

## **Unofficial Unrevised Translation**

**Please note that this is a translation from German to English of parts of the First Instance Judgement rendered by the Koblenz Higher Regional Court in the case against Anwar R., dated 13/01/2022**

Case number:

1 StE 9/19

3 BJs 30/18-4 GBA b. BGH

The ruling, in conjunction with Federal Court of Justice Order of 20 March 2024, 3 StR 434/22, and the sentence are legally binding as of 21 March 2024.

Koblenz, 2 August 2024

Mannheim, Judicial Inspector

| as registry official of the court

# HIGHER REGIONAL COURT OF KOBLENZ

IN THE NAME OF THE PEOPLE

## JUDGMENT

In the case of crimes against the State Case

against

Anwar R.,

born in XXX 1963 in Homs/Syria,

last resident in:

- Defence Counsel:
- 1.
  - 2.

for crimes against humanity, inter alia.

Joint plaintiffs:

the First Criminal Panel — Crimes Against the State Panel — of the Higher Regional Court of Koblenz

based on the main hearing starting on 23 April 2020,

at its session on 13 January 2022,

in which participated:

Ruled as follows:

The defendant is sentenced to

**life imprisonment**

for a crime against humanity in the form of killing, torture, aggravated deprivation of liberty, rape and sexual assault concurrent with 27 counts of murder, 25 counts of grievous bodily harm, aggravated rape and 2 counts of sexual assault, 14 counts of deprivation of liberty of more than one week, 2 counts of hostage taking, and 3 counts of sexual abuse of prisoners.

The defendant shall bear the costs of the proceedings and the necessary expenses of joint plaintiffs XXX.

Statutory provisions applied:

Section 1, Section 7 (1), nos. 1, 5, 6 and 9 of the Code of Crimes against International Law (CCAIL); Section 7, Section 25 (2), Section 52, Section 174 (a) (1) of the German Criminal Code (*Strafgesetzbuch — StGB*); Section 177 (1) nos. 1 and 3, Section 177 (2) no. 1, Section 177 (4), no. 1 of the German Criminal Code in the version of 1 April 1998; Section 211, Section 223 (1), Section 224 (1) nos. 2 and 4, Section 239 (3) no. 1, and Section 239 (b) of the German Criminal Code.

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## **Grounds**

### **Preliminary remarks**

The principal subject of the present judgment is alleged crimes under Section 7 of the Code of Crimes against International Law (CCAIL), consisting of killings, torture, serious deprivation of liberty and sexual assault in the context of the violent suppression of the internal Syrian protest movement, which began in February 2011 as part of the 'Arab Spring' with a peaceful demand for political reforms. Under the control of the Syrian regime and coordinated by a high ranking ad hoc committee, intelligence services, paramilitary units and regular army forces took action against actual or suspected critics of the regime throughout the country, from 29 April 2011 at the latest. This led to the violent dispersal of demonstrations, often with firearms, the sealing off and storming of entire towns and districts, mass arrests, and the torture of prisoners in facilities run by the branches of the intelligence apparatus. The victims, whose number increased rapidly, were buried in mass graves in strict secrecy.

The defendant was a member of the intelligence service for many years, latterly holding the rank of colonel. From 2008, he headed the Investigations Subdivision of the notorious Branch 251 of the General Intelligence Directorate in Damascus, also known in Syria as the 'Al Khatib' Branch. In this role, he was responsible for conducting investigations into suspected or actual opponents of the regime, mainly in the form of interrogations involving the use of torture. At the same time, the defendant was responsible for the Branch prison in the basement. As the protest movement was suppressed, the growing number of incarcerations led to serious overcrowding. Detention was characterized by excessive violence and inhumane conditions that were extremely cramped, with inadequate ventilation and nutrition, and dire hygiene; in addition, prisoners constantly heard the sound of beatings and screams of pain from those being tortured nearby. Ill-treatment, in particular during interrogations, ill-health caused by the conditions of detention and the lack of medical care had life-threatening consequences. At least 27 prisoners died in the period until 7 September 2012. In overseeing their treatment, the defendant, through his position and associated duties, was involved in a large number of individual offences; furthermore, he personally conducted interrogations. He was transferred to another intelligence branch on 8 September 2012 and deserted at the end of 2012.

The Panel arrived at a conclusion regarding the attack on the Syrian civilian population on the basis of expert opinions and the testimony of some expert witnesses who, as members of the opposition, were directly involved in the events in question. Expert analysis of photographic documentation of those killed (the 'Caesar files') by a former Syrian military photographer should also be highlighted. As evidence of the prevailing conditions in Branch 251 and the offences of the defendant, the Panel relied primarily on the testimony of witnesses who had been imprisoned there — a large number of whom had had direct contact with the defendant — as well as on the statements of former employees of the regime. The Panel did not find credible the defendant's submission — with partial admission of guilt — to the effect that he had been "stripped of his powers" internally as early as June 2011 due to his sympathies for the protest movement and the release of prisoners.

## **A. Findings**

### **I. Re. the findings as to the person of the defendant**

#### **1. Time in Syria (until 1995)**

The defendant Anwar R. — alternative spelling: R. — was born on XXX 1963 in Homs, the child of XXX, and is a Syrian national. His hometown is the settlement of Al Houla — alternative spellings: Al-Hula, Al Howla — in Homs Governorate in the west of Syria, where he grew up and attended primary and secondary school. Nothing more is known about the defendant's childhood and school years, his parents or any siblings.

The defendant is of Muslim faith and Sunni. His mother tongue is Arabic and he also speaks English. He is of medium height and slim build, with grey hair that has thinned out into a crown, a moustache and a striking brown birthmark on the upper left cheek, below his eye.

The defendant graduated from school with a high school diploma and went on to study law at the University of Damascus. He endeavoured to join the Syrian civil service early on, with the aim of becoming an officer. After previous unsuccessful applications, he joined the Syrian police service as a candidate officer on 2 December 1986 while still a student and took part in courses for non-commissioned police officers in parallel to his studies; his training came to an end on 30 July 1987. The defendant was then appointed as a police sergeant to the Directorate for Emigration and Passports, where he carried out clerical duties in divisional offices in Aleppo, Hasaka and Tartus for a total of five years. At the beginning of this period

of activity, the defendant successfully completed his law studies — which he had pursued in parallel — and graduated with a degree after four years of study.

From August 1992, at the defendant's request, he engaged in further training at a State police academy in Damascus with a view to becoming a police officer. This training again covered legal matters — specifically relating to public order and police work — as well as acquisition of the English language. The defendant was ranked second best in his year and was appointed to the rank of first lieutenant; he then worked for 18 months as a lecturer and instructor at the police academy while participating in other training courses. He worked in the police force for a total of 8 years after completing his studies.

In January 1995, as one of the top three students in his year on account of his outstanding professional performance, the defendant was appointed to the General Intelligence Directorate, where he initially participated in a training programme on intelligence gathering for a period of 8 months. In subsequent years, he served alternately in Branches 285 and 251, and intermittently also in Branch 300. His activity within the intelligence service, and the circumstances surrounding his desertion from it, are the subject of the substantive findings of the case. The defendant worked in the Syrian General Intelligence Directorate for a total of almost 18 years, until December 2012, ultimately attaining the rank of colonel.

The defendant married his spouse XXX, also born in Homs, on XXX 1988. Seven children were born out of this marriage: the eldest daughter XXX, date of birth unknown; XXX, born in 1992; XXX, born in 1993; XXX, born in 1997; XXX, born in 1998; XXX, born in 1999; and XXX, born in 2006.

## 2. Period from December 2012: departure; stay in Jordan and Germany

With the help of an acquaintance, witness Z1, the defendant deserted the Syrian intelligence service in mid-December 2012 and fled with his family — his wife and at least the five youngest children — via the Syrian cities of Dara'a and As-Sweida to Jordan, crossing the border on the night of 14 to 15 December 2012. He was initially subject to a security check by the Jordanian authorities and was accommodated in the Zaatari refugee camp near the border. He then stayed in Amman with his family for two and a half years. There he made contact with other officers who had deserted and members of the disparate Syrian opposition abroad, and worked for the largest opposition movement (the 'National Coalition'), advising it on security issues such as the reliability of those working for the movement. The defendant had plans to set up his own opposition counterintelligence and security organization. With the

help of a forged Syrian passport obtained through opposition activists, he flew to Türkiye several times, where he stayed for long periods of time, participating in National Coalition conferences in Istanbul as a security officer. On 27 January 2014, the defendant flew to Geneva and remained there until 16 February 2014. There, as part of an extended delegation of the Syrian opposition abroad, he attended peace talks initiated by the United Nations and organized by its special envoy Lakhdar Brahimi to settle the Syrian conflict (the 'Geneva II negotiations'). The defendant's commitment to the Syrian opposition abroad was in part motivated by the prospect of a high ranking position in any new Syrian security authorities that would be formed after the expected fall of the Assad regime.

It is not known how the defendant provided for himself and his family during his stay in Jordan. However, the defendant repeatedly asked acquaintances for financial support for particular projects.

On 22 April 2014, the defendant, citing his desertion and his opposition activities, applied to the German embassy in Amman for a residence permit for the Federal Republic of Germany and a visa for himself, his wife and the five younger children XXX, XXX, XXX, XXX and XXX, through the intermediary of Syrian opposition activist Z2, who had not previously been personally acquainted with the defendant. No application was made for the two eldest daughters XXX and XXX; they no longer lived with the rest of the defendant's family from a date that cannot be determined. His married daughter XXX had previously lived independently while in Syria, and had travelled to Lebanon, independently of the defendant, with her husband and three children. She arrived independently in Germany from Lebanon between 2015 and 2017; she has lived in Berlin with her own family since then. Daughter XXX, who is also married, lives in Türkiye with her own family.

In a decision dated 8 May 2014 — just two weeks after the application was submitted — the Federal Office for Migration and Refugees admitted the defendant, his wife and their five children to the Federal Republic of Germany on the basis of Section 23 (2) and (3) of the German Residence Act [*Aufenthaltsgesetz*]. The factual and legal background to this decision was the special contingent created by the Federal Government at the time for the admission of Syrian refugees considered to be in particular need of protection for humanitarian reasons (Order of the Federal Ministry of the Interior pursuant to Section 23 (2), (3) in conjunction with Section 24 of the Residence Act for the Temporary Admission of Persons in Need of Protection from Syria and Countries Bordering Syria and Egypt of 23 December 2013), hereinafter: Order of 23 December 2013). The defendant was regarded internally by the

German Foreign Office as a “deserted high ranking collaborator under acute threat” — a refugee who met the personal criteria of the Order of 23 December 2013, and whose case needed to be swiftly resolved — despite the opposing views of those who pointed to his previous activity in the Al Khatib Branch of the Syrian intelligence service.

After visas were issued on 11 June 2014, the defendant, who had previously obtained forged Syrian passports for his relatives through contacts in the Syrian opposition abroad, travelled from Amman to Germany with his wife and five youngest children on 26 July 2014. In Germany, the family was initially placed in emergency reception centre accommodation in Berlin in XXX; they later took up residence at the address XXX in Berlin. Following his application, the defendant and his family members received residence permits and work permits on 28 October 2014 — as provided for in the Order of 23 December 2013 for quota refugees. After consulting a lawyer, the defendant secured an amendment to the permit, stating that it applied retroactively to 7 August 2014. The residence permit was subsequently extended at regular intervals, most recently on 12 July 2018, until 11 July 2021. Following an application for asylum submitted on 9 April 2015, the defendant, his wife and sons XXX and XXX were granted refugee status and recognized as eligible for asylum by decision of the Federal Office for Migration and Refugees on 18 May 2015. In support of this decision, it is stated in general terms that the legal criteria for authorization and recognition, in particular the applicant’s fear of political persecution, were met; regarding other aspects, reference is made to the contents of the file. A preliminary oral hearing was dispensed with. Meanwhile, revocation proceedings at the Federal Office for Migration and Refugees are pending.

The defendant subsequently attended at least one integration and language course, acquired a basic understanding of the German language (level B1+, grade “satisfactory”) and took up employment in the security sector for an unspecified period of time. The family also received benefits to secure their subsistence in accordance with Volume II of the German Social Security Code [*Sozialgesetzbuch*, SGB II], as well as child benefit. With the exception of daughter XXX, the defendant’s children live in Berlin.

The defendant travelled to Istanbul with his wife on 10 May 2015 to visit his daughter XXX on the occasion of the birth of a (grand)child. The return journey proved difficult, as the Syrian passports used by the defendant and his wife were recognized as forgeries by the Turkish authorities and confiscated. With the help of a lawyer and the intervention of the German immigration authorities and Embassy, the defendant and his wife were able to return to

Germany after several months in Türkiye, during which time they submitted an application for re-entry and were issued with replacement documents.

### 3. Questioning, initiation of proceedings and detention

In early 2015, the defendant suspected that he was being watched by foreign operatives of the Syrian intelligence service on various occasions in Berlin and feared abduction, in particular in connection with his visits to the doctor's surgery on 7 and 10 January 2015, respectively. The defendant's suspicions arose because of what he claimed was unusual behaviour on the part of the general practitioner (who was of Syrian origin) and his staff, and the presence of individuals whom he believed to be Syrian on the street outside the doctor's surgery, who were visible from the waiting room window. The defendant contacted a Berlin police station on 23 February 2015, where he gave an account of what he had witnessed with the help of witness Z3, who acted as a language mediator. He was subsequently questioned by the Berlin State Criminal Police Office [*Landeskriminalamt*] on 27 February 2015 as a witness and possible victim. He described his career in the Syrian security authorities. However, it could not be established that the defendant had, in fact, been the subject of surveillance by foreign intelligence services, and the preliminary investigation was closed by the Berlin Public Prosecutor's office [*Staatsanwaltschaft*] on 29 December 2015.

Independently of his earlier questioning and the proceedings initiated at that time, the defendant was again questioned as a witness on 26 October 2017 by the Baden-Württemberg State Criminal Police Office on the premises of the Berlin State Criminal Police Office, in connection with a preliminary investigation against an individual accused of war crimes during the Syrian civil war. The defendant had been named as a possible relevant witness by witness Z4, who was known to the defendant and had previously been questioned as part of the proceedings.

The proceedings against the defendant were initiated on 13 July 2018 by order of the Federal Prosecutor General [*Generalbundesanwalt*]; the investigations were conducted after the findings concerning the defendant were excluded from the 'Syria' structural investigation being conducted by the Federal Criminal Police Office [*Bundeskriminalamt*] to uncover and prosecute crimes against humanity in connection with the Syrian conflict from 2011 onwards. The defendant was arrested in Berlin on 12 February 2019 pursuant to an arrest warrant issued by the investigating judge of the Federal Court of Justice [*Bundesgerichtshof*] on 7 February 2019 (Case no. 4 BGs 21/19). He has remained in pre-trial detention continuously

since then, initially in detention centres in Berlin and, since April 2020, at Koblenz prison. Since April 2020, the conditions of his detention have included restrictions on contact and visits, due to measures to prevent the spread of coronavirus.

#### 4. Criminal record

The defendant has no criminal record.

## **II. Findings as to the substance of the case**

### 1. General political and social development in Syria up to 2011

#### (a) History; political and social structure

The population of the Syrian State, which gained independence in 1946 when the French mandate rule came to an end, is divided into different ethnic and religious groups. Sunni Muslims comprise the largest population group (approximately 60–70% in 2011); Alawites — who are also Muslim — comprise much smaller group (approximately 11% in 2011). The remainder of the population of comprised of minority Christians, Shiite Muslim, Druze, Jewish and Êzîdî groups. Since Syria gained independence, the Alawite minority has become the most politically and socially influential population group. This is rooted in their early support for the French mandate rule and a disproportionate representation in the Syrian Army, where they still account for the majority of officers. The Ba'ath Party, which was later established as the State party, was also dominated by Alawites. Moreover, Alawites are clearly overrepresented in the administration, military and economy because presidents Hafiz and Bashar al-Assad appointed mostly Alawite confidants and relatives to leadership positions. However, Sunnis were also appointed to leadership positions on occasion, thanks to their qualifications and strategic efforts to achieve publicly conveyable ethnic and religious diversity. Examples of high ranking Sunni officials include Hassan Turkmani, former defence minister until 2009 and subsequently an important advisor to the President, before being killed in an attack in 2012; Hisham Ikhtiar, Head of the General Intelligence Directorate until 2005 and subsequently head of security for the Ba'ath Party; Ali Mamlouk, who is believed to have been Head of the General Intelligence Directorate until July 2012; and his successor Dib Zaytoun. Moreover, President Bashar al-Assad and some of his close family members are married to Sunnis.

The Ba'ath Party, which was originally founded with an Arab nationalist agenda and in opposition to the colonial powers, initially pursued the goal of an Arab and socialist community independent from foreign States in Syria, Lebanon and Iraq. In 1963, the party came to power through a military coup. Since 1973, the Ba'ath Party has been enshrined in the Syrian Constitution as the leading party of the Syrian State. State leadership positions are reserved for party members. In 2010, two thirds of the members of the Syrian Parliament belonged to the Ba'ath Party and other parties in its block. Larger associations, business federations and trade unions are close to the Party; membership increases opportunities for receiving State privileges such as economic licences, university admission or promotion in the civil service. The Ba'ath Party has progressively moved away from its original socialist pan-Arab ideology towards a clientelist pro-government objective.

A further coup in 1970 brought Hafiz al-Assad, until then Minister of Defence, to power as President. He remained Syrian Head of State until his death in June 2000. He was succeeded by his then 34-year-old son, Bashar al-Assad, who is still President of Syria today. At the beginning of his term, the new President pleaded for social change, more democracy and reforms during public appearances. Cautious measures of social liberalization and political opening (the 'Damascus Spring') were introduced, including the release of political prisoners, licensing of independent newspapers, closure of prisons, acceptance of the establishment of human rights organizations and authorization of mobile communications and the Internet. The President also launched an anti-corruption campaign. As early as the summer of 2001, however, the Syrian Government reverted to a repressive stance, and numerous Government critics were arrested. As during the rule of Hafiz al-Assad, the intelligence services in particular were tasked with implementing Government policy. In 2004, for example, a Kurdish uprising in the north-east of the country was quashed by security forces, leaving 14 dead and numerous injured.

On the foreign policy front, the wake of the war in Iraq resulted in a rapprochement between Syria and Iran. At the same time, the Syrian Government sought to improve relations with the international community.

(b) Exercise of power, role of the Syrian security apparatus

(aa) Since the military coup in 1963, Syria has transitioned from a pluralistic and liberal society and system of government to an autocratic and repressive regime, which ultimately took on dictatorial characteristics through de facto one-person rule upheld by violent means. The state

of emergency that had remained in place since the coup — and which was only lifted by Bashar al-Assad in April 2011, albeit without any tangible changes — allowed for bans on gatherings, newspapers and political parties and expanded the powers of the security apparatus, in particular by making it easier to arrest and detain people. The security authorities were granted powers to detain anyone who endangered public security, without a court ruling. Increasingly, there were arbitrary arrests of political dissenters, most of whom were detained in prisons run by the intelligence services.

Although torture has been banned under the Constitution since 1973, it was frequently used as a means of extorting information and intimidation. Deaths in custody were frequent, both as a result of prison conditions and ill-treatment and through targeted executions of prisoners accused of attacks or assaults on Government officials or institutions. In 1982, in what has become known as the ‘Hama massacre’, Hafiz al-Assad had the army bomb the city of Hama, which was dominated by opposition groups, in particular the so-called Muslim Brotherhood, killing between 4,000 and 40,000 civilians. Following Bashar al-Assad’s assumption of office and the intervening period of political liberalization, summer 2001 marked a return to large scale arrests of political opponents and to the repressive policies of his father. As under the rule of Hafiz al-Assad, no opposition stood a serious chance in elections, which were held for form’s sake. Social and political initiatives, where not prohibited from the outset, were subject to police surveillance and control; human rights activists were banned from leaving the country. Print media and the Internet were subject to Government control and censorship. In the economic sector, contracts and licences such as those for mobile networks, for example, were awarded within a group of families loyal to the Government or related to the President, in particular, the group of companies owned by Rami Makhlouf, a cousin of the President. When it came to modernization measures and infrastructure development, preference was given to regions that were considered loyal to the Government or promised to be particularly lucrative for the State.

Since the rule of Hafiz al-Assad, resistance to the Government has been nipped in the bud by the intelligence services, which are omnipresent in cities and rural areas. An all-pervasive intelligence system of informers created a prevailing climate of mistrust and fear in Syria.

(bb) The extensive, military-like intelligence apparatus (*mukhabarat*) has been an essential instrument of power of the Syrian state leadership since the rule of Hafiz al-Assad. It was and is responsible for monitoring the population and for gathering information on a political and social level through the use of repressive measures such as searches, arrests and

interrogations, sometimes involving the use of extreme physical violence. Under the state of emergency, which was in place for many years, the intelligence services were granted far-reaching executive powers that had no legal basis. Within the regime, they enjoyed a high level of authority; they were not so much subordinate units of the Syrian administrative and security apparatus as autonomous institutions that reported directly to the State leadership and served to shore up its rule. The official role of the intelligence services was to detect and counter anti-regime activities and to fight terror and extremism.

The National Security Bureau (NSB), staffed with top officials of the intelligence services, among others, and since March 2011 the Central Crisis Management Cell (CCMC), which is described in more detail below, constitute a control and coordination body superordinate to the – military-like structured – intelligence services. The services themselves are divided by areas of responsibility which are in themselves not clearly defined, namely:

- the General Intelligence Directorate, which reports directly to the President;
  - the Military Intelligence Department under the Minister of Defence;
  - the Air Force Intelligence Directorate, which also reports to the Minister of Defence;
  - the Technical Reconnaissance Service which, again, is attached to the Ministry of Defence;
- and
- the Political Security Department under the Ministry of the Interior.

Each of the intelligence services is further divided into branches, most of which are identified by a three-digit number; some branches have sections identified by two-digit numbers. For the most part, the services operated a network of regional offices spanning the entire country. Thus, in addition to the central organizational units, the General Intelligence Directorate, the Military Intelligence Department and the Air Force Intelligence Directorate have regional branches and detachments in all governorates. In addition to branches performing administrative duties, covert investigations and information gathering from social media, at least the General, Military and Air Force Intelligence have branches with executive powers through which direct and violent action can be taken against persons and institutions. Although not part of the military, their members hold military titles, especially at leadership level. As a rule, the individual services and their branches are headed by generals, the sections by officers with the rank of colonels and lieutenant colonels.

Throughout the rule of Hafiz al-Assad and, subsequently, Bashar al-Assad, the control exercised by the intelligence services ranged from surveillance of public spaces and events through to monitoring of political organizations, universities, companies and religious communities and individual surveillance of public servants and religious leaders. The main focus of the General Intelligence Directorate was surveillance of the Syrian population, primarily in the Damascus region. The Military Intelligence Department was officially responsible for the security of the armed forces, including reconnaissance abroad, and the Political Security Department was responsible for political and religious surveillance. The Air Force Intelligence Directorate was linked to the Syrian Air Force in name only, its name being originally derived from the affiliation of Hafiz al-Assad, who had designed it as a personal security body, with the Air Force. Aside from its responsibility for air safety control, the Directorate was mainly tasked with keeping the opposition in check. In addition, all intelligence services were mandated to “fight terrorism” and fend off opponents of the regime.

The intelligence services operated their own detention facilities, including in their regional branch offices, where people were detained without formal proceedings, sometimes for lengthy periods of time, and interrogated and tortured to extort information. This usually happened before detainees were transferred to regular detention facilities such as the civilian prison in Adra or the military prison in Mezzeh. As far back as the rule of Hafiz al-Assad, certain torture techniques were used systematically and given specific names. These included blows to the entire body with cables or canes; beating or flogging of the soles of the feet (*fallaqa*); forcing a person into a tyre and dealing blows to the immobilized victim (*dulab*); beating a person strapped to a wooden board (‘flying carpet’); hanging by the hands with the toes barely touching the ground combined with violent impact on the defenceless person (*shabeh*); chaining to a chair with an adjustable backrest, the movement of which causes overstretching of the spine (‘German chair’); burning, cauterization or scalding of body parts; electric shocks; humiliation; denial of toilet visits; and deprivation of sleep, water and food. Time and again, ill-treatment and general prison conditions resulted in the deaths of prisoners.

With regard to the actions of the intelligence services, it seems that in the period preceding the start of the protests in spring 2011, the services made targeted arrests and maltreated prominent members of the opposition, the press or groups classified as critical of the State, such as the Muslim Brotherhood or politically active members of the Kurdish community. A change towards widespread, extensive action against large swathes of the civilian population seems only to have occurred subsequently.

(cc) The Syrian army is a conscript army. The Republican Guard, which reports directly to the President and the Fourth Division — which at least in 2011 was under the command of the President's brother, Maher al-Assad — are elite units at the service of existing power structures.

(dd) Aside from the intelligence services and the regular armed forces, the Syrian regime also used paramilitary units and militias close to the regime to exert control over the population. However, their activities gained particular importance only with the emergence of the protest movement and the unrest of spring 2011. Particularly noteworthy in this regard were *Shabbiha* (derived from *shabeh*, meaning phantom or ghost): an initially loose network of people close to the regime who viewed themselves as an unofficial arm of the State and developed a form of shadow economy, akin to organized crime, for their own enrichment. They were protégés of the aforementioned Rami Makhlouf, a cousin of President Bashar al-Assad. With the onset of the unrest in spring 2011, *Shabbiha* played a major role in the repression and persecution of opposition forces.

## 2. Start of the conflict in Syria and its course from early 2011 to late 2012

### (a) The Arab Spring, strengthening of civil protest in Syria

In North African countries — primarily Tunisia — and the Middle East, a civil pro-democracy movement started to gather momentum from late 2010 onwards, which became known in the media and academia as the Arab Spring or 'Arabellion'. Social media posts, as well as demonstrations and other types of rally were used to protest against political and social grievances, corruption and mismanagement in the countries in question, some of which were under autocratic rule; this generated a degree of political change. A political slogan used across these countries was "the people want the fall of the regime". However, both the regime and independent observers considered that this movement was unlikely to spill over into Syria.

Nonetheless, support for the protest movement grew in Syria. On the Internet in particular, there was already growing support for anti-Government attitudes in early 2011. Encouraged by developments in other Arab States, the public's willingness to speak out against the Syrian Government subsequently increased; the groups involved included well-known opposition members, some members of the younger generation who were influenced by the Internet and had access information critical of the Government despite the restrictions on such information, as well as economically disadvantaged population groups who did not benefit from the

cronyism of the State system. As the conflict progressed, these groups were joined by a growing number of people who turned against the Government in response to the increase in State violence, in particular relatives of arrested individuals or other victims of earlier protests. Mosques frequented by Sunni worshippers were symbolic of the movement and were the starting point for demonstrations, in particular after Friday prayers, which are mandatory for devout Muslims. Since the security authorities' actions targeted these times and places, the repressive measures turned further segments of the Sunni majority population against the Syrian regime and the majority Alawite security forces, as the measures by now appeared also to be motivated by sectarianism.

(b) Course of the conflict

(aa) In February 2011, the first small-scale rallies against corruption and poverty and in favour of more democratic rights were held in some parts of Syria. The gatherings were peaceful and initially largely undisturbed by the security forces. At the beginning of March 2011, children and young people aged 10–15 years wrote slogans critical of the Government such as “The people want the fall of the regime”, which had already been used in other countries, on the walls of houses in the town of Dara’a in the south-west of the country. The children and young people were then arrested. When they were released from prison a few days later, they had clearly been subjected to torture, and the incident gained nationwide attention on social media as well as in the international press, unleashing a wave of demonstrations across Syria.

On 15 March 2011, in response to the detention and ill-treatment of children and young people, protests were held at the historic Souq al-Hamidiya covered market in Damascus, followed by a silent rally of some 150 people, approximately 30 of whom were arrested. On Friday 18 March 2011, protesters in Dara’a, Baniyas, Homs and Deir ez-Zor gathered after midday prayers for what were by now much larger demonstrations, triggering a violent response by the security forces. As a result, hundreds were injured and at least two killed. Regular rallies followed, usually on Fridays, which grew to several thousand people in size and were held mainly in the cities of Damascus, Homs, Dara’a and Douma. The security forces responded with tear gas and live ammunition. On 23 March 2011, they used firearms against protesters gathered at the Omari mosque in Dara’a, resulting in an unknown number of deaths. A demonstration at the Ummayyad mosque in Damascus after Friday prayers on 25 March 2011 was dispersed using violence. On 1 April 2011 in the Damascus area, including

in the town of Douma north-east of the capital, an unknown number of demonstrators died as a result of firearms used by the security forces, and several demonstrators were arrested.

The vast majority of demonstrations and rallies were peaceful. The demonstrators, who were usually unarmed, carried palm fronds and olive branches as symbols of their peaceful intentions. Occasionally, however, stones were thrown. During riots in Dara'a, there were arson attacks against buildings associated with the Government, such as the office of the Ba'ath Party.

(bb) The Syrian regime reacted to the upsurge in protests by implementing various strategies in parallel

(1) Government and pro-Government newspapers issued statements declaring that the protests were uprisings instigated from abroad with the aim of destabilizing the Syrian State. Throughout 2011, it was repeatedly denied that demonstrators had been killed by the security forces. To spread disinformation among the (global) public, press conferences showed allegedly injured members of the emergency services attending hospitals, as a way of implying that the demonstrators were ready to use violence.

(2) At the same time, Bashar al-Assad ostensibly reached out to protesters by announcing reforms and partially replacing the leadership of the security forces. At the beginning of April 2011, the state of emergency was lifted and the release of imprisoned demonstrators was ordered. Moreover, the demands of certain population groups were met through legislative amendments. For example, stateless Kurds were granted Syrian citizenship, and the ban on teachers wearing full-face veils was lifted. In the period that followed, the Syrian Government continued to be conciliatory and — partly in response to international protests triggered by acts of violence against the civilian population — announced its willingness to engage in dialogue with the opposition and draft a new constitution. In late July and early August 2011, Bashar al-Assad passed legislation allowing for political parties other than the Ba'ath Party and greater freedom of expression in the media.

(3) In parallel, however, and without the public's knowledge, from the end of March 2011 onwards the foundations were laid at the highest level of State for a quantitative and qualitative increase in violence by the security forces. Thus, in response to the worsening situation, the Central Crisis Management Cell (CCMC) was established in March 2011 as an *ad hoc* body composed of senior leaders of the security forces (see 1. (b)). The CCMC reported directly to President Bashar al-Assad. Its standing membership included the deputy

head of the Ba'ath Party Regional Command, Mohammed Said Bekheitan; the Minister of Defence; the Minister of the Interior; and the heads of the intelligence services. There were also alternating representatives of the Government. The CCMC had authority over the governing bodies of the military and intelligence services and provided, by way of central orders for all security services, general guidance on the future response to the protests. The guidelines and instructions issued by CCMC concerned, in particular, organizational matters involving the intelligence services and entities of the Ba'ath Party. From mid-April 2011 at the latest, the aim was to suppress the protest movement by force, including by means of armed intervention by the security forces, in order to prevent the destabilization and possible overthrow of the regime.

(a) In April 2011, the CCMC held several meetings. At a meeting held on or shortly before 18 April 2011 to discuss the "security situation" and the "political situation", it was decided that:

"1. The time of tolerance and fulfilment of demands is over, the saboteurs and conspirators have relied too heavily on our policy in this respect, they have raised the ceiling of their demands, increased their hostile actions, used all means of agitation as well as weapons, and stirred up sectarian strife.

2. Demonstrators, individuals who pose a security threat and saboteurs must be confronted in various ways, including the following:

(a) There shall be no release of any arrested persons, and those arrested shall be prosecuted.

(b) Those who take up arms against the State must be met with arms, taking care not to endanger civilians.

(c) Instructions must be issued for the confiscation of unregistered motorbikes as well as of registered motorbikes used as a means of agitation or a means of transport for armed persons (areas and details to be agreed with the Ministry of the Interior).

(d) Known perpetrators are to be arrested without raids, placed in prison and prosecuted.

(e) Mechanisms for dealing with rallies:

- The police must be prepared and equipped to confront demonstrations, backed by the security apparatus. Similarly, the Party and its organizations will prepare to confront demonstrations where necessary in accordance with the situation.

- The armed forces are to be involved only in emergencies and for specific tasks only.

- The tasks, responsibilities and mechanisms of cooperation between the various bodies must be clearly defined.

3. In the regions, supreme bodies composed of a member of the command, a senior military officer and a security officer are to be established to plan, implement and provide leadership. All military, security and party agencies in the respective territory shall be subordinate to them. They will include:

- A body for the central region.
- A body for the coastal region.
- The Central Crisis Management Cell shall exercise this function in Damascus and Rif Dimashq [Note by the Panel: Surroundings of Damascus].

4. The central region is to be given priority, with measures to keep the remaining regions calm.

5. The Party apparatus (Party organizations, people's organizations and professional trade unions) assumes the following role:

- Training of designated forces in confronting demonstrators and in the use of weapons.
- Round-the-clock shifts at Party headquarters.
- Ensure a limited reserve within the Party and its organizations that can be increased, as needed, in each governorate.
- Participation in confrontation with enemy demonstrations.
- Organization of supportive rallies, depending on the needs and situation in each governorate.
- Monitoring the situation in the population, reporting suspects and instigators and ensuring their eventual arrest and handover to the security authorities and the army.
- Division of the trained forces into units with a leader to ensure well organized interventions.

6. A meeting is to be held with the trade unions to inform them of their duties and to notify them that non-compliance will be liable to prosecution under the Trade Unions Act and general laws.

7. The presidents of the universities are to be informed that students must be notified that rallies in the university are prohibited by law and that anyone violating those provisions will be expelled from the university.

8. The role of the media:

- The deployment of civilian and military media delegations to the scene of the events and the filming of events to ensure that the footage is broadcast in a timely manner. This must be done once a specialized media unit, preferably in liaison with the political administration of the armed forces, has edited the material and prepared a relevant commentary. Constant coordination with the security authorities and the armed forces is needed.

- Banners, terms and phrases shown during the broadcast must be reviewed and any unacceptable terminology be deleted. Use of concepts and terminology based on offences established in the Criminal Code.
  - Use of creative methods to respond to hostile media which rely on audiovisual documentation.
  - Clarification of cases that are to be considered unlawful.
  - Both citizens and saboteurs must understand that we are entering a phase where the law will be applied rigorously and unyieldingly in order to safeguard the security of the State, its citizens and public order.
  - The main focus must be on unmasking saboteurs and ensuring their condemnation by all segments of the population.
9. A special meeting of the Central Crisis Management Cell must be held to make arrangements to respond to possible demonstrations on Fridays.”

(b) On 20 April 2011, CCMC met again and, according to the minutes of the meeting, “continued to evaluate the security situation”. The following was noted and resolved:

- “1. The facts show that people who carry out demonstrations, rallies, murders, killings and acts sabotage are further refining their methods and plans to terrorize citizens and force them to join them. They will do anything to shake citizens’ trust in the State and its ability to fight these people. They plan to hold demonstrations in several cities on Friday. It is likely that they will try to spread demonstrations to other cities and foment sectarian discord.
2. There is a need to initiate a new phase in combating the conspirators, and to use force against them from now on. It is important to win the battle and demonstrate the strength and capacity of the State.
3. Detailed plans are being prepared to counter probable armed and unarmed demonstrations and rallies, especially in the regions of Dara’a, Damascus, Rif Dimashq and Homs. The plans will be drawn up today or tomorrow under the supervision of the National Security Bureau. The armed forces are requested to provide the necessary support in coordination with the army command (as per the instructions issued).
4. The General Command of the Army and Armed Forces must submit comprehensive plans. These plans are being drawn up on the basis of a scenario of widespread demonstrations and hostile actions in all governorates. All measures are taken, and arrangements are made to ensure cooperation with the relevant agencies to implement these measures in whole or in part, depending on the prevailing situation.
5. Some military units are being mobilized according to the instructions given.
6. The armed forces are releasing a statement about killings and murders of military personnel, indicating that the perpetrators will be prosecuted by every possible means and brought to justice so that they receive the punishment they deserve.

7. Depending on the situation, all the methods and means described are used when surrounding a region, raiding suspects or combating a hostile demonstration (according to the instructions given during the meeting).

8. Persons suspected of having participated in acts of sabotage, killings, planning of criminal acts and incitement of discord following orders from abroad will be arrested.

9. The security authorities will focus on investigations, interrogations and follow-up in order to obtain evidence-based results and present them in the media.

10. The deceased will be buried without gatherings or demonstrations. The relatives of the deceased must make a pledge to this effect before the bodies are released to them.

11. Daily meetings of the Central Crisis Management Cell will be held.

12. Students who participate in demonstrations will have their registration revoked in accordance with university rules and regulations.

13. By order of the Minister of the Interior, it is forbidden to bring bicycles into the cities.

14. The provisions of item 8 of the minutes of the previous meeting on the role of the media and coordination with the political administration of the armed forces, the Moral Guidance Office in the Ministry of the Interior are emphasized.

15. The upper management committees and the governor of Dara'a are being notified of the general situation and the decisions taken.

16. The Ministry of the Interior will be provided additional personnel, as proposed by the Minister of Defence.

17. He will communicate the instructions to the Party and its organizations in accordance with the rules.

18. Citizens' demands for the State to take action against and defeat the conspirators in order to protect the citizens and their children and enable them to go about their daily lives in safety must be highlighted.

19. The people's committees are being dissolved."

(c) Despite a smokescreen of bureaucratic, trivializing formulations that create a mirage of rule of law, the resolutions contain clear instructions to use lethal force against protesters with the full involvement of the State authorities, security forces and the Ba'ath Party apparatus. In view of the position of the CCMC and its members, they were binding for all security bodies throughout Syria and were passed on across hierarchical levels all the way to the executive security forces.

The aim of the decisions was to quell the protests in order to stabilize the regime at all costs through the use of armed force, thus preventing participants from engaging in further activities

and creating a deterrent for the population as a whole in the long term. Despite the formulation used in the meeting of 18 April 2011 (under point 2 (b)) that provision should be made to ensure that civilians were not harmed, an armed response was ordered in which killing and injuring demonstrators – considered to be non-civilian agitators – was not only accepted but used as a deterrent. It also emerges from the decisions that the State leadership wished for further action against the civilian population to be aimed at nipping future protests and uprisings in the bud by force. This included the persecution, arrest, torture and killing of persons alleged to have participated in or even merely been close to the protests. In reality, and with the approval of the State leadership, the decisions gave carte blanche to the security forces to use violence against suspected opponents of the regime without reviewing the evidence and in the absence of any judicial process.

The instructions were forwarded and understood to this effect. The military, the intelligence services and other parts of the security apparatus were instructed across the respective hierarchical levels and henceforth acted accordingly. As a result of the decisions of the CCMC, a systematic approach was implemented to the extent that protest rallies were broken up using armed force and as many surviving demonstrators as possible were arrested and taken to the detention facilities of the intelligence services in vehicles provided for that purpose, where they were held for varying periods of time and subjected to continuous ill-treatment and even death. Demonstrators fleeing the violence were pursued and arrested by the security forces. Scores of people were also arrested and abducted at checkpoints set up throughout the country and in large scale raids covering entire districts. Among them were people who were entirely uninvolved. The aim of the subsequent torture and ill-treatment by the security authorities was twofold: to obtain information, in particular regarding the organizers and planned further protests, and to intimidate the population and punish those arrested.

(d) In the period that followed, further meetings of the CCMC were held, the subject matter of which – along with the content of further decisions taken – cannot be ascertained. At a meeting on 5 August 2011, an order was issued for “the organization of daily joint campaigns by the military and security agencies, to be determined by them line with security-based prioritization”. “All security branches” were held to “participate in storming the places where those wanted for crimes of sabotage, murder and attacks against citizens and their property and against State institutions are staying.” These individuals were to be arrested; individual areas were to be “cleared” of the wanted people. The orders of 5 August 2011 further provide that the results of investigations, in particular information about searches, were to be

submitted to the head of the NSB on a daily basis. In addition, the names of members of the security forces who “act negligently in confronting the armed gangs or who have had weapons taken from them” were to be reported.

(cc) In April 2011, the largely peaceful demonstrations continued with ever-increasing numbers of participants, prompting an increasingly violent response from the State. The demonstrations took place – not exclusively, but regularly – every Friday; most of them resulted in fatalities. The security forces were instructed to disperse the demonstrations with firearms, and they used live ammunition against civilians without warning. The security forces also responded violently to the funerals of deceased activists, with such events becoming more like rallies. When using physical force or deploying firearms during arrests, no distinction was made between whether they were protesting activists, devout mosque-goers or — in the case of funerals — grieving relatives. In some cases, the demonstrators injured by the security forces were also denied medical care, with ambulances prevented from reaching the injured and medical assistants being shot at. In Dara’a and Homs, security officers were posted at hospital entrances to stop alleged opponents of the regime from entering.

On 22 April 2011, at least 100 civilians were killed and many more injured by Government forces during demonstrations in various parts of the country. The demonstrations were dispersed by the security forces and numerous arrests were made. A few days later, the town of Dara’a was surrounded, besieged and eventually stormed by Government forces, including armoured army units and snipers. Many people died in the city, which was cut off from water, food and medical supplies; deaths also occurred during demonstrations outside the city and when residents from surrounding areas tried to provide water and food to the besieged civilians in the city. Despite posters stating that the intention was to help, the security forces fired live ammunition directly at people providing assistance and at demonstrators. In total, at least 200 people died. In late April, security forces operations in other parts of the country also resulted in deaths. In the city of Douma, numerous arrests were made during extensive raids.

In the following months of 2011, the number of participants in the protest movement grew to the hundreds of thousands, with a concomitant increase in the extent of State repression. In July 2011 alone, many thousands of civilians lost their lives to State violence. The security forces concentrated on cities that were considered to be opposition strongholds. For example, Government forces stormed the city of Hama at the end of July 2011, killing several hundred people. In September 2011 Douma was surrounded by the military, and its infrastructure —

electricity, water, transport of foodstuffs —was disrupted; numerous arrests were made. At the same time, the security forces increasingly set up checkpoints to conduct checks on individuals and held lists of those to be arrested. From that point onwards, the use of firearms against demonstrators and the arbitrary ill-treatment of alleged opposition members also occurred at such checkpoints.

The security forces were under orders to disperse gatherings of more than eight civilians by armed force. Leaders of the protest movement were targeted. The arrests led to massive overcrowding in State prisons, where prisoners were subjected to arbitrary violence and torture, sometimes resulting in death. The conditions, in particular in the intelligence services' prisons, were characterized by lack of water and food, sleep deprivation and dire hygiene.

(dd) From September 2011 onwards, the protests — which had been peaceful up to that point — became increasingly militant. The Free Syrian Army (FSA) was founded, its members initially recruited mainly among deserters from the regular army. The period that followed saw sporadic attacks by opposition forces on Government buildings and, from the beginning of 2012, armed clashes between Government forces and militant opposition groups. Meanwhile, civilians continued to gather at peaceful mass demonstrations, which were in no way violent but continued to be met with the use of firearms and physical force by the security forces. *Shabbiha* were increasingly called in to crack down on the demonstrations. The killing of countless demonstrators and arbitrary arrests continued. The situation escalated to the point that Government soldiers who refused to shoot unarmed demonstrators in action were in turn shot by intelligence service agents “from the second row”. Deserters and other insubordinates were taken into custody.

Tensions eased for a short period at the beginning of 2012. The Arab League had already exerted diplomatic pressure on Syria in late 2011, threatening to suspend the country's membership, and the Syrian Government agreed to measures proposed by the Arab League. In December 2011, the Arab League deployed around 160 observers to Syria. At the turn of the year, the Syrian Government withdrew the military, tanks and heavy weaponry from cities and released approximately 3500 detainees. However, civilians at demonstrations were nevertheless killed by Government forces during this period.

In February 2012, the largest demonstration in the Syrian capital since the beginning of the conflict took place in the Mezzeh district of Damascus. The security forces deployed in response shot dead at least one person and dispersed the demonstration with tear gas and

stun grenades. Dozens of demonstrators were arrested. Also in February 2012, the city of Homs was attacked by Syrian forces, resulting in the deaths of numerous civilians, including journalists. The Government blamed terrorist armed groups for a massacre of civilians in Homs, while opposition activists blamed the Syrian Army and militias loyal to the Government. In March and April 2012, 95 civilians died as a result of violence committed by Government forces in Idlib; numerous arbitrary arrests were made at the same time. In Al Houla, more than 100 civilians were killed by pro-Government militias on 31 May 2012, and at least 55 others were killed in the village of Qubair, near Hama, in an act of violence by pro-Government armed groups. From the end of July 2012, the Syrian Army and pro-Government forces fired at civilians trying to cross the Jordanian border, resulting in at least one fatality. In late August 2012 in the Damascus suburb of Darya, the bodies of more than 200 civilians previously shot dead by the security forces during house raids were discovered.

As the conflict progressed, the degree of militarization increased, with the Syrian Air Force bombing opposition-held and FSA-held neighbourhoods of Damascus and other cities around the capital, including with cluster and incendiary bombs. From mid- 2012 onwards, the fighting on both sides increased to the extent that the conflict could now be regarded as a civil war. In autumn 2012, units of the newly formed FSA and other militant anti-Government units commenced operations in the Damascus region. Nevertheless, peaceful opposition structures and civil protest continued within the regions controlled by the Syrian State, and continued to be met with violence by the Syrian regime.

(c) State actors and institutions involved; approach and victims

(aa) After the outbreak of the conflict, the Syrian regime used the same institutions and forces that had previously been at its disposal, but their numbers were increased. The general military and paramilitary units, in particular *Shabbiha*, were deployed. The intelligence services accounted for a significant portion of the security forces deployed to combat the protest movement; they continued to serve as a direct instrument of power in the early stages of the conflict. From the beginning of the conflict, intelligence activities focused on this domestic task. The General Intelligence Directorate, the Military Intelligence Department and the Air Force Intelligence Directorate were particularly active in this regard. In particular, branches 215, 227, 291 and 235 (the so-called 'Palestine Branch') of the Military Intelligence Department were involved in cracking down on the protest movement; within the Air Force Intelligence, the 'Mezzeh Airport' and 'Bab Touma' branches were most active. Through Branch 285 and Branch 251 — the latter being relevant to the proceedings in terms of the

involvement of the defendant — the General Intelligence Directorate had operational branches at its disposal (for further details see section 3 (a)).

In terms of personnel, the General Intelligence Directorate and the Military Intelligence Department employed between 8000 and 10 000 full-time staff each. Both the Political Security Department and the Air Force Intelligence Directorate employed between 5000 and 6000 full-time staff each. No reliable statement can be made regarding the number of staff deployed in individual operations against demonstrations. A typical sequence of events, however, was that military and intelligence forces comprising at least several hundred officers cordoned off streets, fired tear gas and live ammunition into the demonstrations, then entered the demonstration with batons, injuring and arresting demonstrators before taking them to detention centres. At the same time, neighbouring streets were searched for fugitives or persons suspected of participating, often merely on the basis of their age and place of residence.

From the beginning of the demonstrations, which were initially few and far and between, in February 2011, the intelligence services sought to obtain information about the organization and organizers of the protests; to this end, participants were arrested and interrogated while being subjected to torture. This added to the intelligence services' existing role of intimidating and persecuting opposition forces; from this point onwards, the intelligence services focused on organizers and supporters of the protest movement, both on the streets and on social media. Within their military-like structures, the security forces were instructed to take coordinated action against demonstrators from the end of April 2011 at the latest; in addition, raids and house searches were conducted and arrests made, mostly with the participation of intelligence officers. Furthermore, the intelligence services set up an increasing number of checkpoints in inner cities and on transit roads in rural areas, where people were searched and arrested.

At the beginning of the conflict, the Syrian army comprised between 200 000 and 300 000 soldiers with a further 300 000 reserves; it was largely made up of conscripts. By spring 2012, about 60 000 soldiers had deserted, fleeing abroad or subsequently joining the FSA because they were opposed to the attacks on the civilian population and rejected the action taken against the protest movement and associated attacks on the civilian population. The higher-ranking, often Alawite, officers usually remained in the regular Syrian army. The Republican Guard, deployed to protect the government in the Damascus area, and the Fourth Brigade, under the command of the President's brother, Maher al-Assad, were regarded as elite units

loyal to the regime and largely Alawite in character. The two units were primarily used to crack down on the protest movement and were involved in arrests, house raids, injuries to and killings of demonstrators. This was different to the regular army units where soldiers, including conscripts, were deployed against unarmed demonstrators while being told that they were combating against Salafists, terrorists and criminals. This generated a growing number of deserters and defectors. Militias loyal to the Government, which had already supported the armed forces and intelligence services in 2011, were incorporated into the newly established National Defence Forces (NDF) in the second half of 2012.

The military police were mainly in charge of administrative tasks during the conflict, such as photographing and documenting the deceased. From March 2011 at the latest, the photographic service of the military police was instructed to systematically record the demonstrators and detainees who had been killed. This resulted in 26 938 image files with photographs of a total of 6821 corpses, which were smuggled out of the country by a deserting military photographer ('Caesar'). The photographed individuals, most of whom showed signs of emaciation and ill-treatment, had died between May 2011 and August 2013, usually in intelligence branches, and had been photographed shortly afterwards by military police photographers. The military police were also responsible for transporting detainees between prisons and courts, and for the military field courts responsible for sentencing political detainees, which handed down sentences of varying lengths and imposed the death penalty following short show trials that tended to be based on confessions extracted as a result of torture.

(bb) During the violent dispersal of demonstrations, and during house searches, raids and controls at checkpoints, the security authorities arrested scores of people from March 2011 onwards. Those arrested were usually bussed to detention facilities and held there for varying lengths of time, ranging from a few days to years, in the absence of any arrest warrants or formal legal proceedings.

