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"I lost my dignity": Sexual and gender-based violence in the Syrian Arab Republic

Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic

Summary

Sexual and gender-based violence against women, girls, men, and boys has been a persistent issue in Syria since the uprising in 2011. Parties to the conflict resort to sexual violence as a tool to instil fear, humiliate and punish or, in the case of terrorist groups, as part of their enforced social order. While the immense suffering induced by these practices impacts Syrians from all backgrounds, women and girls have been disproportionally affected, victimised on multiple grounds, irrespective of perpetrator or geographical area.

Government forces and associated militias have perpetrated rape and sexual abuse of women and girls and occasionally men during ground operations, house raids to arrest protestors and perceived opposition supporters, and at checkpoints. In detention, women and girls were subjected to invasive and humiliating searches and raped, sometimes gang-raped, while male detainees were most commonly raped with objects and sometimes subjected to genital mutilation. Rape of women and girls was documented in 20 Government political and military intelligence branches, and rape of men and boys was documented in 15 branches. Sexual violence against females and males is used to force confessions, to extract information, as punishment, as well as to terrorise opposition communities. Rapes and other acts of sexual violence carried out by Government forces and associated militias during ground operations, house raids, at checkpoints, and during detention formed part of a widespread and systematic attack directed against a civilian population, and amount to crimes against humanity. After February 2012, these acts also constitute the war crimes of rape and other forms of sexual violence, including torture and outrages upon personal dignity.

Though considerably less common than rape by Government forces and associated militias, incidents of female rape by members of armed groups were also documented. Rapes and other forms of sexual violence carried out by armed group members after February 2012 constitute the war crimes of rape and other forms of sexual violence, including torture and outrages upon personal dignity. These acts also contravene fundamental international human rights norms including the right to life, liberty and security of person, the right to freedom from torture and other forms of cruel, inhuman, or degrading treatment, and the right to the highest attainable standard of physical and mental

health.

Throughout areas under its control, Hay'at Tahrir al-Sham (led by former Jabhat al-Nusra command) caused severe psychological and physical harm to women, girls, and men, by imposing religious dress codes and, in the case of women and girls, denying their freedom of movement without a male relative. Edicts formally delivered to populations residing under HTS control disproportionately impacted women and girls and evinced discriminatory treatment on the basis of sex, in breach of international human rights norms. The use of unauthorised courts by HTS and various armed groups to execute women and sexual minorities constitute the war crime of murder, and seriously contravene international human rights norms, including the right to life, liberty and security of person, the right to freedom from torture and other forms of cruel, inhuman, or degrading treatment, and the right to the highest attainable standard of physical and mental health.

During the height of its power, the Islamic State in Iraq and the Levant (ISIL) discriminated against women, girls, and sexual minorities as a matter of policy. Stoning of women and girls on charges of adultery and executions of homosexuals were recurrent in areas under ISIL control, as were forced marriages of Sunni women and girls to ISIL fighters. ISIL's rule placed women and girls under the control of male relatives, effectively restricting their freedom of movement and removing them from public life. Those found to violate ISIL's strict dress code, most commonly women but also girls as young as 10, were punished with lashings. These acts constituted the war crime of torture, cruel or inhuman treatment, and outrages upon personal dignity against women. Executions further constituted the war crime of murder and also amount to serious breaches of international human rights norms, including denial of the right to life and the right to be free from discrimination. Further, the well-documented crimes of ISIL and their terrorising of the civilian population in ar-Raqqah and Dayr az-Zawr governorates formed part of a widespread or systematic attack directed against a civilian population. By targeting sexual minorities and depriving them of their fundamental rights, ISIL's treatment of sexual minorities constituted the crime against humanity of persecution.

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I. Introduction

1. Since its inception, sexual and gender-based violence has been a devastating feature of the Syrian conflict.[1] As the numbers of warring parties multiplied, so too did forms of sexual and gender-based violence, now documented in virtually every governorate countrywide, including rape, sexual assault, sexual torture, and sexual humiliation. While Syrians from all backgrounds suffer immeasurably as a result of sexual and gender-based violence, women and girls have been disproportionally affected, victimised on multiple grounds, irrespective of perpetrator or geographical area. Sexual and gender-based violence not only has a profound impact on survivors but it can also breakup families and hinder efforts to achieve durable peace. Near-total absence of accountability for such violations perpetuates the cycle of violence, manifesting in shame and entrenching grievances within affected communities. If any political and reconciliation efforts are to succeed, survivors must obtain justice and reparation, and be provided with adequate psychosocial support and rehabilitation.

2. The present report focuses on the perpetration of sexual and gender-based violence beginning with the unrest in March 2011 to December 2017. While it addresses incidents and patterns prior to the outset of armed conflict in February 2012, it primarily focuses on the conduct of parties to the subsequent situations of non-international armed conflict.

3. As the complexity of the Syrian conflict increased, so did the manner, form, and range of perpetrators committing sexual and gender-based violence. Initial incidents of sexual and gender-based violence were carried out by Government forces during ground operations, at checkpoints, and during detention of victims. The emergence of extremist groups, including the terrorist groups ISIL and Jabhat Fatah al-Sham, has resulted in women, girls, and minorities being subjected to a wider range of violations including executions, restriction of freedom of movement, restrictions of dress, and subsequent corporal punishment for breach of the codes imposed.

4. This report is based on 454 interviews with survivors, relatives of survivors, eyewitnesses, defectors, healthcare practitioners and medical personnel, lawyers, and members of affected communities. Almost without exception, interviews were conducted in person due to the sensitive nature of the subject matter. Such contact allowed for trust to be established and for a robust assessment of credibility to be conducted in the context of sexual and gender-based violence. Only the cases that met the standard of proof of reasonable grounds to believe that incidents and patterns occurred as described form the basis of this report. In some of the most serious cases, supporting documentary evidence of physical injuries and medical treatment was also obtained.

5. Sexual and gender-based violence during conflict, as in times of peace, is consistently underreported. Challenges to documenting sexual and gender-based violations include the social and cultural stigma attached to such incidents. This greatly reduces the willingness of survivors to disclose sexual violence they endured. It frequently takes months or years for survivors to be able to discuss their experiences, if ever, given that they are often blamed for the events and for bringing shame to their families. Additional

[1] "Conflict-related sexual violence refers to incidents or patterns (for the purposes of listing in accordance with Security Council resolution 1960 (2010)) of sexual violence, that is rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity against women, men or children. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g. political strife). They also have a direct or indirect nexus with the conflict or political strife itself, that is, a temporal, geographical and/or causal link. In addition to the international character of the suspected crimes (which can, depending on the circumstances, constitute war crimes, crimes against humanity, acts of genocide or other gross violations of human rights), the link with conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/State collapse, cross-border dimensions and/or the fact that they violate the terms of a ceasefire agreement." (see 66/657–S/2012/33, para. 3). "Gender-based violence is considered to be any harmful act directed against individuals or groups of individuals on the basis of their gender. Gender-based violence may include sexual violence, domestic violence, trafficking, forced/early marriage and harmful traditional practices." (see A/HRC/27/21, para. 3 (internal citation omitted)).

challenges to documenting such violations include the reduction in flow of refugees able to leave the Syrian Arab Republic, thereby reducing the access to potential survivors of sexual and gender-based violence.

6. Consequences for female survivors of sexual violence range from the very real threats of divorce and excommunication from one's family, to honour killings, particularly in more conservative areas. For unmarried women and girls, the prospects of a future marriage can be ruined. Many survivors – female and male – also remain in denial, unable to safely access treatment and mental health services even if they are available. In extreme cases, female survivors describe suicidal feelings with some eventually taking their own lives. Male victims also suffer long-term physical and mental health issues including depression, many times compounded by an inability to admit to others what they experienced, in large part out of fear that perceived loss of masculinity would prevent them from fulfilling traditional gender roles.

II. Government and associated militias

My home was invaded in December . . . One security officer told me to go to my room and he followed me in. He began insulting me and telling me he would "do me" and that I would "never be clean again." I screamed, but no one came.

Female rape survivor, Dara'a, 2012

The officer took two girls, held their faces down on the desk, and raped them in turn. The girls tried to resist but there was nothing they could do. The officer then told me "you see what I am doing to them, I will do this to your wife and daughter."

Male detainee, Damascus Political Security Branch, 2014

7. Reported incidents of sexual and gender-based violence by Government forces, primarily during detention and, on occasion, house raids pre-date the mandate of the Commission. Since March 2011, the increased intensity of military operations resulted in greater interactions between Government forces and the population including those suspected of being members of the opposition and, consequently, more opportunity for sexual and gender-based violations to occur.

8. During the earlier stages of the conflict, ground operations and house raids gave a greater range of scenarios for violations to occur. As armed groups proliferated and acquired heavy weaponry, Government forces began to prioritise the use of airstrikes, thus decreasing the interaction between Government troops and the wider population. As the conflict progressed, most sexual and gender-based violations by Government forces therefore occurred at checkpoints or in detention. When the number of former detainees crossing into neighbouring countries decreased, so did the opportunity to establish a comprehensive picture of sexual and gender-based violations occurring in Government detention in 2016 and 2017. In addition, persons in areas re-taken by Government forces, often utilising Shi'a militias, remain reluctant to discuss events occurring in these areas due to fear of reprisals.

A. Rape and sexual violence during ground operations

9. Almost immediately after anti-Government protests erupted in March 2011, Syrian authorities initiated a campaign of mass arrests to quell demonstrations. Large numbers of arrests continued until 2014 (see A/HRC/31/CRP.1, para. 18) with some detainees being held for years. As part of the campaign, the Syrian army and security forces conducted house-to-house searches for persons they considered as wanted, which were mostly carried out at night and at dawn. Initially, searches were conducted to arrest protestors and, from mid-2011 onwards, broadened to include suspected members of the newly-formed Free Syrian Army (FSA).

10. As clashes escalated into armed conflict, raids were also undertaken as part of military ground operations aimed at retaining or re-establishing Government control over those areas. House raids were characterised by arrests of men and sexual violence against women and girls, as well as killings of men, women, and occasionally children. These acts were often followed by looting and destruction of personal property.

11. Survivors of sexual violence and defectors of the Syrian army link rapes of women and girls during house raids to the arrest of men, with the rapes considered as punishment for rebellion and a way to deter opposition. An interviewee described how during a ground operation in al-Harak (Dara'a), graffiti on the walls read "Your men in our prisons, your women on our laps", which she interpreted as retribution acts to male and female opponents of the Government respectively.

