

## EXECUTIVE SUMMARY

### **Criminal complaint to the German Federal Public Prosecutor**

#### **Torture in Syria**

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On 1 March 2017, together with seven claimants from Syria as well as the two Syrian lawyers Mr. Anwar al-Bunni, director of the Syrian Center for Legal Researches & Studies, and Mr. Mazen Darwish, president of the Syrian Center for Media and Freedom of Speech (SCM), ECCHR submitted the first criminal complaint against six identified and further unknown high-level officials of the Syrian Military Intelligence Service and Syrian Government to the Office of the German Federal Public Prosecutor. The complaint addresses crimes against humanity and war crimes committed in three prisons of the Military Intelligence Service in Syrian Arab Republic.

The complaint, founded on significant evidence and a strong legal analysis, aims for the initiation of an investigation by the Federal Public Prosecutor into the individual criminal responsibility of the six suspects as well as the issuance of international arrests warrants against them. Such important steps would further increase public awareness about the systematic, on-going human rights violations in Syria and enhance pressure on the international community to open effective avenues for prosecuting these crimes on a broader scale.

The complaint is based on the testimonies of twelve witnesses, seven of whom are co-complainants. All of the complainants have either survived or witnessed torture in three prisons run by the Military Intelligence Service between October 2011 and July 2015. Their

detention took place at different times and lasted for different periods between several days to several months. All of the witnesses, with the exception of one who is able to travel to Germany, currently reside in Germany and are willing to testify before the German prosecutorial authorities.

## **Witnesses**

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The testimonies of the twelve witnesses reveal the inhuman conditions inside the prisons of the Military Intelligence Service as well as the systematic practice of torture and other forms of cruel, inhuman and degrading treatment.

For example, the now 29-year-old *witness 5* was arrested for participation in peaceful protests against the government near Damascus at the end of 2014. She had been detained in the prison of the branch 227 and later in the prison of the branch 235 of the Military Intelligence Service. During her imprisonment of one month in each prison she was severely ill-treated and witnesses torture on a daily basis. After her release she fled to Germany, where she currently resides.

*Witness 1* is a 57 years old lawyer, who was targeted by the Military Intelligence Service for publishing articles critical of the Syrian government, hosting internally displaced Syrians and distributing UN aid supplies. In April 2015, he was arrested at the border to Lebanon and transferred to the prison of the branch 235 of the Military Security in Damascus. During the two weeks of his detention, he was severely tortured, among others by means of electric shocks. Since May 2015 he has been living in Germany together with his family.

In November 2012, the 35-years old *Witness 8* was firstly imprisoned by the Military Intelligence agency for printing and distributing flyers criticizing the government. Later, in June 2013, he was detained in the prison of branch 235. He was tortured and forced to disclose information about other activists during his two months of imprisonment. He now resides in Germany.

Similarly, *Witness 3* has been detained on two occasions for his peaceful political activities. After his first two weeks-detention in Damascus, he was rearrested and brought to the prison of the branch 215 of Military Intelligence Service in Damascus. During his 28 days-detention, he was severely beaten and tortured with electric shocks on several occasions. He currently lives with his wife, *witness 5*, in Germany.

*Witness 7*, was arrested in December 2011 and detained in the prison of the branch 215 as a result of her regime-critical position and peaceful participation in demonstrations. During her

33 days-detention, she was sexually humiliated by the guards. Subsequently, she was transferred to Adra prison for another month of detention until her release. She now resides in Germany.

The complaint is further supported by the 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.

*Anwar al-Bunni* is a well-known Syrian human rights lawyer, who had been targeted for his human rights work. In Mai 2006, he was arrested and sentenced for 5 years in detention. While imprisoned, Mr. al-Bunni was also ill-treated and tortured. After his release in 2011, he moved to Germany.

### **Sites of crime**

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The sites of crime addressed are three detention facilities in Damascus, each allocated to one branch, namely 235, 215 and 227, of the Syrian Military Intelligence Service, which is the biggest of four intelligence services of the Syrian government. It maintains 28 branches in Damascus and approx. 50 branches outside of the capital. Compared to prisons of other agencies, its branches are responsible for the highest number of documented deaths.

Like the other three intelligence agencies, the Military Intelligence agency has supported the Assad-family for decades by means of surveillance and violent repression against oppositional movements in Syria. Under tight supervision of President Bashar al-Assad and the National Security Bureau (NSB), the agency plays a crucial role in the planning and implementation of the government's policy of crackdown on the Syrian civil society through intimidation, detention and torture.

