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Ситуации в области прав человека, требующие внимания со стороны Совета

Доклад независимой международной комиссии по расследованию событий в Сирийской Арабской Республике*

Резюме

Положение в области прав человека в Сирийской Арабской Республике резко обострилось с 15 февраля 2012 года. Возросла интенсивность вооруженного насилия, которое охватило новые районы. Между правительственными вооруженными силами (включая ополчение *шаббиха*) и антиправительственными вооруженными группами велись активные боевые действия. Спорадические столкновения между вооруженными сторонами переросли в непрерывное военное противостояние с применением более жестоких тактических мер и новых военных средств обеими сторонами. По всей стране наблюдались различные уровни вооруженного насилия.

За отчетный период комиссия по расследованию установила, что интенсивность и продолжительность конфликта в сочетании с возросшими организационными возможностями антиправительственных вооруженных групп достигла правового порогового значения немеждународного вооруженного конфликта. Поэтому в своей оценке действий сторон вооруженного противостояния комиссия руководствовалась положениями как международного гуманитарного права, так и международного права прав человека.

Комиссия установила наличие разумных оснований полагать, что правительственные вооруженные силы и *шаббиха* совершали такие преступления против человечности, как убийства и пытки, военные преступления и серьезные нарушения международного права прав человека и международного гуманитарного права, включая незаконные казни, пытки, произвольные аресты и задержания, сексуальное насилие, неизбирательные нападения, грабежи и уничтожение имущества. Комиссия установила, что правительственные вооруженные силы и ополченцы *шаббиха* несут ответственность за убийства в Эль-Хуле.

* Приложения к настоящему докладу воспроизводятся в том виде, в котором они были получены, только на том языке, на котором они были представлены.

Просьба отправить на вторичную переработку

Комиссия подтверждает свой предыдущий вывод о том, что нарушения совершались в рамках государственной политики. Крупномасштабные операции, проводимые в различных мухафазах, аналогичный способ их проведения, их сложность и взаимодействие армейских подразделений с системой безопасности указывают на причастность высшего руководства вооруженных сил и сил безопасности, а также правительства. Было установлено, что ополченцы *шаббиха* несут ответственность за совершение многих преступлений, описанных в настоящем докладе. Хотя характер, состав и структура подчинения ополченцев *шаббиха* остаются невыясненными, достоверная информация позволяет сделать вывод о том, что их действия осуществляются совместно с вооруженными силами правительства.

Комиссия установила наличие разумных оснований полагать, что военные преступления, включая убийства, внесудебные казни и пытки, совершались организованными антиправительственными вооруженными группами. Хотя эти группы и не являются сторонами Женевских конвенций, они обязаны соблюдать принципы международного гуманитарного права. Нарушения и злоупотребления, совершаемые антиправительственными вооруженными группами, не достигают степени тяжести, частотности и масштабов нарушений и злоупотреблений, совершенных правительственными вооруженными силами и ополченцами *шаббиха*.

Обе стороны нарушают права детей.

Комиссии неизвестно о каких-либо усилиях по обеспечению соблюдения международных норм, предпринимаемых будь то правительством или антиправительственными вооруженными группами с целью предотвращения или пресечения преступлений, документальные подтверждения которых представлены в настоящем докладе.

Возможности комиссии по осуществлению ее мандата были серьезно ограничены. У нее практически отсутствовал доступ к правительственным должностным лицам и военнослужащим вооруженных сил и сотрудникам сил безопасности. Следует отметить отсутствие возможности для проведения личного опроса жертв и свидетелей внутри страны.

Конфиденциальный перечень лиц и групп, предположительно ответственных за совершение преступлений против человечности, нарушение норм международного гуманитарного права и серьезные нарушения прав человека, будет представлен Верховному комиссару Организации Объединенных Наций по правам человека по окончании текущего мандата комиссии в сентябре 2012 года.

Комиссия подтверждает, что наилучшим решением является урегулирование на основе переговоров с проведением инклюзивного и конструктивного диалога между всеми сторонами, ведущего к политическому преобразованию, при котором бы учитывались законные чаяния всех слоев сирийского общества, включая этнические и религиозные меньшинства.

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I. Введение

1. Настоящий доклад представлен в соответствии с резолюцией 19/22 Совета по правам человека от 23 марта 2012 года, в которой Совет продлил мандат независимой международной комиссии по расследованию положения в Сирийской Арабской Республике, учрежденной Советом на основании его резолюции S-17/1 от 22 августа 2011 года.

2. В настоящем докладе комиссия[1] излагает свои выводы, основанные на расследованиях, проведенных до 20 июля 2012 года. В докладе использованы материалы периодических докладов с обновленной информацией комиссии, опубликованных 16 апреля и 24 мая 2012 года, а также устная обновленная информация, представленная комиссией Совету по правам человека 27 июня 2012 года (A/HRC/20/CRP.1). В нем также представлены обновленные данные специального расследования событий в Эль-Хуле, проводимого комиссией в соответствии с мандатом, предоставленном ей Советом в его резолюции S-19/1 от 1 июня 2012 года.

3. Настоящий доклад следует рассматривать совместно с предыдущими докладами комиссии (A/HRC/S-17/2/Add.1 и A/HRC/19/69) в связи с толкованием ее мандата и методов работы, а также ее фактических и правовых выводов по поводу событий, имевших место в Сирийской Арабской Республике с марта 2011 года по 15 февраля 2012 года.

A. Проблемы

4. Комиссия столкнулась с рядом проблем. Ей были предоставлены широкие полномочия − в географическом, временном и материальном плане − по расследованию всех утверждений о нарушениях прав человека, совершенных в стране с марта 2011 года. Это означало проведение расследований в условиях быстро меняющейся ситуации, которая переросла в вооруженный конфликт.

5. Ограниченность физического доступа в страну также стала серьезным препятствием для комиссии в плане осуществления ее мандата. В частности, у нее практически отсутствовал доступ к правительственным должностным лицам, военнослужащим вооруженных сил и сотрудникам сил безопасности. Следует отметить отсутствие возможности для проведения личного опроса жертв и свидетелей внутри страны, особенно лиц, предположительно пострадавших от действий антиправительственных вооруженных группировок.

6. Комиссия неоднократно обращалась с просьбами разрешить посещение страны, в том числе в своих вербальных нотах и письмах от 2 и 16 апреля, 1, 10 и 29 мая и 22 июня 2012 года (приложение I), а также во время встреч с Постоянным представителем Сирийской Арабской Республики в Женеве 26 и 30 апреля и 18 и 21 июня 2012 года. Эти усилия позволили Председателю комиссии посетить Дамаск 23−25 июня и обсудить с руководством страны ее работу, включая расследование событий в Эль-Хуле. Подробности этого визита были изложены комиссией в ее устной обновленной информации (A/HRC/20/CRP.1). Правительство пока еще не предоставило разрешения комиссии на проведение расследования на месте.

[1] В состав комиссии входят Паулу Сержиу Пиньейру (Председатель) и Кэрин Конинг Абузейд.

7. В период осуществления комиссией своего мандата правительство предоставило ей ряд документов, включая отчеты о расследованиях, проведенных национальными органами, а также списки людских потерь. Эта информация по мере необходимости отражена в настоящем докладе.

B. Методология

8. С учетом вышеупомянутых проблем комиссия стремилась адаптировать свою методологию. Продолжая усилия по отображению нарушений прав человека и других злоупотреблений, независимо от предполагаемых виновных лиц, комиссия сосредоточилась на рассмотрении наиболее серьезных утверждений. Она учитывала необходимость обеспечения защиты жертв и свидетелей, поскольку эти требования лежат в основе методологии расследования нарушений прав человека.

9. Ввиду ограниченности доступа в Сирийскую Арабскую Республику комиссия продолжала осуществлять свою деятельность в регионе с целью сбора информации из первых рук, которую сообщали лица, покинувшие страну. Начиная с 15 февраля комиссия провела на местах и из Женевы с использованием скайпа и телефона 693 опроса лиц, ставших жертвами и свидетелями событий внутри страны. Таким образом, за период после своего учреждения в сентябре 2011 года комиссия в общей сложности провела 1 062 опроса.

10. Комиссия также ознакомилась с фотографиями, видеозаписями, результатами спутниковой съемки и такими дополнительными материалами, как судебно-медицинские и медицинские отчеты. Она продолжала изучать сообщения, поступавшие из правительственных и неправительственных источников (как международных, так и представлявших сирийскую оппозицию), результаты экспертных анализов и сообщения средств массовых информации (в том числе из сирийских информационных источников), а также доклады Организации Объединенных Наций, в том числе доклады правозащитных органов и механизмов.

11. Комиссия применяла критерии доказывания, использовавшиеся в ее предыдущих докладах, а именно "наличие разумных оснований полагать". Для подтверждения информации об инцидентах Комиссия преимущественно использовала сведения, полученные "из первых рук".

12. В своих предыдущих докладах комиссия не применяла нормы международного гуманитарного права. В ходе текущего отчетного периода комиссия установила, что интенсивность и продолжительность конфликта в сочетании с возросшими организационными возможностями антиправительственных вооруженных групп достигли правового порогового значения немеждународного вооруженного конфликта. Исходя из этого, при осуществлении оценки действий сторон в ходе боевых действий комиссия применяла нормы международного гуманитарного права (см. также приложение II).

13. Комиссия продолжала взаимодействие с представителями государств-членов, органами Организации Объединенных Наций и другими международными и региональными организациями. Она выражает признательность всем тем, кто сотрудничал с ней в целях осуществления ее мандата, прежде всего жертвами и свидетелями нарушений прав человека и других злоупотреблений.

II. Контекст

A. Политическая обстановка

14. На протяжении всего отчетного периода продолжались усилия, направленные на поиск урегулирования кризиса в Сирийской Арабской Республике. Правительство предприняло ряд политических и управленческих реформ, в то время как Организация Объединенных Наций и Лига арабских государств 23 февраля 2012 года совместно назначили своего специального посланника Кофи Аннана. Эти усилия увенчались незначительным прогрессом из-за эскалации насилия и значительного ухудшения положения в стране.

15. Инициативы в области реформ включали в себя референдум по вопросу о новой конституции, проведенный 26 февраля 2012 года, парламентские выборы, состоявшиеся 7 мая, и назначение нового правительства 23 июня. Эти события предоставили возможность для введения политического плюрализма и осуществления демократического политического процесса. Вместе с тем их не расценили в качестве достаточно далеко идущих шагов, способных удовлетворить требования растущего протестного движения в стране или находящихся в ссылке оппозиционеров.

