

Article 15 communication on Crimes against Humanity committed in Syria

Submitted by:

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I. Introduction

1. The NGOs making this submission have personally interviewed witnesses of the crimes mentioned in this report, which have exceeded four hundred (400) interviews conducted on site and more than two thousand (2000) phone calls and other types of testimonies. The NGO's have also engaged a local network of activists in order to obtain reliable and credible information. Furthermore, they have summarised a selected number of reliable and publicly available international NGO reports on alleged crimes committed in Syria in order to corroborate the first hand information they have collected.
2. The NGOs submit that there is a reasonable basis to believe that crimes against humanity were committed in the context of the Syrian popular uprising, in particular crimes against humanity of murder; imprisonment or other severe deprivation of physical liberty; enforced disappearance, persecution and Torture. There are so far no national proceedings implemented by the State to investigate and try those who bear the responsibility of these crimes. Although on March 19 the state news agency Syrian Arab News Agency (SANA) reported that the Ministry of the Interior would form a committee to investigate the "unfortunate incidents" in Daraa, and would respond with "all measures deemed necessary", the prospect of seeing this committee implemented is very slim. Thus, the NGOs making this submission put the international community on notice that the policy conceived at the highest echelons of the State to commit crimes against humanity, the gravity of the crimes as well as the absence of any future prospects for ending the impunity for their perpetrators should prompt the international community to urgently act in order to halt the bloodshed.

II. Subject matter Jurisdiction

4. Article 53(1)(a) provides that the Prosecutor of the ICC shall consider whether the information available to him provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed.
5. For a crime to fall within the Court's jurisdiction: (i) the crime must be one of the crimes set out in article 5 of the Statute (jurisdiction *ratione materiae*); (ii) the crime must have been committed within the timeframe specified in article 11 of the Statute (jurisdiction

ratione temporis); and (iii) the crime must satisfy one of the two criteria laid down in Article 12 of the Statute.¹

6. The NGOs submitting this communication are cognisant to the fact that the preconditions for the exercise of jurisdiction by the Court are not met for the situation in Syria. Indeed, Syria is not a State party to the Rome Statute and thus the Court cannot exercise jurisdiction on the crimes committed on the Syrian territory or by nationals of Syria. However, the NGOs wish to recall that this situation might change if the Security Council was to refer the situation to the ICC, in which case it would have jurisdiction on these crimes. The NGOs conceive this application as an attempt to pave the way for the future analysis of the Court on the horrendous crimes committed therein, and to show to the international community that by all accounts these egregious violations of human rights constitute crimes against humanity that should be repelled, including by prosecuting those who bear the greatest responsibility.

III. Legal characterisation and reasons that the listed crimes fall within the jurisdiction of the ICC

7. For the reasons set out in this submission, the information collected by the NGOs provide a reasonable basis to believe that crimes against humanity under article 7 of the Statute have been committed in Syria.

(a) Contextual elements of crimes against humanity

8. As recalled by the Pre Trial Chamber II of the ICC in its Decision on the Authorization of an Investigation in Kenya², the contextual elements of crimes against humanity are set out in the Chapeau of article 7 (1) as follows:

'crimes against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

¹ *Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on the Prosecutor's Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo", [ICC-01/05-01/08-14-tENG](#), 17 July 2008, para. 12.

² Pre Trial Chamber II, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ICC-01/09, para.77-78, <http://www.icc-cpi.int/iccdocs/doc/doc854287.pdf>

Article 7(2)(a) of the Statute further indicates that:

'[a]ttack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.

9. PTC II interpreted these paragraphs as requiring five contextual elements for crimes against humanity: (i) an attack directed against any civilian population, (ii) a State or organizational policy, (iii) the widespread or systematic nature of the attack, (iv) a nexus between the individual act and the attack, and (v) knowledge of the attack.

(i) Attack directed against any civilian population

10. In the Decision on the Authorization of an Investigation in Kenya, PTC II derived from the Statute and the elements of crimes the conclusion that the attack “consists of a course of conduct involving the multiple commission of acts referred to in article 7(1)”. Furthermore, it recalled that the term is not restricted to “a military attack” and rather refers to “a campaign or operation carried out against the civilian population”.³

11. When defining the term “directed against any civilian population”, the Chamber considered that it requires showing that the attacks were directed against the civilian population as a whole and not against randomly selected individuals.

12. Furthermore, the Chamber specified that it need not be satisfied that the entire civilian population of the geographical area in question was being targeted. However, the civilian population must be the primary object of the attack in question and cannot merely be an incidental victim. The term “civilian population” refers to persons who are civilians, as opposed to members of armed forces and other legitimate combatants.⁴

13. It appears from the available information that most of the attacks carried out by the Syrian regime were targeting civilians in the cities where the uprising took place. The population targeted by these attacks was unarmed civilian people who took on spontaneously to the

³ Pre Trial Chamber II, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ICC-01/09-19-Corr, para.80.