*Branch 235*, also known as 'Palestine-branch', is the biggest branch of the Military Intelligence Service. The branch is known as 'the centre of the army's apparatus of repression' and its detention facilities is reportedly run by 500 employees. It is located in the south-east of Damascus, near the faculties of Engineering and Information Technologies of the University

of Damascus, north of *Al-Qazzaz* district and west of the junction between *Mohallak al-Janoubi* highway and „Damascus Airport Motorway“.

*Branch 215* is also known as „Raid Brigade“ or „*Kafrsousa* Branch“. The branch is traditionally responsible for the crackdown of political opposition. Since 2012, it has been carrying out raids and arrests of persons perceived to be supporters of the protests against the government. Due to the high number of deaths occurring in its premises, the branch has been referred to as „Branch of Death“. Its detention facility is located in the South-West of the city on the street of the Sixth of May (also known as *Al Tawjih Al Siyasi'* street) in Damascus.

*Branch 227* received international media attention after the publication of the so-called “Caesar photos” that revealed the death of at least 2043 prisoners in its premises between May 2011 and August 2013. The branch is located in *Mezzeh* district, on the corner between the street of the Sixth of May and *Omar Bin Abdul Aziz* street in Damascus.

None of the individuals detained by the security personnel of these branches were neither informed about the reasons of arrest nor had they been subject to a final judgment by a court of law ordering their arrest or subsequent detention. The vast majority of former detainees testified had no access to a lawyer during the time of their imprisonment. Some were even rearrested even though there was a judicial decision ordering their release.

Upon arrival, prisoners were usually stripped naked, while women were often sexually assaulted on this occasion. Then prisoners were often beaten during a ritual known as “welcome parties”.

#### *Torture and other ill-treatment*

The complaint exposes the systematic and widespread torture practiced in the detention facilities run by the Military Intelligence Service. The employment of torture is founded on attempts of forceful confession during interrogation as well as humiliation or punishment of detainees. According to testimonies of several witnesses, prisoners were regularly tortured to the point of unconsciousness. The scale of deaths caused by torture and ill-treatment during detention were firstly uncovered by the images taken by the deserted forensic photographer of the Syrian Military Police known as “*Caesar*”. *Caesar* smuggled 53.275 images out of Syria depicting bodies of more than 6.000 tortured prisoners who died in the detention facilities of the Syrian Intelligence Services. From there the bodies were transported to one of three military hospitals where the images were taken between May 2011 and August 2013.

During torture sessions, the interrogators would severely beat a prisoner by resorting to the use of various tools and techniques. For example, *Witness 1* was beaten with a hard plastic tube for several hours. He further describes how interrogators stuck pencils into the bodies of detainees and then purposefully broke the pencils for a piece of the pencils remaining stuck the prisoners' flesh. *Witness 3* reported an incident of a prisoner being beaten with a meat-hook on a chain. *Witness 2* testified that the interrogators poured cleaning chemicals on his body, which caused severe burns, and prevented him from washing it off. Other torture tools include cables, sticks, pipes as well as electric shocks.

Furthermore, the torturers use different positions to expose detainees to extreme pain. *Witness 2* was forced to stand in a row of prisoners facing the wall for almost 24 hours during which he lost consciousness.

The interrogators frequently utilized torture-methods known as *Shabeh*, *Dulab*, and *Falaqa*. *Shabeh* involves the detainees being suspended by their wrists, usually tied to a hook or over a door or pipes in the ceiling, often for several hours. With their wrists handcuffed, either in front or behind them, their feet often do not touch the floor. While in this position, the detainees are usually beaten, and sometimes subjected to electric shocks. The *Dulab* technique forces the detainees to bend at the waist and stick their head, neck, legs and arms into the inside of a car tire. Hereby they cannot move and defend themselves against the beatings of their torturers. During *Falaqa* detainees lay down on their stomach and are forced to lift their legs. The perpetrators would hit on their foot soles. The employment of these torture techniques resulted in deaths, severe physical injuries and long-standing psychological traumas in the detention facilities of the branches 235, 215 and 227 of the Syrian Military Intelligence Service.

Moreover, sexual violence was used as a systematic tool of humiliation and destabilization of women, their families and the Syrian society as a whole. Witnesses confirmed that both female and male detainees are regularly raped and are subject to other forms of sexual violence while in detention. *Witness 7* testified that a guard forced her to undress herself and touched her inappropriately.

