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Situations relatives aux droits de l'homme qui requièrent l'attention du Conseil

Rapport de la Commission d'enquête internationale indépendante sur la Syrie*

Résumé

Le nombre des victimes de la tragédie syrienne est une illustration poignante de son ampleur. Leurs angoissants récits de survie décrivent de graves violations des droits de l'homme, des crimes de guerre et des crimes contre l'humanité. La dynamique destructrice de la guerre civile n'a pas seulement un impact sur la population civile mais déchire le tissu social complexe du pays, hypothéquant les chances des générations futures, et met en danger la paix et la sécurité dans toute la région.

La situation des droits de l'homme en République arabe syrienne continue de se détériorer. Depuis le 15 juillet 2012, on assiste à une escalade dans le conflit armé entre les forces gouvernementales et les groupes armés antigouvernementaux. Le conflit prend un caractère de plus en plus sectaire, avec une radicalisation et une militarisation accrues du comportement des deux parties.

Aux fins du présent rapport, 445 entretiens ont été menés. Les obstacles persistants à l'accès au territoire syrien ont considérablement réduit la capacité de la Commission de s'acquitter de son mandat en enquêtant sur toutes les violations présumées du droit international et sur tous les massacres. Cela concerne en particulier les informations relatives aux crimes et aux violations commis par les groupes armés antigouvernementaux.

Les forces gouvernementales et les milices qui leurs sont affiliées se sont rendues coupables de meurtres, d'actes de torture, de viols, de disparitions forcées et d'autres actes inhumains constitutifs de crimes contre l'humanité. Des crimes de guerre et des violations flagrantes du droit international relatif aux droits de l'homme et du droit international humanitaire – arrestations et détention arbitraires, attaques illégales, attaques contre des objets protégés et pillages et destruction de biens – ont également été commis.

* Les annexes du présent rapport sont distribuées telles qu'elles ont été reçues, dans la langue originale seulement.

Les groupes armés antigouvernementaux ont commis des crimes de guerre, notamment des meurtres, des actes de torture, des prises d'otages et des attaques contre des objets protégés. Ils continuent de mettre en danger la population civile en positionnant des installations militaires à l'intérieur des zones civiles. Les attentats à la bombe commis par des groupes armés dans des zones à prédominance civile ont eu pour effet d'y répandre la terreur et sont constitutifs de crimes de guerre en tant qu'attaques menées contre des civils. Les violations et les abus commis par les groupes armés antigouvernementaux n'ont toutefois pas atteint l'intensité ni l'ampleur de ceux qui ont été perpétrés par les forces gouvernementales et les milices qui leur sont affiliées.

Aussi bien les milices affiliées aux forces gouvernementales que les groupes armés antigouvernementaux ont violé le Protocole facultatif se rapportant à la Convention relative aux droits de l'enfant, concernant l'implication d'enfants dans les conflits armés, auquel la République arabe syrienne est partie. Les milices affiliées aux forces gouvernementales ont fait participer directement aux hostilités des enfants de moins de 18 ans. Des enfants de moins de 15 ans prennent une part active aux combats dans les rangs des groupes armés antigouvernementaux – pratique constitutive du crime de guerre d'utilisation, de conscription et d'enrôlement d'enfants.

La Commission tient à réaffirmer que la seule solution du conflit syrien réside dans un règlement politique fondé sur le cadre défini le 30 juin 2012 dans le communiqué final du Groupe d'action pour la Syrie (communiqué de Genève, A/66/865-S/2012/522).

Il est impératif de faire en sorte que toutes les parties répondent des crimes qui ont été commis. La quête de la paix et de la justice est une responsabilité commune aux niveaux régional, national et international. Les recommandations détaillées faites par la Commission – au Gouvernement syrien, aux groupes armés antigouvernementaux, à la communauté internationale, au Conseil des droits de l'homme et au Conseil de sécurité – viennent souligner la nécessité de contrer la progression d'une culture de l'impunité par la saisine de la justice aux niveaux national et international et par la mise en œuvre d'autres moyens de promouvoir la vérité et la réconciliation, le relèvement social et la réinsertion des victimes.

Une liste confidentielle de personnes et de groupes considérés comme responsables de crimes contre l'humanité, de violations du droit international humanitaire et d'atteintes flagrantes aux droits de l'homme sera soumise au Haut-Commissaire des Nations Unies aux droits de l'homme à la fin de l'actuel mandat de la Commission, en mars 2013.

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I. Introduction

1. Le nombre des victimes de la tragédie syrienne est une illustration poignante de son ampleur. Leurs angoissants récits de survie décrivent de graves violations des droits de l'homme, des crimes de guerre et des crimes contre l'humanité. La dynamique destructrice de la guerre civile n'a pas seulement un impact sur la population civile mais déchire le tissu social complexe du pays, hypothéquant les chances des générations futures et mettant en danger la paix et la sécurité dans toute la région.

2. Dans le présent rapport, la Commission d'enquête internationale indépendante sur la République arabe syrienne¹ présente les conclusions des enquêtes qu'elle a effectuées du 15 juillet 2012 au 15 janvier 2013. Le rapport s'appuie sur la mise à jour périodique publiée le 20 décembre 2012 et la déclaration prononcée par le Président de la Commission lors du dialogue qui a eu lieu à la vingt et unième session du Conseil des droits de l'homme, le 17 septembre 2012.

3. Dans sa résolution 21/26 du 28 septembre 2012, le Conseil des droits de l'homme a prorogé le mandat initial de la Commission établi dans sa résolution S-17/1 du 23 août 2011. En prorogeant ce mandat, le Conseil a demandé à la Commission d'enquêter sur tous les massacres et d'actualiser régulièrement ses conclusions, y compris par le biais d'une évaluation du nombre de victimes.

4. Le présent rapport de la Commission doit être lu conjointement avec ses précédents rapports (S-17/2/Add.1, A/HRC/19/69, A/HRC/21/50) en ce qui concerne l'interprétation de son mandat et de ses méthodes de travail ainsi que ses conclusions factuelles et juridiques concernant les événements qu'a connus la République arabe syrienne entre mars 2011 et le 15 juillet 2012.

A. Difficultés rencontrées

5. N'ayant pas eu accès au territoire syrien, la Commission n'a pas pu s'acquitter de son mandat comme elle le souhaitait. Elle n'a guère eu la possibilité de rencontrer des hauts responsables et des membres des forces armées et des forces de sécurité. En outre, elle n'a pas pu interroger en personne des victimes et des témoins à l'intérieur du pays, en particulier des personnes qui avaient subi des violations commises par des groupes armés antigouvernementaux.

6. Le 25 octobre 2012 la Commission a demandé au Président Bashar Al Assad l'autorisation de se rendre en République arabe syrienne pour y enquêter. Elle n'a reçu aucune réponse. Depuis octobre, des demandes répétées de réunion avec le Représentant permanent de la République arabe syrienne à Genève sont restées sans réponse. Les informations reçues du Gouvernement sont exposées dans le présent rapport (voir annexe I).

¹ Les commissaires sont Paulo Sérgio Pinheiro (Président), Karen Koning AbuZayd, Carla Del Ponte et Vitit Muntarbhorn. Ces deux derniers ont rejoint la Commission pour la période de son actuel mandat.

B. Méthode

7. La méthode utilisée est fondée sur les pratiques habituelles des commissions d'enquête et des enquêtes sur les droits de l'homme, qui ont été adaptées aux difficultés susmentionnées².

8. La Commission s'est appuyée essentiellement sur des témoignages de première main pour corroborer les informations relatives à des incidents. En raison de l'impossibilité d'accéder au territoire syrien, le personnel de la Commission a été déployé ailleurs dans la région aux fins de recueillir des témoignages de première main auprès des réfugiés. Le présent rapport est fondé sur 445 entretiens avec des victimes et des témoins se trouvant à l'intérieur du pays effectués dans la région et depuis Genève, notamment par Skype et par téléphone. Le nombre total d'entretiens effectués depuis le début du mandat en septembre 2011 s'élève à 1 391.

9. Des photographies, des enregistrements vidéo, des images satellitaires et des rapports médico-légaux et médicaux ont été rassemblés et analysés. Des rapports provenant de sources gouvernementales et non gouvernementales, des analyses effectuées par des universitaires, ainsi que des rapports émanant de l'ONU, notamment d'organismes et mécanismes de protection des droits de l'homme, et d'organisations humanitaires ont été utilisés dans le cadre de l'enquête.

10. La Commission a continué d'appliquer en matière de preuve les critères utilisés pour les précédents rapports. De tels critères sont remplis lorsque les informations relatives à des incidents sont suffisamment corroborées pour que la Commission puisse raisonnablement conclure que les incidents en question se sont produits tels que décrits.

11. La Commission est reconnaissante à tous ceux qui ont collaboré à l'exécution de son mandat.

II. Contexte

A. Contexte politique

12. Au cours des six derniers mois de la période considérée, le conflit est devenu de plus en plus violent et complexe, et les efforts pour parvenir à un règlement politique étaient arrivés à un point mort. En soutenant différentes parties en République arabe syrienne, des acteurs régionaux et internationaux ont, du fait de leurs intérêts divergents, compromis les chances d'un règlement négocié. La position des principaux acteurs internationaux reste inchangée.

13. Après un vote unanime du Conseil de sécurité à l'appui d'un cessez-le-feu en République arabe syrienne le 24 octobre 2012, le Gouvernement syrien et les groupes armés antigouvernementaux, y compris l'Armée syrienne libre ont accepté les termes d'une trêve pendant la fête religieuse de l'Aïd al-Adha du 26 au 30 octobre. Toutefois cette trêve n'a pas tenu et les hostilités entre les parties se sont poursuivies.

14. La création de la Coalition nationale des forces révolutionnaires et d'opposition syriennes, le 12 novembre, a constitué une évolution importante au sein de l'opposition syrienne. La Coalition est composée de représentants des groupes de l'opposition syrienne à l'étranger et des «forces révolutionnaires intérieures», dont l'Armée syrienne libre. Moaz al-Khateeb a été élu à la tête de la Coalition. Le chef du Conseil national syrien, George Sabra,

² Voir le document A/HRC/21/50.

est devenu un des vice-présidents de la Coalition. Les réactions à la constitution de la Coalition sont mitigées. La Ligue des États arabes l'a reconnue en tant que «représentant et principal interlocuteur de la Ligue». Plus de 13 groupes armés antigouvernementaux, dont le Front al-Nusra, ont annoncé qu'ils ne reconnaissaient pas la légitimité de la Coalition.

15. Le 11 décembre, le Département d'État des États-Unis a déclaré que le Front al-Nusra était une «organisation terroriste étrangère», affiliée à Al-Qaida en Iraq.

16. Le 6 janvier 2013, le Président Al Assad a prononcé un discours dans lequel il a exclu toute négociation avec «les terroristes», affirmant qu'il ne pouvait y avoir de règlement politique qu'avec une opposition nationaliste qui ne cherchait pas à «diviser la Syrie». Il a en outre défini sa conception d'un règlement politique dans le cadre duquel les pays étrangers cesseraient d'armer «les groupes terroristes» à l'intérieur du pays, à la suite de quoi l'armée syrienne arrêterait ses opérations militaires mais se réserverait le droit de riposter à toute attaque menée par les groupes armés. Il a proposé la convocation d'une conférence nationale pour élaborer une charte nationale en vue de la tenue d'élections parlementaires et de la formation d'un nouveau gouvernement.

17. Le Secrétaire général s'est déclaré déçu par ce discours dans la mesure où il ne prenait pas en considération le communiqué final du Groupe d'action pour la Syrie (communiqué de Genève) du 30 juin 2012 (A/66/865-S/2012/522), qui appelait à une transition politique, un arrêt durable des hostilités et la mise en place d'un organe de gouvernement transitoire doté des pleins pouvoirs exécutifs. L'opposition syrienne a rejeté tout règlement ou transition dont ferait partie le Président Al Assad.

18. Le 18 janvier 2013, le Haut-Commissaire des Nations Unies aux droits de l'homme s'est adressé au Conseil de sécurité, demandant que la Cour pénale internationale soit saisie de la situation en République arabe syrienne.

19. Le Représentant spécial conjoint de l'Organisation des Nations Unies et de la Ligue des États arabes pour la Syrie, M. Lakhdar Brahimi, a continué d'encourager les parties prenantes à œuvrer en vue de mettre un terme à la violence en République arabe syrienne et à entamer des négociations ouvertes à toutes les parties en vue d'un règlement global. Une série de réunions entre les États-Unis d'Amérique et la Fédération de Russie ont été facilitées par le Représentant spécial conjoint aux fins d'appuyer la mise en œuvre du communiqué de Genève.

B. Contexte militaire³

20. Ces derniers mois, le conflit en République arabe syrienne s'est continuellement aggravé, quoique de manière inégale, atteignant de nouveaux niveaux de violence et s'étendant à de nouvelles régions. Si le Gouvernement a gardé le contrôle des gouvernorats du sud et du littoral les groupes armés antigouvernementaux ont réalisé d'importants gains militaires dans les régions centrale et septentrionale, obligeant le Gouvernement de céder le contrôle de plusieurs localités et carrefours stratégiques. On assiste à une escalade dans les gouvernorats du nord-ouest, avec la participation de milices kurdes.

1. Forces gouvernementales et milices affiliées

21. Le Gouvernement, avec les milices qui lui sont affiliées, a adopté une stratégie de «contraction» des forces pour faire face à la montée de l'insurrection. Tout en mettant l'accent sur la conservation des grandes villes, les forces gouvernementales ont entouré les villes en proie à l'agitation d'un système de sécurité en trois strates. Les tirs d'artillerie et

³ Voir aussi l'annexe II.

les bombardements aériens prenant pour cible les villes sous le contrôle des groupes armés se sont intensifiés. D'autres zones, essentiellement rurales, ont été complètement abandonnées par les forces gouvernementales mais ont continué d'être bombardées. En plus des munitions classiques, d'autres types de munitions ont été utilisés, notamment des obus d'artillerie et des bombes aériennes à fragmentation. Aucune des deux parties n'a fourni des preuves crédibles attestant l'utilisation d'armes chimiques.

22. Les groupes armés d'autodéfense constitués par les communautés favorables au Gouvernement – également appelés comités populaires – ont continué de protéger leurs quartiers et localités contre les groupes armés antigouvernementaux et de participer aux opérations militaires aux côtés des forces gouvernementales. Ils seraient armés et équipés par le Gouvernement et, dans certaines régions par des sympathisants se trouvant à l'extérieur.

2. Groupes armés antigouvernementaux

23. En dépit de divisions persistantes, les insurgés ont continué d'évoluer vers la constitution d'une force de combat de plus en plus en mesure de contester le contrôle du pays par le Gouvernement et de frapper des objectifs stratégiques tels que les champs pétroliers et les aéroports. Les groupes armés ont étendu leur contrôle sur des parties de plus en plus importantes du territoire dans les provinces du nord et du centre tout en résistant tant bien que mal dans les gouvernorats du sud et du littoral.

24. En dépit de multiples tentatives pour unifier et structurer ses rangs, l'opposition armée est restée fragmentée et incapable de désigner une direction fiable. Cette fragmentation est aggravée – pour ne pas dire causée – par le fait qu'au lieu de favoriser l'intégration des différents groupes, l'appui financier et matériel extérieur fourni par différentes parties a créé des divisions et exacerbé les rivalités entre eux.

25. L'Armée syrienne libre est restée une simple dénomination en dépit des efforts de ses dirigeants et partisans pour créer un commandement central et le relier aux conseils militaires régionaux et locaux. Il y a aussi, d'autre part, des alliances militaires indépendantes allant des plus modérées aux plus extrémistes, qui ont essayé d'intégrer plusieurs groupes armés dans certains contextes et régions. Les différences entre ceux qui se désignent comme l'Armée syrienne libre et les groupes indépendants n'ont toutefois pas beaucoup entravé la collaboration entre les deux parties, qui ont continué de coopérer sur le plan opérationnel pour atteindre leurs objectifs communs.

26. Le rôle joué par les appuis extérieurs a contribué à la radicalisation de l'insurrection, dans la mesure où il a favorisé des groupes armés salafistes⁴ comme le Front al-Nousra et même encouragé des éléments modérés à les rejoindre attirés par leurs moyens logistiques et opérationnels supérieurs. L'appui apporté par des sources extérieures dépend généralement de l'efficacité opérationnelle des groupes et de leur disposition à adhérer au discours et aux symboles de ceux qui les soutiennent.

27. Le nombre de combattants étrangers a augmenté mais ne représente encore qu'une petite proportion des effectifs des groupes armés antigouvernementaux. Leur savoir-faire et leur expérience des guerres de rébellion ont contribué à l'efficacité tactique de l'opposition. Ils viennent de pays du Moyen-Orient, de l'Afrique du Nord et de l'Asie centrale et sont nombreux à être originaires de Lybie, de Tunisie, d'Arabie saoudite, du Liban, d'Iran et d'Égypte.

⁴ Le mot salafi désigne un vaste éventail de groupes qui ont une lecture littérale des textes canoniques sunnites. En République arabe syrienne, il désigne souvent des groupes qui utilisent une telle lecture des textes pour promouvoir un activisme contre un ordre considéré comme non islamique.

28. Les groupes armés antigouvernementaux ont amélioré leur accès aux armements, quoique de façon inégale. Outre le matériel militaire pillé dans les bases de l'armée, des armes et des munitions leur sont fournies par des sources extérieures et introduites en contrebande depuis des pays voisins en grandes quantités et de façon de plus en plus fréquente.

3. Autres forces

29. Les tensions entre les groupes armés antigouvernementaux et les miliciens kurdes appartenant pour la plupart au Parti de l'union démocratique ont augmenté dans les régions à prédominance kurde. Après avoir pris la plupart des villes kurdes sans grande résistance, les nouvelles unités de protection populaire kurdes ont eu des affrontements périodiques avec les groupes armés antigouvernementaux du fait de l'intrusion de ces derniers dans ce qu'elles considèrent comme leur territoire.

C. Situation socioéconomique et humanitaire⁵

30. Le conflit a eu des effets dévastateurs sur les droits économiques, sociaux et culturels de la population syrienne. La destruction de l'infrastructure, des logements, des établissements médicaux, des écoles et des systèmes de distribution d'eau et d'électricité aggrave des conditions qui étaient déjà mauvaises auparavant en sorte que des communautés entières sont au bord de l'effondrement.

31. L'arrivée de l'hiver, s'ajoutant à des déplacements de populations de plus en plus nombreux et des difficultés croissantes dans l'acheminement des secours humanitaires – nourriture, fournitures médicales et combustible – était un sujet de vive préoccupation. Dans les centres urbains, les risques d'épidémie et de maladie ont augmenté, aggravés par la défaillance des systèmes d'appui, des services et des infrastructures.

32. Les prix des produits de grande consommation, y compris le pain, ont flambé. Au cours des quatre derniers mois de la période considérée, l'inflation a dépassé 50 %. Le régime des sanctions continue de faire sentir ses effets paralysants. Les mécanismes d'adaptation de la population et, en particulier, des communautés qui accueillent des personnes déplacées, s'effondrent, laissant ceux qui sont piégés par le conflit ou qui essaient de fuir les hostilités dans des conditions épouvantables. Les combats empêchent la population d'accéder aux biens de première nécessité, notamment la nourriture et l'eau. Les sources d'approvisionnement en produits alimentaires, telles que les boulangeries, sont délibérément prises pour cible.

33. L'enseignement continue de souffrir du conflit. En décembre 2012, le Ministère syrien de l'éducation annonçait que 1 468 écoles étaient utilisées comme centres collectifs d'accueil et que 2 362 autres (10 % du nombre total d'écoles) avaient été endommagées ou pillées.

34. La fourniture de médicaments est entravée dans certaines situations, et des dénis de soins médicaux continuent d'être signalés. Les forces gouvernementales ont attaqué des hôpitaux et des dispensaires et ont utilisé des tireurs embusqués pour empêcher les personnes d'accéder aux hôpitaux.

35. Les attaques contre les hôpitaux et les centres médicaux et leur personnel alourdissent les coûts socioéconomiques du conflit. Les membres du personnel des services de santé abandonnent leur poste, les hôpitaux sont à court de fournitures et les campagnes de

⁵ Voir également l'annexe III.

vaccination se sont arrêtées dans certaines régions. Cette situation restreint considérablement l'accès aux soins de santé, notamment pour les personnes les plus vulnérables.

36. Le 7 janvier 2013, le Gouvernement a annoncé que des usines avaient été pillées ou détruites. Il a fourni des informations supplémentaires sur des attaques menées par des groupes armés contre des entrepôts de fournitures médicales et a indiqué que des médicaments avaient été détruits ou vendus à l'étranger. Le Gouvernement a également affirmé que des récoltes avaient été détruites et que des céréales avaient été volées dans des silos.

37. La situation humanitaire s'est détériorée de façon alarmante. Le nombre de victimes est en augmentation. En décembre, le Haut-Commissaire des Nations Unies aux droits de l'homme a estimé à 60 000 les décès survenus depuis mars 2011 sur la base d'une évaluation externe de chiffres fournis par six organisations non gouvernementales⁶ et par le Gouvernement. Ce dernier évalue le nombre des victimes à 11 713. Des données plus ventilées provenant de toutes les sources sont nécessaires. Le nombre de décès vérifié par la Commission sur la base de 1 391 entretiens était de 1 190.

38. Les différents protagonistes ne s'acquittent pas de leur responsabilité partagée d'assurer l'accès à l'aide humanitaire. Au contraire, les attaques contre le personnel et les locaux des services d'aide humanitaire et les routes d'approvisionnement sont fréquentes dans le cadre des hostilités en cours, entravant gravement les opérations.

39. Les Syriens sont de plus en plus nombreux à fuir leur foyer. Selon des estimations du Haut-Commissariat des Nations Unies pour les réfugiés, au 6 janvier 2013, 2 millions de personnes avaient été déplacées. Au 21 janvier, 671 262 réfugiés syriens se trouvaient, selon des estimations, dans cinq pays voisins et en Afrique du Nord, avec pour conséquence une déstabilisation accrue de la région, tant économiquement que politiquement.

40. Avant le conflit, la République arabe syrienne accueillait différents groupes de réfugiés, dont 500 000 Palestiniens et 150 000 Iraquiens. Ces deux groupes vivaient déjà dans des conditions précaires. L'Office de secours et de travaux des Nations Unies pour les réfugiés de Palestine dans le Proche-Orient (UNRWA) estime que 400 000 Palestiniens réfugiés dans toute la Syrie ont actuellement un besoin urgent d'assistance. Environ 17 000 ont demandé l'aide de l'UNRWA au Liban et 3 300 autres ont fui en Jordanie. Il est essentiel que les États voisins respectent le principe de non-refoulement.

41. En novembre 2012, le Forum humanitaire pour la Syrie a lancé un appel à contributions pour le financement des opérations d'assistance, notant que l'aggravation de la situation humanitaire, s'ajoutant aux pertes de vies humaines et aux déplacements de population, nécessitait une réponse urgente. Les besoins humanitaires n'ont toutefois été financés qu'à 50 %. En décembre 2012, réagissant à la crise des réfugiés syriens, le système des Nations Unies a proclamé une situation d'urgence de niveau 3⁷.

⁶ Les chiffres fournis par les différentes organisations non gouvernementales variaient entre 36 000 et 50 000 décès.

⁷ Une situation d'urgence de niveau 3 est une crise humanitaire majeure causée par une catastrophe naturelle ou un conflit qui requiert une mobilisation à l'échelle de tout le système.

III. Violations relatives au traitement des civils et des belligérants hors combat

A. Massacres⁸

42. Le Conseil des droits de l'homme lui ayant demandé d'enquêter sur tous les massacres⁹, la Commission a, à des fins pratiques, défini un massacre comme :

«le fait pour des forces armées ou des groupes armés organisés de tuer délibérément un nombre important de civils ne participant pas directement aux hostilités ou de belligérants hors combat, dans un seul incident, en violation du droit international relatif aux droits de l'homme ou du droit international humanitaire¹⁰».

43. Des moyens d'enquête déterminés ont été utilisés pour répondre à la demande du Conseil des droits de l'homme.

1. Forces gouvernementales et milices affiliées

44. Une enquête a été menée pendant la période considérée sur les massacres décrits ci-après¹¹.

45. Des informations de première main ont été recueillies sur l'opération militaire menée à Jedaydet Artouz le 1^{er} août 2012. Pendant cette opération, des soldats ont effectué des perquisitions maison par maison, surtout dans les quartiers sud de la ville à majorité sunnite. Après cette opération, les résidents ont découvert les corps d'une soixantaine de personnes de sexe masculin qui semblaient avoir été sommairement exécutées. Ils ont notamment trouvé dans un même endroit les corps de 17 hommes, dont la plupart avaient les mains attachées derrière le dos et avaient été abattus à bout portant. Il y a des motifs sérieux de croire que des soldats gouvernementaux ont perpétré des meurtres constitutifs de crime de guerre.

46. Les forces gouvernementales ont pilonné Daraya du 20 au 24 août, prenant pour cible des combattants appartenant à des groupes armés antigouvernementaux. À la suite de ce pilonnage, les forces gouvernementales sont entrées dans la ville, accompagnées de *Shabbiha*. De nombreux jeunes, dont certains étaient peut-être des déserteurs ou des membres de groupes armés antigouvernementaux qui avaient déposé les armes, seraient allés se cacher dans une zone appelée «les jardins» (*Mazare*); dans ce lieu, les forces gouvernementales ont tué plus de 100 personnes. Selon d'autres récits, les *Shabbiha* ont fouillé les maisons à la recherche d'hommes en âge de combattre. Des corps présentant des signes clairs d'exécutions sommaires ont été ultérieurement trouvés dans différents refuges autour de Daraya.

47. On peut voir des dizaines de corps, y compris de femmes et d'enfants, dans des enregistrements vidéo réalisés et sur des photographies prises après les événements de Daraya. Les médias étatiques syriens ont annoncé par la suite que la localité de Daraya

⁸ Voir aussi l'annexe IV.

⁹ Résolution 21/26 du Conseil des droits de l'homme, par. 19.

¹⁰ Ces massacres comprennent de multiples cas de meurtre, d'attaque contre des civils et de condamnation ou d'exécution en l'absence d'un procès équitable, actes constitutifs de crimes contre l'humanité. Lorsque le meurtre est commis dans le cadre d'attaques massives ou systématiques contre une population civile, en application ou dans la poursuite de la politique d'un État ou d'une organisation, les massacres sont assimilables à un crime contre l'humanité.

¹¹ On trouvera dans l'annexe IV des détails et des conclusions additionnelles sur le massacre de Tremseh du 12 juillet, au sujet duquel la Commission avait déjà enquêté.

avait été «nettoyée» des groupes «terroristes» armés. Il y a de sérieux motifs de croire que les forces armées ont commis des meurtres constitutifs de crime de guerre contre des belligérants hors combat et des civils ne participant pas activement aux hostilités, y compris des femmes et des enfants.

48. De multiples sources rendent compte des événements qui se sont produits à Harak dans le gouvernorat de Dara'a du 18 au 26 août. Après huit jours de combats avec l'Armée syrienne libre, les forces gouvernementales ont repris le contrôle de la ville. En retournant chez eux, les habitants d'Harak ont trouvé des maisons brûlées et des corps portant des marques de blessures dues à des éclats d'obus et des tirs à bout portant et de profondes entailles causées par une arme blanche. Certains corps avaient été brûlés. Parmi les morts, il y avait des femmes et des enfants. Les corps auraient été transportés au siège de la 52^e brigade de l'armée syrienne située à proximité où ils ont été brûlés. Il y a de sérieux motifs de croire que les forces gouvernementales et les milices affiliées au Gouvernement ont commis des meurtres constitutifs de crime de guerre.

49. Selon des témoignages de première main, Deir Baalbeh (Homs) a subi des pilonnages aveugles du 22 au 24 décembre. Pendant les affrontements entre l'Armée syrienne libre et les forces gouvernementales, ces dernières ont pris au piège des civils, les empêchant de quitter la ville, tuant même une famille qui tentait de s'enfuir. La séquence des événements indique que la population civile a subi le 29 décembre à Deir Baalbeh une attaque menée par les forces gouvernementales qui constitue un crime de guerre. La Commission note qu'il s'agit là d'une violation des règles relatives à la conduite des hostilités.

50. Le 7 janvier 2013, les forces gouvernementales ont repris le contrôle d'Al-Mastomah, après avoir soumis la ville à un pilonnage aveugle et à l'issue de trois jours d'affrontements avec l'Armée syrienne libre. Elles sont entrées dans le village où elles ont effectué des perquisitions maison par maison, exécutant des civils ou des personnes hors combat à bout portant. Il ressort de l'enregistrement vidéo montrant les personnes tuées que les forces gouvernementales ont exécuté des femmes, des enfants et des personnes âgées, commettant des meurtres constitutifs de crime de guerre.

51. Les enquêtes sur les massacres qui auraient été commis en juillet à Al Muhassan (Dayr az-Zawr), à Sad Street dans la ville de Dara'a en août et à Duma en dehors de Damas en octobre se poursuivent.

52. Au vu des incidents relevés, les forces gouvernementales sont responsables de crimes de guerre et sont peut-être responsables de crimes contre l'humanité.

2. Groupes armés antigouvernementaux

53. Dans des aveux crédibles faits contre leur propre intérêt, des témoins oculaires ont décrit la tuerie dont a été victime le clan Al-Barri à Alep le 28 ou 29 juillet 2012. Au cours des affrontements, l'Armée syrienne libre a capturé cinq membres de la famille Al-Barri; elle les a interrogés et reconnus coupables de différents crimes. Selon les témoins, un tribunal de la charia, organe quasi judiciaire constitué par un groupe affilié à l'Armée syrienne libre, le Liwa al-Tawhid, a condamné les cinq hommes à la peine de mort. L'exécution de ces hommes a été filmée et l'enregistrement vidéo a été diffusé sur l'Internet. Un groupe armé antigouvernemental, probablement le Liwa al-Tawhid, a commis le crime de guerre consistant à condamner et à exécuter des personnes sans qu'elles bénéficient d'un procès équitable.

54. Un combattant de l'Armée syrienne libre a confirmé qu'il faisait partie de la brigade qui avait capturé les «cinq alaouites» sur la route d'al-Haffa à Lattaquié à la fin de juillet et qui les avait interrogés et exécutés peu de temps après. Selon son témoignage: «Les prisonniers sunnites ont été gardés. Les alaouites ont été exécutés». En l'espèce,

l'Armée syrienne libre s'est rendue coupable d'une exécution en l'absence d'un procès équitable constitutive de crime de guerre.

55. L'article 3 commun aux Conventions de Genève interdit les condamnations prononcées et les exécutions effectuées en l'absence d'un jugement préalable, rendu par un tribunal régulièrement constitué, assorti de toutes les garanties judiciaires reconnues comme indispensables en droit international.

56. Des enquêtes se poursuivent sur des allégations selon lesquelles des groupes armés antigouvernementaux ont exécuté sommairement des militaires appartenant aux forces armées gouvernementales et des membres des milices affiliées au Gouvernement, qui avaient été faits prisonniers.

57. Il ressort des incidents passés en revue ci-dessus que des groupes armés antigouvernementaux ont commis des crimes de guerre.

B. Autres exécutions arbitraires¹²

58. Des exécutions arbitraires, non couvertes par la définition des massacres figurant plus haut, continuent d'être enregistrées. Des cas de privation arbitraire de la vie en violation du droit international relatif aux droits de l'homme, tels que des exécutions extrajudiciaires ou sommaires, souvent doublées de meurtres constitutifs de crimes contre l'humanité, ont été signalés tout au long de la période considérée.

1. Forces gouvernementales et milices affiliées

59. De nombreuses personnes parmi celles qui ont été interrogées ont été des témoins directs d'exécutions perpétrées par les forces gouvernementales et les milices affiliées au Gouvernement. D'autres étaient présents après les faits, ont été informés du décès par un témoin oculaire ou étaient des membres de la famille de ceux qui avaient été tués. Des meurtres ont été constatés le 8 août dans la ville de Homs, les 1^{er} et 2 octobre dans un village situé près de cette ville dont le nom n'est pas précisé, le 19 octobre à Dahadeel (Homs); le 3 octobre à Namer et le 28 octobre à Musayfrah (Dara'a); en juillet à Iblin, le 23 août à Mare'a (Idlib); et en juillet à Damas. Dans tous les cas les meurtres ont été commis pendant des perquisitions effectuées dans des maisons.

60. Les forces gouvernementales et les milices affiliées ont commis des exécutions extrajudiciaires en violation du droit international relatif aux droits de l'homme. Il s'agissait là aussi de meurtres constitutifs de crime de guerre. Lorsque des meurtres sont commis dans le cadre d'attaques massives ou systématiques contre une population civile, en application de la politique d'une organisation, ils constituent un crime contre l'humanité.

2. Groupes armés antigouvernementaux

61. Il y a eu, comparativement, plus d'informations sur les tueries commises par des groupes armés antigouvernementaux pendant la période considérée. La plupart des récits provenaient des gouvernorats de Damas et d'Alep. Plusieurs personnes interrogées ont également évoqué des tueries à Dara'a, à Homs et à Dayr az Zawr.

62. Une des personnes interrogées avait été témoin d'une tuerie dans une usine, dont les employés étaient en majorité chrétiens. Au début de septembre, des membres d'un groupe armé sont entrés dans l'usine, criant: «Nous savons qui vous êtes et de quelle région vous venez. Nous vous demandons de quitter l'usine et votre région. Autrement vous serez en danger». Le directeur de l'usine a été ensuite abattu. Un autre témoin oculaire a décrit

¹² Voir également l'annexe V.

l'exécution de sunnites progouvernementaux par la brigade Al-Omari dans des villages situés en dehors de la ville de Dara'a.

63. Le système public d'application de la loi et de justice s'étant désintégré dans certaines régions du pays, les groupes armés antigouvernementaux ont fait appel à des structures sociales traditionnelles souvent fondées sur des institutions religieuses pour combler le vide. Selon les descriptions reçues, ces mécanismes ne sont pas conformes aux normes judiciaires internationales telles qu'elles sont définies par le droit international humanitaire. Prononcer des condamnations ou procéder à des exécutions en l'absence d'un procès équitable est un crime de guerre.

64. Des groupes armés antigouvernementaux ont tué des personnes qui étaient soit des belligérants hors combat soit des civils qui ne participaient pas activement aux hostilités, commettant ainsi des meurtres constitutifs de crime de guerre. De tels actes constituent aussi une violation du droit international relatif aux droits de l'homme.

C. Arrestations et détention arbitraires¹³

65. Des cas d'arrestation et de détention arbitraires continuaient de se produire malgré leur interdiction par le droit international. Des prises d'otages par des groupes armés afin d'obtenir une rançon ou en vue d'un échange ont également été enregistrées. Les agents de l'État doivent, au minimum, informer une personne arrêtée des motifs de son arrestation, présenter rapidement cette personne à un juge et lui donner la possibilité de contester la légalité de sa détention.

66. Les protagonistes tant étatiques que non étatiques qui décident de détenir des personnes pendant un conflit armé doivent les traiter humainement, en évitant tout traitement cruel, inhumain ou dégradant. Aucune partie n'a le droit de prendre des otages.

1. Forces gouvernementales et milices affiliées

67. Cinq hommes qui travaillaient comme gardiens dans des centres de détention de l'État avant leur défection ont donné des détails sur les stratégies d'arrestation arbitraire du Gouvernement et les moyens de les réaliser. Les suspects étaient appréhendés lors de perquisitions de domiciles, d'opérations militaires, ou juste après les manifestations. Ils étaient conduits dans des centres de détention et torturés pour qu'ils donnent des informations sur d'autres membres présumés de l'opposition. Les informations recueillies à l'aide de ces techniques coercitives étaient utilisées pour établir des listes de personnes à arrêter.

68. Vingt-deux personnes ont été victimes d'arrestations arbitraires. Elles ont été détenues au secret pendant de longues périodes sans que leur famille soit avisée. On les a obligées à verser des pots-de-vin pour obtenir leur libération et on les a gardées en détention uniquement dans le but de leur arracher des informations ou d'obliger d'autres personnes à se rendre. Aucune des personnes interrogées n'a été informée des raisons de son arrestation.

69. D'autres personnes ont indiqué qu'elles avaient été présentées à un juge qui a ordonné leur libération. Dans huit cas, les personnes interrogées ont toutefois indiqué que des membres de leur famille avaient payé des pots-de-vin pour obtenir leur libération. Un déserteur, qui avait travaillé pour un service du renseignement à Hama, a fait la déclaration suivante: «Les détenus versent de l'argent pour obtenir leur libération.

¹³ Voir aussi l'annexe VI.

C'est une pratique systématique en Syrie aujourd'hui. Très souvent, c'est dans ce but que des personnes sont arrêtées».

70. Des forces de sécurité qui détenaient un habitant de Lattaquié ont fait parvenir à son frère par le biais d'intermédiaire le message suivant: «À moins que vous vous rendiez, votre frère restera en détention». De multiples récits ont confirmé l'existence de la pratique consistant à arrêter un autre membre de la famille lorsque la personne recherchée n'était pas chez elle.

71. Le Gouvernement n'a encore pas fourni de statistiques officielles sur le nombre de détenus et de centres de détention. Il a communiqué des informations concernant la libération de 2 289 personnes détenues pendant la période considérée.

72. Les forces gouvernementales ont arrêté et détenu arbitrairement des personnes en violation du droit international. Elles ont détenu des personnes sans chef d'accusation et sans justification légale, exigeant le versement de pots-de-vin pour leur libération. Le fait d'arrêter des personnes sur la base d'informations obtenues sous la torture rend l'arrestation illégale. Dans la mesure où ces violations constituent un traitement inhumain, elles sont contraires au droit humanitaire international.

2. Groupes armés antigouvernementaux

73. Les groupes armés antigouvernementaux ont procédé à des arrestations de plus en plus fréquentes de membres des forces gouvernementales, ainsi que d'«informateurs» et de membres de leur famille. Bien qu'il n'ait guère été possible d'accéder aux victimes, de multiples récits faisant état de prises d'otages par les groupes armés uniquement à des fins de rançon ou d'échange ont fait l'objet d'enquêtes.

74. En août 2012, 48 citoyens iraniens ont été arrêtés par les brigades Al-Bara à Damas. La République islamique d'Iran a affirmé qu'il s'agissait de pèlerins, mais des groupes armés ont déclaré que ces personnes étaient des gardiens de la révolution. Ces hommes auraient été menacés d'exécution à moins que le Gouvernement ne libère des détenus. Une telle menace équivaut à une prise d'otages, qui constitue un crime de guerre.

75. Un ancien habitant de Damas vivant à proximité de Sayyidah Zaynab a déclaré ce qui suit: «L'Armée syrienne libre fait la même chose [que l'armée régulière]. Elle aussi arrête et détient des personnes. Elle n'arrête en général que des "informateurs". On ignore ce qu'ils deviennent. Ils les emmènent et on ne les revoit plus jamais».

76. Des groupes armés antigouvernementaux ont arrêté des personnes uniquement à des fins de rançon ou d'échange, ce qui constitue un crime de guerre. Dans la mesure où ils infligent des peines ou des traitements cruels, inhumains ou dégradants à leurs détenus, de tels groupes violent le droit international humanitaire.