12. Government forces primarily carried out home raids from April 2011 up to 2015. Most home raids were, however, conducted prior to August 2012 when the Syrian Air Force began using air power to repel opposition advancements in urban centres. Reliance on air strikes and internal population movements along support lines reduced the need for ground operations and, as corollary, opportunities to arrest. Together, these developments led to substantial reduction in house raids. After the Russian Federation intervened militarily in late 2015, ground operations further decreased.

13. In 2011, home raids were mostly conducted by the Syrian army. The following year, Government forces began to rely more heavily on Popular Committees (pro-Government militias, also known as *shabiha*), who were mainly comprised of Shi'a or Alawite individuals, and, as such, perceived by many in the Sunni population to be less sympathetic to them. In many incidents documented throughout 2011 and 2012, ground forces were composed of a mixture of Syrian army and pro-Government militias. Popular Committees from Shi'a villages near Homs city took part in operations in support of Government forces in which rapes were committed. Syrian militias were themselves reinforced by foreign Shi'a militias in early 2012, often making it difficult for victims to accurately identify their attackers. In other cases, including in Homs, branches such as the Air Force Intelligence acted alone or in conjunction with pro-Government militias during ground operations.

14. While the main objective of house raids was to arrest men believed to be opposition supporters, raids provided the opportunity to quell the opposition in other ways. These included instilling fear through sexual violence, killings, and looting. Inside their homes, women and girls not only witnessed the arrests and killings of male relatives but were also the primary victims of sexual violence aimed at causing maximum terror and humiliation to the population. Sexual violence mostly took the form of rapes, often gang-rapes by up to six perpetrators, that the families of victims, including their husbands and children, were forced to watch. Girls as young as nine were raped and arrested. Frequently, several women and girls were raped in one household. Occasionally, women and girls were further humiliated by being raped in public outside their homes or forced to walk naked in the streets.

15. Information gathered by the Commission shows that acts of sexual violence committed during house raids were not isolated incidents, but rather part of a pattern observed countrywide. The Commission gathered first-hand accounts of sexual violence during house raids between 2011 and 2014 in the governorates of Dara'a (Tafa's, al-Harak, Busra al-Sham, Dara'a city, Ibta, Inkhil, and Tasil); Homs (al-Quseir, Kafr Aya, Bab Amr, Karm al-Zeitoun, Homs city, Tayeba, and al-Houla); Damascus (Damascus city, Saqba, and Yarmouk), Hama (Hama city and Tamanaa); Latakia (al-Haffe); and Rif Damascus (Zabadani). Credible second-hand information from health practitioners and relatives of survivors was received on sexual abuses committed between 2011 and 2015 in the governorates of Idlib (Jisr al-Soghour, Taftazanaz, and Idlib city); Homs (Bab Sba); Dayr az-Zawr; and Damascus (Qazaz and Darayya).

16. One woman recalled how on a morning in June 2011, at 5:00 a.m., soldiers in uniform alongside pro-Government militias broke into her family's home in Hama city, struck her with the butt of a rifle, and raped her in front of her brother. Later that month, in Tafas (Dara'a), four soldiers raped a woman in front of her husband and their three children. In the vast majority of raids and ground operations, victims of rape were women

and girls but in two instances, the Commission also documented the rape of men. An interviewee described how, following the move of Government forces into the Bab Amr neighbourhood of Homs city in February 2012, pro-Government militiamen stormed his house, killed five of his male relatives, and forced him to watch the gang-rape of his wife and two daughters, both minors. Afterwards, the interviewee was raped in front of his family. In early 2013, another male interviewee reported being violently raped by Government forces when he tried to leave Yarmouk camp.

17. Sexual violence and killings regularly took place in parallel. Women and girls who were raped often witnessed the killing of male relatives, and in several instances eyewitnesses recalled women and girls being killed after being raped. Women and girls who tried to resist sexual assault and those who tried to prevent it were severely beaten or killed. One woman recalled how, in March 2012, she was dragged out of her home in al-Haffe (Latakia) by pro-Government militia members and raped in the street. Her brother-in-law was killed when he tried to intervene. In another instance, a survivor of the al-Houla (Homs) massacre in May 2012 (see A/HRC/20/CRP.1.) described how Government forces entered her home and raped her daughter in front of her and her husband before shooting the daughter and the father. The mother was then raped by two soldiers.[2]

18. In many instances, women and girls were arrested during house raids and taken to Government detention facilities as a way to pressure their male relatives into surrendering. Residents of Homs city stated that Government forces raided houses looking for men and, when they could not locate them, arrested their mothers, wives, and/or daughters. This was confirmed by army defectors, including a soldier who participated in a ground operation in Heit (as-Suweida) in January 2012. He was present when army soldiers broke into a house looking for an opposition supporter and when they found he had fled, raped his wife and three daughters, burned the house, and detained the four women. Such tactics were allowed to go unchecked by officers who, on occasion, were themselves the perpetrators of rapes. Defectors who participated in ground operations in Aleppo, Dara'a, and Homs confirmed that women and girls were often arrested when their male relatives were not found. In detention, many of these women and girls were subjected to sexual violence, including rape (see paras. 27-41).

19. While most of the sexual violence perpetrated against women and girls during ground operations and home raids was committed through rapes, sometimes women were subjected to other forms of sexual and gender-based violence that amounted to torture or inhuman and degrading treatment. In March 2012, women were forced at gunpoint to walk naked in front of tanks in the streets of the Karm al-Zeytoun (Homs). A 16 year-old girl from Karm al-Zeytoun recalled how she watched the rape of two women and afterwards was forced to walk in front of the tanks for several hours. Another interviewee reported seeing around 50 clothed women and girls walking in front of tanks in Kafr Aya (Homs) in January 2013.

20. In February 2015, Government forces, backed by the National Defence Forces militia and foreign Shi'a militias, launched a major ground offensive in Bashkoy, Rityan, and Herdetnin (Aleppo). Amidst reports of the capture and rape of women from these locations, one opposition fighter recalled receiving a phone call during which he was made to listen to the rape of his wife.

21. Allegations of rape being used in more recent ground operations including during the recapture of eastern Aleppo city in December 2016 have not been confirmed. The Commission is extremely concerned, however, that the widespread use of less organised Shi'a militias, both Syrian and foreign, is a contributing risk factor which increases the likelihood of such events occurring.

[2] Evidence of the use of rape as a tactic in the al-Houla massacre in May 2012 did not emerge until after the publication of the Commission's report of its special inquiry into the events of al-Houla (A/HRC/20/CRP.1). Such delayed reporting is not unusual, as it takes time for survivors of sexual violence to be located, or for them to speak about their experiences if indeed they are ever able to.

B. Rape and sexual violence at checkpoints

22. By April 2011, Government forces had entered key cities across the Syrian Arab Republic, including Dara'a where the civil unrest began, and established checkpoints and roadblocks to prevent people from moving freely and participating in protests, with forces manning the checkpoints receiving orders to search for weapons and shoot at demonstrators (see A/HRC/S-17/2/Add.1, para. 47). As the situation deteriorated, checkpoints became an increasingly common way for soldiers and security agents to carry out arrests on the basis of lists of wanted persons prepared by the local security branch (see A/HRC/19/69, para. 59). The Commission documented incidents of sexual violence at checkpoints between 2011 and 2016, with most incidents taking place in 2012 and 2013 when greater movements of populations in areas with Government or pro-Government checkpoints were occurring.

23. Victims of sexual violence at checkpoints were mostly women and girls, although several incidents against homosexual men were also reported in 2011. In 2011, it was still relatively common for women to not be searched at checkpoints. As the conflict intensified however, Government forces changed this approach, and reports of rape and sexual abuse of women at checkpoints began to emerge. In a few cases, women and girls detained at checkpoints were raped in front of male relatives. As a rule, however, abuses took place after women and girls were taken to a nearby building, military vehicle, or other form of shelter out of public view. For example, a young woman who had been stopped at a checkpoint in a suburb of Damascus in October 2012 was taken to a military vehicle, subjected to mock executions, and raped by a Syrian army officer. Afterwards, the officer burned her hair and she was subsequently taken to a detention centre.

24. Women and girls subjected to sexual violence at checkpoints were invariably from opposition-held areas. Several incidents documented took place as residents from these areas were crossing the border to neighbouring countries following ground operations by pro-Government forces. This was the case of a male interviewee who left Bab Amr (Homs) with a group of residents after a ground operation in February 2012. As the group was leaving, pro-Government militias detained eight women and girls aged between 15 and 30 years at a checkpoint. The interviewee recalled that the women and girls were later released and confirmed they had been raped. The Commission also interviewed numerous women and girls who were arrested at checkpoints but subjected to sexual abuse later while in detention.

25. Throughout 2012 and 2013, women and girls were frequently sexually abused and harassed at checkpoints in Homs and Hama. A female interviewee described being pulled off a bus in April 2012 at a checkpoint in Bab Sbaa (Homs). She and two other women were severely beaten before being taken to a house where eight other women from al-Houla (Homs) were naked and injured. In another instance in Hama in 2013, a father was forced by soldiers to leave his daughter with them at a checkpoint, telling him they "would look after her."

26. In addition to rape, interviewees also reported experiencing other forms of sexual violence at checkpoints. Elderly women, including relatives of FSA members, were subjected to intimate searches. An interviewee whose sons had joined the FSA stated that she was stopped at a checkpoint by pro-Government militia members as she was attempting to enter Darayya (Damascus), under siege at the time. She was then taken to a basement where a male militia member beat and searched her. The interviewee recalled crying throughout the search as the man touched her breasts and genitalia. In another case, in October 2013, a mother and daughter were stopped at an Air Force Intelligence checkpoint in Dara'a as they attempted to leave the country. The mother was verbally insulted and officers threatened to subject the daughter to a virginity test. The women managed to leave the checkpoint without further abuse but could not cross the border. In another incident in September 2016, a woman was violently raped at a Government checkpoint whilst travelling from Damascus towards Beirut. She also suffered injuries from having an object inserted in her genitals.

C. Rape, sexual, and gender-based violence against women and girls in detention

27. While most of those detained by Syrian forces between 2011 to December 2017 were males above the age of 15 (see A/HRC/31/CRP.1, para 17), thousands of women and girls were also apprehended, including female lawyers, journalists, and activists expressing anti-Government sentiments. Large numbers of female relatives of men perceived to be opposition supporters, or suspected of belonging to armed groups, were also arbitrarily detained. Female relatives of defectors, protestors, and providers of medical care and food to members of the opposition were equally targeted for arrest. The latter included daughters of arrested females.

