

Case number:

1 StE 3/21

3 BJs 9/19-4

Federal Prosecutor General at
the Federal Court of Justice

Received by the court
registry on

HIGHER REGIONAL COURT OF KOBLENZ

IN THE NAME OF THE PEOPLE JUDGMENT

In the case of crimes against the State Case against

... ,

born on .../Syria,

last resident in: ...,

currently in pre-trial custody at the ... detention facility.

- Defence Counsel:
1. Attorney ...[A]
 2. Attorney ...[B] -

for aiding and abetting a crime against humanity

the 1st Criminal Panel – crimes against the state Panel - of the Higher Regional Court

of Koblenz, based on the main proceedings starting on 23 April 2020,

at its session on 24 February 2021,

in which participated:

Presiding Judge at the Higher Regional Court ...- as presiding judge;

Higher Regional Court Judge ...,
Higher Regional Court Judge...,
Higher Regional Court Judge... and
Higher Regional Court Judge...

- as sitting judges;

Senior Public Prosecutor at the Federal Court of Justice ...,
Public Prosecutor ...

As representatives of the Federal Prosecutor's Office at the Federal Court of Justice,

Attorney ...[A] from ...,

Attorney ...[B] from ...

- as defence counsel,

Judicial inspector ...,

- as registry official of the court,

Ruled as follows:

The defendant is sentenced to a term of imprisonment of

four years and six months

for aiding and abetting a crime against humanity in the form of torture and aggravated deprivation of liberty.

The defendant shall bear the costs of the proceedings.

Statutory provisions applied:

Section 7(1), subsections (5) and (9) and section 7(2) of the Code of Crimes against International Law (VStGB), sections 27 and 46b of the Criminal Code (StGB).

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Grounds

A. Findings

I. Findings relating to the person

The defendant was born in Damascus on 25 May 1976 and is a Syrian citizen. He grew up in eastern Syria; his home is the small town of Muhasan in Deir-Ezzor Governorate. The defendant has at least four siblings, an older and a younger brother and two sisters. His father died at an undetermined time. His mother and younger brother are staying in Turkey. One sister lives in Greece with her own family, another sister in Damascus.

The defendant attended school in his hometown until school year 12 and left without qualifications. Following that, he lived with two of his brothers and an uncle in the Al-Midan neighbourhood of Damascus from 1994 to 1996. On 10 July 1996, at the age of 20, the defendant joined the Syrian General Intelligence Directorate, where he served until his desertion in early January 2012. While working for the intelligence service, he continued to live in Damascus; for part of that time he stayed in intelligence service accommodation. The defendant pursued the career of a non-commissioned officer and reached the rank of warrant officer. The locations and activities relating to his work for the intelligence service are addressed in the findings on the case. The offence in question took place in September or October 2011.

The defendant deserted on 5 January 2012 and returned to his hometown of Muhasan – initially without his wife and his then four children, who remained in Damascus – where he stayed for an unknown period of time. The intelligence service made enquiries about his whereabouts with his wife and brother. Neither the time at which the defendant was reunited with his family, who also moved to Eastern Syria at an unknown time, nor the time at which he left Syria, or whether he did so together with his family, could be reliably determined. In any event, the defendant made his way to Greece via Turkey, where he claims to have stayed for some time. On 25 April 2018, he travelled by air from Greece to Germany, together with his wife and five of their six children. Their entry was granted on the basis of family reunification since ...[C], one of the defendant's sons who was a minor at the time, had been sent ahead and had arrived in Germany beforehand.

In Germany, the defendant and his wife applied for asylum on 9 May 2018. On 2 August 2018, he obtained a temporary residence permit for the duration of the asylum proceedings, which have not yet been finalised. First, the defendant and his family were placed in an initial reception facility in ...[a]. In summer 2018, he was allocated a flat in ...[b]straße ... in ...[c], where he lived with his wife and his children, except for his eldest son ...[D], until his arrest. In Germany, the defendant and his family receive basic social security in accordance with the German Asylum-Seekers' Benefits Act (AsylbLG).

The defendant is a Sunni Muslim. He has been married to ...[E], born ...1977, since 1 September 1998. There are six children from the marriage: a son ...[D], born ... 1999, a daughter ...[F], born ... 2001 in Damascus, a son ...[C], born ... 2002 in Damascus, a daughter ...[G], born ... 2005 in Damascus, a son ...[H] who, according to the Syrian civil status certificate, was born in ... 2014 in Deir-Ezzor, and a daughter ...[J], whose stated date and place of birth are ... 2015 in Deir-Ezzor. The defendant's eldest daughter, ...[F], has muscular atrophy and uses a wheelchair.

The defendant has a criminal record in Germany. By order of the...[a] District Court of 24 July 2018 (case no. 8143 Js 20064/18 - Cs), which took effect on 1 September 2018, he was sentenced to a monetary fine for bodily harm in the amount of 20 daily rates at €5 each, which has since been fully executed. The sentence was based on the fact that on 26 May 2018, in a reception centre for asylum seekers in ...[a], the defendant hit a child in the face in the course of an argument between his son and that child.

In the present proceedings, the defendant was arrested and remanded in custody on 12 February 2019 on the basis of an arrest warrant issued by the investigating judge of the Federal Court of Justice on 7 February 2019 (case no. 4 BGs 25/19). On 17 May 2019, he was released from custody following a decision issued on the same day by the Federal Court of Justice– investigating judge (case no. 4 BGs 128/19), in which the judge found a self-incriminating testimony given by the defendant to be inadmissible as evidence, rejected the strong suspicion based thereon, and revoked the arrest warrant. On appeal by the Federal Prosecutor General, the 3rd Criminal Panel at the Federal Court of Justice, by order of 6 June 2019+ (case no. StGB 14/19),

overturned the aforementioned decision by the investigating judge and amended the original arrest warrant of 7 February 2019 by limiting the scope of the offence in respect of which there is strong suspicion. Thereupon, the defendant was remanded in custody again on 25 August 2019 and has remained in custody since.

II. Substantive findings

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

a) History; political and social structure

The population of the Syrian State, which gained independence in 1946 when the French mandate rule came to an end, is divided into different ethnic and religious groups. Sunni Muslims make up the largest proportion of the population (2011: about 60-70%), Alawites – who are also Muslim – account for another, much smaller proportion (2011: about 11%), while the remaining share comprises minorities of Christians, Shiite Muslims, Druze, Jews and Yazidis. Since independence, the Alawite minority has become the most politically and socially influential population group. This is rooted in their early support for the French mandate rule and a disproportionate representation in the Syrian Army, where they still make up the majority of officers. The Ba'ath Party, which was later established as the State party, was also dominated by Alawites. In addition, Alawites are clearly overrepresented in the administration, military and economy because of the appointment of mostly Alawite confidants and relatives to leadership positions by presidents Hafiz and Bashar al-Assad. However, Sunnis have also attained leadership positions occasionally, thanks to both their qualifications and strategic efforts to achieve publicly conveyable ethnic and religious diversity. Examples of senior Sunni officials include Hassan Turkmani, who was killed in an attack in 2012 and was Minister of Defence until 2009 and key advisor to the President thereafter; Hisham Ikhtiar, head of the General Intelligence Directorate until 2005 and later head of security of the Ba'ath Party; and Ali Mamlouk, who is believed to be head of the General Intelligence Directorate. Moreover, President Bashar al-Assad and some of his close family members are also married to Sunni spouses.

The Ba'ath Party, originally founded with an Arab nationalist agenda and in opposition to the colonial powers, initially pursued the goal of an Arab and socialist community

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

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

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

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

aa) Since the military coup in 1963, Syria has transitioned from a pluralistic and liberal society and system of Government to an autocratic and repressive regime, which ultimately took on dictatorial characteristics through de facto one-person rule upheld by violent means. The state of emergency, which had been in force since the coup and was only lifted by Bashar al-Assad in April 2011 – albeit without any actual changes in practice – enabled bans on assemblies, newspapers and political parties and gave far-reaching powers to the security apparatus, in particular by lowering the threshold for arrests and detentions. The security authorities were granted powers to detain anyone who endangered public security without a court order. Increasingly, there were arbitrary arrests of political dissenters, most of whom were detained in prisons run by the intelligence services.

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

State.

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

bb) Since the rule of Hafiz al-Assad, an extensive secret service apparatus (“mukhabarat”) has formed an essential instrument of power of the Syrian State leadership. It was and remains responsible for surveillance of the population and for obtaining information in the political and social realms through the use of repressive measures such as searches, arrests and interrogations, sometimes in exercise of most severe physical violence. Under the state of emergency, which has been in force for many years, the intelligence services were given far-reaching executive powers that have no legal basis. Within the regime, they have enjoyed a high degree of authority; they were not so much subordinate units of the Syrian administrative and security apparatus, but instead autonomous institutions that reported directly to the State leadership and served to secure its rule. The official role of the services is to detect and counter anti-regime activities and to fight terror and extremism.

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

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

- the Political Security Department under the Ministry of the Interior.

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

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

The intelligence services operated their own detention facilities, including in their regional detachments, where people were detained without formal proceedings, sometimes for lengthy periods of time, interrogated and tortured to extort information. This usually happened before the detainees were transferred to regular detention

facilities such as the civilian prison in Adra or the military prison in Mezzeh. Already during Hafiz al-Assad's reign, certain torture techniques were used systematically and were given specific names. These included blows to the entire body with cables or canes; beating or flogging of the soles of the feet ("Fallaqa"); forcing a person into a tyre and dealing blows to the immobilised victim ("Dulab"); beating a person strapped to a wooden board ("flying carpet"); hanging by the hands with the toes barely touching the ground combined with violent impact on the defenceless person ("Shabeh"); chaining to a chair with an adjustable backrest, the movement of which causes overstretching of the spine ("German chair"); burning, cauterization or scalding of body parts; electric shocks; humiliation; denial of toilet visits; and deprivation of sleep, water and food. Time and again, ill-treatment and general prison conditions resulted in deaths of prisoners.