D. Disparitions forcées¹⁴

77. L'un des aspects les plus insidieux du conflit a trait aux milliers de personnes disparues de leur domicile, à un barrage ou dans la rue, alors qu'elles vauaient à leurs occupations habituelles.

78. La République arabe syrienne n'est certes pas partie à la Convention internationale sur la protection de toutes les personnes contre les disparitions forcées mais elle est partie au Pacte international relatif aux droits civils et politiques et à la Charte arabe des droits de l'homme, dont les dispositions sont violées par les disparitions forcées. Les disparitions

¹⁴ Voir aussi annexe VII.

forcées placent leurs victimes hors du champ de la loi, violant leur droit d'être reconnues en tant que personnes devant la loi, leur droit à la liberté et la sécurité et leur droit d'être à l'abri d'une détention arbitraire. Elles constituent souvent une porte ouverte vers la commission de crimes supplémentaires, la torture par exemple.

79. Enquêter sur les disparitions forcées est souvent une tâche particulièrement difficile parce que les familles, vivant dans l'espoir que leurs proches leur seront rendus sains et saufs, ne tiennent pas à donner des noms ou autres renseignements sur les personnes disparues. L'absence d'accès à la République arabe syrienne constitue une entrave de plus pour les enquêtes.

1. Forces gouvernementales et milices affiliées

80. De multiples sources ont fait état de disparitions forcées imputables aux forces gouvernementales et aux milices affiliées. Aucune information n'a été donnée aux familles qui voulaient savoir ce qu'il était advenu de leurs proches. Les proches de certains détenus qui se sont adressés à des responsables ont été eux-mêmes arrêtés, justifiant ainsi les craintes d'autres personnes qui auraient pu entreprendre des démarches similaires.

81. Le sort de nombreuses victimes demeure inconnu. Dans les cas où un disparu a été rendu à sa famille, les personnes interrogées ont indiqué qu'il avait été torturé et, dans un cas, violé alors qu'il était en détention. Dans trois cas, les familles ont reçu par la suite le corps de leur proche.

82. Les forces gouvernementales ont commis des actes de disparition forcée en violation de leurs obligations juridiques internationales. Lorsqu'elles entrent dans le cadre d'une attaque généralisée ou systématique contre une population civile, ces disparitions sont constitutives de crimes contre l'humanité.

83. Les renseignements disponibles ne sont pas suffisants pour parvenir à une conclusion en ce qui concerne les milices affiliées. Les enquêtes se poursuivent.

2. Groupes armés antigouvernementaux

84. Une personne a signalé qu'un groupe armé antigouvernemental avait commis un acte de disparition forcée. Les familles dont des proches ont été arrêtés ou enlevés par des groupes armés sont en toute probabilité restées en République arabe syrienne. Les entretiens se sont déroulés par téléphone et Skype mais il demeure difficile de prendre contact avec les familles à l'intérieur du pays.

85. Les groupes armés antigouvernementaux ne sont certes pas en tant que tels partie à la Convention mais leurs actes peuvent être analysés au regard des principes du droit international coutumier et leur responsabilité pénale est engagée à raison des disparitions forcées constitutives de crimes contre l'humanité.

86. Les renseignements disponibles ne sont pas suffisants pour parvenir à une conclusion en ce qui concerne les groupes armés antigouvernementaux et les disparitions forcées. Les enquêtes se poursuivent.

E. Torture et autres formes de mauvais traitements¹⁵

87. En vertu du droit international des droits de l'homme et du droit international humanitaire, la torture et autres formes de peines ou traitements cruels, inhumains ou

¹⁵ Voir aussi annexe VIII.

dégradants sont interdits. Ces actes relèvent du crime de guerre. La torture et autres actes inhumains peuvent aussi constituer des crimes contre l'humanité.

1. Forces gouvernementales et milices affiliées

88. De nombreuses informations ont été reçues qui font état de l'usage de la torture et autres formes de mauvais traitements par les forces gouvernementales et les milices affiliées. La majorité de ces informations font état de sévices commis au cours des interrogatoires par les services de renseignement.

89. Bon nombre de personnes faisant état d'actes de torture et autres formes de mauvais traitements dans des centres de détention officiels étaient détenues par les services de renseignement à Damas et à Alep. Plusieurs disaient avoir été torturées dans l'agence 235 de la sécurité militaire, aussi appelée «Agence Palestine», à Damas. Pratiquement tous ceux qui ont décrit des actes de torture dans le gouvernorat d'Alep ont indiqué que leurs proches avaient été détenus dans l'agence du renseignement de l'armée de l'air, de la ville d'Alep.

90. D'autres ont décrit des actes de torture commis dans les locaux de la sécurité militaire à Izra, Dara'a et Homs, dans l'agence 215 de la sécurité militaire à Damas, dans les locaux du renseignement politique à Hama et dans les locaux de la sécurité militaire et du renseignement de l'armée de l'air à Lattaquié. Certains avaient subi de multiples interrogatoires ainsi que des agressions durant leur transfert entre différents centres de détention et gouvernorats.

91. Les méthodes de torture décrites par la commission dans ses précédents rapports sont demeurées les mêmes d'une région à l'autre du pays. Dans de nombreux cas, des cicatrices et des blessures conformes aux récits des victimes étaient encore visibles.

92. Des violences ont été également signalées dans les centres de détention non déclarés. Des personnes ont été attaquées physiquement par des soldats dans des lieux tels que des boutiques ou des écoles, avant d'être transférées dans un service de renseignement. D'autres ont décrit les auteurs de ces actes comme étant des membres des *Shabbiha* venus de localités alaouites ou chiites proches.

93. De multiples informations ont été reçues de personnes tabassées à un barrage, en particulier dans les gouvernorats de Dara'a et Lattaquié. D'autres encore ont fait état d'agressions à l'intérieur de casernes.

94. Plusieurs personnes ont signalé avoir été battues ou avoir vu d'autres personnes battues lors de la fouille de leur maison. Selon des informations qui ont été corroborées, des hommes ont été battus puis tués par des soldats qui fouillaient des maisons à Mare'a, Idlib, entre le 23 et le 28 août, ainsi que dans des villages du gouvernorat de Dara'a, en octobre. Des informations ont été également reçues selon lesquelles des personnes auraient été battues pendant la fouille de maisons à Jabal Al-Zawiya (Idlib, juillet), Saqba (Damas, juillet), Qastal Ma'af et d'autres villages turkmènes (Lattaquié, début septembre) et dans le secteur d'Al-Ghadam (Damas, décembre).

95. Fait gravement préoccupant, dans la majorité des cas, les passages à tabac venaient en prélude à des exécutions.

96. Les détenus étaient placés dans des cellules surpeuplées, certaines d'entre elles souterraines. Aucun n'a reçu des soins médicaux pendant sa détention. Selon certaines informations, deux détenus seraient décédés des suites de leurs blessures dans leur cellule. Pour la plupart, la nourriture et l'eau étaient fournies en quantité insuffisante et l'un d'entre eux a déclaré que lui-même et d'autres détenus avaient bu leur propre urine pour survivre. Ces récits, s'ils sont vérifiés, constitueraient des violations de l'Ensemble de règles minima pour le traitement des prisonniers.

97. Des actes de torture et autres formes de peines ou traitements cruels, inhumains ou dégradants ont été commis par des forces gouvernementales et des milices affiliées durant une attaque généralisée visant la population civile, en application ou aux fins d'une politique organisationnelle. La torture dans les centres de détention officiels relève également d'une attaque systématique contre une population civile. Des actes de torture et autres actes inhumains constitutifs de crimes contre l'humanité ont été commis. Leurs auteurs peuvent aussi être poursuivis pour crime de guerre.

98. Les services de renseignement, notamment les services de renseignement militaire, politique et de l'armée de l'air, sont particulièrement responsables d'actes de torture et de mauvais traitements.

99. Les conditions de détention relèveraient, si elles sont vérifiées, des peines ou traitements cruels, inhumains ou dégradants.

2. Groupes armés antigouvernementaux

100. Des informations crédibles ont été reçues qui font état d'actes de torture subis par des soldats gouvernementaux ou des membres des milices affiliées alors qu'ils étaient détenus par des groupes armés antigouvernementaux.

101. Plusieurs entretiens étaient centrés sur le traitement des soldats gouvernementaux et membres des *Shabbiha* (ou individus perçus comme faisant partie de groupes de *Shabbiha* locaux) dans le gouvernorat d'Alep. Les méthodes de torture consistaient notamment à battre les détenus avec des câbles électriques et des bâtons. Un homme détenu avec 54 autres dans une maison d'Alep a déclaré avoir vu huit détenus mourir, d'autres avaient subi des blessures graves, y compris des fractures, au cours de leur interrogatoire. Un commandant de l'ASL à Damas a déclaré avoir tabassé un détenu afin qu'il «avoue». Ce détenu a été par la suite exécuté.

102. Des actes de torture et autres formes de peines ou traitements cruels, inhumains ou dégradants ont été commis par les groupes armés antigouvernementaux au cours des interrogatoires de membres des forces gouvernementales capturés et de personnes considérées comme membres des *Shabbiha*.

103. Ces actes de torture et autres actes inhumains ne faisaient partie d'aucune attaque ni généralisée ni systématique contre la population civile. Ils ne sont certes pas constitutifs de crimes contre l'humanité en tant que tels mais ils peuvent donner lieu à des poursuites en tant que crimes de guerre.

F. Violences sexuelles¹⁶

104. Des récits de violences sexuelles ont été recueillis auprès de victimes et de témoins directs. Des entretiens complémentaires ont eu lieu avec des organisations et des particuliers qui aidaient ou avaient probablement aidé des victimes de violences sexuelles. Peu de cas a été fait des récits de témoins indirects de violences sexuelles même si de nombreux récits de ce type ont été reçus.

105. Les difficultés particulières posées par la collecte d'éléments de preuve de violences sexuelles subies par des femmes et des filles sont exposées de manière détaillée dans l'annexe IX.

¹⁶ Voir aussi l'annexe IX.

1. Forces gouvernementales et milices affiliées

106. Des actes de violence sexuelle ont été perpétrés dans deux contextes différents: contre des femmes par des forces gouvernementales et des membres des milices affiliées (généralement décrits comme étant des membres des *Shabbiha*) au cours de la fouille des maisons et aux barrages, d'une part, et contre des hommes et des femmes dans des centres de détention, où ces violences sont utilisées comme moyen de soutirer des renseignements pendant les interrogatoires, ainsi que comme moyen d'humilier et de punir, d'autre part.

107. Les violences sexuelles servent également de moyen de contraindre des hommes qui combattent avec les groupes armés antigouvernementaux à se rendre en échange de la libération d'un proche détenu. Les méthodes utilisées dans les actes de violence et de torture sexuelles sont le viol, l'électrocution des parties génitales au moyen de fils électriques et les brûlures des parties génitales au moyen de cigarettes, de briquets ou de plastique fondu.

108. Les enfants également sont victimes de violence sexuelle. Une fille de 14 ans a été violée dans un centre de détention non déclaré à Idlib.

109. Dans le contexte des centres de détention, des viols et autres actes inhumains ont été perpétrés dans le cadre d'une attaque généralisée visant une population civile, en application ou aux fins d'une politique organisationnelle. Ce comportement s'inscrit aussi dans le cadre d'une attaque systématique contre une population civile. Des viols et autres actes inhumains constitutifs de crimes contre l'humanité ont été commis par les forces gouvernementales et les milices affiliées. Le viol, la torture et les traitements inhumains sont aussi passibles de poursuites en tant que crimes de guerre.

110. Des violences sexuelles, y compris des viols, ont été commises contre des femmes et des filles au cours de la fouille de maisons et aux barrages par des forces gouvernementales et des milices affiliées. Ces fouilles, qui suivent souvent un bombardement aérien, sont des opérations militaires constituant une attaque contre la population civile. Les viols et autres actes de violence sexuelle qui font partie de l'attaque ou ont été conçus pour en faire partie, sont des crimes contre l'humanité.

2. Groupes armés antigouvernementaux

111. Considérant la quantité limitée d'informations reçues, il n'a pas été possible de parvenir à une conclusion concernant les crimes de violence sexuelle commis par les groupes armés antigouvernementaux.

G. Violations des droits des enfants¹⁷

112. Au cours des six derniers mois de la période à l'examen, les enfants ont souffert de violations généralisées de leurs droits.

1. Forces gouvernementales et milices affiliées

113. Des enfants se sont vu dénier les protections spéciales prévues dans le droit international exigeant qu'ils soient séparés des adultes dans les lieux de détention et que leur détention soit orientée vers la réadaptation. Des enfants d'à peine 8 ans ont été emprisonnés avec des adultes. Cette situation constitue un traitement inhumain. Des enfants ont été également torturés, ce qui a pu entraîner la mort de certains d'entre eux.

¹⁷ Voir aussi annexe X.

114. Des attaques gouvernementales contre plus de 17 écoles ont été attestées. Dans certains cas, des forces antigouvernementales se trouvaient sur les lieux. Des agents chargés des admissions dans les hôpitaux ont refusé que des enfants blessés dans les hostilités soient traités et des médecins ont été contraints de dénoncer des enfants.

115. Les systèmes officiels de conscription syriens sont en voie de désintégration. Des enfants de moins de 18 ans sont appréhendés aux barrages et les milices affiliées au Gouvernement utilisent l'appartenance confessionnelle, les liens de parenté et l'argent pour gonfler leurs rangs. Ces méthodes ont pu déboucher sur le recrutement de soldats mineurs. Les enfants sont utilisés comme informateurs et les deux parties punissent les «informateurs» par des exécutions judiciaires ou extrajudiciaires.

2. Groupes armés antigouvernementaux

116. Les groupes armés antigouvernementaux utilisent souvent les écoles comme casernes ou bureaux. Ces occupations ne sont pas toujours justifiées par les nécessités militaires et ont contribué à répandre l'idée que les écoles ne sont pas des lieux sûrs. Sur les 20 000 écoles de la République arabe syrienne, plus de 2 400 ont été endommagées par des opérations militaires. Des milliers d'autres ont été transformées en abris pour personnes déplacées, au détriment de l'accès à l'éducation.

117. Les groupes armés antigouvernementaux engagent des volontaires âgés de moins de 18 ans. Des enfants ont été utilisés dans des combats et ont assumé d'autres rôles actifs. Certains groupes armés utilisent des enfants comme gardes, ce qui peut amener ces derniers à maltraiter les détenus. Une vidéo non corroborée semble montrer un enfant associé à un groupe armé antigouvernemental en train de décapiter un prisonnier.

118. Des enfants sont détenus avec des adultes dans des lieux de détention contrôlés par les groupes armés antigouvernementaux.

IV. Violations dans le cadre de la conduite des hostilités

A. Attaques illégales¹⁸

119. Le conflit en République arabe syrienne s'est transformé en une guerre d'usure de plus en plus dangereuse pour les civils. Les zones civiles ont fait l'objet d'attaques aveugles. Au cours de la période à l'examen, Damas a subi des bombardements aériens pour la première fois depuis le début du conflit. Les groupes armés antigouvernementaux conduisent leurs opérations à partir de zones à forte densité de population civile, plaçant ainsi les civils à la merci des tirs et les obligeant à fuir leurs maisons. Les forces gouvernementales conduisent leurs opérations militaires en faisant fi de la distinction entre civils et personnes participant directement aux hostilités. Selon des récits d'initiés recueillis auprès de membres de haut rang des forces gouvernementales ayant fait défection, des commandants militaires ont donné l'ordre de viser directement des civils et la population civile en tant que telle.

120. La dynamique du conflit est devenue de plus en plus complexe. La guerre a pris une tournure sectaire dans laquelle s'insinue une criminalité de circonstance et qu'aggrave la présence de combattants étrangers et de groupes extrémistes. Les difficultés d'accès à la République arabe syrienne ont notablement entravé les enquêtes sur la conduite des hostilités par les groupes armés antigouvernementaux.

¹⁸ Voir aussi annexe XI.

1. Force gouvernementale et milices affiliées

121. Des cas de pilonnage et de bombardement aérien aveugles ont été constatés sur l'ensemble des gouvernorats d'Alep, Dara'a, Damas, Idlib, Dayr az Zawr, Hama, Homs, El-Hasakah et Lattaquié.

122. À Alep, Hama et Dayr az Zawr, les files d'attente devant les boulangeries ont été prises pour cible, provoquant des morts et des blessés parmi les civils, femmes et enfants compris. Les attaques étaient souvent lancées le matin, lorsque la concentration de civils est la plus forte, ou bien juste avant l'*iftar*, la rupture du jeûne pendant le ramadan. Le plus souvent, les files d'attente devant les boulangeries ont été attaquées le lendemain de la livraison de farine aux boulangers après une longue période de pénurie.

123. Le bombardement aérien de zones urbaines à forte densité de population, à Azaz par exemple, a été corroboré par des images satellites (voir annexe XI, fig. 1 à 3). Selon les récits de personnes ayant fait défection, certaines villes et autres localités ont été délibérément et aveuglément attaquées. Ces attaques contre des zones civiles révélaient une indifférence à l'égard des pertes de vies civiles. Dans certains cas, celui de l'attaque contre Harak, par exemple, le pilonnage systématique a été suivi d'opérations au sol au cours desquelles les forces gouvernementales ont perpétré un massacre.

124. Dans plusieurs cas attestés dans lesquels il est évident que des civils ont été attaqués, les forces gouvernementales ont tiré sur des rassemblements de civils, sur des cortèges funèbres par exemple. Au cours de l'attaque contre Al-Habit (Idlib), le 28 juillet, les hélicoptères de l'armée ont mitraillé les rues de la ville afin d'empêcher toute circulation, tuant des civils qui tentaient d'échapper aux tirs. Le 9 novembre, l'armée de l'air a pilonné le marché du village d'Al Quriyah le jour où ce marché était ouvert aux femmes, tuant 21 civils dont 19 femmes.

125. Des quartiers entiers de la banlieue de Damas ont été bombardés et détruits par les forces gouvernementales. Un déserteur de la section des forces spéciales de l'infanterie qui opérait à Damas a déclaré que son commandant considérait que toutes les zones dans lesquelles l'ASL et d'autres groupes armés antigouvernementaux opéraient étaient des «zones favorables aux terroristes». En attaquant Zabadani, ce commandant aurait donné l'ordre de «détruire la ville».

126. Par suite de ce déchaînement de violence, des centaines de milliers de civils ont fui leurs maisons. La ville de Taftanaz, soumise à un intense bombardement, a été décrite par d'anciens résidents comme «une ville fantôme».

127. Le bombardement de files d'attente devant les dépôts de pain et les boulangeries constitue une violence visant à répandre la terreur dans la population civile, en violation du droit international humanitaire coutumier.

128. Selon des récits d'initiés, l'armée de l'air aurait pris pour cible des zones perçues comme étant favorables à l'opposition, et ce «en tant que forme de punition». Si ces attaques contre des civils sont confirmées, ceux qui les ont ordonnées seraient personnellement pénalement responsables du crime de guerre qu'elles constituent.

129. Le pilonnage aveugle et généralisé, le bombardement régulier des villes, les massacres, les tirs aveugles contre des cibles civiles, les tirs contre des rassemblements de civils, une campagne prolongée de pilonnage et de tirs de sniper sur les zones civiles, telles sont les caractéristiques du comportement du Gouvernement. Les forces armées syriennes ont mis en œuvre une stratégie dans laquelle le pilonnage et le recours aux snipers servent à tuer, mutiler, blesser et terroriser les habitants civils des zones qui sont passées sous contrôle des groupes armés antigouvernementaux. Le pilonnage et les tirs de sniper des forces gouvernementales ont tué et blessé des civils des deux sexes et de tous âges, notamment des enfants et des personnes âgées. Ces attaques sont constitutives de crimes de

guerre et relèvent apparemment d'une campagne contre les civils dans les zones contrôlées par les groupes armés antigouvernementaux, ce qui peut être constitutif de crimes contre l'humanité.

2. Groupes armés antigouvernementaux

130. Les groupes armés antigouvernementaux ont revendiqué cinq attentats à la bombe attestés au cours de la période à l'examen, commis à Alep et Damas. Le recours aux engins explosifs improvisés, aux attentats-suicide et aux voitures piégées s'est répandu dans l'ensemble de la République arabe syrienne.

131. Il y a des raisons de penser que les groupes armés antigouvernementaux utilisent régulièrement des objectifs civils tels que les écoles pour y installer leurs bases, s'y loger ou s'y réunir, exposant ainsi des civils aux dangers de la guerre.

132. Alep a été divisé entre les forces gouvernementales et les groupes armés antigouvernementaux, les deux parties installant des snipers au sommet des immeubles et à l'entrée des routes principales pour contrôler la circulation des personnes. Les snipers tirent régulièrement sur des civils. Il est évident qu'au cours des incidents examinés, le comportement des personnes qui ont été blessées aurait dû amener à présumer qu'il s'agissait de civils.

133. En opérant de l'intérieur d'objectifs civils, les groupes armés antigouvernementaux mettent en danger la population civile et violent l'obligation qui leur incombe en droit international humanitaire d'éviter, autant que faire se peut, de positionner des objectifs militaires à l'intérieur ou à proximité de zones à forte densité de population. L'utilisation de snipers pour limiter la circulation des personnes et affirmer son contrôle sur des espaces a fait un nombre considérable de victimes civiles, les snipers ne faisant pas de distinction entre les civils et les personnes qui participent aux hostilités. Le ciblage des personnes à partir de positions cachées dans les zones urbaines remplit de terreur la population civile. Monter des embuscades au moyen d'engins explosifs improvisés dans des zones à prédominance civile sème également la terreur dans la population civile et représente une violation flagrante du droit international humanitaire constitutive du crime de guerre consistant à attaquer des civils. Les enquêtes relatives à la conduite des opérations par les groupes armés antigouvernementaux se poursuivent.

3. Autres auteurs de crimes

134. L'on a pu constater une augmentation du nombre des attaques qu'aucune partie n'a revendiqué et qui ne répondent apparemment à aucun objectif militaire ou stratégique autre que de semer la terreur parmi la population civile. Particulièrement préoccupantes sont les attaques qui peuvent susciter des tensions sectaires. Ces attaques ne sont motivées par aucun avantage militaire ou stratégique et sont plutôt le fruit d'un mépris général pour les vies humaines. Il est de plus en plus évident que la prolifération de combattants étrangers et de groupes extrémistes a modifié le caractère du conflit. Plus de 10 incidents ont été attestés dans lesquels des engins explosifs improvisés, portés par une personne ou placés dans un véhicule, ont été déclenchés dans les quartiers peuplés par des minorités ou à proximité de sites religieux.

135. En raison de la prolifération des factions armées dans le conflit syrien, on constate une augmentation des actes de violence sauvage, qui sont clairement conçus pour répandre la terreur au sein de la population civile. Il n'est pas toujours possible de déterminer qui sont les auteurs de tels actes. Ce comportement représente une violation des règles et coutumes du droit international humanitaire et peut accroître les tensions sectaires. Cette évolution risque d'ajouter une tumeur maligne au conflit.

136. Ces crimes peuvent certes relever du droit interne mais ils peuvent aussi constituer des crimes de guerre lorsque leurs auteurs sont partie au conflit.

B. Personnes et objets bénéficiant d'une protection spéciale¹⁹

137. L'escalade de la violence dans des zones urbaines fortement peuplées a été de plus en plus préjudiciable aux personnes et aux objets bénéficiant d'une protection spéciale en vertu du droit des conflits armés.

138. Le ciblage délibéré du personnel médical et des hôpitaux, et le déni d'accès aux soins, ont constitué l'une des caractéristiques les plus alarmantes du conflit et se sont poursuivis sans relâche tout au long de la période à l'examen.

139. Des hôpitaux, du personnel médical, des journalistes et des biens culturels ont été assimilés à des objectifs militaires par les deux parties et considérés sous l'angle de l'avantage stratégique.

140. L'examen des images satellites a révélé l'ampleur des destructions d'hôpitaux dans des zones urbaines fortement peuplées, ainsi que des munitions, des cratères, des barricades et des gravats dans les zones environnant les hôpitaux à Damas, Alep et Homs.

1. Forces gouvernementales et milices affiliées

141. Au cours de la période à l'examen, des hôpitaux publics, des hôpitaux de campagne et des unités médicales dans les gouvernorats d'Alep, de Damas, d'Idlib et de Day raz Zawr ont subi des attaques, souvent à répétition.

142. Les forces gouvernementales ont attaqué des hôpitaux dans lesquels étaient traités des membres blessés de l'ASL. On peut citer à ce titre les attaques contre l'hôpital Al-Huda à Sbeneh, en septembre, l'hôpital Al-Saeed à Al-Arifi (Day raz Zawr), entre juillet et novembre, et l'hôpital de Tafas (Dara'a), en décembre.

143. Le personnel médical a fait l'objet d'attaques. Au début de septembre, un urgentiste a été touché par les tirs d'un sniper à Alep alors qu'il était en tenue médicale portant l'emblème du Croissant-Rouge. À peu près à la même époque, à Alep, des snipers ont pris pour cible une ambulance qui évacuait des combattants de l'ASL blessés lors de combats. À Dara'a, le chauffeur d'une ambulance a été arrêté à un barrage des forces gouvernementales et torturé à mort. Dans le gouvernorat de Damas, un médecin a été arrêté, torturé puis jugé pour avoir prodigué des soins médicaux à des groupes armés antigouvernementaux et des civils dans les zones tenues par l'opposition.

144. À Alep, Dara'a, Damas et Hama, des personnes blessées ou malades se sont vu refuser les soins pour des motifs sectaires ou politiques, ou bien ont évité d'aller se faire soigner dans des hôpitaux administrés par le Gouvernement en raison de la crainte fondée d'être arrêtées et torturées. Il ressort d'un ensemble cohérent de récits qu'à Dara'a et Homs, des snipers postés aux barrages situés en face de l'hôpital empêchaient l'accès aux soins.

145. L'hôpital Dar Al-Shifa d'Alep a été pris pour cible à plusieurs reprises au cours de la période à l'examen. Ces attaques ont fait des morts et des blessés parmi les civils présents à l'hôpital, ont lourdement endommagé son infrastructure et notablement réduit sa capacité à soigner les patients. Les attaques contre les hôpitaux d'Alep s'insèrent apparemment dans une campagne dirigée contre les civils dans les zones contrôlées par les groupes armés antigouvernementaux.

¹⁹ Voir également annexe XII.

146. Des hôpitaux et des unités médicales ont été délibérément ciblés par les forces gouvernementales à des fins d'avantage militaire en privant d'assistance médicale les groupes armés antigouvernementaux et tous ceux qui sont perçus comme favorables à ces groupes. Les forces gouvernementales ont commis le crime de guerre constitué par l'attaque d'objets ou de personnes porteurs des signes distinctifs visés dans les Conventions de Genève.

2. Groupes armés antigouvernementaux

147. Les groupes armés antigouvernementaux ont emporté des fournitures et du matériel médicaux qui se trouvaient dans des hôpitaux administrés par le Gouvernement, peut-être en vue de les utiliser dans les hôpitaux de campagne. L'hôpital militaire national de Homs a été détruit après avoir été désigné par erreur comme objectif militaire. Les attaques de ce type constituent des violations du droit des conflits armés et, en tant qu'attaque d'objets protégés, constituent aussi un crime de guerre.

3. Biens culturels

148. Des biens culturels en République arabe syrienne tels que la cité antique de Bosra, classée site du patrimoine mondial par l'Organisation des Nations Unies pour l'éducation, la science et la culture, ont été utilisés à des fins militaires par les forces gouvernementales puis attaqués par les groupes armés antigouvernementaux.

149. À Alep, le souk historique a été incendié en octobre tandis que la mosquée des Omeyyades et l'Église Saint Kework ont également subi des dommages non négligeables. Des pillards ont pénétré l'un des châteaux forts les mieux préservés de l'époque des Croisades, le Krak des Chevaliers. Des pièces de musée ont été pillées à Palmyre, Bosra et Homs et des vestiges de l'ancienne cité de Palmyre ont été endommagés.

150. Toutes les parties au conflit sont dans l'obligation, en vertu de droit international humanitaire, en particulier de la Convention sur la protection des biens culturels en cas de conflit armé, de respecter les biens culturels et de s'attacher tout particulièrement à éviter qu'ils soient endommagés dans le cadre des opérations militaires.

151. Lorsque des bâtiments consacrés à une religion ou des monuments historiques sont intentionnellement l'objet d'attaques alors qu'ils ne sont pas des objectifs militaires, on peut considérer que le crime de guerre constitué par l'attaque d'objets protégés a été commis.

C. Pillage et destruction de biens²⁰

152. S'approprier des biens d'usage privé ou personnel (pillage) dans le contexte d'un conflit armé constitue un crime de guerre²¹. La destruction délibérée des biens d'un adversaire sans qu'il y ait nécessité militaire de ce faire est un acte illégal en droit international humanitaire. Ces deux types de violations ont été constatés au cours de la période à l'examen.

1. Forces gouvernementales et milices affiliées

153. Les forces gouvernementales et les milices affiliées ont intentionnellement détruit dans des raids les maisons et commerces de personnes soupçonnées d'être membres ou partisans de groupes antigouvernementaux. Ces destructions non dissimulées ont notamment

²⁰ Voir également annexe XIII.

²¹ Statut de Rome, art. 8 2) e) v).

consisté à brûler ou faire exploser des biens ou leur causer des dommages irréparables. Le pillage d'un bien prélude souvent à sa destruction.

154. Le schéma de comportement ci-dessus a été constaté à Bosra, Lihraq et Mhajjah (Dara'a), en octobre 2012. Le même type de comportement se retrouve en août dans le village de Qastal Ma'af (Lattaquié), de la part de «comités populaires». À Dahadeel (Damas), le 19 octobre, un témoin direct a vu les forces gouvernementales incendier la maison d'un voisin. Dans le village de Kanshikam (Idlib), selon un ex-agent de police, des soldats «ont volé toutes les choses de valeur qui se trouvaient chez lui et détruit tout le reste». En novembre, des forces gouvernementales et des milices affiliées sont entrées à Tafas (Dara'a) et ont brûlé un certain nombre de maisons et de commerces.

155. Les forces gouvernementales et les milices affiliées ont perpétré des pillages constitutifs de crime de guerre. Ils ont aussi délibérément incendié et détruit des biens considérés comme appartenant à des membres ou des partisans de l'opposition, se rendant ainsi coupables de destruction de biens d'un adversaire. Les dispositions des droits de l'homme relatives au droit au respect de la vie privée et du domicile ont été violées.

2. Groupes armés antigouvernementaux

156. Aucun récit de première main faisant état de groupes armés antigouvernementaux qui se seraient approprié les biens d'autrui n'a été reçu. Des témoignages indirects, des rapports émanant de gouvernements, des bandes vidéo et d'autres matériels apportent des éléments de preuve de pillage. On ne peut dire avec certitude si les biens emportés l'ont été à des fins d'enrichissement personnel ou pour soutenir l'effort de guerre de l'opposition. Les pillages par des particuliers ou groupes non parties au conflit n'ont pas fait l'objet d'enquête.

157. Le 7 janvier 2013, la Mission permanente de la République arabe syrienne a présenté une note verbale contenant une brève description de pillage par des «bandes armées» à Alep (voir annexe I). Les tentatives faites pour vérifier ces allégations auprès de sources situées à l'intérieur de la République arabe syrienne sont restées vaines.

158. Aucune conclusion juridique concernant les actes des groupes armés antigouvernementaux n'a été possible, en raison de la difficulté de déterminer si les actes d'appropriation de biens étaient le fait d'une partie au conflit ou de personnes recherchant un profit personnel.

3. Zones rasées

159. La Commission a pu attester trois cas de zones urbaines rasées en République arabe syrienne. En règle générale, après avoir pilonné et bombardé une zone, les forces gouvernementales rasant au bulldozer les maisons et commerces civils.

160. En juillet 2012, 300 maisons ont été détruites par des explosifs et rasées au bulldozer à Al-Tadamon (Damas). Cette opération faisait suite à un pilonnage qui a forcé les habitants à s'enfuir. Les groupes antigouvernementaux ont peut-être lancé des attaques à partir d'Al-Tadamon. Les images satellites montrent près de 1 000 structures détruites. Qaboon, au nord de Damas, et Hey el Arbeen, à Hama (octobre), ont connu le même sort (voir annexe XIII, fig. 1 et 2).

161. Le Gouvernement justifie les démolitions susmentionnées en invoquant des plans d'aménagement urbain préexistants visant à éliminer des constructions illégales.

162. Le droit international humanitaire coutumier oblige les parties à un conflit à prévenir les déplacements de population et à respecter le droit des personnes déplacées à retourner dans leurs foyers. Le Gouvernement de la République arabe syrienne se rend peut-être

coupable de violation de ses obligations concernant le droit de retour des personnes déplacées. Ces questions nécessitent une enquête plus poussée.

V. Responsabilités²²

163. En conférant son mandat à la commission, le Conseil des droits de l'homme, dans sa résolution 21/26, a voulu que les responsables de violations et autres atteintes au droit international aient à répondre de leurs actes.

164. Des crimes contre l'humanité, des atteintes au droit international humanitaire et des violations flagrantes des droits de l'homme ont été perpétrés en République arabe syrienne. Comme cela a été noté dans les précédents rapports, les États sont responsables des violations du droit international des droits de l'homme imputables à leurs agents²³. Les individus peuvent également être tenus pénalement responsables en tant qu'auteurs de crimes identifiés dans le présent rapport. Chaque fois que possible, les individus occupant des postes dirigeants qui pourraient être responsables ont été identifiés aux côtés de ceux qui ont matériellement commis les actes en question. À la fin de son mandat, la commission transmettra à la Haut-Commissaire une liste des individus et unités qu'elle considère comme responsables. Les documents réunis peuvent aussi être mis à disposition lorsque les questions de consentement et de protection seront convenablement réglées.

165. Des mécanismes possibles de responsabilisation porteurs de poursuites pénales sont décrits dans l'annexe XIV au présent rapport, chacun d'entre eux ayant ses avantages et ses inconvénients. Les commissions vérité, diverses formes de justice réparatrice ou autres processus placés sous la conduite des Syriens pourraient être envisagés à un stade ultérieur.

166. Le Gouvernement conserve le rôle premier à cet égard mais il n'a guère fait jusqu'ici montre de la volonté ou de l'aptitude nécessaires pour répondre à cet impératif. En l'absence d'action au plan national à ce sujet, il incombe au Conseil de sécurité, aux États Membres influents et aux organisations régionales d'intervenir d'urgence pour faire en sorte que les auteurs de violations répondent de leurs actes.

VI. Conclusions et recommandations

167. La situation en République arabe syrienne se détériore rapidement, provoquant des souffrances indicibles et un désarroi généralisé de la population. L'on assiste à une escalade manifeste du conflit armé entre le Gouvernement et les groupes armés antigouvernementaux. Cette situation est aggravée par un accroissement du sectarisme.

168. Un autre sujet de préoccupation essentiel a trait à la radicalisation du conflit résultant de la présence croissante de combattants étrangers. Le conflit se militarise de plus en plus du fait de la prolifération des armes et des types d'armement utilisés (voir annexe XV). C'est malheureusement la population civile qui en souffre le plus.

169. La Commission est particulièrement consciente de la nécessité d'un cadre global fondé sur des considérations humanitaires pour toutes les parties. En premier lieu, il importe d'insister sur le fait qu'il n'y a aucune solution militaire au conflit. Une cessation durable des hostilités demeure de la plus haute importance pour mettre fin à la violence et aux violations et autres atteintes flagrantes aux droits de l'homme.

²² Voir aussi annexe XIV.

²³ Voir A/HRC/21/50, par. 131 à 142.

170. En deuxième lieu, il n'y a pas de solution autre que politique. Le document clef qui rendrait possible une telle solution est le communiqué final du Groupe d'action pour la Syrie de juin 2012 (A/66/865-S/2012/522). La commission réitère que la meilleure solution demeure celle d'un règlement négocié comportant un dialogue inclusif et sérieux entre toutes les parties et débouchant sur une transition politique prenant en compte les aspirations légitimes de toutes les composantes de la société syrienne, notamment les minorités ethniques et religieuses.

171. En troisième lieu, il faut souligner la responsabilité partagée de la communauté internationale et des divers acteurs dans le pays pour ce qui est de la recherche de la paix et du respect du droit international des droits de l'homme et du droit international humanitaire. Cette responsabilité et la responsabilité qui incombe à l'État de protéger sa population se complètent mutuellement.

172. En quatrième lieu, la question de la responsabilité des auteurs de crimes internationaux mérite d'être posée de manière plus affirmée afin de lutter contre le sentiment diffus d'impunité qui existe dans le pays.

173. En cinquième lieu, il faut consolider et élargir l'espace humanitaire fondé sur les principes d'impartialité et de neutralité en République arabe syrienne et dans les pays voisins touchés par les débordements du conflit.

174. La commission renouvelle les recommandations qu'elle a formulées dans ses précédents rapports, en particulier celles énoncées ci-dessous.

175. La commission d'enquête recommande que la communauté internationale:

a) Appuie le processus de paix fondé sur le communiqué final du Groupe d'action pour la Syrie et le travail accompli par le Rapporteur spécial conjoint de l'Organisation des Nations Unies et de la Ligue des États arabes pour la Syrie;

b) Enraye la prolifération et la fourniture d'armes et traite les sources du phénomène en ayant à l'esprit les incidences régionales et les responsabilités connexes dans le proche voisinage et au-delà;

c) Renforce l'espace humanitaire sur la base de l'assistance et de la protection aux victimes et du respect du droit international des droits de l'homme et du droit international humanitaire, facilités par un appui technique, financier et autre efficace;

d) S'attaque aux défis de la radicalisation du conflit, en tenant compte des divers acteurs et mandants qui influent sur la situation.

176. La commission recommande que le Gouvernement de la République arabe syrienne:

a) Participe au processus de paix et aide à le propulser, sur la base du communiqué final du Groupe d'action pour la Syrie;

b) Se conforme au droit international des droits de l'homme et au droit international humanitaire, sachant que l'État est partie à la plupart des traités internationaux relatifs aux droits de l'homme et à tout une série de traités relatifs au droit humanitaire, et accorde à la communauté internationale un accès aux zones touchées afin d'apporter une aide humanitaire à ceux qui en ont besoin;

c) Aide et protège les victimes, considérant en particulier que les règles d'engagement dans un conflit armé, sur la base du droit international, doivent être effectivement appliquées et que les attaques aveugles contre la population civile sont interdites;

d) Veille à ce que les auteurs de violations du droit international des droits de l'homme et du droit international humanitaire aient à répondre de leurs actes, grâce à des systèmes nationaux de justice efficaces et accessibles, et accorde aux victimes des voies de recours conformes aux normes internationales;

e) Permette à la commission d'accéder au pays.

177. La commission recommande que les groupes armés antigouvernementaux:

a) Se conforment aux droits de l'homme et au droit humanitaire, s'engagent effectivement à respecter des règles de conduite conformes aux normes internationales et participent au processus de paix;

b) Permettent l'accès des acteurs humanitaires afin d'aider les personnes qui ont besoin d'assistance;

c) Se rappellent que les attaques aveugles contre la population civile sont interdites;

d) Veillent à ce que les auteurs de violations du droit international des droits de l'homme et du droit international humanitaire aient à répondre de leurs actes, et fournissent aux victimes des voies de recours utiles conformément aux normes internationales;

e) Se séparent des combattants étrangers, en particulier des éléments extrémistes qui refusent de se conformer au droit international des droits de l'homme et au droit international humanitaire.

