



EXECUTIVE SUMMARY

Criminal complaint to the War Crimes Commission of Swedish police and the Swedish war crimes prosecutor team

Torture in Syria

On 19 February 2019, together with nine plaintiffs from Syria, Syrian Center for Legal Studies and Research (SCLSR), Syrian Center for Media and Freedom of Speech (SCM), Caesar Files Group, the Civil Rights Defenders (CRD) and the European Center for Constitutional and Human Rights (ECCHR) submitted a criminal complaint against 25 known and further unknown high-level officials of the Syrian security apparatus. The criminal complaint addresses crimes that have been committed in detention facilities of the Syrian intelligence services, namely Military Intelligence, Air Force Intelligence, General Intelligence and Political Security, as well as in Saydnaya Military Prison, detention facility of the 4th Division of the Syrian Armed Forces and detention facilities of the Military Police between February 2011 and June 2015.

The complaint, based on plaintiffs' testimonies, extensive research and legal analysis aims for the initiation of an investigation by the Swedish prosecutorial authorities into the individual criminal responsibility of the suspects as well as the issuance of international arrests warrants against them. Such steps would further increase public awareness about the systematic, on-going human rights violations in Syria and enhance pressure on the international community to establish effective judicial avenues for prosecuting such crimes.

The complaint revolves around the testimonies of nine plaintiffs who have survived and witnessed torture and other grave crimes committed in the above-mentioned detention facilities between February 2011 and June 2015. Their detention took place at different times and lasted for different periods, from several days to several years. All of the plaintiffs currently reside in Sweden or are Swedish nationals. They are willing to testify with the Swedish investigative authorities. Those plaintiffs, who already testified, are willing to provide further information to the authorities if required.

Plaintiffs

The testimonies of the nine plaintiffs stand at the center of the criminal complaint. They reveal the inhumane detention conditions as well as systematic physical and psychological torture inside the government-run detention facilities.

Plaintiff 2 is a Syrian human rights defender and journalist. In 2012 he worked for the Syrian Center for Media and Freedom of Expression (SCM), at that time operating under the name “Violations Documentation Center”. In February 2012, he was arrested in the SCM office together with his colleagues and brought to the Investigative branch of the Air Force Intelligence in Damascus, where he witnessed other detainees, including minors, being tortured on several occasions. One month later, he was transferred to the Regiment 555 of the 4th division, where he was repeatedly tortured, including by beating with cables and solid sticks. Due to the inhuman detention conditions, the plaintiff lost 30 kg in weight while detained. In November 2012, he was transferred to Adra Civil Prison. Following his release in February 2013, he fled to Lebanon and Turkey before coming to Sweden in 2014.

Plaintiff 5 was arrested twice. The first time, he was arrested in May 2011, was arrested in May 2011 after he was listed as a wanted person by the regime. Following this arrest, he was detained in the General Intelligence branches 251 and 285, where he was exposed to severe torture sessions. He was released after two months.

In December 2012, he was arrested for the second time for being politically active and engaged in humanitarian work. He was brought again to branch 251, where he had to endure several torture sessions. Among other things, he was beaten until unconsciousness, exposed to electric shocks and *shabeh*.

While in detention, plaintiff 5 saw a doctor only once. When he told the doctor that he had problems with his stomach, the doctor kicked him hard in the stomach. He still has a hole in his knee, because he was tormented with a drilling machine. After more than one year he was released. He arrived in Sweden in April 2015.

Plaintiff 7 was accused of participation in demonstrations, having instigated students in his university to take part in demonstrations and of having spoken critically about the government. He was arrested in September 2012 and detained in the Military Intelligence branch 215. There, the plaintiff was first detained in a cell of about 3x4 meters in size with a number of people varying between 25 and 50, and later in a cell of about 4x5 meters holding up to 104 people. This gave the detainees no space to sleep or sit down. He was allowed to use the toilet twice a day for only a few seconds. The plaintiff was exposed to different kinds of torture, for example, severe beatings, electric shocks and *shabeh*.

He was released after 45 days. In mid-2012, he fled to Europe and arrived in Sweden in October 2014.