16. Президенту Башару аль-Асаду не удалось привлечь оппозицию к проведению конструктивного диалога. Выборы бойкотировались оппозицией, а их результаты сохранили превосходство партии Баас в парламенте, а также в составе нового правительства, в связи с чем не удалось привлечь новые политические силы в органы управления. Эти события усугубили раскол среди различных слоев населения и оппозиционных групп.

17. В результате усилий международного сообщества, предпринятых через совместного специального посланника, 10 марта 2012 года был подготовлен план из шести пунктов. Этот план предусматривал меры по обеспечению прекращения насилия всеми сторонами и приверженности политическому урегулированию. 12 апреля вступило в силу соглашение о прекращении огня, после чего 21 апреля Советом Безопасности состоялось развертывание Миссии Организации Объединенных Наций по наблюдению в Сирийской Арабской Республике (МООННС) на первоначальный период в 90 дней для контроля за осуществлением плана. Прибытие наблюдателей МООННС вначале позитивно повлияло на положение на местах, и насилие в апреле пошло на спад. Однако позднее военные операции активизировались до такой степени, что к 15 июня МООННС была вынуждена временно приостановить свою деятельность. 20 июля мандат МООННС был продлен на окончательный 30-дневный срок. Для его дальнейшего возобновления было поставлено условие о прекращении использования тяжелых вооружений и сокращении насилия всеми сторонами.

18. Оппозиционные группы, представленные в Сирийском национальном совете, отказались вступать в переговоры с Президентом Асадом, призвав его уйти в отставку. И Сирийский национальный совет, и Свободная сирийская армия (ССА) согласились с планом из шести пунктов, в том числе с прекращением огня. В марте между Советом и ССА было подписано соглашение о сотрудничестве в области выделения средств ССА через соответствующего координатора в Совете; однако оно не было выполнено, и каждая группа продолжала действовать самостоятельно.

19. Международное сообщество заняло различные позиции по вопросу о том, каким образом следует урегулировать этот конфликт. Одни государства потре-

бовали незамедлительной отставки Президента; другие сосредоточились на предотвращении любых форм вмешательства извне. Третьи продолжали осуществлять военные поставки правительству. Иные же призывали обеспечить финансирование антиправительственных вооруженных групп и предоставляли им средства связи и материальную поддержку. Предполагаемое присутствие иностранных советников стало еще одним предметом разногласий между государствами наряду с вопросом о применении санкций. Неопределенность международного контекста подорвала усилия совместного специального посланника по достижению политического урегулирования конфликта.

20. 30 июня 2012 года совместный специальный посланник созвал совещание группы действий в составе представителей Организации Объединенных Наций, Лиги арабских государств и Европейского союза, а также стран, способных оказать влияние на стороны конфликта, включая пять постоянных членов Совета Безопасности. В принятом коммюнике группа действий подтвердила приверженность плану из шести пунктов и определила принципы и руководящие положения для политических преобразований, осуществляемых Сирией. Оппозиционные группы подвергли критике предлагаемые преобразования за предоставление Президенту Асаду возможности участвовать в составе переходного правительства. На совещании, состоявшемся 2 и 3 июля в Каире под эгидой Лиги арабских государств, сирийская оппозиция изложила свою общую точку зрения на процесс политических преобразований, а также на национальный пакт, устанавливающий справедливость, демократию и плюрализм в качестве конституционных основ будущей Сирии. Вместе с тем представителям оппозиции не удалось договориться по вопросу об избрании такого органа, который представлял бы их интересы на международном уровне.

B. Военная ситуация[2]

21. За отчетный период наблюдалось значительное ухудшение ситуации с точки зрения безопасности, при этом возрастала интенсивность вооруженного насилия, которое распространялось на новые районы. Между правительственными вооруженными силами (вместе с проправительственным ополчением) и антиправительственными вооруженными группами велись все более активные боевые действия. Спорадические столкновения между вооруженными субъектами переросли в непрерывное военное противостояние с применением более жестоких тактических мер и новых военных средств обеими сторонами. По всей стране наблюдались различные уровни вооруженного насилия.

22. Правительство стало все чаще использовать свои войска и тяжелые вооружения в операциях против районов, предположительно поддерживающих оппозиционные группы. К проведению военных операций привлекались все армейские подразделения и службы безопасности. Как правило, подобные операции начинаются с оцепления намеченного района контрольно-пропускными пунктами, после чего проводится артиллерийский обстрел в качестве подготовки к вторжению наземных сил с целью вытеснения повстанцев и их сторонников. Кроме того, артиллерийский обстрел также используется в условиях прямых столкновений и в операциях по подавлению демонстраций. Силы и средства авиации также используются против комбатантов и безоружных демонстрантов в местах, находящихся под контролем вооруженных групп.

[2] См. также приложение III.

23. Правительственные вооруженные силы сосредоточили свои основные усилия на обеспечении контроля над основными городами, такими как Дамаск, Алеппо, Хомс и Хама. Нападения на районы, в которые предположительно проникли антиправительственные вооруженные группы, сопровождались таким непредусмотренным результатом, как возросшая поддержка местного населения этим группам. В ходе многочисленных операций было убито значительное число комбатантов и гражданских лиц.

24. Проправительственные вооруженные формирования, включая *шаббиху*, предположительно действуют совместно с правительственными войсками при проведении операций по обеспечению безопасности и военных операций. Точные данные относительно их характера, численности и связей с правительством по-прежнему отсутствуют.

25. Вооруженные силы испытывают возросшее сокращение личного состава и вооружений в результате боевых операций, дезертирства и людских потерь. Дезертирство оказывает психологическое воздействие на войска, усугубляя кризис доверия в рядах вооруженных сил и способствуя дальнейшему дезертирству. Правительство также испытывает трудности с призывом новобранцев, поскольку многие из тех, кого призывают на обязательную военную службу, отказываются подчиняться.

26. Антиправительственные вооруженные группы распространили свои действия на всю страну, сражаясь с правительственными вооруженными силами на множестве фронтов одновременно. На момент составления доклада они участвовали в продолжительном вооруженном противоборстве в столице, создавая зоны безопасности на остальной территории страны. По поступающим данным в состав некоторых из вооруженных групп входят иностранные боевики.

27. ССА приняла меры по устранению явных недостатков в своей в целом эффективной командной структуре. В некоторых мухафазах ССА образовала местные военные советы, претендующие на осуществление руководства над сражающимися в этих районах группами. Многие группы заявляют о своей принадлежности к ССА, в то время как другие группы существуют без каких-либо явных связей с ней.

28. Антиправительственные вооруженные группы проводят боевые действия с правительственными войсками в виде прямых столкновений, засад и рейдов. Хотя расследования не подтвердили использования антиправительственными вооруженными группами новейших современных вооружений, их доступность и навыки по эффективному применению имеющихся вооружений возрастают. Предположительно увеличивается объем поступающих к ним финансовых и материально-технических средств.

29. Комиссия отметила возросшее и эффективное применение самодельных взрывных устройств против автоколонн, поисковых групп и боевых средств правительственных вооруженных сил. Они также используются против военнослужащих, сотрудников сил безопасности и правительственных должностных лиц.

30. В стране действует ряд радикальных исламских вооруженных групп. Наиболее влиятельной из них является, предположительно, связанная с Аль-Каидой организация Фронт освобождения народа Леванта Ан-Нусра, которая взяла на себя ответственность за совершение ряда нападений, включая использование террористов-смертников, против правительственных вооруженных сил и высокопоставленных должностных лиц.

31. В ряде мухафаз имеются также группы самообороны. Некоторые из этих групп появились в деревнях, населенных, предположительно, проправительственными меньшинствами.

C. Социально-экономическая и гуманитарная ситуация

32. Кризисная ситуация ускорила спад экономики государства. Она обострила ситуацию в отношении нищеты и безработицы, которая на протяжении десятилетия ухудшалась в результате засухи в сельскохозяйственных районах и привела к перемещению фермеров в города и возросшей неприязни по отношении к тем, кто действительно или предположительно пользовался экономическими благами, распределяемыми правительством. По данным Международного валютного фонда, экономика Сирийской Арабской Республики значительно сократится в 2012 году, преимущественно в результате санкций. Резкий спад экономического роста сопровождался такими тревожными показателями, как девальвация сирийского фунта, который с момента начала текущих событий утратил 30% своей стоимости, и инфляция, которая превысила 50%[3].

33. Милитаризация конфликта усугубила гуманитарный кризис. Тысячи сирийцев стали внутренне перемещенными лицами или устремились в соседние страны. На момент составления доклада, по оценкам Верховного комиссара Организации Объединенных Наций по делам беженцев (УВКБ ООН), 1,5 млн. человек подверглись перемещению внутри страны. Сирийское население все чаще обращается за помощью к Сирийскому Арабскому Красному Полумесяцу, Всемирной продовольственной программе и к другим организациям[4]. К июлю 114 208 сирийцев были зарегистрированы в качестве получающих помощь беженцев в четырех соседних странах (42 682 − в Турции, 34 050 − в Иордании, 29 986 − в Ливане и 7 490 − в Ираке)[5]. Беженцы внутри Сирийской Арабской Республики, включая приблизительно 500 000 палестинцев и более 103 000 зарегистрированных иракских беженцев[6], также затронуты сложившейся ситуацией. По сообщениям УВКБ ООН более 13 000 иракских беженцев покинули Сирийскую Арабскую Республику в первой половине 2012 года; большинство из них возвратились в Ирак[7].

34. 16 июля Комиссия получила от правительства Сирийской Арабской Республики информацию, согласно которой в отношении страны установлено "более 60 пакетов незаконных односторонних принудительных санкций со стороны Соединенных Штатов Америки, Европейского союза, Лиги арабских государств, Турции, Швейцарии, Канады, Австралии, Японии и других". По мнению правительства, эти санкции, нацеленные на подрыв экономической, финансовой и сельскохозяйственной жизни страны, равносильны коллективному наказанию сирийского народа. Особое сожаление правительство выразило по поводу санкций, наложенных на импорт нефтепродуктов, включая бытовой газ и топливный мазут, что серьезно затронуло повседневную жизнь обычных си-

[3] Matthew Epstein and Ahmed Saeed, "'Smart' sanctions take toll on Syria", *Financial Times*, 18 July 2012.