178. La commission recommande au HCDH de coordonner une présence dans la région afin de renforcer les efforts faits pour promouvoir et protéger les droits de l'homme en République arabe syrienne.

179. La commission recommande que le Conseil des droits de l'homme:

a) Appuie les recommandations formulées par la commission, notamment en transmettant le présent rapport au Secrétaire général, afin que celui-ci le porte à l'attention du Conseil de sécurité et que les mesures appropriées puissent être prises compte tenu de la détérioration de la situation, et selon une procédure officielle de présentation des rapports, à l'Assemblée générale et au Conseil de sécurité, compte tenu de la valeur ajoutée que l'Organisation des Nations Unies peut apporter en tant qu'organe impartial attaché aux droits de l'homme et à l'état de droit;

b) Souligne la nécessité de l'application effective du droit international des droits de l'homme et du droit international humanitaire dans toutes les situations et par toutes les parties au conflit;

c) Se penche sur la question des responsabilités des auteurs de crimes internationaux en luttant contre le phénomène de l'impunité et par le renvoi devant la justice aux niveaux national et international, en sus d'autres moyens de promouvoir la vérité et la réconciliation, ainsi que le relèvement social et la réinsertion des victimes.

180. La Commission recommande que le Conseil de sécurité:

a) Appuie ses recommandations;

b) Compte tenu de la gravité des violations et des crimes perpétrés par les forces gouvernementales et les groupes antigouvernementaux, prenne les mesures voulues et s'engage à faire respecter les droits de l'homme et l'état de droit par le renvoi devant la justice, éventuellement devant la Cour pénale internationale, sachant

que, dans le contexte de la République arabe syrienne, seul le Conseil de sécurité est habilité à renvoyer cette situation devant la Cour;

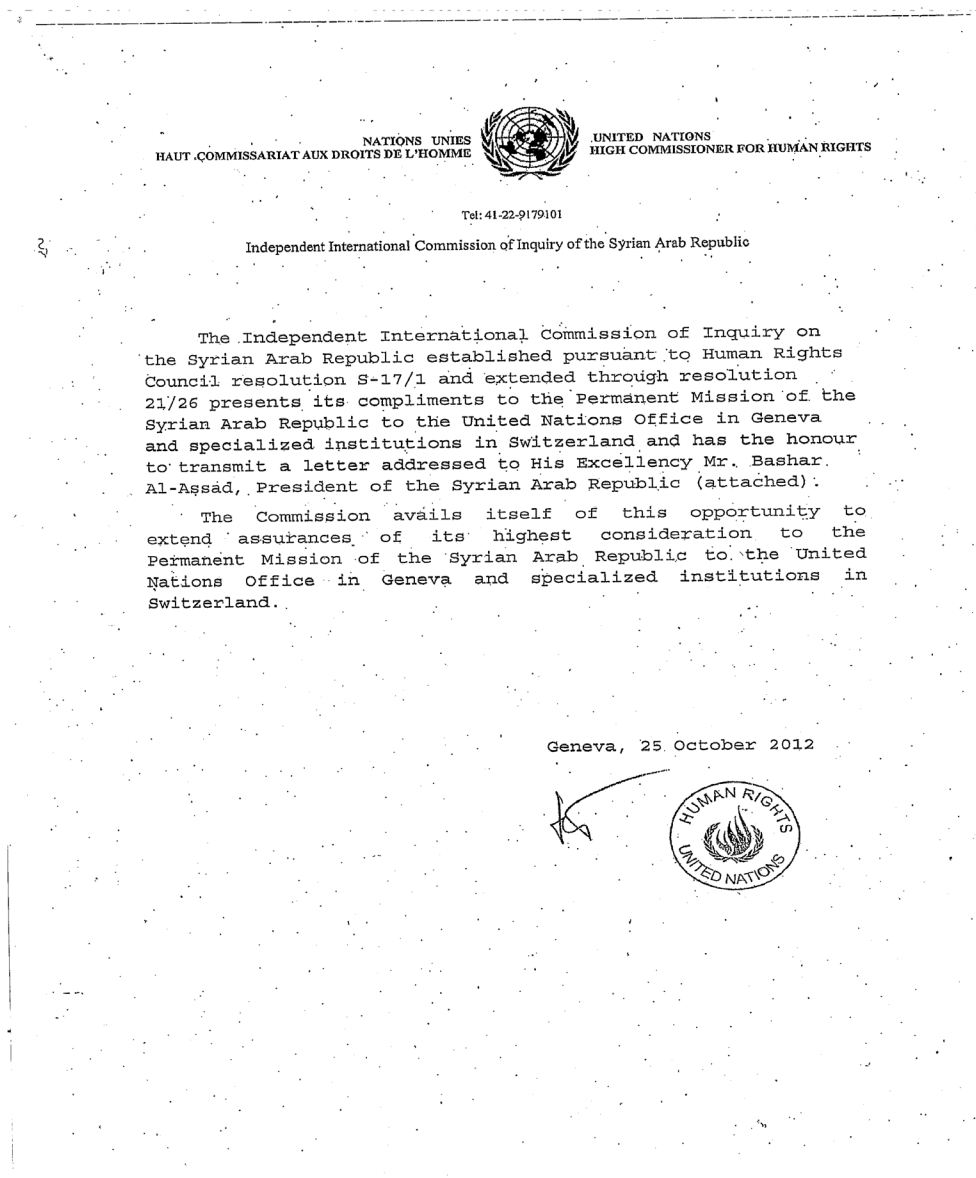
c) Renforce la mise en œuvre et l'application effective du droit international des droits de l'homme et du droit international humanitaire par tout l'éventail des pouvoirs et moyens dont il dispose, notamment pour s'attaquer efficacement aux violations des droits des enfants, s'agissant en particulier des incidences des conflits armés sur les enfants et de leur participation aux hostilités.

Annexes

Annexe I

[Anglais seulement]

Correspondence with the Government of the Syrian Arab Republic



NATIONS UNIES
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L'HOMME



UNITED NATIONS
HIGH COMMISSIONER FOR
HUMAN RIGHTS

Tel: 41-22-9179101

Independent International Commission of Inquiry of the Syrian Arab Republic

25 October 2012

Excellency,

We are pleased to address you in our capacity as the Independent International Commission of Inquiry on the Syrian Arab Republic, established by the United Nations Human Rights Council pursuant to resolution S-17/1 and extended by resolution 21/26 on 28 September 2012.

As we begin the new phase of our work, we wish to express our sincere appreciation for the cooperation afforded by Your Excellency's Government during the previous phases of the Commission, including our regular dialogue with the Permanent Representative of the Syrian Arab Republic based in Geneva, the information provided through numerous *note verbales*, and for my own visit to Damascus on 23-25 June 2012.

To advance our work, my fellow Commissioners and I would like to meet with you in person to discuss issues of our common interest. I take this opportunity, on behalf of the Commission, to reassure you of our full commitment to the principles of independence, impartiality and objectivity. We would appreciate your giving positive consideration to our request.

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

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

Paulo Sergio Pinheiro

Chairperson

H.E. Mr. Bashar AL-ASSAD
President of the Syria Arab Republic
Damascus, Syrian Arab Republic

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UNITED NATIONS
HIGH COMMISSIONER FOR
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Tel: 41-22-9179101

Independent International Commission of Inquiry established pursuant to
United Nations Human Rights Council Resolutions S-17/1, 19/22 and 21/L.32

The Independent International Commission of Inquiry on the Syrian Arab Republic presents its compliments to the Permanent Representative of the Syrian Arab Republic to the United Nations Office in Geneva and specialized institutions in Switzerland.

We hereby acknowledge with appreciation receipt of your Nota Verbale No. 528/12, dated 12 Nov. 2012, relaying the official statistics on the number of violations allegedly perpetrated by 'terrorist armed groups,' and further information related to the victims of such violations, the number of kidnapped people and the number of explosives that were found by security forces.

We take this opportunity to recall that the Commission considers a non-international armed conflict to be taking place in Syria and is thus applying International Humanitarian Law (IHL). IHL does not prohibit attacks on security forces and military targets. Death or injuries that result from such attacks are not considered violations, subject to certain exceptions.

As with other materials your Government has provided to the Commission, we anticipate including reference to the statistics in our final report which will be submitted to the Council in March, 2013. These incidents will be described as unverified unless your Government provides, or our own investigations conducted from outside Syria reveal, more information as to the circumstances. Commission methodology requires corroboration of all allegations before inclusion in the report. Our investigators visiting the location of the incident and meeting directly with victims and eyewitnesses would be most helpful.

Our investigations have previously benefitted from your Government's submission of reports on Al-Houla, Al-Qubeir, and the attack on the Ikhbariya television premises. Each of these submissions was considered in detail and addressed in our Report. Further reports of a similar nature, and/or the ability of our investigators to speak with witnesses to any of the incidents, would enhance the likelihood of corroboration, and thus inclusion. We remain available for such contact at your convenience.

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UNITED NATIONS
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Tel: 41-22-9179101

Independent International Commission of Inquiry established pursuant to
United Nations Human Rights Council Resolutions S-17/1, 19/22 and 21/L.32

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

Geneva, 17 November 2012





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MISSION DE SYRIE

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Mission Permanente
De La
République Arabe Syrienne
Genève.

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 NO ACTION NEEDED

الجمهورية العربية السورية
OHCHR
الجنة الدائمة لدى
OHCHR

9 JAN 2013

Recipients: MENA
Geneva, January 7-2013

The Permanent Mission of the Syrian Arab Republic to the United Nations Office and other International Organizations in Geneva presents its compliments to The Office of the United Nations High Commissioner for Human Rights (OHCHR), and in reference to the oral update published by the Independent International Commission of Inquiry on the Syrian Arab Republic (CoI) on 20/12/2012, would like to present the OHCHR with the following remarks by the government of the Syrian Arab Republic on the abovementioned oral update:

The last oral update by the CoI is characterized by a rush to just present any information it has received only from one side, neglecting to carefully scrutinize its authenticity, in a conduct that lacks professionalism and impartiality. The CoI instead continues to invoke logistical excuses to justify its refusal to utilize an extensive amount of authenticated and verified information officially presented by Syria to the OHCHR.

The CoI also continues to insist that the government of the Syrian Arab Republic provided "unverified" information, or describes this information as "allegations" meanwhile its presentation of the acts committed by the armed terrorist groups remains timid and lags far behind the unfolding of events on the ground.

The CoI does not cease to address a considerable amount of false information and continues to invoke incorrect legal pretexts which fall beyond the scope of its mandate, including its claim concerning "the use of cluster bombs" which is a totally unacceptable allegation. This also applies to the mandate the CoI has given itself in investigating International Humanitarian Law (IHL), a matter which Syria had previously reiterated that the CoI does not have the mandate to raise. The CoI instead avoided addressing several important issues directly related to human rights, some examples of which are listed below:

- The city of Aleppo has witnessed a dangerous international precedent as factories were deliberately destroyed or looted, and their contents were transferred to neighbouring countries, in an attempt to destroy the Syrian industrial sector which had been prosperous before the crisis. These acts are considered at the very least to be violations of the Right to Development.
- The armed terrorist groups looted warehouses used to store medicines -for which the Syrian government had paid large funds to make them available for citizens at a very low cost despite the sanctions imposed on the export of such medicines to Syria. The armed terrorist groups sold the stolen medicines in the neighbouring

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countries, or totally destroyed them in order to deprive the Syrian people, in a clear violation of the Syrians' Right to Health.

- The CoI did not refer to the party responsible for the food crises in the country, or to the theft of warehouses and grain convoys and their smuggling to neighbouring countries; nor did it mention the destruction of agricultural crops and the deliberate starvation of the Syrian people, as well as the systematic targeting of material and equipment used to supply electricity and the preventing of their repair, acts that constitute contrived crises never witnessed in Syria before 2011.
- The CoI's insistence on investigating IHL raises questions regarding the motivation behind choosing this path, in addition to other questions raised by statements made by the CoI and conclusions it had reached which coincide with positions and statements of certain countries regarding the crisis. It remains unknown why the CoI continues to refuse applying international law on combating terrorism - including relevant United Nations Security Resolutions, despite the fact that these are binding resolutions that are to be applied to what is happening in Syria.
- The CoI unfortunately persists in completely ignoring all that Syria sought to clarify from the beginning of the crisis, including the Syrian government's confirmation of the existence of specific foreign powers which seek sectarian incitement in Syria and which have issued religious "takfiri fatwas" to justify murder, torture, theft, kidnapping, and the violations of all international laws and customs related to human rights. These are phenomena that are foreign to Syrian society and that the Syrian State and people had combated in the past. The CoI unfortunately did not heed any of these calls and insisted on doubting the warnings emanating from the Syrian government, and chose instead to participate in the vicious smearing campaign against Syria, which opened the way for the unprecedented human rights violations we witness today in Syria and which are being committed by the armed terrorist groups.
- One can only imagine how the situation would have been had the CoI paid attention from the outset to the warnings of the Syrian government and had not waited until specifically this moment to expose, regrettably in a distorted fashion and far away from the truth, the sectarian incitement going on in Syria, relying on incorrect information that proved to be falsified on a daily basis. The CoI had been expected to better read the complex geopolitical situation of the region before getting involved in dangerous issues in such a manner. It could have benefited from the vast amount of information timely provided by Syria, and could have contributed to stopping the bloodshed of Syrians.
- Many religions, sects and races have lived in Syria for thousands of years, and together they have formed a unique example of co-existence and of the right of freedom of religion and belief. It had been expected from the CoI to inquire about

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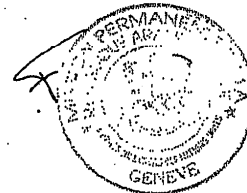
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the factor that has affected the Syrian society for several months, and which led to the hateful speech referring to "sects and races" in Syria. It remains surprising that the CoI did not seek to investigate the various "takfiri fatwas" issued by certain individuals from outside Syria, "fatwas" that sanctioned attacks, acts of murder, and the violation of whole components of Syrian society. Question are raised ad to why did the violation of the right of freedom of religion and belief not find its way into the CoI's report? Why did the CoI not arrive to the realization that the sordid ideas and practices of the armed terrorist groups who fight each other over "booties" and of those who instigate them is in fact the principle factor that has affected the Syrian society from the outset of the crisis, and is responsible for the events on in Syria.

- It is regrettable that the CoI claims it has collected evidence directly from "victims" while in fact its report is filled with clear proof on the use of unverified evidence provided by non-governmental organizations. It should ne noted that the CoI often relied on information provided by countries directly involved in the Syrian crisis and which have direct interest in exacerbating the situation in order to achieve their own gains at the expense of the Syrian people.
- The CoI remains incapable of referring to the outside role of countries that finance, arm, train, and harbour armed terrorists, and which provide them with intelligence, political, and media cover, hampering the efforts towards national dialogue and political solution to the crisis. This is indeed a matter that falls within the heart of the violation of international human rights law. The CoI's continuous disregard for the role of these countries remains disturbing.
- The CoI has confirmed again in this report the unprofessional and impartial nature of its work which has proven to fall exactly in line with certain countries' political positions and orientations. The CoI's focus on specific issues actually shifts according to these countries' orientation. This confirms once again its impartiality in dealing with the situation in Syria. The CoI has been given several chances to demonstrate its impartiality and objectivity in dealing with the events in Syria; unfortunately it has wasted each one of them.

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

Office of the United Nations High Commission for Human Rights
Palais Wilson



Route de Près-Bois, 20 1215 Genève 15 Case Postale 1903 Tel: +41 22 7154560 Fax: +41 22 7384275

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Independent International Commission of Inquiry on the Syrian Arab Republic
established pursuant to United Nations Human Rights Council Resolutions S-17/1, 19/22 and 21/26

The Independent International Commission of Inquiry on the Syrian Arab Republic (CoI) presents its compliments to the Permanent Mission of the Syrian Arab Republic to the United Nations Office in Geneva and specialized institutions in Switzerland (Permanent Mission).

Receipt is hereby acknowledged of the Note Verbale No. 561/12, from the Permanent Mission dated 12 Dec 2012, in response to the CoI's Note Verbale of 17 November 2012 and Note Verbale No. 01/13 dated 7 January 2013, in response to the CoI's Update of 20 December 2012.

With respect to the concern of the Government of the Syrian Arab Republic on the fact of the CoI addressing breaches of International Humanitarian Law (IHL) in its report, the CoI wishes to refer to the resolutions of the Human Rights Council (HRC), in particular, A/HRC/21/26 which stressed the need to "hold to account those responsible for violations and abuses, including those that may amount to crimes against humanity and war crimes." War crimes are serious violations of IHL.

As set out in its report to the HRC (A/HRC21/50) of 16 August 2012, the CoI has determined that the threshold for a non-international armed conflict has been met. The finding is in line with those stated publicly by the guardian of the Geneva Conventions, the International Committee of the Red Cross, as well as the public pronouncements of the Syrian Government.

Concerning attacks on police forces, once the threshold of armed conflict has been met, IHL does not prohibit the targeting of those who directly participate in hostilities, whether they are civilians or military personnel. Military objectives are targetable at all times. Civilians who do not participate in hostilities, i.e., who are undertaking purely civilian roles, are not targetable. Attacking civilian police who are not directly participating in hostilities may constitute a war crime. However, civilian law enforcement operations which amount to direct participation in hostilities are legitimate targets under IHL. Attacks on such operations do not amount to violations of IHL and are thus not included in the Commission's findings.

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This position reflects the provisions of IHL and has no bearing on Syrian domestic law. It does not assess whether any action by armed groups violates Syria's criminal laws, or whether Syria's law enforcement personnel are acting within the constraints of Syrian law.

With regard to the CoI's selection of incidents and its consideration of statistics from the Syrian Government, other governments, non-governmental organizations and other sources, the CoI gives the highest priority to information gathered from eye-witnesses deemed credible based upon the overall accuracy and internal consistency of their accounts, and the extent to which those accounts accord with information from other sources. Original materials produced by the CoI's investigators (e.g., site visits, forensics examinations, satellite analysis) are also prioritized. Second-hand reports, statistics gathered by others, analysis, videos and similar materials produced by others - especially when generated by a party to the conflict - are considered, but are used in the report only when corroborated.

With respect to Shura Councils, the CoI has referred to them in its previous two reports (See 20 Dec 2012 Update, para 32, and A/HRC/21/50, paragraphs 59-60, see also Annex V, paragraphs 50-53 of A/HRC/21/50). The CoI describes the summary executions perpetrated by armed groups as violations of international human rights and humanitarian law.

With respect to the alleged use of cluster munitions by the Syrian Government forces, the CoI has multiple interviews with individuals, one of which had defected from the air force, reporting to have seen cluster munitions in use. Investigators and the CoI's military expert reviewed video footage that coincided with the testimony. The CoI determined that the use of cluster munitions had been corroborated. However, the CoI also noted that the use of such munitions is not a violation of international law per se, but only when used indiscriminately.

The CoI takes note of the Syrian Government's concern about the involvement of other countries in "arming, financing, and sheltering" of armed groups operating in Syria and whether this falls within the mandate of the Commission. The Chair of the CoI, in his speech to the HRC in September 2012, criticized supplying arms

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to parties. States in fact can be held responsible for violations of IHL and international human rights law (IHRL) in a number of circumstances, namely if the violations are committed by its organs or armed forces, by persons or entities the state has empowered to exercise governmental authority, by persons or groups acting on its instructions or under its direction or control, or by private persons or groups which the state acknowledges and adopts as its own conduct. The Commission does not have in its possession evidence indicating that other states are in fact deploying armed forces in Syria, are exercising governmental authority, are controlling the operations of the armed groups within Syria, or are acknowledging and adopting the actions of private persons; however should the Syrian Government be in possession of such evidence, the Commission would be receptive. The Commission maintains that all Parties to the Geneva Conventions should undertake to respect and ensure respect for IHL in all circumstances.

The CoI would welcome an exchange on the Government's concern as to the application of international law on combating terrorism, including relevant UN Security Council Resolutions. The CoI recalls the difference between terrorism and insurgency and also that all counter-terrorism measures must be compliant with international human rights law. Although the mandate of the CoI does not include 'terrorism,' previous CoI reports have condemned bombings that did not appear directed toward military targets (See Periodic Update 24 May, p. 5 repeated in HRC/20/CRP.1) (See also HRC/21/50, p. 78) and which appeared to have as 'a primary purpose spreading terror among the civilian population' which are prohibited under IHL. The CoI's subsequent report will contain additional findings in this area.

The Commission would welcome the provision of first-hand witnesses on the looting of factories in the Aleppo Governorate and medicine warehouses in order to conduct interviews, including over Skype. The CoI has reported on pillaging as a war crime and violations of economic, social and cultural rights concerning the denial of medical care.

The war crime of pillage is committed when the perpetrator procures the items 'for private or personal use.'¹ Similarly, the

¹ See Rome Statute Art. 8 (2)(e)(v).

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CoI has and continues to report on the destruction of items 'indispensable to the survival of the civilian population' such as food and water supplies, where it has corroborated evidence of the crime and the perpetrator.

The Government twice references 'takfiri fatwas' from areas outside Syria' in the NV, expressing concern as to the absence of CoI reporting. Issuing such decrees is not, in and of itself, a violation of IHL or IHRL. It is only upon the execution of such acts that a violation coming under the CoI mandate occurs.

The Commission has repeatedly welcomed and has in many instances addressed in detail the evidence that Syria has provided to the OHCHR. Yet the Commission recalls once again the priority given to first-hand evidence and with it, the necessity to allow the Commission to conduct investigations within Syria. The CoI also welcomes the provision of witnesses or other first-hand information your Government might provide.

The CoI takes this opportunity to reiterate our commitment to objectivity in both our investigation and our reporting. Violations are described in our reports only when they are corroborated, without distinction as to perpetrator.

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

Geneva, 15 January 2013



Annexe II

[Anglais seulement]

Military situation

I. General situation

1. During recent months, the Syrian conflict has continuously escalated, albeit unequally, reaching new levels of violence and spreading to new regions. Armed clashes between Government forces and anti-Government armed groups have intensified along with the involvement of multiple actors in what is becoming a protracted civil war. Levels of violence have varied geographically due to the interplay of a number of factors, in particular the sectarian composition of the affected areas and the armed groups' operational capabilities.

2. Violence has particularly increased in and around major cities, in particular Damascus and Aleppo, where recurring assaults by parties to the conflict have moved frontlines closer to the cities' centers but insubstantially. Whereas the Government remained in control of the southern and coastal governorates due to the heavy presence of military units and security services, anti-Government armed groups made substantial military gains in central and northern regions driving the Government out of parts of the territory and forcing it to cede the control of several localities, neighbourhoods and strategic intersections. Except for major towns, Government forces no longer try to recapture those areas considered as "liberated" by the opposition, instead causing extensive destruction through heavy artillery shelling and aerial bombardment. An escalation was also observed in north-eastern governorates, namely Al-Raqqah and Al-Hasakah, where Government forces have ceded control of several Kurdish localities to a Kurdish militia.

II. Government forces and affiliated militia

3. The Government, along with supporting militia, have progressively adopted a strategy based on "contraction" of its forces in facing the mounting insurgency threat. Whereas continuing to focus on securing control of major cities such as Aleppo and Damascus, they have besieged number of other restive localities with layers of security and limited their actions in the countryside to the shelling of areas under armed groups' influence.

4. The Syrian army ground operations have mostly taken place inside major towns like Hama and Idlib cities, or in the countryside of governorates that are still under the Government's control such as Dara'a and Latakia. In central governorates such as Hama and Homs, army units have imposed prolonged blockades of towns located amongst areas under opposition influence purportedly to prevent the anti-Government armed groups from establishing in additional urban zones and to cut the insurgents from their potential popular support. Armed clashes have regularly taken place around these towns — like Khan Sheikhoun or Halfaya — between the army checkpoints and the insurgents operating in the surrounding countryside.

5. Opposition strongholds like Rastan, Zabadani and Maarat An Numan, have also been extensively besieged and shelled by army units in their attempt to limit the anti-Government armed groups' geographical influence, cut their logistical lines, and prevent

them from geographically connecting with other localities held by other groups. Other areas such as Aleppo northern countryside, Dayr az Zawr southern countryside and Jabal Al-Zawiya in Idlib were ceded to the opposition but continuously targeted by indiscriminate airstrikes.

6. Efforts were also engaged to reinforce army positions along Lebanese and Jordanian borders in an attempt to block the flows of weapons and fighters.

7. Disinclined to put overstrained troops into hazardous urban operations, the Government forces intensified its use of air force, artillery and mortars shelling. Intense and brutal bombing has targeted opposition strongholds as well as areas newly infiltrated by armed groups including in many cases intentional targeting of non-military facilities such as bakeries and gas stations. Different types of ammunition were used in the shelling including explosive barrels, cluster aerial bombs and artillery cluster shells. The commission documented the increased use of cluster ammunition by Government forces including since early December, artillery cluster shells fired by units equipped with BM-21 Grad Multi Rocket Launchers near the cities of Idlib and Latamnah. No credible evidence of the use of chemical weapons was documented.

8. In comparison with the first half of 2012, defections have decreased likely due to the Government forces limited ground engagements, increased control of military and security personnel movements, and possible perception among potential defectors that the time for defection was over. As a direct consequence, proportion of civilians among insurgency ranks have augmented over 70 percent forcing their way to most leadership positions as well.

9. Some minority communities, notably Alawites and Christians, have formed armed self-defence groups supposedly to protect their neighbourhoods from anti-Government fighters by establishing checkpoints around their areas. Some of those local groups — also known as Popular Committees — were allegedly armed and equipped by the Government and have participated alongside Government forces in military operations in Damascus and Homs. Statements indicated that some of these groups were also supported by external sponsors in neighbouring countries. Armed clashes have occurred between these Committees and anti-Government armed groups in multi sectarian localities and neighbourhoods or cases where armed insurgents have reached areas inhabited by minority communities.

A. Anti-Government armed groups

10. Despite its persistent fragmentation and inability to unify under a single command, the Syrian armed opposition has continued to mature into a fighting force increasingly able to challenge the State's control of the country and to strike at strategic targets. During recent months, anti-Government armed groups have reached strategic regions and were able to challenge Government forces control of sensitive infrastructure such as oil fields, major highways, as well as military bases and airports. Unable to progress in key cities because of Government forces' airstrikes, anti-Government armed groups have recently started targeting the Government forces' main supply routes and fighting for control of bases and airports mainly across the north of the country.

11. In northern, eastern and central provinces, armed groups have extended their control over increasing swathes of territory due to, among other reasons, an increased access to efficient military assets allowing them to seriously challenge the army's tactical superiority. Meanwhile, armed groups in the southern and coastal governorates have struggled to establish themselves and are able only to briefly attack isolated checkpoints and bases.

11. Anti-Government armed groups have improved their access to weaponry, though those in the south tend to be less well armed. While important quantities of lethal military equipment were looted from army bases, weapons and ammunition have also been provided by external sources and smuggled in across borders with neighbouring countries in significant quantities and on an increasingly regular basis. Currently, most armed groups are equipped with individual light weapons and small arms, typical to any insurgency, and seem to benefit from an increased availability of munitions that allowed them in many occasions to sustain combat against the army for days. Some armed groups also possess mortars, heavy machine guns and heavy anti-aircraft machine guns. A few have obtained anti-tank and anti-aircraft missiles though in limited quality and quantity but enough to affect Government forces' use of armoured vehicles and air assets.

12. Despite the numerous endeavours made to unify and structure the indeterminate number of anti-Government groups, the armed opposition is still largely fragmented and unable to coalesce behind a reliable leadership. Among these groups, the lines of separation between the Salafi, FSA and other armed groups are ambiguous with fighters shifting from one group to another based on the availability of funds and weapons.

13. Fragmentation of the armed opposition has been aggravated by — if not the result of — the fact that the financial and material external support delivered by different sponsors, instead of promoting integration, has been provided to different armed groups in exchange for rival loyalties. However, differences between the FSA and independent groups, Salafi or not, have not significantly hindered their cooperation. In general, they have collaborated and coordinated their actions in a pragmatic approach aiming at using all available forces to achieve the ultimate declared objective, namely the ousting of the regime.

14. The escalation of violence and increasing intervention of external sponsors has also led to radicalisation among the anti-Government armed groups, and the proportion of fighters with Salafi inclinations has augmented including local and foreign extremists. The financial support provided by donors not only strengthened Salafi factions but also pushed mainstream insurgents toward joining them due to their better ability to provide them with the necessary logistical supplies. Statements indicated that the level of the financial support provided by external conservative sponsors to an armed group depends on its operational efficiency, numbers of fighters and particularly its willingness to embrace Salafi ideology with the associated symbols and speech.

B. Free Syrian Army

15. The FSA has remained a brand name despite its leadership and supporters' efforts to create a central command and link it to regional and local command structures. Due to its inability to logistically sustain its followers, FSA leadership failed to produce and maintain a leadership hierarchy capable of uniting field commanders and units fighting under its banner. A new initiative sponsored by external supporters was launched on December in Antalya with the creation of the "Supreme Joint Military Command Council" and its General staff Committee led by Brigadier General Salim Idriss — promoted to Major General — and linked to five geographical regions regrouping major local revolutionary councils. It is still attempting, with limited success as of yet, to unify all opposition fighting forces and secure the loyalty of all local military and revolutionary councils.

C. Independent alliances

16. Besides the FSA, independent military alliances have managed to unify the efforts of several armed groups engaged in military operations in specific circumstances and areas.

The Al-Tawhid Brigade which formed before the anti-Government armed groups' campaign in Aleppo represents the most advanced attempt yet in uniting local brigades under a single command hierarchy. Some others like the Union of Homs Rebels have even tried to establish a governance structure including military, security, judicial and administrative components to fill the gap left by Government authorities in "liberated areas".

D. Salafi groups^a

17. Increasingly radical ideologies are gradually defining the character of the conflict. The accompanying radicalisation favours armed groups that openly adopt Salafism. The Al-Nusra Front stands out among these groups due to its superior level of operational effectiveness and its use of more aggressive tactics clearly benefiting from better financial support. Other independent Salafi groups, like the Ahrar Al-Sham Battalions in Idlib and the Al-Islam Brigade in Damascus eastern suburbs have also attracted more radical elements of the opposition and subsequently gained more legitimacy among the opposition armed groups.

18. Foreign fighters constitute an important faction of the insurgency but their numbers and organisation are still hard to assess with accuracy. It is sure that they represent a small proportion within the anti-Government armed groups' ranks but their expertise and experience in matter of IEDs and insurgency warfare have brought a substantial contribution to the opposition's tactical effectiveness. They have integrated armed groups all over the country and contributed to the radicalisation of anti-Government insurgents. According to several statements, foreign fighters are drawn from countries in the Middle East, North Africa and Central Asia, many from Libya, Tunisia, Saudi Arabia, Lebanon, Iraq and Egypt.

E. Other forces

19. The predominantly Kurdish areas of Syria have been marked by mounting tensions between the PYD and anti-Government armed groups. The newly created Kurdish Popular Protection Units, commonly known as the YPG, responsible for maintaining order and protecting the lives of residents in Kurdish neighbourhoods have captured most of the Kurdish towns in the North, as Syrian security forces withdrew without any major resistance. Since July, clashes have periodically erupted in Aleppo Kurdish neighbourhoods and other Kurdish towns between the YPG and the Free Syrian Army because of the latter's intrusions into Kurdish territories.

^a Salafi refers to a wide range of groups who adopt a literalist view of Sunni canonical texts. In Syria it often denotes groups who use that literalism to promote a militant activism against a ruling establishment deemed non-Islamic.

Annexe III

[Anglais seulement]

Socioeconomic and humanitarian situation

1. The conflict in Syria is increasing in intensity and severity, particularly in major urban centres. It further exacerbates pre-existing long-term poverty and unemployment and directly impacts the ability of Syrians to realise their economic, social and cultural rights.^a The onset of severe winter conditions, coupled with a growing displaced population and the increasing difficulty in delivery of humanitarian relief — including food and medical supplies and fuel — was cause for grave concern. With regard to livelihoods, vast areas of agricultural land have been destroyed in recent fighting leading to increased food insecurity.^b In urban centres, the risk of epidemics and diseases is compounded by the destruction of civilian facilities and infrastructure, including housing, medical facilities, schools, power and water utilities.

2. Market distortions have led to sharp price increases in basic commodities, including for bread. During the past four months, inflation has reached unprecedented levels, exceeding 50 percent.^c Despite the commission's recommendations to the contrary, the sanctions regime remains intact and coping mechanisms among the general population and particularly communities hosting IDPs, are collapsing, leaving those trapped by and fleeing the conflict in appalling conditions. The hostilities prevent people from accessing basic necessities including food and water. The commission also documented Government targeting of food sources, such as bakeries.

3. The Syrian crisis presents a highly challenging humanitarian operational environment, given the proliferation of armed actors now operating inside Syria, the severe constraints on humanitarian access, the escalating security risks and attacks against humanitarian staff,^d the urban context in which much of the fighting takes place, and the widespread human rights violations perpetrated. The impact of the crisis is felt in particular in neighbouring countries. The scope and scale of the conflict has increased significantly and continues to negatively affect and destabilise the region. There is an urgent need for all sides to enable such access, as well as to ensure a UN presence in the humanitarian field.

4. Protracted armed violence has led to thousands of internally displaced Syrians and others fleeing in increasing numbers to neighbouring countries. As of 6 January 2013, the United Nations High Commissioner for Refugees (UNHCR) estimated that 2 million people had been internally displaced. By 21 January, there were 671,262 Syrians registered as refugees or awaiting registration, in five neighbouring countries and North Africa (156,801 in Turkey,^e 200,350 in Jordan,^f 218,663 in Lebanon,^g 73,150 in Iraq, 13,873 in Egypt and 5,417 in North Africa.^h

^a The Syrian Arab Republic has ratified the International Covenant on Economic Social and Cultural Rights. The Syrian constitution moreover attributes importance to economic and social rights, providing for the rights to health (articles 46 and 47) and education, part 3 (articles 21–26 and 38).

^b Only 5% of farmers reported fully harvesting crops OCHA, Syria Humanitarian Bulletin No. 16, 7 January 2013, page 4.

^c ACAPs disaster needs analysis, 22 December 2012: http://reliefweb.int/sites/reliefweb.int/files/resources/syria_conflict_december_2012.pdf.

^d Eight UN staff and 7 Red Cross workers were reported killed in 2012.

^e The refugee population in Turkey has increased by circa. 30,000 since the end of November 2012, 21 January 2013.

5. The situation for Syria's 500,000 Palestine refugees is precarious. UNRWA, the UN Agency for Palestine refugees, estimates that 400,000 Palestine refugees across Syria are now in urgent need of assistance and 17,000 have approached UNRWA for assistance in Lebanon and there are reportedly 3300 in Jordan.ⁱ It is essential that the principle of non-refoulement by neighbouring States be ensured.

6. The humanitarian situation has deteriorated alarmingly. The number of casualties is on the rise. In December, the OHCHR reported 60,000 deaths since March 2011 based on an external assessment of figures from six NGOs^j and the Government. The latter places the number of casualties at 11,713. There is potential for further disaggregation of data from all sources. The number of deaths verified by the Commission from 1,391 interviews is 1,190. The intensification of violence in Damascus over recent weeks has severely impacted the Palestine refugee community, as about three-quarters of the community live in this area. Shelling and clashes in and around Yarmouk camp south of Damascus city forced most of the approximately 150,000 Palestine refugees living there to flee. Many are reported to have fled to other parts of Damascus and rural Damascus, while others have left for Homs and Lebanon.^k

7. Syria's education system has paid and continues to pay a heavy toll in the conflict. In December, the Syrian Ministry of Education informed its partners that about 1,468 schools across the country are being used as collective centres hosting a large number of the two million people who have left their homes because of the current events, and that by now 2,362 schools are reported targeted, damaged or looted corresponding to more than 10 percent of Syria's total number of 22,000 public and private schools. The numbers of schools damaged or occupied by people who have left their homes continues to increase. The movement of affected students in perceived "safe" areas has strained schools' capacity, both in terms of physical capacity and schools' ability to provide quality education.^l School attendances ranges from 38 to 100 percent across Government controlled areas and appears severely limited in opposition controlled areas and is cited as one of the reasons refugees leave the country.

8. In all neighbouring countries education for Syrian refugees remains a priority of host Governments and the international community.^m

9. The Syria Humanitarian Assistance Response Plan (SHARP-January-to June 2013) launched in December, jointly with the revised Regional Refugee Response Plan (RRP) identifies damage and destruction to housing has one of the critical impacts of the current emergency in Syria. Accounts from Syrian interviewees demonstrated multiple reports of shortages of food, water, fuel, electricity, medicine and lack of shelter. The Commission documented the lack of access to basic services and provisions being particularly acute in Aleppo governorate documented accounts of medicine delivery being refused and denial of medical care. Furthermore, it documented Government forces attacking hospitals and field clinics and preventing physical access to hospitals by use of snipers.

10. The attacks on hospitals, medical units and personnel do not capture the compounded socio-economic cost of violence – health care staff leaving their posts,

^f Figures include 52, 582 refugees reported as awaiting registration in Jordan, 21 January 2013.

^g Figures include 67, 061 refugees reported as awaiting registration in Lebanon, 21 January 2013.

^h <http://data.unhcr.org/syrianrefugees/regional.php>, UNHCR Refugee Response, 22 January 2013. 25,000 Syrian refugees also registered in European countries.

ⁱ UNRWA, Syria crisis situation update Issue 30, 11 January 2013.

^j Individual NGO numbers ranged from XX to YY.

^k UNRWA, Syria crisis situation update Issue 30, 11 January 2013.

^l The Humanitarian Assistance Response Plan for Syria (January to June 2013).

^m The Syria Regional Response Plan (January to June 2013).

hospitals running out of supplies and vaccination campaign ceasing. These effects substantially limit access to health care for entire communities including the most vulnerable amongst the population, such as women, childrenⁿ and the elderly.

11. On 7 January 2013, the commission received information from the Government stating that factories in the city of Aleppo had been deliberately looted or destroyed, in an attempt to destroy the Syrian industrial sector. The Government provided information on attacks by armed groups on warehouses of medical supplies and that medicines had been destroyed or sold overseas. The Government also provided information on destruction of agricultural crops and theft of grain from warehouses.^o

12. The sixth meeting of the Syrian Humanitarian Forum, held on 9 November, concluded that the deepening humanitarian situation in the country coupled with the loss of life and increasing displacement was a matter of grave concern to the international community and appealed for urgent funds for aid operations. By 31 December, the two humanitarian assistance appeals for refugees in neighbouring countries and the internally displaced persons and others in need inside the Syrian Arab Republic were only 69% and 55% funded respectively.^p During December, the international community launched two appeals for four million people, to provide life-saving emergency assistance inside Syria and to refugees in neighbouring countries, UN humanitarian agencies and partners seek US\$1.5 billion for interventions until 30 June.^q In response to the Syrian refugee crisis, in December, the United Nations system declared a level 3 Emergency situation in the region.

ⁿ The word children is used throughout this report to refer to people who have not yet attained their 18th birthday.

^o NV from the Syrian Arab Republic in Geneva, 7 January 2013.

^p OCHA, Syria Humanitarian Bulletin No. 16, 7 January 2013.

