

INTERNATIONAL COURT OF JUSTICE

**JOINT APPLICATION INSTITUTING PROCEEDINGS CONCERNING A  
DISPUTE UNDER THE CONVENTION AGAINST TORTURE AND OTHER  
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

CANADA AND THE KINGDOM OF THE NETHERLANDS

v.

THE SYRIAN ARAB REPUBLIC

Filed with the Registry  
8 June 2023

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## JOINT APPLICATION INSTITUTING PROCEEDINGS

To the Registrar of the International Court of Justice (the “Court”), the undersigned, being duly authorized by the Government of Canada and the Government of the Kingdom of the Netherlands, state as follows:

1. In accordance with Article 36(1) and Article 40 of the Statute of the International Court of Justice (the “Statute”) and Article 38 of the Rules of Court, we have the honour to submit this Joint Application (the “Application”) instituting proceedings in the name of Canada and the Kingdom of the Netherlands (“the Netherlands”) (jointly, the “Applicants”) against the Syrian Arab Republic (“Syria”). Pursuant to Article 41 of the Statute, the Application is accompanied by a separate document requesting that the Court indicate provisional measures to protect the rights invoked herein from imminent and irreparable prejudice.

### I. INTRODUCTION

2. Syria has committed countless violations of international law, beginning at least in 2011, with its violent repression of civilian demonstrations, and continuing as the situation in Syria devolved into a protracted armed conflict.<sup>1</sup> These violations include the use of torture and other cruel, inhuman or degrading treatment or punishment (“CIDTP”), including through abhorrent treatment of detainees, inhumane conditions in places of detention, enforced disappearances, the use of sexual and gender-based violence, and violence against children. These violations also include the use of chemical weapons which has been a particularly abhorrent practice to intimidate and punish the civilian population, resulting in numerous deaths, injuries and severe physical and mental suffering. Syria’s actions, which have resulted in severe pain and suffering, and the deaths of tens of thousands of people,<sup>2</sup> have been met with widespread condemnation by the international community.
3. This Application concerns the international responsibility of Syria for its gross and systematic failure to fulfill its obligations regarding the prohibition against torture and other CIDTP, as well as its other numerous violations of the provisions of the Convention against Torture and

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<sup>1</sup> UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 46<sup>th</sup> Sess., UN Doc. A/HRC/46/55 (2021) [COI Report A/HRC/46/55] at para. 5, online: [www.ohchr.org/en/documents/country-reports/ahrc4655-report-independent-international-commission-inquiry-syrian-arab](http://www.ohchr.org/en/documents/country-reports/ahrc4655-report-independent-international-commission-inquiry-syrian-arab) (Annex 4).

<sup>2</sup> UN Human Rights Council, *Civilian Deaths in the Syrian Arab Republic - Report of the United Nations High Commissioner for Human Rights*, Advance Unedited Version, 50<sup>th</sup> Sess., UN Doc. A/HRC/50/68 (2022) at paras. 1 and 20, online: [www.ohchr.org/en/documents/reports/ahrc5068-civilian-deaths-syrian-arab-republic-report-united-nations-high](http://www.ohchr.org/en/documents/reports/ahrc5068-civilian-deaths-syrian-arab-republic-report-united-nations-high). In this report, the UN High Commissioner for Human Rights observed that of the 350,209 confirmed civilian deaths in Syria between March 2011 and March 2021, 12,259 of these deaths were as a result of the “use of objects and other means” (including sexual violence, death in custody, torture, strangulation, mutilations, beheadings, and hanging), and 1,295 deaths due to the use of chemical, biological, radiological, or nuclear (CBRN) weapons. This figure does not include any undocumented deaths from torture or CIDTP. See paras. 1 and 20 (Annex 5).

Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Convention against Torture”),<sup>3</sup> and the legal consequences flowing therefrom.

4. Syria has consistently denied wrongdoing, despite clear and compelling evidence demonstrating the sheer magnitude of violations of the Convention against Torture that are attributable to Syria and that continue to this day.<sup>4</sup> Indeed, the United Nations Independent International Commission of Inquiry on the Syrian Arab Republic (“COI”), established by the United Nations Human Rights Council (“HRC”) to investigate all alleged violations of international human rights law in Syria since March 2011, has concluded that the Syrian government has “resorted to arbitrary detention, torture and ill-treatment, including through sexual violence, and to involuntary or enforced disappearance to intimidate and punish perceived political opponents and dissenting civilians and their families.”<sup>5</sup>
5. Syria has defended its conduct as necessary to combat terrorism. When States defend their populations from terrorist acts, however, they are obligated to do so in compliance with international human rights law. Syria has consistently failed in this regard.<sup>6</sup> As a peremptory norm of international law (*jus cogens*),<sup>7</sup> and pursuant to Article 2(2) of the Convention against Torture,<sup>8</sup> torture is prohibited in all circumstances, without derogation. No exceptional circumstances whatsoever can justify the use of torture.

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<sup>3</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations Treaty Series, Vol. 1465, p. 85 (entered into force 26 June 1987) [Convention against Torture], online: [www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading](http://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading) (Annex 1.1).

<sup>4</sup> The facts relied on by the Applicants have been extensively and meticulously collected and documented by various bodies of the United Nations and other international inter-governmental organisations, as well as reputable non-governmental organisations and other credible sources. See, for example, UN Human Rights Council, *Resolution adopted by the Human Rights Council at its seventeenth special session*, 17<sup>th</sup> Spec. Sess., UN Doc. A/HRC/RES/S-17/1 (2011), online: [www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/ColSyria/ResS17\\_1.pdf](http://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/ColSyria/ResS17_1.pdf) (Annex 6.1) as found in UN Human Rights Council, *Report of the Human rights Council on its seventeenth special session*, 17<sup>th</sup> Spec. Sess., UN Doc. A/HRC/S-17/2 (2011), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/169/88/PDF/G1116988.pdf?OpenElement>, establishing the Independent International Commission of Inquiry on the Syrian Arab Republic (Annex 6.2). See also UN General Assembly, *Resolution adopted by the General Assembly on 21 December 2016*, 71<sup>st</sup> Sess., UN Doc. A/RES/71/248 (2017), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/462/01/PDF/N1646201.pdf?OpenElement>, establishing the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011 (Annex 7).

<sup>5</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 100.

<sup>6</sup> UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 46<sup>th</sup> Sess., UN Doc. A/HRC/46/54 (2021) [COI Report A/HRC/46/54] at paras. 22-23, online: [www.ohchr.org/en/documents/country-reports/ahrc4654-report-independent-international-commission-inquiry-syrian-arab](http://www.ohchr.org/en/documents/country-reports/ahrc4654-report-independent-international-commission-inquiry-syrian-arab) (Annex 8).

<sup>7</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, [2012] ICJ Rep 422 [Belgium v. Senegal] at para. 99, online: [www.icj-cij.org/sites/default/files/case-related/144/144-20120720-JUD-01-00-EN.pdf](http://www.icj-cij.org/sites/default/files/case-related/144/144-20120720-JUD-01-00-EN.pdf) (Annex 2).

<sup>8</sup> Convention against Torture, *supra* note 3 at Article 2(2), states: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

6. After nearly a decade of conflict, with shifting control over cities and territory, a ceasefire was brokered in February 2020, which has largely held to date, in which the Syrian government regained significant territory.<sup>9</sup> Even after this shift in circumstances, Syria continued to fail to take meaningful measures to remedy its ongoing violations of the Convention against Torture, including the commission of torture and other CIDTP.
7. A credible political process to resolve the conflict and address these violations remains lacking.<sup>10</sup> In light of the massive scale and ongoing nature of these violations, and the recognised link between continued impunity for those that have committed human rights violations in Syria and the continued commission of such violations,<sup>11</sup> the Applicants have resorted to the dispute settlement procedure as contained in Article 30(1) of the Convention against Torture. The Applicants seek compliance by Syria with its obligations thereunder, which are of an *erga omnes partes* nature, and are thus owed to the Applicants, and indeed to all States Parties to the Convention against Torture.<sup>12</sup>

## II. JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

8. The Applicants and Syria are all Members of the United Nations and bound by the Statute, including Article 36(1), which provides that the jurisdiction of the Court “comprises [...] all matters specially provided for [...] in treaties and conventions in force.”
9. The Applicants and Syria are all States Parties to the Convention against Torture. Canada ratified the Convention against Torture on 24 June 1987, and the Netherlands did so on 21 December 1988.<sup>13</sup> Syria acceded to the Convention against Torture on 19 August 2004.<sup>14</sup> By 18 September 2004, the Convention had entered into force as between all three parties to the present dispute.