In addition to physical pain, detainees were confronted with psychological torture. The majority of torture survivors testified that they had to unwillingly observe the torture of other detainees close by or hear them being torture while being blindfolded. Constant threats, humiliation and verbal insults constitute further acts of psychological torture.

### *Inhuman prison-conditions*

Numerous reports of Syrian and international human rights organizations describe the conditions in the prisons run by the Syrian intelligence services, including the branches 235, 215 and 227 of the Military Intelligence Service, as inhuman. As these appalling conditions characterized by overcrowded cells, severe lack of food and water, hygienic care or medical treatment, led to death of many detainees, it is safe to assert they qualify as torture. The facts that corpses of the deceased in collective cells would usually stay there for up to several days before the guards came remove them, also constitutes an act of psychological torture and ill-treatment.

Witnesses testified that prisoners are detained in small and dark underground cells without windows. Such common cells were described as extremely overcrowded. At times there are over 100 prisoners in a 5 by 3 meters large cell. According to one of the witnesses, the longest serving detainee in each cell, the so-called „Scharwisch“, organizes the ‘sleeping shifts’, including the physical sleeping arrangement. Due to the lack of space some prisoners had to sleep on top of each other, which usually led to physical injuries. In addition, there are numerous solitary confinement cells, which are usually 2 by 1,5 meters large and have a very low ceiling.

All witnesses stated that the constant lack of nutrition led to continuous loss of weight among prisoners as well as to increased vulnerability to infections. Despite the numerous diseases spreading among the detainees, no medical treatment was offered to them. Requests for medication or medical care were either ignored or punished by the guards. No exception was made for children and pregnant women in the detention facilities.

Furthermore, access to basic hygienic facilities was constantly restricted. Prisoners were allowed to use the toilet only at certain times and only upon permission of a guard. Often prisoners were completely prohibited to use the bathroom for a certain period of time and to wash themselves in privacy. Women were denied sanitary towels, which provides for an additional form of gendered humiliation as well as a severe health risk.

### **Crimes against humanity**

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The crimes committed in the detention facilities of branches 235, 215 and 227 include murder, unlawful imprisonment, torture, rape, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health

amounting to crimes against humanity within the meaning of Article 7 of the German Code of Crimes against International Law (*Völkerstrafgesetzbuch*, hereinafter: CCIL).

According to the definition provided by the Rome Statute and recognized by the CCIL, acts of murder, unlawful imprisonment, torture, rape, and other inhumane acts of a similar character, are considered a crime against humanity when committed as part of a ‘widespread or systematic attack directed against any civilian population’. ‘Attack’ is understood as ‘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’.

#### *Widespread or systematic*

The number of crimes committed in the prisons of branches 235, 215 and 227 amounts to thousands. The “Caesar photos” alone, which cover only a part of all deaths in prisons, reveal that 3,532 detainees died in branch 215, 2,043 in the premises of branch 227, and 127 in the detention facilities of branch 235. Despite these large numbers, the above-described crimes constitute a small part of an even higher number of committed in other branches and by the other three intelligence agencies. Next to three branches that form the scope of the criminal complaint at hand, the Military Intelligence Service maintains further 25 branches in Damascus and approx. 50 branches across the country.

The systematic nature of the crimes committed in the detention facilities has been documented by the Independent International Commission of Inquiry on the Syrian Arab Republic of the United Nations (Syria CoI) which proved that vast state resources had been utilized to cause civilian deaths in detention facilities on a massive scale and thus amounting to crimes against humanity. Further, established research reports by Human Rights Watch (‘Torture Archipelago’ 2012; ‘If the dead could speak’, 2015) and Amnesty International (‘It breaks the human’, 2016; ‘Human slaughterhouse: Mass hangings and extermination at Saydnaya Prison’, 2017) highlight that the above-listed crimes committed in the branches 235, 215, 227 are part of a pattern committed in numerous detention facilities across the country.

#### *Directed against any civilian population*

According to testimonies of the witnesses as well as numerous reports of human rights organizations, the violence is aimed towards those members of the Syrian civilian population that oppose the government, or are perceived to do so. To qualify as any civilian population, victims of the attack do not have to be ‘civilians’ in the sense of international humanitarian law. The group should be rather recognizable by a ‘common element’ and its vulnerability

towards the governmental and military authority, such as political opposition in the criminal complaint at hand.