^q Syrian Assistance Response Plan and Syria Regional Response Plan (Jan-June 2013), launched 19 December 2012.

Annexe IV

[Anglais seulement]

Unlawful killing: “massacres”^a

1. In paragraph 19 of resolution A/HRC/21/L.32, the Human Rights Council condemned in the strongest terms the increasing number of massacres taking place in Syria and requested the commission to investigate all massacres.^b
2. The commission responded to the extended mandate by dedicating specific resources to the investigation. Considering the absence of a legal definition, the commission presents the following working definition of massacre.
3. A massacre is an intentional mass killing of civilians not directly participating in hostilities or hors de combat fighters by organized armed forces or groups in a single incident, in violation of international human rights or humanitarian law.^c

I. Government forces and affiliated militia

A. Tremseh, 12 July

1. A massacre occurred in Tremseh, Hama, on 12 July, immediately prior to the current reporting period. Due to a lack of access to Syria, it was possible to collect more information only in the weeks and months following the massacre. The gravity of the events in Tremseh warrants its inclusion within this report.
2. The offensive of Tremseh appears to have been a Government intervention to root out anti-Government armed groups that had been involved in a series of tit-for-tat kidnappings with *Shabbiha*, reportedly from the neighbouring Alawite town of Al-Safsafiyah. The operation was a continuation of a military campaign targeting populated urban areas north of Hama city, such as Khan Sheikhoun and Souran.
3. At 04:00, Government forces cordoned the town with checkpoints from three directions, the east, north and south. The western side of Tremseh is adjacent to Al-Safsafiyah. Supplies of electricity, water and communications were cut off.
4. At 05:00 on 12 July, FSA positions in the town came under attack by Government forces using shelling, helicopter gunships and ground troops. Credible accounts indicate that at 08:00 following the Government attack, Government ground forces and *Shabbiha* entered Tremseh from its western periphery, receiving support from the neighbouring villages of Selheb, Al-Safsafiyah, Tel Sekin, and Asila among others. The presence of

^a See A/HRC/21/50, Annex II for the applicable law.

^b A/HRC/21/L.32, Para. 19.

^c Thus included are multiple instances of the war crime of murder, and killings that result from conduct of hostilities in which civilians or the civilian population as such is the object of the attack, amounting to the war crime of attacking civilians. When murder is committed as part of a widespread or systematic attack directed against a civilian population, perpetrated pursuant to or in furtherance of a State or organisational policy, the commission of massacres can amount to the crime against humanity of murder.

Shabbiha was consistently noted by interviewees, who described them as closely cooperating with Government forces.

5. Individuals attempting to flee were shot in the fields on the outskirts of Tremseh, although the commission could not determine whether they were civilians or fighters.

6. UNSMIS observers attempting to reach Tremseh on 12 July were stopped outside the town by Government forces. When UNSMIS reached the village on 13 July, they reported that civilian objects, including over 50 homes and a school, were affected. They also observed and documented pools of blood and brain matter in a number of instances.

7. Collected accounts relayed how Government forces conducted house-to-house searches seeking 'terrorists' by looking for men and their ID cards. Interviewees alleged that after their identification, numerous men were executed. UNSMIS interviewed 27 villagers who gave highly consistent accounts of extra-judicial executions of men arrested by Government forces.

8. One interviewee describes how the youth of Tremseh attempted to defend the village against Government forces, although whether any armed clashes occurred could not be determined. The raid led to the arrest of around 100 people and the killing of dozens. Among those arrested were four persons, including a medical doctor, who were subsequently featured on Syrian state television as 'terrorists.' Their fate and whereabouts remain unknown. Government forces set a number of houses on fire, claiming they belonged to 'terrorists.'

9. Following the raid by Government forces, the *Shabbiha*, armed with guns, knives and machetes entered Tremseh from its western periphery. The *Shabbiha* looted shops and commercial buildings and caused extensive damage to residential property. Hostilities continued throughout the day until Government forces regained control of the town. Government forces and the *Shabbiha* withdrew around 20:00. After Government forces left, survivors emerged from hiding. Interviewees relayed eyewitness accounts of how they found tens of bodies in the streets and tens of houses and shops set on fire.

10. First-hand information was received indicating that indiscriminate shelling, shooting and setting fire on buildings and shops resulted in full destruction of tens of the houses and shops in Tremseh. At least six houses were completely destroyed, 13 burnt down, and four shops looted and set on fire. Additionally, there was reliable information that three schools were looted, destroyed and at least one of them set on fire.

11. Interviewees stated that more than a hundred bodies were collected in Tremseh's mosque following the attack. The commission documented and corroborated 46 victims of the attack by name. Casualties included 39 persons killed, three of whom are believed to be under 18 years old and one 60 year old man; seven burnt bodies, including four persons under 18. A father stated that, among the burnt bodies, he identified his seven year old son by his unique front teeth. Another young man was identified by a steel belt he was wearing. The whereabouts of at least 15 people remain unknown.

12. It has not yet been possible to ascertain if all those killed, arrested and detained were connected with armed groups. However, the high number of children killed indicates that civilians had been inadequately protected, or deliberately targeted.

13. Other uncorroborated reports blamed anti-Government armed groups for the civilian deaths in this incident. Video material purportedly from Tremseh was broadcast on Russian television and showed two FSA members captured by the army confessing to having killed civilians in the town. It was not possible to assess whether these confessions were obtained voluntarily.

14. Government forces attacked civilians in Tremseh in the conduct of their military operations. The heavy bombardment of the town in the early hours of 12 July was indiscriminate, causing the destruction of civilian objects. There are reasonable grounds to believe that the arrest and extra-judicial execution of men and boys, following house-to-house searches, and their identification by Government forces, amounts to the war crime of murder.^d Government forces killed persons who were either hors de combat fighters or civilians taking no active part in hostilities.

15. There are reasonable grounds to believe that *Shabbiha* murdered persons who were hors de combat fighters or civilians, using knives and guns, spreading terror among the civilian population of Tremseh. The number of children among the casualties indicates that while not all those killed were necessarily civilians, a substantial number were, indicating that civilians were likely targeted. Government forces and Government affiliated militias perpetrated the war crime of murder. The 15 unaccounted persons documented raise the spectre of the occurrence of the crime of enforced disappearance, which may amount to the crime against humanity of enforced disappearance if committed as part of a widespread or systematic attack directed against a civilian population.

B. Jedaydet Artouz, 1 August

16. First-hand information was collected concerning events that took place on 1 August in Jedaydet Artouz, a town on the southern outskirts of Damascus. Jedaydet Artouz has a heterogeneous population of Sunni Muslims, Christians, Druze and Alawites.

17. According to interviewees, a massacre took place a few days after an incident in which FSA fighters assassinated a high-ranking officer, living in a neighbourhood adjacent to Jedaydet Artouz. In retaliation, army troops composed of hundreds of soldiers accompanied by tanks, armoured vehicles and heavy machine guns, launched a military operation in the town that lasted from 05:00 until the late afternoon on 1 August. During the operation, soldiers conducted house-to-house searches, mainly in the Sunni-majority southern parts of the city.

18. During the house searches, residents of Jedaydet Artouz said they heard sporadic fire in different locations of the city. Interviewees stated that Syrian army troops were raiding homes and detaining male residents, especially those belonging to families known for their anti-Government positions and who had participated in peaceful demonstrations. The commission received consistent accounts that Government forces looted shops and homes during the raid.

19. At around 17:00 when the army left, residents of the town discovered the bodies of approximately 60 male residents (all adults, except one), who were allegedly summarily executed, after being arrested by army troops. In one case, an interviewee stated that residents found a group of 17 dead bodies of adult males, who had been rounded up in a warehouse next to an agricultural field bordering the Sunni neighbourhood south-east Jedaydet Artouz. One eyewitness said that most of those who were found had their hands tied behind their backs and had been shot at a close range. Some had their T-shirts removed and pulled over to cover their heads. Other bodies were found across different locations in the town, and all appeared to have been summarily executed.

20. All the bodies that were found were taken to an area adjacent to a local mosque and buried shortly thereafter in a mass grave.

^d Article 8(2)(c)(i)-1, Rome Statute.

21. The information collected and corroborated indicates that the conduct of Government forces in Jedaydet Artouz on 1 August had a strong punitive element. The military operation, apparently in retaliation for an assassination, was focused on a majority-Sunni neighbourhood, raising concerns that there was a sectarian vein to the conduct of Government forces.

22. There are reasonable grounds to believe that Syrian soldiers perpetrated the war crime of murder, as they conducted house-to-house searches, arrested male residents, and summarily executed them. The death of 60 residents, all of them male bar one, amounts to a mass perpetration of a war crime, in violation of the Common Article 3 prohibition on killing persons hors de combat or civilians not taking active part in hostilities. It is clear that the 17 adult males killed in close quarters with their hands tied behind their back were either civilians or hors de combat fighters.

C. Daraya, 25 August

23. In Damascus governorate, investigations focused on the widely reported killings in Daraya. Allegations were made against anti-Government armed groups, though most accounts attributed responsibility to Government forces. Credible and corroborated accounts indicate that anti-Government fighters sought refuge in Daraya, fleeing from fighting in other areas. Government forces shelled Daraya from 20 to 24 August, after which they moved into the town together with *Shabbiha*. Interviewees described how anti-Government armed group fighters fled Daraya, Government forces executed civilians who had decided to stay in their homes.

24. Many young men, some of whom may have been defectors or anti-Government armed group members who had put down their arms, reportedly fled to an area referred to as “the gardens” (*Mazare*). Government forces attacked “the gardens” on 25 August killing over one hundred people, reportedly through extensive gunfire and shooting at close range at those hiding in the area. Further accounts describe *Shabbiha* conducting house searches, looking for fighting aged men. Bodies bearing clear signs of summary execution were later found in various shelters around Daraya. Video footage and photographs of the aftermath of the events in Daraya show scores of bodies, including those of women and children. Syrian state media reported that Daraya had been “cleansed” of armed ‘terrorist’ groups. This incident requires further investigation.

25. While the massacre in Daraya requires further investigation, there are reasonable grounds to believe that Government forces perpetrated the war crime of murder against hors de combat fighters, or civilians taking no active part in hostilities, including women and children. The credible and corroborated evidence collected indicates that fighting aged males were sought out for execution, in violation of Common Article 3 to the Geneva Conventions, which prohibits violence to life and person, in particular murder of all kinds, of persons taking no active part in hostilities.

D. Harak, 18–26 August

26. Multiple sources from Harak in Dara’a Governorate provided accounts of events that took place between 18 and 26 August 2012. Harak was once home to 40,000 Sunnis. The population of Harak has reduced to around 5,000 by the end of 2012. Most sources interviewed were civilians who fled Harak when Government forces approached the town on 18 August and returned when Government forces withdrew on 26 August. One source interviewed was an FSA fighter present in Harak from 18 to 25 August. All interlocutors accused Government forces of mass killing in Harak at this time. All interviewees placed

the number of civilians killed at over 500. The FSA source claimed that Government forces killed 565 people, of whom 30 were FSA fighters.

27. Government forces that came to Harak on 18 August included the Syrian Army's 52 Brigade, Military Intelligence, Air Force Intelligence and Political Intelligence. Members of the *Shabbiha* and possibly members of the Iranian Republican Guard accompanied the army. Government forces remained in Harak for nine days. For the first eight days they encountered resistance from the FSA. Having exhausted their ammunition, the FSA withdrew. Government forces re-established control in the town, while local residents returned to Harak to find many burned homes. The corpses of some civilians who had remained in Harak during the military operation were found throughout the town. Others who stayed behind had gone missing.

28. The FSA fighter described how he and his colleagues moved into areas following Government forces. This source claims to have seen 400 civilian corpses. Some of the civilian casualties were caused by shrapnel, some by close range gunfire and some bore severe knife injuries. Some bodies had been burned. Among the dead bodies were women and children.

29. Interlocutors accused the *Shabbiha* of removing many bodies from Harak. It is alleged that the corpses were buried in the nearby 52 Brigade Headquarters, to cover up the killing. According to the FSA fighter, "Government forces tried to hide the bodies of dead civilians, but we could smell them." Another interviewee suggested that the Syrian Army commanders responsible for the operation presented the civilian dead as killed FSA fighters.

30. The level of brutality unleashed on Harak may be connected to its location. As mentioned above, the 52 Brigade headquarters is located near the town and there are other military bases in the area. As such, Harak became a port of call for defecting soldiers. Recognising this, the Syrian Army established a base in Harak in May 2011. Despite this, defectors continued to seek refuge in Harak. In May, the defectors forced the army out of Harak, killing around 10 soldiers. The commission continues to seek additional verification of events in Harak from 18 to 26 August, in particular from Government soldiers involved in the operation at the time.

31. It was determined that some civilian casualties in Harak bore injuries caused by shrapnel. Considering the presence of FSA fighters in Harak and the direct hostilities between Government forces and FSA fighters over the span of eight days, during which 30 FSA fighters were killed in combat, the commission is unable to conclude whether Government forces shelled Harak indiscriminately during the period between 18 and 25 August. However there are reasonable grounds to believe that Government forces and *Shabbiha*, committed the war crime of murder, killing persons hors de combat and civilians taking no active participation in hostilities at close range with gun fire and knives.

32. The burning of bodies, among them women and children, is particularly condemnable. It is not clear whether the persons whose bodies were burnt were killed by burning or the bodies were burned later. Combined with credible allegations that bodies of those killed in Harak were buried in a mass grave in the 52 Brigade Headquarters, indicates that Government forces and affiliated militias are disregarding their obligation under international humanitarian law to dispose of the dead in a respectful manner. The concealment or disfiguration of bodies hinders the rehabilitation of victim communities and prevents identification of the dead.

E. Deir Baalbeh, 22–30 December

33. Several first-hand accounts of events that occurred in Deir Baalbeh, a town to the east of Homs between 22 and 30 December were received. Intermittent skirmishes had occurred between Government forces and FSA elements on the outskirts of Deir Baalbeh during December. On 22 December, FSA elements successfully attacked the “Ishara” checkpoint at the eastern edge of the city and managed to take control of it for a few hours. Shortly after, Government forces shelled the eastern flank of the city using mortars and tanks, causing civilian families to flee towards the centre of Deir Baalbeh. The shelling intensified throughout the night of 22 to 23 December. According to some of the accounts collected, that night “was the worst shelling that the city witnessed since the outset of events in March 2011.” The shelling was indiscriminate and caused significant damage to civilian houses and infrastructure.

34. On 23 December, Government tanks and armoured personnel carriers pushed through the southern and northern parts of the city as confrontations intensified with various FSA elements who attempted to push back Government forces using light weapons and rocket-propelled grenades. Civilians, including families, were trapped in these areas as they attempted to leave through regular checkpoints by foot or by other means of transportation including cars and buses. According to corroborated accounts, Government forces effectively blocked many of the exit points out of the city and forced families to return. In one instance, a family of three was killed as it attempted to leave through the Tal Nasr checkpoint manned by Government forces to the east of the city.

35. Throughout the period from 24 until 28 December, hostilities continued between the FSA and Government forces at various locations, as Government forces gradually gained ground. Accounts confirm that the FSA light weaponry could not match the overwhelming firepower of Government tanks, armoured personnel carriers and shelling. Groups of FSA fighters, who were running low on ammunition, attempted unsuccessfully to smuggle some of the families who were trapped inside the city to other locations before Government forces could regain control of the city. Credible accounts confirm that Government forces were able to push all FSA elements outside the city and take over Deir Baalbeh on 29 December. Investigations of the incident continue, including into reports stating that civilians — numbering between 220 and 400 — were killed by Government forces as they established control over the city on 29 December.

36. It is clear from the information obtained from credible and corroborated witness accounts that Deir Baalbeh was attacked by Government forces. There are reasonable grounds to believe that the shelling of the town during the night of the 22 to 23 December was indiscriminate, causing significant damage to civilian houses and infrastructure. On 23 December, in the course of confrontations between the FSA and Government forces, Government forces trapped civilians within Deir Baalbeh, blocking their exit from the town and in one documented instance, killing a family that attempted to flee. Trapping civilians within an area that is subsequently attacked suggests that Government forces made the civilian population the object of their attack. There are reasonable grounds to believe that Government forces committed the war crime of attacking civilians in Deir Baalbeh. Investigation into this incident continues, with efforts to establish the number of casualties and those responsible for issuing orders and implementing the military operation against Deir Baalbeh.

F. Al-Mastomah, 7 January

37. Al-Mastomah is a predominantly Sunni village located seven kilometres south of Idlib. Prior to hostilities, Al-Mastomah had a population of 8,000, most of whom have fled

due to protracted and escalating fighting. The village is located near the largest Government military base in the area, a scout camp. The camp is located on the southern edge of Al-Mastomah. A Government checkpoint in Al-Tal borders Al-Mastomah to the north.

38. On 3 January 2013, FSA fighters from the neighbouring villages moved into Al-Mastomah and attacked the scout camp. After three days of intensive fighting, during which the village was heavily shelled by mortars, artilleries and tanks from the scout camp and al-Tal checkpoint, the FSA withdrew from the village. The majority of the residents fled from the shelling, with only a few remaining in the village. According to one interviewee, around 70 persons remained in the village, most of them elderly.

39. On 7 January 2013, in the early morning, Al-Mastomah came under attack by Government forces using shelling and ground troops. Prior to the offensive, Government forces had shelled the village from the scout camp and Al-Tal checkpoint for two hours. Reports from credible sources suggest that *Shabbiha* deployed together with the army.

40. An eyewitness stated that troops conducted house-to-house searches before establishing a base at a school on the eastern side of the village and set checkpoints around it. An eyewitness who returned to village after the raid, recounted how bodies of summary executed persons were collected and buried before dawn. The commission was able to examine video footages of the deceased before their burial. The footage shows bodies of women, children and elderly people among the deceased. It also appears that some of the bodies were executed in close quarters.

41. Government forces subjected Al-Mastomah to indiscriminate shelling, which caused the majority of the town's residents to flee. Government forces regained control of Al-Mastomah after three days of clashes with the FSA. They entered the village and conducted house-to-house searches. The majority, if not all FSA fighters fled Al-Mastomah after three days of combat and their defeat by Government forces. The remaining civilians were made the target of the ground assault by Government troops, which, there are reasonable grounds to believe, executed civilians or persons hors de combat in close quarters. The video footage of those killed indicated that Government forces executed women, children and the elderly. There are reasonable grounds to believe that Government forces perpetrated the war crime of murder in Al-Mastomah.

G. Incidents currently under investigation

42. Investigations into a massacre that is alleged to have taken place on Sad Street in Dara'a city in August and a massacre that is alleged to have taken place in Duma outside Damascus in October, are on-going.

II. Anti-Government armed groups

43. Article 3 common to the Geneva Conventions, which applies in armed conflicts not of an international character, prohibits the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable under international law.

44. Anti-Government armed groups exercise limited control over territory and population. The massacres perpetrated by anti-Government armed groups must be viewed in this context.

A. Execution of members of the Al-Berri clan, Aleppo, 28/29 July

45. Interviews with persons who made credible admissions against their own interest, provide an account of a mass killing that took place in Aleppo on 28 or 29 July.

46. An interviewee explained that there had been an agreement between the FSA and the Awlad Al-Berri in Aleppo to not engage in hostilities. Following this agreement, the FSA raided the police station of Bab Al-Naireb in Aleppo. Awlad Al-Berri, according to the FSA, “committed treason,” violating their agreement and attacking the FSA, resulting in the deaths of 11 FSA fighters. In retaliation, FSA reinforcements attacked Awlad Al-Berri, killed several members in combat, besieged Bab Al-Naired and captured five members of the Al-Berri family, including Zaino Al-Berri, a prominent Syrian parliamentarian. According to the interviewee, the FSA interrogated the five members of Awlad Al-Berri and found them to be “drug dealers, *Shabbiha* who oppress demonstrations and who arm citizens to oppress demonstrations, rapists of female students at Aleppo University and murders of youths.” According to the interviewee, one member of the Awlad Al-Berri confessed to raping 14 young women at Aleppo University. Following the interrogation, the five persons were referred to the ‘Shari’a Court’ in Aleppo, a quasi-judicial body established by Liwa Al-Tawhid. The ‘Shari’a Court’ sentenced all five persons to death. Liwa Al-Tawhid executed the sentence by gunning down those “convicted.” The event was filmed and the footage release on the internet.

47. The persons sentenced and executed by the ‘Shari’a Court’ in Aleppo were either hors de combat or civilians taking no active part in hostilities. The perpetrators, namely Liwa Al-Tawhid and the FSA, were aware of their status, having captured them in combat. The sequence of events, the lack of an appeal, combined with other accounts of ‘Shari’a Courts’ and councils amount to reasonable grounds to believe that the ‘Shari’a Court’ of Aleppo was not regularly constituted and did not afford the essential guarantees of independence and impartiality and other judicial guarantees recognised as indispensable under international law. Consequently, there are reasonable grounds to believe that an anti-Government armed group, likely the Liwa Al-Tawhid, which is affiliated with the FSA, perpetrated the war crime of sentencing and execution without due process.

B. Execution of five soldiers in Latakia, post-July 2012

48. One interviewee, an FSA fighter, confirmed that he had been part of a brigade that had captured “five Alawites” on a road into Al-Haffa. He could not provide the date of the incident but stated it had happened after his defection to the FSA in late July. He stated that those captured were soldiers who had surrendered. The five captives were interrogated and “confessed to committing rape and killing civilians in Al-Haffa.” He confirmed that they were executed shortly afterwards. The interviewee noted that not all captured soldiers were executed by his FSA-affiliated group: “Sunni captives were kept. Alawites were executed.” In this instance, the FSA perpetrated the war crime of execution without due process.

C. Incidents currently under investigation

49. Video footage of anti-Government armed groups summarily executing captured Government soldiers and affiliated militia members, informers and people believed to be members of the *Shabbiha* is publicly available. Namely, under investigation is the execution of 10 to 28 Government soldiers near Saraqeb, Idlib on 1 November. It is alleged that the execution was conducted by the Mountain Shield Brigade, an anti-Government armed group. Investigations are also continuing into the execution of 21 Government soldiers in Aleppo on 10 September. It is alleged that anti-Government armed groups

affiliated with the FSA are responsible. The execution of eight to ten hors de combat Government soldiers in Ras Al-Ayn in mid to late November, is also being investigated. It is alleged that the execution was perpetrated by the Al-Nusra Front. These incidents, if confirmed, would amount to war crimes. Attempts to interview perpetrators or eyewitnesses have so far been unsuccessful, however, investigations are on-going.

Annexe V

[Anglais seulement]

Other unlawful killing^a

1. Unlawful killings, which did not fall within the above definition of massacres, continue to be recorded. Arbitrary deprivations of life contrary to international human rights law, such as extra-judicial or summary executions, occurred throughout the reporting period, frequently overlapping with the war crime of murder. Unlawful killing attributable to both Government forces and anti-Government armed groups in five governorates were recorded.
2. The practice of summarily executing people suspected of supporting or being part of anti-Government armed groups continued during this reporting period. Forty-one individuals provided information on executions conducted by Government forces in violation of international law. Ten interviewees witnessed the executions first-hand. The remaining witnessed the aftermath, learned of the death from an eyewitness, or were family members of those killed. The incidents were spread geographically.

Homs

3. A recently-defected interviewee watched a raid in Homs led by General [name withheld] on 8 August. Several persons were arrested and brought to Bilal mosque. Twelve men were allegedly shot execution style; the interviewee saw their bodies later in the hospital. The interviewee identified the commander of the operation as being from the air force intelligence in Homs, Brigadier [name withheld].
4. In a small village east of Homs, on 1 or 2 October, an interviewee witnessed a ground operation conducted by a mixture of army, security agencies and local *Shabbiha*. The interviewee recognised the army from their uniforms and tanks, and the intelligence agency personnel because they drove civilian cars. He said he recognised the *Shabbiha* because “we are particularly afraid of them – especially for the women and girls.”
5. The interviewee stated that most people “panicked and ran for the farms.” The army entered the village and appeared to be searching for a specific person as they went immediately to one house. From his hiding place, the interviewee saw a young man drive into the village, apparently unaware of the operation. After the operation the villagers found the body of this young man tied to a tree. He had been shot through the head.
6. On 19 October, one of those interviewed was in Dahadeel when “over 1,000 military, intelligence and *Shabbiha* entered the area.” He identified the *Shabbiha* by their shaven heads and long beards with moustaches, explaining that Sunni Muslims have beards “but not moustaches.” Some of the *Shabbiha* wore military fatigues, others were in civilian clothes. They came to his house, searched it, and asked him for his ID. They checked it against a list of names and as his name was apparently not on the list they departed. He then saw the security forces go to his neighbour’s house. Either his neighbour did not have his ID or his name was on the list because they arrested him and set the house on fire. Once the security forces left, the interviewee and other neighbours tried to extinguish the fire. He said that the security forces then returned to see who was helping this family. Then they

^a See A/HRC/21/50, Annex II for the applicable law.

went to the house of a man known as “the sheikh.” The interviewee witnessed *Shabbiha* take the sheikh into the street and kill him, shooting him in the stomach and in the head. Some of the military appeared disgusted by this and left the scene. They appeared powerless to stop the *Shabbiha*, however and did not try.

Dara’a

7. An interviewee from Namer, Dara’a, described a military operation in the village by Government forces on 3 October. She related how two tanks entered her street with some 50 *Shabbiha* accompanying them. Approximately 10 men knocked on their door, and the interviewee’s husband, aged 34 years old, opened it. One of the *Shabbiha* entered, slapped her husband, and asked him about his mobile phone and his identity cards. The *Shabbiha* continued to slap her husband as they pushed him outside where other soldiers began hitting him. The interviewee was made to stay home. Fifteen minutes later she heard the sound of shooting nearby. When the forces withdrew, she went out and found her husband lying dead in their compound face down. He had been shot three times.

8. In Musayfrah, on 28 October, an interviewee stated that 30–40 men entered the village. Some were wearing military uniforms while others were in civilian clothes. The military men had the badges of the 4th Air Force Division on their uniforms. The interviewee believed the civilians to be *Shabbiha*. When the men came into his home they forced all the women and children outside. The interviewee remained in the house with the other males of his family where they were tied to chairs. The house was searched. Finding nothing the soldiers began torturing the interviewee’s elderly father, asking him where “the terrorists” were and accusing them of supporting the insurgency. “They cut off two of my father’s fingers and they slit his wrists. Eventually they shot my father dead. They also killed my brothers and my brother’s son. They killed them with knives.” The interviewee said he was also questioned and tortured until he lost consciousness. The interviewee believes he may have survived the attack because he was unconscious and the security forces must have believed him to be dead.

Idlib

9. In July, Syrian military forces entered Iblin village in the Jabal Al-Zawiya region of Idlib. The residents of Iblin are Sunni. An interviewee recounted that she was at home with her husband, six children, her sister and mother-in-law at the time. Approximately 20 armed military personnel broke down the door of their home and arrested her husband. Together with her mother-in-law, they tried to prevent the soldiers taking her husband outside the house, but the soldiers beat them back. After the men were outside, they closed the door to keep the women away. A few hours later when the soldiers had left, her mother-in-law went outside the house and found the interviewee’s husband dead in front of their house. He had been shot in his chest and neck.

10. An older interviewee from Mare’a, in Idlib, stated that when a raid on his village began on 23 August, he and his extended family were at home together. He had four sons, two of whom were there with their wives and children. Security forces knocked on the door, saying, “we want to see who is inside the house. Where are your children? Where are your children?” The interviewee eventually opened the door and two soldiers entered. They were in full Syrian Army fatigues, including helmets, and the interviewee described the two in detail. They addressed his sons, accusing them of participating in anti-Government armed groups. One of the soldiers took a hatchet that was hung on his waist and hit the closest son in the head killing him instantly. He then turned on the second son and killed him.

Damascus

11. In a case detailed in document A/HRC/22/59, annex XII, during a house raid conducted allegedly by military intelligence personnel in July in Damascus, a woman and two children were killed as they attempted to prevent the arrest of their family member.

Findings

12. Government forces and affiliated militias have committed extra-judicial executions, breaching international human rights law. This conduct also constitutes the war crime of murder. Where murder was committed as part of a widespread or systematic attack against a civilian population, with knowledge of that attack, it is a crime against humanity.

Anti-Government armed groups

13. There have been increased reports of anti-Government armed groups killing captured Government soldiers or those they believe to have collaborated with the Government. Most of the accounts collected during this reporting period emanated from Damascus and Aleppo governorates. Several interviewees also spoke about killings in Homs and Dayr az Zawr.

14. The killing of five members of the Al-Berri clan in Aleppo and the killing of five Alawite soldiers in Latakia constitute massacres and are discussed above.

15. As the state law enforcement and justice system have disintegrated in certain areas of the country, anti-Government armed groups have turned to enduring social structures, often based around religious institutions, to fill the lacunae. Eighteen interviewees indicated that detainees had appeared before such “tribunals”, which had ordered their executions.

16. Common Article 3 prohibits the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees, which are recognised under international law. The collected information indicates that persons who are detained by anti-Government armed groups are not afforded the judicial guarantees recognized under international law to which they are entitled. According to insider accounts, courts and tribunals are being established on an ad hoc basis in areas in which anti-Government armed groups are able to establish sufficient control. A mix of imams and judges who have defected run the courts, applying a hybrid of Syrian criminal and Islamic law. The accused are not afforded a right to appeal and are not provided or allowed a defense. As a result, detainees who face this quasi-judicial system are often deprived of contact with the outside world, making it difficult if not impossible for their families to know of their fate and for humanitarian organisations to track their whereabouts.

17. Consistent accounts paint a punitive quasi-judicial system in which the participation in hostilities is punishable by death. Detainees who are affiliated with the Government but have taken no direct part in hostilities are released. Anti-Government armed groups also appear to be heavily involved in this process, operating “interrogation committees” that present the evidence against the accused to the court. There is strong evidence that indicates that detainees are tortured during the interrogation process. In failing to meet the standards under international law for regularly constituted courts and judicial guarantees, the execution of hors de combat Government soldiers and militiamen, anti-Government armed groups commit the war crime of sentencing or executing without due process.

Aleppo

18. Five interviewees detailed killings by anti-Government armed groups in Aleppo. All but one of those interviewed are members of anti-Government armed groups affiliated with the FSA. Three indicated that the killings occurred only after tribunal, made up of local religious leaders, had passed sentence.

19. Two interviewees stated that captured “Alawite officers” had been killed after having a death sentence passed on them by a tribunal. In one case, two soldiers were captured and executed after defectors had indicated that one had perpetrated a rape at the other’s orders. In the second case, the interviewee was at pains to say that while “many” captured officers had been executed, that the tribunal did not pass such sentences on those who did not have “blood on their hands”.

20. An interviewee who lived in Atarib described detainees held at an FSA prison in the village being taken to a location outside of the village and executed. The interviewee had seen the body of one of those executed dumped on the roadside.

21. In late October and early November, there were a series of running battles between Kurdish militias and anti-Government armed groups in north east Aleppo. There were reports of two killings of Kurds during this time. The first, taking place on 29 October, involved the capture and assault of Kurdish man who later died from his injuries. The second, an execution of a senior female Kurdish commander in the city of Aleppo on 1 November. It has not yet been possible to corroborate these reports. Investigations continue.

22. Several videos available on Youtube purport to show killings by anti-Government armed groups in Aleppo. These include videos purporting to show anti-Government fighters cutting the throat of a regime supporter in Aleppo on 12 August, members of armed groups throwing Government loyalists off the roof of a post office in Al-Bab in Aleppo on 1 September, and members of anti-Government armed groups executing captured soldiers in the Aleppo military barracks of Masakin Hananou. It has not been possible to verify these videos.

Damascus

23. Five interviewees, including two perpetrators and one survivor, provided details about killings of captured soldiers and civilians believed to be collaborating with the Government.

24. One interviewee recounted his role in interrogating those captured by his FSA-affiliated group. He stated that, in July, a man with an Iranian passport was captured in the area of Sayyidah Zaynab. The interviewee stated “when we tortured” the man, he “confessed” to the presence of multiple Hezbollah intelligence centres and snipers in Damascus. The interviewee confirmed he had beaten the man until he had answered the questions. The Iranian man was shot six days later and buried near Sayyidah Zaynab. The interviewee emphasised that a death sentence had been passed by a tribunal, which reached its verdict after considering the man’s “confession”.

25. Another interviewee detailed how he and other members of the FSA kidnapped and killed “an Alawi” soldier in Zamalka in October. He stated that the soldier had been involved in the rape of a woman at a checkpoint.

26. One of those interviewed was a survivor of a killing at a factory in an area of Damascus predominantly populated by Christians. He indicated that the vast majority of the factory’s workers were Christian. On 3 September, he and the other workers were on the factory floor when “20 armed men with their faces covered... broke into the room with

Kalashnikovs”. The men were dressed in civilian clothes. One of the armed men shouted “we know who you are and which region you come from. We ask you to leave this factory and your region. Otherwise you will be in danger.” The factory’s director came on to the floor and was shot dead by one of the armed men, who then left. The interviewee believes that the workers of the factory were targeted specifically because of their religious affiliation. He never returned to factory and fled Syria shortly afterwards.

Dara’a

27. Two interviewees, both from FSA-affiliated groups, provided accounts of killings which their particular groups had perpetrated. One detailed the execution of pro-Government Sunnis by the Al-Omari brigade in villages outside of Dara’a city.

28. The second stated that he was part of a group operating in a town 10 kilometres north of Dara’a city. He stated that he and six other fighters captured six Iranians who “under interrogation” stated that they were members of the Republican Guard there to fight “foreign terrorists” on behalf of the Government. The interviewee stated that two of the captives were killed when they tried to seize weapons in order to escape. The remaining four were later reportedly exchanged for FSA prisoners. The killing of captives attempting an armed escape would be considered lawful. Investigations into this incident are on-going.

Homs

29. One interviewee, who joined the Al-Nusra Front in April, described the overrunning of an army checkpoint in a hospital in western Homs governorate. Two soldiers were left wounded while others were abducted. In relation to the soldiers wounded in the attack, he stated “I don’t care, they were only two and we left them to die. We had no possibility to take them, and they killed others so they deserve to die”. The abducted soldiers were taken before a tribunal which would have passed sentence. The interviewee did not know the sentence passed in this instance but stated they would only have been executed if they had been found guilty of killing civilians.

30. Customary international law requires that the wounded receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made on any grounds other than medical ones. That the wounded soldiers were left to die, and that no one was called to administer aid to them – in the event that the fighters were unable to take them to their field hospital – may constitute a violation of international humanitarian law. This interviewee provides no account of any specific deaths and consequently, there is insufficient evidence to make a finding related to any killings.

Dayr az Zawr

31. Two FSA members confirmed the existence of interrogation committees and a tribunal in Dayr az Zawr. They stated that only those convicted of “serious crimes” would be executed on order of the council. One interviewee confirmed that during interrogations, confessions were beaten out of detainees. He is aware of four recent executions, those of two Government soldiers who confessed to killing civilians, an FSA fighter who confessed to providing information to Government forces and a drug-dealer.

Findings

32. It has been noted in several instances, those captured were brought before a quasi-judicial mechanism to determine their guilt and to pass sentence. It is apparent however, that many of the confessions that these councils heard had been obtained through torture, such as beating and were highly unreliable.

33. With the exception of the killing of the two Iranians in Dara'a where investigations are on-going, anti-Government armed groups killed persons who were either hors de combat fighters or civilians taking no active part in hostilities, thereby committing the war crime of murder or the war crime of sentencing or execution without due process. Such killings are also a breach of international human rights law.

Annexe VI

[*Anglais seulement*]

Arbitrary arrest and detention^a

1. International human rights law forbids detaining someone without a legal basis,^b yet incidents of arbitrary arrest and unlawful detention continued apace over the reporting period. Accounts described not only an arbitrary substantive basis for the detention, but also numerous and serious procedural shortcomings. Armed groups seized individuals and held them hostage for ransom or exchange.^c Fifty interviewees described their own or their relatives' apprehension — by both Government forces and anti-Government armed groups — in circumstances that violate international law.
2. Almost all of those arrested were males, some of whom were children. In nearly one third of the cases, money changed hands prior to release, while nearly all described torture and conditions of detention amounting to inhumane treatment.^d
3. Human rights provisions applicable in Syria require State personnel, at a minimum, to inform an arrested person of the reasons for their arrest, to bring the person promptly before a judge or similar independent body and to provide the detainee with an opportunity to challenge the lawfulness of detention.^e During states of emergency, these provisions are derogable. To date, the Government has not filed a notice to the Office of the UN Secretary General informing of an intention to derogate.
4. Non-State actors are generally not permitted to detain people during peacetime under applicable domestic law. However, given that the threshold for armed conflict has been reached, international humanitarian law also applies. Thus, parties to the conflict who choose to detain a person must treat them humanely. They must avoid any cruel, inhuman or degrading treatment or punishment, and cannot hold them hostage. Indeed, individual criminal liability attaches to individuals who take hostages in relation to the conflict.

I. Government forces and affiliated militia

5. Five interviewees worked as guards at official detention centres prior to defecting. They conveyed details behind the Government strategies and means of arbitrary arrest. Most often such arrests by Government forces were recorded during raids on a neighbourhood or village. Persons suspected of involvement in opposition activities were rounded up and taken to detention centres. Those arrested were often tortured to reveal information on others possibly involved (see A/HRC/22/59, annex VIII). The information gathered through these coercive techniques was used to compile lists of future arrestees.

^a See A/HRC/21/50, Annex II for the applicable law.

^b ICCPR article 9.

^c Under the 'Elements of Crime' of Rome Statute, hostage taking requires, inter alia, a detention; a threat to kill, injure, or continue detaining the person; the intent to compel a State or some other entity to act or refrain from acting as an explicit or implicit condition for the safety or the release of the detained person.

^d See Annex IX (Torture).

^e See A/HRC/21/50, Annex II, paras. 43–46 for an explanation of the legal framework applicable to arbitrary arrest, including provisions of domestic law.

6. Twenty two interviewees were themselves arbitrarily arrested and recounted a range of detention-related violations attributable to Government forces and affiliated militias. In a minority of cases, young men and boys were arrested either at or immediately following demonstrations. No interviewee reported being informed of the reasons for his arrest.

7. Individuals were held incommunicado for extended periods without their families being notified, they were forced to pay bribes for their release, were held solely for purposes of extracting information from them, or to force others to surrender. No interviewee was provided legal counsel, though some managed to secure counsel through their own efforts.

8. Questions asked during interrogations strongly suggested that, in the majority of cases, interviewees had been targeted for arrest. One man, a bread seller from a northern governorate, was interrogated about allegedly supplying bread to anti-Government armed groups. Other interviewees were questioned specifically about providing fuel or medical aid to the armed groups. Three interviewees, two of whom were children, stated they had been taken off the street after participating in demonstrations. One interviewee, a low-ranking soldier in the Syrian army, was accused of sympathising with the opposition by fellow soldiers. In only three cases, was it unclear why the interviewees had been arrested, though later questioning suggested that the interrogating agency believed that they were members of anti-Government armed groups or that they were assisting these groups.

9. One such detainee from Dara'a was arrested on a Friday in July after watching a demonstration that erupted after prayers. Four armed men in military uniforms seized him from a side street, blindfolded and handcuffed him, and took him in a military jeep to checkpoint where he was seriously maltreated. "Give me the names of the members of the coordination committees who mobilised you to demonstrate?" When he did not provide a name he was physically assaulted.