28. In both the public and private spheres, women and girls were arrested by Syrian security and armed forces or by militia acting on behalf of the Government, leaving them little or no opportunity to escape, even if only on the basis that their male relatives were wanted. These included arrests at demonstrations, at homes during ground operations and house raids, at checkpoints, and at government offices while attending to administrative matters such as renewing passports or, in the case of civil servants, while collecting their salaries. Others were abducted in the street and subsequently transferred to detention facilities, including unofficial detention centres located in abandoned houses, factories, warehouses, and sports centres.

29. From the moment of arrest and throughout detention, many women and girls were subjected to different types of sexual violence, including rape, sexual torture, sexual abuse, and humiliation, with most interviewees reporting a combination of these. While in most cases, the victims were adult women aged between 18 and 45, the Commission also documented the rape of several girls, the youngest a nine-year-old, and sexual abuse and humiliation of elderly women. On occasion, pregnant women were also raped, including a woman who was seven months pregnant, and another in the early stages of pregnancy who subsequently miscarried.

30. While en route to the detention facilities, women and girls were abused by army officers and pro-Government militia members who touched their breasts and thighs and insulted them. Upon arrival to the detention facilities, similar abuses continued. One interviewee recalled that, when she and other women arrived at the Damascus Political Security Branch in November 2011, they were told: “welcome, bitches.” All victims identified were Sunni, and derogatory references to their faith were frequently made by the perpetrators in an apparent attempt to dehumanise them and disassociate themselves from their victims.

31. On admission to detention facilities, male guards routinely subjected women and girls to intimate searches, the most invasive of which amount to rape (see para. 105). Such searches are, on the face of it, conducted to ensure that female detainees are not concealing any objects but the manner in which they were conducted in Government-controlled detention facilities was clearly sexualised and humiliating. Women and girls reported being subjected to these searches at the Military Security branches in Latakia, Homs, and Hama, Branch 215 (Raids Company) in Damascus, the Investigations Branch 285 in Kafr Soussa (Damascus), the Air Force Intelligence (Investigations) Branch in Mezzeh military airport, as well as in unofficial detention facilities.

32. The most notorious detention facility for such searches was Military Security Branch 215 where female detainees consistently described identical treatment by male officials. On arrival, women were stripped naked, often two or more at a time, in front of the male officer in charge of admissions. Detainees were then made to squat in front of detention officials and other women and a male officer inserted his fingers into their vaginas on the pretext of conducting a search. One woman assigned to Branch 215 in December 2012 described how she was humiliated during the search for reason of the shape of her genitalia and afterwards made to feel dirty by the male officer as he went to wash off the “dirty Sunni woman.” The worst treatment is reserved for newly admitted women rather than those transferred in from elsewhere. This pattern continued at least until 2015.

33. After admission, women and girls were repeatedly interrogated about their own or their relatives’ involvement with the opposition. Interviewees stated that, during their first

interrogation, they were asked about their sex life and whether they were virgins. During interrogation, women and girls were threatened with rape, and tortured with severe beatings and kicking all over the body, including genitalia, to force them to provide information. Some detainees were naked while being tortured, which added to their humiliation. Others were beaten with pipes while hanging from the ceiling and electrocuted on their breasts and vaginas. These torture methods resulted in serious injuries and, in some cases, death. Several interviewees said they were so violently tortured they lost consciousness and, upon recovering, felt their genitals injured and had semen between their legs.

34. During interrogations, many women and girls are subjected to rape and other forms of sexual violence to force confessions of their alleged support to the opposition or to extract information as to the whereabouts of their male relatives. Rape of women and girls has been documented in 20 political and military intelligence branches between 2011 and 2016, namely in Aleppo (Air Force Intelligence branch), Damascus (Air Force Intelligence branches in Bab Touma and Mezzeh airport, branches 211, 215, 235, 248, 251, 282, 285, and 291), Dara'a (Military Security and Air Force Intelligence branches), Dayr az-Zawr (Military Security Intelligence branch), Hama (Military Security Intelligence and State Security Centre), Homs (Air Force and Military Security Intelligence branches), Latakia (Political Security branch), and Quneitra (Saa Saa branch). Rape of women and girls has also been documented in several other facilities including Azaz (Aleppo) Criminal Security branch, and the prison and hospital 601 at Mezzeh airport.

35. Often the perpetrator of rape has been a low-ranking officer. Numerous cases of rapes by high level officers have also been documented, as detailed below. In many instances, the victims are raped by one male officer or by different individuals on separate occasions. In such cases, women and girls were sometimes held by one or more officers while a third raped them, or their hands were tied or handcuffed, all of which added to their sense of powerlessness.

36. Female detainees received minimal amounts of food and were held in cells which lacked basic sanitary conditions. Detainees reported wetting themselves and bleeding as a result of torture, but being unable to shower or change clothes, even after being raped. One detainee recalled believing that, at one point, the fact as she was covered in blood, urine, and lice prevented officers from raping her. Medication preventing women from menstruating or suspected to be birth control was also reportedly distributed in some detention facilities.

37. Some women and girls were gang-raped by two to six different men. Victims of gang-rapes frequently lost consciousness during the rapes due to the violence of the acts inflicted. Many sustained heavy haemorrhages and two women suffered from urinary and faecal incontinence as a result of being gang-raped. In another instance, one defector who witnessed the gang-rape of the sister of a demonstrator in Azaz (Aleppo) Criminal Security Branch in July 2011 said that "her body was finished" after the rape. The rape was ordered by the interrogator, a Major, after the woman refused to say where her brother was. A few days later, the same Major participated in the gang-rape of another female detainee.

38. Rape as a means of punishment has also been used at the end of the interrogation process on the orders of officers. In one particularly brutal incident in Branch 62, 4th Division (Damascus), in 2012, a female prisoner did not co-operate throughout her interrogation. A pro-Government militia member asked the officer for permission to make her talk and, on receiving it, rammed a metal rod into her anus in the presence of her infant son. She passed out from the pain and sustained severe internal injuries but was not interrogated further after that day.

39. At times, women were further humiliated by being raped in front of other detainees, both female and male. In 2012, two women detained at the Hama State Security Branch were raped next to one another by two officers, one of whom was a Lieutenant Colonel, on ten consecutive days. On one occasion, the same two officers raped the women in front of two naked male detainees, whose hands and feet were tied in the *shabah* position.[3] One of

[3] In the *shabah* position, detainees are forced to sit with their hands and/or their feet tied in a low chair which is typically tilted forward.

the women remembered feeling so ashamed she did not dare make eye contact with the male detainees throughout the events. Some women were also forced to dance or serve drinks to officers while naked. Others were threatened that photos of them unveiled or otherwise not deemed to conform to Islamic dress codes would be made public. In 2014, male guards in the Political Security Branch in Damascus forced a cell of male detainees to look at a naked female detainee brought into the cell and, after attempts to persuade the male detainees to assault the girl failed, the guards proceeded to rape the girl orally and vaginally whilst the male detainees were present.

40. Incidents such as the ones cited above demonstrate that officers of the Syrian forces were not only aware of sexual violence perpetrated against women and girls but that they ordered it or were themselves the perpetrators. In cases when there was no direct involvement of an officer, the widespread nature of sexual violence throughout detention facilities under Government control suggests that it was a practice sanctioned by higher levels. This is confirmed by defectors from different branches. One defector from the Homs Air Force Intelligence branch described it as common practice for senior officers to order or otherwise permit lower ranks to sexually assault women and girls. He illustrated this with an example he witnessed in 2012 when a Brigadier General told a lower ranking officer who expressed interest in a woman: "Take her. Do anything you want with her."

41. The Commission continues to document accounts of female detainees tortured and threatened with sexual violence. In late 2015, one woman detained at the Security branch in Aleppo city became incontinent as a result of the torture she suffered in detention. A pregnant woman was beaten during interrogation in the same facility but stated she would rather the child died than to have to suffer as she did. In late 2016, in the Air Force Intelligence Branch in Damascus, pregnant women miscarried as a result of torture and beatings inflicted on them. Another woman, detained at the Military Security Branch in Homs in late 2016 and released in March 2017, was threatened with rape, choked until she began losing consciousness, and beaten so severely that two of her vertebrae were fractured. Male detainees have also continued to report women being sexually assaulted at locations such as Military Security in Hama in late 2015 and early 2016.

42. While the Commission has documented accounts in 2017 of female guards being appointed to female detention areas in Palestine Branch (235) in Damascus, resulting in increased protection from sexual violence, women, at times detained with young children, continue to be subject to cruel, inhuman, or degrading treatment. In one cell in Palestine Branch in June 2017, three mothers were held along with their young children in a cell with other detainees. One mother had given birth 10 days prior to being detained along with her baby. One of the female detainees in the same cell was made to stand in the toilet on one leg for two hours by a female guard, having recently had surgery. Cold water was then poured over her before she was allowed to return to the cell.

D. Rape and sexual violence against men and boys in detention

43. Male detainees, including boys as young as 11 years, were subjected to a range of forms of sexual violence including rape, sexual torture, and humiliation. Generally, rape of males took place during admission to a facility – in these cases, the perpetrators were often pro-Government militias supporting the detention facility – during interrogation to force confessions, and occasionally even after detainees confessed to further humiliate or punish them. Upon arrival at detention facilities, men and boys were forced to strip, and often stand naked in front of others. In some instances, they described being submitted to unnecessarily intimate searches during which guards touch their genitals.

44. The most common form of male rape occurred with objects, including batons, wooden sticks, pipes, and bottles, a tactic which has been used during interrogations since early in the conflict. Many such incidents were documented at the Air Force Intelligence facility in Mezzeh airport, though incidents were also documented in other intelligence detention centres including political and military intelligence branches in Aleppo, Damascus (branches 215, 251, 282, 291, and Air Force Intelligence in Harasta), Hama, Homs, and Tartous, and unofficial detention centres in Latakia and Hasakah. In most cases,

rapes with objects took place together with threats of raping female relatives of the detainees, and with electrocution of their genitals.

45. In other instances, interrogators have themselves perpetrated penile rape against male detainees, both anally and orally, the latter sometimes under the threat of execution if the detainee refused to comply. Rape of men and boys by interrogators, guards and officers were documented in Aleppo (Military Intelligence branch), Damascus (branches 215, 227, 285, Air Force Intelligence, and Sednaya prison), Hama (Air Force Intelligence branch), Idlib (Political Security branch), and Tartous (Political Security branch). In a particularly brutal incident in branch 215 in August 2012, an 18 year-old man from Dara'a was severely beaten, threatened with the rape of his sisters, and then gang-raped by five officers. After the rape, the detainee was bleeding and unable to walk. One of the officers raped the detainee five more times over a month before the detainee was transferred to another detention facility.

