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人权理事会
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需要理事会注意的人权状况

独立国际调查委员会关于阿拉伯叙利亚共和国的报告*

概要

自 2012 年 2 月 15 日以来，阿拉伯叙利亚共和国的人权状况严重恶化。武装暴力更加激烈，并延伸到新的地区。政府军(和沙比哈民兵)与反政府武装之间的敌对行动持续不断。武装力量之间的零星冲突演变为持续战斗，双方均采用了更加残忍的战术，并投入了新的军事能力。全国范围内的武装暴力程度不一。

在本报告期内，调查委员会确认，鉴于冲突的激烈程度和持续时间，以及反政府武装不断增加的组织能力，冲突已达到非国际性武装冲突的法定门槛。因此，委员会在评价敌对双方的行动时采用了国际人道主义法和国际人权法。

委员会认定，有合理的理由认为政府军和沙比哈民兵犯下了谋杀和酷刑等危害人类罪、战争罪以及严重侵犯国际人权法和国际人道主义法的罪行，包括非法杀戮、酷刑、任意逮捕和拘留、性暴力、不加区分的攻击、掠夺和损毁财产。委员会认为政府军和沙比哈民兵应对胡拉屠杀负责。

委员会肯定了之前的结论，即侵权行为是依据国家政策实施的。各省开展的大规模军事行动、其类似的作战方式、复杂性以及一体化的军事－安全装备显示了武装和安全部队以及政府最高级别的参与。委员会确认沙比哈民兵为本报告所述诸多罪行的实施者。虽然沙比哈民兵的性质、组成和等级制度尚不清楚，但是根据可靠消息，可认定沙比哈民兵与政府军协同行动。

* 本报告附件不译，原文照发。

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委员会认定，有合理的理由认为有组织的反政府武装犯下了战争罪，包括谋杀、法外处决和酷刑。虽然这些武装不是日内瓦四公约的缔约方，但是必须遵守国际人道主义法的原则。反政府武装实施的侵权和暴力行为在严重性、频率和规模上不及政府军和沙比哈民兵。

双方均侵犯了儿童权利。

委员会不知道政府军或反政府武装是否为达到国际标准，努力防止或惩处了本报告所载罪行。

不得进入叙利亚严重影响了委员会履行任务的能力。委员会与政府官员以及武装和安全部队成员的接触极少。此外，叙利亚境内的受害者和目击者不得出面受访。

委员会将在 2012 年 9 月当前任务结束时，向联合国人权事务高级专员提交一份机密清单，其中载有被认为应对危害人类罪、违反国际人道主义法和严重侵犯人权行为负责的个人和单位名单。

委员会重申最佳途径是通过谈判解决问题，这需要所有各方之间开展包容和有意义的对话，以实现反映叙利亚社会所有组成部分，包括族裔和宗教少数群体合法愿望的政治过渡。

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一. 导言

1. 本报告依据人权理事会 2012 年 3 月 23 日第 19/22 号决议提交，理事会在该决议中延长了其 2011 年 8 月 22 日第 S-17/1 号决议设立的关于阿拉伯叙利亚共和国的独立国际调查委员会的任务。

2. 委员会[1] 根据截至 2012 年 7 月 20 日开展的调查，在本报告中阐述了结论。报告参考了委员会 2012 年 4 月 16 日和 5 月 24 日发布的定期更新，以及委员会在 2012 年 6 月 27 日向人权理事会作出的最新情况口头通报(A/HRC/20/CRP.1)。报告还提供了委员会根据理事会 2012 年 6 月 1 日第 S-19/1 号决议的授权，对胡拉事件的特别调查的最新结果。

3. 本报告应与委员会之前的报告(A/HRC/S-17/2/Add.1 和 A/HRC/19/69)一并阅读，以便理解委员会的任务和工作方法，以及关于阿拉伯叙利亚共和国 2011 年 3 月至 2012 年 2 月 15 日期间所发生事件的事实和法律结论。

A. 挑战

4. 委员会面临许多挑战。委员会受命调查 2011 年 3 月以来叙利亚国内的人权侵犯指控，该任务涵盖的地域广、时间长、事件多。这意味着在迅速变化的局势下开展调查，该局势已演变为武装冲突。

5. 不得进入该国也严重影响了委员会履行任务的能力。特别是，委员会几乎无法接触政府官员以及武装和安全部队成员。此外，叙利亚境内的受害者和目击者，特别是那些据称遭到反政府武装虐待的人不得出面受访。

6. 委员会在 2012 年 4 月 2 日和 16 日、5 月 1 日、10 日和 29 日以及 6 月 22 日的普通照会和信函(附件一)，以及 2012 年 4 月 26 日和 30 日以及 6 月 18 日和 21 日与阿拉伯叙利亚共和国常驻日内瓦代表的会晤中，一再提出访问该国的请求。通过这些努力，主席得以在 6 月 23 日至 25 日期间访问大马士革，与当局讨论委员会的工作，包括对胡拉事件进行调查。委员会在最新情况口头通报(A/HRC/20/CRP.1)中介绍了访问详情。政府尚未允许委员会进行现场调查。

7. 在委员会任务期内，政府提供了大量文件，包括国内当局的调查报告，以及伤亡人员名单。本报告酌情反映了这类信息。

[1] 委员会成员为保罗·塞尔吉奥·皮涅罗(主席)和卡伦·科宁·阿卜扎伊德。

B. 方法学

8. 委员会力求结合上述挑战调整其方法学。委员会继续努力反映所有侵犯人权的行为，无论据称实施者为何人，同时将重点放在最严重的指控上。委员会注意到对受害人和目击者的保护，这是人权调查方法学的核心关切问题。

9. 由于无法进入阿拉伯叙利亚共和国，委员会继续前往该区域，从离开叙利亚的人那里收集第一手资料。自 2 月 15 日起，委员会已经在实地，以及从日内瓦通过 Skype 和电话，对叙利亚境内的受害者和目击者开展了 693 次访谈。自委员会 2011 年 9 月设立以来，访谈总数达到了 1,062 次。

10. 委员会还研究了照片、视频记录、卫星图片和额外材料，例如法医和医疗记录。委员会继续审查了政府和非政府(国际和叙利亚反对派)来源的报告、学术分析、媒体报道(包括叙利亚新闻媒体)，以及联合国的报告，包括人权机构和机制的报告。

11. 委员会采用了之前报告中采用的证据标准，即“有合理的理由认为”。委员会主要依赖第一手资料以证实相关事件。

12. 在之前的报告中，委员会没有适用国际人道主义法。本报告期内，委员会确认，鉴于冲突的激烈程度和持续时间，以及反政府武装不断增加的组织能力，冲突已达到非国际性武装冲突的法定门槛。确认了这一点后，委员会在评价敌对双方的行动时，适用了国际人道主义法(另见附件二)。

13. 委员会继续与会员国、联合国各机构以及其他国际和区域组织合作。委员会感谢那些在它履行任务期间给予合作的人，特别是人权侵犯行为的受害者和目击者。

二. 背景

A. 政治背景

14. 本报告期内，委员会继续努力寻找解决阿拉伯叙利亚共和国危机的方法。叙利亚政府启动了若干政治和治理改革，联合国和阿拉伯国家联盟于 2012 年 2 月 23 日指定科菲·安南担任联合特使。鉴于暴力升级以及地面局势的严重恶化，这些努力收效甚微。

15. 改革举措包括 2012 年 2 月 26 日就新宪法举行的公投、5 月 7 日举行的议会选举以及 6 月 23 日组成的新政府。这些活动为引入政治多元化和民主政治进程提供了机会。不过，这些活动被视为包容性不够，无法令国内的持不同政见者或流亡在外的反对派满意。

16. 巴沙尔·阿萨德总统未能让反对派参与有意义的对话。选举遭到反对派抵制，选举结果维持了复兴党在议会和新政府中的优势地位，因此未能将新兴政治力量纳入政府机构。这一进展进一步激怒了部分群体和反对团体。

17. 国际社会通过联合特使作出努力，2012 年 3 月 10 日提出了一项六点计划。该计划列出了各方停止暴力并致力于政治进程的步骤。停火自 4 月 12 日起生效，安全理事会随后于 4 月 21 日部署了联合国叙利亚监督团(联叙监督团)，最初期限为 90 天，监督该计划的执行。联叙监督团观察员的到来最初对地面局势产生了积极影响，暴力程度在 4 月有所下降。不过，之后军事行动不断升级，以至于到 6 月 15 日，联叙监督团不得不暂时中止其活动。7 月 20 日，联叙监督团最终延期 30 天。如各方停止使用重型武器并减少暴力行为，则有可能进一步延期。

18. 叙利亚全国委员会中的反对团体拒绝与阿萨德总统合作，要求他下台。叙利亚全国委员会和叙利亚自由军均接受了六点计划，包括停火。3 月，叙利亚全国委员会与叙利亚自由军签署了一项关于通过委员会内的联络处向叙利亚自由军输送资金的合作协议；不过协议没有执行，因此各团体继续独立运作。