Plaintiff 8 was arrested in 2012 and detained in branch 215 of the Military Intelligence. She was 19 years old at the time of her arrest. She was arrested because she had organized a shelter and collected money for internally displaced people. In the branch 215, she was subjected to inhuman detention conditions characterized

by a limited access to sanitary facilities, lack of daylight and inedible food. During her detention, the plaintiff was subjected to interrogation several times. During the interrogation sessions she was beaten, humiliated, insulted, sexually harassed and threatened with further violence. Later, she was transferred to Military Intelligence branch in Homs, where she was interrogated and exposed to torture and sexual violence. The plaintiff left Syria in 2013. She has been living in Sweden since December 2014.

Plaintiff 9 was arrested in March 2012 when gathering together with other people for a funeral. The student helped wounded people when the funeral was attacked by the military and was then, together with other participants of the funeral. He was first brought to the Military Intelligence branch in Raqqa, where he was beaten, verbally humiliated and severely hit with a cable.

Afterwards, the plaintiff was transferred to the Criminal Security branch in Raqqa, which was used as a detention facility of the local Joint Investigation Committee. 30 to 40 people were detained in the cell of 4x4 meters. There was little oxygen left to breath and the detainees had to take turns for sleeping. While detained, the plaintiff was exposed to physical torture including *falaqa*.

Three weeks later, he was transferred to the central prison in Raqqa where he had to stay for another two weeks until he was released. He arrived in Sweden in January 2015.

Several plaintiffs have already testified as witnesses with the War Crimes Commission of Swedish police. Together with plaintiffs who have not yet testified, they filed a complaint addressing the crimes they were exposed to and demand an investigation.

The complaint is supported by two Syrian lawyers Mr. Anwar al-Bunni and Mr. Mazen Darwish.

Mazen Darwish is a Syrian lawyer, journalist and president of the Syrian Center for Media and Freedom of Speech (SCM). He was repeatedly targeted and detained by Syrian authorities as a result of his work. Since the beginning of protests in 2011, Mr. Darwish and his organization documented arrests, murder and enforced disappearances of activists. In February 2012, he was arrested, tortured, and repeatedly transferred to different detention centers. Following a call for his release supported by numerous international human rights organizations, he was released in August 2015. Mr. Darwish continued his human rights work and was awarded the Pinter International Writer of Courage Award (shared with Salman Rushdie) given by English PEN in 2014, and the UNESCO/Guillermo Cano World Press Freedom Prize in 2015.

Anwar al-Bunni is a well-known Syrian human rights lawyer, who had been targeted for his human rights work since 2001. In Mai 2006, he was arrested and sentenced for 5 years in detention. While detained, Mr. al-Bunni was also ill-treated and tortured. In 2008 he received the Front Line Award for Human Rights Defenders at Risk. The following year he was awarded the Human Rights Award by the German Association of Judges. After his release in 2011, he moved to Germany and continued his work leading Syrian Center for Legal Studies and Research. In December 2018, he was awarded the Franco-German Prize for Human Rights

and the Rule of Law. The complaint is further supported by Caesar Files Group, which is a group managing numerous images and official documents of the Syrian governmental institutions which were smuggled out of Syria by the former military police employee ‘Caesar’ and others.

Crimes by the Syrian security apparatus

The crimes addressed in the complaint have to be seen in a broader context concerning the overall situation in Syria. The sites of detention, where the plaintiffs were kept and tortured, are only a few of numerous detention facilities and prisons operated by the Syrian intelligence services and the Syrian Military. Yet the crimes that form the basis of this complaint are exemplary for the overall policy of suppression, humiliation and extermination of civilian population by the Syrian government under the pretense of countering the opposition.

This policy has been deployed by the Syrian government for decades. It has, however, reached an unprecedented level of intensity and severity in the context of the uprising in Syria starting from March 2011. The country-wide backlash against civilians, who were perceived as opposition and threat to the regime, followed a pattern of systematic arrests and detention by intelligence services, military forces and pro-government militia.

Following the uprising that started in Syria in early 2011, the NSB and the four intelligence services were given a leading role in countering any anti-government activities by monitoring, arresting, interrogating and detaining protesters and members of the opposition, as well as taking part in military actions against them. Due to the quick growth of the anti-government movement and its spread across the country, the government established Central Crisis Management Cell (CCMC) in March 2011 to provide a coordinated response to the situation by bringing together high-ranking security and military officials. Together, these actors designed a state policy of repression and persecution against anyone perceived as opposition to the regime of Bashar al-Assad.

The Syrian security apparatus consists of the four intelligence services, namely Military Intelligence, Air Force Intelligence, General Intelligence and Political Security, as well as the National Security Bureau (NSB), which acts as an umbrella institution overseeing activities of all intelligence services.

