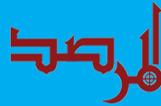


The Syrian Situation

International Humanitarian Law Violations and the Call for Justice

Marta Bitorsoli LLB; LLM – Legal Researcher



المركز العربي لحقوق الإنسان في الجولان

AL-MARSAD - Arab Human Rights Centre in Golan Heights

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AL-MARSAD - Arab Human Rights Centre in Golan Heights

P.O. Box 9
Majdal Shams 12438
Golan Heights, Via Israel

972-4-687-0644 (phone)

972-4-687-0645 (fax)

Email: marsad@golan-marsad.org

Web: <http://www.golan-marsad.org>

Al-Marsad | Arab Human Rights Centre in Golan Heights is an independent, not-for-profit national human rights organisation located in Majdal Shams, in the Occupied Syrian Golan. The centre was founded in October 2003 by a group of lawyers and professionals in the fields of law, health, education, journalism and engineering, along with human rights defenders and other interested community members.

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Preface

Syria's modern history has witnessed large scale violence during successive periods of political systems that seized power as a result of military coups. The violence of the Syrian authorities increased during the rule of Hafez al-Assad (1970-2000), which was marked by the persecution of political opponents and targeted killings, arrests, torture and forced disappearances.

Systematic policies of violence and persecution became worse during the reign of Bashar al-Assad, and reached unprecedented levels with the start of mass peaceful protests in March 2011. These protests were met by the use of excessive force and the perpetration of serious crimes against peaceful demonstrators by Assad's troops and security services. The militarization of the peaceful protests led to an unprecedented use of violence by belligerents on all sides who have committed war crimes and crimes against humanity, against civilians in particular.

The ongoing armed conflict in Syria over the last five years has inflicted severe suffering on civilians. Over 300 thousand people have died and 11 million people have been displaced within the country and abroad as a result of the excessive use of force. As successive reports of the International Commission of Inquiry on the Syrian Arab Republic state, the government forces and security services continue to launch large-scale attacks on civilians that include the perpetration of massacres. The systematic murder, torture, rape and forced disappearance of civilians amount to crimes against humanity. The regime forces, security services and militias commit serious human rights violations and war crimes by the targeting of civilians, murder, hostage-taking, the recruitment and use of children in hostilities, torture, rape and sexual violence, violating the special protection granted to hospitals and medical personnel and humanitarian missions. Indiscriminate aerial and

artillery bombardments aim to spread terror among civilians and have resulted in large numbers of victims. The bombardments include the use of chlorine gas – an illegal weapon – by government forces.

The Commission of Inquiry reports also confirm that several of the opposition armed groups pursue a systematic policy of willful killings, extrajudicial executions, torture and hostage-taking, enforced disappearances, rape, sexual violence and the recruitment and use of children in hostilities, attacks on protected objects and the targeting of medical and religious personnel. Armed groups have also committed massacres against civilians, spread terror by detonating car bombs in civilian areas, besieged civilian neighborhoods and shelled them indiscriminately. The Islamic State in Iraq and the Levant (ISIS - Daash) and Al-Nusra, an Al-Qaeda affiliate, commit crimes against humanity by employing torture, murder and acts of forced-disappearance and displacement of the civilian population in areas under their control.

Al-Marsad fully supports the call of the Syrian people for freedom from tyranny and terror, and to obtain peace, democracy and respect for human rights. In doing so, Al-Marsad calls on the UN Security Council to initiate and support humanitarian intervention as soon as possible, ensuring that the motivation for the intervention is strictly humanitarian, that the intervention respects international law and that the intervention is conducted in a manner to reasonably expect an improvement in the situation rather than an increase in suffering.

In addition, Al-Marsad calls on the UN Security Council to refer the situation in Syria to the International Criminal Court (ICC) to hold the government forces and the opposition armed groups to account for their blatant violations of international humanitarian and human rights law.

Dr. Nizar Ayoub
Director

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Introduction

Since 2011 Syria has been devastated by a ferocious civil war which escalated into an internationalised conflict, in which government forces, rebel groups, extremist and terrorist groups, foreign fighters, international powers and coalitions are involved.

Syria has become the arena in which international interests are in dispute at the expense of civilians.

The Syrian war has created more than 250,000 victims, 7.6 million internally displaced persons and 4.2 million refugees.

In this paper, which is based on publically available information from the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Watch, Amnesty International, the Syrian Observatory for Human Rights and other local and international organisations of recognised independence, Al-Marsad seeks to raise its voice against the unacceptable impunity that perpetrators of unspeakable crimes have been enjoying in Syria, to date.

It is Al-Marsad's view that those responsible for war crimes and crimes against humanity committed in Syria should be prosecuted under international and national jurisdictions, regardless of their political affiliations.

Alongside prosecutions, non-judicial mechanisms should also be established in order for reconciliation to be possible for the Syrian people, in the long term.

Finally, Al-Marsad has observed with deep regret states' failure to comply with international obligations on asylum and urges the international community to provide the required assistance to Syrian refugees.

The International Criminal Court and its Jurisdiction

The International Criminal Court (ICC) is a permanent Court created with the purpose of investigating and prosecuting those individuals responsible for the most serious crimes of international concern: genocide, crimes against humanity and war crimes.

The International Criminal Court is an international institution established by treaty, therefore only the state parties are bound by its Statute, hereinafter the Rome Statute. The ICC is not a supranational body, rather a complementary one; that is, it does not substitute national criminal systems.¹ The Rome Statute is an integral part of national criminal law of the state parties, consequently the international legal obligation to investigate and prosecute the most serious crimes can be carried out by capable and willing state parties, if need be.

It should be noted that the ICC has jurisdiction over individuals,² regardless of their official capacity.³

Territorial Jurisdiction

As a general rule, the ICC only has jurisdiction over state parties; that is over crimes committed within a territory of a state party or by a national of a state party. However, there are three exceptions which allow for the jurisdiction to be extended over non-state parties. Pursuant to Article 12.3⁴ a non-state party can refer a situation to the ICC, thus extending the ICC's jurisdiction over its territory. The State which accepts the jurisdiction of the Court pursuant to Article 12.3 shall cooperate with the Court with no delay or exception.⁵ The

1. The complementarity principle is embodied in Articles 1 and 17 of the Rome Statute.

2. Rome Statute, Article 1, 25.1 and 26.

3. Rome Statute, Article 27.

4. Rome Statute, Article 12.3: If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

5. Rome Statute, Article 12(3).

second exception is a referral by the Security Council. Finally, the Court has jurisdiction over citizens of a non-state party for crimes committed against nationals of a state party or in a territory where the ICC has jurisdiction. A different issue is whether a state party can detain and transfer to the ICC a national of a non-state party who finds itself in the territory of the state party in question.⁶

In summary, only the intervention of the Security Council under Chapter VII of the United Nations Charter, makes the jurisdiction of the ICC potentially universal.

The Principle of Complementarity

The ICC works under the principle of complementarity, pursuant to which the national jurisdictions will have priority over the jurisdiction of the International Court, which hence operates *de residuo*.

The principle of complementarity implies that the Court can exercise its jurisdiction and admit a case only if the national jurisdiction of the state that would be competent cannot be activated, because the state *is unwilling or unable to genuinely carry out the investigation or prosecution*⁷ or the decision not to prosecute is due to unwillingness or inability to genuinely prosecute.⁸

Temporal Jurisdiction

As for the jurisdiction *ratione temporis*, the Court has jurisdiction only with respect to crimes committed after the entry into force of the Rome Statute, the 1st July 2002. For those states that joined the treaty after its entry into force,

6. For more on the issue of complementarity see: Flavia Lattanzi, *The Complementary Character of the Jurisdiction of the Court with Respect to National Jurisdictions*, in THE INTERNATIONAL CRIMINAL COURT: COMMENTS ON THE DRAFT STATUTE, Flavia Lattanzi ed., 1998; John T.Holmes, *The Principle of Complementarity*, in THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE, ISSUES, NEGOTIATIONS, RESULTS, Roy S. Lee ed., 1999.

7. Rome Statute, Article 17.1(a).

8. Rome Statute, Article 17.1(b).

the jurisdiction can be exercised only over those crimes committed after the state's accession to the Treaty (after the first day of the month that follows sixty days from the deposit of the state's ratification);⁹ unless a declaration establishing otherwise was made under Article 12.3.

Material Jurisdiction: the crimes within the jurisdiction of the Court

With regard to the jurisdiction *ratione materiae*, the crimes within the jurisdiction of the ICC are listed in Article 5: genocide, crimes against humanity, war crimes and aggression.¹⁰ It is important to underline that these crimes are unanimously considered part of *jus cogens*, which means that the prohibition to commit such acts is a peremptory norm accepted by the international community as a norm from which no derogation is permitted, regardless of membership, or not, of the specific treaties that prohibit the acts.

GENOCIDE

In accordance with the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which is also *jus cogens*, the Rome Statute defines genocide as follows: '*genocide*' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

9. Rome Statute, Article 126.2. The Statute also foresees the possibility of delaying the applicability of the ICC's jurisdiction over war crimes for seven years after the state's accession to the treaty; see Rome Statute, Article 124.

10. Rome Statute, Articles 5 to 8. For more on the crimes within the ICC's jurisdiction see: Andreas Zimmerman, Article 5: Crimes within the Jurisdiction of the Court, in COMMENTARY OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: OBSERVER'S NOTES, ARTICLE BY ARTICLE, Otto Triffterer ed., 1999.

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.¹¹

Some of the systematic deliberate attacks perpetrated against civilian groups in Syria could qualify as acts of genocide. In fact, even if the definition of genocide does not include *political reasons*, the sectarian nature of the war could fit the religious reasons. Therefore for those governmental or non-governmental deliberate attacks against specific sectors of the population, carried out with the intent to destroy them by reason of their sectarian belonging, the elements of the crime of genocide could be satisfied and the members of the group charged with genocide.

CRIMES AGAINST HUMANITY

Article 7 of the Rome Statute lists the acts which fall within the category of crimes against humanity:

‘Crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

11. Rome Statute, Article 6.

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

In order for those acts to be considered crimes against humanity they have to satisfy the requirements set forth in the *chapeau* of the article, namely: to be part of a widespread or systematic attack directed against any civilian population,¹² and the attack must be carried out pursuant to or in furtherance of a State or organisational (meaning non-state) policy.¹³

The prerequisite of a crime against humanity is thus the existence of a state or non-state policy, which directly or indirectly foresees the perpetration of the crimes.¹⁴ Providing that such a condition is satisfied, the crime has to be committed on a widespread or, alternatively, systematic scale.

The “Elements of the Crimes” clarifies that the “*policy to commit such attack* requires that the state or organization actively promote or encourage such an attack against the civilian population”¹⁵ and that the policy is to be

12. Rome Statute, Article 7.1.

13. Rome Statute, Article 7.2.

14. Rome Statute, Article 7.2.

15. Report of the Preparatory Commission for the International Criminal Court, Part I: Finalized Draft Text of the Rules of Procedure and Evidence, U.N. Doc. PCNICC/2000/1/Add.1 (2000).

implemented by state or organizational actions, although exceptionally the policy could be implemented by a “deliberate failure to take action, which is consciously aimed at encouraging such attack”.¹⁶

Thus the Statute also admits the *policy* requisite to be satisfied by omission.

It is worth noting, in particular having in mind the applicability of the Rome Statute to the Syrian scenario, that, reflecting the evolution of customary international law, Article 7 of the Rome Statute clearly incorporates non-state actors as potential perpetrators of crimes against humanity.¹⁷ Non-state actors capable of perpetrating crimes against humanity are organised groups that can exercise control over a territory,¹⁸ as most of the armed groups active in Syria are able to do so.