19. 关于如何应对冲突，国际社会意见不一。一些国家要求总统立即下台；另一些国家则强调防止任何形式的外部干预。一些国家继续向政府提供军事物资。还有一些国家则呼吁筹资，并向反政府武装提供通信和物质支助。与是否实施制裁一样，存在外国顾问据称也是各国的一个争论焦点。国际背景的不确定性破坏了联合特使通过政治途径解决冲突的努力。

20. 2012 年 6 月 30 日，联合特使召集了行动小组会议，行动小组成员包括联合国、阿拉伯国家联盟和欧盟，以及对冲突方有影响的国家，包括安全理事会五个常任理事国。行动小组在一份公报中重申了对六点计划的承诺，并列出了叙利亚领导的政治过渡的原则和方针。反对团体批评拟议的过渡为阿萨德总统参加过渡政府提供了可能。阿拉伯国家联盟 7 月 2 日和 3 日在开罗举行的一次会议上，叙利亚反对派发布了一项政治过渡和国家契约的共同愿景，其中确立司法、民主和多元化为叙利亚今后的宪法基础。不过，反对团体无法就选举一个将在国际上代表它们的机构达成共识。

B. 军事局势[2]

21. 本报告期内，安全状况严重恶化，武装暴力更加激烈，并延伸到新的地区。政府军(和沙比哈民兵)与反政府武装之间的敌对行动持续不断。武装力量之间的零星冲突演变为持续战斗，双方均采用了更加残忍的战术，并投入了新的军事能力。全国范围内的武装暴力程度不一。

[2] 另见附件三。

22. 政府部署了更多军队和重型装备，对被视为支持反对派的区域开展军事行动。军队各司和安全部队均参与了军事行动。通常，先设检查点封锁一个目标区域，然后炮轰，最后地面部队入侵，击退叛军及其支持者。在直接交火以及镇压示威的行动中也使用了炮击。在武装团体的影响下，空军也对地方战斗人员和手无寸铁的示威者开火。

23. 政府军集中力量控制大马士革、阿勒颇、霍姆斯和哈马等主要城市。攻打据称反政府武装渗入的地区适得其反，反倒加大了当地民众对反对团体的支持。在许多军事行动中，均有大量战斗人员和平民丧生。

24. 据称亲政府的民兵，包括沙比哈民兵在安全和军事行动中与政府军并肩作战。它们的确切性质、实力和与政府的关系尚不清楚。

25. 由于作战、叛逃和伤亡，军队面临越来越严重的人员流失和装备损耗。叛逃在心理上对军队造成了打击，在士兵中引发了信任危机，助长了进一步叛逃。政府在招募新兵方面也面临困难，因为许多义务兵役招募的新兵拒绝报到。

26. 反政府武装扩大了全国范围内的活动，同时与政府军多线交锋。本报告撰写时，反政府武装正卷入叙利亚首都持续的武装冲突，同时在叙利亚其他地方设立避难所。据称，某些武装团体中有外国作战人员。

27. 叙利亚自由军采取了措施，纠正其整体有效的指挥结构中的明显缺陷。叙利亚自由军在某些省设立了地方军事理事会，声称对该地区作战的团体有领导权。许多团体声称附属于叙利亚自由军，而另一些新出现的武装团体则与其没有明显的从属关系。

28. 反政府武装通过直接交火、伏击和突然袭击与政府军作战。调查未确认反政府武装使用更加先进的武器，但是它们获得和有效使用可获得武器的能力有所加强。它们似乎获得了更多的资金和后勤支持。

29. 委员会注意到，反政府武装更多并有效地使用了简易爆炸装置，以对付政府军的车队、巡逻队和设施。它们还使用简易爆炸装置袭击军队和安全部队的成员以及政府官员。

30. 国内新出现了一些伊斯兰极端武装团体。最重要的是为地中海东部地区人民而战的努斯拉赫阵线，该团体据称与基地组织有关，曾声称对多起袭击负责，包括针对政府军以及高级官员的自杀性爆炸事件。

31. 一些地区还出现了自卫团体。其中一些团体出现在据称亲政府的少数群体居住的村庄。

C. 社会经济状况和人道主义状况

32. 危机导致国民经济迅速衰退。危机加剧了十年干旱造成的农村和农业地区的贫困和失业水平，导致农民向城市迁移，并且更加仇视那些正在享受或似乎享受

政府分配的经济利益的人。国际货币基金组织称，2012 年阿拉伯叙利亚共和国经济将严重缩水，主要原因是制裁。经济的迅速下滑还伴随着一些惊人指标，例如叙利亚镑贬值，自危机发生以来已贬值 30%，以及通货膨胀飙升至 50%以上。[3]

33. 冲突的军事化加深了人道主义危机。数千名叙利亚人在国内流离失所或逃到临国。本报告撰写时，联合国难民事务高级专员办事处(难民署)估计境内流离失所者人数已达到 150 万人。叙利亚人民越来越多地向阿拉伯叙利亚红新月会、世界粮食计划署以及其他组织寻求帮助。[4] 截至 7 月，已有 114,208 名叙利亚人登记为难民，在四个邻国接受援助(土耳其 42,682 人、约旦 34,050 人、黎巴嫩 29,986 人、伊拉克 7,490 人)。[5] 阿拉伯叙利亚共和国境内的难民，包括约 500,000 名巴勒斯坦人和超过 103,000 名登记的伊拉克难民[6] 也受到叙利亚局势的影响。难民署称，2012 年上半年，13,000 多名伊拉克难民离开了阿拉伯叙利亚共和国，大多数返回了伊拉克。[7]

34. 7 月 16 日，委员会收到阿拉伯叙利亚共和国政府的资料，其中声称叙利亚遭到“美利坚合众国、欧洲联盟、阿拉伯国家联盟、土耳其、瑞士、加拿大、澳大利亚、日本及其他国家 60 多项非法单边强制制裁”。政府认为，针对国内经济、金融和农业生活的这些制裁构成了对叙利亚人民的集体惩罚。政府特别谴责对石油产品，包括国内汽油和燃油进口的制裁，这严重影响了叙利亚普通民众的生计。政府还谴责对国有和私有银行体系、石油出口和医疗物资进口等实施制裁导致的负面影响。

35. 受访者指出，整个社会都面临食物、燃料、水、电和医疗物资短缺。霍姆斯、伊德利卜、德拉和哈马等地区短缺尤为严重。因战争而背井离乡的人们亟需住所。人道主义事务协调厅称，亟需援助的人数激增，从估计 100 万增加到 150 万人，[8] 并继续稳步上升。

36. 2012 年 7 月 16 日举行的叙利亚人道主义论坛第四次会议断言，人道主义状况的恶化是国际社会深表关切的问题。安全局势已妨碍了援助工作者帮助有需要

[3] Matthew Epstein 和 Ahmed Saeed，“‘Smart’ sanctions take toll on Syria” (“聪明”制裁使叙利亚受到重创)，《金融时报》，2012 年 7 月 18 日。

[4] 难民署，“难民署对叙利亚人民大批逃离的激增深表关切”，2012 年 7 月 20 日，见 www.unhcr.org/50094bdcb.htm。

[5] 见难民署，叙利亚难民区域应对，data.unhcr.org/syrianrefugees/regional.php。

[6] 阿拉伯叙利亚共和国政府估计国内的伊拉克难民超过 100 万。

[7] 人道协调厅，人道主义公报，叙利亚，第 3 期，2012 年 7 月 5 日。

[8] 人道协调厅，人道主义公报，中东和北非，第 2 期，2012 年 5 月至 6 月。

的人的能力。针对周边国家难民和阿拉伯叙利亚共和国境内流离失所者以及其他有需要的人的两项人道主义援助呼吁只收到了 20%的资金。[9]

三. 调查结果

37. 委员会重点关注最严重的人权侵犯行为，同时也希望指出整体人权状况的恶化。除生命权和人身自由和安全权外，其他基本人权也继续遭到侵犯。暴力事件增多进一步限制了言论自由、结社自由及和平集会的自由，而这正是 2011 年 3 月反政府抗议活动的导火索。叙利亚人民普遍丧失了基本经济、社会和文化权利。正如之前报告指出的，委员会仍然对侵犯人权法行为不受惩罚的风气深表关切。

A. 伤亡情况

38. 政府提供的资料显示，截至 2012 年 7 月 9 日，包括政府军和平民在内的 7,928 人因动乱丧生。

39. 其他实体，特别是叙利亚非政府组织和反对团体，包括地方协调委员会、叙利亚暴力行为文献中心、叙利亚人权网络和叙利亚人权观察站也在采用各种方式计算伤亡人数。他们报道的数字从 17,000 人到 22,000 人不等。委员会无法确认这些数字。

40. 委员会记录了全国范围内暴力事件导致的大量伤亡。委员会仅报告通过调查人员访谈获得的第一手资料中提到的人员死亡。在委员会的数字中，没有区分平民与作战人员。不包括受伤人员。委员会通过采访 2 月 15 日至 7 月 20 日期间事件的受害者和目击者，确认了 840 例死亡。