<sup>9</sup> See, for example, COI Report A/HRC/46/54, *supra* note 6 at para. 19.

<sup>10</sup> See, for example, UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 52<sup>nd</sup> Sess., UN Doc. A/HRC/52/69 (2023) [COI Report A/HRC/52/69] at para. 6, online: [www.ohchr.org/en/documents/country-reports/ahrc5269-report-independent-international-commission-inquiry-syrian-arab](https://www.ohchr.org/en/documents/country-reports/ahrc5269-report-independent-international-commission-inquiry-syrian-arab) (Annex 9), with reference to UN Security Council, Briefing by Mr Geir Pedersen, United Nations Special Envoy for Syria, 29 November 2022, at para. 15, online: [https://specialenvoysyria.unmissions.org/sites/default/files/2022-11-29\\_secco\\_un\\_special\\_envoy\\_for\\_syria\\_mr.\\_geir\\_o.\\_pedersen\\_briefing\\_as\\_delivered\\_0.pdf](https://specialenvoysyria.unmissions.org/sites/default/files/2022-11-29_secco_un_special_envoy_for_syria_mr._geir_o._pedersen_briefing_as_delivered_0.pdf) (Annex 10).

<sup>11</sup> UN Security Council, *Resolution 2191 (2014)*, UN Doc. S/RES/2191 (2014), preamble, page 3, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/700/22/PDF/N1470022.pdf?OpenElement> (Annex 11).

<sup>12</sup> *Belgium v. Senegal*, *supra* note 7 at para. 69.

<sup>13</sup> See Annexes 1.1 and 1.2 for Canada and the Netherlands’ instruments of ratification of the Convention against Torture.

<sup>14</sup> UN Treaty Body Database, Ratification Status for Syrian Arab Republic, online: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=170&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=170&Lang=EN).

*Conditions for Jurisdiction under Article 30 of the Convention against Torture*

10. As States Parties to the Convention against Torture, the Applicants and Syria are all bound by the dispute resolution process set out in Article 30(1), which states:

Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

11. Neither Canada, the Netherlands nor Syria has made a reservation under Article 30(2) of the Convention against Torture, to declare that it does not consider itself bound by Article 30(1).
12. In order to exercise jurisdiction in the present case, the Court must be satisfied that each of the following requirements has been met: (i) there is a dispute in existence as between each of the Applicants and Syria; (ii) the dispute could not be settled through negotiations; and (iii) after a request was made to submit the dispute to arbitration, the parties were unable to agree to the organisation of arbitration within six months.

*(i) The Existence of a Dispute between the Applicants and Syria*

13. The Netherlands formally notified Syria that it was requesting negotiations pursuant to Article 30(1) of the Convention against Torture on 18 September 2020, via Note Verbale,<sup>15</sup> and publicly announced that it had taken this step.<sup>16</sup> The next day, Syria publicly denounced the Netherlands' actions.<sup>17</sup> Canada formally notified Syria of its request for negotiations pursuant to Article 30(1) on 3 March 2021,<sup>18</sup> also accompanied by a public announcement.<sup>19</sup> The Applicants each took this step due to their disputes with Syria regarding the latter's responsibility for its failure to fulfill its obligations under the Convention against Torture. On 12 March 2021, the Applicants announced their joint intention to hold Syria to account for

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<sup>15</sup> Note Verbale from the Permanent Mission of the Kingdom of the Netherlands in Geneva, Switzerland to the Permanent Mission of the Syrian Arab Republic in Geneva Switzerland (18 September 2020) (Annex 3, NV 1); A full record of the Notes Verbales exchanged between the parties to the dispute may be found in Annex 3 to this Application.

<sup>16</sup> Government of the Netherlands, News Item, "The Netherlands holds Syria responsible for gross human rights violations" (18 September 2020), online: [www.government.nl/latest/news/2020/09/18/the-netherlands-holds-syria-responsible-for-gross-human-rights-violations](http://www.government.nl/latest/news/2020/09/18/the-netherlands-holds-syria-responsible-for-gross-human-rights-violations) (Annex 12).

<sup>17</sup> Syrian Arab News Agency, "Foreign Ministry: Government of the Netherlands is the last one who has the right to talk about the Human rights" (19 September 2020), online: <https://sana.sy/en/?p=203611> (Annex 13).

<sup>18</sup> Note Verbale from the Permanent Mission of Canada to the United Nations and the World Trade Organization at Geneva to the Permanent Mission of the Syrian Arab Republic to the United Nations at Geneva (3 March 2021) (Annex 3, NV 6).

<sup>19</sup> Government of Canada, News Release, "Minister of Foreign Affairs takes action on Syria's human rights violations" (4 March 2021), online: [www.canada.ca/en/global-affairs/news/2021/03/minister-of-foreign-affairs-takes-action-on-syrias-human-rights-violations.html](http://www.canada.ca/en/global-affairs/news/2021/03/minister-of-foreign-affairs-takes-action-on-syrias-human-rights-violations.html) (Annex 14).

these violations.<sup>20</sup>

14. Since at least 2011, the Applicants have consistently expressed their profound concern regarding the human rights situation in Syria, and have repeatedly called on Syria to meet its international human rights obligations, which include those set out in the Convention against Torture. In various multilateral settings, including the United Nations Security Council (“UNSC”), the United Nations General Assembly (“UNGA”), and the HRC, the Applicants have specifically registered their views<sup>21</sup> and co-sponsored resolutions<sup>22</sup> condemning, *inter alia*, Syria’s use of torture and other CIDTP, including through instances of sexual and gender-based violence, enforced disappearances, abhorrent treatment of detainees, inhumane conditions of detention, and other acts committed by Syria to coerce, punish or terrorize its civilian population. Syria has repeatedly rejected the positions taken

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<sup>20</sup> Government of the Netherlands, Diplomatic Statement, “Joint statement of Canada and the Kingdom of the Netherlands regarding their cooperation in holding Syria to account” (12 March 2021), online: [www.government.nl/documents/diplomatic-statements/2021/03/12/joint-statement-of-canada-and-the-kingdom-of-the-netherlands-regarding-their-cooperation-in-holding-syria-to-account](http://www.government.nl/documents/diplomatic-statements/2021/03/12/joint-statement-of-canada-and-the-kingdom-of-the-netherlands-regarding-their-cooperation-in-holding-syria-to-account) (Annex 15).

<sup>21</sup> See, for example, UNSC: Netherlands, Statement by Mr. Van Oosterom (Netherlands), United Nations, Security Council, 8434<sup>th</sup> Meeting, UN Doc. S/PV.8434, at page 10-11 (Annex 16); UNGA: Canada, Statement by H.E. Ambassador Rishchynski (Canada), Permanent Representative of Canada to the United Nations, General Assembly, 96<sup>th</sup> Plenary Meeting, 66<sup>th</sup> Sess., UN Doc. A/66/PV.96 (2012) at page 3, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/231/51/PDF/N1223151.pdf?OpenElement> (Annex 17); Canada, Statement by Ms. Pritchard, United Nations, General Assembly, Summary Record of the 13<sup>th</sup> Meeting, 75<sup>th</sup> Sess., UN Doc. A/C.3/75/SR.13 (2021) at page 10 at para. 63, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/322/42/PDF/N2032242.pdf?OpenElement> (Annex 18 ); HRC: Canada, United Nations Webcast, 17<sup>th</sup> Special Session, Human Rights Council (Part 2), UNHRC, 17<sup>th</sup> Spec. Sess., at timestamp 00:30:40, online: <https://media.un.org/en/asset/k14/k14xhy8mda>; the Netherlands, United Nations Webcast, Commission of inquiry on Syria - 15<sup>th</sup> Meeting 30<sup>th</sup> Regular Session of Human Rights Council, UNHRC, 30<sup>th</sup> Reg. Sess., at timestamp 1:57:04, online: <https://media.un.org/en/asset/k1s/k1snot517j>.