Among the instructions given by CCMC to the NSB and the intelligence services were coordinated and violent raids on demonstrations leading to mass and targeted arrests and interrogation of activists, supporters and coordinators of the demonstrations. Violent and unlawful arrests were often followed by detention in one of the branches of the intelligence services and military prisons, including the Saydnaya Military Prison.

Implementation of the policy proposed by the CCMC required coordinated efforts by both security and military institutions, for which institutions such as Military Police worked hand in hand with the intelligence services. Given the high number of persons who were arrested and detained in response to the uprising, the Government started using premises of the Syrian Armed Forces, including the 4th Division and subordinate units, as additional detention facilities.

In the detention facilities of intelligence services, military units, Military Police and in military prisons, detainees have been systematically exposed to torture, degrading treatment, sexual violence and other inhuman acts, which resulted in death of many detainees as was revealed by 26,948 photographs smuggled out of Syria by the Syrian Military Police defector known as “Caesar.” The photographs were taken as part of the Syrian Military Police’s internal procedures between May 2011 and August 2013 and represent unique proof of the Syrian government’s machinery of torture and killing.

Sites of crime

The complaint at hand addresses crimes which were committed against the plaintiffs in detention facilities of four intelligence services, Joint Investigation Committees, Saydnaya Military Prison, the 4th Division and the Military Police.

Syrian Intelligence Services

The intelligence services operate in central branches in Damascus as well as in regional branches in Syria’s 14 governorates. Both central and regional branches hold detention facilities in which torture is a daily practice.

Military Intelligence reportedly operates up to 28 branches in Damascus and around 50 branches outside the capital throughout the country. The branches are usually designated by 3-digit-combinations. The complaint addresses crimes committed in the branches 215 (Damascus), 261 (Homs), 290 (Aleppo) and in the branches located in Tartous and Raqqa.

Air Force Intelligence operates central branches in Damascus as well as various regional command centers, namely, the Southern Region, Central Region, Northern Region, Eastern Region and Western Region. The criminal complaint addresses crimes committed in branches located in Homs and Aleppo.

Similarly to other intelligence services, General Intelligence operates central as well as regional branches across the country. The complaint addresses crimes committed in two branches located in Damascus, branch 251, as Al Khateeb branch, and branch 285.

The headquarters of the Political Security is located in Damascus. It maintains subordinate branches both in Damascus as well as in each of the governorates. Unlike the Syrian Military and General Intelligence branches, Political Security branches are not numbered but rather referred to by their task or geographic area. Subject of this complaint is the Political Security branch in Tartous.

Further sites of crime presented in the complaint are detention facilities used by the Joint Investigative Committee, Saydnaya Military Prison as well as the detention facility of the Regiment 555 within the 4th Division of the Syrian Armed Forces.

Joint Investigative Committees

In August 2011, CCMC and NSB reinforced the government's response to the protests, *inter alia* by introducing the Joint Investigation Committees (JIC) as coordinating bodies on the governorate level. Each JIC is comprised of one representative of each of the intelligence services and headed by a representative of Criminal Security, a unit within the civilian police and *de jure* part of the Ministry of Interior. The cooperation of the members of these investigation committees seems to not shift their position within the respective intelligence agency they belong to. The JICs were utilized to interrogate the arrestees and to identify new targets for arrest and share it with other intelligence services, Military Police and Armed Forces as well as the CCMC/NSB.

JICs do not appear to operate in their autonomous facilities. Instead, they use local premises of institutions represented within the JIC, namely the intelligence services and the criminal police, for the purposes of detention and interrogation of detainees. Subject of this complaint are the JICs in Homs and Raqqa.

Saydnaya Military Prison

For decades, one of Syria's most important political prisons, Saydnaya Military Prison has continued to be used as a tool of repression since the outbreak of protests in the country in 2011. In Saydnaya, the Syrian regime detains supporters of the opposition as well as members of the Syrian military, many arrested on suspicion of attempting to desert or supporting the opposition. After being arrested, detained and tortured in detention facilities of the intelligence services, some detainees are being transferred to Saydnaya. Abuse at Saydnaya aims to permanently break the physical and mental state of the detainees.