10. In ten cases, interviewees reported being taken before a judge and given an order for release. In eight cases, however, interviewees stated that they or their family members had paid bribes in order to secure their release. One interviewee, a defector who had worked at one of the intelligence branches in Hama, stated that in many cases bribes were the primary motivating factor behind the arrests: "Detainees pay money to secure their release. It is a systematic practice in Syria nowadays. Arresting people is done very often for this particular purpose."

11. The commission recorded two cases in Damascus (700,000 August, 1 million, no date), 1 in Dara'a (200,000, no date); two in Latakia (500,000 November, and 300,000 August), one in Homs (350,000 July), and two in Aleppo (100,000 July and 350,000 September).

12. One young man from Dara'a, arrested in April, was released in September, after his father sold land and paid 300,000 Lira (approximately 3,000 USD) to his Government captors. Similar accounts were received from Latakia where both *Shabbiha* and security forces arrested people and released them only after bribes were paid.

13. At other times, it was neither information nor money the captors sought. The security forces holding one former Latakia resident stated to his brother through intermediaries that "unless you surrender, your brother will remain in detention." Multiple accounts corroborated the practice of arresting someone else in the family, if the person wanted was not at home.

14. Official statistics on the number of detainees and detention centres have yet to be provided by the Government. It did, however, provide periodically information concerning the release of 2,289 detainees over the reporting period. The information was accompanied with the note that those released "have surrendered themselves and their weapons, and

made written commitments that they will not carry weapons or do anything that could prejudice the security and stability of Syria.”

II. Anti-Government armed groups

15. Anti-Government armed groups have increasingly apprehended members of the Government forces, perceived collaborators (“informants”), their family members and foreigners aligned with the Government. While detention is clearly preferable to execution — a phenomenon prevalent in the commission’s previous reports — still the fundamental principles set out in Common Article 3 of the Geneva Conventions are not being met.

16. The commission received multiple accounts of armed groups taking hostages for the sole purpose of ransom or exchange. On 4 August, 48 Iranian citizens were apprehended by the Al-Bara Brigade in Damascus. The Islamic Republic of Iran asserted that the men were civilian pilgrims en route to the Sayyidah Zaynab shrine, while the armed group claimed they were members of the Revolutionary Guard sent to assist the Government. Media reported in October that the men had been threatened with execution unless the Government released detainees. If true, such threat would constitute ‘hostage taking’, a war crime. The men were reported to have been exchanged for some 2,000 detained civilians in January 2013.^f

17. A former resident of Damascus living near Sayyidah Zaynab, stated, “After the army has come and gone, the FSA come back and do the same. They also arrest and detain people. The FSA would only arrest ‘informants.’ We don’t know what happened to them. They’d take them away and we’d never see them again.”

18. Another interviewee in his early twenties who had fought with anti-Government armed groups explained what happened to detainees taken during operations, “some got killed, others were injured and the rest were abducted.” When asked what happened to the injured ones he said “I don’t care, they were only two and we left them to die we had no possibility to take them, and they killed others so they deserved to die”. He then clarified that the abducted soldiers were taking to a ‘Shari’a council’.

19. Two former detainees held by anti-Government groups in Aleppo, one in October and the other in November, told the Commission that they were invited to join the group upon their release. Also in Aleppo anti-Government armed groups seized a man for ransom and while holding him tried to exploit his technical skills for use in their operations.

III. Findings

20. Government forces arbitrarily arrested and detained individuals in violation on international human rights law. Of particular concern are holding individuals without charge, the failure to provide detainees with legal counsel, the ability of detainees to challenge the lawfulness of their detention, or family visits. Arresting people on the basis of information received under circumstances amounting to torture seriously undermined the legality of such arrest. To the extent these violations amount to inhumane treatment they violate international humanitarian law.

21. Anti-Government armed groups are detaining persons solely for ransom or exchange which is a war crime. To the extent they inflict on the detainees cruel, inhuman or degrading treatment, such groups violate international humanitarian law.

^f The commission addressed the Islamic Republic of Iran via Note Verbale on 10 January, 2013 requesting to interview those released. By 21 January, no reply had been received.

Annexe VII

[Anglais seulement]

Enforced disappearance^a

1. One of the most insidious aspects of the Syrian conflict has been the disappearance of thousands of people from their homes, at checkpoints and from the street as they went about their daily lives.
2. The International Convention for the Protection of All Persons from Enforced Disappearance requires, *de minimus*, a person's arrest, detention or abduction and a refusal, either at the time at which the person is deprived of his liberty or afterwards, to give information on his fate or his whereabouts. These acts and omissions must be carried out by or with the authorisation, support or acquiescence of the State.^b While Syria is not a party to the Convention, it is a party to the ICCPR and the Arab Charter on Human Rights, provisions of which are infringed by enforced disappearance.
3. Enforced disappearance places its victims outside the law, violating their right to recognition as a person before the law, to liberty and security and freedom from arbitrary detention, including the right to be brought promptly before a judge or other official for review of the lawfulness of detention. It is also often a gateway to the commission of further crimes such as torture and other forms of cruel, inhuman or degrading treatment or punishment, and murder.
4. The prohibition against enforced disappearance in international law, however, serves to punish harms that are distinct from, for example, arbitrary arrest or torture. It is rooted not only in the paramount protection of the individual, but in the protection of the family during armed conflict.^c Indeed, investigations of enforced disappearance are often particularly difficult because families — living in hope that their relatives will be safely returned to them — do not wish to provide names and other details of the disappeared. Lack of access to Syria has further hindered investigations.

I. Government forces and affiliated militia

5. There were 19 reports of enforced disappearance committed by Government forces — both army and intelligence agents — and affiliated militia, occurring since 15 July. The majority of the disappeared were adult men though three reports relating to the disappearances of women and two relating to children were received.
6. In eleven of those incidents, the whereabouts of the person or persons arrested or abducted remains unknown. Five returned to their families after lengthy detentions, with four indicating they had suffered serious physical abuse — and in one case a rape — during their detention. In three cases, the bodies of those who had been taken were later recovered.

^a See A/HRC/21/50, Annex II for the applicable law.

^b Additionally, the International Criminal Court, in its Elements of Crimes, indicated that such acts and omissions can be carried out by or with the authorisation, support or acquiescence of “a political organisation” and that an intention to remove the person from the protection of the law for “a prolonged period of time” must be present.

^c Brian Finucane, Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War, *The Yale Journal of International Law*, [Vol. 35: 171].

In two cases, the bodies bore marks of torture while in the third case, the body was so decomposed it was identified through documents found in clothing.

7. One interviewee stated the intelligence agents had come to her house in Damascus on several occasions, looking for her husband but he had evaded them. After a week her husband failed to return from work and has not been seen since. Fearing rape, she has made inquiries of the police only through intermediaries and reported that the police refused to confirm whether her husband was held by the Government, commenting only that “if he has done nothing wrong, then he’ll be okay.”

8. Another interviewee, whose son was arrested during a house search by Military Security in late October in Damascus, also used intermediaries in an effort to locate the whereabouts of his son. He stated that he did not go to the branch of Military Security himself as he feared that, by making the inquiry, he would also be subject to arrest. This fear — expressed by several interviewees — appears rooted in fact. Another interviewee, this time describing events in a Jabal Al-Zawiya, Idlib governorate, stated that three women were arrested “and taken away in a military vehicle” after having complained about the arrests and subsequent killing of their husbands.

9. In three cases, it was reported that family members — a son, brother and brother-in-law, respectively — disappeared after passing through army checkpoints in Latakia and Homs. None of the families were informed of their relatives’ whereabouts. In two of those cases, the families have made multiple unsuccessful inquiries. In the third case, the father, who had been arrested, detained and reportedly tortured by Air Force Intelligence in Dara’a in early 2012, was too frightened of further arrest to make inquiries.

10. One child, a 14 year old boy, was arrested immediately following a demonstration in Damascus. His treatment while in detention is detailed in document A/HRC/22/59, annex X. He was released after several months and told investigators that his family had not been informed of the fact of his detention or of his whereabouts. His father had consistently attempted to find him, even having his photograph shown on a local television channel as a “missing person”.

11. In two instances, interviewees reported that their relatives had been abducted by Government affiliated militia, described in interview as *Shabbiha*, in Latakia and Homs respectively. Their whereabouts of their relatives remain unknown.

II. Anti-Government armed groups

12. One interviewee reported information that indicated an anti-Government armed group had perpetrated an enforced disappearance. The arrest and treatment of this interviewee, a former work at Political Intelligence in Aleppo, is detailed in document A/HRC/22/59, annex VIII. This interviewee was held in Hritan for approximately six weeks with 54 men who were predominantly captured soldiers but which also included others who were suspected of being *Shabbiha*. His family was not informed of his whereabouts.

13. It is likely that families whose relatives have been arrested or abducted by anti-Government armed groups have remained within Syria. While the commission does conduct interviews through telephone and Skype, contacting families within Syria remains a challenge.

14. Government forces have engaged in enforced disappearance in violations of their international legal obligations. The commission is gravely concerned that a significant number of people are being held outside the protection of the law for extended periods. No information was provided to families who inquired as to their relatives’ whereabouts.

Relatives of some detainees who approached the Government security apparatus were themselves arrested, justifying a fear in others who might undertake the same inquiry.

15. Given the geographic spread of the documented cases and the consistent manner in which abductions and arrests were carried out, there are reasonable grounds to believe that enforced disappearances were committed by Government forces, as part of a widespread or systematic attack against a civilian population, constituting crimes against humanity.

16. There is currently insufficient information to make a finding in respect of *Shabbiha*. These affiliated militia are likely to be viewed as agents of the State acting with the State's authorisation, support or acquiescence.

17. Although anti-Government armed groups are per se not a party to the Convention, their actions can be assessed against customary international legal principles, and they are subject to criminal liability for enforced disappearance that amounts to a crime against humanity. There is currently insufficient information to make a finding with respect to anti-Government armed groups and enforced disappearance; investigations are on-going.

Annexe VIII

[Anglais seulement]

Torture and other forms of ill-treatment^a

1. Sixty-eight interviews were collected regarding the use of torture and other forms of cruel, inhuman or degrading treatment or punishment in Syria since 15 July 2012.
2. Under international human rights law, there is a clear prohibition on torture and other forms of ill-treatment. Syria is a party to the ICCPR, Article 7 of which reads, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
3. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Syria is also a signatory, provides a more detailed definition of torture.^b This definition, however, requires that pain and suffering be “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” and so would not encompass the conduct of anti-Government armed groups. Similarly, the prohibition set out in Article 13 of the Arab Charter of Human Rights imposes an obligation only on State parties.
4. International humanitarian law explicitly prohibits torture and other forms of ill-treatment. Such conduct is a war crime. Torture and other inhumane acts may also constitute crimes against humanity.^c

I. Government forces and affiliated militia

5. The commission received 62 reports of the use of torture and other forms of cruel, inhuman or degrading treatment by Government forces and affiliated militia, occurring since 15 July 2012. The majority — 36 — indicated that the abuses took place during interrogations by the Government’s intelligence agencies. There were also multiple reports of civilians being tortured in unofficial detention centres, at army checkpoints and military barracks, and during house searches by Government forces, sometimes accompanied by members of affiliated militia, notably local *Shabbiha*.
6. Twenty-nine interviewees indicated that they, or their family members, had been arrested and subsequently detained at official detention centres. The initial arrests took place at checkpoints, during house-searches and on the street (see A/HRC/22/59, annex VI). In two instances, the person arrested received a call from Political Intelligence demanding he come in for questioning. A further six interviewees were guards, or worked in other

^a See A/HRC/21/50, Annex II for the applicable law.

^b Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (‘CAT’) defines ‘torture’ as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

^c See ICC Elements of Crimes, Article 7(1)(f).

capacities, at official detention centres. The doctor of one of the interviewees who sought medical treatment also provided a statement.

7. Questions asked during interrogations strongly suggested that, in the majority of cases, interviewees had been targeted for arrest. One man, a bread seller from a northern governorate, was interrogated about supplying bread to anti-Government armed groups. Other interviewees were questioned specifically about providing fuel or medical aid to the armed groups. Three interviewees, two of whom were children, stated they had been taken off the street after participating in demonstrations. One interviewee was a member of the Syrian army who had been accused of sympathising with the opposition by fellow soldiers. In only three cases was it unclear why the interviewees had been arrested, though later questioning suggested that the interrogating intelligence agency believed that they were members of anti-Government armed groups or that they were assisting these groups.

8. According to those interviewed, interrogations were carried out under the auspices of Syria's four principal intelligence agencies: Military Intelligence, Air Force Intelligence, Political Security Directorate and the General Security Directorate. All four have central offices in Damascus as well as a network of regional, city and local sub-offices across the country. The majority of those interviewed indicated that they had been interrogated by members of Military and/or the Political Security Directorate. Interviews emanating from Aleppo governorate, however, referred most often to Air Force Intelligence.

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

10. A further five of those interviewed reported that they were also held for short periods in unofficial detention facilities, such as schools or shops, as a prelude to being transferred to an official centre. While held in unofficial centres, interviewees reported abuse by members of the army and by local *Shabbiha*.

11. In eleven cases, interviewees stated that they have been assaulted or had witnessed the assault of others at army-run checkpoints. Two others had been abused inside military barracks. A further ten interviewees described their or their family members being beaten or otherwise assaulted during house searches.

12. Few of those arrested in house searches were taken to official detention centres. Indeed, in seven of ten cases where assaults were reported in the context of house searches by Government forces and *Shabbiha*, interviewees stated that execution of the victim (or victims) took place shortly afterwards.

13. Due to a continued lack of access, it has not been possible to visit detention centres to interview detainees, those responsible for the detention centres or to observe detention conditions.

A. Reports of torture and other forms of ill-treatment taking place in official detention centres

14. Many of the interviewees who reported torture and other forms of ill-treatment in official detention centres were detained in intelligence agencies in Damascus and Aleppo governorates. Several interviewees were tortured in Damascus' Military Security Branch 235, also known as the 'Palestine branch'. Six of the eight interviewees speaking about torture in Aleppo governorate indicated that their relatives had suffered abuse at the Air Force Intelligence building inside the Al-Zahra complex in Aleppo City.

15. Other interviewees spoke about torture taking place at Military Security in Izra, Dara'a; Military Security in Homs city; Military Security Branch 215 in Damascus; Political Intelligence in Hama; and Military Security and Air Force Intelligence in Latakia city. Five interviewees stated that they (and in one case, the interviewee's son) had undergone multiple interrogations and assaults while being transferred among detention centres and governorates.

16. Reported methods of torture remained consistent across the country. Interviewees described being placed in prolonged stress positions; severe beatings about the head and body with electric cables, whips, metal and wooden sticks and rifle butts; electric shocks applied to sensitive parts of the body, including the genitals and ears; burnt with cigarettes; and kicked.

17. The commission received 15 reports of detainees being placed in prolonged stress positions, such as hanging from walls or ceilings by their wrists (*shabah*) and hanging by wrists tied behind their backs. Eleven interviewees stated that they had been subjected to electric shocks to various parts of their bodies; four interviewees reported being beaten on the soles of the feet (*falaqa*). Other methods reported were forcing detainees to bend at the waist and place their head, neck and legs through a car tire while beatings were administered (*dulab*); tying the detainees to a flat board with their head unsupported and either stretching them (as on a rack) or folding the board in half (*Bishat al-Rih* or the "flying carpet"). Incidents of sexual violence in detention centres are detailed in document A/HRC/22/59, annex IX. For many interviewees, scars and wounds, consistent with their accounts, were still visible.

18. One interviewee, arrested in mid-July during a house search and taken to the 'Palestine branch' of Military Security in Damascus, reported that he had been hung from the ceiling; given electric shocks to his genitals, had cigarettes extinguished on his body, including on his anus; and was beaten with a hose. Another interviewee, who worked at the Palestine branch, stated that between June and August, he witnessed detainees hung from the ceiling by the wrists for extended periods of time; having electric shocks applied to their genitals and ears; and beaten. Further, he indicated that he witnessed one detainee being thrown off the roof of the building by intelligence officers, causing his death.

19. Six interviewees reported family members suffering abuse during their detention at Air Force Intelligence in Aleppo city. One detailed how his relative and two other men, which travelling through a "pro-Government village" where detained by Government affiliated militias and taken to Air Force Intelligence. They were reportedly hung from the wrists and stabbed. Two of them, including the interviewee's relative, were shot in the head and their bodies dumped in Aleppo. The third, who had been stabbed multiple times, was found still alive after having been left on the street near the intelligence branch. Another interviewee stated that his brother had been held for less than a week and had been beaten and suffered electric shocks to his face, chest and genitals. Another, whose brother had been arrested and was later found dead, was informed that the deceased had also been held at Air Force Intelligence. The commission viewed a post-mortem video of the body of the deceased, which bore clear marks of beatings and cuts, particularly on the deceased's back.

20. A further interviewee worked as a guard at Air Force Intelligence in Aleppo between May and October. He stated he could hear detainees screaming and crying and saw several detainees with injuries following interrogation. He recalled several instances where detainees had to be carried from the interrogation rooms to their cells as they were unable to walk. One interviewee described the dumping of bodies, including one of a child, outside Air Force Intelligence in Aleppo, with their bodies showing evidence of beatings and mutilation.

21. One interviewee, detained with four others in Air Force Intelligence in Latakia, stated that all were beaten and one of those with whom he was arrested later in custody. Some detainees died in suspicious circumstances while in the custody of the intelligence agencies. One interviewee — whose two cousins were arrested in late October during a house search in a Damascus neighbourhood — was told by the Military Police that they had died as a result of “suffocating” while in detention.

22. The commission recorded the torture of children as well as the detention of those under 18 years in the same cells as adult detainees (see A/HRC/22/59, annex X). Children were also subjected to the conditions of detentions described below.

23. Five of those interviewed had been moved among multiple detention facilities. Where there had been multiple transfers, interviewees stated that they had suffered physical violence in each location.

24. One such interviewee was arrested and beaten at a checkpoint in Latakia governorate in late August before being taken to Military Security in Latakia. During a two month detention, the interviewee was transferred between Military Security Branches in Latakia, Homs and Damascus. In all three locations, he underwent multiple interrogations during which he was hung from the ceiling by his arms and beaten with electrical wire; put in a car tire and beaten; hit about the face, causing the breaking of teeth; and denied food and water for days at a time. In Latakia, he observed other detainees in his cell with marks on their bodies from beating. While held in one of the Military Security Branches in Damascus, he stated that he saw bodies of eleven other detainees as he was taken in for interrogation. Another interviewee, held for a month at the Military Security Branch in Latakia, stated he had also been beaten and given electric shocks while being interrogated by military security officers.

25. Several forms of torture and other forms of ill-treatment meted out to detainees did not result in physical evidence. Two interviewees stated that they had been forced to strip and remain naked for prolonged periods. One was threatened with sexual assault.

B. Reports of torture and other forms of ill-treatment taking place in unofficial detention centres

26. Five interviewees reported being held in unofficial detention centres. In late December, one interviewee, a 14 year old girl, was abducted by four men, two of whom were in uniform, and held a building in Idlib by people she described as “Shiites from her neighbourhood”. She was interrogated about her mother’s work with the FSA. Her treatment — which included her being raped — is detailed in document A/HRC/22/59, annex IX. She described being beaten, burnt with cigarettes and injected with an unknown substance. In interview, her doctor stated that she had injuries highly consistent with her account.

27. One interviewee was stopped while driving in Homs city in mid-July by *Shabbiha* who he said were “Alawites from the Zahra neighbourhood” of the city. He stated he was taken to a building where there were 12–15 other captives, including an 8 year old boy. He was given electric shocks and the *Shabbiha* attempted to blind him with a screwdriver. He lost the use of sight in his right eye. At the time of interview, the damage to his left eye, as a result of untreated infection, was apparent.

28. In August, two interviewees reported their or their family members being stopped while driving in Latakia governorate. One stated that he had been stopped by soldiers who accused him of supplying the anti-Government armed groups with fuel. He described being taken, blindfolded, to a school where he was beaten for several hours before his transfer to

a Military Security branch. The second stated that his nephew had been kidnapped and beaten by *Shabbiha* while travelling in Latakia governorate.

29. Another interviewee said that he had been stopped by uniformed soldiers in Damascus and required to produce his identification. After it showed him to be from Homs, he was taken to a shop where the soldiers stripped him, beat him and extinguished cigarettes on him. He was later taken to Political Intelligence in Harasta, Damascus. In a fourth case, one man was abducted in July from his village near Tremseh in Hama governorate by *Shabbiha* from a neighbouring “Alawite village”. He stated that he was severely beaten and released only after payment of a substantial ransom.

C. Reports of torture and other forms of ill-treatment taking place at army checkpoints and military barracks

30. Multiple reports were received of people beaten and otherwise assaulted at checkpoints, particularly in Dara’a and Latakia governorates. Two interviewees described physical assaults inside military barracks.

31. In late October, one interviewee reported having been stopped by intelligence agents at a checkpoint in Mhajjah, Dara’a governorate after a word, which was perceived to be pro-opposition, was observed written in dust on one of the windows. The interviewee stated he was taken to a room where he was beaten, given electric shocks and forced to remain on all-fours, imitating a donkey. He was released after being made to lick the windows of his car clean. Another interviewee reported that her husband was asked to report to the Mhajjah checkpoint for questioning and did not return. She stated that his body was delivered to a local hospital the following evening, with puncture wounds to his chest and back, and facial bones, including his jaw, broken. Another interviewee described soldiers beating and then executing an unarmed man at a checkpoint in Harak in mid-November. A former worker at one of the intelligence agencies stated in interview that he regularly witnessed the beating and humiliation of “Sunni commuters” at checkpoints in Dara’a governorate.

32. Three interviewees described abuse of civilians at checkpoints in Latakia governorate in August. The first was beaten, including with metal objects, by soldiers as they questioned him about the presence of anti-Government armed groups in the area. Another described his neighbour being held at a checkpoint run by local *Shabbiha* and having to contribute money to “purchase” his neighbour’s release. The interviewee stated that he saw evidence of beatings on his neighbour’s back after he was released from the checkpoint. The third described his being detained with four friends by what he described as *Shabbiha* from a “nearby Alawite village”. They were held for three days, during which his friends were beaten, before they were handed to Air Force Intelligence in Latakia.

33. A former soldier who, prior to his defection, was deployed at a checkpoint in Hama, gave numerous accounts of soldiers beating civilians passing through the checkpoint, stating, “I cannot possibly count all such incidents.”

34. There were two reports of persons being physically assaulted inside military barracks. One interviewee was taken to a barracks in Idlib, where he was hung by his wrists and beaten while he was interrogated about other soldiers’ plans to defect. The second interviewee described people being detained at military barracks in Aleppo city. While investigations are on-going, there is information emerging which suggests that people are assaulted not only while held in detention by Syria’s intelligence agencies, but also while held by regular army units inside army camps and under the supervision of army officers.

D. Reports of torture and other forms of ill-treatment taking place during house searches

35. Ten of those interviewed reported being beaten or witnessing others being beaten during house searches. There are corroborated reports of adult men being beaten — and killed — by members of the army during house searches in Mara'and, Idlib governorate between 23 and 28 August, as well as in villages in Dara'a governorate during October. Reports were also received of individuals being beaten during house searches in Jabal al-Zawiya in Idlib governorate (July), Saqba in Damascus governorate (July), Qastal Ma'af and other Turkmen villages in Latakia governorate (early September) and the Al-Ghadam area of Damascus (December).

36. The commission notes with concern that in seven of the ten incidents reported, the beatings were a prelude to executions. One interviewee, speaking about house searches in Mare'a, Idlib stated that the adult males — including her husband — were taken outside the house. Their bruised bodies were later found, with their eyes gouged out.

37. In a house search in a village in Dara'a governorate in early October, men were beaten before being taken away from the house and executed. In another search, also taking place in a village in Dara'a governorate in early October, *Shabbiha* entered a house and began beating the interviewee's husband before taking him outside and killing him by firing multiple shots at his chest and abdomen. In a third house search which took place in a different Dara'a village in late October, three adult men were tortured, including being cut with knives. Only one, the interviewee, survived as a result, he believes, of being mistaken for dead while unconscious.

E. Conditions of detention

38. Most detainees described being held in over-crowded cells. The size of the cells varied, as did the number of detainees being held in each cell. Ten interviewees reported that the cells were so overcrowded that it was impossible to lie prone, with two saying it was also not possible to sit. Five interviewees reported that they were held in underground cells, with no access to light. Two stated that cold water was thrown on them at intervals during the night by the guards.

39. Interviewees highlighted the lack of medical care provided to them during their detention. Several described returning to their cells, or seeing cell mates returned to their cells, with untreated injuries. Two interviewees stated that other detainees in their cells died as a result of their wounds and the bodies remained in the cells for several hours before being removed by guards. None was seen by any medical personnel.

40. Multiple detainees stated that they were provided with inadequate food and water during their detention. One detainee stated that he and detainees held with him went without food and water for days at a time. Another stated that he and other detainees had to drink their own urine in order to survive. Four detainees reported that their cells were not equipped with toilets and that detainees often had to relieve themselves in the cells as they were not permitted to exit the cells to go to the bathrooms.

41. These accounts, if verified, would amount to the breach of the Standard Minimum Rules for the Treatment of Prisoners.

Findings

42. Torture and other forms of cruel, inhuman or degrading treatment or punishment have been committed by Government forces and affiliated militia, notably local *Shabbiha*. This is in violation of Syria's obligations under international human rights and humanitarian law.

43. Severe pain was inflicted upon persons in official detention centres, in unofficial detention centres, at checkpoints and during house searches. As was found in previous reports, torture was inflicted to punish, humiliate or to extract information from detainees. Much of the physical violence described by interviewees — including kicking, hitting, beating (including beating on the soles of the feet), flogging, inflicting electric shocks, burning, extended hanging from the wrists, and threatening the victim with rape in circumstances where the interrogators had the power to carry out this threat — have been found to constitute torture by various international tribunals.^d

44. Torture and other forms of cruel, inhuman or degrading treatment or punishment have been perpetrated by Government forces and affiliated militia as part of a widespread attack directed against a civilian population, with knowledge of the attack. Torture in official detention centres was also perpetrated as part of a systematic attack on a civilian population, with knowledge of that attack. Consequently, torture and other inhuman acts as crimes against humanity have been committed. This conduct is also prosecutable as the war crimes of torture and inhuman treatment.

45. On the basis of interviews conducted, members of the intelligence agencies, in particular Military, Political and Air Force Intelligence are primarily responsible for torture and ill-treatment. The names of direct perpetrators, the heads of branches where torture has been found to have occurred and the Directors of the relevant intelligence branches have been withheld.

46. The conditions of detention as described in interviews conducted would, if verified, constitute the cruel, inhuman or degrading treatment of those detained.

II. Anti-Government armed groups

47. The commission received five reports of the use of torture and other forms of cruel, inhuman or degrading treatment or punishment by anti-Government armed groups. A sixth interview, with a FSA prison guard, detailed conditions of detention at one facility in Duma, Damascus governorate.

48. Three interviews centred on the treatment of captured Government soldiers and *Shabbiha* (or those perceived to belong to local *Shabbiha* groups) in Aleppo governorate. One interviewee, who had worked at Political Intelligence in Aleppo, described his kidnapping, detention and torture by members of anti-Government armed groups. He stated he was taken by force from his house in Aleppo city to a heavily guarded house in another neighbourhood. There he was interrogated about his treatment of detainees while being kicked and beaten with electrical cables and sticks by at least seven men. He was then placed in a room with five other detainees before being transferred to a larger detention centre in Hritan which held 54 other people, most of whom were captured soldiers. Some stated they were civilians suspected of collaborating with the Government. He remained there until late November when he was released. During that time he suffered multiple interrogations and beatings. He stated that he witnessed eight detainees die from their

^d See A/HRC/21/50, Annex II.

injuries and numerous others return to the cells with severe injuries including broken bones. Injuries to his legs and hands were visible at the time of interview.

49. The same interviewee was released after having been brought before “an FSA court”, where three men heard his case and levied a fine. He stated that an FSA member who knew him before the conflict had also been allowed to speak.

50. One interviewee provided an account of his role as a commander of an FSA military unit in Damascus, where he was charged with interrogating captives. He indicated he had extracted information from one particular detainee by beating him, adding that the detainee was then executed after appearing before a tribunal.

51. Another interviewee, speaking about a detention centre in Dayr az Zawr, described confessions beaten out of detainees before they appeared before a tribunal for sentence. The interviewee who had been held at an FSA prison in Hritan described being held in overcrowded rooms where detainees were given little food or water. He stated that he and other detainees had to drink from the toilet located in the room.

52. A guard at an FSA prison in Duma in Damascus governorate described captives being given the same food as was provided to the guards. He stated that the young person held at the centre was a 16 year old boy who had been arrested after being seen photographing demonstrations.

53. The commission has received 18 interviews which speak, in varying levels of detail, about the quasi-judicial mechanisms being run by some anti-Government armed groups (see A/HRC/22/59, annex V). While investigations are continuing, the substantive or procedural frameworks currently employed do not appear to comply with international human rights law.

Findings

54. Torture and other forms of cruel, inhuman or degrading treatment or punishment have been committed by anti-Government armed groups during interrogations of captured members of Government forces and those they believe to be members of the *Shabbiha*. Severe pain was inflicted to punish, humiliate or to extract information from detainees.

55. Torture and other inhumane acts were not committed as part of either a widespread or systematic attack on a civilian population. Therefore, they do not constitute crimes against humanity but may be prosecutable as war crimes.

56. There is currently insufficient information to determine whether the conditions of detention constitute cruel, inhuman or degrading treatment or punishment of those detained.

Annexe IX

[Anglais seulement]

Sexual violence^a

1. Forty-one interviews were conducted in relation to sexual violence. Direct accounts were sought from victims and eyewitnesses. Further interviews were conducted with treating doctors or nurses, psychologists, social workers, immediate family members, defectors, anti-Government fighters, and other individuals and organisations who have assisted or were likely to have assisted victims of sexual violence. Limited weight was given to hearsay accounts of sexual violence, though many such accounts were received.
2. There were particular difficulties in collecting evidence in cases of sexual violence against women and girls due to cultural, social and religious beliefs surrounding marriage and sexuality. The concept of honour, not only of the individual but also of her family, is constructed around notions of female virginity before marriage and sexual fidelity afterwards. At least three of those interviewed were of the view that it is worse for a girl to be raped than to be killed in Syrian society. Five stated that they were aware of instances where young women had committed suicide after they had been raped. Male victims also often failed to report sexual violence, though some were willing to speak about such violence occurring in detention centres.
3. Syrian refugees, NGOs, and relief organisations reported that one of the reasons that families from Homs, Damascus, Dara'a, and Idlib governorates fled was because of a perceived increased risk of kidnapping and rape. This perception was bolstered by stories from neighbours, family members, FSA soldiers, Syrian news stations, international media and the internet. The widespread fear of rape appears to have contributed to the less credible hearsay reports of rape.
4. Lack of access prevented interviews with victims and eye-witnesses still in Syria, as well as serving members of the Syria military and intelligence agencies or those fighting with affiliated militia.

I. Government forces and affiliated militia

5. Sexual violence during the conflict occurred in two distinct contexts: against women by Government security and military forces and affiliated militia (usually described in interview as *Shabbiha*) during house searches and at checkpoints; and against men and women in detention centres, where it was used as a means to extract information during interrogations, as well as to humiliate and punish. It was also used as a means to coerce male relatives fighting with anti-Government armed groups to surrender themselves in return for the release of the detainee. Methods of sexual violence and torture usually consisted of acts of rape, electrocution of genitals by live wires and burning of genitals by cigarettes, lighters or melted plastic.

^a See A/HRC/21/50, Annex II for the applicable law.

A. Sexual violence committed during house searches and at checkpoints

6. An FSA fighter stated that he and other fighters searched houses that had been invaded by Government security forces in Damascus after a ground operation in July 2012. They believed that “*Shabbiha*” had raided houses once the operation had concluded. In one house they found three dead bodies and one 17 year old girl who was alive and had been shot in the leg. Her head scarf had been removed and she was naked from the waist down. She survived the attack and remains living in Syria.

7. A woman from Homs described a ground invasion by the army and *Shabbiha* in October 2012. During house searches, “six or seven *Shabbiha*” enter her neighbour’s house. She then heard her female neighbour screaming, “They’re raping me. Someone help me.” She also heard the woman’s 14 year old son scream, “Stop raping my mother.”

8. A young woman from Dara’a described “*Shabbiha* and security forces” invading her town on 22 November. Between twenty and thirty soldiers and *Shabbiha* — who she knew by name and who she described as “*Shi’as*” from her village — entered her house looking for the men. Her aunt, three female cousins, and three sister-in-laws were in the house, while the men were hiding in the basement. They beat the elderly aunt when she told them the men were in Lebanon. One of the *Shabbiha* took two of her cousins upstairs to a separate room and locked the door while the others stayed downstairs. After the *Shabbiha* left, the two stated that they had been beaten, but she noticed the cousins couldn’t walk properly afterwards and couldn’t explain why they were separated from the rest if they had only been beaten.

B. Sexual violence in detention centres

9. A former worker at Air Force Intelligence in Homs city, described an incident where an intelligence officer pointed to a female detainee and was told by the senior commander [name withheld] ““Take her. Do anything you want with her.” He described female relatives of anti-Government armed group fighters and demonstrators being detained and raped by officers as retribution.

10. A 14 year old boy, whose treatment at a Military Security branch in Damascus is detailed in document A/HRC/22/59, annex X was threatened with rape during his interrogation. He also stated that while detained, he saw a cellmate who returned from interrogation crying and then refused to eat for two days. The cellmate later told him that he had been raped.

11. Three of those interviewed reported suffering other forms of sexual violence, such as electricity shocks and cigarette burns to their genitals, while held in official detention centres. One, arrested in Damascus in the latter half of 2012 and transferred to Political Intelligence in Harasta, described having electric shocks to genitals. He was told “we do this so you won’t have children.” The full extent of the abuse suffered is detailed in document A/HRC/22/59, annex VIII. He also saw two women imprisoned, who were held in order to force their husband and son to give themselves up in exchange.

12. An interviewee described having electric shocks to his genitals during his interrogation at Damascus’ Military Security Branch 235 (see A/HRC/22/59, annex VIII). A former employee of the same branch stated that, during interrogations, he had witnessed electric shocks being applied to the genitals of male detainees.

13. A former worker from the Political security branch in Hama said he witnessed intelligence officer’s applying electric shocks to sensitive organs, including the genitals, during the interrogation of detainees.

14. A Sunni Muslim man who lived in Damascus returned home from work in July to discover his wife missing. He had recently moved into the neighbourhood, not knowing *Shabbiha* lived there. They were watched and followed by the *Shabbiha*. He believes the *Shabbiha* took her and raped her. She was returned the next day and they immediately fled the area.

15. Reports of sexual violence occurring in unofficial detention centres were also received. A 14 year old girl described her kidnapping and rape in [location withheld] in December. Her mother had worked with the FSA. The girl had been abducted from the street by four men, two in military uniforms and two in civilian clothing. She was taken to an unknown building where she was kept and questioned by people she described as “Shi’as from her neighbourhood”. While there she was interrogated by a woman about the work her mother did with the FSA. During the interrogation, she was beaten with electrical wire, given injections, beaten and had cigarettes extinguished on her chest. She was denied food and water for extended periods of time. On the fifth day of her detention, four young men were brought into the room where they raped her. Two days later, she was released. Her father took her to a gynaecologist outside Syria. In a separate interview, the doctor confirmed bruises, cigarette burns, injection marks on arms, and sexual injuries to the victim. This 14 year old girl has tried to commit suicide three times, saying, “My life has no value. I lost everything, what has gone will never come back.”

16. In September, a neighbourhood in Homs was searched by Government security forces and “*Shabbiha*”. A local resident stated that the security forces went from house to house detaining men. If men were not found in the house, the soldiers claimed they must be fighting with the FSA. The resident said that his aunt had been one of the women captured by *Shabbiha* along with between 40 and 50 other women from different streets and taken to a wedding hall in the town. He said women were raped, and daughters raped in front of their mothers. Some were kept for hours and others were kept for a few days with one woman kept up to 12 days. The interviewee knew some of the women but would not divulge their names so as not to “shame” them.

17. In a third case, an interviewee stated he had paid a ransom on behalf of his neighbour who had been detained at a checkpoint in Latakia by *Shabbiha* from a nearby “Alawite village”. He stated that he saw marks of beatings on his neighbour’s back. When he asked the neighbour about how he had been treated, he started to cry. The interviewee was informed by the man’s brother that he had been raped during his abduction.

Findings

18. Sexual violence, including rape and forms of sexual torture, has been perpetrated by Government forces and affiliated militia against men, women, girls and boys during the Syrian conflict.

19. In the context of detention centres, rape and other inhumane acts have been perpetrated as part of a widespread attack directed against a civilian population, with knowledge of the attack. This conduct was also perpetrated as part of a systematic attack on a civilian population. Rape and other inhumane acts, as crimes against humanity, have been committed by Government forces and affiliated militia. Rape, torture and inhuman treatment are also prosecutable as war crimes.

20. Acts of sexual violence — including rape — were committed against women and girls during house searches and checkpoints during the reporting period. The searches, which often follow shelling and aerial bombardments, are military operations constituting an attack on the civilian population. Rapes and other acts of sexual violence which formed

part of the attack or which were intended to be part of the attack are crimes against humanity.

II. Anti-Government armed groups

21. One interviewee spoke about sexual violence committed by anti-Government armed groups. A member of the FSA stated that in mid-October in Aleppo he and other FSA fighters came across a car containing four FSA members from a different unit. In the car was a young boy who said he had been abducted by them. Upon interrogation, the four FSA in the car admitted to raping a woman and a girl in Aleppo. The FSA fighters were taken before a 'Shari'a court' in Aleppo. The interviewee commented that "actions like this proved to be detrimental to the revolution in Aleppo."

22. Another FSA fighter from Jobbar stated that there had been incidences of "Alawites kidnapping Sunni girls" in Baba Amr, a neighbourhood of Homs city. The FSA's Al-Farouk brigade responded by kidnapping Alawite women to exchange for the Sunni girls. The interviewee stated that the Alawite women are treated well and any mistreatment of them would be punished.

Findings

23. Based on limited information received, it was not possible to reach a finding concerning crimes of sexual violence committed by anti-Government armed groups.

Annexe X

[Anglais seulement]

Violations of children's rights^a

1. Forty-four percent of Syria's population were under 18 in 2010. In the protracted conflict that has overtaken their country since then, children have faced widespread violations of their rights. Children of both sexes have been unlawfully killed and wounded; they have been subjected to, and possibly singled out for, sexual violence. They have been subjected to other forms of torture in detention facilities, checkpoints and during military and security force operations.
2. Parties to the conflict have undermined children's rights to health and education, putting hospitals and schools at the front line of the conflict and reversing painstaking gains in social services over many decades.
3. Children's lives have been misshapen by violence, political and sectarian polarisation, impoverishment and the enforced isolation and idleness that conflict creates. Many have fled the country as a result. Others have been drawn into the hostilities. Both parties have used children in hostilities, exposing them to and implicating them in intense violence. The commission is particularly concerned about many reports of anti-Government armed groups enlisting children for active participation in the conflict.