The Syrian regime used the existing civilian, military and intelligence services prisons as detention facilities, which were significantly overcrowded due to the large number of arrests. Prisons such as Tadmur military prison, which had been closed around 2001, were brought back into service. Important larger detention centres included the civilian prison in Adra, where prisoners were transferred for long-term detention, and a military prison in Saydnaya. A large number of prisons were also operated by the intelligence services; these included detention facilities in the governorates, which extended like a network across the entire

country. The facilities were used as places of initial detention, although sometimes prisoners were held there for months or years. The General Intelligence Directorate operated prisons in branches 251 and 285, at least. Of the remaining intelligence services, in particular the Military Intelligence Department, including Branch 235 – the Palestine Branch, which became notorious among the population – and the Air Force Intelligence Directorate were involved in the detention, torture and killing of actual or alleged opponents of the regime. A total of ten detention facilities were run by the Military Intelligence Department, including five in Damascus. At least two prisons were run by the Air Force Intelligence Directorate. The Political Security Department operated a prison in the Mezzeh district of Damascus.

The detention conditions in the intelligence service facilities were characterized by a lack of food and medical assistance, overcrowding resulting in insufficient space to move around and sleep, dire hygiene conditions due to vermin infestation and inadequate opportunities to wash or change clothes, arbitrary use of violence, and enormous psychological stress due to prisoners' uncertainty about their fate and their constant awareness of the screams of fellow prisoners who were subjected to ill-treatment in adjacent rooms day and night. While being interrogated in intelligence service facilities, prisoners were usually subjected to systematic torture. Torture methods that had been 'tried and tested' in the Syrian intelligence apparatus before the start of the conflict were used, i.e. blows delivered with and without batons over the whole body — sometimes while the person was immobilized inside a tyre (*dulab*) or on a board ('flying carpet') — and in particular on the soles of the feet (*fallaqa*), while suspended by the wrists (*shabeh*), or during overextension of the body and spine ('German chair'). In addition, electric shocks, burns and scalding, the extraction of fingernails and toenails, and on occasion other methods were used, inspired by the sadistic ingenuity of the torturers. While torture was used primarily for the purpose of information gathering at the beginning of the conflict, in the detention centres from May 2011 onwards the aim was not so much to gather intelligence but to 'break' actual or alleged members of the opposition so as to deter them from further activities and stifle protest.

Sexualized violence against men and women was widespread, which served in particular to humiliate the victim and included rape. This led to a heightened climate of fear in the prisons, especially among women. In extreme cases, sexual assault, including rape, took place in the presence of the victim's spouse. Women in particular were often stigmatized in a country shaped by conservative moral attitudes, as it was assumed that they had been subjected to sexual assault.

(cc) The detention facilities also included the military hospitals in Tishreen (also referred to as 'Branch 607' or simply '607'), Harasta and Mezzeh (also referred to as 'Branch 601' or simply '601'), which were located in the greater Damascus area and had been used solely for the medical treatment of soldiers and their dependents prior to the conflict. When the protest movement began, they were repurposed: the military hospitals were now also used to detain and ill-treat patients alleged to be members of the opposition. Although even in these cases the focus was initially on medical treatment, from April 2011 onwards the security forces and medical staff increasingly subjected injured prisoners taken to hospital, and demonstrators, to severe ill-treatment. As of 2012, the role of the military hospitals was twofold: in addition to wards providing conventional medical treatment reserved for members of the regime, there were specially equipped wards where prisoners were tied to hospital beds and tortured, sometimes until they died. As a result, the military hospitals were sometimes more feared by the civilian population than the intelligence service prisons.

The military hospitals also played an important role in handling the bodies of deceased prisoners. From March 2011 onward, bodies were collected and documented by military doctors and photographers on a continuous basis: the corpses of prisoners who had died in prisons and intelligence service facilities or had been killed on the street were taken to the military hospitals. These corpses, which were for the most part naked or dressed only in underwear and showed signs of malnutrition and/or torture, were collected along with the bodies of prisoners who had died in the military hospitals and kept temporarily in cold storage facilities. Given the numbers, which exceeded capacity, before long the corpses were simply dumped in halls or courtyards. A bureaucratic record of the deceased was kept by writing numbers on stapled slips of paper or directly on their skin in felt tip pen, stating the place of detention and death — usually the number of an intelligence branch — and a detainee number. Forensic pathologists working at the hospitals wrote a brief report that erroneously gave a natural cause of death such as heart failure or respiratory arrest, and issued corresponding death certificates, as well as writing another registration number on the slip of paper or on the corpse itself. Military photographers from the military police were then called in and took multiple photographs of each corpse. Photos and reports were subsequently compiled into a dossier. The documentation system was intended to ensure internal control within the regime, in particular to make the fate of the detainees traceable and to rule out the possibility that they had regained their freedom through bribery.

(dd) The number of corpses collected in this way in Damascus alone was initially at least 10 per day, but this figure soon rose to at least 50 per day. From the collection points in

Damascus and its environs, the corpses were recorded by category and then transported in refrigerated trucks and lorries, sometimes even on articulated lorries, to specially constructed mass graves in the Damascus area, in Najha and Al Kteifa. There, the dead were dumped into the graves once their origin had been documented again by specially recruited administrators. This treatment of civilians began in May 2011 at the latest, when the number of casualties from the conflict rose sharply.

The number of civilians killed, injured, imprisoned or otherwise harmed by State measures imposed by the Syrian security authorities during certain periods of the conflict cannot be precisely determined because of the lack of reliable figures, the rapidly changing situation and the lack of neutral observers. The Panel bases its assessment of the defendant on figures that are in the lower range of the available estimates, which are that at least 2000 civilians died between the beginning of the conflict and July 2011, and that at least 5000 civilians had died between the start of the conflict and December 2011. By May 2012, more than 10 000 people had died in the unrest. Many times that number of people were abducted from demonstrations, checkpoints, workplaces, residential addresses or hospitals to intelligence service prisons, where they were systematically and sometimes severely ill-treated through the use of the torture methods identified. As the conflict continued into 2012, the number of deaths continued to rise.

#### (d) Summary

The foundations for the Syrian regime's action against the protest movement that emerged from February 2011 onwards had been laid as early as the 1970s by Syria's established autocratic political system, supported by an extensive and repressive security apparatus. With the army, intelligence services and paramilitary units, the political leadership had sufficient forces at its disposal to respond to dissidents with violence. The political system was designed for this purpose: it had suppressed political opposition for decades and had, on occasion, imposed violent 'punitive measures' resulting in a large number of victims. Extrajudicial detention centres existed throughout the country, and practices of economic and social control and police-state persecution and torture of individual activists had been tried and tested.

As established below, immediately after the Arab Spring caught on in Syria in February 2011, the protest movement was met with proven measures of repression, although the security authorities' actions were initially limited to the violent dispersal of what were at that time only

isolated demonstrations and arbitrary arrests. By the end of April 2011 at the latest, the protests had spread throughout the country, with rallies at least in the governorate capitals. At the same time, the measures taken by the security authorities had massively expanded in quality and quantity through violent ‘demolitions’ of demonstrations, accompanied by the lethal use of firearms and thousands of extensive arrests every day, with prisoners subsequently tortured in various detention facilities. Checks and arrests also took place at a nationwide network of checkpoints; entire neighbourhoods considered oppositional were brought under control through lockdowns and raids using violent means. The violence was not only used in isolated cases and at random, but as part of a comprehensive strategy to make the Syrian civilian population compliant and to ‘educate’ them to be loyal to the Government. The use of force was organized and systematic, based on the decisions taken in April 2011 by the supreme governing body — the CCMC — which had been set up for that purpose; the decisions sanctioning the use of force, arrest and ill-treatment were implemented by propagating them across the State hierarchy, up to and including the executive bodies.

In summarizing the above findings, the Panel — in anticipation of its legal assessment — has identified a multitude of factual circumstances that constitute an attack on the Syrian population, in the form of the killing, unlawful deprivation of liberty and torture of thousands of civilians. The attack served to bolster the Syrian Government, which used it as a means of preserving power and suppressing dissidents’ political aspirations. Furthermore, from the end of April 2011 at the latest, as a result of the central decisions of CCMC and their implementation, the attack was both systematic and widespread. It lasted well beyond mid-2012.

### 3. Branch 251 of the Syrian General Intelligence Directorate

(a) Before the conflict flared up, the General Intelligence Directorate — colloquially known as ‘State Security’ — was responsible for counterintelligence, monitoring the Syrian population at home and abroad, controlling the Syrian economy, fighting corruption and monitoring foreign institutions in Syria. From spring 2011, the focus was on ‘counter-terrorism’, defined as the repression of opposition and dissident groups. The organization initially employed between 10 000 and 30 000 full-time staff for this purpose. The intelligence service was divided into 12 central organizational units in Damascus — a directorate and 11 specialized branches — and 13 regional branches. Apart from Branch 251, which is the subject of the proceedings, the General Intelligence Directorate also operated a training academy in Najha, a suburb of Damascus; evaluation, technical and counterintelligence branches; and a central

investigation branch, which was assigned the number 285. The latter was located in the middle of Damascus in the Kafr Sousa district. The General Intelligence Directorate was led by Major General Ali Mamlouk from 16 July 2005 to 24 July 2012, and by Major General Dib Zaytoun from 24 July 2012 onwards.

Branch 251 was one of the Damascus-based branches responsible for 'internal security' in the Damascus City and Rif Dimashq governorates. The Branch had between 2500 and 3000 staff. It was effectively in charge of suppressing protests in these areas once the conflict began, making the majority of arrests in Damascus and Rif Dimashq, and setting up roadblocks in these areas. However, the Branch was also responsible — both before and after the outbreak of the internal conflict — for the comprehensive monitoring of civil society. Numerous sections were involved in analysing information about and spying on cultural, religious and educational institutions. The most important section in terms of numbers, the scope of reconnaissance activities and the size of their physical premises was the one responsible for 'interrogations', and the Branch prison and its prisoners were under its auspices.

The Branch's headquarters is located in central Damascus amid city-centre buildings on Baghdad Street and in close proximity to the Red Crescent hospital. It comprises an extensive area separated from the outside by walls and roadblocks and includes a spacious garden and parking lot. Since it is located in the Al Khatib district, it is known locally by the informal name of the Al Khatib Branch. The Branch primarily consists of two buildings over at least three floors, housing offices and interrogation rooms, set around an inner courtyard.

In 2011 and 2012, the basement of one of the buildings of Branch 251 housed a prison, which had several communal cells ranging in size from 10 to 40 square metres, as well as some small single cells with a surface area not exceeding 1 x 2 metres. The basement also housed day rooms for prison guards, interrogation rooms and an open interrogation area. The basement prison was extended at the beginning of 2012 to build rooms underneath a garden area and increase the amount of accommodation, as the number of prisoners increased rapidly from March 2011. The offices and interrogation rooms of officers were located on the upper floors of the Branch, where prisoners were brought from the prison wing. Branch 251 was led by Major General Tawfiq Younis in 2011 and 2012. Until 7 September 2012, the defendant was Head of the Investigations Subdivision of Branch 251.

Section 40 was formally attached and subordinate to Branch 251. It was designed as a rapid response force in the field and was deployed for raids, the establishment and operation of checkpoints, arrests, house searches and, in particular in the further course of 2011, the dispersal of anti-regime demonstrations (the 'clearance and attack squad'); its geographical jurisdiction covered the governorates of Damascus City and Damascus Area. Despite its formal status as a Section, it had a degree of autonomy because it was led by Hafiz Makhoul, a maternal cousin of Bashar al-Assad who had close ties to the upper echelons of the Syrian regime. Although officially under the authority of Branch 251, the Section conducted its operations largely autonomously and had its own office building in the Jisr al-Abiat district of Damascus and its own detention facility. It did the groundwork for Branch 251, in particular by delivering prisoners. It was not possible to establish whether there were any 'overlaps' to the effect that officers employed by Section 40 were also responsible for or conducted investigations — in particular interrogations — at the Al Khatib headquarters.

(b) In the event of the deployment of operational forces — which could consist of units from other intelligence services or the military, Section 40, paramilitary militias or a combination thereof, and whose purpose was to break up demonstrations and other protests, house searches, the 'storming' of entire neighbourhoods and towns, and controls at checkpoints — detainees were usually taken by bus to the Al Khatib Branch. They were regularly subjected to ill-treatment, both at the time of their arrest and during transportation. Those arrested by officers of Section 40 were commonly taken to the Section's premises for a short period — usually several hours, and rarely more than a day — where they were then frequently interrogated and subjected to ill-treatment. After passing through Section 40, they were then transferred to Branch 251, where they were subjected to further interrogations, torture and prolonged detention. Sometimes those arrested by Section 40 were taken directly to Branch 251 and placed under its authority.

On arriving at Branch 251, prisoners were driven into the courtyard between the buildings and, in the vast majority of cases, were subjected to a barrage of severe ill-treatment once out of the vehicle; they were often beaten with truncheons and other bludgeon-like objects for hours on end. This resulted in deaths. This initial treatment was cynically described by staff as a "welcome party". Detainees were then led or pushed into the prison in the basement, where they had to strip and squat (referred to as a "security manoeuvre") while they were searched, including rectally, for hidden objects. Women were examined by female officials.

Prisoners were separated by gender and held in the basement of Branch 251, mostly in shared cells that were so overcrowded from April 2011 onwards that they were forced to sleep in shifts, crammed together on the floor; some were forced to stand. Often, the only source of fresh air to the cells, which were poorly ventilated if at all, was the gap at the bottom of the cell door. As a result, prisoners struggled with the extremely stuffy air and a lack of oxygen. Some cells had a single, unseparated toilet with a water supply; otherwise, prisoners were only taken to the toilet at times set by the guards. Some cells had a skylight overlooking the courtyard, others were lit only by artificial lighting that was on constantly, making it impossible for prisoners to distinguish between day and night. Since it was almost impossible for prisoners to wash or change their clothes, the hygiene conditions were catastrophic. Vermin, in particular lice, were omnipresent in the cells. Prisoners who were already injured on arrival or who sustained injuries as a result of torture were given only inadequate medical care, if any. Open wounds became infected; injuries and diseases were usually left untreated. Alternative accommodation consisted of very small single cells with a surface area of approximately 1 x 2 square metres, often with two or more prisoners crammed inside. The generally inadequate food supply resulted in rapid weight loss and debilitation among prisoners. Day and night, they were exposed to cries of pain from other prisoners being tortured in the adjacent interrogation rooms or in open areas. Prisoners who were brought out of the communal cell frequently returned with injuries and signs of torture. This, together with prisoners' lack of certainty about their own fate, resulted in enormous psychological stress, including an unremitting and existential fear of death.

Prisoners' fears that they would be ill-treated often proved to be well founded, because each new detainee, after an initial waiting period, would be brought out for at least one interrogation session, either in the prison itself or in the offices of officers tasked with interrogations located on the upper floors, where they were subjected to torture. In the vast majority of cases, this consisted of blows to the soles of the feet with a belt or cable, causing swellings and lacerations that made walking — which they were forced to do by the guards — extremely painful (*fallaqa*). Other torture methods included suspending the person by the wrists (*shabeh*), administering electric shocks, burns and scalds and arbitrary beatings with or without objects, and kicking the person's whole body. The ill-treatment could often not be stopped by making (false) confessions or providing extorted information, either because detainees did not have the information being requested from them, or because the ill-treatment was essentially an end in itself, designed to humiliate detainees and create a deterrent. Violent methods, in the form of beatings by prison guards, were used without any

justification or in response to prisoners breaking rules, such as speaking without permission. Occasionally, sexual violence was used against women and men and took the form of rape, touching or hitting the genitals, and threats of sexual violence against spouses and family members. The only detainees who were spared direct physical ill-treatment were those who arrested on an individual basis; they were prominent figures, personally acquainted with an official, or had influential advocates speaking up for them.

Relatives were not notified of the whereabouts of prisoners, who were not told for how long they would be imprisoned. They were also regularly kept in the dark about the charge against them and reason for their detention.

(c) The conditions described above prevailed in the Branch from spring 2011 onwards. In terms of responsibilities and activities, Branch 251 and Section 40 were closely involved in the suppression of the protest movement during that period. Along with other intelligence services, they were an integral element of the Syrian regime's violent strategy involving the mass arrest of suspected or actual opponents of the regime, the dispersal of demonstrations, and the arbitrary abduction and systematic torture of anyone who participated in such events.

#### 4. Individual offences in the period 29 April 2011 to 7 September 2012

##### (a) Torture and deprivation of liberty

From 29 April 2011 to 7 September 2012, at least 4000 people were transferred to the Al Khatib site of Branch 251, on Baghdad Street in Damascus, where they were held in the Branch's basement prison in the conditions described below for at least several days, and more often for a period of between one week and two months or longer — interspersed with interrogations — before their eventual transfer or release.

It was generally the case (see above under 3. (b)) that prisoners were arrested by Section 40 officers or other security forces from the intelligence service, militia or military at protest rallies and checkpoints, during raids on entire neighbourhoods, at workplaces or in private homes, and often also arbitrarily in public spaces, before being brought to the Branch premises in transport vehicles. Even at the time of arrest and during the journey, prisoners were regularly subjected to beatings or other forms of ill-treatment — which therefore cannot be attributed to the defendant — and were made to cover their heads their clothes or crouch down so that they could not recognize the route or destination. On arrival in the inner courtyard of Branch 251, they were usually greeted with the so-called 'welcome party', during which the guards of

the Branch used their fists, as well as pipes, cables and canes, to beat and kick prisoners before they were forcibly taken to the basement part of the prison. There they had to strip naked and squat so that their orifices could be inspected (the 'security manoeuvre'). At least some of their clothes were then returned to them. Wallets and other items were confiscated, along with belts and shoelaces; in some cases all footwear was confiscated.

The prisoners were forcibly detained in Branch 251 for at least several days and were tortured throughout their stay. In addition to the violence that most detainees had to endure immediately after their arrival in the Branch, the vast majority were subjected to systematic physical violence during their subsequent detention and interrogation. Their bodies and the soles of their feet were beaten with tools, causing considerable pain. A significant proportion of the prisoners were also subjected to the other torture methods practised in the Branch, namely *shabeh*, *dulab* or the 'German chair'. The guards were free to devise and mete out other forms of ill-treatment, such as administering burns. Prisoners were not allowed to approach the guards unsolicited and were constantly subjected to verbal abuse.

The conditions of detention were typical for the Branch: all prisoners were housed in the basement cells, some of which had no daylight. The tiny single or overcrowded communal cells were extremely cramped, with a lack of food, catastrophic hygienic conditions and vermin infestations. There were no facilities for personal hygiene and prisoners only had limited opportunities to relieve themselves. Due to the cramped conditions, prisoners were often unable to get into a position suitable for sleeping. The air flow in the cells was inadequate due to the overcrowding, lack of ventilation and heat, and the stench was unbearable. Many prisoners were injured as a result of the ill-treatment they endured, while others suffered from skin diseases such as scabies, abscesses and rashes due to the unhygienic conditions. Medical treatment was largely denied to these individuals and to those with pre-existing medical conditions, whose condition deteriorated as a result. Only occasionally were doctors called in from the neighbouring Red Crescent hospital to provide prisoners with temporary care or to transfer them to hospital for treatment.

Day and night, all of the prisoners had to endure the cries of pain of those being tortured and their pleas for it to stop, which were audible from the adjacent corridor and interrogation rooms. They were given no information about the reason for, or duration of, their detention. Instead, they were kept completely in the dark about their fate, and in particular about whether and when it would be their turn to suffer the brutal abuse, the effects of which they were constantly witnessing in others. None of the prisoners knew if and when they would get out

of prison alive. The constant screams of those being tortured, the fear of soon being subjected to brutal violence themselves, and concern for their own survival became a mortal fear for most prisoners.

Arrests, as well subsequent abductions and imprisonment, were conducted without a court order or judicial review that even came close to meeting the minimum requirements of the rule of law. In the majority of cases — such as when individuals unknown to the security authorities were singled out at a demonstration or arrested at a checkpoint solely on the basis of their origin and age — such actions were completely arbitrary and based solely on blanket instructions from the Executive, namely the security authorities, whose aim was to violently disperse demonstrations, detain demonstrators and torture them to prevent further opposition activities. Even in the few cases of targeted arrests of wanted individuals, these actions were based solely on executive orders. The lawfulness of these arrests was not reviewed by an independent body, either before or during detention. Prisoners were not granted any legal rights. They had no access to a lawyer or other assistance; there were no legal remedies against the detention. An individual was only brought before a court once they had left the Branch, if at all.

Among the 4000 detainees were joint plaintiffs N1, N2, N3, N4, N5, N6, N7, N8, N9, N10, N11, N12, N13, N14, N15, N16, N17, N18, N19 and N20.

Aside from the information contained in their witness statements, no further findings regarding the duration of individual detentions and ill-treatment could be made. Of the 4000 cases identified, however, there was in any event some overlap between detention periods, likely because of the large number of cases.

#### (b) Killings

During the period of the offence, 27 persons who could not be more precisely identified died as a result of the ill-treatment inflicted on them in Branch 251 and the conditions in which they were detained. 12 deaths occurred in the period between May and June 2011, 1 further death between July and September 2011, and 14 deaths between July and August 2012. The causes of death were trauma, infections acquired in the Branch that went untreated and resulted in sepsis, and other predominantly medical conditions that were left untreated and ultimately resulted in organ failure, although it was not possible to make further findings in this regard in relation to individual cases. These deaths would not have occurred if the individuals concerned had not been detained in the Branch; it would be clear even to a

layperson that they could have been prevented if the ill-treatment had not taken place and the prisoners had received adequate care.

It was not possible to determine the time and manner of the killings more precisely.

(c) Sexual violence

In addition to insults of a sexual nature and the threatened sexual abuse of close relatives, the following acts of a sexual nature occurred during the period of the offence:

Witness N8 (see below under (d) (bb) (4)) was detained in Branch 251 between August and October 2011. During an interrogation, a guard forcefully inserted a cane into the rectum of the joint plaintiff, who was restrained. As a result, the joint plaintiff suffered injuries that required treatment but were left untreated. To this day, he suffers the psychological consequences of the assault.

Witness N16 (see below under (d) (bb) (11)) was detained in the Al Khatib Branch for three days in February 2012. When the joint plaintiff, who was restrained, was brought out for interrogation, a guard deliberately grabbed her clothed breast with his hand from below.

Witness N14 (see below under (d) (bb) (13)) was repeatedly detained in Branch 251 for short periods from 17 March 2012. During one of many instances of interrogation and torture, a guard took the joint plaintiff's head in his hands and pressed it firmly into his lap. He only let go of the joint plaintiff when requested to do so by another guard.

(d) Acts to the detriment of the joint plaintiffs

(aa) The joint plaintiffs listed below were all detained in Branch 251 in the catastrophic conditions described above, and most of them were subjected to violent assaults. In no case was there any legal basis for their detention and treatment. In addition to offences under the CCAIL, offences against these individuals under the German Criminal Code had to be established, as the restriction on proceedings imposed by the Federal Prosecutor General has lapsed as a result of these individuals joining the proceedings as joint plaintiffs (Section 395 (5) of the German Code of Criminal Procedure (*Strafprozeßordnung* — StPO)).

(bb) In chronological order of detention in Branch 251, the following joint plaintiffs were affected:

(1) N6 was arrested at home in his apartment on 2 May 2011 during a major raid on Zabadani, and was restrained, dragged onto a bus and driven to the Al Khatib Branch. On the way into the building he was verbally abused and beaten, as had happened on a previous journey there. The joint plaintiff was placed in a communal cell where he constantly heard people being tortured in other rooms. He was interrogated twice during his detention. He had to lie face down and was beaten on his feet and back by a guard with a four-wire cable with exposed ends that was also used to torture other witnesses. He suffered violent assaults elsewhere on his body during his time in the Branch prison. The joint plaintiff suffered injuries to his feet and bruises all over his body. He was detained in Branch 251 for a total of five days.

(2) N4 was also arrested on 2 May 2011 following a demonstration in Damascus and, after a brief stay in Section 40, was transferred to Branch 251 on the same day, where he remained for ten days. He was beaten up on arrival as part of the 'welcome party' and then searched in the usual way by being made to perform the 'security manoeuvre'. In the Branch prison, he was initially placed in a communal cell adjacent to the interrogation rooms, which were visible through two windows. As a result, the joint plaintiff — like his fellow prisoners — was exposed for hours on end to the loud cries of pain of those being tortured. After a few days he was moved to a single cell and then back to the communal cell towards the end of his detention.

In the cells and during the numerous interrogations, the joint plaintiff was kicked by guards, beaten with wooden sticks, and hit on the head, thighs and back. During one of the interrogations, his back and, in particular, the soles of his feet were whipped with a thick cable. In the single cell he was restrained with metal handcuffs on one occasion. The guards attached electrodes to his body and tortured the joint plaintiff by administering electric shocks. They then doused him with water and repeated the ordeal, which intensified the pain.

The joint plaintiff — a descendant of the former Syrian President Shukri Al-Kuwatli — met the defendant during one of these interrogations. The defendant initially questioned him in a friendly manner, but became increasingly irate when the joint plaintiff did not give the desired answers. The interrogation was abruptly terminated by the defendant, who told the guard to "throw him out". The joint plaintiff was not physically abused in the presence of the defendant.

The joint plaintiff is undergoing psychotherapy due to his experiences in detention and is unable to work due to the injuries sustained as a result of the torture, in particular the electric shocks.

(3) N19 was arrested at his home at the end of June 2011 along with his two brothers, without any reason being given. After being taken to the Al Khatib Branch where he was stripped and searched, he was taken to a very overcrowded, poorly ventilated and dirty cell infested with vermin. The next day he was interrogated and beaten with a bludgeon, among other things. After a few days he was moved to another cell with comparable conditions. Throughout his detention, the joint plaintiff had to endure the screams of the other prisoners being tortured; he could hear the crackling sound of electricity and concluded that they were being tortured with electric shocks. The joint plaintiff spent 11 days in the Al Khatib Branch before being transferred to Branch 285 in Kafr Sousa.

(4) N8, a Syrian film director critical of the regime, was arrested at Damascus airport on an unknown date in August 2011. After several stays lasting approximately four days at other detention centres of the Syrian regime, he was transferred to the Al Khatib Branch, where he remained for approximately two months. As soon as he got out of the minibus and into the courtyard, the joint plaintiff was 'welcomed' by the guards who beat him with batons and their bare hands. He had to strip naked in the basement before being searched and put in an overcrowded communal cell, where he was only able to sit down because some of the other prisoners moved aside. As soon as he arrived and for the duration of his stay, he had to endure the fearful and agonizing screams of fellow prisoners being tortured in adjacent rooms. After his second interrogation, the joint plaintiff was taken to a single cell that stank of blood and mould and was so small that he could not stretch out to sleep.

During his numerous interrogations, the guards kicked him and beat him on his back, legs and feet using a cable. In the basement, he was bound several times with his hands above his head and suspended from the wall or ceiling so that his toes only just touched the floor. In this suspended position, he was defenceless against the guards' constant beatings; on at least one occasion, the ill-treatment continued until the joint plaintiff lost consciousness. On another occasion, a guard forcibly inserted a baton into the joint plaintiff's rectum. During an interrogation in which the joint plaintiff was asked to provide information on the subject of film material and on his alleged cooperation with foreign States, he was threatened with life imprisonment ("You won't live to see life on the outside") if he did not provide any information.

The joint plaintiff suffered injuries to his feet, impaired movement in his fingers as a result of being bound and beaten (which persists to this day) and bruises all over his body. He had to undergo an operation on his rectum due to the injuries sustained in the sexual assault. To this day, he suffers psychological consequences such as nightmares and anxiety.

(5) N3, a doctor employed in a Damascus hospital, was collected from his workplace on 21 August 2011 for a purportedly brief interrogation and was taken to the Al Khatib Branch, where he remained until 5 November 2011. He was initially held for 25 days in a small single cell in which the light was constantly on; he was then transferred to a communal cell, which was infested with vermin and at times so overcrowded that prisoners could only sleep on their sides. He heard the screams of fellow prisoners being tortured. During at least six interrogations, his face and feet were beaten with a cable and he was then forced to walk on the spot. He was forced to watch another detainee being tortured next to him. The joint plaintiff was deeply fearful during his stay, but his assessment was that he was not treated as badly as others.

(6) N1, also a practising doctor, was lured out of his practice in the Damascus area and arrested on 26 September 2011 on the pretext that a patient needed his help. He then spent about 40 days in the Al Khatib Branch. He was initially placed in a small single cell together with another person who had serious head injuries. He spent the rest of his detention in various communal cells. During his ten interrogations in the department, he had to lie face down and raise his bare feet, which were beaten with various objects if the interrogator disliked his answers. On one occasion, he was told that he would receive more than the stated number of blows if his voice was heard during the beating. During some of the interrogations, the joint plaintiff was not alone; another detainee was being interrogated and beaten at the same time.

The joint plaintiff suffered the consequences of his detention, in particular from a psychological standpoint. The situation seemed so desperate that he seriously considered taking his own life.

(7) N20 was on his way to a demonstration with friends on 30 September 2011 when he was arrested, beaten and taken to Branch 251, where he was held for a total of five days. He was housed in a small, overcrowded communal cell in which their only source of light and air was a small window at ceiling height. As he waited for the interrogations, he could hear the screams of the person who had gone before him. During his three interrogations, he was asked to reveal the names of members of the opposition and was beaten with cables or a pipe on his thighs and the soles of his feet. On at least one occasion, the joint plaintiff was interrogated by the defendant and beaten by a guard. For the duration of his imprisonment, the joint plaintiff was convinced that he would not get out of prison alive.

(8) N5 was detained in Branch 251 several times.

On 14 October 2011, the opposition activist was picked up for the first time at a demonstration in Harasta. He spent four days in the Al Khatib Branch before being transferred to Branch 285 in Kafr Sousa for six days and then returning to Branch 251. He remained there for two months before being transferred back to Kafr Sousa; he was released from there on 17 January 2012.

During both periods of detention in Branch 251, the joint plaintiff was insulted by the guards and objects were used to assault his entire body. Most often, the soles of his feet were beaten with a belt. His hands were sometimes tied so tightly with a cable tie that they were severely constricted, and the joint plaintiff still suffers the consequences today. The joint plaintiff was initially accommodated in a communal cell that was at times so overcrowded that it was impossible to sit down, and later in a small single cell. He could only distinguish day from night by listening to the faint calls to prayer from the mosques. He was constantly exposed to the screams of those being tortured, which could be heard particularly loudly in the single cell, as the torture took place directly opposite. At one point, the joint plaintiff — who had himself been tortured by then — had to share the small single cell with another man who had been beaten so badly that he needed space to lie down and defecated in his clothes.

The joint plaintiff was subjected to frequent interrogations and was beaten during most of these. He met the defendant during one of the interrogations. Z5, who had been his interrogator up to that point, instructed the joint plaintiff to write down his curriculum vitae, his participation in demonstrations and “everything he had done against the State”, giving him sheets of paper for that purpose. When the joint plaintiff was brought back into the interrogation room, Z5 was accompanied by the defendant, who was sitting behind the only desk in the room and was introduced by Z5 by name, rank and position as Head of Branch. Z5 took the sheets of paper — only one of which had been written on by the joint plaintiff — skim-read them and handed them to the defendant. The latter read them, then threw them in the face of the joint plaintiff and said to Z5: “I already told you that he doesn’t understand words. Take him and explain it to him in a way he understands. When he’s cooked, bring him back.” The joint plaintiff was then taken back to a single cell, where he was ordered to stand still and not move. This continued for three days. If the joint plaintiff collapsed from exhaustion and fatigue during this time, a guard would come into his cell, beat him or douse him with water and order him to get up again. The joint plaintiff was then brought before interrogating officer Z5 again and was beaten and interrogated.

Only 25 days after his release, the joint plaintiff was arrested again in February 2012 and taken back to the Al Khatib Branch. On this occasion he was detained for two to three weeks and was again beaten and subjected to the conditions of detention described above. He was interrogated once during this time.

(9) N9 was arrested by Section 40 in a café on the evening of 24 October 2011; he was taken to Branch 251 that night and detained for 10 to 15 days. He was not mistreated when he was brought in and was subjected only to the usual security checks. The joint plaintiff was put in one of the smaller communal cells, which initially held between 12 and 20 prisoners but later held approximately 25. Even when the cell was occupied by 15 people, it was so cramped that it was impossible to sit down. The food the prisoners received would have been enough for 5 people at most. Prisoners were often subjected to arbitrary beatings by the guards as a group punishment for their alleged misdemeanours.

During five or so interrogations in which the joint plaintiff was forced to admit his membership of political groups and reveal the names of other members, he had to kneel or lie face down and bend his legs at the knee. In these positions, he was beaten with a belt and a four-wire cable on his body and over the soles of his feet, in particular if the interrogator disliked his answers. This caused the joint plaintiff's feet to swell to such an extent that he could hardly walk. On one occasion he was taken to a room containing a variety of instruments of torture, such as cables, pliers and canes. A guard approached him with a pair of pliers and opened them threateningly, but ultimately did not harm the joint plaintiff.

(10) N15 was arrested at his home on 4 February 2012, probably due to mistaken identity, and was taken by bus to the Al Khatib Branch, where he remained for ten days. On the way there, he was hit on his back and head with a metal rod until he briefly lost consciousness. After getting off the bus, the detainees continued to be beaten until they reached the prison. After being searched, the joint plaintiff was placed in a very overcrowded and dirty communal cell in which people slept on top of each other because of the cramped conditions. The screams of people being tortured, and pleading for the torture to stop, were clearly audible in the cell. A guard would occasionally enter the cell and whip the prisoners. They were given just enough food to keep them alive. During the joint plaintiff's interrogation, he was beaten so hard on the foot with a cane that he still suffers from the pain. He also continues to suffer from severe anxiety disorders.

(11) Journalist N16, who was helping to secretly collect medicine for victims of the regime, was arrested in her home on the night of 5 February 2012 along with her siblings and taken to the Al Khatib Branch, where she remained for three days. When she was admitted, she was stripped and searched, not by the guards but by a nurse from the nearby Red Crescent hospital. She was then put in a small single cell with her two sisters. The only furnishings in the cell were two smelly blankets. In the cell, the screams of those being tortured in the adjacent rooms were heard almost continuously.

The joint plaintiff was questioned daily during the three days of her detention. She was not physically abused during the interrogations. However, on the way from the cell to the interrogation room the guards beat her with their bare hands and a cane. On one occasion, a guard grabbed the restrained joint plaintiff's clothed breast from below.

(12) Opposition activist N13, who was involved in providing medical care to victims of the regime by setting up field hospitals, was arrested on his way to work on the morning of 14 February 2012. After several stops at facilities belonging to the regime, on that same day he was taken to Branch 251 together with other prisoners, where he was held for 18 days. On arrival, there was a particularly brutal "welcome party", during which the new arrivals were beaten with bare hands and cables and kicked for over an hour. After the usual strip-search and 'security manoeuvre', the joint plaintiff was placed in a larger, very overcrowded communal cell holding around 100 people; prisoners could sit down only partially. In addition to the stifling heat and high humidity, the cell was infested with vermin; many prisoners were ill or seriously injured. There was not enough food and it was almost inedible.

The joint plaintiff was questioned a total of ten times. During every interrogation he was beaten, including on his face, and flogged with cables. He was suspended from the door of a cell so that his feet barely touched the floor. On one occasion, following a request from the interrogator ("Take this animal with you and explain to him what's what"), he was kicked in the genitals from behind, with the consequence that the joint plaintiff continues to suffer pain on urination.

(13) N14, who worked for a European Union education programme and was an opposition activist, was stopped by security forces at a checkpoint in Zabadani on 17 March 2012. After they had confiscated her identity documents, laptop and other personal belongings, she was instructed to report to the Al Khatib Branch the next day. She did not comply with the request initially, and instead went into hiding. At some point between the end of March and the

beginning of April, probably on 4 April 2012, she finally attended the Branch. The subsequent interrogations and investigations lasted around 50 days. Although the joint plaintiff was initially allowed to leave the Branch and stay at home overnight, on approximately 10 occasions she had to spend the night in a single cell in the Branch — sometimes this was for a single night and sometimes for several consecutive nights. On one occasion she was there for 2 consecutive nights, on another 3. On the other days, she was allowed to go home in the evening as at the beginning and was only required to return to the Al Khatib Branch the following day.

After initially being received in a friendly manner during her first interrogation in the Branch, when the interrogating officer offered her water, coffee and tea, her treatment quickly deteriorated and became abusive. A few days after her first visit to the Branch, she was taken to the basement, where the guards punched and kicked her in a windowless, blood-spattered room on the instructions of the interrogating officer; the joint plaintiff was hit on the face, ears, neck and back. The same thing happened during subsequent interrogations in the basement. On one occasion, the guards attached the joint plaintiff's hands to the ceiling and left her suspended there for hours. On other occasions she was subjected to electric shocks to her fingertips, knees, shoulders and chest. Aside from during the interrogations and overnight stays, the joint plaintiff was held in a dirty, dark single cell where she had to endure the screams and cries of other prisoners being tortured in the adjacent area.

During numerous interrogations, the joint plaintiff was subjected to verbal abuse of a sexual nature (such as calling her a "whore"). During one of the interrogations, one of the guards pressed her face into his lap and only let go of her when another guard asked him to do so.

(14) N10 worked for Syrian television and had taken part in and filmed demonstrations. He was arrested on 31 March 2012, spent a day in Section 40 and was then transferred to the Al Khatib Branch. As soon as he got out of the transport vehicle in the courtyard, he was beaten. This ill-treatment continued after he was searched in the usual manner and until the joint plaintiff was pushed into the detention room. Throughout his 18 days in the Branch, he was in a communal cell holding around 100 people, which was so overcrowded that a significant number of the prisoners, including the joint plaintiff, could only stand upright. The cell smelled awful and was damp, infested with vermin and poorly ventilated. The blankets that were lying around were full of lice. Many prisoners were ill and had a fever; some were unconscious. The prisoners fanned each other to keep cool, as air only entered the cell from outside when the guards opened a vent in the door. One particularly brutal guard regularly entered the cell

and beat the prisoners with a cable that had exposed copper wires at the end. Food was in such short supply that the joint plaintiff lost a dramatic amount of weight — about 15 kilograms. The screams of torture victims could be heard from other rooms.

The joint plaintiff was questioned at least eight times during his detention. Before his first interrogation, he had to wait for hours on his knees outside the interrogation room. During the hour-long interrogation, and on the way from the cell and back, he was beaten with objects and kicked despite confessing to the accusations levelled at him, namely his participation in demonstrations. The other interrogations were also characterized by ill-treatment. The joint plaintiff continues to suffer the psychological effects of his experiences in the Branch.

(15) N7, who participated in demonstrations as a student, was arrested on an unknown date in May 2012 and transferred to the Al Khatib Branch, where he arrived a few days after his arrest. After getting out of the transport vehicle, he was beaten before being strip-searched. He was detained in the Branch for at least three days and was then transferred to the Palestine Branch. He was held in Branch 251 in a very overcrowded, hot and stuffy communal cell with high humidity, a strong stench and vermin. His fellow prisoners were injured or suffering from skin diseases. The agonizing screams of other prisoners were constantly audible. During several interrogations, the guards beat and kicked the joint plaintiff, regardless of whether he answered questions or not.

(16) N2 was arrested on 27 May 2012 during a protest rally in the form of a sit-in. At the same time, her mother, joint plaintiff N18, was also arrested nearby (see (17) below). Both women were initially transported by bus to Section 40 and interrogated. After about ten hours, they were taken with other women to the Al Khatib Branch, where the joint plaintiff was met with the smell of urine and blood. Like other detainees, she had to strip naked and was searched by a Red Crescent nurse for hidden objects, including in intimate areas.

The joint plaintiff was initially put with 17 other women, including her mother, in a vermin-infested, windowless communal cell measuring 9 square metres. After a few days, she was taken to a small single cell, also windowless, where the light remained on day and night. From there, she heard the constant beatings and cries of pain of other prisoners. She suffered so badly in these conditions that she demanded to speak to the defendant, whom she knew from a previous encounter in March 2011 due to the imprisonment of her sisters, Z86 and Z87. The joint plaintiff was then brought before the defendant, who promised to return her to a communal cell. Despite this, the joint plaintiff was taken back to her single cell. After a few

days, she was taken to another small single cell, where her mother was being held. Both women remained there until their release.

The joint plaintiff was interrogated several times in the Al Khatib Branch. During and between the interrogations, she was subject to threats, verbal abuse, and physical abuse involving objects. After one interrogation, she was suspended by her wrists in the basement and, in this defenceless position, her abdomen was beaten and doused with a cup of scalding liquid that has left a scar. The joint plaintiff was then strapped to a board and beaten while immobilized.

The Panel was unable to make any further conclusive findings regarding the assaults, in particular sexual assaults, on the joint plaintiff, who was still noticeably traumatized at the time of the main hearing. It was established, however, that the joint plaintiff was in a state of panic throughout her detention because she feared that she would be raped. The joint plaintiff was detained at the Al Khatib Branch for a total of 23 days.

(17) N18, the mother of joint plaintiff N2 was, like her daughter, detained in Branch 251 for a period of 23 days from 27 May 2012. The joint plaintiff had accompanied her daughter to the sit-in, fearing that something might happen to her. Although she kept her distance from the event itself, she was dragged onto a waiting bus by security officers. After a 10-hour stay in Section 40, she was transported to Branch 251, where she and her daughter were placed in the large communal cell described above, in which 16 other women were held. One by one, all the women were called out of the cell for interrogation. Following her interrogation, the joint plaintiff was transferred to a small single cell. During her interrogation, she was not subjected to physical violence — as was the case during the rest of her stay — but was verbally abused and threatened. She also had to endure inhumane conditions of detention due to the cramped conditions, lack of air and food and the catastrophic hygienic conditions. In addition, she was constantly exposed to the sounds of beatings and the screams of pain of other prisoners. She suffered most acutely when she had to listen to the cries of a person she correctly identified as her own daughter, N2. Eventually the daughter was brought to her mother's cell, where they both remained until the end of their detention.

(18) N17, an employee in a Government laboratory, was arrested at a checkpoint on his way to work on 19 May 2012 and informed that he was on a wanted list, and although this was obviously incorrect, he was taken to the Al Khatib Branch together with other individuals. Once they had disembarked the bus, the prisoners were subjected to a mock execution in which

they were blindfolded and made to stand against a wall. They heard an order being given to simply kill them, and guns being loaded. However, no shots were fired. Instead, the prisoners were ordered into the building, where they underwent the usual search.

The joint plaintiff was taken to an extremely overcrowded communal cell, which he described as a “grave” so cramped that he could barely stand up at first. The air was so bad that the guards abused the prisoners by covering the ventilation opening in the door until they were at risk of suffocation. The guards also entered the cell for no reason and beat the prisoners arbitrarily with an electric cable, the end of which had exposed wires that ripped their skin and flesh to shreds. Condensation dripped from the ceiling, and vermin fell with it; the vast majority of the prisoners suffered from fevers and skin diseases, in particular abscesses. They were provided with food in a meagre and undignified manner: for example, soup was handed to them in a laundry detergent container, without a spoon. The screams of fellow prisoners being abused were heard constantly. After about a week, when the joint plaintiff was interrogated twice regarding the completely unfounded accusation that he had killed a Syrian State official, he was hit over the head and body with bare hands, belts, cables and pipes; his ear was hit particularly hard.

After a stay of approximately one month under the conditions described, the joint plaintiff was transferred to another intelligence unit in Najha for approximately one week and was then brought back to the Al Khatib Branch. There he was held in a slightly larger and slightly less (though still very) overcrowded cell than previously, with a skylight in the wall through which the sky was visible. There, too, he was constantly exposed to the screams of tortured prisoners and the sounds of beatings and devices delivering electric shocks. He was again beaten and interrogated until he signed two blank papers. After approximately one week he was taken to Branch 285 in Kafr Sousa.

The joint plaintiff still suffers from tinnitus caused by the ill-treatment inflicted on him during that period, as well as from psychological problems. He is depressed and can only sleep with the help of medication.

(19) N11 was arrested on the night of 5 to 6 June 2012 in a park where he had met with friends. After staying for one day in Section 40, he was taken to the Al Khatib Branch. He was searched in the usual way and then — dressed only in boxer shorts — pushed into a very overcrowded, overheated and poorly ventilated communal cell which, despite being only 5 x 4 metres, contained 100 prisoners. In order to have any space at all, the prisoners had to take

turns sleeping in shifts, and even then they had to lie head to toe, on their sides. On the way to one of his interrogations, he spotted one of his friends, and on the way back asked a guard if he could be placed in the same cell. In response, the guard beat the joint plaintiff with a cable for several minutes and forced him back into his original cell.

During his interrogation, the joint plaintiff was insulted, punched and kicked. The interrogator threatened to kill him with a single shot if he did not cooperate and supply the names of opposition journalists and doctors, telling him that no one would ever ask after him again. When the joint plaintiff refused — partly because he did not know the information requested of him — he was hit with a rifle butt and kicked in the head, causing him to hit his chin on the ground and lose consciousness.

The joint plaintiff remained in Branch 251 for approximately one week, but it was not possible to determine the precise duration of his detention. He was subsequently transferred to another intelligence unit in Najha.

(20) N12, who was accused of taking part in fighting against the Syrian army, was arrested, together with his uncle and a cousin, by a patrol on the way to his home village on a Friday in July 2012. After a brief stopover at another location, he was taken to the Al Khatib Branch. On arrival, the joint plaintiff and other detainees were verbally abused and hit with a plastic pipe, his shoulders bearing the brunt of the blows. After being searched, 20 to 24 detainees were put in a previously empty, small communal cell measuring around 3 x 3 metres. The cell was damp and had no daylight. Prisoners had to endure the constant screams of people being tortured and the fear that it would soon be their turn.

During his time in detention, however, the joint plaintiff was not interrogated or physically assaulted, nor were the other prisoners in his cell subjected to violence, as long as the joint plaintiff was with them. After approximately one week — the duration cannot be determined precisely — the joint plaintiff, whose family had connections to high ranking figures and had paid a ransom, was released. On his release, he was suffering from scabies.

(cc) No findings were made with regard to offences against joint plaintiffs that would be eligible for private accessory prosecution.

It could not be established that joint plaintiff N21 had been in certain facilities of the Syrian regime at specific times, in particular Branch 251, in the period 29 April 2011 to 7 September 2012. Although the Panel is convinced that this joint plaintiff also suffered assaults on his

person by the Syrian security authorities, the time, place and nature of these assaults could not be determined.

Z6, the brother of joint plaintiff N22, worked as a doctor at the Mujtahed Hospital in Damascus, where he was arrested in mid-July 2012 and taken to the Al Khatib Branch. However, the Panel was unable to determine with sufficient certainty whether, when and how Z6 died in the Branch.

(e) Disappearances

The Panel was unable to establish that those detained and imprisoned in Branch 251 had been subjected to “enforced disappearance” as it is understood in international criminal law.

(aa) However, it was common practice for the Syrian security authorities not to disclose any information about the fate of individuals sent to the intelligence services’ detention centres after their arrest. Notably, prisoners were generally not allowed to make contact with the outside world, whether through relatives, legal counsel or third parties in general. Relatives were kept completely in the dark as to the whereabouts of the missing person, their condition and whether they were still alive; there was no independent communication about this. Often, there was some doubt as to whether the security authorities were even responsible for the person’s disappearance. This placed an extreme and unbearable burden not only on relatives — who were not informed of the fate of the detainee until their release or transfer to a regular prison, and never learned their fate if they were killed — but on prisoners as well. For them, it constituted a further erosion of their rights, as they were well aware that they were subject to the whim of the security officers without the prospect of even minimal psychological support that was independent of any external authority. This approach was an integral part of the Syrian regime’s strategy to suppress opponents of the regime and intimidate the civilian population.

In the vast majority of cases, relatives were also not informed when a missing person had died in intelligence service facilities or elsewhere, nor of whether or where they had been buried. Instead, corpses were regularly disposed of anonymously and secretly in mass graves, their identities recorded only for the regime’s internal purposes.

(bb) Nonetheless, the Panel was unable to make any findings regarding specific cases in which relatives of detainees of Branch 251 made enquiries to the Branch regarding the whereabouts of detainees during the period from 29 April 2011 to 7 September 2012 and had

been given no information or false information. Cases in which this was even remotely possible were those involving the detention of the individuals listed below, in respect of whom the following events can be ascertained:

(1) After her daughters Z86 and Z87 were arrested at protest events and taken to Branch 251, joint plaintiff N18 went to various security authorities, including branches of the intelligence service and the Criminal Investigation Department, where she was denied information each time. The same happened at the Al Khatib Branch. When she enquired at the Presidential Office, she was laughed at. Her efforts continued for several days following the arrest of her daughters on 15 March 2011, i.e. before the period of the offence. During the subsequent detentions of N18 and her third daughter, joint plaintiff N2, in May 2012, no specific enquiries were made by third parties as to their whereabouts.

(2) Z6, the brother of joint plaintiff N22 (see also (d) (cc) above) was detained in Branch 251 in mid-July 2012; it cannot be determined with certainty whether, when and under what circumstances he died there. Relatives of Z6 learnt of his whereabouts by informal means that could not be further determined. When witness Z7 appeared with an intermediary in Branch 251 on 29 or 30 July 2012, both were permitted to meet with the defendant. He told them that Z6 had been in the Branch, had since died, and that his body was in one of the military hospitals. It is not possible to establish whether the defendant was telling the truth in this respect.

(3) With regard to witness Z8, who was detained in Branch 251, Section 40 officers correctly told relatives that Z8 was in Branch 251. Further enquiries through a contact who could not be identified did not yield any information; it cannot be established that any further enquiries were made of State institutions.

(4) Relatives of witness Z44, who was detained in Branch 251, made enquiries as to his whereabouts, at an unspecified point in time, of an officer with whom they were personally acquainted whose identity could not be determined. Although they gave him a bribe, he gave them false information.