Saydnaya Military Prison lies roughly 30 kilometers north of Damascus. Run by the Syrian Military Police under control of the Ministry of Defense, the prison consists of two main prisons, known as the 'red' building, reported to be the prison for mostly civilians, and the 'white' building, reportedly mainly for former military personnel accused of government infidelity, both together holding between 10,000 and 20,000 prisoners.

Regiment 555 of the 4th Division

Due to the lack of space in the detention facilities of the intelligence services, some detainees were brought to the premises of the Syrian Armed Forces, including of the Regiment 555 of the 4th Brigade, located in Moadamiya, which is approximately 10 kilometers southwest of Damascus. Detainees kept in premises of the Regiment 555 report about inhumane detention conditions, systematic torture and abuse similar to the detention facilities operated by the intelligence services.

Military Police

Central and regional offices of the Military Police were used as transit detention facilities for detainees who were supposed to be transferred to another branch of intelligence services, to a civil prison, to the Saydnaya military prison, or to be released. Former detainees reported about inhuman detention conditions in those premises as well as physical abuse they were exposed to while detained there. The complaint addresses

crimes committed against in the plaintiffs in premises of the Military Police branches in Al-Qabun (district of Damascus), Tartous and Homs.

Acts addressed in the complaint

The acts addressed in the complaint are part of an overall policy of arrests, detention, humiliation, enforced disappearance, torture and murder which has been implemented by all four intelligence services and their subordinate branches, Syrian Armed Forces and military institutions since March 2011. These crimes follow standardized patterns of violence throughout the country. While particular detention facilities preferred certain torture methods over others, the replication of documented torture methods across branches and intelligence services shows that the use of torture was systematic. Below are exemplified torture methods and inhuman prison conditions prevailing in the Syrian detention facilities.

Torture and other inhuman treatment

Torture and other inhuman treatment have been systematically used towards detainees, including minors, across all detention facilities of intelligence services, Syrian Armed Forces and military police in all governorates, including in Saydnaya Military Prison, as part of a state policy. Former detainees reported that the most severe torture took place during interrogation sessions. These were usually carried out by investigators and officers of the branch in separate interrogation or “torture rooms”. During these sessions, investigators usually forced detainees to confess to having participated in demonstrations, provide names of other demonstrators and organizers, or any information related to funding of demonstrations. Even after detainees confessed about “crimes” they did not commit, they were exposed to further torture.

Reported methods of torture are consistent across the country. Detainees were subjected to severe beatings on all parts of the body with objects, including metal and wooden sticks, rifle butts, batons and cables, as well as to stabbing and cutting. They were further forced to take stress positions for long periods of time. Multiple reports describe *falaqa* as one of the most used torture methods. For this, detainees had to lie down and were beaten on the soles of their feet. Another common torture method is called *bisat al-rih* (English: flying carpet). This method of torture involves a person being strapped face-up onto a foldable wooden board, the two ends of which are elevated bringing the head towards the feet causing severe pain to the lower back. During the process, the person was usually beaten. Other torture methods used across Syria included hanging detainees from walls or ceilings by their wrists (*shabeh*¹), forcing detainees to bend over and put their head, neck and legs through a tire while beatings are carried out (*dulab*²), stubbing out cigarettes on the body and exposing detainees to electroshocks.

Psychological torture and other forms of ill-treatment which did not result in physical damage included forcing detainees to watch other detainees, also friends and family members, being tortured, raped or killed,

¹ *Shabeh* method foresees hanging the person from the ceiling by the wrists so that their toes barely touch the ground or they are completely suspended in the air with their entire weight on their wrists, causing extreme pain.

² For *dulab*, or “tire method”, the person is forced to bend at the waist and stick their head, neck, legs and sometimes arms into the inside of a car tire, and then is exposed to beatings, including with objects.

threatening that their family members will be detained and tortured as well, threatening with execution, denigrating detainees' religious beliefs, and degrading detainees by using obscene language or insults. Most detainees were held incommunicado for extended periods of time without any contact to their family members.

In Saydnaya Military Prison in addition to the above-described torture, witnesses report that due to a ban of speaking, they were not allowed to report if another prisoner in their cell had died. Bodies of deceased prisoners would lay in their cell, causing severe psychological anguish. Some detainees in need of urgent medical help were not able to contact the prison staff due to the ban on speaking, which in some cases led to their death.