Like thousands of other victims, the witnesses who testified for the purpose of this criminal complaint about the crimes in the prisons of branches 235, 215 and 227 were targeted due to their political position, which was perceived as ‘oppositional’ by the Syrian government. This constitutes the ‘common element’ of the group. Furthermore, none of the witnesses were involved in armed hostilities or engaged with any party to the conflict as an active member. Testimonies of prisoners held in other detention centers as documented in reports of Syrian and international human rights organizations provide further evidence that the affected people did not belong to any authority. The targeted group is therefore to be qualified as civilian population.

#### *State or organizational policy*

The crimes committed in the prisons of branches 235, 215 and 227 should be seen as a part of the policy of repression in response to the protests against the government which started in 2011. Under tight supervision of President Bashar al-Assad and the National Security Bureau (NSB), the four intelligence services, air force, military, political and general, coordinated the brutal attack against the civilian population. This policy involved mass arrests, interrogations, torture, detention and executions as a method to suppress the population perceived as ‘oppositional’. The systematic commission of deliberate ill-treatment and torture was recognized as ‘state policy of torture and ill-treatment’ by the UN Independent International Commission of Inquiry on the Syrian Arab Republic.

#### **War crimes**

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The crimes committed in the prisons of branches 235, 215 and 227 of the Military Intelligence Service amount to war crimes within the meaning of Article 8 CCIL since all of the claimants were at no point in time involved in taking direct part in hostilities and the below described crimes committed towards them were motivated by the armed conflict.

The acts of willful killing, denying of fair trial, torture, rape, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health, are considered a war crime if committed against persons protected under international humanitarian law in the context of an armed conflict and if the acts are associated with the conflict.

## *Armed conflict*

The conflict in Syria is characterized as a non-international armed conflict *inter alia* by the International Committee of the Red Cross and the German Federal Court of Justice since 2012. Those crimes that have been committed since 2012 are therefore certainly to be qualified as war crimes. Crimes included in this criminal complaint that have been committed prior to 2012 may still be prosecuted as crimes against humanity as their commission does not require a link to an armed conflict.

## **Suspects**

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The complaint targets six identified and further unknown high-level officials of the Military Intelligence Service and the Syrian government. As superiors they maintained and allowed the policy of deliberate ill-treatment and torture of prisoners to occur. The suspected persons are Ali Mamluk, head of the National Security Bureau, Abdelfattah Qudsiyeh, deputy head of the National Security Bureau, Rafiq Shehadeh, head of the Military Intelligence Service between July 2012 and March 2015, Muhamad Mahalla, head of the Military Intelligence Service since April 2015, Muhammad Khallouf (alias Abou Ezzat), head of branch 235, Shafiq Masa, head of branch 215, the unidentified head of branch 227 as well as other unidentified officials of the Syrian Military Intelligence Service and the Syrian government.

The systematic commission of the crimes against humanity and war crimes described in this complaint was caused by the involvement of the government apparatus. Once agreed upon, the 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 individual criminal responsibility in national proceedings and thus cannot be prosecuted. The National Security Bureau (NSB), which regularly received orders by the President, consists of Assad's closest advisors and is responsible for the supervision of the four intelligence services, which consist of the Military Intelligence Service, Air Force Security, Political Security and General Intelligence Service.

All above-listed suspects hold military positions superior to the direct perpetrators of the mentioned crimes, the interrogators working in the detention facilities of branches 235, 215 and 227. Mr. Mamluk and Mr. Qudsiyeh forwarded the instructions to the heads of the four intelligence agencies, including Mr. Shehadeh and his successor Mr. Mahalla. As heads of the Military Intelligence Service, Mr. Shehadeh and Mr. Mahallahad *de jure* and *de facto* control

the activities of the agency, thus 28 branches in Damascus, including branches 235, 215 and 227, as well as over 50 branches outside of the capital. Mr. Shehadeh and Mr. Mahalla passed down orders to the heads of central and regional branches and ensured that orders were executed. There is significant evidence that information about prison conditions, torture, as well as transfer and deaths of prisoners was regularly and systematically reported back to them.

The head of branch 235, Mr. Khallouf, and head of branch 215, Mr. Masa, together with the unidentified head of branch 227 were the direct superiors of the interrogators committing the crimes addressed in the criminal complaint at hand. They were in charge of passing on the orders to the chiefs of prisons, where the afore-listed crimes against humanity and war crimes were committed. In turn, they were constantly informed about their execution.