46. Numerous interviewees further reported that they were raped in front of other detainees, usually male but sometimes also females. In such cases, the rapes took place inside detention cells, interrogation rooms, and corridors of detention facilities. Not only did these rapes constitute a form of torture of the direct victims,[4] sometimes to the point of confession, but also acted as a way of pressuring those forced to watch as they were made to believe the same would happen to them if they did not cooperate. In one instance, in the summer of 2013, a detainee at the Air Force Intelligence in Mezzeh airport was raped in a cell while the other detainees faced the wall following the orders of the perpetrator. Similar incidents were reported in other detention facilities, including Sednaya military prison (Rif Damascus), where male opposition sympathisers from Idlib and Hama were often singled out as targets.

47. Detainees were also forced to have intercourse with other detainees. In one incident in 2014 in Branch 251, a detainee was made to perform oral sex on a second detainee who had previously been sexually assaulted by the officer issuing the orders. The second detainee was then electrocuted on his genitals and became permanently impotent. In more extreme cases, perpetrators exploited blood relations by forcing male relatives to have intercourse with one another, with devastating psychological consequences for the victims. This was the case of an uncle and nephew detained in 2011 at the Halab prison (Aleppo), and of a father and son at the Damascus Political Intelligence branch in 2012. The rape of an adolescent boy in front of his father was used in 2011 at the Latakia Political Security Directorate Branch to force the father to confess.

48. Rape of male detainees in various forms occurred frequently in Sednaya military prison (Rif Damascus). Prison guards raped detainees with rods and pipes, in some cases seemingly for amusement. A detainee described how, in 2013, one guard would enter the cell and make detainees face the wall. Then, the guard would pick two detainees and tell one to "do him in front of me." In another incident during the winter of 2014, a detainee explained how prison guards raped one of the prisoners while the other prisoners looked away. Male rape in Sednaya was reported to be most frequent during the night, between midnight and 5:00 a.m.

49. Electrocution and beating of male genitals was a consistent part of the torture administered to male detainees during the conflict. Some such beatings have resulted in permanent injuries to the genitals of the victims that remain untreated due to a lack of available medical support. Other forms of male sexual torture include forcing a detainee to drink large quantities of water and tying a plastic wrap around his penis causing retention of fluid in the bladder and other complications. This took place on multiple occasions at Military Intelligence branch 235 (Palestine) and at least once at branch 293.

50. One of the most disturbing forms of torture was the genital mutilation of boys and men. In one unofficial detention facility, described as "a slaughterhouse" in the base of a water tower in Sahnaya, adjacent to Darayya, one witness described how the worst treatment was reserved for suspected FSA members. One man had his penis mutilated, where after it became infected and it was not until he reached Adra prison that he was taken

[4] *See* note 25, *infra*.

to hospital. A detainee from the same facility stated he thought this punishment was reserved for some men from Douma and Darayya to humiliate the populations there. Another victim was a young boy who was tortured following the Saida massacre in Dara'a in 2011. He died and, while his body was prepared for burial, it was discovered his penis had been cut off.

III. Armed groups

A local fighter proposed to a 13 year-old girl. When her father refused, the FSA started to harass him. In the end, the girl had no choice but to marry the fighter.

Local resident, al-Qudseya (Rif Damascus), 2013

51. Unlike in Government controlled areas, including areas held by associated militias, the use of checkpoints by armed groups was considerably less prevalent and the number of incidents of sexual and gender-based violence in this context was thus very low. This, coupled with significantly less movement of populations living under Government control into territory held by armed groups, greatly curtailed the exposure of women and girls from Government-held communities to sexual and gender-based violence when passing through border-like checkpoints manned by armed groups.

52. The foregoing contexts partly explain wide variance in the numbers of reported incidents of sexual and gender-based violence by Government forces and associated militias as opposed to those by armed groups. There has also been no evidence of a systematic practice or policy on the part of armed groups to use sexual and gender-based violence to instil fear, extract information, or enforce loyalty. Incidents of sexual and gender-based violations perpetrated by armed groups have therefore occurred in other contexts, most often involving elements of exploitation, sectarianism, or revenge. Such incidents have occurred since the emergence of armed groups in late 2011 in Damascus and Aleppo, primarily against women and girls

53. For example, in 2012, a Kurdish woman in Afrin was kidnapped, held in solitary confinement, and raped by members of the Northern Storm Brigade in Azaz (Aleppo). In 2013, an Iraqi family living in Douma, Eastern Ghouta (Rif Damascus), were travelling to Damascus when they were stopped by an unknown opposition group at a checkpoint near Saqba city. The mother, son, and daughter, both young adults, were accused of being Shi'a and subsequently raped. As a consequence of the rape, the son admitted to having become anally incontinent. Also in 2013, a woman detailed suffering sexual abuse following her detention by FSA fighters in Aleppo.

54. In 2014, a Sunni girl in a village northwest in Rif Damascus befriended soldiers at a checkpoint in order to ease her passage through the checkpoint. The relationship was not sexual. The girl's Facebook page showed a Government of Syria flag. Tensions escalated in relation to the girl's support of the Government. A short time later, the girl attended hospital having a mental breakdown. She had tears to her rectum and was in significant pain from a violent rape by three FSA members of the al-Barraa Brigade, who later boasted about the rape.

55. In other incidents, members of armed groups supported by their commanders exploited their position to pressurise families into allowing the marriage of their daughters, including minors. In one instance in September 2013, a father was shot in the leg trying to prevent the marriage of his two daughters to FSA members who were supported by their commander. In another incident in 2014, a 15 year-old Sunni girl in Rif Damascus became involved with a 23 year-old FSA fighter. A prominent member of the local community attempted to rebuke the FSA member for his actions. The local FSA commander became involved and instead arranged for the FSA fighter to marry the girl with no dowry or obligation of take care of the wife. The girl's family was forced to accept. The husband's position in the FSA meant that he was able to abandon the girl a few days after the marriage. Her family then refused to take her back as she had been dishonoured. Attempts by the local community to find employment for the girl were thwarted by the FSA.

56. During the recapture of eastern Aleppo city in November 2016, in an area then under the control of armed groups and Jabhat Fatah al-Sham, the body of a young woman was found on a rooftop. She had been shot in the neck exiting through her nose. Upon examination, the woman was found to have bruises on her thighs and breast and semen in her vagina. Nobody claimed her body. It is possible she was killed to protect the family's honour. It is not known who was responsible for her death. During the final months of the siege and attendant chaos, the Commission further received a number of allegations of sexual and gender-based violence in eastern Aleppo city during its recapture.

57. Members of armed groups detained women and girls belonging to minority religious groups, to use them as bargaining chips for initiating prisoner swaps with commanders detained by Government forces. For example, various armed groups, including Jaysh al-Islam and Ajnad al-Sham (currently part of the Faylaq ar-Rahman coalition) stormed the town of Adra al-Omaliyah in eastern Damascus in 2013. Numerous Alawite families, in addition to some Ismaili, Shi'a, Druze and Christian families, were taken hostage and moved to Douma, eastern Ghouta (Rif Damascus). In December 2017, three women and one girl – also from Adra al-Omaliyah – were part of a group of detainees held by Jaysh al-Islam and handed over to the Government as part of an agreement to evacuate 29 patients from besieged Eastern Ghouta. Hundreds of religious minorities, primarily women and girls, remain in the captivity of armed groups, waiting to be swapped.

IV. Jabhat Fatah al-Sham

Jabhat Fatah al-Sham militants accused the woman of adultery and stoned her. The woman's family publicly voiced their support for the execution to clear their honour.

Local resident, Idlib countryside, 2016

58. Since their emergence in January 2012, Jabhat al-Nusra[5] has exerted their own interpretation of Islamic tenets on civilians living in areas under its influence, which have had a particularly negative effect on women.[6] Minorities such as Druze and Christians in areas such as Idlib province have, for the most part, left these areas rather than be forced to convert to Islam, follow dress codes, or movement restrictions imposed on females.

59. In January 2015, Jabhat al-Nusra militants stormed 13 villages populated by the Druze minority sect located in Mount Sumāq, northern Idlib. Neither religious nor community leaders belonging to the Druze villages had taken sides in the conflict. Male members of the Druze faith adhere to a specific dress code, often including a *shashiyah*, or

[5] Notwithstanding its change in name from "Jabhat al-Nusra" to "Jabhat Fatah al-Sham" in July 2016, the Commission continues to regard the group as a terrorist entity as designated by Security Council resolution 2170 (2014). After the first round of Astana talks, the terrorist group united with a number of extremist factions under the umbrella coalition of "Hay'at Tahrir al Sham" on 28 January 2017.

[6] Similar to the Islamic State in Iraq and the Levant (ISIL), Jabhat Fatah al-Sham and its umbrella Hay'at Tahrir al-Sham (HTS) strictly interpret tenets of Islamic law (*shari'a*) in a manner which systematically discriminates against women and girls, subjugating their status in both the public and private spheres. Throughout areas under HTS control, such interpretations have led to a stratified societal structure which privileges Muslim males. For example, women and girls are required to obtain approval from their male guardians (*wali*) before contracting a marriage, and the guardians further possess the power to impose marriage on a woman or girl without her expressed consent. A man may further divorce his wife by unilateral repudiation (*talaq*), and is not made to justify his reasons for doing so. By repeating the word "*talaq"* three times, the divorce is considered irrevocable (*bain*). A women or girl, on the other hand, must obtain the consent of her husband prior to a divorce, or must obtain judicial annulment from an HTS *shari'a* court on the basis of specific grounds (*i.e.*, harms) caused to her by her husband. Throughout such courts in Idlib governorate, HTS weighs the testimony of two women as equal to that of one man. Under Islamic legal tradition, this practice was originally meant to apply only to matters relating to financial affairs. When a woman is granted a divorce, she must enter a three-month waiting period prior to remarriage (*iddah*). After a divorce, mothers may lose their right to custody of their children if they remarry. Moreover, obedience is considered to be a duty of the wife, whereby disobedience – an extremely vague notion left to the interpretation of jurists/members of the terrorist group – causes her to lose her right to maintenance.

a white scarf. They are further obligated to grow out their moustaches. As they began to exercise control over the area, members of the terrorist group prevented Druze men from wearing the *shashiyah*, and forced all men to shave their moustaches as part of "proving their conversion to and belief in Islam." Druze men obeyed the demands in order to spare the community from violence. Other villagers recalled Druze families being forced to marry their daughters to Jabhat al-Nusra fighters.