[4] UNCHR, "UNHCR gravely concerned about dramatic escalation of Syria exodus", 20 July 2012, размещено по адресу: www.unhcr.org/50094bdcb.htm.

[5] См. UNHCR, Syria Regional Refugee Response, data.unhcr.org/syrianrefugees/regional.php.

[6] По оценкам правительства Сирийской Арабской Республики, число иракских беженцев в стране составляет более 1 млн.

[7] OCHA, Humanitarian Bulletin, Syria, No. 3, 5 July 2012.

рийцев. Предметом осуждения также стали негативные последствия санкций, в том числе для государственной и частной банковских систем, экспорта нефти и импорта медицинских препаратов.

35. Сообщения опрошенных лиц показали, что от нехватки продовольствия, топлива, воды, электричества и медицинских препаратов страдают целые общины. Перебои в снабжении особо остро ощущаются в таких мухафазах, как Хомс, Идлиб, Деръа и Хама. Люди, вынужденные из-за боевых действий покинуть свои дома, остро нуждаются в жилище. По данным Управления по координации гуманитарных вопросов, число лиц, нуждающихся в безотлагательной помощи, резко возросло с приблизительно 1 млн. до 1,5 млн. человек[8] и продолжает неуклонно возрастать.

36. Четвертое совещание Сирийского гуманитарного форума, состоявшееся 16 июля 2012 года, заключило, что ухудшение гуманитарной ситуации является предметом серьезной озабоченности международного сообщества. Ситуация с безопасностью ограничивала возможности гуманитарных работников по оказанию помощи нуждающемуся населению. Два призыва к оказанию гуманитарной помощи беженцам в соседних странах и внутренне перемещенным лицам, а также другим нуждающимся внутри Сирийской Арабской Республики обеспечили лишь 20% от необходимого финансирования[9].

III. Выводы

37. Хотя основное внимание комиссии было сосредоточено на наиболее серьезных нарушениях прав человека, она хотела бы отметить общее ухудшение ситуации в области прав человека. В дополнение к праву на жизнь и праву на свободу и личную безопасность продолжают нарушаться другие основные права человека. Возросшее насилие еще более ограничило свободу выражения мнений и свободу ассоциации и мирных собраний, нарушение которых послужило стимулом к началу восстания в марте 2011 года. Сирийское население в целом лишено основных экономических, социальных и культурных прав. Как уже отмечалось в предыдущих докладах комиссии, она по-прежнему серьезно обеспокоена повсеместной атмосферой безнаказанности за нарушения права прав человека.

A. Людские потери

38. В представленной правительством информации указано, что по состоянию на 9 июля 2012 года в результате восстания были убиты 7 928 человек, включая военнослужащих правительственных вооруженных сил и гражданских лиц.

39. Подсчетом людских потерь с использованием различных методов занимаются также и другие образования, в частности сирийские неправительственные организации и оппозиционные группы, включая местные координационные комитеты, Центр документации по нарушениям в Сирии, Сирийская сеть по правам человека и Сирийская организация по наблюдению за соблюдением

[8] OCHA, Humanitarian Bulletin, Middle East and North Africa, No. 2, May–June 2012.

[9] “Critical funding shortage threatens humanitarian response for Syria – UN official”, UN News Centre, 16 July 2012.

прав человека. Сообщаемые ими данные находятся в пределах от 17 000 до 22 000 человек. Комиссии не удалось подтвердить эти цифры.

40. Комиссия зарегистрировала многочисленные людские потери в результате инцидентов по всей стране. Она сообщает о смерти только тех лиц, о которых ею была получена информация из первых рук во время опросов, проведенных ее дознавателями. В данных комиссии не проводится различий между гражданскими лицами и комбатантами. Раненые не учитываются. В результате опроса жертв и свидетелей событий, имевших место с 15 февраля по 20 июля, комиссия подтвердила 840 случаев смерти.

B. Специальное расследование событий в Эль-Хуле

41. 27 июня 2012 года комиссия представила Совету по правам человека свои предварительные выводы (A/HRC/20/CRP.1), основанные на свидетельских показаниях, полученных вплоть до 22 июня. В своем докладе комиссия пришла к заключению о том, что правительство несет ответственность за гибель гражданских лиц в результате обстрела района Эль-Хула и, в частности, поселка Талду. Она также установила, что проведенное правительством расследование не соответствовало уровню международных норм в области прав человека. В отношении преднамеренного убийства гражданских лиц комиссии не удалось установить личности тех, кто совершал эти деяния. Тем не менее она пришла к заключению о том, что ответственность за многие случаи смерти очевидно несут силы, лояльные по отношению к правительству.

42. Несмотря на конкретный запрос, направленный правительству в вербальной ноте от 4 июня 2012 года (приложение I), и личную просьбу председателя комиссии во время его визита в Дамаск 24 и 25 июня, доступа в страну предоставлено не было. Правительство не подготовило окончательного отчета о своем собственном расследовании и не указало, когда можно будет ожидать его получения.

43. Комиссия провела восемь дополнительных бесед, в том числе опросила шесть свидетелей, находившихся в районе поселка Талду, из которых двое являлись выжившими жертвами. Она изучила другие материалы, включая видеозаписи и спутниковые изображения. Кроме того, она рассмотрела аналитические материалы, поступившие из других источников.

44. Комиссия рассмотрела результаты 47 опросов, поступившие из разных источников. Данные опросов совпадали в изложении событий и в описании совершавших противоправные деяния лиц, как военнослужащих правительственных вооруженных сил или ополченцев *шаббиха*. За исключением двух свидетелей, фигурировавших в докладе правительства, и в одном из других описаний представленная правительством версия событий не подтверждалась. Комиссия тщательно рассмотрела показания этих двух свидетелей, изложенные в этом докладе, и сочла их отчеты недостоверными в силу ряда неточностей (см. также приложение IV). Отчеты других свидетелей, опрошенных разными дознавателями, согласовались друг с другом, в том числе сведения, полученные от детей, несмотря на тот факт, что такие опросы проводились спустя продолжительный период времени.

45. В своем устном изложении обновленной информации Совету по правам человека комиссия установила, что антиправительственные вооруженные группы, правительственные вооруженные силы и *шаббиха* могли бы иметь доступ к двум местам совершения преступлений: первое представляло собой семь до-

мов, в которых проживало семейство Абдулраззак по адресу на Саад Роуд (Тарик ас-Сад) и второе − два дома, в которых проживало семейство Ас-Саида по адресу Мейн Стрит (Аш-Шаръи ар-Раиси), напротив государственной больницы[10]. Комиссии удалось установить, что в день инцидента контрольно-пропускной пункт в Эль-Кауз, который ближе всего расположен к дому семейства Ас-Саида, оставался под контролем правительства. Линия фронта между оппозицией и правительственными силами проходила к северу от контрольно-пропускного пункта. Поэтому комиссия сочла весьма маловероятным, что в день убийств антиправительственная вооруженная группа получила бы доступ к дому Ас-Саида.

46. В том что касается места проживания семейства Абдулраззак, где было убито более 60 человек, комиссия пришла к заключению о том, что для совершения этого преступления потребовалось бы значительное число лиц. Благодаря данным спутниковой съемки и дополняющим их отчетам комиссия установила, что перемещение транспортных средств или вооружений, а также размер группы могли быть легко обнаружены правительственными вооруженными силами, размещенными на позиции вблизи водохозяйственного объекта. В этой связи комиссия сочла, что доступ к месту преступления для какой-либо значительной антиправительственной вооруженной группы был невозможен.

47. К тому моменту, когда произошли эти инциденты, государственная больница была занята вооруженными силами уже в течение нескольких месяцев. Хотя до нее можно было добраться пешком с обоих мест преступления, ни один человек, будь то раненый или спасающийся бегством с места преступления, не попытался укрыться в ней или обратиться за медицинской помощью. Насколько удалось установить комиссии, все раненые и их родственники, а также жители близлежащих домов направились в районы, контролируемые оппозицией. Ни один из раненых не обратился за медицинской помощью в государственную больницу. В правительственном отчете семья Ас-Саида охарактеризована как лояльная по отношению к правительству, однако выжившие члены семьи пытались спастись в окрестностях Талду, контролируемых оппозицией, предпочтя не обращаться за помощью к находившимся рядом правительственным вооруженным силам.

48. Комиссия по-прежнему считает, что правительство не выполнило своего предусмотренного законом обязательства по расследованию убийств, имевших место в Эль-Хуле 25 мая 2012 года.

49. На основе имеющихся свидетельских показаний комиссия пришла к заключению о наличии элементов военного преступления, а именно убийства. Убийство множества гражданских лиц, включая женщин и детей, было преднамеренным и связанным с текущим вооруженным конфликтом. Имеются достаточные основания полагать, что лица, совершившие эти преступления в обоих местах проживания семейств Абдулраззак и Ас-Саид, являлись военнослужащими правительственных вооруженных сил и ополченцами *шаббиха*.

50. Имеются также разумные основания полагать, что эти акты составляли звено в цепи нападений на гражданских лиц и как таковые позволили отчасти прийти к заключению (см. раздел C ниже) о том, что эти преступления против человечности были совершены правительством и ополченцами *шаббиха*.

[10] См. A/HRC/20/CRP.1, para. 44 and annex.

C. Незаконные казни[11]

51. За отчетный период был отмечен значительный рост случаев нападения на гражданских лиц, убийств и внесудебных казней. Комиссия провела приблизительно 300 опросов в ходе расследования случаев предполагаемых незаконных казней гражданских лиц и комбатантов, не участвующих в боевых действиях. Инциденты, имевшие место при описанных ниже обстоятельствах, были подтверждены в многочисленных отчетах[12]. Хотя обе стороны конфликта совершали незаконные казни, согласно имеющейся информации по своей тяжести, частоте и масштабам нарушения, совершенные правительственными вооруженными силами и ополченцами *шаббиха*, значительно серьезнее нарушений, совершенных антиправительственными вооруженными группами.