##### 5. Defendant's contribution to the offence

The defendant was employed in a prominent position as Head of the Investigations Subdivision and Deputy Head of Branch 251 during the period of the offence from 29 April 2011 to 7 September 2012. He held this position from 9 August 2008 onwards, having held

somewhat similar positions in the Syrian General Intelligence Directorate. The defendant's role consisted mainly of organizational, evaluative and managerial functions that extended to the Branch prison. His involvement in and presence at interrogations was sporadic and at his discretion. With the exception of an impulsive assault against witness Z9, the defendant did not personally assault prisoners in a manner that would threaten their life, limb, freedom and sexual self-determination. However, he was aware of these assaults and approved of them as targeted measures to intimidate and coerce prisoners into making confessions. He accepted their deaths as an inevitable consequence of their ill-treatment and the conditions of detention, of which he was aware. He was aware of the violence that took place across Syria from the end of April 2011 and was instigated by the security authorities. More specifically:

(a) Pre-offence conduct: activities in the Syrian intelligence service up to April 2011

(aa) As already established with regard to the person of the defendant, he decided to join the Syrian civil service in December 1986 at the age of 23 while still a student, where he subsequently undertook various duties for a total of 26 years. After completing his police training and working for 5 years at police stations in Aleppo, Hasaka and Tartous dealing with immigration and identity card issues, he was selected to join the Syrian intelligence service in 1995 on account of his professional qualifications. This appointment was a mark of distinction, as the intelligence services — as has been established, and as the defendant was well aware — played a key role in the Syrian State apparatus. As a pillar of the regime, the intelligence services had extensive control and executive powers. The defendant now found himself in a role that was much more important and varied that granted him greater authority than he had enjoyed in the police force. The defendant — who identified with the Syrian regime and the way it exercised power and was ambitious to advance his career as a specialist officer — willingly accepted the role.

The defendant initially completed an eight-month basic training course. He received two months of training from Syrian officers and a further six months of training from Russian instructors in Damascus. During his first assignment as lieutenant (later first lieutenant and captain), he was assigned to Branch 251 of the Syrian General Intelligence Directorate in the Al Khatib district, where he was head of embassy protection patrols in Damascus until 8 June 1996. In this role, he had particular responsibility for supervising and organizing patrols in the embassy districts of Damascus.

From 9 June 1996 to October 2006 or 24 November 2007, the defendant worked as an officer in the central management Branch 285 of the Syrian General Intelligence Directorate in the Damascus district of Kafr Sousa. He worked as an investigating officer in the 'Investigations' Subdivision there; as such, he was involved in interrogating prisoners and analysing the information obtained. The Branch was responsible for investigating security-related incidents and, in particular, for prosecuting dissident activities and interrogating prisoners from all over Syria. In addition to his interrogation activities, which he conducted with four other investigating officers, the defendant was responsible for dealing with legal issues, on account of his legal training, specializing in the area of Syrian security law — in his own words, “political and security issues, organizations, etc.” — as well as criminal and disciplinary law. He was promoted to the rank of major during this time and was also appointed lieutenant colonel, either during his time there or during subsequent service. In addition to interrogating prisoners in the Branch, the defendant was involved in the basic and further training of other senior investigating officers and lecturing. He himself took part in further training courses, for example in economics and “crisis management”.

In October 2006 or on 24 November 2007, the defendant was transferred to Branch 300 of the Syrian General Intelligence Directorate in Damascus — also located at the headquarters of the intelligence service in Kafr Sousa, Damascus — which he described as the “anti-espionage branch” or the “counter-espionage and counter-sabotage branch”. The defendant performed various security tasks there aimed at protecting ministries and foreign delegations; in addition, he was responsible for investigative work. The defendant was responsible for accompanying political delegations and representatives of foreign intelligence services from France, Spain, Great Britain, the Russian Federation, Iran and China; he was also responsible for security arrangements for a visit by the International Atomic Energy Agency in 2007. In addition to his ongoing investigative duties, he led Syrian expert delegations in state security, which aimed to facilitate an exchange with security officers from other countries.

In the course of 2007 or 2008 and no later than 9 August 2008, the defendant — who in the meantime, through his various assignments, had acquired outstanding knowledge in his field of expertise (investigative work focused on efforts critical of the regime) — was requested as a specialist officer with an excellent reputation by the Head of Branch 251, Brigadier General Tawfiq Younis, and was appointed Head of the Investigations Subdivision. He was promoted to the rank of colonel on 1 January 2011.

(bb) Even prior to the period of the offence (29 April 2011 to 7 September 2012), arrests and detentions in branches of the intelligence services of the Syrian State — including branches 251 and 285 — were conducted without any legal basis. Even before the spring of 2011, the treatment of prisoners and interrogations in Branches 251 and 285 were characterized by torture and inhumane prison conditions. The processes involved a system that was well established among the staff of the branches: a detainee, already worn down by the conditions of detention, ill-treatment and an uncertain fate would be presented to an interrogator by the guards, who usually subjected the detainee to ill-treatment without even being asked to do so, or at the interrogator's request if, in the interrogator's opinion, the detainee was not being sufficiently cooperative. However, the prisons run by the intelligence services had not yet become massively overcrowded, as they were from spring 2011 onwards. As a rule, arrests were not made completely arbitrarily, but with the aim of forcing information out of a detainee if there was a specific suspicion of dissident attitudes and activity, and of using detention and torture to deter the person from engaging in further activity. Deaths sometimes occurred.

As the officer responsible for interrogations in Branch 285 and head of the corresponding subdivision in Branch 251, the defendant was able to closely organize the investigative work there. He was responsible for effective gathering information, which was achieved by monitoring potential opponents of the regime, arresting them and interrogating them with the use of torture. While working for Branch 285, the defendant initially conducted interrogations himself; after being promoted to subdivisional head of Branch 251, he decided which interrogations to attend and whether to conduct them himself.

(cc) The defendant identified with the Syrian State, in whose service he had placed himself as a young man. He was well aware of the regime's totalitarian rule and the central role of the security authorities in it, as was the wider Syrian public. The defendant particularly admired erstwhile President Hafiz al-Assad for his prudent and consistent exercise and safeguarding of power. During his time working for the intelligence service, the defendant set himself the goal of defending the ruling Syrian State apparatus from terrorist activities, foreign influence and opposition efforts, but also from any criticism or protest, using the means at his disposal.

Furthermore, when he was recruited by the intelligence service, the defendant was aware — as was the wider Syrian public — of the brutal methods employed by the Syrian security authorities, including the intelligence services in particular, against actual and suspected opponents of the regime. In the course of his work for the intelligence service, at the coordination points of the units of the intelligence service responsible for suppressing

dissident activities, he gained extensive, intimate knowledge of the intelligence service's methods, both through direct observation and by applying them himself. These included the monitoring of cultural and social endeavours and their regulation, the selection of those to be arrested and the making of arrests, the treatment of prisoners, in particular the conditions of detention, and the methods of extorting confessions. He was familiar with the circumstances of the interrogations, which were regularly accompanied by beatings even before 2011, as well as the various torture methods used in branches 285 and 251, such as *fallaqa*, *shabeh* and the 'German chair', and the exhausting and psychologically stressful detention conditions that were characterized by a lack of food and sleep, arbitrary ill-treatment and the agony of an uncertain fate. He was also aware of deaths among the prisoners in the intelligence service's detention centres.

The defendant's role increased his personal prestige and status, at least among politically aware members of the public. It conferred privileges which allowed him to live a life unencumbered by the surveillance and omnipresent controls to which 'ordinary' Syrians were subjected, affording him preferential treatment in his dealings with the State bureaucracy and extensive powers, while at the same time providing him and his family with a livelihood. These factors formed part of the defendant's motivation for doing his job.

(b) Period of the offence: activity in the period from 29 April 2011 to 7 September 2012

(aa) Objective element of the offence

(1) As a specialist officer in a management position in Branch 251 from 29 April 2011, the defendant was involved in suppressing the growing activities of the opposition, in a seamless continuation of his previous role. He remained Head of the Investigations Subdivision until he took up his position in Branch 285 on 8 September 2012; this was the most important and most extensive subunit of Branch 251, which investigated dissident activities. From the beginning of 2011, the defendant was second in command to Brigadier General Tawfiq Younis and his deputy.

The defendant had a spacious office with a desk and at least one sofa on the first floor of the same wing of the building in which the Branch's basement prison was located. Next to it were the interrogation officers' rooms; the floor above housed the offices of the Head of Branch. The defendant also used an office in the prison area, which may not have been exclusively for his own use. The defendant had between five and ten interrogators, who were junior officers, under his command. The Branch prison — including the prison director who was

presumably a senior corporal, and the prison guards — were also under his command. As a military-style commander, the defendant had the right to issue instructions to all personnel in his subdivision; his managerial powers thus extended to the running of the prison, the treatment of prisoners and the manner in which interrogations were conducted.

(2) The defendant exercised his powers until he was transferred. His primary task was to lead and coordinate interrogations, gather information and determine the fate of prisoners. The defendant dictated the working methods of the prison guards — as conveyed by the prison director — and those of the interrogators, at least in general terms. He specified the objectives of the interrogations and at the very least ensured compliance with the general instructions regarding the treatment of prisoners and the use of methods of extortion and intimidation. He monitored the activities of the prison guards and interrogators by visiting the prison and attending interrogations sporadically. He ascertained the reasons for the arrests and the suspected offences of individual prisoners, received interrogation reports, summarized the findings and determined the further course of action. His subordinates — whether guards, prison officers or interrogators — treated him with respect, addressed him as *sidi* ('my lord') and followed his instructions. The defendant was informed of any incidents involving prisoners, in particular deaths.

The detention and interrogation of prisoners in the Branch prison took place under the leadership and hierarchical responsibility of the defendant. Almost every detention and interrogation was accompanied by the ill-treatment of prisoners through physical torture, humiliation and inhumane conditions of detention. This was part of a practice that had been followed in the subdivision for decades, and which the defendant also implemented. The defendant gave the interrogators and the guards a free hand when it came to choosing the means by which they abused, intimidated and coerced prisoners into making confessions. An explicit order was only required if a detainee was not to be subjected to torture, contrary to the norm. The defendant was authorized to order this, and his order would be followed.

Due to his prominent position, the defendant did not have to personally participate in the ill-treatment of the prisoners. He was also no longer responsible for conducting interrogations; rather, he was able to 'select' persons of particular interest for his own investigations. Accordingly, the defendant often interrogated prominent detainees — particularly those active in the cultural sphere — when his involvement reflected the importance and significance of the matter. The aim was to bring the individuals concerned into line with the regime, using subtle pressure and incentives. The increased external visibility of the treatment of such

detainees had also to be considered. Moreover, interrogation satisfied the defendant's personal interest and intellectual curiosity. Similarly, when a detainee was suspected of significant opposition activity, the defendant would either conduct the interrogations himself or attend them. During conversations with such detainees, the defendant was able to use interrogation skills acquired over the years to try to establish an apparently close relationship in order to obtain information or to 'turn' a detainee and persuade them to engage in conspiratorial activities in future. Sometimes he resorted to subtle methods of intimidation by showing otherwise privileged detainees the conditions in the Branch. On other occasions, however, when interrogating ordinary prisoners who had been tortured and not selected for special treatment, or when dealing with their relatives, the defendant showed no empathy whatsoever, assuming the role of a tough interrogator and occasionally ordering that they be tortured. He did not carry out the ill-treatment himself; the only established physical assault by the defendant was when he impulsively punched witness Z9 in the face during an interrogation.

The defendant had the right to make proposals to the Head of the Branch regarding the fate of detainees, in particular regarding the decision as to whether they should remain in the Branch, be transferred to another facility belonging to the security authorities, or be released. In more significant cases, written reports on the information obtained from interrogations and investigations were prepared by or at the request of the defendant, together with suggestions for further action, which could also be used further up the hierarchy, right up to the Director of the General Intelligence Directorate. In principle, the formal authority to make a final decision to continue detention or to transfer or release detainees lay with Tawfiq Younis, as Head of Branch and the defendant's superior. However, the defendant had considerable discretion and authority to make preliminary decisions. This was partly due to Younis's extensive managerial responsibilities (the latter was the commanding officer of the heads of the eight other sections and five local offices of Branch 251) and his duties to the heads of the intelligence services, but above all it was due to the sheer number of detainees in respect of whom decisions needed to be made. The defendant thus had the power to determine the fate of detainees who, in the eyes of the security authorities, were of little significance. This meant that the defendant sometimes ordered releases.

In view of his position and duties, the defendant had a particularly close relationship with the Head of Branch. The defendant was called in for meetings with Tawfiq Younis and visits by high ranking members of the intelligence service.

(3) The aforementioned division of responsibilities had been in place since the appointment of the defendant as head of subdivision and continued until his last day of work in the Branch on 7 September 2012. The events in Syria in the spring of 2011 led to the defendant becoming increasingly autonomous, although he did not always welcome this change. There were a number of differences compared to the preceding period, as described below:

From February 2011, the defendant faced an ever-increasing number of incoming detainees. This led to overcrowding and a further deterioration in already inhumane prison conditions. The defendant was unable to alleviate the situation by increasing the number of releases or transfers. At the end of April 2011, the first decisions of the CCMC (see 1. (b); 2. (b) (bb) (3) above) were made known to the officers of Branch 251, including the defendant, and were implemented by them. This led to a further lack of restraint on the part of the security forces, which manifested in Branch 251 as lower-ranking officers having a 'carte blanche' in their treatment of prisoners. The modus operandi of the staff — as determined by the Branch management, including the defendant — was now oriented towards achieving the objectives of detention by means of continuous physical and psychological ill-treatment, despite the higher number of prisoners. The defendant and the prison director subordinate to him gave the guards a largely free hand in the ill-treatment and abuse of the prisoners, who were to be disciplined in accordance with the CCMC's instructions. These resulted, inter alia, in recorded deaths, sexual assaults and detention conditions that amounted to torture. In the second half of 2011 the staff of the Branch, including the defendant's subdivision, was increased to an indeterminate extent and the prison was expanded through the addition of at least one further large cell block located below an outside area.

Furthermore, the Branch adjusted its working procedures: many detainees had to be 'processed' through the Branch, which was not designed for long-term stays, and more confessions had to be extorted more quickly. This meant that a thorough investigation was no longer possible. In addition, there was an increase in the number of people who had simply been arrested at a demonstration or without any grounds for suspicion. This was in line with the regime's strategy of adopting a qualitatively and quantitatively tougher approach and intimidating the population. The result was that the defendant increasingly had to deal with prisoners who were not particularly useful sources of information; often, it was not possible to interrogate them due to their poor physical condition, as they had already been brutally abused during their arrest and transportation and were scarred by the dire conditions of detention. At the same time, the defendant's position became all the more important because

the number of prisoners did not allow for individual discussions with the Branch head and the defendant had even greater autonomy.

Following the massacre of Al Houla — the defendant's hometown — by pro-Government militias and members of the Syrian security forces on 25 and 26 May 2012, in which acquaintances and distant relatives of his were killed, relatives and acquaintances increasingly contacted him and questioned his actions. However, the defendant continued his work as before.

(4) The Head of Section 40, Hafiz Makhoulf — who had special status on account of his family's relationship to the ruler Bashar al-Assad and powers that went beyond his official rank (see 3. (a) above), p. 48) — was officially of the same hierarchical rank as the defendant. Both men were section heads and senior officers in the service of the Syrian General Intelligence Directorate. However, Hafiz Makhoulf, as part of the inner circle of power around Bashar al-Assad, which was present on the streets, well known and feared by the Syrian public, and thus effectively exercised a high level of authority. The defendant and the Head of Branch, Tawfiq Younis, therefore did have to submit to Makhoulf's demands without exclusion.

However, it cannot be established that Hafiz Makhoulf — who acted autonomously and was based in a property that was separate from the rest of Branch 251 in the Al Khatib district — gave orders or intervened in the operations of Branch 251 at its headquarters, or that he gave specific instructions to the defendant. Rather, the Branch 251 admitted those who had been arrested by Section 40, either individually or in conjunction with other security forces, before deciding on their subsequent treatment. The possibility that Makhoulf occasionally requested special treatment for detainees of particular interest to him cannot be excluded. However, there are no indications that the individually identifiable injured parties and joint plaintiffs were affected by this, or that Makhoulf was involved in otherwise established individual offences.

(bb) Subjective element of the offence

(1) As has been established in relation to his pre-offence conduct, the defendant was very familiar with the power structure in Syria and the central role of the security authorities as a result of his many years of professional experience prior to the beginning of the Arab Spring. In particular, he was aware of the organizational structure and methods used by the intelligence services to monitor and suppress opposition activities through violent means, including the methods of torture used in the prisons of the intelligence services.

Due to his professional duties, the defendant also had more detailed knowledge than the general public of the political situation and events in Syria from February 2011. He knew about the growing civic freedom movement and, because of his own involvement, about the attempts of the Syrian regime to keep the protests under control. He was well aware of the measures taken by the State, which rapidly went beyond preventing, monitoring and dispersing demonstrations and escalated to increased surveillance of the population (for example by increasing the number of checkpoints), the making of arrests and the use of more intense violence against peaceful demonstrators and alleged and actual members of the opposition. The decisions taken by the CCMC also passed over the defendant's desk; as a longstanding member of the intelligence service, he understood how they should be interpreted. The defendant therefore knew that he was now expected to take even tougher action and to intimidate actual or potential opponents of the regime.

In the period that followed, the defendant observed that the security authorities' attacks were intensifying throughout the country as these decisions were implemented, resulting in waves of arrests, the brutal use of force, and killings. He knew that the increasing number of detainees in his Branch was directly related to the widespread and systematic attacks, carried out by the end of April 2011 at the latest, for the purpose of political repression and intimidation of the civilian population, and that those detainees had been arrested more or less arbitrarily during the dispersal of demonstrations or other protest rallies, at checkpoints or in their homes, before being abducted to the Branch.

(2) Moreover, the defendant had detailed knowledge of the working procedures and conditions in Branch 251, which he had helped to design, as well as of the objectives of the detention and treatment of prisoners. This included the conditions of detention in the Branch prison, the torture and ill-treatment that took place there, and the manner in which interrogations were conducted by the officials working in his area of responsibility. In particular, the defendant knew that newly arrived detainees were regularly 'greeted' by the guards under his command in the courtyard of the department with a prolonged barrage of brutal blows, before being led to the severely overcrowded cell block where they were subjected to arbitrary physical abuse by the prison guards, catastrophic detention conditions — overcrowding, a lack of ventilation, no heating or cooling appropriate to the season and inadequate medical care, hygiene facilities and food — and endured extreme psychological stress. He was familiar with the personalities of the guards subordinate to him, some of whom had sadistic tendencies. The defendant knew that torture was taking place in the prison wing, the interrogation rooms and the corridors of the Branch premises, either on the orders of other

interrogators or at the guards' own initiative, on the basis of the general instructions that the defendant upheld. Under his administrative leadership, torture methods such as *fallaqa*, *shabeh*, the 'German chair' or *dulab*, with which he was familiar, continued to be used. The defendant was aware of the poor health of the detainees, which was an inevitable consequence of their ill-treatment, untreated illnesses and injuries, as well as the prison conditions more generally, in particular the poor hygiene and shortage of food. The defendant was aware that the occasional medical care provided by doctors called from the nearby Red Crescent hospital was not sufficient to avert serious health consequences for prisoners.

The defendant was aware of the duration of detention in Branch 251 — which he actively influenced — and that the treatment of detainees, which was left to the discretion of the guards, included sexual assaults in the form of sexual insults, threats and rape. He knew that the confessions made by prisoners were obtained under duress, including the threat of severe consequences such as death or long-term imprisonment. As a lawyer, he was also aware that there was absolutely no legal process that would have even remotely legitimized the arrests and subsequent detention of prisoners. He knew that even under Syrian law there was no justification or excuse for the conditions of detention, torture and other forms of ill-treatment against the prisoners, which constituted a violation of human rights.

(3) The defendant was not only aware of all these facts — he welcomed them. The defendant had placed himself at the service of the Syrian State as a result of his internal convictions and career ambitions, believing that his task was to protect it. He was more than willing to apply his personal and professional skills for that purpose. On account of his many years of assimilation into the Syrian State and his activities on behalf of the regime, it seemed perfectly natural to him that the investigations which he was responsible for did not have to be conducted out according to the rule of law; rather, they needed to be carried out as effectively as possible for the purpose of obtaining information, so that from his perspective, deprivation of liberty, torture and other assaults on prisoners were both legitimate and expedient. The same could be said for the practice of deterring opposition activity by subjecting individuals to brutal treatment in his Branch — a practice that the Syrian security apparatus had engaged in for decades.

The manner in which the regime suppressed the protest movement from spring 2011 onwards was therefore not unknown to the defendant; he was concerned that it should be implemented as smoothly as possible in order to achieve the desired result. However, the sheer number of detainees brought to the Branch made it difficult to maintain normal procedures and the

methodical work habits favoured by the defendant. He found it rather inconvenient that some detainees had played no part in the protests and were therefore unable to provide any information.

However, these concerns — which were based on considerations of expediency and a certain personal ‘work ethic’ to ensure efficient investigations — did not prevent the defendant from fulfilling his duties as head of the subdivision and ensuring that the orders he received to ensure the continued existence of the Syrian regime were implemented as effectively as possible.

Only once the massacre of Al Houla on 25 and 26 May 2012 became widely known and the defendant had discussed it with acquaintances and relatives did he begin to have concerns about the actions of the security apparatus of which he was a part. Instead of following up on these concerns, however, the defendant continued his activities until his transfer to Branch 285. Although the possibility that he may have felt inwardly detached from the actions of some parts of the security services cannot be excluded, any such notion did not stop him from continuing to view the work of his subdivision as helpful to the maintenance of the regime and, in turn, from contributing to the continued functioning of the machinery of detention, ill-treatment (including torture causing death) and interrogation.

(4) The killings established to have occurred during the period of the offence were understood by the defendant to be a necessary consequence of the conditions he maintained in his subdivision; at the very least, he acquiesced to them:

The life-threatening conditions in the Branch 251 prison under his command were — as already established — not only known to the defendant but the inevitable consequence of his conscious decision to accept and subject to ill-treatment a high number of detainees that significantly exceeded the capacity of the prison cells. The defendant fully expected that deaths would occur because of the lack of adequate care for sick, injured or emaciated prisoners and the fact that the guards were given free rein to commit acts of abuse. The deaths that occurred in the Branch were reported to the defendant by his subordinates; the defendant then ordered the removal of the corpses. The defendant also fully expected that individuals who were in such poor health that they had been transferred to hospital would die there as a result of the injuries inflicted in the Branch or as a result of their poor general health resulting from detention; the defendant was also informed of these deaths.

Killings of prisoners was not a priority for the defendant; indeed, they were somewhat inconvenient for him, as the deceased could not be interrogated. However, the death of a proportion of prisoners seemed to be a necessary consequence of his activities, efforts to combat opponents of the regime, and the methods selected to achieve this. The defendant acquiesced in these killings so that he could continue his activities effectively.

The defendant's defining motive for the treatment of prisoners was his desire to maintain the political order in Syria. As already established, the defendant identified with the country's repressive political system, which he felt compelled to protect. The suppression of opponents of the regime had long been a routine part of his job. He saw himself as a civil servant who safeguarded the interests of the regime and who contributed to that cause through his professional role in an essentially technocratic manner. He had the same attitude to the ill-treatment inflicted on prisoners and their deaths. Detention in perilous conditions helped to prevent further dissident activity, as desired by the regime's leadership. The activities undertaken by the defendant during the period of the offence, when the protest movement seemed to him to be getting out of hand, were partly aimed at securing his own livelihood, which was dependent on the regime remaining in power — specifically, he was seeking to protect his social and financial position, above all so that he could provide for his family and maintain his standard of living.

(cc) Had he wanted to desist from committing the offence, the defendant would have had sufficient opportunity to do so. Certainly, it would not have been easy for him to voluntarily resign from the service or to request a transfer to a different position in the Syrian civil service that would not have been associated with crimes under international law: the defendant would have risked arousing suspicion that he was disloyal to the regime, and would have faced investigations and, in the worst case scenario, arrest. However, the Panel was unable to establish any mechanism by which the defendant, had he taken such action, would have automatically suffered serious life-threatening consequences. The defendant could have chosen to accept the risk associated with any such action. In any case, it would have been possible for the defendant, who was aware of the intolerable conditions in the Branch prison even prior to the period of the offence, to escape prosecution by fleeing in a timely manner. Like many other Syrians who had previously served the regime or were threatened by it, he could have sought asylum in a neighbouring country. Unlike most of those other Syrians, when making plans to flee the defendant would have had access to extensive information regarding the security situation and, by virtue of his rank, financial resources far above average. Any attempt to flee would likely have been successful, although not without risk, as

the regime would have punished the defendant as a captured deserter, including by imposing the death sentence.

However, it cannot be established that the defendant had any desire to renounce the Syrian regime during the period of the offence. Instead, the defendant freely chose, on the basis of his inner convictions, to continue his work in Branch 251 until he was transferred. This was not a situation in which he was forced to continue against his own wishes due to external circumstances. Thus, the defendant did not begin to plan his escape until he was transferred to Branch 285.

(c) Post-offence conduct

The defendant's last day of work in Branch 251 was 7 September 2012. He was transferred to Branch 285 of the Syrian General Intelligence Directorate with effect from 8 September 2012. The reasons for the transfer cannot be unequivocally determined.

In Branch 285, the central administration and investigation branch of the Syrian General Intelligence Directorate located at the latter's headquarters in the Damascus district of Kafr Sousa, the defendant was put in charge of the Investigations Subdivision, which also existed in this Branch. The nature of his work was essentially the same as in his previous position, involving investigative work such as organizing interrogations of prisoners in the Branch and analysing the resulting information, as well as making recommendations regarding the fate of prisoners. In addition, the defendant was appointed to high-level committees.

As the armed anti-Government forces began to achieve greater success in the internal conflict that was gradually evolving into a civil war, an advance on the capital became more likely and the continued existence of the Syrian regime under Bashar al-Assad increasingly uncertain. At this point, the defendant started to make plans to flee the country. A further potential motive that cannot be excluded was that the defendant was gradually distancing himself from the Syrian regime on account of its increasingly harsh action against individuals who were clearly unimplicated, and his relatives' influence on him in this regard. At the beginning of December 2012, the defendant confided in a friend and colleague, witness Z1 — who had himself already decided to flee — during a discussion in Z1's office. On 4 December 2012, he did not attend his workplace and travelled with his wife and five youngest children in stages towards the Jordanian border, which he crossed during the night of 14–15 December 2012.

## **B. Assessment of evidence**

The gathering and assessment of evidence was complicated by the fact that the charges relate to events that occurred ten years ago in a non-European country. However, in view of the extensive preliminary fact-finding work conducted in advance by the investigating authorities, experts and non-governmental organizations (NGOs) in relation to the situation in Syria from 2011 and the events preceding it, and the high number of witnesses who, due to the influx of refugees into Germany and other European countries, were able to contribute to the investigation either as victims or as former members of the regime or persons close to the regime, the Panel has been able to make the above findings with certainty.

The defendant made several statements regarding the charges in the main hearing. The Panel first prepared a summary of the defendant's submissions and of the written statements he provided, both as a witness and in other contexts (see I. below). The Panel then divided the further assessment of the evidence presented in the main hearing — in accordance with the findings made — into information relating to: the political and social situation in Syria (see II. below) and the internal conflict there from 2011 onwards (see III. below), including the work of the secret services; the underlying findings for individual offences (see IV. below); the person of the defendant (see V. below); and lastly, the defendant's role as a responsible commanding officer of Branch 251 which is relevant to the charges against him (see VI. below).

Where witness statements pertain to more than one of the areas mentioned above, the statement in question and an assessment of the extent to which it can be relied upon are included in the section that reflects the statement's primary focus or the aspect that is of greatest significance in terms of the proceedings; where this is not the case, a note has been inserted accordingly. As part of its assessment of evidence relating to the person and role of the defendant, the Panel heard from witnesses who came into direct contact with the defendant, irrespective of whether they were also able to provide information regarding the course of the internal conflict in Syria or whether they were joint plaintiffs.

As reported by witness Z10, who was in charge of the police investigation, during the preliminary investigation the Federal Criminal Police Office prepared a photo line-up of eight middle-aged, balding men with moustaches and a birthmark in the same place as the defendant's; the defendant is number 2 in the photo sequence. Reference is made to the photographs for further details in accordance with Section 267 (1) sentence 3 Of the German

Code of Criminal Procedure (case file Vol. I.1, Bl. pp. 143–149). In the course of the police investigation, at the start of police questioning the photo line-up was shown to all witnesses who might have come into contact with the defendant in Syria, as stated by witness Z10 and the witnesses concerned. Where reference is made to photo line-up in the following assessment of evidence, this is what is meant.

## **I. Statements of the defendant**

The defendant's statements about his person and the matter arise primarily from submissions made at various points during the main hearing. Moreover, the defendant was repeatedly questioned as witness in relation to other matters before the preliminary investigation against him was initiated. At an even earlier stage, he had prepared a typed curriculum vitae in preparation for his admission as a refugee to the Federal Republic of Germany.

### **1. Submission**

In sum, the defendant submitted that, during the period of the offence, he was stripped of his powers due to his Sunni religious affiliation, the powerful position of his superior — the Head of Section 40, Hafiz Makhlouf — and his critical attitude towards the regime of which his superiors were aware, and that he did not have (or no longer had) the authority to make his own decisions in Branch 251. To the extent possible, he helped detainees and individuals critical of the regime. He had made plans to flee at an early stage but had unable to carry them out prior to his eventual desertion. More detail is provided below:

(a) On the fifth day of the main hearing, the defendant entered a prepared, detailed submission, which essentially concerned his background, his activities within the intelligence service, the restrictions imposed on him, and information regarding his contact with individual witnesses who had already given evidence during the preliminary investigation and persons who, in the opinion of the defendant, had knowledge that could exonerate him.

(aa) The defendant provided information regarding his personal circumstances, the period preceding his entry into the Syrian intelligence service and the period following his desertion. This information is described in more detail in the assessment of evidence regarding the person of the defendant (see VI. below) and is only summarized here:

With regard to the period preceding his entry into the Syrian intelligence service, the defendant provided information about his place of origin — the village of Al Houla in the district

of Homs — and his school and university education (a law degree from the University of Damascus). In his fourth year of study, the Syrian Ministry of the Interior offered him the opportunity to take part in a course for junior police officers. He enrolled in that course on 2 December 1986 and continued the fourth year of his studies at the university alongside his service. He then worked for several years as a junior officer in various divisions of the Directorate for Emigration and Passports. At his request, he subsequently attended a course for aspiring police officers at the Faculty of Police in Damascus from 22 August 1992, which he successfully completed, attaining the rank of first lieutenant. Because he graduated second in his year, he was initially allowed to stay on as a lecturer at the police academy.

Regarding the period following his desertion, the defendant described his efforts to gain asylum in the Federal Republic of Germany with the help of Syrian opposition member Z2, his departure from Jordan to Germany, and the difficulties he encountered when his daughter visited him in Turkey in 2015. Further comments in his submission regarding a curriculum vitae that had been sent to witness Z2 before his departure and regarding police questioning in Germany are presented in connection with the information in the curriculum vitae and the questioning (see 2. and 3. below).

(bb) According to the of the defendant's submission on the matter, in January 1995 the top three trainees in his cohort, one of whom was the defendant, were assigned to the "Directorate for State Security", where they initially received theoretical training. He was later assigned to "Branch 251" as a patrol officer. Their task was to conduct patrols to protect the Muhajerin and Al-Malki areas of Damascus, where most of the embassies are located. In mid-1996, he was assigned to the "Central Office of the Directorate", where he had worked as an investigator in the "Investigation Branch". That office was responsible for the Directorate's legal affairs. He remained there until he attained the rank of major. In October 2006, he transferred to Branch 300 — the counterintelligence branch — where he worked until 9 August 2008. Subsequently, he transferred back to Branch 251, also referred to by the defendant as the "Internal" branch, where he was head of the "Investigation Subdivision". The Head of Branch, Tawfiq Younis, told him that he was being put in charge of the interrogation section.

(cc) The defendant attached a sketch to his submission showing the structure of the General Intelligence Directorate and Branch 251, to which reference is made in relation to the more detailed graphical representation pursuant to Section 267 (1) sentence 3 Of the German Code of Criminal Procedure (transcript, fifth day of the main hearing on 18 May 2020, Exhibit 2,

page 45 *et seq.*). At the top, Major-General Mohammed Dib Zaytoun is named as “Head of Office”. One level down, Brigadier General Tawfik Younis is listed as “Head of Branch 51”; next to him, at the same level, is Colonel Hafiz Makhoulf, Head of Section 40. A total of four officers, ranging from first lieutenant to lieutenant colonel, were assigned to Tawfik Younis, although they were themselves assigned to Section 40. The defendant names himself and “Lieutenant Colonel Z5” as Hafiz Makhoulf’s subordinates. First Lieutenant Z11 was subordinate to the defendant.

Elsewhere in his submission, the defendant stated that officers Major Z5 and Lieutenant Colonel Z11, the prison director, six other investigators, several prison guards and the defendant himself were employed in the Investigations Subdivision.

The defendant explained the local conditions as follows:

“There are only 19 cells in Branch 251, numbered 1–19. Fourteen cells are located on the north–south axis, five on the west–east axis. There are also four additional rooms. Two of these are relatively large (communal cells) and two smaller cells called ‘doubles’. During the ‘Syrian events’, a courtyard was converted into an outdoor cell by covering it with metal sheeting.”

In the Branch prison there were no means of suspending detainees, such as chains. The defendant described his own office as measuring 3 x 3 metres, with an adjoining bedroom from where he could make confidential phone calls.

(dd) The defendant made the following more specific statements regarding the charges:

(1) With the outbreak of demonstrations against the State authorities in Syria on 15 March 2011, “everything changed”. Chaos was unleashed in the country. A crisis management team was formed, with local branches set up in all provincial administrations, in various security services and in the police services, including Branch 251. Its members included the Head of Branch, Brigadier General Tawfiq Younis, as well as officers from the Republican Guard and the Fourth Division. The defendant had not pay attention to the “cell”. He describes in more detail that the committee had decided to deploy the Republican Guard, the Fourth Division and individual intelligence units with clearly defined local responsibilities to combat the demonstrations in neighbourhoods of Damascus and the surrounding areas of the city with the purpose of suppressing demonstrations, in particular in the eastern outskirts of Damascus. The Republican Guard’s approach to demonstrators was described as harsh. All detainees arrested by these forces were sent to Branch 251. The prison there could hold 200 people; however, it was “more than full, with around 1000 people”.

The defendant commented on the conditions in the Branch prison:

“With regard to the appalling medical care and the reportedly catastrophic lack of food, this was the responsibility of the Head of Branch 251. It is also important to bear in mind the large number of detainees. I complained to him three times about the general state of affairs inside the prison. He asked me in no uncertain terms never to mention the subject again.”

There was an incident in which the head of a brigade of the Republican Guard brought in 700 detainees. All investigating officers and all investigators from the Central Directorate were summoned and ordered by the Head of the intelligence service, Major-General Ali Mamlouk, to conduct interrogations that continued into the next day. Of those arrested, “some [...] were released, others were transferred to the Central Directorate.”

However, there were no deaths in the Branch. The defendant then sought to refute the statements of witnesses who, when questioned as witnesses as part of the preliminary investigation, had provided information regarding the deaths of prisoners. He also listed and commented on the testimony of witnesses who described having had personal contact with him during the preliminary investigation. For the sake of clarity, the Panel has included the information related to the witnesses concerned when assessing the relevant witness statements. The defendant also stated that, at certain points in time, corpses or seriously injured persons were brought to the Branch by external security forces; the dead and injured were then taken directly to hospital.

(2) The defendant went on to describe how he did not want to accept the high number of arbitrary detentions and authorized releases, and how he was stripped of his powers as a result.

Long lists of the names of “demonstration leaders and demonstration instigators” were drawn up. He wanted to establish whether the prisoners in the Branch were subject to arrest warrants. For those whose names were not on the list, he “began to issue certificates of release so that they could be freed.” At the beginning of April 2011, the defendant was summoned to the office of Brigadier General Younis, who told him that “the residents of your village of Al Houla demonstrated on Friday,” in their thousands: Younis said they were traitors. The defendant interpreted this as a warning and a threat against him. From that point onwards, he was convinced that he would have to desert. In the two weeks that followed, “the Republican Guards got involved”. He told Younis on two further occasions that the Republican Guard forces were arbitrarily arresting many people. He was then asked not to repeat this assertion. Furthermore, at the beginning of June 2011, senior Republican Guard officers filed

a complaint against him with the Head of Branch on the grounds that he had released prisoners and was from the town of Al Houla. His loyalty was then called into question. He had again been summoned by the Head of Branch and was informed that the subdivision he led was to be restructured.

At the beginning of July 2011, the Head of Branch stripped him of his powers with immediate effect and appointed other individuals to take over his duties. The defendant explained the background to this decision as follows:

“From March to June 2011, I helped detainees whenever I could. I had to prepare written summaries of each of the interrogations conducted by the investigators and submit them to General Younis. In these summaries, I could make recommendations.

For example, when 70 detainees were brought into our Branch and it was decided who was to be responsible for whom, I was given 10 detainees to interrogate. The other 60 detainees were interrogated by other officers. I conducted my interrogations; the others conducted their interrogations and gave me their interrogation reports. I then wrote an overall report on all the interrogations and, as already mentioned above, recommended that all unarmed participants in the demonstration and all those who denied any part in demonstrations be released, which was then enacted. This happened on a daily basis. My view was and remains that unarmed protesters are innocent and should be released; armed protesters should not be. This is how there came to be a group of detainees who were not released and were transferred to Section 285. I can tell you now that I was unable to continue like this beyond June 2011, because, as I will explain, I was completely stripped of my powers.”

In his submission, the defendant named the officers assigned to his Subdivision and describes how “the tasks [...] were distributed”. Lieutenant Colonel Z5 —sometimes also described as “Major” — was responsible, together with two other investigators of Alawite religious affiliation, for the investigative work, i.e. for the interrogation of armed demonstrators and detainees who were accused of funding the demonstrations. Z5 allegedly passed the results directly to the Head of Branch, bypassing the defendant. Lieutenant Colonel Z5 had also become the link between the Branch leadership and those in charge of crisis management. Z5 allegedly provided the crisis team with all the necessary information regarding the interrogations he had conducted, in particular with regard to the neighbourhoods and residential addresses of demonstrators, so that the army could bomb them.

First Lieutenant Z11 and four other investigators assumed responsibility for interrogating peaceful demonstrators. Furthermore, officers of Section 40, under the direction of Colonel

Hafiz Makhoulf, conducted interrogations independently, without the defendant being allowed to become involved. The defendant was tasked with “checking” the results of the interrogations conducted by First Lieutenant Shannan. The defendant commented on the conditions in the Branch prison: “All detainees were to be transferred to Branch 285 according to the new orders issued by General Younis.”

The defendant described his subsequent activities as follows:

“After the leaders of the Republican Guard filed a complaint against me with the Head of Branch 251, and after my powers were curtailed, I was tasked exclusively with presenting the results of investigations to the Head of Branch. During this time, I stayed away from the prison for several months. General Tawfiq Younis, Head of Branch, subsequently called me and realized that I had not been present at the prison for some time. I replied that I had acted in accordance with instructions, once the aforementioned new tasks had been assigned. He advised me to show up for at least half an hour every now and again when I was on duty, so that staff would not notice that the Branch had actually been divided into three departments, and that a State within a State had been created. I did as he said, without consulting anyone. I was not in charge of interrogations at that time. After Younis’s call, I concluded that it was the prison director who had reported it to him.”

The defendant then described how his request “to be transferred from the security apparatus to the police” was taken by General Younis and “thrown straight in the bin”. Prior to his transfer to Branch 285, he had noticed that many prisoners had been taken to hospital. He could hear screams from his office in Branch 251. When he called the prison to find out what was going on, he was told that Major Z5 was interrogating “armed individuals” in the presence of officers from Section 40 and was using violence. The defendant, in his submission, then lists the officers of Section 40 by name and claimed that they were authorized to interrogate “prisoners on remand” whom they had arrested and to pass the results directly to Colonel Hafiz Makhoulf who, bypassing Brigadier General Tawfiq Younis, then passed them directly to the head of the intelligence apparatus, Major-General Dib Zaytoun.

Most of the detainees brought in by the Republican Guard had sustained injuries or broken bones, and some had life-threatening head injuries. The defendant informed Brigadier General Tawfiq Younis of this, and Younis ordered that the cases be documented, with photographs attached, and that the prisoners on remand be transferred to the Red Crescent hospital or to the military hospital in Harasta. From June 2011, the demonstrations were held at night and weapons were used. Religious groups met with the Head of Branch in an attempt to obtain the release of arbitrarily detained, elderly or sick persons.

On one occasion, Younis called the defendant and asked him to draw up a list of prisoners who were suitable for release, in particular unarmed demonstrators. The defendant took this opportunity to add more names to the list to ensure that more people were released. "I did this every time until I was transferred from Branch 251 to Branch 285." In particular, he helped to release Z12.

With regard to the statements made by former co-defendant A. that the defendant remained Head of the Investigations Subdivision and responsible for the prison in Branch 251 in January 2012, the defendant claims that A. was obviously not aware that:

"my powers had been taken away from the start of June 2011 and that my task was now to pass on the results of the interrogations conducted by Z11 to the Head of Branch."

The defendant again described the new division of tasks, as follows:

"Those responsible for Section 40 now worked independently in the 'Prison' division. Major Z5 personally signed and forwarded the results of interrogations directly to the Head of Branch 251. The officers of Section 40 also forwarded the results of their interrogations of detainees of Branch 251 to the Head of Section 40 without presenting these results to me or to the Head of Branch. The Head of Section 40, Colonel Hafiz Makhoulf, signed and personally forwarded these results to the Head of the State Security Intelligence Directorate. It was also unusual that the results of investigations were forwarded directly by the Head of the Subdivision to the Head of the State Security Intelligence Directorate, without these results first going to the Head of Branch. The reasons for this are obvious: he was above the law and more powerful than the Head of Branch, and more powerful even than the Head of the State Security Intelligence Directorate."

(3) The defendant describes the reason for his transfer to Branch 285 as follows:

At the end of August 2012, a patrol belonging to the Fourth Division brought in 11 prisoners on remand. The prison was overcrowded at the time; the defendant was on night duty. He then

"[instructed] the Head of Office in the Detention Branch to check the names of the detainees on the lists and on the computer. It was determined that they were not on any wanted list and that there were no arrest warrants for them. Such a list has existed since 2003, since the Iraq war. Persons suspected of terrorism, for example Syrians who fought for Iraq, were put on this list for investigation. I informed the head of the patrol that these detainees were not wanted persons, so we could not detain them. Immediately afterwards, the Head of Branch, Brigadier General Tawfiq Younis, summoned me and launched an investigation against me for not detaining the individuals brought in by a patrol from the Fourth Division. I explained to him the reason for this. He then informed me that a disciplinary sanction would be imposed on me and a note made in my file, and that I would be transferred."

He was sentenced to 20 days imprisonment, suspended on probation. The next day he received notification of his transfer “to the Directorate”. Although he had allegedly been subject to strict control measures during his time in Branch 251 — for example, he was collected by a patrol vehicle in the morning and driven home in the evening — the control measures under the management of Branch 285 were by contrast very relaxed.

(4) The defendant provided the following information regarding the planning and execution of his desertion:

At a time not specified by the defendant — the relevant part of the submission follows on from the description of the alleged stripping of powers in June 2011 — he made contact with Z13 from the FSA, via his sons-in-law. Z13 stated that he had consulted the leader of his group and had come to the conclusion that only the defendant could organize a desertion. Fearing for his family, “I rejected the idea of getting out alone.” Then, “later”, he asked Colonel Z14, who lived in the village of Jdeida in the south-western outskirts of Damascus, to enquire with the FSA there “about organizing a desertion.” He was told that the FSA could not do this for him and his family.

At meetings held from June 2011 onwards with representatives from various districts, a “very nice man” from Douma, named Z15, was present. The defendant revealed to Z15 that he needed his support in order to be able to desert and get to his region. The man asked him to remain on duty, in order to be as helpful as possible and not arouse suspicion.

After the defendant’s sanctioning and transfer to Branch 285, work became very quiet. However, he kept his plans for the desertion in mind and intended, with the help of his colleague Colonel Ziad Z1, to take a suitable opportunity to desert.

He had been friends with Z1 since they had attended the course at the Faculty of Police together. The defendant revealed to Z1 that he wanted to desert as soon as possible, together with his family. Z1, for his part, said that he would desert before the defendant did and go to Jordan. He promised that he would contact someone who could also bring the defendant to Jordan. The following day the defendant received a phone call from a person who told him that everything was ready. He was asked to go with his family to Duella near the border between Damascus and the Damascus region; they were then “transported from house to house, so to speak” in the South Damascus region until they were able to cross the border into Jordan on the night of 14–15 December 2012.

Regarding the motivation for his desertion, the defendant claimed in his submission that he was “essentially able to identify with the Syrian legal and State system and do my duty” until 15 March 2011 when everything changed in Syria — but not after that date. Most of his family members had deserted; for example, two of his uncles on the paternal side had led demonstrations in his hometown of Al Houla. In deserting, he left behind 26 years of service and became a refugee, because he did not want to be part of the events in Syria. However, all higher-ranking officers who approved of the regime’s approach to the uprising would continue their service, supported by various civilized countries that did not have to live with the reality of civil war and war. He did not have to leave Syria because opposition groups were targeting him and his family, as the persecuting authorities claimed. On the contrary, he was close to the opposition. The rulers and their apparatus had doubted his loyalty because of his background, ever since the earliest days of the events in Syria. He was “only able to successfully desert when the circumstances were right.” He had seen many violations of the law but was powerless to do anything about them.

(5) The defendant also made reference to many individuals, some of whom had been questioned as witnesses during the preliminary investigation and had described having personal contact with him, and mostly contradicted their statements. To ensure that the factual presentation is optimally structured and comprehensible, the Panel has presented and assessed this part of the defendant’s submission as part of its assessment of the relevant witness statements.

In the course of his statements, the defendant also claimed that there had been no deaths in Branch 251, at least in 2011; rather, bodies had been delivered to Branch 251 by the staff of Section 40, the Republican Guard and the Fourth Division, as this was the headquarters of the “crisis team”, which was responsible for handling confiscated weapons and cars and transporting the injured or dead. Statements by witnesses and former co-defendant A., who stated in the preliminary investigation that deaths had indeed occurred, were described by the defendant as false, and on occasion he provided detailed explanations to refute them.

In addition, the defendant named individuals — most of whom had unspecified contacts outside Europe — who, he claimed, were aware of his attitude “to the revolution as a whole”, his sympathy towards the demonstrators, the conditions in the Branch, the high-handedness of Colonel Hafiz Makhoulf and his — unspecified and undated — efforts to prepare to flee. For example, he reported an incident — the timing of which is not specified — in which a police officer named Z16 called him and reported that a security patrol from a subdivision of

Branch 251 had forcibly entered a shop in a town on the outskirts of Damascus and stolen two million Syrian pounds from a safe before severely beating and detaining the shopkeeper. The defendant claims that he was unable to do anything about this, because the patrol was under the command of Colonel Hafiz Makhlouf. The detainee was subsequently taken to Branch 251 and then sent directly from there by the defendant to the hospital, where he died of internal bleeding. The Head of Branch allegedly advised him not to meddle in Makhlouf's affairs.

(6) Towards the end of his submission, the defendant emphasizes his confidence in the German justice system. Furthermore, he expresses "to the court, but also to the injured witnesses and their families" that:

"I regret the situation in Syria, just like that in comparable Arab countries, and very much wish that it had been possible to achieve democratic conditions through peaceful means, without a dictatorship or sectarian terror. I would also like to express my sympathy and regret to all of the victims and their families, as well as to the families of those who have lost their lives since the events of spring 2011. I did not commit the offences I am accused of."

(b) In addition to the submission made in the context described above, the defendant made two additional statements after hearing the testimony of witnesses in the main hearing who alleged that they had had personal contact with him.

(aa) The first of these additional statements concerns the testimony of witness Z7 — delivered anonymously — who, when searching for his cousin Z6, who was allegedly detained in Branch 251 and may have died there, attended the Branch in person in July 2012 and spoke to the defendant. The defendant denied that he had ever had contact with the witness. He commented on the person of the missing Z6 and, in so doing, provided information on his own work duties at the time, among other things:

"In late July or early August 2012, while I was reviewing the results of interrogations and preparing reports, investigator Z17, who is from the town of Alsalamiah, came to my office and told me that employee Z18 from the "Department of Associations" — including the medical association, which reports to Lieutenant Colonel Z19 — had detained a doctor who was from the same region as the aforementioned investigator. I remember that the doctor had been employed at the Almujtahed [Almushtahed] hospital in Damascus. The investigator enquired as to his whereabouts and searched for him in prison, but to no avail".

The Panel has included the submission, insofar as it relates specifically to the testimony of witness Z7, in the relevant context.

(bb) Moreover, following the testimony of witness N2, the defendant made an additional submission in which he corrected and expanded on the information he had provided in his first submission regarding this witness. In it, the defendant describes, inter alia, how he met with the sisters of witness N2, who were also imprisoned, interrogated the sisters himself, and protected them from the acts of violence by other persons. This part of the statement is set out in more detail in the assessment of the testimony of the witness concerned.

(c) In a lengthy closing statement, the defendant essentially reiterated his previous statements and made the following comments (summarized here):

(aa) The defendant first described the course of the “Syrian revolution”. Even after the first demonstration near the Umayyad Mosque in Damascus, it was clear that the regime, with the help of the police and the intelligence services, would use force to suppress the movement. There were large scale arrests; the number of detainees increased like a tsunami. At the same time, the inhabitants of his hometown of Al Houla were also demonstrating against the regime.