B. 对胡拉事件的特别调查

41. 委员会基于截至 6 月 22 日收集的证据，于 2012 年 6 月 27 日向人权理事会提交了初步调查结果(A/HRC/20/CRP.1)。委员会在报告中认定政府应对炮轰胡拉地区，特别是塔勒杜村导致的平民死亡负责。委员会还认为政府的调查未达到国际人权标准。关于蓄意杀害平民，委员会无法确认犯罪者的身份。不过，委员会认为效忠政府的部队可能应对其中大量死亡案例负责。

42. 尽管 2012 年 6 月 4 日的普通照会(附件一)，以及主席 6 月 24 日和 25 日访问大马士革时亲自向叙利亚政府提出特别要求，仍然不允许委员会进入该国。政府尚未发布其调查的最后报告，也没有表明可能何时发布。

[9] “严重的资金短缺威胁了对叙利亚的人道主义援助——联合国官员”，联合国新闻中心，2012 年 7 月 16 日。

43. 委员会进行了八次额外访谈，包括采访塔勒杜地区的六名目击者，其中两人为幸存者。委员会研究了其他材料，包括影像记录和卫星图片。委员会还研究了其他来源的分析。

44. 委员会考虑了各种来源的四十七个访谈。访谈中对事件的描述一致，并一致将政府军和沙比哈民兵描述为暴行实施者。除政府报告提到的两名证人外，其他人的叙述均不支持政府对事件的描述。委员会认真研究了政府报告提到的两名证人的证词，判定他们的描述存在大量不一致(另见附件四)，因此不可靠。不同调查人员采访的证人的叙述一致，包括儿童的证词。不过采访儿童耗时较长。

45. 委员会在向人权理事会的最新情况口头通报中，确认反政府武装、政府军和沙比哈民兵均有可能进入两个犯罪现场：一是位于 Saad Road (Tariq Al-Sad)的 Abdulrazzak 家的七间民宅，二是国立医院对面位于 Main Street (Al-Shar'i Al-Raisi)的 Al-Sayed 家的两间民宅。[10] 委员会确认，事件当天，最靠近 Main Street 上 Al-Sayed 家的 Al-Qaws 检查点仍然处于政府的控制下。反对派与政府军的前线位于该检查点以北。因此，委员会认定反政府武装在屠杀当天基本不可能进入 Al-Sayed 家。

46. 关于有 60 多人被杀的 Abdulrazzak 家，委员会认为实施这项罪行需要很多人。通过卫星图片和经证实的叙述，委员会认定车辆或武器，以及大量人员的移动很容易被驻扎在水务部门的政府军发现。因此，委员会认为具有一定规模的反政府武装不可能进入那里。

47. 事件发生时，国立医院已被军队占领数月。虽然医院距离两个犯罪场所都很近，但是没有人——不论是伤员还是从犯罪现场逃脱的人——去那里接受治疗或寻求保护。委员会可以确定，所有伤员及其家属，以及附近住宅的居民都逃到了反对派控制的地区。没有伤员去国立医院接受治疗。政府报告称 Al-Sayed 家族的效忠者为亲政府派，但是幸存的家庭成员却没有向附近的政府军求助，而是选择逃到反对派控制的塔勒杜地区。

48. 委员会仍然认为政府没有尽到调查 2012 年 5 月 25 日胡拉屠杀的法律义务。

49. 基于可获得的证据，委员会认定谋杀这一战争罪的要素已得到满足。对多名平民，包括妇女和儿童的杀戮是蓄意的，而且与当前的武装冲突有关。有合理的理由认为在 Abdulrazzak 家和 Al-Sayed 家实施罪行的是政府军和沙比哈民兵。

50. 还有合理的理由认为，上述行为是针对平民的一系列袭击的一部分，因此得出了下文所述的部分结论(见下文 C 节)，即政府和沙比哈民兵犯下了危害人类罪。

[10] 见 A/HRC/20/CRP.1，第 44 段和附件。

C. 非法杀戮[11]

51. 本报告期内，关于袭击平民、谋杀和法外处决的案件激增。委员会在调查据称存在非法杀害平民和失去战斗力的士兵的事件时，进行了约 300 次访谈。在下文所述情况下发生的事件得到了多方证实。[12] 虽然冲突双方均实施了非法谋杀，但是据可获得的资料显示，政府军和沙比哈民兵的违法行为的严重性、频率和规模远远超过了反政府武装。

1. 政府军和沙比哈民兵

52. 大多数非法杀戮发生在攻打反政府武装要塞的情况下。最常见的模式是，首先封锁一个地区进行炮轰，[13] 之后是地面部队攻击，包括特种兵和沙比哈民兵。广泛使用了狙击者。[14] 锁定一个地区后，政府军挨家挨户地搜查。在这些行动中，大规模地搜查逃兵、反对派活动分子和战斗年龄的男性。受伤或被俘的反政府战斗人员遭到处决。在某些情况下，作战人员、逃兵和反对派活动分子的家属，以及一些似乎随机挑选的人也遭到处决。

53. 除其他外，特雷姆瑟、古拜尔、胡拉、基利、塔尔里法特、塔夫塔纳兹、萨敏、阿因拉鲁茨、安塔立博、阿卜迪塔、霍姆斯和库塞尔等地区也存在这种模式。

54. 3 月在卡米什利，4 月在大马士革、阿勒颇和杰贝勒扎维耶行使和平抗议权利的示威者继续遭到过度的武力。

55. 委员会认为，基于本报告描述的非法杀戮事件，有合理的理由认为政府军和沙比哈民兵侵犯了国际人权法保护生命权的条款。此外，许多这类杀戮已满足了国际刑法下谋杀这一战争罪的要素。[15]

56. 袭击经常针对平民和民用物体。虽然政府声称目标是袭击“恐怖主义者”，但是对平民居住的周边地区、城镇和区域发动了袭击(见附件六)。因此，委员会认定有合理的理由认为，在很多情况下犯下了袭击平民这一战争罪。

57. 有合理的理由认为记载的事件构成了谋杀这一危害人类罪。在存在封锁、炮轰、地面攻击和挨家挨户搜查的城镇和乡村，构成了对主要平民人口广泛或系统

[11] 另见附件二，第 30 至 42 段。

[12] 委员会调查的非法杀戮的完整报告见附件五。

[13] 关于炮轰的更多资料见附件六。

[14] 在地面攻击中，狙击者经常与军队配合，造成大量平民死亡。委员会记录被狙击者射杀的平民有 35 人。几十名受访者提到了附近存在狙击者对他们造成的负面心理和社会影响。人们不敢出门，而炮轰开始时又不敢呆在家里。

[15] 《罗马规约》，第八条第(二)款第 3(1)项。另见附件二，第 30 至 42 段。

性的袭击。鉴于袭击的规模、重复性、过度使用武力的程度、滥轰滥炸的性质以及袭击的协调性，委员会认定这些行为是依据国家政策实施的。

2. 反政府武装

58. 虽然与反政府武装受害者的接触有限，但是委员会记录了反政府作战人员杀戮被俘的政府军士兵、沙比哈民兵和承认参与军事袭击的间谍的案件(见附件五)。虽然人权法律制度对反政府武装等非国家行为方有不同的处理，但是国际人道主义法平等地适用于冲突的所有各方。

59. 委员会审议了关于杀害失去战斗力的士兵和沙比哈民兵的已证实的证据。在库塞尔、巴巴阿姆尔、卡利迪亚和其他地方，委员会注意到反政府武装逮捕的个人有时在遭到处决前接受了准司法程序。但是没有得到关于司法程序的一致描述，也没有资料说明遵守公平审判标准的程度。不提供基本的司法保障就处决囚犯构成了战争罪。

60. 委员会认定关于反政府武装经过或不经过“审判”便实施处决的资料构成了合理的理由，可认为反政府武装多次犯下谋杀或未经正当程序便判决或处决的战争罪。关于袭击未参战的平民个人或整个平民人口的指称，委员会无法证实。

3. 不明犯罪者

61. 委员会发现在 3 月至 7 月的九次爆炸中，有几十名平民被不明犯罪者杀害。[16] 这些爆炸似乎是通过自杀性爆炸者或简易爆炸装置，包括车载装置实施的。

62. 虽然上述行为可能与非国际性武装冲突有关，从而应根据国际人道主义法加以评判，但是由于无法进入犯罪场所以及缺乏关于犯罪者的信息，委员会无法做出评判。不过，这些行为是根据叙利亚刑法应起诉的国内罪行。政府有义务确保根据其国际人权义务，公正、及时、有效和独立地开展调查。

D. 任意拘留和强迫失踪[17]

63. 委员会采访了 25 名据称被任意逮捕和非法拘留的人。另外，与逃兵进行了五次访谈，这些逃兵声称在服役时目睹了任意逮捕和拘留事件。

64. 据政府称，自 2011 年 2 月起，四次大赦释放了 10,000 多人，其中 2012 年 7 月 10 日释放了 275 人。秘书长在关于安全理事会第 2043 (2012)号决议执行情况报告(S/2012/523)中指出，联叙特派团看到 2012 年 5 月 31 日和 6 月 14 日在德拉、大马士革、哈马、伊德利布和德尔祖尔释放了 468 名被拘留者。