1. Правительственные вооруженные силы и *шаббиха*

52. Большинство незаконных казней имело место в ходе ударов по опорным пунктам антиправительственных вооруженных групп. По наиболее распространенной схеме удары начинались с блокады района и его обстрела[13], за которыми следовал штурм наземными войсками, в том числе подразделениями специального назначения и ополченцами *шаббиха*. Активно использовались снайперы[14]. Осуществляя зачистку какого-либо района, правительственные вооруженные силы методично обыскивали дома. В ходе этих операций производился систематический поиск дезертиров, активистов и мужчин боеспособного возраста. Раненые или захваченные антиправительственные комбатанты подвергались казни. В некоторых случаях также производились казни родственников комбатантов, дезертиров и активистов, либо других лиц явно по произвольному выбору.

53. Такая схема, в частности, использовалась в Тремсехе, Эль Кубейре, Эль-Хуле, Кили, Тал Рифате, Тафтаназе, Сармине, Аин Ларузе, Атарибе, Абдите, Хомсе и Эль-Кузейре.

54. Чрезмерная сила по-прежнему применялась против демонстрантов, осуществлявших свое право на мирный протест в Эль-Камишли в марте и в Дамаске, Алеппо и Джабаль-эз-Завия в апреле.

55. Комиссия установила, что случаи незаконных казней, описанные в настоящем докладе, дают разумные основания полагать, что правительственные вооруженные силы и ополченцы *шаббиха* нарушали положения международного права прав человека, защищающие право на жизнь. Кроме того, многие из таких убийств содержат элементы такого военного преступления, как убийство, предусмотренное международным уголовным правом[15].

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[11] См. также приложение II, пункты 30−42.

[12] С полным описанием расследованных комиссией незаконных казней можно ознакомиться в приложении V.

[13] Более подробная информация об обстрелах содержится в приложении VI.

[14] Снайперы регулярно сопровождали войска во время наземных ударов, и на них приходится значительное число жертв из числа гражданских лиц. Комиссия зарегистрировала 35 случаев, когда гражданские лица были застрелены снайперами. Десятки опрошенных лиц сообщили о пагубных психологических и социальных последствиях присутствия снайперов в их районах. Люди боялись покидать свои жилища, а когда начинался артиллерийский обстрел, опасались оставаться в домах.

[15] Римский статут, статья 8 2), c), i) − 1. См. также приложение II, пункты 30−42.

56. Часто удары были направлены против гражданских лиц и гражданских объектов. Хотя заявленной целью правительства являлось нанесение ударов по "террористам", такие удары были направлены на кварталы, населенные пункты и районы с гражданским населением (см. приложение VI). В этой связи комиссия приходит к выводу о наличии разумных оснований полагать, что во многих случаях имело место военное преступление, заключающееся в нападении на гражданских лиц.

57. Существуют также разумные основания полагать, что документально подтвержденные инциденты представляют собой преступления против человечности, состоящие в убийстве. В городах и деревнях, где применялась схема блокады, артиллерийского обстрела, наземного штурма и повального обыска домов, создавались ситуации, отвечающие критерию широко распространенного или систематического нападения на преимущественно гражданское население. Масштабы ударов, их повторяющийся характер, уровень постоянного применения чрезмерной силы, неизбирательный характер обстрелов и скоординированность нападений побудили комиссию сделать вывод о том, что эти действия совершались в рамках государственной политики.

2. Антиправительственные вооруженные группы

58. Несмотря на ограниченный доступ к жертвам антиправительственных вооруженных групп, комиссии удалось документально подтвердить случаи убийства антиправительственными боевиками захваченных правительственных солдат, ополченцев *шаббиха* и лиц, признавших свое участие в военных операциях (см. приложение V). Хотя в отношении таких негосударственных субъектов, как антиправительственные вооруженные группы, применяется иной правовой режим с точки зрения права прав человека, нормы международного гуманитарного права применяются одинаково ко всем участникам конфликта.

59. Комиссия рассмотрела подтвержденные доказательства убийства военнослужащих, не принимавших участия в боевых действиях, и ополченцев *шаббиха*. Комиссия отметила, что в Эль-Кусейре, Боб Амри, Кальдие и в некоторых других местах лица, захваченные антиправительственными вооруженными группами, иногда подвергались квазисудебному разбирательству до их казни. Не удалось получить достоверных сведений о судебной процедуре, равно как и информации о том, насколько соблюдались нормы справедливого судебного разбирательства. Казнь заключенного без предоставления основополагающих судебных гарантий представляет собой военное преступление.

60. Комиссия пришла к заключению о том, что информация о казнях, совершенных антиправительственными вооруженными группами − при наличии или отсутствии "суда" − дает разумные основания полагать, что в ряде случаев были совершены военные преступления убийства или вынесение и приведение в исполнение смертного приговора без соблюдения норм отправления правосудия. Комиссия не имела возможности подтвердить ни предполагаемые нападения на отдельных гражданских лиц, не участвовавших в боевых действиях, ни против гражданского населения.

3. Неизвестные исполнители

61. Комиссия установила, что множество гражданских лиц погибло в период с марта по июль в результате девяти взрывов, совершенных неизвестными ис-

полнителями[16]. Эти взрывы, очевидно, были совершены террористами-смертниками или же с применением самодельных взрывных устройств, включая заминированные автомобили.

62. Хотя вышеупомянутые деяния, вероятно, были связаны с немеждународным вооруженным конфликтом и, таким образом, оцениваются в соответствии с международным гуманитарным правом, ограниченный доступ к местам совершения преступлений в сочетании с отсутствием информации об исполнителях лишают комиссию возможности провести подобную оценку. Тем не менее существуют внутригосударственные преступления, подлежащие преследованию в соответствии с сирийским Уголовным кодексом. Правительство обязано обеспечить проведение беспристрастного, незамедлительного, эффективного и независимого расследования в соответствии с его обязательствами по международному праву прав человека.

D. Произвольное задержание и насильственное исчезновение[17]

63. Комиссия опросила 25 человек, предположительно подвергшихся произвольному аресту и незаконному задержанию. Еще пять бесед было проведено с дезертирами, утверждавшими, что они являлись свидетелями произвольных арестов и задержаний в то время, когда они находились на активной службе.

64. По информации правительства, с февраля 2011 года по четырем амнистиям были освобождены более 10 000 человек, включая 275 человек, освобожденных 10 июля 2012 года. В своем докладе об осуществлении резолюции 2043 (2012) (S/2012/523) Совета Безопасности Генеральный секретарь отметил, что МООННС наблюдала освобождение 468 заключенных в Деръа, Дамаске, Хама, Идлибе и Дьер эз-Зуре 31 мая и 14 июня 2012 года.

65. Официальных статистических данных по числу задержанных лиц и центров содержания под стражей правительство до сих пор не предоставило. На 25 июня МООННС получила и перепроверила информацию о 2 185 задержанных лицах и 97 местах содержания под стражей по всей стране. Сирийские неправительственные организации сообщают, что число лиц, в настоящее время содержащихся под стражей, достигает 26 000. Комиссия не имела возможности подтвердить число арестованных и задержанных лиц.

66. Большинство арестов было произведено в четырех ситуациях: это аресты лиц, предположительно собиравшихся дезертировать или отказавшихся выполнять приказы (обычно открыть огонь по гражданскому населению); аресты во время обыска домов; на контрольно-пропускных пунктах и аресты среди участников протестных акций, как во время, так и после демонстраций. В ряде случаев аресты производились произвольно в районах, где не проводилось активных боевых действий. Согласно сообщениям, четверо из арестованных подобным образом лиц составляли женщины. Двое являлись детьми − 14-летний мальчик и 9-летняя девочка.

67. Ни одному из опрошенных лиц не предоставлялась возможность обратиться за помощью к адвокату или получить такую помощь. За одним исключением никто из них не получал свиданий с родственниками. Только двое из опрошенных, арестованные по подозрению в намерении дезертировать, получили официальное обвинение в совершении правонарушения.

[16] См. приложение V, пункт 55.
[17] См. также приложение VII.

68. Многие утверждали, что до освобождения их заставляли подписать или заверить отпечатком пальца документ, содержание которого им было неизвестно. Трое из задержанных были доставлены к судье, а затем освобождены. В одном неподтвержденном случае опрошенный заявил, что, хотя судья и приказал освободить его, он оставался под стражей еще в течение трех месяцев. Был также опрошен один бывший судья, который заявил, что агенты органов безопасности запрещали проводить допрос без своего присутствия, а однажды угрожали ему применением оружия.

69. Опрошенные лица сообщили, что срок их пребывания под стражей составлял от нескольких часов до пяти месяцев. Большинство из них находилось под стражей в течение 60 дней или меньше.

70. Комиссия считает, что внутреннее законодательство Сирийской Арабской Республики (см. приложение II) не соответствует ее обязательствам по статье 9 Международного пакта о гражданских и политических правах обеспечить, чтобы каждое арестованное или задержанное по уголовному обвинению лицо "в срочном порядке доставлялось к судье или другому должностному лицу, которому принадлежит по закону право осуществлять судебную власть".

71. Существуют разумные основания полагать, что правительственные вооруженные силы подвергали отдельных лиц произвольному аресту и задержанию. Особую обеспокоенность вызывает помещение под стражу без предъявления обвинений, непредоставление задержанным лицам возможности встретиться с адвокатом или с родственниками, а также отсутствие в большинстве случаев возможности пересмотра судебного решения в какой бы то ни было форме.

72. В том что касается насильственного исчезновения, семьи арестованных лиц не уведомлялись о времени ареста или впоследствии о месте содержания под стражей их родственников. В большинстве случаев семьям не было ничего известно о месте содержания под стражей их родственников.

73. Если правительство отказывается признать арест и помещение под стражу или сообщить о судьбе соответствующего лица, в этом случае имеет место преступление, состоящее в насильственном исчезновении.

E. Пытки и другие виды неправомерного обращения[18]

1. Правительственные вооруженные силы и *шаббиха*

74. С 15 февраля 2012 года комиссия опросила 81 человека в связи с утверждениями о пытках и других видах жестокого, бесчеловечного или унижающего достоинство обращения. Пятьдесят девять опросов касались событий, имевших место в отчетный период. Комиссия не имела возможности посетить центры содержания под стражей для того, чтобы опросить задержанных лиц или ознакомиться с условиями содержания под стражей.