Supporters and opponents of the regime were pitted against each other within the intelligence services. The defendant was shocked by the degree of sectarian division. He tried to keep the number of detainees in the Al Khatib prison low, because it was not designed to hold such large numbers. He prepared up to 100 reports a day. He proposed releasing most of the prisoners and transferring a few others to Section 285.

The influence of Section 40 and its head, Hafiz Makhoulf, increased and expanded to include the area surrounding Damascus, which was technically assigned to other security services. Makhoulf made use of his great power and influence; a large number of people were arrested and brought to the Branch in appalling condition and with various injuries. The prisoners were beaten as part of a “welcome party” led by Lieutenant Colonel Z20, who had been appointed the Branch’s security officer by the Head of Branch, Brigadier General Tawfiq Younis. The defendant on one occasion objected to the practice of beating and abusing detainees upon arrival; in response, the Head of the Branch told him that same day that all detainees were terrorists. On another occasion, the Head of Branch had summoned the defendant and informed him that 50 000 inhabitants of his hometown were demonstrating against the regime. When the defendant replied that there was a need to ascertain what the people's demands were, Younis called the demonstrators traitors and ordered the defendant back to his office. From this point on, his loyalty was questioned.

At a later stage, forces of the Republican Guard and the Fourth Division formed a committee with brigadier generals, including Younis, and other officers. The link with this committee was allegedly Lieutenant Colonel Z5. The committee members met every evening at Branch headquarters. The subject was the sharing of information obtained by the Branch in relation to firing targets among opponents of the regime.

(bb) Due to the arbitrary nature of the arrests — people were simply being rounded up in the streets and squares — the Branch prison could not accommodate the large number of detainees. When the defendant raised this for the third time, he was reprimanded by the Head of Branch and told to keep quiet. During this time, he tried unsuccessfully to desert. However, he was able to help many people by suggesting that they be released, and by working with the chairmen of local committees.

The defendant described the concerns expressed by leaders of the Republican Guard, and the restructuring of the Investigations Subdivision, as already described in his initial submission. Ultimately, the position of “Head of the Investigations Subdivision” no longer existed. Instead, seven officers acted as “superiors” for each interrogation. By order of the Head of Branch, the defendant was supposed to transmit only investigation reports and interrogation transcripts. The prison was “open”, and access was no longer restricted to the investigations team.

In the period that followed, the Head of Branch accompanied major military and security operations on the outskirts of Damascus, while the defendant and Lieutenant Colonel Z5 were on duty in the Branch. The detainees who were brought in were divided into categories and only some of the results of the interrogations were subsequently presented to the defendant. Z5 had taken over the areas of “armed individuals, field hospitals, financing, incitement and activists” and had two investigators permanently assigned to him; together with the investigators he tortured suspects day and night. The results of investigations were presented directly to the Head of the Branch, without the defendant having any part in this. In addition, officers from Section 40 attended the Al Khatib Branch. When the defendant heard screams coming from the prison one day, he called and asked to be told the reason for this. He was then informed that Lieutenant Colonel Z21 from Section 40 was interrogating and torturing prisoners. He recalls that this coincided with the advance of Syrian army forces into Al Houla, probably in August 2011, and that he learned of the deaths of family members. He wanted to travel to the region, but his father had stopped him, saying that the region was controlled by radical armed groups.

Around New Year's Day 2012 there was a wave of arrests, in relation to which the defendant was ordered to conduct "preliminary investigations". Following these investigations, he concluded that 170 of the 200 or so people arrested had nothing to do with demonstrations or the opposition. After the defendant had informed the Head of Branch of this, the latter demanded that records be kept and agreed to the defendant's proposal to release 170 prisoners and transfer the remaining 30 or so to Branch 285. The defendant prohibited all investigators and employees from assaulting the prisoners. Colonel Hafiz Makhoulouf is said to have complained about this subsequently. Although the defendant had shown the records to the Head of Branch, who again approved the procedure, the Head of Branch informed him that the matter was the defendant's responsibility. The defendant then requested a transfer back to the Ministry of the Interior. The Head of Branch, Younis, ordered the defendant to stay in his office and continue to examine the records. In that context, the defendant instructed his son-in-law to contact the Free Syrian Army.

Then, on 25 May 2012, a massacre occurred in Al Houla. Two days later, at the request of the Head of Branch, the defendant was ordered to discuss the massacre in an interview with a Russian television station and to claim that it had been carried out by radical Islamist terrorists. He refused to do so and was reproached for "playing all his losing cards". A short time later, he came into contact with Z22, a member of the "Harasta Committee" who was aware of the defendant's negative attitude towards the regime. He helped Z22 by handing over many detainees from Harasta.

The defendant stated that he had never personally given an order aimed at subjecting prisoners to torture, ill-treatment or violence. The abuses in the Al Khatib Branch were perpetrated exclusively by officers of Section 40 and by certain employees in his own section, in particular Lieutenant Colonel Z5. These acts were purely religiously motivated. They wanted to "identify" with the two individuals who were responsible for everything: Tawfiq Younis and Hafiz Makhoulouf. The defendant did not participate in any actions against demonstrators outside of Branch 251.

(cc) The defendant then referred to individuals who had died in Branch 251. On 2 May 2011, a person who had been abused by members of the Republican Guard was brought to the Branch and pronounced dead; the body was transferred to the Red Crescent hospital. Another person with an open fracture in their left leg was examined by the Branch doctor and transferred to hospital, where they died half an hour later of a pulmonary embolism. In April 2012, a man with a gunshot wound and another person were brought in one morning by

Section 40 officers; the former was already dead, the other died in the Red Crescent hospital. The Head of Branch asked the defendant to keep quiet about these incidents.

During the period when he was only involved in reviewing investigation results, the defendant often heard of prisoners being taken to hospital. The deplorable conditions in the prison of the Al Khatib Branch were due to the number of prisoners, which gradually increased to ten times the prison's capacity, as well as to inadequate nutrition and the poor health of the prisoners. The Branch doctor, the prison director, certain officers and other staff members tortured prisoners on religious grounds. The defendant did not condone this but was unable to do anything about it. Tawfiq Younis and Hafiz Makhoulf were solely responsible, and they viewed every detainee as a dangerous enemy of the regime.

The defendant had not allowed any detainees to disappear, but instead made himself personally available to answer all enquiries from intelligence officers, the police and civilians who asked the names of detainees and the charges against them. Following a change in the law, relatives could contact the office of the Chief Public Prosecutor to determine the whereabouts of prisoners.

(dd) Lastly, the defendant stated that he had no authority to issue orders, and that this was due in particular to the interference of Hafiz Makhoulf, who was only stripped of his powers in 2014. However, the defendant helped as best he could. A large number of witnesses confirmed this in their testimony during the main hearing.

The defendant claimed that he had left behind 26 years of service and gave up many privileges so that no one would be harmed; he did not want to be responsible for detainees coming to harm. Seven of his relatives were martyred, including a 10-year-old grandson. He worked in Branch 285 for less than 3 months. No official order had appointed him Head of the Investigations Subdivision.

At the end of his final statement, the defendant addressed the "entire Syrian people", in particular the "relatives of victims and the injured". He was sorry that he had not been able to help them and do more to stop the "machinery of death". He rejected the arrests and the humiliation of the Syrian people and shared in their feelings and suffering. He and his relatives had also been victims. It had been painful to receive reports of deaths in his home region. He had therefore openly expressed his opinion, thereby risking his own life and the lives of his family members. He had done what he could in the circumstances, until he seized the opportunity to desert. He abandoned all his work. Chronic illnesses slowly took their toll on

his body. The torment of being uprooted from his homeland and separated from his family weighed heavily on him.

(d) The defendant was unwilling to provide additional information or explanations during the main hearing, even when specifically asked to do so.

## 2. Witness hearings and interviews

The defendant was questioned by the Berlin police authorities as a witness as part of a preliminary investigation that he himself initiated on account of his fear of possible measures by the Syrian intelligence service. He was subsequently questioned again as a witness by officers from the Baden-Württemberg State Criminal Police Office as part of another investigation. The Panel considers these interviews to be admissible in their entirety. There was no indication that the defendant should have been informed that he was a suspect before or during his questioning, notably because there was insufficient evidence, from the information he provided and from other investigations, of specific criminal offences that could be personally attributed to him.

More specifically:

(a) The defendant first reported an incident in which he feared he was being observed by Syrian intelligence officers on 23 February 2015. The details and circumstances were conveyed to the Panel by witness Z3, who was with the defendant at the time, and by the recording police officer, witness Z23.

Witness Z23 was able to recall events sufficiently to state that the defendant described himself as an officer who had defected from the Syrian intelligence service and had been brought to Berlin by the German Foreign Office. The defendant feared that he would be kidnapped by the Syrian intelligence service. He reported three incidents in which he claimed to have been observed by two people, including, on two occasions, by the same person. Witness Z3 acted as an interpreter when the incident was reported. The defendant provided handwritten descriptions of the events in Arabic, which were translated by witness Z3. Both the original and the translation were attached to the incident report. This was confirmed by witness Z3. In the written descriptions, the defendant describes in detail the events that he deemed suspicious, in particular during his visit to his family doctor in January 2015.

b) A subsequent police interview, which the defendant was summoned to attend as a witness, was conducted on 27 February 2015 on the premises of the Berlin State Criminal Police

Office. The Panel was informed of the content and circumstances of the report by the investigating officers, witnesses Z24 and Z25.

(aa) Witness Z24 stated that the reason for the interview was the defendant's report of a criminal offence in relation to what he described as a security threat from the Syrian intelligence service. Notes from a previous incident report, translated by Ms. Z3, formed the basis for this. He suspected that a third party was acting as an intelligence agent. The defendant had been summoned by witness Z3, not by the refugee centre, so as to protect him.

The defendant was informed that he was a witness. Through an interpreter, he was then asked about his professional career, his current circumstances, and the situations in which he felt that he was being watched. As the interpreter was present, there were no communication issues. The interview transcript was back-translated for the defendant. He then initialled it on each page. The Panel therefore assumes that the defendant expressed himself as outlined by the witness.

The defendant's statements seemed authentic to the witness. However, he (witness Z24) was very sceptical about the defendant's claims that he was being watched and followed. It all seemed inconsistent; the behaviour of the supposed intelligence officers seemed amateurish. However, the witness had received confirmation from the German Foreign Office that the defendant had indeed supported the Syrian opposition. Witness Z24 wondered at the outset of the interview whether the information had been fabricated to make it "sound better" in asylum proceedings — although the defendant's asylum application had already been processed by this point — or whether the defendant hoped that he would be given better accommodation as a result of the alleged threat and his desire for police protection.

Following the interview, he, the witness, was contacted again by witness Z3, who described another situation in which the defendant thought he was being watched. The defendant claimed he had been watched by Syrians from a vehicle as he left the police station. Enquiries based on the vehicle's number plate, and requests for information from the Federal Office for the Protection of the Constitution [*Bundesamt für Verfassungsschutz*] and the German Federal Intelligence Service [*Bundesnachrichtendienst*], yielded no results. In particular, the German Federal Intelligence Service stated that, in contrast to the period preceding the crisis in Syria, it had no information on Syrian intelligence activities aimed at monitoring the Syrian expatriate community. In the witness's final report, after which the investigation ended, he

used the phrase “selective perception”. He felt that the defendant misinterpreted everyday situations because of his suspicion that he was being followed. The interview was then shared with the Federal Criminal Police Office.

The aim of the interview was essentially to determine whether the defendant had indeed been in a threatening situation and whether the individuals in question could be identified. The defendant’s activities in Syria were of less interest to the witness. During questioning, there was no indication that the defendant had committed any offence. Torture, arrests and killings were not discussed. Branches 251 and 285 did not mean anything to him (the witness).

This information was essentially confirmed by witness Z25. Her impression was that the defendant’s statements were vague, although his fear was plausible enough. She wondered how the defendant would have been able to tell that the individuals in question were intelligence officers.

(bb) The defendant made the following substantive statements when questioned on 27 February 2015:

(1) During questioning, the defendant described himself and his professional career prior to his recruitment by the Syrian intelligence service and stated that he had been assigned to the Secret Police at the beginning of 1995. There were several courses, some of which were led by Russian instructors. He himself was then employed by “internal security” in Damascus. His Branch had the symbol “251”. Damascus was divided into various “security sectors”: the Air Force Security Service, the Military Security Service, the Political Security Service, the Military Police and State Security. The defendant was responsible for patrolling and protecting the embassies in a particular residential area — Rauda and Malika. In June 1996, he was transferred as an officer to Investigation Branch “285” in Damascus. It was assigned cases from different parts of the country and was instructed to investigate them, with each investigator working in their area of expertise. The defendant was responsible for legal affairs. He worked in three thematic areas: political and security issues and organizations; criminal matters; and disciplinary issues within the security forces. He remained at the branch from 9 July 1996 to 24 November 2007 and was promoted to the rank of Lieutenant Colonel during that time.

On 24 November 2007, he was transferred to the anti-sabotage division of the “Central”, i.e. the administrative headquarters of the domestic intelligence service in Kafr Sousa. He worked in three departments: “vital objectives” (protection of ministries); investigations; and escorting

foreign delegations to ensure their protection. French, Spanish, British, Russian, Iranian and Chinese delegations visited as part of the “fight against terrorism”.

(2) On 9 August 2008, he was transferred back to the “internal division”, Branch “251”. He was appointed head of the “investigations” section and, in this role, was promoted to the rank of Colonel in on 1 January 2011. He focused on the fight against terrorism, for example in relation to organizations such as Al Qaeda, the Nusra Front and the Salafists.

In March 2011, the “events” in Syria began. The defendant was from the area around Homs, specifically Al Houla. His family members had actively participated in the resistance by taking part in demonstrations and protest marches. The National Guard arrested demonstrators and took them to the defendant’s Branch. The defendant was under pressure from several sides: family members, neighbours and people in his local area. Four adults from his family, a young woman and an 11-year-old boy were killed. People would telephone him and asked how he could continue to work for the regime in those circumstances. At the same time, his division had started to make mistakes. He spoke to the commanding officer about it several times, and they were on very good terms. The defendant told the officer that it could not be in the interests of the State to arrest people arbitrarily. There was no reaction to this; the National Guard had already taken control. On 7 September 2012, he was transferred back to the administrative headquarters of Branch “285” for “investigations”, because they were “not really satisfied” with his attitude. The nature of his work there was the same as previously.

By now he strongly opposed the activities of the security authorities. Lists of wanted persons were not acted upon. Arrested individuals had no rights. This prompted him to consider desertion. When questioned, the defendant revealed that he had had contact with and had come to trust a police officer from Dara’a. This colleague told him about a colonel in the Syrian police who had fled and was in Jordan. The defendant made use of this contact. He escaped on 4 December 2012 and reached a small town near the Iraqi-Jordanian border on 11 December 2012. Together with other refugees, he entered Jordanian territory with his wife and five children. He remained in hiding in Jordan until 26 July 2014.

The Syrian Government responded very negatively to his desertion. When he called an acquaintance in Damascus following his escape, he felt as if he was being “sounded out”. On 1 July 2013, a list of deserting officers was published, along with a declaration that they had been officially discharged and would be handed over to the judiciary. If the Syrian judiciary got hold of him, he would face the death penalty.

(3) During questioning, the defendant described the details of his visit to the doctor in Berlin, where a photograph of him had been taken, allegedly so that he could be distinguished from his son XXX, who was a patient there. His next visit was only for the purpose of collecting blood test results, but he was nevertheless asked to take a seat in the waiting room. A woman who arrived after him was seen before him. The doctor greeted him briefly in Arabic and then made him wait for a long time. He then left. Shortly before leaving, he had looked out of the window and seen two people on the other side of the street, whom he had immediately recognized as Syrian, based on their appearance. They were walking up and down the pavement and looking over towards the doctor's surgery. In other situations, too, the defendant had felt he was being watched. He described in detail how he had encountered people of Arab appearance when leaving his hostel and visiting the dentist. These anomalies were allegedly typical of the mistakes made by members of the Syrian intelligence service. He then contacted witness Z3, whom he knew.

(cc) In his submission, the defendant does not comment on the interview or its content.

(c) The defendant was further questioned as a witness by the Baden-Württemberg State Criminal Police Office in Berlin on 26 October 2017.

(aa) The nature and circumstances of this interview were described by the interviewing officer, witness Z26, who stated that the defendant had been called as a witness in connection with a preliminary investigation being conducted by the Baden-Württemberg State Criminal Police Office concerning an individual named E., who had been accused of working in intelligence service Branch 320 in Hama and shooting at demonstrators. During asylum proceedings, E. had denied that he had worked in Branch 320 in Hama or shot at demonstrators. The defendant was interviewed as a witness on account of the information he had provided to the Berlin State Criminal Police Office and his status as a colonel in the Syrian domestic intelligence service. Witness Z4, who was also interviewed during the investigation by the Baden-Württemberg State Criminal Police Office (see. VI. 1. (b) (aa)), also identified the defendant as a possible source of information.

The defendant had agreed to give evidence when contacted in advance. The interview took place on the premises of the Berlin State Criminal Police Office. Before it commenced, the defendant was informed of his duty to tell the truth and was also expressly instructed in accordance with Section 55 of the German Code of Criminal Procedure; this instruction was repeated during the interview. There were no communication issues with the interpreter

present. The defendant was provided with an Arabic translation of his recorded statements; each page was initialled by him to confirm its accuracy. The defendant made a number of handwritten amendments. The witness found the defendant to be open and communicative. The defendant willingly provided information and wanted to assist in the investigation of war criminals. He even stated that he was willing to testify in The Hague if necessary.

A public prosecutor from the Office of the Federal Prosecutor General who was involved in the investigation at the time was also present. However, there were no specific requirements regarding the subject of the interview. It was duly concluded without any irregularities. The transcript of the interview was subsequently shared with the 'Syria' structural investigation proceedings being conducted by the Federal Prosecutor General.

(bb) In his submission during the main hearing, the defendant commented on the content and circumstances of the evidence he had given at that time. He had explained his professional role to the interviewing police officers and had stated that "we interrogated hundreds of detainees. The interrogations were non-violent and respectful." No official orders had been issued for the use of torture; the only such orders had been issued by Hafiz Makhlouf, and the defendant had nothing to do with them.

The public prosecutor questioning him had told him, in the presence of an officer from the State Criminal Police Office, that he, the defendant, had very extensive information. However, the interview was terminated before he could provide any details. He had stated that force had to be used when dealing with terrorist organizations such as Al Qaeda, Da'esh and Al Nusra, but he had not been referring to measures in any way related to beatings or torture.

(cc) According to the information provided by witness Z26, the defendant made the following statement during questioning:

Regarding his personal circumstances, the defendant stated that he had worked for the intelligence service for a total of 18 years and had previously served for 8 years in the police force. He had been in the general State Security Service; as part of that, in 1995 in the Syrian capital in internal Branch 251 he had been head of patrols in the embassy districts. He had then been transferred to "Investigations Branch 285" where he worked as an investigating officer alongside four other officers. In 2008, he was transferred back to Branch 251, where he worked until 7 September 2012. After that, he returned to Branch 285. He had always been based in Damascus and was only sent on short missions of one to two weeks' duration, to Tartous, Aleppo or Kamishli.

He was then asked several questions about his contacts in Branch 320, its structure, and the conditions in Hama, which the defendant answered in some detail. In the course of the interview, he stated that as an investigator he “knew all the officers responsible in all the provinces” because “they came to us to take courses.” He knew most of the officers in the central and regional branches. However, it was “not usual for us to communicate with lower-ranking staff.” The defendant then provided information about his own activities and desertion. He claimed that there was a “social” and a “human and political” reason for the latter. He came from an area of Homs where there had been a massacre, and one of his grandchildren had been killed. He had increasingly been criticized by his relatives and acquaintances for his work in the intelligence service. Furthermore, he did not want to be responsible for people being killed as a result of his work. He was aware of how the regime attacked the population with all the means at its disposal. He fled on 4 December 2012; it took ten days for him to reach Jordan with his family.

When asked whether he had witnessed war crimes or crimes against humanity, the defendant answered in the affirmative. He said that dead people had been brought to his Branch several times before being taken to hospital. The corpses showed signs of torture, including broken limbs, and were photographed for Branch records. An accompanying list of those killed was also handed over. The prison in the basement of his Branch had capacity for up to 250 people. However, the Republican Guard had once brought in 750 people in a single day, many of them elderly, with diabetes and heart conditions. They were taken directly to nearby hospitals. Having complained to the Head of Branch on three occasions to no avail, he requested a transfer to the Ministry of the Interior. In the space of 2.5 to 3 months, 17 000 detainees had been brought to his Branch. 95% of them were subsequently released because the arrests were arbitrary. The Republican Guard protested against this course of action.

The defendant was then asked whether he personally had been the victim of assault, torture or arrest; he then described the situation in which he claimed to have been under threat. He answered additional questions about the location of intelligence service facilities in Hama. The defendant answered in the affirmative when he was subsequently asked whether he had personally participated in or been present at interrogations of opponents of the regime, describing this activity as his professional duty. Some of the interrogations were violent, some peaceful. There were hundreds of interrogations a day, “so you couldn't always be polite.” Individuals who had been members of armed groups had also been subjected to “strict interrogations”. After stating the above, the defendant was reminded of his right to refuse to give evidence in accordance with Section 55 of the German Code of Criminal Procedure. He

added that “we” were not ordered to use force. “As far as possible, we avoided this as well.” There was far more violence in other places. Ultimately, he had wanted to be peaceful, which was why he had left the country.

He was then asked specific questions regarding the actions of the domestic intelligence service forces in suppressing demonstrations in Hama. In response, the defendant stated, among other things, that these forces had not been armed before August 2011, but had been equipped with Russian rifles and grenades thereafter. The defendant was then asked numerous questions regarding specific individuals in the Syrian civil service, some of which he was able to answer; he was also shown a military identification card. The defendant studied the document and the stamps on it to determine their significance and authenticity; he correctly identified the religion and region of origin of the defendant in the proceedings of the State Criminal Police Office.

(dd) The Panel assumes that the defendant, when questioned by the police on 26 October 2017, made the statements reported by witness Z26 and reproduced above. There was no evidence to suggest that the witness had made a false statement; in particular, the witness, as a police interviewer, clearly endeavoured in a professional manner to recall the interrogation to the extent possible and to give an unbiased account of their situation. The information provided by the witness is consistent with the police interview transcript, parts of which were read out to the witness. According to the witness, there were no communication problems with the police interpreter.

To the extent that the defendant’s statements in his submission contradict the testimony of witness Z26, the Panel is unable to rely on them as a basis. The defendant’s recollection of the person interviewing him — the interview was in fact conducted in the usual manner by the head of the police investigation and not by the representative of the Federal Prosecutor General, who was only present — is inaccurate. The defendant’s sweeping claim that interrogations in Branch 251 were “non-violent and respectful” is contradicted by the witness’s detailed recollection of the defendant’s statements, which matches the transcript signed by the defendant. The defendant has also admitted that interrogations in the intelligence service branch did indeed involve the use of force, although he denies any personal responsibility for this.

(ee) The Panel deems the information provided by witness Z26 during the examination by the Panel to be generally admissible.

The defendant gave evidence before preliminary investigation proceedings against him had commenced. Witness Z26 stated convincingly that the purpose of the interview was solely to gather information pertaining to the proceedings conducted by the Baden-Württemberg State Criminal Police Office, and not to obtain knowledge that might lead to the defendant's conviction for specific crimes he had committed. This is consistent with the witness's account of the interview, which matches the transcript: to assess his level of knowledge and his opportunities for observation, the defendant was first questioned in respect of himself and his professional background within the Syrian intelligence service. However, questions relating to his knowledge of the structures and modus operandi of the intelligence service in Hama and, by extension, of the subject of the proceedings conducted by the Baden-Württemberg State Criminal Police Office, were also raised.

Following further questioning regarding the defendant's activities, including the situation in Branch 251, the defendant was questioned specifically and in detail regarding incidents in Hama, individual — probably local — intelligence service employees who featured in the investigative proceedings conducted by the Baden-Württemberg State Criminal Police Office, and an identity document. Questions regarding the defendant's work and the conditions in the intelligence service branches in which he had worked were not unrelated to the preliminary investigation into another member of the regime. These questions pertained to the potential insights that could be provided by the defendant as a witness, the comparison of intelligence service activities in Damascus and Hama, and possible links. For example, one of the questions put to the defendant was whether members of the domestic intelligence service had been deployed during demonstrations in Hama; the defendant provided some detailed information in response. At the same time, information about the historical background in Syria and the structure and procedures of the Syrian apparatus of power was also relevant in the context of a personal investigation into criminal offences under Section 7 of the CCAIL. The fact that the questioning undertaken by the investigating authorities was not conducted inappropriately, including for the purpose of incriminating the defendant as a possible suspect, is also evident from the fact that the minimal amount of specific information provided by the defendant regarding his activities and possible involvement in criminal offences was not the subject of further detailed questioning.

Furthermore, there was no objective suspicion that would have required a repeat instruction in accordance with Section 55 of the German Code of Criminal Procedure at an earlier stage, or that would have required the defendant to be questioned as a suspect. The defendant's work for the Syrian intelligence service did not in and of itself give rise to any suspicion of

criminal activity, absent any knowledge of specific criminal offences that could be attributed to him personally. The defendant relied heavily on his assertion that he had released unsuspecting individuals, immediately transferred the injured and sick to a hospital, opposed overcrowding in the prison and ultimately deserted. The investigating authorities needed to provide further instruction in accordance with Section 55 of the German Code of Criminal Procedure only after the defendant admitted to participating in interrogations and had replied to a separate question that the latter had been conducted both peacefully and violently and took the form of “strict interrogations”. Although this provided an initial indication that the defendant might have been personally involved in criminal offences, there were insufficient grounds to believe that he should be treated as a suspect. Moreover, the defendant did not specify the period of time during which these interrogations took place, — which would have been essential information in determining whether they formed part of a widespread or systematic attack directed against a civilian population within the meaning of Section 7 of the CCAIL and thus to establish whether they were punishable by law — nor did he mention specific incidents of violence.

### 3. Curriculum vitae

The defendant had, as he himself stated during his police interrogation at the Berlin State Criminal Police Office, prepared a curriculum vitae in English during his time in Jordan, which he had given to witness Z2, a well-known Syrian opposition politician, to pass to the German authorities. He again referred to this curriculum vitae in his submission to the Panel. Witness Z2 confirmed to the Panel that he had received the document from the defendant and had provided it to the Federal Criminal Police Office during the preliminary investigation, as reported by the investigating officer, witness Z10. The Panel considers it beyond doubt that the document was written by the defendant.

The stated purpose of the curriculum vitae, which is written in prose and entitled “Curriculum vitae (c.v.) of colonel Anwar Abbas R.”, is to prepare the defendant’s admission to the Federal Republic of Germany (“I am hopefully asking you to get an approval of residence in your country”). It contains the following information regarding his personal circumstances, covering the period from the beginning of the defendant's work in the Syrian intelligence service until his desertion:

“After a year and a half, in early 1995, I was selected as one of the top three participants from each course, and we were assigned to the State Security Administration, where I completed a six-month course in various aspects of

security science. I worked as an investigator during this time; then I became Head of the Investigations Subdivision in Branch 285. During this period, I gave hundreds of lectures to the other heads of investigation subdivisions in State security branches in Syria. From 23 October 2003, we took a one-year course in science, economics, crisis management and English, and received a certificate in this field as assistants to the Branch leadership. On 24 November 2007, I was transferred to the anti-espionage branch, where I worked for nine months. During this period, I headed the investigation departments and the services for key targets and became one of the heads of the Syrian security delegations attending meetings with Arab and foreign delegations that come to Syria to discuss various issues.

I also worked as one of the security parade officers and accompanied delegations, including from the International Atomic Energy Agency, which visited the country in 2007. Then, from 9 August 2008 to 7 September 2012, I worked as the Head of Investigations for internal Branch 251 of the State Security Administration. During this period, I worked with members of the Revolutionary Committee, such as XXX, etc., in Damascus and the surrounding area, to release detainees who had been sent to the Branch without clear legal justification. I was then transferred back to the investigations branch of the State Security Administration, as a senior assistant in Branch 285, due to a dispute between Major-General Ali Drgham and Hafiz Makhoul, as they had been informed of my sympathy for the Syrian revolution and my positive attitude towards detainees. I continued thus until I left the administration on 4 December 2012 after two failed attempts. However, I released thousands of detainees and am responsible for the actions mentioned above. After my departure, I came to the Hashemite Kingdom of Jordan, where I provided information that resulted from my 18 years of working for the political opposition in State Security.”

#### 4. Other statements

In April 2014, the defendant applied to the German Embassy in Amman, Jordan, for a residence permit. On the application form, under the section entitled “Occupation”, he wrote “Colonel in the State Security Administration”. On another form, the defendant entered the abbreviation “Mil.” under the section entitled “Education/Occupation”. In April 2015, in a questionnaire issued by the Federal Office for Migration and Refugees, the defendant gave his most recent occupation as “colonel (police, then intelligence service)”.

## **II. Re. the findings as to the general political and social situation in Syria, its internal organization and the security services in the period up to spring 2011**

### 1. General political and social development in Syria up to 2011

(a) The findings regarding general political and social development in Syria up to the beginning of the protest movement in spring 2011 are based predominantly on the report submitted to the Panel by ethnologist and expert witness Laura Thurmann, which in turn is based on a large number of cross-referenced sources from scientific publications, the press (including Arabic sources), NGOs and official statements issued by the Syrian Government. The Panel had no reason to question the expert's findings, which were confirmed in detail by further evidence (see (b) and (c) below).

(b) The expert's insights is consistent with and complemented by the information provided by several witnesses, some of whom are expert witnesses.

(aa) The Panel has relied on the testimony of the following witnesses, which is summarized below:

(1) Expert witness Z27 is a Syrian lawyer, journalist and human rights activist who was politically active in the Syrian opposition before and after the start of the protest movement. He is currently the director of a centre for media and freedom of expression that he founded in France in 2004, and he co-authors annual reports on the human rights situation in Syria. The witness was detained several times by various Syrian intelligence services, including the Military Intelligence Department and, for a period of three and a half years, by the Air Force Intelligence Directorate and the Fourth Division. He suffered torture at the hands of the Fourth Division and the Air Force Intelligence Directorate.

The witness began by outlining Syrian history since independence. In his view, the origins of the lack of democratic structures lie in the union formed by Syria and Egypt between 1958 and 1961 to create the United Arab Republic, which resulted in the loss of an independent press and independent political parties. This paved the way for the coup in 1963 and the rise of the Ba'ath Party. The coup served to strengthen the military, indirectly propelling Hafiz al-Assad, who was defence minister at the time, to power. The witness gave a detailed account of the state of emergency being declared, the introduction in 1973 of a constitution that bestowed sweeping presidential powers, and the monopolization of the Ba'ath Party as the leading institution of State and in society. As part of these developments, instruments with extensive de facto powers were created, which served to control society. This resulted in a security apparatus that replaced State institutions and had free rein. The 1982 massacre in Hama, which directly affected between 16 000 and 60 000 people, was directed against the whole of Syrian civil society in order to demonstrate that the security apparatus would stop at

nothing to preserve the political system. Further violent attacks, resulting in many deaths, occurred during the course of the conflict with the Muslim Brotherhood and the suppression of trade unions and leftwing movements, in particular between 1979 and 1989.

All other State organs had been subordinated to the security authorities and placed at their disposal; all independent organizations had been crushed. The control of society began at a young age, with children between the ages of 6 and 12 became members of the “Ba’ath Youth” and, from the age of 12, the “Revolution Youth” — a youth organization that was likewise affiliated to the Ba’ath Party. These organizations served the purpose of political indoctrination.

When Bashar al-Assad came to power, he essentially inherited a “broken society” without a press or parliament. Civil society was sustained by individuals, in particular lawyers, but their activities were severely restricted. Bashar al-Assad was appointed as successor to his father because his older brother, who had originally been intended for the role, died in an accident. In the witness’s view, even as far back as the rule of Hafiz al-Assad there was only ever a “family business” with inherited power, rather than a functioning State structure.

Witness Z27 further stated that Bashar al-Assad’s reforms were implemented without legislative changes to justify them. The President tried to cloak the continuation of the policy of oppression in a pleasant facade; this was merely “applying make-up to the face of tyranny”. As early as August 2001, these developments were reversed: activists were arrested and cultural and political forums broken up. Hopes that the end of the Iraq war would prompt the United States of America (USA) to push for political change in Syria were dashed. Foreign policy measures that ultimately served only to consolidate power included the promotion of jihadist aspirations in Iraq, fuelling a putative Arab–Kurd conflict and rapprochement with Iran; meanwhile, there were unsuccessful attempts to integrate Syria into the international community by arranging visits by European Union member states.

In terms of domestic policy, the regime consistently used the security apparatus to crack down on the opposition; for example, demonstrations were broken up and participants arrested as early as 2004. The intelligence services targeted the — admittedly small — circle of politically active individuals. Branch 285 of the Syrian General Intelligence Directorate was responsible for blocking undesirable websites. Extensive privatization and corruption resulted in the emergence of a shadow economy.

The witness's account, characterized by a wealth of information and personal experiences, demonstrates that the extensive powers of the historically established security forces had created the organizational conditions for a massive and widespread crackdown on the protests as early April 2011.

(2) Expert witness Z28, a Syrian lawyer and human rights activist, also described how, in personal experience dating back to the 1970s, politically unpopular individuals were subjected to arbitrary harassment and detention. He had been detained in various intelligence service facilities in 1978, 1986, 1989 and 2006, and had been interrogated countless times in the interim. He was accused of fabricating crimes such as killings and theft.

In 1978 in particular, individuals who were part of the peaceful opposition died as a result of torture. After the 1982 massacre in Hama, around 3000 people disappeared. The aim of this was to send shockwaves throughout society. The witness described how it was common practice to take action against members of the peaceful opposition under the pretext of fighting extremists; ultimately, however, it was the Government, as an extremist organization, that was fighting society.

Alawites occupied key positions in the State and its services, but there were also many high ranking Sunnis in the security apparatus. Nevertheless, it was difficult for them to become heads of branch. In the witness's experience, Sunnis in the security services were more brutal than Alawites because they were under greater pressure to demonstrate their loyalty, as he himself learned from his own detention and from former prisoners for whom he had provided legal representation.

(3) Expert witness Z2 is a former Syrian opposition politician, now an exiled politician and businessman; he was a member of the Syrian parliament from 1994 and was long considered the most prominent dissident and critic of the Assad governments.

His evidence focused on the economic and political conditions during the transfer of power from Hafiz Al-Assad to Bashar al-Assad, as well as his personal experiences of standing up to State-protected families like the Makhloufs, as an opposition member and "free entrepreneur". He gave the Panel an insight into the emergence and failure of the Damascus Spring in 2001, which he had helped to instigate; at the time, he said, people believed that they could fight corruption and transform the economy. He was of the opinion that civil society had to be strengthened in order to achieve this, and as a member of parliament, he fought in vain for critical civil organizations and assemblies to be permitted. He convened a large

number of meetings in an open forum to facilitate a national exchange. The forum was eventually closed down following an intervention by the intelligence services. The witness continued to convene the forum without permission and was arrested on 5 September 2001. He was stripped of all his assets and sentenced to five years in prison on charges of “inciting the people, regime change through violent means and undermining public opinion”. However, as a member of parliament, he received special treatment in detention.

In 2006, the witness was detained for one day in the Al Khatib Branch; he was also monitored by the police and the intelligence service and had to report regularly to the Branch. When visited by the intelligence services, he was physically assaulted. He was arrested again in 2008 and spent two and a half years in prison in Adra. After his release, Ali Mamlouk and Tawfiq Younis, as high ranking intelligence officers, told him that he should refrain from political activity in future. A new leaf would be turned; next time he would not get off so lightly. It was with a heavy heart that the witness then abandoned his civil society activities in Syria.

Asked about the relationship between Alawites and Sunnis in Syria, the witness stated that the “real bosses in Syria, in particular in the intelligence service” were Alawite. However, he also said that members of other faiths had a tendency towards greater brutality in order to distinguish themselves from Alawites and gain their support.

(4) Expert witness Z3, an Islamic studies scholar who worked at the German Embassy in Damascus until 2012, including as a translator, and thereafter for the German Institute for International and Security Affairs [*Stiftung Politik und Wissenschaft*] in Berlin, stated that torture had been practised by the Syrian intelligence services even in the years prior to 2011. Documents she had translated had made her aware of instances of ill-treatment that took the form of flogging, whipping the soles of the feet, and the ‘German chair’ method, which causes spinal fractures. Some people had died, usually as a result of being brutally beaten during interrogations.

(5) Expert witness Z29 had studied political developments in Syria since the 1990s as a journalist and Islamic scholar who had studied in Syria and conducted research on the subject during his numerous visits to the country. His knowledge is based on the analysis of publications and extensive conversations with public figures and members of opposition groups whom he knew from an earlier period. He had contact with them during his visits to the country and through Syrians living in exile.

The witness explained that even under the regime of Hafiz al-Assad — and continuing almost seamlessly into the rule of Bashar al-Assad — abuses by the security authorities were part of everyday life in Syria, and that the intelligence services played a leading role in this regard, with sometimes competing responsibilities. In particular, it was common knowledge even before 2011 “that the regime arrests, tortures and kills. Everyone knew that — it was nothing new.” Uprisings had been suppressed as early as the late 1970s and the 1980s, in particular the Muslim Brotherhood uprising in Hama. The army shelled the city and killed 15 000 people. At the time, the dissident scene was small, and from the regime’s perspective, posed no threat. “If no one takes to the streets, nothing happens.”

The periods before and after 2011 were in no way comparable. The “facility for the greatest cruelty in the apparatus” already existed, but in the early days, people were not “killed one after the other”. With regard to working within the regime, the witness stated that, in his opinion, those who chose to work for the State would have had no choice but to adapt to the conditions of the dictatorship. It was reportedly dominated by Alawites; as a Sunni, one had to prove one’s willingness to act in a repressive manner in the interests of the system; as a Sunni, one had to be “the first to say that more people should be imprisoned”.

(6) The political situation in Syria from the 1970s onwards, the treatment of opponents of the regime and the role of the intelligence services in the suppression of the political opposition are highlighted in the credible testimony of expert witness Z30. The 70-year-old witness was active as an opposition politician in Syria for decades. During witness examination by the Panel, he stated that he had first been imprisoned from 29 March 1978 to 10 February 1980, including in Branch 251. He was arrested for a second time on 3 January 2008 and was detained in the Branch. The background to his arrest was that he was a leading member of the “Committee for the Revival of Civil Society” and co-author of the resulting “Damascus Declaration”. He was sentenced to 30 months in prison, along with 12 friends. Only a few months after his release, he was again detained in Branch 251 in March 2011 (see VIII. 1. (c) (ee) below).

Regarding political developments in Syria, the witness stated that Hafiz al-Assad suppressed the opposition as early as the 1970s. As a member of the younger generation at that time, he had rebelled against this and pursued alternative activities. Various violent Islamist groups had emerged in the late 1970s. At the same time, opposition youth organizations were being set up by leftwing groups. The regime arrested members of both sides, “some for their weapons and violence, others for their words”. As a member of a leftwing group from 1978 to

1980, the witness ended up in prison without a court hearing “or any document that could justify the detention”. The — unofficial — accusation against him was that he had “founded an opposition organization”. He was detained at the Al Khatib Branch for approximately one month before being transferred to the regular prison. The arrest in 2008 had taken place after the first conference of the Syrian National Council on 30 November 2007, following which a wave of arrests was made. His office was stormed by State Security officers in January 2008, although he was treated respectfully when arrested. Branch 251 was a temporary stopover on his way to Branch 285. After being sentenced by a criminal court, he was transferred to a civil prison; the charge against him at this point was “undermining national morale and national unity”. This was a common accusation that could be levelled against almost anyone. The role of the intelligence services was significant at the time, although not as visible to the outside world as it was subsequently.

(7) According to the testimony of witness Z9, a journalist and activist, it was common practice even before the protest movement began to be summoned by the security authorities and questioned about one’s work. He had written political articles, for example about corruption in Syria, but had only been able to do so covertly by ostensibly writing about a different topic. “It’s complicated. In Syria, you can’t write about politics directly. You have to skirt around it by talking about art or society.” For example, he examined how corruption was reflected in the works of other artists.

(8) Witness Z31, who was active in the opposition since 2001, reported that Bashar al-Assad tried to open up Syria to some extent after coming to power in 2001. At the same time, there was a movement to oppose Israel and the USA. In 2002 and 2003, Bashar al-Assad changed his mind: many activists were arrested, including young people distributing leaflets on Labour Day.

(9) Other witnesses, who were questioned by the Panel primarily in relation to their experiences as former collaborators or victims of the regime, shared their perceptions of the Syrian State.

Witness N16, for example, who was subsequently imprisoned several times by the security services for dissident activity, reported that a climate of fear prevailed during her childhood and youth in the 1980s. She recalls an incident from the fourth grade of primary school when she shared her father’s criticisms of the regime with friends. The next day, the security forces attended the school.

Witness Z32, who was detained in Branch 251 in 2012 and testified anonymously to the Panel on 16 December 2020, stated that she was part of the Syrian upper class and had been active in the opposition. Regarding the distribution of positions of power among religious and population groups, she stated that the Syrian regime did not consist exclusively of Alawites. High-level Government positions such as those of minister, parliamentary speaker and vice-president were occupied by Sunnis. Although Alawites generally held the leading positions in the security forces, Sunnis held other high-level administrative posts.

This was largely confirmed by witness Z33, a longstanding employee of the General Intelligence Directorate. Sunnis could hold leadership positions, although a distinction was drawn between regular civil service positions and sensitive ones within the security apparatus. This part of the witness's testimony — which was primarily concerned with the period after the start of the conflict and his experience of the conditions in Branch 251 and Section 40 and was characterized some peculiar behaviour (see III. 1. (c) (bb) and VII. 2. c) (dd) below) — was accepted by the Panel as accurate on account of the consistent nature of the testimony provided during the preliminary investigative proceedings and to the Panel (in contrast to his testimony pertaining to the circumstances following the start of the conflict), his nuanced description of the situation, and consistency with the observations of witness Z32.

Witness Z34, a longstanding employee of Branch 285 of the Syrian General Intelligence Directorate, stated that the Head of Branch 285, Brigadier General Ahmat Dib, was Alawite. The latter had the authority to decide on the transfer or release of prisoners. However, the Head of the General Intelligence Directorate, Dib Zaytoun, who had ultimate responsibility, was Sunni, as was his predecessor Ali Mamlouk. Both had a great deal of power as heads of the intelligence services during the crisis. The witness was Sunni; his appointment as a secretary in an Alawite department head had apparently been unproblematic.

(bb) The individual observations of the aforementioned witnesses were consistent with the statements of expert witness Laura Thurmann and supported the conclusion that a social and political shift towards autocratic one-party rule, with the State President as the dominant leader, occurred in Syria in the period prior to the internal conflict. The political leadership relied both on a system of patronage in which close associates and families occupied a dominant position in the economy and the State structure, and on an extensive security apparatus tasked with monitoring and suppressing opposition efforts. The witnesses vividly described how the use of violence against prisoners, in particular torture and extrajudicial killings, was one of the means by which power was preserved, as was well known among the

general public. The formation of a pluralistic civil society was thus effectively prevented; efforts to open up the country, which were partly motivated by foreign policy, did not last. With regard to the excessive violence that followed, it is clear that an organizational infrastructure and knowledge — such as prisons for the detention of opponents of the regime and methods for their systematic abuse — were already in place: all that was required was for the army and the intelligence services to extend their longstanding activities to the entire protest movement, both qualitatively and quantitatively. It is also clear from the political developments described by the witnesses that the Syrian State leadership continued to pursue its longstanding pattern of conflict resolution through violent suppression and confrontation which it deemed successful.

The witness statements paint a multidimensional picture of the religious and ethnic power dynamics within the Syrian State apparatus. Although members of the Alawite religious community were, in general, historically privileged and held a disproportionate number of key positions in the State apparatus once the Assad family took power, members of other religious communities, particularly the Sunni majority, also held leadership positions. It seems plausible that they were under pressure to take action, in that they had to prove themselves to be particularly loyal to the regime. However, it also seems plausible that, in view of the large Sunni majority, the regime had to draw on this population group to staff the extensive security apparatus, and to grant high-level positions to Sunnis in order to appease society.

(c) The Panel has also drawn on reports by an independent international commission of inquiry, established by the United Nations Human Rights Council in light of the events in Syria from March 2011, which were published in November 2011 and March 2012 (see III. 1. (e) (aa) for more details). The summary of the historical and social developments in Syria contained in this report corroborates the statements of expert witness Laura Thurmann and the aforementioned witnesses. The reports confirm in particular the autocratic rule of the Assad family following the military coup in 1971, the suspension of civil rights and liberties due to the decades-long state of emergency, the dominance and control of politics and society exerted by the Syrian Ba'ath Party, human rights violations such as the attack by Syrian forces on the city of Hama in 1982 (the reports estimate that there were between 10 000 and 25 000 deaths), and State repression over the four decades prior to 2011 of actual or suspected opponents of the regime who were arrested, tortured, and imprisoned on unsubstantiated charges. Surveillance and repression were reportedly conducted by an extensive intelligence apparatus, which severely restricted political life and autonomous civil society.

## 2. Exercise of power, structure and role of the Syrian intelligence services

(a) Regarding the established structure, development and activity of the Syrian intelligence services and other parts of the Syrian security apparatus in the period prior to 2011, the Panel relied on the official statement of the German Federal Intelligence Service of 16 June 2016 regarding the structure of the Syrian intelligence services, on the statements of expert witness Laura Thurmann, and on the statements of expert witness Z35, who holds a leadership position in the Commission for International Justice and Accountability (CIJA), an NGO concerned with the Syrian conflict.

The Panel has no knowledge of the German Federal Intelligence Service's sources. The findings of expert witness Laura Thurmann are based on the evaluation of a wide range of sources, including specialist publications, press releases and publications by international and human rights organizations. The facts summarized by expert witness Z35 are based on a systematic evaluation of anonymized interviews with a large number of collaborators and victims of the regime, conducted by the CIJA since the beginning of the internal Syrian conflict. Although the Panel was unable to obtain the names of the anonymized witnesses and thus could not question them directly, witness Z35 described in detail how standardized interviews were conducted, how the information was documented and categorized according to the anonymized witnesses, and how it was evaluated to provide insights into the conflict and its course (see also III. 2. (a) below). The evidence is consistent regarding the established structure, approximate number of personnel and tasks of the intelligence services. The Panel further concluded that the external structure of the intelligence services —as an instrument for stabilizing the political power apparatus — and their extensive resources already existed prior to 2011, and that these services in their existing organizational form were used to violently suppress the protest movement on a massive scale.

(b) Consistent with the above, and based partly on direct experience, several Syrian witnesses, some of whom are expert witnesses, provided detailed evidence regarding the history, structure and activities of the Syrian intelligence services.

(aa) Expert witness Z27 outlined the historical development of the intelligence services: the oldest service — the Military Intelligence Department — was founded in the 1950s. It was succeeded by the General Intelligence Directorate, commonly known as 'State Security', in the 1960s. The Air Force Intelligence Directorate was founded most recently, in the 1970s. The task of the intelligence services was always to suppress the opposition by means of

arbitrary arrests, torture or “disappearances”. It was common knowledge in Syrian society that they used torture. In particular, the violent events of the 1980s, such as the crackdown on the Muslim Brotherhood movement and the Communist Workers Party, exposed the methods used, which included specific types of torture. The regime ensured that the public was aware of this in order to instil fear. Torture methods were, to a certain extent, part of a general culture; methods of abuse such as *dulab*, *shabeh* or the ‘flying carpet’ were regularly administered well before 2011. Deaths were occurring in intelligence service facilities even before the conflict began.

(bb) Expert witness Z28 confirmed this: as early as the 1970s, unpopular individuals were arrested and tortured, or simply disappeared by the intelligence services. There was no legal process. In 1978, the witness had been detained and tortured in branches 251 and 285 of the Syrian General Intelligence Directorate; in 2006, he was kidnapped on the street and taken to Branch 285. Even at that time, torture was ubiquitous in intelligence service facilities, as he had seen for himself. As a lawyer, imprisoned clients also reported that they had been subjected to torture. The witness stated that the administration of torture by the Syrian security apparatus was well known even before 2011, in particular among members of the security authorities.

The witness, who as a lawyer has specialist knowledge, also stated that staff of the intelligence services were protected from criminal prosecution for their activities. For example, it was illegal to file a complaint against a security guard and impossible to prosecute staff without the approval of the head of the relevant directorate.

(cc) Witness Z2 described how the system was based on the information provided by the intelligence services, whose function was to maintain political control. Since 1963, the Syrian system has been built on “absolution, segregation and violence”. There was not a single intelligence service that did not use torture.

(dd) Witness Z36, who testified anonymously, stated that he had worked for 21 years in an unspecified “office” of the General Intelligence Directorate. He described the structure of the intelligence services as being divided into general, military and “political” services, as well as the Air Force Intelligence Directorate. The “political” intelligence service was under the Ministry of the Interior. He estimated the number of employees of the General Intelligence Directorate at between 30 000 and 50 000 in Syria as a whole. It was led by Ali Mamlouk until his death in 2012, when he was succeeded by Dib Zaytoun.

Torture was used across all of the intelligence services. In the witness's experience, there were no interrogations in which prisoners were not abused. There was no presumption of innocence. The witness also stated that all of the intelligence services used similar torture methods. Interrogations were also very similar: prisoners were handcuffed by a guard and interrogated by an officer. The torture to be inflicted by the guards was ordered by the interrogator verbally or using hand gestures. In some cases, written orders were issued stating the methods to be used, with coded descriptions such as "extended investigations". Furthermore, it was common practice to smuggle informers into prison cells, or to intimidate and "turn" prisoners, in particular members of the political opposition, by fabricating criminal charges against them.

