



## Asamblea General

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### Consejo de Derechos Humanos

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Tema 4 de la agenda

**Situaciones de derechos humanos que requieren la atención del Consejo**

### **Informe de la comisión de investigación internacional independiente sobre la situación en la República Árabe Siria\***

#### *Resumen*

La situación de los derechos humanos en la República Árabe Siria se ha deteriorado de forma importante desde el 15 de febrero de 2012. La violencia armada aumentó en intensidad y se extendió a nuevas zonas. Las hostilidades activas entre las fuerzas gubernamentales (y la *Shabbiha*) y los grupos armados contrarios al Gobierno continuaron de forma encarnizada. Los enfrentamientos esporádicos entre los agentes armados derivaron en un combate continuo, que implicó tácticas más brutales y nuevas capacidades militares por ambas partes. El nivel de violencia armada a lo largo y ancho del país fue desigual.

Durante el período del que se informa, la comisión de investigación determinó que la intensidad y duración del conflicto, combinadas con unas mayores capacidades organizativas de los grupos armados contrarios al Gobierno, habían alcanzado el nivel a partir del cual puede afirmarse legalmente la existencia de un conflicto armado no internacional. La comisión, por lo tanto, al evaluar las acciones de las partes en las hostilidades, aplicó tanto el derecho internacional humanitario como el derecho internacional de los derechos humanos.

La comisión encontró motivos razonables para creer que las fuerzas gubernamentales y la *Shabbiha* habían cometido delitos de lesa humanidad, como el asesinato y la tortura, así como delitos de guerra y violaciones graves del derecho internacional de los derechos humanos y del derecho internacional humanitario, en particular actos ilícitos como ejecuciones extrajudiciales, torturas, detenciones y arrestos arbitrarios, violencia sexual, ataques indiscriminados, pillajes y destrucción de bienes. La comisión consideró que las fuerzas gubernamentales y los miembros de la *Shabbiha* eran responsables de los asesinatos cometidos en Al-Houla.

\* Los anexos del presente informe se reproducen como se recibieron, en los idiomas en que se presentaron únicamente.

La comisión se reafirma en su anterior conclusión en el sentido de que las violaciones fueron cometidas siguiendo una política de Estado. Las operaciones a gran escala realizadas en diferentes provincias, el similar *modus operandi*, la complejidad de aquellas y el carácter integrado de los aparatos militar y de seguridad apuntan a la participación, al más alto nivel, de las fuerzas armadas y los cuerpos de seguridad y del Gobierno. Se consideró que los miembros de la *Shabbiha* habían cometido muchos de los delitos descritos en el presente informe. Si bien la naturaleza, composición y jerarquía exactas de la *Shabbiha* siguen sin estar claras, información creíble permitió concluir que actuaron de consuno con las fuerzas gubernamentales.

La comisión encontró motivos razonables para creer que los grupos armados organizados contrarios al Gobierno habían cometido delitos de guerra, en particular asesinatos, ejecuciones extrajudiciales y torturas. Aunque no son parte en los Convenios de Ginebra, estos grupos deben sujetarse a los principios del derecho internacional humanitario. Las violaciones y abusos cometidos por grupos armados contrarios al Gobierno no alcanzaron la misma gravedad, frecuencia y escala que los perpetrados por las fuerzas gubernamentales y la *Shabbiha*.

Ambos grupos violaron los derechos del niño.

La comisión no está al tanto de que ni el Gobierno ni los grupos armados contrarios al Gobierno hayan llevado a cabo actuaciones, homologables según criterios internacionales, para prevenir o castigar los delitos documentados en el presente informe.

La falta de acceso obstaculizó de forma importante la capacidad de la comisión para cumplir su mandato. Su acceso a responsables gubernamentales y a miembros de las fuerzas armadas y de seguridad fue prácticamente nulo. Es importante resaltar que ni las víctimas ni los testigos que permanecen en el interior del país pudieron ser entrevistados en persona.

Se remitirá a la Alta Comisionada de las Naciones Unidas para los Derechos Humanos, cuando llegue a su fin el actual mandato de la comisión en septiembre de 2012, una lista confidencial de personas y dependencias que se consideran responsables de delitos de lesa humanidad, violaciones del derecho internacional humanitario y graves violaciones de los derechos humanos.

La comisión reitera que la mejor solución es un acuerdo negociado que implique un diálogo inclusivo y significativo entre todas las partes, que se traduzca en una transición política que a su vez refleje las aspiraciones legítimas de todos los sectores de la sociedad siria, incluidas las minorías étnicas y religiosas.

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## I. Introducción

1. Este informe se presenta de conformidad con la resolución 19/22 del Consejo de Derechos Humanos, de 23 de marzo de 2012, en la que el Consejo prorrogó el mandato de la comisión de investigación internacional independiente sobre la situación en la República Árabe Siria, establecida por el Consejo mediante su resolución S-17/1, de 22 de agosto de 2011.

2. En el presente informe, la comisión<sup>1</sup> expone las conclusiones a las que ha llegado sobre la base de las investigaciones realizadas hasta el 20 de julio de 2012. El informe se basa en las actualizaciones periódicas que la comisión publicó el 16 de abril y el 24 de mayo de 2012, así como en la exposición oral en la que la comisión informó al Consejo de Derechos Humanos el 27 de junio de 2012 (A/HRC/20/CRP.1). También actualiza las conclusiones de la investigación especial de la comisión sobre los acontecimientos de Al-Houla, atendiendo al mandato establecido por el Consejo en su resolución S-19/1, de 1º de junio de 2012.

3. El presente informe deberá leerse conjuntamente con los informes anteriores de la comisión (A/HRC/S-17/2/Add.1 y A/HRC/19/69) en relación con la interpretación de su mandato y sus métodos de trabajo, así como sus conclusiones fácticas y jurídicas en lo que respecta a los acontecimientos acaecidos en la República Árabe Siria entre marzo de 2011 y el 15 de febrero de 2012.

### A. Retos

4. La comisión se enfrentó a diversos retos. Se le otorgó un mandato amplio —tanto en lo geográfico como en lo temporal y material— para investigar todas las alegaciones de violaciones de los derechos humanos cometidas en el país desde marzo de 2011. Ello implicaba la realización de investigaciones en el contexto de una situación en rápida evolución que derivó hacia un conflicto armado.

5. La imposibilidad de acceder físicamente al país también menoscabó de forma importante la capacidad de la comisión para cumplir su mandato. En particular, sus posibilidades de acceder a responsables gubernamentales y a miembros de las fuerzas armadas y de seguridad fueron prácticamente inexistentes. Es importante destacar que las víctimas y testigos presentes en el interior del país, especialmente aquellos que alegaban haber sido maltratados por grupos armados contrarios al Gobierno, no pudieron ser entrevistados en persona.

6. La comisión cursó diversas solicitudes para visitar el país, inclusive mediante notas verbales y cartas de fecha 2 y 16 de abril, 1º, 10 y 29 de mayo, y 22 de junio de 2012 (anexo D), y en reuniones mantenidas con el Representante Permanente de la República Árabe Siria en Ginebra los días 26 y 30 de abril y 18 y 21 de junio de 2012. Esas iniciativas permitieron al presidente de la comisión visitar Damasco entre el 23 y el 25 de junio para estudiar con las autoridades las tareas de la comisión, en particular la investigación sobre Al-Houla. La comisión proporcionó información detallada sobre la visita en su exposición oral al Consejo (A/HRC/20/CRP.1). El Gobierno todavía no ha permitido que la comisión realice investigaciones sobre el terreno.

7. Durante el mandato de la comisión, el Gobierno hizo llegar diversos documentos, en particular informes de investigaciones realizadas por autoridades nacionales, así como listas

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<sup>1</sup> Los Comisionados son Paulo Sergio Pinheiro (Presidente) y Karen Koning AbuZayd.

de bajas. Esta información quedará reflejada en el presente informe, en caso de que ello se considere pertinente.

## **B. Metodología**

8. La comisión trató de adaptar su metodología para hacer frente a los retos expuestos. Si bien continuó esforzándose por hacer constar las violaciones y abusos de los derechos humanos, independientemente del presunto culpable, la comisión se centró en las alegaciones más graves. Tuvo en cuenta la protección de las víctimas y testigos, una inquietud que constituye la esencia misma de la metodología de las investigaciones sobre derechos humanos.

9. Debido a su imposibilidad de acceder a la República Árabe Siria, la comisión continuó desplegándose por la región para recabar versiones de primera mano de aquellas personas que habían abandonado el país. Comenzando el 15 de febrero, la comisión realizó 693 entrevistas sobre el terreno, y también desde Ginebra, en particular mediante Skype y por teléfono, con víctimas y testigos en el interior del país. Ello elevó el número total de entrevistas realizadas por la comisión, desde su creación en septiembre de 2011, a 1.062.

10. La comisión también examinó fotografías, grabaciones de vídeo, imágenes por satélite y material adicional, como informes forenses y certificados médicos. Continuó examinando informes de fuentes gubernamentales y no gubernamentales (tanto internacionales como de la oposición siria), análisis académicos y relaciones de los hechos aparecidas en los medios de comunicación (inclusive de agencias de noticias sirias), así como informes de las Naciones Unidas, sobre todo de órganos y mecanismos de derechos humanos.

11. La comisión aplicó el criterio de prueba utilizado en anteriores informes, a saber la existencia de "motivos razonables para considerar" [la existencia de una violación]. La comisión se basó principalmente, para corroborar incidentes, en versiones de primera mano.

12. En sus anteriores informes, la comisión no aplicó el derecho internacional humanitario. Durante el período del que se informa actualmente, la comisión determinó que la intensidad y duración del conflicto, combinadas con la mayor capacidad organizativa de los grupos armados contrarios al Gobierno, habían alcanzado el nivel a partir del cual puede afirmarse legalmente la existencia de un conflicto armado no internacional. Una vez determinado este extremo, la comisión aplicó el derecho internacional humanitario al evaluar los actos de las partes durante las hostilidades (véase también el anexo II).

13. La comisión continuó cooperando con representantes de los Estados Miembros, órganos de las Naciones Unidas y otras organizaciones internacionales y regionales. La comisión da las gracias a todos aquellos que cooperaron con ella en el cumplimiento de su mandato, en primer lugar y ante todo a las víctimas y a los testigos de violaciones y abusos de los derechos humanos.

## **II. Contexto**

### **A. Antecedentes políticos**

14. Durante el período del que se informa continuaron los esfuerzos para encontrar una solución a la crisis en la República Árabe Siria. El Gobierno puso en marcha diversas reformas políticas y de gobernanza, en tanto que las Naciones Unidas y la Liga de los Estados Árabes designaron a un enviado especial conjunto, Kofi Annan, el 23 de febrero de

2012. Estos esfuerzos arrojaron escasos resultados, habida cuenta que la violencia iba cada vez a más y que la situación sobre el terreno se deterioraba de forma importante.

15. Entre las iniciativas de reforma estaban un referéndum sobre una nueva Constitución, celebrado el 26 de febrero de 2012, elecciones parlamentarias, celebradas el 7 de mayo, y la designación de un nuevo Gobierno el 23 de junio. Estas iniciativas constituyeron otras tantas oportunidades para la introducción de pluralismo político y de un proceso político democrático. No fueron, no obstante, consideradas suficientemente inclusivas como para satisfacer al creciente movimiento disidente dentro del país o a la oposición en el exilio.

16. El Presidente Bashar Al Assad no consiguió implicar a la oposición en un diálogo significativo. Las elecciones fueron boicoteadas por la oposición, y su resultado preservó la supremacía del partido Baath en el Parlamento, así como en el nuevo Gobierno, al no incorporar a fuerzas políticas emergentes en las instituciones de Gobierno. Por ello, el régimen dio nuevos motivos para granjearse el antagonismo de sectores de la población y de grupos en la oposición.

17. Los esfuerzos en la comunidad internacional, canalizados por conducto del enviado especial conjunto, se tradujeron en la presentación, el 10 de marzo de 2012, de una propuesta de seis puntos. La propuesta expuso las medidas encaminadas a establecer un cese de la violencia por todas las partes y un compromiso en relación con un proceso político. La cesación del fuego entró en vigor el 12 de abril; a ello se siguió el despliegue de la Misión de Supervisión de las Naciones Unidas en Siria (UNSMIS) el 21 de abril por un período inicial de 90 días, para supervisar la aplicación de la propuesta. La llegada de observadores de la UNSMIS tuvo inicialmente un impacto positivo sobre el terreno, y los niveles de violencia disminuyeron en abril. Posteriormente, no obstante, las operaciones militares se intensificaron hasta un nivel tal que, el 15 de junio, la UNSMIS tuvo que suspender sus actividades temporalmente. El 20 de julio, el mandato de la UNSMIS fue prorrogado por un período final de 30 días. La nueva prórroga quedó condicionada al cese de la utilización de armas pesadas y a una reducción de la violencia ejercida por todas las partes.

18. Los grupos de oposición representados en el Consejo Nacional Sirio se negaron a entablar negociaciones con el Presidente Assad, exhortándole a que abandonase el poder. Tanto el Consejo Nacional Sirio como Ejército Libre de Siria (ELS) aceptaron la propuesta de seis puntos, incluyendo la cesación del fuego. En marzo, el Consejo Nacional Sirio y el ELS firmaron un acuerdo para cooperar sobre la canalización de fondos al ELS por conducto de una oficina de enlace en el seno del Consejo; el acuerdo no fue aplicado, no obstante, y cada grupo continuó operando de forma independiente.

19. En la comunidad internacional, las posiciones sobre cómo abordar el conflicto fueron diversas; algunos Estados exigieron la marcha inmediata del Presidente; otros se centraron en prevenir cualquier forma de intervención externa. Otros más continuaron ofreciendo suministros militares al Gobierno; y otros aún abogaron por la provisión de financiación, y proporcionaron apoyo, en forma de equipos de comunicaciones y material, a los grupos armados contrarios al Gobierno. La presunta presencia de asesores extranjeros fue también motivo de polémica entre los Estados, como lo fue la utilización de sanciones. El incierto contexto internacional socavó los esfuerzos del enviado especial conjunto para lograr una solución política al conflicto.

20. El 30 de junio de 2012, el enviado especial conjunto convocó una reunión de un Grupo de Acción formado por las Naciones Unidas, la Liga de los Estados Árabes y la Unión Europea, así como por países con influencia en las partes en el conflicto, en particular los cinco miembros permanentes del Consejo de Seguridad. En un comunicado, el Grupo de Acción renovó su compromiso con la propuesta de seis puntos y estableció

principios y directrices para una transición política dirigida por los propios sirios. Grupos de oposición criticaron la transición propuesta por dejar la puerta abierta a la posibilidad de que el Presidente Assad formase parte de un Gobierno de transición. En una reunión celebrada en El Cairo los días 2 y 3 de julio bajo los auspicios de la Liga de los Estados Árabes, la oposición siria elaboró una visión conjunta de una transición política y un pacto nacional que hicieran de la justicia, la democracia y el pluralismo las bases constitucionales de una futura Siria. No obstante, no pudieron ponerse de acuerdo para elegir un órgano que les representase a nivel internacional.

## B. Situación militar<sup>2</sup>

21. Durante el período del que se informa, la situación en materia de seguridad se deterioró de forma importante, debido a que la violencia armada aumentó en intensidad y se extendió a nuevas zonas. Las hostilidades activas entre las fuerzas gubernamentales (y la milicia progubernamental) y los grupos armados contrarios al Gobierno también se multiplicaron. Los enfrentamientos esporádicos entre los agentes armados derivaron en una situación de combate continuo, que implicó tácticas más brutales y nuevas capacidades militares por ambas partes. Los niveles de violencia armadas fueron de diversa consideración a lo largo y ancho del país.

22. El Gobierno, de forma creciente, desplegó sus tropas y material pesado en operaciones contra zonas que se consideraba que estaban dando apoyo a grupos de oposición. Todas las divisiones del ejército y servicios de seguridad participaron en operaciones militares. Normalmente, dichas operaciones comenzaban con el acordonamiento de la zona designada mediante puestos de control, a lo que seguía posteriormente un bombardeo que era el preludio de incursiones de las fuerzas terrestres destinadas a desalojar a los insurgentes y a sus partidarios. El bombardeo se utilizaba en el contexto de los enfrentamientos directos y en operaciones encaminadas a aplastar manifestaciones. Efectivos aéreos también abrieron fuego sobre combatientes y manifestantes desarmados en localidades situadas en la órbita de los grupos armados.

23. Las fuerzas gubernamentales dirigieron sus principales esfuerzos a controlar las ciudades principales como Damasco, Aleppo, Homs y Hama. Los ataques sobre zonas presuntamente infiltradas de grupos armados contrarios al Gobierno tuvieron el efecto no deseado de incrementar el apoyo de las poblaciones locales a esos grupos. Durante muchas operaciones, resultaron muertos numerosos combatientes y civiles.

24. La milicia progubernamental, en particular la *Shabbiha*, actuó al parecer junto con las fuerzas gubernamentales en operaciones de seguridad y militares. Su naturaleza y efectivos exactos y su relación precisa con el Gobierno siguen estando poco claros.

25. El ejército sufrió un desgaste creciente en términos de personal y equipos debido a las operaciones bélicas, a las deserciones y a las bajas. Las defecciones afectaron a las tropas psicológicamente, alimentando una crisis de confianza entre las filas y alentando nuevas deserciones. El Gobierno también tuvo dificultades para reclutar nuevos soldados, ya que muchos de los que fueron convocados para realizar el servicio militar obligatorio se negaron a presentarse a filas.

26. Los grupos armados contrarios al Gobierno ampliaron sus actividades a lo largo y ancho del país, enfrentándose con fuerzas gubernamentales en múltiples frentes a la vez. En el momento de redactarse el presente informe, participaban en confrontaciones armadas sostenidas en el interior de la capital, al tiempo que establecían santuarios por el resto del

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<sup>2</sup> Véase también el anexo III.



país. Según algunas fuentes, en las filas de algunos grupos armados luchaban combatientes extranjeros.

27. El ESL tomó medidas abordar las evidentes deficiencias de su estructura efectiva global de mando. En algunas provincias, el ESL creó consejos militares locales que se abrogaron la dirección de los grupos que luchaban en esas zonas. Muchos grupos afirmaron estar afiliados al ESL, al tiempo que emergen otros que carecen de una filiación clara.

28. Grupos armados contrarios al Gobierno se enfrentaron a las fuerzas gubernamentales mediante choques directos, emboscadas e incursiones. Si bien las investigaciones no han confirmado el uso de armamento más sofisticado por grupos armados contrarios al Gobierno, mejoraron su acceso al mismo y su capacidad para utilizar las armas disponibles de forma efectiva. Al parecer, disponen de un mayor acceso a financiación y apoyo logístico.

29. La comisión tomó nota del mayor y más efectivo uso de artefactos explosivos improvisados contra los convoyes, patrullas y dependencias de las fuerzas gubernamentales. También se utilizaron para atacar a miembros del ejército y de las fuerzas de seguridad y a responsables del Gobierno.

30. Han surgido en el país diversos grupos armados islámicos radicales. El más importante es el Frente Al-Nusrah para el Pueblo de Levante, un grupo vinculado al parecer con Al-Qaida, que reivindicó su responsabilidad en varios ataques, en particular en atentados suicidas mediante bombas cometidos contra fuerzas y altos responsables gubernamentales.

31. Existen también grupos de autodefensa en diversas localidades. Algunos de esos grupos surgieron en localidades habitadas por minorías presuntamente progubernamentales.

### C. Situación socioeconómica y humanitaria

32. La crisis precipitó un rápido deterioro de la economía del Estado, y ha exacerbado los niveles ya existentes de pobreza y de desempleo causados por una sequía en zonas rurales agrícolas, que ya viene durando una década y que ha ocasionado el desplazamiento de agricultores hacia las ciudades, así como un resentimiento cada vez mayor contra aquellos que disfrutaban, o se piensa que disfrutaban, de las sinecuras económicas repartidas por el Gobierno. Según el Fondo Monetario Internacional, la economía de la República Árabe Siria se contraerá de forma importante en 2012, principalmente debido a las sanciones. La drástica caída del crecimiento económico se ha visto acompañada de indicadores alarmantes, como la depreciación de la libra siria, que ha perdido el 30% de su valor desde el comienzo de estos acontecimientos, y por una inflación que se ha disparado por encima del 50%<sup>3</sup>.

33. La militarización del conflicto ha ahondado la crisis humanitaria. Miles de sirios han sido desplazados internamente o han huido a países vecinos. En el momento de redactarse este informe, el Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR) calculaba que 1,5 millones de personas habían sido desplazadas internamente. La población siria, cada vez más, busca la ayuda de la Media Luna Roja Árabe Siria, del Programa Mundial de Alimentos y de otras organizaciones<sup>4</sup>. A fecha de julio, 114.208 sirios figuraban registrados como refugiados, recibiendo asistencia en cuatro países vecinos (42.682 en

<sup>3</sup> Matthew Epstein y Ahmed Saeed, "Smart' sanctions take toll on Syria", *Financial Times*, 18 de julio de 2012.

<sup>4</sup> ACNUR, "UNHCR gravely concerned about dramatic escalation of Syria exodus", 20 de julio de 2012, disponible en [www.unhcr.org/50094bdcb.htm](http://www.unhcr.org/50094bdcb.htm).

Turquía, 34.050 en Jordania, 29.986 en el Líbano y 7.490 en el Iraq)<sup>5</sup>. Los refugiados en el interior de la República Árabe Siria, entre los que hay alrededor de 500.000 palestinos y más de 103.000 iraquíes<sup>6</sup>, se han visto también afectados por la situación. Según el ACNUR, más de 13.000 refugiados iraquíes habían abandonado la República Árabe Siria durante el primer semestre de 2012, de los que la mayoría regresaron al Iraq<sup>7</sup>.

34. El 16 de julio, la comisión recibió información del Gobierno de la República Árabe Siria, en la que este declaraba que había sido sometido a "más de 60 paquetes de sanciones coercitivas unilaterales ilícitas por parte de los Estados Unidos de América, la Unión Europea, la Liga de los Estados Árabes, Turquía, Suiza, el Canadá, Australia, el Japón y otros países". En opinión del Gobierno, dichas sanciones, que van dirigidas contra la vida económica, financiera y agrícola en el país, constituyen un castigo colectivo contra la población siria. El Gobierno deploró especialmente las sanciones impuestas a la importación de productos de petróleo, en particular gas de uso doméstico y fuel oil, que afectaban de forma grave al nivel de vida de los sirios de a pie. Se denunciaron también las consecuencias negativas de las sanciones, en particular las que afectan a los sistemas bancarios público y privado, a las exportaciones de petróleo y a la importación de suministros médicos.

35. De las declaraciones de los entrevistados se desprendió claramente que comunidades enteras sufren de falta de alimentos, combustible, agua, electricidad y suministros médicos. La escasez es especialmente aguda en zonas como Homs, Idlib, Deraa y Hama. Las personas obligadas por las hostilidades a abandonar sus casas tienen una apremiante necesidad de refugio. Según la Oficina de Coordinación de Asuntos Humanitarios (OCHA), el número de personas que necesitan urgentemente asistencia ha aumentado drásticamente, pasando de 1 millón a 1,5 millones<sup>8</sup>; dicha cifra continúa aumentando de forma constante.

36. La cuarta reunión del Foro Humanitario Sirio, celebrada el 16 de julio de 2012, concluyó que el continuo deterioro de la situación humanitaria era motivo de grave preocupación para la comunidad internacional. La situación de seguridad ha minado la capacidad de los trabajadores humanitarios para asistir a la población necesitada. Los dos llamamientos de asistencia humanitaria en favor de los refugiados de los países vecinos y las personas desplazadas internas y otras personas necesitadas en el interior de la República Árabe Siria se han financiado tan solo en un 20%<sup>9</sup>.

### III. Conclusiones

37. Pese a que la comisión se centró en las violaciones más graves de los derechos humanos, desea señalar el deterioro general de la situación de derechos humanos. Además del derecho a la vida y el derecho a la libertad y a la seguridad de la persona, continúan violándose otros derechos humanos fundamentales. La creciente violencia se ha circunscrito todavía más a las libertades de expresión, asociación y reunión pacífica, que inicialmente habían hecho prender la chispa de la rebelión de marzo de 2011. La población siria carece en general de derechos económicos, sociales y culturales básicos. Tal como la

<sup>5</sup> Véase ACNUR, Syria Regional Refugee Response, [data.unhcr.org/syrianrefugees/regional.php](http://data.unhcr.org/syrianrefugees/regional.php).

<sup>6</sup> El Gobierno de la República Árabe Siria calcula el número de refugiados iraquíes en el país en más de 1 millón.

<sup>7</sup> OCHA, *Humanitarian Bulletin*, Siria, N° 3, 5 de julio de 2012.

<sup>8</sup> OCHA, *Humanitarian Bulletin*, Middle East and North Africa, N° 2, mayo y junio de 2012.

<sup>9</sup> "Critical funding shortage threatens humanitarian response for Syria – UN official", UN News Centre, 16 de julio de 2012.

comisión señaló en anteriores informes, sigue preocupándole gravemente el clima imperante de impunidad en relación con las violaciones de los derechos humanos.

## A. Bajas

38. La información ofrecida por el Gobierno indica que, a fecha 9 de julio de 2012, 7.928 personas, entre las que figuraban fuerzas gubernamentales y civiles, habían resultado muertas debido a los disturbios.

39. Otras entidades, en particular organizaciones no gubernamentales sirias y grupos de oposición, incluyendo comités locales de coordinación, el Centro para Documentación de las Violaciones en Siria, la Red Siria para los Derechos Humanos y el Observatorio Sirio para los Derechos Humanos, también llevan un recuento de las bajas empleando diversos métodos. Las cifras que aportan fluctúan entre los 17.000 y los 22.000 bajas mortales. La comisión fue incapaz de confirmar dichas cifras.

40. La comisión registró numerosas bajas debidas a incidentes en todo el país. La comisión informa solamente de la muerte de aquellas personas sobre las que se dispone de información de primera mano obtenida mediante entrevistas realizadas por sus investigadores. En las cifras de la comisión no se hace distinción entre los civiles y los combatientes. Las personas heridas no se incluyen. La comisión, a través de entrevistas a víctimas y a testigos presenciales llevadas a cabo entre el 15 de febrero y el 20 de julio, confirmó 840 muertes.

## B. Investigación especial sobre los sucesos de Al-Houla

41. La comisión hizo llegar sus conclusiones preliminares (A/HRC/20/CRP.1) al Consejo de Derechos Humanos el 27 de junio de 2012, sobre la base de las pruebas recabadas hasta el 22 de junio. En su informe, la comisión concluyó que el Gobierno era responsable de las muertes de civiles debido al bombardeo de la zona de Al-Houla y, especialmente, de la localidad de Taldou. También consideró que la investigación del Gobierno no satisfizo los criterios internacionales en materia de derechos humanos. En relación con el asesinato deliberado de civiles, la comisión fue incapaz de determinar la identidad de los autores. No obstante, consideró que fuerzas leales al Gobierno eran, probablemente, responsables de muchas de las muertes.

42. No se concedió acceso al país a pesar de las solicitudes concretas dirigidas al Gobierno, en una nota verbal de fecha 4 de junio de 2012 (anexo I), y en persona, por conducto del presidente de la comisión durante su visita a Damasco los días 24 y 25 de junio. El Gobierno no ha publicado un informe final sobre su propia investigación, ni ha indicado cuándo podrá ver la luz dicho informe.

43. La comisión realizó ocho entrevistas adicionales, entre ellas varias con seis testigos de la zona de Taldou, dos de los cuales eran supervivientes. También estudió otros materiales, en particular grabaciones de vídeo e imágenes por satélite. Igualmente estudió análisis de otras fuentes.

44. La comisión tuvo en cuenta 47 entrevistas de diferentes fuentes. Las entrevistas fueron coherentes en su relación de los hechos y su descripción de los autores como pertenecientes a fuerzas gubernamentales y a la *Shabbiha*. Aparte de los dos testigos que figuran en el informe del Gobierno, ninguna otra versión apoyó la relación de los hechos ofrecida por el Gobierno. La comisión estudió cuidadosamente el testimonio de los dos testigos que figuran en dicho informe, y consideró sus versiones no fidedignas en razón de diversas incoherencias (véase el anexo IV). Las versiones de otros testigos entrevistados

por diferentes investigadores fueron poco consistentes, inclusive las recabadas de niños, a pesar de que fueron realizadas a lo largo de un amplio período de tiempo.

45. En su exposición oral ante el Consejo de Derechos Humanos, la comisión determinó que los grupos armados contrarios al Gobierno, las fuerzas gubernamentales y la *Shabbiha* pudieron haber tenido acceso a los dos escenarios de los crímenes: el primero, las siete casas de la familia Abdulrazzak en la carretera de la Presa (*tariq al-sadd*) y el segundo, las dos casas de la familia Al-Sayed en la calle Mayor (*al-shar'i al-raisi*), frente al Hospital Nacional<sup>10</sup>. La comisión ha posteriormente determinado que el puesto de control de Al-Qaws, que es el más próximo a la casa de los Al-Sayed, en la calle Mayor, permaneció bajo control gubernamental el día del incidente. La línea del frente entre la oposición y las fuerzas gubernamentales se encontraba al norte del puesto de control. La comisión, por lo tanto, concluyó que era altamente improbable que un grupo armado antigubernamental hubiera tenido acceso a la casa familiar de los Al-Sayed el día de la matanza.

46. En relación con el emplazamiento de los Abdulrazzak, en el que resultaron muertas más de 60 personas, la comisión consideró que para llevar a cabo el crimen se hubiera necesitado un gran número de autores. La comisión consideró, a través de imágenes por satélite y testimonios confirmados, que el movimiento de vehículos y/o armas, así como el tamaño del grupo, hubieran sido fácilmente detectables por las fuerzas gubernamentales estacionadas en la posición de la Dirección de Recursos Hídricos. La comisión cree por consiguiente que ningún grupo armado contrario al Gobierno de cierto tamaño pudo tener acceso a dicho escenario.

47. El Hospital Nacional llevaba ocupado por el ejército varios meses cuando tuvieron lugar los incidentes. Aunque era accesible a pie desde ambos escenarios del crimen, nadie, ni heridos ni personas que huían de los escenarios de los crímenes, buscó refugio en dicho Hospital para ser tratado u obtener protección. Hasta donde la comisión pudo determinar, todos los heridos y sus parientes, así como las personas procedentes de casas próximas, huyeron hacia zonas controladas por la oposición. Ninguno de los heridos procuró obtener atención médica en el Hospital Nacional. El Gobierno calificó a la familia Al-Sayed de leal al Gobierno, pero los supervivientes de esa familia huyeron hacia zonas controladas por la oposición en Taldou, optando por no buscar la asistencia de las fuerzas gubernamentales próximas.

48. La comisión sigue considerando que el Gobierno no ha cumplido con su obligación legal de investigar los asesinatos de Al-Houla del 25 de mayo de 2012.

49. Habida cuenta de las pruebas disponibles, la comisión concluyó que se habían dado los elementos necesarios para determinar la existencia de delitos de guerra. El asesinato de múltiples civiles, en particular mujeres y niños, fue deliberado y vinculado al conflicto armado en marcha. Existen razones fundadas para creer que los autores de los crímenes, en la ubicación tanto de la familia Abdulrazzak como de la familia Al-Sayed, fueron fuerzas gubernamentales y miembros de la *Shabbiha*.