I. Government forces and affiliated militia

A. Unlawful killings

4. The commission has documented a substantial number of deliberate and indiscriminate attacks, and disproportionate attacks where civilian casualties were clearly in excess of the anticipated military advantage. Fifty interviewees described the death and injury to children during shelling and aerial bombardments by Government forces. The use of artillery and air power against refugee camps, bakeries, schools, village houses and other everyday locales; and the use of excessive force against demonstrators by Government forces is well documented. Street fighting, house-to-house attacks and massacres^b have devastated contested areas such as peri-urban Damascus and Homs, or rural Dara'a and Idlib.

B. Sexual violence

5. Victims of sexual violence have little incentive to report on the crimes committed against them. They may face stigma, alienation or worse from their families. There are few services to help them, and perpetrators of sexual violence apparently enjoy impunity. For these reasons, clear evidence of sexual violence against children is scarce, but there are troubling indications that conflict has deepened the vulnerability of both girls and boys to such violence. Several accounts from victims and witnesses illustrated this trend.^c

^a This report uses the terms "children, boys and girls" to denote people under 18 year of age. See A/HRC/21/50, Annex II for the applicable law.

^b A/HRC/22/59, annex IV.

^c Ibid., annex IX.

6. Previous reports of the commission have documented boys' vulnerability to sexual violence in detention. In late 2012, one interviewee, a 14 year old boy, stated that he was threatened with rape while detained by Military Security in Damascus. Girls also reported sexual violence in detention and in the course of operations by Government forces. A 14 year old girl said that she had been detained by a Government affiliated militia in December and sexually assaulted in detention. She was held with another girl her own age, and according to her mother, she has made three attempts on her life since her release. An FSA fighter from rural Damascus said that after an attack on his neighbourhood by a Government affiliated militia, he found his neighbour's half-naked grand-daughter, aged 17 in her house. Most of the rest of her family had been killed and he believed she had been raped. A defecting Government intelligence operative said that security services sometimes capture the mothers and sisters of wanted males to pressure their male relatives into surrendering themselves to the authorities. In detention, these women and girls faced forced nudity and rape.

7. There are partially corroborated accounts of young women or girls who committed suicide after being raped. A woman from Homs reported that around May, a young woman aged about 17 or 18 was detained by a Government intelligence agency in Homs. She was released to her father one month later, but before being released, she was forced to serve tea to her father and her captors while naked. When she returned home, she bid goodbye to her mother and then committed suicide by throwing herself from the roof of her home. A defector from Air Force Intelligence and a young woman from Homs confirmed some of the details of this story. A second incident took place in Harak, a town in Dara'a governorate, which was attacked by a large government force between 18 and 25 August. A woman who left Harak after the attack said that one young woman aged between 17 and 20 was among girls and women reportedly raped during the attack, and she later killed herself. In December, Government personnel later visited schools and told schoolgirls "Go home and tell your families that if the FSA shoot any bullets then we will kidnap you." Girls stopped attending schools as a result.

8. Visiting these horrors on younger women is a means of disorienting a society in which many people build their beliefs about honour and shame around notions of female virginity. This disorientation is clear in (possibly apocryphal) stories of fathers killing their daughters rather than surrendering them to armed attackers; in accounts collected from families that have gone into displacement because of fears for their daughters; accounts of children present during the rape of their mothers; and in accounts of kidnappings and counter kidnappings of young women from the sectarian constituencies of opposing armed groups and militia.

C. Unlawful detention of children and ill-treatment of children in detention

9. Detained children have special protections in international law, which requires them to be detained separately from adults and which orients their detention towards rehabilitation. The Syrian Juvenile Justice Act (1974, number 18) allows for punitive detention of children aged 15–17 if they have committed serious offences – but requires that they be detained in special wings of juvenile reformatories. Detained children are being denied these protections today.

10. Many credible informants said that children are routinely detained with adults in the detention facilities of the intelligence services. One 17 year old boy who had spent almost two years in detention estimated that about 50 of 350 prisoners in any given centre were under 18 and that some were as young as eight years. Another interviewee, an adult, described boys "as young as 12" being held in cells with adults in the Military Security

Branch in Harasta, also in Damascus. Two other interviewees stated that boys aged between 12 and 15 years old were held in cells with adult male detainees in Air Force Intelligence in Aleppo.

11. Some interviewees described conditions in detention. A 14 year old boy held in detention in Damascus said that he had been held in an over-crowded cell, in which it was impossible to lie down and that the detainees were provided with little food or water. He added that he and other detainees had had to drink from the toilet inside the cell in order to survive. A 17 year old boy, also detained in Damascus, said that each detainee had about one floor-tile of space each, pointing at floor tiles 35cm².

12. Children have been subjected to the same conditions of detention as adults. The conditions of detention as described in interviews presented here would, if verified, constitute the cruel, inhuman or degrading treatment of those detained (see A/HRC/22/59, annex VIII).

D. Torture of children

13. Boys — as well as some girls — have been subjected to torture and other forms of ill-treatment in Government detention centres, at checkpoints and during house searches. One interviewee, a 14 year old boy, was arrested in early July after participating in a demonstration that had erupted outside his local mosque after Friday prayers. Soldiers reportedly blindfolded and forced him into a vehicle, beating him as he was taken to a branch of the Military Security in Damascus. He was released in late October. In the intervening four months, the interviewee stated he had been interrogated multiple times about the organizers of demonstrations, with most of the questioning taking place in a small underground room. He described being beaten with electric wire and a hosepipe while being hung, suspended from the ceiling; being burnt with cigarettes and hot metal; being hit in the face resulting in a broken nose; and being threatened with rape. He stated he could hear other detainees screaming in nearby rooms, both during his interrogations and while held in cells. Marks, including cigarettes burns and other scars, were visible on the interviewee's body at the time of interview.

14. A 17 year old boy interviewed by the commission had also been arrested after participating in a demonstration in southern Damascus in January 2012. Held until late October, he described being hung by his wrists and being given electric shocks in an Air Force Intelligence detention facility in Damascus.

15. Some children may have died under torture. The sister of a detainee in Aleppo said that her brother had informed her that in July, a boy aged about 15 died in a crowded cell of the Air Force Intelligence detention facility in Aleppo apparently after being tortured. Another Aleppo citizen reported finding the body of a child bearing the marks of torture near an Air Force Intelligence detention facility.

16. Physical assaults also took place at checkpoints and in the course of attacks by security forces. A former soldier, now defected, said he was deployed at a checkpoint in Hama in July and witnessed a 17 year old boy, who was a cancer patient, being beaten, after being found with revolutionary songs stored on his mobile phone.

17. There are reasonable grounds to believe that children are tortured at checkpoints, in house searches and in detention. Children's detention in the same conditions as adults contravenes Syrian and international law. One outcome of this mixed detention regime is that children have been routinely subjected to the same systems of torture that adults face.

E. Attacks on schools and hospitals; children's rights to health and education

18. Syria has over 20,000 schools, and in 2010 its school enrolment, attendance and completion rates compared favourably with those of the region. In the current conflict, various credible reports suggest that between 2,400 and 3,900 schools have been damaged by military operations. Thousands more have been converted into shelters for displaced persons, undermining access to education particularly in contested areas where displacement is high. The pace of displacement is likely to bring further pressure to bear on educational infrastructure. Other schools have been taken over by anti-Government armed groups (see below).

19. The commission has collected accounts of Government attacks on at least 17 schools. In some cases, schools were reportedly being used as bases for anti-Government armed groups, thereby losing their status as protected civilian objects. However, there are reasonable grounds to believe that other attacks on schools were unlawful and in some cases deliberate. One soldier from an army brigade stationed in Dara'a said that his commanding officer had verbally given an order to hit schools harshly "so that they don't go out on demonstrations." The soldier said that he had defected because the army was attacking children and schools without discrimination.

20. Areas contested or held by anti-Government armed groups have significantly lower attendance rates. Security forces have a presence around some schools, and families sometimes prevent their children from attending out of fear for their safety – in some cases school children have been threatened directly. Attacks on schools sometimes lead to displacements of entire families: a woman from rural Dara'a said that families had left her village one week after the girls' secondary school was shelled in January 2013, killing one student and injuring another. Many had moved to a nearby village which they believed the Government was protecting for sectarian reasons.

21. The conflict has deeply affected health services. Hospitals have come under direct attack (see A/HRC/22/59, annex XII). A worker at Dar Al-Shifa hospital in Aleppo said that a Government helicopter had fired nine missiles at the hospital in August. Syrian security forces have forced medical staff to inform on children wounded in Government offensives and deny them treatment. One 12 year old boy who was helping evacuate wounded children on a city street in Damascus in July was seriously injured by indiscriminate fire from an army vehicle. He said that the young people who took him to hospital, his father, and medical staff all told him to say that he had been shot by "terrorists," but he insisted on telling the truth. Doctors there continued to treat him while warning him of the risks that he was bringing on himself.

22. Elsewhere, doctors and others have refused treatment to wounded children. One man from rural Dara'a said that when a school in rural Dara'a was shelled, his fleeing 11 year old sister was hit and seriously injured. Rescuers tried to take her to hospital in the garrison town from where the shelling came, but military checkpoints on the way refused to let her pass. Her rescuers reached the hospital by back roads, and staff at the hospital there refused to treat her, saying that it was a military hospital (her rescuers believed that it was in fact civilian). Although she lost consciousness there, doctors insisted that she be moved to a hospital in a bigger town, where she died shortly after arrival.

23. In 2010, child health indicators in Syria compared favourably with those in the wider region. This progress is being threatened by the protracted conflict. Syrian pharmaceutical factories used to produce much of the country's supply, but Syrian mothers of young children in northern Jordan told the commission that vaccines for children ceased to be available in Dara'a around June, and in Damascus around November. Imported

medication is no longer available, they said, and children requiring complex or continuous treatment face serious difficulties.

F. The use of children in hostilities

24. When Syria acceded to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in 2003, it made a declaration which said that the enlistment of under-18s was prohibited. The draft Military Law (1953), which regulates recruitment, states that males are liable for recruitment in the year that they reach the age of 19. Before the conflict began, prospective conscripts would present themselves to local conscription offices to collect their military service papers on reaching 18. Within 12 months, these conscripts would join different units after a medical examination, for 21 or 24 months of compulsory service. Today, official conscription systems are disintegrating, at the same time that the Government's need for military personnel becomes ever more urgent. The Government's approaches to addressing this need for soldiers may lead it to disregard formerly well-established age distinctions.

25. With many young men evading official conscription systems, the Government is enlisting young men arrested at checkpoints or during attacks on civilian areas. As Government control over Syrian territory shrinks, checkpoints play ever more important roles in the relationship between Government and people. Interviewees from rural Dara'a said that security forces check payment of water and electricity bills at checkpoints. Security forces sometimes separate very young children from their parents and ask them leading questions, such as "What do you think of President Bashar Al-Assad?" Checkpoints have become part of the conscription system in areas where Government control is tenuous. A 19 year old evading conscription said that he was subjected to humiliating treatment in checkpoints in the Dara'a area. Another interviewee said that boys aged 12 and over would face such harassment. One woman with a well-built 14 year old son said that he would be questioned about conscription at each of the checkpoints separating her village from Dara'a city.

26. Some (but not all) interviewees believed that this method of recruitment was bringing under-18s into the Syrian armed forces. A defector from Dara'a stated: "They arrest youth aged from 16–18 at the checkpoints ... They take them to the military security branch in Dara'a and then they beat them up. Some of them who have problems [with the authorities] are taken to Air Force Intelligence where they may be detained or liquidated. If you're not proved to have taken part in the events, they take you to the army. They take you to the [local branch of the] military police ... to the military conscription department, and they send you to distant governorates. That [new] system started from the beginning of the events. Military service was from 18, now it's anyone who turns up at checkpoints." Other defectors stated that leaving the army had never been an easy task, and was now practically impossible, so great was the need for soldiers.

27. The Government's establishment of militia is linked to its need for military personnel. These militia are often drawn from sectarian constituencies. They use a mix of sectarian affiliation, kinship systems and ready cash to fill their ranks. This may lead to the recruitment of under-age soldiers.

28. The Government's different affiliated militia are not always easy to distinguish from each other. Popular Committees are often seen as local, self-defence groups formed in Government-aligned neighbourhoods. They are sometimes conflated with *Shabbiha*, although that term is sometimes associated with harsh, muscled fighters drawn from the core of the security apparatus or the Government's most trusted sectarian constituencies, rather than from under-age youth. The evidence suggests that both these groups are using children for active participation in hostilities.

29. A soldier who recently defected from a military base in an area where the majority of the population comes from the Alawi sect, with which many of the highest officials in the Government and security forces are associated, said that local young people would come and take weapons from the base. He believed that they were part of a Government affiliated militia. "Every day people came, fifty to a hundred. People would identify themselves with civilian IDs [no regular soldiers have civilian IDs]. Some of them were aged 16. When I saw them I asked, 'What are you doing here?' They answered, 'We are here to fight as volunteers.'" Recruits received one week's weapons training, or no training at all.

30. Kinship groups, called houses (Arabic *buyut*, singular *bayt*) are used to identify sectarian affiliation and loyalty, and the use of kinship groups may lead to the recruitment of children. One refugee who had witnessed the start of a house-to-house attack by Government affiliated militia on Deir Baalbeh, a largely Sunni area in Homs said that many of the attackers were drawn from Alawite and Shi'a areas nearby, and he listed the *buyut* from which they were drawn. He said that the youngest attackers were 15 or 16 years of age. This recruitment takes place in a society that has been rapidly impoverished by conflict – some people can afford only one meal a day. Participation in Government affiliated militia brings immediate cash rewards, payable by shift or by month, according to different observers.

31. The commission has collected accounts of the use of under-age children as informers. One former soldier who defected to an anti-Government armed group said that the youngest informers used by the government were 12 years old. Some of these young informers are caught and detained in prisons run by anti-Government armed groups. One 16 year old who was probably his family's main breadwinner, was reportedly paid 5,000 Syrian pounds a month. All parties to the conflict punish spies and informers severely, often with judicial or extra-judicial execution.

32. Using children under 15 for active participation in hostilities is a war crime under the Rome Statute of the International Criminal Court, and "active participation" covers activities such as scouting, spying, sabotage and the use of children as decoys or couriers.

Findings

II. Anti-Government armed groups

A. Unlawful attacks

33. Children have been killed in many of the recent explosions in Syria's larger cities over the reporting period. Reports of multiple instances of children killed by snipers were received (see A/HRC/22/59, annex XI). As all parties to the conflict employ snipers, it is frequently unclear which party is responsible for any given child's death.

B. Sexual violence

34. The threat of sexual violence is often implied in the abduction of women and girls. An FSA soldier stated that the FSA had abducted the mother and daughters of a sniper who was part of a Government affiliated militia, in Dara'a in late 2012. The sniper was detained by the Government in order to prevent him from surrendering to the FSA; the women were reportedly released unharmed. Another FSA soldier stated that four members of the FSA

had taken part in a rape in Aleppo in October– they may have subsequently been prosecuted in a court linked to an armed faction.

35. The commission has come across many reports at second-hand that suggest that sexual violence has become routinized in operations by the security forces. One woman said that she believed that a thousand women had been raped in an attack on Al-Ihraq in Dara'a governorate in August. She said that local leaders ask a young man to marry an unmarried survivors of rape, “if he is willing to protect her” (using the Arabic phrase *yustur 'alayha*, which connotes protecting, covering and condoning). Other interviewees from Homs and Dara'a said that several unmarried women or girls were married to FSA fighters after being subjected to rape. Many perceive these marriages as an attempt to come to terms with a crisis of sexual violence. However, such marriages may skirt important questions of consent and run the risk of re-victimising the women and girls concerned.

C. Use of schools

36. Anti-Government armed groups occasionally occupy schools as barracks or bases. This has contributed to a widespread belief that schools are not safe, and undermined rights to education in areas controlled or contested by anti-Government armed groups.

D. Use of children in hostilities

37. Closing schools, or putting them on the front-line of the conflict in this way imposes a life of isolation and idleness on thousands of children, which can push children towards conflict. Children have relatively limited analytical resources for understanding a conflict which has taxed the interpretative abilities of many – yet they have to try and understand their coercive environment, and incidents of violence which transform their lives for the worse. One 11 year old girl, who lost a close friend and her father in shelling said she believed they were martyrs, and that she wanted to be a martyr herself.

38. Teenage boys face particular pressures because they attract the attention of security forces early on. Interviewees from Dara'a said that boys aged as young as 12 attracted apprehension and violence from Government soldiers at checkpoints. This kind of challenge can push young males towards a fascinated preoccupation with violence, or a desire to act as a protector. For many parents, the fear that their young sons will start experimenting with violence is a reason to send their sons out of the country. One refugee camp near the Syrian border had received almost 500 unaccompanied children at the beginning of 2013. Ninety-seven percent of them were boys, nearly all of them over 14. Many of them are leaving their country and the protection of their families because they fear enlistment.

39. For some under-age boys, the harassment at checkpoints, or the loss of a family member pushes them towards active participation in the conflict. One boy who said he was 17, but looked significantly younger, joined the Al-Nusra Front in early 2012. He said he had made the decision to join after his sister died and his home was destroyed in shelling. He believed that the armed group was the only means by which his family could be protected from further loss. Several interviewees said that this participation was voluntary and some said that it may happen with the encouragement of parents. The commission spoke to one father who supported the decision of two sons, both aged under 18, to join the FSA as fighters. Both died within weeks.

40. There is little tangible evidence to suggest that under-age boys are forcibly conscripted into anti-Government armed groups, which draw many of their recruits from defecting adult soldiers. However, both adult and child members of these armed groups

stated that volunteers under 18 are enlisted. In order to join an armed group, a recruit merely needs to present himself to a local commander, who can be contacted through any armed man in a neighbourhood where anti-Government armed groups operate. Most recruits join in their own neighbourhood, where family members can vouch for them. Many interviewees associated with anti-Government armed groups said that it was very straightforward to leave them – recruits need only hand in their weapon to the commander. This suggests that participation in these groups remains voluntary.

41. The 17 year old boy who joined the Al-Nusra Front said that at first, he participated by delivering food and water to fighters. Eventually, he was given a weapon and took part in attacks. He described one attack on a checkpoint when Government soldiers who were injured were left to die. Other Government soldiers were captured and he believed that they would be tried by a court organized by the armed group, and executed if found guilty of killing civilians. The interviewee eventually left active participation in hostilities because of an injury sustained in combat. But there are no safe jobs in anti-Government armed groups – Government agents arrest and torture people carrying too much bread or medicine. Under 18s have not undergone military training and consequently some are put to work as guards in detention centres, potentially drawing them into the ill-treatment of detainees. A member of the Government security forces who said that he had been detained and tortured by an anti-Government armed group near Aleppo in October said that he was guarded by very young men, aged 17 to 20. An uncorroborated video posted on the internet at the beginning of January 2013 apparently shows a child associated with an anti-Government armed group beheading a prisoner.

E. Unlawful detention of children

42. There is some evidence suggesting that detention facilities controlled by anti-Government armed groups detain children. The commander of a detention facility run by an anti-Government armed group in rural Damascus said that he had detained a 16 year old informer. A soldier in an anti-Government armed group said that he had arrested members of an allied group who were abducting a 14 year old boy in Aleppo in October. The boy shouted to them from inside a vehicle that he had been abducted, and his abductors claimed he was a member of the *Shabbiha*, and from a *Shabbiha* family. The other anti-Government soldiers at the scene established that this was not the case, and the boy was released. Investigations are on-going.

Findings

43. The rights of children have been violated by Government forces, in particular violating the Convention of the Rights of the Child (CRC) by detaining them with adults, violating the Convention against Torture (CAT) and Common Article three of the Geneva Conventions by subjecting them to torture and other ill-treatment, and using them in hostilities in violation of international criminal law and possibly also the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC). Other crimes are visited upon children, such as unlawful killing, sexual violence, and indiscriminate attack, as detailed in other sections of this report. Evidence indicates their rights to education have also been infringed.

44. Anti-Government armed groups are also responsible for using children under the age of 18 in hostilities in violation of the CRC-OPAC, which by its terms applies to non-State actors. Where those children are under the age of 15, those recruiting them may be liable under international criminal law. Other crimes perpetrated against children by anti-Government armed groups, such as unlawful killing, torture and sexual violence may amount to war crimes.

Annexe XI

[Anglais seulement]

Unlawful attacks^a

1. This reporting period has been characterised by increasingly violent and indiscriminate attacks on densely populated urban areas, with Damascus suffering aerial bombardment for the first time since the beginning of the conflict. The intensification of shelling and aerial bombardments has caused significant civilian casualties.
2. The conflict in Syria has evolved into a war of attrition that has increasingly put civilians at risk. Anti-Government armed groups conduct their operations from within densely populated civilian areas, putting civilians in the line of fire and causing them to flee their homes. By using civilian objects, such as schools for military purposes, anti-Government armed groups subject civilians to the dangers of war.
3. Government forces conduct their military operations in flagrant disregard of the distinction between civilians and persons directly participating in hostilities.
4. The dynamics of the conflict have become increasingly complex. The war has become coloured by veins of sectarianism, permeated by opportunistic criminality, and aggravated by the presence of foreign fighters and extremist groups.
5. Extensive aerial and long-range mortar and artillery capabilities remain in the hands of Government forces. One hundred and seventy-eight interviewees spoke about shelling and aerial bombardments by Government forces. One third of all victims recorded by the commission are children.
6. Anti-Government armed groups have gained some artillery and mortar capability, which have so far been recorded as utilised only in attacks against military objectives such as airfields and bases. Lack of access to Syria has significantly hampered the investigation into the conduct of hostilities by anti-Government armed groups.

I. Government forces and affiliated militia

A. Aleppo governorate

Aleppo city

7. In the first days of Ramadan, starting 20 July, FSA and other anti-Government armed group fighters entered Aleppo city. Soon thereafter, the city was subjected to heavy shelling and aerial bombardment by Government forces. Mash-had, Salah Al-Din, Al-Shaar, and Al-Sukri neighbourhoods whose residents were supportive of the opposition, were heavily shelled by mortar and artillery from army bases in Al-Zahra, Al-Ramoussi, Nayrab airport and Masakin Hananou. Syrian military airplanes and helicopters were reported as having indiscriminately dropped “barrel bombs” on civilian objects causing loss of life and significant destruction of civilian property, failing to take the necessary precautions in attack. Interviewees consistently cited the danger and destruction caused by indiscriminate shelling as the reason they fled Aleppo.

^a See A/HRC/21/50, Annex II for the applicable law.

8. Several defectors interviewed provide insight into the conduct of the armed forces' military operations. According to one, a commander in an Aleppo-based airfield ordered the shelling of civilian neighbourhoods with artillery and from helicopters. He indicated that the current commander [name withheld] ordered civilian neighbourhoods to be fired upon at close range. Their first target was Al-Hanafiyeh neighbourhood, near the base, which was shelled to prevent anti-Government armed groups from using it to attack the airport. If confirmed, these individuals would be individually criminally responsible for the war crime of attacking civilians.

9. Ten of those interviewed provided evidence of systematic attacks on bread lines and bakeries in Aleppo. A bakery near Al-Hilwaniya was hit by artillery fire in early August, killing 11 people who had been queuing for bread, many of them children. On 16 August at 05:00, Al-Zarrah bakery in Qadi Askar was shelled with mortar fire from the nearby Al-Ramousa military compound. The mortars hit queues of people lining up for bread, killing 25 and injuring over 50 persons. In Mare'a, northern Aleppo, a line of people queuing for bread was hit on 22 August by a "barrel bomb" dropped 25 metres away from the bakery. Between August and December, Qadi Askar, Iderbi, Al-Sakhour, Aguir, Masakin Hananou and Al-Moysar bakeries were all bombarded during the morning hours, when people were lining up for bread. One interviewee witnessed the aerial bombardment of a bakery in Aleppo in August, describing in detail the scene of the attack which resulted in the deaths of 20 people. On 23 October, a bakery in Masakin Hananou was shelled at sunset, killing 4 persons, one of whom was a young girl who was decapitated as a result of the mortar attack. An interviewee who worked as a volunteer in Dar Al-Shifa hospital in Aleppo said that the hospital received victims of the bread line bombings, many of whom were women and children who suffered from severe injuries.

10. Several interviews indicated the presence of anti-Government armed group members during bread distribution. One interviewee stated that the owner of one of the bakeries had requested the FSA to be present to organize and maintain the order of persons queuing for bread. Other sources suggested that anti-Government group members were gathering bread either to distribute to the population or for their own consumption.

11. The bombardment of bread lines and bakeries amounts to violence aimed at spreading terror among the civilian population in violation of customary international humanitarian law. The bakeries have consistently been attacked when most crowded. The timing of the attacks has often been in the morning when the concentration of civilians was highest or right before iftar, the breaking of the fast during Ramadan. In most cases, such as the Halfaya bakery attack discussed below, the attacks were conducted the day after flour was delivered to the bakery, following a protracted shortage. As a result of the shelling and aerial bombardment of bakeries, dozens have closed in Aleppo, contributing to the shortages of food and deterioration of the humanitarian situation.

12. The maintenance of order by members of armed groups in the vicinity of the breadlines does not legitimise the targeting of breadlines as such. The presence of large numbers of civilians (interviewees consistently describe queues of hundreds of people) renders any attack on a breadline disproportionate and clearly in excess of the concrete and direct military advantage anticipated from killing a small number of anti-Government members engaged in non-combatant activities. Syrian armed forces have attacked civilians engaged in a typical civilian activity, in areas where civilians in high concentrations were expected to be found.

13. Interviews with members of the Syrian Air Force, now defected, indicate that the aerial bombardment of Al-Sakhour and Masakin Hananou, where bakery queues were bombed in August, was carried out from the Rasm Al-Aboud military base under the 24th Division of the Air Force. Orders for the bombardment of these localities were given directly by the commander of the base, [name withheld] and his deputy [name withheld].

14. The same interviewees described the Air Force's failure to take measures to avoid civilian casualties in their targeting of civilian areas. Airstrikes were directly targeted at populated areas. Loss of civilian life was reportedly expected, and at times intended. No warnings were given to the civilian population, nor were any other precautions in attack taken. One interviewee described how areas in which the armed groups operated or where people had previously demonstrated against the regime, were viewed as an incubator of the insurgency and thus targetable. The Air Force targeted these areas, he stated, "as a kind of punishment." The aerial bombardment and shelling of civilian areas and objects, such as densely populated areas, farms, commercial areas and civilian vehicles, was intentional, aiming to force civilian residents of an area to ask anti-Government armed groups to leave their area. Civilian vehicles entering or departing opposition-held areas were targeted as they were considered suspicious and possibly transporting fighters or supplies for anti-Government armed groups. The commission recalls that the intentional targeting of civilians is a war crime.

15. Aleppo has been divided between Government forces and anti-Government armed groups, with both parties positioning snipers on top of buildings and at the entry to main roads to control the movement of people. The majority of interviewees injured by sniper fire stated that they had been hit by Government snipers. This belief stemmed from their having been struck by bullets that were fired from the direction of visible military bases and, in one instance, from snipers on top of a government hospital. In such instances, the conduct of the persons was such that they should have been presumed to be civilians. Interviewees who were in Aleppo during the reporting period described how snipers targeted people passing certain areas, regardless of whether they were fighters or civilians. Dar Al-Shifa hospital in Aleppo received persons, including women and children, whose injuries were typical of sniper fire.

16. The firing on an individual by a sniper is inherently deliberate and targeted. There is a reasonable basis to believe that the firing on civilians by snipers constitute attacks that are, at the very least, indiscriminate as to their target, and were carried out recklessly, or the deliberate targeting of civilians as the object of the attack. Patterns of sniping continue to be investigated.

Andan

17. The town of Mia'arat Al-Artiq near Andan was heavily shelled on a daily basis in early September by mortar fire from Jamiat Al-Zahraa, an army base. In interviews, former residents of the town described the fear experienced by civilians hiding from the incessant mortar fire and the devastation that the shelling caused, killing and injuring civilians who were looking for shelter following the destruction of their homes.

18. The shelling of Andan from Jamiat Al-Zahraa continued from late September into late October. Interviewees provided the names of persons killed by shrapnel from mortar fire while at home or attempting to evacuate their families.

19. Information collected indicates that the attacks carried out on Andan did not distinguish between civilian and military objectives. The Syrian military forces carrying out the attacks did not assess whether their conduct would cause excessive incidental loss of life, in violation of customary principles of international humanitarian law.

Azaz

20. In the afternoon of 15 August, the town of Azaz was subjected to heavy aerial bombardment from two fighter jets. The aerial bombardment caused the deaths of tens of civilians, many of whom were children and elderly persons. Dozens of residential homes

were destroyed. The house of the Danoun family was directly hit, killing 20 family members.

21. According to interviewees who were residents of Azaz and who witnessed the bombardment on 15 August, the FSA had occupied two positions in Azaz, the former prison building and the former office of the Ba'ath Party.

22. According to UNITAR/UNOSAT, satellite imagery (see Figure 1), collected on 13 August and 17 August 2012, shows the likely location of a munitions impact (see Figure 2). The imagery shows that the impacts caused the total destruction of at least six structures and the partial destruction and serious damage of 5–10 additional proximate structures. According to UNITAR/UNOSAT analysis, the pattern of destruction visible from satellite imagery is consistent with reports indicating that one or more air dropped munitions impacted the site. Further, UNITAR/UNOSAT identified imagery that shows a nearby cemetery possibly with 20 bodies prepared for burial on 17 August 2012 (see Figure 3).

23. Recorded accounts indicate that the town of Azaz was deliberately targeted in an indiscriminate manner from the Rasm Al-Aboud base north of Aleppo, operated by the 24th Division of the Syrian Air Force.

24. There are reasonable grounds to believe that the attack on Azaz was indiscriminate. In particular, the bombardment of the Danoun family home, which killed 20 members of the family, is indicative of a failure to take precautions in attack and verify targets. As recorded accounts indicate, the FSA had established itself in identifiable locations, which could have been targeted without causing such excessive loss of civilian life. The intended targeting of Azaz by the 24th Division of the Syrian Air Force without discriminating between military and civilian targets is a gross violation of international humanitarian law.

Tal Rifaat

25. Since Tal Rifaat came under FSA control in May 2012, the town has been shelled and subjected to aerial bombardment on an almost daily basis from Menag military airport approximately 5km north of Tal Rifaat. Since late July, Tal Rifaat has come under increasing aerial bombardment from fighter jets.

26. On 4 August, the house of the Elbaw family was hit around 6:00 by a “barrel bomb” dropped from a fighter jet, killing seven persons, including women and children. Information was collected from multiple individuals who helped those wounded in the attack and collected the bodies of those killed. Consistent accounts emphasised the devastation of the strike on the Elbaw family home. The individuals killed in the strike were decapitated and had limbs severed; one interviewee said, “It was impossible to recognise the bodies.” On 10 August, a fighter jet dropped a “barrel bomb” on a residential house in Tal Rifaat, killing eight persons, among them an elderly man. The “barrel bomb” also hit nearby houses, killing 16 persons, among them four children and five women. These residential areas were all located near Al-Shaheed Mohamed Aboud School, which the FSA had been using as accommodation.

27. In late July and early August, the market place and commercial areas in Tal Rifaat were also hit by rockets, killing civilians who were going about their daily activities.

28. The commission was unable to ascertain whether the aerial bombardment of the Elbaw family house was excessive in relation to the concrete and direct overall military advantage of attacking the nearby school, which was used by the FSA, and is thus unable to find sufficient grounds that the attack was disproportionate. The attacks on the market place and commercial areas in Tal Rifaat, however, are in violation of the obligation to do everything feasible to verify that targets are military in nature and distinguish civilian from military objectives.

Bab Al-Salama crossing

29. As civilians fled their homes from across Aleppo governorate to refugee camps in Turkey, many approached the border at the Bab Al-Salama crossing in northern Aleppo. There were consistent documented accounts that in early October, there was an airstrike on Sajou, a small village adjacent to Bab Al-Salama crossing. An estimated 200–300 people had sought shelter in a school in Sajou village. Around 06:00, civilians in the school heard the sound of an approaching fighter jet and in a panic, began to run out to seek shelter elsewhere. The fighter jet dropped a “barrel bomb,” killing over a dozen persons, many of whom were women and children. Approximately 10 were members of the Shahoud family.

Al-Sahara

30. The village of Al-Sahara, due to its geostrategic location, has been used by the FSA and other anti-Government armed groups — including the Al-Nusra Front — as a recruitment and training location. On 3 August, the village came under sustained and heavy shelling and aerial bombardment, with shells and bombs hitting residential homes, farms and parks. Around 60 shells hit the village in one day, killing approximately 10 persons, among them women and children. The FSA and other anti-Government armed groups, including the Al-Nusra Front had been occupying residential homes and schools. According to interviewees who witnessed the shelling, the shelling and aerial bombardment was not targeted at any specific area and according to one former resident of Al-Sahara, the shelling appeared to be “like revenge or punishment to all the residents.” As a result of the shelling and aerial bombardment of the entirety of Al-Sahara, most of the houses in the village were destroyed or partially damaged. The shells were fired from Aurom Al-Sugra where the 46th Regiment is based.

31. An attack by bombardment (whether aerial or shelling) which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or area containing a concentration of civilians or civilian objects, amounts to “area bombardment,” which under international humanitarian law is indiscriminate and as such, prohibited. Such conduct, perpetrated by the Syrian armed forces is in violation of international humanitarian law.

Mare’a

32. Throughout this reporting period, Mare’a has been regularly attacked by Government forces. Accounts indicate that the area was shelled from the Infantry Military School in Aleppo. Recorded incidents demonstrate a pattern of indiscriminate and widespread shelling as well as indiscriminate firing on civilian targets. In August, shrapnel from mortar shelling injured civilians in Mare’a. On or about 1 September, a bus carrying civilians, among them women and children, from Mare’a to Azaz, was hit by shrapnel from the aerial bombardment of a nearby school and upon returning to Mare’a, the bus was hit directly by a “barrel bomb.”

33. On 11 September at 11:30, a fighter jet dropped a “barrel bomb” on a gathering of workers loading potatoes into a cold storage warehouse, killing five and injuring many others. An interviewee who witnessed the attack said that the fighter jet had first dropped a “barrel bomb” on a nearby bakery that resulted in no casualties since the bakery was empty. According to the same interviewee, the fighter jet then returned, flying at a lower altitude before dropping the “barrel bomb” on the workers at the warehouse, appearing to target any concentrated gathering of persons. In late December, the village of Harbal near Mare’a was subjected to aerial bombardment, with fighter jets dropping “barrel bombs” on civilian areas.

34. There are reasonable grounds to believe that the protracted campaign of shelling on Mare'a has been indiscriminate and in violation of the law of armed conflict.

B. Dara'a governorate

Dara'a city

35. By late October, the shelling of Dara'a city had become unbearable for many residents. Interviewees cited the intensity of the shelling as the main reason they fled to Jordan. Multiple interviews documented incidents in August and November where Government snipers, positioned around Dara'a city, targeted and killed civilians, often when civilians were in walking in large crowds. In one incident on 24 August at 15:30, an unarmed man, wearing civilian clothes, was hit by sniper fire while participating in a peaceful demonstration. In another incident, on 30 November, civilians were hit by sniper fire while returning from Friday prayers at mosque at 11:30. Late at night, civilians were shot who violated the curfew. One victim of sniper fire in Dara'a was able to identify the sniper by name and noted that the sniper appeared to have license to "shoot whenever he wants." Other interviewees confirmed that "snipers stay in their positions for months." Several of the cases indicated that snipers had fired on people who were clearly engaged in civilian activities.

Bosra

36. The town of Bosra has been subjected to heavy shelling and aerial bombardment since late August. Several interviewees who were witnesses to the bombardment of Bosra described how "barrel bombs" were dropped on civilian gatherings, such as a funeral procession that was held in early September. The bombs were dropped from such a height as to make accurate targeting impossible.

37. Interviewees have described that in response to the presence of anti-Government armed groups in Bosra, Government forces have shelled the town without discriminating between those groups and civilian objectives. The humanitarian condition of Bosra and the occupation and targeting of Old Bosra Castle, addressed in the section on specifically protected objects and persons, are also of concern. Interviewees relayed accounts of how family members were targeted and killed by snipers positioned within Old Bosra Castle.

38. The documented instance of the bombardment of a funeral procession is in violation of the principle of distinction under international humanitarian law. The method, namely the use of a "barrel bomb" from a high altitude, demonstrates a failure to take all feasible precautions in attack. Firing on civilian gatherings has been adjudicated as an example of violence aimed at spreading terror among the civilian population, in violation of the laws of armed conflict.

Mhajjah

39. The shelling of Mhajjah began on 10 August and intensified in late September and early October in the lead up towards a ground attack on 14 October. According to interviewees, the town was shelled as retaliation against defectors. Victims described how they and their family members were injured by mortar fire and shrapnel while they were in their homes. One interviewee, whose wife and two nephews were killed when a shell hit their home at 22:00, said that Mhajjah was shelled daily between 20:00 and 24:00 and that the shelling was "random."

40. The accounts collected by the commission indicate that the shelling of Mhajjah amounted to a protracted campaign of indiscriminate and widespread shelling, during

which the Government forces failed to take feasible precautions to avoid or minimise the incidental loss of life, injury to civilians and damage to civilian objects.

Harak

41. The shelling of Harak began in July and continued into January 2013. Government armed forces took control of key strategic checkpoints within Harak on 25 August, and since then, have continued shelling areas of the town that remain under the control of anti-Government armed groups. Recorded accounts indicate that the systematic and protracted shelling of Harak is at the very least indiscriminate and appears to be targeted at primarily if not entirely residential neighbourhoods. Those carrying out the shelling exhibit a disregard for the loss of civilian life.

Tafas

42. Multiple accounts have been collected of the shelling of Tafas, which was followed by ground operations carried out by various Government security forces and affiliated militia. The intensity of the shelling was noted by each interviewee, with estimates that between 260–350 munitions were fired at the town for days at a time. The shelling intensified around mid-November and continued into December. The shelling caused the deaths and injuries of hundreds of civilians in Tafas as many civilian targets were repeatedly hit. On 19 December, two shells hit a crowded marketplace in Tafas, killing at least 10 civilians, among them young children. Thirteen civilians were killed and more than 80 injured from shelling and shrapnel on 25 December.

43. The firing of 260–350 munitions into populated areas is a method of warfare that is indicative of a failure to take all feasible precautions with a view to avoiding or minimizing the incidental loss of life, injury to civilians and damage to civilian objects. Tafas was shelled for a protracted period, during which civilian targets suffered indiscriminate fire, in violation of international humanitarian law.

Villages of Al-Karak, Umsifra, Um Walad, Lajjah and Kherbet Ghazallah

44. The villages of Al-Karak, Umsifra and Um Walad, located south and southwest of Al-Thaala military airport, controlled by the 24th Air Force Division and Battalion 1023, have been subjected to sustained shelling for a considerable period of the conflict. The villages were shelled by mortar, tank fire and from helicopter gunships. A defector from the Air Force described how he was given orders by [name withheld] to shell the villages if he heard any gun fire, making no distinction between civilians and military targets. The interviewee stated, “We bombarded and shelled to chase the FSA out of the village, because if they stayed they could attack us. The Commander, [name withheld] wanted to protect the base regardless of method, that is why his orders were to shell heavily.”