WAR CRIMES

In the case of international armed conflicts, the category of war crimes embodied by the Rome Statute is constituted by (a) Grave breaches of the Geneva Conventions of 12 August 1949 and (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.

The first category includes acts carried out against persons or properties protected by the Geneva Convention, namely:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by

16. Ibid.

17. Rome Statute, Article 7.2.

18. See M.Charif Bassiouni, Introduction to International Criminal Law: Second revised Edition, Martinus Nijhoff Publishers, 2013.

military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

Within the second category (Article 8.2(b)), the Rome Statute lists:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance.

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking by whatever means buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation

or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(xvi) Pillaging a town or place, even when taken by assault;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

The reports of the Independent International Commission have highlighted the perpetration of most of the above listed crimes.

Whereas in conflicts of a non-international character Article 8.2(c) prohibits

serious violations of article 3 common to the four Geneva Conventions, *namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:*

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;*
- (iii) Taking of hostages;*
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.*

The Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Watch, the Syrian Observatory for Human Rights and numerous other organisations have been collecting evidence of extremely serious war crimes committed in Syria since 2011.¹⁹

Elements of individual criminal liability: mens rea

For these crimes to be perpetrated, the commission of the crime itself, the *actus reus*, is not sufficient. It has to be proven that they have been committed with a guilty mind, *mens rea*.

The conditions for the criminal liability are established in Articles 25-30 of the Rome Statute (apart from the crimes of specific intent). Articles 31-33 refer to the conditions of exoneration from criminal liability.

19. See <http://www.syriahr.com/en/?cat=36>; <http://www.ohchr.org/EN/HRBodies/HRC/IIICISyria/Pages/IndependentInternationalCommission.aspx>; <https://www.hrw.org/middle-east/n-africa/syria>.

According to Article 25 an individual is liable if – acting individually or jointly with others – (a) orders, solicits or induces the commission of a crime, regardless of whether the crime is actually carried out or merely attempted, (b) facilitates the commission of a crime, aids, abets, or otherwise assist in its commission or its attempted commission.

Moreover pursuant to Article 25.d an individual might be held liable if he/she contributed to the commission or the attempted commission by a group with a common purpose, with the intent to further the criminal activity of the group or with the knowledge of the group's intent.

Finally Article 28 establishes that *de jure* and *de facto* military commanders are responsible for crimes within the jurisdiction of the Court, committed by forces under their effective

command and control, or effective authority and control, as a result of their failure to exercise control properly over such forces, if they knew or should have known that the forces were committing or about to commit such crimes and/or if they failed to take all necessary and reasonable measures within their power to prevent or repress their commission, or to submit the matter to the competent authorities for investigation and prosecution.²⁰

The activation of the Court's jurisdiction

A referral to the Prosecutor of the ICC, or an action taken by the Prosecutor *sua sponte*, may lead to the initiation of an investigation and consequent prosecution.

The object of a referral has to be a *situation* meaning a global context in which crimes within the jurisdiction of the Court appear to have taken place.²¹ This provision limits the politicised use of the Court, since its jurisdiction cannot

20. See Rome Statute, Article 28.

21. Rome Statute, Article 13.

be activated against a specific individual, a specific group, a specific party or a specific event without taking into account the overall context. In other words, once the jurisdiction has been activated any person who is responsible for any of the crimes listed in Article 5 can potentially be prosecuted.

A situation may be referred to the Prosecutor by (a) a state-party;²² (b) the Security Council, acting under Chapter VII of the Charter of the United Nations,²³ and (c) a non-state party which in so doing accepts the jurisdiction of the Court.²⁴

In addition the Prosecutor in accordance with Article 15 may initiate an investigation *proprio motu*,²⁵ providing that the Pre-Trial Chamber upon examination of the supporting material considers that there is a *reasonable basis* to proceed.²⁶ However, the Court retains the power to assess whether the case falls within the jurisdiction of the Court and is admissible, even after having issued the authorization to commence the investigation.²⁷

The referral of a situation to the Prosecutor by the Security Council must be triggered by a threat to peace and security, which is the prerequisite for the Council to act under Chapter VII of the United Nations Charter. The main feature of this referral is the possibility to bypass the preconditions to exercise jurisdiction established in Article 12.2, namely jurisdiction *ratione personae* and *ratione loci*.²⁸

22. Rome Statute, Articles 13(a) and 14.

23. Rome Statute, Article 13(b).

24. Rome Statute, Article 12.3.

25. Rome Statute, Articles 13(c) and 15.

26. Rome Statute, Article 15.4. Morten Bergsmo and Jelena Pejic, Article 15: Prosecutor, in COMMENTARY OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: OBSERVER'S NOTES, ARTICLE BY ARTICLE, Otto Triffterer ed., 1999.

27. Ibid.

28. The crimes have been committed in the territory of a state-party or by a national of a state-party.

Also acting under Chapter VII the Security Council has the power to delay an investigation and prosecution referred to the Court.²⁹

When a situation is referred to the Prosecutor, he/she will determine whether there is a *reasonable basis* to proceed and initiate an investigation.³⁰ This will happen if three elements are met: (i) there is a reasonable basis to believe that crimes within the jurisdiction of the ICC have been committed, (ii) the case has passed a *prima facie* admissibility standard test, and (iii) there are substantial reasons to believe that the investigation will serve the interests of justice, taking into account the interests of the victims and the gravity of the crimes.

If the Prosecutor decides not to proceed, he/she might be asked to reconsider his/her decision by the Security Council, the Pre-trial Chamber and the referring state, alternatively.

The Prosecutor shall investigate incriminating and exonerating evidence, respecting the rights of the accused and the “interests and personal circumstances of victims and witnesses, including age, gender [...] health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children.”³¹

When the investigation is carried out in the territory of a state party, and the state “is clearly unable to execute a request for cooperation due to the unavailability of any authority or any component of its judicial system competent to execute the request for cooperation”, the Pre- Trial Chamber might authorise the Prosecutor to take specific investigative steps within the

29. Rome Statute, Article 16. On the issue of the ICC and the Security Council see Neha Jain, A Separate Law for Peacekeepers: The Clash between the Security Council and the International Criminal Court, 16 European Journal of International Law, No.239 (2005).

30. Rome Statute, Article 53.1.

31. Rome Statute, Article 54.

territory of the state;³² whereas with regard to non-state parties cooperation agreements can be adopted by the Prosecutor with the state.³³

Admissibility

During the investigation phase, once individual cases have been identified, they can be prosecuted if the Pre-Trial Chamber esteems that there are reasonable grounds to believe that the individual committed the crimes within the jurisdiction of the Court,³⁴ thus approving the arrest warrant. Subsequently the charges must be confirmed by the same Chamber,³⁵ hence confirming the indictment issued by the Prosecution.³⁶

The Court will assess the admissibility of the case pursuant to the criteria set forth in Article 17. The case will be admissible if the state that has jurisdiction according to the principle of complementarity is unwilling or unable to genuinely carry out the investigation and the prosecution,³⁷ if the person concerned has not already been tried for conduct which is the subject of the complaint,³⁸ and finally if the case is of sufficient gravity to justify further action by the Court.³⁹

Having regard to the principle of *ne bis in idem*,⁴⁰ it is important to note that although it is embodied in the Rome Statute, it does not apply when the

32. Rome Statute, Article 57.3(d).

33. Rome Statute, Article 54.3(d).

34. Rome Statute, Article 58.

35. Rome Statute, Articles 60 and 61.

36. On the issue of admissibility see: Fabricio Guariglia, Investigation and Prosecution, in in THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE, ISSUES, NEGOTIATIONS, RESULTS, Roy S. Lee ed., 1999.

37. Rome Statute, Article 17.1(a). The following paragraphs of Article 17 defines unwillingness and inability. Unwillingness may be established when (a) The proceedings are made for the purpose of shielding the person concerned from criminal responsibility, (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice; (c) The proceedings were not independent or impartial. As for inability, it may arise from a total or substantial collapse or unavailability of domestic judicial system.

38. Rome Statute, Articles 17.1(c) and 20.3.

39. Rome Statute, Article 17.1(d).

40. Rome Statute, Article 20.

acquittal or conviction at a domestic level was aimed at shielding the accused from criminal liability or the domestic proceedings were not independent or impartial.⁴¹

The criminal investigation will result in prosecution if the Pre-Trial Chamber approves the arrest warrant (article 58) and confirm the charges (article 61).

The Syrian situation

The Syrian situation, which the commission of war crimes and crimes against humanity has been largely documented by the Independent International Commission of Inquiry on the Syrian Arab Republic and other organisations since 2011,⁴² would satisfy two of the three factors set out in article 53(1) (a)-(c)⁴³ in order to determine whether there is a reasonable basis to proceed with an investigation, namely admissibility and interest of justice. As for the third factor, jurisdiction, the situation fulfils the subject matter jurisdiction, whereas the temporal and territorial jurisdiction factors should be granted by Security Council.

The ‘reasonable basis’ standard which according to the interpretation of the Pre-Trial Chamber means “a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court ‘has been or is being committed’”,⁴⁴ has to be applied in order to determine whether the situation fulfils all the statutory factors: jurisdiction, admissibility and interests of justice.

With regard to the jurisdiction, on the subject-matter jurisdiction side,⁴⁵

41. Rome Statute, Article 20.3.

42. See <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/PressReleases.aspx>; <https://www.hrw.org/middle-east/n-africa/syria>; <https://www.amnesty.org/en/countries/middle-east-and-north-africa/syria/report-syria/>; <http://www.syriahr.com/en/>.

43. Jurisdiction, admissibility and interest of justice.

44. 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-Corr, 31 March 2010, para. 35

45. Rome Statute, Article 5. For the purpose of assessing the subject-matter jurisdiction, the

there are no doubts that crimes within the jurisdiction of the Court are being committed in the Syrian territory.

As for the territorial jurisdiction, the devastating long term war in Syria, also considering its destabilising effects in the entire region and its impact on the civilian population, is undoubtedly a threat to peace and security; consequently the Security Council should act under Chapter VII of the United Nations Charter and take measures to restore international peace and security, including referring the Syrian situation to the ICC so that the perpetrators will face justice.

The Security Council is the only institution capable of setting aside the territorial and personal parameters set out in article 12 of the Statute, when a threat to peace and security exists.

The Syrian situation would meet the admissibility standards, as well. Pursuant to Article 17 of the Rome Statute, admissibility requires an assessment of complementarity (subparagraphs (a)-(c)) and gravity (subparagraph (d)). The complementarity assessment⁴⁶ of the potential cases is satisfied by the absence of relevant proceedings, which suffices to make the case admissible, with no need for the Prosecutor to consider the other factors set out in article 17.⁴⁷ In any event, in the Syrian case, the absence of an adequate legal framework

following factors have to be taken into account: the relevant underlying facts and factors relating to the crimes that appear to fall within the jurisdiction of the Court; contextual circumstances, such as the nexus to an armed conflict or to a widespread or systematic attack directed against a civilian population, or a manifest pattern of similar conduct directed at the destruction of a particular protected group or which could itself effect such destruction; alleged perpetrators, including the de jure and de facto role of the individuals, group or institution and their link with the alleged crimes, and the mental element, to the extent discernible at this stage. See ICC, Policy Paper on Preliminary Investigations, Section IV.