(c) The report of the United Nations Human Rights Council of November 2011 (see III. 1. (e) (aa) below) also describes the structure of the Syrian security authorities and is consistent with the evidence presented above in this regard. The report highlights the existence of elite army units under the direct control of the President, in particular the Republican Guard and the Fourth Division; a plethora of intelligence services with overlapping tasks; and pro-Government militias such as *Shabbiha* and those comprising members of the Ba'ath Party. The Panel drew on this evidence on an indicative basis in making its assessment.

### **III. Re. the findings as to the start of the conflict in Syria and its course from 2011 onwards; actors and victims**

The findings regarding the course of the conflict, the actors and institutions involved, and the number of victims are based on an overview of the evidence collected by the Panel, including the expert opinion of witness Laura Thurmann, the statements of expert witnesses Z3, Z29, Z35, Z27, Z28 and Z2, and reports from international and human rights organizations. In addition, the Panel relied on the statements of witnesses Z36, Z40 and Z33, who testified as former members of the regime, as well as a large number of witnesses who were victims and had been detained in Branch 251, usually following their arrest by Section 40 officers. The Panel attaches particular evidential value to the CIJA documents of April 2011, which were submitted by the CIJA through the Federal Criminal Police Office and are included in the findings. The number and condition of the people who died during the conflict, their bureaucratic documentation and eventual burial in mass graves is corroborated by the impressive 'Caesar files' and their expert analysis, the statements of witnesses Z38 and Z37,

who were involved in documenting the burials, and the analysis of satellite images of mass graves.

More specifically:

1. Overall course of the conflict from 2011

(a) The general course of the internal Syrian conflict following the spread of the Arab Spring to Syria in February 2011 was presented by expert witness Laura Thurmann in terms of its chronology and escalation, based on a comprehensive evaluation of existing sources. In particular, the expert witness was able to provide an overview of documented events in an escalatory sequence that unfolded between spring 2011 and mid-2012. She indicated that, despite a generally consistent picture of the course of the conflict and the reaction of the State, the accuracy of figures such as the number of victims remains uncertain due to the lack of independent research and free journalistic activity. In making its assessment, the Panel relied on the expert witness's testimony, which was confirmed and supplemented by a range of other evidence, in making its findings.

The Panel's conclusion that the intelligence services were involved in the conflict is based on the expert opinion of expert witness Laura Thurmann, on the official report of the German Federal Intelligence Service of 16 June 2016, and on the statements of expert witness Z35. The evidence is consistent not only with regard to the official powers of the individual intelligence services and their role in the Syrian State apparatus, but also their *de facto* position and activities during the protest movement and the civil war that began in 2011. The established external structure of the Syrian intelligence services remained the same in 2011; essentially, alongside the military and militias they were the main components of the security apparatus used to suppress the protest movement.

(b) Regarding the circumstances and developments since 2011, the Panel also heard testimony from the witnesses below, who had taken a critical view of the regime and engaged in dissident activities; some of these witnesses have already been mentioned. Their evidence paints a coherent picture of a violent and ultimately coordinated and escalating response by the security forces to the protest movement, from February 2011 onwards. The statements reinforce the impression that the Syrian regime attempted to violently suppress dissident efforts from the outset, and that the use of force by the State intensified significantly, both qualitatively and quantitatively, from the end of April 2011.

(aa) Expert witness Z27 (see above under II. 2. (b) (aa) ) described in detail, and based on his opposition activities, the events that occurred in the wake of the Syrian protest movement and its suppression. He was an active participant in protests and demonstrations and was able to gain insights into the political security situation as a result of the systematic collection of information by the organization he led.

The witness described in detail how the Arab Spring spread from Tunisia and Egypt to Syria. In the beginning, there was approval and solidarity on the Internet, followed by a wave of demonstrations. The witness named individual demonstrations at the beginning of the protest movement, including one in front of the Libyan Embassy, during which security forces had taken action against demonstrators, first filming them, then beating them with truncheons and arresting them. 5 February 2011 was proclaimed the “Day of Syrian Rage”, with sit-ins in Damascus and Aleppo. He and other prominent individuals, such as witness Z28, were then summoned and interrogated by the Internal Branch of State Security. Tawfiq Younis personally interrogated him. State Security accused him of inciting demonstrations. On 6 March 2011, there was a further demonstration in front of the Syrian Ministry of the Interior; when photos of those arrested were held aloft by demonstrators, security guards attacked and beat the demonstrators severely and tore up the photos. There was bloodshed. A philosophy lecturer known to the witness was held down by two people who slammed his head against a pylon. On 15 March 2011, there was a large demonstration in Damascus at which a number of arrests were made, followed the next day by a sit-in aimed at freeing those arrested. The witness was involved in this and was arrested again. Although the protests were entirely peaceful — “peaceful individuals standing around in front of the Ministry of the Interior in Damascus” — a large number of security force personnel attacked the protesters and started beating them. More than 30 people, including women, were arrested. In addition, there were the well-known incidents in Dara’a, where children who had written slogans on walls were arrested and tortured.

The security services were poised to crush the opposition movement; the country had been divided into sectors, and each sector had been assigned to a specific branch of the intelligence service. In February and March 2011, there had not yet been any shooting in Damascus, while in Dara’a, firearms had been used on 18 March 2011, resulting in the first civilian casualties. Although the demonstrators made peaceful demands, the security forces reacted with extreme violence. According to the witness, a decision had been made to use force against demonstrators and ignore their demands.

From April 2011, there were frequent reports of firearms being used, initially in Homs, then in Damascus, and eventually across the country. Arbitrary mass arrests were made, targeting entire regions. The security forces began to use violence systematically. For example, live ammunition was used against demonstrators. The witness, who was arrested on 22 March 2011, recalled reports of a Friday demonstration in Damascus in April 2011, during which some demonstrators died and others were arrested by the armed forces. On 29 April 2011, a large demonstration in Douma was broken up, resulting in dozens of deaths. In June 2011, people who wanted to organize a sit-in were shot at with live ammunition; this resulted in the deaths of demonstrators. During this period, the city of Dara'a was besieged by the military, whereupon there were solidarity demonstrations that were, in turn, suppressed by force. The witness was able to recall the dates because they had been recorded in reports written by volunteers at the documentation centre he ran. It was generally difficult to determine the exact number of victims.

Individuals — and young people in particular — were systematically subjected to torture and humiliation following their arrest. While individuals arrested at the beginning of the protests were only imprisoned for a few days, the period of detention was subsequently extended to one month. Released prisoners had told him that they would rather die than go through such an ordeal again.

The actions of the security forces were consistent with public statements made by the Syrian President. Bashar al-Assad is reported to have said in a public speech on 30 March 2011: "If you want open warfare, then so be it." In April 2011, Syria reached a point "where it exploded." The witness tried to document human rights violations as part of his work for a human rights organization, until all of its members had been arrested.

Regarding the actions of the Syrian intelligence service, the witness reported several changes compared to the period before the protests: arrests and torture were widespread before the start of the protest movement. However, the number of people detained and killed rose dramatically in 2011 because, unlike in previous periods, the activities of the intelligence services were no longer targeted solely at smaller opposition groups.

The way in which torture methods used also changed. He saw the differences for himself, having been arrested both before 2011 and afterwards. Torture had previously been used to obtain information and would have stopped if the detainee revealed all the desired information. From 2011, torture was used more as a punishment, a retaliatory measure and

an instrument used to annihilate or 'break' a person's psyche. Sometimes, torture was administered without interrogation. During the witness's detention at the Air Force Secret Intelligence Directorate in 2012, he had witnessed how a detainee suspended from a height pleaded in vain to be let down so that he could confess, but the guards had no interest in what the detainee had to say. Opponents of the regime were subjected to ill-treatment, as were individuals who were mistakenly arrested, for example due to a mix-up of names. Society was to be kept under control, "at any cost". Ultimately, the intelligence services were given free rein. They could have "done whatever they wanted", without any rules. He had been able to observe this during his numerous periods of detention, the most recent of which was between April and October 2012, with the Fourth Division.

(bb) Consistent with this, expert witness Z28 testified, on the basis of his work as a lawyer and his contact with a large number of people persecuted by the Syrian authorities, that the approach of the security authorities changed once the protests started in 2011. At that point, the regime became increasingly concerned as the protest movement grew into a popular uprising. The regime's response then became increasingly brutal. The witness illustrated this by referring to protests that took place from February 2011 onwards, of which he had first-hand knowledge because they were about his release and family members participated in them. During the protests, demonstrators were beaten with sticks and arrested. While the focus pre-2011 had been to use torture against members of the opposition to obtain information, after 2011 it was no longer on obtaining information but on punishment and deterrence. Clients he sought to defend had been asked: "Do you want freedom?". Those who answered in the affirmative were tortured, which was motivated by a desire for revenge. The number of arrests rose at an alarming rate. Pre-2011 there would have been perhaps 3000 people detained at the any one time, and they would ultimately have been brought before the State Security court. After 2011, hundreds of people were arrested every day. The powers of the intelligence services also changed. Pre-2011, only key branches such as Branch 251 had a free hand to conduct investigations and make arrests, while the remainder could only act on Government orders. After 2011, however, each intelligence branch was allowed to do as it saw fit. Torture methods became more brutal. For example, people were tied to a chair without a seat while a candle was placed under it; such methods had not existed prior to 2011.

Everyone who fell into the hands of the security apparatus was tortured. Beatings were standard practice during transportation to a branch of the intelligence service; institutionalized "welcome parties" were held on arrival. He saw them with his own eyes. He was detained for

a period of five years from 2006 and, shortly before his release in May 2011, for five days in Branch 285 of the General Intelligence Directorate. A communal cell measuring 4 x 5 metres was completely overcrowded, with 50 to 60 people who were “stuck together”. Day and night he endured the screams of those being tortured.

There was no such thing as people not being beaten while in detention. At best, known members of the opposition or media personalities were spared severe torture for fear that it would spark further unrest. In such cases, special orders were issued, stating the person should be treated. Some members of the opposition were arrested with the aim of recruiting them as informers; such individuals were also spared abusive treatment.

According to his clients, in 2011 some cells in intelligence service prisons barely had enough room to stand (“there was only enough space for your own foot”). Prisoners collapsed, hallucinated and eventually went mad. As there was no ventilation, they had severe breathing problems. People died and were then deliberately left in the cells until their bodies began to decompose. Wounds would not be dressed. A friend had told him in 2011, at a time and place he could not precisely recall, that 17 people had died in the 27 days of his detention. The food — slices of bread, potatoes, a bit of jam — was sometimes simply thrown into the cells. As a lawyer, he had met detainees being driven from security facilities to court; they were usually injured, barefoot and sometimes wearing only underwear. He had met people weighing 40 kilograms who had weighed 80 kilograms before their imprisonment.

Sexual violence against both men and women was also widespread from 2011 onwards, although only a few victims were willing to speak openly about this. Sexual violence in particular was used to humiliate individuals and their relatives. Prisoners told him that they had been raped in front of their relatives. He helped women to have abortions after their release.

(cc) Expert witness Z29 also travelled to Syria in 2011 and 2012 as part of his work as a journalist. He tried to find out how the political resistance and demonstrations had been organized and whether there was any validity to the State’s assertions that the protest movement was formed of terrorist — in particular Islamist — groups. In the later stages of the conflict, he researched the mass killings and the “collection points” for corpses that were by then becoming known.

The witness stated that, at the beginning of the protests in February and March 2011, demonstrations were still relatively spontaneous and took the form of flash mobs. The regime

reacted differently depending on the location. While participants in Damascus were “only” arrested, firearms were used at an early stage in Homs. He had been at a demonstration where young men had been demonstrating in the middle of the street, with women, children and the elderly on the sidelines so that they could get away more easily. “People know they are going to a peaceful demonstration and that they have to expect to be shot at.” In February and March 2011, there were events “where there was only beating, and there were situations where there was shooting”. In the latter cases, however, the regime disseminated the claim that the security forces had not been involved, showing the media weapons that it alleged been used against them. In August 2011, the witness heard gunfire in Homs and saw people in hospital with gunshot wounds who said that they had been at a demonstration. In April or May 2011, 200 people were arrested following a demonstration in Homs.

He saw the arrests with his own eyes. On one occasion, he was travelling on an intercity bus when a passenger was singled out at a checkpoint. “He was hit over the head with a sack and taken away in a panel van.” Many people told him about arrests on the street or at demonstrations. In the early stages, prisoners were beaten and tortured; they were “missing for a while”, but most of them were released and warned not to engage in activities again.

The regime then became increasingly brutal in response to the demonstrations. In June 2011, “we knew that the intelligence service would come and open fire on those who came.” It was a disturbing sequence of events: “On Friday there would be a demonstration, and people were shot dead. On Saturday they were buried, then there were more shootings at the funerals. From Sunday to Thursday there was peace and quiet, and then it started all over again on Friday. That did not deter people: on the contrary, there were demonstrations in more and more places.” In December 2011, there had been shootings at a checkpoint in Homs; from 2012 onwards, it was often the case that arrested individuals never returned. In December 2011, sniper nests were in place, and “anyone who went out onto the street was shot”; this occurred in districts of Homs that were deemed loyal to the opposition. By 2012 and 2013, it had become normal for people to be shot. Demonstrators began to arm themselves to protect the demonstrations. The witness gave a detailed account of the Al Houla massacre at the end of May 2012, stating that, according to his research — and contrary to statements made by the Government — the massacre was caused by the excessive use of force by the Syrian security forces. More and more armed groups — including the army, which sometimes used heavy weapons — attended the demonstrations, and arrests were the responsibility of the intelligence services.

During the conflict, the function of the intelligence services evolved. Previously, their main function had been to gather knowledge, whereas now they had a primarily executive function. Whereas the intelligence services had previously competed against each other, they were now acting in a coordinated manner. For example, wanted lists were exchanged among various services. At checkpoints and during the suppression of demonstrations, it was often difficult to identify the security forces — “people in uniform, but wearing trainers” would arrive, but they were usually representatives of the intelligence services and the army. In the past, each service had had different characteristics. The Air Force Intelligence Directorate and the Military Intelligence Service had been seen the harshest service, while the Political Security Department was considered more moderate. However, these differences were erased as the conflict progressed. Politically, the sadistic terror was perfectly orchestrated; according to the witness’s research, Ali Mamlouk, the Head of the General Intelligence Service, had a central role in coordinating this.

Based on his conversations with former members of the regime, the witness spoke about the circumstances and motives of individuals who deserted. According to him, there were broadly three groups of defectors: “Anyone who had already left in 2011 was a hero. Those who left at the beginning of 2012 didn’t like the brutality. But anyone who left at the end of 2012 was a ‘weathervane’, because this seen as being too late in the day.” The later a person defected, the more likely it was that they had done so only to avoid being on the wrong side after the expected collapse of the regime. The earliest desertions occurred in summer 2011.

(dd) Witness Z2 — a prominent opposition politician in Syria — stated that he had taken part in several demonstrations in spring 2011. He recalled the first rally in front of the Ministry of the Interior on 15 March 2011, when participants were beaten by the intelligence services and around 40 people were arrested. He always took part in the demonstrations held there on Fridays. On 7 May 2011, he was attacked and beaten by members of the intelligence service “until blood flowed”, after which he was taken to prison in Adra. Hundreds of other detainees were also beaten. He observed that new groups had been formed in the intelligence services to quash the uprisings and that they had been recruited specifically to be deployed against the protesters. There were also — possibly staged — counter-demonstrations by Alawites armed with axes, large knives and iron bars, in which they chanted slogans against the demonstrators (“Bashar, don't worry, there are people who drink blood.”).

In the first six weeks of the protest movement, which was estimated by the witness to have begun on 15 March 2011, the Government had not, in his estimation, issued orders to violently

suppress the demonstrations. After this time, however, the violence escalated. The attack on his person on 7 May 2011 could have proved fatal, as he was hit on the head with an iron rod and could only shield himself with his arm, which was broken in the attack. Based on his knowledge of the structure of the Syrian power apparatus, this violence could not have happened without a centralized command.

(ee) Witness Z57, an opposition journalist and cousin of former co-defendant A., stated that the security services were on high alert and were strengthened from the end of February 2011 in order to suppress demonstrations. He was told this by former co-defendant A., who worked for the security services. The witness testified about a demonstration in Douma on 25 March 2011. The participants gathered outside a mosque and were confronted with a counter-demonstration organized by the regime. From the end of April 2011, there was violence at demonstrations. While participating in a rally at the time, the demonstrators had been surrounded; soldiers and members of the security authorities had got out of their vehicles and attacked them with batons, with blows “the like of which he had never seen in his life”. There were many arrests. Even at this early stage, violence had been institutionalized by the regime, as was evident from the increasing number of victims at the demonstrations every Friday, whom the witness referred to as “martyrs”. The violence then escalated to ever greater levels. Regarding his own detention at the Palestine Branch from 8 April 2011, the witness reported that, on account of his position, he himself had not been abused there and had been released after one day. However, other prisoners had been kicked and beaten; he had heard screams constantly during his stay. He himself, however, was merely insulted. Officers had shown an understanding of the work of intellectuals and opposition members and had tried to recruit him as an informant.

(ff) Witness Z9 stated that he had been involved in the Syrian protest movement as a journalist and activist “from the very beginning”. Initially, he participated in small-scale rallies and vigils in front of embassies and State institutions. Since Damascus was completely in the hands of the security forces, this was “literally crazy”. On 5 February 2011 a call had been put out to organize a demonstration in front of parliament, but that demonstration had been called off. Participants and passers-by were stopped, and some were taken away. He was beaten but was allowed to leave. In the beginning, it was always the case that there were a few dozen participants shouting slogans with key words such as “freedom” or “justice”, without being directly critical of Bashar al-Assad; security officers would then arrive and order them to leave. Protests such as the one held in front of the Lebanese embassy could last up to two hours.

According to the testimony of witness N20, a doctor who was active in the protest movement from the beginning of March 2011 and treated injured demonstrators, there was no such thing as demonstrations without State violence. On 25 March 2011, people at a demonstration in Douma, a 'sit-in' on the street, were shot at by "the police", who reacted very forcefully. Live ammunition was fired, "and many fell." At another demonstration in 2011, the witness administered medical care to a participant who had been shot in the thigh and removed the bullet from his leg.

Demonstrators were regularly arrested. Typically, participants were beaten with sticks and the butts of guns and dragged to the ground, whereupon they were blindfolded and their hands tied behind their backs with cable ties. They were then pushed into cars with their heads down. He had heard about torture from people who had been released. Many of his acquaintances had simply disappeared. The security forces involved, who could be recognized by their clothing, either belonged to the army and the intelligence services or to the paramilitary forces controlled by the intelligence services. They were not always uniformed officers. The standard-issue weapon of the security forces was the Kalashnikov assault rifle. In August 2011, the witness was arrested and detained by the Palestine Branch for 23 hours; he was beaten without being formally interrogated. This was followed by a second period of detention in September–October 2011 in branches 251 and 285 (for further details, see IV. 1. (c) (bb) (5), and VII. 2. (d) (dd)). In Branch 285, he was crammed into a cell measuring 4.5 x 5.5 metres, along with 85 other prisoners. Some of them had open wounds and broken limbs and were screaming in agony. The witness contracted a serious eye infection that was left untreated.

(hh) Witness Z30, an opposition politician who was imprisoned until mid-2012, reported that the "revolution" was expected from December 2010 onwards by both the opposition and the regime. The regime initially tried to appease people and reassure them — including the "shaky ones" within the apparatus — that nothing would happen. Although people were very afraid, they discussed the situation all the time, first and foremost on social media. From January to March 2011, many events were held, most of them organized by young people in front of embassies. Some of the individuals present included opposition politicians who were personal acquaintances. There were only a few dozen people at any one time.

The regime used force, partly, as the witness put it, through "force of habit", and partly because it had no way of dealing with the protests. The opposition movement wanted to work: not in secret, as it had from 2000 to 2010, but openly, to bring about peaceful, democratic

change. However, anyone who publicly expressed opinions of this kind was arrested. Two people were killed at a demonstration in Dara'a on 18 March 2011. The witness took part in a demonstration organized by academics in Damascus and in a sit-in on 16 March 2011.

(ii) Witness Z55 testified that he was an activist who coordinated demonstrations and printed flyers. The demonstrations began on 15 March 2011. The regime's reaction was hysterical, which no one had reckoned with. Demonstrators were being shot at as early as 18 March 2011. Ministers and the heads of the intelligence service, in particular Ali Mamlouk, subsequently formed a security committee — a crisis cell — which issued the security authorities with orders to “shoot to kill” and detain protestors.

(jj) Witness Z31 stated, on the basis of her experiences as an activist and in comparison with her two periods of detention in 2011 and 2012, that in May 2011 mass arrests were used to intimidate the population, whereas in 2012 the regime adopted a more selective but more brutal approach; there had been more “martyrs”.

(kk) The Panel had no reason to doubt the veracity of this information. Witnesses who had been or continued to be politically active against the Syrian regime and/or persecuted and abused showed no tendency towards exaggeration or any particular eagerness to denounce their persecutors. Their testimonies are mutually reinforcing and, when considered in the light of the statements of former regime officials presented below, provide a coherent picture of a systematic and widespread campaign of persecution executed with remarkable brutality against real or perceived critics of the regime.

(c) The Panel examined as witnesses former members of the regime who likewise gave evidence regarding the course of the conflict and the activities of the Syrian security forces involved:

(aa) Witness Z36, testifying anonymously, stated on the basis of his experience as a longstanding intelligence officer in the General Intelligence Directorate that the security forces were given a free hand once the unrest began, as well as increasing powers as the popular movement grew. Each branch was ultimately able to do what it wanted. A kind of “state of emergency” was introduced, whereby anyone who opposed the regime was considered a traitor. The charges against detainees were fabricated in advance; detainees were simply expected to sign and confirm that they were true. Members of the regime who refused to follow orders were regarded as traitors. The witness had experienced first hand how officers would be transferred to a different location or office or interrogated about their motives.

Refusing to follow orders was always a perilous course of action. In most cases, however, intelligence officers did not dare to resign, partly because of the benefits they enjoyed through their employment.

As a result of the large number of arrests at demonstrations, the number of prisoners in the individual branches of the intelligence services increased over the course of the conflict. The methods of interrogation evolved: they became “crazy”. The witness knew from Branch 285 of the General Intelligence Directorate — which had ultimate responsibility for interrogations throughout Syria — that people were suspended from the ceiling so that the tips of their toes just touched the floor. Those who were interrogated were tortured with electric shocks and doused with scalding water. Cigarettes were stubbed out on their skin and their heads submerged under water. On some occasions, prisoners were forced to wear shoes with nails in them. Others had their penises tied with a piece of string; in the worst cases, prisoners were suspended by those same strings. Once the penis was bound, the detainee was forced to drink water. The witness knew of a man whose penis had been cut off with pliers. Men were brutally raped with a wooden stick. Hundreds of prisoners were held in tiny cells measuring just 4 x 4 metres. There they spent many days without being interrogated, and then they were simply tortured without any investigation being conducted. Such methods were only introduced “during the revolution” to humiliate prisoners. Once the order finally came to shoot people on the streets, it was no longer important whether they died in the cells.

Approximately three months into the movement, instructions were issued “from above” to crush the demonstrations by whatever means necessary, including the use of firearms. The orders had come “from Assad”; “everything” was to be shot at. This is likely to have been the case from the end of May 2011, as the unrest had begun in March. To the witness’s knowledge, until 2012 no armed groups were involved in fighting opponents of the regime: it was only after that date that people began to violently oppose the regime.

The Panel has no reason not to accept as accurate the witness’s statements, which were consistent with his testimony in the preliminary investigation, detailed in nature, and not characterized by any inclination to incriminate or exonerate.

(bb) According to his testimony, witness Z33 is a former member of the intelligence service who worked for 30 years in various branches of the Syrian General Intelligence Directorate, including 13 years in Branch 251 between 1985 and late 1998. Between 2008 and early 2016, he held a senior position in Information Branch 255 of the General Intelligence Directorate.

(1) The witness stated that his job at the beginning of the internal Syrian conflict involved scanning and archiving documents. He processed tens of thousands of pages a day and found it difficult to recall their content. He compiled statistics. He handled reports and lists of individuals who had been arrested or were wanted. The documents described how a person was to be arrested and interrogated, for example “using all methods and means”.

He knew that torture was being used in the most brutal manner in many branches of the intelligence service. It began at the point of arrest. For example, people in Branch 285 were beaten with rifle butts, batons and iron bars. He had personally witnessed more than 15 people being killed; they had “bled profusely” and were then taken away. This was at the beginning of the uprising, which the witness dated to 15 March 2011. There were instructions on the use of force; these were “strict and harsh”, although some officers tried to soften them. Torture had been used prior to the conflict, but not to the same extent or in the same way.

During police questioning, the witness had produced a “hierarchy” of religions in the period after the start of the protest movement, with Alawites at the top and Sunnis at the bottom. When testifying during the main hearing, he stated that he had changed his mind in this regard and provided different information: at the start of the conflict, Alawites had seized all the power. Suddenly, a lower-ranking Alawite could command a Sunni; he could also tell a Sunni of a much higher rank what to do. Alawites no longer had confidence in other religions. Although high ranking Sunnis could have continued to work, they would have been under scrutiny from Alawites.

The witness further stated that although his job at the Information Branch involved sitting in an office and working at a computer, he had been ordered to help break up demonstrations. He had refused to do so and had been asked why. He was questioned internally about this. He eventually deserted, although he had needed time to prepare to flee. He sold his belongings and wanted to get his family out of Syria first. When his son and wife fled, he was questioned about that too.

(2) The Panel has carefully assessed the statements of this witness, who also provided information on the internal structure of Branch 251 and Section 40 (see IV. 1. (a) (cc) and 2. (a) (dd) below) and on the position of the defendant (see VII. 2. (c) (dd) below).

During police questioning, the witness indicated that he was unable to recall the details of his past because he was “under great psychological and social strain”. His testimony during the main hearing was initially rather ponderous and evasive. Initially, the witness's testimony

alternated between detailed, specific information and sweeping assertions and accusations, for example regarding the relationship between Alawites and Sunnis and the role of Section 40 after the start of the conflict. The witness was initially unwilling to provide information on the actions of the intelligence services during the conflict. It appeared inconsistent that the witness was able to recall certain documents relating to the defendant — which he claimed to have handled and whose content he could describe at least in general terms — but that, in response to the Panel’s general questions as to whether those documents included the transcripts of interrogations, he was largely unable to remember due to the large number of documents he had handled. Furthermore, his testimony stood in stark contrast to the information he had provided during police questioning as part of the preliminary investigation. The Panel formed the view that the witness answered questions selectively and tendentiously, possibly in an attempt to dispel any suspicion that he might be partially responsible, which he feared. He also showed a clear inclination to exonerate both defendants.

When challenged about his testimony, the witness explained that he had been through “hard times” in Syria that had “destroyed everything inside him”. Since then, he has experienced memory problems and has “forgotten everything”. In Germany, he often experiences a state of shock; when this happens, he forgets even his own name. The witness eventually explained through his lawyer that he and his family felt threatened because he was testifying. He had found communications from the Panel in connection with his summons opened in his letterbox. His sister had been summoned in Syria; she had been advised to remind him – the witness – that his siblings were still in Syria. He had also been approached by “friends” offering “advice”, which he had understood as threats.

However, following the Panel’s intervention, the suspension of proceedings and a discussion with his legal counsel, the witness testified far more freely than previously, for example regarding details of documents that he had previously said he was unable to recall. He then made the statements provided regarding torture and instructions for it to be used in the branches of the secret service. The Panel accepted these statements — which were detailed and consistent with the witness’s testimony in the preliminary investigation, substantiated on further questioning and, in the Panel’s view, based on personal experience — as truthful and uses them as a basis. The Panel attaches particular importance to the consistency of the testimony because the threatening situation described by the witness had not yet occurred at the time of the preliminary investigation.

However, the Panel does not find the information provided by the witness statements on the shift in the balance of power between religious groups to be credible. Although the taking of other evidence also indicates the dominant position of Alawites, a further significant shift in power at the start of the Syrian conflict was not described by others. In contrast to his more nuanced account during the preliminary investigation, the witness described the development in very general terms using dramatic language. He himself is an Ishmaelite and described this religious group as the most disadvantaged. In this respect, the Panel has compelling evidence that the witness presented a personally motivated account that did not correspond to the facts in order to exonerate himself, and it is therefore unable to take use his statements in this regard as a basis.

(cc) Witness Z40, who worked as a security guard in Branch 251, stated that the number of prisoners arriving by bus had significantly increased from April 2011, and again in the period up to August 2012. Sometimes one vehicle came every day, sometimes two or three vehicles on several consecutive days. The largest transfers usually took place on Fridays because the demonstrations also took place on the day of the week.

(d) Witnesses Z31, N8, N9, Z50, Z44, N16, Z52, Z45, N7 and ‘Sami’ who were before the Panel and had been detained in Branch 251 — and in some cases, in Section 40 — and who provided information primarily in relation to their detention (cf. below under IV. 1. (c)), as well as witness ‘Sami’, who was only interviewed by the police, were able to report on the escalating course of the conflict from February 2011 onwards against the backdrop of their own opposition activities, participation in demonstrations, other arrests or general perceptions. Their naturally fragmented, but nonetheless first-hand observations are consistent with the overall picture of the systematic use of violence by the Syrian security forces, not only against suspected members of the opposition or participants in the protest movement, but also against suspected protesters. The Panel had no reason to doubt the truthfulness of the detailed statements of any of the witnesses listed below, which were clearly based on experience.

- As witness Z31 reported, the number of arrests increased dramatically in 2011. The aim was to intimidate people through mass imprisonment and to prevent them from taking to the streets again. Many peaceful activists were killed. Nevertheless, the proportion of those killed compared to the number arrested was low. From 2012 onwards, fewer people were arrested, but many of them were killed.

- Witness N8 sought to document the protest movement from the very beginning, against the backdrop of his professional activity as a director and documentary filmmaker, by “grabbing a camera” and taking to the streets with the demonstrators. At the beginning, there were “flying demonstrations” at various locations to avoid the security forces. The film footage — which was later confiscated — showed the use of tear gas and batons as well as gunshots being fired. The rallies were infiltrated by security forces who had posed as demonstrators and abducted participants. By his own account, the witness — in addition to his abduction to Branch 251 — was detained by the Air Force Intelligence Directorate for three months from the end of March 2011, and subsequently in other intelligence branches. There he was severely injured as a result of beatings and the use of razor blades. He had also seen children imprisoned at the Air Force Intelligence Directorate. During questioning in August 2011 about film footage he had made, he had received massive beatings with fists and elbows, as well as kicks. Following his detention in Branch 251 in September 2011, he was transferred to various other intelligence branches, including Branch 285 of the General Intelligence Directorate and a branch office in Najha, where he was also ill-treated, like all the other detainees, by being beaten with fists, rifle butts and cables.
  
- Witness Z9 reported that he had taken part in demonstrations from 15 March 2011, first in Damascus and later in Harasta. The regime resorted to violence from day one. Two weeks after his first demonstration at the beginning of April 2011, live ammunition started to be used against protesters. He had almost been killed on one occasion when a bullet had passed close to his head. One participant, with whom he had been talking about a fear of dying shortly beforehand, was shot dead next to him. The demonstrations had remained peaceful; he had filmed to document that people who were demonstrating peacefully were being shot at. At one point, the entire Harasta region was stormed and the streets there were searched. The witness’s own imprisonment had been a targeted action to obtain information about members of the opposition and his activities as a blogger and journalist critical of the regime. With regard to his time in Branch 285 of the General Intelligence Directorate from October 2011, which came after his time in Branch 251, the witness testified that torture had been carried out on a massive scale there as well. He was forced to stand for 24 hours. He was doused with water and cooled with the targeted use of air conditioning. He was made to lie down on the floor; then guards then trampled on him. He was beaten with belts. Other detainees were suspended by their hands in the blazing sun or beaten on the head. Friends had told of conditions in the central prison in Adra, where men were raped with a bottle or a stick, or had their penises bound and scalded.

- Witness Z50 reported his arbitrary arrest in July 2012 at a checkpoint manned by militia; the sole reason given for his detention was that he was from Aleppo. Immediately after his arrest, he was locked up in an unknown place with a large number of people. There, like the other prisoners, he was doused with petrol; a security guard had then threatened to light a cigarette. During his onward transport, he was beaten many times, in particular at checkpoints. During his subsequent detentions in Branches 251 and 285, he suffered punches and kicks.

The defendant stated that he had not dealt with this witness officially; other officers had interrogated him using “all violent means”, partly because he was suspected of supporting the FSA. These statements do not counter the perceptions of the witness and their credibility.

- Witness Z44 stated that he had been arbitrarily arrested on 26 August 2011 during a raid in Damascus. He was initially placed in a detention centre at the “Tenth Division”, where he was brutally beaten, resulting in extensive wounds to his back. After being temporarily detained in the Al Khatib Branch, he was transferred to the military hospital in Harasta because of his injuries but was not treated there; instead, “the torture really started there”. Like other prisoners, he was shackled to the bed with chains, beaten with a whip and injured with a blade. The abuse lasted three days, during which time he lost consciousness. The torture was indescribable. For example, another prisoner who complained that his hand was in pain then had his hand chopped off. Orders had been given to dump the severely injured witness on a street: “You can throw him away. He’s done for.”
- According to her statements, witness N16 was active in an opposition group and was detained a total of five times in various regime facilities between November 2011 and March 2014. She had taken part in demonstrations since June 2011, all of which had been peaceful; the security forces nonetheless arrested anyone they caught. Often these were people who happened to be at the mosque or were just there to take part in prayers. The demonstrations were therefore organized as five-minute “flash demonstrations”. She had not personally witnessed live ammunition being used in Damascus, apart from at a funeral, but had heard about it being used in the surrounding area. The security forces wore military uniforms but were not part of the regular police force or the army. In February 2012, she had helped to collect medicines for injured people in Homs after the Syrian army had shelled the city.

Before her first arrest in November 2011, the witness had taken part in one of the demonstrations in Damascus, which usually took place on Fridays. After a few minutes, security forces from the Air Force Intelligence Directorate appeared. Because she had seen

a 12-year-old boy being beaten, she herself was arrested and abused in a police station along with other women and men. Torture took place in all of the facilities where she had been detained. She had also seen dead bodies in February 2012 in Branch 285 of the General Intelligence Directorate, and in the summer of 2012 in the Air Force Intelligence Directorate prison. She had heard from other women that there had been systematic rapes in intelligence service facilities and at checkpoints. In some cases, this was used as a means of humiliation and to exert pressure on the husbands; “the women were raped in front of the man so that the man would confess”.

- Witness Z52 testified that in September 2012, following his detention in Branch 251, he was taken to the Central Office of the General Intelligence Directorate in Kafr Sousa and continuously beaten together with fellow detainees. It was generally known that torture was practised in the branches.
- Witness Z45, who testified anonymously on 25 and 26 November 2020, stated that he had taken part in a demonstration in Douma on 18 March 2011. A large number of security forces armed with various types of Kalashnikov had arrived in their vehicles. They broke up the demonstration and brutally attacked the demonstrators. They beat them up and dragged them into waiting buses. The same thing happened again that same day, during a sit-in in front of the city council. Eleven people were shot dead by the security forces that day. The witness was arrested one week later for participating in the demonstration and for his activities as an activist.
- According to his statements, witness N7 was one of the activists involved in organizing the demonstrations in Raqqa in spring 2011. The first demonstration there took place on 25 March 2011, followed by two demonstrations per week. They printed leaflets with the information in a coordination centre and then distributed them. Some of the security forces, in particular *Shabiha* units, attended the scene in advance to prevent the demonstration and then immediately began to break it up with batons. However, only in 2012 did he become aware of deaths occurring. He had been working for an NGO that aimed to promote democratic structures and civil society involvement. He was therefore wanted and detained several times: In May 2011 at the Military Intelligence Department in Raqqa, again at the same location in November 2011 under the Criminal Investigation Department, and lastly in May 2012 under the Military Police, after which he was transferred to the Al Khatib and Palestine Branches, among others.

– Witness ‘Sami’, whose police testimony, which pertained primarily to the so-called ‘Caesar’ files, was presented to the Panel through the questioning of investigating officer Z10, stated that he had taken part in demonstrations in his hometown of Qaboun in the greater Damascus area “at the beginning of the revolution”, which he dated to mid-March 2011. He had seen demonstrators being shot there. Other participants could not retrieve the bodies from the streets and had to flee. On another occasion he had seen a female demonstrator being shot, leaving her paralysed. He had witnessed many arrests; in one incident alone, around 40 people had been arrested in his hometown. Even taking into account the fact that the witness could not be questioned directly, the Panel did not doubt the veracity of his detailed statements, which according to the investigating officer were candid and were given without communication problems.

(e) The Panel also consulted reports regarding the course of the conflict that correspond to the statements of the direct evidence of witnesses and the experts — which were given priority — and thus confirm them circumstantially.

(aa) A description of the course of the conflict that supports the evidence submitted is provided in the reports of an International Commission of Inquiry appointed by a United Nations body.

(1) In the light of the results of a fact-finding mission in September 2011 and the deterioration of the human rights situation in Syria that followed, the United Nations Human Rights Council set up an International Commission of Inquiry, which issued its first report on the events in Syria in November 2011. According to the report, this was based on direct questioning of victims and other witnesses in connection with events since March 2011.

The report indicates that, in February 2011, limited protests broke out relating to the issues of poverty, corruption, freedom of expression, democratic participation and the release of political prisoners, combined with demands for economic and political reforms. In Dara’a, these demonstrations were held in response to the detention and torture of a group of children and then spread across the country, including Al Ladhqiyyah, Baniyas, Damascus, Deir ez-Zor, Homs, Hama and Idlib. Large scale military-style operations were conducted in Dara’a on 25 April 2011, swiftly followed by an increasing use of violence on the part of State Security forces throughout the country. In November 2011, the Office of the United Nations High Commissioner for Human Rights (OHCHR) estimated that at least 3500 civilians had been killed by State forces since March 2011. Thousands more were detained and tortured, with

the majority of the victims in Homs, Hama and Dara'a. The violence escalated until around November 2011, when military and security forces conducted operations — including with tanks — to suppress public gatherings and funeral processions in various cities, killing 260 civilians in a short space of time.

The report then gives detailed consideration to official statements by the Syrian Government, to the founding of the FSA, and to the reaction of foreign States. Under the heading “Excessive use of force and extrajudicial executions”, the report describes how State forces shot indiscriminately at unarmed demonstrators during the dispersal of protests, hitting them in the upper body and head. Defectors reported that they had received orders to fire at unarmed people without warning. Occasionally, an order to disperse was issued and the use of firearms announced in advance. Joint operations by the military, the security forces and militias, involving “shoot to kill” orders and resulting in numerous casualties, including children, were conducted in Latakia in mid-April 2011. A defector had described in detail the orders that had been issued to attack “armed conspirators and terrorists”. A peaceful demonstration had been held, with participants demanding freedom and carrying olive branches; they had been fired at with machine guns and other weapons. Dead and injured people lay on the ground afterwards. While attempting to bring food, water and medicine to residents of the city of Dara'a, aid workers were ambushed on 29 April 2011, killing more than 40 people, including women and children.

The report also describes the use of snipers, the setting up of checkpoints and the violence there, the blockade of towns and neighbourhoods with subsequent house searches, and the killing of soldiers — who chose to fire in the air instead of at demonstrators — by security forces posted behind them. The mass arrests of demonstrators and civilians during large scale raids, for example on 7 May 2011 in the city of Baniyas, are also reported. Activists and journalists were the targets of arrests. Detainees were “routinely tortured”. In addition, the number of people missing and unaccounted for is in the thousands. Cases of abduction resulting in the disappearance of the victims are also highlighted: family members never heard from the victims again and were advised by the State authorities to forget about them.

A further section of the report is devoted to the use of systematic torture through beatings with batons and cables; electric shocks; forced confinement in stress positions for days on end; deprivation of food, water and sleep; overcrowded cells; and systematic sexual assault through rape and beatings of genitals. The report describes torture and killings including of children and young people – as well as the transfer of detainees to intelligence service

facilities. Individuals attempting to flee the country were killed. Shootings and executions at the Syrian border in August and September 2011 are described.

Lastly, the report states that witness testimonies revealed extensive degrees of coordination among the security forces. Various units made concerted efforts in this regard. Operations were conducted on the orders of high-ranking officers at the level of colonel or brigadier general, including the order to open fire on unarmed demonstrators.

(2) In a further report from February 2012, the chronology of events continues, again based on the testimony of unnamed witnesses, publicly accessible sources, and Government documents. There was further escalation and polarization. The peaceful protests against the Government continued, and the violent reaction of the security forces persisted — with Bashar al-Assad reaffirming that “restoration of security and fighting terrorism with an iron fist” remained the foremost priority. At the same time, the first operations by the FSA against Government forces — although primarily defensive at first — were conducted. According to the Syrian Government, 2131 civilians were killed between March and December 2011, and according to other sources, 6399 civilians and 1680 army defectors were killed between March 2011 and February 2012. The report mentions military operations in January and February 2012 in residential areas — including villages in the vicinity of Idlib, in Homs, Al-Zabadani, Rif Dimashq, Khaldieh and Hama — involving bombardments and shelling with heavy weapons, resulting in numerous civilian casualties. “Shoot to kill” orders against peaceful demonstrators remained in place. Arbitrary arrests continued on a large scale, mainly by surrounding demonstrations and transporting those arrested by bus and lorry to intelligence service detention facilities. Moreover, entire neighbourhoods were blockaded and raided by the intelligence services, elite army units and/or Shabbiha forces, resulting in numerous arrests. Sections of military hospitals were transformed into torture centres. Doctors and medical staff at regular hospitals had to treat the injured and sick clandestinely or face arrest.

(3) In a further United Nations report from February 2016 entitled *Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic*, the commission appointed by the Human Rights Council describes in greater detail the systematic pattern of mass arrests and enforced disappearances of civilians from March 2011, the denial of contact with relatives, and deaths from torture in Government-controlled prison facilities.

(4) The Panel is aware that the above documentation cannot provide direct evidence of the human rights violations set out therein. In particular, it could not verify the information provided by witnesses who are unnamed in the reports. However, in view of the authoring institution and the extensive explanation of the basis and limitations of the reports — and it should be emphasized that the Syrian Government denied the authors the opportunity to form an impression of the situation on the ground — the Panel views these reports as indicia of the intensifying State response to largely peaceful protests, which culminated in systematic arbitrary arrests, torture and killings across the country in April 2011.

(bb) Similarly, the Panel referred to reports by the NGOs Human Rights Watch and Amnesty International, which, they state, are the result of direct questioning of numerous witnesses who were victims of the internal Syrian conflict. With regard to these reports, it was again not possible to verify the sources of the evidence, which therefore had to be assessed with a degree of caution.

(1) The report entitled *We've never seen such horror — Crimes against Humanity by Syrian Security Forces* traces the sequence of violent reactions by Syrian security forces and the number of deaths that occurred from the beginning of the protest movement. It focuses on events in Dara'a Governorate from 18 to 22 May 2011 and, according to the authors, is based on 50 interviews with residents of the city and others present there during the reporting period, as well as on an evaluation of widely accessible press publications.

The starting point of the protest movement — which the authors consider to have been of little significance for the period of February 2011 — is the arrest and torture of 15 children and young people in Dara'a and the protest rallies of several thousand civilians against this from 18 March 2011 in Dara'a, with the Al-Omari mosque as the central location. The report lists further protests held between 23 and 25 March 2011, at which more than 30 protesters were killed. At least 12 people were killed during protests in Al Ladhiqiyah on 26 March 2011. After Government representatives had initially been sent to the city in an attempt to calm and the situation and restore peace, and following Bashar al-Assad's public promise of reforms and the establishment of a committee of inquiry, the violence escalated in April 2011. Starting on Friday 1 April 2011, thousands of protesters took to the streets; between 8 and 15 people were killed during a protest against the Government in Douma alone. Mass demonstrations subsequently took place every Friday in major cities across Syria, including Dara'a, Baniyas, Homs, Harasta, Al Ladhiqiyah, Idlib and Kamishli. On 8 April 2011, 25 people were killed in Dara'a, and 34 people died during protests and funeral processions on 22 and 23 April 2011.

For the country as a whole, 22 April 2011 was the deadliest day yet, with a total of 110 victims. Witnesses unanimously reported instances of live automatic weapons being fired into the crowd after tear gas was used and shots fired into the air, as well as instances in which firearms were used without prior warning. In addition to the demonstrators, individuals who sought to help the injured were targeted. From the end of March 2011, snipers were deployed on Government buildings in Dara'a, shooting at the heads, necks and upper bodies of protesters.

The report then details how security forces carried out large scale operations against towns and villages that were seen as centres of protest. On 25 April 2011, security forces and the military entered Dara'a with tanks and shelled the city for 16 hours before setting up numerous checkpoints and posting snipers on the rooftops. Power was cut off and communication channels were shut down. Anyone who tried to leave their home was shot at. Later, hundreds of people were arrested in their homes. The city was then placed under military control, with insufficient supplies. More than 200 people were killed, including residents of neighbouring towns who had tried to help those trapped on 29 April 2011, on whom the security forces had opened fire without warning. This pattern was repeated in several places: the security forces surrounded Douma on 25 April 2011, Al-Zabadani on 1 May 2011 and Baniyas and districts of Homs on 6 May 2011. The report describes military operations in smaller towns and the number and location of demonstrators killed in May 2011. Mention is also made of efforts to obstruct or shoot at individuals who sought to provide medical assistance.

(2) The report entitled *Torture Archipelago — Arbitrary Arrests, Torture, and Enforced Disappearances in Syria's Underground Prisons since March 2011*, published in July 2012, is based on 200 interviews conducted by Human Rights Watch staff, including with deserted members of the Syrian security services. The interviewees stated that they had witnessed ill-treatment and the conditions in intelligence service prisons. On this basis, the report lists the individual organizations of the intelligence apparatus, the *mukhabarat* as well as the 27 detention facilities under its control, including the location, name of the intelligence branch and torture methods used there. The latter, insofar as they were endured or observed by the interviewees, are described in more detail and in some cases labelled with key words. The victims interviewed are assigned code names, together with the date of interview and the dates, branch and location of detention.

(3) The report entitled *'It breaks the human': Torture, disease and death in Syria's prisons* by Amnesty International examines detentions by the Syrian regime between 2011 and 2015,

based on interviews with over 60 former detainees as well as members of a military hospital. The report describes the conditions in the detention centres of the Syrian intelligence services and in Saydnaya prison, and the torture methods used there.

(4) The Panel considers that there are sufficient grounds to draw on the research contained in the reports, at least as an indicative basis. Although it was again not possible to verify the sources cited, in view of the detailed account — which is essentially consistent with the information provided by the witnesses heard by the Panel and by experts — the Panel considers it impossible that the reports are based entirely on inaccurate findings, although the reliability of individual observations must be questioned.

## 2. Central Crisis Management Cell

The Central Crisis Management Cell (hereinafter the 'CCMC'), the highest ranking central coordination centre and founded at the time of the protest movement, has been described in detail by witness Z35 in terms of its role, tasks, staffing and activities. The witness's statements are corroborated by those of witnesses Z28, Z27 and Z36.

(a) Witness Z35, an American lawyer formerly involved in the prosecution of war crimes in the former Yugoslavia, is the director of the international NGO, the Commission for International Justice and Accountability (CIJA) (see II. 2. (a)), which was established as a foundation in 2012 under Dutch law at the time of the conflict in Syria. According to the witness, the organization is funded by countries including Germany, Canada, the United States of America, the United Kingdom and the Kingdom of the Netherlands. Its work is conducted without external influence. Its senior staff were recruited from among individuals who had experience of international criminal prosecution through the courts, such as lawyers, former prosecutors and analysts who had conducted investigations in Rwanda, the former Yugoslavia, Cambodia and Sierra Leone. According to the witness, the organization's founders had begun compiling witness statements and written material from the internal Syrian conflict in 2011 with a view to subsequently making it available to the courts. The work essentially consisted of interviews and the documentation of a large number of statements by witnesses from different backgrounds — victims from the civilian population as well as former members of the regime and other eyewitnesses — most of whom testified anonymously. The majority of these individuals remain in Syria. Witnesses were interviewed using an established protocol. Each witness was instructed that their statement could become the subject of criminal proceedings and that they were obliged to tell the truth. The witnesses could then

speak freely, without prompting from CIJA staff. After collating the statements, dossiers were prepared. Witness Z35 presented examples of witness statements to illustrate the procedure that was followed.

A total of more than 2500 witnesses were interviewed; the period covered was mostly 2011 and 2012. In addition, a large number of original documents totalling over 800 000 pages were “retrieved” from the military and Syrian intelligence services during the subsequent civil war. In practice, the work involved the organization’s local staff entering an area as soon as armed groups had left; they then searched for documents, including in electronic format, in former Government buildings and took them to a safe place. The documents were scanned, archived and labelled with a barcode in order to document their origin and content as a traceable source.

Witness Z35 stated that it was thus possible to obtain reliable information regarding the establishment, activities and staffing of the CCMC. As its name suggests, the committee was set up for the purpose of crisis management. It is said to have been formally under the auspices of the Syrian Ba’ath Party. Its task was to standardize the approach of all Government organizations involved in combating the conflict. Accordingly, the committee comprised individuals who already had a leading role in maintaining order (from the regime’s perspective) — namely, the heads of the individual intelligence services, the Minister of the Interior and the Minister of Defence, as well as other ministers as required. Ultimately, the establishment of the committee was the regime’s harsh response to the growing protest movement; the aim was to ramp up the actions of the security authorities in a uniform manner. Mohamed Said Bekheitan (a Ba’ath Party official) was chairman of the committee until October 2011, when he was succeeded by Hassan Turkmani (a former defence minister and Vice President). Members of the committee included Ali Mamlouk as Head of General Intelligence, Jamil Hassan as Head of Air Force Intelligence, Mohammed Dib Zaytoun as Head of Political Security and Abdel Fatak Qudsiyeh as Head of Military Intelligence. Interior Minister Mohammad Al-Shaar and Defence Minister Daoud Rajiha were also members.