50. Existen también motivos razonables para creer que dichos actos formaban parte de una serie de ataques dirigidos contra civiles, y que, en su condición de tales, permitían concluir (véase la sección C *infra*) que el Gobierno y la *Shabbiha* habían cometido crímenes de lesa humanidad.

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<sup>10</sup> Véase A/HRC/20/CRP.1, párr. 44 y anexo.

## C. Muertes arbitrarias<sup>11</sup>

51. Los casos de ataques contra civiles, asesinatos y ejecuciones extrajudiciales aumentaron drásticamente durante el período sobre el que se informa. La comisión realizó alrededor de 300 entrevistas investigando incidentes en los que se alegaba la muerte arbitraria de civiles y de combatientes que ya no estaban en condiciones de luchar. Los incidentes que ocurrieron en los contextos descritos anteriormente fueron corroborados mediante múltiples versiones<sup>12</sup>. Si bien ambas partes en el conflicto causaron muertes de forma arbitraria, la gravedad, frecuencia y escala de las violaciones cometidas por las fuerzas gubernamentales y la *Shabbiha* fueron, según la información disponible, mucho mayores que las atribuibles a grupos armados contrarios al Gobierno.

### 1. Fuerzas gubernamentales y *Shabbiha*

52. La mayoría de los homicidios arbitrarios ocurrieron en el contexto de ataques contra los baluartes de grupos armados contrarios al Gobierno. Según el patrón más destacado, los ataques comenzaban con el bloqueo de la zona y el bombardeo de la misma<sup>13</sup>, a lo que seguía un asalto de las fuerzas terrestres, entre ellas fuerzas especiales y *Shabbiha*. Se usaron ampliamente los francotiradores<sup>14</sup>. Para asegurar la zona, fuerzas gubernamentales emprendían registros casa por casa. Durante esas operaciones se perseguía sistemáticamente a los desertores, activistas y hombres en edad de combatir. Se ejecutaba a los heridos y a los combatientes contrarios al Gobierno capturados. En algunos casos, los familiares de los combatientes, desertores y activistas, así como otros que parecían haber sido escogidos al azar, eran también ejecutados.

53. La existencia de este patrón se constató, entre otras localidades, en Tremseh, Al Qubeir, Al-Houla, Kili, Tal Rifat, Taftanaz, Sarmin, Ain Larouz, Atarib, Abdiya, Homs y Al Qusayr.

54. Se continuó utilizando fuerza excesiva contra los manifestantes que ejercían su derecho a protestar pacíficamente en Al Qamishli, en marzo, y en Damasco, Aleppo y Jabal Al Zawiya, en abril.

55. La comisión considera que los casos de homicidios arbitrarios descritos en el presente informe ofrecen motivos razonables para creer que las fuerzas gubernamentales y la *Shabbiha* violaron las disposiciones del derecho internacional de los derechos humanos que protegen el derecho a la vida. Además, muchos de esos mismos asesinatos reunían los elementos propios del crimen de guerra de asesinato según figura contemplado en el derecho internacional penal<sup>15</sup>.

56. Frecuentemente, se dirigieron ataques contra civiles y objetos civiles. Aunque el objetivo declarado del Gobierno era atacar a "terroristas", los ataques se dirigieron contra barrios, ciudades y regiones con población civil (véase el anexo VI). La comisión por lo

<sup>11</sup> Véase también anexo II, párrs. 30 a 42.

<sup>12</sup> Si se desea obtener una relación completa de los homicidios arbitrarios investigados por la comisión, véase el anexo V.

<sup>13</sup> Si se desea más información sobre los bombardeos, véase el anexo VI.

<sup>14</sup> Los francotiradores acompañaban regularmente a las fuerzas durante los ataques por tierra y fueron responsables de un importante número de bajas civiles. La comisión registró 35 casos de civiles muertos por francotiradores. Decenas de entrevistados describieron los perjudiciales efectos psicológicos y sociales de la presencia de francotiradores en su vecindario. La gente temía salir de su casa y, cuando comenzaban los bombardeos, tenía miedo de permanecer en ella.

<sup>15</sup> Estatuto de Roma, art. 8 2) c) i) – 1. Véase también el anexo II, párrs. 30 a 42.

tanto concluye que existen motivos razonables para creer que se cometieron en muchos casos crímenes de guerra consistentes en ataques contra civiles.

57. También existen motivos razonables para creer que los incidentes documentados constituyeron crímenes de lesa humanidad de asesinato. En las ciudades y pueblos en los que existía un cuadro de bloqueos, bombardeos, ataques por tierra y registros casa por casa se dieron las condiciones para considerar que existió un ataque generalizado y sistemático contra una población predominantemente civil. La escala de los ataques, su naturaleza repetitiva, el nivel de fuerza excesiva utilizada en forma constante, la naturaleza indiscriminada del bombardeo y el carácter coordinado de los ataques permiten a la comisión concluir que se habían ejecutado aplicando una política de Estado.

## 2. Grupos armados contrarios al Gobierno

58. A pesar de su acceso restringido a víctimas de grupos armados contrarios al Gobierno, la comisión pudo documentar casos en los que combatientes contrarios al Gobierno dieron muerte a soldados gubernamentales, miembros de la *Shabbiha* e informantes capturados que admitieron haber tomado parte en ataques militares (véase el anexo V). Si bien el régimen jurídico de derechos humanos aplicable a dichos agentes no estatales, como los grupos armados contrarios al Gobierno, es diferente, el derecho internacional humanitario se aplica igualmente a todas las partes en un conflicto.

59. La comisión consideró contrastadas las pruebas sobre muertes de soldados y miembros de la *Shabbiha* que estaban ya fuera de combate. En Al Qusayr, Bab Amr, Qaldiya y en otras partes, la comisión tomó nota de que personas capturadas por grupos armados contrarios al Gobierno en ocasiones se enfrentaron a un proceso parajudicial antes de ser ejecutadas. No se ha podido obtener una relación coherente del proceso de juicio, ni se tiene información sobre la medida en que esos procesos respetaron los criterios en materia de juicio justo. Ejecutar a un prisionero sin otorgarle salvaguardias judiciales fundamentales constituye un crimen de guerra.

60. La comisión concluyó que la información sobre ejecuciones cometidas por grupos armados gubernamentales —con o sin "juicio"— constituyó un motivo razonable para creer que se habían cometido, en diversas ocasiones, crímenes de guerra consistentes en asesinato o en la condena o ejecución sin las garantías propias del debido proceso. La comisión no pudo corroborar los presuntos ataques dirigidos contra personas civiles que no participaban en hostilidades o contra población civil.

## 3. Autores no identificados

61. La comisión determinó que decenas de civiles habían resultado muertos en nueve explosiones entre marzo y julio, obra de autores no identificados<sup>16</sup>. Las explosiones parecen haber sido causadas por atacantes suicidas o artefactos explosivos improvisados, incluso colocados a bordo de vehículos.

62. Si bien los actos mencionados pueden vincularse a un conflicto armado no internacional y de esta forma evaluarse con arreglo al derecho internacional humanitario, la falta de acceso a los escenarios de los crímenes, sumada a la ausencia de información sobre sus autores, menoscabó la capacidad de la comisión para efectuar dicha valoración. Se han cometido, no obstante, delitos en el ámbito nacional perseguibles en virtud del Código Penal sirio. El Gobierno está obligado a velar por que se realice una investigación imparcial, pronta, efectiva e independiente, según le dictan sus obligaciones internacionales en materia de derechos humanos.

<sup>16</sup> Véase el anexo V, párr. 55.

## D. Detención arbitraria y desaparición forzada<sup>17</sup>

63. La comisión entrevistó a 25 personas que afirmaron haber sido detenidas arbitrariamente y retenidas de forma ilegal. Se celebraron otras cinco entrevistas con desertores que alegaron haber presenciado detenciones y reclusiones arbitrarias mientras estaban en activo.

64. Según el Gobierno, desde febrero de 2011 más de 10.000 personas han sido puestas en libertad a raíz de cuatro amnistías, entre ellas 275 personas puestas en libertad el 10 de julio de 2012. En su informe sobre la aplicación de la resolución 2043 (2012) del Consejo de Seguridad (S/2012/523), el Secretario General señaló que la UNSMIS había tenido constancia de la liberación de 468 detenidos en Deraa, Damasco, Hama, Idlib y Deir ez-Zor el 31 de mayo y el 14 de junio de 2012.

65. El Gobierno no ha facilitado aún estadísticas oficiales sobre el número de personas detenidas y de centros de detención. Al 25 de junio, la UNSMIS había recibido y contrastado información sobre la existencia de 2.185 detenidos y 97 lugares de detención en todo el país. Las organizaciones no gubernamentales sirias elevan la cifra de personas actualmente encarceladas hasta 26.000. La comisión no pudo confirmar el número de personas detenidas y presas.

66. La mayoría de las detenciones tuvieron lugar en cuatro tipos de situaciones: cuando se creía que la persona tenía previsto desertar o esta se había negado a cumplir órdenes (por lo general de abrir fuego contra civiles); durante registros domiciliarios; en puestos de control; y, en caso de participación en una manifestación, durante la misma o después de esta. En unos pocos casos, se practicaron detenciones aleatorias en zonas en que no había hostilidades activas. Al parecer, en cuatro de esos casos los detenidos fueron mujeres y en dos fueron menores, un niño de 14 años y una niña de 9.

67. No se ofreció ni brindó asistencia letrada a ningún entrevistado. Salvo en un caso, ningún entrevistado recibió la visita de sus familiares. Solo dos entrevistados, detenidos bajo sospecha de planear su desertión, fueron oficialmente acusados de un delito.

68. Muchos alegaron que, antes de ser puestos en libertad, fueron obligados a poner su firma o su huella digital en un documento cuyo contenido desconocían. Tres detenidos comparecieron ante un juez antes de ser puestos en libertad. En un incidente no verificado, el entrevistado afirmó que, pese a que el juez había ordenado su puesta en libertad, permaneció encarcelado otros tres meses. También se entrevistó a un exjuez que afirmó que los agentes de seguridad prohibían interrogar a nadie sin que ellos estuvieran presentes y que, en una ocasión, lo encañonaron con una pistola.

69. Los entrevistados estuvieron presos entre unas pocas horas y cinco meses. En la mayoría de los casos la duración de la reclusión fue igual o inferior a 60 días.

70. La comisión considera que la legislación nacional de la República Árabe Siria (véase el anexo II) no cumple la obligación que impone el artículo 9 del Pacto Internacional de Derechos Civiles y Políticos de garantizar que se lleve a toda persona detenida o presa a causa de una infracción penal "sin demora ante un juez u otro funcionario autorizado por la ley para ejercer funciones judiciales".

71. Hay motivos razonables para considerar que las fuerzas gubernamentales han detenido y encarcelado a personas arbitrariamente. Preocupa especialmente la reclusión de personas contra las que no se ha formulado ninguna acusación, el hecho de que no se preste

<sup>17</sup> Véase también el anexo VII.

asistencia letrada a los reclusos ni se les permita recibir la visita de familiares y la inexistencia en la mayoría de los casos de cualquier tipo de revisión judicial.

72. En los casos de desaparición forzada, los familiares de las personas detenidas no fueron informados en el momento de la detención ni después sobre el lugar en que sus allegados permanecían recluidos. En la mayoría de los casos, los familiares no sabían dónde estaba la persona detenida.

73. Existe un delito de desaparición forzada cuando el Gobierno se niega a reconocer la detención y reclusión o a revelar la suerte de la persona en cuestión.

## **E. Tortura y otras formas de malos tratos<sup>18</sup>**

### **1. Fuerzas gubernamentales y *Shabbiha***

74. A partir del 15 de febrero de 2012 la comisión comenzó a entrevistar a 81 personas por denuncias de tortura y otras formas de tratos crueles, inhumanos o degradantes. En 59 de las entrevistas se abordaron hechos ocurridos durante el período que se examina. La comisión no pudo visitar los centros de detención para entrevistar a los reclusos u observar las condiciones de internamiento.

75. De las 59 personas mencionadas, 30 afirmaron haber sido detenidas y/o encarceladas por las fuerzas gubernamentales o por la *Shabbiha*. Todas excepto una dijeron que habían sufrido violencia física durante su internamiento. Otras 19 personas entrevistadas, 10 de las cuales habían trabajado en centros de internamiento o en puestos de control antes de desertar, denunciaron haber presenciado torturas o malos tratos. Cuando le fue posible, la comisión pudo ver las heridas o cicatrices de las presuntas víctimas.

76. Si bien la mayoría de los entrevistados habían permanecido en centros de detención oficiales, seis afirmaron haber estado recluidos en instalaciones no oficiales, como viviendas civiles, antes de ser trasladados a un centro oficial. Los entrevistados denunciaron haber sido víctimas de abusos cometidos por soldados y por la *Shabbiha* en los centros no oficiales. Otros nueve entrevistados afirmaron haber sido golpeados o agredidos durante registros domiciliarios o en puestos de control, o haber presenciado agresiones contra terceros. Ninguno de ellos fue encarcelado posteriormente.

77. Los métodos de tortura denunciados eran similares en todo el país. Los entrevistados afirmaron haber recibido fuertes golpes en la cabeza y el cuerpo con cables eléctricos, látigos, varas de metal y de madera y culatas de rifle, así como quemaduras con cigarrillos, patadas o electrochoques en partes sensibles del cuerpo, incluidos los genitales. Seis entrevistados dijeron que perdieron el conocimiento durante los interrogatorios.

78. Hubo múltiples denuncias de reclusos golpeados en las plantas de los pies (*falaqa*). Era práctica común mantener a los presos durante largo tiempo en posiciones forzadas, por ejemplo colgados de la pared o el techo por las muñecas (*shabeh*) o colgados de las muñecas esposadas a la espalda. Otros métodos consistían en obligar a los presos a doblarse introduciendo la cabeza, el cuello y las piernas en un neumático mientras eran golpeados (*dulab*) y en atarlos a una tabla con la cabeza suspendida y estirarlos o doblar la tabla por la mitad. Algunos reclusos fueron víctimas de violaciones u otras formas de violencia sexual<sup>19</sup>. Muchos entrevistados mostraron cicatrices y heridas que corroboraban los relatos.

<sup>18</sup> Véase también el anexo VIII.

<sup>19</sup> Véase también el anexo IX.



79. En algunos casos las torturas y malos tratos infligidos no implicaron violencia física. Los detenidos fueron afeitados y obligados a hacer el perro y a declarar que "no hay más Dios que Bashar". Otros entrevistados declararon que fueron obligados a desnudarse y a permanecer sin ropa durante períodos prolongados. Tres entrevistados afirmaron haber sido amenazados con ser ejecutados. Uno dijo haber presenciado cómo otro recluso era amenazado de agresión sexual y otro afirmó que los interrogadores amenazaron con detener y violar a las mujeres de su familia.

80. Seis entrevistados fueron trasladados a múltiples centros de detención dependientes de diferentes organismos de inteligencia. Uno de ellos dijo que en cinco meses había estado en diez centros diferentes de cuatro provincias. Otro entrevistado pasó por cuatro centros distintos en Deraa y Damasco, también en cinco meses. Dichos entrevistados sufrieron violencia física en todos los centros a los que fueron trasladados.

81. La mayoría de los detenidos dijeron que habían permanecido reclusos en pequeñas celdas atestadas. Dos entrevistados afirmaron que las celdas estaban tan atestadas que era imposible sentarse o tumbarse. Todos excepto uno denunciaron la insuficiencia de alimentos y agua. Otro entrevistado dijo que, tras pasar una semana sin agua, tuvo que beber su propia orina. Varios entrevistados afirmaron que en su celda no había retrete. Cuatro entrevistados describieron celdas infestadas de insectos y piojos. La comisión no pudo corroborar las denuncias de denegación de medicación y tratamiento médico.

82. La comisión recibió denuncias de hechos que, en caso de verificarse, supondrían una infracción de las Reglas mínimas para el tratamiento de los reclusos (véase el anexo II).

83. La comisión confirma su conclusión anterior de que las fuerzas gubernamentales y la *Shabbiha* infligieron torturas y otras formas de tratos crueles, inhumanos o degradantes en violación de las obligaciones que incumben al Estado en virtud del derecho internacional humanitario y el derecho internacional de los derechos humanos.

84. La comisión determinó que se infligieron daños severos en los centros de detención oficiales y no oficiales, durante los registros domiciliarios y en los puestos de control. También concluyó que se infligieron torturas para castigar y humillar o para obtener información. Diversos tribunales internacionales han concluido que en la mayoría de los casos la violencia física descrita por los entrevistados constituye tortura (véase el anexo II).

85. La comisión encontró motivos razonables para considerar que se infligieron torturas como parte de un ataque generalizado contra la población civil por parte de las fuerzas gubernamentales y de los miembros de la *Shabbiha* que tenían conocimiento del ataque. Concluye que los miembros de las fuerzas gubernamentales y de la *Shabbiha* cometieron actos de tortura que constituían un crimen de lesa humanidad y un crimen de guerra. Los miembros de las fuerzas de seguridad, en particular del Servicio de Inteligencia Militar y el Servicio de Inteligencia de la Fuerza Aérea, parecen ser los principales responsables de las torturas y los malos tratos. La comisión tuvo constancia de la participación de miembros de la *Shabbiha* en la comisión de actos de tortura en centros de detención no oficiales de Homs en febrero y marzo.

86. La comisión concluyó que conductas como afeitar a la fuerza a los detenidos y obligarlos a hacer el perro constituyen un trato cruel, inhumano o degradante. Del mismo modo, las condiciones de detención descritas en las entrevistas constituyen un trato cruel, inhumano o degradante de los detenidos.

## **2. Grupos armados contrarios al Gobierno**

87. Se realizaron 15 entrevistas sobre el trato dado por los grupos armados contrarios al Gobierno a los miembros de las fuerzas gubernamentales y de la *Shabbiha*. Todos los entrevistados alegaron pertenecer a esos grupos armados y dieron detalles sobre la captura,

el interrogatorio y la puesta en libertad o ejecución de las personas detenidas. Tres entrevistados afirmaron que los combatientes del Gobierno y miembros de la *Shabbiha* capturados fueron torturados durante su interrogatorio antes de ser ejecutados.

88. La comisión encontró motivos razonables para considerar que los grupos armados contrarios al Gobierno habían cometido actos de tortura y otras formas de malos tratos durante el interrogatorio de los miembros de las fuerzas gubernamentales y la *Shabbiha* apresados. Determina que se infligieron dolores graves para castigar y humillar o para obtener información.

89. La comisión determina, no obstante, que los actos de tortura no se cometieron en el marco de un ataque generalizado o sistemático contra la población civil, por lo que no constituyen crímenes de lesa humanidad, aunque pueden enjuiciarse como crímenes de guerra.

## F. Ataques indiscriminados

90. En cumplimiento del derecho internacional humanitario, quienes ordenen y realicen ataques deberán asegurarse de distinguir entre objetivos civiles y militares<sup>20</sup>. Según las declaraciones, hubo ocasiones en que las fuerzas gubernamentales bombardearon pequeños reductos de la oposición. Sin embargo, en muchos ataques los proyectiles disparados no distinguieron entre objetivos civiles y militares. En la mayoría de los casos investigados, los bombardeos vinieron seguidos de un ataque de las fuerzas terrestres y se dirigieron también contra manifestantes. En algunos casos se dirigieron contra grupos armados contrarios al Gobierno cuando el ejército no quería poner en peligro a sus tropas o sus equipos.

91. La mayoría de las muertes registradas en Bab Amr durante la operación militar iniciada en febrero de 2012 fueron causadas por un bombardeo extenso e indiscriminado de las fuerzas gubernamentales principalmente contra infraestructuras civiles y zonas residenciales. La ciudad de Al Qusayr sufrió ataques indiscriminados entre febrero y mayo; una fuente fidedigna dijo a la comisión: "He sido testigo de lo que llaman un bombardeo indiscriminado: el ejército sirio está disparando con morteros sobre un barrio entero". El 5 de junio, las fuerzas gubernamentales iniciaron un ataque contra Al Haffe acordonando la ciudad y bombardeándola con tanques, morteros y helicópteros artillados.

92. También se ha verificado el lanzamiento de bombardeos indiscriminados en Atarib el 14 de febrero; en Ain Larouz el 5 de marzo; en Sermin el 22 de marzo; en Taftanaz el 4 de abril; en Kili el 6 de abril; en Al-Houla el 25 de mayo y los días 12 y 13 de junio; en Akko el 9 de junio; en Salma el 11 de junio; y en Jobar varios días a fines de junio.

93. La comisión tomó nota de las grabaciones en vídeo que indicaban la utilización de municiones en racimo en la provincia de Hama en julio. Dicho material no pudo ser verificado. Si bien la República Árabe Siria no es parte en la Convención sobre Municiones en Racimo, la comisión señala que esas armas son intrínsecamente indiscriminadas cuando se emplean en zonas residenciales o frecuentadas por civiles.

94. Sobre la base de sus conclusiones, la comisión determinó que se cumplían las condiciones jurídicas para considerar un ataque indiscriminado como una violación del derecho internacional humanitario consuetudinario. Las fuerzas gubernamentales bombardearon zonas habitadas por civiles sin atacar ningún objetivo militar concreto.

<sup>20</sup> Véase el anexo II, párrs. 30 a 42.

95. Además, los ataques, en especial los bombardeos, causaron incidentalmente muertos y heridos entre la población civil, así como daños a bienes de carácter civil. Existen motivos razonables para considerar que los daños fueron excesivos en relación con la ventaja militar prevista.

## G. Violencia sexual<sup>21</sup>

96. Se realizaron 43 entrevistas sobre los actos de violencia sexual cometidos por las fuerzas gubernamentales y la *Shabbiha* desde febrero de 2012 contra hombres, mujeres y niños. Entre los entrevistados había dos mujeres y un hombre que habían sido violados. También se entrevistó a cinco testigos de violaciones, tres de los cuales también las habían sufrido. Siete de los entrevistados eran desertores que afirmaron que los soldados y la *Shabbiha* habían cometido violaciones y agresiones sexuales.

97. Fue difícil recabar pruebas de violencia sexual debido a las creencias culturales, sociales y religiosas sobre el matrimonio y la sexualidad.

98. Según las declaraciones, las violaciones y demás formas de violencia sexual tenían lugar en dos tipos de circunstancias: en primer lugar, durante los registros domiciliarios y en los puestos de control, a manos de miembros de las fuerzas gubernamentales y de la *Shabbiha*; y segundo, durante la reclusión. Además, hubo varias denuncias de raptos y violación de mujeres en Homs entre fines de febrero y abril e informaciones verificadas sobre mujeres obligadas a caminar desnudas por las calles de Karm-Al Zeitoun en febrero.

99. Quince entrevistados describieron actos de violencia sexual cometidos durante registros domiciliarios y en los puestos de control en el curso de operaciones militares en Homs entre febrero y mayo, y en Al Haffe en junio. Cinco entrevistados detallaron actos de violencia sexual en Zabadani a fines de febrero y en diversos lugares de la provincia de Hama en abril. Al parecer los ataques fueron perpetrados por soldados y por la *Shabbiha*.

100. La comisión siguió recibiendo denuncias de violaciones y agresiones sexuales en los centros de detención, cometidas por lo general como parte de torturas o malos tratos. Se recibieron múltiples informaciones sobre la aplicación de electrochoques a los reclusos en los genitales.

101. La comisión encuentra motivos razonables para considerar que miembros de las fuerzas gubernamentales y de la *Shabbiha* cometieron violaciones y agresiones sexuales contra hombres, mujeres y niños. Las violaciones y agresiones sexuales también eran parte de las torturas infligidas en los centros de detención oficiales y no oficiales.

102. Habiendo determinado anteriormente que las operaciones militares como las que tuvieron lugar en Homs en febrero y marzo y en Al Haffe en junio formaban parte de un ataque generalizado y sistemático contra la población civil, la comisión concluye que las violaciones cometidas durante esos ataques, a sabiendas de que estos se estaban produciendo, podrían enjuiciarse como crímenes de lesa humanidad.

## H. Violaciones de los derechos de los niños<sup>22</sup>

103. La comisión realizó 168 entrevistas sobre presuntas violaciones de los derechos de los niños. Treinta de los entrevistados eran menores de 18 años. En las entrevistas

<sup>21</sup> Véase también el anexo IX.

<sup>22</sup> Véase también el anexo X.

resultaron patentes los efectos psicológicos y sociales negativos de la violencia en los niños.

## 1. Fuerzas gubernamentales y *Shabbiha*

104. La comisión tuvo constancia de la muerte de 125 niños, principalmente varones, después del 15 de febrero de 2012.

105. Hubo niños que resultaron muertos y heridos en los bombardeos de ciudades y pueblos. En una visita a un hospital en Turquía, la comisión vio a una niña de 2 años gravemente herida en el bombardeo de Azaz ocurrido en junio. También hubo múltiples denuncias de niños muertos y heridos por disparos de francotiradores.

106. También murieron niños en los ataques contra manifestaciones, como el ataque del 15 de marzo en Menaq, así como en los ataques contra pueblos que se consideraba que escondían a desertores o a grupos armados contrarios al Gobierno. Hubo múltiples denuncias de niños asesinados en el curso de operaciones militares terrestres y registros domiciliarios (véase el anexo V). El 25 de mayo, 41 niños fueron asesinados en Al-Houla. Algunos murieron durante el bombardeo, pero la mayoría parecía haber recibido disparos a quemarropa.

107. Hubo denuncias de detenciones y reclusiones arbitrarias de niños. Los niños explicaron haber sufrido golpes, latigazos con cables eléctricos, quemaduras con cigarrillos y descargas eléctricas en los genitales. Hubo múltiples informes sobre menores reclusos en las mismas celdas que adultos.

108. La comisión recibió denuncias de la violación y la agresión sexual de niñas menores de 18 años (véase el anexo VII).

109. No se recibieron pruebas de que las fuerzas gubernamentales reclutasen o alistasen oficialmente a niños menores de 18 años. Sin embargo, se documentaron tres incidentes en que las fuerzas gubernamentales utilizaron a niños como rehenes o como escudos humanos.

110. Varias escuelas de toda la República Árabe Siria fueron saqueadas, vandalizadas y quemadas en respuesta a las protestas de los estudiantes. Se denunció en varias ocasiones su uso por miembros de las fuerzas gubernamentales y de la *Shabbiha* como centros de operaciones militares, bases temporales y puestos de francotiradores (véanse los párrafos 116 a 125 *infra*).

111. También se denunció que las personas heridas, incluidos los niños, tenían solicitar tratamiento médico en los hospitales públicos. Muchos niños fueron llevados a clínicas de campaña en las que solo se podían tratar heridas leves.

112. Las pruebas recabadas indicaron que las fuerzas gubernamentales y la *Shabbiha* seguían violando los derechos de los niños. Son de aplicación las conclusiones jurídicas a las que se llegó en los anexos IV, V, VII, VIII y IX.

113. La reclusión de adultos y niños juntos infringe las obligaciones que incumben al Gobierno en virtud de la Convención sobre los Derechos del Niño, a menos que su separación vulnere el derecho de las familias a permanecer juntas.

## 2. Grupos armados contrarios al Gobierno

114. Once entrevistados, cuatro de ellos menores, explicaron la utilización de niños por grupos armados contrarios al Gobierno. Todos afirmaron que esos grupos, incluido el ELS, utilizaban a niños para labores de apoyo, como ayudar en las evacuaciones médicas o servir de mensajeros. Cinco entrevistados dijeron que los grupos armados contrarios al Gobierno utilizaban a niños menores de 18 años —uno dijo que menores de 15 años— como combatientes.

115. La comisión considera que en la actualidad no hay suficiente información para determinar que los grupos armados contrarios al Gobierno utilizaron a niños menores de 15 años haciéndolos participar activamente en las hostilidades. No obstante, observa con preocupación las informaciones que indican que niños menores de 18 años están combatiendo y desempeñando funciones de apoyo para los grupos armados contrarios al Gobierno.

## I. Ataques contra personas y bienes protegidos

116. El conflicto en la República Árabe Siria ha causado miles de víctimas. Los hospitales y clínicas han sufrido las hostilidades. Se han atacado deliberadamente las clínicas de campaña. Las fuerzas gubernamentales que desean establecer una presencia ocupan rutinariamente bienes de carácter civil, como escuelas, edificios municipales y hospitales. Las clínicas de campaña subterráneas no tienen equipamiento adecuado, sus instalaciones no están esterilizadas y carecen de instrumentos básicos, suministros médicos y sangre. La Media Luna Roja Árabe Siria también está tratando de atender las necesidades médicas y humanitarias de las personas afectadas por el conflicto.

117. El derecho internacional humanitario no solo prohíbe los ataques contra la población civil y los bienes de carácter civil, sino que también exige su protección<sup>23</sup>. La comisión recabó grabaciones en vídeo y realizó 12 entrevistas sobre ataques contra personas o bienes protegidos, en particular escuelas y centros médicos.

118. La comisión tuvo conocimiento de múltiples ataques contra hospitales de campaña. Durante un período de intensos bombardeos, el hospital de Bab Amr fue atacado y parcialmente destruido. A finales de febrero, una clínica de campaña fue atacada por un helicóptero en Al Qusayr. Un testigo relató que el edificio de la escuela de Yousef-al-Atmeh en Jisr Al Shughour, que era utilizado como clínica de campaña por los residentes locales, fue bombardeado en febrero por las fuerzas de seguridad.

119. Miembros de la Media Luna Roja Árabe Siria fueron víctimas de ataques. Cinco trabajadores han sido asesinados desde el inicio de la crisis, el último de ellos el 10 de julio en Deir el-Zour. En mayo, mientras evacuaba a dos heridos en A'zaz, una ambulancia recibió disparos de francotiradores y dos médicos, que llevaban el uniforme de la Media Luna Roja, resultaron heridos. Ese mismo día, la oficina de la Media Luna Roja en A'zaz fue bombardeada y quemada. El director fue detenido y encarcelado durante 20 días.

120. El 24 de abril, cinco ambulancias de la Media Luna Roja Árabe Siria se vieron atrapadas en un fuego cruzado en Duma. Un médico murió y cuatro trabajadores de la Media Luna Roja resultaron heridos.

121. Las fuerzas gubernamentales siguieron ocupando hospitales públicos en diversas localidades. En mayo, el ejército trasladó tanques, vehículos armados y tropas al recinto del hospital nacional en A'zaz y Al Qusayr y apostó francotiradores en el tejado. Lo mismo ocurrió en Al Haffe en junio.

122. Las fuerzas gubernamentales ocuparon escuelas y otros edificios civiles para transformarlos en centros de operaciones militares, bases temporales y puestos de francotiradores. Por ejemplo, en marzo, una niña de Atarib describió el uso de dos escuelas como cuarteles para las fuerzas gubernamentales, que colocaron tanques en la entrada y francotiradores en el tejado. La escuela de Al Qusayr fue ocupada de manera similar en

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<sup>23</sup> Esa protección debe mantenerse a menos que las personas o bienes protegidos tomen parte en actos hostiles. Véase el anexo II, párrs. 30 a 42.

mayo. Un entrevistado dijo que el 11 de marzo recibió disparos de un francotirador que estaba apostado en el tejado de la escuela local de Jondia.

123. La comisión encuentra motivos razonables para considerar que las fuerzas gubernamentales infringieron el derecho internacional humanitario al atacar a miembros de la Media Luna Roja Árabe Siria. Esos actos también pueden enjuiciarse como crímenes de guerra. Además, al colocar sus activos militares, que son objetivos legítimos de las fuerzas enemigas, en el interior de bienes de carácter civil, las fuerzas gubernamentales vulneran el principio de distinción establecido en el derecho internacional humanitario. Las fuerzas gubernamentales también han violado el derecho internacional humanitario al bombardear deliberadamente clínicas de campaña.