46. Rome Statute, articles 53(1)(b) and 17(1)(a)-(c).

47. Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Judgment on the Appeal of Mr Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, ICC-01/04-01/07-1497, 25 September 2009, para. 78. When potential cases falling within the jurisdiction of the Court have been identified, the Office seeks to encourage, where feasible, genuine national investigations and prosecutions by the States concerned in relation to these crimes.

would mean domestic institutions are unable to carry out proceedings genuinely and independently.⁴⁸

With regard to the gravity, the assessment shall include quantitative and qualitative considerations, such as the scale, nature, manner of commission of the crimes, and their impact.⁴⁹

Among the elements to be taken into account in order to determine the scale, include the number of direct and indirect victims, the extent of the damage caused by the crimes, in particular the bodily or psychological harm caused to the victims and their families, or their geographical or temporal spread (high intensity of crimes over a brief period or low intensity of crimes over an extended period).⁵⁰ As for the nature, the specific elements of each offence such as killings, persecution, or the imposition of conditions of life on a group calculated to bring about its destruction, have to be assessed.⁵¹ The manner refers to the means used to perpetrate the offences, the systematic nature of the crimes, the existence of a state and/or non-state policy aimed at the commission and/or the tolerance of the offences, whether the offences resulted from the abuse of power or official capacity, the cruelty, including the

48. See ICC, Policy Papers on Preliminary Investigations, paras.48-49. In the Syrian Arab Republic, political opponents, or people perceived as such have been tortured, detained and accused of vaguely defined crimes related to political activity since the establishment of the Assad regime. Moreover the Legislative Decrees 14/1969 and 69/2008 gave immunity to members of the security forces and, although the Constitution formally proclaims the independence of judges, membership in the Baath party is a precondition for judicial and prosecutor positions. The President presides over the Higher Council of the Judiciary, which administers the judicial system and sits on the Supreme Constitutional Court, of which appoints its other four members. In 2010, the Committee against Torture denounced the systematic violation of the right of a fair trial, due to the lack of judicial independence. See Report of the Independent International Commission of Inquiry in the Syrian Arab Republic, 23 November 2011, A/HRC/S-17/2/Add.1.

49. See ICC – OTP, Policy Paper n preliminary Investigation, 2015, para.61; see also 5 Prosecutor v. Abu Garda, Decision on the Confirmation of Charges, ICC-02/05-02/09- 243-Red, 8 February 2010, paras. 31; ICC-01/09-19-Corr, para. 188; ICC-02/11-14, paras. 203-204.

50. ICC – OPT, Policy Paper on Preliminary Investigations, 2015, para.62.

51. ICC – OPT, Policy Paper on Preliminary Investigations, 2015, para.63.

vulnerability of the victims.⁵² Finally, the scale of the impact depends on the suffering endured by the victims, the increased vulnerability of the victims, the terror instilled, the social, economic and environmental damage inflicted on the victims and communities.⁵³

Having regard to the interests of justice, the interests of victims and communities are the parameters of the assessment, however it is worth noting that the concept of the interests of justice should not *be considered a conflict management tool requiring the Prosecutor to assume the role of a mediator in political negotiations*.⁵⁴ Moreover, considering the mandate of the institution and the purpose of the Statute, *there is a strong presumption that investigations and prosecutions will be in the interests of justice*.⁵⁵

A path to justice in Syria must be created by the Security Council, by extending the jurisdiction of the Court by referring the Syrian case to the Prosecutor.

So far the Security Council has referred two cases to the Prosecutor of the International Criminal Court: the situation in Darfur, Sudan was referred to the ICC by the Security Council with resolution 1593/2005, and the situation in Libya with Resolution 1970/2011.

52. ICC – OPT, Policy Paper on Preliminary Investigations, 2015, para.64.

53. ICC – OPT, Policy Paper on Preliminary Investigations, 2015, para.65.

54. ICC – OPT, Policy Paper on Preliminary Investigations, 2015, paras.69-71.

55. ICC – OPT, Policy Paper on Preliminary Investigations, 2015, paras.69-71.

The Syrian Situation: Political Background

The Syrian Arab Republic used to have a population of 22 million people (more than 4,6 million Syrians have fled their country fearing for their lives, so far),⁵⁶ of whom 74% are Sunni Muslim, 10% Alawite, 3% other Shia Muslim, 10% Christian and 3% Druze. Major ethnic minority groups include Kurdish, Assyrian, Armenian, Turkmen and Circassian populations.⁵⁷

Hafez Al Assad became president of Syria after a military coup in 1971,⁵⁸ when a state of emergency, which suspended most of the constitutionally guaranteed protections and rights had been in place for four years.⁵⁹ Bashar Al Assad, his son, succeeded him in 2000.

Since the Assads' rule the Baath party has dominated social and political life in Syria⁶⁰ and the key positions of the state (including the armed forces and the judiciary) are occupied by the Alawite minority, to which the Assad family belongs.⁶¹

Political opponents, or people perceived as such, in Syria have been tortured and arbitrarily detained since the beginning of the Assads' rule, and in 1982 between 10,000 and 25,000 people, mostly civilians, were killed by the Syrian forces during an uprising by the Muslim Brotherhood.⁶² Strict surveillance, suppression and control of freedom of expression have been conducted by an

56. According to UNHCR data, see <http://data.unhcr.org/syrianrefugees/regional.php>.

57. "Report of the independent international commission of inquiry on the Syrian Arab Republic", United Nations Human Rights Council, 23 November 2011, A/HRC/S-17/2/Add.1; Section II.

58. A period of military coups and coup attempts began after Syria gained independence as a parliamentary republic in 1946, when the French army departed.

59. On the Syrian political background, see the first "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic", United Nations Human Rights Council, 23 November 2011, A/HRC/S-17/2/Add.1.

60. Ibid. Article 8 of the 1973 Constitution proclaims the Baath party as the leading party.

61. "Report of the Independent International Commission of Inquiry on the Syrian Arab Republic", United Nations Human Rights Council, 23 November 2011, A/HRC/S-17/2/Add.1, Section II.

62. Ibid.

extensive apparatus of intelligence, the Mukhabarat.⁶³

The Syrian Armed Forces (Army, Navy and Air Force), of which the President is the supreme commander, numbered around 300,000 in 2011 and used to be organized into three corps with a total of 12 divisions: seven armoured, three mechanized, one Republican Guard and the Special Forces. The Republican Guard (under the President's direct control) and the Fourth Division (commanded by the President's brother Maher Al Assad) are the elite units.

The internal security apparatus includes police forces under the Ministry of the Interior, Syrian Military Intelligence, Air Force Intelligence, the National Security Bureau, the Political Security Directorate and the General Intelligence Directorate (which reports directly to the President, in spite of being formally under the Ministry of the Interior and which includes Internal Security, External Security and Palestine Division).⁶⁴

Since the beginning of the uprising in 2011 the regime relied extensively on militias alongside national security forces, in particular the Shabbiha (composed by civilians armed by the government), and the People's Army (a Baath party militia).

The Syrian situation: Conflict Background

Government forces, and its militias, have used lethal force (including unlawful killings, extrajudicial killings, torture, arbitrary detention and enforced disappearance) against civilians since the beginning of the uprising in March 2011.⁶⁵ Such an extensive and disproportionate use of lethal force against the

63. Ibid.

64. Ibid.

65. See Security Council resolutions 2042 (2012), 2043 (2012), 2118 (2013), 2139 (2014), 2165 (2014), 2175 (2014), 2191 (2014), 2209 (2015), 2235 (2015), 2254 (2015) and 2258 (2015) and its Presidential Statements of 3 August 2011 (S/PRST/2011/16), 21 March 2012 (S/PRST/2012/6), 5 April 2012 (S/PRST/2012/10), 2 October 2013 (S/PRST/2013/15), 24 April 2015 (S/PRST/2015/10) and 17 August 2015 (S/PRST/2015/15). See also the Reports of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015; A/HRC/28/69 of the 5 February 2015; Conference Room Paper: Selected testimonies from victims of the

demonstrators was the main reason why the opposition groups started arming themselves, and in June 2011 the Free Syrian Army, composed of defectors from the army, was created.⁶⁶ Shortly after the beginning of the uprising the government forces began striking residential areas perceived to be under the control of opposition groups, as well.⁶⁷

In early 2012 the ICRC qualified the violence in Syria as a non-international armed conflict, thus determining the applicability of International Humanitarian Law norms.⁶⁸ Since then, however, the conflict has intensified, becoming an internationalised “multi-sided and highly fluid war of attrition”⁶⁹, in which Syrian and foreign armed groups fight alongside international coalitions, external powers and governmental forces.

In 2015 the situation on the ground became even more fragmented and complex. On one side, against the backdrop of the crisis in Yemen and Iraq, the polarisation of the regional actors intensified. On the other, extremist groups, such as ISIS and Jabhat al-Nusra, gained more and more ground, consolidating their strongholds and imposing extreme Islamist law in the areas under their direct control, causing a significant exacerbation of the sectarian dimension of the conflict. Additionally the external powers and international coalitions intervened on the ground with heavy operations, causing a multiplication of frontlines and battlefields and, reportedly, also many civilian casualties.

Syrian conflict 16 September 2014; A/HRC/27/60 of the 13 August; A/HRC/25/65 of the 12 February; Conference Room Paper: “Without a trace: enforced disappearances in Syria” of the 19 December 2013; A/HRC/24/CRP.2 of the 13 September 2013; A/HRC/24/46 of the 11 September 2013; A/HRC/23/58 of the 4 June 2013; A/HRC/22/59 of the 5 February 2013; A/HRC/21/50 of the 15 August 2012; A/HRC/19/69 of the 22 February 2012; A/HRC/S-17/2/Add.1 of the 23 November 2011.

66. See the first Report of the Independent Commission of Inquiry, of the 23 November 2011, A/HRC/S-17/2/Add.1, para.29.

67. Ibid.

68. ICRC, Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting, at: <https://www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-07-17.htm>.

69. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16128&LangID=E>

The internationalisation of the conflict and the financial, logistic and military support given by external powers to the armed groups closer to their interests have been fuelling the escalation of violence and militarisation, so that at this stage most of the armed groups are well organised and able to fight potentially for years. The ideological boundaries are also blurring, since opposition and extremist armed groups do not hesitate to cooperate and fight together at times, despite having different ideologies.

The government forces lost ground during the first half of 2015, but regained power as a consequence of the Russian intervention, reinforcing a dictatorship that since the beginning of the uprising has used disproportionate force against its civilians, imposed sieges, deliberately targeted civilians and has been responsible for torture, enforced disappearance, unlawful and extrajudicial killings, and other serious crimes.

As a consequence, the prospect for a political solution decreased dramatically given that many international interests are in dispute on the Syrian battlefield.

A conflict against civilians

The 2011 uprising, which evolved into civil war and subsequently into an internationalised armed conflict in Syria has been characterised since its very beginning by a severe disregard of basic principles of International Humanitarian Law, in particular the principle of distinction between civilians and combatants.⁷⁰ According to available reports all actors involved,

70. See Security Council resolutions 2042 (2012), 2043 (2012), 2118 (2013), 2139 (2014), 2165 (2014), 2175 (2014), 2191 (2014), 2209 (2015), 2235 (2015), 2254 (2015) and 2258 (2015) and its Presidential Statements of 3 August 2011 (S/PRST/2011/16), 21 March 2012 (S/PRST/2012/6), 5 April 2012 (S/PRST/2012/10), 2 October 2013 (S/PRST/2013/15), 24 April 2015 (S/PRST/2015/10) and 17 August 2015 (S/PRST/2015/15). See also the Reports of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015; A/HRC/28/69 of the 5 February 2015; Conference Room Paper: Selected testimonies from victims of the Syrian conflict 16 September 2014; A/HRC/27/60 of the 13 August; A/HRC/25/65 of the 12 February; Conference Room Paper: "Without a trace: enforced disappearances in Syria" of the 19 December 2013; A/HRC/24/CRP.2 of the 13 September 2013; A/HRC/24/46 of the 11 September 2013; A/HRC/23/58 of the 4 June 2013; A/HRC/22/59 of the 5 February 2013; A/

with no distinction, have deliberately targeted civilians. Indiscriminate, disproportionate and deliberate attacks against civilians, protected objects and *hors de combat* fighters, imposition of ferocious sieges and blockades, restriction of humanitarian access, use of banned weapons (such as chemical and incendiary shells, cluster munitions, antipersonnel landmines), unlawful use of indiscriminate weapons in densely populated areas or even directly against civilian objects (rockets, heavy artillery, fuel-air explosives and barrel bombs), terror and starvation⁷¹ have been used as general means of warfare; they have not been the exception.