Sexual violence

Various forms of sexual violence, including but not limited to rape, and sexualized torture have been committed in detention facilities across the country. Both male and female detainees reported about having been forced to undress and remain naked, exposed to electroshocks and cigarette burns on their genitals, forced to perform oral sex on guards, investigators or other detainees and being penetrated with objects. Furthermore, detainees were threatened that they would be raped in front of their family or that their family members would be raped. Some detainees report about having been forced to sexually abuse and rape other detainees.

Inhuman detention conditions

Former detainees reported about inhuman detention conditions across all detention facilities and prisons in Syria.

The cells were dark and small. For example, in the basement of Saydnaya Military Prison, the only source of light in the cells was a lamp in the corridor, which meant that the prisoners were in almost complete darkness during their entire detention there which could last several years. Given the number of detainees, the cells were so overcrowded that detainees had to take turns to sleep. They were never allowed to leave the cell or breathe fresh air. Many detention cells were reported to have no toilet and to be infested with insects and lice. Detainees reported that they were permitted to use the bathroom only a few times a day at designated times, for just a minute or two, leaving them no time to wash themselves.

Moreover, former detainees reported inadequate food and water supply in detention. Guards gave each cell a limited amount of food, which was often spoiled, and water, which detainees then distributed among themselves.

A combination of poor and spoiled food, lack of medical care and poor hygienic situation exacerbated the conditions in which gastrointestinal and skin infections could severely increase. At the same time, no adequate medical care was provided, even for those seriously wounded after beatings or torture, or for detainees suffering from chronic conditions.

Suspects

The crimes against humanity and war crimes described in this complaint were committed by individuals acting from within the government apparatus. Once agreed upon, orders of the high-level officials followed the chain of command down to the direct perpetrators, who executed the orders.

At the top of the chain stands the President Bashar al-Assad, who as a current head of state enjoys immunity from criminal prosecution by national prosecutorial authorities. The National Security Bureau (NSB), which regularly receives orders by the President, consists of Assad's closest advisors and is responsible for the supervision of the four intelligence services.

In addition to the heads of the NSB, the list of suspects includes the names of the heads of the four intelligence services, heads of the Military Intelligence branches 215 in Damascus, branch 261 in Homs, branch 290 in Aleppo, branch Tartous and branch Raqqa; the Air Force Intelligence branches in Aleppo and Homs; the General Intelligence branches 251 and 285 in Damascus, the Political Security branch in Tartous; heads of intelligence branches represented in the Joint Investigative Committees in Raqqa and Homs; heads of the Regiment 555 of the 4th Division and the former head of the 4th Division; as well as the current and former heads of the Military Police.

Suspects hold military positions superior to the direct perpetrators of the mentioned crimes.

The complaint targets twenty-five named high-level officials.

Legal analysis

The acts committed against the plaintiffs constitute crimes against humanity, war crimes, torture and humiliating and degrading treatment, rape, particularly grave assault and illegal abduction within the meaning of the Swedish Penal Code and the Law on criminal responsibility for genocide, crimes against humanity and war crimes.

The above listed suspected officials are responsible as co-perpetrators and/or superior commanders for these crimes.

Applicable law

The Law 2014:406, entered into force on the 1st of July 2014, and provides a legal basis for the prosecution of war crimes and crimes against humanity. Section 3 (6) in the chapter 2 of the Swedish Penal Code in its wording after the 1st of July 2014, explicitly stipulates universal jurisdiction for those crimes. The Law may not be retroactively applied and is therefore applicable only to the acts committed after 1st of July 2014.

As for the acts committed prior to the Law's entry into force, the Swedish Penal Code is applicable. Section 6 in the chapter 22 of the Penal Code criminalizes crimes against international law and breaches of international humanitarian law. Section 3 (6) in the chapter 2 of the Swedish Penal Code enables prosecutorial authorities to prosecute these crimes under the principle of universal jurisdiction. Furthermore, section 3 (7) in the chapter 2 of the Swedish Penal Code enables prosecutorial authorities to exercise universal jurisdiction to

prosecute crimes from the general catalogue of crimes in the Swedish Penal Code for which the least severe punishment is imprisonment for four years or more.

Crimes committed prior to the entry into force of the Law 2014:406

The acts committed against the plaintiffs in the period between February 2011 and July 2014 constitute particularly grave assault, illegal abduction and rape within the meaning of section 6 (2) in the chapter 3, section 1 in the chapter 4 and section 1 (3) in the chapter 6 and of the Swedish Penal Code, which are subject to prosecution in accordance with section 3 (7) in the chapter 2 of the Swedish Penal Code.