124. La ocupación de hospitales y escuelas por el Gobierno infringe los derechos a la educación y a la salud.

125. La comisión no pudo corroborar las alegaciones de ataques contra la población civil o bienes de carácter civil por parte de grupos contrarios al Gobierno.

## **J. Saqueo y destrucción de bienes<sup>24</sup>**

### **1. Fuerzas gubernamentales y *Shabbiha***

126. La comisión recibió informaciones contrastadas sobre el saqueo, la destrucción y el incendio de bienes por parte de miembros de las fuerzas gubernamentales y de la *Shabbiha* durante sus operaciones militares. Cuando tales actos ocurrieron durante registros domiciliarios, la comisión documentó docenas de casos de saqueo de bienes, en particular de dinero, vehículos, joyas y aparatos eléctricos.

127. Los entrevistados indicaron que los registros, y por tanto los saqueos, los incendios y la destrucción de bienes, iban dirigidos contra grupos y personas que parecían ser desertores, miembros de grupos armados contrarios al Gobierno, manifestantes y familiares de estos. En particular, familiares de desertores denunciaron la quema de sus casas, granjas y tiendas. En algunos casos, el saqueo, el incendio y la destrucción de bienes parecía ir más en contra de comunidades enteras que de personas concretas.

128. Según soldados que habían desertado, con el saqueo y el incendio de bienes de activistas de la oposición y desertores se pretendía, entre otras cosas, imponerles restricciones financieras, a ellos y a sus actividades. Los soldados del Gobierno y de la *Shabbiha* también se beneficiaron financieramente de esos actos, que cometieron en total impunidad.

129. Existen motivos razonables para considerar que los miembros de las fuerzas gubernamentales y de la *Shabbiha* cometieron el crimen de guerra de saqueo. La comisión también determinó que miembros de las fuerzas gubernamentales y de la *Shabbiha* tomaron parte en la destrucción y el incendio de bienes durante los registros domiciliarios.

### **2. Grupos armados contrarios al Gobierno**

130. La comisión no ha recibido ninguna información de saqueo o destrucción de bienes por los grupos armados contrarios al Gobierno, pero la falta de acceso a la República Árabe Siria obstaculizó las investigaciones. El Gobierno facilitó información sobre delitos presuntamente cometidos por grupos armados contrarios al Gobierno, como el saqueo y el robo de vehículos, que la comisión no pudo corroborar. Por consiguiente, la comisión no

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<sup>24</sup> Véase también el anexo XI.

pudo llegar a ninguna conclusión sobre el saqueo, el incendio y la destrucción de bienes presuntamente cometidos por grupos armados contrarios al Gobierno.

## IV. Responsabilidad

131. La comisión encuentra motivos razonables para considerar que en la República Árabe Siria se han cometido crímenes de lesa humanidad, infracciones del derecho internacional humanitario y violaciones graves de los derechos humanos. La comisión hizo todo lo posible por identificar a los dirigentes que podían ser responsables. En marzo, la comisión entregó a la Alta Comisionada de las Naciones Unidas para los Derechos Humanos listas confidenciales de personas y unidades sospechosas<sup>25</sup>. Se entregarán más listas cuando finalice su actual mandato, en septiembre de 2012.

### A. Responsabilidad del Estado

132. Las pruebas recabadas confirmaron la anterior conclusión de la comisión de que se habían cometido violaciones siguiendo una política del Estado. Las operaciones a gran escala llevadas a cabo en distintas provincias, su desarrollo similar, su complejidad y la integración del aparato militar y de seguridad indican la participación de las máximas instancias de las fuerzas armadas y de seguridad y del Gobierno.

133. Los testigos presenciales señalaron sistemáticamente a miembros de la *Shabbiha* como autores de muchos de los delitos descritos en el presente informe. Si bien la naturaleza, composición, jerarquía y estructura de este grupo siguen siendo desconocidas, información creíble llevó a la conclusión de que los miembros de la *Shabbiha* actuaron con el consentimiento, con la colaboración o a instancias de las fuerzas gubernamentales. El derecho internacional de los derechos humanos reconoce la responsabilidad de los Estados que cometen violaciones por conducto de terceros.

### B. Responsabilidad de los grupos armados contrarios al Gobierno

134. Aunque no sean Estado parte en los Convenios de Ginebra, los grupos armados organizados deberán no obstante respetar los principios del derecho internacional humanitario<sup>26</sup>. Las violaciones graves del derecho internacional humanitario cometidas por miembros de esos grupos durante conflictos armados no internacionales son enjuiciables como crímenes de guerra. Los agentes no estatales también son responsables de las violaciones graves de los derechos humanos, en particular de las que constituyen delitos internacionales<sup>27</sup>. La comisión constató la comisión de esas violaciones, en particular de asesinatos, ejecuciones extrajudiciales y torturas, por miembros de grupos contrarios al Gobierno.

### C. Responsabilidad individual

135. Ya sean miembros de las fuerzas gubernamentales o de grupos contrarios al Gobierno, quienes cometan intencionadamente los delitos señalados en el presente informe son responsables. Son también responsables quienes ordenen la comisión de esos delitos (o

<sup>25</sup> A/HRC/19/69, párr. 87.

<sup>26</sup> Véase el anexo II, párrs. 11 a 13.

<sup>27</sup> Véase el anexo II, párrs. 8 a 10.

los planeen o instiguen, o inciten, ayuden o induzcan a su comisión). La comisión recibió pruebas concordantes de que miembros de alto y medio rango de las fuerzas gubernamentales participaron directamente en la comisión de actos ilícitos. Los desertores denunciaron que los mandos ordenaban a sus subordinados que dispararan contra civiles y contendientes fuera de combate y que torturaran y maltrataran a los detenidos. A menudo se obligaba a cumplir las órdenes a punta de pistola, y cualquiera que dudara en hacerlo podía ser objeto de arresto o ejecución sumaria. Se demostró que hubo destrucción y saqueo generalizados de bienes con el consentimiento de los mandos.

136. Los dirigentes de los grupos armados contrarios al Gobierno también tomaron parte en los crímenes de guerra y las violaciones de derechos humanos que se exponen pormenorizadamente en el presente informe. Mandos locales ordenaron la ejecución de miembros de las fuerzas gubernamentales y de la *Shabbiha* capturados o los mataron ellos mismos.

#### **D. Responsabilidad de los mandos**

137. Los mandos militares y los altos cargos civiles son responsables de crímenes de lesa humanidad y crímenes de guerra si no toman las medidas razonables que estén a su alcance para impedir o reprimir la comisión de esos delitos o denunciarlos a las autoridades competentes. Estas medidas se deberán aplicar con respecto a los subordinados que están bajo sus órdenes y autoridad efectivos.

138. La amplia difusión que tuvieron los hechos, incluida la probable comisión de violaciones y delitos, llevó a la comisión a concluir que los mandos militares y los altos cargos civiles de las más altas instancias del Gobierno debían tener conocimiento de esos hechos.

139. Lo mismo cabía decir de las violaciones y crímenes cometidos por los grupos armados contrarios al Gobierno. Algunos mandos locales reconocieron algunos de los actos descritos en las entrevistas.

140. La comisión no tiene constancia de que el Gobierno o los grupos armados contrarios al Gobierno hayan tomado medidas acordes a la normativa internacional con objeto de impedir o castigar los delitos documentados en el presente informe.

141. La Comisión Nacional Jurídica Independiente creada por el Gobierno al parecer ha estado investigando algunas denuncias de violaciones<sup>28</sup>. El Gobierno también inició una investigación especial de los sucesos de Al-Houla. La comisión estudió los informes recibidos sobre las investigaciones acerca de lo ocurrido en Tremseh, Al Qubeir y Al-Houla. La comisión no pudo encontrar caso alguno de procesamiento con imposición de condena a ningún mando militar o de las fuerzas de seguridad o alto cargo civil responsable de crímenes de lesa humanidad, crímenes de guerra o violaciones graves de los derechos humanos cometidos desde marzo de 2011.

142. No se ha recibido información digna de crédito que indique que los grupos armados contrarios al Gobierno hayan investigado, enjuiciado y castigado a sus miembros acusados de haber cometido los delitos y violaciones señalados.

<sup>28</sup> El 25 de junio, el presidente de la comisión se reunió con el director de la Comisión Nacional Jurídica Independiente en Damasco. La Comisión tiene representaciones en la capital y en las provincias y al parecer recibió 6.500 denuncias, la mayoría de ellas referentes a personas muertas o desaparecidas, contra el ejército, la policía y los grupos armados contrarios al Gobierno.



## V. Conclusiones y recomendaciones

143. La crisis de derechos humanos se ha agravado considerablemente en el contexto de unas hostilidades fuera de control que han derivado en un conflicto armado no internacional. La principal víctima de este conflicto es la población civil de todas las comunidades; miles de personas han perdido la vida en la espiral de violencia.

144. La situación socioeconómica del país se ha deteriorado aún más y ha dejado a la inmensa mayoría de la población en un estado de confusión. La comisión mantiene que las sanciones equivalen a la denegación de los derechos humanos más fundamentales de la población siria.

145. La comisión concluye que existen motivos razonables para considerar que las fuerzas gubernamentales y la *Shabbiha* cometieron crímenes de lesa humanidad, crímenes de guerra y violaciones del derecho internacional de los derechos humanos y el derecho internacional humanitario. También hay motivos razonables para considerar que los grupos armados contrarios al Gobierno cometieron crímenes de guerra y violaciones del derecho internacional de los derechos humanos y el derecho internacional humanitario. Ambas partes violaron los derechos del niño.

146. Se debe investigar exhaustivamente las violaciones y abusos de los derechos humanos. Se deben recabar sistemáticamente pruebas de las violaciones y abusos cometidos, incluidos los crímenes contemplados en el derecho internacional, a fin de facilitar el enjuiciamiento de sus autores. Se debe facilitar acceso a la comisión para que pueda investigar esas violaciones de manera imparcial y sobre el terreno.

147. La comisión cree que las operaciones a gran escala durante las cuales se cometieron las violaciones más graves se realizaron con el conocimiento o a instancias de los más altos cargos del Gobierno. Por tanto, son responsables quienes ordenaron o planearon los actos o quienes, ocupando puestos de mando y autoridad efectivos, no los impidieron ni castigaron a sus autores. La identificación sistemática de la *Shabbiha* como autora de muchos de los crímenes no exonera al Gobierno de su responsabilidad, puesto que el derecho internacional reconoce la responsabilidad de los Estados que cometen violaciones por conducto de terceros.

148. La comisión constató la violación del derecho internacional humanitario y el derecho internacional de los derechos humanos por miembros de grupos contrarios al Gobierno. Son responsables quienes ordenaron o planearon los actos o quienes, ocupando puestos de mando y autoridad efectivos, no los impidieron ni castigaron a sus autores.

149. La creciente militarización del conflicto resulta dramática para la población siria y podría tener consecuencias trágicas para toda la región. La cesación sostenida de las hostilidades por todas las partes sigue siendo fundamental para poner fin a la violencia y a las graves violaciones y abusos de los derechos humanos.

150. La comisión reitera que la mejor solución sigue siendo un acuerdo negociado que implique un diálogo inclusivo y efectivo entre todas las partes y dé lugar a una transición política que refleje las aspiraciones legítimas de todos los sectores de la sociedad siria, incluidas las minorías étnicas y religiosas.

151. Habida cuenta de las amenazas catastróficas para el sistema de gobierno y la población de Siria, así como para la estabilidad de la región, la comisión reitera las recomendaciones que formuló en sus informes anteriores y destaca las que figuran a continuación.

152. Para la comunidad internacional:

a) Los países que tienen influencia en las partes en el conflicto sirio, en particular los miembros permanentes del Consejo de Seguridad, deben trabajar de manera concertada con objeto de presionar a las partes para que pongan fin a la violencia e inicien negociaciones que incluyan a todos para poner en marcha un proceso sostenible de transición política en el país;

b) Es esencial que las Naciones Unidas mantengan su presencia en el país para la cesación efectiva del fuego y para ayudar a la población siria a iniciar unas consultas amplias, inclusivas y verdaderas con objeto de lograr la reconciliación, la rendición de cuentas y reparaciones en el marco del derecho internacional.

153. La comisión recomienda que el Gobierno de la República Árabe Siria:

a) Investigue todas las violaciones del derecho internacional de los derechos humanos y el derecho internacional humanitario que se indican en el presente informe y vele por que se enjuicie a los responsables con las debidas garantías procesales y por que las víctimas tengan acceso a la justicia y a una reparación;

b) Ponga inmediatamente en libertad a todas las personas detenidas arbitrariamente, publique una lista de todos los centros de detención y garantice que las condiciones de detención se ajusten a la legislación aplicable;

c) Respete las normas relativas a los conflictos armados y distribuya las normas para entablar combate por las que se rigen las operaciones de las fuerzas armadas y de seguridad;

d) Brinde a la comunidad internacional acceso inmediato a las zonas afectadas para que proporcione asistencia humanitaria a todos los que la necesiten.

154. La Comisión recomienda que los grupos armados contrarios al Gobierno:

a) Adopten, anuncien públicamente y respeten normas de conducta que se ajusten a las normas del derecho internacional de los derechos humanos y el derecho internacional humanitario, y exijan responsabilidades a los autores de violaciones;

b) Proporcionen a las instituciones humanitarias y de derechos humanos competentes información sobre la suerte de las personas que han capturado y den acceso a los detenidos.

155. La comisión recomienda que la Oficina del Alto Comisionado consolide una presencia en la región para intensificar los esfuerzos encaminados a promover y proteger los derechos humanos en la República Árabe Siria.

156. La comisión recomienda que el Consejo de Derechos Humanos transmita el presente informe al Secretario General para que lo señale a la atención del Consejo de Seguridad a fin de que puedan adoptarse las medidas apropiadas en vista de la gravedad de las violaciones, los abusos y los crímenes que se documentan en el informe cometidos por las fuerzas gubernamentales y la *Shabbiha* y por grupos contrarios al Gobierno.

## Anexos

## Annex I

[Arabic/English only]

## Correspondence with the Government of the Syrian Arab Republic



Tel: 41-22-9179101

Independent International Commission of Inquiry pursuant to resolution A/HRC/S-17/1

The Independent International Commission of Inquiry established pursuant to resolution S-17/1 of the Human Rights Council presents its compliments to the Permanent Representative of the Syrian Arab Republic to the United Nations in Geneva.

As the Permanent Representative will be aware, the mandate of the Commission has been extended for another six months based on resolution A/HRC/19/L.38/Rev.1. As members of the Commission embark on this phase, they wish to reiterate their commitment to full engagement with his Government and their intention to reflect the perspective of all parties in the context of the current crisis. They wish to note again, and in the spirit of this engagement, that the Commission's second report included, to the extent possible, the information sent to it by the Government. The information in the documents provided and from the Permanent Representative's letters has appeared either in the body of the text or attached as an Annex to the report.

As Commissioners Karen Abuzayd and Paulo Sergio Pinheiro pursue their work, they refer again to the importance of having direct access, including to be able to assess alleged violations committed against members of the security forces and the army in Syria. The Commissioners strive to reflect facts impartially and without bias. Their presence on the ground would enhance their ability to understand the Government's position and corroborate further the documents it has provided thus far. As stated in the recommendations in their last report, they call for inclusive national dialogue as a meaningful and peaceful exit from the current impasse. They also noted the potentially harmful and counterproductive impact of economic sanctions.

In this context, the Commissioners kindly request access for the Commission to the Syrian Arab Republic to engage further with all parties and ascertain facts on the ground. They stand ready to provide the Permanent Representative with any information or details in this regard.

The Commission avails itself of this opportunity to renew to the Permanent Representative of the Syrian Arab Republic assurances of its highest consideration.

Geneva, 2 April 2012

S.B





Tel: 41-22-9179101

Independent International Commission of Inquiry established pursuant to resolution A/HRC/S-17/1  
and extended through resolution A/HRC/Res/19/22

16 April 2012

Excellency,

I am writing on behalf of the Independent International Commission of Inquiry on the Syrian Arab Republic established by the United Nations Human Rights Council pursuant to resolution S-17/1 and extended for another six months by resolution A/HRC/Res/19/22 adopted on 23 March 2012.

As the Commission begins the next phase of its work, we respectfully seek your assistance in the fulfilment of the Commission's mandate. In this regard, we wish to reassure you of our commitment to full engagement with Your Excellency's Government and our intention to reflect in our reports the perspective of all parties in the context of the current crisis, as we had done so in the Commission's last report submitted to the Human Rights Council in February 2012.

In that report, the Commission endeavoured to reflect, to the extent possible, the information sent to us by the Government authorities, which appeared either in the main body of the report or attached as an Annex. Guided by the principles of independence and impartiality, the Commission strives to reflect facts without any bias. The Commission's reporting is victim-centered, as we do not make any distinction among the victims, as such the Commission was the first body to investigate and report on human rights violations by armed opposition groups.

As stated in the recommendations in our last report, we call for an inclusive national dialogue and a negotiated settlement as a meaningful and peaceful exit from the current impasse. The recommendations also refer to the dangers of militarisation and the potentially harmful and counterproductive impact of economic sanctions on the Syrian people.

H.E. Mr. Walid al-Moallem  
Minister of Foreign and Expatriates Affairs  
Damascus, Syrian Arab Republic

....//...

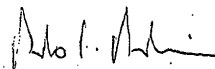
As the Commission pursues its work, we reiterate the importance of having direct access to the country, and renew our request to visit the Syrian Arab Republic with a view to be able to see the human rights situation first-hand, to engage further with all parties, to ascertain facts on the ground, and to assess the allegations of human rights violations, including those committed against members of the security forces and the army in the Syrian Arab Republic.

The Commission's presence on the ground would be essential in enhancing its ability to understand the Government's position and corroborate further the documents it has provided thus far. In this regard, we hope that the ceasefire process, if sustained, will contribute to a better promotion and protection of human rights of all communities in your country.

In the coming six months, the Commission intends to do periodic updates on such violations, in addition to the oral report to the Human Rights Council in June and the written updated report in September, as mandated by resolution A/HRC/Res/19/22. The Commission stands ready to bring on board the perspectives of the Government in the context of such periodic reporting.

The Commission would very much appreciate your support in giving a positive consideration of our request to visit your country.

Please accept, Excellency, the assurances of our highest consideration.



Paulo Sergio Pinheiro  
Chairperson

Mission Permanente  
De La  
République Arabe Syrienne  
Genève



الجمهورية العربية السورية  
مكتب الدائمة لدى مكتب الأمر الملحق  
جنيف

OHCHR REGISTRY

27 APR 2012

Recipients: MENA  
HE. csat@p

N°233/12

Geneva, 27<sup>th</sup> April 2012

The Permanent Mission of the Syrian Arab Republic to the United Nations Office and other International Organizations in Geneva presents its compliments to the Secretariat of the High Commissioner for Human Rights, and with reference to the letter addressed by the President of the International Commission of Inquiry to the Minister of Foreign Affairs in the Syrian Arab Republic, on 16 April 2012, has the honour to attach, herewith, the position of the Syrian Government (in Arabic) regarding the above-mentioned letter.

The Permanent Mission of the Syrian Arab Republic avails itself of this opportunity to renew to the Secretariat of the High Commissioner for Human Rights the assurances of its highest consideration.

Annex: ment.

Secretariat of the High Commissioner  
for Human Rights

Rue des Pâquis 52  
Palais Wilson  
1201 Genève



MISSION PERMANENTE  
DE LA  
RÉPUBLIQUE ARABE SYRIENNE  
GENÈVE



الجمهورية العربية السورية  
البعثة الدائمة لدى مكتب الأمم المتحدة  
جنيف

التاريخ: ٢٠١٢/٠٤/٢٦

الرقم: ٢٠١٢/233

تهدي بعثة الجمهورية العربية السورية الدائمة المعتمدة لدى مكتب الأمم المتحدة والمنظمات الدولية الأخرى في جنيف أطيب تحياتها إلى مكتب المفوضة السامية لحقوق الإنسان؛

وبالإشارة إلى رسالة رئيس لجنة التحقيق الدولية الموجهة إلى السيد وزير الخارجية والمغتربين في الجمهورية العربية السورية، والمؤرخة ٢٠١٢/٤/١٦، تتشرف بعثة الجمهورية العربية السورية بإعلام المفوضية السامية بما يلي:

١- لقد تعاملت الجمهورية العربية السورية مع الأمم المتحدة بمصادقية وشفافية كاملة، وعرضت لها ما يتعرض له الشعب السوري من انتهاكات لحقوق الإنسان على أيدي المجموعات الإرهابية المسلحة، في الوقت الذي كانت فيه دول عديدة ترفض الاستماع لأي حديث عن وجود أجناسات خارجية وإرهاب مسلح في سورية يُمارس بشكل يزداد بشاعة يوماً بعد يوم، بل وكان البعض يهزأ من هذا الكلام. ومن المحزن بشكل كبير أن يكون دم /٦١٤٣/ مواطن سوري هو جزء من الثمن الذي يدفعه الشعب السوري حتى يبدأ العالم بالاعتراف بحقيقة أن المسألة ليست مطالب شعبية ينبغي على كل حكومة تليتها، وإنما هي مخططات لتدمير دولة بأكملها بمواقفها الخارجية، وذلك باستخدام العنف وارتكاب انتهاكات جسيمة وممنهجة لحقوق الإنسان من قبل المجموعات الإرهابية المسلحة،

ومموليهم وداعميهم الذين يسعون بكافة الطرق لمنع أي كان من معرفة الجرائم ضد الإنسانية التي يرتكبونها.

٢- لقد أثبتت الأحداث صحة كل ما كانت سورية تصرح به أو تقدمه من معلومات وبيانات، بما في ذلك ما أعلنته عن وجود عمليات التضليل الإعلامي ضد سورية. لقد آن الأوان لتدارك الأخطاء والعودة إلى الانحياز إلى ضحايا انتهاكات حقوق الإنسان، والتخلي عن الاتهامات الخطيرة التي لا تستند إلى أية حقائق، ما هدفها سوى استجرار التدخل الأجنبي إلى سورية، بما في ذلك اتهامات ارتكاب السلطات السورية لجرائم ضد الإنسانية، وتحميل السلطات السورية، وعلى أعلى المستويات مسؤولية هذه الجرائم المزعومة.

٣- لقد خسرت سورية حتى الآن /٣٢١١/ مدني استشهدوا ضحية للقتل خارج القانون الذي ارتكبه المجموعات الإرهابية المسلحة. كما قتلت هذه المجموعات، وأيضاً خارج نطاق القانون، /٤٧٨/ من رجال حفظ النظام، و /٢٠٨٨/ عسكرياً، بالإضافة إلى /٢٠٤/ سيدة و /٥٦/ طفلاً. كما قامت هذه المجموعات باستهداف واغتيال /١٠٦/ من خيرة الخبرات العلمية ورجال الدين والقانون الذين لم يقبلوا الانضمام إلى تحركاتهم. فيما يتم تدبير عمليات تفجيرات ضد السكان قبل جلسات مجلس الأمن الدولي أو مجلس حقوق الإنسان للمتاجرة بالدم السوري من أجل بعض الأسطر في بيانات عدائية رخيصة. لقد أصبحت الأمم المتحدة وأجهزتها مطالبة بعدم القبول بأن تكون أداة لتدمير الدول وقتل الشعوب كما حصل في مناطق أخرى في العالم، ترتكب فيها انتهاكات جسيمة لحقوق الإنسان تفوق ما تم إدعاءه واتخاذ ذريعة لتدمير تلك الدول.



٤- لقد شارك رئيس لجنة التحقيق الدولية في اجتماع لأعداء الشعب السوري في اسطنبول في بداية شهر نيسان/ أبريل ٢٠١٢، وقد انعقد هذا الاجتماع خارج نطاق الشرعية الدولية وخارج نطاق الأمم المتحدة للالتفاف على الشرعية الدولية والتقدم بالأجندات المعادية لسورية على حساب أمنها وأمن شعبها واستقرارها. لقد أرسلت مشاركة رئيس اللجنة في الاجتماع رسالة خطيرة في انضمامه لهؤلاء وانحيازهم لأطراف لا تريد السلام لسورية، الأمر الذي يجعل اللجنة تتعد عن الحيادية والاستقلالية في تعاطيها مع الأوضاع في سورية.

٥- أصدرت لجنة التحقيق الدولية بياناً صحفياً بتاريخ ١٦/٤/٢٠١٢ تطرقت فيه إلى عدة مسائل تقع خارج نطاق ولايتها بشكل كامل:

أ- فلا ولاية للجنة في الخوض في عمل المراقبين الدوليين في سورية، إن هذا الأمر غير مرتبط بعمل اللجنة ومن المستغرب تدخلها فيه.

ب- أكدت اللجنة في بيانها على استخدام الأسلحة الثقيلة في بعض المناطق واعتقالات في مناطق أخرى، وذلك باستناد إلى ما قالت أنه "تحقيقاتها الميدانية". ومن غير المفهوم ما هو المقصود بالتحقيقات الميدانية وهي لم تدخل المناطق التي تتحدث عنها؟ إن الحديث بهذه الطريقة يسعى لإعطاء النتائج غير الصحيحة للجنة مصداقية لا تتحلى بها.

ج- اعتبرت اللجنة أن المحاسبة ضرورية باعتبارها مكوناً أساسياً "لمرحلة انتقالية تؤدي إلى دولة قائمة على مبادئ سيادة القانون والديمقراطية وحقوق الإنسان". إن الجمهورية العربية السورية ترفض أي تدخل في خيارات شعبها. إن هذا الحديث يُعتبر تدخلاً

سافراً في الشؤون الداخلية لسورية، ويدل مرة أخرى على تسييس عمل اللجنة. وليس للجنة حق في وضع تصور لمستقبل دولة عريقة مثل سورية أو رأيها في خيارات الشعب السوري المتحضر والواعي لمستقبله.

د- أعربت اللجنة عن قلقها على مصير "النازحين واللاجئين السوريين"، وأثنت على الدول المستضيفة للاجئين السوريين، في الوقت الذي لم يسمعها أحد تصدر بياناً أو حتى تشير إلى جهود سورية الجبارة في استضافة ما يزيد على مليون ونصف لاجئ من مختلف دول المنطقة وجدوا في سورية الملاذ الآمن وبلد الخير والأمان. لقد تحملت سورية حكومةً وشعباً أعباءً كبيرة في اقتسام لقمة العيش معهم وتأمين فضاء الحماية اللازم لهم وبما يفوق أي التزامات مطلوبة منها بموجب تعهداتها الدولية. والجدير بالذكر أن هؤلاء الضيوف لم يسعوا لمغادرة سورية في هذه الظروف، فقد وجدوا في سورية ما لا يجدونه في أي من دول المنطقة، حتى في هذه الظروف الصعبة، وهم يدركون أن سورية تبذل جهوداً إضافية لحمايتهم مع الشعب السوري من إرهاب المجموعات المسلحة، الأمر الذي يثير الكثير من إشارات الاستفهام حول حقيقة من يُسمون باللاجئين السوريين، والأهداف السياسية والعسكرية لبعض الدول المستضيفة لهم.

٦- كانت لجنة التحقيق الدولية التقت في جنيف عدداً ممن أسمّتهم "ضحايا انتهاكات حقوق الإنسان"، كما أنها طلبت في رسالتها إلى الجمهورية العربية السورية المؤرخة ٢٠١٢/١٢/٢٨ تسهيل الاتصالات بالعائلات القتلى والجرحى من أفراد الجيش والأمن، بالإضافة إلى الضحايا

الأخرين، إن الموضوعية والحيادية في عمل اللجنة، يستدعيان لقاء ضحايا انتهاكات حقوق الإنسان التي قامت بها المجموعات الإرهابية المسلحة. والجمهورية العربية السورية مستعدة لتقديم لوائح بأسماء المواطنين السوريين الذين تعرضوا لاعتداءات وانتهاكات حقوقهم أو حقوق أقربائهم على أيدي هذه المجموعات، وترى أنه من المفيد استقبالهم في جنيف، كما فعلت في أواخر العام الماضي لتجميع شهادات معادية لسورية وتمثل وجهة نظر تصيب في الحملة التي تتعرض لها سورية.

٧- تؤكد الجمهورية العربية السورية على أنها شكلت لجنة تحقيق وطنية نزيهة ومحيدة ومستقلة للتحقيق في شكاوى ارتكاب أعمال عنف في الأحداث الأخيرة، وهذه اللجنة مستمرة في عملها.

تعتزم بعثة الجمهورية العربية السورية هذه المناسبة لتعرب لمكتب المفوضة السامية لحقوق الإنسان عن فائق اعتبارها وتقديرها.

إلى مكتب المفوضة السامية لحقوق الإنسان - جنيف



NATIONS UNIES  
HAUT COMMISSARIAT AUX DROITS DE  
L'HOMME



UNITED NATIONS  
HIGH COMMISSIONER FOR  
HUMAN RIGHTS

Tel: 41-22-9179101

Independent International Commission of Inquiry established pursuant to resolution A/HRC/S-17/1

and extended through resolution A/HRC/Res/19/22

1 May 2012

Excellency,

On behalf of the Independent International Commission of Inquiry on the Syrian Arab Republic established by the United Nations Human Rights Council pursuant to resolution S-17/1 and extended by resolution A/HRC/Res/19/22, I wish to acknowledge with thanks a Note Verbale No. 233/12 from the Permanent Mission of the Syrian Arab Republic to the United Nations Office in Geneva and specialized institutions in Switzerland, dated 27 April 2012, relaying a position of the Syrian Government in response to my letter addressed to Your Excellency on 16 April 2012.

Noting with appreciation the detailed comments provided in the Note Verbale, the Commission wishes to elaborate in more detail on some of the key points therein. Before doing so, I wish to take this opportunity to clarify that the Office of the High Commissioner for Human Rights (OHCHR), whom the Note Verbale was addressed, provides the Commission of Inquiry with the necessary secretariat support, but the Commission itself is independent from OHCHR and reports only to the Human Rights Council that has created its mandate.

Moving on to the specific points raised in the Note Verbale, I wish to share with you the following observations:

1- As stated in the Commission's last report and our previous communications to the Syrian Government, the Commission is guided by the principles of independence, impartiality and objectivity, and as such, it strives to reflect the information sent to us by the Government authorities, to the fullest extent possible, keeping in line with the established methodology of fact-finding and reporting. The Commission has dealt with the information about the victims of human rights abuses committed by the armed opposition with compassion, and it was the Commission that was first to report on such incidents, in support of all victims of such human rights violations.

2- On behalf of the Commission, I would like to reassure you of the Commission's full commitment to pursuing the implementation of its mandate and reporting thereunder in the most objective way, based on the factually accurate information, subject to its ability to collect and verify such information from all sources, in particular from those from within Syria.

H.E. Mr. Walid al-Moallem  
Minister of Foreign and Expatriates Affairs  
Damascus, Syrian Arab Republic

.../...

1

3- The Commission has noted with appreciation the detailed information about civilian casualties resulting from acts of armed groups, which will be reflected in its next report.

4- The Commission would like to assure that it is in its mandate to follow all meetings and discussions linked to the on-going events in Syria. Here, we would like to assure that our presence in the Istanbul meeting of April 2012 did not amount to participation, but only to observation. The presence of the Commission in this meeting did not mean that we have compromised our neutrality and independence. Nor did our participation carry in it any political undertone - as it is suggested in your letter - by taking sides in a conflict or joining them. The aim of the Commission in its presence in the mentioned meeting was for information purposes, so that we are introduced to the evolution of the position of member states regarding the evolution of the situation in Syria.