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[16] 见附件五，第 55 段。

[17] 另见附件七。

65. 政府尚未提供关于拘留者和拘留中心数目的官方统计。截至 6 月 25 日，联叙监督团收到并核实了关于 2,185 名被拘留者和全国 97 处拘留所的资料。叙利亚非政府组织认为目前被拘留的人数高达 26,000 人。委员会无法确认被捕和被拘留的人数。

66. 大多数逮捕属于以下四种情况：逮捕被认为计划叛逃或拒绝服从(通常是向平民开火)命令的人；入室搜查时逮捕；在检查点逮捕；以及在抗议活动或抗议之后逮捕抗议者。有几次是在当时没有交火的区域任意逮捕。据称被任意逮捕的有四名妇女和两名儿童，一名 14 岁的男孩和一名 9 岁的女孩。

67. 受访者无一获得律师服务。只有一名受访者见到过家人。只有两名因涉嫌计划叛逃而被捕的受访者正式遭到起诉。

68. 许多受访者声称，他们在获释前被迫在一份内容不明的文件上签名或按手印。三名被拘留者在获释前被带见法官。一名受访者声称，虽然法官下令释放他，但是他又被拘留了三个月，不过该事件未经核实。一名前任法官也接受了采访，他说安全人员禁止在他们到场前进行审问，曾有一次用枪口对着他。

69. 在受访者中，拘留时间从几小时至五个月不等。大多数受访者被拘留了 60 天或不到 60 天。

70. 委员会认为阿拉伯叙利亚共和国的国内法律(见附件二)不满足《公民权利和政治权利国际公约》第九条规定的确保因刑事指控被逮捕和拘留的人“被迅速带见审判官或其他经法律授权行使司法权力的官员”的义务。

71. 有合理的理由认为政府军任意逮捕并拘留了个人。特别令人关切的是，政府军未经指控便拘留个人、未向被拘留者提供法律服务或禁止家人探视，以及在大多数案件中缺乏任何形式的司法审查。

72. 关于强迫失踪，在逮捕时或逮捕后均未告知被捕者家人其拘留所在地。在大多数情况下，被拘留者的家人不知道他们被关在哪里。

73. 在拒绝告知逮捕和拘留或披露相关人员下落的情况下，政府即犯下强迫失踪罪行。

E. 酷刑和其他形式的虐待[18]

1. 政府军和沙比哈民兵

74. 自 2012 年 2 月 15 日起，委员会就关于酷刑和其他形式的残忍、不人道或有辱人格待遇的指控与 81 人进行了访谈。其中 59 次访谈涉及本报告期内发生的事件。委员会未获准去拘留中心采访被拘留者或视察拘留条件。

[18] 另见附件八。

75. 上述 59 名受访者中有 30 人称曾经被政府军或沙比哈民兵逮捕和/或拘留。除一人外，均称在拘留期间遭到肢体暴力。另外 19 名受访者称目睹了被拘留者遭到酷刑或虐待；其中 10 人在叛逃前曾在拘留中心或检查点工作。在可能的情况下，委员会检查了据称受害者的伤痕或伤疤。

76. 大多数人曾被关在官方拘留中心，但有六人称他们在被转移到官方拘留中心之前，曾被拘留在非官方设施，例如平民家里。受访者声称在非官方拘留中心遭到士兵和沙比哈民兵的虐待。还有九名受访者称，他们在入室搜查时或在检查点遭到殴打或袭击，或是目睹其他人遭到袭击。这九人之后均未被拘留。

77. 据称全国采用的酷刑方法一致。受访者称头部和身体被电线、鞭子、金属和木棍以及枪托严重殴打、被香烟烧、被踢，或是身体敏感部位，包括生殖器被电击。六名受访者称他们曾在审讯中失去知觉。

78. 委员会收到了大量关于被拘留者脚底板被打的报告。常见做法包括让被拘留者长时间处于压力姿势，包括绑住手吊在墙上或天花板上，或将手反绑在背后。其他方法包括强迫被拘留者蜷成一团，头、脖子和腿穿过轮胎，同时殴打他们；以及将被拘留者绑在一块板上，头部没有支撑，拉扯肢体或将板折成一半。一些被拘留者遭到强奸和其他形式的性暴力。[19] 在许多受访者身上看到了他们描述的伤疤和伤痕。

79. 一些形式的酷刑和虐待没有在身上留下痕迹。强迫被拘留者剃光头，学狗叫，并宣称“没有上帝，只有巴沙尔”。另一些受访者称他们被迫脱光衣服，长时间一丝不挂。三名受访者称他们受到处决威胁。一名受访者称看到一名被拘留者遭到性侵犯威胁；另一人称审讯人员威胁逮捕并强奸其女性家属。

80. 六名受访者曾被不同情报机构的多个拘留所拘留。一名受访者称在 5 个月内转辗于四个省的 10 个拘留所。另一名受访者也在 5 个月内被转移至位于德拉和大马士革的四个拘留所。在存在多次转移的情况下，受访者在每个拘留所都遭到了肢体暴力。

81. 大多数被拘留者称被关在过于拥挤的小牢房。两名被拘留者称牢房小到无法坐下或躺下。除一人外，所有被拘留者都说没有足够的食物和水。一名受访者称，在断水一周后，他不得不喝自己的尿液。一些受访者称牢房里没有厕所。四名受访者说牢房里尽是虫子和虱子。委员会无法证实关于拒绝提供药物和治疗的报告。

82. 委员会记录的一些描述如经证实，将构成违反《囚犯待遇最低限度标准规则》的情况(见附件二)。

83. 委员会确认了先前的结论，即政府军和沙比哈民兵实施的酷刑和其他残忍、不人道或有辱人格的待遇违反了该国在国际人道主义法和国际人权法下的义务。

[19] 另见附件九。

84. 委员会确认在官方和非官方拘留所、入室搜查时和检查站对个人造成了严重痛苦。委员会还认定酷刑是为了惩罚、羞辱或获取信息。各国际法庭均认定，受访者描述的许多肢体暴力构成了酷刑(见附件二)。

85. 委员会认定有合理的理由认为，酷刑是政府军和沙比哈民兵在针对广泛平民的攻击中实施的，并且是在政府军和沙比哈民兵明知这一攻击的情况下实施的。委员会认定，政府军和沙比哈民兵实施了构成危害人类罪和战争罪的酷刑。安全部队，特别是军事和空军情报部门的成员似乎是酷刑和虐待的主要责任人。委员会注意到沙比哈民兵成员参与了 2 月和 3 月在霍姆斯非官方拘留中心的酷刑行为。

86. 委员会认定，强迫被拘留者剃光头和学狗叫等行为构成了酷刑、残忍或有辱人格的待遇。同样，访谈中描述的拘留条件也构成了对被拘留者残忍、不人道或有辱人格的待遇。

2. 反政府武装

87. 关于反政府武装对政府军和沙比哈民兵成员的待遇，委员会开展了 15 次访谈。所有受访者均声称是这些武装团体的成员，并详细描述了俘虏、审讯和释放或处决被拘留者的情况。三名受访者称被俘的政府士兵和沙比哈民兵成员在处决前的审讯期间遭到酷刑。

88. 委员会认定有合理的理由认为反政府武装在审讯被俘的政府军和沙比哈民兵成员时实施了酷刑和其他形式的虐待。委员会确认为惩罚、羞辱或获取情报对这些人造成了严重痛苦。

89. 不过，委员会确认这些酷刑行为不是在广泛或有系统地针对平民的攻击中实施的；因此不构成危害人类罪，但是可作为战争罪起诉。

F. 不加区分的攻击

90. 那些下令和实施攻击的人必须确保区分平民和军事目标，以符合国际人道主义法。[20] 受访者的叙述显示，政府军有时炮轰小型反对派要塞。然而，在许多袭击中，发射炮弹的人并没有区分平民和军事目标。在调查的大多数案例中，地面部队攻击前先进行炮轰；还对示威者进行了炮轰。有时，军方不愿拿装备和军队冒险，也对反政府武装进行了炮轰。

91. 在 2012 年 2 月开始的军事行动中，巴巴阿姆尔的大多数死亡都是政府军大规模地对主要为民用的基础设施和住宅区滥轰滥炸造成的。库塞尔市在 2 月至 5 月遭到滥轰滥炸；一可靠来源告知委员会，“我亲眼见到所谓的滥轰滥炸 ──叙

[20] 见附件二，第 30 至 42 段。

利亚军队向整个居民区发射了迫击炮”。6 月 5 日，政府军开始攻打哈非，它们封锁城市，然后用坦克、迫击炮和武装直升机炮轰。

92. 已证实的其他地区的滥轰滥炸有：2 月 14 日在阿卜迪塔、3 月 5 日在阿因拉鲁茨、3 月 22 日在萨敏、4 月 4 日在塔夫塔纳兹、4 月 6 日在基利、5 月 25 日、6 月 12 日和 13 日在胡拉、6 月 9 日在亚柯、6 月 11 日在萨尔玛，以及 6 月底多次在约巴。