With regard to the actions of the intelligence services, it emerges that in the period preceding the beginning of the protests in spring 2011, the services used targeted arrests and ill-treatment against prominent members of the opposition, the press or groups classified as critical of the State, such as the Muslim Brotherhood or politically active members of the Kurdish community. A change towards widespread, extensive action against wide circles of the civilian population can only be observed in the period thereafter.

cc) The Syrian army is a conscript army. The Republican Guard, which reports directly to the President, and the 4th Division, which at least in 2011 was under the command of the President's brother, Maher al-Assad, are elite units at the service of existing power structures.

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

spring 2011, the Shabiha played a major role in the repression and persecution of opposition forces.

2. Start and course of the conflict in Syria from early 2011 to mid-2012

a) The “Arab Spring”, strengthening of civil protest in Syria

In North African countries, starting primarily in Tunisia, and countries in the Middle East, a civil pro-democracy movement started to gather momentum from late 2010 onward, which became known in the media and academia as the “Arab Spring” or “Arabellion”. Social media posts, demonstrations and other forms of rallies were used to protest against political and social grievances, corruption and mismanagement in the countries in question, some of which were under autocratic rule; this generated some political change in the States concerned. A political slogan used across countries was “The people want the regime to fall”. However, both the regime and independent observers considered a spill-over into Syria of low likelihood.

Still, support for the protest movement also grew in Syria. On the Internet in particular, there was already growing support for anti-government attitudes in early 2011. Encouraged by developments in other Arab States, the willingness to speak out publicly against the Syrian Government increased during the subsequent period; relevant groups in this regard included renowned opposition members, part of the younger generation influenced by the Internet who were able to access information critical of the government despite restrictions on such information, as well as economically disadvantaged population groups who did not benefit from the cronyism-based system of State. As the conflict progressed, they were joined by a growing number of people who turned against the Government in reaction to the increase in State violence, especially relatives of those arrested or other victims of earlier protests. Mosques frequented by Sunni believers served as symbols of the movement and were starting points for demonstrations, especially after Friday prayers, which are mandatory for devout Muslims. Since the security authorities’ actions were focused on these times and places, the repressive measures turned further segments of the Sunni majority population against the Syrian regime and the majority Alawite security forces, as the measures now also appeared to be motivated by sectarianism.

b) Course of the conflict

aa) In February 2011, the first smaller rallies against corruption and poverty and in favour of more democratic rights took place in some parts of Syria. The gatherings were peaceful and initially largely undisturbed by the security forces. At the beginning of March 2011, children and young people aged between 10 and 15 years wrote slogans critical of the Government such as “The people want the regime to fall”, which had already been used in other countries, on the walls of houses in the town of Daraa in south-western Syria. The children and young people were thereupon arrested. When they were released from prison a few days later, they showed clear signs of torture and the incident gained nationwide attention on social media, as well as in the international press, and unleashed a wave of demonstrations across Syria.

On 15 March 2011, in response to the detention and ill-treatment of the children and young people, there were protests at the historic Souq al-Hamidiya covered market in Damascus, followed by a silent rally of some 150 people, approximately 30 of whom were arrested. On Friday 18 March 2011, protesters in Daraa, Baniyas, Homs and Deir-Ezzor gathered after midday prayers for what were already much larger demonstrations, which triggered a violent response on the part of the security forces called in. As a result, hundreds were injured and at least two killed. Regular rallies followed, especially on Fridays, which grew to several thousand people, mainly in the cities of Damascus, Homs, Daraa and Douma. The security forces responded using tear gas and live ammunition. On 23 March 2011, the security forces used firearms against protesters in Daraa, who had gathered at the Omari Mosque, which resulted in an unknown number of deaths. A demonstration at the Ummayyad Mosque in Damascus after Friday prayer on 25 March 2011 was violently dispersed. On 1 April 2011, in the Damascus area, including in the town of Douma northeast of the capital, an unknown number of demonstrators also died from firearms used by the security forces. At the same time, numerous other demonstrators were arrested.

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

bb) The Syrian regime reacted to the upsurge in protests with various parallel strategies.

(1) The Government and pro-government newspapers issued statements declaring the protests as uprisings instigated from abroad that aimed at destabilising the Syrian State. Throughout 2011, the killing of demonstrators by the security forces was consistently denied. In order to spread disinformation among the (world) public, allegedly injured members of the security forces were presented in hospitals at press conferences to infer that the demonstrators were ready to use violence.

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

(3) At the same time, unnoticed by the public, from the end of March 2011 onwards, the foundations were laid at the highest level of State for a quantitative and qualitative increase in violence by the security forces. Thus, in response to the worsening situation, the Central Crisis Management Cell (CCMC) was established in March 2011 as an ad hoc body composed of senior leaders of the security forces. The cell reported directly to President Bashar al-Assad. Its standing membership included the deputy head of the Ba'ath Party Regional Command, Mohammed Said Bekheitan; the Minister of Defence; the Minister of the Interior; and the heads of the intelligence services. There were also alternating representatives of the Government. CCMC had authority over the governing bodies of the military and intelligence services and provided, by way of central orders for all security services, general guidance on the future response

to the protests. The guidelines and instructions issued by CCMC concerned, in particular, organizational matters involving the intelligence services and the entities of the Ba'ath Party. From mid-April 2011 at the latest, the aim was to suppress the protest movement by force, including armed intervention by the security forces, in order to prevent the destabilisation and possible overthrow of the regime.

(a) In April 2011, CCMC held several meetings. At a meeting on or shortly before 18 April 2011, after discussing the "security situation" and the "political situation", a decision was taken to the following effect:

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

2. Demonstrators, those posing a security threat and saboteurs must be confronted in various ways, including the following:

a) No release of any arrested persons and prosecution of those arrested.

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

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

d) Known perpetrators are to be arrested without raids, placed in prison and handed over to justice.

e) Mechanisms for dealing with rallies:

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

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

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

3. In the regions, supreme bodies composed of a member of the command, a senior military officer and a security officer are to be

established to plan, implement and provide leadership. All military, security and party agencies in the respective territory shall be subordinate to them. They will include:

- A body for the central region.
 - A body for the coastal area.
 - The Central Crisis Management Cell will exercise this function in Damascus and Rif Dimashq [note by the Panel: surroundings of Damascus].
4. The central region is to be given priority, with measures to keep the remaining areas calm.
5. The Party apparatus (Party organizations, people's organizations and professional trade unions) assumes the following role:
- Training of designated forces in confronting demonstrators and in the use of weapons.
 - Round-the-clock shifts in Party headquarters.
 - Ensure a limited reserve within the Party and its organizations which can be increased, as needed, in each governorate.
 - Participation in confrontation with enemy demonstrations.
 - Organization of supportive rallies, depending on the needs and situation in each governorate.
 - Monitoring the situation in the population, reporting suspects and instigators and their eventual arrest and handover to the security authorities and the army.
 - Division of the trained forces into units with a leader to ensure well organized interventions.
6. A meeting is to be held with the trade unions to inform them of their duties and to notify them that noncompliance will be liable to prosecution under the Trade Unions Act and general laws.
7. The presidents of the universities are to be informed that students must be notified that rallies in the university are prohibited by law and that anyone violating those provisions will be expelled from the university.
8. The role of the media:
- The deployment of civilian and military media delegations to the scene of the events and the filming of events to ensure that the footage is

broadcast in a timely manner. This must be done once a specialized media unit, preferably in liaison with the political administration of the armed forces, has edited the material and prepared a relevant commentary. Constant coordination with the security authorities and the armed forces is needed.

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

9. A special meeting of the Central Crisis Management Cell must be held to make arrangements for the response to possible demonstrations on Fridays.”

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

“1. The facts show that people who carry out demonstrations, rallies, murders, killings and acts sabotage are further refining their methods and plans to terrorize citizens and force them to join them. They do anything to shake citizens’ trust in the State and its ability to fight these people. They plan to hold demonstrations in several cities on Friday. It is likely that they will try to spread demonstrations to other cities and foment sectarian discord.

2. There is a need to initiate a new phase in combating the conspirators, and to use force against them from now on. It is important to win the battle and demonstrate the strength and capacity of the State.

3. Detailed plans are being prepared to counter probable armed and unarmed demonstrations and rallies, especially in the regions of Daraa, Damascus, Rif Dimashq and Homs. The plans will be drawn up today or tomorrow under the supervision of the National Security Office. The armed forces are requested to provide the necessary support in coordination with the army command (as per the instructions issued).

4. The General Command of the Army and Armed Forces must submit comprehensive plans. These plans are being drawn up on the basis of a scenario of widespread demonstrations and hostile actions in all governorates. All measures are taken, and arrangements are made to ensure cooperation with the relevant agencies to implement these measures in whole or in part, depending on the prevailing situation.
5. Some military units are being mobilized according to the instructions given.
6. The armed forces are releasing a statement about killings and murders of military personnel, indicating that the perpetrators will be prosecuted by all means and brought to justice so that they receive the punishment they deserve.
7. Depending on the situation, all the methods and means described are used when surrounding a region, raiding suspects or combating a hostile demonstration (according to the instructions given during the meeting).
8. Persons suspected of having participated in acts of sabotage, killings, planning of criminal acts and incitement of discord following orders from abroad will be arrested.
9. The security authorities will focus on investigations, interrogations and follow-up in order to obtain evidence-based results and present them in the media.
10. The deceased will be buried without gatherings or demonstrations. The relatives of the deceased must make a pledge to this effect before the bodies are released to them.
11. Daily meetings of the Central Crisis Management Cell are being held.
12. Students who participate in demonstrations will have their registration revoked in accordance with university rules and regulations.
13. By order of the Minister of the Interior, it is forbidden to bring bicycles into the cities.
14. The provisions of item 8 of the minutes of the previous meeting on the role of the media and coordination with the political administration of the armed forces, the Moral Guidance Office in the Ministry of the Interior are emphasised.
15. The upper management committees and the governor of Daraa are being notified of the general situation and the decisions taken.
16. The Ministry of the Interior will be provided additional personnel, as proposed by the Minister of Defence.

17. The Deputy Regional Secretary of the Ba'ath Party is coordinating the role of the Party and its organizations in the plans that are being drawn up. He will communicate the instructions to the Party and its organizations in accordance with the rules.