75. Тридцать из 59 вышеупомянутых опрошенных лиц заявили, что они были арестованы и/или помещены под стражу правительственными вооруженными силами или ополченцами *шаббиха*. Все, за исключением одного, сообщили, что во время содержания под стражей они подвергались физическому насилию. Еще 19 опрошенных лиц указали, что они являлись свидетелями того, как задержанных лиц подвергали пыткам или неправомерному обращению; сюда относятся 10 лиц, которые несли службу в центрах содержания под стражей или

[18] См. также приложение VIII.

на контрольно-пропускных пунктах, прежде чем дезертировать. Комиссия, по возможности, осматривала раны или шрамы предполагаемых жертв.

76. Хотя большинство задержанных пребывало в официальных местах содержания под стражей, шестеро заявили о том, что их содержали в таких неофициальных помещениях, как жилые дома, прежде чем перевести в официальные центры. Опрошенные лица сообщили, что в неофициальных центрах они подвергались жестокому обращению со стороны солдат и ополченцев *шаббиха*. Еще девять опрошенных сообщили, что они подверглись избиениям и нападениям во время обыска домов или на контрольно-пропускных пунктах либо являлись свидетелями нападения на других лиц. Никого из этих девяти лиц впоследствии не поместили под стражу.

77. Согласно сообщениям по всей стране применялись схожие методы пыток. Опрошенные лица описывали жестокие удары по голове и туловищу, наносимые электропроводами, кнутами, металлическими и деревянными палками и ружейными прикладами, ожоги от сигарет, избиения ногами, а также применение электрошока в чувствительных местах тела, включая половые органы. Шестеро из опрошенных указали, что во время допроса они теряли сознание.

78. Были получены многочисленные сообщения об избиении задержанных по ступням ног (*фалака*). Повсеместно применялась практика продолжительного удержания в неудобном положении, включая подвешивание за запястья к стене и потолку (*шабех*) или подвешивание за запястья, связанные за спиной. Также использовались такие методы, при которых заключенных заставляли нагибаться и вставлять голову, шею и ноги в автомобильную покрышку, подвергая их при этом избиениям (*дулаб*); заключенных также привязывали к доскам с головой навесу и либо растягивали, либо складывали пополам. Некоторые задержанные подвергались изнасилованиям и другим видам сексуального насилия[19]. На многих из опрошенных были видны шрамы и ранения, подтверждающие их заявления.

79. Некоторые из установленных видов пыток и неправомерного обращения не имели вещественных доказательств. Задержанных лиц насильно обривали, заставляли лаять по-собачьи и повторять, что "нет Бога, кроме Башара". Другие опрошенные лица сообщили, что их заставили раздеться и оставаться обнаженными в течение продолжительного времени. Трое из опрошенных заявили, что им угрожали казнью. Один сообщил, что он присутствовал при том, как другому задержанному угрожали сексуальным надругательством; еще один заявил о том, что лица, проводившие допрос, угрожали арестовать и изнасиловать его родственниц.

80. Шестерых опрошенных лиц перемещали между многочисленными местами лишения свободы, находившимися в ведении различных разведывательных служб. Один из опрошенных сообщил, что его перемещали между 10 различными центрами, расположенными в четырех мухафазах, на протяжении пяти месяцев. Другого опрошенного несколько раз перемещали между четырьмя различными центрами в Деръа и Дамаске. При многочисленных перемещениях опрошенные лица подвергались физическому насилию в каждом из таких мест.

81. Большинство задержанных сообщили о том, что их содержали в небольших переполненных камерах. Двое из опрошенных указали, что камеры были настолько переполненными, что в них невозможно было ни сидеть, ни лежать. Все, кроме одного из опрошенных, сообщили о недостаточности и плохом каче-

[19] См. также приложение IX.

стве питания и воды. Один из опрошенных заявил, что, поскольку его содержали без воды в течение недели, он был вынужден пить собственную мочу. Несколько опрошенных указали, что в их камерах отсутствовали туалеты. Четверо опрошенных описали камеры, кишащие насекомыми и вшами. Комиссия не имела возможности подтвердить сообщения об отказах в медикаментах и лечении.

82. Комиссия зарегистрировала сообщения, которые в случае подтверждения могли бы представлять собой нарушения Минимальных стандартных правил обращения с заключенными (см. приложение II).

83. Комиссия подтверждает свой предыдущий вывод о том, что правительственными вооруженными силами и ополченцами *шаббиха* совершались акты пыток и другие виды жестокого, бесчеловечного или унижающего достоинство обращения в нарушение обязательств государства по международному гуманитарному праву и международному праву прав человека.

84. Комиссия установила, что имело место причинение острой боли лицам во время пребывания в официальных и неофициальных центрах содержания под стражей, во время обысков домов и на контрольно-пропускных пунктах. Она также установила, что пытки применялись с целью наказания, унижения или принуждения к даче показаний. В большинстве случаев физическое насилие, описанное опрошенными лицами, было квалифицировано различными международными трибуналами как представляющее собой пытку (см. приложение II).

85. Комиссия установила наличие разумных оснований полагать, что пытки совершались в рамках широкомасштабного нападения на гражданских лиц со стороны правительственных вооруженных сил и ополченцев *шаббиха*, которым было известно о нападении. Она пришла к заключению о том, что пытки как преступление против человечности и военное преступление совершались правительственными вооруженными силами и ополченцами *шаббиха*. Основная ответственность за применение пыток и неправомерного обращения, очевидно, возлагается на сотрудников сил безопасности, в частности служащих военной разведки и разведки ВВС. Комиссия отметила привлечение к актам пыток ополченцев *шаббиха* в неофициальных центрах содержания под стражей в Хомсе в феврале и марте.

86. Комиссия пришла к заключению о том, что такие действия, как насильственное обривание задержанных лиц и принуждение их к имитации собачьего лая, представляют собой жестокое, бесчеловечное или унижающее достоинство обращение. Аналогичным образом условия содержания под стражей, описанные опрошенными лицами, представляют собой жестокое, бесчеловечное или унижающее достоинство обращение с заключенными.

2. Антиправительственные вооруженные группы

87. Было проведено 15 опросов по поводу обращения с военнослужащими правительственных вооруженных сил и ополченцами *шаббиха* со стороны антиправительственных вооруженных групп. Все опрошенные лица заявили о том, что они являлись членами таких вооруженных групп, и подробно сообщили о задержаниях, допросах, освобождениях или казнях задержанных лиц. Трое из опрошенных указали, что захваченные военнослужащие и ополченцы *шаббиха* до казни подвергались пыткам во время допроса.

88. Комиссия установила наличие разумных оснований полагать, что антиправительственными вооруженными группами применялись пытки и другие

формы неправомерного обращения во время допроса захваченных военнослужащих правительственных вооруженных сил и ополченцев *шаббиха*. Она пришла к заключению о том, что острая боль применялась для наказания, унижения и принуждения к сообщению информации.

89. Вместе с тем комиссия установила, что акты пыток не совершались в рамках широкомасштабных или систематических нападений на гражданское население, поэтому они не представляют собой преступлений против человечности, однако могут квалифицироваться как военные преступления.

F. Неизбирательные нападения

90. Для того чтобы соблюдать нормы международного гуманитарного права, лица, отдающие приказ о проведении наступательной операции или участвующие в наступлении, должны гарантировать проведение различий между гражданскими и военными целями[20]. По полученным сведениям правительственные вооруженные силы иногда ведут направленный артиллерийский обстрел для поражения небольших узлов сопротивления оппозиции. Вместе с тем во многих других случаях те, кто производит стрельбу, не проводят никаких различий между гражданскими и военными целями. В большинстве расследованных случаев артиллерийский обстрел проводился перед наступлением наземных войск; он также использовался против демонстрантов. В ряде случаев он применялся против антиправительственных вооруженных групп, когда военные не хотели рисковать оснащением и войсками.

91. Во время военной операции, начавшейся в феврале 2012 года в Баб Амре, большинство лиц погибло в результате интенсивного и неизбирательного артиллерийского обстрела правительственными вооруженными силами преимущественно гражданской инфраструктуры и жилых районов. От неизбирательных нападений в период с февраля по май пострадал город Эль-Кусейр; один заслуживающий доверия источник сообщил комиссии: "Я был свидетелем тому, что люди называют неизбирательным обстрелом − сирийская армия просто поливала минометным огнем весь микрорайон". 5 июня правительственные силы начали наступление на Эль-Хафу, оцепив городок, и затем обстреляли его из танков, минометов и боевых вертолетов.

92. Другие подтвержденные отчеты о неизбирательных обстрелах были зарегистрированы в Атарибе 14 февраля; Айн-Ларузе 5 марта; Сермине 22 марта; Тафтаназе 4 апреля; Кили 6 апреля; Эль-Хула 25 мая, а также 12 и 13 июня; Акко 9 июня; Сальме 11 июня и Джобаре в различные числа в конце июня.

93. Комиссия приняла к сведению видеосъемку из мухафазы Хама, на которой показано, что в июне там использовались кассетные боеприпасы. Этот материал не удалось подтвердить. Хотя Сирийская Арабская Республика не является участницей Конвенции по кассетным боеприпасам, комиссия отмечает, что такое оружие изначально является неизбирательным, если оно применяется в жилых районах или районах, часто посещаемых гражданскими лицами.

94. На основе своих выводов комиссия установила, что был превышен правовой порог ответственности за неизбирательные нападения в виде нарушения норм обычного международного гуманитарного права. Правительственные вооруженные силы обстреливали районы, населенные гражданскими лицами, не обеспечивая направленное действие по конкретному военному объекту.

[20] См. приложение II, пункты 30−42.

95. Кроме того, такие нападения и особенно артиллерийские обстрелы стали причиной случайной гибели и ранений среди гражданского населения, а также наносили повреждения гражданским объектам. Имеются разумные основания полагать, что причиненный ущерб был чрезмерным по отношению к ожидаемому военному преимуществу.

G. Сексуальное насилие[21]

96. Было проведено 43 опроса в связи со случаями сексуального насилия в отношении мужчин, женщин и детей, совершенного правительственными вооруженными силами и ополченцами *шаббиха* в период с февраля 2012 года. В числе опрошенных лиц находились две женщины и трое мужчин, ставших жертвами изнасилования. Кроме того, были опрошены пять свидетелей изнасилований, из которых трое также являлись жертвами. Семеро опрошенных являлись дезертирами, которые сообщили, что изнасилования и сексуальные посягательства совершались солдатами и ополченцами *шаббиха*.