45. The information collected, including the above first-hand account, indicates that Government forces are conducting hostilities in violation of the principles of the law of armed conflict, making no distinction between civilians and fighters, conducting area bombardment, and taking no precautions in the choice of means and methods of warfare.

46. There are corroborated accounts that the village of Lajjah has been used by the FSA as a base. FSA fighters and defectors had sought shelter in the Lajjah area due to its rugged terrain. The village itself and surrounding towns such as Izra, have been indiscriminately bombarded with “barrel bombs” from fighter jets and subjected to intense shelling, as a result of which the villages are almost completely destroyed. The FSA has located military objectives within densely populated civilian areas, violating the principle of distinction under international humanitarian law.

47. The village of Kherbet Ghazallah, which is located along the Damascus – Dara’a highway, was heavily shelled on 5 August, after an FSA unit attempted to capture and ultimately killed the Chief of Political Security in Dara’a while he was travelling along the highway. This incident provoked Government forces to shell the village, killing civilians, among them women and children. One interviewee described how schools in Kherbet Ghazallah were targeted. Another interviewee, who was an FSA fighter in the Kherbet Ghazallah area, relayed that when an intermediary well-respected by both Government forces and anti-Government armed groups, attempted to diffuse the conflict, he was told by Government forces to pass on the message that “for each bullet the FSA fires on the [Damascus – Dara’a] highway, we will fire ten artillery shells into the town.” Other villages in the area, such as Western Garyiah, were also subject to heavy and indiscriminate mortar shelling.

C. Damascus governorate

48. Twenty-two interviews conducted paint a picture of entire neighbourhoods of suburban Damascus being shelled and destroyed by Government forces as part of their urban warfare against elements from anti-Government armed groups. Between late July and November, the neighbourhoods of Dahadeel, Al-Midan, Sayyidah Zaynab, and Al-Tadamon were heavily shelled and subject to aerial bombardment from helicopters. These attacks were often followed by ground offenses and by further large scale destruction (see A/HRC/22/59, annex XIII). During the ground offensives, snipers were positioned at strategic locations, such as on top of buildings and at the entrance to main roads, to control movement. According to interviewee accounts, many civilians were killed by sniper fire.

49. In late August, a ten-day Government offensive on Al-Tal against the FSA resulted in high casualties among anti-Government armed groups operating in the area. Witnesses to the attack, which was carried out through heavy mortar shelling and firing from helicopters, described how Government forces deliberately attacked civilian objects, including bakeries, make-shift hospitals, commercial areas and infrastructure, motivated by a fear that the FSA would use them. Interviewees noted that during the offensive, most civilian casualties were caused by sniper fire.

50. An interviewee who defected from the brigade that operated from the military base at Al-Mazzah Airport, described how in their planning of hostilities, namely airstrikes in Duma, Arbin and Daraya, the commanders within the armed forces were aware of the presence of civilians in areas under attack, but did not take any precautions to avoid the incidental loss of civilian life. The interviewee also described how civilians in areas where the FSA operated, were considered by Government forces to be cooperating with the FSA and thus targetable. The interviewee said that the commander of the brigade, [name withheld] ordered: “there are some terrorist groups in the area, go and bomb them.”

51. A defector from a Special Forces branch of the infantry that operated in Damascus governorate, relayed accounts of how the Major that led their division, [name withheld], considered all areas in which the FSA and other anti-Government armed groups operated to be “areas supportive of terrorists.” These areas were surrounded by Government forces. Orders were given to shell these areas to force the terrorists out.

52. In attacking Zabadani, the abovementioned Major allegedly gave orders to “destroy the town.” In the planning and execution of military operations, the presence of a civilian population was not considered and no estimates were made as to collateral damage. The interviewee said that the operations were guided by the view that if civilians “happened to be” in the areas where the FSA or other anti-Government armed groups are operating, they were supporting the FSA and thus legitimate targets.

53. The Al-Ghutah area east of Damascus has been the scene of confrontations between Syrian armed forces and anti-Government armed groups during the reporting period. On 31 October, the entire area was subject to heavy aerial bombardment resulting in considerable civilian casualties. A civilian nurse from Zabadani in western Damascus governorate noted that the many civilians injured in November and December 2012 were victims of sniper fire.

54. Such conduct violates the principle of distinction and amounts to a violation of international humanitarian law. Further investigation is required to determine how such orders were conveyed and implemented within the chain of command. However, there exists a prima facie case that the war crime of attacking civilians was perpetrated, and that the individuals who were responsible for ordering the attacks and military commanders who carried them out are individually criminally responsible for the commission of this war crime.

55. As noted, attacks by bombardment (whether aerial or by shelling) on a neighbourhood, which treat as a single military objective a number of clearly separated and distinct military objectives located in a neighbourhood containing a concentration of civilians or civilian objects, is “area bombardment”, which is inherently indiscriminate and in violation of international humanitarian law.

D. Idlib governorate

Al-Habit

56. The town of Al-Habit, the western part of which was occupied by FSA elements, was shelled on 28 July by tanks positioned at nearby checkpoints. According to residents of Al-Habit and witnesses to the attack, the shelling targeted only the western part of Al-Habit, indicating that the Syrian military was selective in its targeting. The shelling, however, killed civilians who were in their homes in the western part as well as those who were out on the streets. The attack was conducted at 15:00 after the *Dhur* prayer. Among those killed and injured were women and children. One interviewee described how bodies of 8 and 10 year old children were strewn about the area.

57. During the attack on Al-Habit, army helicopters fired at the streets of the town in order to prevent movement, killing civilians who were attempting to escape the shelling. The shelling of Al-Habit was notably intense. One interviewee stated that in one day, 48 shells landed within a one-kilometre perimeter, raising the spectre of area bombardment and indiscriminate attack.

Taftanaz

58. Five consistent accounts were received relating to the intense shelling and aerial bombardment of Taftanaz, which began in July and continued throughout the month of Ramadan. Most of the residents of Taftanaz fled, unable to find shelter from the shelling and airstrikes within the town. One interviewee, a former resident of Taftanaz described the situation, stating, “It is like a ghost city. From 20,000 inhabitants there are hardly some 200 people left in the city.” Snipers were positioned around Taftanaz, particularly on the road leading to the airport, which led to the deaths of civilians. One account described how a woman was shot by a sniper and bled to death on the street. Persons attempting to assist her were also injured by sniper fire.

59. Sniper fire, as the direct targeting of individuals at a distance using small calibre weapons, is highly accurate. There is evidence to suggest that civilian victims of sniper fire have been deliberately targeted, a war crime.

60. The commission recorded an account from a defector from the Air Force in Taftanaz. The commanders of the Air Force Brigade in Taftanaz, [names withheld], reportedly gave orders to pilots, “There are armed terrorist groups operating [in a particular village or area]. Go destroy them all.” The interviewee emphasised that no additional orders were given on targeting and there was no target selection. The interviewee said that the pilots given such orders understood them to mean to destroy a village or area in its entirety. The weapons and means of warfare used were indiscriminate. Another interviewee described how the missiles and bombs used were unguided, and, when combined with the height at which helicopters flew, made targeting impossible, or at best, inaccurate. The flying height was determined by officers in the control tower of the air base, and was usually between 1–2 kilometres above the ground. According to an interviewee, “There is no way that you could pick out targets from this height and with these weapons. An unguided bomb dropped from a helicopter flying at a height of one kilometre could land anywhere within a 100m radius.” “We would drop bombs randomly.” The reasoning behind this approach to the conduct of hostilities was, according to one of the commanders of the air base, “If they [the civilians] didn’t want the terrorists, they would have forced them out before we got there. Anyone who supports the terrorists is a terrorist themselves.”

Karnfbel

61. The town of Karnfbel was subject to heavy aerial bombardment on 17 October, hitting civilians in a commercial area of the town. The commission has recorded the names of 10 civilians killed in the attack, among them women and children.

Sarmin

62. On 28 September, a peaceful demonstration was targeted from a helicopter, which fired several missiles at the gathered crowd of demonstrators and at a group of people who had just left the mosque and were heading towards the demonstration. The attack destroyed the mosque, caused the deaths of three civilians and the injury of many others. While residents of Sarmin attempted to rescue those wounded, the area was subjected to another round of aerial bombardment. Two hours later, Sarmin was hit with airstrikes for a third time. Sarmin was bombarded again in late December. Interviewee accounts describe how the village is being bombarded with “barrel bombs” on an almost daily basis. The extent of the presence of anti-Government armed groups remains under investigation.

E. Dayr az Zawr governorate

63. The city of Dayr az Zawr has been the site of confrontations between Government forces and anti-Government armed groups since late June 2012. Neighbourhoods in which armed groups are based, namely Al-Hamidia, Al-Ardi, Al-Shiekh Yasin, Jubiela, Mouwthafeen, and Al-Omal, have been subjected to heavy mortar and artillery shelling and airstrikes from helicopters and fighter jets. The shelling of these neighbourhoods was conducted from army bases located in Al-Joura and Al-Dhara neighbourhoods. Snipers controlled all movement along the roads leading to these and other army positions. In order to avoid passing through snipers’ lines of fire, civilians made doors in the walls between houses to avoid using the roads, developing alternate routes to traverse the city, which offered a greater degree of cover from sniper fire from Government-held areas. Despite such efforts, civilians were killed by snipers, while undertaking civilian activities and moving in civilian areas.

64. There were reports of several incidents, between August and November, where civilians were killed by sniper fire in Jubiela neighbourhood in Dayr az Zawr. One interviewee described how the bodies of civilians shot by snipers would remain on the

streets until they could be retrieved at night. The interviewee stated that in Dayr az Zawr, there were too many casualties of sniper fire to count, but that he saw many bodies, “unidentified,” lying on the streets.

65. During late July and August, Al-Muhassan was subjected to heavy aerial bombardment and shelling on a daily basis, from a nearby airport, often after the breaking of the Ramadan fast, iftar or early in the morning. The attacks, which often hit or affected civilians gathered for the evening meal, caused high civilian casualties. According to a former resident of Al-Muhassan, much of the civilian population of the town fled due to the shelling and aerial bombardment.

66. In September, a military plane fired four rockets at Mohamed Al-Issa bakery in Al-Muhassan. The attack occurred at 07:00, killing eight civilians who had lined up to buy bread, among them women and children, and severely injuring 16 others. Soon after the attack, the military plane returned to the area and fired a rocket at a residential home, killing two women.

67. The shelling and heavy aerial bombardment of Al-Muhassan continued into late September. According to a victim of the attacks, Al-Muhassan was shelled during the night from Dayr az Zawr airport, and bombarded from fighter jets and helicopters during the day, which dropped “barrel bombs” at random.

68. On 9 November at around 08.00, the Air Force shelled the market of Al-Quriyah village. The attack occurred on a women’s market day, killing 21 civilians, 19 of whom were women. An interviewee who ran to the market after hearing the attack described the scene, “I saw scattered bodies, scattered limbs and heads, and remains of bodies. One body was a mere pile of flesh. No one was able to identify the body.” According to witnesses to the attack, the shelling came from a Syrian Artillery Battalion of the 17th Division stationed in Al-Mayadin city.

69. The attacks described by interviewees are often indiscriminate by their nature and method. The shelling and aerial bombardment of Al-Muhassan raises the spectre of area bombardment, with the entirety of the town targeted by Government forces as a single military target. The attack on the bread line and bakeries in Al-Muhassan, in addition to the general indiscriminate shelling and bombardment of civilian objects, has the effect of spreading terror among the civilian population, which is a serious violation of international humanitarian law. The bombardment of the market in Al-Quriyah was indiscriminate. In so far as the attack was deliberately carried out, in the knowledge that the market was a civilian object and contained a high concentration of civilians who were not directly participating in hostilities, the attack could amount to the war crime of attacking civilians.

F. Hama governorate

70. Qalaat Al-Madiq was heavily and indiscriminately shelled on 21 December. In the context of the hostilities, a 12 year old child was killed by sniper fire.

71. On 23 December at 16:00, the Alfourn Albalai (Baladi Bakery) in Halfaya was targeted by at least four rockets by a fighter jet. Accounts indicate that around 1000 people were queuing outside the bakery. As one interviewee explained, “We hadn’t received flour for several days, there wasn’t a single loaf in the city, so almost everyone was going to the bakery that day, and many of them were women and children.” One interviewee described how 15 minutes prior to the attack, a helicopter hovered above the area. Another interviewee, who arrived at the bakery following the attack, described the scene, “When I got there, I could see bodies all over the road. There were women and children ... Corpses could not be identified as the bodies were disfigured.” The heavy shelling of Halfaya continued into January 2013.

72. The indiscriminate firing on civilian targets is a violation of international humanitarian law. The firing on civilian targets has been adjudicated as a violation of the principle of distinction inherent within the law of armed conflict. The commission was unable to ascertain whether the attack on the Alfourn Albalai (Baladi Bakery) in Halfaya was targeted at a military objective. However, there were reasonable grounds to believe, that in the context of the protracted campaign of shelling on Halfaya, in conducting the attack, Syrian armed forces were in violation of their obligation under international humanitarian law to take all feasible precautions. In addition, the firing of four rockets on a concentrated gathering of around 1000 people suggests that the attack caused excessive incidental death and injury to civilians and was disproportionate to the overall military advantage of the attack. The sequence of the attack, with all four rockets hitting the bakery, indicates that it was the target of a deliberate attack.

73. Following the attack on Tremseh on 12 July, residents of Tremseh said that the Air Force has continued to shell the town twice a week, forcing civilians to leave the town to nearby villages.

G. Homs governorate

74. There were multiple accounts throughout Homs governorate, of civilian deaths from sniper fire. An interviewee from the town of Telkalakh noted that between November and December, most injuries of civilians were as a result of sniper fire, “Which targets mostly civilians as FSA fighters operate at night.”

Al-Qusayr

75. After anti-Government armed groups took control of Al-Qusayr, the town has been subject to daily shelling, which is on-going. The armed groups occupy residential homes in the town, located in the midst of civilians and civilian objects. According to a former resident of Al-Qusayr, armed groups keep their locations secret to avoid being targeted and locate themselves within civilian areas in order to “protect civilians from attack.” One interviewee, who provided humanitarian assistance in Al-Qusayr, was injured by shrapnel in late October while transporting victims of shelling from the site of the attack to a field hospital. Al-Qusayr remains the site of regular confrontations between Government forces and anti-Government armed groups.

76. Throughout December, Shoumarieh and Baida villages in Al-Qusayr were daily bombarded with “barrel bombs.”

77. The presence of anti-Government armed groups within civilian areas violates the obligation under international humanitarian law for parties to the conflict to avoid locating military objectives within or near densely populated areas, to the extent feasible. In situations where military objectives cannot feasibly be separated from densely populated areas, parties to the conflict have an obligation to remove civilian persons and objects under their control from the vicinity of military objectives.

Rastan and Talbiseh

78. In late July, after the FSA gained control of Talbiseh, Government forces began to shell and bombard the town. In mid-September, Rastan was heavily shelled. In both towns, witness and victim accounts describe shelling and aerial bombardment that was indiscriminate. Military airplanes dropped “barrel bombs” in civilian areas and shelled residential neighbourhoods from a military base north of Rastan, killing and injuring civilians in their homes.

79. The protracted and widespread shelling of Rastan and Talbiseh was conducted in an indiscriminate manner, in violation of the law of armed conflict.

Deir Baalbeh

80. In the course of confrontations between anti-Government armed groups and Government forces in Deir Baalbeh, the area was subjected to heavy shelling. Interviewees who had witnessed or been victims of the confrontations reported that shelling intensified between late October and December, and that on 26 December, after armed groups conducted an operation on Ishara Military base and a prominent member of the military police from Deir Baalbeh defected, Deir Baalbeh was subjected to “the worst shelling since the start of events, with missiles and mortars,” throughout the night. The heavy and concerted shelling was followed by a ground operation, examined in full in the section on massacres.

81. There are reasonable grounds to believe that the heavy, protracted and widespread shelling of Deir Baalbeh is indicative of a planned operation that was indiscriminate and in violation of international humanitarian law.

H. Al-Hasakah governorate

82. There are corroborated witness and victim accounts of the aerial bombardment of Hay Al-Horanah, Ras Al-Ayn on 12 November. Hay Al-Horanah was attacked at around 15:00, the aerial bombardment destroying around 35 houses in a residential area of the town, killing and injuring civilians.

There are reasonable grounds to believe that the attack on Hay Al-Horanah was conducted in a manner that failed to take feasible precautions to avoid the incidental loss of civilian life, injury and destruction of civilian property.

I. Latakia governorate

83. Eight interviewees provided a detailed picture of the indiscriminate shelling of Turkmen villages from nearby Government bases, set up in predominantly Alawite enclaves. A consistent pattern emerged from the accounts of the interviewees. Once the FSA or other anti-Government armed groups gain control of a village, Government forces begin heavy shelling, often dropping “barrel bombs” on residential areas both during the day and at night (see A/HRC/22/59, annex II). The shelling of towns was so regular and consistent that residents were able to identify the bases from which the mortar and artillery shells were being fired. Interviewees consistently identified the Syrian military stationed in Ras Al-Basit as the source of indiscriminate shelling.

84. The protracted and regular bombardment of cities and densely populated civilian areas, without the taking of feasible precautions, is in violation of principles of international humanitarian law.

Al-Khadra

85. There were several reports of heavy shelling on Al-Khadra, a majority Turkmen village near the Syrian-Turkish border. According to an interviewee to an attack in late July, around 06:00, the village was hit by shelling, which appears to have been directed at the village indiscriminately.

86. In late August, Government forces began shelling Al-Khadra at 06:30. Witnesses to the shelling relayed accounts of civilians decapitated and severely injured by shrapnel from

the shelling. Following the shelling, the Syrian military operations on Al-Khadra escalated to airstrikes and dropped “barrel bombs” from fighter jets.

87. There are reasonable grounds to believe that the widespread shelling of Al-Khadra was conducted in an indiscriminate manner in violation of the laws of armed conflict.

Al-Rabia district

88. Around 15 July, the village of Al-Hilwa was shelled. According to victims of the shelling, Syrian armed forces were targeting the FSA who were attempting to take control of a security compound in the village, but that the shelling was so heavy that it hit residential areas, indicating that Government forces did not take the necessary precautions in attack to minimise the incidental loss of life and destruction of civilian objects.

89. There were multiple consistent accounts of snipers targeting civilians in Al-Rabia between 21–22 July. One sniper was positioned on top of the police station and another on top of the Military Security building in Al-Rabia. A family that was driving past the police station was shot by snipers, injuring children inside the car. A man collecting milk from the farms in Al-Rabia on 22 July at 10:30 was hit by sniper fire in the back. Government snipers in Al-Rabia targeted civilians, deliberately firing at persons who were engaged in civilian activities.

Jabal Al-Turkman

90. In mid-July, villages in Jabal Al-Turkman came under intense shelling. The village of Shakria was shelled daily with mortar and artillery shells. Interviewees described how helicopters were used to bombard the village alongside shelling by artillery. An FSA fighter interviewed described how the FSA operated in the Jabal Al-Turkman area, noting that while there were attempts to use buildings away from residential areas, a civilian house that was bombarded in Rabia village in mid-July was located near a house used by the FSA. The Jabal Al-Turkman area continued to be hit by “barrel bombs” dropped by helicopters, as the area is too close to the Turkish border for armed forces to use fighter jets.

91. The particular use of means and methods of warfare by the Government forces, namely the use of “barrel bombs” dropped from fighter jets at high altitudes, contributes to the indiscriminate nature of hostilities and amounts to serious violations of international humanitarian law.

Qastal Ma’af

92. The shelling of Sarayha, a village in Qastal Ma’af, began on 20 August. The village was shelled with mortars and artillery during the night and subjected to aerial bombardment during the day. One interviewee account described that an anti-Government armed group was present in the village but that the buildings they used were not targeted in the shelling. Entire civilian areas of Sarayha were shelled.

93. Another interviewee, a former resident of Al-Shakiriyah village in Qastal Ma’af, described the situation at the beginning of Ramadan, “When the FSA rebel groups came to the village and the village gave them shelter, shelling by the Syrian army started targeting the entire village.”

94. In early September, Beit Alwayli, a Turkman village near Qastal Ma’af was shelled. A victim of the shelling described how her family home was hit at 12:30, while she was with her children. This incident, among others, indicates that Government forces did not take adequate precautions during their operations in Qastal Ma’af. The widespread bombardment of an area as a single military target, without distinguishing civilian objects is a violation of the principle of distinction under the laws of armed conflict.

Findings

95. There are reasonable grounds to believe that the Government has conducted hostilities in a manner that has spread terror among the civilian population, in violation of international humanitarian law.

96. Indiscriminate and widespread shelling, the regular bombardment of cities, mass killing, indiscriminate firing on civilian targets, firing on civilian gatherings, and a protracted campaign of shelling and sniping on civilian areas, has characterised the conduct of the Government. Syrian armed forces have implemented a strategy, which uses shelling and sniper fire to kill, maim, wound and terrorise the civilian inhabitants of areas which have fallen under anti-Government armed group control. Shelling and sniper fire by government forces have killed and wounded civilians of both sexes and all ages, including children and the elderly.

97. Information collected indicates that many of the aerial and shelling attacks by Government forces are conducted indiscriminately. In incidents where an objective determination of the expected military advantage of an attack and the collateral damage expected by any reasonable commander, and whether the latter was excessive could be made, the commission found there were reasonable grounds to believe that certain attacks, such as those on bread lines outside bakeries, in particular Halfaya in Hama, were disproportionate.

98. The commission has collected and corroborated information from first-hand accounts. Many of the interviewees provided the names of the dead, including those of women and young children. Details of Syrian military entities responsible for the shelling and aerial bombardments and names of their commanders have also been recorded in some instances.

99. The use of snipers to control the movement of people and assert control over areas has caused considerable civilian casualties as snipers fail to distinguish between civilians — or those whose status should be presumed to be civilian — and those participating in hostilities. The targeting of individuals from concealed positions in urban areas infuses a degree of terror within the civilian population. Investigations relating to the conduct of hostilities by anti-Government armed groups are on-going.

100. There are reasonable grounds to believe that some of these attacks amount to the war crime of attacking civilians. The commission has identified a pattern that appears to amount to a concerted campaign against civilians in anti-Government armed group-controlled areas. The killing of persons, when committed as part of a widespread or systematic attack directed against a civilian population, pursuant to or in furtherance of a State policy, amounts to the crime against humanity of murder. Investigation into this pattern of conduct continues.

II. Anti-Government armed groups

A. Bombings

101. Named anti-Government armed groups claimed responsibility for a number of bombings in Aleppo and Damascus during the reporting period.

102. On 9 September, two bombs exploded in Aleppo, reportedly targeting a makeshift barracks in a stadium and the military police headquarters. Both were located in two adjacent sealed off districts in the centre of the city. The number of civilians killed and injured was disputed. According to media reports, the FSA's Noble Brigade claimed

responsibility for the bombing of the stadium, claiming to have killed or wounded 200 soldiers.

103. The bombs were directed at military targets. It has not been possible to verify the fact and number of civilian casualties. Consequently, it has not been possible to determine whether the attack was disproportionate to the direct and concrete military advantage anticipated from the attack.

104. On 3 October, three suicide bombs exploding near Saadallah Al-Jabiri Square killing 48 people. The bombs affected the Officers' club, a hotel and a café. The café bore the brunt of the bombing though a building within the Officers' club complex was also ruined. The Government reported 48 deaths, with 122 injuries. Media reports did not indicate whether civilians were among the dead and injured. The Al-Nusra Front claimed responsibility for the attack.

105. There is currently insufficient information available to determine the lawfulness of this attack, but the commission notes with concern the fact that the suicide bombings, while they may have been directed at the Officers' Club, occurred in a busy area of Aleppo, near to civilian locations such as the hotel and café.

106. A bomb exploded near the offices of the headquarters building of the General Federation of Trade Unions in Damascus on 4 November. The intended target was unclear though several military and security installations were in the area. There were no casualties; 11 people were lightly wounded by shattering glass.

107. Arabic media reported that the Ahfad Al-Rasoul Brigade had claimed responsibility. With no military target clearly selected and with damage done to a hotel and its civilian guests, this bombing constitutes an unlawful attack.

108. On 5 November, there was a suicide bombing at a rural development centre in Sahl Al-Ghab in Hama, reportedly being used by Government forces as a military base, killing two people. The Al-Nusra Front claimed responsibility for this attack.

109. A car bomb exploded in the Mezzeh 86, a predominantly Alawite neighbourhood in western Damascus on 5 November. Reports indicated that 11 people were killed and dozens injured. An anti-Government group called Seif Al-Sham claimed responsibility for the attack, saying that it targeted a meeting point for the army, police and *Shabbiha*. It is unclear whether this was the case.

110. Media reports did not specify whether civilians were among the dead and injured. There is currently insufficient information available to determine the lawfulness of this attack, the staging of such an attack in a civilian neighbourhood is deeply troubling.

B. Failure to distinguish: locating military objectives in civilian areas

111. Anti-Government armed groups regularly use civilian objects such as schools as bases, accommodation or meeting points. By operating within such objects, anti-Government armed groups are endangering the civilian population and violating their obligation under international humanitarian law to avoid locating military objectives within or near densely populated areas, to the extent feasible.

112. This was found to have occurred during: (i) the aerial bombardment of Tal Rifaat on 4 and 10 August, where the FSA had based in a nearby school; (ii) the shelling of Lajjah, a village in Dara'a which anti-Government armed groups were using as a base during the reporting period; and (iii) aerial attacks on Al-Qusayr, Homs where anti-Government armed groups based in residential houses.

C. Use of snipers in Aleppo city

113. As detailed above, both Government forces and anti-Government armed groups are using snipers to control movement of people in Aleppo city. A limited number of reports were received which indicated that interviewees were hit by fire from anti-Government armed group fighters. In such cases, it was apparent that the conduct of those injured ought to have led to the presumption of their civilian status.

114. The firing on an individual by a sniper is inherently deliberate and targeted. There is a reasonable basis to believe that the firing on civilians by snipers constitute attacks that are, at the very least, indiscriminate as to their target, and were carried out recklessly, or the deliberate targeting of civilians as the object of the attack. Patterns of sniping continue to be the subject of further investigation.

Findings

115. There are reasonable grounds to believe that anti-Government armed groups have conducted hostilities in a manner that is in violation of international humanitarian law. The use of car bombs and improvised explosive devices in densely populated urban areas spreads terror among the civilian population and can amount to the war crime of attacking civilians.

116. Organized anti-Government armed groups have concrete obligations under the law of armed conflict. In conducting hostilities against Government forces and affiliated militia, anti-Government armed groups have exposed civilians to the ravages of war.

117. The use of snipers to control movement of persons and assert control over urban areas has endangered civilians and hindered civilian activity in densely populated urban areas, particularly Aleppo city. The conduct of anti-Government armed groups has contributed to the increase in violence and danger to civilians that has characterized the evolving dynamics of the conflict.

118. There are reasonable grounds to believe that anti-Government armed groups have committed the war crime of attacking civilians. Investigations relating to the conduct of hostilities by anti-Government armed groups are on-going.

III. Other perpetrators

119. There has been an increase in attacks in which no parties claim responsibility and which do not appear to have any military or strategic objective, beyond their primary purpose to spread terror among the civilian population. Of particular concern are attacks that may foment sectarian tensions. Such attacks are not motivated by any military or strategic gain, but rather by a wanton and menacing disregard for human life. It has become increasingly evident that the proliferation of foreign fighters and extremist groups has altered the character of the conflict.

A. Bombings and other attacks

120. On 21 October, at least one car bomb was reported as having exploded outside a police station in Bab Touma, a predominantly Christian neighbourhood in Damascus. Media reported that 13 people were killed and 29 injured.

121. Police exercising civilian law enforcement functions are not a legitimate target for attack. Moreover, the attack occurred in a busy civilian neighbourhood, with resulting civilian casualties. This bombing is an unlawful attack on a civilian population.

122. A bomb exploded in the southern Damascus neighbourhood of Daf Al-Shok on 26 October. It reportedly was detonated near a children's playground, killing five people and wounding 23. There was no evidence of a legitimate military target in the vicinity and the explosion resulted in civilian casualties. This bombing is an unlawful attack on a civilian population.

123. On 29 October, two car bombs exploded in different places in Damascus. The first was detonated outside a bakery in Jaramana, a predominantly Christian and Druze area of the city. There were some indications that a nearby police station may have been the intended target. There were no reported casualties, though 32 people were said to have been injured.

124. As above, police exercising civilian law enforcement functions are not a legitimate target for attack. This bombing is an unlawful attack on a civilian population.

125. On the same day, 29 October, a car bomb exploded in Al-Hajar Al-Aswad in southern Damascus, reportedly resulting in an unknown number of deaths. It was unclear if there had been an intended target. Based on the information currently available, this attack may be considered unlawful.

126. A bomb exploded near a Shi'a Muslim shrine, in the Sayyidah Zaynab area of Damascus on 31 October. Reports indicated that six people were killed and 13 were injured. There was no obvious intended military target. This bombing constitutes an unlawful attack.

127. Three bombs exploded in the Al-Wuroud district of Damascus, a predominantly Alawite neighbourhood on 6 November. The blasts occurred near housing for the elite Republican Guard. Reportedly at least 15 people were killed. It was unclear whether any of the injured were civilians.

128. A Republican Guard compound is a legitimate military target. However there is currently insufficient information to determine how the attack was staged and its impact, if any, on civilians. Consequently, it has not been possible to determine whether the attack was disproportionate to the direct and concrete military advantage anticipated from the attack.

129. On 6 November, a car bomb was detonated near a shopping mall in the mixed neighbourhood of Ibn Al-Nafis, killing and injuring several people. There was no obvious intended military target. On the information currently available, this bombing is likely to constitute an unlawful attack.

130. A car bomb exploded near a mosque in the Sunni working-class district of Al-Qadam in southern Damascus on 7 November. There were reportedly dozens of casualties. There was no obvious intended military target. On the information currently available, this bombing is likely to constitute an unlawful attack.

131. On 18 November, a car bomb exploded after midnight in Mezzah, a predominantly Alawite area of Damascus. There were no casualties. There was no obvious intended military target. This bombing constitutes an unlawful attack.

132. Two car bombs exploded outside the State Security Directorate and a regional military office in Damascus on 23 December. The Government stated that 44 people had been killed, many of them civilians. The FSA released a statement denying its involvement and suggesting that the Government had staged the bombing, which came during the visit of the League of Arab States.

133. The State Security Directorate and a military office are legitimate military targets. Should the majority of the 44 dead be civilians, it is likely that a finding could be made that the attack was disproportionate to the direct and concrete military advantage anticipated from the attack, and therefore unlawful. Investigations are on-going.

134. There was an explosion at the University of Aleppo, near its halls of residence and its architecture faculty on 15 January 2013. Over 80 people are said to have been killed. Both the Government forces and anti-Government armed groups denied responsibility. As of 23 January, investigations are on-going with preliminary findings indicating that the university was hit by a missile rocket.

B. Assassinations

135. On 6 November, Mohammed Osama Laham, brother of the Speaker of the Parliament, was killed by gunmen in Midan, a neighbourhood of Damascus. Laham appeared to have no military function and would not, on the information available, be considered a legitimate military target.

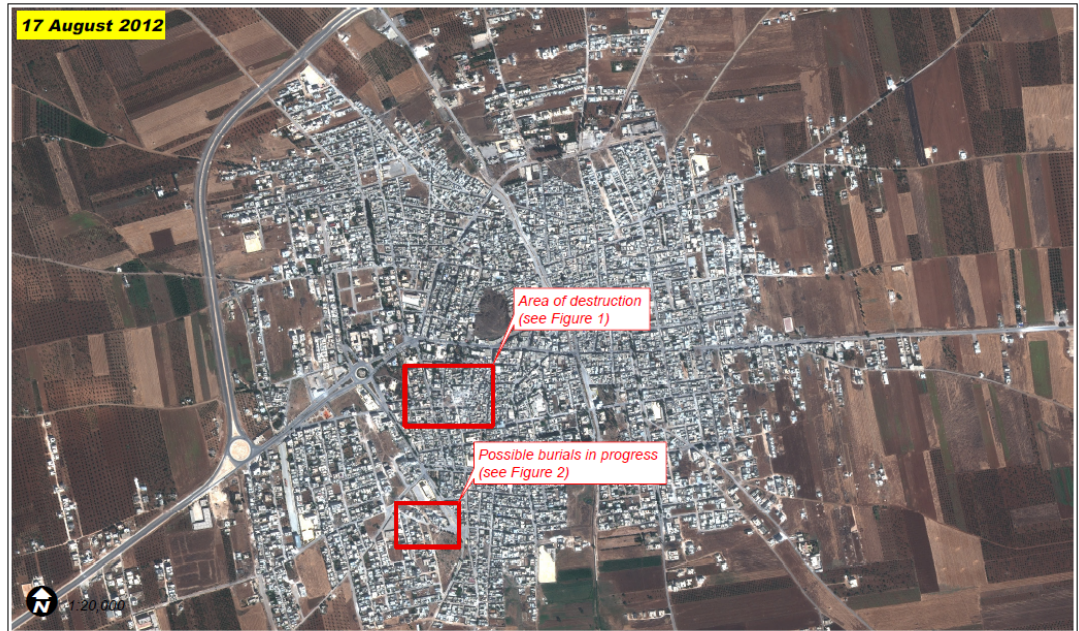
Findings

136. As the conflict in Syria has become characterised by the proliferation of armed factions, there has been an increase in acts of wanton and unrestrained violence, which are clearly intended to spread terror among the civilian population. The perpetrators of such acts cannot always be determined. Such conduct is in violation of the rules and customs of international humanitarian law and may result in the instigation of sectarian tensions. This trend risks becoming a malignant feature of the conflict.

137. The above incidents may be crimes in domestic law and where the perpetrators are parties to the conflict, may also amount to war crimes.

Satellite imagery provided to the Commission of Inquiry on the Syrian Arab Republic by UNITAR/UNOSAT.

Figure 1
Azaz



The town of Azaz, in Aleppo Governorate, as seen by the WorldView-2 satellite on 17 August 2012.

Center Coordinates: 37°2'46.63"E 36°35'10.00"N

This damage assessment by UNITAR/UNOSAT was done at the request of the Office of the United Nations High Commissioner for Human Rights - International Commission of Inquiry on Syria. It provides an analysis of damage to the town of Azaz, Syria, as a result of reported aerial bombardment occurring on 15 August 2012. Using imagery collected by the WorldView-2 satellite on 13 August and 17 August 2012, UNOSAT located and assessed the likely location of the munitions impact in Azaz (see Figure 1). In addition, the nearby cemetery likely has about 20 bodies prepared for burial as seen on 17 August 2012 (see Figure 2).

Figure 2
Impact of 15 August 2012 bombardment of Azaz



A central portion of the town of Azaz is visible at top as of 13 August 2012. By 17 August 2012, at bottom, at least six structures in the area had been completely destroyed (red arrow) with an addition 5-10 proximate structures exhibiting heavy to moderate damage. The pattern of destruction at this location is consistent with reports indicating one or more air dropped munitions impacted the site. Location at Latitude 36.583 x Longitude 37.043. Images copyright 2013 DigitalGlobe.

Figure 3
Possibly 20 shrouded bodies at a cemetery, 17 August 2012, Azaz



A cemetery in central Azaz, identified on Google Maps in Arabic as مقبرة اعزاز, as seen on 13 August 2012 (top). On 17 August 2012, at bottom, about 20 white objects measuring an average of 1.5 meters long, and consistent with shrouded bodies awaiting burial, are visible at the northwest corner of the cemetery (red arrow). A light truck is also visible on the proximate road. Location at Latitude 36.579 x Longitude 37.042. Images copyright 2013 DigitalGlobe.

Annexe XII

[Anglais seulement]

Specifically protected persons and objects^a

1. Escalating violence in densely populated urban areas has increasingly affected persons and objects specifically protected under customary and treaty laws of armed conflict. In some incidents, protected persons and objects appear to have been deliberately targeted.

2. First-hand accounts from victims and eyewitnesses indicate that hospitals and medical personnel, journalists and cultural property, are at times treated as military objectives by both sides to the conflict. Satellite imagery examined shows the extensive destruction of hospitals in densely populated urban areas, as well as munitions craters, barricades, rubble, fortifications and debris in areas around hospitals in Damascus, Aleppo, and Homs cities.

I. Medical personnel and objects

A. Government forces and affiliated militia

Aleppo governorate

3. State hospitals, field hospitals and medical units in Aleppo have come under attack.

4. A field hospital in Tal Rifaat was bombarded twice, on 27 July and 19 August. A volunteer who had been working at the hospital at the time said that most patients were civilians.

5. On 29 July, the Syrian army shelled a field hospital run by the FSA in a school building in Al-Sheikh Najjar. The field hospital was shelled twice in succession. The first shell hit the field hospital, damaging the building and medical infrastructure. The second shell killed approximately 15 civilians fleeing from the field hospital.

6. Dar Al-Shifa hospital has been subject to regular shelling and aerial bombardment attacks throughout the reporting period. On 12 August, Dar Al-Shifa hospital was hit by nine rockets fired from a helicopter, damaging the first three floors on the southeast side of the hospital and destroying the ambulance entrance. A witness to the attack noted that there was an FSA unit to protect the hospital present and that one of the FSA members attempted to fire at the helicopter. Dar Al-Shifa hospital was attacked again with several rockets during the first week of October, damaging the third, fourth and fifth floors on the southern side of the hospital. On the morning of 28 October, a fighter jet dropped several “barrel bombs” on the general area around Dar Al-Shifa hospital.

7. One interviewee, who was hospitalised at a field hospital in Ansar after being hit by sniper fire, relayed how on 7 September, the hospital was shelled, causing significant damage to the building and its infrastructure.

^a See A/HRC/21/50, Annex II for the applicable law.

8. On 16 September, a Syrian fighter jet dropped two “barrel bombs” on two residential buildings in Bustan Al-Qasr next to Al-Sukari hospital, which were being used by the FSA to treat wounded fighters and civilians.
9. Al-Farabi hospital in Hritan, on the outskirts of Aleppo, was shelled in late October. An interviewee who passed the hospital the day after the attack described the extensive destruction of the hospital building and its infrastructure.
10. The mobile Kafrnbel field hospital in Al-Bab has been shelled twice in different locations, most recently in early December. In order to remain hidden and decrease the likelihood of attack, the hospital was not identified by the distinctive emblems of the Geneva Conventions.
11. In collecting accounts from eyewitnesses and victims to attacks on hospitals and medical units, there has been consistent information indicating that no warnings were given prior to attacks. This is a violation of international humanitarian law and amounts to the war crime of attacking protected objects.
12. Dar Al-Shifa hospital in Aleppo was regularly targeted during the reporting period. These attacks caused death and injury to civilians present within the hospital, significantly damaging its infrastructure, and substantially reducing the hospital’s ability to treat patients. The commission considers that these direct attacks on Dar Al-Shifa and other field hospitals in Aleppo constitute examples of a campaign of attacks against civilians in anti-Government armed group-controlled areas.
13. Medical personnel have come under attack in Aleppo. In early September, a medical emergency worker was shot by sniper fire in Al-Midan neighbourhood while in full medical uniform and holding a medical bag with a Red Crescent logo on it. Around the same time, an ambulance that was evacuating wounded, hors de combat FSA fighters in Salah Eden neighbourhood was hit five times by sniper fire.
14. Medical personnel and medical transports are afforded special protection under international humanitarian law, implicit in Common Article 3 to the Geneva Conventions, which requires that the wounded and sick be collected and cared for. Attacks against persons hors de combat are prohibited.