5- With respect to paragraph 5 of your letter referring to the CoI's 16 April 2012 press statement, the CoI takes note that the agreement reached between the Syrian Arab Republic and the opposition forces to permit the deployment of international observers is not part of the mandate of the CoI. Nevertheless, it is clear that human rights violations are occurring in the context of the on-going armed confrontations - such violations being the direct subject of the mandate - and the Commission wished to express its optimism that such violations would cease with the implementation of the plan.

In point 5(b) the letter refers to the Commission's description of "heavy weaponry" and to "field investigations" undertaken. It is of course correct that the Syrian government has not afforded access to the CoI's investigators to date. Thus, the "field investigations" refer to the deployment of investigators to the region and elsewhere (except Syria) where they have conducted interviews and investigative activities with a broad spectrum of interlocutors. The methodology of the CoI is, whenever possible, to gather its own first hand observations, ideally from site visits to the locations of alleged violations. When that is impossible due to a lack of access, the second most favourable option is to take testimonies and witness statements from those who themselves saw the events in question first hand. Supporting documents and materials are also collected whenever possible. The CoI attempts to corroborate the accounts it receives with other sources, and it includes in its reports and public statements only those events which it 'reasonably suspects' to have occurred. In the case of the mentioned heavy weaponry, the CoI had credible and corroborated accounts that came from interviews gathered in the field.<sup>1</sup> It is the objective of the CoI to include in the future, accounts that come also from "the field" in the Syrian Arab Republic, a development which will only improve the CoI's assessment of the human rights situation.

I refer with respect to Paragraph 5(c) of your letter and the reference to the CoI's statement about the need to ensure accountability for violations "as a fundamental component in a transitional period leading to a State founded on the principles of rule of law, democracy and human rights." Read carefully, the CoI's statement does not refer to the founding of a new state, and the CoI would never imply such an outcome. Instead, in mentioning "transition" the text refers to the reforms that are already underway and that are planned in your country's ongoing efforts to bolster the principles of rule of law, democracy and human rights. The mentioned principles are those which can be found in numerous texts, declarations, and conventions to which the Syrian Arab Republic has previously ascribed and which can be readily described as the common aspirations of humankind. I referred to a "transition" away from the violence currently affecting Syria in which the principles of rule of law and democracy have fallen victim.

To achieve this, it is indeed my position as Chair of the Commission CoI, and presumably also that of the Syrian Arab Republic and all the members of the HRC, that those responsible for the serious

<sup>1</sup> The term "field" is frequently used in the human rights arena to describe locations that are not the "headquarters," or otherwise associated with a desk and computer.

human rights violations – irrespective of who perpetrated them – must be held accountable. It is a core function of the CoI’s mandate to identify such persons.

In paragraph 5(d) of your letter you have noted the CoI’s reference to “Syrian displaced and refugees.” It is correct that the CoI has not mentioned those refugees to whom the Syrian Arab Republic is host. The CoI understands its mandate to be limited to the circumstances arising out of the hostilities within Syria.

To the point that those refugees Syria is hosting have not sought to flee, accurate as that may be, it does not detract from the notion that civilians are fleeing Syria in large numbers. The definition of ‘refugee’ is well-settled in international law and applies equally to those Syria is hosting as well as to those escaping the country. The CoI is aware that not all individuals purporting to be refugees meet the definition in fact, however, the testimonies the CoI has collected, and corroborated, have convinced it that families settled in the camps in Syria’s neighbouring countries are legitimately refugees. In support, the CoI would refer to the UNHCR statements on this matter where some 61,000 individuals are reportedly registered as refugees.<sup>2</sup> The key point is that refugees must be allowed to return, in favourable conditions, to their homes.

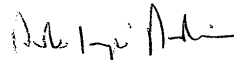
6- The Commission is doing all its possible to gather information on human rights violations in Syria, and verify their validity. The Commission appreciates the openness of the Syrian Arab Republic to transparency and its willingness to share information, data, and eye-witness account, to help us carry out our mission. The Commission thanks the permanent Mission of Syrian Arab Republic for sharing detailed data on the victims of police and army personnel during violent events since March 2011, information which is reflected in our reports. The Commission is encouraged about the readiness of the Syrian Government to further this collaboration, and the most efficient way would be to provide access to the Commission to interview the witnesses of the Syrian victims, whether of civilian, public order, or military personnel, and have direct access to the areas of events themselves. Such an access would provide the Commission with objective and precise information about the human rights situation in the Syrian Arab Republic.

7 - With respect to point 7 of your letter, the CoI is keen to meet with the Syrian Commission and to discuss their findings. In advance, we would welcome receiving information concerning the Commission’s membership, their Terms of Reference, and their methodology, as well as an anticipated date on which they anticipate completing their investigations.

8- Furthermore, as indicated in my previous letter, in the coming six months, the Commission intends to do periodic updates on human rights violations, in addition to the oral report to the Human Rights Council in June and the written updated report in September, as mandated by resolution A/HRC/Res/19/22. Keeping in line with this calendar, if the Commission were to be given access to Syria, the mission would have to be undertaken by the end of May, at the latest, in order for its findings to be reflected in the Commission’s oral report to the Human Rights Council in June.

The Commission would very much appreciate your support in giving a positive consideration of our request to visit your country.

Please accept, Excellency, the assurances of our highest consideration.



Paulo Sergio Pinheiro  
Chairperson

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<sup>2</sup> <http://www.unhcr.org/4f9137529.html>

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UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS

Tel: 41-22-9179101

Independent International Commission of Inquiry pursuant to resolution A/HRC/S-17/1  
and extended through resolution A/HRC/Res/19/22

The Independent International Commission of Inquiry on the Syrian Arab Republic established pursuant to Human Rights Council resolution S-17/1 and extended through resolution A/HRC/19/22 presents its compliments to the Permanent Representative of the Syrian Arab Republic to the United Nations Office in Geneva and specialized institutions in Switzerland.

Further to its earlier Note Verbales of 2 April 2012, and of 16 April and 1 May 2012, transmitting letters addressed to H.E. Mr. Walid al-Moallem, the Minister of Foreign and Expatriates Affairs of Syria, the Commission of Inquiry wishes to recall that it is the body that, through the Human Rights Council mandate, credibly addresses the international community regarding the overall human rights situation in Syria in an impartial, objective and balanced manner. As previously mentioned, the Commission does not make any distinction among victims from any of the parties to the present unrest.

In order for the Commission to fully implement its mandate, it is essential for the Commission to have access to Syria to enable it to - more adequately and rigorously than outside the country - ascertain facts on the ground, based on first-hand information within the country and from the Syrian government.

As the Commission's next oral report is due for presentation to the Human Rights Council on 27 June 2012, the Commission's visit, if granted, as hoped by the Commission, would need to be undertaken by the end of May, at the latest, for its findings to be fairly reflected in its oral report.

The Commission avails itself of this opportunity to extend assurances of its highest consideration to the Permanent Representative of the Syrian Arab Republic to the United Nations Office in Geneva and specialized institutions in Switzerland.



Geneva, 10 May 2012

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HIGH COMMISSIONER FOR  
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Independent International Commission of Inquiry established pursuant to resolution A/HRC/S-17/1  
and extended through resolution A/HRC/Res/19/22

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The Commission thanks the Syrian Arab Republic for the prompt response to its Note Verbale of 24 May 2012 and acknowledges receipt, again with appreciation, of the Note Verbale, dated 25 May 2012, relaying additional information concerning criminal activity from 12 April to 23 May, 2012.

The Commission seeks to clarify that it has just released a "Periodic Update," as it is mandated to do under resolution A/HRC/19/22, para 15. The Human Rights Council requested the Commission "to conduct and continuously update a mapping exercise of gross violations of human rights since March 2011, including an assessment of casualty figures, and to publish it periodically."

Separately, on 27 June 2012, the Commission will provide an "Oral Update" to the Human Rights Council during its 20th Session. It is in the Oral Update that the Commission anticipates being able to make use of the information recently provided by the Syrian Arab Republic. The Commission takes this opportunity to reiterate that only by visiting the Syrian Arab Republic can the Commission properly investigate and corroborate the incidents and crimes about which your government has informed. Should the Syrian Arab Republic concur with a visit from the Commission, said visit must be completed prior to 15 June 2012 for the information to be considered in the Oral Update.

Finally, the Commission recalls that its final report will be submitted to the Human Rights Council during its 21st Session in September. In the interim, additional "Periodic Updates" will be issued as appropriate.

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The Commission avails itself of this opportunity to extend assurances of its highest consideration to the Permanent Representative of the Syrian Arab Republic to the United Nations Office in Geneva and specialized institutions in Switzerland.



Geneva, 29 May 2012

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UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS

Tel: 41-22-9179101

Independent International Commission of Inquiry pursuant to resolution A/HRC/S-17/1

and extended through resolution A/HRC/Res/19/22

The Independent International Commission of Inquiry on the Syrian Arab Republic established pursuant to Human Rights Council resolution S-17/1 and extended through resolution A/HRC/19/22 presents its compliments to the Permanent Representative of the Syrian Arab Republic to the United Nations Office in Geneva and specialized institutions in Switzerland.

Further to paragraph 8 of resolution A/HRC/S-19/L.1, adopted on 1 June 2012, the Human Rights Council requested the Commission to urgently conduct a comprehensive, independent, and unfettered special inquiry, consistent with international standards, into the events in Al-Houla. The Commission is also requested to provide a full report of the findings of its special inquiry to the Human Rights Council at its 20th session, and to coordinate, as appropriate, with relevant UN mechanisms.

In furtherance of this mandate, paragraph 9 of the same resolution calls upon the Syrian authorities to accord the Commission full and unhindered access to Syria to enable it to conduct the special inquiry.

According to the tentative programme of work of the 20th session of the Human Rights Council, the Commission is expected to present its oral report on Wednesday, 27 June 2012. With this date in mind, the Commission, including the two Commissioners and its team of human rights investigators and forensic and military experts, stands ready to carry out an investigative mission to Syria, as soon as possible. The mission would need to be completed by Friday, 22 June, at the very latest, in order for its findings to be included in the presentation to the Human Rights Council.

The Commission has taken note of the Note Verbale from the Permanent Mission of the Syrian Arab Republic, dated 30 May 2012, containing information regarding the massacre of civilians in Al-Houla. Furthermore, the Commission noted media announcements on 31

May 2012 relating the results of a three-day investigation into the massacre, appointed by the Syrian government. In this regard, as a first step in the context of its special inquiry, the Commission would appreciate receiving a copy of the full report on the findings of the national investigation, along with an opportunity to meet with its members. In conducting the special inquiry, the Commission will also coordinate with UNSMIS and other relevant UN human rights mechanisms, as appropriate.

The Commission wishes to reassure the Permanent Representative of its full commitment to conducting its work in accordance with the highest international standards of objectivity, impartiality and independence.

The Commission avails itself of this opportunity to extend assurances of its highest consideration to the Permanent Representative of the Syrian Arab Republic to the United Nations Office in Geneva and specialized institutions in Switzerland.



Geneva, 4 June 2012

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UNITED NATIONS  
HIGH COMMISSIONER FOR  
HUMAN RIGHTS

Tel: 41-22-9179101

Independent International Commission of Inquiry established pursuant to resolution A/HRC/S-17/1

and extended through resolution A/HRC/Res/19/22

22 June 2012

Excellency,

I thank you very much for enabling my visit to Damascus. I am particularly grateful for the opportunity to explain in person to members of the Government the nature of the Commission's work as well as the modalities necessary for it to be successful.

Your Excellency will no doubt be aware that I will be delivering an Oral Update on behalf of the Commission of Inquiry on Syria to the Human Rights Council on 27 June 2012, with special attention paid to the Al-Houla incident. Our final report, which is to be submitted to the 21<sup>st</sup> Session of the Council in September, needs to be completed by 6 August 2012.

I very much hope that this visit to Damascus will pave the way for our team to begin its work in earnest in the Syria, and thereby fulfil its mandate. However, I will only be able to include the results of future investigations if we can complete our mission there by 25 July 2012. Therefore, as time is of the essence, I am hopeful that during this visit we can build an understanding as how my colleagues and I would be able to deploy effectively in your country.

Please accept, Excellency, the assurances of our highest consideration.

A handwritten signature in black ink, appearing to read 'Paulo Sergio Pinheiro'.

Paulo Sergio Pinheiro

Chairperson

H.E. Mr. Walid al-Moallem  
Minister of Foreign and Expatriates Affairs  
Damascus, Syrian Arab Republic

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Independent International Commission of Inquiry established pursuant to resolution A/HRC/S-17/1  
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The Independent International Commission of Inquiry on the Syrian Arab Republic established pursuant to Human Rights Council resolution S-17/1 and extended through resolution A/HRC/19/22 presents its compliments to the Permanent Representative of the Syrian Arab Republic to the United Nations Office in Geneva and specialized institutions in Switzerland.

We hereby acknowledge with appreciation receipt of your Nota Verbale No. 330/12, dated 25 June 2012, relaying the contents of a DVD to the Commission. We have viewed the disk with interest and have taken note of the testimonies of the two eyewitnesses therein. We have also noted that the female of these witnesses was interviewed by a Russian journalist, on ANNA Television, in June.

The Commission would like to arrange interviews with both witnesses, as well as any additional eyewitnesses that the Government of the Syrian Arab Republic recommends. We would hope to include the results of those interviews in our final report to the Human Rights Council to be delivered in September 2012. In the event you agree with this proposal, we can then discuss the modalities of the interviews. To be included in the final report we would need to conduct them by 25 July 2012.

The Commission avails itself of this opportunity to extend assurances of its highest consideration to the Permanent Representative of the Syrian Arab Republic to the United Nations Office in Geneva and specialized institutions in Switzerland.

Geneva, 13 July 2012



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## Annex II

[English only]

### Applicable law

#### I. Background

1. Whether during peacetime or periods of armed conflict, a substantial body of international law will be in operation. The sources comprise primarily treaties ratified by the country in question. Customary international law (CIL) is also applicable. In its first report submitted in November 2011, the Commission identified the Syrian Arab Republic's legal obligations under international human rights law (IHRL).<sup>1</sup> At that time, although violent clashes were occurring, the Syrian Arab Republic was in a state of peace and has not sought to derogate from any applicable treaty provisions.

2. In its second report submitted in February 2012, the commission expressed its concern that the violence in the Syrian Arab Republic had reached the requisite level of intensity to trigger the applicability of International Humanitarian Law (IHL). However, because it could not verify whether the FSA, or its associated groups, had reached the necessary level of organization, the commission determined that it could not apply IHL.

3. During the period covered by this third report, the commission has determined that the intensity and duration of the conflict, combined with the increased organizational capabilities of the FSA,<sup>2</sup> do, in fact, meet the legal threshold for a non-international armed conflict.<sup>3</sup> With this determination, the commission applied IHL, including Common Article 3, in its assessment of the actions of the parties during hostilities.

4. As described below, egregious violations of human rights, customary or humanitarian law can give rise to individual criminal responsibility under international criminal law (ICL).

#### II. Regimes in effect

5. The onset of IHL applicability does not replace existing obligations under IHRL; both regimes remain in force and are generally considered as complementary and mutually reinforcing. Where both IHL and IHRL apply, and can be applied consistently, parties to a conflict are obliged to do so. In situations where IHL and IHRL are both applicable, but cannot be applied consistently, the principle of *lex specialis* applies.<sup>4</sup>

<sup>1</sup> A/HRC/S-17/2/Add.1 paras. 23–26.

<sup>2</sup> See annex III.

<sup>3</sup> This view is supported by the ICRC, among others. See “the Syrian Arab Republic in civil war, Red Cross says,” 15 July 2012, Available from <http://www.bbc.co.uk/news/world-middle-east-18849362>. President Assad himself described the Syrian Arab Republic as being in a state of war in a statement on 26 June 2012, see “the Syrian Arab Republic in a State of War, says Bashar al-Assad,” 26 July 2012. Available from <http://www.bbc.co.uk/news/world-middle-east-18598533>.

<sup>4</sup> See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*. The International Court of Justice ruled that IHL is *lex specialis* vis-à-vis IHRL during armed conflicts. Thus, the parties must abide by the legal regime which has a more specific provision on point. The

6. Gross violations of either regime expose the perpetrator to criminal liability at the international level. Courts in any country can employ the principle of universal jurisdiction to try such cases. The definitional elements of international criminal law (ICL), have recently been bolstered with the adoption of the Rome Statute and the creation of the International Criminal Court (ICC), discussed below.

7. The specific applicability of each regime is discussed below.

### III. International human rights law

8. At all times relevant to this report the Syrian Arab Republic was a party to the major United Nations human rights treaties and a number of optional protocols.<sup>5</sup> The Government did not declare a state of emergency nor otherwise seek to derogate from any of the aforementioned obligations which consequently remained in effect throughout the conflict, irrespective of the applicability of other legal regimes.<sup>6</sup>

9. All branches of the Syrian government were therefore bound to respect, protect, promote and fulfill the human rights of all persons within its jurisdiction. The obligation included the right to afford an effective remedy to those whose rights were violated (including the provision of reparations) and to investigate and bring to justice perpetrators of particular violations.<sup>7</sup> The Syrian Arab Republic was also bound by relevant rules of IHL which form a part of customary international law.

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analysis is fact specific and therefore each regime may apply, exclusive of the other, in specific circumstances. The Human Rights Committee generally concurs with this view as set out in the General Comment 31 to the ICCPR. “The Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”

<sup>5</sup> The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights were ratified by the Syrian Arab Republic in 1969, the same year it ratified the Convention on the Elimination of All Forms of Racial Discrimination. The Syrian Arab Republic is also party to the Convention on the Elimination of Discrimination against Women which it ratified in 2003, the Convention on the Prevention and Punishment of the Crime of Genocide in 1955, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment in 2004 and the Convention on the Rights of Child in 1993. The Syrian Arab Republic ratified the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict in 2003. The Syrian Arab Republic has not ratified the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

<sup>6</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 178, paras. 105–106, “[t]he protection offered by human rights conventions does not cease in case of armed conflict.” See also *Nuclear Weapons case*, statements concerning IHL as *lex specialis*, at p. 240, para. 25.

<sup>7</sup> See Human Rights Committee, General Comment No. 31 on The Nature of the General Legal Obligation Imposed on State Parties to the Covenant (2004), paras. 15–19. In this General Comment, the Human Rights Committee considered that the duty to bring perpetrators to justice attaches in particular to violations that are criminal under domestic or international law, torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killing and enforced disappearance. See also 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*, adopted by the General Assembly in December 2005, and the *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (which were recognised in a consensus resolution of the UN Commission on Human Rights in 2005).

10. *Non-state actors and IHRL*: Non-state actors cannot formally become parties to international human rights treaties. They must nevertheless respect the fundamental human rights of persons forming customary international law (CIL), in areas where such actors exercise *de facto* control.<sup>8</sup> The commission therefore examined allegations of human rights violations committed by the Syrian Government as well as abuses of customary international human rights norms perpetrated by the anti-Government armed groups.

#### IV. International humanitarian law

11. International humanitarian law (IHL), also known as the law of armed conflict, is binding on all parties to a conflict.<sup>9</sup> Its applicability is triggered whenever hostilities meet the threshold criteria of “armed conflict,” and applies irrespective of whether any party involved has in fact declared war. IHL comprises the four Geneva Conventions of 12 August 1949 as well as its Protocols I and II and an array of other instruments and customary principles that protect those most vulnerable to the effects of armed conflict.<sup>10</sup>

12. The Syrian Arab Republic is a party to the Geneva Conventions and its Protocol I, as well as to several other IHL instruments concerning weaponry and mercenaries.<sup>11</sup> The Syrian Arab Republic has not, however, ratified Protocol II to the Geneva Conventions which is specifically applicable during non-international armed conflict. A number of provisions of customary IHL nevertheless apply to non-international armed conflict and must be respected when the armed conflict threshold is met. The commission took note that a non-international armed conflict developed in the Syrian Arab Republic during February 2012 which triggered the applicability of Common Article 3 of the Geneva Conventions as well as customary law relevant to non-international armed conflict.

13. As the Security Council underlined in its resolution 1325 (2011), it is important for all States to apply fully the relevant norms of IHL and IHRL to women and girls, and to take special measures to protect women and girls from gender-based violence during armed conflict.<sup>12</sup>

<sup>8</sup> For a more expansive view of the application of IHRL, see Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, Oxford University Press, 2006). To similar effect, see UN Secretary-General, *Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, para. 188, available from: [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf).

<sup>9</sup> As the Special Court for Sierra Leone held, “it is well settled that all parties to an armed conflict, whether States or non-State actors, are bound by international humanitarian law, even though only States may become parties to international treaties.” See *Prosecutor v. Sam Hinga Norman*, case SCSL-2004-14-AR72(E), (31 May 2004), para. 22. Common Article 3 of the Geneva Conventions itself states that “each party ... shall be bound.” (emphasis added).

<sup>10</sup> One repository of the principles of customary IHL can be accessed in *Customary International Humanitarian Law* (3 vols.), by Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, (Cambridge, Cambridge University Press, 2005) (*ICRC Study*).

<sup>11</sup> The Syrian Arab Republic is a party to the following treaties: The Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare (1925); the Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (1929); the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and its Protocol (1954); the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989).

<sup>12</sup> See also S/RES/1820.



## V. International criminal law

14. International criminal law provides the means of enforcement at the international level of penalties for grave violations of customary law, IHRL and serious violations of IHL which are recognized as attracting individual liability. As noted, the ICC tries persons accused of such crimes, namely genocide, crimes against humanity, aggression and war crimes.<sup>13</sup> The Rome Statute had been joined by 121 countries as of July 2012.<sup>14</sup> Although the Syrian Arab Republic has signed the text, it has not yet become a party. Pursuant to its Article 13 (b), the Security Council can refer the situation of the Syrian Arab Republic to the ICC Prosecutor for investigation. At the time of writing, no such referral has been made.

15. *War crimes*: A complete listing of which actions constitute war crimes under the Rome Statute is contained within its Article 8. In the context of non-international armed conflict, this comprises serious violations of Common Article 3 and Protocol II, as well as other serious violations of international law.

16. *Crimes against humanity*: Crimes against humanity are those crimes which “shock the conscience of humanity”. Under the Rome Statute, crimes against humanity occur where certain acts are undertaken as part of a widespread or systematic attack against a civilian population where the perpetrator has knowledge of the attack.<sup>15</sup> The elements of crimes against humanity are well established in international criminal law:<sup>16</sup>

1. There must be one or more attacks;
2. The acts of the perpetrator must be part of the attack(s);
3. The attack(s) must be directed against any civilian population;
4. The attack(s) must be widespread or systematic;
5. The perpetrator must know that his or her acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his or her acts fit into such a pattern.

The underlying “acts” — or crimes — referred to in the above paragraph (2) have been enumerated in the Rome Statute.<sup>17</sup> The list includes a number of the violations described elsewhere in this report, for example, unlawful killings;<sup>18</sup> enforced disappearances;<sup>19</sup> torture

<sup>13</sup> See William Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (Oxford, Oxford University Press, 2010), Otto Triffterer, *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article* 2nd ed., (Oxford, Hart Publishing, 2008) and M. Cherif Bassiouni, *International Criminal Law* (3 vols.) 3rd ed., (Boston, Martinus Nijhoff, 2008).

<sup>14</sup> See <http://www.icc-cpi.int>.

<sup>15</sup> Article 7, Rome Statute. See M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Practice* (Cambridge, Cambridge University Press, 2011).

<sup>16</sup> The “Elements of Crimes” applied to cases at the International Criminal Court, Available from <http://www.icc-cpi.int>. See also *Prosecutor v. Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, Judgement, Trial Chamber, 22 February 2001.

<sup>17</sup> The list in the Statute includes murder, extermination, enslavement, forcible transfer of population, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, sexual violence, persecution, enforced disappearance, apartheid and other inhumane acts. See Article 7 (1) (a–k).

<sup>18</sup> Listed as murder under Article 7 (1) (a) of the Rome statute. See annex V.

<sup>19</sup> Article 7 (1) (h) of the Rome statute. See annex VII.

and other cruel, inhuman and degrading treatment;<sup>20</sup> and/or rape,<sup>21</sup> and therefore their elements are not repeated here.

17. *Widespread or systematic*: Widespread has long been defined as encompassing “the large scale nature of the attack, which should be massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims”.<sup>22</sup> As such, the element of “widespread” refers both to the large-scale nature of the attack and the number of resultant victims. The assessment is neither exclusively quantitative nor geographical, but must be carried out on the basis of the individual facts. Accordingly, a widespread attack may be the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude”.<sup>23</sup>

18. In contrast, the term “systematic” refers to:

*the “organised nature of the acts of violence and the improbability of their random occurrence” (citations omitted). An attack’s systematic nature can “often be expressed through patterns of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis”. The Chamber notes that the “systematic” element has been defined by the ICTR as (i) being thoroughly organised, (ii) following a regular pattern, (iii) on the basis of a common policy, and (iv) involving substantial public or private resources (citations omitted), whilst the ICTY has determined that the element requires (i) a political objective or plan, (ii) large-scale or continuous commission of crimes which are linked, (iii) use of significant public or private resources, and (iv) the implication of high-level political and/or military authorities.*<sup>24</sup>

19. It is important to note that crimes against humanity need not be both widespread and systematic. The test is disjunctive, and therefore reaching either element suffices.

## VI. Customary international law

20. Customary International Law is made up of norms of (inter)state behaviour that have developed over time and that have become binding among states in their international relations. Treaties are often the codification of CIL norms. CIL is an inseparable component of both IHL and IHRL. The relationship between those two legal regimes and CIL can be expressed in terms of specific crimes or violations, for example, those set out in the Rome Statute. CIL is identified by legal scholars, courts, military law experts, and, for example, the ICRC.<sup>25</sup> CIL contains a number of core precepts such as distinction of civilians, prohibition on indiscriminate attacks, that feasible precautions are undertaken, the principle of humanity (no unnecessary suffering), and imperative military necessity.

<sup>20</sup> See annex VIII.

<sup>21</sup> See annex IX.

<sup>22</sup> ICC Pre-Trial Chamber, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19, 31 March 2010, para. 95 (citations omitted).

<sup>23</sup> ICTY, *Dusko Tadic* Judgment, 7 May 1997, para. 648.

<sup>24</sup> ICC Pre-Trial Chamber, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19, 31 March 2010, para. 96.

<sup>25</sup> See for example the ICRC Study (supra fn 46). In that extensive study, the ICRC identified 161 customary international humanitarian legal norms.

## VII. State obligations to investigate, prosecute, punish and provide reparations

21. Customary law, IHL and IHRL obligate states to investigate allegations of serious violations of their respective regimes and, when appropriate, prosecute suspected perpetrators and compensate the victims. The UN General Assembly expressed the obligation in the clearest of terms when it declared in the “Basic Principles on the Right to Remedy,”

*“In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him.”*<sup>26</sup>

22. The obligation is founded in part on Article 2 of the International Covenant on Civil and Political Rights (ICCPR),<sup>27</sup> wherein an effective remedy is required. The obligation to investigate is specifically confirmed in the interpretation given that provision by the Human Rights Committee.<sup>28</sup>

23. The obligation is slightly different for internal armed conflicts under IHL. There, the obligation to investigate war crimes and prosecute the suspects is a matter of customary law.<sup>29</sup> The notion has been reaffirmed on several occasions by the UN Security Council specifically in relation to the conflicts in Afghanistan, Burundi, Democratic Republic of the Congo, Kosovo and Rwanda.<sup>30</sup> In a resolution on impunity adopted without a vote in 2002, the UN Commission on Human Rights recognized that perpetrators of war crimes should be prosecuted or extradited.<sup>31</sup> The commission has similarly adopted resolutions — most of them without a vote — requiring the investigation and prosecution of persons alleged to have violated IHL in the internal armed conflicts in Sierra Leone, Chechnya, Rwanda, Sudan, Burundi and the former Yugoslavia. It is now broadly regarded as a customary international legal obligation to investigate and punish alleged perpetrators of IHL violations – in either international or non-international armed conflicts.<sup>32</sup>

24. It is thus beyond doubt that each instance of alleged gross human rights violation, and all “serious” IHL violations — perpetrated by individuals on either side of the conflict in the Syrian Arab Republic — must be investigated, and, if appropriate, prosecuted. A

<sup>26</sup> See Supra, fn 43, *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*, UNGA Resolution 60/147, 16 Dec. 2005, Art. 4.

<sup>27</sup> Article 2 of ICCPR requires a State party to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in it and also to ensure an effective remedy for any person whose rights have been violated.

<sup>28</sup> General Comment 31, para. 8.

<sup>29</sup> Unlike in internal conflicts, the obligation in international armed conflicts rests not only with customary law, but also with the “grave breaches regime,” set out in the four Geneva Conventions. See Article 49 of the First Geneva Convention, Article 50 of the Second Geneva Convention, article 129 of the Third Geneva Convention and article 146 of the Fourth Geneva Convention. The ‘grave breaches regime’ contains a specific list of crimes that, whenever violated, oblige the state to ‘try or extradite’ the suspected perpetrator. The International Humanitarian Fact Finding Commission, <http://www.ihffc.org/>, was set up for the purpose of conducting such investigations.

<sup>30</sup> UN Security Council, Res.978 (§558), Res.1193 (§559) and Res.1199 (§560); UN Security Council, Statements by the President (§§561–569).

<sup>31</sup> UN Commission on Human Rights, Res.2002/79 (§589).

<sup>32</sup> See ICRC’s Customary IHL Rule 158.

final point to be made concerns the nature of the investigation that must be conducted to satisfy this obligation. The UN has developed guidelines for such investigations and they center around four universal principles: independence, effectiveness, promptness and impartiality.<sup>33</sup> These four principles lie at the heart of human rights protection and are binding on UN members in that they have been relied upon and further developed in the jurisprudence of UN-backed international courts and also have been agreed upon by the States represented within the relevant United Nations bodies.

## VIII. State responsibility

25. Every internationally wrongful act of a State incurs the international responsibility of that State.<sup>34</sup> Similarly, customary international law provides that a State is responsible for all acts committed by members of its military and security forces.<sup>35</sup> The State is therefore responsible for wrongful acts, including crimes against humanity, committed by members of its military and security forces.

26. The prohibition of crimes against humanity is a *jus cogens* or peremptory rule, and the punishment of such crimes is obligatory pursuant to the general principles of international law.<sup>36</sup> Furthermore, crimes against humanity are the culmination of violations of fundamental human rights, such as the right to life and the prohibition of torture or other forms of inhuman and degrading treatment.<sup>37</sup> According to the principles of State responsibility in international law, the Syrian Arab Republic bears responsibility for these crimes and violations, and bears the duty to ensure that individual perpetrators are punished and that victims receive reparation.<sup>38</sup>

## IX. Individual responsibility

27. The principle of individual criminal responsibility for international crimes is well established in customary international law.<sup>39</sup> According to article 27 of the Rome Statute of the International Criminal Court, which the Syrian Arab Republic has signed but not ratified, the Statute applies equally to all persons, without any distinction based on official capacity. In this context, Syrian laws afford extensive immunities, in most cases, for crimes

<sup>33</sup> *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (Economic and Social Council resolution 1989/65; text available at: <http://www1.umn.edu/humanrts/instate/i7pepi.htm>) and *the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (General Assembly resolution 55/89, 2000; text available at: <http://www2.ohchr.org/english/law/investigation.htm>). Note that the investigation need not be conducted by a court or even a judicial body. Administrative investigations, where appropriate, may equally comply with the four principles.