97. Сбор доказательств сексуального насилия был связан с определенными трудностями ввиду культурных, социальных и религиозных представлений, связанных с вопросами брака и сексуальности.

98. Согласно полученным сведениям, изнасилования и другие формы сексуального насилия совершались в двух случаях. Во-первых, они совершались во время обысков домов и на контрольно-пропускных пунктах военнослужащими правительственных вооруженных сил и ополченцами *шаббиха*; во-вторых, они совершались в местах лишения свободы. Кроме того, было получено несколько сообщений из Хомса о том, что в конце февраля и в апреле имели место случаи похищения и изнасилования женщин, а также поступили подтвержденные сведения о том, что женщин заставляли ходить обнаженными по улицам Карм-аз Зейтуна в феврале.

99. 15 опрошенных лиц сообщили об инцидентах сексуального насилия, совершенных во время обысков домов и на контрольно-пропускных пунктах во время военных операций в Хомсе в период с февраля по май и в Эль-Хафе в июне. Пять опрошенных подробно рассказали о случаях сексуального насилия в Забадани в конце февраля и в различных населенных пунктах мухафазы Хама в апреле. Эти нападения, согласно сообщениям, совершали военнослужащие и ополченцы *шаббиха*.

100. Комиссия продолжала получать сообщения об изнасилованиях и сексуальных посягательствах в местах лишения свободы, которые, как правило, совершались как часть пыток и/или неправомерного обращения. Было получено множество сообщений о том, что во время допросов задержанных мужчин подвергали пытке электрошоком в районе половых органов.

101. Комиссия пришла к заключению о наличии разумных оснований полагать, что изнасилования и сексуальные посягательства совершались в отношении мужчин, женщин и детей военнослужащими правительственных вооруженных сил и ополченцами *шаббиха*. Изнасилования и сексуальные посягательства также являлись частью пыток в официальных и неофициальных центрах содержания под стражей.

[21] См. также приложение IX.

102. Установив ранее, что военные операции, подобные тем, которые проводились в Хомсе в феврале и марте и в Эль-Хафе в июне, являлись частью широкомасштабных и систематических нападений на гражданское население, комиссия пришла к заключению о том, что изнасилования, совершенные сознательно во время этих нападений, подлежат преследованию как преступления против человечности.

H. Нарушения прав ребенка[22]

103. Комиссия провела 168 опросов в связи с предполагаемыми нарушениями прав ребенка. В числе опрошенных имелось 30 лиц моложе 18 лет. В результате опросов стало очевидным неблагоприятное психологическое и социальное воздействие насилия на детей.

1. Правительственные вооруженные силы и *шаббиха*

104. После 15 февраля 2012 года комиссия зарегистрировала убийство 125 детей, преимущественно мальчиков.

105. Детей убивали и ранили во время артиллерийских обстрелов городов и деревень. Во время посещения больницы в Турции комиссия обнаружила двухлетнюю девочку, получившую серьезные ранения во время обстрела Азаза в июне. Поступали также многочисленные сообщения о детях, убитых или раненых снайперами.

106. Кроме того, детей убивали во время нападений на демонстрации протеста, например нападение, совершенное в поселке Менак 15 марта, и во время нападений на деревни, подозреваемые в укрывательстве дезертиров и антиправительственных вооруженных групп. Поступали многочисленные сообщения о детях, которые были убиты во время военных наземных операций и обысков домов (см. приложение V). В числе убитых в Эль-Хула 25 мая был 41 ребенок. Некоторые были убиты во время артиллерийских обстрелов, однако большинство было предположительно застрелено с близкого расстояния.

107. Поступали сообщения о произвольных арестах и задержании детей. В них описано, как детей избивают, хлещут электрическими проводами, прижигают сигаретами и подвергают пытке электрошоком, воздействуя на половые органы. Многочисленные сообщения содержат информацию о том, что задержанных несовершеннолетних содержат в камерах вместе со взрослыми.

108. Комиссия получала сообщения об изнасилованиях и сексуальных посягательствах, совершенных в отношении девочек в возрасте моложе 18 лет (см. приложение VII).

109. Никаких доказательств официального призыва или мобилизации правительственными вооруженными силами детей в возрасте моложе 18 лет получено не было. Однако было документально зарегистрировано три случая, при которых правительственные войска использовали детей в качестве заложников или живых щитов.

110. В ответ на протесты учащихся школы во многих местах по всей Сирийской Арабской Республике подверглись грабежам, вандализму и были сожжены. В различных сообщениях описаны случаи их использования правительственными вооруженными силами и ополченцами *шаббиха* в качестве пунктов раз-

[22] См. также приложение X.

мещения военнослужащих, временных баз и мест для расположения снайперов (см. пункты 116−125 ниже).

111. Сообщалось также о том, что раненые, включая детей, опасаются обращаться за медицинской помощью в государственные больницы. Многих детей доставляют в полевые клиники, которые могут обрабатывать только незначительные раны.

112. Собранные свидетельства указывают на то, что права детей продолжают нарушаться военнослужащими правительственных вооруженных сил и ополченцами *шаббиха*. Правовые заключения, изложенные в приложениях IV, V, VII, VIII и IX, остаются в силе.

113. Совместное содержание под стражей взрослых и детей представляет собой нарушение обязательств правительства по Конвенции о правах ребенка, если их разлучение не нарушает также право семей на совместное проживание.

2. Антиправительственные вооруженные группы

114. Одиннадцать опрошенных лиц, включая четырех несовершеннолетних, описали случаи использование детей антиправительственными вооруженными группами. Все они указали, что антиправительственные вооруженные группы, включая ССА, использовали детей на вспомогательных ролях, таких как оказание помощи при медицинских эвакуациях или использование в качестве курьеров. Пять опрошенных заявили, что антиправительственные вооруженные группы использовали детей в возрасте до 18 лет, а по свидетельству одного из них − до 15 лет в качестве комбатантов.

115. Комиссия считает, что в настоящее время отсутствует информация, позволяющая сделать вывод о том, что антиправительственные вооруженные группы использовали детей в возрасте до 15 лет для активного участия в боевых действиях. Вместе с тем она с обеспокоенностью отмечает сообщения о детях в возрасте до 18 лет, которые сражались и выполняли вспомогательные функции на стороне антиправительственных вооруженных групп.

I. Нападения на пользующиеся защитой лица и объекты

116. Конфликт в Сирийской Арабской Республике повлек за собой тысячи людских потерь. Больницы и клиники оказались в эпицентре боевых действий. Полевые клиники стали объектами намеренных нападений. Гражданские объекты, такие как школы, муниципальные здания и больницы, повсеместно занимаются правительственными вооруженными силами, пытающимися закрепить свое присутствие. Укрытые под землей полевые клиники плохо оборудованы, нестерильны и не имеют базовых инструментов, медицинских препаратов и запасов крови. Сирийский Арабский Красный Полумесяц также занимается активной деятельностью по удовлетворению медицинских и гуманитарных потребностей лиц, затронутых конфликтом.

117. Международное гуманитарное право не только запрещает нападения на гражданских лиц и гражданские объекты, но и требует их защиты[23]. Комиссия собрала видеоматериалы и провела 12 опросов, посвященных нападениям на

[23] Такая защита действует до тех пор, пока защищаемые лица или объекты не вовлекаются в боевые действия. См. приложение II, пункты. 30−42.

пользующиеся защитой лица и объекты, в частности на школы и медицинские учреждения.

118. Комиссия зарегистрировала множественные случаи нападений на полевые госпитали. Во время интенсивного обстрела был поражен и частично разрушен полевой госпиталь в Баб Амре. В конце февраля с вертолета был нанесен удар по полевой клинике в Эль-Кусейре. Один из свидетелей сообщил, что в феврале силы безопасности разбомбили здание школы им. Юсуфа аль-Атмеха в Джиср-эш-Шугуре, которое использовалось в качестве полевой клиники местными жителями.

119. Жертвами нападений становятся работники Сирийского Арабского Красного Полумесяца. С момента начала кризиса было убито пять его сотрудников, последний из них был убит 10 июля в Дйер-эз-Зуре. В мае при эвакуации двух раненых в Азазе военным снайпером была обстреляна машина скорой помощи Красного Полумесяца, и двое медицинских работников были ранены; все они носили форму Красного Полумесяца. В тот же день было обстреляно и сожжено здание Красного Полумесяца в Азазе. Его директор был арестован и находился под стражей в течение 20 дней.

120. 24 апреля под перекрестный огонь попали пять машин скорой помощи, принадлежавших Сирийскому Арабскому Красному Полумесяцу. Один доктор был убит, а четыре сотрудника Красного Полумесяца были ранены.

121. Правительственные вооруженные силы продолжали оккупировать государственные больницы в нескольких населенных пунктах. В мае военные разместили танки, армейские транспортные средства и военнослужащих на территории государственных больниц в Азазе и Эль-Кусейре, а на крышах больниц находились снайперы. То же самое произошло в Эль-Хафе в июне.

122. Правительственные вооруженные силы занимают школы и другие объекты гражданского назначения, превращая их в военные объекты, временные базы и места для размещения снайперов. Например, в марте девочка из Атариба сообщила об использовании двух школ в качестве казарм для правительственных вооруженных сил, у школьных ворот были размещены танки, а на крышах зданий были оборудованы позиции снайперов. Аналогичным образом в мае была оккупирована школа в Эль-Кусейре. Один из опрошенных заявил, что 11 марта он был обстрелян снайпером с крыши местной школы в Джондии.

123. Комиссия пришла к заключению о наличии разумных оснований полагать, что правительственные вооруженные силы действовали в нарушение норм международного гуманитарного права, выбирая в качестве цели работников Сирийского Арабского Красного Полумесяца. Такие деяния также подлежат преследованию в качестве военных преступлений. Кроме того, размещая свои военные силы и средства, представляющие собой законные цели вооруженных сил противника, внутри гражданских объектов, правительственные вооруженные силы нарушают принцип различия, предусмотренный международным гуманитарным правом. Правительственные вооруженные силы также нарушили международное гуманитарное право, подвергнув намеренному обстрелу полевые клиники.

124. Оккупация правительством больниц и школ нарушает права на образование и здоровье.

125. Комиссия не имела возможности подтвердить утверждения о том, что антиправительственные группы выбирают в качестве цели своих ударов гражданских лиц или гражданские объекты.