60. Later the same year, residents in the Druze villages of Qalb Lozah (Idlib) recalled how Jabhat al-Nusra militants entered their village in June and began forcing community members to convert to Islam. Shortly afterwards, they began urging Druze women to marry the groups' fighters, and urged Druze men to marry non-Druze women. Mixed marriage is not permissible under the Druze faith. Once converted, Druze women were forced to wear a *niqab*, or face veil, and Druze men were forced to abandon their religious dress code.

61. Sectarian motivated violence further affected women imprisoned by Jabhat al-Nusra, such as those in Harim prison in Idlib governorate who were separated according to whether they are Sunni or Shi'a. Their treatment likewise varied accordingly. Shi'a women have been accused of collaborating with Government forces and were often forced to listen to their male relatives being tortured. In other areas, the harassment of non-Sunni women in areas controlled by the terrorist group continues, though the Commission has not received evidence of their members having raped females in detention.

62. Limited incidents of male rape within Jabhat al-Nusra detention have been documented. On one occasion in 2013 in Zabdean Deir al-Asafir, nine kilometres south of Damascus, a male detainee was tortured and interrogated for over 10 days. After 10 days, he was stripped naked and a man with a Libyan accent made the detainee kneel on all fours and inserted a stick into the detainee's anus. The women detained at the same facility were insulted as "whores."

63. In areas close to Damascus such as Yarmouk Camp, forced marriage by Jabhat al-Nusra was prevalent in 2013 and 2014. Similarly, the terrorist group remains against any activities that they perceive may result in any empowerment of women in the areas under their control. As a sign of this, in 2015, a woman's organisation in Idlib was shut down and burned to the ground by elements of Jabhat al-Nusra. The organiser's car was also destroyed. The organisation ran centres throughout Idlib and organised activities for women's empowerment. The organiser of the centres was also detained for a short period but then released unharmed. In 2017, a number of non-governmental organisations in Idlib began holding meetings which required the remote presence of both male and female staff after, the terrorist group prevented them from conducting meetings with mixed participants.

64. By 2015, when Jabhat al-Nusra assumed control of some towns and villages in the Idlib countryside, residents living in Idlib began describing the pervasive use of and variety of "shari'a courts." Shortly thereafter, reports began emerging from Maarrat Misrin about the group's restrictions of personal freedoms, including a requirement that women cover their hair. Two women were reportedly executed in January 2015 in Maarrat Misrin and Hafsarjah following a local shari'a court's finding that they had committed adultery.

65. Throughout the Syrian conflict, the Commission has regularly received allegations of members of extremist and terrorist groups imposing medieval punishments on men accused of homosexuality. In early 2016, two men, accused of being homosexuals were thrown from the third floor of a building in Khan Sheikhoun (Idlib). Their hands were tied behind their backs and Jabhat al-Nusra militants announced the accusations of homosexuality over loudspeakers. In September 2016, militants of the newly self-styled Jabhat Fatah al-Sham[7] in concert with armed group fighters executed seven men in Rastan city (Homs) via fusillade whom they accused of being homosexual. An unauthorised court, functioning on behalf of all armed groups in the area, had ordered the executions.

66. In late August 2016, Jabhat Fatah al-Sham stoned to death a woman from Heish village in Idlib countryside, after members of the terrorist group accused her of having engaged in extramarital relations. The woman was apprehended in the home of the

[7] *See* note 5, *supra*.

unmarried man with whom she was involved, and immediately taken for execution. Upon being informed of her death, the woman's family did not ask for her body, instead regarding the accusation levied against her as a matter of "dishonour" (see section VII. Impact). The victim's family moreover voiced their public support for Jabhat Fatah al-Sham's judgment, in order to "cleanse their honour for her crime." The unmarried male was further summarily executed via gunshot immediately upon his arrest.[8]

67. Recent reports have emerged of Hay'at Tahrir al-Sham[9] (HTS) circulating decrees throughout Idlib governorate which demand that women and girls over the age of 9 years wear a black or dark brown coloured *jalabiya*, or wide-cut, loose-fitting garment, when venturing outdoors. They may not wear dresses with bright colours, must cover their hair, and cannot apply makeup to their faces. In August 2017, HTS reportedly circulated similar decrees in other schools in Idlib, underscoring that female students who do not abide by the dress code would be banned from attending classes. In December 2017, HTS published a decree prohibiting widows from living on their own. Investigations into these decrees are on-going.

68. In Idlib city, armed female guards affiliated to HTS and stationed at the entrance of the university check if female students comply with the dress code and ban them from entering the premises if this is not the case. Similarly, female guards patrol streets and markets in Idlib flagging instances of noncompliance with the HTS dress code to male members of the group. In August 2017, this resulted in the temporary apprehension of a girl who had rejected the guards' remarks about her dress.

69. In some parts of Idlib, women and girls must be accompanied by a *mahram* or male member of their immediate family. HTS have denied access to restaurants to women who are not so accompanied. Any infringement of the rules can be punished with a lashing. HTS further interferes with the freedom of expression and movement of women and girls including by vetting female passengers at checkpoints, chasing them out of public transport if they are deemed to be wearing "indecent dresses", and threatening drivers with a fine if they allow "inappropriately" dressed females on to their buses. In order to avoid public scrutiny and stigmatization by HTS, many women have consciously stopped visiting public places.

70. HTS continue to detain women to use as bargaining chips to force the surrender or exchange of others. In one such example in July 2017, two women were forcibly dragged from their apartment and down the stairs of their building in Atareb (Aleppo) by masked members of the security group of HTS. Their only crime was to be the mother and wife of a man wanted by HTS for the theft of one of their vehicles. The women remain in prison.

71. The majority of the Sunni population remaining in areas controlled by HTS do not fear this fighting force in equal measure to those who lived under ISIL. Conditions in HTS controlled areas have always been significantly worse for minority groups, though the displacement of minorities from these areas has inevitably reduced incidents of gender-based violence.

V. Islamic State in Iraq and the Levant

They made her kneel on the ground. The first Hisbah policeman picked up a cement block and threw it at the woman's head. They then threw a succession of smaller stones until she collapsed. Her brain matter was visible on the floor.

Female eyewitness, Dayr az-Zawr, 2015

72. Since emerging in April 2013, the Islamic State in Iraq and the Levant (ISIL) imposed stringent rules in areas under its control which placed women and girls under the control of male relatives, effectively removing them from public life. As a result, women and girls were prevented from freely choosing their professional occupation or receiving

[8] *See* Legislative decree no. 37 of 1 July 2009.

[9] *See* note 5, *supra*.

education which did not comply with the group's curriculum. Violations of ISIL's codes were punished by a variety of mechanisms ranging in severity from corporal punishments to executions. ISIL also executed sexual minorities, including homosexual men and boys.

73. As ISIL has been displaced from ar-Raqqah and Dayr az-Zawr in 2017, further details have emerged of the suffering of women and girls under ISIL control. While the liberation of these areas has resulted in a new found freedom for some, this is harder to accept for other more conservative elements of the local societies. As to the fate of the Yazidi women who were still being held in these areas, some have been freed though others are believed to have been forced to flee along with their captors. The fate of thousands of others remains unknown.

A. Executions

74. ISIL routinely executed women and men for unapproved contact with the opposite sex, resulting from charges of adultery. Women were also executed, usually stoned to death, for carrying out professional activities and for assisting fighters of other groups, all of which are in breach of the group's rule that prohibits women from being in contact with men to whom they were not related.

75. Numerous instances of women being stoned to death have been documented over past four years. The first incidents of stoning in ar-Raqqah and Dayr az-Zawr governorates began in 2013 and continued sporadically until at least August 2017. ISIL justified each of these executions through its interpretation of Islamic shari'a. On most occasions, ISIL fighters or al-Hisbah, ISIL's morality brigade, read out a notice stating the woman's crime. No evidence is provided and the simple reporting of an accusation may be sufficient for ISIL to carry out a stoning. Executions of women via stoning are carried out in public, usually in a square, and witnessed by relatives, including children, of the woman and other members of her community. These public displays of brutality, which are often filmed and circulated online, were used to instil fear among women for disobeying ISIL edicts.

76. As the fall of ISIL in Dayr az-Zawr loomed, so too did the pressure on ISIL to hunt out those they suspected of collaborating with outside forces, regardless of the evidence obtained. In September 2017, a woman aged around 22 years was unloaded from an al-Hisbah van in front of a grocery shop in Dayr az-Zawr. She was made to kneel and was then shot in the head, having been accused of contacting Government forces via the internet.

77. ISIL also targeted for execution sexual minorities and those accused of engaging in homosexual conduct. Males, including boys raped by older men, have been executed on charges of sodomy, and videos of the executions widely circulated to terrorise populations under their control. In July 2016, a teenage boy was arrested by al-Hisbah in ar-Raqqah city, and thrown off a building on charges of sodomy. Similar incidents have been documented in Aleppo, Dayr az-Zawr, and Palmyra (Homs) throughout the period that ISIL controlled territory in these governorates.

B. Corporal punishments

78. While ISIL imposed a strict dress code on men and women, females were more often reported to be punished if they failed to comply. Women and girls over the age of 10 could not appear in public unless they were entirely covered in long, thick, black concealing clothes and could travel only if accompanied by a close male relative (*mahram*). As a consequence, widows and women whose husbands were not with them, including those married to fighters at the battlefront, risked punishment every time they left their homes.

79. Infringement of these rules was punishable by fines and lashings, the latter being the most common. Lashings were usually administered by ISIL's Hisbah morality police. Over time, an all-female unit of that brigade, al-Khansa'a, had been increasingly responsible for monitoring adherence to the dress code, including ensuring that women and girls covered

not only their bodies and faces but also their hands and feet. Both al-Hisbah and al-Khansa'a enforced punishments against women. In one of the earliest documented incidents, a school teacher was lashed in ar-Raqqah city in October 2013 for not wearing a headscarf (*hijab*); within months, more brutal incidents arose.

80. At the height of ISIL's power, the presence of al-Hisbah was so widespread that unless women and girls complied with the rules, they were almost certainly punished. In 2015, a 12 year-old girl was relentlessly beaten in the street because she was caught taking makeup to her sister who was getting married that day. Regardless of their personal circumstances, al-Hisbah does not spare infringers. For example, in May 2015, a woman who was seven months pregnant was arrested by al-Hisbah in ar-Raqqah city for talking to a seller while buying gloves. In detention, she was interrogated and violently beaten with a wooden stick.