The CCMC documents from April 2011 were seized from a Government building in Idlib by a CIJA employee in 2015, in the manner described above. He was a Syrian who had lived in the area in question and was not a member of the regime. He gained access to the office after employees of the Syrian regime had left Idlib. The document in question, dating from August 2011, came from the office of the military intelligence service in Raqqa. It was also found by an employee after the regime had withdrawn.

Witness Z35 further testified that, according to credible information from employees of the regime, the committee's decisions were transmitted to smaller army units in the provinces and to the security authorities so that they could be implemented. In particular, all intelligence services, army command centres and police stations were involved in passing on instructions. The witness has submitted further documents to substantiate this. In a letter dated 8 August 2011, the subdivisions of Branch 243 are instructed by the Branch leadership to conduct daily raids and patrols and to arrest demonstrators and other persons deemed responsible for the protests. In a further letter dated 22 August 2011, in which reference is made to a circular from the Ministry of the Interior dated 16 August 2011, the head of the political intelligence service in Raqqa informs the Ministry of the Interior that specific measures have been ordered, in particular joint action in certain districts and the arrest of "arsonists" and participants in demonstrations. The letter contains expressions comparable to those used in the CCMC documents.

(b) The documents attributable to the CCMC in terms of content include the minutes of a meeting of the CCMC and communications of the decisions made by it. It is clear from each document that it was sent by fax.

A document dated 20 April 2011 bears the heading "Bulletin" and, according to its letterhead, was issued by the General Command of the Army and Armed Forces and the Head of Branch 294, most likely of the military intelligence service. Other headers label it "strictly confidential" and "urgent"; it is addressed to the Head of Branch 294. The document refers to a letter from a regional command, which in turn pertains to a meeting of the CCMC. The committee had met on 18 April 2011 and arrived at a number of decisions, as listed in detail below in the document dated 20 April 2011 and reproduced in the findings. The document bears two illegible signatures, one of which includes the designation "Head of the Intelligence Branch". The words "General Command of the Army" and "Intelligence Branch" can be made out from an otherwise illegible stamp at the bottom of the document. A distribution list is attached, which includes the offices of the intelligence service branch and a "request to arrange all that is necessary".

A further document is dated 20 April 2011. It bears the words "An Arab nation with an eternal message" in a header, which also shows that it originates from the leadership of the Syrian Ba'ath Party. According to another statement, it is "Top secret" and "to be retained only by the responsible person". Under the heading "Minutes of the meeting" follows a text stating that the CCMC met on 20 April 2011 "under the leadership of Comrade General Secretary"

and “continued to evaluate the security policy situation”. This is followed by an enumerative list of a large number of orders and (alleged) facts, as reproduced by the Panel in its findings. The document ends “with a request to take note and implement as appropriate” and bears the signature of the deputy regional secretary of the Ba’ath Party.

The last document, dated 6 August 2011 and again titled “An Arab Nation with an Eternal Message” and marked “strictly confidential — urgent”, again comes directly from the leadership of the Syrian Ba’ath Party, according to its letterhead, and is addressed to the “Comrade Head of the Party Branch in Hama Governorate, Rif Dimashq, Deir ez-Zor, Homs, Idlib and Dara’a” in his capacity as “Head of the Security Committee”. The resolutions passed by the CCMC at its meeting on 5 August 2011 — as summarized by the Panel in its findings — are set out in the below. The letter concludes with a “request to implement what is required to bring about a rapid end to the crisis, a return to security and peace for the citizens”. The signature is followed by the words “Comrade Head of the National Security Office”.

(c) Other witnesses have confirmed the existence and function of the CCMC, and in some cases also the instructions to use force.

According to witness Z27, the aim of the committee was to “bring the demonstrations under control” in a coordinated manner; there had been executive orders to suppress the riots, which had been directed at the intelligence services, the police and sometimes also the press. Members included Dib Zaytoun, Head of the National Security Office, Jamal Hassan as Head of the Air Force Intelligence Service, Ali Mamlouk as Head of the General Intelligence Service, and the Ministers of Defence and of the Interior. The CCMC was established in late March or early April 2011. Witness Z28 also confirmed its existence.

Witness Z36 stated that the cell — which he initially described as the “Directorate for Emergencies” and the “Cell for Dealing with Emergencies” but which, when confronted with relevant testimony, he confirmed was the CCMC — was composed of the leaders of the security services, in particular the heads of the intelligence services Bachtar (NSB), Mamlouk (General Intelligence Directorate) and Hassan (Air Force Intelligence Directorate). The Cell was established on the basis of a decree issued by President Assad in order to bring the popular movement, which was perceived as a crisis, under control. The witness stated that there were security branches in other places below the level of the Crisis Cell, meaning that every town or city was involved. The CCMC issued specific instructions. From the start this included instructions to arrest people who were communicating via social media in order to

silence them, the witness stated. Another order issued by the Crisis Cell was addressed to the branches in the provinces. They were to put pressure on traders so that they, in turn, would pass it on to the rest of the population. Finally, there were also coded orders to use force, for instance, to “take the necessary steps” and “wipe out the resistance”. The witness himself had, some three months after the unrest, seen orders to use targeted force against demonstrators. In his recollection this was in May 2011.

(d) Taking the above as a whole, the Panel has no doubts as regards the establishment, composition and function of the CCMC. Moreover, it deems the documents submitted by witness Z35 to be authentic and uses them as the basis for its assessment. There are no indications which cast doubt on the methods applied by the CIJA, as described by witness Z35. The witness detailed the origin of the information about the course of the conflict which was available to him and about the Syrian security apparatus, and he substantiated this with numerous documents. The documents he presented containing orders issued by the CCMC fit with the hierarchy and power structure in the Syrian state, in particular the function of the Ba’ath Party, which pervades the machinery of power. Especially in view of the fragmentary nature of the recorded decisions, in particular their only being available as forwarded circulars, and their coded wording, the Panel also found no indication that these could be — interest-driven — forgeries. It is also easy to align the CCMC’s orders chronologically with the course of the conflict as presented directly to the Panel by the witnesses and experts.

### 3. Number, documentation and treatment of those killed; mass graves

That the Syrian regime had large numbers of people killed from April 2011 onwards at the latest, and that it bureaucratically documented this and had the bodies buried in mass graves also follows from the testimony given by former employees of the regime, from satellite images of alleged mass graves and from the origin and analysis of a large number of photographs of corpses (the ‘Caesar’ files). At the same time, evidence is thereby furnished of the fact that a substantial proportion of those who were killed originated from the branches of the intelligence services, including the General Intelligence Directorate.

(a) The documentation of the dead by a Syrian military photographer (‘Caesar’) as ordered from late spring 2011 on provides key evidence of the systematic and extensive killing of those arrested in the intelligence services’ prisons. The 26 938 image files which ‘Caesar’ secretly secured and took out of the country depict the corpses of 6821 people, who were each photographed more than once; the majority of the people bore signs of emaciation and

of injuries caused by torture. The corpses had numbers on them which shed light on their origin. The numbers were either written on the person's skin with a felt-tip pen or on notes on their body.

(aa) The Panel was unable to directly question the military photographer known by the alias 'Caesar', as he lives abroad at an unknown location. A friend of 'Caesar', who also lives abroad under an unknown identity and who is known to the Panel only by the alias 'Sami', was involved in securing, storing and sending the image files out of Syria; he was not prepared to undergo witness examination. However, the Panel was able to gain a sufficient impression of the origin, content and authenticity of the image files by questioning witness Garance Le Caisne who had been in contact with 'Caesar' and 'Sami' in 2014 and had documented and publicized their activities, by questioning witness Z10 who conducted the police questioning of 'Sami' during the preliminary investigation, by examining a plausibility report on the image files produced by a foreign forensic expert, by inspecting a portion of the photographs taken by 'Caesar', and by means of an overall forensic assessment of the photographs conducted by expert witness Prof. Dr. Rothschild.

(bb) Witness Garance Le Caisne, who underwent examination by the Panel, is a French journalist and publicist who was able to make contact with 'Sami' in 2014 via intermediaries and, also, through him, with 'Caesar' in the course of her work as a journalist, which regularly took her to Arab states, including to Syria in 2012. Based on interviews with both men regarding the origin of the image files and other research she conducted, she published a book entitled *Operation Caesar: At the Heart of the Syrian Death Machine*. The witness 'Sami' was questioned by witness Z10 on 9 November 2017 as part of the structural investigation conducted by the Federal Public Prosecutor's Office.

(1) The Panel does not doubt that witnesses Le Caisne and Z10, whom it examined in person, testified truthfully, or that the information provided by 'Caesar' and 'Sami' is accurate.

In particular, witness Le Caisne testified in detail about how she made contact with the witness 'Caesar'. This was done through an editorial assignment, its incorporation into the book project she was working on at the time, gaining the trust of a chain of intermediaries, including the key confidant of 'Sami' and 'Caesar'. She was able to conduct a detailed interview with 'Sami', she stated, and it was he who, ultimately, helped her establish contact with 'Caesar'. After telephoning 'Caesar' via Skype, she had several face-to-face meetings with him. The witness also comprehensibly explained what she understood 'Caesar's' motivation to be for

documenting the photographs: Syria was a country of absentees; the photographs provided both an insight into the fate of a large number of people who disappeared and invaluable help to their relatives.

The particulars that witnesses Le Caisne and Z10 provided about ‘Caesar’ and ‘Sami’ through witnesses Le Caisne and Z10 were detailed, both consistent in themselves and with each other and plausible; taken together with the other evidence in this body of evidence, they form a coherent overall picture. In particular, the expert’s analysis of the photographs (see (ee) below) proves the accuracy of the information. The mass burials of dead bodies bearing numbers, as described by various former employees of the regime (see (b) below) also confirms the information provided by ‘Caesar’ and ‘Sami’. Lastly, the fact that witness Z28 — who, in turn, relies on information given to him by clients as part of his work as a Syrian lawyer and victim representative — confirmed both the tasks of the Syrian military photographers before and after the start of the conflict and the numerical recording of those killed by means of notes stuck on their corpses or written on their skin circumstantially speaks to its truthfulness.

(2) Based on the information provided by ‘Caesar’ and ‘Sami’, as relayed by witnesses Le Caisne and Z10, the Panel draws on the following facts in its assessment:

Up until he fled Syria in August 2013, ‘Caesar’ was a senior member of the military photography staff in the Syrian military police. Both the photographic documentation department and the military police were based in the Qaboun district of Damascus. As part of his original job, ‘Caesar’ and his staff were required to document the members of the military who died or were injured as a result of an accident, crime or combat action. He was also responsible for the military hospitals in Mezzeh and Tishreen in and near Damascus, though not for the other military hospital in Harasta.

From spring 2011 the subject matter of this documentation work changed. In March 2011, a staff member drew ‘Caesar’’s attention to images showing civilians who had been shot and killed. Shortly thereafter he himself was called by the forensic medicine department to go the military hospital in Tishreen, subsequently also to that in Mezzeh, and was commissioned with documenting the corpses lying in the courtyard there, which bore the signs of torture and ill-treatment. He was required to take several photographs of each, that is three to five per corpse. The bodies had already been divided into groups of “martyrs” (which were identified by their real names and of which there were only a few), “detainees” and “terrorists”. The

corpses categorized as “detainees” and “terrorists” had numbers on them, either written on their skin using a felt-tip pen or on an attached piece of paper. A number or letter identified intelligence service branch in which a person had died — for instance “J” for “Jawiyya” (‘air’) to designate the Air Force Intelligence Directorate. Another number sequence comprised a prisoner number used to identify the person, and a report number issued by the military hospitals’ forensic medicine department, which was assigned to the corpses in ascending order up to 5000, after which the numbering started over with the addition of a letter. In a few isolated cases the dead had no numbers on them.

A forensic expert of the rank of colonel who was responsible for the Tishreen and Mezzeh hospitals was routinely required to record the physical characteristics of the corpses and to write a note regarding the alleged cause of death, which was euphemistically termed a “postmortem report”. A military photographer was called in, too. After assigning a forensic number, the photographer was required to take several photographs (generally between three and five) of each corpse. The forensic medicine department was then required to compile dossiers on the deceased, to which the photographs taken by the military photographers were added.

In the assessment of both ‘Caesar’ and ‘Sami’, there were two reasons why the Syrian authorities compiled these documents. Firstly, it was important for bureaucratic reasons to be able to issue a death certificate citing a natural cause of death which could, if required, be passed on to the victim’s relatives. Secondly, the documents served internal control purposes in that they ensured that the fate of those detained could be unequivocally verified — that is, that they had in fact been killed, and had not been released, for example as a result of corruption.

When ‘Caesar’ first became aware of civilian deaths in March 2011, he contacted ‘Sami’, a friend, and reported that he had received photographs of tortured corpses from his colleagues (“I am getting images that are so horrible”). In the opinion of both men, the state of the corpses which were laid out in the hospital courtyards did not concur with the medical report which ‘Caesar’ had received from the hospitals’ forensic medicine department. Similar photographic material had been seen previously, but it was “not so brutal”, according to ‘Caesar’. Once ‘Caesar’ had smuggled the image files out of his office on data storage devices he decided, together with ‘Sami’, to continue with their work so that would both of them could collate photographic material and get it out of the country. ‘Caesar’ and ‘Sami’ wanted to let the public know what was happening to the large numbers of people who were disappearing in Syria at

that time and to secure evidence. They both expected the Syrian regime to fall imminently and that its members would be prosecuted. Following this organizational phase, 'Caesar' and 'Sami' worked together from May 2011 such that 'Caesar' secretly stored, on USB sticks and memory cards, the photographs which he had taken or which he obtained from his employees, he smuggled them out of the authority and took them to 'Sami', who then stored them in various file folders on a PC and deleted the files on the storage media, which he passed back to 'Caesar'. Initially — that is, in May 2011 — the image files contained images of only a few corpses. However, they quickly increased in number to 10 to 20 per day. By 2012, around 50 to 70 corpses were being documented each day by the military photographers in Damascus.

Given the security situation and the fact that the internet was being monitored in Syria, getting the photographic material and files out of the country proved difficult and was the reason why different routes were used and why there were then different versions of the data. In 2012, 'Sami' had intermediaries compress the images (down to 250 to 300 KB per image) and upload them to the online platform Google Drive. After fleeing to Lebanon in July 2013, he was also given a hard drive which had been smuggled into Lebanon by the Free Syrian Army and which contained another compressed version of the photographs. Once he was in Jordan, and subsequently in Türkiye, 'Sami' then put the photographs into chronological order based on the numbers applied to the corpses. He then renamed the files and had intermediaries pass them on to the British law firm Carter-Ruck and Co., who in turn commissioned experts with carrying out a plausibility check. The original, uncompressed files (1 to 1.3 MB per image), in their original order, were first stored on an external hard drive and taken to Syrian territory controlled by the Free Syrian Army and then also uploaded to the Google Drive platform. These files were also made available to the law firm. A further 1500 images from July and August 2013 were smuggled out of the country on a USB stick by 'Caesar', who fled Syria in late September 2013.

In the light of this sequence of events, which it was not possible to determine any more precisely given that the Panel was not able to directly examine the witnesses 'Caesar' and 'Sami', the Panel assumes, in terms of chronology and numbers, that 'Caesar' had for the first time become aware of suspicious — though initially only isolated — corpses in March 2011 which provided an indication of abuse and killings by the Syrian security forces, that image files relating to between 10 and 20 corpses were secured each day as from May 2011, and that the number of photographs taken up until the end of the recording period in August 2013 successively increased. Given the total number of deceased people photographed (6821),

this sequence of events was readily consistent. Based on the statements of expert witness Prof. Dr. Rothschild, as set out below, the Panel assumes that most of these individuals died only a few days, or at most a few weeks, before the photographs were taken.

(cc) As confirmed to the Panel by witness Le Caisne, the London-based law firm Carter-Ruck and Co., to which the image files were sent according to 'Caesar' and 'Sami', commissioned a body of inquiry to conduct a forensic analysis. The body included, as its chairperson, Sir Desmond de Silva (former Chief Prosecutor of the Special Court for Sierra Leone) as well as Prof David Crane (former first Chief Prosecutor of the Special Court for Sierra Leone), Prof Geoffrey Nice (former Lead Prosecutor of the Former President of Yugoslavia at the International Criminal Tribunal for the Former Yugoslavia), Dr Stuart Hamilton (an expert in forensic pathology), Prof Susan Black (Professor of Anatomy and Forensic Anthropology) and Stephen Cole (technical director of a forensics investigation company) According to the investigation report, the experts had the opportunity to interview 'Caesar' in Qatar in January 2014 after which they were able to assess the authenticity of the photographs.

According to their written statements, after analysing a sample of the 5500 photographs of a total of 835 deceased persons, 3500 of them in detail, and comparing the statements made by 'Caesar' and 'Sami' concerning the origin of the images, the experts came to the conclusion that the witnesses' descriptions were consistent with the injuries as established, which were depicted on the images made available. The corpses in the photographs exhibited signs of strangulation, beatings, emaciation and injuries caused by electric shocks. Overall, the picture emerged, the experts concluded, that the deceased had very likely died of unnatural causes, specifically as a result of ill-treatment and torture, even though fatal injuries were, ultimately, only found in a minority of the cases investigated. Making a value-based assessment, the experts concluded that the material they analysed constituted "clear evidence of systematic torture and killing of detained persons by the agents of the Syrian Government."

(dd) Witness Z10, who led the police investigation, explained the origin of the photographs, which were printed out in the course of the present proceedings and were available on data storage devices. According to him, they are the uncompressed datasets that were taken out of the country via the Internet, supplemented by files that 'Caesar' created in July and August 2013 and that were then passed on by 'Sami' in September 2017 to the Federal Public Prosecutor General via intermediaries in Liechtenstein. According to witness Z10, these data

were also made available to expert witness Prof. Dr. Rothschild, who had already been commissioned as part of the preliminary investigation.

The Panel inspected a selection of the photographs. In its layperson's assessment, the overwhelming majority of them depict the corpses of naked young men lying on, for instance, either tarpaulins or dusty ground in an outdoor area. The corpses, some of which are severely emaciated, show signs of different kinds of injuries, including open wounds and, in the majority of cases, significant bruising and abrasions, some extensive, some also longitudinal, which could be an indication of beatings or whippings. The eyes of some of the corpses were missing. Further, the Panel also had access to an example of a form which the witness 'Caesar' had photographed and, according to witness Le Caisne, passed on to her. According to its introductory text, the form was used to document a death and was "issued on behalf of the military public prosecution service".

(ee) All of the photographs were subject to a forensic examination by the experienced expert witness Prof. Dr. Rothschild, Director of the Institute of Forensic Medicine at the University Hospital of Cologne. By way of his vivid and impactful presentation, which was backed up by photographic material taken from the 'Caesar' files, the expert gave his comprehensive expert opinion, which included brief descriptions of the people depicted in the photographs, including their age, sex and prominent features, a translation and a systematic representation of the numbers visible on the corpses, a description of the general condition of those depicted in the photographs, signs of ill-treatment, torture and the use of violence, and the presumed cause of death. The expert drew attention to the limitations of any diagnosis made on the basis of assessing photographs, which is no substitute for a postmortem, on the basis of only partial views of the bodies being available and the limitations of enlarging the photographic material. He gave examples of case histories based on individual images.

According to the expert, the majority of the photographs depict naked males lying on their back in an outdoor area. There are a total of 26 938 image files showing a total of 6821 distinguishable individuals. Based on the numbering of the corpses, their origin can be broken down as follows:

<u>Subdivision/Branch</u>	<u>Image files</u>	<u>Persons</u>
215	13 801	3551
216	1108	292
220	210	50
227	8001	2049

235	482	127
248	206	54
251	446	110
Air Force ("Air")	1515	352
Military police	177	46
Unknown	601	116
Miscellaneous	391	74

The photographs showed 6820 men and one woman, the expert stated. They were judged to include 329 very young people, possibly adolescents, 2342 people of a young age, 2178 middle-aged people, 1215 people of advanced age, 531 old people and 226 people whose age could not be determined. The overwhelming majority of the deceased had been photographed lying on stoney or sandy ground, the expert reported; some of them had blankets or tarpaulins under them. In some cases obvious injuries had been covered with clothing. The majority of the faces were well documented; where their eyes were missing this was due to them having been eaten by birds or insects following death. A total of 3912 people were photographed in their underwear, another 1547 were naked, the rest were fully or partially clothed, although their clothes were dirty and threadbare. One in 20 showed signs of professional medical treatment such as bandages. Some of the bodies showed signs suggesting that the person had died shortly after emergency surgery for ballistic trauma.

According to the expert, the photographs had obviously served less as medical documentation and more the general, rather superficial, 'registration' of the bodies. The fact that a systematic approach had been applied when taking the photographs in order to create a typical 'set' for each body — an overview, details of the head and neck area and the upper and lower half of the body — tended to suggest that instructions had been issued to that effect or that the same photographer had been used.

The expert explained in detail that, from an expert forensic medical perspective, it was to be assumed that all the photographs did in fact depict dead human bodies, although clear signs of death in the form of livor mortis, rigor mortis, putrefaction or injuries not compatible with life could be identified in only 88.6% of the cases. A large number of the people depicted in the photographs showed signs of the consequences of ill-treatment in the form of mainly blunt injuries, the expert reported, for instance stroke marks (i.e. parallel erythema stripes) together with burst capillary bleeding and haematomas. These could only have been caused by very severe, unbridled blows to the body, which would also have caused severe pain and even

meant the person lost consciousness. The expert believed that sticks, pipes, cables and similar items had likely been used for these beatings. Moreover, numerous bodies had large haematomas on the legs and feet, indicating that these areas of the body had been subjected to targeted blows. Besides stick-like implements, flat objects had been used. The intensity of the blows suggested systematic ill-treatment through beating or kicking, the expert stated. In some cases the impact marks blended into one another so that it was not possible to count the number of blows to the body. Based on the images of the injuries, the expert stated, it was also plausible that the people had been hit severely and several times whilst physically restrained. Judging by their outward appearance, many of the injuries were explainable by having been inflicted simultaneously. In a few cases it was evident that fingernails or toenails had been removed by mechanical means, in the expert's assessment an extremely painful process.

In many other cases the expert found indications of suffocation following the application of mechanical pressure to the neck, in particular significant force to the throat, in some cases with extensive haematomas across the entire neck area together with large abrasions, which could have been caused by massive beating and kicking of the neck or by someone standing on the person's neck, he reported. The pattern of the haemorrhages suggested that cane-like objects had been pushed against the neck, possibly from behind. According to the expert witness, the extensive nature of the abuse could have caused bleeding and swelling, as well as compression of the trachea and larynx and constriction of the carotid arteries. In some cases, whitish foam was visible on and around the mouth — a sign of suffocation or drowning. The expert described mechanical dislocation of the airways as a manner of death that was accompanied by a massive fear of dying ("a feeling of annihilation").

A little over half of the people depicted in the photographs had such injuries, the expert stated. Apart from these injuries, more than 60% of those depicted were in an at times considerably reduced state in terms of their general, nutritional and health condition. Their bodies showed signs of extensive emaciation and wasting, which, in the expert's assessment, was most likely a consequence of food deprivation. Numerous bodies also had very severe signs of malnutrition together with severe weight loss owing to the body using up body fat and to muscle atrophy. It was in some cases obvious, the expert explained, that the people had starved to death. This was specifically to be assumed on the basis of the pronounced emaciation of the body which caused the skeleton to protrude and generalized muscle atrophy. The expert described starving to death as a lengthy process with a considerable amount of painful paraesthesia. Many bodies also had signs of extensive skin disease, such

as were caused by a lengthy and extensive lack of hygiene in combination with injuries, malnutrition and parasite infestation. It was obvious, the expert reported, that many of the people depicted in the photographs had needed urgent medical care and treatment but had not received it. The expert also drew attention to the multitude of signs of shackling on their wrists, plus strap-like injuries and evidence of blindfolds.

Some of the bodies had no or only minimal externally visible injuries or diminution, the expert reported. Since the majority were young and middle-aged men, who also showed no signs of any fatal illness, then, in view of the context in which the photographs had been taken, they could have suffered asphyxiation, for example owing to a lack of oxygen in the air or interventions involving gas, poison, drowning or suffocation by gently covering the respiratory organs. A few of the bodies showed signs of ballistic trauma following gunshot wounds or wounds caused by an explosion; in a few cases numerous bullet wounds in one region of the body or signs of close-range gunshots could also be considered to have been caused by execution. A few corpses (52) showed signs of (electro-)thermic impacts. None of the bodies could be regarded as having suffered a natural cause of death.

As regards the timing of the deaths, the expert explained that storing the corpses outside and the absence of any green discolouration in the area around the lower abdomen, which occurs at an outdoor temperature of 21 degrees Celsius or above, was an indication either that the corpses had first been kept in cold storage or that death had occurred shortly before the photographs were taken.

The Panel follows the expert's findings and uses them as the basis for its assessment. These findings, for each of which the expert gave detailed oral explanations and which were evidently based on his experience and expertise, were the result of a meticulous investigation and comprehensive explanation of the photographic material — some of which the Panel inspected while the expert report was being rendered — and are consistent with it.

(ff) The Panel has no doubt as to the authenticity and origin of the photographs as presented to by witnesses Le Caisne and Z10, and indirectly by witnesses 'Caesar' and 'Sami'. In its assessment, the photographs prove that, from May 2011, a large number of deaths occurred in the Syrian regime's various intelligence service branches on account of detainees being tortured to death, being killed by food deprivation or suffocation, or being executed there.

(b) Numerous witnesses corroborate the large number, documentation and treatment of the corpses of the victims of the regime:

(aa) Expert witness Z29 testified that he had met two witnesses in the course of his research who reported that there was a “handling facility for corpses” in Homs. They had, he stated, explained that the corpses had numbers on them and were photographed and registered. This was in early 2012; the witnesses were interviewed in April 2012. One of them was young and was deployed as a conscript; he gave the impression of being very distressed. He had, the expert witness reported, described having to pack body parts into plastic bags in a military hospital. From the beginning of March 2012, corpses were constantly being delivered, piled metres high in an inner courtyard. He was required to photograph the corpses, attach numbers to them and then pack them up. A doctor who had defected described the collection point in a similar manner. The dead originated from a district of Homs, which had declared its independence, from checkpoints and a large number came from the prisons, in particular those operated by the Military Intelligence Service and the Air Force Intelligence Directorate. The number of corpses delivered per day is said to have fluctuated between 30 and 400; in some cases, they were transported to the hospital in lorries. The hospitals in Tishreen and Harasta were also well known in that regard. Another person witness Z29 talked to reported being allowed to search for his brother’s corpse. Because he was a person with influence he was assigned several security personnel so that he could spend hours looking through the corpses. However, according to witness Z29, the person he talked to was unable to provide any further proof.

The Panel regards this statement as evidence of a system which was applied across the country, and which was geared to recording a large number of people who died at the hands of the security authorities.

(bb) By his own account, witness Z37, who had already testified anonymously in the course of the preliminary investigation, was a member of the administrative staff in the cemeteries department in Damascus. He testified that he was recruited by senior officers in the security services in May or June 2011 and that 10 to 15 staff nominated by him were tasked with assisting in the burial of corpses in mass graves. He himself had had to document the corpses which were delivered. He had done this job from 2011 until 2017, he said.

(1) The witness stated that, when he first began this job in May or June 2011, he and a group of employees from his agency were sent to the military hospitals in Tishreen and Harasta, where refrigerated trucks were waiting to transport corpses. The trucks were driven to a place that he did not at first recognize. During a second phase of his job, he received lists several times a week and was picked up from his place of work by a patrol and taken to mass graves.

Large trenches up to six metres deep had been dug there, into which the corpses were tipped. Eventually, he drove himself and his staff members there in a minivan which they were provided with; they were required to check the lists they were handed by the drivers of the trucks in which the corpses were delivered. He and his staff were given a vehicle which belonged to the intelligence service (a Nissan Sunny) so that they would not be stopped at checkpoints. The witness stated that this work, which did not change over the next few years, had begun four to five months after he took on the original job, that is between September and November 2011.

The witness stated that the regular transports from the military hospitals in Harasta and Tishreen had arrived at the mass graves around twice a week. That was where the corpses which originated from the branches accumulated. Corpses came in from all the branches. The witness named "State Security", which he said included an "Administration" he did not designate any more precisely, the "AlKhatib Branch" and Section 40, the Palestine Branch, branches in the regions, Branch 215 and patrol branches belonging to the Air Force Intelligence Directorate. The corpses had numbers written on their forehead or chest, he testified. They were then driven to the mass graves in Najha (around 14 kilometres south of the centre of Damascus towards the airport) and al-Quteifa (alternative spelling Al-Qutayfah) around 40 kilometres north-east of the city centre on the motorway towards Homs. He had heard from a digger operator that there was another mass grave near Mezzeh Military Airport for which the Air Force Intelligence Directorate was responsible; the digger operator had excavated pits there and in other places. The burials that the witness was part of took place at night; they left at around 4 a.m. or 5 a.m. and returned between 8 p.m. and 9 p.m..

The cemeteries were depots that were inaccessible to civilians and were enclosed — in al-Quteifa by a mound of earth around two to three metres high, and in Najha by a wall seven to eight metres high. The witness stated that he and his staff had to pass through two checkpoints. There were armed security service patrols on the sites of the cemeteries. He himself had stayed away from the actual graves. However, he had spoken to digger operators who had talked of excavated areas up to six metres deep. The drivers of the refrigerated trucks and his other staff members had also talked about the trenches which were dug and which he himself had also seen from a distance. The refrigerated trucks were bigger than a freight container, the witness stated, and approximately 11 metres long. They had each held between 700 and 750 bodies, which were stacked inside. The trenches were between 100 and 200 metres long and between 2 and 3 metres wide; some were only 50 metres long. Each of the trenches was big enough to hold between 20 and 50 truckloads. When a truck

arrived, the doors were opened and the corpses were pulled out and thrown into the trenches haphazardly. The stench was abominable, the witness reported. Those of his staff members who had had to handle the corpses had usually worn a gown and a mask, but the work had still made them ill. His staff reported that the corpses, which were all naked, were covered in blue impact marks and bloody wounds. They had seen the signs of torture, such as wounds resulting from electric shocks and extracted fingernails, sometimes strangulation marks, presumably from execution by hanging. Some corpses were handcuffed and shackled using cable ties. The penis of one male corpse had been cut off. There were also corpses of women and children. The witness himself had once seen a dead woman who was holding a dead child. He had nearly broken down at the sight of it.

The staff tasked with unloading the corpses also reported that some of the bodies were already decomposed and that their faces were no longer recognisable, the witness testified. This was due in part to chemicals having been applied to the faces. Some of the bodies were "burst open"; the staff saw "rivers of blood and maggots" when they emptied the trucks. The witness said he could smell the stench from 100 metres away. The first time he was unable to eat anything for several days. It was only the corpses from the hospital which had smelled so badly, not those from the prison in Saydnaya, because they had been executed the same night, as an escort officer had told him. There had, the witness stated, also been cases in which the people executed were still alive and an officer had given the order to run them over with a wheel loader.

The witness's task had been to "add corpses to the lists". He was given the lists by the officers who escorted the vehicles delivering them and the refrigerated trucks. At the burial sites, the witness then entered in the documents the date, the origin of the individual corpses (i.e. the intelligence service branch) and the total number of dead, as told to him. For example, he was told "Palestine Branch, put down 150!" or "Section 40, put down 100!". His staff told him that the corpses also bore a number, that is, the number of the branch. He had to hand the completed lists over to an officer following the burial. Before that he made a copy which was to be passed on to his supervisor. According to the numbers attached to the corpses and the documents he was given, the corpses had arrived from all sorts of intelligence service branches, including the Al Khatib Branch. In 2011 and 2012, bodies from the intelligence service departments were usually brought in twice a month, but sometimes only once a month or not at all.

The witness was not able to provide more precise figures for the number of victims. According to the information that he had provided during police questioning, between 3500 and 5000 bodies were delivered from the Al Khatib Branch and Section 40 between June and December 2011. During the main hearing, the witness, emphasizing that he could not give precise figures, estimated the number of dead at between 3500 and 5000 deaths for the whole of 2011, with an upward trend in numbers. During the preliminary investigation he had put the total number of those buried in the period between 2011 and 2017 at between 1 and 1.7 million. At the main hearing he stated that on an unknown date an officer had quoted a figure of 1 million dead. However, his personal view was that the figure could be as high as 2 to 3 million, based on what his staff had reported.

The witness was unable to provide accurate information as to how often per week he was deployed to do this work. There were at least two regular deliveries per week from the military hospitals, he stated. In addition, there were also special transports of those executed in the prison in Saydnaya, and special transports after which the burials had been supervised by high-ranking officers. The staff who accompanied him on the job were tasked with removing the bodies from the trucks. They were all civilian administrative staff, he reported, and were forced to work there.

(2) Owing to his still vivid memories of events, the witness was visibly moved whilst making his statement before the Panel and stated that he still had nightmares about them. Witness examination had to be suspended at an early stage due to the obvious psychological strain he was under and was resumed on the following day of the main hearing. Although the witness showed some understandable hesitation regarding the number of deliveries of corpses and the number of dead and their administrative and technical documentation, the Panel's view is that this does not undermine the credibility of his statements, which are consistent with the results of the investigation. The witness made discernible efforts to recall memories from years ago. His testimony before the Panel was initially incoherent, fragmentary and vague. However, when asked follow-up questions he was always able to provide more concrete, structured information which formed a logical picture and was consistent with what the witness had stated in the preliminary investigation. Occasional inconsistencies — for instance when the witness first stated that he was collected and driven to the mass graves and then later corrected himself and said that a vehicle had been made available to them — were of minor relevance and easily explained by the many years he spent doing his job and his changing workflows.

The witness's statement forcefully demonstrates the industrialized 'processing', as it were, of people killed by the Syrian security services as the conflict went on, in the form of their continuous collection, registration and, ultimately, disposal in mass graves dug over many years through a considerable mechanical effort. Consistent with what the witness stated, and also in view of the outcome of the taking of evidence in the 'Caesar' evidence (which is consistent with the processes described by the witness), the Panel concludes, as regards the chronology of events, that the witness and other staff in his authority were recruited as early as May or June 2011 and that the number of corpses continually grew after that, until it plateaued at a high level in the second half of 2011. It is not possible to determine precisely the number of victims of the regime who were buried in the mass graves. In view of the frequency of the deliveries reported by the witness and the load capacity, however, it can be assumed that at least 5000 people died per month from mid-2011 onwards, with the number likely increasing thereafter.

(cc) Witness Z38, a trained computer scientist and intelligence officer of the rank of lieutenant, worked for the Syrian General Intelligence Directorate from November 2010 to early 2012. He stated that he initially worked in the "Information Branch" and, from 15 November 2010 until the end of 2012, in the "mail room" of Branch 295, in the Najha branch office south of Damascus. He was then transferred to another branch office in "Sid Zaynab" (phonetic spelling).

(1) The witness testified that, from some point in the second half of 2011, which he was not able to specify more precisely, he had in the course of his work in the mailroom in Branch 295 regularly received papers listing deceased persons that were used to announce the transports of corpses. These lists were passed on to him from hospitals, for instance the Harasta Hospital or Hospital No. 601. They included the number of dead and, for each dead person, an identification number, a number to indicate the intelligence service branch they originated from and a date. The papers, the witness stated, bore the stamp of one of the forensic experts employed in the military hospitals. The names of the dead were not included. The numbers of the branches cited were mainly 215, 235, 251, 285 and 293; the numbers referred to the intelligence service branches from which the deceased originated. The lists were intended for the Head of Branch 295, although the witness had also been able to read them. The lists, an example of which the witness produced during the main hearing, were used in the preparation of funerals.

The witness stated that Branch 295 was responsible for the whole region and thus also for the graves. The lists were not received on a daily basis but cumulatively for 50 to 100 people, sometimes considerably more. They were assigned to the refrigerated trucks and checked against their content. The numbers on the corpses had to be kept distinct from the numbers which were given out to those relatives who wanted to find out what had happened to the deceased, the witness stated. These numbers were chosen at random and communicated in pretence only. They were just as fake as the information which was given to the families that the victims had died a natural death. The witness also stated that the corpses transported to the mass graves had come exclusively from Damascus and its surrounding area. Most of them had come from the intelligence service branches, corpses were also delivered directly from the Mezzeh, Tishreen and Harasta military hospitals.

Around 4 a.m., between 50 and 300 bodies were taken by refrigerated lorry to pre-prepared mass graves excavated by diggers near Najha, which the witness identified on a satellite map. Between April 2011 and January 2012, the lists to which he had access had included more than 8400 dead. However, the deliveries had not begun in earnest until late 2011. There were two mass graves, he stated. One was primarily for people who had been executed and for fallen soldiers. The other was reserved for those who died in the intelligence service prisons. The witness stated that he had not had direct access to the mass graves. However, he was able to watch the diggers excavating them from an elevated position in the cemetery. The area was cordoned off and separately guarded "by Iranians"; the drivers of the trucks transporting the corpses had special authorization to pass through.

(2) The Panel considers this witness, too, to be credible and his statements to be believable. The witness reported openly about his career within the intelligence service, including that he had wanted to study to become an officer but had not been accepted. By his own account, the witness was reticent to testify on account of pressure being exerted on his family. However, when he was asked follow-up questions he was, although sometimes laboriously, then repeatedly able to provide detailed information which was internally consistent and concurred with the outcome of the taking of evidence as to the fate of those killed and their documentation. The witness was able to pinpoint the exact location of the mass graves on aerial photographs. The local conditions are consistent with the analysis of satellite images conducted by the Federal Criminal Police Office. Further, at the main hearing the witness was able clearly to explain the sketches he had already made during his police questioning relating to the location of Branch 295 and the mass graves.

Although during the main hearing the witness initially gave incomplete details of the circumstances of his acquaintanceship and meeting with the former co-defendant A., this does not undermine the credibility of his statements: the Panel gained the certain impression that he had kept other facts concerning Eyad a secret for fear of what would happen to his relatives given the targeted threats made by members of the co-defendant's family, which he described in detail. Further, based on the totality of information provided by the witness, the Panel takes as its basis that in addition to his office job in a mailroom he was also responsible for receiving reports about the delivered corpses for further administrative processing.

The information provided by this witness, too, confirms the picture that the corpses of killed detainees from the intelligence service branches were amassed at central locations, in particular the military hospitals, where they were recorded before being loaded onto refrigerated trucks or other vehicles, driven to mass graves and buried there. The lists of the dead to which the witness testified and that obviously originated from a forensic expert or his office fit with the photographic record provided by the 'Caesar' files and the bureaucratic documentation of those killed, which it likewise evidences.

(dd) Witness Z33, a former employee of the Syrian General Intelligence Directorate who had worked in a documentation centre at the central intelligence headquarters in Kafr Sousa in 2011 and 2012, stated that many people had died in intelligence services facilities. He knew that to be the case in Branch 285 in particular. He had seen corpses in the Branch's courtyard. There were refrigerated trucks in which corpses were transported, he stated. The bodies were brought in from the branch offices of the intelligence services before being collected and taken to an "administrative centre"; he had learned this from talking to colleagues. A register of deaths was kept that was only intended for the administration. The witness stated that the dead had been treated in this way "since the beginning of the uprising", which he dated to March 2011. He also saw corpses in the military hospital in Harasta. They were just lying around on the floor, exposed to the sun, he said. One of the corpses had visible signs of torture. Relatives were usually not informed when someone had died, the witness reported. Enquiries were either ignored or answered to the effect that the person had never been detained. Relatives were also sometimes falsely informed that prisoners had died of a natural cause.

As mentioned above (see III. 1. (c) (bb) and VII. 2. (c) (dd)), the Panel critically assessed the testimony of witness Z33 on account of his possibly being influenced by others and his tendentious self-exculpatory statements. Nevertheless, the aforementioned particulars are

consistent with what he stated in the preliminary investigation. They are detailed and in keeping with what he was able to learn in the course of his duties. The Panel therefore takes them to be true and uses them as its basis.

(ee) Lastly, witness Z36, as a former employee of the General Intelligence Directorate, also stated that the bodies of people who died in the intelligence branches were taken to hospitals and stored in refrigerated trucks there. If there was not enough space, they were simply thrown onto the ground. Certificates were issued stating that the people had died of an illness. Lists were drawn up, the corpses were each marked with a number, photographed and then taken to mass graves. Hardly any of the corpses were handed over to families, the witness testified.

(c) The analysis of aerial photographs of the region around Damascus conducted by the Federal Criminal Police Office is consistent with the aforementioned witnesses' statements and with the large number of dead to be buried which also follows from the 'Caesar' body of evidence.

According to witness Z39, who was involved in the investigation, following the testimony of witness Z37 aerial photographs were inspected for signs of the mass graves alleged by the witness to be in Al Kteifa. The witness had indicated to the Federal Criminal Police Office its location on a section of a map, at the coordinates 33.756887 and 36.603874. Satellite and aerial photographs of the area in question, which are available on Google Maps and Apple's image service, were then secured; an area that had been worked on was visible on these photographs. Some of the area, which was enclosed by earth deposits, had been levelled and some of it had mounds of earth on it. On the right-hand (eastern) side of the higher resolution images provided by the Apple service it was possible to make out what was likely a digger and a long, narrow pit which, according to the indicated scale, was around 100 metres long. The Panel convinced itself of this fact by inspecting the images, to which reference is hereby made pursuant to section 267 (1) sentence 3 of the Code of Criminal Procedure (case files Vol. III. 5, p. 483–485 regarding images 1 to 6).

The Panel is conscious of the fact that the evidential value of these images is diminished because, as witness Z39 also testified, it is not possible to establish when they were taken. The witness, however, also testified that the Federal Criminal Police Office had commissioned the German Aerospace Centre [*Deutsches Zentrum für Luft- und Raumfahrt*] to conduct a time series analysis. The analysis included a photograph dated January 2016 which was

almost identical to the secured images, meaning that it could be assumed that the photographs were taken around the turn of 2015/2016. The time series study also showed that pits which had been dug over the years had again and again been filled in, others had been dug and a wall had finally been erected around the area. The pits were up to 120 metres long and between 3 and 5 metres wide. It also emerged that the worked area had increased in size from 19 000 square metres in 2014 to 40 000 square metres in August 2019.

The Panel is convinced that these are the mass graves described by the witnesses. The photographs provide proof of their existence at least from 2014 and circumstantially confirm the information provided by the witnesses relating to the period before that. To the extent that no structural changes could be determined in the area in the period before 2014, this does not contradict what the witnesses stated, especially since, according to witness Z39, there was a second, considerably larger, area close by which had not yet been investigated.

(d) The Panel evaluates the outcome of the taking of evidence presented in (a) to (c) above to mean that the Syrian regime was responsible for the deaths of a growing number of people who were killed during protests and in prisons and intelligence service branches in the period after April–May 2011, and that it sought to “dispose of” them secretly on a massive scale and in a manner that violated the dignity of the deceased, disregarded their individuality and denied them a peaceful resting place. Documenting those killed did not serve their individualization but was merely a bureaucratic means of controlling the implemented procedures and of preventing rescue measures enabled by corruption. This ties in with the fact that relatives were prevented from searching for people who had disappeared by being given arbitrarily assigned numbers. The evidence in this regard fits seamlessly into the chronological sequence of the conflict’s escalation. It proves that, in line with the instructions which the leadership handed down to the security authorities and which were implemented by the latter, from late April 2011 at the latest violent action was taken against protests by the civilian population, leading to a rapidly growing number of fatalities.

#### 4. Military hospitals

In the light of the above, it follows that Harasta, Tishreen and Mezzeh military hospitals were also involved in the ill-treatment of detainees, simultaneously serving as collection and documentation centres for those murdered in various intelligence service facilities. This is substantiated by the statement of expert witness Thurmann, and above all by the taking of evidence on the origin and subject matter of the ‘Caesar’ files set out above. Moreover,

witness Z44 described his torture and the ill-treatment of other prisoners transferred to Harasta military hospital. Witnesses Z38 and Z37, who were involved in the registration of murdered individuals and their burial in the mass graves in the Damascus area, stated that the bodies originated from the military hospitals. Witness Z28 stated that surviving detainees had reported that sick prisoners were taken to military hospitals, where they were tortured and murdered. Geographical location was important: Since Branches 215 and 248 are located near Mezzeh Military Hospital, the sick and injured, as well as the dead, were taken there. Harasta and Tishreen hospitals were located closer to Branches 251, 227 and 235, and responsible for taking detainees from there.

The testimony of witness N5 was regarded as circumstantial evidence, although it could not be verified in more detail. He stated that he had posted recordings of murdered individuals, received from a third party in 2011, to his YouTube channel, which was critical of the regime. The recordings were of corpses from military hospitals, as well as individuals who had been arrested and taken to intelligence service facilities. Local mayors were subsequently informed that they could collect the bodies from Tishreen military hospital. The witness stated that this was done in consultation with relatives. Those collecting the bodies photographed them before washing them and handing them over to relatives. The statement suggests that some bodies were handed over to relatives instead of being buried anonymously in mass graves.

#### **IV. Re. the findings as to Branch 251 and Section 40 of the Syrian General Intelligence Directorate**

##### **1. Branch 251**

The Panel relied on the statement provided by the Federal Intelligence Service dated 16 June 2016 as the basis for its assessment of the position of Branch 251 within the organizational structure of the Syrian General Intelligence Directorate. The Panel also relied on information provided by former regime employees and expert witnesses engaged in journalism or with ties to the Syrian opposition to determine the structure of the Branch, its remit and premises, and the conditions of detention and the treatment of detainees during the course of the conflict in 2011 and 2012. The witnesses were able to provide detailed information about the modus operandi and conditions of Branch 251 of the Syrian General Intelligence Directorate based either on their personal experience of working for the Syrian intelligence service or for the Branch itself, or on knowledge acquired through years of political activity or journalism.

The information provided by a large number of witnesses detained in Branch 251 was of key importance over and above that. Based on their own observations, these witnesses were able to give the Panel a powerful, often harrowing, insight into the conditions which prevailed in the Branch and how those detained there were treated.

(a) In sum, former employees of the regime, members of the opposition and witnesses actively engaged in journalism testified before the Panel as follows:

(aa) Witness Z36, who testified anonymously and who, by his own admission, worked for 21 years in an unspecified branch of the General Intelligence Directorate, provided comprehensive details concerning the structure and remit of Branch 251.

(1) According to the witness, Branch 251 was one of the General Intelligence Directorate's central branches responsible for the province of Damascus. Besides its branch number, it was also referred to informally as the "Al Khatib Branch" and "Internal Branch". It was a security branch covering the city of Damascus and the surrounding area. The Branch had a wide range of other responsibilities, the witness stated; there were various subdivisions such as those for interrogations, students, workers, parties, weapons, religions, an economic subdivision and another for the security of Ministries, as well as Section 40, which was responsible for patrols. Further, the witnesses stated, there was also an external sub-branch and field offices across the regions. The main purpose of the Branch was to monitor parties and political groups — including by means of infiltration — and to engage in preventative work so that they were unable to harm the Government. Whilst the other branches of the General Intelligence Directorate were housed in a single complex of buildings in Kafr Sousa in Damascus, Branch 251 was the only one to be based elsewhere, the witness reported. The Branch was close to the Red Crescent hospital. Historically, it had been under the leadership of Major General Mohammed Nasif. According to the witness, he was succeeded by Tawfiq Younis, who he believed was still in charge today. Branch 251 operated independently, the witness stated, although formally it was part of the central branch of the General Intelligence Directorate. The witness drew up an organizational chart of Branch 251 to which he added the names of the respective senior officers.

Branch 251, including its field offices, had between 2500 and 3000 employees, the witness further stated. It employed around 50 interrogation officers who worked in shifts. Interrogations were conducted day and night without interruption. The Branch had various prisons, the witness reported. A distinction had to be drawn between the central prison in the

basement of the branch and prisons located elsewhere. The latter were assigned to the subdivisions, which were responsible for arresting people who were eventually taken to the Branch. Branch 251 had the worst reputation in the whole of Syria. That had always been the case, even before “the start of events”, and was still the case.

According to the witness, suspects were specifically taken to Branch 251 so that they could be interrogated there. Its role was similar to that of Branch 285, the central interrogation branch for the whole of Syria. It was where the investigative work done by all the cities and governorates in Syria was collated and then shared with the Head of the General Intelligence Directorate, Ali Mamlouk. Accordingly, prisoners were sometimes transferred from Branch 251 to the central branch so that investigations could continue there.

The hierarchy of the Branch was such that there was a head of branch, a deputy head of branch and a head of the interrogation subdivision; interrogators were lower down in the hierarchy. Torture was ordered by the head of the investigations subdivision, who in turn took orders from the head of branch. According to the witness, where this was done in writing, coded wording was used, such as “rigorous interrogation methods”. At the end of the interrogation a decision was taken about what was to be done with a prisoner, that is whether he was to be taken to a prison or whether further investigations were necessary. The interrogator submitted a proposal to the head of branch.

The prisoners detained in the prisons belonging to Branch 251 were treated in a similar way to those held in other intelligence service prisons. A “welcome party” was held when they arrived, the witness stated. This meant that whoever was arrested was beaten and kicked by every member of staff from when they were arrested until they arrived in their cell. The means of torture applied in Branch 251 were similar to those used in other facilities, the witness stated. In Syria there is no presumption of innocence; everyone was guilty from the outset. If an interrogator did not like an answer, torture was inflicted. It could be said that there was not a single interrogation of a detained person either in Branch 251 or in Branch 285 which did not involve torture. The outcome was a foregone conclusion, the witness stated, which was merely supposed to be confirmed by the interrogation. Prisoners had no civil rights whilst they were in the Branch. They were, for instance, only allowed to use the toilet if a guard gave them permission to do so. Prisoners often soiled themselves as a result. Sick or injured prisoners received no treatment. They were left lying on the ground until they died.