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

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

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

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

The instructions were forwarded and understood to this effect. The military, the intelligence services and other parts of the security apparatus were instructed across the respective hierarchical levels and henceforth acted accordingly. As a result of the decisions of the CCMC, a systematic approach was implemented insofar as protest rallies were broken up with the use of armed force and as many of the surviving

demonstrators as possible were arrested and taken to the detention facilities of the intelligence services in vehicles provided for that purpose, where they were held for varying periods of time and subjected to continuous ill-treatment, even to the point of death. Demonstrators fleeing the violence were pursued and arrested by the security forces. Scores of people were also arrested and abducted at checkpoints set up throughout the country and in large-scale raids covering entire districts. Among them, were people who were entirely uninvolved. The aim of the subsequent torture and ill-treatment by the security authorities was to obtain information, especially about the organizers and further protest actions planned, on the one hand, and to intimidate the population and punish those arrested, on the other.

(d) In the subsequent period, there were further meetings of the CCMC, the subject matter of which – along with the content of further decisions taken – cannot be ascertained. At a meeting on 5 August 2011, order was given for “the organization of daily joint campaigns by the military and security agencies to be determined by them line with security-based prioritization”. “All security branches” were held to “participate in storming the places where those wanted for crimes of sabotage, murder and attacks against citizens and their property and against State institutions are staying.” These individuals were to be arrested; individual areas were to be “cleared” of the wanted people. The orders of 5 August 2011 further provide, that results of investigations, in particular information about searches, were to be submitted to the head of the National Security Bureau on a daily basis. In addition, the names of members of the security forces who “act negligently in confronting the armed gangs or who have had weapons taken from them” were to be reported.

cc) In April 2011, the largely peaceful demonstrations continued with successively increasing numbers of participants, which triggered an increasingly violent response from the State. The demonstrations took place – not exclusively, but regularly – every Friday; most of them resulted in fatalities.

The security forces were now instructed to disperse the demonstrations with firearms and used live ammunition, which was deployed against the civilians without warning. The security forces also responded violently to funerals of deceased activists, which turned into events akin to rallies. No distinction was made in the use of physical or firearm force or in making arrests between protesting activists, devout mosque-goers

or – in the case of funerals – grieving relatives. In some cases, the demonstrators injured by the security forces were also denied medical care, with ambulances being prevented from reaching the injured and (also) medical assistants being shot at. In Daraa and Homs, security forces were posted at hospital entrances to prevent alleged opponents of the regime from entering.

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

In the following months of 2011, the protest movement grew to a six-digit number of active participants and with it the extent of State repression. In July 2011 alone, a mid-four-digit number of civilians lost their lives at the hands of State violence. On the one hand, the security forces concentrated on cities that were considered to be strongholds of the opposition. For example, government forces stormed the city of Hama at the end of July 2011, killing several hundred people. In September 2011, the town of Douma was surrounded by the military and its infrastructure – electricity, water, transport of foodstuffs – was disrupted; there were also numerous arrests. At the same time, the security forces increasingly set up checkpoints that carried out personal checks and were equipped with lists of people to be arrested. Henceforth, the use of firearms against demonstrators and arbitrary abuse of alleged opposition members also occurred at such checkpoints.

The security forces had orders to disperse gatherings of more than eight civilians by armed force. Leaders of the protest movement were targeted. The extensive waves of

arrests led to massive overcrowding in State prisons where detainees were subjected to arbitrary violence and torture, even to the point of death. The conditions, especially in the prisons of the intelligence services, were characterised by lack of water and food, sleep deprivation and catastrophic hygiene conditions.

dd) From September 2011 onwards, the protests, which had been peaceful until then, became increasingly militant. The Free Syrian Army (FSA) was founded; its members were initially largely recruited from among deserters from the regular army. In the subsequent period, there were sporadic attacks by opposition forces on government buildings and, from the beginning of 2012, armed clashes between government forces and militant opposition groups. At the same time, civilians continued to gather in peaceful mass demonstrations, which were not violent at all but continued to be met with the use of firearms and physical violence by the security forces. The Shabiha militia were increasingly called in to crack down on the demonstrations. The killing of countless demonstrators and arbitrary arrests continued. The situation escalated insofar as government soldiers who refused to shoot unarmed demonstrators in action were in turn shot by intelligence service agents "from the second row". Deserters and other insubordinates were taken into custody.

Tensions eased for a short period at the beginning of 2012. The Arab League had exerted diplomatic pressure on Syria already in late 2011, threatening to suspend the country's membership, and the Syrian Government agreed to measures proposed by the League. In December 2011, the Arab League deployed around 160 observers to Syria. At the turn of the year, the Syrian Government withdrew the military and its tanks and heavy weaponry from the cities and released some 3,500 prisoners. However, there were also killings of civilians by government forces during demonstrations in this period.

In February 2012, the largest demonstration in the Syrian capital since the beginning of the conflict took place in the Mezzeh district of Damascus. The security forces deployed in response shot dead at least one person and dispersed the demonstration with tear gas and sound grenades. Dozens of demonstrators were arrested. Also in February 2012, the city of Homs was attacked by Syrian forces, resulting in numerous civilian deaths, including journalists. The Government attributed a massacre of civilians in Homs to terrorist armed groups, opposition activists held the Syrian Army and militias

loyal to the Government responsible. In March and April 2012, 95 civilians died as a result of violence committed by government forces in Idlib; numerous arbitrary arrests were made on the same occasion. In Houla, more than 100 civilians were killed by pro-government militias on 31 May 2012, and at least 55 others were killed in the village of Qubair, near Hama, in an act of violence by pro-government armed groups. From the end of July 2012, the Syrian Army and pro-government forces fired on civilians trying to cross the Jordanian border, resulting in at least one casualty. At the end of August 2012, more than 200 civilians were found in the Damascus suburb of Darya who had previously been shot dead by security forces during house raids.

As the conflict progressed, the degree of militarization increased, with the Syrian Air Force bombing opposition-held and Free Syrian Army-held neighbourhoods of Damascus and other cities around the capital, including with cluster and incendiary bombs. From the middle of 2012 onwards, the fighting on both sides increased to such an extent that the conflict can be regarded as a civil war from this point onwards. Nevertheless, peaceful opposition structures and civil protest continued within the regions controlled by the Syrian State.

c) State actors and institutions involved, approach and victims

aa) After the outbreak of the conflict, the Syrian regime used the same institutions and forces that had been at its disposal before; their numbers, however, were increased. The general military and paramilitary units, especially the Shabiha militia, were deployed. The intelligence services accounted for a significant portion of the security forces deployed to combat the protest movement; they continued to serve as a direct instrument of securing power in the early stages of the conflict. From the beginning of the conflict, intelligence activities focussed on this domestic task. The General Intelligence Directorate, the Military Intelligence Department and the Air Force Intelligence Directorate were particularly active in this regard. Military Intelligence, especially branches 215, 227, 291 and 235 ("Palestine Branch"), was mainly involved in cracking down on the protest movement; Air Force Intelligence worked through the "Mezzeh Airport" and "Bab Touma" branches. With Branch 285 and Branch 251, the latter of which is relevant to the proceedings in terms of the actual involvement of the defendant, the General Intelligence Directorate had operational branches at its disposal (for further details see p. 31 para. 3).

In terms of personnel, the General Intelligence Directorate and the Military Intelligence Department had 8,000 to 10,000 full-time staff each. Both the Political Security Department and the Air Force Intelligence Directorate employed 5,000 to 6,000 full-time staff each. No reliable statement can be made about the number of staff deployed in individual operations against demonstrations. A typical sequence of events, however, was that military and intelligence forces in at least the hundreds cordoned off streets, fired tear gas and live ammunition into the demonstrations, then entered the demonstration with batons, injured demonstrators, arrested them and took them to detention centres. At the same time, neighbouring streets were searched for fugitives or persons suspected of participating, often merely on the basis of their age and place of residence.

From the beginning of the demonstrations, which were initially still far and between, in February 2011, the intelligence services sought to obtain information about the organization and organizers of the protests; to this end, participants were arrested and interrogated under torture. This added to the existing role of intimidating and persecuting opposition forces incumbent on the intelligence services, which henceforth focussed on the organizers and supporters of the protest movement on the streets and in social media. Within their military-like structures, the security forces involved were instructed to take coordinated action against demonstrators from the end of April 2011 at the latest; in addition, raids and house searches with arrests were carried out, mostly with the participation of members of the intelligence services. The intelligence services also set up an increasing number of checkpoints in inner cities and on transit roads in rural areas, where people were also searched and arrested.

At the beginning of the conflict, the Syrian army comprised between 200,000 and 300,000 soldiers with a further 300,000 reserves; it was largely made up of conscripts. By spring 2012, about 60,000 soldiers had deserted, fleeing abroad or later joining the Free Syrian Army because they were opposed to the attacks on the civilian population. The higher-ranking, often Alawite, officers usually remained in the regular Syrian Army. The Republican Guard, which was deployed to protect the Government in the Damascus area, and the 4th Division, which was under the command of the President's brother, Maher al-Assad, were considered elite units loyal to the regime and largely of Alawite origin. The two units were primarily used to crack down on the protest

movement and were involved in arrests, house raids, injuries to and killings of demonstrators. This was different from the regular army units where soldiers, including conscripts, were deployed against unarmed demonstrators while being told that they were combating against Salafists, terrorists and criminals. This generated a growing number of deserters and defectors. Militias loyal to the Government, which were already supporting the armed forces and intelligence services in 2011, were incorporated into newly established so-called National Defence Forces (NDF) in the second half of 2012.

The military police were mainly in charge of administrative tasks during the conflict, such as photographing and documenting the deceased. For example, from March 2011 at the latest, the photographic service of the military police had instructions to systematically record demonstrators and detainees who had been killed. This activity resulted in the 26,938 image files with photographs of a total of 6,821 corpses smuggled out of the country by a deserting military photographer ("Caesar"). The people pictured, most of whom showed signs of emaciation and abuse, had died between May 2011 and August 2013, mainly in intelligence branches, and were photographed shortly thereafter by military police photographers. The military police were also in charge of transporting prisoners between the prisons and courts and of military field courts, which were also responsible for sentencing political prisoners and where penalties up to capital punishment were imposed in short mock trials, mostly on the basis of confessions extracted under torture.

bb) During the violent dispersal of demonstrations, house searches, raids and controls at checkpoints, the security authorities arrested scores of people from March 2011 onwards. Those arrested were usually bussed to detention facilities and held there for varying lengths of time, ranging from a few days to years, without warrants or other formal proceedings.