81. While breaches to the dress code are the most common reason for ISIL to administer lashings to women, other behaviours deemed to constitute a breach of ISIL's rules have also resulted in women being lashed. These included cases of women punished for having male relatives in her home while their husbands were away, and of women punished for smoking.

82. The Commission has been unable to confirm reports that emerged in 2015 of female members of al-Hisbah using an implement known as "biters" to punish women accused of breaching ISIL's rules, including the dress code, in ar-Raqqah and Dayr az-Zawr. Biters were varyingly described as a pincer like device or metal teeth covering placed in the mouth of the woman administering the punishment. On some occasions the devices were said to be used to bruise the breast area. On other occasions, the device was reportedly clamped above the left breast until a major blood vessel was punctured, and the device remained in place until the woman bled to death. In one such incident, a woman was hanging out clothes on her balcony in ar-Raqqah city without being fully covered. Members of al-Hisbah on patrol reportedly sighted the woman and used a pincer to bite her breast and, the woman died from her injuries.

C. Forced marriages

83. Unmarried women and girls over the age of puberty are perceived by ISIL as a threat to its ideology and enforced social order. As a result, ISIL fighters began to forcibly marry Sunni girls and women living in areas under its control, a trend that became particularly visible from 2014 onwards. Some of those forced to marry ISIL members were adults, including widows, but the vast majority of cases documented revealed that girls aged between 12 and 16 years were victims of forced marriage.

84. A range of factors contributed to families agreeing to the marriages. Many feared repercussions if they refused an offer of marriage and their fears were well-founded. The Commission has documented numerous accounts of ISIL fighters turning up armed at residences in order to pressurise families into agreeing to their "proposals." In more extreme cases, girls were taken by force. In one such case, ISIL fighters took a 14 year-old girl from her home in Dayr az-Zawr city by force. When her father objected, he was lashed. Families also agreed to marry their daughters because they perceived ISIL fighters to be "true Muslims." In other instances, however, especially in rural communities where families lived with more modest means, many were persuaded by the money and benefits offered in exchange for the marriage. One less mouth to feed was a reason often cited countrywide for early marriage, and increased poverty brought about by the conflict encouraged this harmful practice.

85. To avoid their daughters from marrying ISIL fighters, some families married their daughters to other suitors, directly resulting in a rise of child marriage. Other families have fled or sent their daughters away. Girls as young as 14 years have been sent unaccompanied on smuggled routes out of ar-Raqqah and Dayr az-Zawr governorates following requests for their hand in marriage by ISIL fighters. Such girls were exposed to further risk of abuse and exploitation on the perilous journey out of ISIL controlled territory, and then to another country, while remaining family members risked retaliation and sought to escape as soon as

circumstances allowed. In a village north of ar-Raqqah city, a Sunni Bedouin mother of young teenage daughters was forced to flee due to the fear of her daughters, aged 12, 13, and 17 years being abducted and forced to marry ISIL fighters.

86. Some of those married to ISIL fighters were divorced shortly afterwards. In such cases, they mostly returned home but with their future marital prospects damaged. In cases that the ISIL fighter-husband of a girl died, the "wife" was typically passed on to another fighter. Husbands often told their brides, "If I die, you will marry my brother." Many women were passed between multiple ISIL fighters, some as many as six or seven times within two years. When the fighter-husband was killed, ISIL command deliberately waived the Islamic three-month period of mourning (*iddah*), thus facilitating the ability of a woman to simply be passed on to the next fighter in line.

87. Until September 2017, women living in or displaced to ISIL held areas such as Dayr az-Zawr who were widowed or unmarried and unable to stay with relatives were often forced to live in "guesthouses" run by al-Hisbah, where they were vulnerable to further exploitation.

D. Yazidi women and girls

88. The Commission has previously reported on Yazidi women and girls taken into ISIL held areas in the Syrian Arab Republic (A/HRC/32/CRP.2). The fate of many remains unknown but as the net closed on ar-Raqqah and Dayr az-Zawr in 2017, some fighters were observed fleeing to other areas with their "possessions" including unveiled women, believed to be Yazidi. Other Yazidi women have been freed or sold back to their families, and others have reportedly been killed in airstrikes.

89. Until mid-2016, ISIL did not allow their members who "owned" Yazidis to sell the Yazidi children separately. This rule was changed in mid-2016 and resulted in the separation of children from their mothers and subsequent sale of young boys as house servants, and girls as young as nine years as sexual slaves. Such children are often then given Muslim names. Identifying their ancestry remains problematic.

VI. Syrian Democratic Forces

90. The Commission has not documented reports of rape of detainees, male or female, by the Syrian Democratic Forces (SDF). Torture of male detainees, however, including the burning of and threats to burn genitals were documented in 2017. In one such incident in June 2017, in an SDF detention facility in al-Tabqa (ar-Raqqah), males were reportedly subjected to burning of their genitals with cigarette lighters during interrogation.

91. With the large scale movement of displaced persons who fled clashes in ar-Raqqah and Dayr az-Zawr into Kurdish held areas in the latter half of 2017, women and girls, many travelling without male relatives, remain particularly vulnerable in internment camps where tens of thousands of internally displaced persons are forced to reside (see A/HRC/37/72, Annex III, paras. 1-18). In order to leave these camps, IDPs are asked to pay SDF authorities and locate a *kafīl* or "guarantor" for onward movement to certain areas. As a result, many women travelling alone have no option but to remain in the camps, as they are without sponsors or the financial means to move to other areas.

92. In many of the foregoing camps, a lack of adequate bathroom facilities for women has forced them to walk great distances with a male relative to relieve themselves, for fear of being assaulted or humiliated. In Ain Issa Cotton Factory camp (ar-Raqqah) in late 2017, women were scared to wash themselves after a 14 year-old girl was reportedly raped in a shower room. The perpetrator is unknown.

VII. Impact

When I regained consciousness, I was in my cell, lying on the floor. My three-year-old son said "Mummy, I thought you were dead."

Woman detainee, Homs Military Security Branch, rape witnessed by infant son, 2013

93. Sexual and gender-based violence has a profound and lasting impact on the physical and mental health of those who have endured it. In Syria, survivors of particularly violent rapes, including gang-rapes and rapes with objects, sustained physical injuries that oftentimes went untreated, either because treatment was denied to them, as in the case of many detainees, or due to lack of adequate healthcare in their area. Some were eventually able to obtain treatment abroad, including from non-governmental organisations. Families have also taken unmarried women and girls released from detention to health professionals for gynaecological examination to establish if their hymen was intact. Where possible, operations were performed to repair the hymen in order to increase chances of a future marriage.

94. Both male and female survivors of sexual violence reported feelings of shame and guilt. Depression remains widespread and many interviewees said they felt worthless and hopeless. Access to adequate and trusted mental health services remain extremely limited, particularly away from the main population centres in Syria.

95. Women and girls report feeling responsible for dishonouring their families and often conceal the abuse they endured from their relatives. In many parts of Syrian society, the concept of honour is constructed around notions of female virginity before marriage and sexual fidelity afterwards. For this reason, some interviewees consider that it is worse for a girl to be raped than to be killed. In some cases, victims of rape were subjected to honour killings by their families. Families who know of the abuse are sometimes supportive of survivors while others disown them. Relatives sometimes blame women for what happened and in extreme cases refuse to have them back in the family homes. Married women, often rejected by their husbands following detention, bear the additional pain of being separated from their children. Sometimes the husband does not want the children to be raised by a woman whose honour is found to have been violated. In other instances, divorced women attempt to re-marry in an attempt to survive. Children who are the product of former marriages are sometimes rejected by the new husband and are brought up by other family members away from the mother.

96. For male victims of rape, the psychological consequences after their release can be as severe. Men and boys said they feel they lost their masculinity and were unable to confide to relatives or friends about what happened to them. Some men become impotent as a result of sexual torture and feel guilty for being unable to conceive. Former young male detainees fear that their fathers will no longer respect them if they find out about the rapes.

97. Women and girls who become pregnant as a result of rape face an unenviable situation. Under the Syrian Penal Code, abortion is illegal.[10] Nonetheless, under general criminal law principles of necessity, an abortion can be performed legally to save the life of the pregnant woman. Stated penalties on those performing abortions are reduced if the abortion is performed by the woman to save her honour or another person performs the abortion to save the honour of a descendant or a relative to the second degree.[11]

98. In practice, those seeking an abortion inside the Syrian Arab Republic have either been unsuccessful or obtained it from doctors who sometimes agree to do it after consulting with other health practitioners. On occasion, religious guidance is sought before such a procedure is carried out. There also instances of *fatwas* (rulings on Islamic law) being issued to allow women and girls to travel abroad to seek medical assistance. Whichever the

[10] Penal Code of the Syrian Arab Republic (Law 148/1949, as amended), at Arts. 525-532.

[11] *See, e.g., Syrian Arab Republic ABORTION POLICY, available at* www.un.org/esa/population/publications/abortion/doc/syrianarabrep.doc

case, interviewees reported that they do not tell their families about the procedure they underwent unless circumstances leave them with no alternative.

99. Women and girls who have babies as a result of rape remain at risk of honour killings if it becomes known the child is a result of rape. At the very least, they face divorce and ostracisation from their family and community. Social and cultural stigmas make it extremely difficult to obtain reliable information on these women and the children born of rape.

100. A number of women and girls committed suicide after having been raped. For example, in 2012 a group of women and girls from Homs governorate were repeatedly raped by pro-Government militia members with six becoming pregnant. Upon their release, they received abortions following religious advice that found the procedure appropriate to protect them from honour killings. One of the girls, aged 14 years, later killed herself because she was unable to cope with the perceived shame of the rapes and the added pressure of having had an abortion. In another incident in 2012, a girl released from detention returned to her home in Latakia governorate. Convinced that his daughter had been raped, the father verbally abused her and she eventually committed suicide.

101. Parties to the conflict perpetrate sexual violence against children of both sexes. Girls as young as nine years old have been raped during ground operations. In detention, girls and boys have also been raped. In cases where children are detained with their parents they are frequently exposed to the torture, including sexual violence, suffered by their parents. The psychological effects of witnessing such events will last a lifetime. Many child survivors suffer from nightmares, and experience physical symptoms such as bed-wetting, shaking and inability to speak when recalling events. For many, the continuing conflict has impeded the access to the services required to help heal such trauma.