93. 委员会注意到哈马省 7 月的影像证据表明使用了集束弹药。该影像材料无法证实。虽然阿拉伯叙利亚共和国不是《集束弹药公约》的缔约方，但是委员会指出，在居民区或平民经常出现的地区使用这类武器本身就具有滥杀滥伤性质。

94. 委员会基于调查结果，认定已达到违反习惯国际人道主义法的滥伤滥杀的法定门槛。政府军针对平民居住区，而不是针对具体的军事目标进行了炮轰。

95. 此外，袭击——特别是炮轰——附带造成平民伤亡，并对民用物体造成损害。有合理的理由认为造成的损害已经超过了预期的军事利益。

G. 性暴力[21]

96. 就政府军和沙比哈民兵自 2012 年 2 月以来对男性、女性和儿童实施性暴力的事件开展了 43 次访谈。受访者包括两名女性和三名男性受害者。受访者还包括五名强奸证人，其中三人也是受害者。七名受访者为逃兵，他们称士兵和沙比哈民兵实施了强奸和性侵犯。

97. 由于婚姻和性方面的文化、社会和宗教信仰，很难收集性暴力的证据。

98. 受访者的叙述显示，发生强奸和其他形式性暴力的情况有两种。一是政府军和沙比哈民兵在入室搜查和检查点实施的；二是在拘留所。此外，2 月底至 4 月期间，霍姆斯有多起绑架和强奸妇女的报告，以及 2 月有妇女被迫在卡尔姆泽通的街上裸体示众的报告已得到证实。

99. 15 名受访者描述了 2 月至 5 月在霍姆斯以及 6 月在哈非的军事行动中，在入室搜查期间以及在检查点发生的性暴力事件。五名受访者详细描述了 2 月底在扎巴达尼以及 4 月在哈马省各地发生的性暴力事件。据称实施者为政府军士兵和沙比哈民兵。

100. 委员会继续收到关于拘留所发生的强奸和性侵犯的报告，这些通常是作为酷刑和/或虐待的一部分。委员会收到了多份关于男性被拘留者在审讯期间生殖器遭到电击的报告。

[21] 另见附件九。

101. 委员会认定，有合理的理由认为政府军和沙比哈民兵对男性、女性和儿童实施了强奸和性侵犯。在正式和非正式拘留所，强奸和性侵犯也是酷刑的一部分。

102. 鉴于之前已确认诸如 2 月和 3 月在霍姆斯以及 6 月在哈非的军事行动构成广泛或有系统地针对平民的攻击的一部分，委员会认定在明知攻击的情况下，在攻击期间实施的强奸可以危害人类罪起诉。

H. 对儿童权利的侵犯[22]

103. 委员会就据称对儿童权利的侵犯进行了 168 次访谈。其中 30 名受访者未满 18 岁。在访谈中，明显可以看出暴力对儿童造成的负面心理影响和社会影响。

1. 政府军和沙比哈民兵

104. 据委员会记录，2012 年 2 月 15 日以来有 125 名儿童被杀，其中大部分为男孩。

105. 儿童在城镇和乡村遭到轰炸时丧生或受伤。委员会在访问土耳其的一家医院时，看见一名在 6 月阿扎兹轰炸中受重伤的两岁女童。还有一些关于儿童被狙击手射杀或因此受伤的报告。

106. 还有儿童在针对抗议活动的袭击中丧生，例如 3 月 15 日袭击 Menaq 村时，以及袭击被认为是窝藏逃兵或非政府武装的村庄时。有多项关于儿童在军事地面行动和入室搜查中丧生的记录(见附件五)。5 月 25 日的胡拉大屠杀中有 41 名儿童死亡。其中一些死于轰炸，但大多数似乎是被近距离射杀。

107. 有报告称儿童遭到任意逮捕和拘留。儿童自称遭到殴打、被电线鞭打、被香烟烫和生殖器遭到电击。多份报告称未成年人与成人关在同一个牢房。

108. 委员会收到了关于强奸和性侵犯未满 18 岁女童的报告(见附件七)。

109. 没有证据表明政府军正式招募或征用未满 18 岁的儿童。不过，记录了三个政府军使用儿童作人质或作人盾的事件。

110. 由于学生示威，阿拉伯叙利亚共和国各地的学校遭到抢掠、破坏和被烧。多个来源称政府军和沙比哈民兵将学校作为军事集结地、临时基地和狙击点(见下文第 116 至 125 段)。

111. 报告还指出，伤员，包括儿童，不敢去公立医院接受治疗。许多儿童被带到只能处理轻伤的医疗站。

[22] 另见附件十。

112. 收集的证据表明，儿童权利继续遭到政府军和沙比哈民兵的侵犯。附件四、五、七、八、九得出的法律结论适用。

113. 除非分开关押侵犯了家人同处一室的权利，否则将成人与儿童同室拘留违反了政府在《儿童权利公约》下的义务。

2. 反政府武装

114. 11 名受访者，包括四名未成年人讨论了反政府武装对儿童的利用。11 人均称反政府武装，包括叙利亚自由军利用儿童作帮手，例如帮助伤员撤离或送信。五名受访者称反政府武装让未满 18 岁的儿童参加战斗，其中一人称未满 15 岁。

115. 委员会认为目前没有充分资料表明反政府武装招募了未满 15 岁的儿童参加战斗。不过，委员会关切地注意到，有报告称未满 18 岁的儿童为反政府武装作战或从事辅助工作。

I. 对受保护人员和物体的袭击

116. 阿拉伯叙利亚共和国的冲突已经造成数千人伤亡。医院和诊所陷入战火中。医疗站成为蓄意攻击的目标。民用物体，例如学校、市政大楼和医院经常被政府军占领作为据点。地下医疗站配备简陋、没有消毒、缺乏基本工具、医疗物资和血液。阿拉伯叙利亚红新月会也在积极地满足受冲突影响地区的医疗和人道主义需要。

117. 国际人道主义法不仅禁止攻击平民和民用物体，还要求为其提供保护。[23] 委员会收集了影像材料，并进行了 12 次访谈，询问受保护人员或物体，特别是学校和医疗设施遭受攻击的情况。

118. 委员会记录了多起袭击战地医院的事件。在一次密集轰炸中，巴巴阿姆尔的战地医院被击中并部分损毁。2 月底，库萨尔的一家医疗站被直升机击中。一名目击者称，在吉斯尔舒古尔，当地居民用作医疗站的 Yousef al-Atmeh 学校教学楼遭到安全部队轰炸。

119. 阿拉伯叙利亚红新月会成员是袭击的受害者。自危机发生以来，有五名工作人员遇害，最近一次是 7 月 10 日在代尔祖尔。5 月，红新月会的一辆救护车在阿萨兹转移两名伤员时被军方狙击手击中，两名医生受伤；所有人都身穿红新月会的制服。同天，红新月会在阿萨兹的办事处遭到炮轰并被烧毁。办事处主任被捕，拘留了 20 天。

120. 4 月 24 日，阿拉伯叙利亚红新月会的五辆救护车在杜马遭遇交火。一名医生丧生，四名红新月会工作人员受伤。

[23] 除非受保护人员或物体参与敌对行为，否则都将提供保护。见附件二，第 30 至 42 段。

121. 政府军继续在多个地点占领公立医院。5 月，军队将坦克、装甲车和部队开进了阿萨兹和库萨尔的国立医院，并在楼顶安置了狙击手。6 月在哈非也发生了同样的事件。

122. 政府军占领了学校和其他民用建筑，将它们变为军事集结地、临时根据地和狙击点。例如，3 月，一名来自安塔立博的女孩描述称，两所学校被政府军变为军营，学校门口停着坦克，屋顶上有狙击手。5 月，库萨尔的学校也以类似的方式被占领。一名受访者称，3 月 11 日，他被 Jondia 当地学校屋顶上的一名狙击手击中。

123. 委员会认定有合理的理由认为，政府军以阿拉伯叙利亚红新月会成员为目标的行为违反了国际人道主义法。也可以战争罪起诉这些行为。此外，将作为敌军合法攻击目标的军事资产置于民用物体内，政府军违反了国际人道主义法的区分原则。政府军蓄意炮轰医疗站也违反了国际人道主义法。

124. 政府占领医院和学校侵犯了教育权和健康权。

125. 关于反政府武装以平民或民用物体为目标的指控，委员会无法证实。

J. 掠夺和损毁财物[24]

1. 政府军和沙比哈民兵

126. 委员会收到了关于政府军和沙比哈民兵在军事行动期间掠夺、损毁和烧毁财物的已证实的报告。在入室搜查时发生的这类行为中，委员会记录了几十件掠夺财物，包括金钱、车辆、珠宝和电器的案件。

127. 受访者表示，搜查以及其间发生的抢掠、烧毁和损毁财物行为的目标是逃兵、非政府武装成员、示威者，以及他们的家属。特别是，逃兵的家属描述了他们的住宅、农田和商店如何被烧毁。有时，掠夺和烧毁财务的行为似乎不是针对具体个人，而是针对整个社区。

128. 据叛逃的士兵称，抢掠和烧毁反对派活跃分子和逃兵的财产，其中一个目的是在资金上对他们及他们的活动实施限制。政府军和沙比哈民兵也从中获得经济利益，因为他们的这类行为完全不受惩罚。