### **Modes of liability**

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The suspected officials are responsible for the crimes committed in the detention facilities of branches 235, 215 and 227, due to their acting as indirect perpetrators or accomplices of the crimes or/and due to their responsibility as superior commanders.

#### *Indirect perpetration*

According to the doctrine of ‘Organisationsherrschaft’ under German criminal law, the suspects are to be considered indirect perpetrators. It is beyond any doubt that those who directly committed the crimes presented in this criminal complaint should be considered as perpetrators. However, the multilevel hierarchy of the chain of command and the systematic pattern of the crimes documented in numerous prisons of the Military Intelligence Service indicate that the physical perpetrators of those crimes were only used as a human tool to commit those crimes. By means of their power and their position in the intelligence apparatus, the suspects orchestrated and directed the commission of the aforementioned crimes by their subordinates.

The criminal complaint at hand refers in detail to how the subordinated perpetrators of the crimes had to keep track of their activities by documenting the names of prisoners and the number of deaths as well as by keeping a record of the interrogations.

#### *Accomplice liability*

Even if the doctrine of indirect perpetration would not apply, the six identified and further unknown high-level officials are to be qualified as accomplices of the aforementioned crimes.

The crimes were committed by the subordinates upon instructions of the superiors and therefore in cooperation with them. Under German law, the direct involvement of the superiors does not have to be based on their physical presence at the site of crime or their direct participation in the commitment of it. The direct involvement of suspected high-level officials rather arises from the fact that systematic commission of those crimes in the detention facilities of branches 235, 215 and 227, as documented by corroborating evidence, was only possible due to the thorough planning and organization undertaken by the head of the Military Intelligence agency as well as the respective heads of the branches 235, 215 and 227. Through their orders, the officials had direct impact on the acts of their subordinates and thus on the commitment of the crimes.

### *Superior responsibility*

The suspected officials might further be responsible for the crimes against humanity and war crimes committed towards the claimants as well as many other detainees due to their positions as superiors and military commanders according to Section 4 CCIL. As the military superiors of the direct perpetrators, they had constant control over their subordinates and their activities. Furthermore, the rigorous documentation system, not at last revealed by the “Caesar photos” depicting each dead detainee with three different numbers containing information about the victim, regularly informed at least the six suspects, and most likely beyond that, about the crimes committed in detention facilities of the branches 235, 215 and 227. 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, investigate the crimes committed by them or bring them before a court. 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 appears to be beyond any doubt that they were or should have been aware of the atrocities happening in those prisons.

### **Jurisdiction of the German judiciary**

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German courts have jurisdiction over the aforementioned crimes on the basis of the principle of universal jurisdiction. The CCIL affirms in article 1 the principle of universal jurisdiction, which constitutes the legal basis for prosecution of international crimes including crimes against humanity and war crimes, by German courts. Furthermore, the Federal Public Prosecutor can investigate international crimes, even if the victim and the perpetrator of the crime are not present in Germany.

Therefore, the Federal Public Prosecutor has the authority to investigate the international crimes presented in this complaint as well as the respective individual criminal responsibility of the six identified and further unknown officials of the Syrian Military Intelligence Service and the Syrian government.

With regard to the situation in Syria, the Federal Public Prosecutor is currently working on several individual-related investigations as well as two “structural investigations”, which are broad investigations of similar nature to the ‘situations’ at the International Criminal Court (ICC). One structural investigation focuses on crimes committed by the so called “Islamic State” or Daesh in Syria and Iraq, while the scope of the other one, inspired and supported by the publication of the “Caesar photos”, draws on international crimes committed in Syria, in particular, by the Syrian government, since the beginning of the conflict.

### **Next steps**

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This criminal complaint supported by testimonies of witnesses and other evidence should be used as a foundation for investigations against the high-level officials of the Military Intelligence Service named in the complaint by the Federal Public Prosecutor. The witnesses should be given an opportunity to present their testimonies. The individual investigations should be followed by charges and international arrest warrants against the listed officials.

There is no doubt that further legal interventions should be undertaken to ensure that all systematic and widespread crimes in Syria will be adequately addressed. ECCHR is therefore currently looking into other sites of crime and other possible suspects, and plans to bring further criminal complaints under the principle of universal jurisdiction in Germany. These might concern the crimes of torture committed by other bodies of the Syrian Intelligence Service or different crimes and locations, like executions in Saydnaya-prison.

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European Center for Constitutional and Human Rights (ECCHR)

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