102. Fear of sexual violence against women and girls is a driving factor for families to leave their homes and seek refuge elsewhere as well as an incentive to marry off their daughters at a young age in the belief this will protect them. This pattern was particularly noticeable during the 2011-2012 ground operations carried out by Government forces and in ISIL held areas from 2013 to 2017. Outside the territory of the Syrian Arab Republic, child marriage is a by-product of war, especially in refugee camps where women and girls are vulnerable to sexual exploitation, forced marriage, and trafficking.

VIII. Applicable law

A. General considerations

103. In its first reports following the outbreak of protests in March 2011, the Commission analysed international legal violations under the framework of international human rights law and crimes against humanity, the latter which may be perpetrated during both times of peace and armed conflict. As instability grew countrywide, the Commission determined that, as at February 2012, the situation in Syria had given rise to a non-international armed conflict, and consequently began applying international humanitarian law (see A/HRC/21/50, Annex II, para. 12). Violations of international human rights law, international humanitarian law, and crimes against humanity are assessed herein insofar as they bore a direct nexus, i.e., a temporal, geographical, and/or causal link, regardless of actual fighting, with pre-conflict political strife (international human rights law and crimes against humanity), or with the armed conflict itself (international human rights law, international humanitarian law, and crimes against humanity).

104. The applicability of international humanitarian law does not replace existing obligations under international human rights law. Rather both regimes remain in force and are considered complementary and mutually reinforcing.

105. This report applies the definition of rape as set out in the International Criminal Court Elements of Crimes, which integrates jurisprudence of international criminal tribunals and requires three cumulative elements: “(i) the perpetrator acted with intent or

knowledge, or both; (ii) the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body; [and] (iii) the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a personal incapable of giving genuine consent."[12] The concept of "invasion" used to define rape under the Rome Statute of the International Criminal Court is "intended to be broad enough to be gender-neutral."[13] These acts entail individual criminal responsibility.[14]

106. As the Security Council underlined in Resolution 1325 (2011), it is essential for all States to apply fully the relevant norms of international humanitarian law and international human rights law to women and girls, and to take special measures to protect women and girls from gender-based violence during armed conflict.[15]

B. International humanitarian law

107. War crimes are serious violations of international humanitarian law which entail individual criminal responsibility. To determine whether parties to the conflict perpetrated war crimes, the Commission referred to treaty obligations of the Syrian Arab Republic, in particular Article 3 Common to the Four Geneva Conventions, as well as customary international humanitarian law applicable in situations of non-international armed conflict.

108. For the purposes of this report, the following are considered war crimes: rape and other forms of sexual violence, including sexual slavery,[16] violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, and committing outrages upon personal dignity, in particular humiliating and degrading treatment.[17] It is also possible to prosecute sexual violence as an act of torture, as sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental.[18]

C. Crimes against humanity

109. Crimes against humanity occur when certain acts are carried out as part of a widespread or systematic attack directed against a civilian population and where the

[12] International Criminal Court Elements of Crimes [hereinafter "ICC Elements of Crimes"], at Arts. (7)(1)(g)-(1) and 8(2)(b).

[13] *Ibid*. at fn. 50, relating to Article 8(2)(b)(xxii), and fn. 62, relating to Article 8(2)(e)(vi) of the Rome Statute.

[14] *Ibid*. at Arts. (7)(1)(g)-(1) and 8(2)(b).

[15] *See* Security Council resolution 1820 (2008). Notably, in its resolutions 1820 (2008) and 1888 (2009), the Security Council reaffirmed that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, could significantly exacerbate situations of armed conflict, and might impede the restoration of international peace and security.

[16] International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, 2005, Volume I: Rules, at Rule 93.

[17] See Article 3 Common to the Geneva Conventions, available in, *e.g.*, International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 at Arts. 1(a) and (c).

[18] *Prosecutor v. Kunarac, Kovač and Vuković* , Case No. IT-96-23 and IT-96-23/1-A, at para. 150; *see also Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, Case No. IT-96-21-I, 16 November 1998 (Čelebići Judgment), at para. 493; European Court of Human Rights, *Aydin v. Turkey*, Application No. 57/1996/676/866, 25 September 1997, at paras. 83-86; *V.L. v. Switzerland*, Communication No. 262/2005, 20 November 2006, UN Doc. CAT/C/37/D/262/2005 (2007), at para. 8.10; and *C.T. and K.M. v. Sweden*, Communication No. 279/2005, 17 November 2006, UN Doc. CAT/C/37/D/279/2005 (2007); *see also Report of the Special Rapporteur on Torture*, UN Doc. E/CN.4/1986/15, 19 February 1986, at para. 119.

perpetrator has knowledge of the attack.[19] For purposes of this report, the relevant crimes constituting crimes against humanity include: murder; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, or any other form of sexual violence of comparable gravity; persecution; and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.[20] Forced marriages may also amount to crimes against humanity.[21]

110. The Commission has previously found that the Government of the Syrian Arab Republic perpetrated the crimes of humanity of extermination, murder, rape or other forms of sexual violence, torture, and imprisonment in the context of widespread detentions (see A/HRC/31/CRP.1.). The Commission also determined that ISIL was responsible for the crimes against humanity of murder and torture and other forms of ill-treatment (see A/HRC/32/CRP.2.).

D. Genocide

111. Article II of the 1948 Convention for the Prevention and Punishment of the Crime of Genocide, to which the Syrian Arab Republic is a State Party, states that the crime of genocide is committed when a person commits a prohibited act with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such. Prohibited acts are (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.[22]

112. The crime of genocide requires that the perpetrator have a special intent to destroy, in whole or in part, a protected group. The genocidal acts must be committed against a person because of their membership in a particular group and as an incremental step in the overall objective of destroying the group.[23]

113. While not discussed herein, the Commission has previously found that ISIL committed the crime of genocide against the Yazidis of Sinjar, including women and girls taken into the Syrian Arab Republic, through sexual slavery, enslavement, torture, and the imposition of measures to prevent Yazidi women and girls from giving birth (see A/HRC/32/CRP.2).

[19] According to the Rome Statute, an "[a]ttack directed against any civilian population" means a course of conduct involving the multiple commission of acts . . . against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. *See Rome Statute of the International Criminal Court*, 17 July 1998 (entered into force 1 July 2002), UN Doc. A/CONF.183/9 [hereinafter 'Rome Statute'], at Art. 7(2)(a). According to the ICC Elements of Crimes, the policy to commit an attack requires that the state or organisation actively promote or encourage such an attack against a civilian population. *See* ICC Elements of Crimes, at Art. 7(3). The ICC Pre-Trial Chamber II has confirmed that non-state actors (armed groups) may qualify as an organisation for the purpose of article 7(2)(a). *See, e.g., Situation in Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19, 31 March 2010, at para. 92; *see also Prosecutor v. Ruto et al.*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, ICC-01/09-01/11-373, 23 January 2012, at paras. 184-185.

[20] Rome Statute, *supra* note 19, at Arts. 7(1)(a), 7(1)(e), 7(1)(f), 7(1)(g), 7(1)(h), and (7)(1)(k).

[21] See, *e.g.*, Extraordinary Chambers in the Courts of Cambodia, Case 002 Closing Order, 15 September 2010, at para. 1443; *see also The Prosecutor v. Dominic Ongwen*, Decision on the confirmation of charges against Dominic Ongwen, Pre-Trial Chamber II, No.: ICC-02/04-01/15, 23 March 2016, at para. 95.

[22] This definition is replicated, without amendment, in Article 6 of the Rome Statute.

[23] *Prosecutor v. Rutaganda*, ICTR Trial Judgment, 6 December 1999, at para. 59; *see also Prosecutor v. Jelisić*, ICTY Trial Judgment, 14 December 1999, para. 66.

E. International human rights law

114. At all times relevant to this report, the Syrian Arab Republic was party to major human rights treaties and a number of optional protocols.[24] All branches of the Syrian government were therefore bound to respect, protect, promote, and fulfil the human rights of all persons within its jurisdiction. The Syrian Arab Republic was also bound by rules of international human rights law which form a part of customary international law, such as the absolute prohibition against torture, which can take the form of rape and other forms of sexual violence.[25]

115. While most acts of murder, rape, sexual slavery, and torture may be examined as war crimes and crimes against humanity, this report also notes the human rights impact of sexual violence, notably through the frameworks of the rights to the highest attainable standard of physical and mental health, and violence against women and girls as a form of discrimination against women.[26]

116. Specific legally binding protections are afforded to the civil, cultural, economic, political, and social rights of children. The Convention on the Rights of the Child ("CRC"), to which the Syrian Arab Republic is a state party, generally defines a child as any person under the age of 18.[27] The CRC provides that States Parties "shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."[28] States Parties must also prevent, in particular: "(a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; [and] (c) The exploitative use of children in pornographic performances and materials."[29] The State therefore has an obligation to prevent and protect children from sexual abuse by both state and non-state actors (*i.e.*, obligation of due diligence in respect of acts of private individuals or entities that impair the rights enshrined in the CRC).

117. As non-state actors, armed groups cannot formally become parties to international human rights treaties. It is increasingly accepted however that such groups are nevertheless obligated to respect fundamental human rights insofar as they form part of customary

[24] The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights were ratified by the Syrian Arab Republic in 1969, the same year it ratified the Convention on the Elimination of All Forms of Racial Discrimination. The Syrian Arab Republic is also party to the Convention on the Elimination of Discrimination against Women which it ratified in 2003, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment in 2004 and the Convention on the Rights of Child in 1993. The Syrian Arab Republic ratified the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict in 2003. The Syrian Arab Republic has not ratified the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 1968.

[25] *See* International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Prosecutor v. Zejnil Delalić, Zdravko Mucić also known as Pavo, Hazim Delić, Esad Landžo also known as Zenga*, Trial Judgment, IT-96-21-T, 16 November 1998, paras. 494-496.

[26] *See* Committee on the Elimination of Discrimination against Women [hereinafter CEDAW], General Recommendations 19 (1992), "Violence against women"; 30 (2013) "on women in conflict prevention, conflict and post-conflict situations"; and 35 (2017) "on gender-based violence against women, updating general recommendation No. 19", *available at* http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx.

[27] Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49, at Art. 1.

[28] *Ibid*., at Art. 19(1).