⁴ ICC-01/09-19-Corr, para.82.

streets in Deraa, Damascus, Homs, and other cities in order to express their protest against the repressive regime and to call for a change in the state policy. Several videos shown on media and social networks show hundreds of demonstrators rallied in the main squares or streets of these cities, chanting “selmia, selmia” [peaceful, peaceful], opening their shirts to show that they carried no arms, etc.

14. Information collected by local and international NGOs testify that the civilian groups targeted were at first all the protesters that took up to the streets. Security forces opened fire on these demonstrators in an arbitrary and indiscriminate way. The second pattern of attacks against the civilian population was through vast campaigns of arbitrary arrests, that targeted real or perceived opponents or even people who had no history of opposition to the government but simply demonstrated spontaneously against the regime during the uprising.

(ii) State or organizational policy

15. In addition, article 7(2)(a) of the Statute imposes the requirement that the attack against any civilian population be committed “pursuant to or in furtherance of a State or organizational policy to commit such attack” .

16. The introduction to elements of article 7, when explaining the meaning of policy states that “policy to commit such attack” requires that the state or organization actively promote or encourage such an attack against a civilian population. The footnote to the paragraph states “a policy, which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action”.

17. In the Case The Prosecutor v. Katanga and Ngudjolo Chui, Pre-Trial Chamber I found that this requirement:

[...] ensures that the attack, even if carried out over a large geographical area or directed against a large number of victims, must still be thoroughly organised and follow a regular pattern. It must also be conducted in furtherance of a common policy

*involving public or private resources. Such a policy may be made either by groups of persons who govern a specific territory or by any organisation with the capability to commit a widespread or systematic attack against a civilian population. The policy need not be explicitly defined by the organisational group. Indeed, an attack which is planned, directed or organised - as opposed to spontaneous or isolated acts of violence - will satisfy this criterion.*⁵

18. In relation to the term “policy”, the Majority recalled in particular the criteria used by the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in the case against Tihomir Blaskic, in which the ICTY Trial Chamber held that the plan to commit an attack:

[...] need not necessarily be declared expressly or even stated clearly and precisely. It may be surmised from the occurrence of a series of events, inter alia:

- The general historical circumstances and the overall political background against which the criminal acts are set;*
- The establishment and implementation of autonomous political structures at any level of authority in a given territory;*
- The general content of a political programme, as it appears in the writings and speeches of its authors;*
- Media propaganda;*
- The establishment and implementation of autonomous military structures; the mobilisation of armed forces;*
- Temporally and geographically repeated and co-ordinated military offensives;*
- Links between the military hierarchy and the political structure and its political programme;*
- Alterations to the "ethnic" composition of populations;*
- Discriminatory measures, whether administrative or other (banking restrictions, laissez-passer,...);*

⁵ Pre-Trial Chamber I, Decision on the confirmation of charges, ICC-01/04-01/07-717, para. 396. See also Pre-Trial Chamber II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ICC-01/05-01/08-424, para. 81. See also ICTY, Prosecutor v. Tadic, Case No. IT-94-1-T, Judgement, 7 May 1997, para. 653; R. Dixon, C. K. Hall, "Article 7", in O. Triffterer (ed.). Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article, 2nd ed. - (Munich etc.: C.H.Beck etc., 2008), p. 236.

- *The scale of the acts of violence perpetrated - in particular, murders and other physical acts of violence, rape, arbitrary imprisonment, deportations and expulsions or the destruction of non-military property, in particular, sacral sites.*⁶

19. The NGOs submit that the attacks on the civilian population in Syria were not isolated or spontaneous acts of violence, but were committed pursuant to the policy of the State of Syria under the leadership of President Bashar al Assad. This policy is to launch violent attacks against political opponents or persons perceived to support the political opponents in order to retain power by all means. This policy is further evident due to the following:

- a. The policy of the State is subject to the political and contextual background on the nature of the Syrian police state, i.e. the implementation of the Emergency law since 1963; the control of the President and his close relatives on the State apparatus; media control, etc.
- b. The policy of the State is also evident through the consistent denial of the crimes committed by the security forces and the attempt to portray protesters as terrorists groups, armed gangs or foreign elements.
- c. The policy of the State was clearly demonstrated by several official communiqués circulated as “top secret” documents throughout the Syrian Security Apparatus different branches, and leaked to various NGO’s. These communiqués identify violent means to crush protesters.
- d. The policy of the State can be further exemplified by the attempts to conceal evidence of the commission of crimes by:
 - Confiscation of cellular phones and other recording devices from victims and witnesses of the crimes
 - Imposition of a total blackout on foreign media
 - Imposition of sieges on some cities. During the siege, a large-scale campaign of arbitrary arrests was implemented, further demonstrating the policy of the State to stifle dissent and deter any future demonstration.