129. 有合理的理由认为政府军和沙比哈民兵犯下了掠夺这一战争罪。委员会还确认政府军和沙比哈民兵在入室搜查期间损毁和烧毁了财物。

2. 反政府武装

130. 委员会没有收到关于反政府武装抢掠或损毁财物的报告，但是由于无法进入阿拉伯叙利亚共和国，妨碍了调查。政府提供了关于据称反政府武装实施罪行

[24] 另见附件十一。

的信息，包括抢掠和偷车，但是委员会无法证实。因此，关于据称反政府武装抢掠、烧毁和损毁财物的事件，委员会无法得出任何结论。

四. 责任

131. 委员会认定有合理的理由认为，阿拉伯叙利亚共和国境内发生了危害人类的罪行，以及违反国际人道主义法和严重侵犯人权的行为。委员会尽可能努力确认可能应对此负责的领导人。3 月，委员会向联合国人权高级专员提交了一份关于可疑个人和单位的机密清单。[25] 委员会将于 2012 年 9 月当前任期结束时提供进一步清单。

A. 国家责任

132. 收集的证据证实了委员会此前的结论，即侵权行为是依据国家政策实施的。各省开展的大规模军事行动，相似的作战方法，其复杂性和一体化的军事/安全装备显示了武装和安全部队以及政府最高级别的参与。

133. 目击者一致确认沙比哈民兵为本报告所述诸多罪行的实施者。虽然该团体的性质、组成、等级和结构仍不清楚，但是根据可靠信息，可认定沙比哈民兵的行为得到了政府军默认、与政府军协同作战或听从政府军的指挥。国际人权法确认通过代理实施侵权行为的国家应负有责任。

B. 反政府武装的责任

134. 虽然有组织的武装团体不是日内瓦四公约的缔约方，但是必须遵守国际人道主义法的原则。[26] 在非国际性武装冲突期间，这类团体的成员实施的严重违反国际人道主义法的行为可以战争罪起诉。非国家行为方也可能应对严重侵犯人权的行为，特别是构成国际罪行的这类行为负责。[27] 委员会确认反政府武装成员实施了包括谋杀、法外处决和酷刑在内的这类侵权行为。

C. 个人责任

135. 不论政府军或反政府武装成员，那些蓄意实施本报告所确认罪行的人都应承担责任。此外，那些下令(或计划、唆使、煽动、协助或怂恿)实施这些罪行的人也应负责。委员会收到了一致的证据，称政府军的中高级官员直接参与非法行

[25] A/HRC/19/69，第 87 段。

[26] 见附件二，第 11 至 13 段。

[27] 见附件二，第 8 至 10 段。

为。逃兵称指挥官命令下属向平民和失去战斗力的士兵开枪，以及折磨和虐待被拘留者。士兵们被枪口顶着执行命令，稍有犹豫便可能被捕或立即处决。证据显示，大规模的抢掠和损毁财物是在指挥官的默许下发生的。

136. 反政府武装的领导人也涉嫌参与了本报告详细描述的战争罪和人权侵犯行为。地方指挥官或命令他人，或亲自处决俘获的政府军士兵和沙比哈民兵。

D. 指挥责任

137. 军队指挥和文职长官如未能在其职权范围内采取合理的措施，防止或制止实施危害人类罪和战争罪行为，或将有关问题提交主管部门处理，则应对这类罪行承担责任。他们实际指挥和控制的下属必须实施这些措施。

138. 鉴于对事件的广泛报道，包括对可能发生的侵权行为和罪行的报道，委员会认定军队指挥和政府最高级别的文职长官不可能对这类事件一无所知。

139. 同理适用于反政府武装实施的侵权行为和罪行。地方指挥官承认知道访谈中描述的某些行为。

140. 委员会不知道政府军或反政府武装做出了哪些符合国际标准的努力，以防止或惩处本文件所载罪行。

141. 据称，政府的国家独立法律委员会一直在调查对侵权行为的部分指控。[28] 政府还设立了一个胡拉事件特别调查组。委员会审议了收到的关于特莱姆萨、古拜尔和胡拉事件的报告。委员会没有发现任何成功起诉应对 2011 年 3 月以来实施的危害人类罪、战争罪或严重侵犯人权行为负责的军队或安全部队指挥或文职长官的案件。

142. 未收到可靠资料，显示反政府武装对据称实施已确认罪行和侵权行为的成员进行了调查、起诉和惩处。

五. 结论和建议

143. 在不受限制的敌对行动中，人权危机急剧升级，交火已经演变为非国际性武装冲突。全国范围内的平民人口受冲突的影响最大，数千人在愈演愈烈的暴力行为中丧生。

144. 社会经济状况和人道主义状况进一步恶化，致使绝大多数人口深陷混乱局面。委员会坚持认为，制裁导致叙利亚人民无法享有大多数基本人权。

[28] 6 月 25 日，委员会主席在大马士革会见了国家独立法律委员会负责人。该委员会在首都和各省设有代表处。该委员会据称收到 6,500 项针对军队、警察和反政府武装的申诉，其中大多数涉及死亡和人员失踪案件。

145. 委员会认定有合理的理由认为政府军和沙比哈民兵犯下了危害人类罪和战争罪，并违反了国际人权法和国际人道主义法。还有合理的理由认为反政府武装犯下了战争罪，并违反了国际人权法和国际人道主义法。双方均侵犯了儿童权利。

146. 必须彻底调查侵犯和践踏人权的行为。必须系统地收集侵犯和践踏人权行为，包括国际罪行的证据，以推动追究犯罪者责任的进程。必须允许委员会进入叙利亚，以便在现场公正地调查这类侵权行为。

147. 委员会认为发生了最严重侵权行为的大规模军事行动是在政府最高层知情的情况下，或在其指挥下实施的。因此，责任在于那些下令或计划实施这些行动的人，或就实际指挥和控制的人而言，责任在于那些没有防止这类行为或惩处犯罪者的人。虽然有一致的证据确认沙比哈民兵是许多罪行的实施者，但是这并不能免除政府的责任，因为国际法确认通过代理实施侵权行为的国家应负有责任。

148. 委员会确认反政府武装成员实施了违反国际人道主义法和国际人权法的行为。那些下令或计划采取这些行动的人，或就实际指挥和控制的人而言，那些没有防止这类行为或惩处犯罪者的人应承担责任。

149. 冲突日益军事化给叙利亚人民带来了灾难性后果，可能在整个区域引发悲惨后果。各方持续停火仍然是结束暴力和严重侵犯和践踏人权行为的关键。

150. 委员会重申最佳途径仍然是通过谈判解决问题，包括各方开展包容和有意义的对话，以实现反映叙利亚社会所有组成部分，包括族裔和宗教少数群体合法愿望的政治过渡。

151. 考虑到叙利亚政体和人民以及区域稳定遭到的巨大威胁，委员会再次提出之前报告中的建议，并强调以下各项。

152. 就国际社会而言：

(a) 对叙利亚冲突各方有影响的国家，特别是安全理事会常任理事国，应齐心协力向各方施加压力，以结束暴力，并启动全面的谈判，以便在叙利亚实现可持续的政治过渡进程；

(b) 联合国继续向叙利亚派驻人员对切实落实停火，以及支持叙利亚人民启动广泛、包容和可信的磋商，以便在国际法框架下实现和解、问责和赔偿至关重要。

153. 委员会建议阿拉伯叙利亚共和国：

(a) 调查本报告所载所有违反国际人权法和国际人道主义法的行为，以确保根据适当程序追究犯罪者的责任，并确保受害者能够诉诸司法并获得赔偿；

(b) 立即释放所有被任意拘留的人，公布所有拘留设施，并确保拘留条件符合适用的法律；

(c) 遵守武装冲突规则，分发交战规则，为军队和安全部队的作战行动提供指导；

(d) 允许国际社会立即进入受影响地区，为需要的人提供人道主义援助。

154. 委员会建议反政府武装：

(a) 采纳、公布并遵守符合国际人权法和国际人道主义法标准的作战规则，并追究犯罪者的责任；

(b) 向相关人道主义和人权机构提供关于被俘人员的信息，允许这些机构与被拘留者接触。

155. 委员会建议高级专员办事处继续向该区域派驻人员，以加强在阿拉伯叙利亚共和国增进和保护人权的努力。

156. 委员会建议人权理事会将本报告转交秘书长，提请安全理事会注意，以便可以根据本文所载政府军和沙比哈民兵以及反政府武装实施的侵权、虐待行为和罪行的严重性，采取适当行动。

Annexes

Annex I

[*Arabic/English only*]

Correspondence with the Government of the Syrian Arab Republic

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 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

HUMAN RIGHTS
UNITED NATIONS

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

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
البعثة الدائمة لدى مكتب الأمم المتحدة
جنيف

OHCHR REGISTRY

27 APR 2012

Recipients: MENA
HC CSARCSP

N°233/12

Geneva, 27th 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 REPUBLIQUE ARABE SYRIENNE
AUPRES DU BUREAU DES NATIONS UNIES
GENEVE

MISSION PERMANENTE
DE LA
RÉPUBLIQUE ARABE SYRIENNE
GENÈVE

الجمهورية العربية السورية
البعثة الدائمة لدى مكتب الأمم المتحدة
جنيف

الرقم: 233/٢٠١٢ التاريخ: ٢٦/٠٤/٢٠١٢

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 ١٦/٤/٢٠١٢، تتشرف بعثة الجمهورية العربية السورية بإعلام المفوضية السامية بما يلي:

١- لقد تعاملت الجمهورية العربية السورية مع الأمم المتحدة بمصداقية 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 أجندات 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 تلبيتها، وإنما هي مخططات لتدمير دولة بأكملها بمواقفها الخارجية، وذلك باستخدام العنف وارتكاب انتهاكات جسيمة وممنهجة لحقوق الإنسان من قبل المجموعات الإرهابية المسلحة،

وممولیهم 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 ارتكبته 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 واتخاذه 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 وانحيازه لأطراف لا تريد السلام لسورية، الأمر الذي يجعل اللجنة تبتعد عن الحيادية والاستقلالية في تعاطيها مع الأوضاع في سورية.