Civilians are thus the main targets of the armed groups, which have not only failed but also refrained from employing means of combat capable of distinguishing between civilians and combatants.

Reports have corroborated accounts of unlawful killing, extrajudicial killing, enforced disappearance, torture, sexual violence, rape, sexual slavery, enforced marriage, recruitment of child soldiers, taking of hostages, use of civilians as human shields, deliberate targeting of religious and sexual minorities, inhumane treatment, punitive imposition of sieges, blockades and starvation.⁷²

The war has also given rise to an unprecedented number of Internally Displaced Persons - IDPs - and refugees (at least 7.6 million IDPs and more

HRC/21/50 of the 15 August 2012; A/HRC/19/69 of the 22 February 2012; A/HRC/S-17/2/Add.1 of the 23 November 2011.

71. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16128&LangID=E>.

72. See Reports of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015; A/HRC/28/69 of the 5 February 2015; Conference Room Paper: Selected testimonies from victims of the Syrian conflict 16 September 2014; A/HRC/27/60 of the 13 August; A/HRC/25/65 of the 12 February; Conference Room Paper: "Without a trace: enforced disappearances in Syria" of the 19 December 2013; A/HRC/24/CRP.2 of the 13 September 2013; A/HRC/24/46 of the 11 September 2013; A/HRC/23/58 of the 4 June 2013; A/HRC/22/59 of the 5 February 2013; A/HRC/21/50 of the 15 August 2012; A/HRC/19/69 of the 22 February 2012; A/HRC/S-17/2/Add.1 of the 23 November 2011. See also: Human Rights Watch, "He Didn't Have to Die, Indiscriminate Attacks by Opposition Groups in Syria".

than 4 million refugees) who are not receiving the required assistance, in violation of international legal obligations. The International Community, in fact, is dramatically failing to protect Syrian refugees and consequently to comply with the principle of *non-refoulement* and their obligations under International Customary and Conventional Law, in particular Human Rights instruments and the 1951 Convention of the Protection of Refugees with its 1967 Protocol.⁷³

Applicable Law

Due to the direct and/or indirect intervention of external powers, foreign fighters and foreign armed groups, the internationalised character of the conflict is nowadays unquestionable. In any event, Common Article 3 to the four Geneva Conventions and customary International Humanitarian Law would be applicable even assuming that the conflict were merely internal.

It is important to underline that every armed group bears the obligation to respect International Humanitarian Law norms, regardless of the compliance shown by the other actors, since such obligation does not depend on reciprocity.

The primary principle of Humanitarian Law is the principle of distinction, which has been plainly disregarded in Syria by all of the armed groups involved. This principle establishes that military attacks cannot be directed against civilians or civilian objects, but only against combatants who might include members of regular armed forces or of armed groups participating in military operations. Civilians lose their protected status, and thus become legitimate military objectives, only by taking direct participation in hostilities. If there is any doubt a person must be considered a civilian.

Military objectives are those that by their nature, location, purpose or use make an effective contribution to military action and whose total or partial

73. Ibid.

destruction, capture or neutralization, in the circumstances applying at the time, offers a definite military advantage.

Evidence collected by Human Rights Watch and the Independent Commission of Inquiry show that most of attacks have been perpetrated against the civilian population as a reprisal, or lacking any effective contribution to the military purpose.⁷⁴ In addition civilians and civilian objects have been used for military purposes, thus as human shields.⁷⁵

Government forces, opposition groups and terrorist groups have deliberately employed indiscriminate means of war (such as unguided rockets, car bombs, mortars and explosive weapons in densely populated areas, barrel bombs, cluster bombs, to name just a few), failing to directly target a specific military objective and to use weapons the effects of which can be controlled so as to limit civilian casualties. Although government forces have been in control of the aerial space for most part of the conflict, and hence are responsible for most of the indiscriminate shelling of civilian areas, from 2014 onwards some rebel and extremist groups have also acquired the capability to shell areas perceived to be pro-government.

Attacks have also been disproportionate, disregarding the fundamental principle of proportionality, which establishes that the expected incidental civilian loss and damage shall be limited to the greatest extent possible and in any event cannot be excessive in relation to the concrete and direct military advantage anticipated.

74. See Reports of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015; A/HRC/28/69 of the 5 February 2015; Conference Room Paper: Selected testimonies from victims of the Syrian conflict 16 September 2014; A/HRC/27/60 of the 13 August; A/HRC/25/65 of the 12 February; Conference Room Paper: “Without a trace: enforced disappearances in Syria” of the 19 December 2013; A/HRC/24/CRP.2 of the 13 September 2013; A/HRC/24/46 of the 11 September 2013; A/HRC/23/58 of the 4 June 2013; A/HRC/22/59 of the 5 February 2013; A/HRC/21/50 of the 15 August 2012; A/HRC/19/69 of the 22 February 2012; A/HRC/S-17/2/Add.1 of the 23 November 2011. See also: Human Rights Watch, “He Didn’t Have to Die, Indiscriminate Attacks by Opposition Groups in Syria”.

75. Ibid.

In order to avoid disproportionate attacks several factors should be taken into account by the armed groups, among them: the location and nature of the targets, the technical skills of the fighters, the weapons employed and, in particular their accuracy, which in turns depends on range, ammunition, environmental factors and trajectory.

Considering the scale of civilian losses and damage it is fair to say that all of the parties involved in the Syrian conflict have failed to take precautionary measures aimed at avoiding, or at least minimizing, incidental loss of civilian life and damage to civilian objects.

Furthermore, most of the fighting is taking place in urban areas. Although International Humanitarian Law does not prohibit fighting in such areas, it places greater obligations on the warring parties to do everything feasible to verify the military nature of targets and minimize harm to civilians.

Deliberate attacks against civilians have been carried out by all parties involved with the intent to instil fear and terror among the population and/or as reprisals, both of which are serious Humanitarian Law violations.

State and non-state actors: armed groups and government forces

State and non-state actors have committed war crimes and crimes against humanity in Syria. Indeed, the civilian population has been the primary deliberate target of the parties of this conflict, with no exception.

Since all parties to the conflict have been enjoying impunity for these terrible crimes a path to justice should be opened in Syria and those responsible prosecuted. The main state and non-state parties involved in the war and in serious violations of International Humanitarian Law are listed below.

Government Forces

Apart from the Syrian Army, the government is heavily relying on

irregular and foreign forces, such as militias, Lebanese Shia Hezbollah fighters and Iranian fighters. Since 2015 Assad has also received significant aerial support from Russia. Assad has openly defended the intervention of Hezbollah, Iranian and Russian fighters alongside government troops.⁷⁶

War Crimes and Crimes against Humanity committed by Government Forces

ATTACKS ON CIVILIANS

Since 2011 government forces have been carrying out indiscriminate and deliberate attacks against civilians, and because of its superior firepower it is safe to say that government forces are responsible for most of the indiscriminate aerial attacks on civilian-inhabited cities, towns, villages and makeshift IDP camps.⁷⁷

Barrel bombs have been dropped by government forces on markets, schools, medical facilities and squares. Additionally, in order to maximise deaths and injuries, often a second round of bombs is dropped on those gathered to assist the injured.⁷⁸ In most of the incidents investigated by the International Commission and Human Rights Watch no evidence of the presence of military targets was found.⁷⁹

76. <http://www.aljazeera.com/news/2015/08/assad-defends-presence-hezbollah-fighters-syria-150825203254106.html>

77. Oral Update of the Independent International Commission of Inquiry on the Syrian Arab Republic, 23 June 2015, A/HRC/29/CRP.3.

78. The use of barrel bombs and indiscriminate bombardment in Syria: the need to strengthen compliance with international humanitarian law, Statement by Mr. Paulo Sérgio Pinheiro Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/CoISyriaIndiscriminateBombardment12032015.pdf>.

79. See Reports of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015; A/HRC/28/69 of the 5 February 2015; Conference Room Paper: Selected testimonies from victims of the Syrian conflict 16 September 2014; A/HRC/27/60 of the 13 August; A/HRC/25/65 of the 12 February; Conference Room Paper: “Without a trace: enforced disappearances in Syria” of the 19 December 2013; A/HRC/24/CRP.2 of the 13 September 2013; A/HRC/24/46 of the 11 September 2013; A/HRC/23/58 of the 4 June

Chemical weapons such as chlorine and phosgene gas have also been used.⁸⁰

The deliberate attacks against civilians are carried out with the intent to spread terror among the population perceived to be close to the opposition groups, or retaliate against attacks of rebel groups. The indiscriminate attacks have forced civilians to flee, prompting the displacement of thousands.⁸¹

Government forces – including, paramilitary, foreign and local supporting militia – continue to locate military objectives within or near densely populated civilian-inhabited areas.⁸²

CRIMES AGAINST DETAINEES

Widespread and systematic use of torture, amounting to extermination,⁸³ has been documented in government held detention facilities - especially Security Branches 215, 227 and 235, Mazzeh military airport - including against women, children and the elderly.⁸⁴ Sexual violence and rape (against both male and female detainees), prolonged suspension, beatings to death, executions, death as result of inhumane treatment, electrocution (including to

2013; A/HRC/22/59 of the 5 February 2013; A/HRC/21/50 of the 15 August 2012; A/HRC/19/69 of the 22 February 2012; A/HRC/S-17/2/Add.1 of the 23 November 2011. See also: Human Rights Watch, “He Didn’t Have to Die, Indiscriminate Attacks by Opposition Groups in Syria”; The use of barrel bombs and indiscriminate bombardment in Syria: the need to strengthen compliance with international humanitarian law, Statement by Mr. Paulo Sérgio Pinheiro Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/CoISyriaIndiscriminateBombardment12032015.pdf>.

80. Report of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015, para.39.

81. Report of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015.

82. Report of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015.

83. United Nation Human Rights Council, Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic, 3 February 2016, A/HRC/31/CRP.1, para.97; Report of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015.

84. For the crimes committed against detainees see for all United Nation Human Rights Council, Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic, 3 February 2016, A/HRC/31/CRP.1. See also, Report of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015.

genitals) have been proved.⁸⁵

The conditions in the detention centres are inhumane.

A “countrywide pattern in which adult male civilians disappear”⁸⁶ has been documented as well; indeed, enforced disappearance has been implemented throughout the entire conflict, not only during the uprising.

SIEGES

Government forces use starvation and terror as a means of war in the areas where they have been enforcing ferocious sieges, with the aim of making life unbearable for the population perceived to be close to the opposition, even if only because of their physical location.