<sup>22</sup> Since 2011, there have been over 50 resolutions related to the human rights situation in Syria adopted by the UNHRC, and UNGA. See for example: UN Human Rights Council, Resolution adopted by the Human Rights Council, 16<sup>th</sup> Spec. Sess., UN Doc. A/HRC/RES/S-16/1 (2011), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/130/54/PDF/G1113054.pdf?OpenElement> (Annex 19); UN Human Rights Council, Resolution adopted by the Human Rights Council at its seventeenth special session, 17<sup>th</sup> Spec. Sess., UN Doc. A/HRC/RES/S-17/1 (2011), online: [www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/ResS17\\_1.pdf](http://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/ResS17_1.pdf) (Annex 6.1) as found in the UN Human Rights Council, Report of the Human rights Council on its seventeenth special session, 17<sup>th</sup> Spec. Sess., UN Doc. A/HRC/S-17/2 (2011), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/169/88/PDF/G1116988.pdf?OpenElement> (Annex 6.2); UN Human Rights Council, Resolution adopted by the Human Rights Council on 23 March 2016, 31<sup>st</sup> Sess., UN Doc. A/HRC/RES/31/17 (2016), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/072/25/PDF/G1607225.pdf?OpenElement> (Annex 20); UN General Assembly, Resolution adopted by the General Assembly on 19 December 2011, 66<sup>th</sup> Sess., UN Doc. A/RES/66/176 (2012), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/469/38/PDF/N1146938.pdf?OpenElement> (Annex 21); UN General Assembly, Resolution adopted by the General Assembly on 18 December 2014, 69<sup>th</sup> Sess., UN Doc. A/RES/69/189 (2015), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/708/96/PDF/N1470896.pdf?OpenElement> (Annex 22); and most recently UN Human Rights Council, Situation of Human Rights in the Syrian Arab Republic, 52<sup>nd</sup> Sess., UN Doc. A/HRC/RES/52/30 [A/HRC/52/L.16], online <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G23/059/43/PDF/G2305943.pdf?OpenElement> (Annex 23) and UN General Assembly, Resolution adopted by the General Assembly on 15 December 2022, 77<sup>th</sup> Sess., UN Doc. A/RES/77/230 (2023), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/764/98/PDF/N2276498.pdf?OpenElement> (Annex 24).

by the Applicants, and in the context of the UNGA, has consistently voted against the adoption of related resolutions.<sup>23</sup>

15. In the context of the HRC, the Applicants have made recommendations to Syria during its Universal Periodic Reviews held in 2011, 2016, and 2022 respectively, to *inter alia*: cease torture and other CIDTP related practices, investigate alleged violations, and bring perpetrators to justice.<sup>24</sup> None of the related recommendations were accepted by Syria, but were rather rejected outright or were noted as “not enjoying the support” of Syria.<sup>25</sup>
16. On the basis of the above, it is clear that a dispute exists as between the Applicants and Syria with respect to the interpretation and application of the Convention against Torture.

(ii) *Attempts to Settle the Dispute through Negotiation*

17. The Applicants have made a genuine attempt to resolve the dispute concerning breaches of the Convention against Torture by Syria through good faith negotiations. Sixty-six Notes Verbales have been exchanged between the Applicants and Syria, including substantive discussions with regard to the dispute and attempts to negotiate its resolution.<sup>26</sup> The Notes Verbales were sent by and to the respective Permanent Missions of the Applicants and Syria to the United Nations in Geneva, Switzerland and from the Syrian Embassy in the United Arab Emirates. The Applicants additionally met in-person with Syria in Abu Dhabi, United Arab Emirates, on 25 April 2022 and 5-6 October 2022, as part of their efforts to negotiate a resolution of the dispute.

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<sup>23</sup> See, for example, UN General Assembly, 89<sup>th</sup> Plenary Meeting, Monday, 19 December 2011, 66<sup>th</sup> Sess., UN Doc. A/66/PV.89 (2011) at pages 19-21, 25, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/643/65/PDF/N1164365.pdf?OpenElement> (Annex 25); UN General Assembly, 73<sup>rd</sup> Plenary Meeting, Thursday, 18 December 2014, 73<sup>rd</sup> Sess., UN Doc. A/69/PV.73 (2014) at pages 18-19, 23, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/702/72/PDF/N1470272.pdf?OpenElement> (Annex 26); UN General Assembly, 58<sup>th</sup> Plenary Meeting, Friday, 9 December 2016, 71<sup>st</sup> Sess., UN Doc. A/71/PV.58 (2016) at pages 4 and 20-21, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/426/14/PDF/N1642614.pdf?OpenElement> (Annex 27); 54<sup>th</sup> Plenary Meeting, Thursday, 15 December 2022, 77<sup>th</sup> Sess., UN Doc. A/77/PV.54 (2022) at page 25, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/753/09/PDF/N2275309.pdf?OpenElement> (Annex 28).

<sup>24</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Syrian Arab Republic*, 19<sup>th</sup> Sess., UN Doc. HRC/19/11 (2012) [UPR WG A/HRC/19/11] at 22 at para. 104.17, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/102/33/PDF/G1210233.pdf?OpenElement> (Annex 29); UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Syrian Arab Republic*, 34<sup>th</sup> Sess., UN Doc. A/HRC/34/5 (2016) at paras. 110.21, 109.148, 109.167, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/441/78/PDF/G1644178.pdf?OpenElement> (Annex 30); UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Syrian Arab Republic*, 50<sup>th</sup> Sess., UN Doc. A/HRC/50/6 (2022) at page 17 at para. 133.133 and at page 18 at para. 133.147, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/297/96/PDF/G2229796.pdf?OpenElement> (Annex 31).

<sup>25</sup> See, for example, UPR WG A/HRC/19/11, *ibid.* at para. 104.17; UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Syrian Arab Republic*, Addendum, 34<sup>th</sup> Sess., UN Doc. A/HRC/34/5/Add.1 (2017) at 8, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/055/86/PDF/G1705586.pdf?OpenElement> (Annex 32).

<sup>26</sup> See Annex 3.

18. In an effort to advance substantive discussions of the dispute while the parties were attempting to agree on a mutually acceptable location for in-person meetings, the Applicants presented a Statement of Facts and a Statement of Law to Syria in writing on 9 August 2021.<sup>27</sup> These documents included a description of the relief sought by the Applicants. On 30 September 2021, Syria informed the Applicants that it rejected “*in toto*” the characterisation of the dispute as its “international responsibility for the recent breaches of its obligations under the Convention against Torture,” along with the Statement of Facts and Statement of Law.<sup>28</sup> Despite repeated requests by the Applicants, Syria never responded in writing to the Statement of Facts and the Statement of Law.
19. In the meantime, the Applicants continued to make concerted efforts to meet in-person, with the parties finally convening on 25 April 2022 in Abu Dhabi. During that meeting, the Applicants presented statements, once again setting out the dispute and the relief sought. Modalities for the continuing negotiations were agreed to. A second meeting was convened on 5-6 October 2022. At that meeting, the Applicants delivered oral presentations of the documents provided to Syria in writing in August 2021, namely on the facts of the dispute, the law, and the Applicants’ request for relief, in particular: cessation of violations of the Convention against Torture, assurances and guarantees of non-repetition, and full reparation for victims.
20. On the basis of the outcome of two rounds of in-person meetings, and more than two years of exchanges of Notes Verbales, without any progress towards settling the dispute, the Applicants were forced to conclude that negotiations had become deadlocked or futile. They informed Syria of their position by Note Verbale on 17 October 2022.<sup>29</sup>

(iii) *Attempts to Organise Arbitration*

21. By Note Verbale dated 7 November 2022, the Applicants formally requested that the dispute be submitted to arbitration, and enclosed a proposal of elements to form the basis for an agreement on the organisation of arbitration.<sup>30</sup> Syria did not acknowledge or otherwise respond to the formal request made by the Applicants to refer the dispute to arbitration. In the three Notes Verbales it has sent since the formal request for arbitration, Syria has not

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<sup>27</sup> Note Verbale from the Permanent Mission of Canada to the United Nations in Geneva, Switzerland and the Permanent Mission of the Kingdom of the Netherlands to the United Nations in Geneva, Switzerland to the Permanent Mission of the Syrian Arab Republic to the United Nations in Geneva, Switzerland (9 August 2021) (Annex 3, NV 13).