The Syrian regime used the existing civilian, military and intelligence services prisons as detention facilities, which were significantly overcrowded due to the large number of arrests. Prisons such as the Tadmur military prison, which was closed around 2001, were put back into service. Important larger detention centres included the civilian prison in Adra, where detainees were transferred for long-term detention, and a military prison in Saydnaya. A large number of prisons were also operated by the intelligence

services; these included detention facilities in the governorates, which extended like a network across the entire country. The facilities were used as places of initial detention, although sometimes detainees were held there for months or years. The General Intelligence Directorate operated prisons in branches 251 and 285, at least. Of the remaining intelligence services, in particular the Military Intelligence Department, including Branch 235 – the so-called “Palestine” Branch, which became notorious among the population – and the Air Force Intelligence Directorate were involved in the detention, torture and killing of actual or alleged opponents of the regime. A total of 10 detention facilities were run by the Military Intelligence Department, including five in Damascus. At least two prisons were run by the Air Force Intelligence Directorate. The Political Security Department operated a prison in the Mezzeh district of Damascus.

The detention conditions in the intelligence service facilities were characterised by a lack of food and medical assistance, overcrowding resulting in insufficient space to move around and sleep, catastrophic hygiene conditions due to vermin infestation and inadequate opportunities to wash or change clothes, arbitrary use of violence, and enormous psychological stress due to the uncertainty about one’s own fate and a constant awareness of the screams of fellow prisoners who were being ill-treated in adjacent rooms throughout the day and night. While being interrogated in the intelligence service facilities, prisoners were usually subjected to systematic torture. Torture methods that had been “tried and tested” in the Syrian intelligence apparatus before the start of the conflict were used, i.e. blows with and without batons over the entire body of prisoners – sometimes fixed inside a tyre (“Dulab”) or on a board (“flying carpet”) – especially on the soles of the feet (“Fallaqa”), hanging by the wrists (“Shabeh”), and overextension of the body and spine (“German chair”). In addition, there were electric shocks, burns and scalding, pulling out of fingernails and toenails, and occasionally other methods inspired by the sadistic ingenuity of the torturers. Sexualised violence against men and women was also widespread, which served the particular humiliation of the victim and included rape. While torture was used primarily for information gathering at the beginning of the conflict, from May 2011 onwards in the detention centres it was not so much about intelligence gathering but instead about breaking the actual or alleged opposition members, deterring them from further activities and thereby stifling protest.

The detention facilities also included the military hospitals in Tishreen (also referred to

as “607”), Harasta and Mezzeh (also referred to as “601”), located in the greater Damascus area, which had been used solely for the medical treatment of soldiers and their dependents before the conflict began. With the beginning of the protest movement, they were re-purposed: the military hospitals were now also used to house and abuse patients alleged to be members of the opposition. While even in these cases the focus was initially on medical treatment, from April 2011 onwards security forces and medical staff increasingly turned to severe abuse of injured prisoners taken to hospital or demonstrators. As of 2012, the role of the military hospitals was twofold: aside from wards that provided conventional medical treatment reserved for members of the regime, there were specially prepared wards where prisoners admitted were tied to hospital beds and tortured, sometimes until they died. As a result, the military hospitals were sometimes more feared by the civilian population than the intelligence service prisons.

cc) The military hospitals also played an important role in dealing with deceased prisoners. From March 2011 onward, dead bodies were collected and documented by military doctors and photographers on an ongoing basis: the bodies of prisoners who had died in prisons and intelligence service facilities and those who had been killed directly on the street were taken to the military hospitals. The corpses, mostly naked or dressed only in underwear and with signs of malnutrition and/or torture, were collected together with those who had died in the military hospitals and kept temporarily in cold storage facilities. In view of their numbers, which exceeded capacity, soon they were simply dumped in halls or courtyards. The dead were recorded bureaucratically by writing numbers on stapled slips of paper or directly on their skin with felt-tip pen, designating their place of detention and death – usually the number of an intelligence service section – and a prisoner number. Forensic pathologists working at the hospitals wrote a brief report that normally indicated an – inaccurate – natural cause of death such as heart failure or respiratory arrest, issued corresponding death certificates, and noted another registration number on the slip of paper or on the body itself. Military photographers from the military police were then called in and took multiple photographs of each of the bodies. Photos and reports were subsequently compiled into a dossier. The documentation system was intended for internal control within the regime, in particular to make the fate of the prisoners traceable and to rule out the possibility that they had regained their freedom through bribery.

The number of corpses collected in this way in Damascus alone was initially at least 10 per day, but soon rose to a daily number of at least 50. From the collection points in Damascus and its environs, the corpses were recorded by category and then transported in refrigerated trucks and lorries, sometimes even on articulated lorries, to specially constructed mass graves in the Damascus area – Najha and Al Kteifa. There, the dead were dumped into the graves once their origin had been documented again by specially recruited administrators. Such treatment of civilians who had been killed began in May 2011 at the latest, at which point the number of casualties in the conflict rose sharply.

dd) An exact determination of the number of civilians killed, injured, imprisoned or otherwise harmed by state measures on the part of the Syrian security authorities in the course of the conflict over certain periods of time is not possible, in view of the lack of reliable counts, the dynamic development of events and the absence of neutral observers. The Panel bases its assessment in favour of the defendant on figures that are in the lower range of available estimates. Accordingly, at least 2,000 civilians died from the beginning of the conflict until July 2011 and at least 5,000 civilians by December 2011, again gauged from the onset of the conflict. By May 2012, more than 10,000 people had died in the unrest. Many times that number of people were removed from demonstrations, checkpoints, workplaces, private homes or hospitals to intelligence service prisons, where they were systematically and sometimes severely abused, using the torture methods identified. As the conflict continued in 2012, the number of deaths continued to rise.

d) Summary

As already stated (see under II. 1., p. 7), the basis for the Syrian regime's action against the protest movement that emerged from February 2011 onwards had already been laid from the 1970s by Syria's established autocratic political system supported by an extensive, repressive security apparatus. With the army, intelligence services and paramilitary units, the political leadership had sufficient forces at its disposal to proceed violently against dissidents. The political system was designed for this purpose; it had suppressed political opposition for decades and – occasionally – used violent "punitive measures" with a large number of victims. Extrajudicial detention centres existed throughout the country, practices of economic and social control and police-state

persecution and torture of individual activists were tried and tested.

As noted further (see under II. 2., p. 13), immediately after the “Arab Spring” spilled over into Syria in February 2011, the protest movement was met with proven repressive measures, although the security authorities’ actions were initially limited to the violent dispersal of the still isolated demonstrations and arbitrary arrests. By the end of April 2011 at the latest, the protests had spread to the entire country, with rallies at least in the governorate capitals. At the same time, the measures taken by the security authorities had massively expanded in quality and quantity through violent “demolitions” of demonstrations, accompanied by lethal use of firearms, and extensive arrests numbering in the thousands every day with subsequent torture of the detainees in various detention facilities. Checks and arrests also took place at a nationwide network of checkpoints; entire neighbourhoods considered oppositional were brought under control through lockdowns and raids using violent methods. The violence was not only used in isolated cases and randomly, but as part of a comprehensive strategy to make the Syrian civilian population compliant and “educate” them to be loyal to the Government. This use of force was organized and systematic, based on the decisions taken in April 2011 by the supreme governing body, the CCMC, which was set up for this purpose; the decisions sanctioning the use of force, arrest and ill-treatment were implemented by passing them across hierarchical levels of the State all the way to the executive entities.

In this summary of the above findings, the Panel – in anticipation of its legal assessment (see in this connection C. 1., p. 160) – finds a multitude of factual circumstances that constitute an attack on the Syrian population in the form of killings, unlawful deprivation of liberty and torture of a large number of civilians. The attack served to bolster the Syrian Government, which used it as a means of preserving power and suppressing dissident political aspirations. Furthermore, from the end of April 2011 at the latest, as a result of the central decisions of CCMC and their implementation, this attack was both systematic and widespread.

3. Branch 251 and Section 40 of the Syrian General Intelligence Directorate

a) Before the conflict flared up, the General Intelligence Directorate – colloquially known as “State Security” – was responsible for counterintelligence, monitoring the Syrian population at home and abroad, controlling the Syrian economy, fighting corruption and monitoring foreign institutions in Syria. From spring 2011, the focus was on “counter-terrorism”, defined as meaning the repression of opposition and dissident groups. The organisation initially employed between 10,000 and 30,000 full-time staff for this purpose. The intelligence service was divided into twelve central organizational units in Damascus – a directorate and eleven specialized branches – plus 13 regional branches. Apart from Branch 251, which is the subject of the proceedings, the General Intelligence Directorate also operated a training school in Najha, a suburb of Damascus; evaluation, technical and counterintelligence branches; and a central investigation branch, which was assigned the number 285. The latter was located in the middle of Damascus in the Kafr Sousa district. The General Intelligence Directorate was headed by Major General Ali Mamlouk from 16 July 2005 to 24 July 2012 and by Major General Dib Zaytoun from 24 July 2012 onwards.

Branch 251 was one of the Damascus-based branches responsible for “internal security” in the Damascus City and Rif Dimashq governorates. The Branch had between 2,500 and 3,000 staff. It was effectively in charge of combating protests in these areas after the conflict began, carrying out the bulk of arrests in Damascus and Rif Dimashq and setting up roadblocks. The Branch is located in central Damascus amid city-centre buildings on Baghdad Street in close proximity to the Red Crescent hospital. It comprises an expansive area separated from the outside by walls and roadblocks, which includes a spacious garden and parking area. Since it is located in the “Al Khatib” district, it is known locally by the informal name of the “Al-Khatib Branch”. The Branch primarily consists of two buildings of at least three storeys, which flank an inner courtyard and house offices and interrogation rooms.