٥- أصدرت لجنة التحقيق الدولية بياناً صحفياً بتاريخ ٢٠١٢/٤/١٦ 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 تُشير 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 أعباء 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 يُدركون 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 أسمتهم "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

الآخرين، 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 تصب في الحملة التي تتعرض لها سورية.

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

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

إلى مكتب المفوضية السامية لحقوق الإنسان – جنيف

MISSION PERMANENTE DE LA REPUBLIQUE ARABE SYRIENNE
AGENCES DU BUREAU DES NATIONS UNIES
GENEVE

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

..../...

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.[1] 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

[1] 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.

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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.[2] The key point is that refugees must be allowed to return, in favourable conditions, to their homes.

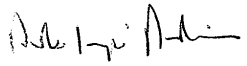
6- The Commission is doing all its possible to gather information on human rights violations in Syria, and verify their validity. The Commission appreciates the openness of the Syrian Arab Republic to transparency and its willingness to share information, data, and eye-witness account, to help us carry 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

[2] http://www.unhcr.org/4f9137529.html

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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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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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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.

HUMAN RIGHTS UNITED NATIONS

Geneva, 4 June 2012

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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 21st 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.

Paulo Sergio Pinheiro
Chairperson

H.E. Mr. Walid al-Moallem

Minister of Foreign and Expatriates Affairs

Damascus, Syrian Arab Republic

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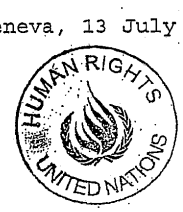
We hereby acknowledge with appreciation receipt of your Nota Verbale No. 330/12, dated 25 June 2012, relaying the contents of a DVD to the Commission. We have viewed the disk with interest and have taken note of the testimonies of the two eyewitnesses therein. We have also noted that the female of these 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 26 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).[1] 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,[2] do, in fact, meet the legal threshold for a non-international armed conflict.[3] 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.[4]

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[1] A/HRC/S-17/2/Add.1 paras. 23–26.

[2] See annex III.

[3] 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.

[4] 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.[5] 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.[6]

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.[7] The Syrian Arab Republic was also bound by relevant rules of IHRL 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."

[5] 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.

[6] *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.

[7] 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.[8] 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.[9] 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.[10]

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.[11] 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.[12]

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[8] 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.

[9] 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).

[10] 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*).

[11] 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).

[12] 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.[13] The Rome Statute had been joined by 121 countries as of July 2012.[14] 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.[15] The elements of crimes against humanity are well established in international criminal law:[16]

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.[17] The list includes a number of the violations described elsewhere in this report, for example, unlawful killings;[18] enforced disappearances;[19] torture

[13] 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).

[14] See http://www.icc-cpi.int.

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

[16] 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.

[17] 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).

[18] Listed as murder under Article 7 (1) (a) of the Rome statute. See annex V.

[19] Article 7 (1) (h) of the Rome statute. See annex VII.

and other cruel, inhuman and degrading treatment;[20] and/or rape,[21] 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".[22] 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".[23]

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.*[24]

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.[25] 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.

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[20] See annex VIII.

[21] See annex IX.

[22] 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).

[23] ICTY, *Dusko Tadic* Judgment, 7 May 1997, para. 648.

[24] 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.

[25] 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."*[26]

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

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.[29] 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.[30] 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.[31] 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.[32]

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

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[26] 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.

[27] 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.

[28] General Comment 31, para. 8.

[29] 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.

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

[31] UN Commission on Human Rights, Res.2002/79 (§589).

[32] 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.[33] 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.[34] Similarly, customary international law provides that a State is responsible for all acts committed by members of its military and security forces.[35] 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.[36] 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.[37] 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.[38]

IX. Individual responsibility

27. The principle of individual criminal responsibility for international crimes is well established in customary international law.[39] 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 committed by Government agents at all levels during the exercise of their duties. Although

[33] *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/instree/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.

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

[35] Ibid., commentary to article 7.

[36] 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.

[37] *Almonacid-Arellano et al. v. Chile*, para. 111.

[38] 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."

[39] *Prosecutor v. Tharcisse Muvunyi*, Judgement, Case No. ICTR-00-55-T, 12 September 2006, para. 459.

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 Principals)* 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.[40]

29. IHL contains provisions similarly constraining the use of force under its requirement for proportionality in attack.[41] 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.

[40] See Article 3 of the *Code of Conduct.* See generally the *Basic Principles*.
[41] 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.[42] 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.[43]

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.[44] 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.[45] 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

[42] Rome Statute, Art. 8 (2) (e) (i)–(iv).
[43] Rome Statute, Art. 8 (2) (e) (iv).
[44] Article 9 (2) ICCPR.
[45] Article 9 (3) ICCPR.

unlawful.[46] The term "arbitrary" needs to be considered in terms of appropriateness, proportionality and reasonableness.[47] Lawfulness of detention is to be considered as both lawfulness under domestic law and lawfulness under international law.[48]

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".[49] 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".[50] 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[51] — 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.[52]

D. Enforced disappearance

47. While the Syrian Arab Republic is not a party to the specialized convention concerning enforced disappearances,[53] 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,[54] 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.[55]

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[46] The ICCPR also provides for a right of compensation for unlawful arrest or detention.

[47] *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.

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

[49] 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.

[50] State of Emergency Act, art. 6.

[51] Code of Criminal Procedure, Law No. 112 of 1950 as amended, arts. 104 (1) and (2).

[52] Legislative Decree No. 55/2011, amending article 17 of the Code of Criminal Procedure.

[53] International Convention on the Protection of all Persons from Enforced Disappearance, 2006.

[54] Article 9 ICCPR.

[55] 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.[56] Customary IHL rules also include a prohibition on arbitrary deprivation of liberty[57] and require parties to the conflict to keep a register of persons deprived of their liberty,[58] 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.[59] 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.[60]

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.

[56] Article 4 (1) AP II, Common Article 3 of the four Geneva Conventions of 1949.

[57] ICRC Study, Rule 99.

[58] ICRC Study, Rule 123.

[59] Rome Statute, Art. 7 (1) (i).

[60] 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".[61] 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".[62] These provisions do not, however, further define the crime of torture.

[61] Syrian Constitution, Article 53.

[62] 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.[63]

[63] 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.[64]

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".[65] 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.[66] 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".

[64] See CRC Art. 37 (c).
[65] Rome Statute, Art. 8 (2) (e) (v).
[66] 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-Nusrah 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 Nusrah 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.[a] 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,[b] 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).[c] 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

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

[b] 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.

[c] 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.[d] 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.[e] 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.[f]

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[d] 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.

[e] UNSMIS, international human rights NGOs, journalists and the CoI have all conducted interviews during the course of their investigations into the events.

[f] 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) 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.*[g]

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.

[g] *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.