<sup>28</sup> Note Verbale from the Permanent Mission of the Syrian Arab Republic to the United Nations Office and other International Organizations in Geneva to the Permanent Mission of the Kingdom of the Netherlands in Geneva (30 September 2021) (Annex 3, NV 15).

<sup>29</sup> Note Verbale from the Permanent Mission of Canada to the United Nations in Geneva, Switzerland and the Permanent Mission of the Kingdom of the Netherlands to the United Nations in Geneva, Switzerland to the Permanent Mission of the Syrian Arab Republic to the United Nations in Geneva, Switzerland (17 October 2022) (Annex 3, NV 60).

<sup>30</sup> Note Verbale from the Permanent Mission of Canada to the United Nations in Geneva, Switzerland and the Permanent Mission of the Kingdom of the Netherlands to the United Nations in Geneva, Switzerland to the Permanent Mission of the Syrian Arab Republic to the United Nations in Geneva, Switzerland (7 November 2022) (Annex 3, NV 62).



acknowledged the Applicants' request to submit the dispute to arbitration, notwithstanding subsequent invitations from the Applicants for Syria to provide comments on the proposal regarding elements for the organisation of arbitration. More than six months have passed since the Applicants formally requested arbitration, without agreement on the organisation of arbitration.

#### *Conclusion on Jurisdiction*

22. The Applicants have satisfied the conditions set out in Article 30(1) of the Convention against Torture to establish the jurisdiction of the Court. There is an existing dispute between the parties concerning the interpretation or application of the Convention against Torture, specifically regarding Syria's numerous and ongoing violations of its obligations thereunder, and its repeated denials in this regard.
23. Despite lengthy efforts on the part of the Applicants over the course of more than two years, the dispute could not be settled through negotiation. No agreement was reached on the organisation of arbitration, and the dispute has not been otherwise resolved in the meantime.
24. The Court thus has jurisdiction pursuant to Article 36(1) of the Statute and Article 30(1) of the Convention against Torture to settle the dispute between the Applicants and Syria.

### III. SUMMARY OF THE FACTS

25. The use of torture and other CIDTP is entrenched in the Syrian system of detention. Over the past four decades, suspected opponents of the Syrian government have been subjected to torture and detention.<sup>31</sup> In its 2010 Concluding Observations to Syria's initial report under the Convention against Torture, the United Nations Committee against Torture ("the Committee") expressed deep concern about the widespread and routine use of torture by Syrian officials, in particular in detention facilities.<sup>32</sup>
26. As of 2011, Syria began employing torture and other CIDTP on a massive scale. Against a background of unrest across several countries in the Middle East and North Africa, demonstrations broke out in Syria in February 2011 around economic, social and other human rights issues, with demands for government reform.<sup>33</sup> Syria's longstanding practices of arbitrary detention of dissidents and activists were among the main grievances that inspired the protests, which were accompanied by calls for the release of political

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<sup>31</sup> UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 17<sup>th</sup> Spec. Sess., UN Doc. A/HRC/S-17/2/Add.1 (2011) [COI Report A/HRC/S-17/2/Add.1] at para. 17, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/170/97/PDF/G1117097.pdf?OpenElement> (Annex 33).

<sup>32</sup> UN Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention*, 44<sup>th</sup> Sess., UN Doc. CAT/C/SYR/CO/1 (2010) at para. 7, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/426/23/PDF/G1042623.pdf?OpenElement> (Annex 34).

<sup>33</sup> COI Report A/HRC/46/54, *supra* note 6; COI Report A/HRC/S-17/2/Add.1, *supra* note 31 at para. 27.

prisoners.<sup>34</sup> In March 2011, Syrian security forces detained and tortured a group of Syrian children accused of defacing public buildings with anti-government graffiti in the city of Dar'a, prompting further peaceful protests in the city.<sup>35</sup> After families recovered the mutilated bodies of Thamer Al Sharee, 14 years of age, and Hamza Ali Al Khateeb, 13 years of age, detained in April in a separate incident, protests spread across Syria.<sup>36</sup>

27. The Syrian government responded with widespread arrests during military operations and at checkpoints,<sup>37</sup> and with targeted attacks on demonstrators in many locations.<sup>38</sup> Notwithstanding initial announcements of limited reforms in the spring of 2011, the Syrian government continued its brutal repression of demonstrations and non-violent activists.<sup>39</sup> Defections from the military and security forces ensued, fuelling the emergence of armed opposition groups.<sup>40</sup> This situation of unrest in Syria eventually devolved into an armed conflict.<sup>41</sup>
28. Since the spring of 2011, the use of torture and other CIDTP, often in the context of arbitrary detention, has been a hallmark of the conflict.<sup>42</sup> The security and intelligence apparatus, which includes police forces under the Ministry of the Interior, Syrian Military Intelligence, Air Force Intelligence, the National Security Bureau, the Political Security Directorate and the General Intelligence Directorate, is large and effective,<sup>43</sup> with central offices in Damascus, as well as a vast network of regional, city and local facilities within governorates across the country. The highly consistent use of various methods of torture and other CIDTP – regardless of location and detaining authority<sup>44</sup> – demonstrates the systematic and widespread nature of the practice,<sup>45</sup> which extends from the highest levels of the Syrian government.<sup>46</sup> The Syrian government has also engaged pro-government militia and committees (colloquially known as *Shabbiha*<sup>47</sup>) in, *inter alia*, confronting demonstrators,

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<sup>34</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 5.

<sup>35</sup> COI Report A/HRC/S-17/2/Add.1, *supra* note 31 at para. 27.

<sup>36</sup> COI Report A/HRC/S-17/2/Add.1, *supra* note 31 at para. 62; COI Report A/HRC/46/55, *supra* note 1 at page 2.

<sup>37</sup> COI Report A/HRC/46/54, *supra* note 6 at para. 3; see also COI Report A/HRC/46/55, *supra* note 1.

<sup>38</sup> COI Report A/HRC/46/54, *supra* note 6 at para. 3.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Id.*, at para. 4.

<sup>42</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 1.

<sup>43</sup> COI Report A/HRC/S-17/2/Add.1, *supra* note 31 at para. 19.

<sup>44</sup> UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 21st Sess., UN Doc A/HRC/21/50 (2012) at para. 77 [COI Report A/HRC/21/50], online: [www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50\\_en.pdf](http://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf) (Annex 35).

<sup>45</sup> *Ibid.* paras. 77-85.

<sup>46</sup> See, for example, COI Report A/HRC/46/55, *supra* note 1 at para. 25, noting that “all parts” of the Syrian security forces have been involved in Convention against Torture violations, and confirming the systematic torture and ill-treatment of detainees and involvement of high-ranking officers.

<sup>47</sup> COI Report A/HRC/S-17/2/Add.1, *supra* note 31 at para. 20, the COI explains that: “The militia includes the *Shabbiha*, which is composed of an estimated 10,000 civilians, who are armed by the Government and are widely used to crush anti-Government demonstrations alongside national security forces; and the People’s Army, a Baath party militia with an estimated 100,000 reservists, designed to provide additional security and protection in cities in times of war.”

establishing checkpoints, capturing members of opposition forces, and transferring them to branches of the intelligence and security services.<sup>48</sup>

### *Treatment of Detainees*

29. Since 2011, Syrian officials have frequently detained protesters, both during and immediately following demonstrations, in addition to other individuals perceived to oppose the Syrian government, and their family members, often as a result of targeted security or military operations.<sup>49</sup> As the conflict progressed, Syrian forces also engaged in mass arrest campaigns in areas that they recaptured.<sup>50</sup> Individuals have additionally been targeted based on their ethnicity, cultural background, religion, gender, and sexual orientation.<sup>51</sup>
30. During security and military operations, and at checkpoints and other points of arrest, as well as during the transfer to detention facilities, Syrian officials and others acting at their instigation, or with their consent or acquiescence have committed, and continue to commit, torture and other CIDTP.<sup>52</sup> Detainees were most often taken to official detention centres and interrogated by Syrian intelligence and security services. Upon arrival, detainees were beaten and whipped for an extended period, sometimes hours.<sup>53</sup> Those who survived this treatment continued to be subjected to torture and other CIDTP throughout their detention.
31. In some instances, Syrian officials and others under their control transferred those taken into custody to unofficial detention centres, including converted military barracks, schools, stadiums and warehouses, as well as to secret detention locations.<sup>54</sup> Sections within military and civilian hospital facilities were also repurposed for detention, and became notorious for the torture and other CIDTP inflicted on injured detainees by security officers, and in some cases, by medical personnel.<sup>55</sup>
32. The methods of torture used by Syrian officials, and others acting at their instigation, or with their consent or acquiescence, are both physical and mental, causing severe as well as long-term consequences, and frequently death.<sup>56</sup> The use of at least 20 different methods of torture by Syrian officials has been extensively documented.<sup>57</sup> Reported methods of torture

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<sup>48</sup> See for example, COI Report A/HRC/21/50, *supra* note 44 in particular at paras. 52, 74-86, 96-102.