⁶ ICTY, Prosecutor v. Blaskic, Case No. IT-95-14-T, Judgement, 3 March 2000, para. 204.

- e. The discovery of mass graves in several locations in the Horan region and Homs also shows that there was a policy of the State of Syria which involved the use of extensive means for the burial of the victims. The existence of mass graves is an example of the organised character of the attack on the civilian population, involving the mobilisation of state apparatus, various security forces and other institutions in order to carry out the policy.
- f. The deployment of heavy armament inside the cities of Deraa, Banias, Latakia, Homs, Idlib and other smaller cities and villages across Syria demonstrates a State policy by deploying official Syrian Army divisions to deal with the protestors en masse.

(iii) Widespread or systematic nature of the attack

20. As held by Pre-Trial Chamber II of the ICC, the reference to a widespread or systematic attack has been interpreted as excluding isolated or random acts from the concept of crimes against humanity.⁷ Only the attack, and not the alleged individual acts are required to be “widespread” or “systematic”.⁸ In this regard, the adjective “widespread” refers to “the large-scale nature of the attack and the number of targeted persons”, while the adjective “systematic” refers to the “organised nature of the acts of violence and the improbability of their random occurrence”.⁹ The Chamber, moreover, opined that the existence of a State or organisational policy is an element from which the systematic nature of an attack may be inferred.¹⁰ The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a 'widespread' or 'systematic' attack."

21. Based on the available information, there is a reasonable basis to believe that the attacks directed against the civilian population in Syria were both widespread and systematic.

⁷ KENYA para 94

⁸ KENYA para 94

⁹ KENYA para 95

¹⁰ [ICC01/0501/0814tENG](#), para. 33.

22. The attacks followed these main patterns:

- The launching of large scale military operations on towns and neighbourhoods identified as hubs of protests. For example On April 25, security forces and military vehicles moved into the city of Daraa using military vehicles, including numerous tanks and armoured personnel carriers (APCs), under a cover of heavy gunfire that lasted unabated for about 16 hours (see below for more details). The security forces occupied all neighbourhoods in Daraa, imposed checkpoints, and placed snipers on the roofs of buildings in many parts of the city. They imposed a siege on the city, cut off electricity and all means of communications, and prevented any movement by opening fire on anyone who tried to leave their house. Once they had established full control of the city, the security forces then proceeded to arrest hundreds of men from their homes. This pattern would be repeated in a number of places, with varying degrees of military involvement. For example it was followed in Douma, on the 25th of April. The same pattern of conduct was also followed in Zabadani near Damascus, on the 1st of May. On the 6th of May, the army and security forces using armoured vehicles and tanks, surrounded the coastal town of Banyas and they entered under cover of heavy gunshot.
- Security forces also placed snipers on the roofs of buildings in the above mentioned cities. The snipers were apparently clearly instructed to implement a shoot to kill policy, as they were targeting vital body organs. Several testimonies collected from the residents of these cities and examinations of the entry points of bullets that victims were subjected to corroborate evidence of the instructions given to snipers.
- The State conducted a campaign of arbitrary arrest in all the cities under siege. At times, they resorted to intimidation of the families of political opponents and even detained them in order to obtain information on the whereabouts of the opponents.

23. On the basis of the available information, the NGOs consider that at a minimum the following conduct has been committed:

- a. murder constituting a crime against humanity under article 7(1)(a) of the Statute;
- b. imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law under article 7 (1) (e) of the Statute;
- c. enforced disappearance of persons under article 7 (1) (i) of the Statute and
- d. persecution under article 7(1) (h) of the Statute.

e. Torture under article 7(1) (f) of the Statute.

24. Thus far, the submitting NGO's documented more than 1168 cases of death from across Syria, as well as more than 3000 cases of injury, in addition to more than 893 cases of forced disappearances and 11000 cases of arbitrary detention, all since March 15th of this year. A mass grave was also discovered in Daraa which contained 13 bodies, including bodies of children, in addition to significant indications of other 7 mass graves in Homs and Horan regions. The methodology of documentation which was followed by the reporting NGO's is the Oxford Research Group Protocols. Witnesses also told the reporting NGO's that they and other detainees were subjected to various forms of torture, including torture with electro-shock devices, cables, and whips. Most also said they were held in overcrowded cells and many said they were deprived of sleep, food, and water, in some cases, for several days. Some said they were blindfolded and handcuffed the entire time.