The Yarmouk camp has been kept under siege by the government forces for more than three years.⁸⁷ Inhabitants have died as a consequence of a lack of medical care and assistance, starvation and sniper attacks.⁸⁸ The Independent Commission documented instances in which inhabitants had to eat domestic animals and leaves in order to survive.⁸⁹ Sniper fire prevents civilians from leaving the area under siege; women, children and the elderly have also been targeted.⁹⁰ Humanitarian assistance is deliberately blocked.⁹¹

The government continues to besiege Yarmouk camp in Damascus as well as eastern Ghouta, Zabadani and Madaya.⁹² Although the government forces are

85. Report of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015, paras.90-95.

86. A/HRC/30/48, 13 August 2015, para. 42.

87. Report of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015.

88. Ibid.

89. Ibid.

90. Ibid.

91. Report of the International Commission of Inquiry: A/HRC/30/48 of the 13 Aug, paras.99-103.

92. Report of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015.

not the only ones that are using besieging as a means of war,⁹³ these sieges have been on-going for almost three years and have resulted in civilians starving to death, or dying from chronic illness or injuries sustained in aerial bombardments for which there is little or no medical care available.⁹⁴ It is estimated that 40% of the children in Yarmouk camp suffer from malnutrition.⁹⁵ The denial and obstruction of food and other items indispensable to the survival of the civilian population aims to force restive areas into submission as part of the government's strategy of 'surrender or starve'.⁹⁶

Non-state actors

The main non-government armed groups active in Syria are: Ahrar al-Sham, Al Qaeda, Jabhat al-Nusra, Ansar al-Sham, Hezbollah (which operates alongside the government forces), Jaish al-Islam, Liwa al-Haqq, Liwa al-Tawhid, Suqour al-Sham and the Islamic State (or Islamic State of Iraq and the Levant).

Islamic Front

The Islamic Front is an umbrella organisation which was created in 2013 by seven Islamist groups; the coalition was led by Hassan Abboud until 2014.

Members of the Islamic Front are: Suqour al-Sham, a powerful opposition

93. Anti-government armed groups have imposed sieges around the towns of Nubul and Zahra (Aleppo) and around Foua'a and Kafria (Idlib). The situation in these Idlib towns is reportedly dire – with shortages of food, water, medicine and electricity. In January, ISIS besieged Al-Jabal, Al-Joura, Al-Ahrabish and Al-Qousour, all densely populated districts of Dayr Az-Zawr city, which remains under government control. Hundreds of thousands of civilians have since lived with minimum access to food, medicine, water, electricity and fuel. These besieged communities have survived on bread and water. Access to clean water is limited, and cases of diarrhoea, dehydration and gastrointestinal diseases are increasing. See Report of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015, paras.104-105.

94. Report of the International Commission of Inquiry: A/HRC/30/48 of the 13 August 2015, paras.99-108.

95. Ibid.

96. Ibid.

force and one of the strongest rebel groups, although it has been weakened after fighting with ISIS; Liwa al-Tawhid that fight to remove Bashar al-Assad; Jaish al-Islam, another important anti-government rebel group; Ahrar al-Sham, one of the largest members of the Islamic Front and a powerful opposition force; Ansar al-Sham and Liwa al-Haqq, both anti-Assad organisations and, finally, the Kurdish Islamic Front (KIF), the smallest affiliate of the Islamic Front, which was established in 2013 by Sheikh Abu Abdullah al-Kurdi with the assistance of Syrian opposition forces, in particular Ahrar al-Sham. The inclusion of the Kurdish Islamic Front in the Islamic Front is proof that the Islamic Front wants the Kurdish people in its envisioned Islamic State.⁹⁷

The Kurdish Islamic Front has fought alongside ISIS and Ahrar al-Sham against the Popular Protection Units (YPG), a militia that operates in the semi-autonomous Kurdish region in north-eastern Syria.

Free Syrian Army

Originally the Free Syrian Army was composed of those combatants who had defected from the Syrian army. Later it became the armed group backed by the National Coalition for Syrian Opposition and Revolutionary Forces, formed in November 2012. In December 2012 it was operating under the Supreme Military Council, which is a coalition of groups lacking central command structure. In some instances it claimed responsibility for shelling civilian objects.⁹⁸

97. Valerie Szybala, “The Islamic Alliance Emerges”, The Institute for the Study of War, at <http://www.understandingwar.org/backgroundunder/islamic-alliance-emerges>; see also <https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>.

98. Human Rights Watch, “He Didn’t Have to Die, Indiscriminate Attacks by Opposition Groups in Syria”.

Ahrar al-Sham

Ahrar al-Sham was formed in December 2011.⁹⁹ It is a Salafi, Sunni organisation, also known as the Islamic Movement of the Free Men of the Levant. It has very strong ties with Al-Qaeda and is one of the main members of the Islamic Front,¹⁰⁰ the formation of which it actively contributed to in December 2012 and which leads the Shariah and the Political Offices.¹⁰¹ It is estimated to have between 10,000 and 15,000 units.¹⁰² Some of its members and funders were political prisoners of Assad's regime.¹⁰³ By the 2013 summer Ahrar al-Sham was sufficiently organised to carry out operations throughout the country.¹⁰⁴

Its commander, Hassan Abboud, has reportedly contributed to the creation of the Kurdish Islamic Front (also a member of the Islamic Front) in order to obtain Kurdish support for the Islamic Front, since there have been instances of conflict between Kurdish militias and the Islamic Front.¹⁰⁵

99. See <https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/523>. See also, Hassan, Hassan. "The Army of Islam Is Winning in Syria." *Foreign Policy*. N.p., 1 Oct. 2013; Lund, Aron. "Holy Warriors." *Foreign Policy*, No.15, Oct. 2012: http://www.foreignpolicy.com/articles/2012/10/15/holy_warriors; Zelin, Aaron, and Charles Lister. "The Crowning of the Syrian Islamic Front", *Foreign Policy*. N.p., 24 June 2013, :http://mideastafrica.foreignpolicy.com/posts/2013/06/24/the_crowning_of_the_syrian_islamic_front; Hubbard, Ben. "Islamist Rebels Create Dilemma on Syria Policy", *New York Times*. N.p., 27 Apr. 2013: <http://www.nytimes.com/2013/04/28/world/middleeast/islamist-rebels-gains-in-syria-create-dilemma-for-us.html?pagewanted=all>; Bar, Herve. "Ahrar Al-Sham Jihadists Emerge from Shadows in North Syria", *Agence France Presse*. N.p., 13 Feb. 2013; <http://www.dailystar.com.lb/News/Middle-East/2013/Feb-13/206284-ahrar-al-sham-jihadists-emerge-from-shadows-in-north-syria.ashx>.

100. Under the umbrella organisation called Islamic Front, Sunni Islamist groups fight against the Assad Regime with the intent to create an Islamic government in Syria. See: Quilliam Foundation, *The Jihadist Network in the Syrian Revolution*, A Strategic Briefing; <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/523>.

101. *Ibid.*

102. *Ibid.*

103. *Ibid.*

104. *Ibid.*

105. *Ibid.*

Ahrar al-Sham has been cooperating with not only the Free Syrian Army brigades, but also with al-Nusra¹⁰⁶ and ISIS,¹⁰⁷ although it is considered a more moderate Islamist group than the latter.

In the summer of 2014 tensions between Ahrar al-Shams and ISIS escalated during the battle for Raqqa, which saw al-Nusra and Islamic Front (including Ahrar al-Sham) on one side and ISIS on the other. Ahrar al-Shams also blames ISIS for the killing of its former leader Abu Khalid al-Suri.¹⁰⁸

Among the leaders of Ahrar al-Sham there are:

(i) Abu Khalid al-Suri, also known as Abu Omeir al-Shami, who was considered to be Ayman al-Zawahiri's representative in Syria and was charged with facilitating reconciliation amongst Islamist militants in the region. He was killed in a suicide bombing against Ahrar al-Sham's headquarters.¹⁰⁹

(ii) Hassan Abboud, also known as Abu al-Hassan or Abu Abdullah al-Hamawi. He was its commander and the leader of the political office of the Islamic Front. He was killed in a car bombing attack in Idlib.¹¹⁰ Sheikh Hashim al-Sheikh, also known as Abu Jaber, was named the leader of Ahrar al-Sham the day after Hassan Abboud was killed. He used to command a battalion of

106. On March 8, 2013: Al-Nusra and Ahrar al-Sham seized Raqqa from government forces; Ahrar al-Sham coordinated with al-Nusra, other Islamic Front units, and battalions from the Supreme Military Council to drive ISIS out of Raqqa.

107. On December 13, 2013: Ahrar al-Sham, ISIS, and al-Nusra coordinated an attack on Hezbollah's headquarters in Damascus; on January 6, 2014.

108. See <https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/523>. See also, Hassan, Hassan. "The Army of Islam Is Winning in Syria." *Foreign Policy*, 1 Oct. 2013; Lund, Aron. "Holy Warriors." *Foreign Policy*, No.15, Oct. 2012: http://www.foreignpolicy.com/articles/2012/10/15/holy_warriors; Zelin, Aaron, and Charles Lister. «The Crowning of the Syrian Islamic Front», *Foreign Policy*, 24 June 2013, :http://mideastafrica.foreignpolicy.com/posts/2013/06/24/the_crowning_of_the_syrian_islamic_front; Hubbard, Ben. "Islamist Rebels Create Dilemma on Syria Policy", *New York Times*, 27 Apr. 2013: <http://www.nytimes.com/2013/04/28/world/middleeast/islamist-rebels-gains-in-syria-create-dilemma-for-us.html?pagewanted=all>.

109. *Ibid.*

110. *Ibid.*

the Free Syrian Army.¹¹¹

Ahrar al-Sham is allegedly funded by Islamist networks based in the Persian Gulf and backed by Qatar. Sheikh Hajjaj al-Ajami is considered to be one of the main funders. Ahrar al-Sham has also allegedly coordinated humanitarian efforts sponsored by the Turkish Humanitarian Relief Foundation and Qatar Charity.¹¹²

Though Ahrar al-Sham began its operation using IEDs against military bases to seize weapons, nowadays it is one of the more active and better equipped groups with tanks, mobile artillery, anti-tank missiles, rockets and grenade launchers and is also able to carry out cyber-attacks.¹¹³ It is not clear whether it uses suicide attacks as well.

Ahrar al-Sham maintains under its control areas mostly around Idlib, although it has been active in Hama, Aleppo, Raqqa, Al-Hasakah, Deir al-Zour, Daraa, and in the north and east. In the areas under its control it engages in humanitarian missions and provides the population with food and fuel, as well as operating water pumping stations, dams, and a road and bridge repair team.¹¹⁴

Al Qaeda

Al Qaeda, the world's largest Sunni Islamist organisation, experienced a significant expansion in Iraq in 2011, during the so called Arab Spring, and expanded in Syria during the civil war, becoming the Islamic State in Iraq and Syria (ISIS), and subsequently the Islamic State (IS).¹¹⁵

111. Ibid.

112. Foreign Policy, "The Crowning of the Syrian Islamic Front": <http://foreignpolicy.com/2013/06/24/the-crowning-of-the-syrian-islamic-front/>.

113. See <https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/523>.

114. See <https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/523>.

115. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/>; "Dreaming of a

However, in February 2014, the relations between Al Qaeda Iraq and the Islamic State became problematic when the Islamic State declared its merger with the other Al Qaeda affiliate in Syria, Jabhat al-Nusra. The latter denied the merger. On behalf of Al Qaeda Iraq, Zawahiri ruled in favour of Al Nusra and decreed that the two organizations would continue to operate independently.¹¹⁶ The Islamic State then started refusing to comply with orders issued by Al Qaeda Iraq and, at the end of February, it was also accused of killing of Abu Khalid al-Suri, Zawahiri's delegate to Syria and a leader of Ahrar al-Sham.¹¹⁷

Since many jihadist groups around the world have begun to pledge allegiance to the Islamic State, it appears that Al Qaeda and the Islamic State are competing for leadership of global jihad.

Al Qaeda has been financed personally by the bin Laden family but also by other private donors. Another significant means of financing the group has been an international web of illicit trafficking and charities run by Al Qaeda itself.¹¹⁸ The Al Qaeda affiliate in Syria is Jabhat al-Nusra.