<sup>49</sup> UN Human Rights Council, *Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic*, 31<sup>st</sup> Sess., UN Doc. A/HRC/31/CRP.1 (2016) at para. 18 [COI, *Out of Sight, Out of Mind*], online: [www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-31-CRP1\\_en.pdf](http://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-31-CRP1_en.pdf) (Annex 36); COI Report A/HRC/46/55, *supra* note 1 at para. 15.

<sup>50</sup> *Ibid.*, COI, *Out of Sight, Out of Mind*.

<sup>51</sup> See, for example, COI Report A/HRC/46/55, *supra* note 1 at para. 15; and UN Human Council, *Oral Update of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 25<sup>th</sup> Sess., 18 March 2014 at para. 27 (Annex 37).

<sup>52</sup> *Ibid.*, COI Report A/HRC/46/55, paras. 15 and 20.

<sup>53</sup> United Nations Office of the High Commissioner for Human Rights, *Open Wounds – Torture and ill-treatment in the Syrian Arab Republic*, United Nations, Human Rights (14 April 2014) [OHCHR, *Open Wounds*] at pages 4-5, online: [www.ohchr.org/sites/default/files/Documents/Countries/SY/PaperOnTorture.pdf](http://www.ohchr.org/sites/default/files/Documents/Countries/SY/PaperOnTorture.pdf) (Annex 38).

<sup>54</sup> COI Report A/HRC/21/50, *supra* note 44 at paras. 6, 14-16.

<sup>55</sup> UN Human Rights Council, *Assault on medical care in Syria*, 24<sup>th</sup> Sess., UN Doc. A/HRC/24/CRP.2 (2013) at paras. 33-37, online: [www.securitycouncilreport.org/un-documents/document/ahrc24crp2.php](http://www.securitycouncilreport.org/un-documents/document/ahrc24crp2.php) (Annex 39).

<sup>56</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 20.

<sup>57</sup> *Ibid.*

have been consistent across the country.<sup>58</sup> They include, *inter alia*, severe beatings and whippings, including with fists, electric cables, metal and wooden sticks, chains and rifle butts; administering electric shocks; burning body parts; pulling out nails and teeth; mock executions; and simulated drownings.<sup>59</sup> In many cases, detainees are subjected to multiple and recurring periods of torture, during which a combination of torture techniques are deployed.

33. Syrian intelligence and security officials have also used standardised methods of torture and other CIDTP, which often combine severe beatings with prolonged stress positions or the use of specific torture devices. These have included: folding detainees into a car tyre followed by a severe beating (*dulab*);<sup>60</sup> crucifying or suspending detainees from one or two limbs for prolonged periods and beating them (*shabeh*);<sup>61</sup> strapping detainees to hinged wooden boards, the ends of which are brought slowly together, overextending the body and spine (*bisat al rih* or *flying carpet*);<sup>62</sup> and beatings or whippings against the soles of the feet (*falaqa*).<sup>63</sup>

#### *Conditions of Detention*

34. The abhorrent conditions documented across Syria's system of detention constitute CIDTP and often amount to torture in and of themselves.<sup>64</sup> Prison conditions are similar across detention facilities, and characterised by severe overcrowding with detainees often forced to stand and sleep in shifts.<sup>65</sup> Some cells are underground,<sup>66</sup> leaving victims in near complete darkness, sometimes for months on end. A 22-year-old student detained at the Air Force Intelligence Branch in the town of Harasta and held in an overcrowded cell of 12 square metres, explained:

It was impossible to sleep. We were cramped, the smell was unbearable, and the cell was infested with insects. We could hardly breathe. There was no ventilation at all; the only small window of the room was closed all the time. There was a hole in one of the corners of the cell, which was the toilet. It was disgusting; there was no privacy at all. Imagine 60 persons using that hole every day. There was no recreation time whatsoever.<sup>67</sup>

<sup>58</sup> UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 22<sup>nd</sup> Sess., UN Doc. A/HRC/22/59 (2013) [COI Report A/HRC/22/59] at para. 16, online: <http://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/106/27/PDF/G1310627.pdf?OpenElement> (Annex 40).

<sup>59</sup> COI Report A/HRC/21/50, *supra* note 44 at Annex VIII at para. 8; UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 24<sup>th</sup> Sess., UN Doc. A/HRC/24/46 (2013) at para. 80, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/164/10/PDF/G1316410.pdf?OpenElement> (Annex 41); COI Report A/HRC/46/55, *supra* note 1 at para. 20.

<sup>60</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 20.

<sup>61</sup> *Ibid.*

<sup>62</sup> COI Report A/HRC/21/50, *supra* note 44 at Annex VIII at para. 9; COI Report A/HRC/22/59, *supra* note 58 at para. 17.

<sup>63</sup> COI Report A/HRC/21/50, *supra* note 44 at Annex VIII at para. 9.

<sup>64</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 20.

<sup>65</sup> COI, *Out of Sight, Out of Mind*, *supra* note 49 at para. 26.

<sup>66</sup> COI Report A/HRC/22/59, *supra* note 58 at para. 96.

<sup>67</sup> OHCHR, *Open Wounds*, *supra* note 53 at pages 4-5.

35. Most detainees are provided with inadequate food and drinking water.<sup>68</sup> For extended periods of time, there is a complete absence of any food at all, leading to dehydration, malnourishment and sometimes death by starvation.<sup>69</sup>
36. The risks to the health and lives of detainees imposed by the conditions of detention have been compounded by the often non-existent or inadequate medical assistance, making otherwise treatable conditions fatal.<sup>70</sup> Detainees died in large numbers from preventable conditions such as diarrhoea or other infections that spread in unhygienic and overcrowded cells.<sup>71</sup> Overcrowding, lack of adequate sanitation and lice infestations also resulted in the spread of skin diseases.<sup>72</sup> Furthermore, detainees received little to no medical care to treat wounds sustained during torture and developed severe infections, in some cases eventually resulting in death.<sup>73</sup>

*Syria's Use of Torture and other CIDTP to Interrogate, Punish, Intimidate, and Coerce*

37. Detainees are routinely subjected to torture and other CIDTP in the course of interrogations. Syrian officials have interrogated detainees to obtain, amongst other information, details regarding the organisation of demonstrations and other opposition activities, the reasons for protesting, as well as the involvement of the detainees or their family members and others in opposition and armed groups.<sup>74</sup> Detainees who are members of the Syrian military forces or security services are often interrogated regarding plans to defect.<sup>75</sup> The information gathered is then used to identify and to target additional suspects for arrest and detention.<sup>76</sup>
38. A 60 year-old male, held for three months in different detention centers in the Tartous Governorate in 2013, including at a Military Intelligence Branch facility, was interrogated about his alleged involvement in an opposition group and the identity of members of this group.<sup>77</sup> He described his detention conditions as follows:

Every day, cellmates were taken for 30 or 45 minutes of interrogation and came back with their faces bleeding, barely able to walk, and with open wounds that remained untreated and became infected.<sup>78</sup>

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<sup>68</sup> COI Report A/HRC/22/59, *supra* note 58 at para. 96.

<sup>69</sup> COI Report A/HRC/22/59, *supra* note 58 at para. 96; UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 37th Sess., UN Doc A/HRC/25/65 2014 at para. 52 (Annex 42).