The acts committed against the plaintiffs between February 2011 and July 2014 also constitute torture and humiliating and degrading treatment as crimes against international law, which are subject to prosecution in accordance with section 3 (6) in the chapter 2 of the Swedish Penal Code.

The acts committed against the plaintiffs in the period between April 2011 and July 2014 constitute crimes against humanity as crimes against international law, subject to prosecution in accordance with section 3 (6), chapter 2 of the Swedish Penal Code.

Acts committed against the plaintiffs between February 2012 and July 2014 constitute war crimes and thus crimes against international law in accordance with section 6 in the chapter 22 of the Swedish Penal Code, subject to prosecution in accordance with section 3 (6) in the chapter 2 of the Swedish Penal Code.

Particularly aggravated assault

The physical violence conducted against the plaintiffs and the upholding of the inhuman conditions in which they were detained constitute particularly aggravated assault in accordance with section 6 (2) in chapter 3 of the Swedish Penal Code. The perpetrators of the acts have showed grave relentlessness when performing the acts, which have caused the plaintiffs serious pain and deep mental and physical suffering.

Aggravated rape

The sexual acts committed against plaintiff 8 during her detention with the Military Intelligence have constituted rape in the meaning of section 1 in the chapter 6 of the Swedish Penal Code according to its wording in 2012. The acts were committed against the plaintiff when she, as a detainee, was isolated and completely unable to defend herself.

Illegal abduction

The arrests and detention of the plaintiffs constitute illegal abduction in accordance with section 1 in the chapter 4 of the Swedish Penal Code. Through the arrest and detention, the plaintiffs were forcibly deprived of their liberty. The torture and inhuman detention conditions that followed upon their arrest, show that the deprivation of liberty was conducted with an intent to hurt their life or health.

Torture as a crime against international law

The acts committed against the plaintiffs are in violation of the absolute prohibition of torture under international law and constitute crimes against international law which are subject to prosecution in accordance with the section 3 (6) in the chapter 2 of the Penal Code.

Although the acts committed against the plaintiffs before the outbreak of an armed conflict in Syria may be prosecuted as acts of particularly grave assault, there is a possibility to prosecute torture as a crime against international law. The use of torture is a violation of international treaties prohibiting torture, including the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and International Covenant on Civil and Political Rights which are binding for both Sweden and Syria as signatory states. Secondly, the prohibition against torture is a norm of customary international law and constitutes an absolute and non-derogable norm, i.e. *ius cogens*.

Crimes against humanity as a crime against international law

The acts committed against the plaintiffs constitute torture, degrading or humiliating treatment, unlawful deprivation of liberty and persecution as crimes against humanity as they were committed as a part of a widespread and systematic attack against a civilian population within the meaning of international law. Crimes against humanity constitute crimes against international law which are subject to prosecution in accordance with the section 3 (6) in the chapter 2 of the Penal Code.

As a response to the outbreak of the protests in Syria in March 2011, vast state resources have been utilized to arrest, detain, torture and murder thousands of civilians in detention facilities across Syria following government instructions and an established pattern of acts. In April 2011, these acts reached the level of a widespread and systematic attack. The aforementioned acts have targeted those who have been identified as actual or potential supporters of the opposition by organizing or participating in protests against the government, documenting and publishing human rights violations or by residing in areas perceived as centers of oppositional activities. The plaintiffs subject to this complaint have all been arrested due to the perception of them as supporters of the opposition. Hence, they all share the common element of the civilian population targeted by the aforementioned crimes.

War crimes

The acts committed against the plaintiffs after February of 2012 constitute torture and rape amounting to war crimes within the meaning of article 6 in the chapter 22 of the Swedish Penal Code (in its wording prior to the 1st of July 2014).

The conflict in Syria has been characterized as a non-international armed conflict by, inter alia, the United Nations Commission of Inquiry on Syria since February of 2012. Neither of the plaintiffs have taken part in the hostilities between the government forces and the oppositional forces. They are therefore to be considered as a protected group in the meaning of the common article 3 of the 1949 Geneva Conventions.

The acts committed against the plaintiffs have been closely related to the armed conflict. While interrogated in detention, the plaintiffs were confronted with questions or accusations of assistance to armed groups par-

ticipating in the conflict, holding of weapons or killings of intelligence officers. Others were accused of inciting university students of taking part in protests against the government. This demonstrates the security apparatus' perception of the plaintiffs as belonging to or supporting the adversaries of the Syrian government labeled as 'opposition'. The acts committed against them had the overarching purpose of weakening the 'opposition'.