Dara’a governorate

15. As part of an attack against Tafas, a town in southern Dara’a on 25 and 27 December, a hospital was bombarded. Government forces attacked the hospital because they believed wounded FSA members were receiving treatment there.
16. Accounts indicate that the parties to the conflict consider the control of hospitals and medical facilities in terms of strategic and military gain. On 1 January 2013, Government forces attacked a checkpoint outside Al-Ihraq hospital in Dara’a that had been taken over by defectors in an effort to regain control over the hospital.
17. In August, an ambulance driver delivering medical supplies was stopped at a Government checkpoint in Athman. He was arrested upon the discovery of medical supplies and taken to a Government security agency. The man was detained for two weeks, after which his body was brought to the National Hospital in Dara’a. An interviewee who saw and collected the man’s body described it as, “The ambulance driver’s body was skeletal. It looked like he hadn’t been fed for two weeks. His skin as red and blue all over and his legs were swollen to twice their size. He looked like he’d been beaten to death.”

Damascus governorate

18. The commission recorded an account of a physician who was arrested and tortured due to his medical and humanitarian activities. The interviewee provided medical assistance and transported medical supplies and medicines to civilians and wounded in FSA-administered hospitals in Homs, Aleppo, Hama and Dara'a. He was arrested in Damascus on 17 July. When security forces came to his house, an officer [name withheld] asked him, "Why are you assisting the opposition? Why do you provide them with medicine?" The interviewee replied that he was providing humanitarian assistance, to which the officer replied, "I will teach you what assistance is; you will see it with your own eyes." After threatening to rape the interviewee's wife he shot her, his two young daughters and the doctor himself. The interviewee was taken to a military hospital, where he recounted how he and other patients in the hospital who were affiliated with the opposition were tortured and ill-treated. Medical staff burned their bodies with cigarettes and urinated on them. After 17 days in the hospital, the interviewee was transferred to a branch of Military Security in Damascus. After three months in prison, he was charged with providing medical support to anti-Government armed groups. In late October, a lawyer secured his release.

19. During the ten days of heavy shelling and aerial bombardment of Al-Tal in early August, Al-Hosna hospital, Al-Tal military hospital, and Al-Zahraa hospital were severely damaged.

20. In late August, Dumair was heavily shelled. One interviewee recounted how a fighter jet dropped three bombs on a residential area, which destroyed six houses, all of which were near a field hospital.

21. One interviewee described how he witnessed the shelling of Al-Huda hospital in Sbneh in September. The interviewee had been at the hospital three to four days prior to its shelling. He described it as a four-storey building, with one ward dedicated to obstetrics, where pregnant women were being treated, one dedicated to children, one dedicated to emergencies and one dedicated to treating FSA fighters. All the wards were full, including the one with FSA fighters, who were around 20–25 in number. The interviewee believed that the hospital was deliberately targeted due to the presence of wounded FSA fighters. In support of this, he pointed out that other shells had landed in the vicinity of the hospital.

Idlib governorate

22. Jabal Al-Zawiya was subjected to heavy bombardment in early August. During the bombardment, Adnan Kiwan Hospital was targeted, damaging the building and its infrastructure.

Dayr az Zawr governorate

23. Al-Saeed hospital in the Al-Arfi neighbourhood of Dayr az Zawr, which provided medical care to opposition fighters, was bombarded multiple times, on 19 July, in September, and on 26 November. Due to the bombardment, the equipment and staff of the hospital have been transferred to two concealed field hospitals. Patients of the hospital were injured during the attacks. One of the rockets fired at the hospital landed inside the operating room.

24. During the heavy shelling of Al-Muhassan that began on 29 September, a field hospital set up in a school was shelled over 6 times. The repeated shelling of the field hospital demonstrates that it was deliberately targeted, providing reasonable grounds to believe that the war crime of attacking protected objects has been perpetrated.

Hama governorate

25. The commission has received accounts of the Syrian Army occupying and using the National Hospital in Halfaya, Hama, as a military base and thus rendering it a military objective.

Homs governorate

26. On 24 July, a field hospital in Talbiseh was shelled, injuring eight civilians.

Findings

27. Field hospitals, as medical units, are afforded special protection under international humanitarian law, be they military or civilian, fixed or mobile, permanent or temporary, as long as they are organised and utilised for medical purposes. According to applicable customary international humanitarian law, the protection from attack accorded to medical units and hospitals, shall not cease unless they are used to commit hostile acts, outside their humanitarian function, and only after a warning has been given and after the warning has remained unheeded for a reasonable time. The presence of soldiers or fighters solely for the protection of the hospital or for the maintenance of order does not alter the hospital or medical unit's protected status. It remains a civilian object; not a military one.

28. The first-hand account of the physician tortured and charged with providing medical assistance denotes a serious violation of international humanitarian law. Punishing a person for performing medical duties is prohibited.

29. Hospitals and medical units have been deliberately targeted by Government forces to gain military advantage by depriving anti-Government armed groups and those perceived to support them of medical assistance for sustained injuries. There are also reasonable grounds to believe that Government forces have committed the war crime of attacking protected objects^b and the war crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions.^c Certain attacks, such as those on Dar Al-Shifa hospital in Aleppo, appear to have been intended to terrorise a local population by targeting a prominent protected facility. As military operations are increasingly carried out in densely populated, urban areas, hospitals and medical units may have been hit by missiles or mortars that may have been aimed at nearby military targets.

B. Anti-Government armed groups*Damascus governorate*

30. The commission recorded a car bomb explosion outside of a hospital in Al-Wahdeh neighbourhood in Jaramana, Damascus governorate on 28 August. While the perpetrator is unknown, vehicle-borne improvised explosive devices have characterised anti-Government armed group conduct. Investigation into the incident is on-going.

Homs governorate

31. A young fighter relayed how an anti-Government armed group attacked a checkpoint outside the National Military Hospital in Jurat Al-Shayyah in western Homs in September. After gaining control of the checkpoint, the interviewee described how fighters

^b Article 8(2)(e)(iv), Rome Statute.

^c Article 8(2)(e)(ii), Rome Statute.

took over the hospital building, looted the equipment and supplies to take to their own field hospital, and set the hospital on fire. The fighter explained that as the hospital was an army hospital, its destruction was considered a victory against Government forces.

Findings

32. The use of car bombs in civilian areas, particularly near a hospital, is an act that spreads terror among the civilian population and is in violation of the laws of armed conflict. Accounts indicate that anti-Government armed groups have taken medical supplies and equipment from Government and military hospitals, possibly for use in field hospitals. The destruction of a hospital building is in violation of the law of armed conflict.

II. Deprivation of access to medicine and medical care

A. Government forces and affiliated militia

Aleppo governorate

33. Following the shelling of Qadi Askr bakery in Aleppo on 16 August, an interviewee recalled how he rushed to the scene of the attack and attempted to rescue those injured by bringing them to Aleppo University Hospital. The administration of the University Hospital refused to treat the wounded as he was afraid of retaliation from Government security forces. Another hospital in Aleppo agreed to treat the wounded, on the stated condition that they would “do the medical care very quickly. You have to take the wounded before the Security knows about the incident.” In one recorded incident in early October, Al-Jamal Hospital in Aleppo refused to treat an FSA fighter wounded by shelling.

Dara’a governorate

34. The commission recorded an account of snipers positioned at Government checkpoints in front of a hospital in Dara’a, which shot at and prevented civilian vehicles from approaching the hospital and accessing medical care. One interviewee described being forced to turn away from the hospital in Dara’a after coming under fire from a Government sniper while attempted to bring his brother, a government worker himself, for lifesaving treatment on 30 November.

35. An interviewee injured by shrapnel from indiscriminate shelling in Bosra on 23 October, relayed how he was evacuated to a FSA-administered field hospital because he could not go to a government hospital in Dara’a where all those injured who are Sunni are considered to be insurgents or demonstrators and denied medical treatment.

36. An 11 year old girl, who was severely injured by shrapnel on 26 November while she was walking to school, was refused entry to Izra Hospital at a military checkpoint. The girl lost consciousness while the interviewee took a detour around the checkpoint to the hospital. At Izra Hospital, staff refused to accept the wounded girl, saying it was a military hospital. By the time they arrived at another hospital, in Sweida, she had died of her injuries.

Damascus governorate

37. A 12 year old boy who was injured by shelling was told by doctors and nurses at a Government hospital to say he had been hit by “terrorists” explaining, “if you don’t say so, the security forces will come and imprison you.” A full account of this incident can be found in document A/HRC/22/59, annex X.

Hama governorate

38. On 21 December, Qalaat Al-Madiq was indiscriminately shelled. One victim of the shelling was evacuated to a field hospital, explaining that he could not go to a Government hospital in a nearby village fearing that he would be arrested or killed by *Shabbiha* or security forces.

Homs governorate

39. Interviewees from Rastan describe how in October, snipers were placed on top of Al-Basel hospital. As a result of military presence within the hospital, the interviewee said none of the civilians in Rastan would dare approach the hospital for medical care.

Findings

40. There have been documented accounts of violence against the wounded and sick, such as the killing, injuring, harassing and intimidating of patients or those trying to access health care, blocking or interfering with timely access to medical treatment, the deliberate failure to provide or the denial of medical assistance, and discrimination in access to health care. There have also been documented instances of health-care facilities being misused or their neutrality compromised by the presence of snipers or military personnel. The documented instances of doctors, Government forces and snipers interfering with or blocking timely access to medical treatment, compounded by a general climate of fear that prevents civilians from accessing state hospitals, has meant that those wounded in hostilities have languished without assistance, prevented from accessing basic emergency medical care. Government forces have violated the Common Article 3 provision to the Geneva Conventions that “the wounded and sick shall be collected and cared for.”

III. Cultural property

A. Government forces and affiliated militia

41. Syria’s six World Heritage sites have suffered damage in the fighting. Old Bosra Castle has been used for military and strategic purposes by Government forces. Interviewee accounts indicate that the castle, along with nearby Roman ruins, have been occupied by Government forces.

Findings

42. There are reasonable grounds to believe that cultural property within Syria, namely the ancient city of Bosra, which is a UNESCO World Heritage Site, has been used for purposes that are likely to expose it to damage and destruction. Such conduct is prohibited under international humanitarian law, unless imperatively required by military necessity. All parties to the conflict have an obligation to respect cultural property and take special care to avoid any damage to cultural property in the context of military operations.

B. Anti-Government armed groups

43. In Aleppo, the historic souk was burned in October. The Umayyad mosque was significantly damaged and the Saint Kevork Church was damaged by arsonists, also in October. Looters have broken into one of the world’s best-preserved Crusader castles, Krak

des Chevaliers. Artefacts in museums in Palmyra, Bosra and Homs have also been looted while ruins in the ancient city of Palmyra have been damaged.

44. Old Bosra Castle which has been used for military and strategic purposes by Government forces was subsequently targeted by anti-Government armed groups.

Findings

45. All parties to the conflict have an obligation to respect cultural property and take special care to avoid any damage to cultural property in the context of military operations. A failure to do so is in violation of customary and treaty provisions of international humanitarian law, such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention).

IV. Journalists

46. Incidents of domestic and international journalists being arbitrarily detained, held hostage, and killed in the context of the continuing hostilities, have been recorded. Investigations are on-going as to the deliberate targeting of journalists by Government forces and by anti-Government armed groups.

47. Japanese journalist Mika Yamamoto was killed in Aleppo in August, apparently in a gun battle.

48. Ali Abbas, a SANA reporter, was killed outside his home in Jedaydet Artouz, a Damascus suburb on 11 August. The Al-Nusra Front claimed responsibility for the killing of Abbas in a statement issued on 17 August.

49. Abdel Karim Al-Oqda was allegedly extra-judicially executed on 19 September at his home in Hama. Al-Oqda was a cameraman and reporter for the citizen news organization, Shaam News Network. On 16 September, Government forces bombarded the printing press of Liwaa Al-Fatih, a weekly affiliated with the FSA, in Aleppo. Yusuf Ahmed Deeb, an editor, was killed in the attack.

50. Haidar Smoudi, a cameraman of the Syrian Arab News Agency (SANA) was allegedly murdered outside his home in Damascus by anti-Government fighters on 22 December.

51. On 18 January 2013, French reported Yves Debay was killed by sniper fire in Aleppo and Al-Jazeera reporter Mohamed Al-Massalma (Mohamed Al-Horani) was shot in Busra Al-Harir, Dara'a.

52. James Foley, a freelance US journalist, was abducted on 22 November in Idlib. Anhar Kochneva, an Ukrainian journalist, is being held hostage since October by anti-Government armed groups demanding a ransom for her release. Austin Tyce, an American journalist, was taken from a Damascus suburb in August and his whereabouts are unknown.

53. Many other journalists have been killed while performing their trade. The Committee to Protect Journalists lists more than 17 journalists killed in Syria during this reporting period.

Findings

54. Under international humanitarian law, attacks against journalists are prohibited. Journalists exercising their professional activities in relation to an armed conflict must be protected. Both pro- and anti-Government forces have violated this provision.

Annexe XIII

[Anglais seulement]

Pillaging and destruction of property^a

1. Deliberately destroying the property of an adversary in the absence of military necessity is illegal under international humanitarian law. For purposes of this analysis, property of suspected anti-Government members and supporters was considered as being that of the “adversary.” For anti-Government armed groups, the same was considered when the property belonged to Government personnel or was non-military Government property. Appropriating property for private or personal use (pillaging) in the context of an armed conflict is a war crime.^b Twenty-eight interviews were conducted regarding property destruction and pillaging over the reporting period.

I. Government forces and affiliated militia

2. Government forces and affiliated militia intentionally destroyed the homes and businesses of (suspected) anti-Government members and supporters during raids on villages and neighbourhoods. Instances of overt destruction included the burning down of property, blowing it up, and damaging it beyond repair. Credible accounts attributed these crimes to Government security forces. Looting was a frequent precursor to the destruction.

3. Multiple interviewees described an army-led attack on the town of Bosra, Dara’a governorate on 15 October. The neighbourhood where the attack took place is mixed, with some 5000 Shi’as living amongst the majority Sunni population. The army, allegedly supported by more than 300 members belonging to the local ‘Popular Committees,’ (referred to by the interviewee as “*Shabbiha*”) swept through the neighbourhood. Together they emptied houses of their contents and then set them alight. According to one person interviewed, “[t]he army would break into the houses and then the *Shabbiha* would burn them down... they were careful not to damage the Shi’a houses on the edge of the street.” Reports put the total number of homes burned in the operation at 30.

4. On 14 October, a mixture of Air Force Intelligence, Military Security Intelligence and *Shabbiha* entered the town of Mhajjah, Dara’a. They went from house to house searching for names on a list. They burnt 100 houses, many of which belonged to men who had defected from the security forces. Another interviewee stated that “only 10 houses remain” in the village of Lihraq, Dara’a, all the others, including the interviewee’s house were burned down some time after August, by Government forces and affiliated militia.

5. In a village east of Homs, Deir Baalbeh, an army raid on 28–29 December ended with an interviewee stating, “There is not a single house in Deir Baalbeh that hasn’t been looted and burned.” Video footage confirmed the widespread destruction and homes emptied of their contents.

6. In Latakia, anti-Government forces attacked Government compounds in Qastal Ma’af village in August. Police stations and Interior Ministry offices were targeted, however, FSA forces were repelled and ultimately withdrew. “This triggered indiscriminate shelling by the Government against all Turkman villages in the district, and already at the

^a See A/HRC/21/50, Annex II for the applicable law.

^b Article 8(2)(e)(v), Rome Statute of the International Criminal Court.

same day, when the clashes erupted, they started with campaigns of looting homes of people”. He described the perpetrators as “Popular Committees” who are “the junior partner of the *Shabbiha*.”

7. In Damascus, throughout the reporting period, homes and shops belonging to suspected opposition supporters were systematically looted. Reports describing looting by Government forces and *Shabbiha* in August in Jedaydet Artouz. In October, a man who was shot in his home by Government forces, returned home from the hospital to find all his belongings had been looted. Also in Damascus a flammable powder was used to set homes alight. In Dahadeel, Damascus, in an operation on 19 October, an interviewee saw Government forces enter his neighbour’s house. He believes that his neighbour either did not have an ID or his name was on a list because “they took him away and broke up the furniture in the house, before setting it alight.”

8. In Kanshikam village, Idlib, in September, an interviewee’s village was shelled and raided shortly thereafter. His house was stormed by soldiers who “stole his valuables and destroyed everything else.” He was blindfolded and taken to the Political Security Branch in Kanshikan, accused of defecting. He had not defected and was later released.

9. In well-corroborated accounts, the army, Air Force Intelligence, Military Intelligence and *Shabbiha* entered Tafas in late November and burned multiple houses and shops.

II. Anti-Government armed groups

10. There were no first-hand accounts of anti-Government armed groups appropriating property for their own use. Second hand accounts, reports from Governments, video and other materials provided evidence of looting by armed groups, though it was unclear whether the goods taken were in fact used for personal gain, or instead to support the opposition’s war effort. There were also allegations of theft and looting by individuals and groups not participating in the conflict, but who took advantage of the security vacuum created by it.

11. Destruction of property was alleged by a limited number of interviewees, including one reliable account in Dayr az Zawr. The interviewee described oil production facilities being damaged via attacks by anti-Government armed groups. Another witness blamed anti-Government fighters for damaging cultural objects in Aleppo during the fighting.

12. On January 14, the Permanent Mission of the Syrian Arab Republic transmitted a Note Verbale briefly describing looting by ‘armed gangs’ in Aleppo. However, the report provided no specific instances. The commission is aware of reports alleging such groups are responsible for plundering factories, schools, pharmacies and warehouses and selling them across borders. Attempts to reach sources inside Syria who could verify these acts were unsuccessful.

Findings

13. Government forces and affiliated militia have perpetrated the war crime of pillaging. They have deliberately burned and destroyed property they believed belonged to opposition members or supporters thereby committing the crime of ‘destruction of property of an adversary’ as well as the international human rights law violation of the right to privacy and home.

14. While noting allegations, it was not possible to reach a finding with respect to similar acts by the anti-Government armed groups due primarily to difficulties in determining whether the appropriations were for personal gain.

III. Razing

15. Instances of razing in urban locations in Syria were documented. Typically, after shelling and bombarding an area, Government forces moved in with bulldozers and razed hundreds of civilian homes in residential areas.

16. One interviewee witnessed the destruction of what he estimates to be approximately 300 residential homes by explosives and bulldozers in Al-Tadamon in Damascus in early August. A former resident of Al-Tadamon now internally displaced, described the events beginning on 10 July. The neighbourhood was shelled, which caused the majority of the population to flee. Around 24 July, Government forces entered Al-Tadamon and levelled approximately 200 homes with bulldozers, among them the interviewee's home and store. Prior to leaving the Damascus area, the interviewee went back to Al-Tadamon to see the neighbourhood. He described how his home and store, as well as all the other buildings on his street, were "reduced to stones." Satellite imagery shows the total or partial destruction of an estimated 1,000 structures in Al-Tadamon (see Figure 1). Another neighbourhood experiencing this phenomenon is Qaboon, north of Damascus.

17. One interviewee, who witnessed the razing of residential homes in Al-Tadamon, noted that the houses demolished were facing the Hajiz Nasreen checkpoint, which was on the line between the city of Damascus and its suburbs. According to the interviewee, houses were razed because anti-Government armed groups were using the residential homes to attack the checkpoint. According to the interviewee, most of the houses were empty as people had fled due to the prior shelling and bombardment of the neighbourhood.

18. Analysed satellite imagery (see Figure 2) also shows the mass razing of residential homes in Hey el Arbeen neighbourhood of Hama. According to reports and ancillary imagery review, an 80-hectare area of Hama containing hundreds of residential structures was razed within the first week of October. Sources described the Hama site as a launching pad for anti-Government operations.

19. The Government justified these demolitions as part a pre-existing urban plan to remove illegal buildings. Media has reported that additional demolitions are planned.

Findings

20. These events were analysed as attacks under the rubric of the law of armed conflict. No violation was found to arise from within the information collected.

21. With respect to the internally displaced persons who lived there, customary international humanitarian law, obliges the parties to a conflict to prevent displacement caused by their own acts. Further, under customary law, displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.^c In practical terms, this principle applies to all refugees and displaced persons forcibly removed from or otherwise forced to flee their "homes, lands, properties or places of habitual residence ... regardless of the nature or

^c Rule 132. Return of Displaced Persons. ICRC Customary Law Study.

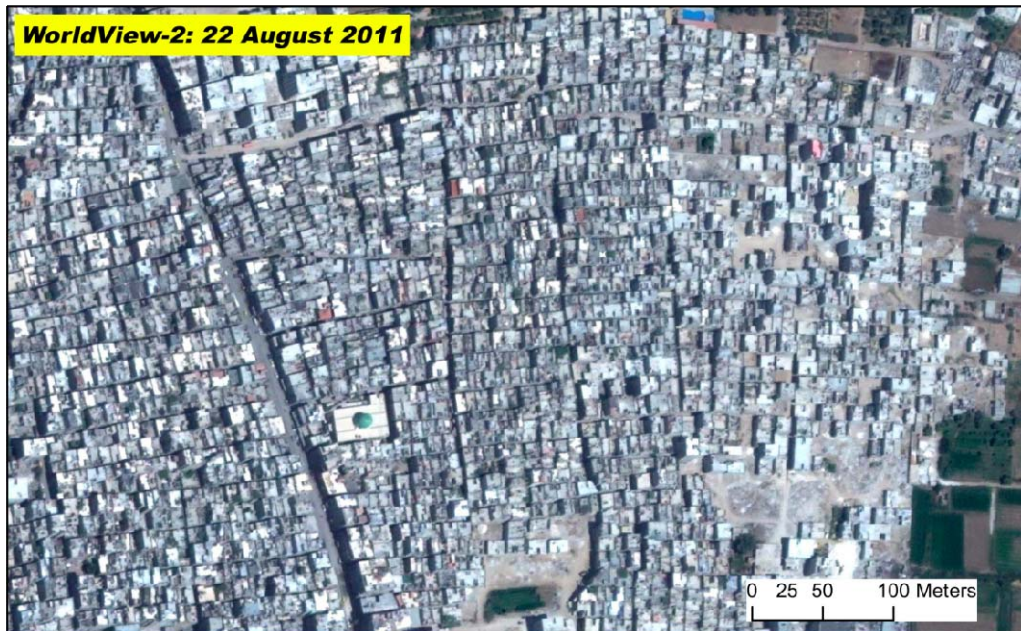
circumstances by which displacement originally occurred.”^d Guiding human rights principles on this issue take the position that war is not a justifiable ground upon which to legitimize the arbitrary or unlawful destruction of homes over which refugees and displaced persons continue to retain rights.^e

22. Based on the factual and legal analysis of the razing of the Al-Tadamon and Hey el Arbeen, the Government may be violating its obligations under customary international humanitarian law of the right of displaced persons to return to their homes.

^d “Handbook on Housing and Property Restitution for Refugees and Displaced Persons Implementing the ‘Pinheiro Principles’, March 2007, pg. 16–17
http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf.

^e “Handbook on Housing and Property Restitution for Refugees and Displaced Persons Implementing the ‘Pinheiro Principles’, March 2007, pg. 16–17
http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf.

Figure 1
Al-Tadamon neighbourhood, Damascus city, Damascus governorate
Between 300 and 1000 residential houses were razed in July 2012.



At top, the area of Damascus known as Tadamon, as it appeared on 22 August 2011. By 3 January 2013, at bottom, large portions of the neighborhood had been razed. UNOSAT analysis estimates that almost 1,000 structures in the area were destroyed by demolition. Images copyright 2013 DigitalGlobe; image from 22 August 2011 obtained from Google Earth.

Figure 2
Hey el Arbeen neighbourhood, Hama city, Hama

Approximately 300 residential houses were razed on 1 October 2012.



This area of Hama was razed in in the first week of October 2012 according to media reporting and ancillary imagery review. Hundreds of structures within an 80 hectare area in the north of the city are visible in the 12 December 2011 image (top) and are absent in the 23 October 2012 image (bottom). Images copyright DigitalGlobe 2012.

Satellite imagery provided to the Commission of Inquiry on the Syrian Arab Republic by UNITAR/UNOSAT.

Annexe XIV

[Anglais seulement]

Accountability

I. Violations of international law and the obligation to investigate, prosecute and punish

The Commission of Inquiry on Syria has already stated that there are reasonable grounds to believe that Government and affiliated militia as well as anti-Government armed groups committed crimes pursuant to international law, violations of international human rights law and international humanitarian law.⁷³ The commission emphasises that under international law, i.e. treaties to which Syria is a Party and customary international law, *Syria is obliged to investigate, prosecute and punish the authors of such violations, irrespective of their allegiance.*⁷⁴

II. Investigation and prosecution through the Syrian national justice system

Any national effort in Syria has to meet essential international standards, namely independence, impartiality, thoroughness, effectiveness and promptness of investigations⁷⁵ and due process.⁷⁶

However, the commission has stated that it has not yet identified any evidence that Syria is making a genuine and credible effort to punish severe crimes.⁷⁷ In fact, given the protracted and increasingly sectarian nature of the conflict, it seems highly improbable that effective and independent prosecutions that meet essential international standards could be carried out in Syria anytime in the near future. There is not only a lack of willingness to institute proceedings, a country torn by almost two years of bloody and destructive conflict is also unlikely to be capable of such an effort.

At the present stage, investigation and prosecution by the Syrian national justice system is thus not a viable option to ensure accountability of authors on all sides to the conflict in Syria. However, it is crucial to note that the potential approaches to accountability described below would have to be supplemented by national prosecutions in Syria at some point. Experience shows that only a very limited number of cases can be dealt with by other States or the international community and that a significant “impunity gap” remains if the concerned State does not initiate national investigations and prosecutions. Assistance to strengthen the capacity, independence, impartiality, and effectiveness of the Syrian national justice system with respect to prosecuting the crimes identified in this report should form part of transitional arrangements.

⁷³ A/HRC/21/50, 16 August 2012, para. 145.

⁷⁴ Ibid., Annex II, paras. 21–24.

⁷⁵ A/HRC/21/50, 16 August 2012, Annex II, footnote 33.

⁷⁶ Articles 14 and 15 International Covenant on Civil and Political Rights.

⁷⁷ Ibid., paras. 140–141 and Annex II, para. 27.

III. Investigation and prosecution through the national justice systems of third States

It is possible that crimes committed in Syria are investigated and prosecuted by third States according to applicable rules of international law. For those crimes, many States assert universal jurisdiction which means that they apply their national criminal law despite the absence of specific link to the offence such as territoriality or nationality of the author or the victim.

However, this approach can only ensure accountability in a very limited way. Authors of crimes could only be prosecuted if they leave Syria. The identification of perpetrators and the carrying out of the investigation have proven to be extremely challenging in these cases due to the fact that the evidence as well as witnesses and victims are not present in the State that asserts jurisdiction. Accordingly, national prosecutions in third states cannot guarantee comprehensive accountability for crimes in Syria but only supplement other efforts in a selective way.

IV. Investigation and prosecution by an internationalized or international ad hoc tribunal

The international community has set up or helped to set up a number of ad hoc tribunals, including the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), the Special Tribunal for Lebanon (STL) and the Extraordinary Chambers in the Courts of Cambodia (ECCC, “Khmer Rouge Tribunal”). An important advantage of such tribunals is that they can be tailored to meet the specific challenges and needs of the situation. While the ICTY and the ICTR were essentially imposed, the other tribunals mentioned above were created with significant participation of the respective countries which increases ownership of victims. The geographical presence of a tribunal in the concerned State can also improve positive perception by affected societies.

A significant inconvenience of ad hoc tribunals is that a highly complex institution has to be created from scratch. Defining a sound legal framework, finding appropriate facilities, recruiting competent personnel or ensuring cooperation of States *represent considerable challenges, require time and are likely to be more costly* than if a permanent institution is tasked with investigation and prosecution. Furthermore, when financial contributions by States are not compulsory as in the case of the ICTY and the ICTR, *long-term funding is extremely difficult to secure*. The SCSL, the STL and the ECCC, for instance, are currently under great financial pressure. Financial constraints on ad hoc tribunals are of significant concern because they drastically undermine the ability to effectively and independently provide justice for victims. The example of the ECCC is also instructive because it shows that internationalized structures which are integrated in the national justice system are exposed to a *considerable risk of undue influencing* which impedes the impartial delivery of justice. Finally, security concerns have often led the creators of ad hoc tribunals to establish them (at least partially) abroad, which limits the positive “ownership-effect” of ad hoc tribunals described above.

What the situation in Syria at the present time is concerned, it is difficult to conceive an *internationalized ad hoc tribunal that is integrated in the national judicial system*. Given the apparent lack of willingness and capability to execute investigations and prosecution described in paragraph 2, it is unrealistic to assume that Syria would support the establishment of such a tribunal let alone fully respect its independence. The dire security situation rules out the presence of such a mechanism in Syria. An *international ad hoc*

mechanism that is imposed on Syria likewise fails to convince. The general inconveniences of ad hoc tribunals and the existence of the International Criminal Court as a permanent institution speak against this solution.

In conclusion, the creation of an international or internationalized ad hoc tribunal does not adequately ensure accountability for crimes committed in Syria.

V. Investigation and prosecution by the International Criminal Court

The biggest advantage of the ICC is that it is an *established structure that could immediately initiate investigations regarding serious crimes in Syria*. The ICC can rely on highly experienced and competent personnel, an established legal framework and long-term funding secured through mandatory contributions of States Parties. It is noteworthy that an important reason for the creation of the ICC was the wish to avoid some of the above-mentioned difficulties associated with ad hoc tribunals by creating a permanent mechanism. The right to refer situations was included in the Rome Statute notably to give the UN Security Council the possibility to resort to the ICC as a permanent institution instead of establishing further ad hoc tribunals.

Syria is not a State Party to the Rome Statute. Accordingly, jurisdiction of the ICC can only be established if the competent Syrian authorities *accept the jurisdiction ad hoc*,⁷⁸ if *Syria adheres to the Rome Statute*⁷⁹ or if the *UN Security Council refers the situation to the ICC*.⁸⁰ In order to address violations that have been committed since the beginning of the conflict in Syria in 2011, it would be crucial *that the ICC can exercise its jurisdiction retroactively*. Jurisdiction since 2011 would only be possible if Syria or the Security Council specify it when referring the situation to the Court. Given the lack of willingness by the current Syrian authorities to initiate credible prosecutions, the *only conceivable option* for ICC jurisdiction at this point in time seems to be a *referral of the Security Council*. If the opposition should take over power at a later stage it could accept the jurisdiction the ICC ad hoc in the name of Syria.

It is important to highlight the possible *deterrent effect the establishment of ICC jurisdiction* could have on the commission of crimes in Syria. It would be a message to all parties involved in the conflict that crimes are not only monitored by the International Community but also sanctioned. As opposed to an ad hoc mechanism that has yet to be created, the ICC is a well-known, fully functioning institution that could immediately initiate investigations. ICC jurisdiction over Syria could especially have an effect on the opposition that seeks international legitimization. Finally, the existence of ICC jurisdiction contributes to political negotiations because it moves the fundamental issue of accountability to the fore.

The establishment of jurisdiction of the ICC *does in no way rule out parallel or subsequent national proceedings*. According to the *principle of complementarity* enshrined in the Rome Statute, a case is inadmissible if national authorities carry out genuine investigations and prosecutions.⁸¹ In fact, it is clear that the ICC will never be in a position to prosecute all authors of serious crimes. The bulk of prosecutions will have to take place on a national level, whether the ICC is seized or not.

⁷⁸ Article 12 (3) Rome Statute.

⁷⁹ Article 12 (1) Rome Statute.

⁸⁰ Article 13 (b) Rome Statute.

⁸¹ Article 17(1)(a) Rome Statute.

Finally, the ICC can *rely on strong support from the international community*. There are 121 States Parties to the Rome Statute that represent almost two thirds of all UN Member States. Almost 60 States from all regions of the world *have explicitly called on the UN Security Council to refer the situation in Syria to the ICC*.⁸² The UN High Commissioner for Human Rights,⁸³ Special Procedures Mandate Holders of the Human Rights Council⁸⁴ and numerous NGOs⁸⁵ have also demanded a referral. Finally, the UN General Assembly,⁸⁶ the UN Human Rights Council,⁸⁷ Arab States,⁸⁸ the Group of Friends of the Syrian People,⁸⁹ the UN Secretary General,⁹⁰ and others have called for accountability in Syria and/or action by the UN Security Council.

In sum, the ICC *is the appropriate institution for the fight against impunity in Syria*. As an established, broadly supported structure, it could immediately initiate investigations against authors of serious crimes in Syria and due to the complementarity principle, the option of national prosecutions at a later stage, instead of or in parallel to the activities of the ICC, remains fully available.

VI. Need for a holistic approach

It is widely acknowledged that *judicial measures alone do not suffice* to sustainably address serious violations of international human rights and humanitarian law. According to the *Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity* of 2005, victims have a right to justice, to reparation, to the truth, and to

⁸² Joint letter of 57 States addressed to the President of the UN Security Council on 14 January 2013.

⁸³ Navi Pillay made repeated calls to the Security Council to refer the situation to the International Criminal Court on 18 and 22 August 2011 ; 2 and 12 December 2011 ; 8, 13 and 28 February 2012 ; 29 May 2012 ; 1 and 7 June 2012 ; 2 July 2012 and 10 September 2012. The Human Rights Council has “noted” these statements (A/HRC/RES/S-19/1).

⁸⁴ Statements delivered on behalf of all Special Procedures mandate-holders of the United Nations Human Rights Council at the Eighteenth and the Nineteenth Special Sessions of the Human Rights Council on the situation of human rights in the Syrian Arab Republic, Geneva, 2 December 2011/1 June 2012.

⁸⁵ E.g. Amnesty International, Syria: New report finds systemic and widespread torture and ill-treatment in detention, 14 March 2012; Human Rights Watch, Syria: Crimes Against Humanity in Homs, 11 November 2011.

⁸⁶ UN General Assembly Resolutions A/RES/66/253 A. (16 February 2012), A/RES/66/253 B. (3 August 2012) and A/C.3/67/L.52 all stress the importance of ensuring accountability and the need to end impunity in Syria.

⁸⁷ Human Rights Council Resolutions A/HRC/RES/S-16/1 (28 April 2011), A/HRC/RES/S-17/1 (18 August 2011), A/HRC/RES/S-18/1 (30 November 2011), A/HRC/RES/19/38 (19 March 2012), A/HRC/RES/S-19/1 (4 June 2012), A/HRC/RES/20/22 (3 July 2012) and A/HRC/RES/21/26 (28 September 2012) all include one or several paragraphs concerning the issue of accountability for gross human rights violations and crimes against humanity.

⁸⁸ Statement by H.E Ambassador Mootaz Ahmadein Khalil Permanent Representative of the Arab Republic of Egypt on behalf of the Arab Group Before The Security Council, Open Debate on “The Situation in the Middle East, Including the Question of Palestine”, New York, 15 October 2012; Resolution 7523 of the League of Arab States, Cairo, 5 September 2012.

⁸⁹ The Fourth Ministerial Meeting of The Group of Friends of the Syrian People – Chairman’s conclusions, Marrakech, 12 December 2012.

⁹⁰ Remarks to the Human Rights Council, Opening of the 21st Session of the Human Rights Council, Geneva, 10 September 2012.

guarantees of non-recurrence.⁹¹ These rights of victims are mirrored by corresponding obligations of States.

The *right to justice* implies the right of a victim to assert his or her right in a judicial process as well as accountability of the authors of serious crimes. Possible measures are described in this non-paper. The *right to reparation* includes restitution, rehabilitation and measures of satisfaction, such as medical care, return of property, memorials or public apologies. The *right to truth demands a clarification of the facts and the corresponding responsibilities*. Measures include truth commissions, investigation panels, documentation of violations or the securing of archives. *Guarantees of non-recurrence*, finally, focuses on the need to protect victims and the society at large from further violations by adopting measures such as disarmament, demobilization, reintegration of former combatants, institutional reforms or lustration and vetting.

Accordingly, it is crucial that any initiative to fight impunity in Syria *is not limited to judicial measures but is carried out with a view to ensure all the basic rights of victims* described above. International measures must be tailored to the potentially changing situation with the view to contributing to a sustainable culture of accountability and rule of law. They should strengthen national initiatives, ownership and institutions in order to re-establish civic trust and to create the basis for peace, justice, security and development at the national level.

⁹¹ See in particular General Assembly Resolution A/RES/66/147 on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; Human Rights Council Resolution A/HRC/RES/18/7 on the creation of a Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; E/CN.4/2005/102/Add.1 (2005) and United Nations Commission on Human Rights Resolution 2005/66 “taking note with appreciation of this document”.

Annexe XV

[Anglais seulement]

Glossary of weapons used

Glossary of weapons used in Syria

Aerial projectiles

Syrian Air Forces (SAF) fighter jets and helicopters were used extensively in bombing the anti-Government armed groups and the areas under their influence. Different categories of aerial projectiles were fired or dropped including the RBK250-275 cluster bomb, OFAB 250-270 fragmentation high explosive bomb, FAB-500 high explosive bombs, S5 explosive rockets and DIY “Barrel Bombs” which consist of storage tanks or sheet-metal cylinders packed with varied quantities of explosives and metal scrap.

Anti-aircraft MANPADs

Man-portable air-defence systems (MANPADs) are shoulder-launched surface-to-air missiles. They are typically guided weapons mainly used against low-flying aircraft, especially helicopters. Reports indicated that certain armed groups used MANPADs including Strela-2 (SA-7) and Igla-1 (SA-16) in shooting down SAF aircrafts.

Anti-tank weapons

Different categories of anti-tank weapons have been used in the Syrian conflict by both sides including man-portable weapons (RPG7), guns (B10), missiles (AT-3 Sagger), AT mines and IEDs.

Artillery and mortars

The army has deployed its artillery and mortars across Syria and participated in the extensive and continuous shelling of cities, villages and rural areas. Statements indicated that the guns most often used by those units are the BM-21 Grad, 2S1 Gvozdika, Type 63 multiple rocket launcher and mortars of different calibres (120mm and 240mm). Statements also indicated that some armed groups possess mortars.

Assault rifles

The most common weapons used by Government forces and the armed opposition were assault rifles, including the AK-47, FN-FAL and the NORINCO.

Cluster munition

A cluster munition is a form of air-dropped or ground-launched explosive weapon that releases or ejects smaller anti-tank and/or anti-personnel sub-munitions. Cluster munitions pose an immediate threat by randomly scattering thousands of sub-munitions or “bomblets”. The danger posed by these sub-munitions may extend well after the conflict, as hundreds may fail to explode upon impact. The commission documented the Government forces’ increasing use of this type of ammunition by aerial bombs and more recently by artillery rockets.

Machine guns

Vehicle-mounted heavy machine guns have been omnipresent in the Syrian conflict. The most commonly documented are the DShK 12.7x108mm, the KPV 14.5mm, the ZU-23-2 23mm and the ZU-23-4 Shilka 23mm Anti-aircraft gun mounted on APC.

Annexe XVI

[Anglais seulement]

Map of the Syrian Arab Republic