<sup>70</sup> COI, *Out of Sight, Out of Mind*, *supra* note 49 at para. 29.

<sup>71</sup> *Ibid.*

<sup>72</sup> UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 37th Sess., UN Doc. A/HRC/37/72 (2018) [COI Report A/HRC/37/72] at para. 65, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/022/82/PDF/G1802282.pdf?OpenElement> (Annex 43).

<sup>73</sup> COI, *Out of Sight, Out of Mind*, *supra* note 49 at para. 24.

<sup>74</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 3.

<sup>75</sup> COI Report A/HRC/21/50, *supra* note 44, Annex VIII at para. 4.

<sup>76</sup> COI, *Out of Sight, Out of Mind*, *supra* note 49 at para. 86.

<sup>77</sup> OHCHR, *Open Wounds*, *supra* note 53 at page 5.

<sup>78</sup> *Ibid.*

39. Syria also uses torture and other CIDTP to extract confessions of the detainees' perceived opposition activities or to elicit promises to abstain from any future participation therein.<sup>79</sup> Detainees have been routinely forced to sign or fingerprint documents they were not able to read, which often turned out to be written confessions of crimes, sometimes while blindfolded or handcuffed.<sup>80</sup> The extracted confessions have subsequently been used as a means to justify the detainees' further detention or, in some cases, convictions.<sup>81</sup>
40. Syria perpetrates torture and other CIDTP as a means of punishment, intimidation, and coercion. Victims have been punished for perceived disloyalty to the Syrian government. They are intimidated in order to instill fear, with a view to forcing them to refrain from demonstrations and other opposition-related activities, as well as to discourage others from doing so.<sup>82</sup>

#### *Sexual and Gender-Based Violence*

41. Sexual and gender based violence, including rape, is deployed by Syria as a means of torture and other CIDTP. It is routinely committed against both male and female detainees, including children, and often combined with other practices amounting to torture and other CIDTP.<sup>83</sup> Sexual and gender-based violence has been perpetrated by Syrian government forces and affiliated militia during home raids, military operations, and at checkpoints,<sup>84</sup> as well as by Syrian officials across government-controlled places of detention, where it is used to extract information, as well as to intimidate, coerce, humiliate and punish.<sup>85</sup>
42. In detention, women and girls have been routinely subjected to invasive and humiliating body searches by male guards,<sup>86</sup> as well as forced nudity and beatings and electric shocks to their genitals.<sup>87</sup> Women and girls have been routinely raped, with many subjected to multiple rapes, including gang rapes.<sup>88</sup> Men and boys have been subjected to a range of forms of sexual violence.<sup>89</sup> Rape was most commonly perpetrated with objects, including batons, wooden sticks, pipes, and bottles.<sup>90</sup> Electric shocks, beatings targeting genitals, and genital mutilation are also forms of torture frequently administered.<sup>91</sup>

<sup>79</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 16.

<sup>80</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 16.

<sup>81</sup> *Ibid.*; See also UN Human Rights Council, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 51st Sess., UN Doc. A/HRC/51/45 (2022) [COI Report 51/45] at para. 19, online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/463/09/PDF/G2246309.pdf?OpenElement> (Annex 44).

<sup>82</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 3.

<sup>83</sup> *Id.*, *supra* note 1 at para. 20.

<sup>84</sup> COI Report A/HRC/22/59, *supra* note 58 at para. 106.

<sup>85</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 21.

<sup>86</sup> UN Human Rights Council, *"I lost my dignity": Sexual and gender-based violence in the Syrian Arab Republic*, 37<sup>th</sup> Sess., UN Doc. A/HRC/37/CRP.3 (2018) [COI, *I lost my dignity*] at para. 31, online: [www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-37-CRP-3.pdf](http://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-37-CRP-3.pdf) (Annex 45); COI Report A/HRC/46/54, *supra* note 6 at para. 50.

<sup>87</sup> *Id.*, COI, *I lost my dignity*, at paras. 33 and 37.

<sup>88</sup> *Id.*, at para. 34.

<sup>89</sup> *Id.*, at paras. 43-44.

<sup>90</sup> *Id.*, at para. 44; COI Report A/HRC/46/54, *supra* note 6 at para. 50.

<sup>91</sup> COI, *I lost my dignity*, *supra* note 86 at paras. 49-50; COI Report A/HRC/46/54, *supra* note 6 at para. 50.

43. Outside formal places of detention, it is women and girls that have predominantly been victims of sexual violence and rape.<sup>92</sup> During house raids, family members have been forced to watch the rape, including gang rape, of female relatives.<sup>93</sup> At checkpoints, sexual violence has most often taken place in nearby buildings, military vehicles or other forms of shelter, although in some cases women and girls have been raped in front of their male relatives.<sup>94</sup>
44. Syrian officials have also used sexual and gender-based violence as a means to coerce men from opposition and armed groups to surrender, in exchange for the release of their detained relatives.<sup>95</sup> Syrian authorities have also threatened to rape detainees in front of their family members, or to rape their wives and children. As one male detainee at the Damascus Political Security Branch reported in 2014:

The officer took two girls, held their faces down on the desk, and raped them in turn. The girls tried to resist but there was nothing they could do. The officer then told me “you see what I am doing to them, I will do this to your wife and daughter.”<sup>96</sup>

45. Victims have suffered extreme pain, physical injuries, and mental suffering from sexual and gender-based violence. In particular, women and girls who have been subjected to repeated sexual violence, including gang rape, often suffer from haemorrhaging and incontinence,<sup>97</sup> as well as other consequences specifically associated with sexual violence.<sup>98</sup> The physical and mental suffering caused by sexual and gender-based violence is further aggravated by the nature of the acts, and the ensuing stigmatisation attached to the incidents, affecting the victims, families and communities.<sup>99</sup> Victims accordingly often do not seek required medical care, or experience substantial barriers to receiving treatment and support.<sup>100</sup> They are also more likely to face additional abuse or harm linked to traditional and cultural practices.<sup>101</sup> Fear of sexual violence and the anticipated humiliation of being a victim of sexual violence has been deliberately used as a tool by the Syrian government to extract information, punish, and humiliate individuals and their families.<sup>102</sup>

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<sup>92</sup> *Ibid.*, COI Report A/HRC/46/54.

<sup>93</sup> COI, *I lost my dignity*, *supra* note 86 at para. 14.

<sup>94</sup> *Id.*, at para. 23.

<sup>95</sup> COI Report A/HRC/22/59, *supra* note 58 at para. 107.

<sup>96</sup> COI, *I lost my dignity*, *supra* note 86 at page 5.

<sup>97</sup> *Id.*, at para. 37.

<sup>98</sup> *Id.*, at paras. 27-42.

<sup>99</sup> *Id.*, at paras. 93-102.

<sup>100</sup> See, for example, COI Report A/HRC/52/69, *supra* note 10 at para. 19 where the COI notes that:

“Stigmatization often also prevents survivors of rape from seeking required medical assistance, physical protection, psychosocial or economic support and redress. It also renders survivors more likely to face additional abuse or harm linked to traditional and cultural practices.”

<sup>101</sup> *Ibid.*

<sup>102</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 21.

## Children

46. The torture of children was a precipitating factor of the start of the conflict in Syria.<sup>103</sup> As noted above, the detention and torture of children accused of anti-government graffiti in Dar'a,<sup>104</sup> and the subsequent deaths and recovery of the mutilated bodies of Thamer Al Sharee and Hamza Ali Al Khateeb, ignited the initial protests.<sup>105</sup>
47. Torture and other CIDTP have an increased traumatic effect on children as victims, above and beyond the mental and physical suffering experienced by adults.<sup>106</sup> Numerous accounts from former detainees indicate that children were detained, some younger than 10 years old, in various locations run by the military and security forces, and that torture was applied equally to adults and children.<sup>107</sup> Cases of children as young as 7 years old dying in Syrian government custody have also been documented.<sup>108</sup> One defector recollected that:
- people had their feet and hands bound with plastic handcuffs. They were beaten mercilessly, including 10-year-old children. Some children urinated out of fear while they were being beaten. It was very cruel.<sup>109</sup>
48. Children have witnessed torture and other CIDTP inflicted on family members and have been forced to inflict torture on other detainees.<sup>110</sup> For example, one witness detained in 2014 and held in the Qamishli Security Branch, described how a 16-year-old boy was forced to electrocute the genitals of another detainee.<sup>111</sup> Such incidents exacerbate the mental distress experienced by children as a consequence of torture and other CIDTP in detention.