In 2011 and 2012, the ground floor of one of the buildings of Branch 251 was housing a prison, which had several communal cells ranging in size from 10 to 40 square metres, as well as some small single cells with a floor area not exceeding 1 by 2 metres. The basement also housed day rooms for prison guards, interrogation rooms and an open interrogation area. The prison was extended at the beginning of 2012 to

include underground rooms located underneath a garden area in order to create more space for the rapidly increasing number of detainees from March 2011. The offices and interrogation rooms of the officers were located on the upper floors of the Branch, where detainees were brought from the prison wing. Branch 251 was headed by Major General Tawfiq Younis in 2011 and 2012. Until 2012, the head of the interrogation section of Branch 251 was the former co-defendant ...[K].

Section 40 was formally attached and subordinate to Branch 251. It was designed as a rapid reaction force in the field and was deployed for raids, setting up and running of checkpoints, arrests, house searches and, in particular in the further course of 2011, to break up anti-regime demonstrations (“clearance and attack squad”); its geographical jurisdiction covered the governorates of Damascus City and Rif Dimashq. Despite its formal status as a section, it enjoyed a certain autonomy because it was headed by Hafiz Makhoul, a maternal cousin of Bashar al-Assad who had close ties to the upper echelons of the Syrian regime. Although officially under the authority of Branch 251, the section conducted its operations largely autonomously. It had its own office building in the Jisr al-Abiat district of Damascus and its own detention facility. It did the groundwork for Branch 251, in particular by supplying prisoners. Its staff were specially selected; hiring prerequisites included physical fitness and particular loyalty to the regime.

b) When Section 40 staff was deployed against demonstrations, other protests, in house searches and at checkpoints, those arrested were sometimes taken to the section building for a short time, where they were then regularly interrogated and ill-treated. After the brief transit stay, which rarely lasted more than a day, they were transferred to Branch 251, where they faced torture and prolonged detention. In other cases, those arrested by Section 40 were taken directly to Branch 251 and placed under its authority, often after ill-treatment on the buses used to transport them.

Upon arrival at Branch 251, the prisoners were driven into the courtyard between the buildings and in the vast majority of cases were subjected to a gauntlet of systematic ill-treatment as they got off; often they were beaten with batons and whipped for extended periods, sometimes running to hours. This already resulted in some deaths. This treatment on arrival was cynically referred to by staff as a “welcoming party”. The detainees were then led or pushed into the prison cellar, where they had to undress

and were searched for hidden objects, including through rectal search.

The prisoners were housed in the basement of Branch 251 – separated by gender – mainly in communal cells that were so overcrowded from April 2011 onwards that the prisoners who were taken there could only sleep on the floor taking turns, closely packed together and staggered; in some cases, they were forced to stand. Often, the only supply of fresh air to the cells, which were poorly ventilated if at all, came through the gap at the bottom of the cell door. As a result, prisoners struggled with the extremely stuffy air and had difficulty breathing. The cells either had a single, unseparated toilet with a water supply or the prisoners were only taken to the toilet at times set by the guards. Some cells had a skylight overlooking the yard, others were lit only by constant artificial lighting, which made it impossible for prisoners to distinguish between day and night. Since there was hardly any possibility to wash and change clothes, the hygiene conditions were catastrophic. Vermin, especially lice, were omnipresent in the cells. Prisoners who were already injured on arrival or had sustained injuries from torture were given only inadequate medical care, if at all. Open wounds became infected; injuries and diseases usually remained untreated. Alternative accommodation consisted of very small single cells with a floor size of about 1 by 2 metres which often had two or more prisoners crammed inside. The generally inadequate food supply led to rapid weight loss and debilitation among the detainees. They were also exposed day and night to the cries of pain from other prisoners who were tortured in the adjacent interrogation rooms or in open areas. Prisoners taken from the communal cell regularly returned injured and with signs of torture. This and the uncertainty about their own fate resulted in enormous psychological stress for the prisoners, up to and including constant existential fear of death.

Fears of their own ill-treatment regularly proved to be well-founded, as each new detainee after a waiting period was taken to at least one interrogation either in the prison sector or in the offices of interrogators on the upper floors, where they were subjected to torture. In the vast majority of cases, this consisted of blows to the soles of the feet with a belt or cable, causing swellings and lacerations that made walking – subsequently forced by the guards – extremely painful (“Fallaqa”). But it also involved hanging by the wrists (“Shabeh”), electric shocks, burns and scalds, arbitrary beatings with or without objects, and kicks to the entire body. The abuse could often not be stopped by way of (false) confessions or extorted information, either because the

detainees did not have the desired information or because the ill-treatment proved to be an end in itself to humiliate and deter. Violence in the form of beatings by prison guards also occurred groundlessly or in response to prisoners breaking rules such as speaking without permission. Occasionally, sexual violence was also used against women and men in the form of rape, touching or hitting the sexual organs and threats of sexual violence against spouses and family members. The only prisoners who were, on an exceptional basis, not subjected to direct physical abuse were those who had been specifically arrested individually, enjoyed a certain celebrity status or were personally acquainted with a staff member.

Relatives were not notified of the whereabouts of detainees. Nor were the prisoners themselves told how long they could expect to be imprisoned. They were also regularly kept in the dark about the actual charge and reason for their detention.

c) In terms of both their responsibilities and actual activities, Branch 251 and Section 40 were closely involved in the suppression of the protest movement from spring 2011 onwards. Along with other intelligence services, they were an integral element of the Syrian regime's violent strategy involving the mass arrest of suspected or actual opponents of the regime, the dispersal of demonstrations, and the arbitrary abduction and systematic torture of those who participated in them.

4. Involvement of the defendant

a) Activity of the defendant in the Syrian intelligence service, actions prior to the offence

The defendant joined the Syrian General Intelligence Directorate on 10 July 1996 at the age of 20. He first underwent basic training at the training base in Najha, a suburb of Damascus, in Branch 295 of the General Intelligence Directorate. In addition to physical training, he received instruction in the basics of military operations and the use of various weapons, including pistols, sniper rifles and explosives. After eighteen months, from the beginning of 1998 until February 2010, he worked as a trainer himself. In 2004 and 2005, he underwent advanced training in "counter-terrorism" supported by Russian military experts where he trained in storming buildings in big cities, setting up and counteracting ambushes, street fighting, kidnapping armed and unarmed persons, making arrests and personal protection.

From February 2010, the defendant was assigned to Branch 251 of the General Intelligence Directorate. For the most part, he was deployed at the Branche's main location on Baghdad Street in Damascus. He was initially employed in the "religion branch", where he was involved, among other things, in collecting information in mosques. The political views of the imams preaching in the mosques and the statements of visitors to events there – possibly critical of the government – were to be investigated; this spying activity also included collection of additional personal information about those present. The defendant prepared reports on this for further use by his superiors. After this period, he worked for five months in a section responsible for the city of Zabadani, which was located on the outskirts of Damascus, where he carried out office duties. As this became too tedious for him, he returned to the "religion branch" for two months at his own request. He was then transferred to Section 40, where he served from July 2011 until his desertion on 5 January 2012. At least for some of that time, the defendant worked at a section that was mainly deployed in Douma.

As a result of his many years of work in the Syrian General Intelligence Directorate, especially in various sections of Branch 251, the defendant had intimate knowledge of the workings of the Syrian intelligence services, most notably Branch 251. The defendant knew that the intelligence services had been used as a means of spying on the civilian population and political repression even before the Arab Spring began in February 2011. He was aware of the role of Branch 251, of the Baghdad Street facility with its underground prison, of the conditions of detention there, and of the fact that prisoners were tortured to extort information or simply to intimidate them. The defendant also knew that from March 2011 onwards the conditions in the Branch had deteriorated drastically for the detainees held there, that because of the mass arbitrary arrests, the detention centre now housed way more prisoners than it had done in the past, that they were systematically ill-treated there and, above all, subjected to torture and the arbitrary violence of the guards. Finally, it was no secret to the defendant that from the end of April 2011 at the latest, an all-out attack led by the leadership of the security authorities was under way to suppress the Syrian opposition movement and intimidate the population, with violent intervention in demonstrations, a large number of resulting injuries and deaths and mass arrests. The defendant, who arguably may

have maintained an inner distance to the events, nevertheless continued in this work to earn his living.

b) Actions contributing to the offence in September/October 2011

In September or October 2011, a demonstration took place in the town of Douma south of Damascus near the Al-Kabir Mosque with some 3,000 to 6,000 participants. The demonstrators behaved peacefully, sat in the street, and danced. About 1,000 security operatives were deployed to deal with them, including members of the Ministry of the Interior, the Air Force Intelligence Directorate and various sections of Branch 251. Section 40 contributed a contingent of about 250 men, among them the defendant, who was equipped with a firearm.

At the very least the members of Section 40 had orders to shoot, pursue and arrest the demonstrators. Hafiz Makhoul personally drove up in an SUV, hurled insults at the demonstrators and made remarks to the security guards: "Anyone who loves the President should shoot the traitors," and opened fire himself with a submachine gun. At least five people were hit, at least three of them died. Intelligence officers also started shooting at the demonstrators. The defendant did not do so but withdrew somewhat. The demonstrators then tried to flee. The security forces, among them the defendant, chased them, combed the streets, arrested a large number of them and put them on waiting buses.

Thirty demonstrators were then driven in a convoy of at least two buses from Douma to Branch 251 in Damascus; the defendant escorted them and provided security. Many of those arrested were already beaten on the buses; it could not be established whether the defendant took part in this. When they arrived at the courtyard of Branch 251, the detainees had to get off the bus and were beaten severely on the way from the bus to the building; among other things, they were beaten with metal pipes by newly enlisted recruits. The Panel has also been unable to establish that the defendant himself ill-treated the detained demonstrators in the course of these events.

The detainees were held in Branch 251 for at least several days and were all tortured during their stay. In addition to the violence which all of them, without exception, had to endure immediately upon their arrival at the branch, the vast majority were subjected

to systematic physical violence during their subsequent detention and interrogation by being beaten with implements on their bodies and the soles of their feet, causing them considerable pain. The conditions of detention were typical for the Branch: all prisoners were housed in the underground detention rooms, partly without daylight, in extremely cramped conditions, without sufficient food, under catastrophic hygiene conditions in vermin-infested rooms without any facilities for personal hygiene and with only limited opportunity to use the toilet. All of them had to endure the cries of pain and pleading of others as they were tortured in adjacent interrogation rooms throughout the day and night. The prisoners were not informed of the reason for their detention or its duration. Each of the detainees was completely in the dark about their fate, especially about when it would be their turn to undergo the brutal ill-treatment the effects of which they could constantly see in others. None of them knew if and when they would get out of prison alive. Relatives of the detainees were not informed of their fate.