J. Грабежи и уничтожение имущества[24]

1. Правительственные вооруженные силы и *шаббиха*

126. Комиссия получила подтвержденные сообщения о грабежах, уничтожении и сожжении имущества правительственными вооруженными силами и ополченцами *шаббиха* во время проводимых ими военных операций. Там, где подобные деяния совершались во время обысков домов, комиссия документально зарегистрировала десятки случаев разграбления имущества, включая деньги, автомобили, драгоценности и электротехнику.

127. Опрошенные лица указали, что обыски, а, следовательно, разграбление, сожжение и уничтожение имущества направлены против групп и лиц, которые, очевидно, являются дезертирами, членами антиправительственных вооруженных групп, демонстрантами и родственниками вышеупомянутых лиц. В частности, родственники дезертиров сообщали о том, что их дома, фермы и магазины были сожжены. В некоторых случаях разграбление, сожжение и уничтожение имущества осуществлялось не к конкретным лицам, а было направлено против целых общин.

128. По сообщениям впоследствии дезертировавших солдат разграбление и сожжение имущества оппозиционных активистов и дезертиров, в частности, осуществлялось с целью подвергнуть этих лиц финансовым трудностям и ограничить их деятельность. Кроме того, правительственные солдаты и ополченцы *шаббиха* извлекали из этих акций финансовую выгоду и проводили их с полной безнаказанностью.

129. Имеются разумные основания полагать, что правительственные вооруженные силы и ополченцы *шаббиха* совершали военное преступление в виде грабежа. Комиссия также установила, что правительственные вооруженные силы и ополченцы *шаббиха* занимались уничтожением и сожжением имущества в ходе обысков домов.

2. Антиправительственные вооруженные группы

130. Комиссия не получала никаких сообщений о разграблении или уничтожении имущества антиправительственными вооруженными группами, однако отсутствие доступа в Сирийскую Арабскую Республику затрудняло расследования. Правительство представило информацию, касающуюся преступлений, предположительно совершенных антиправительственными вооруженными группами, в том числе о мародерстве и краже автомобилей, которую комиссия не имела возможности подтвердить. Таким образом, комиссия не могла прийти к каким-либо выводам в отношении предполагаемого разграбления, сожжения и уничтожения имущества антиправительственными вооруженными группами.

IV. Ответственность

131. Комиссия имеет разумные основания полагать, что в Сирийской Арабской Республике совершались преступления против человечности, нарушения международного гуманитарного права и серьезные нарушения прав человека. Комиссия по возможности пыталась выявить занимающих руководящие должности лиц, которые, возможно, несут за это ответственность. В марте комиссия передала Верховному комиссару по правам человека Организации Объединен-

[24] См. также приложение XI.

ных Наций конфиденциальный перечень подозреваемых лиц и подразделений[25]. Дополнительные перечни будут составлены по завершении ее текущего мандата в сентябре 2012 года.

A. Ответственность государства

132. Собранные доказательства подтверждают предыдущий вывод комиссии о том, что нарушения совершаются в рамках государственной политики. Крупномасштабные операции, проведенные в различных мухафазах, аналогичный способ их проведения, их сложность и взаимодействие вооруженных сил с органами безопасности указывают на причастность высшего руководства вооруженных сил и сил безопасности, а также правительства.

133. Очевидцы постоянно опознавали ополченцев *шаббиха* в качестве исполнителей многих преступлений, описанных в настоящем докладе. Хотя характер, состав, система подчинения и структура этой группы остаются неясными, достоверная информация позволяет прийти к заключению о том, что ополченцы *шаббиха* действовали с согласия, при участии и по указанию правительственных вооруженных сил. Международное право прав человека признает ответственность государств, которые совершают нарушения через своих подручных.

B. Ответственность антиправительственных вооруженных групп

134. Даже при том, что они не являются сторонами Женевских конвенций, организованные вооруженные группы должны, тем не менее, соблюдать принципы международного гуманитарного права[26]. Во время немеждународных вооруженных конфликтов серьезные нарушения международного гуманитарного права, совершаемые членами таких групп, подлежат преследованию как военные преступления. Негосударственные субъекты могут также нести ответственность за грубые нарушения прав человека, в частности такие, которые считаются международными преступлениями[27]. Комиссия установила факт таких нарушений, включая убийства, внесудебные казни и пытки, совершенные членами антиправительственных групп.

C. Индивидуальная ответственность

135. Независимо от того, являются ли они военнослужащими правительственных вооруженных сил или членами антиправительственных групп, лица, которые намеренно совершали преступления, установленные в настоящем докладе, несут ответственность. Ответственность несут также и те, кто приказывал совершать эти преступления (или планировал, подстрекал, побуждал, помогал или содействовал). Комиссия получила убедительные доказательства того, что военнослужащие среднего и высшего руководящего звена правительственных вооруженных сил непосредственным образом причастны к совершению незаконных деяний. Дезертиры сообщили, что командиры приказывали своим подчиненным стрелять по гражданским лицам или комбатантам, не участвовавшим в боевых действиях, а также подвергать задержанных лиц пыткам и ненадлежащему обращению. Приказы часто приводились в исполнение под угрозой

[25] A/HRC/19/69, пункт 87.
[26] См. приложение II, пункты 11–13.
[27] См. приложение II, пункты 8–10.

применения оружия, и любой сомневавшийся в необходимости их выполнения рисковал быть подвергнутым аресту или казни без надлежащего судебного разбирательства. Свидетельства показывают, что широко распространенное разграбление и уничтожение имущества осуществлялось с согласия командиров.

136. Руководство антиправительственных вооруженных групп также замешано в совершении военных преступлений и нарушений прав человека, описанных в настоящем докладе. Местные командиры либо приказывали казнить захваченных военнослужащих правительственных вооруженных сил или ополченцев *шаббиха*, либо казнили их сами.

D. Ответственность командования

137. Военные командиры и гражданские начальники несут ответственность за преступления против человечности и военные преступления, если они не принимают имеющихся в их власти разумных мер по недопущению или пресечению совершения таких преступлений или для передачи дел компетентным органам. Такие меры должны осуществляться и по отношению к подчиненным, которые фактически находятся под их командованием и контролем.

138. Подробное изучение событий, а также схожесть нарушений и преступлений позволили комиссии прийти к заключению о том, что военные командиры и гражданские начальники на высших уровнях правительства, очевидно, знали об этих событиях.

139. То же самое относится и к нарушениям и преступлениям, совершенным антиправительственными вооруженными группами. Командиры, отдававшие приказы на местах, признали некоторые из событий, описанных в сообщениях.

140. Комиссии не известно об усилиях по соблюдению международных норм, которые правительство или антиправительственные вооруженные группировки предприняли с целью недопущения или пресечения преступлений, документальные подтверждения которых представлены в настоящем докладе.

141. По имеющимся сведениям Национальная независимая юридическая комиссия проводила расследования по некоторым из утверждений о нарушениях[28]. Кроме того, правительство провело специальное расследование событий в Эль-Хуле. Полученные отчеты о расследованиях, проведенных в Тремсехе, Эль-Кубейре и Эль-Хуле, были рассмотрены комиссией. Она не обнаружила ни одного случая успешного преследования кого-либо из командиров вооруженных сил или сил безопасности, либо гражданских начальников, которые понесли ответственность за преступления против человечности, военные преступления или серьезные нарушения прав человека, совершенные с марта 2011 года.

142. Не было получено никакой достоверной информации по поводу проведения антиправительственными вооруженными группами расследований, преследований и наказаний членов групп, предположительно совершивших расследованные преступления и нарушения.

[28] 25 июня Председатель комиссии встречался с руководителем Национальной независимой юридической комиссии в Дамаске. Эта Комиссия представлена в столице и в мухафазах. Было отмечено, что она получила 6 500 жалоб в связи со случаями смерти и с пропавшими лицами, в которых обвинялись военнослужащие вооруженных сил, сотрудники полиции и антиправительственные вооруженные группы.

V. Выводы и рекомендации

143. **Наблюдалась значительная эскалация кризисной ситуации в области прав человека в условиях активных боевых действий, переросших в немеждународный вооруженный конфликт. Основная тяжесть этого конфликта легла на гражданское население во всех общинах, и спираль насилия уже унесла жизни тысяч человек.**

144. **Еще более ухудшилась социально-экономическая и гуманитарная ситуация, что весьма пагубно сказалось на значительной части населения. Комиссия по-прежнему считает, что санкции приводят к лишению сирийского народа самых элементарных прав человека.**

145. **Комиссия пришла к заключению о наличии разумных оснований полагать, что правительственные вооруженные силы и ополченцы *шаббиха* совершали преступления против человечности, военные преступления и нарушения норм международного права прав человека и международного гуманитарного права. Имеются также разумные основания полагать, что антиправительственные вооруженные группы совершали военные преступления и злоупотребляли нормами международного права прав человека и международного гуманитарного права. Обе стороны нарушали права ребенка.**

146. **Нарушения прав человека и злоупотребления должны быть тщательно расследованы. Для содействия процессу привлечения к ответственности виновных лиц следует обеспечить систематический сбор доказательств нарушений и злоупотреблений, включая международные преступления. Комиссии должен быть предоставлен доступ в страну, с тем чтобы она могла беспристрастно расследовать такие нарушения на месте их совершения.**

147. **Комиссия полагает, что широкомасштабные операции, в ходе которых совершались наиболее серьезные нарушения, проводились с ведома или по распоряжению высшего правительственного руководства. В этой связи ответственность возлагается на тех, кто либо приказывал совершать такие деяния, либо планировал их, либо когда речь идет о лицах, осуществлявших фактическое командование и контроль, не смог их предотвратить и наказать виновных. Постоянные упоминания об ополченцах *шаббиха* в качестве исполнителей многих из преступлений не освобождает правительство от ответственности, поскольку международное право признает ответственность государств, которые совершают нарушения через своих подручных.**

148. **Комиссия установила факт нарушений международного гуманитарного права и международного права прав человека, совершенных членами антиправительственных групп. Ответственность возлагается на тех, кто либо приказывал совершить, либо планировал такие деяния, либо, когда речь идет о лицах, осуществлявших фактическое командование и контроль, не смог их предотвратить или наказать виновных.**

149. **Возросшая милитаризация конфликта пагубна для сирийского народа и может спровоцировать трагические последствия для всего региона. Для того чтобы покончить с насилием и грубыми нарушениями прав человека, а также со злоупотреблениями, вопросом первостепенной важности остается долговременное прекращение боевых действий всеми сторонами.**

150. **Комиссия напоминает о том, что наилучшее решение по-прежнему заключается в согласованном урегулировании, предусматривающем проведение инклюзивного и конструктивного диалога с участием всех сторон, для достижения политических преобразований, отражающих законные чаяния всех слоев сирийского общества, включая этнические и религиозные меньшинства.**

151. **Осознавая катастрофические угрозы для сирийского государства и народа, а также для стабильности в регионе, комиссия подтверждает рекомендации, содержащиеся в ее предыдущем докладе, и обращает особое внимание на те, которые изложены ниже.**

152. **Международному сообществу:**

a) странам, способным оказать влияние на стороны сирийского конфликта, в частности постоянным членам Совета Безопасности, следует объединить усилия, с тем чтобы заставить стороны прекратить насилие и приступить к проведению всесторонних переговоров с целью осуществления в стране процесса устойчивых политических преобразований;

b) дальнейшее присутствие Организации Объединенных Наций в стране является крайне необходимым для эффективного соблюдения прекращения огня и оказания поддержки сирийскому народу в проведении широких, инклюзивных и конструктивных консультаций по достижению примирения, установлению ответственности и предоставлению возмещения на основе положений международного права.