## Enforced Disappearance

49. Syria has perpetrated enforced disappearances<sup>112</sup> on a widespread and massive scale following the 2011 demonstrations and ensuing conflict, including to spread fear and stifle dissent, and as punishment.<sup>113</sup> Tens of thousands are missing after having been taken into

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<sup>103</sup> See, for example, UN Human Rights Council, *Summary of the High-Level Panel Discussion on the Situation of Human Rights in the Syrian Arab Republic*, UN Doc. A/HRC/35/15 (2017) at para. 4: "The High Commissioner [for Human Rights] highlighted that the conflict had begun with the detention and torture by security officials of a group of children in Daraa who had daubed anti-government graffiti on a school wall" (Annex 46).

<sup>104</sup> COI Report A/HRC/S-17/2/Add.1, *supra* note 31 at para. 27; and COI Report A/HRC/46/55, *supra* note 1.

<sup>105</sup> COI Report A/HRC/S-17/2/Add.1, *supra* note 31 at para. 62.

<sup>106</sup> UN Human Rights Council, *"They have erased the dreams of my children": children's rights in the Syrian Arab Republic*, COI Conference Room Paper 43<sup>rd</sup> Sess., UN Doc. A/HRC/43/CRP.6 (2020) [COI, *They have erased the dreams of my children*] at para. 53, online: [www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_hrc\\_43\\_crp.6.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_43_crp.6.pdf) (Annex 47).

<sup>107</sup> COI Report A/HRC/S-17/2/Add.1, *supra* note 31 at para. 72.

<sup>108</sup> COI, *They have erased the dreams of my children*, *supra* note 106 at para. 3.

<sup>109</sup> COI Report A/HRC/S-17/2/Add.1, *supra* note 31 at para. 72.

<sup>110</sup> COI, *They have erased the dreams of my children*, *supra* note 106 at para. 54.

<sup>111</sup> *Ibid.*

<sup>112</sup> See, for example, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, United Nations, *Treaty Series*, Vol. 2716, p. 3 (entered into force 23 December 2010), Article 2 (Definition of Enforced Disappearance) (Annex 48).

<sup>113</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 18.



government custody, and remain forcibly disappeared.<sup>114</sup> In a consistent pattern, individuals were unlawfully detained, and neither they nor their families were informed about where they would be taken.<sup>115</sup> Individuals have been routinely subjected to incommunicado detention. These detainees are deprived of contact with the outside world, without the ability to communicate with anyone, including close relatives.<sup>116</sup> These practices place victims outside the protection of the law.<sup>117</sup>

50. Enforced disappearance and incommunicado detention often amount to torture and other CIDTP, and leave disappeared persons in a situation of unique vulnerability when it comes to their treatment and the conditions of detention. Victims suffer extreme powerlessness and helplessness, as they are often isolated in undisclosed locations for an undetermined length of time. The family members of the tens of thousands of missing persons are also victims as they continue to suffer from a pervasive sense of anguish, distress and uncertainty as to the whereabouts of their loved ones, or even whether they are still alive.<sup>118</sup> The Syrian government intentionally prolongs the suffering of those families by withholding information on the fate of their loved ones as a means of both intimidation and punishment.<sup>119</sup>

#### *Syria's Response to Torture and Other CIDTP*

51. The gross, systematic and widespread perpetration of torture and other CIDTP in Syria has been met with impunity. While Syria's constitution and criminal laws, including new legislation adopted in 2022, prohibit all acts of torture or degrading treatment,<sup>120</sup> these laws are neither enforced, nor implemented in practice. Syria has systematically failed to prevent or undertake prompt, thorough and impartial investigations of incidents of torture or deaths in detention.<sup>121</sup> Even where visibly ill-treated detainees have appeared before a judge, courts have consistently failed to order investigations into their cases.<sup>122</sup> Moreover, members of the intelligence services enjoy *de facto* immunity from prosecution.<sup>123</sup>
52. Syria has routinely concealed deaths in detention, including as a result of torture and other CIDTP. Syrian officials have kept meticulous registers of detainees,<sup>124</sup> and are aware of the

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<sup>114</sup> *Id.*, at para. 15.

<sup>115</sup> *Id.*, para. 18.

<sup>116</sup> COI Conference Room Paper, *Without a trace: enforced disappearances in Syria*, 19 December 2013 [COI, *Without a trace*], at para. 11, online: <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/ThematicPaperEDInSyria.pdf> (Annex 49).

<sup>117</sup> *Id.*, at paras. 4 and 11.

<sup>118</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 78.

<sup>119</sup> *Id.*, at paras. 104-105.

<sup>120</sup> COI Report A/HRC/51/45, *supra* note 81, at para. 23; UN Human Rights Committee, *Fourth periodic report submitted by the Syrian Arab Republic under article 40 of the Covenant, due in 2009*, UN Doc. CCPR/C/SYR/4 (2022) at paras. 37-38 (Annex 50).

<sup>121</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 97; see also *Out of Sight, Out of Mind*, *supra* note 49 at para. 40.

<sup>122</sup> COI, *Out of Sight, Out of Mind*, *supra* note 49 at para. 89.

<sup>123</sup> See, for example, legislative decrees 14/1969 and 69/2008 as noted in COI Report A/HRC/S-17/2/Add.1, *supra* note 31 at para. 22, and most recently, COI Report A/HRC/52/69, *supra* note 10 at para. 18.

<sup>124</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 27.

fate of most of those they have detained.<sup>125</sup> Yet, Syria continues to withhold information, which has had and continues to have a devastating impact on families.<sup>126</sup> Without certainty of death, next of kin cannot access governmental services such as social benefits or exercise a range of civil rights which require an official death certificate.<sup>127</sup> This is particularly the case for women who, without a death certificate of their deceased or disappeared spouse, cannot exercise their rights to inheritance and custody, and who are restricted in their freedom of movement.<sup>128</sup> When death certificates for victims of torture or other CIDTP have been issued, they routinely purport that the victims died of natural causes, such as “heart attack.”<sup>129</sup>

53. Multiple sources indicate that, in many cases, following the registration of deceased detainees at military hospitals, their bodies are transported and buried in mass graves.<sup>130</sup> For example, multi-year satellite imagery, as well as accounts from defectors and family members of the deceased, have led to the identification of two specific mass burial sites in Najha and Qutayfa on the outskirts of Damascus.<sup>131</sup>
54. Syria’s failure to prevent torture and other CIDTP is also indicative of a failure to implement and undertake a systematic review of its interrogation rules and other rules governing the custody of detainees, and a failure to provide effective training regarding the prohibition of torture and other CIDTP of all officials involved in the custody, interrogation or treatment of individuals subject to any form of arrest, detention or imprisonment. Furthermore, victims of torture do not have recourse to practical and effective remedies by which they can obtain redress, an enforceable right to fair and adequate compensation, or rehabilitation.<sup>132</sup>
55. Syria’s reporting to the Committee remains outstanding since May 2014. Syria has only submitted its initial report and appeared before the Committee in 2010, providing comments and follow-up responses to the Committee’s concluding observations in August 2011.<sup>133</sup> Syria also did not provide a special report pursuant to Article 19(1) of the Convention against Torture as requested by the Committee in November 2011, nor did it engage in the subsequent interactive dialogue with the Committee.<sup>134</sup>

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<sup>125</sup> *Id.*, at para. 104.

<sup>126</sup> *Ibid.*

<sup>127</sup> COI, *Death Notifications in the Syrian Arab Republic: Policy Paper*, 27 November 2018, [COI, Death Notifications] at paras. 6-7, online: [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/DeathNotificationsSyrianArabRepublic\\_Nov2018.docx](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/DeathNotificationsSyrianArabRepublic_Nov2018.docx) (Annex 51).

<sup>128</sup> COI Report A/HRC/46/54, *supra* note 6 at paras. 62-65.

<sup>129</sup> COI, *Death notifications*, *supra* note 127 at paras. 4-5.