<sup>34</sup> *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10)*, chap. IV, sect. E, art. 1.

<sup>35</sup> *Ibid.*, commentary to article 7.

<sup>36</sup> Case of *Almonacid-Arellano et al. v. Chile*, Inter-American Court of Human Rights, Judgement of September 26, 2006, (Preliminary Objections, Merits, Reparations and Costs), para. 99. See also *Official Records of the General Assembly* (see footnote 33), Art. 26.

<sup>37</sup> *Almonacid-Arellano et al. v. Chile*, para. 111.

<sup>38</sup> See the Preamble to the Rome Statute of the International Criminal Court: "Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes."

<sup>39</sup> *Prosecutor v. Tharcisse Muvunyi*, Judgement, Case No. ICTR-00-55-T, 12 September 2006, para. 459.

committed by Government agents at all levels during the exercise of their duties. Although the Independent Special Legal Commission was established in recent months to investigate events, the State still has not provided the commission with any details of investigations or prosecutions under way by this mechanism.

## **X. Elements of specific violations**

### **A. Excessive use of force**

28. Excessive use of force by law enforcement officials (whether police or military or other members of State security forces) impinges on fundamental human rights guarantees, including the right to life (Article 6 ICCPR) and security of persons (Article 9 ICCPR). International standards such as the Code of Conduct for Law Enforcement Officials (*Code of Conduct*) and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles)* provide further guidance for public order officials operating in potentially violent circumstances. Non-violent means are to be used as far as possible before resorting to the use of force (principle of “necessity”), and any use of force must be limited to that which is proportionate to the seriousness of the offence and the legitimate objective to be achieved (principle of “proportionality”). Firearms are to be used only in self-defence or in defence of others against imminent threat of death or serious injury; to prevent a particularly serious crime involving grave threat to life; or to arrest a person posing such a threat and who is resisting efforts to stop the threat or to prevent that person’s escape. Before using firearms, law enforcement officials must identify themselves as law enforcement officials and give a clear warning that firearms will be used. Further, sufficient time must be provided for the warning to be observed, unless this would unduly create a risk of death or serious harm to the officer or other persons or would be clearly inappropriate or pointless in the circumstances.<sup>40</sup>

29. IHL contains provisions similarly constraining the use of force under its requirement for proportionality in attack.<sup>41</sup> War-time attacks, even when carefully planned, frequently result in the loss of life or injury to civilians and damage to civilian objects. Under the rule requiring proportionality, a party is required to forego any offensive where the incidental damage expected “is excessive in relation to the concrete and direct military advantage anticipated”. Thus, where the military advantage is outweighed by the damage or death to civilians and their objects, the attack is forbidden. This rule applies despite the recognition that incidental injury to civilians, so-called “collateral damage”, may occur even when an attack is lawful.

### **B. Unlawful killing**

#### **1. Arbitrary deprivation of life**

30. IHRL strictly prohibits taking life arbitrarily, a restriction that bars state actors from killing a person outside a legitimate and legal basis for doing so. Those legitimate bases are twofold. First, when a fully-fledged judicial process in line with international standards has been followed. Second, in the most narrow of circumstances, where a person’s life is under imminent threat.

<sup>40</sup> See Article 3 of the *Code of Conduct*. See generally the *Basic Principles*.

<sup>41</sup> ICRC Study Rule 14.

31. Moreover, a state-sponsored deprivation of life will be arbitrary in the legal sense unless it is both necessary and proportionate. Therefore, when a state actor employs lethal force it must be in order to protect life (i.e., it must be proportionate) and there must also be no other means available, such as capture or incapacitation, to curtail that threat to life (i.e., it must be necessary). Only under these limited circumstances is the resort to lethal force by the State legal.

32. The noted IHRL standards differ to a degree from those applicable to fighters/combatants during an armed conflict under IHL. For example, one would not expect soldiers to warn their enemies before an attack. So long as all applicable IHL, CIL and IHRL requirements are met, killing an enemy fighter during an armed conflict is not illegal. The converse is also true: fighters/combatants causing another person's death, even that of the enemy, during armed conflict can be unlawful when the applicable law is breached (see below).

## **2. Murder as a war crime**

33. In specific circumstances, killing another person during an armed conflict is murder (also known as "wilful killing" when committed in the course of an international armed conflict). The crime of murder is a recognized offense under customary law and has been codified in the Rome Statute. In non-international armed conflict, the elements comprising the war crime of murder are as follows:

- (i) The perpetrator killed one or more persons;
- (ii) Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities;
- (iii) The perpetrator was aware of the factual circumstances that established this status;
- (iv) The conduct took place in the context of and was associated with an armed conflict not of an international character;
- (v) The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

34. Thus, murder is committed upon the intentional killing of a protected person in the context of an armed conflict when the perpetrator is aware of the circumstances of the victim and the conflict itself. Interpretations given by the international courts to the elements of murder largely mirror those of traditional criminal law. For example, even where the perpetrator does not directly kill the victim at his own hand, the act(s) of the perpetrator must at least be a "substantial cause of the death" of the victim. Premeditation does not appear as a required element.

35. Murder can also be prosecuted as a crime against humanity when it is perpetrated in the context of a widespread or systematic attack against any civilian population - whether conducted in a time of war or peace. The mental element of murder as a crime against humanity not only includes the intent to cause someone's death but also the knowledge of the act being part of a widespread or systematic attack against any civilian population.

## **3. Attacks on protected persons and objects; Indiscriminate attacks**

36. IHL prohibits the intentional targeting of civilians in both international and non-international armed conflicts. Violations of this provision are prosecutable in ICL,

including at the ICC.<sup>42</sup> Parties to a conflict have an obligation to distinguish at all times between those taking part in hostilities and the civilian population, and they must direct attacks only against military objectives. Referred to as the “principle of distinction”, the International Court of Justice in its Advisory Opinion of 8 July 1996 on the Legality of the Threat or Use of Nuclear Weapons, recognised this principle as “intransgressible” in customary international law.

37. Attacks on places where both civilians and combatants may be found are prohibited if they are not directed at a specific military objective, or if they use methods or means of combat which cannot be directed at a specific military objective. It is prohibited to launch an attack which may be expected to cause incidental loss of civilian life, injury to civilians, and/or damage to civilian objects which would be excessive in relation to the anticipated concrete and direct military advantage.

38. Customary IHL establishes that all “parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks”. Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas. Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.

39. Attacking, destroying, removing or otherwise rendering useless objects which are indispensable to the survival of the civilian population is prohibited. Sieges must still allow for vital foodstuffs and other essential supplies to be delivered to the civilian population.

40. Medical personnel as well as hospitals, medical units and transport must be respected and protected in all circumstances. Medical personnel, units and transport lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy.

41. IHL also incorporates specific protections for objects. It is prohibited to commit an act of hostility directed against places of worship which constitute the cultural or spiritual heritage of peoples.

42. The Rome Statute sets out a number of war crimes which correspond to these breaches of IHL guarantees. They include the crime of intentionally attacking civilians, and intentionally attacking civilian buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected.<sup>43</sup>

### **C. Arbitrary arrest and unlawful detention**

43. Article 9 of the ICCPR prohibits arbitrary arrest or detention of individuals. It provides that “no one shall be deprived of liberty except on such grounds in accordance with such procedures as are established by law”. Persons arrested are to be informed at the time of arrest of the reasons for the arrest and promptly informed of any charges.<sup>44</sup> Anyone arrested or detained on a criminal charge is to be brought promptly before a judge or other officer authorized by law to exercise judicial power and is entitled to trial within a reasonable period or release.<sup>45</sup> Persons have a right to take proceedings before a court for the purposes of reviewing the lawfulness of detention and to be released if the detention is

<sup>42</sup> Rome Statute, Art. 8 (2) (e) (i)–(iv).

<sup>43</sup> Rome Statute, Art. 8 (2) (e) (iv).

<sup>44</sup> Article 9 (2) ICCPR.

<sup>45</sup> Article 9 (3) ICCPR.

unlawful.<sup>46</sup> The term “arbitrary” needs to be considered in terms of appropriateness, proportionality and reasonableness.<sup>47</sup> Lawfulness of detention is to be considered as both lawfulness under domestic law and lawfulness under international law.<sup>48</sup>

44. The commission therefore notes the conditions of detention provided for in the Syrian Arab Republic’s domestic law. Article 4 of the State of Emergency Act (SEA) authorises the Military Governor to impose, through oral or written orders, “restrictions on the rights of people to the freedom of assembly, residence, transport, and movement, and to arrest suspected people or those threatening public security on a temporary basis, and to authorize investigations of persons and places at any time, and to allow any person to perform any task”.<sup>49</sup> This provision has provided grounds for the arrest of peaceful demonstrators.

45. The SEA also provides for the detention of suspects for “crimes committed against State security and public order” and “crimes committed against public authorities”.<sup>50</sup> The commission observes that these crimes do not appear to be further defined in the Syrian Arab Republic’s domestic laws. The SEA also permits the security forces to hold suspects in preventive detention without judicial oversight for indefinite periods.

46. The commission observes that in April 2011, the Syrian Arab Republic’s Code of Criminal Procedure — which previously required suspects to be brought before a judicial authority within 24 hours of arrest or else be released<sup>51</sup> — was amended to allow suspects to be held for up to seven days, pending investigation and the interrogation of suspects for certain crimes. This period is renewable up to a maximum of 60 days.<sup>52</sup>

#### D. Enforced disappearance

47. While the Syrian Arab Republic is not a party to the specialized convention concerning enforced disappearances,<sup>53</sup> it is a party to the ICCPR, provisions of which are infringed by enforced disappearance. Such action violates a person’s right to recognition as a person before the law,<sup>54</sup> to liberty and security and freedom from arbitrary detention, including the right to be brought promptly before a judge or other official for review of the lawfulness of detention. Disappearance may also be associated with torture and other forms of cruel, inhuman or degrading treatment and extrajudicial execution, in violation of the right to life, prohibition on torture and other forms of cruel, inhuman or degrading treatment.<sup>55</sup>

<sup>46</sup> The ICCPR also provides for a right of compensation for unlawful arrest or detention.

<sup>47</sup> *A. v. Australia*, Human Rights Committee, communication No. 560/1993, CCPR/C/59/D/560/1993, para. 9.2. In considering unlawful remand, the Committee has also highlighted that factors of inappropriateness, injustice and lack of predictability that may render arbitrary an otherwise lawful detention; see *Van Alphen v. The Netherlands*, Human Rights Committee, communication No.305/1988, CCPR/C/39/D/305/1988.

<sup>48</sup> See for instance, *A. v Australia*, Human Rights Committee, communication No. 560/1993, CCPR/C/59/D/560/1993, para.9.5.

<sup>49</sup> While the state of emergency was lifted on 21 April 2011, the Government did not abolish the SEA, which remains in force under Syrian domestic law.

<sup>50</sup> State of Emergency Act, art. 6.

<sup>51</sup> Code of Criminal Procedure, Law No. 112 of 1950 as amended, arts. 104 (1) and (2).

<sup>52</sup> Legislative Decree No. 55/2011, amending article 17 of the Code of Criminal Procedure.

<sup>53</sup> International Convention on the Protection of all Persons from Enforced Disappearance, 2006.

<sup>54</sup> Article 9 ICCPR.

<sup>55</sup> The Human Rights Committee in its General Comment No 20 (1992), para. 11, on Article 7 of the ICCPR, recognized that safeguards against torture included having provisions against incommunicado



48. Under IHL, persons taking no active part in the hostilities are entitled to be treated humanely.<sup>56</sup> Customary IHL rules also include a prohibition on arbitrary deprivation of liberty<sup>57</sup> and require parties to the conflict to keep a register of persons deprived of their liberty,<sup>58</sup> respect detainees' family life, to permit detainees to receive visitors, especially near relatives to the degree practicable and allow correspondence between detainees and their families.

49. Parties to a conflict must take all feasible measure to account for persons reported missing as a result of the conflict and efforts must be made to provide family members with any information the Party has on their fate. The practice of enforced disappearance also may be a gateway to other violations such as torture, murder or extra judicial executions. The combined effect of particular IHL obligations leads to the conclusion that the practice of disappearance is prohibited by customary IHL.

50. Furthermore, "imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law" and enforced disappearance are acts recognized in the Rome Statute as potentially giving rise to a crime against humanity if committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack.<sup>59</sup> Integral to the finding of a crime of "enforced disappearance" is a refusal to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.<sup>60</sup>

## E. Torture and other forms of ill-treatment

51. Under IHRL, there is a clear prohibition on torture and other forms of cruel, inhuman or degrading treatment in Article 7 of the ICCPR. The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides a fuller definition: "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

52. Torture during armed conflict is both a violation of IHL and a breach of international criminal law. Torture must not be balanced against national security interests or even the protection of other human rights. No limitations are permitted on the prohibition of torture. International humanitarian law explicitly prohibits the torture and cruel treatment of persons taking no active part in hostilities (including members of armed forces who have laid down their arms or been rendered *hors de combat*). Such conduct constitutes a war crime.

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detention, granting detainees suitable access to persons such as doctors, lawyers and family members, ensuring detainees are held in places that are officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.

<sup>56</sup> Article 4 (1) AP II, Common Article 3 of the four Geneva Conventions of 1949.

<sup>57</sup> ICRC Study, Rule 99.

<sup>58</sup> ICRC Study, Rule 123.

<sup>59</sup> Rome Statute, Art. 7 (1) (i).

<sup>60</sup> ICC Elements of Crimes, Article 7 (1) (i).

53. Torture can form part of a crime against humanity. The ICC's Elements of Crimes set out the following elements for the crime of torture during armed conflict:

- (i) The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons;
- (ii) The perpetrator inflicted the pain or suffering for such purposes as:
  - (1) Obtaining information or a confession;
  - (2) Punishment;
  - (3) Intimidation or coercion;
  - (4) Or for any reason based on discrimination of any kind.

54. The definition, both under CAT and under the ICC's Elements of Crimes, provides that "severe" pain must be inflicted. International tribunals and human rights bodies have, to date, found the following acts constituted torture: kicking, hitting, beating (including beating on the soles of the feet), flogging, shaking violently, inflicting electric shocks, burning, subjecting the victim to "water treatment", extended hanging from hand and/or leg chains and suffocation/asphyxiation. Mental torture has been found to have occurred where the perpetrator threatened the victim with death or simulates an execution, while having the means to carry it out. These acts have been held to constitute torture irrespective of any subjectively experienced pain of the victim.

55. In its General Comment, the Committee Against Torture emphasised that an obligation on all state authorities exists in respect of torture. Any official who has reasonable grounds to believe that acts of torture or ill-treatment are being committed is obliged to prevent, investigate, prosecute and punish. Otherwise, the State bears responsibility and its officials will be individually considered as complicit or otherwise responsible "for acquiescing in such impermissible acts". Investigations should be conducted in accordance with the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

56. All persons detained in connection with an armed conflict must be treated humanely. At the end of armed conflict, persons deprived of their liberty enjoy the protection afforded under Articles 5 and 6 of Protocol II, or at a minimum such protections as are recognized as customary law, until their release.

57. The United Nations has developed a comprehensive set of standards to be enforced in places of detention. The underlying principles, based in IHL and IHRL, are humane treatment and non-discrimination. Particularly relevant is Protection Principle 7 which requires that all maltreatment of detainees be investigated and punished.

58. The commission notes that according to the 2012 Syrian Constitution, "[n]o one may be subjected to torture or to degrading treatment and the law shall define the punishment for any person who commits such acts".<sup>61</sup> Further, Article 391 of the Syrian Criminal Code stipulates that: "Anyone who batters a person with a degree of force that is not permitted by law in order to extract a confession to, or information about, an offence shall be subject to a penalty of from three months to three years in prison".<sup>62</sup> These provisions do not, however, further define the crime of torture.

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<sup>61</sup> Syrian Constitution, Article 53.

<sup>62</sup> Law No. 148/1949 of the Syrian Criminal Code.

## F. Rape and sexual violence

59. Rape violates the prohibition on torture and cruel, inhuman or degrading treatment and also impairs other human rights including the right to the highest attainable standard of physical and mental health under the International Covenant on Economic, Social and Cultural Rights (ICESCR). It is also expressly prohibited in armed conflict. Common article 3 to the Geneva Conventions also prohibits “violence to life and person, in particular ... cruel treatment and torture” and “outrages upon personal dignity, in particular, humiliating and degrading treatment”. Rape constitutes a war crime under the Rome Statute as well as potentially constituting a crime against humanity if it is part of a widespread or systematic attack on civilians. The elements of the crime of rape in non-international armed conflicts in the Rome Statute are as follows:

- (i) 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;
- (ii) 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;
- (iii) The conduct took place in the context of and was associated with an armed conflict not of an international character;
- (iv) The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

60. The Security Council has urged parties to armed conflict to protect women and children from sexual violence. Its resolution 1325 (2000) calls on all parties to the conflict to take special measures to protect women and girls from rape and others forms of sexual abuse and its resolution 1820 (2008) stresses that “sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict”.

61. Sexual violence can meet the definition of torture and has been prosecuted as such.

## G. Children and armed conflict

62. The Convention on the Rights of the Child (CRC) generally defines a child as any person under the age of 18. However, with respect to armed conflict, the Convention draws its language from the Protocols to the Geneva Conventions, and consequently sets the lower age of 15 as the minimum for recruitment or participation in armed forces.

63. The Optional Protocol, which the Syrian Arab Republic adopted in 2003, without reservation, sets 18 as the minimum age for direct participation in hostilities, for recruitment into armed groups and for compulsory recruitment by governments.

64. Under the Rome Statute, it is a war crime to use, conscript or enlist children under the age of 15 years into armed forces or use them to participate actively in hostilities.<sup>63</sup>

<sup>63</sup> Rome Statute, Art. 8 (2) (e) (vii).

65. Active participation in hostilities does not solely denote children's direct participation in combat but encompasses activities linked to combat such as scouting, spying, sabotage, and the use of children as decoys, couriers, or at military checkpoints. Also prohibited is the use of children in "direct" support functions such as carrying supplies to the front line.

66. The commission notes that international law requires that child detainees must be separated from adults, unless to do so would involve a violation of the right of families to be housed together. The requirement to incarcerate child and adult detainees separately is set forth in the CRC.<sup>64</sup>

## **H. Pillaging**

67. By definition pillage (or plunder) is theft within the context of, and in connection with, an armed conflict. Under the Rome Statute, pillage is "the forcible taking of private property by an invading or conquering army from the enemy's subjects".<sup>65</sup> The Elements of Crimes of the ICC specify that the appropriation must be done for private or personal use. The prohibition of pillage is a long-standing rule of customary and treaty-based international law. It constitutes a war crime to pillage a town or place, even when taken by assault.

## **I. Destruction of personal property**

68. International human rights law protects an individual's home from interference by the State. Article 17 of the ICCPR prohibits arbitrary or unlawful interference with a person's home or correspondence. The Human Rights Committee has interpreted this provision to mean that no interference can take place except in cases envisaged by the law, and that law must comport with the objectives of the ICCPR.<sup>66</sup> Article 11 of the ICESCR commits States Parties to providing everyone "an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions".

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<sup>64</sup> See CRC Art. 37 (c).

<sup>65</sup> Rome Statute, Art. 8 (2) (e) (v).

<sup>66</sup> General Comment 16, Art. 3.

## Annex III

[English only]

### Military situation

1. During this reporting period, the military situation has deteriorated significantly with armed violence gaining in intensity and spreading to new areas. While events in the Syrian Arab Republic were once viewed as an excessive use of force against peaceful demonstrators, the dynamics of the crisis have shifted dramatically. Active hostilities between Government forces (and pro-Government militia) and anti-Government armed groups took place across broad sections of the country. Sporadic clashes between the armed actors have evolved into continuous combat, involving more brutal tactics and new military capabilities by both sides. Levels of armed violence vary throughout the country.

#### I. Government forces and pro-Government militia

2. As the Syrian Government attempts to re-establish its authority in areas which have fallen, or are at risk of falling, under the *de facto* control of anti-Government armed groups, it has increasingly engaged its military troops and heavy equipment, such as tanks and helicopters, in operations against areas perceived to be in support of the armed groups.

3. All army divisions and security services have engaged in military operations that varied in terms of used capabilities, tactics and scale according to the confronted armed group's size, capabilities and degree of influence and support. Military operations consistently begin with Government forces deploying reinforcements to establish checkpoints around the periphery of a targeted area. This differs from the previous approach which focused on establishing checkpoints within the area. Defections among deployed soldiers and repeated attacks on isolated checkpoints by anti-Government armed groups were reportedly behind this tactical shift. Once the area has been cordoned, artillery and tank units — increasingly joined by helicopters — conduct shelling before ground forces raid the area to dislodge the insurgents. Security forces and pro-Government militia, including *Shabbiha*, have reportedly been involved in these final clearing operations, which often involve house-to-house searches.

4. The use of heavy fire assets, such as artillery and helicopters, which earlier had been limited to certain areas such as Homs city and Zabadani, in Rif Dimashq, has been extended to all restive provinces. While previously mortars and artillery shelling had been used as a prelude to incursions by ground forces, they are regularly employed in the context of clashes, when quelling demonstrations, and when Government forces are unable to regain control of a contested area. The use of air assets, once limited to observation and transportation purposes, was also extended to fire support; as attack helicopters were used to shell localities under the control of anti-Government armed groups.

5. In the face of rising insurgency, Government forces directed their main efforts towards the control of major population centres such as Damascus, Aleppo, Homs and Hama. They targeted suburban towns and neighbourhoods of these major localities which were perceived to have been infiltrated by anti-Government armed groups. Their attacks on such areas had the unintended effect of increasing the local populations' support for those groups. Simultaneously, operations with heavy artillery and helicopters shelling were conducted to neutralize the anti-Government armed groups' influence in key countryside towns located along main lines of communication such as in Sahl Al-Ghab between Hama

and Idlib governorates, and the Northern Aleppo countryside. During many of these operations, large numbers of fighters and civilians were killed.

6. According to testimonies received by the commission, *Shabbiha*, continues to act alongside Government forces in security and military operations. With the increased militarization of the crisis, *Shabbiha* has supported army units by conducting raids and clearing operations once Government forces re-established control of targeted localities. Nevertheless, the composition, strength, and level of involvement of this militia remain opaque. The role of Syrian authorities in supporting this militia could not be ascertained with a sufficient degree of certainty. In part, this difficulty stems from the diverse use of the term “*Shabbiha*”. Many of those interviewed by the commission use the term to refer to any armed individual dressed in civilian clothes or in mixed civilian and military clothes. Others report that, in some areas, the *Shabbiha* are composed of civilians of neighbouring villages predominantly populated by Alawites. Some interviewees claim that *Shabbiha* are organised, trained and paid by central or regional authorities, while others have stated they are local volunteers, with loyalties to the Government arising from ethnicity and/or a fear of the consequences of the fall of Government on them and their families. While it is evident that *Shabbiha* act in concert with Government forces, their precise nature and the relationship between the *Shabbiha* and the Government remains unclear.

7. Government forces faced increased attrition in personnel and equipment due to combat operations, defections and casualties. While the number and level of defections are not yet having an operational impact, they had a psychological effect on the troops, thus fuelling a crisis of confidence within the ranks and encouraging further defections. Defections continued steadily but reach their peaks particularly in the aftermath of military operations. The Government also faced difficulties in drafting new recruits; as those called in for mandatory military service refuse to report. This situation forced the leadership to extend the conscription of those already serving in the ranks which, in turn, has created frustration and further defections among them.

## II. Anti-Government armed groups

8. During the reporting period, anti-Government armed groups continued to engage with Government forces through direct clashes and ambushes, the use of Improvised Explosive Devices (IEDs) and raids on military/security facilities.

9. Despite the apparent absence of an overall effective command structure, the FSA continued to “represent” the main anti-Government armed group with a significant number of groups claiming affiliation to it. The FSA has created Local Military Councils in specific governorates which claim leadership over fighting groups operating in each of those areas. High-ranking defectors within the FSA have also announced the creation of a new command structure, namely the Joint Military Command of the Syrian Revolution, in charge of organizing and unifying all armed groups, coordinating military activities with political partners and managing security and stability in the transitional period.

10. Anti-Government armed groups vary in terms of capabilities, composition and tactics. At one end of the spectrum, there are small groups operating at the local level, mainly composed of civilians and defectors from the area, and often eluding direct confrontations with Government forces by temporarily withdrawing from their villages during army raids. Such groups mainly use IEDs attacks, overnight raids and low scale ambushes on small military units and facilities. On the other end, there are increasingly larger groups that have succeeded in integrating a number of smaller groups, and which are able to control some territory, directly confront army units in urban environment for days and conduct coordinated attacks on army positions and large convoys. The longer these

groups have been able to control territories, the better they were then able to regroup and organize in the event of being ousted. Many groups claim affiliation to the FSA, while some others reject it but increasingly coordinate their actions, and support each other with fighters and equipment. Accounts indicate the existence of foreign fighters in the ranks of some armed groups. The commission has not, however, been able to determine their significance.

11. Anti-Government armed groups expanded their presence and activities throughout the country, clashing simultaneously with Government forces on multiple fronts. While Homs governorate was for months the main open battlefield between anti-Government armed groups and Government forces, military confrontations have spread to several other cities and regions, including Rif Dimashq, Aleppo and Deir el-Zour. At the time of writing, they are reportedly involved in sustained armed confrontations inside the capital, while establishing sanctuaries throughout the rest of the country.

12. By July 2012, anti-Government armed groups had extended their influence to further areas in Homs, Dar'a, Sahl Al Ghab in northern Hama, Idlib countryside, Deir el-Zour and north and west of Aleppo as a result of their increased ability to coordinate their operations at the provincial level. Anti-Government armed groups have also expanded the eastern front in Deir el-Zour, requiring the Syrian forces to re-deploy key units from the Damascus area, geographically stretching State forces and forcing the regime to deploy its strongest military units.

13. Anti-Government armed groups have increased their attacks on key infrastructure, such as oil installations and electrical plants. They have seriously undermined Government forces' control of the country's borders, leading most recently to their temporary control of some border crossing points. Cross-border movements of refugees as well as of anti-Government fighters appears to be more frequent, dense and fluid, although crossing the border through official crossing points remains a perilous trip in some areas.

14. During the reporting period, investigations have not confirmed the use of more sophisticated weaponry by anti-Government armed groups. However, their capacity to access and effectively use available weapons has improved. Anti-Government armed groups appeared to have increasing access to more funding and logistical support, such as ammunition and small arms. Some anti-Government armed groups also possess mortars and anti-tank missiles, reportedly looted during seizure of army positions. The level of destruction lately observed on destroyed government equipment indicates the use of new military capabilities such as anti-tank weapons.

15. The Commission has noted the increased and more efficient use of IEDs by anti-Government armed groups against army and security convoys, patrols and facilities. This asset has also been used to target members of military and security forces and Government officials; causing in many cases collateral damage among civilians and their properties.

### III. Other actors

16. Several radical Islamic armed groups have emerged in the country. The most significant of those is the Al-Nusra Front for the People of the Levant, an alleged Al Qaeda-linked group that has claimed responsibility for several attacks, including suicide bombings against Syrian Government forces and officials. The attacks that took place throughout the country, including in the cities of Damascus, Aleppo, Deir el-Zour, and Idlib, have targeted members of the Government, police, military, intelligence and the *Shabbiha*. The attacks consisted of suicide bombings, ambushes, assassinations, car bombings and IED attacks. The group has identified its leader as the Syrian national Sheikh Abu Muhammad al Julani. In addition to the Al Nusra Front, other groups announced as

operating within the country include Syrian Al Baraa Ibn Malik Martyrdom Brigade in Homs and the Abdullah Azzam Brigades, a regional al Qaeda affiliate.

17. The Commission noted the emergence of self-defence groups in several localities. Some of these groups emerged in villages populated by allegedly pro-government minorities that are not necessarily part of the *Shabbiha* militia.



## Annex IV

[English only]

### Special inquiry into Al-Houla

#### I. Background

1. Mandated to conduct a special inquiry into the events in Al-Houla of 25 May 2012, the commission delivered its preliminary findings to the Human Rights Council on 27 June (A/HRC/20/CRP.1), based on the evidence and materials gathered through 22 June.<sup>a</sup> The initial report found the Government responsible for the deaths of civilians as a result of shelling Al-Houla area and particularly the Taldou village. It also found that the Government had failed to properly conduct an investigation into the events in Al-Houlain accordance with international human rights standards. While the commission did not rule out the responsibility of other potential perpetrators in the killing of the Abdulrazzak and Al-Sayed families,<sup>b</sup> it concluded that it was unlikely that opposition forces were implicated.

2. The commission has since continued its investigation focusing on identifying the perpetrators. Access to the country was not granted despite specific requests to the Syrian Arab Republic via *Note Verbale* dated 4 June 2012 (annex XI) and in person by the Chairperson during his visit to Damascus 24–25 June 2012. Moreover, the commission had not received a response to a request dated 13 July to interview two specific witnesses whose testimony had appeared in the Government report and who had been interviewed by both Syrian and Russian journalists (annex XI).<sup>c</sup> Although the Syrian Government provided the preliminary report of its own commission of inquiry on 7 June, it has not delivered a final report, nor indicated when such a report might be forthcoming.

3. In its continued investigation the commission examined additional satellite imagery and interviewed a further eight witnesses, six of which were from the area of Taldou by telephone, including two survivors. It gathered several other witness accounts, video material and analysis from other sources, always giving due regard to their reliability and authenticity.

4. As noted, the Government's report stated that the Syrian Army had defended itself from an attack by what it deemed "terrorists", and that a number of soldiers were killed in the clashes. The report acknowledged the deaths of civilians and described the Abdulrazzak family as peaceful and stated that it had refused to rise up against the State or participate in demonstrations – suggesting they were attacked by anti-government groups for their failure to support the rebellion. The motive provided for the Al-Sayed family killings was their

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<sup>a</sup> This report is to be read together with the Commission's first report, see A/HRC/20/CRP.1, 27 June 2012.

<sup>b</sup> The anti-Government activists and many victims and witnesses blamed the killings on Government forces working in concert with *Shabbiha* from neighbouring villages. The Government in its report blamed the 600–700 "terrorists" for the killings. The commission also considered the possibility that foreign groups were involved.

<sup>c</sup> On 3 August, the commission received a call from the Geneva Mission of the Syrian Arab Republic offering to arrange interviews with the two witnesses. By the deadline for submission of this report the interviews had not taken place.

familial ties to Abdelmuti Mashlab, a new member of parliament, and existing feuds with some members of the armed groups.

## II. Findings from further investigation

### A. Consistency of accounts

5. More than forty separate interviews were considered by the commission. All interviewees were consistent in their portrayal of the events and their description of the perpetrators as Government forces and *Shabbiha*. Apart from the two witnesses in the Government report, no other account supported the Government's version of events. As noted, the commission's request to interview those two witnesses was not fulfilled. The commission, nevertheless, carefully reviewed their testimony as set out in the Government report and interviews they gave to other sources, and deemed their accounts to be unreliable as they contained a number of inconsistencies.<sup>d</sup> Not making the witnesses available to the commission meant that those inconsistencies could not be further explored. Separately, a high-ranking defector that the commission deemed credible reported that, prior to his defection, he was asked to help manufacture evidence supporting the Government's version of events.