[29] *Ibid*., at Art. 34.

international law, such as the right to life and the absolute prohibition against torture, where such actors exercise de facto control over a part of a state's territory.[30]

F. Domestic law of the Syrian Arab Republic

118. Both the Constitution of the Syrian Arab Republic, promulgated in 2012[31], and the Syrian Penal Code outlaw torture.[32] Further, the Syrian Penal Code criminalises rape – defined as forced sexual intercourse outside of marriage – and sexual assault of women and children.[33] Rape and sexual assault are punishable with hard labour sentences, which are aggravated if the perpetrator is a Government official.[34] Homosexual acts, which would include male rape, are punishable with imprisonment of up to three years.[35]

IX. Conclusions

119. Government forces and affiliated militias perpetrated sexual violence, including rape, against women, girls, and men during house searches and ground operations. These searches were intended to target perceived opposition members and sympathisers for detention, and carried out in the context of military operations countrywide, which this Commission has already established amounts to a widespread and systematic attack directed against a civilian population (see A/HRC/31/CRP.1, paras. 88-89).

120. Through its widespread conduct of mass arbitrary arrests, victimising the general civilian population living in restive areas and persons otherwise perceived to be in opposition to the Government, Government forces and associated militias engaged in the multiple commission of crimes. The acts were committed in pursuance of a policy to target civilians broadly perceived as associated with the opposition, evidenced by the systematic occurrence of crimes across geographic areas. Therefore, rapes and other acts of sexual violence carried out by Government forces and associated militias during ground operations formed part of the attack, and amount to crimes against humanity.

121. After February 2012, rapes and other forms of sexual violence carried out by Government forces and associated militias during house searches and ground operations also constitute the war crimes of rape and other forms of sexual violence, including torture and outrages upon personal dignity.

122. Government forces and affiliated militias also perpetrated sexual violence, including rape, against women and girls at checkpoints. Rapes and other acts of sexual violence at checkpoints, and the imprisonment and rapes in detention which followed, also formed part of a widespread and systematic attack directed against a civilian population (see para. 119) and amount to crimes against humanity. After February 2012, rapes and other forms of sexual violence perpetrated by Government forces and affiliated militias at checkpoints also constitute the war crimes of rape and other forms of sexual violence, including torture and outrages upon personal dignity.

123. Government forces and affiliated militias further perpetrated sexual violence, including rape and other inhumane acts, against women, girls, men, and boys in detention. Rapes, other acts of sexual violence, and other inhumane acts perpetrated in detention centres countrywide formed part of a widespread and systematic attack directed against a

[30] For a more expansive view of the application of international human rights law to non-state actors, *see, e.g.*, Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, Oxford University Press, 2006); *see also, generally*, Katharine Fortin, *The Accountability of Armed Groups under Human Rights Law* (Oxford, Oxford University Press, 2017). To similar effect, *see* Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, at para. 188, *available at* http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf.

[31] Constitution of the Syrian Arab Republic, at Art. 53(2).

[32] Penal Code of the Syrian Arab Republic (Law 148/1949, as amended), at Art. 391(i).

[33] *Ibid*., at Arts. 489-497.

[34] *Ibid*., at Art. 498.

[35] *Ibid*., at Art. 520.

civilian population (see para. 119) and amount to crimes against humanity. After February 2012, rapes and other forms of sexual violence perpetrated by Government forces and affiliated militias in official and unofficial detention facilities countrywide also constitute the war crimes of rape and other forms of sexual violence, including torture and outrages upon personal dignity.

124. Rapes and other forms of sexual violence perpetrated by Government forces and affiliated militias during house searches and ground operations, at checkpoints, and in official and unofficial detention facilities further amount to serious violations of international human rights law including the right to life, liberty and security of person, the right to freedom from torture and other forms of cruel, inhuman, or degrading treatment, and the right to the highest attainable standard of physical and mental health. Rapes and other forms of sexual violence are moreover criminalised pursuant to the domestic law of the Syrian Arab Republic.[36]

125. While considerably less common than rape by Government forces, incidents of female rape by members of armed groups were documented between late 2011 and 2016 in Damascus and Aleppo governorates. After February 2012, rapes and other forms of sexual violence carried out by armed group members constitute the war crimes of rape and other forms of sexual violence, including torture and outrages upon personal dignity. These rapes and other forms of sexual violence further contravene international human rights norms including the right to life, liberty and security of person, the right to freedom from torture and other forms of cruel, inhuman, or degrading treatment, and the right to the highest attainable standard of physical and mental health.

126. Throughout areas under its control, Hay'at Tahrir al-Sham (led by former Jabhat al-Nusra command) caused severe psychological and physical harm to women, girls, and men, by imposing religious dress codes and, in the case of women and girls, denying their freedom of movement without male relative/chaperons (mahram). Edicts formally delivered to populations residing under HTS control disproportionately impacted women and girls and evinced, moreover discriminatory treatment on the basis of sex, in breach of fundamental international human rights norms.

127. The use of parallel justice systems including unauthorised courts by HTS and various armed groups to execute sexual minorities constitute the war crime of murder, and seriously contravene international human rights norms, including the right to life, liberty and security of person, the right to freedom from torture and other forms of cruel, inhuman, or degrading treatment, and the right to the highest attainable standard of physical and mental health.

128. Between 2013 and 2016, the Islamic State in Iraq and the Levant (ISIL) executed women, men, and children on charges of adultery, and also targeted sexual minorities, including homosexuals. These acts constitute the war crime of murder. The executions and other punishments also contravene international human rights norms, including denial of the right to life, and the right to be free from discrimination, among other violations. Further, the well-documented crimes of ISIL and their terrorising of the civilian population in ar-Raqqah and Dayr az-Zawr governorates formed part of a widespread or systematic attack directed against a civilian population, carried out with knowledge of the perpetrator. By targeting sexual minorities on grounds universally recognised as impermissible under international law, and severely depriving sexual minorities of their fundamental rights, ISIL's treatment of sexual minorities constitutes the crime against humanity of persecution.

129. Throughout areas under its control, ISIL further imposed regulations subjugating women and girls in both the public and private spheres, including by placing them under the control of male relatives/chaperons (mahram). While the terrorist group imposed a strict dress code on both men and women, females were more often reported to be punished for failing to comply. Infringement of these rules was punishable by fines and lashings, the latter being most common. Lashings were usually administered by ISIL's morality brigade, al-Hisbah. ISIL's enforcement brigades perpetrated the war crime of torture, cruel or inhuman treatment, and outrages upon personal dignity against women. The psychological

[36] *See supra* section VIII. Applicable Law, F. Domestic law of the Syrian Arab Republic.

and physical harm caused by ISIL's treatment of women and girls, the onerous instructions imposed on their dress, and restrictions on their freedom of movement further demonstrate discriminatory treatment on the basis of sex, seriously contravening international human rights norms.

130. Women and girls as young as 14 years living in ISIL-held areas were often forced to marry the group's fighters. Forced marriages constitute sexual violence and amount to the war crimes of cruel treatment and, in many instances, rape. When committed as part of a widespread or systematic attack directed against a civilian population, forced marriage may also amount to a crime against humanity. These acts also constitute serious abuses of the international human rights of women and girls including the rights to freely choose a spouse and enter into marriage only with free and full consent.[37]

X. Recommendations

131. **On the basis of its findings, the Commission makes the recommendations below.**

132. **The Commission recommends that all parties to the conflict:**

(a) **Immediately cease the perpetration of sexual and gender-based violence against women, girls, men, and boys;**

(b) **Proactively accept and reintegrate survivors of sexual and gender-based violence back into their communities;**

(c) **Proactively facilitate the meaningful participation of women in all relevant peace processes and peace negotiations and any future truth and reconciliation mechanisms; and**

(d) **Immediately cease the arbitrary and unlawful detention of women and children and release those being held in detention, particularly any who have been subjected to sexual abuse of any form.**

133. **The Commission recommends that the Government of the Syrian Arab Republic:**

(a) **Becomes a State party to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II);**

(b) **Implements recommendations of the Committee on the Elimination of Discrimination against Women (CEDAW), including General Commentary 30;**

(c) **Ratifies the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962);**

(d) **Recognises its obligations under Security Council resolutions 1325 and 2122 reaffirming the role of all parties in conflict to protect women and girls from sexual and gender-based violence;**

(e) **Investigates and prosecutes members of its State security forces that bear individual criminal responsibility for committing acts of rape and sexual violence; and**

(f) **Implement protocols for searching of prisoners on admission to custody for internal reporting of incidents of sexual violence, which applies to all personnel, locations and establishments operating under the command or in conjunction with the Government of the Syrian Arab Republic.**

134. **The Commission recommends that members of armed groups:**

[37] Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979, at Art. 1(b).

(a) **Immediately desist from perpetrating rape of women and girls including based on their religious, ethnic, or tribal affiliations;**

(b) **Cease the practice of using their positions of authority to exploit women and girls, including by pressuring families to acquiesce to the marriage of their daughters to fighters; and**

(c) **Take urgent measures to discipline or dismiss individuals under their command responsible for such acts.**

135. **The Commission recommends that the Security Council:**

(a) **As a matter of urgency, and in line with each State's individual obligations under the Geneva Conventions, refer the situation to justice, possibly to the International Criminal Court or an ad hoc tribunal, bearing in mind that, in the context of the Syrian Arab Republic, only the Security Council is competent to refer the situation;**

(b) **Include regular briefings by the Commission of Inquiry as part of the formal agenda of the Security Council, including on the use of sexual violence; and**

(c) **Support the recommendations of the Commission of Inquiry.**

136. **The Commission recommends that the international community:**

(a) **Recognise the perpetration of war crimes, as well as crimes against humanity including rape and other forms of sexual violence committed by Syrian Government forces and associated militias;**

(b) **Recognise the commission of war crimes, including rape, by members of armed groups;**

(c) **Recognise the commission of war crimes, as well as crimes against humanity committed by ISIL, including the use of forced marriage;**

(d) **Provide expertise to assist in the preservation and documentation of evidence relating to sexual violence;**

(e) **Provide funding for psychosocial support programmes, with increased emphasis on trauma therapy, for survivors of sexual violence;**

(f) **Where jurisdiction exists, utilise such accountability mechanisms to investigate and prosecute perpetrators of sexual violence within the Syrian conflict;**

(g) **Wherever possible, demand that parties to the conflict, over whom they have influence, release women and children held in detention, captivity, or as hostages as a confidence building measure and ensure that any women or children who have been subjected to sexual violence or abuse of any form be prioritised for specialised medical treatment, especially psychosocial care and support;**

(h) **Encourage efforts to promote accountability, including by actively supporting the mandate of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, in accordance with General Assembly resolution 71/248;**

(i) **Call upon the Independent Mechanism to collect, as a matter of priority, further evidence and information on those responsible on the crimes documented by the Commission in the present report; and**

(j) **Proactively facilitate the meaningful participation of women in all relevant peace processes and peace negotiations.**

Annex I

Map of the Syrian Arab Republic