Jabhat al-Nusra

Al-Nusra Front is a Sunni, jihadist, salafi militant organization whose goal is to overthrow the Assad regime in Syria and replace it with a Sunni Islamic government. Al-Nusra is Al Qaeda's only official affiliate in Syria, created as Al Qaeda Iraq's extension in Syria, taking advantage of the civil war.¹¹⁹

Caliphate", The Economist, Aug 6, 2011; 9/11 Commission Report: The Official Report of the 9/11 Commission and Related Publications; Byman, Daniel. "Buddies or Burdens? Understanding the Al Qaeda Relationship with Its Affiliate Organizations." Security Studies 23.3 (2014); Joscelyn, Thomas. "Al Qaeda's general command disowns the Islamic State of Iraq and the Sham", The Long War Journal.

116. Ibid.

117. Ibid.

118. Ibid.

119. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>; Atassi, Basma, "Qaeda chief annuls Syrian-Iraqi jihad merger." Al Jazeera, 9 June 2013, <http://www.aljazeera.com/news/middleeast/2013/06/2013699425657882.html>; Associated Press. "ISIL says it faces war with Nusra in Syria." Al Jazeera, 8 Mar. 2014, <http://www.aljazeera.com/>

Jabhat al-Nusra has significant military capacity in the battlefield and has also extensively engaged in suicide terrorist attacks.¹²⁰ Jabhat al-Nusra imposes religious law in the areas under its control.¹²¹ There is no clear information as

news/middleeast/2014/03/isil-says-it-faces-war-with-nusra-syria-20143719484991740.html; Lund, Aron. "Syria's al-Qaeda Wing Searches for a Strategy", Carnegie Endowment for International Peace, 18 Sept. 2014, <http://carnegieendowment.org/syriaincrisis/?fa=56673>; "U.S. Syria Strategy Falters With Collapse of Rebel Group", The New York Times, 04 Mar. 2015, <http://www.nytimes.com/reuters/2015/03/05/world/europe/05reuters-mideast-crisis-syria-hazzm.html>; "Syria's Al-Nusra Front Commander 'killed in Strike'" BBC News, 6 Mar. 2015, <http://www.bbc.com/news/world-middle-east-31757502>; Barnard, Anne, and Eric Schmitt. "Rivals of ISIS Attack U.S.-Backed Syrian Rebel Group", The New York Times, 31 July 2015, http://www.nytimes.com/2015/08/01/world/middleeast/nusra-front-attacks-us-backed-syrian-rebel-group.html?_r=0; Ignatius, David. "Lessons from the Bay of Pigs in the Syrian 'Division 30' Debacle.", The Washington Post, 20 Aug. 2015, https://www.washingtonpost.com/opinions/lessons-from-the-bay-of-pigs-in-the-syrian-division-30-debacle/2015/08/20/f561a29e-4775-11e5-8ab4-c73967a143d3_story.html; Barnard, Anne, and Eric Schmitt. "Rivals of ISIS Attack U.S.-Backed Syrian Rebel Group", The New York Times, 31 July 2015, http://www.nytimes.com/2015/08/01/world/middleeast/nusra-front-attacks-us-backed-syrian-rebel-group.html?_r=0; "Nusra Leader: Our Mission Is to Defeat Syrian Regime." Al Jazeera English, 28 May 2015, <http://www.aljazeera.com/news/2015/05/nusra-front-golani-assad-syria-hezbollah-isil-150528044857528.html>; "Syria Conflict: Al-Nusra Fighters Kill Druze Villagers." BBC News, 11 June 2015, <http://www.bbc.com/news/world-middle-east-33092902>; Tabler, Andrew J., Jeffrey White, and Simon Henderson. "Field Reports on Syria and the Opposition." 12 March 2013, <http://www.washingtoninstitute.org/policy-analysis/view/field-reports-on-syria-and-the-opposition>.

120. Some of the suicide bombing attacks for which Al-Nusra claims responsibility are: the May 10 2012 double suicide bombing attacks in Damascus (55 killed, unknown wounded); the October 3, 2012 suicide bombing attack in Aleppo (12+ killed, unknown wounded); the November 5, 2012 suicide bombing in Hama (50+killed, unknown wounded); the January 24, 2013 suicide bombing in Damascus (53 killed, unknown wounded).

121. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>; Atassi, Basma, "Qaeda chief annuls Syrian-Iraqi jihad merger." Al Jazeera, 9 June 2013, <http://www.aljazeera.com/news/middleeast/2013/06/2013699425657882.html>; Associated Press, "ISIL says it faces war with Nusra in Syria", Al Jazeera, 8 Mar. 2014, <http://www.aljazeera.com/news/middleeast/2014/03/isil-says-it-faces-war-with-nusra-syria-20143719484991740.html>; Lund, Aron. "Syria's al-Qaeda Wing Searches for a Strategy", Carnegie Endowment for International Peace, 18 Sept. 2014, <http://carnegieendowment.org/syriaincrisis/?fa=56673>; "U.S. Syria Strategy Falters With Collapse of Rebel Group", The New York Times, 04 Mar. 2015, <http://www.nytimes.com/reuters/2015/03/05/world/europe/05reuters-mideast-crisis-syria-hazzm.html>; "Syria's Al-Nusra Front Commander 'killed in Strike'" BBC News, 6 Mar. 2015, <http://www.bbc.com/news/world-middle-east-31757502>; Barnard, Anne, and Eric Schmitt. "Rivals of ISIS Attack U.S.-Backed Syrian Rebel Group.", The New York Times, 31 July 2015, http://www.nytimes.com/2015/08/01/world/middleeast/nusra-front-attacks-us-backed-syrian-rebel-group.html?_r=0; Ignatius, David. "Lessons from the Bay of Pigs in the Syrian 'Division 30' Debacle.", The Washington Post, 20 Aug. 2015, <https://www.washingtonpost.com/opinions/lessons-from>

to the leadership structure of Jabhat al-Nusra (also due to internal divisions), although it is known that its chief is Abu Muhammad al-Julani and that a Shura Council is one of the main directive bodies.¹²² Known members of al-Nusra are: Hamid Hamad Hamid al-Ali, who played an active role in recruiting foreign fighters, Muhsin al-Fadhli, reportedly killed by a U.S. drone strike in July 2015; Maysar Ali al-Juburi; Saleh al-Hamawi, who was expelled in 2015 because of internal divisions related to the global jihad – Syrian civil war dualism; Abu Muhammad al-Julani, reportedly the current al-Nusra leader and former member of Al Qaeda Iraq/ISIS; Abdul Mohsen Abdullah Ibrahim; Sami al-Oreidi, perceived to be the current religious leader.¹²³ After Al-Qaeda disowned ISIS, al-Nusra remained the official Al-Qaeda branch in Syria; however there was information about al-Nusra also being supported by Gulf States, in particular Qatar.¹²⁴

The U.S. has claimed that al-Nusra controls a group that has the ambition to develop terrorist attacks globally, although no confirmation yet exists about this.

In 2014 tensions between ISIS and al-Nusra increased, although there is evidence of cooperation between the two groups in certain areas, including carrying out some major operations.¹²⁵ Although Al-Nusra is not a member of the Islamic Front, it has been cooperating with some of its members in some areas, such as carrying out a joint operation with Ahrar al-Sham for the

[the-bay-of-pigs-in-the-syrian-division-30-debacle/2015/08/20/f561a29e-4775-11e5-8ab4-c73967a143d3_story.html](http://www.nytimes.com/2015/08/01/world/middleeast/nusra-front-attacks-us-backed-syrian-rebel-group.html?_r=0); Barnard, Anne, and Eric Schmitt. “Rivals of ISIS Attack U.S.-Backed Syrian Rebel Group.” *The New York Times*, 31 July 2015, http://www.nytimes.com/2015/08/01/world/middleeast/nusra-front-attacks-us-backed-syrian-rebel-group.html?_r=0; “Nusra Leader: Our Mission Is to Defeat Syrian Regime.” *Al Jazeera English*, 28 May 2015, <http://www.aljazeera.com/news/2015/05/nusra-front-golani-assad-syria-hezbollah-isis-150528044857528.html>; “Syria Conflict: Al-Nusra Fighters Kill Druze Villagers.” *BBC News*, 11 June 2015, <http://www.bbc.com/news/world-middle-east-33092902>; Tabler, Andrew J., Jeffrey White, and Simon Henderson, “Field Reports on Syria and the Opposition”, 12 March 2013, <http://www.washingtoninstitute.org/policy-analysis/view/field-reports-on-syria-and-the-opposition>.

122. *Ibid.*

123. *Ibid.*

124. *Ibid.*

125. *Ibid.*

seizing of Idlib.¹²⁶

There have been instances of cooperation with the Free Syrian Army as well.¹²⁷

Hezbollah and the main Kurdish groups have remained al-Nusra's enemies throughout the conflict.

Al-Nusra has not only been financed by foreign donors and by Al Qaeda Iraq, but also through unlawful activities such as kidnapping and ransom and by exercising control over oil fields.¹²⁸ A significant percentage of its fighters are foreigners and it is the second largest and best equipped armed group in Syria, after ISIS.¹²⁹

Al-Nusra has been active across the whole of the Syrian territory and its military capability is such that it could claim to maintain no-fly zones with anti-aircraft weaponry.

Al-Nusra aims at implementing Shariah law in Syria and reportedly forced Druze in the areas under its control to convert to Sunni Islam, since it considers them heretics. Al-Nusra exercises comprehensive control over its area; like ISIS, it has established Islamic courts and provides for government-like institutions.¹³⁰

Ansar al-Sham

Ansar al-Sham (Kataib Ansar al-Sham, "Supporters of the Levant Brigade")

126. Ibid.

127. Ibid.

128. Ibid.

129. Ibid.

130. Ibid.

is an Islamist rebel force, of Salafi and Sunni ideology, and a member of the Islamic Front.¹³¹

There is not much information available regarding its leadership, although it seems it was founded by Afghan Abu Omar and commanded by Chechen Abu Musa al-Shishani.¹³²

It is estimated that it has 2.500 fighters and has been financed by Saudi Arabia.

Ansar al-Sham is based in northern Latakia but also carries out operations in the Idlib area.¹³³

It employs remotely detonated bombs and can engage in small-medium scale armed battles.

Ansar al-Shams has invested in promoting its humanitarian aid efforts.¹³⁴

Hezbollah

Hezbollah is a Shiite political and military organization based in Lebanon.¹³⁵

Hezbollah is run by a seven-member Shura Council, which oversees the committees and establishes the ideological, financial, political, military

131. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>; Roggio, Bill, “Chechen Al Qaeda Commander, Popular Saudi Cleric, and an Ahrar Al Sham Leader Spotted on Front Lines in Latakia”, Long War Journal, 27 Mar. 2014; Hussein, Tam. “The Ansar Al-Sham Battalions.” Carnegie Endowment for International Peace. N.p., 24 Mar. 2014, <http://carnegieendowment.org/syriaincrisis/?fa=55066>; “Guide to the Syrian Rebels” BBC News. N.p., 13 Dec. 2013; <http://www.bbc.com/news/world-middle-east-24403003>; Lund, Aron. “Syria’s Salafi Insurgents: The Rise of the Syrian Islamic Front”, UI Occasional Papers (n.d.): 26. Swedish Institute of International Affairs.

132. Ibid.

133. Ibid.

134. Ibid.

135. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>; Azani, Eitan. “The Hybrid Terrorist Organization: Hezbollah as a Case Study”, Studies in Conflict & Terrorism 36.11 (2013); George, Susannah, “This Is Not Your Father’s Hezbollah”, Foreign Policy, 15 Jan. 2015: <http://foreignpolicy.com/2015/01/15/this-is-not-your-fathers-hezbollah/>; International Crisis Group, “Lebanon’s Hizbollah Turns Eastward to Syria”, 27 May 2014.

and social strategies, and by a secretary general, who is the leader of the organisation.¹³⁶ Hezbollah entered the Lebanese political scene in the 1980s.¹³⁷

Hezbollah fights alongside the Assad regime and is one of its crucial allies. In fact, Bashar al-Assad's fall would jeopardize Hezbollah's power and security in the region.