6. At the same time, accounts of other witnesses interviewed by the commission remained consistent over time, including those collected from children, despite the fact that they were conducted by different interviewers.<sup>e</sup> The commission found it highly unlikely that the dozens of people interviewed in Taldou could be taking part in an extensive fabrication over such an extended period.

7. Consequently, the commission found the version of events received from the Government to be uncorroborated and insufficient when compared to the larger body of evidence collected from other sources. Besides the Government's report, little evidence was collected suggesting that anyone other than Government forces and *Shabbiha* committed the killings.<sup>f</sup>

<sup>d</sup> As examples: 1. They failed to describe the location of the main incident, specifically the Abdulrazzak family home; 2. The witness purported to know that in the northern part of the town "terrorists" were distributing ammunition to each other, but elsewhere the witness described her presence as being in the centre near the clock tower or further south during the same time frame; 3-. The witness also stated that the "terrorists" included "strangers who don't belong to our village," and was able to remember their names individually while the village has 30,000 people, and the whole area of Al-Houla's population is more than 100,000. It is unclear how she could be so certain of terrorist individual identities/names in the described context; 4. The witness said she saw the burning at the hospital area "when we passed by." The area around the hospital was in government hands throughout, so it is unclear when and how she was able to reach the given location given the circumstances of the day; 5. She suggested that the armed groups were in fact mentioning the real first names of the groups' leaders over their radio communications. The commission finds this lacking credibility; 6. The witness described the Al-Sayed family as having been shot from across the street when all other evidence, including by UNSMIS visiting the scene, indicate the victims died from gunshots at close range.

<sup>e</sup> UNSMIS, international human rights NGOs, journalists and the CoI have all conducted interviews during the course of their investigations into the events.

<sup>f</sup> The commission examined the version of events reported in the *Frankfurter Allgemeine Zeitung* (FAZ), 7 June 2012, by Rainer Hermann, and by journalist Marat Musin, on Anna news and Russia Today, 2 June 2012, (Available at [http://www.youtube.com/watch?v=pyi-tJ\\_0PPg](http://www.youtube.com/watch?v=pyi-tJ_0PPg)) both of which blamed the killings on anti-Government armed groups. The commission found these reports relied

## B. Location and access

8. The commission's earlier report determined that both the anti- and pro-Government forces could have accessed the two crime scenes – the first scene being the seven Abdulrazzak family homes on Dam Street (*Tariq al-Sad*) and the second being the two Al-Sayed family homes on Main Street (*Al-Shar'i Al-Raisi*), across the street from the National Hospital (see map). The commission has since determined that the checkpoint at *Al-Qaws* remained in Government hands at the end of the day the incident occurred. The checkpoint demarcated the new front line between the opposition and Government forces. The commission concluded that Al-Sayed house was adjacent to the National Hospital and lying south of *Al-Qaws* checkpoint and that the crime scene remained in Government-controlled territory the entire time. Indeed, when UNSMIS arrived the next day and negotiated the handover of the bodies from the site (see the report of the Secretary-General to the Security Council, S/2012/523, 27 May 2012), Government soldiers were on duty at the checkpoint and in control of the crime scene.

9. In a related finding, the commission ruled out the theory proffered by the Government that the target of the killing was in fact the newly elected Member of Parliament from Taldou, Abdelmuti Mashlab. According to the Government report,

*The first targets of this massacre were relatives of the People's Assembly member Abd Al-Moa'ti Mashlab. What was required was to take revenge, because he challenged them when he submitted his candidacy to the People's Assembly and managed to be elected as a member. This indeed happened before things went out of control and the massacre extended to slaughter other families.<sup>8</sup>*

10. The "other families" are those of Mashlab's distant relatives, namely the Al-Sayed family. The commission determined that the Mashlab household was in opposition-controlled areas of the town at the time of the attack. Thus it would have been accessible to an anti-Government armed group seeking to mete out such a punishment, yet the house remained untouched. Both Al-Sayed family homes, conversely, were readily accessible to Government forces or local militias, but the same access would have been extremely risky if not impossible for anti-Government groups.

11. At the Abdulrazzak crime scene, where over 60 persons were killed, the commission considered it likely that a large number of perpetrators would have been necessary to carry out the crime. The killings occurred in broad daylight. Testimony received indicated that the perpetrators arrived both by foot and in vehicles, and that some arrived with pickups with machine guns mounted on top, in addition to a number of cars and minivans. The commission found that the movement of vehicles or weapons, as well as the size of the group, would have been detectable by Government forces at the Water Authority position. At the same time, access to the scene for any sizable group of anti-Government armed men would have been practically impossible, especially if they arrived in vehicles as multiple eyewitnesses attested.

12. Opposition members did manage to access the scene and remove the bodies later that evening and apparently did so using vehicles. However, they were apparently shot at by Government forces and had to abandon their efforts until the following morning.

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primarily on the same two witnesses as the Government's report and not on additional investigation or witnesses in Al-Houla. Moreover, these reports asserted that the Abdulrazzak family had converted to Shiism. The commission confirmed that all members of both families were Sunni and that no one in either family had converted.

<sup>8</sup> *Note Verbale*, 281/2012 of 7 June 2012, p.3 (unofficial translation).

### C. Loyalties

13. The National Hospital had been occupied by the army for several months prior to the incidents. Although it was accessible by foot from both crime scenes, no one — whether injured or fleeing the crime scenes — sought refuge there. As far as the commission could determine, all injured and surviving family members, as well as people from nearby houses, fled to opposition-controlled areas. Moreover, as mentioned in the commission's previous report, it was anti-Government activists who arrived at the area first, took care of the deceased and assisted in treating the wounded and organized their burial. The commission saw no indication that pro-Government entities attempted to do the same, namely to secure the crime scenes or to recover the wounded and deceased after news of the events broke — at either site.

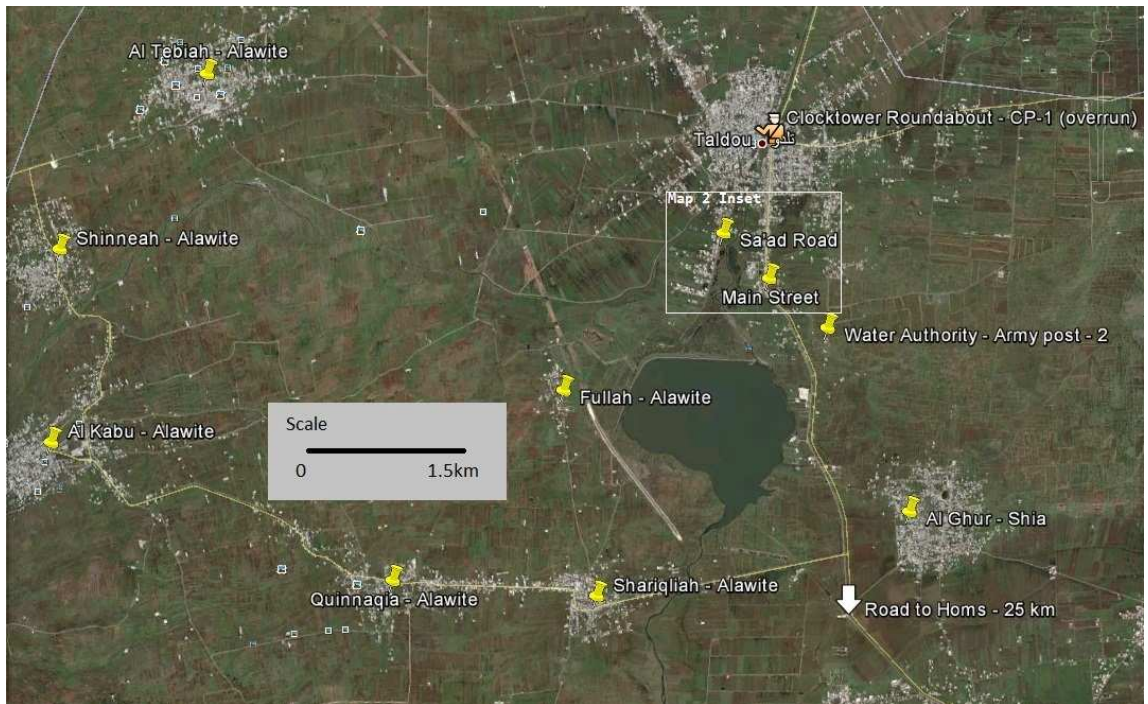
14. The Government report depicted the loyalties of the Al-Sayed family as pro-Government. Muawia Al-Sayed, who was killed alongside his son and young daughter that day, was a retired colonel in the security forces. His son Ahmad was still on active duty, but had been home on extended sick leave. The commission found it compelling that their family members, who survived, fled to opposition-controlled areas of Taldou and chose not to seek assistance from the Government forces nearby. From there, they requested that UNSMIS facilitate the handing over of the bodies to their location. Moreover, testimonies from surviving members of those families clearly describe Government forces and *Shabbiha*, as the perpetrators.

### III. Conclusion

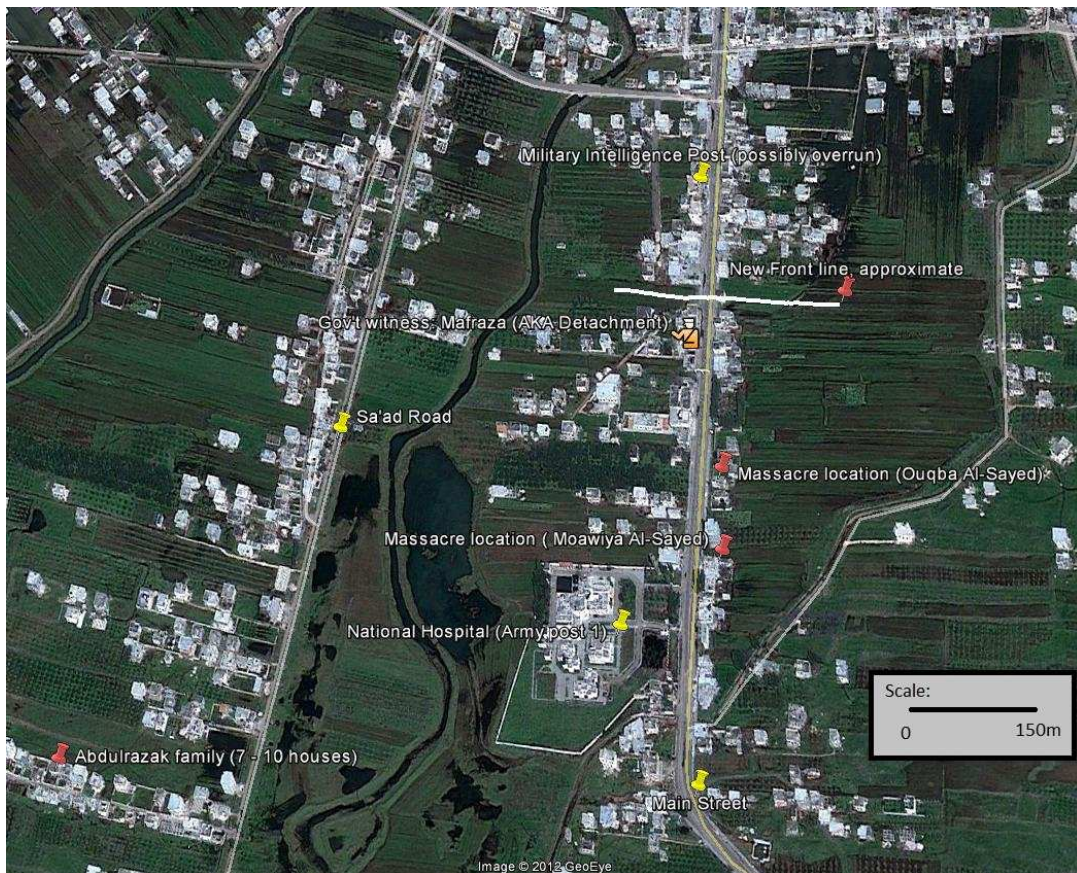
15. The continued investigation since its preliminary report of 27 June 2012, has supplemented the commission's initial understanding of the events in Al-Houla. On the basis of available evidence, the commission has a reasonable basis to believe that the perpetrators of the deliberate killing of civilians, at both the Abdulrazzak and Al-Sayed family locations, were aligned to the Government. It rests this conclusion on its understanding of access to the crime sites, the loyalties of the victims, the security layout in the area including the position of the government's water authority checkpoint and the consistent testimonies of victims and witnesses with direct knowledge of the events. This conclusion is bolstered by the lack of credible information supporting other possibilities.

16. The commission remains of the view that the Government has manifestly failed in its obligation to properly investigate the murders that took place in Al-Houla on 25 May 2012.

Map 1 – Al-Houla area



Map 2 – Inset from Map 1 – South Taldou



## Annex V

[English only]

### Unlawful killing

1. The commission conducted more than 300 interviews relating to the unlawful killing of civilians and *hors de combat* fighters in more than 30 separate incidents. The bulk of the interviews — 285 — related to killings perpetrated by Government forces and *Shabbiha*. These killings occurred in the contexts set out below. The frequency of such violations has increased considerably during the reporting period. Concerning anti-Government armed groups, 15 interviewees provided information on the unlawful killing of captured members of Government forces and *Shabbiha*.

2. Under IHRL Government forces may take the life of a citizen only when doing so is both necessary and proportionate.<sup>a</sup> It is manifestly illegal to kill a person that has been arrested or disarmed and thus poses no threat.<sup>b</sup> When the threshold of armed conflict is reached in a country and IHL is in effect, the applicable rules differ to a degree,<sup>c</sup> but the underlying principles remain. Purposefully killing a civilian<sup>d</sup> or *hors de combat* fighter,<sup>e</sup> without first affording them a judicial process meeting international standards is a war crime.

#### I. Government forces and *Shabbiha*

3. Many forms of unlawful killing took place in the context of attacks against anti-Government armed group strongholds. The most prominent pattern began with a blockade, then shelling, use of snipers, and an assault by ground forces including *Shabbiha* followed by house searches. Defectors, activists or fighting aged men were systematically sought out during these operations. Wounded or captured Anti-Government fighters (i.e. *hors de combat*) were executed. In some cases, family members of fighters, defectors and activists as well as others who appeared to be randomly selected, were also executed.

4. Snipers regularly accompanied attacking forces during ground assaults and were responsible for a significant number of the civilian deaths. The commission recorded 35 instances of civilians shot by sniper fire over the reporting period.<sup>f</sup>

5. The following cases are emblematic of this pattern. Updates on previously reported incidents are also included below.

<sup>a</sup> See annex II, paras. 30–42.

<sup>b</sup> The only exception to this proscription is when the person has been sentenced to death by a lawfully constituted tribunal that provided all fundamental judicial guarantees.

<sup>c</sup> See annex II.

<sup>d</sup> Use of the terms ‘civilians’ in this section refers to those not taking direct part in hostilities. See ICRC Study, Rule 6.

<sup>e</sup> Much like in IHRL, the principle of proportionality is in effect during armed conflict. It prohibits the incidental deaths of civilians that are excessive in relation to the concrete and direct military advantage anticipated. See annex I (Applicable law). See also ICRC Study, Rule 14.

<sup>f</sup> Dozens of interviewees described the detrimental psychological and social effects of the presences of snipers in the neighbourhood. People feared leaving their houses, but when shelling started they feared staying home. Routine tasks such as shopping, going to work or playing outside became life threatening.

**Tremseh (Hama), 12 July 2012**

6. On 12 July 2012, in the early morning, FSA positions in Tremseh came under attack by Government forces using shelling, ground troops and helicopter gunships. Prior to the offensive, Government forces had cordoned the town with checkpoints. Reports from credible sources suggest that *Shabbiha* deployed together with the army.

7. The motive for the assault appears to have been a Government intervention to root out armed groups that had been involved in a series of tit-for-tat kidnappings with *Shabbiha*, reportedly from the neighbouring Alawi town of Safsafiah.

8. Initial reports indicated that the attack began with cutting supplies of electricity, water and mobile-telephone services. Shelling began around 5:00 am. Helicopter gunships supported the Government ground forces, which entered the town at 8:00 am. Together they inflicted heavy losses on the anti-Government forces.

9. Individuals attempting to flee were shot in fields on the outskirts of the town, though the commission could not determine whether they were civilians or fighters. The assault continued throughout the day, ultimately ending with Government forces retaking control of Tremseh. They withdrew around 8:00 pm.

10. UNSMIS observers attempting to reach Tremseh on 12 July were stopped outside the town by Government forces. When UNSMIS reached the village on 13 July, they reported that civilian objects, including over 50 homes and a school, were affected. They also observed “pools of blood and brain matter ... in a number of homes”. UNSMIS interviewed 27 villagers who gave consistent accounts of extrajudicial executions of men arrested by Government forces.

*According to those interviewed, the army was conducting house to house searches asking for men and their ID cards. They alleged that after checking their identification, numerous were killed.*

11. Other uncorroborated reports blamed rebels for the civilian deaths in this incident. The commission viewed video material purportedly from Tremseh, broadcast on Russian television, of two FSA members captured by the army confessing to having killed civilians in the town. The commission could not assess whether these confessions were obtained voluntarily.

**Al-Qubeir (Hama), 6 June 2012**

12. Al-Qubeir is a predominantly Sunni village 20 km northwest of Hama. Although emptied as a result of fighting at the time of writing, it had consisted of approximately 25 houses with no more than 150 residents, most of them from the al-Yatim family. The commission examined a testimony from an eyewitness (defector), as well as reports from other credible sources with direct knowledge of the 6 June events. The Government provided the commission with a report of its findings in a *Note Verbale*, dated 19 June 2012.<sup>g</sup>

13. The Al-Qubeir area had reportedly been experiencing ethnic tensions since the beginning of the conflict.<sup>h</sup> In the days leading up to the incident a resident of Al-Qubeir had

<sup>g</sup> Regarding the Government’s report, the commission viewed video material wherein one member of the Government’s commission who compiled the report on Al-Qubeir was announcing his defection. Therein he implied that the judiciary had been co-opted into covering up the misdeeds of Government forces and aligned forces. The video could not be authenticated.

<sup>h</sup> A journalist who visited Al-Qubeir shortly after the incident and who interviewed a person who had come back to retrieve some items, reported his interviewee as saying, “Many young men from the

an altercation with Alawi members of the neighboring village of Al-Twaime. Anticipating reprisal, the villager requested support from members of the FSA, including seven defectors from the nearby village of Grejis. According to the Government, when they arrived at the village, the FSA elements shot at some of the men in Al-Twaime. The men from Al-Twaime alerted Government security forces.

14. From evidence collected, it appears that after shelling the houses where the anti-Government forces were holed up, ground forces moved in. They were supported by the *Shabbiha* who also deployed in the area. An eye-witness stated that many people were killed and injured in the shelling. The injured were reportedly executed by the *Shabbiha*, and their bodies burned in the houses. Video footage taken during the visit of UNSMIS monitors shows bullet holes on an interior wall of a house, accompanied by blood splattering, suggestive of deliberate killing. The number of deceased has not been confirmed and varies from the Government's account of 40, a figure that includes both killed and missing, to 78, a figure put forward by anti-Government activists. Under both accounts, at least two women and four children were among those killed.

15. In its report the Government described how it deployed to the village with security forces in response to a request from villagers seeking protection from "terrorists". It mentioned the use of RPGs and light arms in its assault on Al-Qubeir. According to the Government's inquiry, initially its forces were repelled and at least one officer was killed, while several more were wounded. Reinforcements were brought in and, according to the report, "shelled also the places where the terrorists were stationed with RPG shells". The clash ended on the same day at about 8:00 pm and resulted in the deaths of a number of the terrorists". According to the report, security forces attacked only the house of Alman Al Yatim where allegedly the "terrorists" were located.

16. The report also states that the bodies of some women and children were examined by a forensic pathologist who determined that they had been killed by gunfire at close range prior to the arrival of the security forces in the village – the implication being that the perpetrators were the "terrorists".

17. It is likely that many people died as a result of shelling. Some clearly died from gunshot wounds. However, some of these individuals may have been directly participating in the hostilities, which means targeting them would not be illegal under international law.

18. The commission found that a reasonable suspicion exists that unlawful killing of civilians or *hors de combat* fighters occurred at the hands of pro-Government forces, including *Shabbiha* from neighboring villages. This conclusion is based on the following factors: the eyewitness account; the Government's report and other materials gathered indicating that residents of Al-Qubeir were feuding with their Alawi neighbors, providing a motive for reprisals; and the FSA and defectors having been invited to Al-Qubeir by villagers seeking their protection.

#### **Al-Houla (Homs), 25 May 2012**

See A/HRC/21/50, paras. 41–50.

#### **Kili, Idlib governorate, 6 April 2012**

19. The commission interviewed six men and two women who gave accounts of extra-judicial killings in raids on the village of Kili in early April. Security forces entered this

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Alawite villages around Al-Qubeir have died fighting for Assad against the rebels. They wanted revenge, and so they took it out on the nearest Sunni village."



town of approximately 15,000 inhabitants following an anti-Government demonstration. The eyewitnesses described in detail how the security forces entered the town after an extensive bout of shelling, arrested two brothers, Moustapha Qarsoum and 'Adil Qarsoum, executed them and then burnt the two bodies. The shelling of Kili resulted in at least eight additional civilian deaths. Many houses of perceived opposition collaborators were burned.

#### **Tal Rifat (Aleppo), 5 April 2012**

20. The commission conducted 18 interviews with five women and 13 men who had knowledge of the events in Tal Rifat on 5 April. During a demonstration that turned violent, protestors captured four members of the security forces. The four were held for ransom, with their captors threatening to kill them unless the security forces, who had surrounded the city, withdrew. The Government forces complied, and the four were released. Immediately afterwards, the 4th Division of the Syrian army raided Tal Rifat. The village was cordoned in advance. Many of the inhabitants who supported the anti-Government armed groups had already fled. One family, the Sakrans, that was openly pro-Government, and had a member working in the military security, stayed behind, as did a small number of anti-Government fighters.

21. At the end of the hostilities at least 52 corpses were discovered, including members of the Sakran family who had been burned in their home. At least seven of the anti-Government fighters who had stayed behind were also found dead. One testimony presented evidence suggesting three people had been executed standing against a wall. Hundreds of homes were looted and burned, reportedly as punishment for the villagers who were accused of having captured the security force personnel and harbouring members of anti-Government armed groups.

#### **Taftanaz (Idlib), 3–4 April 2012**

22. The commission conducted 16 interviews with persons having direct knowledge of the events of 3 April 2012 in Taftanaz, including fighters and civilians. Interviewees stated that the Syrian army launched an intensive attack on the town which had been the scene of several anti-Government protests. Multiple reports indicated that shelling from two directions commenced at 7:00 am and continued for several hours while tanks formed a cordon around the town. As civilians attempted to flee, they came under attack by helicopter gunships. The commission recorded at least six civilian casualties resulting from the shelling and gunship attacks. At the time, many men from the town reportedly took up arms and engaged the Syrian army in battle, slowing their progress into Taftanaz. The commission received reports of tanks being destroyed by anti-Government forces, the latter of which were using mosque loudspeakers to direct and motivate their fighters. Two mosques were allegedly destroyed by the Syrian army.

23. In the early hours of 4 April 2012, anti-Government forces reportedly made a tactical withdrawal from Taftanaz, leaving the way free for Government forces together with *Shabbiha* to enter Taftanaz and to conduct house searches. The commission recorded multiple executions occurring during these searches. In one case, the bodies of two adults and five young children were found burnt in a house. Some bodies were reportedly found with gunshot wounds to the head and chest. Some of those bodies were also found blindfolded with hands tied behind their backs. Casualty estimates range from 84 to 110 people, many of them from the extended Ghazal family. Over 500 houses were reportedly looted and then burnt. According to reports received between 30 and 40 people are missing, presumed to have been arrested and detained by the Government forces during the raids.

**Sarmin (Idlib), 22–23 March 2012**

24. According to six witnesses, the army began shelling the town of Sarmin in the early hours of 22 March 2012. Sarmin had been the scene of anti-Government protests and the base of dozens of defectors and other members of anti-Government armed groups. Most of the civilian population and members of anti-Government armed groups fled before the attack. During the shelling, which, according to witnesses was falling in random locations, 18 people were killed. The army entered Sarmin on 23 March 2012 and, in line with established practice, commenced house searches. Snipers were positioned on rooftops. The commission received reports of men being shot either during searches or while on the street. In one corroborated account, three men, all in their 20s, were taken outside during a house search and shot in the front-yard in the presence of their families. The victims were family members of a well-known lieutenant from the 15th Division Special Forces who had defected. Reports from credible sources describe approximately 300 people arrested during the search operation, of which 10 were killed shortly afterwards. Some were later released; others were reportedly still held at the time of writing.

**Ain Larouz (Idlib), 4–12 March 2012**

25. On 4 March 2012, four officers defected from an army base in Aranba and hid in the nearby village of Ain Larouz. Shortly after sunset, military and security forces raided the village looking for the four defectors. They searched houses, burned shops and vehicles and mistreated residents. They detained approximately 35 persons, including two women and a 10-year-old girl. Security forces were reported to have announced over the mosque loudspeakers a warning with a deadline for the people to hand over the defectors or else they would execute the captives and burn down the village. Following the threats most villagers fled.

26. Five days later, on 9 March, the army blockaded the roads and began to shell the village after positioning snipers on rooftops. According to four witnesses, several persons who tried to flee were shot, either by snipers or by pursuing ground forces. Although the defecting officers were not found, the army released most captives three days later, save for four persons - believed to be relatives of the officers - whose bodies were found outside the city a few days later.

**Yabroud (Rif Dimashq), 4 March 2012**

27. A defector recalled how, on 4 March, he deployed to Yabroud village to take part in an operation. Upon arrival, he joined a battalion of tanks and six buses of security and *Shabbiha* elements. He and the others were ordered to raid the village after it was shelled. An informer accompanied them in the village and pointed out the houses of activists and defectors.

28. A group of people had fled towards a neighbouring mountainous area, but were still visible to the soldiers. The commanding officer, after consulting his superiors, went back inside a tank and fired a round at the group of approximately 60 people, apparently killing dozens. The commission could not verify the profile of this group, which may have included members of anti-Government armed groups.

**Atarib (Aleppo), February–April 2012**

29. The commission conducted 17 interviews with persons with direct knowledge of the events in Atarib in February and in April 2012. The town had been the scene of several anti-Government protests. In the early afternoon of 14 February 2012, Government forces and FSA fighters clashed in Jabal Karmin, three kilometres from Atarib. On the evening of the same day, Government forces attacked Atarib. The town was reportedly shelled by

tanks located on its perimeter, resulting in the death of eight people. Ground forces are said to have entered the town, positioning snipers on the rooftops of public buildings, including at least one school. The commission received multiple, consistent reports of civilians, in particular children, being shot and killed by sniper fire in February during those events, but also in March and April 2012.

### **Homs, Feb–May 2012**

30. Government forces launched a large-scale military attack on the neighbourhood of Bab Amr in Homs city on 2 February 2012, using mortar shells, missiles and tank shells. Although Bab Amr had been targeted on previous occasions, the sustained intensity of this attack was unprecedented. The neighbourhood was considered a hotbed of anti-Government armed groups, particularly the FSA, which had a strong presence there until 2 March, the date on which Government forces reclaimed control of the neighbourhood after 27 days of sustained shelling.

31. During the same period the FSA engaged in limited skirmishes with Government forces on the outskirts of Bab Amr, especially in the nearby Insha'at neighbourhood. Despite its lesser military capacities, the FSA was able to push Government forces back in some of the areas.

32. Government forces deployed to most access points in the area, thus severely restricting movement. At the time of writing, Bab Amr remained under the control of Government forces and was suffering a shortage of food and medical care. Much of the population fled the neighbourhood to surrounding villages and other neighbourhoods, including Khaldieh, Shammas and Al Ghouta, during the intense shelling periods throughout February 2012.

33. The commission recorded a high incidence of extra-judicial executions of civilians in various neighborhoods of the city of Homs since March 2012. Multiple accounts were received of the killing of the entire Sabbouh family in Bab Amr on 5 March. On 11 and 12 March 2012, the neighbourhood of Karm al-Zeytoun reportedly came under an attack by what was described as *Shabbiha* protected by the army. Multiple families were killed in their homes, apparently by knives or other sharp instruments. Estimates of casualties, unverified by the commission, ranged from 35 to 80 in that attack.

34. The commission found that *hors de combat* fighters were similarly killed. One man interviewed by the commission stated that he assisted in the burial of 15 bodies of fighting aged men that appeared to have been executed. Syrian security forces and *Shabbiha* reportedly removed adult men from houses in the neighbourhood of Sultaniya, before lining them up and shooting them.

35. Multiple, consistent reports have been received about extra-judicial executions of civilians in the Shammas neighbourhood in Homs on 15 May 2012. Shammas is approximately three kilometres from the Baba Amr neighbourhood. Residents describe members of the security forces and *Shabbiha* entering the area and shooting into the air before commencing house searches. One of those interviewed explained that the building opposite her house was abandoned and that security had broken in, transforming it into a "slaughter house". She described how approximately every 15 minutes security forces would bring in a man handcuffed and blindfolded and that she would hear a shot shortly afterwards. The first man that was shot was dumped in the street. Another interviewee indicated that the following day he found 23 bodies, including the local imam, in a building near the mosque. Most had bullet wounds to the head.

36. Civilians were also killed, reportedly by sniper fire, in Homs, especially in the neighborhood of Bab Amr and Khaldiya, in March and April 2012. In these cases the

commission documented that the bodies of people killed by snipers were often left where they fell, as no one risked retrieving them.<sup>i</sup>

#### **Al-Qusayr (Homs), Feb 2012<sup>j</sup>**

37. Four interviewees described the city of Al-Qusayr being pinned down under sniper fire in February 2012. One male resident interviewed by the commission was hit on his way back from taking his wife and daughter to the doctor. He had stopped along the road to help some people to restart their car and was hit from behind. The bullet hit a nerve paralysing his left leg.

#### **Abdita (Idlib), 21 February 2012**

38. Four women and 17 men having direct knowledge of the events in Abdita on 21 February 2012 were interviewed by the commission. Their testimonies described in detail the army's blockade of the entrances to the village that day and how they conducted house searches, apparently looking for persons implicated in an IED attack. In one well-documented instance, the army entered the house known for hosting FSA members, took the men out to a neighbouring field, asked them about the IED and shot them when they did not receive an adequate response. One of the three survived and was interviewed by the commission. Another eyewitness stated that 15 persons, out of a total of 30 who died in the clashes that day, died from wounds that suggested execution. Relatives of the FSA leader Riad al-Assad, who is originally from Abdita, were apparently among those summarily executed.

### **Legal conclusions**

39. The commission finds that the individual instances of killing described above provide reasonable grounds to believe that Government forces and *Shabbiha* violated IHRL provisions protecting the right to life. Furthermore, many of the same killings met the definitional requirements of the war crime of murder.<sup>k</sup>

40. Additionally, the evidence indicated that many attacks were directed against civilians and civilian objects.<sup>l</sup> Although the Government's stated aim was to attack "terrorists", the attacks were directed at neighborhoods, towns and regions with civilian populations. The commission therefore concludes that there are reasonable grounds to believe that the war crime of attacking civilians has been perpetrated in many instances.

41. There are reasonable grounds to believe that the documented incidents also constituted the crime against humanity of murder. In those towns and villages where there was a pattern of blockade, shelling, ground assault and house-to-house searches, the element of a widespread or systematic attack against a civilian population was met. The scale of the attacks, their repetitive nature, the level of excessive force consistently used, the indiscriminate nature of the shelling and the coordinated nature of the attacks led the commission to conclude that they were conducted pursuant to State policy.