<sup>130</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 23.

<sup>131</sup> *Id.*, at para. 24.

<sup>132</sup> *Id.*, at para. 97.

<sup>133</sup> UN Committee against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention*, *supra* note 32.

<sup>134</sup> See UN Committee against Torture, *Summary record of the first part (public) of the 1072<sup>nd</sup> meeting*, 48<sup>th</sup> Sess., UN Doc. CAT/C/SR.1072 (2012) (Annex 53).

### *Ongoing Violations of Syria's Obligations under the Convention against Torture*

56. Torture and other CIDTP by Syria continues unabated, "without any sign that the Government intends to discontinue them."<sup>135</sup> Additionally, Syria has still not taken sufficient and effective measures to prevent or punish the commission of torture. In its most recent report to the HRC, covering the period between 1 July and 31 December 2022, the COI reported the following among its findings:

The Commission has reasonable grounds to believe that the Government continued to commit acts of murder, torture and ill-treatment against persons in detention, including practices causing death in detention, as well as arbitrary imprisonment and enforced disappearances, again confirming continuing patterns of crimes against humanity and war crimes.<sup>136</sup>

57. While the present Application does not address torture as constituting either a war crime or a crime against humanity, and is restricted instead to the context of the Convention against Torture, it is worth observing that the systematic and widespread use of torture and other CIDTP by Syria is such that it has led the COI to conclude that their use by Syria over the past decade constitute crimes against humanity:

There are reasonable grounds to believe that the Government has continued to carry out a widespread or systematic attack against the civilian population, in pursuance of a firmly established policy to commit such acts, comprising the crimes against humanity of murder, extermination, imprisonment, enforced disappearance, sexual violence and torture, and other inhumane acts.<sup>137</sup>

58. The COI has further noted that sexual violence in government-controlled detention facilities amounting to crimes against humanity not only continues countrywide, but has seemingly increased, and that the impacts of the violence are compounded by a "legal framework [that] fails to effectively protect victims, including survivors, and constitutes a barrier to accountability."<sup>138</sup> Other ongoing elements highlighted in the report were the ongoing lack of due process for detainees, taking of confessions under duress, lack of access to medical care for detainees, and ongoing lack of access to information regarding the fate of family members taken into custody.<sup>139</sup>

### IV. LEGAL GROUNDS FOR THE APPLICANTS' CLAIMS

59. The Applicants claim that Syria, through its State organs, State agents, and other persons and entities exercising governmental authority, and through other agents acting on its instructions or under its direction and control, has committed and continues to commit multiple violations of the Convention against Torture, in breach of its obligations owed to

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<sup>135</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 102.

<sup>136</sup> COI Report A/HRC/52/69, *supra* note 10 at para. 61.

<sup>137</sup> COI Report A/HRC/46/55, *supra* note 1 at para. 87.

<sup>138</sup> COI Report A/HRC/52/69, *supra* note 10 at para. 18.

<sup>139</sup> *Ibid.*, at paras. 55-60.

the Applicants as States Parties to the Convention against Torture. These include but are not limited to:

- a. committing acts of torture, as defined by Article 1, and in violation of Article 2;
- b. failing to take effective legislative, administrative, judicial or other measures to prevent torture, in violation of Article 2(1);
- c. committing other acts of cruel, inhuman or degrading treatment or punishment, in violation of Article 16;
- d. failing to take effective legislative, administrative, judicial or other measures to prevent other acts of cruel, inhuman or degrading treatment or punishment, in violation of Article 16;
- e. failing to submit cases involving torture and attempted torture to its competent authorities for the purpose of prosecution, in violation of Article 7;
- f. failing to ensure appropriate education, information and instruction for persons who may be involved in the custody, interrogation or treatment of individuals subject to arrest, detention or imprisonment, in violation of Article 10 and Article 16;
- g. failing to systematically review interrogation rules, instructions, methods and practices, as well as arrangement for the custody and treatment of individuals subject to arrest, detention or imprisonment, in violation of Article 11 and Article 16;
- h. failing to ensure prompt and impartial investigations wherever there are reasonable grounds to believe that an act of torture or other cruel, inhuman and degrading treatment or punishment has been committed, in violation of Article 12 and Article 16;
- i. failing to ensure the right of individuals alleged to have been subjected to torture or other cruel, inhuman and degrading treatment or punishment to complain to, and have their cases promptly and impartially examined by, its competent authorities, as well as to take steps to ensure that complainants and witnesses are protected against all ill-treatment or intimidation, in violation of Article 13 and Article 16;
- j. failing to ensure in its legal system that victims of torture obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible, and for compensation to dependants of victims who died as a result of torture, in violation of Article 14;
- k. failing to ensure that statements established to have been made as a result of torture are not invoked as evidence in proceedings, except against a person accused of torture as evidence that the statement was made, in violation of Article 15; and
- l. failing to submit supplementary reports on the measures taken to give effect to their undertakings under the Convention against Torture to the Committee against Torture, in violation of Article 19.

#### IV. THE RELIEF SOUGHT

60. The Applicants respectfully request the Court to adjudge and declare that Syria:
- a. has breached, and continues to breach, its obligations under the Convention against Torture, in particular those in Articles 2, 7, 10, 11, 12, 13, 14, 15, 16, and 19;
  - b. must fully accept its responsibility for those internationally wrongful acts;
  - c. must cease any such ongoing violations forthwith and comply with its obligations under the Convention against Torture;
  - d. must provide appropriate assurances and guarantees of non-repetition of violations of the Convention against Torture;
  - e. must investigate and where warranted, prosecute and punish those responsible for acts of torture, while also guaranteeing fair treatment at all stages of the proceedings for any person against whom proceedings are brought; and
  - f. must provide individual victims full reparation, including compensation and rehabilitation, for the injury they have suffered as a consequence of those internationally wrongful acts.
61. The applicants further respectfully request the Court to adjudge and declare that Syria has committed a serious breach of a peremptory norm of international law, due to its gross or systematic failure to fulfill its obligation under Article 2 of the Convention against Torture not to commit torture as well as to prevent its officials and other persons acting in an official capacity from perpetrating acts of torture, and determine the legal consequences thereof.

#### V. APPOINTMENT OF A JUDGE *AD HOC*

62. In accordance with Article 35(1), of the Rules of the Court, the Applicants give notice of their intention to exercise the right to choose a judge *ad hoc* pursuant to Article 31(3) of the Statute. In light of Article 31(5) of the Statute, the Applicants will choose a single judge *ad hoc*.

VI. RESERVATION OF RIGHTS

63. The Applicants reserve the right to revise, supplement or amend this Application, including as regards the grounds invoked and the relief sought.

VII. APPOINTMENT OF AGENTS

64. The Government of Canada has appointed the undersigned as Agent for the purposes of the present Application. Ms. Carolyn Knobel, Director General and Deputy Legal Adviser, Global Affairs Canada, is Deputy Agent. It is requested that all communications in this case be sent to the following address:

Embassy of Canada  
Sophialaan 7  
2514JP The Hague  
The Netherlands

65. The Government of the Kingdom of the Netherlands has appointed the undersigned as Agent for the purposes of the present Application. Ms Annemarieke Künzli, Legal Counsel, Ministry of Foreign Affairs of the Kingdom of the Netherlands, is Co-Agent. It is requested that all communications in this case be sent to the following address:

Ministry of Foreign Affairs of the Kingdom of the Netherlands  
International Law Division  
Rijnstraat 8  
2515XP The Hague  
The Netherlands

This Application is respectfully submitted on behalf of Canada and the Kingdom of the Netherlands.



**(Signed) Mr. Alan H. KESSEL,**  
**Agent of the Government of Canada**



**(Signed) Dr. René J.M. LEFEBER,**  
**Agent of the Government of the**  
**Kingdom of the Netherlands**

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### **CERTIFICATION**

The Applicants certify that the documents attached by way of Annexes are true copies of the originals thereof and that all the translations of annexes submitted herewith are, to the best of their knowledge and belief, a true and correct rendering of the text in the original language.



*(Signed)* Mr. Alan H. KESSEL,  
Agent of the Government of Canada



*(Signed)* Dr. René J.M. LEFEBER,  
Agent of the Government of the  
Kingdom of the Netherlands

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