(2) The Panel largely relies on the witness's testimony as the basis for its assessment. Owing to the danger he was in, the witness was permitted not to provide any details which could reveal his identity, and he thus made general reference to his knowledge being based on his many years of working for the intelligence service and to the fact that he himself had observed the conditions of detention which prevailed in the Branch and certain orders issued by decision makers. In view of the comprehensive and detailed information provided, the Panel is nevertheless not concerned that the witness gave false testimony, specifically that he may have played down or artificially dramatized the conditions. As regards the witness's report of the appalling conditions in the intelligence service branches, he provided additional details which were confirmed by many other witnesses, both those close to the regime and those critical of the regime. The Panel only treated with caution the evaluative statements which the witness made, for instance when he described Branch 251 as the "most terrible" in the Syrian intelligence service, especially since such ascriptions conflicted with other things that he said, for instance that the intelligence services' modus operandi had become aligned over the course of the conflict.

(bb) According to his statements, witness Z40 was an officer in the guard units at Branch 251 and was responsible for some of the guards deployed there. After graduating from high school, studying engineering and working as a teacher at a secondary school, he was called up for military service in May 2010. After training from June to November 2010, he worked in the Al Khatib Branch in 2011 and 2012. He deserted on 5 August 2012 because he was unhappy about the oppression in Syria and wanted to "stay out of trouble". His task was to guard the outside of the Branch. In the course of his work he had got to know officers working inside the branch. He had also seen prisoners being brought there.

(1) According to the witness, Branch 251 was the security branch of the General Intelligence Directorate, responsible for Harasta and Douma, among other cities. The witness gave precise details of the location of the Branch on Baghdad Street in Damascus, near the Red Crescent hospital. The property was enclosed by wall; there was a checkpoint and a barrier at the entrance. As the witness explained with a sketch, the Branch covered a large area which included parking for staff and an inner area comprising two multistorey buildings and a courtyard. The subdivisions were housed in the buildings. The office of the Head of the Interrogation Subdivision was located above the prison, which was in the basement.

The witness also provided information on the structure of the Branch. It was headed by Tawfiq Younis and organized into subdivisions. The Head of the Religions Subdivision was

Lieutenant Colonel XXX, the Head of the Economic Subdivision was Lieutenant Colonel XXX. Brigadier General XXX was Head of the Subdivision for Political Parties, Lieutenant Colonel XXX was Head of the Media and Universities Subdivision, and Senior Lieutenant XXX was Head of the Communications Subdivision. The defendant was Head of the Interrogation Subdivision, initially holding the rank of colonel and latterly brigadier general. The Deputy Head of Branch was Lieutenant Colonel XXX.

After the “start of the unrest”, the number of staff, which the witness estimated at between 80 and 100, doubled. The witness initially stated that this was in late 2011, but after further consideration said that it was March 2011 and that the number of prisoners taken there increased in April 2011. From that point onwards, between one and three vehicles arrived every day, mostly bringing arrested protestors, many of whom were from Douma. The vehicles were usually 15 to 20-seater buses, but sometimes up to 40 people were crammed into a minibus.

From the start of the unrest prisoners who were arrested at demonstrations and taken to the branch in buses were subjected to beatings on the square in front of the branch for between half an hour and up to four hours. Instruments such as batons and tasers were used; when the latter were used, prisoners simply fell to the ground. The detentions and admissions did not stop throughout the entire period of unrest.

Whenever he was on duty in the basement prison and crossed the courtyard to the canteen or to a dormitory, through the basement windows he heard screams of pain and those being tortured pleading for the ill-treatment to stop (“For God’s sake, I didn’t do anything”). On occasion he also saw a blindfolded prisoner walking across the square with a guard. A friend had told him about the conditions in the prison, which he had himself never been in. The witness himself had not seen the torture which was taking place in the offices or in the basement, he stated. However, he had heard that prisoners were beaten subjected to other forms of ill-treatment. They were in a catastrophic state when released. He had also once seen a lifeless person being taken away at night.

(2) The Panel also largely based its assessment on the information provided by this witness. To the extent that it was based on what he himself experienced, the witness vividly described things and at the same time plausibly justified why he — a guard deployed outside, albeit in a senior function — was not able to provide any extensive particulars. In this respect, his statement was broadly consistent with the information he had provided during his hearing at

the Federal Office for Migration and Refugees, as relayed by witness Z41, and during his questioning at the Federal Criminal Police Office, as relayed by witnesses Vorbrucken and Z56. The Panel was not able to accept the witness's estimate as to how many people were working in the Branch. This is barely compatible with the size of the building and the number of subdivisions housed therein, and also stands in contradiction to the more plausible information provided by witness Z36. It was also unable to accept that the subdivisional heads, including the defendant, held the rank of brigadier general; this does not appear credible because they would then hold the same rank as the head of branch and, in respect of the defendant, this contradicts other evidence provided. However, the Panel accepts that the Deputy Head of the Interrogation Subdivision referred to as "XXX" is Z5, who was named by other witnesses and by the defendant in his submission.

(cc) Witness Z33, a former intelligence service employee who worked in the General Intelligence Directorate for 30 years, including 13 years in Branch 251 from 1985 to the late 1998 (see also III. 1. (c) (bb) and VII. 2. (c) (dd)), stated, with regard to the structure of Branch 251, which he also called the "Internal Branch", that it had been headed by "Major General Tawfiq Younis" in 2011 and 2012; the defendant R. was Head of the Interrogation Subdivision. The Branch had its own premises, consisting of two building complexes, in the centre of Damascus on Baghdad Street, near a hospital. The prison was expanded in 2011. The witness described the multistorey building complex and the layout of the offices of the subdivisions in more detail. In the course of his archiving activities, he had seen reports from Branch 251 that proposed who should be arrested and how detainees should be treated. Some of these proposed "continuation of detention", while others stated in code that "extended interrogation" was to be conducted; occasionally, releases were ordered. Furthermore, the witness explained a sketch of a typical report from Branch 251, which he had made during the preliminary investigation. Among other things, it said: "It has been established that [name] has taken part in demonstrations". There followed a summary of the results of the interrogation, running to several pages, which was intended for the head of branch. The report ended with a proposal for continued detention, release or — in the case of individuals who had not yet been detained — arrest. There was no explicit written instruction to use torture, but to obtain information "by whatever means". Torture had undoubtedly been used in Branch 251; the witness also recalled two deaths.

The Panel held the witness's aforementioned statement to be true despite the specifics already described in the above (see III. 1. (c) (bb)) and drew on it in its assessment. The witness had initially given contradictory testimony. On the one hand, he was able to recall

certain documents concerning the defendant — which by his own account had passed through his hands and the content of which he was able to recount. On the other, when asked general follow-up questions by the Panel as to whether interrogation transcripts had also passed through his hands, he claimed a general lack of capacity to recall such things on account of the large number of documents. However, after explaining the reason for his behaviour when testifying — fear of reprisals — the witness was prepared to provide further particulars and testified as to details contained in documents relating to Branch 251 which he had initially allegedly not been able to remember but which he was then able to present in detail, consistent with what he had stated in the preliminary investigation, and was able to further explain when asked follow-up questions. The Panel thus assessed the information provided as based in fact. It also regarded the detailed description of the site, its structural features and the organizational structure of Branch 251, which the witness described, as based on his own observations, since it was provided in as much detail as and consistent with statements made by other witnesses.

(dd) Regarding the function of Branch 251, witness Z30, a longstanding member of the opposition, stated that the Al Khatib Branch played a “comprehensive, holistic role” in the Syrian security apparatus. He claimed that it was established in the early 1970s and was in fact a local Branch with responsibility for Damascus. However, the Branch began to play an increasingly important role. For over 20 years, it was led by Mohammed Nassif Kherbek. The Branch was ultimately responsible for all domestic and foreign policy, including coordination of the activities of the Iraqi Shiites and dealing with political figures in Lebanon. Kherbek turned into something of an “octopus”; he had fingers in every pie. He also had a direct line to President Hafiz al-Assad, the witness testified.

(ee) Witness Z34, a former employee of Branch 285, described the relationship between that Branch and Branch 251 as follows: those arrested were transferred from Branch 251 to Branch 285 for further interrogation once Branch 251 had carried out the preliminary work; detainees were then handed over to a court.

(ff) Expert witness Z27 stated that the Al Khatib Branch was one of the most important intelligence branches in the country, and to all intents and purposes had fingers in every pie. The Head of Branch was one of the President’s key confidants. The witness sought to prove this using an example, namely original documents in which an official in the Branch had banned a sizeable cultural event shortly before it was to start although it had already been authorized. The witness had been issued with a travel ban by the Branch. Employees in the

Branch had also prevented him from being re-admitted to practise as a lawyer. The Branch's purpose was to guarantee political security by exerting extensive control in all areas of daily life, for example through the subdivisions responsible for political parties and students. Branch employees were dispatched to sit-ins and demonstrations as early as February and March 2011. Torture was continuously in the Branch; the witness gave the example of the *dulab* method (whereby detainees were immobilized in a tyre and beaten).

(gg) Expert witness Z28 stated that Branch 251 had executive functions and was responsible for arrests and interrogations. It was a Branch of the State Security, with ten subdivisions in the provinces, and other subdivisions with specific responsibility for Damascus and the surrounding area. The Branch represented the internal administration of the intelligence service and had a coordinating role, with a loyalist — Tawfiq Younis — at the helm. The majority of arrests were made by Branch 251 and its subdivisions.

By contrast, Branch 285 was the central interrogation branch, the witness stated. That was where most of the prisoners were transferred from Branch 251. As he, the witness, had himself been detained in Branch 285 for a while, he had noted the terrible condition the prisoners were in when they came from Branch 251. Clients had told him, in 2011, about the terrible conditions there and about the fact that a large number of prisoners were taken to Branch 251, sometimes 500 a day. He in particular recalled one report, according to which a group of imprisoned women were humiliated by having to sit naked in an area where they were visible to everyone. The witness was also able to describe the location and structure of the branch on account of having been detained there on several occasions in 1978, 2005 and 2006.

(hh) By his own account, witness Z2 was kept under observation and arrested by Branch 251. The Al Khatib Branch was the branch that dealt with internal affairs; it tasked with monitoring the activities of important people, in particular business figures, and preventing those who were out of favour from engaging in political activity. This was something he himself had experienced. The Branch had originally been established by Mohammed Nasif, who was close to Hafiz al-Assad, and it exerted control and obtained information by infiltrating Government ministries. The Branch was also responsible for monitoring the chambers of trade and industry.

It was well known that torture was used in the Branch, as it was in other intelligence service branches. While detained there in February 2006, the witness had seen implements of torture

such as sticks, whips and suspension devices. He had been taken to a room in which people had been tortured; he had taken that as a tacit warning. The witness gave precise details of the location of the Branch on Baghdad Street in Damascus, near the Red Crescent hospital. At the beginning of the protest movement in spring 2011, he had witnessed the Head of Branch, Tawfiq Younis, drive up to a rally in front of the Ministry of the Interior and issue him with a warning.

(ii) Expert witness Z29 reported that Branch 251 was well known in Syria and that the people he had spoken to as part of his research were afraid to go there. It was also well known that the facility was not designed for long term detention; instead, it was a transit centre.

(jj) Witness Z42, a Syrian author, journalist and filmmaker, described the intelligence services had been “the Government’s instruments of torture and disappearance” for “as long as he could remember.” When he was five years old, his father had been tortured. The Al Khatib Branch was particularly well known among Syrian intellectuals. Spying on the cultural scene fell within its area of responsibility. The Branch was the “brain of State Security”.

(b) The Panel’s preliminary assessment of assesses the above statements is as follows:

According to the essentially consistent testimony of the aforementioned witnesses, Branch 251 occupied a special position in the structure of the Syrian General Intelligence Service, manifested in its size and its premises, which were separate from the other branches of the General Intelligence Directorate based in Kafr Sousa in Damascus, as well as in its notoriety among the Syrian public. While the General Intelligence Directorate had been established to shore up the existing balance of power, Branch 251 was given a wide range of responsibilities to monitor the whole of society, including executive, investigative and coordinating functions. Its core task was to monitor and suppress dissident activity in all areas of society. Accordingly, the Branch played a central role in suppressing the Syrian protest movement. The Branch was responsible for the initial detention and interrogation of those arrested, at least in Damascus and the surrounding area. Detainees were then transferred to other locations, in particular Branch 285 at the central office of the General Intelligence Directorate.

Based on the consistent testimony of the above witnesses, it can be assumed that torture was systematically carried out in the Branch using the available equipment — which included, contrary to the defendant’s submission, equipment from which detainees could be suspended — through concerted cooperation at all hierarchical levels, and that newly arrived individuals, in particular those who had participated in demonstrations, were regularly subjected to ill-

treatment, sometimes for prolonged periods, upon their arrival in the courtyard of the Branch. The individual statements are consistent with the evidence submitted regarding the general escalation of the conflict, which suggests that detainees in the Branch were deliberately humiliated and ill-treated in order to effectively deter them from further participating in protests. The large number of new arrivals described by witnesses is consistent with the increase in the number of arrests following the suppression of the protest movement from March 2011 onwards, and supports the conclusion that there was severe overcrowding in the Branch's prison cells. When considered in conjunction with the taking of evidence on the general course of the conflict, in particular the violent suppression of protests orchestrated by the Syrian power structure, it is clear that the Branch was instrumental to the Syrian security authorities' efforts to quash the civil unrest. In view of the central importance of the Branch and its role in the conflict, the Panel further concludes that the decisions of the CCMC executive body reached the Branch and were implemented by it.

(c) Witnesses N8, N9, Z43, Z31, N20, Z44, Z45, N3, Z 13/01/2021, Z47, Z48, Z50, Z5121, N15, N16, Z52, N7, N13, N10, N2, N18, Z9, N4, N14, N19 and Z42 (see (bb) below), who were detained in the Branch, provided detailed evidence on the conditions of detention and the use of torture in Branch 251, and on the structure of the Branch, including the prison in the basement.

(aa) In no case did the Panel have reason to doubt the truthfulness of the testimony of the witnesses, both male and female, whether obtained through direct questioning during the main hearing or through investigating officers. All of the witnesses, some of whom had had to cope with the aftermath of their traumatic imprisonment and ill-treatment, provided detailed accounts of the circumstances of their abduction and the conditions in Branch 251, which were broadly consistent with their testimony in the preliminary investigation. Uncertainties relating to the details of the (mostly prolonged) period of detention, for example the order in which witnesses were placed in various detention cells, can be explained by the passage of nearly a decade and the witnesses' struggles to process what they had experienced. This did not cause any witness to doubt their recollections, which are broadly consistent and concordant with the testimonies of other witnesses. Where witnesses were unable to clearly state when and in which facility they had observed multiple arrests or successive periods of detention in different facilities, the Panel did not impute the relevant part of the statement to Branch 251. Most of the descriptions were remarkably objective and devoid of any eagerness to convict. Most of the witnesses were visibly moved when recalling the drastic experiences

of their imprisonment; the main hearing had to be interrupted several times so that witnesses could compose themselves and provide further information.

The Panel is certain that each of the witnesses was in fact detained in Branch 251, as each of them, when questioned, was able to plausibly explain how they were able to identify it, either on the basis of their own knowledge of the site in the centre of Damascus or on the basis of information communicated to them by other prisoners during their detention. Furthermore, all the witnesses drew sketches of the extensive underground prison in Branch 251, with its row of single cells, several fairly large communal cells, interrogation rooms and an open, central area. The Panel was able to examine and the witnesses were able to explain these sketches. Both the male and female witnesses stated that women and men were housed separately in the branch. All the witnesses were unanimous in their testimony that family members were not informed of their whereabouts. Those witnesses who testified anonymously did so because those of their relatives who are still in the Government-controlled part of Syria had been threatened with repressive measures if the witnesses gave testimony in the present proceedings. Other witnesses who did not testify anonymously reported that they had similar concerns.

(bb) More specifically, the witnesses testified as follows, in sum:

(1) Witness N8, a Syrian film director and documentary filmmaker, was arrested at Damascus airport in August 2011, shortly before he had intended to flee the country after receiving a warning. After passing through various other intelligence branches, he was eventually transferred to the “Al Khatib Branch”. During the main hearing the witness corrected some of the assertions made during his police interview in October 2011, including that he had spent his birthday (20 September) in the Branch. He was arrested for making critical statements about the regime and for making and filming documentaries about the military and intelligence services’ use of force against the civilian population. At the time of his arrest, he already stood accused of trying to clandestinely smuggle video footage out of the country.

He spent part of August and the whole of September 2011 in the Branch: approximately two months in total. When he arrived at the Branch in a vehicle carrying several detainees, he was beaten with fists and rifle butts in the courtyard as part of a “welcome party”; this included being grabbed by the head and punched in the face. He was then searched and held in the basement prison. There was an area for torture; screams came from there constantly, “screams that were not normal”. He was beaten with bare hands and batons — “my whole

body was smashed” — before being led into an overcrowded communal cell, which he estimated to be 30 square metres in size and holding between 200 and 300 detainees. He spent 2 to 3 days there; the rest of the time he was isolated in small single cell. He recalled fellow prisoners with serious injuries, including an elderly man who had been severely beaten — “about 80 to 90 years old, he was sitting in a corner, blood everywhere, his body swollen” — and a 14-year-old boy who had been taken away and returned with bleeding feet. Other prisoners suffered even more serious injuries to their feet and backs, and their faces were swollen. There were sick people who received no medical care and who could no longer move. Fellow prisoners did what they could to stem the bleeding of tortured prisoners returned to the cells. Most of the other prisoners in the communal cell sustained injuries; signs of torture were visible on their faces. Some suffered fractures. The witness experienced breathing problems due to the poor air quality. Some people were half dead; prisoners lay motionless on the floor in the corridors. Day and night he heard the screams of the tortured.

When being taken for interrogation on the second day, he had seen, through his thin blindfold, that people lying on the floor had been beaten up; some of them were no longer moving. He had been interrogated in the basement area; he had to remain on his knees with his head bowed. He was interrogated about his filmmaking activities that were critical of the regime. At this point, he had not been beaten, but he had been threatened; in addition, “from all sides” of the open interrogation area he heard the screams of others being tortured. Immediately after the interrogation he was beaten, then restrained and tortured almost every day after that. During a further interrogation, during which he was not asked any more specific questions, he was hit on his back and feet with a cable. On another occasion, he was suspended by his hands until only the tips of his toes touched the ground. He was beaten in this position and eventually lost consciousness; even today, he has problems with his legs today because of this ill-treatment. Other prisoners told him that they had suffered similar things; they also told him about the *dulab* (tyre) torture method. Once, when he was lying on the floor, a stick was thrust into his anus; he was seriously injured as a result and had to undergo surgery. The torture methods selected, and the sequence in which they were inflicted, were random: “beatings on the legs, thighs and lower legs, beatings with cables on the hands, back and legs. Blows to the feet with a baton, kicks”. On one occasion, he had been jumped on. Cable ties had been tightened around his wrists, resulting in difficulties using his hands. Although he could hardly walk because of the blows to the soles of his feet, the guards had forced him to do so. He wore only underpants during his detention. His view was that the staff would have had considerable leeway to deal with the prisoners as they saw fit.

Regarding the general conditions of detention, witness N8 stated that prisoners were given an insufficient quantity of food, some of which was spoiled. There were olives, potatoes, and bread that was often mouldy. Prisoners in the communal cell had to sleep sitting upright. As there was not enough space even for this, some prisoners fell asleep standing up and then fell over. There was a set time for going to the toilet; prisoners had no other opportunity to relieve themselves. On one occasion he knocked because he needed to relieve himself and was beaten. Water was supplied from the toilet. The guards counted down the time; the prisoners then had to decide whether to wash themselves with water from a hose or to drink it. The air in the cells was very bad; it stank of blood and mould. There was no medical care, only improvised help provided by the prisoners. The communal cell had no daylight, but his single cell had a small window. He constantly feared that he would be executed and suffered traumatic psychological consequences as a result of his imprisonment.

(2) Witness N9, who was active in Syria as a dissident blogger until 2011, was arrested on 24 October 2011 and, after spending only a few hours in Subdivision 40, was transferred to Branch 251, where he remained for 10 to 15 days before being transferred to Branch 285. He was not beaten on the (one) occasion that he was brought to Branch 251. After descending a few steps, he was made to strip naked and perform a "safety manoeuvre", i.e. to squat down, after which he was allowed to get dressed. His cell in the basement measured 2.5 x 3 metres; at first it held between 12 and 20 prisoners, later 25. It was so overcrowded that prisoners had to "dovetail" when lying down in order to be able to sleep; later on, this was only possible if they lay on their sides. They drank water from the toilet. Food was served twice a day, but in very small quantities. The quantity brought for 15 people was enough for 5 at most. Rice, olives and small amounts of jam were all of poor quality. As the cell lacked daylight and had artificial lighting that was constantly switched on, it was not possible to distinguish between day and night. When he arrived, the prisoners first asked him what time it was.

During a total of six interrogations, he was made to kneel and was blindfolded. If the interrogator was not satisfied with an answer, the witness was beaten on the soles of his feet and on his back with a belt and a four-wire cable. He was also beaten once in this way in order to intimidate him before an interrogation. He was interrogated about his work as a blogger, usually in a corridor in the basement, and twice in a special room with a higher ranking officer, presumably an officer. On one of these occasions, the interrogator had said to the guard: "Either you get the names out of him, or you take his place." After the beatings, his feet became swollen and were unbearably painful for a long time; he was unable to walk.

On one occasion, he was taken to a torture room without a blindfold. There was a table and a military bed, as well as “dozens of instruments of torture, military belts and batons”. A staff member had entered the room with a pair of pliers; the witness knew from fellow prisoners that they were used to pull out fingernails. However, that did not happen to him. He no longer knew whether he had seen suspension rings in Branch 251 or in other detention facilities, as he had stated in his police interview in October 2018. Arbitrary group punishments were meted out, for example if the prisoners were caught talking in the cell without permission. The guard would enter, order everyone to stand facing the wall, and beat the prisoners, mostly over their feet.

The other prisoners were treated the same way, some even worse. Some of them had bleeding feet. He had witnessed how a prisoner had been ill-treated in the corridor area for a long time. Prisoners had been forced to kneel for days, doused with water and beaten in passing; he had been able to observe this through the ventilation gap in the door. As a result of being forced to kneel, his knees became inflamed. One fellow prisoner’s knees were so badly injured that his bones were visible. Cables with exposed copper wires were deliberately used for beatings, causing flesh to be ripped off. There was no medical treatment. Only occasionally did someone come and hand out paracetamol, or sometimes an antibiotic. The other prisoners were aged between 16 and 70. He also heard women’s voices coming from other rooms.

He was relocated when the subject of interrogation became more complex, for example when it concerned contacts with other members of the opposition. He was transferred to Branch 285, the main interrogation centre. He was also tortured there. In the end, he was transferred to the prison in Adra.

(3) Witness Z43 was detained several times by various security authorities, including twice in Branch 251. He was first detained in the Branch in August 2011, for several days, although he cannot recall the exact date.

He was a civil servant in an administrative department, ran a shop in the village of Al-Zabadani and was arrested there at a roadblock on false pretences, namely that he had smuggled Israelis into the country and was on the run. He was first taken to the State Security subdivision in Al-Zabadani, which had a small prison, and then to the Fourth Division. On arrival there he had to walk between two rows of soldiers, who beat and kicked him. Eventually, together with other prisoners, he was transferred to the Al Khatib Branch by bus.

There he was forced to undress and was searched. During his interrogation, he was initially restrained and forced to kneel blindfolded; due to his profession as a civil servant, however, he was allowed to remove his restraints and blindfold. Because the interrogator knew him, he was released a short time later. During his detention he had seen how other prisoners were interrogated and beaten; this was also clear on their return to the communal cell. They were barely able to walk and had injuries on their backs. *Dulab* was one of the torture methods used, he testified.

The witness could no longer recall the dates of his second detention in Branch 251, but he recalled that he had been released at the beginning of 2013. He was in an extremely poor state afterwards, unable even to remember his own name. The witness, who appeared very anxious when testifying before the Panel, felt unable to continue answering questions. They were “like riddles” to him. He also stated that he feared for his family, who had remained in Syria.

In his submission, the defendant claimed that the witness’s recollection of the layout of the cells — as documented in the police interview transcript — was false. The Panel was unable to reconcile the information provided by the defendant, which lacked detail, with the equally vague recollections of the witness. However, the Panel has no reason to doubt the witness’s description of the processes in Branch 251, which have been confirmed by other witnesses. The witness also clearly explained that he had received preferential treatment.

(4) Witness Z31 was detained in Branch 251 from 2 to 16 May 2011 and again from 12 to 19 April 2012. She claims that she was transported to the Al Khatib Branch after a short stopover in Section 40.

In addition to producing a precise sketch of the cell layout in the underground prison, the witness gave a detailed description of the prison conditions in the Branch. During her first detention, she was put in the basement in a tiny single cell measuring 60 x 170 to 190 cm, “as big as a grave”, which she had to share with another woman. It was not possible to tell whether it was day or night because there was only artificial lighting, which stayed on constantly. She constantly heard the screams of tortured prisoners, “terrible voices, and the whip making contact with the body”. She recalled a man who had been beaten: he said, “I’ll say anything”. There followed a pause of only three seconds before the beating continued unabated.

She was given bread and olives, but in meagre quantities; she could hardly eat because the food was so bad. She was only allowed to go to the toilet once a day. When asked about hygiene, the witness reacted sarcastically (“What hygiene? There was no hygiene.”). There were insects everywhere and there was no soap in the toilet or anywhere else; as a result, skin diseases and rashes were common. When she started her menstrual period, she asked in vain for supplies. She was laughed at and finally made do with a sock. There was no medical care, and there was blood everywhere on her fellow prisoners.

While being taken to the interrogation room, she had seen another person who had been beaten there and had inadvertently stepped on them. The body was then dragged out. On another occasion, a person was carried out of an interrogation room. Other prisoners had told her about the *shabeh* (suspension by the hands) and *dulab* (forcing a person into a tyre with blows) torture methods, and the administration of electric shocks preceded by a dousing with water. Cigarettes were stubbed out on the knee of one of the prisoners. A friend of hers was still unable to walk six months after being detained there. A woman detained with her in a single cell was forced to watch her (adult) children being beaten. A Palestinian woman wearing a hijab was brutally beaten; she returned from the interrogations crying hysterically. She learned from other detained women that they had been sexually harassed. During toilet visits, the witness was beaten and insulted indiscriminately; depending on the position of her blindfold, she could see other prisoners being beaten with iron bars, whips, multi-wire cables or hoses on these occasions. Some of her fellow prisoners who had experienced this were unable to withstand the psychological pressure and broke down. The witness describes her own feelings vividly, as follows: “You live in a state of fear, as if you were in a grave. You lose all feeling. There is no contact with the outside world, you can’t see anything, you can only hear screams.”

During her first detention, she was repeatedly beaten during interrogations, all of which were conducted in the basement. This was “normal” procedure — no special orders were issued in this regard. She was beaten with bare hands; on one occasion an electric shock device was used. She was interrogated about the organizers of a demonstration in which she had participated and had been beaten from behind during the interrogation if her answers were not suitable. Her eyes were blindfolded and her hands tied behind her back; she could not see the interrogator, only hear his voice. Through a gap at the bottom edge of the blindfold, she could see that the guards were wearing trainers. There were usually several of them; one of them, who positioned himself behind the prisoner, was always responsible for beatings. The interrogator did not participate in beatings. Other prisoners said the same.

After her second arrest, she was slapped in the face when she arrived in the courtyard of the Branch. She was threatened and saw a room with a strong odour; instruments of torture, such as cables and sticks, and traces of blood were visible on the floor and walls. The loudest screams came from that room. The witness was interrogated by the defendant, R., on the upper floor (see also VII. 2. (d) (cc)). The conditions of detention and torture were essentially the same as during her first detention.

(5) According to his statements, witness N20 (for further details see III. 1. (b) (gg) and VII. 2. (d) (dd)), a doctor, musician and activist against the Syrian regime since March 2011, was arrested in Douma on 30 September 2011, together with others, while looking for a demonstration (it had not taken place due to a heavy military presence). He and the others were picked up by members of the army, beaten on the street and taken by bus directly to the Al Khatib Branch. The witness remained there for five days, before being taken to Branch 285, then to court on 16 October 2011, and finally released.

The beating on the street had been so forceful that he had sustained a rib fracture. During transport, the detainees were forced to lie down; some of them had their hair set on fire by the accompanying security forces, who extinguished the flames by urinating on them. On one occasion in the Branch, the detainees were forced to strip naked in a large room that had several tables in it with officers behind them; as a “security manoeuvre”, they had to bend their knees so that their anuses and genitalia could be searched for hidden objects.

He was put in a cell measuring between 2 x 3 metres and 4 x 3 metres, holding a total of 8 to 10 prisoners. He suffered from severe pain, coughing and breathing difficulties due to his broken rib. He also had open wounds on his back and was therefore unable to lie down without pain. There was no medical care. Daylight only entered the cell through a small skylight. Prisoners received far too little food — one potato and a quarter of a loaf of bread per day. As a result, the witness lost a considerable amount of weight during his short stay in the Branch: he recalled that this amounted to 17 kilograms, although that may have been spread over the entire period of detention.

He was interrogated a total of three times, in a room on the floor as his cell. He was blindfolded. During his first interrogation, he tried to answer only questions about people who had already been “burned”: “To avoid being beaten, you try to give information that will harm the others as little as possible.” He had to lie on his stomach with his feet pointing to the ceiling. He was then beaten with a belt, cable or hose on the soles of his feet, lower legs and

thighs, and always on the same spot to make it particularly painful. The wounds varied depending on the tool used. Each interrogation lasted between 30 and 45 minutes; at a signal from the interrogation officer, the guard struck 10 to 12 times. Evidently, it was a routine procedure. His feet were so swollen that he could only walk with difficulty; it was extremely painful. He had heard from other prisoners that they had also been tortured using the *shabeh* method (suspension by the wrists).

He did not know exactly what he was accused of, but it was likely to be his participation in demonstrations. In his view, torture was not used to obtain information but to systematically intimidate demonstrators and the population. The subsequent court proceedings were a farce. When asked why he was looking for a demonstration, he denied that he had done so and was promptly released.

(6) Witness Z44 who ran a car wash in Damascus, was arrested there on 26 August 2011 as part of a large scale raid. He was initially sent to the "Tenth Division" and was severely beaten over his legs and back. He suffered deep wounds on his back, which bled profusely. After a few days, he was brought to the Al Khatib Branch by bus with other prisoners. His T-shirt was pulled over his head and he was tied up and gagged, an aubergine stuck in his mouth. He remained there for four to five days.

Once in Branch, he and the other prisoners had to sit down in a row on the ground in the courtyard. They were then beaten for two hours. When he was forced to strip naked in the basement of the prison, he was given a slap for every item of clothing he removed. The detention room was overcrowded with 400 people; it was impossible to sit down. As the cell was underground, it was not possible to tell day from night. The air was stuffy; only the toilet in the cell was ventilated. People went there to get some air.

During a subsequent interrogation, a false allegation was made against him: "Why did you blow up the column in Homs?". He was accused of lying and was dragged out of the interrogation room on the interrogator's instructions ("Take him out and educate him"). He was then beaten outside the room. The interrogator then continued the interrogation; afterwards, he instructed the guard to mop the floor, which was soiled with the witness's blood. During a waiting period in the corridor between two interrogations, he was beaten by every officer who passed by. Next to the interrogation room was a kitchen that served as a waiting room; through a window in that room he could see that other loads of prisoner had arrived in the Branch.

In the cell, other prisoners were shocked by his heavily bleeding wounds, which stank and oozed black blood. They laid him in a corner and did not come near him because he was in severe pain. He did not receive any medical care; he was only allowed out into the fresh air once and had been laid down in the courtyard. During a subsequent interrogation, the interrogator could not stand the stench. Throughout his time in the Al Khatib Branch, he constantly heard loud screams; that had also been the case during his time in the Tenth Division and subsequently the military hospital.

He was eventually transferred to the military hospital in Harasta because of his injuries. However, he was not treated there but was instead subjected to further ill-treatment that was even worse. Eventually, he was driven away a vehicle and thrown out onto the street, where he was no longer able to move ("There were flies on my body. I could not shoo them away. My only wish was to be put in the ground."). He was only saved by chance, by a taxi driver. His extensive and deep injuries on his back, the extent of which the Panel was able to appreciate from a photograph, were treated with several operations in Jordan.

(7) Witness Z45, who testified anonymously on 25 and 26 November 2020, was detained in the Al Khatib Branch from 25 March 2011 to 1 April 2011 and again from 5 April 2012 to 10 June 2012. After his arrest on 25 March 2011, he and other detainees were beaten and taken to the Branch by bus. There was a welcome party of brutal beatings; the detainees had to walk through a corridor of violent security officers. His face was struck ten times with a stick, causing damage to one eye that meant he was unable to see for six months. Teeth were also broken. He was then kicked so hard by a security officer in the Branch that two of his ribs were fractured. After that, he could only breathe with difficulty. He was taken to Mujtahid hospital in Damascus for examination. Tied up in a wheelchair, he was continuously insulted and spat at by the accompanying staff of Branch 251. In the hospital, he was simply told that his eye was "gone". The accompanying security officers tore up the prescriptions issued by the hospital in front of him.

In Branch 251, he was placed with 70 other prisoners in a room measuring approximately 70 square metres. The other prisoners were emaciated. "The food was bad, the people had wounds, it was hell." The interrogators' rooms were located opposite. He had heard constant screams coming from them, and from one torture room in particular.

Torture methods included beatings with sticks and belts, as well as immobilizing the victims in tyres (*dulab*). When *fallaqa* was inflicted, a person's feet were immobilized with a wooden

device and a cloth strap by one guard so that another could deliver blows with a belt. He noticed that one of his fellow prisoners had bloody fingers, probably due to nails having been pulled out. The witness was also subject to ill-treatment during the interrogations. During interrogations in an officer's room in the above-ground area of the Branch, he was beaten and kicked in the stomach. "When you feel the fresh air, you know you're in the officers' rooms." At other times, he was interrogated with the use of *fallaqa* in the basement, in a room whose walls were covered in blood. There, the employee who beat him was also the one asking the questions. Before the witness's release, he was forced to sign papers stating, among other things, that he undertook not to take part in any more demonstrations.

When he was arrested again on 5 April 2012, he was placed in a large, overcrowded room holding approximately 350 people, and was later moved to a dark, smaller and equally overcrowded cell holding approximately 50 detainees. One of the detention cells had been built underground beneath a former garden, which he had glimpsed through a skylight. He was also beaten during this detention. He saw a seriously injured person with abdominal wounds and inflamed feet infested with maggots; the person was motionless and was carried out of the cell. The person was said to have died. Another person had gone mad after having to stand for four days. The witness also stated that the Al Khatib Branch in Damascus was notorious.

(8) Witness N3, a hospital doctor, was arrested on 21 August 2011 after being denounced, and was transferred to the Al Khatib Branch. He found the initial search, for which he had been forced to strip naked, particularly humiliating. In numerous interrogations — during which he had to remain on his knees, restrained and blindfolded — he was accused of speaking ill of the Government, arranging to take part in demonstrations and having contact with Mossad, the Israeli intelligence agency. He had in fact taken part in demonstrations and, together with a friend, wanted to help the people of the city of Dara'a, who were trapped by security forces. The interrogators and guards had beaten him to obtain information. During the interrogation, he was forced to lie down and was whipped on the soles of his feet with a cable; he was also slapped in the face. Instructions were issued about how he should be tortured ("We won't get any further with the cable, bring wood"). He was told — presumably intentionally, by the interrogators — that friends of his had been ill-treated while being interrogated.

The witness was initially put in a single cell measuring 180 x 80 centimetres ("it felt like a grave, you have no contact"). He was later transferred to a communal cell, where most of the

prisoners were from Harasta and Douma. This cell measured 3 to 3.5 x 3 metres. The number of fellow inmates varied; sometimes there were 30 to 50 people. One night, so many new prisoners were brought in that they could not all sleep on their backs. He did not know how many times he had been interrogated: "you're very scared, you can't remember exactly, maybe 7 to 10 times". Other prisoners were also subjected to ill-treatment; he recalled a mentally ill prisoner who was treated with particular brutality. New prisoners were beaten up in the area in front of the cells during the "welcome parties". When there was a short circuit in a ventilator, all the prisoners in the cell were collectively punished and beaten for at least an hour. Screams of torture were heard by those in the cell. The food was inadequate in quantity and quality, and the blankets were full of lice. Toilet visits had to be made quickly at set times. The medical care was very poor. For example, a prisoner with diabetes was given insulin, while another prisoner with severe toothache was only given a glass of salty water. The prisoners were psychologically devastated and lived in fear and uncertainty ("in Syria, you never know how long you will be imprisoned"). After 77 days in the Al Khatib Branch, he was transferred to another branch in Kafr Sousa. He subsequently received a document, submitted to the Panel, showing that the witness was accused of "undermining the State by providing false information that weakens the nation's morale, and engaging and participating in demonstrations".

(9) According to his statements, witness Z46, who testified anonymously on 13 January 2021 and was formerly an active member of the opposition in Syria, was arrested along with other people at a demonstration on 8 December 2011 and taken by bus to Branch 251, with a stopover at Section 40. The witness described having been beaten on the premises of Section 40 and subjected to ill-treatment in the form of electric shocks to his foot. The prisoners were arbitrarily beaten on the journey to the Al Khatib Branch and after arriving there; a 16-year-old boy had a screw forced into his back during the journey. Even the employee who had removed the cable ties used in the Branch for the purposes of restraint had hit the witness with the wire cutter. He was searched and pushed into a cell, where he hit the floor and lost consciousness. During the interrogations was beaten on the back with a whip.

The conditions in the prison were dire. Some of the new arrivals were covered in blood and had to be carried into the cell. No care was given to a man suffering from epilepsy. The food consisted of a few olives and some bread with jam; the prisoners sometimes fought over it. The witness lost a lot of weight during his time in prison. He heard screams constantly. He remained in the Branch for seven days. The worst thing was the fear; he constantly wondered when his life would end ("They could call for me at any time and then I won't ever come back").

On 5 April 2012 he was arrested again and, after an interim stay in Section 40, where he was subjected to ill-treatment, including the *fallaqa* method, he was transferred back to the Al Khatib Branch. There he was initially put in a huge cell with 200 prisoners, before being moved to a smaller one measuring 4 x 5 metres holding 65 people. All the cells were overcrowded; his impression was that the cells had been converted from a canteen and a room previously used for interrogations. Some of the prisoners could only sleep standing up. Some of his fellow prisoners lost their minds due to sleep deprivation and were hallucinating. There was also a child aged 14 in the cell, who was regularly tortured with blows to the feet. The medical treatment had been inadequate, as it had been during his first detention. He had a high fever and was given an injection.

(1) Police statements by witnesses Z47 and Z48, who are resident abroad and were unable to testify in person, were submitted to the Panel by the police interrogators, witnesses Z10 and Z49. Based on the account provided by witnesses Z10 and Z49 of the police interviews and the situation with respect to interpretation, the Panel is satisfied that the statements made by witnesses Z47 and Z48 during their police interviews are as described and recorded by the investigating officers. In view of the striking details of the statements of both witnesses and their consistency with the rest of the evidence submitted, the Panel accepted the accuracy of the statements in the following aspects:

According to his police statement, witness Z47 was a member of an opposition political movement and co-organizer of the first demonstrations in February 2011, before being arrested on 19 February 2011 and taken to the Al Khatib Branch. He was detained for a total of 8 months and 20 days. He was held in a single cell in the Branch's basement prison for approximately two months; he could not tell the days apart because it was always dark in his cell. He was interrogated about his role in the opposition, his activities on social media and the names of other members of the organization. Because he was uncooperative, he was ill-treated from his second interrogation onwards. He was beaten over his back and legs, and his feet were beaten with a cable and an iron bar with spikes. He was forced into a tyre and beaten in a fixed position. He then had to stand in a corridor facing the wall; he was hit by everyone who passed by. Due to the blows to the soles of his feet, he could no longer walk. Furthermore, he was suspended by the wrists. His arms were swollen as a result; they had been burned while he was suspended. He had lost consciousness during the torture. He had witnessed the torture of fellow prisoners, including an Iraqi man who had been doused with water and tortured with electric shocks. After about a month of detention, the Branch became

more chaotic due to the higher number of new arrivals. The screams of tortured prisoners were heard very frequently. He was eventually taken to Branch 285.

According to the police statement of witness Z48, he spent several days in the Al Khatib Branch in May 2011. He was put in a cell measuring 2 x 1 to 1.5 metres. A large rat entered his cell through a gap under the door. During interrogations — in which he was accused of taking part in demonstrations, posting messages on the Internet and having contacts with the opposition and abroad — he was beaten and *fallaqa* was inflicted. He was also tortured after the interrogations; he was forced to lie down and was then kicked and beaten. He heard men screaming from the torture rooms and women screaming from the opposite direction. He was eventually taken to Kafr Sousa, from where he was released.

(11) Witness Z50, who was detained in the Al Khatib Branch in July 2012, reported being beaten over his toes with a cable during interrogations, and that other detainees received arbitrary punishments. In his overcrowded, smelly and damp communal cell containing more than 300 people, prisoners could only sleep in a seated position. The food was nowhere near sufficient; he lost 15 kilograms. He heard screams constantly.

(12) Witness Z51, who was arrested in May 2012 and testified anonymously before the Panel on 16 December 2020, reported that she had been crammed into a 2 x 1 metre single cell with a woman who was 8 months pregnant, for a period of 21 days; she had also spent a few days in Branch 285.

There were audible sounds of torture; she had witnessed the “welcome beatings” to which newly arrived prisoners were subjected. Women, too, showed signs of having been tortured. The guards went into the men’s cells at night and beat the prisoners there. The witness lost 8 kilograms in 35 days of detention, due to the meagre amount of poor-quality food, such as mouldy bread. Toilet visits were permitted at the discretion of the guard. Following the arrest of a large number of women, she was taken to a holding cell that was in extremely poor condition — “dirty, no air, bad smell” — and crawling with vermin such as lice, cockroaches, rats and moths. It was so overcrowded that it was impossible for all the prisoners to sleep at the same time. During her interrogations, a guard known among the prisoners as particularly brutal (“Abu Ghadab” or ‘father of anger’) had lashed his whip on the ground next to her to threaten her. The witness said that her social status was the reason why she had not been tortured and had received preferential treatment. She did not elaborate on this, as further details might have led to her being identified.

(13) According to his statements, witness N15 was arbitrarily arrested by military personnel during a raid in the village of Al-Abbadeh in the Damascus region on 4 February 2012, along with a large number of other people, including the mayor and imam. On arriving at the Al Khatib Branch, he and the other detainees were first beaten arbitrarily with fists, hoses and whips, and repeatedly during their subsequent detention. Collective punishments were meted out for talking in the cell. The screams and pleas of the tortured were heard constantly. The light in the cell was switched on all the time; the prisoners did not know whether it was day or night. People were constantly entering the cell, some of them with terrible signs of torture. A child between aged between 10 and 15 years, who was brought in with a gunshot wound to the leg, was beaten nonetheless. A man aged over 70 was also beaten. They slept “on top of each other” in the cell; the food was “just enough to stay alive”.

During interrogation, the witness was asked to confess and was hit on the legs by the interrogator. He sustained a fracture as a result; the overlying wound became infected. He then made a number of false statements and was forced to sign a blank piece of paper. The witness said that the uncertainty about what would happen to him was the worst thing about his detention. After 10 to 15 days in the Branch and an interim stay in another prison, he was brought before a judge, his hand was stamped, and he was allowed to leave.

(14) Witness N16 stated that she was arrested on the night of 4 to 5 February 2012 before being taken to the Al Khatib Branch, where she was held for three days. The reason for this was her work as an activist; she and other people collected medication for those injured during the shelling of Homs. She was beaten in the Branch immediately after her arrest and when she was brought out for daily interrogations, during which she was questioned about her political involvement. In an area near her cell in the basement, male detainees were subjected to ill-treatment; their screams were heard continuously. One man, who had been tortured with particular brutality, suddenly fell silent. Usually at least two people were tortured simultaneously. The staff were more violent towards men than towards women. The witness was verbally and sexually harassed; of note, a guard had grabbed her breasts from below when she was being taken to an interrogation room. There were three people in the small single cell, which measured 1.80 x 1 metre. Even when she was menstruating, there was no possibility of intimate hygiene.

The defendant submitted to this witness that her interrogations had been conducted by Lieutenant Colonel Z5 and Lieutenant Colonel XXX; the latter had previously received information about “her activity in the revolution and the provision of medication”. The

defendant submitted that he had had no official involvement with the witness. This submission does not undermine the perceptions and credibility of the witness.

(15) According to his statements, witness Z52 was arrested on 5 September 2012 at a checkpoint in the immediate vicinity of the Al Khatib Branch, where he remained for approximately 1 month. The witness reported a completely overcrowded detention room holding over 200 people, in which not all prisoners were able to sit, let alone lie down. The artificial lighting was permanently switched on, there was an inadequate supply of drinks and food, the air was stuffy and there were insufficient opportunities to go to the toilet. According to the witness's description, it was an underground detention room that had been added to the prison at a later date. He was interrogated several times, on his knees, handcuffed and blindfolded, in front of the interrogating officer. During the interrogations, he was subjected to prolonged beatings with a belt or a cable, and with unbearable force over the soles of his feet, sometimes his legs restrained. One of his feet subsequently became inflamed. Fellow prisoners were injured and had open wounds, others had been shot at during demonstrations, and many also had skin diseases.

(16) According to his statements, witness N7, was arrested in Raqqa in early May 2012 and, after stopovers in Deir ez-Zor, Homs and the military police station in Al Qaboun, was taken to the Al Khatib Branch, where he was detained for three to four days. On arrival, all of the newly arrived detainees were made to face the wall in the courtyard and were beaten. The cells were overcrowded. The prisoners had rashes and allergies, and vermin clung to their clothing. Due to the overcrowding, the air was very humid; there was no ventilation. "Really loud" screams were heard throughout the day, due to torture. His fellow prisoners had told him about electric shocks and *shabeh*. Most of the prisoners in his cell showed signs of torture. They had fractures, swelling from the beatings, and marks on their wrists from suspension. He was interrogated and beaten several times, including all over his body with an object resembling a fan belt. The interrogations had taken place on one of the upper floors, where the stench was not so bad. If an answer wasn't the 'right' one, he was slapped, kicked and punched. Again and again he had to squat down and was severely beaten in this position, he stated.

(17) Witness N13, who was detained in Branch 251 for 18 days from 14 February 2012, described the conditions of detention there. When he was taken to the Branch, he and other detainees were ill-treated for half an hour with punches, kicks, and whippings with cables. The food was inadequate and sometimes inedible. The flatbread handed out was several

days old and was inedible. Everyone only received a spoonful of the bulgur wheat that was served with it. There was no medical care. There were diabetics who had no medication and whose feet were rotting, as well as many injured people. He recalled a young man whose fingers had been smashed. Regarding another prisoner, the witness stated:

“There was a young man called Ali. [...] This young man had gone mad. He urinated and defecated on the spot. He couldn’t stand and was paralysed because of the torture [...]. His fellow inmates took him to the toilet and cleaned him up.”

There were lice and other vermin everywhere in the cell. Many prisoners had scabies. The cries of other prisoners being tortured were constantly audible. Torture methods included electrocution or suspension from doors, he testified.

(18) Witness N10, who was detained in Branch 251 in April 2012, reported that there were 100 people in a cell so overcrowded that there was no space to sit or lie down, so people had to take turns. The witness vividly described the conditions of detention as follows:

“There was a lot of psychological pressure. It was damp and everyone who came got sick. There were blankets on the floor that were full of lice. Many people were ill. Some were unconscious and had to lie down, so the others had to stand because there wasn’t enough room. After a few days, I had made a few connections. An elderly gentleman made room for me and I was able to sit down. There was a young man there who wanted to be a doctor, and he took care of the people. [...] There was a slit at the bottom of the door. If there happened to be guards around who were nice, they would open it so that we could let some air into the cell. The cell was damp and had no daylight. There was only a small window in the bathroom. There was only an air supply when the slit in the door was opened. We weren’t allowed to say anything in the cell. If the guards had heard a noise, we were beaten immediately. [...] I was among those who did some fanning. We stood and waved our clothes around so that people could breathe. [...] When someone new came into the cell, they still smelled all right. The prisoners would smell their clothes once the new person had been there for a while, and they stank. [...] There was no medical care. Prisoners asked for medication but were given nothing. [...] There were prisoners who had open wounds and were given nothing for the inflammation.”

(19) Witness N2 was detained in the Al Khatib Branch for 23 days from 27 May 2012 and described how she was met with the stench of urine and blood when she was taken to the underground prison. The women were separated on arrival. They were forced to undress one after the other in the presence of two nurses from the “Red Crescent”, and were searched, including in intimate areas.

The collection cell where she was held together with 17 other women consisted of “nothing except floor, walls and ceilings”. The room was full of vermin, the blankets were full of lice. The single cell she was subsequently put in had measured only 1.75 x 0.75 metres; the lighting was on continuously, so day and night could not be distinguished. There were always people shouting and pleading.