The arrest of the demonstrators and their subsequent detention, which lasted at least several days, was arbitrary, without any specific justification and with no order that even came close to meeting the requirements of the rule of law. Nor were the grounds for their detention reviewed by an independent body. It was based solely on blanket instructions from the executive, namely the security authorities, to break up the demonstration by violent means and detain participants in order to prevent further anti-Government aspirations.

As a member of Section 40, which had been given the task of suppressing the opposition movement and functioned as an intervention and arrest unit, the defendant knew that the operation against the demonstration was aimed at the arbitrary seizure and removal of participants in the event. He was aware that he would be in charge of removing demonstrators to "his" main Branch 251. Due to his long-standing work in the branch, the building and based on his observations in this regard, he knew what was in store for the demonstrators there, especially the systematic physical abuse, the appalling detention conditions and extreme psychological stress, starting with the brutal beatings during the usual "welcoming party". Finally, the defendant was also aware that there was a complete lack of a procedure that could have lent the detention even the most remote legal legitimacy. In view of the general political situation and events in Syria, but especially through his own intelligence activities, he was aware

that the incident was part of wider attacks on civilian demonstrators and alleged or actual opposition members that took place throughout the country from the end of April 2011 onwards. This applies irrespective of the fact that he had begun to express his own unease with the Syrian regime to relatives.

The defendant resigned himself to taking part in the suppression of the demonstration and the arrest of the demonstrators in order to continue his intelligence service work, which secured his own and his family's livelihood. He was not in a subjective situation of duress but performed his duties exercising his freedom of choice until his desertion several months after the incident. Irrespective of this, there would have been sufficient opportunities for the defendant not to participate in the offence, had he been willing to do so. For example, he could have claimed illness when he was given the order to deploy, or he could have feigned illness or injury during the deployment. Unlike ordinary soldiers, for example, who were subject to constant surveillance by the intelligence services when deployed against demonstrations, he also had the opportunity to break away and turn his back on the intelligence services because of his freedom of movement at the demonstration and in the surrounding streets.

c) Post-offence conduct

The defendant continued to work actively for Section 40 until the time of his desertion on 5 January 2012. At the turn of 2011/2012, he was still escorting an armed convoy of refrigerated trucks early in the morning to transport about 50 to 60 corpses to a mass grave near Najha on the outskirts of Damascus. After passing through checkpoints, the bodies, most of which were of people who had died in the intelligence service prisons and branches, were thrown into a mass grave previously dug out by an excavator.

B. Assessment of evidence

I. Statements of the defendant

During the main hearing, the defendant did not enter a plea either on his own behalf or on the merits of the case. He did, however, submit to the Panel a written statement he had drafted via his defence attorneys. Prior to the start of the preliminary investigation, he had made statements, including self-incriminating statements, at his hearing before the Federal Office for Migration and Refugees and in a subsequent witness interview at the Federal Criminal Police Office. The details are as follows:

1. Written statement of the defendant

During the main hearing on 9 December 2020, the defendant sent the Panel, via his defence attorneys, a handwritten three-page statement, in which he dealt in more detail with the impression the so-called “Caesar files” – photographs of deceased, previously tortured and emaciated persons that had been shown during the main hearing – had made on him. The statement also addressed the question why, in his opinion, it had not been possible for him to break away from the intelligence service earlier. The defendant was not prepared to answer any follow-up questions in that regard.

The defendant essentially made the following written statements:

He thanked the forensic medical examiner for his remarkable work and detailed account of the physical and psychological torture suffered by the detained victims. He also thanked the Syrian hero with the alias “Caesar” for helping to expose crimes committed by the Assad regime and its sectarian gangs. The images were depressing, shocking, painful and extremely frightening. They broke his – the defendant’s – heart with pain and grief. During the presentation, his whole body was shaking with shock and grief over the victims. Anger and hatred against the criminal Assad regime and all its abettors filled his head and heart. At times he had to avert his gaze. He asserted that he had never seen 99% of the images shown in the courtroom before, the remainder only on Al-Jazeera and other Arabic news channels. He had to think of his relatives who had been detained in prisons of the regime since the beginning of the

revolution. Seven of his relatives, dozens of members of his tribe and hundreds of inhabitants of his hometown Muhasan had been arrested; their fate had been unknown ever since. He had looked at the pictures in the courtroom and searched for his relatives. On the way back from the court building to the prison, he said, he was overcome with grief and pain; he wept bitterly. He had thought of the detainees, their families and the millions of Syrians who had been displaced simply because they had demanded freedom, justice, equality and democracy. Bashar al-Assad and most members of his confession, including civilians and mercenary troops from other countries, were the real criminals who were still committing their crimes against innocent Syrians. He said that he, like every Syrian who loved his country and his people, wanted them to be held accountable by bringing them, first and foremost the dictator Bashar al-Assad and his family, before international courts.

As far as his situation as a member of the Syrian security service was concerned, he was no different from the other members of the Sunni confession, who had been completely powerless, especially since the beginning of the revolution in Syria. It was undisputed that 90% of the revolutionaries were Sunni, just like himself. The regime had viewed them with suspicion and as a constant threat since the outbreak of the revolution. Many of “us” had been kept away from important and sensitive functions or removed from their posts. Many, including himself, had had their personal weapons and security passes taken away from them. Colleagues of other denominations had been tasked to keep watch over them at work, monitoring their every step, word, glance and even breath. They were waiting for the slightest sign of support for the revolution “to arrest us”. He and all the others who had been in a similar situation were therefore left with just one of the following options:

- openly refusing to carry out orders from superiors and being defendant of denial of service and collaboration with demonstrators as a result. Action of that sort would have entailed imprisonment and in most cases execution.
- Splitting from the regime and taking flight immediately without regard for his – the defendant’s – wife and four children. That would have resulted in his wife and children being arrested and tortured until he himself returned and was executed.

- The correct and safest option for himself and his family was to hold out for a few months until some regions were no longer under the regime's control or borders with neighbouring countries were passable, then to leave his post and secretly flee with his family.

He chose the latter option on 5 January 2012. He asked whether loving his wife and children was a mistake for which he deserved punishment.

2. Information provided in the asylum procedure

The defendant had previously made statements, including self-incriminating statements, in the asylum procedure at his hearing in Trier on 9 May 2018 at the local branch of the Federal Office for Migration and Refugees. The information was conveyed to the Panel by witnesses ...[L] and ...[M], who were involved in the hearing on behalf of the Federal Office, and – with regard to the accuracy of the translation – by witness ...[N] as the interpreter used. According to witness ...[N], there were no communication problems with the defendant. The Panel is therefore convinced that the defendant spoke as reported by the witnesses and recorded in the transcript.

a) At his hearing, the defendant first provided information about his religious denomination, his place of origin in Syria, his family circumstances, his schooling, and his places of residence until he joined the Syrian intelligence service, confirming what was known about him.

b) From 10 July 1996 to 5 January 2012, he had, according to his further testimony, been a member of an intelligence service and eventually earned the rank of warrant officer. He had also lived on the intelligence service premises for part of the time. In Najha, a suburb of Damascus, he received two years of training. This included weapons training, military strategy and fitness. He had been trained on sniper weapons and rifles, including on the Russian “Mikarov” – the Panel assumes that he is referring to the Russian “Makarov” pistol – and on weapons made by Braun – possibly referring to Browning – a sniper rifle, various types of bombs and a bazooka. He had taken a course to become a trainer. They had to go into the desert for three days and either stay there or walk 120 kilometres without a break.

The defendant had then been a trainer in Najha until 2010. After that, until his desertion at the beginning of 2012, he was deployed in Damascus, in Baghdad Street, in Intelligence Branch 251. He had initially been in the “religion section” there. Over the course of five months, he learned about the religions in Syria and was responsible for the Damascus neighbourhoods of “Mukhain Alyarmouk, Palisin Street, Aljahar Alaswad and Alkadem”. He had to collect information from all the mosques, especially to find out what was being taught there. He attended Friday prayers to see what was being preached and to find out about the imam’s orientation (“strategy”), i.e. whether he was inciting protest against the Government. He also “collected data” about other people. He had submitted reports on this to his superior in the Branch, Lieutenant Colonel Kamal Alahmad.

He then worked for the “Alzebadani” Branch. He had wanted to leave the job because “office work is not really my thing”. Lieutenant Colonel Kamal Alahmad had wanted him – the defendant – to work in his section again, which he had done for two months. Afterwards, he had been “transferred” to a “dangerous section”, Section 40. He had worked there from July 2011 to 5 January 2012, near Bashar al-Assad’s house. The section was a Mafia-like organisation; once were in it, you could not leave. It was led by Hafiz Makhoulf, a cousin of Assad.

When asked whether he had been an eyewitness to crimes, assaults or abuse, the defendant replied that he had seen people being beaten – including on the head – and that some of them had died. This had “also” been done by members of Branch 251. When people came out of Friday prayers and demonstrated, the security forces arrived. Hafiz Makhoulf had shot five people on one occasion; that had happened in Douma in August or September 2011. Bodies had also been taken away from the prison of “our branch”. The prison was located underground in the “251 building”. He had not been involved in this himself. The commander was Brigadier General Tawfiq Younis.

c) He deserted on 5 January 2012. As a motive for this and also as grounds for asylum, the defendant stated that he had received orders from the intelligence service to kill civilians. He was supposed to arrest demonstrators, especially the ringleaders of demonstrations, drag them into the car and take them away. At the end of 2011, he was instructed to fight civilians who were opposed to the Government and were armed.

Three colleagues had already lost their lives doing so. He had not wanted to kill any compatriots and had decided to go to Deir-Ezzor.