Hezbollah is supported by Iran, Syria, and worldwide fundraising networks.¹³⁸ Much of its funding comes from private donations and from a wide range of both legitimate and illegal businesses: from the blood diamond trade in Sierra Leone to credit card fraud in the United States.¹³⁹ Most members of Hezbollah are Lebanese Shiites.

Since Hezbollah's creation, Iran and its Revolutionary Guards (IRGC) have played an active role in training, supplying, and funding the group. The Assad government facilitated a supply route for arms deliveries from Iran to Hezbollah, and also directly armed the group.¹⁴⁰

Jaish al-Islam

Jaish al-Islam resulted from the merger of several opposition groups based in Damascus and it is now one of the main opposition groups in the area.¹⁴¹ Of Salafi, Sunni ideology Jaish al-Islam is a founding member of the Islamic Front and its leader was Zahran Alloush, was also military commander of the umbrella organisation, before he was killed and replaced by his successor

136. Ibid.

137. Ibid.

138. Ibid.

139. Ibid.

140. Ibid.

141. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>; "Guide to the Syrian Rebels", BBC News, 13 Dec. 2013, <http://www.bbc.com/news/world-middle-east-24403003>; Hassan, Hassan, "The Army of Islam Is Winning in Syria", Foreign Policy, 1 Oct. 2013, http://www.foreignpolicy.com/articles/2013/10/01/the_army_of_islam_is_winning_in_syria; Lund, Aron. "The Politics of the Islamic Front, Part 1: Structure and Support." Carnegie Endowment for International Peace, 14 Jan. 2014, <http://carnegieendowment.org/syriaincrisis/?fa=54183>

Islam Alloush.¹⁴² Jaish al-Islam is reportedly backed by Saudi Arabia.¹⁴³

Jaish al-Islam is active in the Damascus and the Ghouta areas.¹⁴⁴

Liwa al-Haqq

Liwa al-Haqq (the Truth Brigade) is an opposition rebel group that was formed in the Homs area.¹⁴⁵ The founding members of Liwa al-Haqq belonged to different ideologies, including non-violent protesters who participated in the uprising. However, in 2013 Liwa al-Haqq participated in the creation of the Islamic Front, therefore committing to the Salafi ideology of the umbrella organisation.¹⁴⁶ Liwa al-Haqq's leader is the former businessman Abu Rateband and its military commander is a former member of the Syrian Army and former prisoner of the Assad government, Abderrahman Suweiss.¹⁴⁷ It has been funded by mostly private donors, in particular from Kuwait.¹⁴⁸

Together with al-Nusra, Ahrar al-Sham, Liwa al-Tawhid and Ahrar al-Shimal, Liwa al-Haqq carried out a major offensive in Idlib to take control over a military structure.¹⁴⁹

142. Ibid.

143. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>; "Guide to the Syrian Rebels", BBC News, 13 Dec. 2013, <http://www.bbc.com/news/world-middle-east-24403003>; Hassan, Hassan, "The Army of Islam Is Winning in Syria", Foreign Policy, 1 Oct. 2013, http://www.foreignpolicy.com/articles/2013/10/01/the_army_of_islam_is_winning_in_syria; Lund, Aron. "The Politics of the Islamic Front, Part 1: Structure and Support." Carnegie Endowment for International Peace, 14 Jan. 2014, <http://carneгиеendowment.org/syriaincrisis/?fa=54183>

144. Ibid.

145. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>; "Guide to the Syrian Rebels", BBC News, 13 Dec. 2013, <http://www.bbc.com/news/world-middle-east-24403003>; Zellin, Aaron. "The Syrian Islamic Front: A New Extremist Force", The Washington Institute for Near East Policy, 4 Feb. 2013, <http://www.washingtoninstitute.org/policy-analysis/view/the-syrian-islamic-front-a-new-extremist-force>.

146. Ibid.

147. Ibid.

148. Ibid.

149. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>.

Liwa al-Tawhid

Liwa al-Tawhid (the Tawhid Brigade) is the result of the union of opposition groups in Aleppo.¹⁵⁰ Liwa al-Tawhid initially called for a moderate Islamist/civil state to replace Assad, but later on it also joined the Islamic Front as a founding member in December 2013, thus joining the Sunni Salafist ideology.¹⁵¹

Among its surviving leaders only Abdul-Aziz Salameh is known.¹⁵² It is reportedly supported by Qatar and indirectly by Saudi Arabia, which backs the Islamic Front.¹⁵³

Liwa al-Tawhid uses IEDs and engages in gun battles. It has cooperated with extremist groups, such as al-Nusra, in carrying out some major operations for the seizure of strategic sites in Aleppo, as well as with secular groups.¹⁵⁴

Suqour al-Sham

Suqour al-Sham was formed in 2011 by Ahmad Abu Eissa as a local opposition organisation, which armed itself in response to the Assad's violent repression of the protests.¹⁵⁵ Initially it was only able to use IEDs against the government forces, but soon became one of the main armed opposition groups in Idlib,

150. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>; Pannell, Ian. "Syria: Fear and Hunger amid Battle for Aleppo." BBC News, 29 July 2012, <http://www.bbc.com/news/world-middle-east-19042700>; Lund, Aron, "Fighting in Aleppo, Resisting Geneva: An Interview With the Tawhid Brigade.", Carnegie Endowment for International Peace, 2 Jan. 2014, <http://carnegieendowment.org/syriaincrisis/?fa=54064>; Guide to the Syrian Rebels." BBC News, Dec. 2013, <http://www.bbc.com/news/world-middle-east-24403003>.

151. Ibid.

152. Ibid.

153. Ibid.

154. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>.

155. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>; Roggio, Bill. "Suqour Al Sham, ISIS Agree to Ceasefire", Long War Journal, 5 Feb. 2014, http://www.longwarjournal.org/threat-matrix/archives/2014/02/suqour_al_sham_isis_agree_to_c.php; Hassan, Hassan, "Front to Back", Foreign Policy, 4 Mar. 2014, http://www.foreignpolicy.com/articles/2014/03/04/islamic_front_isis_syria.

through mergers with other smaller groups.¹⁵⁶

Suqour al-Sham was a member of the Free Syrian Army, then a founding member of the Syrian Islamic Liberation Front, which acted in coordination with the Supreme Military Council (SMC). In 2013 it also joined the Islamic Front.¹⁵⁷ In 2014 it was significantly weakened by fighting with ISIS, which killed some of Suqour al-Sham's main military and religious commanders.¹⁵⁸ Suqour al-Sham armed itself mostly with weapons coming from the Syrian military through raids of regime compounds, defectors, or sales from corrupt officers.¹⁵⁹

Suqour al-Sham admitted using remotely detonated car bombs in civilian areas.¹⁶⁰

It has also been cooperating with other extreme groups, such as al-Nusra, for some operations.¹⁶¹

The Islamic State

The Islamic State (IS),¹⁶² also known as the Islamic State in Iraq and Syria

156. Ibid.

157. Ibid.

158. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>; Roggio, Bill. "Suqour Al Sham, ISIS Agree to Ceasefire", Long War Journal, 5 Feb. 2014, http://www.longwarjournal.org/threat-matrix/archives/2014/02/suqour_al_sham_isis_agree_to_c.php; Hassan, Hassan, "Front to Back", Foreign Policy, 4 Mar. 2014, http://www.foreignpolicy.com/articles/2014/03/04/islamic_front_isis_syria.

159. Ibid.

160. Ibid.

161. Ibid.

162. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>; The Economist. "The Islamic State of Iraq and Greater Syria: Two Arab countries fall apart", The Economist, June 13, 2014, <http://www.economist.com/news/middle-east-and-africa/21604230-extreme-islamist-group-seeks-create-cal>; Yeginsu, Ceylan, "ISIS Draws a Steady Stream of Recruits From Turkey", The New York Times, 15 Sept. 2014, <http://www.nytimes.com/2014/09/16/world/europe/turkey-is-a-steady-source-of-isis-recruits.html>; Al-Qaida Sanctions Committee, "The List established and maintained by the Al-Qaida Sanctions Committee with respect to individuals, groups, undertakings and other entities associated with Al-Qaida", The United Nations, June 2, 2014, <http://www.un.org/sc/committees/1267/pdf/AQList.pdf>; Kirdar, MJ. AQAM Futures Project Case Studies Series: Al Qaeda in Iraq, Center for Strategic and International Studies, June 2011, http://csis.org/files/publication/110614_

(ISIS or ISIL) is a jihadist, Salafi, Sunni militant organization aiming to establish a caliphate in Syria and Iraq. It was formally created in 2013 by militias involved in the Iraqi insurgency and trained by Zarqawi before his death in 2006.

ISIS origins are to be found in Zarqaw's Jama'at Tawhid wal Jihad, which joined Al-Qaeda in 2004 forming Al-Qaeda Iraq. After the Coalition withdrawal in 2011, Al-Qaeda carried out a series of significant attacks against the Iraqi government and security forces and started seeing the war in Syria as an opportunity to expand.¹⁶³ At this stage Abu Bakr al-Baghdadi, also known as Abu Du'a, was in control of Al Qaeda Iraq and led its expansion into Syria.¹⁶⁴ Baghdadi then sent al-Julani to Syria for the creation of a Salafi cell to operate against Bashar al-Assad.¹⁶⁵

In April 2013 the name of the organisation was changed when Baghdadi declared that al-Nusra and Al Qaeda Iraq would be merged under the name of the Islamic State in Iraq and Syria. Julani, the al-Nusra leader, rejected the

Kirdar_AlQaedaIraq_Web.pdf; Bahney, Benjamin, Howard Shatz, Carroll Gainer, Renny McPherson, and Barbara Sude, *An Economic Analysis of the Financial Records of Al-Qa'ida in Iraq*, RAND Corporation, 2010, http://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG1026.pdf; BBC. "Profile: Islamic State in Iraq and the Levant (ISIS)", The BBC, June 6, 2014, <http://www.bbc.com/news/world-middle-east-24179084>; Nordland, Rod and Alissa J. Rubin. "Iraq Insurgents Reaping Wealth as They Advance", June 20, 2014, http://www.nytimes.com/2014/06/21/world/middleeast/isis-iraq-insurgents-reaping-wealth-as-they-advance.html?_r=0; "How ISIS Works," The New York Times, 16 Sept. 2014, <http://www.nytimes.com/interactive/2014/09/16/world/middleeast/how-isis-works.html>; BBC. "Profile: Islamic State in Iraq and the Levant (ISIS)", The BBC, June 6, 2014, <http://www.bbc.com/news/world-middle-east-24179084>; Caris, Charles, and Samuel Reynolds, *ISIS Governance in Syria*, Middle East Security Report 22: 4, Institute for the Study of War, July 2014, <http://www.understandingwar.org/sites/default/files/ISIS_Governance.pdf>; Kirdar, MJ. AQAM Futures Project Case Studies Series: Al Qaeda in Iraq, Center for Strategic and International Studies, June 2014; Jehl, Douglas. "C.I.A. Says Berg's Killer Was Very Probably Zarqawi", The New York Times, 13 May 2004, <http://www.nytimes.com/2004/05/14/world/struggle-for-iraq-beheader-cia-says-berg-s-killer-was-very-probably-zarqawi.html>; Caris, Charles, and Samuel Reynolds, "ISIS Governance in Syria", Middle East Security Report, Institute for the Study of War, July 2014, http://www.understandingwar.org/sites/default/files/ISIS_Governance.pdf.