(20) Witness N18, who was detained together with her daughter, witness N2, stated that during her 23-day imprisonment in the Al Khatib section from 27 May 2012, she was initially held in a communal cell with other women, then alone, and later with one other person in a single cell. The single cell measured approximately 0.75 x 1.75 metres. They slept on thin, vermin-infested blankets, and there were lice everywhere, which made them itch. They were unable to wash or shower; the witness’s skin became inflamed. In the single cell, the prisoners had to take turns to sleep. A visit to the toilet was permitted every 12 hours and prisoners could then fill a water bottle. Despite the heat, the prisoners therefore had only one litre of water in a 12-hour period. The food — flatbread, rice and bulgur wheat — was inadequate; the witness lost nine kilograms in weight during her detention. It was impossible to distinguish between day and night; artificial lighting shone into the cell constantly. In the communal cell, she had seen injured women prisoners with blood on their necks and breasts; their clothes were torn. She could see from the women’s faces that they must have experienced terrible things, but she did not ask about them.

(21) Witness Z9, who had previously been detained in Branch 251 in March 2011, described that screams could be heard even in the inner courtyard, which presumably came from interrogation rooms where people were being tortured. The screams of tortured prisoners were constantly audible in the prison. He spent time in both solitary and communal cells. There were three people in the small single cell, which measured 1.5 x 2 metres. The communal cells were located opposite the single cells. The smaller communal cells were completely overcrowded with 20 to 30 people (“sometimes people piled on top of each other so that everyone could fit in; sometimes some had to sit down so that others could sleep”). There were even children no older than 12 or 13 years of age. He saw many fellow prisoners who were bleeding on their return from interrogations. Traces of torture such as cable marks and multiple bruises were visible on the detainees; those from Douma were beaten with particular severity. One method of torture involved handcuffing or shackling prisoners to the iron bars of the door windows so that they could not sit down. “There was electricity, there was *dulab*, there were whips and the flying carpet.” He was threatened with electric shocks

that would be administered to certain parts of his body so that he could not have any more children. They were also forced to stand against the wall and were not allowed to sleep.

The food was disgusting; however, prisoners received three meals a day. The portions in his single cell were sufficient. They had exactly one minute in the toilet, then the door would be forced open. Personal hygiene was an impossibility and the smell was absolutely disgusting. The prisoners did not wash for days on end. There were prisoners with high blood pressure, diabetes and heart problems who asked for medication; he did not know whether they received any. People who had been severely beaten, were bleeding or had fractures were given makeshift dressings but remained in pain. One prisoner went mad and kept screaming; he was then beaten.

(22) Witness N4, who was detained in May 2011, reported that fellow prisoners had told him that they had spent between 15 to 30 days in the Branch. This corresponds to the average period of detention of the witnesses examined by the Panel. According to witness N4, one prisoner had been there for a year. Witness N14 recalled in her testimony an elderly woman who had been detained in the Branch for several months; the other prisoners had been there for a much shorter period. According to witness N19, two fellow prisoners had told him that they had been in the Branch for several years.

(23) Witness Z42, who was detained in Branch 251 from 4 to 12 February 2011, stated that, while imprisoned, he had heard the voices of people who had recently just been beaten. The sound of those who had been tortured begging for it to stop were heard. It seemed that the guards tortured prisoners for a set period of time, regardless of what they said. Their ill-treatment continued, even if they confessed to everything. In particular, he recalled the harrowing screams of a young man who was tortured every day. On one occasion, the man was able to escape into the corridor outside the cells. As the window in the door of the witness's cell remained open at night, he was able to look out: the man was wearing long cotton underwear and his hands were tied behind his back. Two guards beat him with cables. The man shouted and wet himself. The guards then forced him to lick his faeces with his tongue. The cables were then used again. The man spat on the wall and was then forced to lick the wall.

(24) The Panel further refers to the testimony of witnesses N5, Z53, Z54, N14 and Z55, which are presented in the context of the assessment of the role of the defendant (see VII. 2. (d)) and contain descriptions of the conditions of detention and the ill-treatment of prisoners.

(cc) In sum, the Panel assesses the testimony of the aforementioned witnesses as follows:

The overall picture that emerged from the witnesses' individual accounts is that the processes and treatment to which detainees were subjected following their arrival at Branch 251 were in some respects almost identical, while in others they differed markedly. For example, the reported duration of detentions in the Branch ranged from a few days to months or years, though in some cases the latter was only based on hearsay. The type of accommodation ranged from the small(est) single cells to communal cells the size of a room or hall, described as so overcrowded that it was impossible to lie down and difficult to breathe. Cells without and with daylight were described, but when daylight was present, it could only enter the cell through small openings. The choice of torture method did not follow any discernible pattern, with the exception of *fallaqa*, the preferred method torture during interrogations. Contrary to the defendant's assertion in his submission, suspension by the hands using various contraptions was also a frequently used method of torture. In addition, individual forms of ill-treatment ranged from 'standardized' torture methods to extreme sadism: the Branch was organizationally oriented towards the administration of torture with specially equipped 'torture rooms', equipment and established procedures, such as those that existed between the interrogator and the staff member inflicting torture. The frequency and purpose of interrogations, as well as the agonizing waits in between them, also varied considerably.

The lack of a transparent and targeted process in the otherwise bureaucratized Syrian State structure, including its security apparatus, indicates that from the beginning of the protest movement the security authorities had to 'handle' a high number of detainees for which the facilities were not designed, by ill-treating them in a somewhat improvised manner regardless of individual charges. The various forms of ill-treatment indicate that the guards who administered torture were given a free hand; in some cases, their actions were characterized by sadistic ingenuity. Justifications for the detentions were fabricated on the basis of forced confessions. Such conduct is consistent with the security authorities' approach to collective punishment and deterrence, as described by other witnesses in relation to the development of the conflict as a whole.

The variations in the treatment of those who were abducted to Branch 251 and exposed to the prevailing conditions there, who were consciously left in the dark about the reason for their imprisonment and their future fate, paint a picture of arbitrariness. However, regardless of all these differences, the witness statements powerfully showed that the Branch was characterized by the inhumane treatment of all those detained there and by a climate of

massive violence and fear. In particular, the prisoners in the basement prison were exposed to arbitrary treatment by the guards there. Almost without exception, prisoners were subjected to torture as a means of extorting information; at the same time, there seems in some cases to have been no connection between the brutal mistreatment and the information gathering. This resulted in excessive violence that — due in part to the lack of medical care — had life-threatening consequences for those affected.

Overall, the witness statements allow for the safe conclusion that those who were abducted to Branch 251, at least from April 2011 on, were exposed to systematic and brutal physical and sexual violence, to inhumane conditions of detention as a result of massive overcrowding, a lack of hygiene, not being allowed to go to the toilet often enough, insufficient food and drink, and massive psychological pressure, partly on account of constantly hearing the screams of their fellow prisoners who were being tortured and seeing the — in some cases seriously — injured tortured fellow prisoners in their own cell.

The treatment the witnesses described is also consistent with the objective pursued by the Syrian apparatus of power, namely to use unspecified, broadly diversified violence against the civilian population for the purpose of intimidation and deterrence. The Panel assumes that the aforementioned conditions, in particular the use of torture, were at any rate intended for all those who were detained arbitrarily at demonstrations and rallies and during raids. The Panel found that exceptions — that is when no direct physical violence was used — were only made for individuals detained for a specific reason who were prominent figures, or for prisoners who were acquainted with an employee of the Branch.

Finally, the Panel concludes from the testimony of witnesses Z33, Z52 and Z45 that the Branch's underground prison was extended prior to April 2012 to house additional detention rooms located beneath an outdoor area. This appears to have been a consequence of the rapid growth in the number of prisoners in the branch after the start of the protest movement which the majority of the witnesses noted.

## 2. Section 40

By summarizing the testimony of various witnesses, the Panel was also able to form an impression of the activities of Section 40 — which are significant in the light of the defendant's submission — and the influence of its commander Hafiz Makhoulf.

(a) The information provided by the following witnesses was relevant in this regard:

(aa) Former co-defendant A. (for further details see V. 2. (c) (aa) and VII. 2. (c) (aa)) was an employee of Branch 251 at the Al Khatib headquarters from February 2010 to July 2011, when he was transferred to Section 40, where he served until his desertion on 5 January 2012. At least for a time, he belonged to one of the Section's units that was deployed mainly in Douma. In his police testimony, which was heard by investigator officers Z56 and Z10 and is credible (see also V. 2. (c) (aa)), the former co-defendant reported that he had been deployed to counter demonstrations as part of his work at the Section and that he had brought detainees to Branch headquarters. The former co-defendant did not provide any information on the further activities of employees of Section 40 at headquarters, for example during interrogations. When questioned about the position and role of the defendant, he stated only that he had been involved in the Branch leadership at its headquarters, and did not mention any influence or activity of employees of Section 40. From July 2011, A. had only visited Branch headquarters in his capacity as an employee of Section 40. Instructions were issued by the Head of Branch there. Detainees from demonstrations or from a checkpoint set up by Section 40 were taken to Branch headquarters. As an employee of Section 40, he was solely responsible for tasks such as manning the checkpoint and the storming houses and flats. In these cases, too, all arrested individuals were taken to Branch headquarters in the Al Khatib district. When asked, the former co-defendant expressly confirmed that "the investigators" were responsible for obtaining further information from prisoners brought to Branch headquarters. He added "I am referring to the Investigations Subdivision", of which the defendant was the head. Various methods of torture were used to obtain information. "We arrested people and took them there. We knew that [torture was taking place (note by the Panel)] because we heard the screams".

The former co-defendant thus confirms the role of Section 40 as a field unit whose activities were clearly distinct from those of personnel working at Branch headquarters, in particular the Investigations Subdivision, whose personnel were responsible for detainees from the point at which they were handed over. Since this knowledge has been derived from the internal observations of an employee working in Section 40 during the period of the offence, the Panel attaches great importance to it.

(bb) Witness Z36, a former long term employee of the General Intelligence Directorate, stated that Section 40 had been part of Branch 251 and had been called "Patrol Section" or the "Counter-Terrorism Section". After Hafiz Makhoulf took over the management of the Section, it acquired a very bad reputation. Makhoulf ordered many arrests and, as Bashar al-Assad's cousin, had a free hand.

Section 40 was responsible for patrols within Damascus. If Branch 251 was searching for a particular individual, the Section was tasked with arresting them and transferring them to Branch 251. However, the Section often went beyond the scope of its authority. Arrested individuals were also interrogated by Section 40 and were not always transferred to Branch 251 but directly to Branch 285, for example, depending on Hafiz Makhoul's orders. The Section had between 100 and 200 employees, and its head also had an office in Branch 251.

(cc) Witness Z40, a senior guard in Branch 251, stated that the employees of Section 40 had been responsible for making arrests on behalf of Branch 251. The unit also conducted patrols and manned checkpoints. Its only involvement with Branch 251 was the transfer of prisoners there. On one occasion during his training, the witness had observed that employees were being sought to work in Section 40. Certain physical characteristics, in particular a strong constitution, were prerequisites for this. Furthermore, employees needed to have a curriculum vitae that was impeccable in terms of loyalty to the regime. Such employees were always volunteers, that is not individuals undertaking military service. The Branch was of particular importance because of the family connections of its Head, Hafiz Makhoul, the son of an aunt of Bashar al-Assad.

(dd) Witness Z33, a former long term employee of the General Intelligence Directorate, described Section 40 as part of the Investigations Subdivision of Branch 251; in his testimony, however, he also described this relationship as being to some extent the other way round, stating that the Investigations Subdivision was part of Section 40. In any event, the de facto decision maker was Hafiz Makhoul. He issued instructions to the lead interrogators in Branch 251; it was Makhoul who was actually in charge of the entire General Intelligence Directorate. Its official Head, Major General Ali Mamlouk, would come down from his office to receive Makhoul. Makhoul issued instructions regarding the arrest of demonstrators and the duration of their detention. The witness had been present when Makhoul had ordered the arrest of all the 1000 people attending a rally at a mosque.

As detailed in the above (see III. 1. (c) (bb) and VII. 2. (c) (dd)), the Panel had reservations about unreservedly accepting the testimony of witness Z33. Besides the general inconsistencies in his witness statements, it was striking that, in relation to his testimony concerning Section 40, he claimed knowledge of the internal power structure of Branch 251 and Section 40 despite not having worked there since 1998; instead, he had worked in document archiving at the geographically distant Central Office of the General Intelligence Directorate. Even on further questioning, the witness could not be persuaded to provide any

specific details concerning the facts underlying his assessment or the occasions on which he had supposedly made these observations. That, however, is the basis which would have been necessary to be able to make the assumption that the commander of a subunit with hundreds of staff across two hierarchical levels was the de facto head of what was — according to statements made by other witnesses — the most important Syrian intelligence service. The Head of the General Intelligence Directorate receiving the Head of Section 40 is not sufficient to prove that. Moreover, the outcome of the taking of evidence does not support the witness's claim either. It only proves that Hafiz Makhlouf acted on his own authority when managing the Section under his control, and that this went unchallenged owing to his close ties with the head of the regime. The Panel can therefore only consider the witness's statements as circumstantial evidence of this; the witness's observations regarding a personal meeting between Makhlouf and the Head of the Intelligence Directorate, Mamlouk, and Makhlouf's orders to detain demonstrators, must be reconciled with this.

(ee) Expert witness Z28 also stated that Section 40 was part of Branch 251 and that it was responsible for Douma. The Section took orders from Branch 251. Individuals were arrested by the Section and brought to Branch 251, in some cases after interrogations had been conducted. The Section did not have a large prison of its own, which is why most prisoners were handed over directly to Branch 251. The Head of Section 40 was Hafiz Makhlouf, a cousin of the President. Although Section 40 had considerable influence, it was subordinate to the much larger Branch 251. Interrogations were conducted in Branch 251, by its employees.

(ff) With regard to Section 40, expert witness Z27 also stated that it was a subdivision of Branch 251 that assumed certain functions of the Branch. Several of his colleagues had been arrested by Section 40. Its head was Hafiz Makhlouf, a cousin of Bashar al-Assad, which is why Section 40 was of great importance internally. The Section was responsible for the Damascus region, but its involvement extended to other areas due to the position of its head.

(gg) Witness Z57 reported that Section 40, under the leadership of Hafiz Makhlouf, was renowned for being particularly brutal. The witness described it as an instrument of power that was used to suppress demonstrations and torture detainees. This was common knowledge, he said.

(hh) Expert witness Z35 (see III. 2. (a) above) stated that, on the basis of the information available to him, Section 40 was part of Branch 251. The Section was known as the "City

Section” and the “Jisr al-Abiat Section”. It was described as exceptionally powerful and notorious. It was significant that messages from Section 40 were sent directly to another Branch and not — as was usually the case — via the head of Branch 251. The letterhead of Branch 251 was used.

(ii) Several of the aforementioned victims of the regime who were abducted to Branch 251 and ill-treated there testified that they had initially been arrested by Section 40 and briefly detained in premises belonging to that unit:

- On 2 May 2011, witness Z31 was arrested by employees of Section 40 during a women’s demonstration in Damascus, abducted to a property belonging to the Section, and taken from there to Branch 251. She reported that Section 40 was also known as “Hafiz Makhoulf”. The men who took her away had beaten her and “touched her in sensitive places”. She had spent two hours in Section 40 but was not interrogated there. When she was arrested for the second time on 12 April 2012 during a sit-in in front of the Syrian parliament organized as part of the “Stop the Killing” campaign, she had also initially been taken to Section 40. The security forces were standing by and knew that the detainees were coming. They immediately began arresting the women involved. She had received “bestial beatings” with truncheons in Section 40; she and the other detainees had been beaten, spat on and insulted for an hour. After her interim stay in the Section, she was transported by van to Branch 251. The witness described that Section 40 was located on a street called “White Bridge” (“Jisr al-Abiad”). There was a large iron gate, an open courtyard, and residential buildings in the immediate vicinity of the Branch.
- According to his statements, witness N9 was arrested on 24 October 2011 by persons that he presumed to be employees of Section 40. He spent two to three hours at the premises of Section 40 before being transported to Branch 251. At the time of his arrest his laptop had been taken from him; in Section 40 he had been briefly questioned about his Facebook account. It was well known that Section 40 was headed by Hafiz Makhoulf, brother of the influential businessman Rami Makhoulf and cousin of Bashar al-Assad, and that it was responsible for arrests and storming “in support of Branch 251”.
- According to her testimony, witness Z51 was arrested on 4 May 2012 in Damascus along with others and taken to Section 40. Armed plain-clothes security forces stormed their office, searched them, checked their identification documents, and blindfolded the men or pulled their T-shirts over their heads. The men who had been arrested with her

were beaten in Section 40. To force her to give up access to her email and Facebook account, she had been forced to watch an acquaintance being beaten and tortured with electric shocks. She had spent a night in Section 40 before being transferred to Branch 251, where she was beaten.

- Witness Z45 testified that he was arrested on 4 May 2012 by employees of Section 40 and taken to the Section's premises in the Damascus district of Jisr al-Abiat. He was beaten on arrival and remained there for a day before being transferred to Branch 251.
- According to the police statement provided to the Panel by the investigating officer, witness Z48 was summoned to Section 40, in the Damascus neighbourhood of Jisr al-Abiat, in May 2011, where he was questioned about anti-Government posts on Facebook. When the witness mentioned that he had been in contact with the President's media spokeswoman, he was released. He was summoned to the Section again the following day, where he was arrested and taken to the Al Khatib Branch.

(b) A comprehensive analysis of the information provided supports the conclusion that Section 40 was primarily engaged in making arrests, conducting searches and raids and dispersing demonstrations, and that it transferred detainees to Branch 251, where their fate was decided. The Section had its own office building with a small detention centre in the Damascus district of Jisr al-Abiat. The Section conducted preliminary investigations, including inspections of seized objects and initial interrogations of detainees; it was not possible to determine whether such investigations were conducted on the basis of formal or presumptive authority.

According to the unanimous testimony of all witnesses, the Section had special status on account of its responsibilities and, in particular, its leader's prominence and proximity to the Government. The information provided by the witnesses suggests that the Section was deployed in the greater Damascus area as a flexible instrument for quickly and effectively suppressing the protest movement. The specific demands regarding the physical fitness and loyalty to the regime of employees of Section 40 are consistent with the tasks performed by the unit. The Panel also assumes that the Head of Section 40, Hafiz Makhlof, took advantage of his special status as a relative of President Bashar al-Assad to act on his own authority — this would be entirely consistent with the structure of the Syrian State, which is based on personal relationships and loyalties. The Panel also accepts that Hafiz Makhlof — as stated by witness Z36 — had his own office at the Al Khatib Branch, as did the heads of the subdivisions based there. Lastly, the Panel cannot exclude the possibility that Hafiz Makhlof

occasionally made requests to the Head of Branch concerning the release or transfer of individual prisoners, and that both the defendant and Tawfiq Younis complied with these requests because of Makhoulouf's de facto position of power.

However, witness testimonies did not confirm that Hafiz Makhoulouf — as alleged by witness Z33 — held a dominant position in either Branch 251 or the General Intelligence Directorate as a whole; this would be incompatible with the separate premises of Section 40 and, as stated by all the other witnesses, its merely supporting role in arresting and handing over suspected opponents of the regime. It would also be incompatible with the autonomous activities of Branch 251, which were consistently described by former employees of the regime and witnesses who had been detained in Branch 251. Furthermore, it could not be determined that employees of Section 40 at the Al Khatib Branch conducted investigative activities such as interrogations involving torture. Neither the witnesses internal to the regime nor the former co-defendant who had worked in Section 40 made any such claim. Nor did any of the victim-witnesses who were initially detained in Section 40 and subsequently at the Headquarters of Branch 251 recall having been interrogated by the same individuals — although this was based purely on the sound of their voices — in both the Al Khatib Branch and Section 40. It would be reasonable to expect that interrogations would be conducted by the same individuals if Section 40 had had formal or presumptive authority to continue the interrogation and ill-treatment of detainees at Branch headquarters.

[untranslated section]

## **C. Legal assessment**

### **I. Crimes under Section 7 of the Code of Crimes against International Law**

The defendant has committed a crime against humanity in the form of killings in 27 cases, torture and serious deprivation of liberty in 4000 cases, and rape and sexual assault in 2 cases.

#### **1. Widespread and systematic attack directed against any civilian population**

The Panel assesses the events in Syria from 29 April 2011 at the latest to the end of 2012 as both a widespread and systematic attack directed against the civilian population, within the meaning of the attributes set out Section 7 (1) of the Code of Crimes against International Law (CCAIL).

(a) Following the legal definition in Article 7 (2) (a) of the Rome Statute of the International Criminal Court (Rome Statute), “an attack directed against any civilian population” means a course of conduct involving the multiple commission, in the context of an overall act, of the alternatives listed in Section 7 (1) nos. 1 to 10 of the CCAIL. The attack must be carried out by a collective, though not necessarily a State one. A “civilian population” is defined as a larger group of people who share distinguishing features — for instance living in the same geographical area or having a shared political will — on account of which they come under attack. A State’s own civilian population can be a relevant object of such an offence. The defining feature is that the measures are not directed primarily against individual victims of the act as individual personalities, but against them as members of a group. The attack need not be directed against an entire population living in a particular area. Rather, it is sufficient for the attack to be directed against a significant number of individuals (see Decisions of the Federal Court of Justice in Criminal Matters 64, 10, margin no. 164; Federal Court of Justice, Decision of 3 February 2021 — AK 50/20, margin no. 32; Werle, in: *Münchener Kommentar, StGB*, 3rd edition, Section 7 of the CCAIL, marginal notes 15, 21, with further references).

A “widespread attack” is defined as a course of action applied on a large scale with a large number of victims. An attack is “systematic” if the use of violence is organized and executed according to plan in the sense of consistent actions (Decisions of the Federal Court of Justice in Criminal Matters 55, 137, margin no. 27; Federal Court of Justice, Decision of 3 February 2021 — AK 50/20, marginal note. 32 [juris] with further references).

(b) Judged on this basis, the actions of the Syrian regime from late April 2011 onwards meet the conditions of the attributes set out in section 7 (1) of the CCAIL in relation to the act. According to the findings as established, the security forces already used violence against peaceful demonstrators and other, including alleged, members of the opposition as of March 2011. Although at first only a few individual protests were affected by the initially sporadic signs that the Arab Spring had spread to Syria and by the subsequent response to certain measures undertaken by the Syrian regime, the Syrian authorities responded ever more violently as the peaceful civilian movement grew, in particular by deploying the army and the intelligence services to suppress the movement by means of organized and numerous

arrests, prolonged periods of detention and torture, and the killing of actual or alleged opponents of the regime.

The widespread violence perpetrated by the Syrian Government and its subordinate authorities against participants in the protest movement, suspected or actual opponents of the regime and civil society activists, as well as against completely impartial civilians, served the politically motivated repression of the protests by directly breaking them up and intimidating the population, thereby ensuring that the existing Government, led by Bashar al-Assad, retained power. The Panel thus regards the collective entity acting and leading the attack to be formed of the Syrian State leadership and those within the security authorities responsible for giving and implementing instructions, in particular the State intelligence services. The object of the attack was the broad majority of civilians who had in fact joined, or were merely suspected of having joined, the protest movement or of being critical of the Syrian Government. They were subjected to increasingly planned and generally arbitrary State violence from March 2011. This at least fulfils the elements of the offence under Section 7 (1) nos. 1, 5, 6 and 9 of the CCAIL.

From late April 2011 onwards the attack can also be regarded as widespread and systematic. The fact that from that point in time — at the latest, the start of the period of the offence on 29 April 2011 — the violent course of action adopted by the security forces was controlled centrally by those with the highest political and military responsibility in the President's circle, within an executive body set up to that end, establishes the systematic nature of the attack. The large number of civilian victims (thousands per month) — and the Panel includes both those who were killed directly by the security forces at demonstrations, checkpoints or elsewhere and those who were abducted to State-run detention facilities and ill-treated there — and the persistent use of violence, which continued to escalate in the following months, together with the countrywide approach, in particular in bigger towns and cities such as Greater Damascus, Douma, Dara'a and Homs, evidence a multitude of acts of violence which meet the elements of the offence and constitute a widespread attack. The attack continued even after the defendant was transferred to Branch 285.

## 2. Individual offences: Killings, torture, serious deprivation of liberty, rape and sexual assault

Within the context of the overall act directed against the civilian population, the detainees brought to the Al Khatib Branch during the period of the offence were killed there by the staff of the Branch in the established numbers and manner within the meaning of Section 7 (1) no.

1 of the CCAIL; subjected to torture within the meaning of Section 7 (1) no. 5 of the CCAIL; raped and sexually assaulted within the meaning of Section 7 (1) no. 6 of the CCAIL; and subjected to severe deprivation of liberty within the meaning of Section 7 (1) no. 9 of the CCAIL.

(a) Within the meaning of Section 7 (1) no. 1 of the CCAIL, killing is the causation of the death of a person as part of a systematic or widespread attack on a civilian population. This applies to each of the 27 deaths established.

(b) Anyone who, in the context of an overall act, tortures a person in his or her custody or otherwise under his or her control by causing that person substantial physical or mental harm or suffering where such harm or suffering does not arise only from sanctions which are compatible with international law commits the elements of the alternative set out in section 7 (1) no. 5 of the CCAIL. To be “substantial”, that harm or suffering requires a sufficiently large degree of impairment to be caused by the act and is to be assessed taking account of all the facts and circumstances of the case, in particular the nature of the act and its context. Lasting damage to health or extreme pain are, however, not necessary, nor is a degree of severity comparable to that required under section 226 of the German Criminal Code (Decisions of the Federal Court of Justice in Criminal Matters 64, 89, marginal note 63; Federal Court of Justice, Decisions of 5 September 2019 – AK 47/19, marginal note [juris]; of 25 September 2018 – *StB* 40/18, marginal note 22 [juris]; of 17 November 2016 – AK 54/16, marginal note 27 [juris]; and of 3 February 2021 – AK 50/21, marginal note 38 [juris]). Massive psychological impairment can also result in an act being classified as torture (see Federal Court of Justice, Decision of 6 June 2019 – *StB* 14/19, margin no. 64; see also Article 1 (1) of the UN Convention Against Torture; European Court of Human Rights *NJW* 2010, 3145, 3146).

The Panel was largely unable to determine the specific manner in which the detainees in Branch 251 — whose individual identities are not known — were treated. It did establish, however, that most of the detainees were subjected to severe beatings immediately upon their arrival at the Branch, and that they were subsequently subjected to further physical ill-treatment while in prison and during interrogations there, at the very least in the form of beatings. Taking this together with the inhumane prison conditions established, the fact that the detainees constantly heard loud cries of pain from fellow prisoners, and the terrifying, harrowing uncertainty they endured regarding the treatment to which they themselves would be subjected, the Panel considers that each of the at least 4000 victims of the offence has suffered to an extent that far exceeds the threshold of “substantial”.

(c) At the same time, the imprisonment of at least 4000 detainees in the Branch constitutes a severe deprivation of physical liberty in contravention of a general rule of international law within the meaning of Section 7 (1) no. 9 of the CCAIL. Following Article 7 (1) (e) of the Rome Statute, this is assumed to be the case where a victim is prevented, without a legal basis recognizable under international law, from leaving the place where they are being held. “Severe” requires that all the facts and circumstances of the case be considered, in particular the length and circumstances of the deprivation of liberty (see *Bundestag Printed Papers* 14/8524, p. 22; Werle, loc. cit., Section 7 of the CCAIL, marginal notes 103 *et seq.*).

The Panel considers the deprivation of liberty unquestionably endured by each of the detainees in Branch 251 to be severe. It was in each case executed without basis in law, and no individual order was issued that even remotely complied with the rule of law. The detainees were not given any reasons for their detention. They were neither instructed about the legal remedies available to them nor granted legal counsel. Relatives were not notified and the detainees were not informed of the duration of their detention, which was therefore an unforeseeable length of time from their point of view. The circumstances of detention were characterized by excessive violence and inhumane general conditions of detention. Moreover, their detentions were not of short duration. The Panel has estimated the number of victims subjected to deprivation of liberty in the Branch during the period of the offence within the meaning of Section 7 (1) no. 9 of the CCAIL in such a way that those who were detained in the Branch for a very short time — a few hours to a day — are excluded. For comparatively short periods beyond that and extending to a few days, the deprivation of liberty weighs heavily in view of the other serious circumstances which made spending even a short period in the branch intolerable.

(d) The Panel considers the sexual assault on joint plaintiff N8 in the form of the forcible insertion of a stick into the anus to constitute rape within the meaning of Section 7 (1) no. 6 2nd alternative of the CCAIL, and the sexual attacks on joint plaintiffs N14 and N16 to constitute sexual assault within the meaning of Section 7 (1) no. 6 1st alternative of the CCAIL.

The physical search described by most witnesses detained in the Al Khatib Branch, whereby witnesses had to strip naked and squat (the “security manoeuvre”), and the further search for hidden objects in the vagina or rectum, was not considered by the Panel to constitute sexual assault within the meaning of Section 7 (1) 1 no. 6 of the CCAIL. The search was not determined to be sexually motivated. Women were searched by nurses from the nearby

hospital who had been brought in for that purpose. There was no evidence that any bodily orifices were touched or penetrated manually or with auxiliary implements.

(e) The individual offences committed against the detainees are an integral part of the overall offence of the widespread and systematic attack directed against the civilian population and are linked to it. The Syrian regime used the existing security apparatus to enforce orders to use violence against actual or alleged members of the opposition. It is self-evident that the mass arrests and ill-treatment ordered by the security apparatus led directly to the individual offences under Section 7 (1) nos. 5 and 9 of the CCAIL. The regime's strategy included killings within the meaning of Section 7 (1) no.1 of the CCAIL as a consequence of the use of force to suppress protests on the streets, the conduct of military operations targeting residential areas, and the deaths of detainees as a result of ill-treatment or inhumane conditions of detention. Lastly, based on the taking of evidence, it can be assumed that the use of sexual violence within the meaning of Section 7 (1) no. 6 of the CCAIL was also omnipresent in Syrian detention centres and was used by the Syrian regime and its subordinate security forces as a means of humiliation.

## **II. Individual offences under the German Criminal Code**

### **1. Legal and factual classification of individual offences under the German Criminal Code**

(a) The killings that have been established constitute murders committed out of base motives within the meaning of Section 211 (2) 4th variant of the German Criminal Code.

(aa) In the case of Section 211 (2) 4th variant of the German Criminal Code, the motive for the act must be at the basest level of general moral values, and must therefore appear significantly more reprehensible or even contemptible than the mere desire to kill (Decisions of the Federal Court of Justice in Criminal Matters 3, 132, 133; *NStZ* 1993, 341). The standard for assessing a motive can be found in the legal community [*Rechtsgemeinschaft*] of the Federal Republic of Germany (Federal Court of Justice *NJW* 2004, 1466; *NJW* 2006, 1008, 1011). The test of a political motive in a particular case is based on the relationship between the act and the purpose intended by the perpetrator. In this context, the killing of political opponents will generally be assessed as base if it serves to uphold a totalitarian system and does not arise from the exercise of a legitimate right to resist within the meaning of Article 20 (4) of the Basic Law of the Federal Republic of Germany [*Grundgesetz*] (see Federal Court of Justice, Decision of 2 May 2018 – 3 *StR* 355/17 = *NStZ* 2019, 342; Schneider in: *Münchener Kommentar, StGB*, 3rd edition Section 211, marginal note 94). In this context it is

not detrimental if the perpetrator kills in the name of an alleged general interest but this interest is derived from an ideology that violates human rights (Fischer, *StGB*, 69th edition, Section 211, marginal note 21a).

If the perpetrator has a range of motives, the base motive must be the one that defines the nature of the offence. Conditional intent does not preclude the assumption (Federal Constitutional Court, Section 211 (2) — base motives 1; Fischer, *loc. cit.*, Section 211, marginal note 79), but must not conflict with the motivation to destroy.

(bb) In applying these standards, the Panel considers that the defendant had a base motive for committing the offences of murder.

It is certainly true that the defendant's acts were informed by a range of motives. These included the desire to secure his own socioeconomic position, in particular so that he could provide for his family and maintain his standard of living. Foremost among his motives, however, was his identification with the prevailing regime — which determined his actions — and his desire to support it. The socialization of the defendant in the Syrian intelligence service and the professional attitudes that he acquired there instilled in him a desire to uphold the undemocratic order in the country; the suppression of the opposition was the defendant's professional calling. It was the primary and absolutely decisive motive for his actions; all social and economic benefits stemmed from it. The Panel therefore concludes that the defendant's defining motive was the suppression of the opposition and the protest movement — both of which he viewed as political enemies — by violent means, including physical annihilation. In view of the totalitarian nature of the Syrian regime, which was known to the defendant, his motive is assessed as base.

The fact that the defendant's work was not specifically oriented towards the targeted killing of detainees and that he did not welcome the deaths of individual detainees does not alter the fact that the conditions for the offence of murder are met. In some cases, murder or extreme ill-treatment more generally hampered efforts to investigate the offence because victims were no longer able to disclose information. Ultimately, the defendant not only acquiesced to the prison conditions that led to the deaths of detainees but actively participated in the regime's strategy of using brutal force to suppress peaceful protests and as a deterrent. He helped to establish the inhumane prison conditions and abandoned detainees to their fate — with the exception of prominent or valuable informants — without regard for the consequences of ill-

treatment, disease and other prison circumstances, and he came to accept the death of tortured or debilitated prisoners as a necessary consequence of their imprisonment.

(b) The following applies to other individual offences under the German Criminal Code:

The limitations on prosecution in respect of these individual offences cease to apply in the case of criminal offences against joint plaintiffs that may be eligible for private accessory prosecution within the meaning of Section 395 (1) of the German Code of Criminal Procedure, under Section 395 (5) of the German Code of Criminal Procedure. In the case of joint plaintiff N8, there was originally no limitation on prosecution in respect of the rape committed against him. Accordingly, the following prosecutable offences in respect of the male and female joint plaintiffs listed arise from the acts established:

- Aggravated rape within the meaning of Section 177 (1) nos. 1 and 3, Section 177 (2) sentence 2 no. 1, and Section 177 (4) no. 1 of the German Criminal Code in the version applicable until 9 November 2016, committed against joint plaintiff N8.
- Two counts of sexual assault within the meaning of Section 177 (1) nos. 1 and 3 of the German Criminal Code in the version applicable until 9 November 2016, committed against female joint plaintiffs N16 and N14, respectively.
- Three counts of sexual abuse of prisoners within the meaning of Section 174a (1) of the German Criminal Code committed against joint plaintiffs N8, N16 and N14, respectively.
- 25 counts of grievous bodily harm within the meaning of Section 224 (1) of the German Criminal Code, one committed against each of male and female joint plaintiffs N8, N20, N9, N16, N15, N7, N17, N4, N13, N19, N18, N2, N3, N1, N6, N11, N12, two against joint plaintiff N10 and three against each of joint plaintiffs N5 and N14. The variant of Section 224 (1) no. 4 of the German Criminal Code (acting jointly) was committed against all joint plaintiffs and therefore applies in all 25 cases, as the physically abusive detention conditions and physical abuse were in each case the result of the joint actions of several staff members in Branch 251. The variant of Section 224 (1) no. 2 of the German Criminal Code (using a dangerous implement) was committed against all male and female joint plaintiffs with the exception of N18, that is, in 24 of the 25 cases.

- 15 counts of deprivation of liberty for more than one week within the meaning of Section 239 (3) no. 1 of the German Criminal Code in 15 cases, one committed against each of male and female joint plaintiffs N8, N9, N15, N17, N10, N4, N13, N19, N18, N2, Al-Hasan, N1 and N11, and two against joint plaintiff N5.
- Two counts of hostage-taking within the meaning of Section 239b (1) of the German Criminal Code, consisting of a death threat against joint plaintiff N11 and deprivation of liberty of more than one week against joint plaintiff N8. The Panel considers that there was a sufficiently stable balance of power to the detriment of both joint plaintiffs.

## 2. Jurisdiction

With regard to the crimes of murder, rape, sexual assault, qualified deprivation of liberty and grievous bodily harm, the Panel has determined that an additional power of authority pursuant to Sections 1 and 7 of the CCAIL permits the applicability of the corresponding individual provisions of the German Criminal Code.

In all other respects — including the aforementioned criminal offences — the applicability of German criminal law can be derived from Section 7 (2) no. 2 of the German Criminal Code. As the Panel was informed by witness Z10, Germany has no extradition treaty with Syria, and extradition would therefore only be possible on an ad hoc basis. Furthermore, based on the expert opinion of the Max Planck Institute dated 21 March 2019, which was supplemented by expert opinions dated 4 May 2021 and 17 October 2021, the Panel is satisfied that the commission of the acts constituting the aforementioned crimes under German law was punishable in Syria at the time the offence was committed, and that this remains the case today. This applies — as explained in the expert opinion — principally to the offences of murder and bodily harm, which, as intentional crimes, are punishable to varying degrees and can carry lengthy sentences of imprisonment or hard labour, or the death penalty. Furthermore, the Syrian Criminal Code at the time of the offence made — and continues to make — provision for a general offence of unlawful detention (Article 555 of the Syrian Criminal Code). Furthermore, inflicting “adversity” in order to extort a confession or information related to a crime (Article 391 of the Syrian Criminal Code), the imprisonment of persons without a court order or decision (Article 358 of the Syrian Criminal Code), and threatening criminal offences to induce a person to commit or abstain from committing a specific act, constitute criminal acts (Article 560 *et seq.* of the Syrian Criminal Code). With regard to sexual offences, rape is recognized under Syrian criminal law (articles 489–492 of

the Syrian Criminal Code), although the definition is restricted to penetration of the female vagina by the male sexual organ. Sexual assault is also recognized (Article 493 *et seq.* of the Syrian Criminal Code), and the definition includes acts of coercion involving the use or threat of force to induce a person to suffer or commit an indecent act. According to Syrian jurisprudence, anal intercourse or the touching of private parts constitutes indecent assault.

Therefore, all of the offences under the German Criminal Code are also crimes under Syrian law, constituting a violation of legal rights in that country (see Fischer *StGB*, 69th edition, Section 7, marginal note 9a).

### **III. Perpetration of crimes by the defendant**

The defendant was a joint offender in the unitary offence.

#### **1. Standard**

A defining characteristic of joint offending within the meaning of Section 25 (2) of the German Criminal Code is a concerted effort by the participants through which their contributions to the crime constitute a joint offence. Whether the involvement of a number of people constitutes complicity in the offence committed by them, or merely the aiding and abetting of an offence committed by a third party, is determined by means of a comprehensive assessment of the objective authority of action of the person concerned in relation to the offence, the degree of their self-interest in the commission of the offence, and their criminal intent. In attributing authority of action, direct contributions to the commission of the offence and an organizational authority of action in directing the offence may both be significant (see Federal Court of Justice, Decision of 21 May 2015 – 3 *StR* 575/14, marginal note 12 [juris]; Decisions of the Federal Court of Justice in Criminal Matters 40, 218). In this respect, a contribution to the core event itself is not necessarily required; a contribution that promotes the commission of the offence and which, from the point of view of the parties to the offence, constitutes a significant part of the activity of all parties, is sufficient.

In cases where the perpetration of the offence is not brought about or not directly brought about, a distinction must also be made between possible indirect perpetration, including by omission (see Decisions of the Federal Court of Justice in Criminal Matters 48, 77; see also Decisions of the Federal Court of Justice in Criminal Matters 64, 10, marginal note 155) and

direct complicity (see Decisions of the Federal Court of Justice in Criminal Matters 64, 10, marginal note 154).

## 2. The defendant as joint offender

Judged against this standard, the defendant is to be regarded as a joint offender. The individual offences established were not committed by the defendant himself. However, the defendant, as the commanding officer, was involved in organizing and ordering the conditions and ill-treatment of prisoners in the Branch prison and during interrogations. The Panel deems that his contribution to the offence, based on his own interest in the offence and his own intent, is sufficient to conclude that he committed the offence jointly within the meaning of Section 25 (2) of the German Criminal Code.

(a) The defendant had sufficient authority of action in the offence.

He held a prominent position in a system of security authorities established by the Syrian regime to suppress critical sections of the population and, together with other executive officials, played a key role in establishing that system. Within Branch 251 — a central organizational unit within the Syrian intelligence service — he played a decisive role in devising and establishing the processes that led to the individual offences committed, in full knowledge of the ongoing attack against the civilian population. The defendant had specific authority to issue orders, notably on account of his senior position vis-à-vis the prison and other prison staff. He helped to organize the conditions of detention there and determined the fate of the prisoners, who were directly subjected to violence as a result of specific proposals made at his discretion. In his capacity as the official and de facto head of one of Syria's most important detention facilities, in the course of his own investigative activities during which he exerted considerable pressure on the victims of the offence, and by combining knowledge — obtained by other officers through extortion — with his decisions or proposals, he objectively played a role in the overall situation that was not merely supportive but instrumental in bringing it about. The defendant was not restricted in his activities to the extent that he can be regarded merely as a passive mouthpiece for his superiors or as a subordinate who followed orders without exercising any discretion. He had a decisive influence on the length of detentions, on the treatment of prisoners and, therefore, on each of the individual offences committed during the period of the offence.

The defendant's involvement was also of great objective significance in the context of the overall offence. The nature and extent of the systematic attack on the civilian population was

only possible with the cooperation of high ranking members of the security apparatus, who reliably implemented the instructions of the State leadership to suppress the protest movement and intimidate large sections of the population by exercising their executive functions and, in the case of the defendant, by exerting a direct influence on prisoners. In his area of responsibility, the defendant was instrumental in ensuring that detainees were unlawfully deprived of their liberty, subjected to inhumane prison conditions, ill-treatment and sexual abuse, and ultimately died. His contribution to the offence thus objectively extends well beyond merely facilitating a primary offence committed by a third party. In addition to the upper echelons of the regime led by Bashar al-Assad, the Panel regards the following entities, in particular, and regardless of the details of their individual contributions, to be joint offenders through whose collaboration the attack on the civilian population was perpetrated against the established specific victims of Branch 251: the 'CCMC' and its role in making decisions that were pivotal to the escalation of the events, the leadership of the General Intelligence Directorate, the Head of Branch 251, and the other investigators at the level of officer — depending on the specific nature of their activities — who were subordinate to the defendant.

In summary, the Panel recognizes the defendant's authority of action over the offence in his capacity as a high ranking 'cogwheel' with executive authority in an organizational structure, and the multitude of individual contributions made by him over a prolonged period of activity. The defendant's contribution consisted of maintaining a unified system that relied upon the many individual acts performed within his sphere of control without any specific orders from his superiors. Through his discretionary decisions, the defendant made a significant contribution to ensuring the continued functioning of Branch 251 and its system of detention and torture; he thus also played a prominent role in ensuring the continued existence of the Syrian regime as a whole, which was responsible for the overall attack on the civilian population.

(b) The defendant had a significant personal interest in the commission of the offences, from a number of different perspectives.

The defendant identified with the Syrian system of rule. Since the beginning of his professional career, he had sided with the Syrian Government, which even under Hafiz al-Assad was autocratic and violently repressive. His professional and economic existence depended on its continued survival. He was socialized in the security apparatus; in keeping with the tradition of the Syrian regime and his decades of activity within the intelligence service, he viewed the protest movement as an enemy, both from a personal and professional

standpoint. In any event, the defendant was ideologically convinced of the superiority of the Syrian system of rule in the form of the de facto autocratic rule of Hafiz al-Assad and the methods for maintaining power established by the latter and continued by Bashar al-Assad; the defendant's only criticism of Bashar al-Assad was his clumsy approach. The defendant nevertheless exercised his leadership in a way that best served the Syrian Government's objectives. In doing so, he carried out the orders of the regime's leadership — even if not every measure implemented corresponded to his personal notion of how the opposition should be effectively and sustainably suppressed — by maintaining a detention system based on mass torture and intimidation of which deaths were a necessary consequence. He also contributed his individual investigative skills, honed over many years of investigating the opposition.

The defendant benefited directly in the sense that the Syrian regime afforded him power, reputation and material support. His prominent position and activities were commensurate with the material and immaterial benefits he enjoyed in return. Even in a negative sense, a defence of the Syrian regime was essential for the defendant: the fall of the regime and its replacement by opposition forces would have most likely resulted in the persecution of all those who held key positions in the security forces and were responsible for the violent suppression and persecution of the opposition. Had the Syrian revolution been successful, the defendant would have experienced at best the loss of his freedom, at worst attempts on his life. In this respect, too, his self-interest coincided with that of the regime's leadership in a manner that distinguished him from, for example, lower ranking officers who did not enjoy the same privileges but who also did not have to fear targeted persecution in the event of regime change, or only to a much lesser extent.

In summary, the defendant made a career within a totalitarian regime that enabled him to rise through the ranks and enjoy certain privileges. He sought to maintain his position, which went hand in hand with upholding the Syrian system of rule. The collapse of the regime would have resulted in the removal of his powers, or even his annihilation.

(c) The defendant ultimately intended to commit the offence.

It follows from his aforementioned identification with the regime that he wished to commit the act himself. The defendant willingly and knowingly submitted to the established system of the security authorities for the suppression of critical sections of the population. In exercising his powers, but also by availing himself of certain privileges, he was aware of his special status,

the effects of his actions on the lives, bodies and freedom of the detainees directly incarcerated in his facility, and the significance of his involvement, which upheld the system by ensuring that the fundamentally violent approach established by the resolutions of the 'CCMC' was implemented. On the basis of the evidence received, he was fully involved in maintaining the operation of the Branch throughout the period of the offence, representing the positions of the regime leadership to the prisoners presented to him, and attempting in the performance of his duties to dissuade them from adopting a critical attitude towards the regime, whether real or perceived. The fact that early efforts to desert were not discernible also indicates his continued willingness to commit the offences. To the extent that he began to doubt the appropriateness of his actions following the attack on Al Houla on 25 and 26 May 2012 — for example, following the interventions made by his relatives — this did not, at that point in time, lead to a change of heart or even to any discernible mental reservation on the defendant's part.

### 3. Active contributions by the defendant

In view of the defendant's established contributions to the offence, which consisted of actively promoting the processes in the Branch and its prison on a daily basis, the Panel concludes that his actions were predominantly proactive in nature. The defendant did not merely allow third parties to commit crimes in the system he encountered or fail to prevent them from doing so; rather, he exercised his organizational authority by making organizational contributions, which included his interventions during interrogations.

## **IV. Justification and culpability**

The defendant acted unlawfully and culpably.

### 1. State of emergency

To the extent that he invokes a state of emergency as a defence, which precludes culpability within the meaning of Section 35 of the German Criminal Code, the conditions of that provision are not met. As has been established, the Panel does not consider there to have been a subjective state of emergency in the sense of a predicament, at least during the period of the offence, which the defendant would have wished to evade. There was no evidence of any internal disavowal of his attitude and activities in support of the system.

Furthermore, it was, objectively speaking, not unreasonable to expect him to act in a rule based manner. It is not apparent that it would have been impossible, or at any rate possible only at unjustifiable risk, for the defendant not to commit the act. In view of the severity of the offence, the Panel considers that greater expectations are to be placed on the defendant when it comes to conscientiously examining how to avoid committing the act and doing all that is in his power in that regard — including accepting risks and personal constraints. This is particularly true because the defendant, as a longstanding member of the intelligence service, was aware of the tasks of Branch 251 long before the period of the offence; in an identical position of responsibility, he had been involved in the arbitrary detention and brutal ill-treatment of prisoners long before the offence, and there are no indications that he had previously made any provision to avoid participating in acts that would constitute crimes under international criminal law.

However, no such scrutiny and endeavours to avoid involvement in the commission of the act are discernible. As established, adequate alternatives to his action would have arisen before and during the offence, and it is implausible that the defendant was only able to flee in December 2012.

## 2. Section 3 of the Code of Crimes against International Law

Furthermore, it cannot be concluded that he acted without guilt within the meaning of Section 3 of the CCAIL. The Panel does not consider the criteria for application of the provision to have been met, because it cannot be established that the defendant, in the context of his organizational authority and executive activities, acted in a way that left him no choice other than to commit the individual offences established. Even if this were to be assumed, the defendant, who has undergone legal training, was aware that his actions violated universal human rights and were incompatible with Syrian law, in particular in respect of the prohibition of torture, which is enshrined in the Syrian constitution. Moreover, the defendant did not claim to be strictly bound by orders and instructions from his superiors to commit human rights violations. On the contrary, he asserted that instructions were issued that stripped him of his authority to act independently.

## **V. Concurrent responsibility**

The Panel considers the defendant's commission of the crimes under Section 7 of the CCAIL to constitute a single offence.

In accordance with previous case law, if (as is the case here) individual acts are factually, temporally and spatially linked, then their functional link to the same overall offence within the meaning of Section 7 (1) of the CCAIL means that they constitute a single entity for the purpose of the legal assessment (Decisions of the Federal Court of Justice in Criminal Matters 64, 89, para. 53; see also Federal Court of Justice, Decision of 3 February 2021 – AK 50/20 = *NStZ-RR* 2021, 155; Werle, loc. cit., Section 7 of the CCAIL, para. 141). Although in such a factual connection of the events constituting the initial element of the systematic and extensive attack directed against the civilian population a unitary assessment or binding effect can (no longer) generally be found under concurrent responsibility in law, the particular feature in the present case is that the defendant, in terms of his actions, did not commit or contribute to any individual acts that can be distinguished in terms of time, place or his activity. Rather, the acts of which the defendant is accused formed part of the continuous exercise of his executive, organizational, reporting and monitoring functions. This is therefore a conformity of the act of commission, which in conjunction with the contributions of other perpetrators led to all of the established individual offences — notwithstanding their distinct qualities and classification according to the CCAIL Section 7 catalogue — and combined them into a single offence.

The offences established under the German Criminal Code constitute a single crime under Section 7 of the CCAIL, within the meaning of Section 52 of the German Criminal Code. Since the latter offence includes killings punishable by life imprisonment, the Panel sees no reason to assume a cut-off effect with regard to the murders with which the defendant is charged under Section 211 of the German Criminal Code, in view of the violation of legal interests.

## **VI. Obstacles to prosecution**

There are no obstacles to prosecution. In particular, the defendant cannot rely on his immunity as a functionary (in the widest sense of the word) of another state (see Federal Court of Justice *NJW* 2021, 1326).