<sup>i</sup> A more detailed discussion of the attack on Homs has been set out above.

<sup>j</sup> A more detailed discussion of the events in Al-Qusayr has been set out in annex VI.

<sup>k</sup> Rome statute, Art. 8 (2) (c) (i). See also annex II.

<sup>l</sup> See ICRC Customary IHL Study, Rule 1. Rome statute, Art. 8 (2) (e) (i).

## II. Anti-Government armed groups

42. The commission documented instances of anti-Government forces killing captured members of the Government forces and *Shabbiha* and suspected informers. While the human rights legal regime differs with respect to non-state actors such as the anti-Government armed groups, IHL applies equally to all parties in a conflict. Thus, killing protected persons or enemy soldiers who are *hors de combat* is illegal and can attract individual criminal responsibility.<sup>m</sup>

43. Members of anti-Government armed groups have admitted killing Government soldiers after capture when the captives refused to join them or if they were deemed to have “blood on their hands”. The commission documented incidents involving anti-Government armed groups — specifically the FSA — primarily in Homs, including the Bab Amr and Khaldiya neighborhoods during the February 2012 siege, and in Al-Qusayr in June 2012.

44. Despite its limited access to victims of anti-Government armed groups, the commission documented anti-Government fighters having killed captured Government soldiers and *Shabbiha* who had admitted, probably under duress, to taking part in shelling or military attacks.

### Homs Governorate, June 2012

45. In Qusayr, the FSA commanders decided to attack the municipality to dislodge Government snipers. The attack succeeded and the FSA captured 22 Government soldiers. One interviewee told the CoI that the detainees were judged by a judicial committee. Some were released to join their families. Some were executed as they were found guilty.

46. In early June 2012, FSA fighters attacked a garrison near Talbisah. Apparently in coordination with Government forces soldiers inside, the FSA overran the location, took the ammunition and weapons and left with a number of defecting soldiers. According to an eyewitness who was in the army at the time, but who later defected, two Alawite soldiers were executed during the raid. He and others found their bodies inside.

47. A defector who fought in the ranks of the FSA-affiliated Al Farouk Brigade in Homs city stated that members of the Government forces, including those he claimed were three Iranian snipers, were summarily executed after they apparently confessed to killing Syrians.

### Aleppo governorate, June 2012

48. The commission viewed video footage that portrayed the bodies of approximately 20 men, allegedly *Shabbiha*, who had been killed by the anti-Government fighters in Aleppo governorate in mid-June.

49. The commission interviewed 10 FSA soldiers who had never heard of IHL or IHRL. One FSA fighter told the commission:

*“We do not leave them alone until we kill them. Either they finish us or we finish them. We do not let them go and continue to kill people. We do not take prisoners, no one comes out alive. If he manages to escape he will come back to kill me.”*

50. Another FSA fighter interviewed stated that when senior military officers are captured they are exchanged for detained members of anti-Government armed groups. However, if the FSA captures an ordinary officer or soldier, “they are interrogated and submitted to trial where Sharia law is applied”. The interviewee provided information on

<sup>m</sup> See annex II.

the composition and functioning of such a court in Tal Rifat. Its members are apparently educated and from diverse backgrounds. For example, some are lawyers, religious leaders and others known for their integrity. The soldier had never heard of IHL and related his view that, “[IHL] is not better than Sharia law where everyone is punished for what he has done by the same means, an eye for an eye”.

51. The commission has taken note of an increased use of IEDs by anti-Government armed groups. Interviewees described how, in April 2012, they had put nails inside pipes with explosive powder and a fuse. Others described the use of gas and fertilizer to create homemade bombs. Information provided by the Government, but not corroborated by the commission, indicated that some 1149 explosive devices have exploded or were dismantled during between May and July 2012.

### Legal conclusions

52. The commission considered the corroborated evidence of killing *hors de combat* Government soldiers and *Shabbiha*. In Qusayr, Bab Amr, Kaldiyeh and elsewhere the commission noted that persons captured by the FSA on occasion faced a quasi-judicial process prior to their execution. A consistent account of the trial process has not been forthcoming, nor has information on the extent of adherence to fair trial standards. Common Article three of the Geneva Conventions, recognized as customary IHL, prohibits such executions unless the accused has been afforded “all the judicial guarantees which are recognized as indispensable by civilized peoples” These guarantees include, inter alia, the presumption of innocence, an impartial tribunal, the ability to mount a defense and examine opposing witnesses, and especially in capital cases, the ability to appeal the judgment. Executing a prisoner without affording fundamental judicial guarantees is a war crime.

53. The commission concluded that the information in its possession on executions perpetrated by anti-Government armed groups — with or without a “trial” — gave rise to reasonable grounds to believe that the war crime of murder had been committed on multiple occasions. The commission could not corroborate alleged attacks directed against individual civilians not participating in hostilities or against a civilian population.

## III. Unknown perpetrators

54. The commission noted four incidents where attacks were committed by as yet unknown perpetrators. They are as follows:

- (i) In the period leading up to this report, a series of attacks, primarily gunfire, was directed at UN observers’ convoys. On 12 June 2012, a convoy headed to Al-Haffe was stopped by alleged pro-Government protestors and was later fired upon by unknown gunmen. On 16 June 2012, UNSMIS stopped its patrols due to safety concerns;
- (ii) Thirteen factory workers were killed on 31 May 2012 near the village of al-Buwaida al-Sharqiya, between Qusayr and the city of Homs. The men were allegedly taken by *Shabbiha*, who arrested, robbed and then killed them. A female eyewitness was with them, but was set free;
- (iii) UNSMIS confirmed on 30 May 2012 the discovery of 13 men’s bodies near the eastern city of Deir el-Zour. Their hands were tied behind their backs, and some were shot in the head. The bodies were discovered by locals in the area of Assukar, 50km east of Deir el-Zour;

- iv. Journalists from Ikhbariya TV were reportedly killed in an attack on their premises in the town of Drousha south of Damascus on 27 June 2012.

## IV. Explosions

55. Between March and July 2012, there have been a series of large explosions in which scores of civilians were killed. The explosions appear to be by suicide bombers or by explosives hidden in vehicles and detonated remotely. The commission has compiled the list below based on open sources it deems credible and where the information is consistent with other material on hand, including interviews conducted by the commission:

- (i) 18 July 2012, bombing at Syria's national security building in Damascus killed the Minister of Defense and other senior Government security officials;
- (ii) 30 June 2012, a car Bomb targeted a funeral procession in Zamalka, Damascus;
- (iii) 14 June 2012, a car bomb exploded near the Sayyidah Zaynab shrine in a Damascus suburb injuring 11 people;
- (iv) 19 May 2012, a car bomb exploded in the parking lot of a military compound in Deir el-Zour;
- (v) 10 May 2012, two large car bombs exploded near the Military Intelligence branch in Damascus' Qazaz neighborhood killing 55 people;
- (vi) 30 April 2012, twin explosions near daybreak close to a government compound in the city of Idlib killed 20 people, most of them from the security services;
- (vii) 27 April 2012, a bomb near a mosque of Al-Meidan neighborhood of Damascus killed 11 people;
- (viii) 18 March 2012, a car bomb killed three people in Aleppo; and
- (ix) 17 March 2012, two bombs apparently aimed at an intelligence service office and a police headquarters killed 27 people in Damascus.

### Legal conclusions

56. While these acts may be linked to the non-international armed conflict and thus assessed under the applicable IHL rubric, lack of access to the crime scenes combined with an absence of information on the perpetrators hampered the commission's ability to render such an assessment. They are nevertheless domestic crimes prosecutable under the Syrian criminal code. The Government is obliged to ensure an investigation is conducted impartially, promptly, effectively and independently in line with its international human rights obligations.

## Annex VI

[English only]

### Indiscriminate attacks<sup>a</sup>

#### I. Homs Governorate

##### **Bab Amr neighbourhood, February–May 2012**

1. The majority of deaths in Bab Amr during the military operation that began in February 2012 was caused by extensive and indiscriminate shelling by Government forces on primarily civilian infrastructure and residential areas. Targets affected by the shelling included schools, state hospitals, field hospitals, shops, mosques, houses and apartment buildings, and storage facilities. While the FSA was active in the neighbourhood, either through military activity or relief efforts, shelling was the primary cause of death and injury among children, women and elderly.

2. Most of the shelling was indiscriminate, even though in some of the cases it seemed to target specific locations. On 22 February 2012, at least two shells struck on the Bab Amr Media office, killing many of its occupants, including two foreign journalists. In another incident in early February a number of shells fell on the only operational field hospital in Bab Amr, causing the death of many of the patients and medical staff. An intense period of shelling caused significant destruction to the neighbourhood infrastructure and forced the residents to flee.

##### **Al Qusayr, February–July 2012**

3. The city of Al-Qusayr is located a few kilometres southwest of Homs city in a mountainous region along the Syrian-Lebanese border, in the Western part of the country. Its strategic relevance derives from its location, as well as the demographic makeup of its citizenry which consists of a majority of Sunni Muslims, 10 percent Christians and a few hundred Alawites.

4. Large numbers of its residents have joined the anti-Government protests which have spread across the country since February 2011. Al-Qusayr has been theatre to some of the heaviest clashes between the Government forces on the one hand, and the FSA and other anti-Government armed groups on the other. The city was initially placed under blockade by the Syrian army in November 2011. The period since has been continuously marred by varied measures of violence which persist at the time of writing.

5. Since February 2012, Al-Qusayr experienced heavy armed confrontations between Government forces and anti-Government armed groups for the control of the city – particularly for the control of the Municipality building, which was used by Government forces as a base to launch attacks in the city, the market area and the main hospital.

6. The commission interviewed 10 persons who provided accounts of alleged crimes committed in Al-Qusayr. Information gathered by first-hand witnesses indicate that the city came under heavy shelling during the period mid-February to mid-July 2012, with peaks in late March–early April 2012 and the first two weeks of June 2012.

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<sup>a</sup> See annex II, paras. 30–42.



7. Witnesses have alleged that in early to mid-June 2012, the army in conjunction with security forces and pro-Government militias went on an offensive, indiscriminately attacking civilians and fighters alike in most of Al-Qusayr, particularly Arjoun, Abu Huri, Baasatin and generally West Qusayr. Accounts show that the Syrian forces resorted to a range of weapons, including missiles, shells and rifle grenades, striking residential areas and resulting in the loss of life and heavy injury. They also caused damage to private homes and public infrastructure.

8. In early May after visiting Al-Qusayr, a credible source told the commission, “*I witnessed what people generally call random shelling – the Syrian army just spreads mortar fire across an entire neighbourhood. It’s sometimes preventive while they put up checkpoints. While we were there we were shelled from relatively close in, and it wasn’t their heaviest ammunition. Plus there were a few rocket attacks, mortar and tanks.*”

9. Several witnesses — including children and women — suffered from shrapnel wounds as a result of shells exploding within a few meters’ range. The majority of witnesses who suffered serious injuries as a result of the shelling were civilians at home or in the streets. Several people suffered gunshot wounds at the hands of snipers positioned on top of buildings in Baasatin and West Qusayr.

## II. Hama Governorate

### Tremseh, 12 July 2012

10. Shelling in Tremseh was at times aimed at specific military objectives, while at other times appeared indiscriminate. UNSMIS reported that Government forces appeared to be targeting fighters and activists with their weaponry. However the same report stated that, “a doctor and his children were killed when a mortar shell hit their home”.<sup>b</sup>

## III. Latakya Governorate

### Salma, 11 June 2012

11. Salma is located on a strategically important road towards the border on Turkey. Anti-Government fighters repelled an attack by Government forces on 11 June. Thereafter, the Syrian army repeatedly shelled the village, using helicopter gunships, mortars and artillery. Reports suggested that the shelling did not target specific locations harboring FSA fighters, but was indiscriminate.

### Al Haffe, 4–12 June 2012

12. On 5 June 2012 Government forces began an assault on the town of Al-Haffe, Latakya governorate. Prior to the offensive, the town experienced an escalation of anti-government protests and was home to a small but increasing number of defectors. There was a protest on 4 July which, although non-violent, was clearly calling for the ouster of the Assad Government.

13. Al-Haffe town, whose population of 10,000 is primarily Sunni, is surrounded by Alawi villages. The FSA had a presence in the area numbering as many as 600, apparently based in the nearby village of Dofeel. Government police and military intelligence are normally present in the village and were there at the time of the assault.

<sup>b</sup> See annex V for more details on the events in Tremseh on 12 July.

14. The commission conducted over 30 interviews with persons who fled the fighting in Al-Haffe. Many of these interviews were with people who had just been injured and evacuated. They described in detail what had been the pattern during several such offensives.

15. Attacks began with cordoning off and then shelling, first the village of Dofeel and then later Al-Haffe itself. Both tanks and helicopter gunships were involved. The security forces present in Al-Haffe placed snipers on top of several buildings. Consistent reports stated that shooting was also coming from neighbouring villages, although the commission could not determine whether this was from Government or local militias.

16. While the target was likely FSA positions in both areas, the shells randomly struck civilian objects such as homes, schools and mosques. Civilians were confined in their houses, while electricity and water were cut off and food supplies dwindled. At least eight civilians, including three children, were killed when a shell hit their home. Several other houses were destroyed.

17. Injured residents were unable to seek medical treatment at the State hospital on the outskirts of Al-Haffe which was occupied by Government forces who positioned snipers on the roof. A field clinic was set up, and according to medical personnel working there, the majority of the casualties — including both killed and injured — was fighting age men. Still, there were women and children brought to the hospital who had injuries caused both from shelling and from machine gun or sniper fire.

18. The FSA apparently held off the initial assault, inflicting heavy losses on the Government forces. One eyewitness — an FSA fighter — reported seeing Government ground forces entering the village in the early afternoon on 5 June who were forced to retreat after encountering stiff resistance. This led to increased shelling and attacks from helicopters.

19. Around 16:00 on 5 June the FSA surrounded the Finance building from which military security forces had been firing. After an intense battle, the FSA overran the building, allegedly capturing several Government officers. The latter were reportedly set free, although the commission was unable to verify the assertion.

20. Over the course of the following eight days, fighting continued in and around Al-Haffe. The FSA ultimately withdrew after evacuating nearly all the remaining civilian population. According to numerous corroborated accounts, the army together with *Shabbiha* entered the village on 13 June. Eyewitness accounts portrayed a campaign of burning and pillaging of the houses of suspected anti-Government supporters. UNSMIS observers, who were allowed into the town only on 15 July, noted that many public buildings were looted and burned.

#### **IV. Other incidents documented**

21. Additional corroborated accounts of indiscriminate shelling were recorded in Atarib (Aleppo) 14 February; Ain Larouz (Idlib) 5 March; Sermin (Idlib) 22 March; Taftanaz (Idlib) 4 April; Kili (Idlib) 6 April; Al-Houla (Homs) 25 May, and 12 and 13 June; Al-Haffe (Latakya) 4 and 5 June 2012; Akko (Hama) 9 June; Salma (Latakya) 11 June; and Jobar (Idlib) multiple dates in late June.

22. The commission also reviewed videos of shelling in the following locations which appeared to be indiscriminate, although neither the authenticity of the videos nor the target of the attack could be verified: Talbiseh, 17 June; Zafarana, 21 June; Lajat (Dar'a), 25 June; Jalama, 12 July; Abaled, 17 July; and Hayam, 21 July.

## **V. Cluster munitions**

23. The Commission took note of video evidence emanating from Hama governorate in July 2012 indicating the use of cluster munitions. The photographs and video of bomblets could not be corroborated. The use of anti-personnel mortar munitions was recorded in Zabadani, Damascus governorate, on 12 April. Corroborated accounts described the shells exploding just above ground to maximize human casualties. Although the Syrian Arab Republic is not a party to the Convention on Cluster Munitions, the commission notes that such weapons are inherently indiscriminate when employed in residential areas or areas frequented by civilians.

## **VI. Legal conclusions**

24. Based on its findings the commission determined that the legal threshold for indiscriminate attack as a violation of customary IHL has been met. Government forces fired shells into areas inhabited by civilians while failing to direct them at a specific military objective.

25. Moreover, the attacks, especially shelling, caused incidental loss of civilian life and injury to civilians, as well as damage to civilian objects, which in the view of the commission were excessive when compared to the anticipated military advantage.

## Annex VII

[English only]

### Arbitrary detention and enforced disappearance

1. The commission continued to receive first-hand accounts of arbitrary arrest and detention, predominantly of men and boys. During this reporting period, 25 people were interviewed who alleged that they had been arbitrarily arrested and unlawfully detained by Government forces and *Shabbiha*. A further five interviews were conducted with defectors who stated that, while in active service, they had observed arbitrary arrests and detentions.
2. According to information received from the Government, over 10,000 people have been released since February 2011, pursuant to four amnesties, including 275 detainees released on 10 July 2012. The Report of the Secretary-General on the implementation of Security Council resolution 2043 (2012), noted that UNSMIS had observed the release of 183 detainees in Dar'a and Damascus on 31 May 2012, and 285 detainees in Damascus, Dar'a, Hama, Idlib and Deir el-Zour on 14 June 2012.
3. Official statistics on the number of detainees as well as the number of detention centres have yet to be provided by the Government. The Commission noted that, as of 25 June 2012, UNSMIS had received and cross-checked information on 2,185 detainees and 97 places of detention across the Syrian Arab Republic. Syrian NGOs have put the number of those currently detained as high as 26,000.
4. Given the current lack of access to the country, the commission is not able to independently confirm numbers of those arrested and detained during the reporting period.

### I. Findings

5. The majority of arrests occurred in four contexts: arrests of those believed to be planning to defect or who had otherwise refused to follow orders (usually to open fire on civilians); arrests of persons in house searches; arrests of persons at checkpoints; and arrests of protesters, either at or immediately subsequent to the protests. A minority of cases were reported where people were arrested randomly in the street in areas where there were no active hostilities at the time. Four of those so arrested and detained were women. Two were children, a boy of 14 and a girl of nine.
6. Eight of those interviewed were members of the Government forces at the time of arrest. Six of these stated that they had been arrested on suspicion of planning to defect. Two others stated their arrests had been a consequence of their refusing orders to fire on civilians in Idlib (February 2012) and in Homs (May 2012) respectively. Of those arrested on suspicion of planning to defect, one stated that he had been found to be in contact with anti-Government armed groups. Most, stated that they were not informed of the basis for the suspicions. One noted that he had been arrested as part of a mass arrest of 60 Sunni soldiers in Aleppo in April 2012. Three of those arrested were detained for over two months with one moved among eight different detention facilities.
7. According to testimonies received, arrests made during house searches, were conducted by military and security forces. The commission received corroborated accounts of arrests taking place during house searches in the towns of Ibdita (Idlib) in February 2012 and of Ar-Rastan (Homs) in March 2012. House searches appeared to target specific wanted persons. As described in multiple interviews, individuals were sought because of

their defections from the Government forces or their involvement in protests. Also targeted were doctors who had treated protesters or members of the anti-Government armed groups. In at least three instances where the wanted individual could not be located, security forces arrested and detained members of his or her family instead. Two interviewees reported having been arrested and detained on multiple occasions. In three cases, interviewees stated that they had been initially held in temporary detention centres — in one case, a former fitness centre in Ar-Rastan — before being either released or moved to official detention centres.

8. Individuals were also reportedly arrested, and in one case detained, at checkpoints in Homs, Al Ladhqiyyah, Idlib, Aleppo, Dar'a and Damascus governorates. Lists of wanted persons were allegedly circulated to checkpoints. Those arrested at checkpoints stated that they were targeted either for being defectors or for having organised or taken part in protests. In one instance, which could not be verified, an interviewee reported being arrested and detained in Tartus in March 2012 as injuries that he had suffered during a previous detention were viewed by Government forces as evidence of involvement in fighting.

9. Reports continue to be received of people being arrested — by security forces and *Shabbiha* — during and immediately following protests. According to interviews, arrests took place following protests in the cities of Idlib in March and April 2012, and Dar'a and Damascus in April 2012. One interviewee, a 14-year-old boy, stated that he and several other adolescents were arrested after a protest in Idlib city in March 2012. The commission was unable to verify this account, but notes that another interviewee, who worked in a detention centre in Damascus until June 2012, reported that minors were arrested and detained following protests.

10. A number of others interviewed were arrested in the street in areas where there were no active hostilities at the time. Those arrested reportedly included five females, including a nine year old girl. Additionally, a young man was allegedly arrested in Aleppo in April 2012, having been found carrying a large amount of foreign currency, which was viewed as evidence of support to anti-Government armed groups. None of those arrested in these circumstances were taken to official detention centres, but instead were reportedly held in unofficial centres, set up in buildings close to their place of arrest. None of these incidents could be verified.

12. Only two of those interviewed, both arrested on suspicion of planning to defect, had been formally charged with any offence. No interviewee had been offered or received the benefit of legal counsel. Only one had received a family visit, with the majority unsure if their family were aware of the location of their detention.

13. In the days prior to release, many said that they had been made to sign or thumbprint a document, the contents of which were unknown to them. Three of those detained were reportedly brought before a judge and then released. In one unverified incident, the interviewee reported that the judge had ordered his release, but he had remained in detention for another 3 months. Also interviewed was a former member of the judiciary who indicated that security agencies brought to his court detainees who showed signs of abuse, including open wounds. He said that security agents did not permit questioning unless they were present and, on one occasion, held the judge at gunpoint. Several detainees stated that the judges did not question them about their injuries and that the presence of security units in the courtroom intimidated them.

14. The lengths of detention of those interviewed ranged from a few hours to approximately 5 months. The majority of those interviewed were held for 60 days or less by Government forces.

## II. Legal conclusions

15. The commission considers that Syria's domestic legislation fails to meet the country's obligations under Article 9 of the ICCPR to ensure that those arrested and detained on criminal charges appear "promptly before a judge or other officer authorized by law to exercise judicial power".

16. There are reasonable grounds to believe that Government forces and *Shabbiha* have continued to arbitrarily arrest and detain individuals during this reporting period. Particular concerns are the holding of individuals without charge; the failure to provide detainees with legal counsel or family visits and the absence in the vast majority of cases reported of any form of judicial review of the detentions.

17. With respect to the crime of enforced disappearance, the families of those arrested were not informed, at the time of arrest or at any point thereafter, of the places of detention of their relatives. With the exception of one detainee, no other detainees interviewed had been afforded family visits.

18. The majority of the families of those detained have not, according to their testimonies, made attempts to obtain information about their relatives' places of detention. The reasons for this are said to be twofold: fear that contact with the Government, including at the time of the arrest, would prompt further arrests; and the fact that, in some instances, on-going hostilities made going to official detention centres difficult, if not impossible.

19. Where the Government has refused to acknowledge the arrest and detention or to disclose the fate or whereabouts of the person concerned, the commission finds that there are reasonable grounds to believe that the crime of enforced disappearance has occurred.

## Annex VIII

[English only]

### Torture and other forms of ill-treatment

#### I. Government forces and *Shabbiha*

1. The commission continues to receive reports of the use of torture and other forms of cruel, inhuman or degrading treatment, occurring most often in the context of interrogations by the Government's intelligence agencies. Since 15 February 2012, the commission has interviewed 81 people regarding allegations of torture and ill-treatment. Fifty nine of these interviews related to events within the reporting period.

2. Due to its lack of access, the commission has not been able to visit detention centres to interview detainees, those responsible for the detention centres or to observe detention conditions.

#### A. Findings

3. Thirty of the 59 individuals interviewed about events in this reporting period stated they had been arrested and/or detained by individuals from Government forces and *Shabbiha*. All but one of this group reported suffering physical violence during their detention. Nineteen others reported being present while others were tortured or otherwise ill-treated. This number includes ten individuals who had worked in detention centres or at checkpoints and who have since defected. The commission has not been able to verify the accounts received. Where possible, the commission observed the wounds/scars of alleged victims.

4. As set out in annex V (Arbitrary detention and enforced disappearance), most of those detained following arrest were taken to official detention centres. According to interviewees, interrogations in these centres were carried out under the auspices of the Syrian Arab Republic's four principal intelligence agencies: Military Intelligence, Air Force Intelligence, General Security Directorate and the Political Security Directorate. The majority of those interviewed indicated that they had been interrogated by members of Military and/or Air Force Intelligence. All four intelligences agencies have central offices in Damascus as well as a network of regional, city and local sub-offices across the country. They appear to operate independently of each other. Questioning during interrogations reportedly revolved around reasons for protesting, involvement of the detainee or his or her family members in anti-Government armed groups and, in the case of detainees who were members of the Government forces, about alleged plans to defect.

5. Several interviewees could not, however, confirm which agencies conducted the interrogations and, in some instances, the precise location of their interrogations. Reported reasons for this included being blindfolded during transport in and out of detention facilities, being blindfolded during interrogations, being transferred between different facilities and undergoing multiple interrogations.

6. While the majority of those held were detained in official detention centres, six interviewees reported that they were also held in unofficial detention facilities, such as civilian houses, usually as a prelude to being transferred to an official centre. Four of the six — one of whom was a woman — were detained in late February/early March 2012 in

various neighbourhoods of Homs city. While held in unofficial centres, interviewees reported abuse by members of the army and by *Shabbiha*.

7. In a further nine cases, interviewees stated that they were beaten or otherwise assaulted during house searches or at checkpoints or witnessed the assault of others. While most interviewees were adult men, one was a young woman living in a village in Homs governorate in April 2012. She stated that she had been beaten by soldiers when she placed herself between them and her elder brother. In none of these cases were the victims subsequently detained.

## **B. Reports of torture and other forms of ill-treatment in official detention centres**

8. Reported methods of torture were consistent across the country. Interviewees described severe beatings about the head and body with electric cables, whips, metal and wooden sticks, and rifle butts; being burnt with cigarettes; being kicked; and being subjected to electric shocks applied to sensitive parts of the body, including the genitals. Six of those interviewed reported losing consciousness at points during their interrogations.

9. The commission also received multiple reports of detainees being beaten on the soles of the feet (*falaqa*). Common practices described included the placing of detainees into prolonged stress positions, including hanging from walls or ceilings by their wrists (*shabah*) and hanging by wrists tied behind their backs. Other methods reported were forcing detainees to bend at the waist and place their head, neck and legs through a car tire while beatings were administered (*dulab*); tying the detainees to a flat board with their head unsupported and either stretching them (as on a rack) or folding the board in half (the “flying carpet”). As detailed in annex VIII (Sexual violence), some detainees reportedly suffered rape and other forms of sexual violence in the course of their detention. For many interviewees, scars and wounds, consistent with their accounts, were still visible.

10. Several forms of torture and other forms of cruel, inhuman or degrading treatment meted out to detainees did not result in physical evidence. Reports detailed detainees being forcibly shaved, made to imitate dogs and to declare “there is no God but Bashar”. Other interviewees stated that they had been forced to strip and remain naked for prolonged periods. Three of those interviewed stated that they had been threatened with execution. One said he had been present when another detainee was threatened with sexual assault; another stated that his interrogators had threatened to arrest and rape female relatives.

11. One female interviewee stated that she, along with her nine year old sister, were arrested in May 2012 and taken to a Military Intelligence branch in Dar’a governorate. She reported that her father was suspected of supporting the anti-Government armed groups. During the interrogation, which she stated was conducted by female interrogators, the interviewee was reportedly tied to a chair, had her breasts grabbed, being slapped and had her headscarf removed. She and her sister were released within a week. She stated that her sister had also been beaten while in detention.

12. Another interviewee, a 14-year-old boy who said he had taken part in protests in Idlib, reported that he had been arrested and detained in the Military Intelligence branch in Idlib in March 2012. He stated that he had received electric shocks and been beaten with a pipe during this interrogation.

13. Six of those interviewed had been moved among multiple detention facilities, run by different intelligence agencies. One interviewee reported being moved among ten different detention centres across four governorates in a five month period. Another interviewee was transferred among four different locations in Dar’a and Damascus, again over a five month



period. Where there have been multiple transfers, interviewees stated that they had suffered physical violence in each location.

### **C. Reports of torture and other forms of ill-treatment in unofficial detention centres**

14. Six interviewees reported being held in unofficial detention centres. In various locations in Homs governorate during late February and March 2012, three interviews were reportedly taken to houses or, in one case, a fitness centre and being held there. Two of those interviewed stated that they had been taken from their houses by members of the army during house searches. The third stated she and two other women, all veiled, were removed from a bus by *Shabbiha*. In all three cases, the interviewees stated they had been beaten while detained. In two of these cases, the perpetrators were reportedly members of the *Shabbiha*.

15. In another case, an interviewee stated that he had been stopped by unidentified individuals in Aleppo in April 2012. When searched, he stated he was found to be in possession of a quantity of foreign currency which was viewed as evidence of support of anti-Government armed groups. He was then reportedly taken to a building in Aleppo where he was beaten with electric wire, given electric shocks and interrogated. After a week he was taken to a different area of Aleppo and released. The commission has not been able to verify this account.

16. In two cases, the interviewees were former members of the army. One reported being arrested on suspicion of planning to defect and was held at a military barracks in Idlib governorate where he was given electric shocks, hung from the ceiling by his arms and beaten about his body and on the soles of his feet. The second interviewee worked at a military airport in Hama governorate which, he stated, had been converted into a makeshift detention centre where detainees were being assaulted. The commission has not been able to verify these accounts.

### **D. Reports of torture and other forms of ill-treatment during house searches and at checkpoints**

17. Nine of those interviewed reported being beaten or witnessing others being beaten during house searches or at checkpoints. There were corroborated reports of adult men being beaten by members of the army during house searches in Ibdita in late February 2012 and in Homs city in March 2012. Other, unverified, reports of individuals being beaten during house searches were received in respect of events in Idlib city (April and May 2012), Baniyas (April 2012), and Talf Rif'at (April 2012).

18. One interviewee reported being removed from his vehicle and beaten at a checkpoint near the Lebanese border, when photographs of demonstrations were discovered on his mobile phone. Another interviewee, a former member of the army, stated that he was present at a checkpoint in Idlib governorate in April 2012 when six men, including two defectors, were brought to the checkpoint where they were severely beaten with sticks and batons. The commission has not been able to verify these accounts.

### **E. Conditions of detention**

19. The majority of detainees described being held in small, over-crowded cells. Two interviewees reported that the cells were so overcrowded that it was impossible to sit or lie

down. All but one reported being given inadequate food and water. One interviewee stated that, having been without water for a week, he drank his own urine to survive. Health conditions in detention were reportedly poor. Several interviewees stated that their cells were not equipped with toilets. Four interviewees described cells infested with insects, including lice.

20. The commission received information it could not corroborate on the denial of medication and medical treatment. One detainee stated that a man, held in his cell in the Idlib military intelligence building in early 2012, died, having not received medication for his diabetes. Another, held in the Kafr Susah military intelligence branch in Damascus, stated that a fellow detainee was left with a broken leg in his cell.

21. Five of those interviewed said they had been held for longer than two months. Two had been held for approximately five months. During this time, none reported receiving legal visits. Only one interviewee said he had received a family visit, a single visit from his wife.

22. As noted above, lack of access has rendered the commission unable to inspect detention centres. The commission has recorded accounts that, if verified, would amount to the breach of the Standard Minimum Rules for the Treatment of Prisoners, details of which are provided in annex I (Applicable law).

## **F. Legal conclusions**

23. The commission confirms its previous finding that torture and other forms of cruel, inhuman or degrading treatment have been committed by Government forces and *Shabbiha*. This is in violation of the Syrian Arab Republic's obligations under international human rights and humanitarian law.