163. Ibid.

164. Ibid.

165. Ibid.

merger and Al Qaeda's leader al-Zawahiri ruled in favour of al-Nusra, then appointing Abu Khalid al-Suri as his mediator in Syria.¹⁶⁶

After the split between ISIS and al-Nusra, the two groups fought against each other. However, there is evidence of some ground-level cooperation between al-Nusra and ISIS units in certain areas of the country or against common enemies, such as Hezbollah.¹⁶⁷ Further, the international coalition's airstrikes pushed the two groups to seek cooperation again.

In June 2014 the name was changed again into Islamic State (IS) and the group declared the foundation of a Caliphate, with its leader Abu Bakr al-Baghdadi as Caliph. In February 2014 Al-Qaeda disowned ISIS.¹⁶⁸

ISIS has experienced a continuous increase in power and it was able to confront both Iraqi and Syrian governments, as well as Iraqi militias, the Kurdish pesh merga, and rebel groups in Syria. In early 2014 it took control of Fallujah and Mosul. Thanks to criminal activities and oil revenues, experts estimate that ISIS could earn over 1 million euros per day.¹⁶⁹

When ISIS first began operating in Syria, it was still connected to Al Qaeda Iraq and funded by donors in Syria, Saudi Arabia, Kuwait and Jordan. After Al Qaeda Iraq disowned ISIS, it has been funding itself mostly through criminal activities, such as kidnapping, extortion of local businesses, robberies, smuggling and seizure of assets from areas under its control (for instance it stole approximately 400 million USD from the Mosul Central bank, when it took over Mosul). In its expansion ISIS also took control of oil refineries, from which it derives significant monetary support.¹⁷⁰

166. Ibid.

167. Ibid.

168. Ibid.

169. Ibid.

170. Ibid.

ISIS exercises effective authority and control over the areas it has captured and imposes extreme Islamist law.¹⁷¹ ISIS is led by the Shura Council, the Military Council, and the Security and Intelligence Council. Baghdadi, as the supreme leader and caliph, oversees the councils, administers the religious and political affairs of the group and controls the provincial governors, who respond directly to him.¹⁷²

When ISIS takes control of an area it establishes a court system that applies extreme Islamic law, imposes religious policies and practices and carries out severe punishment against those who do not comply with the new rules. It also takes over the education system, the humanitarian aid and seizes vital aspects of civilian life, such as water resources and bakeries.¹⁷³

ISIS recruits its fighters mostly abroad, with recruitment videos and online magazines in several languages.¹⁷⁴

Crimes committed by non-government forces

During the first half of 2015 non-government actors have achieved important gains and consequently the Assad regime lost territory. The intervention of Russia in the second half of 2015 changed the situation on the ground, significantly reinforcing the regime.

Opposition groups benefitted from the logistical, financial and military support given by external-proxy actors, and in 2015 also from the aerial support provided by the U.S. led international coalition.

Armed groups are now better coordinated, able to undertake large scale battles and launch high level tactical operations. In spite of ideological differences and the lack of a unified structure, at times they cooperate, making the situation

171. Ibid.

172. See <http://www.bbc.com/news/world-middle-east-27801676>.

173. See <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups>.

174. Ibid.

on the ground highly fluid and uncertain.¹⁷⁵

Anti-government groups have also heavily relied on suicide car attacks,¹⁷⁶ which are by their nature a deliberate indiscriminate attack against civilians.¹⁷⁷

In areas controlled by the government forces, opposition armed groups have shelled and used mortars, unmanned rockets, locally made rockets, artillery fashioned from domestic gas cylinders and car bombs,¹⁷⁸ all inherently indiscriminate weapons when used in a populated area.

In most instances no evidence of military targets were found in the vicinity of the explosion sites.¹⁷⁹

Opposition groups carry out attacks against civilians in government controlled areas in retaliation for the attacks carried out by government forces and they have pointed to the abuses committed by the forces loyal to Assad in order to justify their attacks. Such arguments make no sense, since the obligations stemming from International Humanitarian Law are not conditioned on reciprocity, hence every party must respect International Humanitarian Law.

In spite of the government's superior firepower and control over the fly zone, anti-government groups have also enhanced their power to carry out aerial bombardments.¹⁸⁰

175. Report of the International Commission of Inquiry, A/HRC/30/48, 13 August 2015, paras.12-21.

176. Ibid., para.17; Human Rights Watch, "He Didn't have to die. Indiscriminate Attacks by Opposition Groups in Syria"; Human Rights Watch, "You Can Still See Their Blood" Executions, Indiscriminate Shootings, and Hostage Taking by Opposition Forces in Latakia Countryside.

177. For indiscriminate attacks against civilians committed by the non-government forces see for all: the last report of the International Commission of Inquiry, A/HRC/30/48, 13 August 2015; Human Rights Watch Report, "He Didn't have to die. Indiscriminate Attacks by Opposition Groups in Syria"; Human Rights Watch, "You Can Still See Their Blood" Executions, Indiscriminate Shootings, and Hostage Taking by Opposition Forces in Latakia Countryside.

178. Ibid.

179. Ibid.

180. Ibid. See also para.36 of the Report of the Independent International Commission of Inquiry of the 13 August 2015, A/HRC/30/48, 13 August 2015.

The scale of the attacks, the weaponry and number of casualties resulting from indiscriminate shelling differ between the government and anti-government fighters, although in both instances the attacks are carried out in flagrant disrespect for the principle of distinction and with the intent to spread terror and punish the civilian population, since no precautions are taken to avoid or minimise incidental loss of civilian life.

Anti-government armed groups have imposed brutal sieges as well, especially around the towns of Nubul and Zahra, in Aleppo, and Foua'a and Kafria, in Idlib.¹⁸¹ The situation in the besieged areas is dire, no food or medical supplies are available to civilians. Non-state armed groups also control the electricity and water supply to government-held neighbourhoods of Dara'a and Aleppo cities, depriving civilians of access to potable water and sanitation.

The terrorist group ISIS is imposing a siege on government-held areas of Dayr Az-Zawr city where approximately 300,000 people live.¹⁸² In March 2015, ISIS called on civilians to leave the area but government forces prevented them from leaving.¹⁸³

Referral to the International Criminal Court

The information submitted provides not only for a reasonable, but also compelling basis to proceed with an investigation in to the Syrian situation pursuant to the criteria established by the Rome Statute.

According to the principle of complementarity, the primary responsibility to prosecute rests on national jurisdictions, but in the case of a lack of an impartial and capable judicial system and an impossibility to carry out national proceedings, the International Criminal Court is the organ which has to take action to end impunity. Prosecuting crimes at a national level in Syria

181. Ibid., See also paras.99-108 of the Report of the Independent International Commission of Inquiry of the 13 August 2015, A/HRC/30/48, 13 August 2015.

182. Ibid.

183. Ibid.

is impossible, simply because there is no effective and impartial working judicial system. Therefore the action of the International Criminal Court, together with universal jurisdiction mechanisms are the only instruments to achieve accountability. A different issue would be a subsequent reform of the Syrian judicial system, in the long term, in order to carry out proceedings within the framework of a transitional justice system.

In fact, it is of the utmost importance to stress that the prosecution of those most responsible is a necessary measure but it is not the only measure of a comprehensive effort toward accountability and reconciliation. Non-judicial mechanisms are required as well.

Since Syria is not a member of the Rome Statute and considering the magnitude of the conflict, its impact on the civilian population and on the security and stability of the whole area, the Security Council bears the obligation to activate the jurisdiction of the Court. A referral by the Security Council would ensure impartiality of justice, since it would give the Court jurisdiction upon crimes committed by all parties involved in the conflict.

A referral would also have an immediate deterrent effect, in that it would send the message that impunity for war crimes and crimes against humanity is no longer tolerated or accepted and that all those in a position of power could be held liable.

A referral has been called for by the UN High commissioner for Human Rights, the Independent International Commission of Inquiry, the League of Arab States,¹⁸⁴ (four members of the League of Arab States have ratified the ICC treaty: Jordan, Tunisia, the Comoros, and Djibouti), and several Human Rights organisations.

184. <http://www.arableagueonline.org/syria-crisis-explained/>.

Obligations of States

States, either members or non-members of the Rome Statute, can play a significant role toward the end of impunity and the prevention of the commission of further abuses. Through diplomatic, economic and political activities, they can push the parties to the conflict to comply with International Humanitarian Law and end the targeting of civilians. States must suspend any kind of assistance to armed actors involved in the commission of crimes, regardless of whether the group in question defends the states' interests on the ground. States must publicly condemn crimes committed by all groups and urge them to stop targeting civilians.

Furthermore, torture and war crimes are subject to universal jurisdiction, which grants legal authority to the domestic judicial system of a state to investigate and prosecute, even lacking any jurisdictional link (i.e., even if the crimes were not committed on the state's territory or by one of its nationals, or against one of its nationals). It is also commonly agreed that even genocide and crimes against humanity fall within the universal jurisdiction system. It must be noted, however, that whether universal jurisdiction cases can actually be tried depends on the relevant domestic criminal systems and the available and admissible evidence.

It is also worth mentioning the *out dedere out iudicare* obligation that the 1949 Geneva Conventions and the Convention against Torture embody obliges state parties to extradite or prosecute suspected offenders who are within their territory or otherwise under their jurisdiction. Indeed, article 49, second paragraph, of the 1949 Geneva Convention I, Article 50, second paragraph, of the 1949 Geneva Convention II, Article 129, second paragraph, of the 1949 Geneva Convention III and Article 146, second paragraph, of the 1949 Geneva Convention IV provide: *Each High Contracting Party shall be under the obligation to search for*

persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Recommendations:

In conclusion, Al-Marsad calls the government forces and all the armed groups involved in the Syrian conflict to:

- Abide by the laws of war by ending all deliberate, indiscriminate and disproportionate attacks against civilians;
- Take disciplinary measures against subordinates responsible for violations of International Human Rights and Humanitarian Law or other norms;
- Allow unhindered passage of humanitarian aid, especially to the besieged areas;
- Cease the besieging of civilian areas;
- Refrain from all indiscriminate and disproportionate attacks;
- Prohibit and prevent torture or other cruel, inhuman or degrading treatment, including sexual violence;
- Ban the recruitment of child soldiers;
- Prevent the use of illegal weapons, including chemical weapons, and inherently indiscriminate weapons such as barrel bombs.

Al-Marsad calls on the international community to:

- End the proliferation and supply of weapons;
- Protect the human rights of migrants, internally displaced persons, asylum-seekers and refugees, thus abiding by the principle of *non-refoulement* and the international legal obligations on asylum;
- Apply pressure for the immediate delivery of humanitarian aid, in particular to the besieged areas;

- Strongly demand the end of the sieges;
- Adopt sanctions against leaders and commanders implicated in serious violations of international human rights and humanitarian law in Syria;
- Investigate and prosecute, under the principle of universal jurisdiction and in accordance with national laws, members of armed groups from all sides, should they enter their territory;
- Urge the Security Council to take effective action.

Stressing the need for accountability, Al-Marsad urges the United Nations Security Council to:

- Call for the implementation of all UN resolutions relating to the Syrian situation, in particular Resolution 2254 endorsing a road map for a peace process in Syria;
- Refer the situation in Syria to the International Criminal Court and urge all states to comply with their international obligations;
- Adopt sanctions against commanders from all sides whose subordinates are implicated in serious abuses, as established by Security Council Resolution 2139;
- Following the non-compliance with Security Council Resolution 2139, require all states to suspend all military sales and assistance to all forces implicated in the commission of war crimes;
- Demand safe access for humanitarian aid to Syria, in particular to areas under siege;
- Urge states to comply with their international obligations on asylum and protection of refugees.