In January 2012, he therefore fled first of all to his home village of Muhasan and hid there for six months, changing houses every day or two. His wife and children had remained in Damascus; “they” – obviously meaning intelligence officers – had made unofficial enquiries about him with his wife and brother. The intelligence service had also found out that the defendant was staying in his home village. One of his brothers and a brother-in-law then helped his wife to leave Damascus and go to “Qudsia”, where she hid with an uncle. They had tried to arrest his wife; she had then come to him, the defendant, using a cousin’s identity card. He himself had received threats from the intelligence service via a cousin; this had ultimately been the decisive factor in his decision to leave the country. When his parents’ house was attacked from the air, he fled with his family to the village of Abo Hassan. When asked why he had gone back to his known home village of all places, the defendant replied that the Government had not known that his parents’ house was in Muhasan.

His parents’ house had indeed been fired at after he left, but the bombardment had missed. He had seen this. When questioned, the defendant stated that he returned to the village after taking his family to safety because the house in Abo Hassan was too small for all of them.

d) Finally, the defendant had left Syria on 12 February 2013. He had then spent three years in the “Haran” refugee camp in Turkey and entered Greece on 20 February 2016. He stayed there for two years, two months and four days in a camp near Thessaloniki without applying for asylum. His departure for Turkey was organized by a smuggler, just like his transfer from Turkey to Greece.

3. Witness hearing

The defendant was then questioned as a witness on 16 August 2018 as part of structural proceedings by the Office of the Federal Public Prosecutor against unknown perpetrators on suspicion of violating the International Criminal Code in connection with the civil war in Syria. The circumstances and content of this interview, in particular the statements made by the defendant, were conveyed to the Panel via the police

interviewers ...[O] and ...[P] as witnesses and, through the interpreter used, witness ...[Q]. On this basis, the Panel has come to the conclusion that the defendant made the statements below during the interview. In particular, according to the testimony of witness ...[Q], there were no communication problems; the information he had written down was translated back to the defendant from German into Arabic and in part corrected by him by hand.

a) The defendant provided information on his childhood and youth, as he had previously done at his hearing before the Federal Office for Migration and Refugees. Regarding his relatives, he stated that one of his sisters was still living in Damascus.

b) The defendant submitted that he had joined the intelligence service on 10 September 1996. He had been employed by the General Intelligence Directorate, also called State Security. The defendant gave Kafr Sousa in Damascus as his location. He then provided information on his training and deployment up to February 2010, as described in the findings. This relates in particular to his basic training and activity as a trainer. The defendant described himself as a very good trainer; this was the reason why he was allowed to remain in the function for a long time. He had mainly given the trainees “physical exercise”. The defendant admitted to having been a tough trainer: “You had to force people to push themselves.” However, this had not been his only task. He had received further training in “counter-terrorism”, for which he won a medal. The training had been supervised by “Russian experts”. He had been taught:

“How to storm buildings, even multi-storey ones. This included storming buildings in big cities with large populations, but also in the countryside. We were trained to recognize and counteract ambushes, but also to set them up ourselves. We were trained to abduct both armed and unarmed people and to make arrests. Similarly, we learned how to protect important people.”

Interrogations were not part of his training, he claimed. These had been the task of the investigation branches, especially Branch 285.

In February 2010, he had transferred to Branch 251, also known as the “internal branch” or “Al Khatib”. It was located on Baghdad Street in the Al Khatib district of Damascus, opposite the Red Crescent hospital. He, the defendant, had performed his

duties there in various sections. Initially, he was employed in the "religions" section located in the building on Baghdad Street. For one month, he had worked for Zabadani in the section, possibly in June 2011, at which time the unrest had already been ongoing for three months. He had not liked it in that section and had been transferred back to the "religions" section at his own request. In July 2011, he had finally "switched" to Section 40, which was located in Jisr Al-Abiat in Damascus.

The defendant provided additional details on Branch 251 on Baghdad Street in the "Al Khatib" district of Damascus, in particular the layout of the buildings and the location of an underground prison in the basement of one of the buildings. The religions section had been located in the building opposite. The defendant described the location of various other sections as well as that of an ammunition depot in the building complex. The two buildings were about eight metres apart, with a cafeteria in between. The building complex had been secured by two barriers "before the war", and more extensively afterwards. The defendant also named the heads of individual sections as at January 2012.

c) Regarding the general political situation and the activities of the intelligence services, the defendant stated that "even before the riots there were crimes against humanity on the part of the intelligence services". Within the intelligence services, other religions had been discriminated; Sunnis in particular had always been disadvantaged or punished more severely for offences. Roadblocks had been set up in August 2011. Since the beginning of the unrest, there had been orders to shoot civilian demonstrators. The regime had maintained contacts with Islamist groups such as Jund Al-Sham, a militia in Lebanon.

The regime had worked with "tricks"; for example, a delegation from the Arab League was supposed to visit the prisons at the end of 2011. On the orders of the head of the Branch, Tawfiq Younes, the inmates there had been transferred and the prison had been occupied by staff who acted as prisoners. Weapons were also "planted" on demonstrators to justify the regime's actions against them. Intelligence staff were taken to hospital where bandages had been applied to make them look injured. This was done to make it appear as if they had been attacked by demonstrators. Representatives of the media interviewed the allegedly injured at Al-Mujtahid hospital.

d) The defendant made the following statements about the key events of the established offence:

There were orders to shoot civilian demonstrators. He had been in Section 40 when he received them. That had been in 2011, possibly in September or October. There had been demonstrations at the Al-Masjid Al-Kabir Mosque. The demonstrators believed that they would not be driven out. They were in the street, sitting down and also dancing. They behaved peacefully. Slogans such as “Bashar out” or “The people want to bring down the regime” were shouted.

The defendant saw with his own eyes how his section head, Hafiz Makhlouf, drove up in a Mercedes SUV and got out; he hurled insults at the demonstrators and then shot at them with a submachine gun, firing a whole magazine. Five people were hit, three of whom immediately collapsed dead, and two others were close to death. Others were injured and could have fled. The dead were taken to the Red Crescent hospital. Hafiz Makhlouf gave the order for everyone to use weapons. He said: “Anyone who loves the President should shoot the traitors”. Six or seven people who were directly subordinate to him then opened fire.

In total, there were about 3,000 to 6,000 demonstrators confronted by 1,000 members of the security forces. Among the security forces, Section 40 was represented with about 250 people; in addition, there were members of other sections, in particular the one for Douma under the command of Samer Breidi, as well as people from the Air Force Intelligence Directorate and the Ministry of the Interior.

He, the defendant, claimed that he did not shoot at the demonstrators, but had withdrawn somewhat so no one would notice. He was combing the streets with others (“we”) when the demonstrators “bunked”. In particular those who were trying to film events with mobile phones were taken away. Many demonstrators were arrested and later died. People who had nothing to do with the demonstration were also arrested. They were bussed to Branch 251 and beaten on the way from the demonstration to the branch premises. The buses stopped between the buildings. “The largest number of deaths” occurred outside the Branch 251 building. Among other things, new recruits were deployed there, equipped with metal pipes with which the detainees were beaten on their way from where the bus was parked to the building. The demonstrators were

taken to the underground prison by the recruits in a stooped position and wearing hoods. He, the defendant, was present at the demonstration, during the transport and when the arrested demonstrators were brought in and had seen everything with his own eyes. "When the buses came for the demonstrators, the beatings were not that bad. It was only when [they] arrived at Branch 251 that they were severely beaten." On the bus, the abuse had been carried out by members of the security forces and other colleagues; he did not take part in it.

The demonstrators who were brought in were taken to the basement and most of them never came out again. In some cases, they were transferred to Branch 285, especially when the prison was overcrowded. Before the conflict began, detainees were taken directly to court.

e) As far as torture and assaults against prisoners in Branch 251 are concerned, the defendant further reported that he had once been in the prison of Branch 251 himself after the beginning of the unrest in October 2011. Cries and screams due to torture could be heard in the prison. The defendant elaborated on this: "The torture did not stop until the prisoner passed out." The head of the prison, Abu Ali, was responsible for the torture. He had not talked about the torture with his colleague, ...[R], who had shown him the prison. "That was normality. Even when dead people were taken out of the prison, it was nothing special." When asked, the defendant stated that both before and after the start of the unrest he had seen dead bodies being taken out of the Branch 251 prison. For example, a dead man had been taken out of the prison and another person had been beaten on the head with a metal bar and killed after getting off a bus. This was one to two months before he was deployed at the demonstration in Douma in September or October 2011.

The screams of those being tortured could also be heard in the cafeteria of the branch, as they were very loud. Even before the unrest, people had been arrested and tortured: "Before the riots, if someone had taken part in a demonstration, they were taken to prison and their backs were burnt with a kettle. There were always electric shocks. That was the case in all branches." When asked what had changed in the prison after the riots, the defendant explained that the punishments had become more severe, and the guards were allowed to do what they wanted. The prisoners were tortured in the branch until they were transferred. From time to time, prisoners were taken upstairs by

the guards, where they had to shout that they worshipped the President. After April 2011, prisoners often had their legs broken so that they could not demonstrate again.

The basement prison, which is between 300 and 400 square metres in size, had been designed for 100 prisoners; in actual fact there had been 400 or more. He, the defendant, had reached that conclusion from the admissions and the number of buses. These arrived “sometimes (...) daily, sometimes twice a day”. Other people were also arrested. Now and again, he saw people being released. From April 2011 to mid-May 2011, people arrested on Fridays were released on Saturdays or Sundays. There were transfers to Branch 285 twice to three times a week, “when our prison was full”.

f) He deserted in January 2012 and returned to Deir-Ezzor, staying with relatives in Muhasan until February 2013. Between 9 and 13 February 2013, he travelled illegally across the Syrian-Turkish border and then stayed in a refugee camp near Urfa. On 20 February 2016, he left Turkey and arrived in Greece, where he remained until 25 April 2018. He then took a plane from Athens to Germany. He was given an entry visa because one of his sons was a minor.

4. Admissibility

The Panel considers the statements made by the defendant at his hearing before the Federal Office for Migration and Refugees on 9 May 2018 to be fully admissible. In the Panel’s view, the statements made in the examination of the witness on 16 August 2018 are partially admissible; the Panel used them up to and including the first paragraph of page 13 of the transcript of the examination and has only reproduced them up to that point above.

a) The statements made by the defendant during his hearing before the Federal Office for Migration and Refugees can, in principle, be used in the criminal proceedings pursuant to Section 8(3) sentence 1(3) AsylG. Moreover, there was no failure to instruct the defendant about his rights that would have rendered the information inadmissible.