Crimes committed after the entry into force of the Law 2014:406

The acts committed against plaintiff 4 in the period between July 2014 and June 2015 constitute war crimes and crimes against humanity through torture or other inhumane treatment, unlawful deprivation of liberty, punishment without a fair trial and persecution within the meaning of the Law 2014:406.

Crimes against humanity

The acts committed against the plaintiff 4 constitute torture, degrading or humiliating treatment, unlawful deprivation of liberty and persecution as crimes against humanity because they were committed as a part of a widespread and systematic attack against a civilian population in the meaning of section 2 in the Law 2014:406.

War crimes

The acts committed against the plaintiff 4 constitute war crimes of torture, humiliating and degrading treatment and punishment without a fair trial in accordance with the section 4 (2) and (9) of the Law 2014:406 as they were committed against the plaintiff being a person protected by international humanitarian law, in the context of and in relation to an armed conflict in Syria.

Modes of liability

The suspected officials are criminally responsible for the crimes committed in the detention facilities of the Military Intelligence branches 215 in Damascus, branch 261 in Homs, branch 290 in Aleppo, branch Tartous and branch Raqqa; the Air Force Intelligence branches in Aleppo and Homs; the General Intelligence branches 251 and 285 in Damascus, the Political Security branch in Tartous; the Joint Investigative Committees in Raqqa and Homs; Regiment 555 of the 4th Division; Saydnaya Military Prison and the Military Police in Homs, Tartous and Al-Qabun due to their acting as co-perpetrators of the crimes and due to their responsibility as superior commanders in the meaning of section 6 (3) in the chapter 22 and section 4 in the chapter 23 of the Swedish Penal Code.

Co-perpetration

The suspects subject to this complaint should be held criminally responsible as co-perpetrators for the above mentioned crimes. According to the jurisprudence of the Swedish courts, an individual may be held criminally responsible for a crime that he or she has not physically participated in, if the individual has played such a crucial role for the commission of the crime that it is natural to consider this individual as a perpetrator of the

crime. This is the case when an individual, given his or her position, used the physical perpetrator of the crime as a ‘tool’ and thus played the central role by giving instructions to the perpetrator.

The suspects subject to this complaint have played a crucial role in the commission of the crimes by giving orders and instructions to their subordinates and using them as a ‘human tool’ to commit those crimes. Through their orders, the officials have had direct impact on the acts of their subordinates and thus on the commitment of the crimes. The direct involvement of the suspected high-level officials also arises from the fact that the systematic commission of the crimes committed in the detention facilities has only been possible due to the thorough planning and organization undertaken by the suspects.

Superior responsibility

The suspects subject to this complaint should be held criminally responsible as superior commanders for the above mentioned crimes. According to section 6 (3) in chapter 22 of the Swedish Penal Code, superior commanders may be held criminally responsible for crimes committed by their subordinates if they had or must have had knowledge about the commission of the crimes and omitted to avert them. According to the “guarantor doctrine” developed through the jurisprudence of the Swedish courts, individuals holding a position obliging them to monitor another individual’s actions in order to avert commission of crimes or harmful effects may also be held liable. For criminal liability to incur, the guarantor must have caused a dangerous situation through their own actions and then omitted to avert the effect of those actions.

As the military superiors of the direct perpetrators, the suspects have had constant control over the activities of their subordinates. Due to the rigorous documentation and reporting system upheld by the Syrian security apparatus, the suspects were regularly informed about the crimes committed in the detention facilities. Due to their superior positions, they were continuously able and obliged to take measures to put an end to the unlawful acts of their subordinates and to undertake actions to address these crimes by means of judiciary. Considering the fact that the suspected officials were in their positions for several months if not years and taking note of the international media coverage of the high number of deaths and torture practices in detention facilities of the government, it is beyond any doubt that they were or should have been aware of the atrocities happening in those detention facilities and prisons.

Next steps

This criminal complaint supported by testimonies of plaintiffs and other evidence should be used as a foundation for investigations against the high-level officials of the named suspects by the Swedish prosecutorial authorities. The plaintiffs should be given an opportunity to present their testimonies. The individual investigations should be followed by international arrest warrants against the listed officials.

Information correct as of: February 2019

European Center for Constitutional and Human Rights e.V.

ecchr.eu