24. The commission determines that severe pain was inflicted upon persons in official and unofficial detention centres, during house searches and at checkpoints. The Commission further finds that torture was inflicted to punish, humiliate or to extract information from detainees. Much of the physical violence described by interviewees – including kicking, hitting, beating (including beating on the soles of the feet), flogging, inflicting electric shocks, burning, extended hanging from hand and/or leg chains and threatening the victim with execution in circumstances where the interrogators had the power to carry out this threat – have been found to constitute torture by various international tribunals.<sup>a</sup>

25. The commission finds there are reasonable grounds to believe that torture has been perpetrated as part of a widespread attack directed against a civilian population by Government forces and *Shabbiha*, with knowledge of the attack. It, therefore, concludes that torture as a crime against humanity has been committed by Government forces and *Shabbiha*. On the basis of interviews conducted, members of the intelligence agencies, in particular Military and Air Force Intelligence appear to be primarily responsible for torture and ill-treatment. The commission notes the involvement of *Shabbiha* in acts of torture in unofficial detention centres in Homs city in February and March 2012.

26. The commission further finds that conduct such as forcibly shaving detainees and forcing them to imitate dogs constitutes cruel, inhuman or degrading treatment. Similarly, the conditions of detention as described in interviews conducted would, if verified, constitute the cruel, inhuman or degrading treatment of those detained.

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<sup>a</sup> See annex I (Applicable law).

## II. Anti-Government armed groups

27. The commission conducted 15 interviews relating to the treatment of members of Government forces and *Shabbiha* by anti-Government armed groups. All interviewees claimed to be members of these armed groups.

28. All 15 interviews detail the capture, interrogation and either release or execution of those detained.<sup>b</sup> Interviewees stated that those captured were offered the chance to join anti-Government forces. Those that did not were reportedly either executed or were used as part of an exchange for captured anti-Government fighters.

29. One individual, a member of an anti-Government armed group in Idlib governorate, stated that those who did not wish to join the anti-Government forces were imprisoned. Two other anti-Government fighters stated that makeshift detention centres had been set up in the Bab Amr and El Khaldiyah neighbourhoods in Homs. The commission also notes that the majority of those interviewed claimed that those who refused to join the anti-Government armed groups were executed, in part because the groups had no means of housing and providing for prisoners.

30. Three of those interviewed stated that captured Government fighters and *Shabbiha* were tortured as part of an interrogation which took place before execution. One interviewee admitted that captured members of Government forces were beaten with electric wire and were threatened with drowning, with their heads forced in and out of water.

31. The commission has also received information indicating that Syrian security forces and/or their alleged supporters caught by the anti-Government armed groups have confessed under torture. Many of the video recordings of alleged incidents show those captured with signs of physical abuse, including bruising and bleeding. Two Iranians, held in late January 2012 and released in late April 2012, later made public statements about physical abuse suffered, including the breaking of bones, during their captivity. The commission could not verify those video recordings.

### Legal conclusions

32. The commission finds there are reasonable grounds to believe that torture and other forms of cruel, inhuman or degrading treatment have been committed by anti-Government armed groups during interrogations of captured members of Government forces and *Shabbiha*. The commission determines that severe pain was inflicted to punish, humiliate or to extract information from detainees.

33. The commission determines, however, that the acts of torture were not committed as part of either a widespread or systematic attack on a civilian population. Therefore, they do not constitute crimes against humanity but may be prosecutable as war crimes.

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<sup>b</sup> See annex V.

## Annex IX

[English only]

### Sexual violence

#### I. Government forces and *Shabbiha*

1. The commission conducted 43 interviews detailing incidents of sexual violence — against men, women and children — committed by Government forces and *Shabbiha* since February 2012. These interviews included two female and three male victims of rape. Also interviewed were five eyewitnesses of rape (one of whom was also a victim). Additionally, seven of those interviewed were former members of the army, now defected, who stated that rapes and other forms of sexual assault, committed by soldiers and *Shabbiha*, took place during the Government forces' ground operations as described below.

2. There are difficulties in collecting evidence in cases of sexual violence in Syria due to cultural, social and religious beliefs surrounding marriage and sexuality. Victims' reluctance to disclose information stem from the trauma, shame and stigma linked to sexual assault. There are also serious consequences for female victims' lives and marriages. In one incident, the commission was informed that a female rape victim was subsequently killed by her brother-in-law to "preserve the honour of the family". Another interviewee stated another female rape victim had later killed herself. Several interviewees stated that female rape victims had been abandoned by their husbands and consequently struggled to survive. All victims and/or members of their families interviewed suffered psychological trauma. Many broke down during the interview.

3. The fear of rape and sexual assault also restricted the freedom of movement of women and young girls. Many of the women interviewed sought refuge in neighbouring countries in part because they feared sexual assault.

#### A. Findings

4. Information collected indicates that rape and other forms of sexual violence occurred in two distinct circumstances. The first is during the searches of houses and at checkpoints as Government forces and *Shabbiha* entered towns and villages; the second, in detention. In a minority of cases, all occurring in Homs city between late February and April 2012, there were reports of the abduction and rape of women, and corroborated accounts of women being forced to walk naked in the street.

##### Sexual violence during house searches and at checkpoints

5. Fifteen of the interviewees alleged incidents of sexual violence committed during house searches and at checkpoints during the military operations in Homs between late February and May 2012, and in Al-Haffe in early June 2012. Five interviewees detailed incidents of sexual violence in Zabadani in late February 2012 and in various locations in Hama and Idlib governorates in April and May 2012. The sexual violence was reportedly perpetrated by soldiers and *Shabbiha*.

### Homs city (Homs), February–May 2012

6. Eleven of those interviewed, including two of the victims, detailed rapes and sexual assault perpetrated by Government forces and *Shabbiha* during military operations in Homs. Four interviewees were themselves members of the Government forces in Homs during the military operations.

7. One victim, a man living with his family in Bab Amr, stated that in late February/early March 2012, 40-50 men wearing military clothes burst into his house at 5:00 am. He described being forced to watch the gang rape of his wife and two elder daughters, 14 and 11 years old, before then being raped himself, with his family being made to watch:

*The men raped [my two daughters] and my wife, forcing them onto the ground to do so. They raped them at the same time. When they began to rape my daughters, they forced me to raise my head and watch. You cannot imagine what that felt like, as a man to sit there and watch them do that. They raped each of them three times. Then they forced me out of the chair and ordered me onto the ground. They raped me as well and ordered my wife and children to watch. The men were jeering and said, "Look at your father." They destroyed me.*

8. The same interviewee stated that as the family fled the city with other residents of Bab Amr, the group was stopped at a checkpoint where soldiers detained eight girls. The girls were later released and, according to the interviewee, confirmed that they had been raped.

9. One of the defectors stated that he was deployed to Homs city in February 2012 and was given orders to shoot anything that moved. He said that commanders ordered them to tie up the men, tell them not to kill them, but to make them watch while they sexually assaulted their wives and daughters. The interviewee was present when members of the army raped women during the February 2012 military operations in Homs city.

10. Another interviewee spoke about the rape of his wife by members of the Syrian army during ground operations in Homs city in May 2012. He stated that his family fled their home during the shelling. His wife who had returned to check on their house was stopped by five soldiers, including one lieutenant, and reportedly raped by each of them.

11. Two residents of Karm-el-Zeytoun described soldiers and *Shabbiha* entering houses in March 2012 and raping females inside. One resident stated she witnessed soldiers raping and then executing a 16 year-old girl. A third interviewee, a young man, stated that 13 soldiers together with a number of *Shabbiha* entered his house in Karm-el-Zeytoun, looted it and detained him in a nearby house. He stated that while detained he heard women screaming in an adjoining room and believed they were being raped.

12. Another soldier stated that he defected shortly after a gang rape of women by *Shabbiha* in Ar-Rastan in March 2012. He described being part of a group of soldiers ordered to surround a house while *Shabbiha* entered, after which he could hear women shouting to leave them alone and screaming that they would prefer to be killed. Two other defectors said that they heard colleagues bragging about committing rapes during the military operations in Bab Amr in late February 2012.

### Al-Haffe (Latakia), early June 2012

13. Four interviewees, including one victim, described rape occurring during military operations on, or in the days following 5 June 2012.

14. A female victim stated that she was in her house with three children when "heavily armed *Shabbihas*" broke in and demanded, at gunpoint, that she undress. She was accused of providing food and support to the anti-Government armed groups before being dragged

into the street and raped there by one of the men. She stated that other women were abducted and later raped by *Shabbiha*. She stated that her marriage had fallen apart following the rape.

15. Another interviewee stated that he had been an eyewitness to the rape of several women by intelligence agents in a house in Al-Haffe in early June 2012. Two other interviewees, both resident in Al-Haffe during June 2012, stated that *Shabbiha* were entering houses and raping women. One person detailed the public rape of women in the streets of Shier neighbourhood of Al-Haffe.

#### **Zabadani (*Rif Dimashq*), late February 2012**

16. Two defectors stated that soldiers perpetrated rape during house searches in Zabadani in February 2012. One stated he was part of a contingent of soldiers that entered a house in order to loot it. When inside the house, the soldiers reportedly tied up the men and began to assault a 15-year-old girl. The interviewee, having been beaten by his colleagues, remained outside the house while the rape took place. Another defector stated that he heard his senior officers boasting about raping women during the February raid on Zabadani.

#### **Hama, Idlib and Aleppo governorates, April–May 2012**

17. Two interviewees detailed rapes occurring in various locations in Hama governorate in April and May 2012. One, a defector, stated that he had been deployed to Hama in April 2012 and was part of a contingent of soldiers undertaking house searches. He described the systematic looting of houses and stated that some soldiers and accompanying *Shabbiha* were raping women and girls who were found in the houses. He stated that some victims were killed after the rape.

18. Another interviewee stated that he collected bodies after the army and *Shabbiha* attacked Tamanaa in Idlib governorate on 12 May 2012. Among the bodies he noted one of a woman who had been eviscerated and who had a knife sticking out of her vagina.

19. The Commission also received reports of rapes and other serious sexual assaults taking place in Atarib (February 2012), Tal Rifat (April 2012) and Idlib city (April 2012).

### **B. Sexual violence in detention centres**

20. The commission continues to receive reports of rape and sexual assault in detention centres, committed usually as part of a course of torture and/or ill-treatment. Two male members of the same family, detained from January to March 2012 at the offices of the Political Security in Damascus, described intelligence agents forcing them to rape each other.

21. Three interviewees stated that women were raped in detention centres in Latakia (March 2012), in Hama (March 2012) and in Dar'a (May 2012). In all instances the women were suspected of supporting the anti-Government armed groups, being involved in protests or of being family members of those involved in the armed groups or protests. In the latter incident, a woman reported that she had been arrested and brought to the Military Intelligence offices in Dar'a in late May 2012 where she was interrogated by female agents. She stated that in the course of her interrogation, the agents attempted to remove her clothes and beat her. She stated she witnessed the gang rape of one of her friends who had attended protests in Dara'a, and who was being held in the same detention centre.

22. As detailed in Annex VI (Torture), many reports were received of male detainees having electric shocks applied to their genitals during interrogations.

### C. Abduction and rape of women

23. The commission received reports of women being abducted from the streets of Homs city in April 2012. One woman, whose husband was a member of an anti-Government armed group, was reportedly abducted along with six other women (including a 14 year old girl) in early April 2012 in Karm-el-Zeytoun by ten men, dressed in black. She stated that she and other women were placed in a van and blindfolded while being transported. They were taken to a place that looked “like a storage room”. There she saw 20 naked women with injuries to their bodies. She and the other six women were raped while the men shouted at them, “*You want freedom, this is your freedom.*”

24. The interviewee remained in the room with the other women and girls for ten days, during which time they were vaginally and anally raped on multiple occasions. She stated that the other women were from various neighbourhoods of Homs city, including Baba Amr, Bab Sbaa and El Khaldiyah. The women were released, allegedly, as part of a prisoner exchange between the *Shabbiha* and the FSA. Following her release, she was abandoned by her husband.

25. Another woman interviewed described being pulled off a bus by *Shabbiha* at a checkpoint in Bab Sbaa in April 2012. She and two other veiled women were reportedly detained while other, unveiled women were allowed back on the bus. She stated that she and the two other women were severely beaten before being taken to a house where there were eight other women from Al-Houla who were naked and injured. She stated that she and one other woman were “rescued” by a *Shabbiha* who knew them. She was not aware of what happened to the third woman.

### D. Women forced to walk naked in the streets

26. The commission also received corroborated reports of women being forced at gunpoint to walk naked in the streets of the Karm-el-Zeytoun neighbourhood of Homs, again in February 2012.

### E. Legal conclusions

27. The Commission finds that there are reasonable grounds to believe rape has been perpetrated against men, women and children by members of Government forces and *Shabbiha*. The rape and sexual violence was committed in connection to the armed conflict and could be prosecuted as a war crime. Rape and sexual assault also formed part of torture in both official and unofficial detention centres in violation of IHRL and IHL.

28. Having previously identified the military operations in Homs city in February and March 2012 and in Al-Haffe in June 2012 as part of a widespread or systematic attack against a civilian population, the commission finds that the rapes which occurred during this attack, made with knowledge of the attacks, could be prosecuted as crimes against humanity.

## II. Anti-Government armed groups

29. The commission has not received any reports of rape or other forms of sexual assault perpetrated by members of the anti-Government armed groups. Lack of access to the country has further complicated the investigation of alleged incidents of sexual violence by all parties to the conflict.

## Annex X

[English only]

### Violation of children's rights

1. The commission conducted 168 interviews in which violations of children's rights were alleged. Of these, 30 interviewees were under 18 years of age.
2. In the commission's interviews with children and their care-givers the adverse psychological and social impact of the continued violence was evident. Many of the children interviewed had been injured during the violence and/or saw the death or injury of parents, relatives or friends. Some children displayed signs of high stress, either mirroring that of the (often sole) caregiver or due to events the child had experienced him or herself. Some children recounted that they were "sad", while others explained that they were angry and wanted to "take revenge" for those who killed their family or community members. Many complained of sleeplessness and anxiety, or lack of ability to concentrate, all signs of Post-Traumatic Stress Disorder.

#### I. Government forces and *Shabbiha*

##### A. Killing and injuring of children

3. The commission recorded the death of 125 children killed during the reporting period. The majority are male.
4. The commission recorded the killing and injuring of children during the shelling of Atarib (Aleppo) in February; Bab Amr neighbourhood of Homs city between February and May; Al-Qusayr (Homs) between February and July; Sermin (Idlib) on 22 March; Kafar Zeita (Hama) in late March; Taftanaz (Idlib) on 4 April; Al-Houla (Homs) on 25 May; El Haffe (Latakia) between 4 and 12 June; Salma (Latakia) on 11 June; Azaz (Aleppo) in late June; and in Tremseh (Hama) on 12 July. During a visit to a hospital in Turkey, the commission saw, and met with the family of a two year old girl, injured in the June shelling of Azaz.
5. As noted in annex V, when Government ground forces moved into towns and villages, usually following shelling, snipers were often positioned on roofs and other raised positions. There were multiple reports of children being killed and wounded by sniper fire. In Atarib (Aleppo) in February, a 10 year old boy, playing in front of his family home, was reportedly shot dead by a sniper positioned on top of a nearby police building. Another interviewee from Atarib stated that he had seen a child shot in the chest by a sniper in February. Another 14 year old boy was injured in Atarib in the same month when he was shot in the legs by a sniper, while on his way to buy food at a local market. The commission received further reports of children shot by snipers in Bab Amr in February, March and May; Taftanaz on 3 April; Aleppo in late April; Anadan village (Aleppo) in late April; and Al-Haffe on 4–6 June.
6. Children were also killed during attacks on protests — as reportedly occurred in Menaq village (Aleppo) on 15 March — and in attacks on villages believed to be harbouring defectors or members of anti-Government armed groups. One defector asserted that children were also targeted for killing or arrest to pressure their parents to cease their protest activities. He stated that, "... *If someone is an activist we will arrest any member of*



*his or her family to pressure them to turn themselves in. Worse than that is the dual beating and imprisonment of a father and his son in order to break the adult. It is very carefully thought out.”*

7. There are multiple reports of children killed during military ground operations and house searches. As described more fully in annex V, Government forces and *Shabbiha* conducted a military operation in the village of Ain Larouz to look for defectors. On 4 March, Government forces detained 35 people, including two boys of 14 and 16 years and a 10 year old girl. On 12 March, all but four were released. Bodies of the two boys along with two adults were discovered lying just outside the village.

8. Interviewees recounted the killing of children in Atarib in February; Bab Amr in March; Karm-el-Zeytoun in March; Tal Rifat (Aleppo) in early April; Taftanaz in early May and in Al Qubeir (Hama) in June. These children were killed with members of their families during military ground operations in the named towns and villages.

9. Children were also amongst the victims killed in Al-Houla on 25 May. UN observers found at least 108 bodies, 41 of them children. Some had been killed by shrapnel during shelling, but most appeared to have been shot at close range.

## **B. Children in detention**

10. Multiple reports of arrests and detentions of children were received. Children were detained during or immediately following protests or during ground operations and house searches. In two cases, children appear to have been arrested, along with older family members, because of familial links to fighters in anti-government armed groups.

11. Children interviewed by the commission described being beaten, blindfolded, subjected to prolonged stress positions, whipped with electrical cables, scarred by cigarette burns and, in two recorded cases, subjected to electrical shocks to the genitals.

12. One 15 year old boy said he was arrested in March by security and plain clothes officers after protesting, and taken to a Political Security office in Dara’a in March. He stated, *“There were lots of young men, children and adolescents and also older people. I was standing and the officer stood in front of me and hit me across the face. They put electricity on my temples and my stomach ... They asked us, ‘Where are the weapons!’ ... They used lots of electricity. It felt like five hours and went on until morning, I think. There were kids as young as 10 with me in the cell ...”* He was released five days later only after signing a confession *“... stating that we were terrible boys and had done many things wrong...I also had to sign a blank paper.”*

13. A 14-year-old boy stated that he was arrested during a demonstration in Idlib in March. He had been taken with 12 others to the Military Intelligence branch in Idlib where he was beaten with a pipe and given electric shocks. Another interviewee stated that her 17 year old son had been arrested by *Shabbiha* in Blin (Idlib) after participating in protests in late February. She stated that he had been taken to detention where he was beaten, subjected to electric shocks and made to “kneel and pray for Bashar al-Assad”.

14. Eight detainees, including two minors, stated that minors and adults were held in the same cells. This was said to have occurred in the cells of Aleppo central prison; the Political Security office in Dara’a; the Military Intelligence office in Idlib and Adra central prison which was under the control of Air Force Intelligence. One adult detainee, held in an unknown location in Damascus, stated he was held in a small overcrowded room with adult and child detainees, the youngest of who appeared to be 13 years old. Child detainees reported enduring the same conditions of detention as described in annex VIII.

### C. Sexual violence

15. As noted in annex IX, the commission received a report of the gang rape of two young girls, aged 11 and 14 years, by men in military clothes, in Bab Amr in late February/early March. The girls' father was forced to watch the rape. His daughters were reportedly then forced to watch the rape of their father. A resident of Karm-el-Zeytoun (Homs) stated she had witnessed soldiers raping a 16-year-old girl during military ground operations in March. A defector stated that he had been present at the sexual assault of a 15 year old girl in Zabadani by soldiers during a house search in February.

### D. Recruitment and use of children

16. No evidence of Government forces formally conscripting or enlisting children under the age of 18 years has been received.

17. However, the commission documented at least three separate incidents in which Government forces reportedly used children as young as eight as hostages and as human shields. Two interviewees stated that on 21 February in Abdita (Idlib), soldiers forced women and children to walk with them as they moved around the town. When the soldiers withdrew, reportedly three families, including a number of children, were forced to walk alongside a moving tank. The families were released once the soldiers reached the outskirts of the town. Another interviewee stated that, in Taftanaz on 3 April, women and children were reportedly removed from their houses by soldiers and forced to walk in front of a tank as it moved through the town. In Ain Larouz in March, an interviewee stated that several dozen children, boys and girls ranging between the ages of eight and 13 years, were forcibly taken from their homes. These children were then reportedly placed by soldiers and *Shabbiha* in front of the windows of buses carrying military personnel into the raid on the village.

### E. Attacks on schools and hospitals

18. Schools in various locations across Syria have been looted, vandalized and burned by Government forces in response to student protests. A teacher from the village of Abdita (Idlib) testified that since January schools have effectively been closed in the entire region due to fears of imminent military attack. Many schools had been the site of protests and were therefore targeted by Government forces. The interviewee described how, in February, in response to anti-Government protests, the military fired at Abdita School, broke into the classrooms, destroyed school materials and placed graffiti slogans on the walls, all variants of the slogan, "Al Assad or no one else".

19. As detailed in section III.I of the report of the commission of inquiry (A/HRC/21/50), multiple accounts were received concerning the use of schools by Government forces (most often the army and intelligence services) and *Shabbiha*, as military staging grounds, temporary bases and sniper posts. Several interviewees also stated that the intelligence forces and the *Shabbiha* had installed gun emplacements on the roofs of schools while students were attending classes. The attack on schools has disrupted, and in many cases, curtailed children's ability to access education.

20. Aside from the military operations that prevented civilians from accessing hospitals over lengthy periods of time, reports also indicated that injured persons, including children and their families, failed to seek medical treatment out of fear of attack by the Government for suspected association with anti-Government armed groups. Many children who were injured were not able to receive hospital care and were taken to private or "underground"

field clinics that could treat only the most rudimentary injuries. A nurse from Idlib stated she had treated dozens of women and children in her home during attacks in early March, and that two children died because there was no appropriate equipment and because she was not skilled enough to stop the bleeding of severe wounds.

21. The fear of arrest and torture by Government agents in hospitals denied basic healthcare to both children and women. With a few exceptions, field clinics could do more than stabilize those in frontline communities who were severely wounded. These patients then had to endure days of hardship under precarious circumstances en route to seeking health care in neighbouring countries. Testimonies point to the fact that many children could not tolerate the stress of these transfers and died either before they could be transferred or on the road to the border.

## F. Legal conclusions

22. Evidence gathered clearly indicates that violations of children's rights by Government forces and *Shabbiha* have continued during this reporting period.

23. The legal conclusions of annexes IV (special inquiry into Al-Houla), V (unlawful killing), VII (arbitrary detentions and enforced disappearances), VIII (torture), IX (sexual violence) apply, in respect of the treatment of children by Government forces and *Shabbiha*.

24. There are multiple reports of minors being held in the same cells as adults, in breach of the Government's obligations under the Convention on the Rights of the Child.

## II. Anti-Government armed groups

25. Eleven interviewees, including four minors, spoke about the use of children by anti-Government armed groups. All stated that anti-Government armed groups, including the FSA, used children to work in support roles such as assisting in medical evacuations or as messengers or porters. Five of those interviewed said the anti-Government armed groups used children under the age of 18 — and in one account, below the age of 15 — as fighters.

26. A 17-year-old interviewee stated that he worked in a FSA medical evacuation team in Hama governorate. He said it was FSA policy that “only at 17 could a gun be used, mostly for guard duty and no active fighting”. Three other interviewees, including two minors, stated that they had seen or were aware of 17 year olds actively fighting for the anti-Government armed groups. One said that his 17 year old brother was “*a member of the FSA Al Khatib battalion [and] went to the second floor of a house [in Taftanaz, Idlib governorate, in April] with a Kalashnikov and shot four soldiers*”. Another interviewee stated he saw two fighters, approximately 15 years old, fighting with the FSA-affiliated Al Farouk or Bab Amr battalions in Homs city in June.

27. Another interviewee spoke about the killing of a 17 year old boy — who was reportedly fighting with the FSA — during armed clashes with Government forces in March in Idlib governorate.

28. A 14 year old boy stated that he was given and used a weapon while fighting with the FSA for two days in Idlib in March.

29. There is significant evidence of anti-Government armed groups' use of children in auxiliary roles. One 17 year old interviewee worked as part of a FSA medical evacuation team, taking injured persons mainly from the Hama governorate into Turkey. He stated that in his team there were “about 15 boys under the age of 15 years”, and that the youngest in

his group was 14. The same interviewee stated that boys between the ages of 15 and 17 also performed duties including delivering messages between FSA units, cooking for units in the field and delivering medical supplies to field hospitals in front line units. He stated that no girls fought or worked as auxiliary support to the anti-Government armed groups.

30. Two other interviewees, both minors, stated that anti-Government armed groups used children aged 15 years and above to assist in the loading of ammunition.

31. The use of children as part of medical evacuation teams and as couriers has exposed them to hostilities. One interviewee stated that one minor, who had been part of a medical evacuation team, was shot and killed by a sniper while attempting to evacuate a woman and two young men from Hama city.

32. In a separate incident in March, the commission was informed about four boys, under 18 who were injured by sniper fire trying to evacuate injured from Helfaya. According to the same interviewee, three boys, one 15 year old and two 17 year olds, were captured by Government forces while working as part of a medical evacuation team in Hama city.

33. A 16 year old boy who was shot by a sniper outside of Homs while evacuating a wounded girl, explained that he was volunteering to assist the FSA with medical evacuations “... because it is all they [FSA] will allow me to do... How can I do nothing when they kill my family and my community?”

34. The commission received assurances from Colonel Riad al-Asaad that an FSA policy not to use children in combat is in place. There is evidence to suggest, however, that this policy is not uniformly being adhered to by the FSA and other anti-Government armed groups. It is also unclear whether the understanding of “in combat” by the anti-Government armed groups encompasses the auxiliary roles described above.

## **Legal conclusions**

35. As the anti-Government armed groups are not State parties, they are not bound under the Optional Protocol, which sets 18 as the minimum age for direct participation in hostilities, recruitment into armed groups and compulsory recruitment by Governments.

36. The commission observes, however, that the conduct of anti-Government armed groups, as a party to an armed conflict, is within the jurisdiction of the International Criminal Court which has made “conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities” a war crime. The term “participate” covers both direct participation in combat and also active participation in military activities linked to combat, for example scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints. Use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included.

37. The commission considers that there is currently insufficient information to reach a finding that anti-Government armed groups have been using children under the age of 15 to participate actively in hostilities. It notes with concern, however, reports that children under the age of 18 are fighting and performing auxiliary roles for anti-Government armed groups.

## Annex XI

[English only]

### Pillaging and destruction of property

#### I. Government forces and *Shabbiha*

1. The commission corroborated reports of pillaging, destruction and burning of property by Government forces and *Shabbiha* during their military operations. Such acts occurred in two contexts: first as a consequence of the shelling of towns and villages and second during the searches for defectors and members of armed groups and their supporters that took place during ground operations. The former context is discussed in annex VI (indiscriminate attacks). In the latter context, the commission interviewed 43 witnesses who described Government forces burning, destroying and pillaging their property in the wake of searches.

2. Interviewees stated that the pillaging and destruction were targeted against groups and individuals who appeared to be defectors; members of anti-Government armed groups; demonstrators and family members of the aforementioned. In particular, family members of defectors described how their homes, farms and shops were burned following the defection of their relatives. In some instances the looting, burning and destruction of property appeared to be directed at entire communities rather than specific individuals.

3. According to soldiers who later defected, the looting and burning of property of opposition activists and defectors was intended, inter alia, to impose financial constraints on them and on their activities. Government soldiers and *Shabbiha* also benefited from these acts financially, conducting them with complete impunity. They were viewed as a form of reward for their allegiance to the Government. One defector told the commission:

I never got direct orders to [pillage/destroy], but it was every man's understanding that he was allowed to do everything he wanted without being held accountable for that. Not only that, but also when someone is seen not to be active in doing these things, he will be questioned about his loyalty to the regime and his relation with the oppositions.

4. In Idlib in March 2012, instances were recorded of looting followed by burning of homes after which the army and local militias sold the looted goods. One defector told the commission of his looting prior to his defections:

“Just go and get a TV, something for yourself, there is no FSA here... It [the military base] was like a flea market. Anything you want you can find there, including gold. Nothing was left in the houses... [We] swapped things and sold them to each other.”

5. Twelve different witnesses described the deliberate burning and looting of homes and the purposeful destruction of personal property in various neighbourhoods of Homs. Five witnesses reported the burning of more than 100 houses during the attack on Anadan (Aleppo) in March and again in April 2012. Other witnesses put the number of houses burned at over 300.

6. One defector stated that he was ordered to shell and then to raid the village of Yabrud (Rif Dimashq) in March 2012. He had at his disposal six buses of Government forces together with tanks. A local government informer, whose face was covered,

accompanied them during this operation. The informer guided them toward houses of activists and defectors. Whenever the informer pointed out the house of a defector, FSA fighter or opposition activist, the soldiers would loot and burn it.

7. Demonstrations occurred regularly in the village of Marayane (Idlib), one of which took place on 11 April 2012. A defector stated that on 12 April, he was with Government forces when they raided Marayane (Idlib) using T72 tanks, BMPs and 14.5 mm machine guns. Before entering the village his forces began shelling randomly in an effort to “weaken the enemy.” Once inside the village, they burned more than 100 houses. He recalled specifically shelling two houses, ensuring they were razed to the ground. One belonged to the headmaster of the high school, while the other to an agricultural engineer. The defector presumed, but could not confirm, that the two men were suspected anti-Government fighters. The rest of the houses were looted by the soldiers and then shelled or burned.

8. Another interviewee stated that in Mare’e (Aleppo) on 10 April 2012, Government forces burned 386 houses and some two hundred shops burned during the search operations. He added that all residents fled when they knew that military and security forces were about to raid their village. When people returned, they saw painted on the walls, “from here Al-Assad forces passed; if you return, we will return,” and “there is no God but Bashar al-Assad”.

9. Thirteen individual accounts described widespread looting and destruction of property in Tal Rifat (Aleppo), Bayda and Jabal-az-Zawiyah (Idlib) in April 2012. When Government forces departed these villages after the attack, the inhabitants returned to find the electricity cut, crops destroyed, livestock killed, mosques and schools destroyed, money stolen and houses emptied of their furniture, jewellery, clothes and appliances. Shops had been looted completely and then destroyed either by burning or by shelling. Vehicles had been either stolen or destroyed.

10. Corroborated evidence was collected of pillaging, deliberate destruction and burning of property by pro-Government forces in Bab Amr (Homs), end of April 2012; Ablin (Idlib), 16 June 2012; Ibdita (Idlib), 21 February 2012; Jisr-esh-Shughour (Idlib), March 2012; Al Atarib (Aleppo), 15 February 2012; Taftanaz (Idlib) 4 and 5 April 2012; Sermin (Idlib), 22 March 2012; Azaz (Aleppo), April 2012; Dar’a, June 2012; Hama, end of May and beginning of June 2012; al-Haffah (al-Ladhiqiyah), 13 June 2012; and Anadan (Aleppo), 7 April 2012.

## **Legal conclusions**

11. There are reasonable grounds to believe that Government forces and *Shabbiha* committed the war crime of pillage. The commission also determined that Government forces and *Shabbiha* engaged in the destruction and burning of property during house searches.

## **II. Anti-Government armed groups**

12. The commission received no reports of pillaging or destruction of property by anti-Government armed groups, but lack of access to Syria hampered investigations in this regard. The Government provided information about crimes allegedly perpetrated by anti-Government armed groups, including looting and vehicle theft, which the commission was unable to corroborate. Consequently, the commission has been unable to reach any findings with regard to the alleged pillaging, burning and destruction of property by anti-Government armed groups.

Annex XII

[English only]

Map of the Syrian Arab Republic