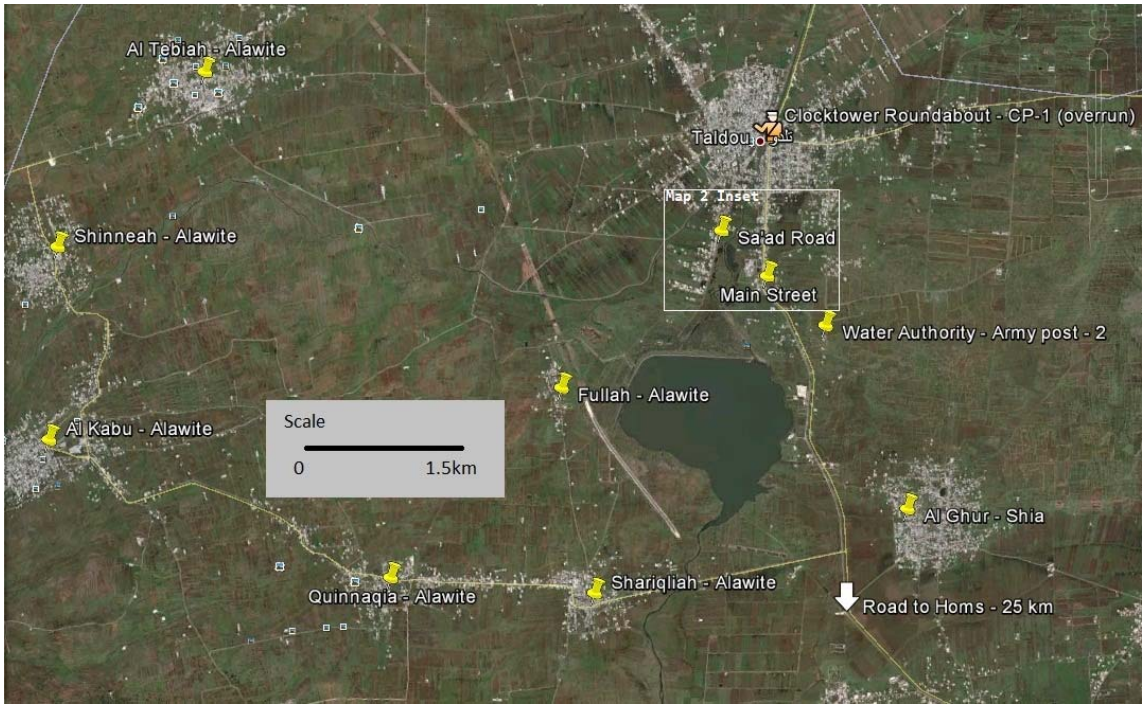
14. The Government report depicted the loyalties of the Al-Sayed family as pro-Government. Muawia Al-Sayed, who was killed alongside his son and young daughter that day, was a retired colonel in the security forces. His son Ahmad was still on active duty, but had been home on extended sick leave. The 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

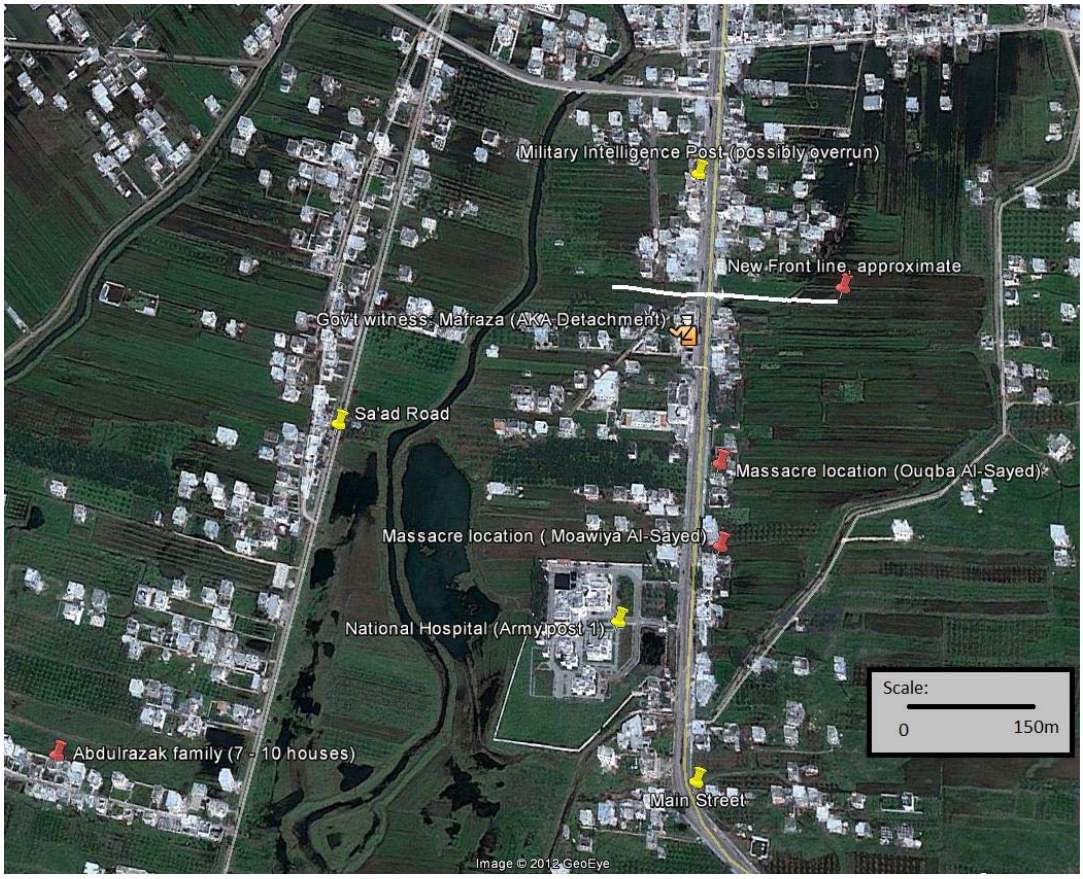
15. The continued investigation since its preliminary report of 27 June 2012, has supplemented the commission's initial understanding of the events in Al-Houla. On the basis of available evidence, the commission has a reasonable basis to believe that the perpetrators of the deliberate killing of civilians, 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.[a] It is manifestly illegal to kill a person that has been arrested or disarmed and thus poses no threat.[b] When the threshold of armed conflict is reached in a country and IHL is in effect, the applicable rules differ to a degree,[c] but the underlying principles remain. Purposefully killing a civilian[d] or *hors de combat* fighter,[e] 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.[f]

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

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[a] See annex II, paras. 30–42.

[b] 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.

[c] See annex II.

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

[e] 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.

[f] 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.[g]

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

[g] 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.

[h] 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

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.[i]

Al-Qusayr (Homs), Feb 2012[j]

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.[k]

40. Additionally, the evidence indicated that many attacks were directed against civilians and civilian objects.[l] 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.

[i] A more detailed discussion of the attack on Homs has been set out above.
[j] A more detailed discussion of the events in Al-Qusayr has been set out in annex VI.
[k] Rome statute, Art. 8 (2) (c) (i). See also annex II.
[l] 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.[m]

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 Khaldiyah 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

[m] 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[a]

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.

[a] 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".[b]

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.

[b] 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 places 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 Ladhiqiyah, Idlib, Aleppo, Dar'a and Damacus 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.[a]

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.

[a] 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.[b] 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.

[b] 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.

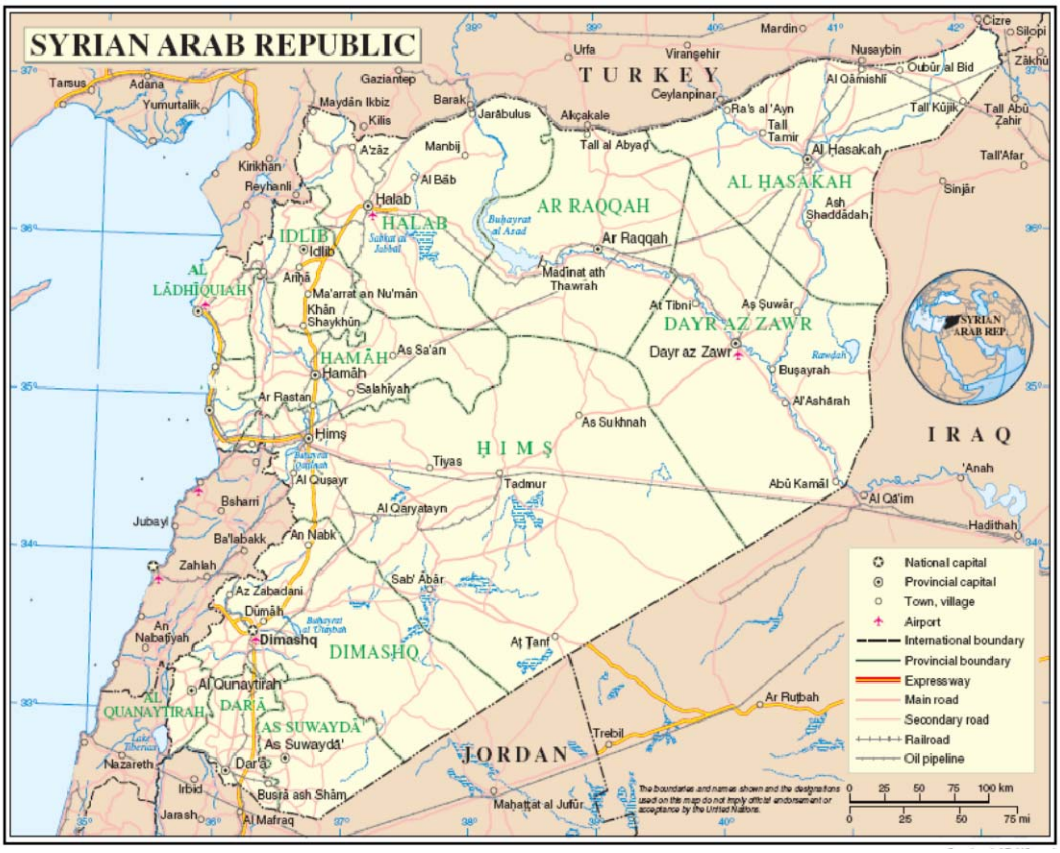
Legal conclusions

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