153. **Комиссия рекомендует правительству Сирийской Арабской Республики:**

a) расследовать все нарушения международного права прав человека и международного гуманитарного права, о которых сообщается в настоящем докладе, с целью обеспечения того, чтобы виновные были привлечены к ответственности в соответствии с процедурой надлежащего разбирательства, а жертвы получили доступ к правосудию и возмещению;

b) незамедлительно освободить всех лиц, подвергшихся произвольному задержанию, опубликовать список всех мест лишения свободы и обеспечить, чтобы условия содержания в них соответствовали действующему законодательству;

c) соблюдать правила вооруженного конфликта и обеспечить распространение правил ведения боевых действий, регулирующих операции вооруженных сил и сил безопасности;

d) предоставить международному сообществу незамедлительный доступ к пострадавшим районам для оказания гуманитарной помощи всем нуждающимся.

154. **Комиссия рекомендует антиправительственным вооруженным группам:**

a) принять, публично объявить и соблюдать правила поведения, соответствующие нормам международного права прав человека и международного гуманитарного права, а также привлекать к ответственности лиц, виновных в злоупотреблениях;

b) сообщить соответствующим гуманитарным и правозащитным учреждениям информацию о судьбе захваченных лиц и предоставить доступ к лицам, содержащимся под стражей.

155. **Комиссия рекомендует Управлению Верховного комиссара укрепить присутствие в регионе для активизации усилий по поощрению и защите прав человека в Сирийской Арабской Республике.**

156. **Комиссия рекомендует Совету по правам человека препроводить настоящий доклад Генеральному секретарю для его представления Совету Безопасности с целью принятия надлежащих мер с учетом серьезности нарушений, злоупотреблений и преступлений, совершенных правительственными вооруженными силами и ополченцами *шаббиха*, а также антиправительственными группами, документальные подтверждения которых содержатся в настоящем докладе.**

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: ٢٠١٢/٠٤/٢٦

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

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

١- لقد تعاملت الجمهورية العربية السورية مع الأمم المتحدة 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.

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 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.

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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HIGH COMMISSIONER FOR HUMAN RIGHTS

Tel: 41-22-9179101

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

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

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

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

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

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

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

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

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

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

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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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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

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

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

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

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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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]

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

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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.

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 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

[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.

[20] See annex VIII.

[21] See annex IX.

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.

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,"

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[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.

> *"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 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

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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.

[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

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 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.

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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.

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.

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.

[40] See Article 3 of the *Code of Conduct*. See generally the *Basic Principles*.
[41] ICRC Study Rule 14.

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.

[42] Rome Statute, Art. 8 (2) (e) (i)–(iv).

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 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]

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[43] Rome Statute, Art. 8 (2) (e) (iv).

[44] Article 9 (2) ICCPR.

[45] Article 9 (3) ICCPR.

[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

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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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 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.

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.

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:

[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).

(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.

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

[61] Syrian Constitution, Article 53.

[62] Law No. 148/1949 of the Syrian Criminal Code.

… 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]

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

[63] Rome Statute, Art. 8 (2) (e) (vii).

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

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[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.

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 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

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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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.

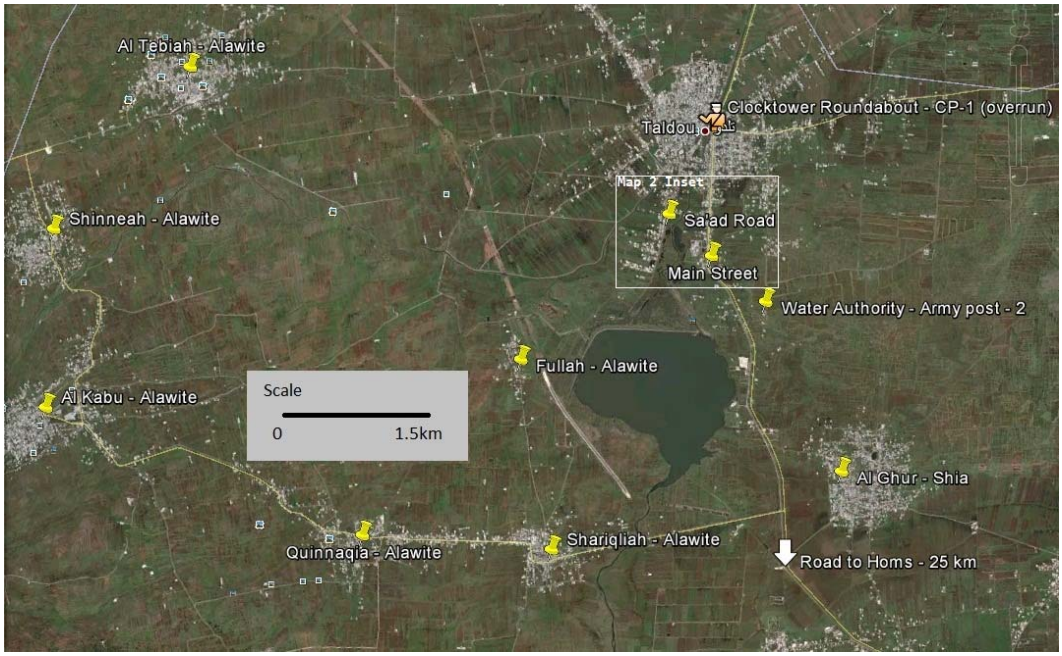
14. The Government report depicted the loyalties of the Al-Sayed family as pro-Government. Muawia Al-Sayed, who was killed alongside his son and young daughter that day, was a retired colonel in the security forces. His son Ahmad was still on active duty, but had been home on extended sick leave. The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

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 town of approximately 15,000 inhabitants following an anti-Government demonstration.

men from the 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."

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 the composition and functioning of such a court in Tal Rifat. Its members are apparently

[m] See annex II.

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.

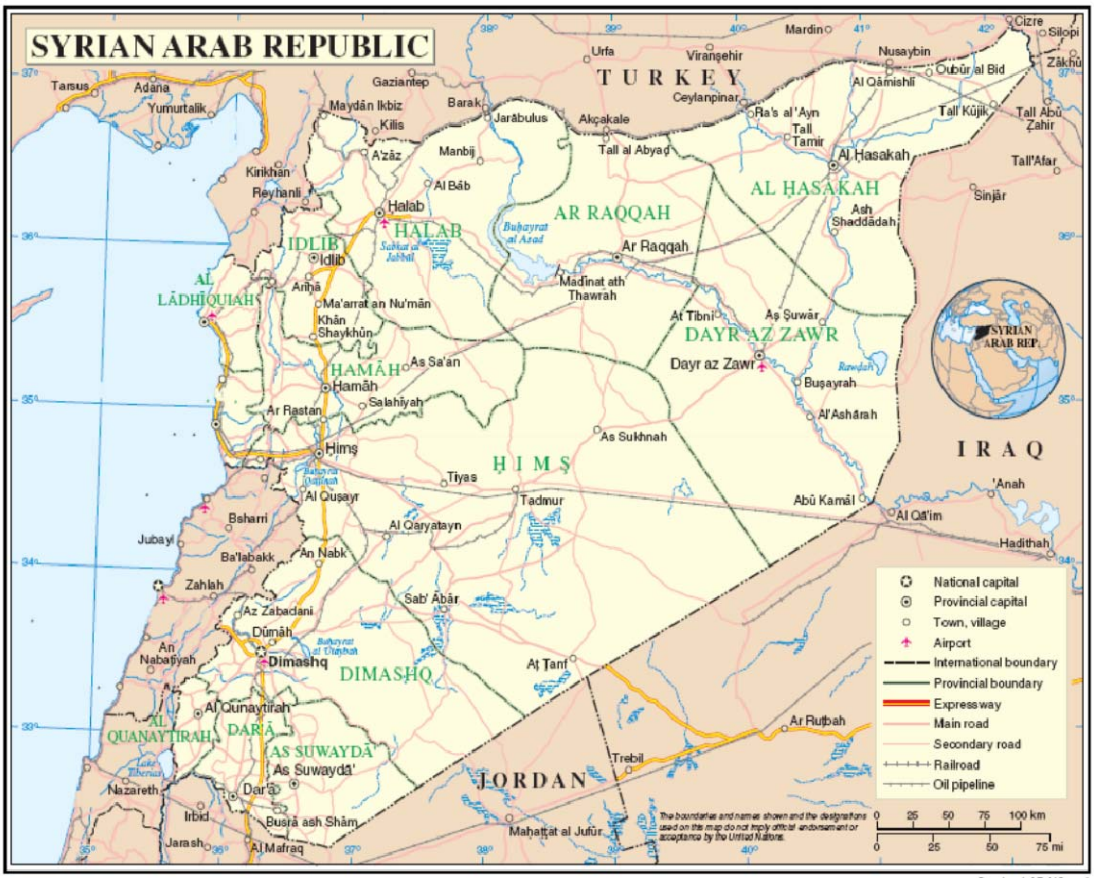
Legal conclusions

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