The Panel does not consider the statements made by the defendant during his hearing to be sufficient in themselves to establish an initial suspicion of his liability for specific criminal offences – assuming he was duly instructed about his rights – which could have triggered the requirement to notify him in particular about the charge, the right to

remain silent, and the right to legal counsel. The acknowledgement of his activity in Section 40 of the Syrian General Intelligence Directorate is insufficient in this regard. Moreover, the hearing in the asylum procedure is not an interrogation that can be enforced under criminal procedure provisions, in particular sections 55, 136, 161, 163a of the German Code of Criminal Procedure (StPO), because the objective of the hearing is to uphold the asylum seeker's individual rights, which is fundamentally different from the objective of hearings conducted in the context of criminal proceedings. Only in this respect does the concerned person have a – non-enforceable – obligation to cooperate (see section 15(2) no. 1, section 25 (1) sentence 1 of the Asylum Act), which does not include an obligation to incriminate him- or herself with facts attracting criminal liability. Even on the basis of a broad, functional concept of interrogation, the present questioning is therefore not an interrogation by the State where facts attracting criminal liability might be rendered inadmissible on the grounds of failure to inform the defendant of his rights (see relevant decisions of the Federal Court of Justice (BGHSt) 36, 328); the Higher Regional Court of Bavaria (BayObLG NStZ 2020, 684); the Higher Regional Court of Düsseldorf (NStZ 1992, 349); the Higher Regional Court of Hamm (NStZ 1989, 187); Gleß, in: Löwe-Rosenberg, StPO, 27th ed., section 136 marginal 12 for further references).

b) The Panel considers the statements made by the defendant in his interview of 16 August 2018, up to and including the first paragraph of page 13 of the transcript, to be admissible, even if the defendant had not been instructed about his possible status as an defendant by then and had been heard solely as a witness. By this point in the interrogation, the level of suspicion against him had not yet consolidated to such an extent that the prosecuting authorities, in particular officers ...[P] and ...[O] who were conducting the interview, should have proceeded to interrogating him as an accused person and instructed him about his rights in this regard. Nothing has come to the Panel's attention that would justify a different assessment.

In this respect, the Panel abides by the principles established by the Federal Court of Justice and their application in this case (BGH, order of 6 June 2019 - StB 14/19, BGHSt 64, 89). In fact, and in law, the Panel has no reason to assume any further impediments to admissibility. In particular, there is no evidence that the Federal Public Prosecutor's Office or the Federal Criminal Police Office sought to prosecute the

defendant in any way that was contrary to his status as a witness or that the investigating officers deliberately misled the defendant about his status as an accused. Also from an objective point of view, there is no evidence that there were further indications of the defendant's status as an accused before the point in time assumed in the aforementioned decision at which he should have been informed about his status as an accused.

In this regard, the Panel heard witnesses ...[P] and ...[O] in their capacity as the interviewers and investigators-in-charge of the Federal Criminal Police Office, who reported on the interview situation, the course of the investigation and the level of their knowledge over time. According to the information provided by them, before the start of the interview there had only been unspecific clues, emerging solely from the statements made by the defendant at his hearing before the Federal Office for Migration and Refugees on 9 May 2018. There had been no further circumstantial evidence or evidence of specific criminal offences committed by the defendant; in particular, no such evidence could have been inferred from the intelligence service ID cards presented in the asylum proceedings. Accordingly, as the witnesses also confirmed, the interview had not served to question and convict the defendant as a perpetrator. Rather, it was primarily aimed at gaining knowledge about the tasks, structures and persons in charge in Branch 251 and Section 40 of the General Intelligence Directorate, and about the local conditions, circumstances and procedures within Branch 251. It was only in the course of the interview, the content and status of which had been reported to the representative of the Federal Prosecutor General, that the defendant had given increasingly detailed accounts of his involvement in the arrest of demonstrators and their fate after they had been taken to Branch 251.

The witnesses' description of the state of the investigation corresponds to the records. Objectively, according to the Panel's findings, there were no concrete suspicions that could have led to the assumption of criminal actions on the part of the defendant before the interview. Based on the information available to it, the Panel also shares the view that the suspicions that there was a case to answer only consolidated in the course of the police interview. It sets this time as the point when the defendant provided the information given in the first paragraph of page 13 of the record of the interview. Only the information provided thereafter gave rise to concrete and serious suspicion that the

defendant had probably himself been involved in crimes against humanity by acting on his own responsibility. Accordingly, the Panel has only reproduced the statements made by the defendant before this point in his interview and bases its assessment of the accusation of guilt against the defendant solely on those statements.

II. Re. the findings regarding the general political and social situation in Syria, the internal organization and the security services in the period up to 2011

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

a) The findings on the general political and social developments in Syria up to the beginning of the protest movement in spring 2011 are essentially based on the expert opinion of the ethnologist and expert witness Laura Thurmman submitted to the Panel, which in turn is based on a large number of cross-checked sources from academic publications, the press (including the Arab press), non-governmental organizations and official statements of the Syrian Government. The Panel had no reason to question the expert's statements, which are confirmed in detail by a wide range of additional evidence (see below under b) and c)).

b) The expert's findings are consistent with and supplemented by the statements of several, mostly expert, witnesses.

aa) In this regard, the Panel has drawn on the statements of the following witnesses, which are summarized below:

(1) Expert witness ...[S] is a Syrian lawyer, journalist and human rights activist and was politically active in the opposition in Syria before and after the beginning of the protest movement. He is currently the director of a centre for media and freedom of expression, which he founded in France in 2004. He is co-author of annual reports on the human rights situation in Syria. The witness was detained several times by different Syrian intelligence branches, including by the Military Intelligence Department and, for three-and-a-half years, by the Air Force Intelligence Directorate and the 4th Division. He was subjected to torture by both the 4th Division and the Air Force Intelligence Directorate.

The witness first outlined the history of Syria since independence. According to the

witness, the absence of democratic structures originates in the merger between Syria and Egypt to form the United Arab Republic in the years 1958 to 1961, as a result of which an independent press and politically independent parties were lost. This paved the way for the coup in 1963 and the rise of the Ba'ath Party. The coup also consolidated the importance of the military and thus indirectly the power of Hafiz al-Assad as the then Minister of Defence. The witness also testified in detail on the declaration of the state of emergency, the introduction of a constitution granting broad presidential powers in 1973, and the monopoly of the Ba'ath Party as the leading institution in State and society.

In the course of this development, instruments with far-reaching de facto powers had been created which controlled society. Ultimately, a security apparatus that had been given free rein had replaced the State institutions. The massacre in Hama, which directly affected between 16,000 and 60,000 people, was ultimately directed against Syrian civil society as a whole, because it showed that the security apparatus no longer recognized any limits when it came to maintaining the political status quo. Further violent attacks with many deaths occurred especially between 1979 and 1989 in the course of the conflict with the Muslim Brotherhood and the dismantlement of the trade unions and left-wing movements.

All other State organs had been subordinated to the security authorities and placed at their disposal; all independent organizations had been crushed. Control of society had started early, with children between the ages of 6 and 12 being assimilated into the "Ba'ath Youth", followed – from the age of 12 – by membership of the "Revolutionary Youth", a youth organisation also belonging to the Ba'ath Party. The organizations were used for political indoctrination.

When Bashar al-Assad came to power, he found an already "broken society" with no press or parliament. Civil society was sustained by individuals, especially lawyers, but its activities had been strictly limited. Bashar al-Assad was appointed as his father's successor because his older brother, who had originally been prepared as successor, had died in an accident. From the witness's point of view, even in the era of Hafiz al-Assad there was only a "family business" with inherited power instead of a functioning State structure.

The witness ...[S] further testified to Bashar al-Assad's initial reforms, although these took place without underlying legal changes. The President had tried to give the continued policy of oppression a pretty facade; it was merely "make-up applied to the face of tyranny". Already by August 2001, the trend had reversed; activists were being arrested and cultural and political forums dismantled. Hopes that the United States would push for political change in Syria with the end of the Iraq war had been dashed. Foreign policy measures that ultimately only served to preserve power included the promotion of jihadist efforts in Iraq, the fuelling of an alleged Arab-Kurdish conflict and rapprochement with Iran; on the other hand, there had been unsuccessful attempts to integrate Syria into the international community through official visits from the European Union.

Domestically, the regime used the security apparatus to crack down resolutely on the opposition; for example, demonstrations were broken up and participants arrested as early as 2004. The intelligence services had deliberately targeted the – albeit small – circle of political activists. Branch 285 of the General Intelligence Directorate was responsible for blocking undesirable Internet portals. Extensive privatisation and corruption led to a shadow economy.

The witness's well-informed explanations, which are shaped by personal experience, prove, among other things, that the organizational preconditions for massive and widespread action against the protests from April 2011 onwards had already been created beforehand, in the shape of the historically established, far-reaching powers of the security apparatus.

(2) Expert witness ...[T], a Syrian lawyer and human rights activist, also described that, in his personal experience going back to the 1970s, politically undesirable persons had been subjected to arbitrary harassment and detention. He was detained himself by various intelligence services in 1978, 1986, 1989 and 2006 and had been summoned for questioning countless times in between. He had been defendant of trumped-up offences, such as killings and theft.

In 1978 in particular, people belonging to the peaceful opposition were killed under torture. After the Hama massacre in 1982, about 3,000 people disappeared. This was

intended to harm society as a whole. The witness described it as common for action to be taken against peaceful opposition under the pretext of fighting extremists; ultimately, however, it was the Government as an extremist organization that was fighting society.

Alawites held key positions in the State and the intelligence services, but there had also been many high-ranking Sunnis in the security apparatus. For the latter, it had been difficult to assume leadership of a branch. In the witness's experience, the Sunnis in the security services had been more brutal than the Alawites because they had had to prove their loyalty, as he had experienced himself in the course of his own detentions and had learned from former prisoners whom he had represented as a lawyer.

(3) Expert witness ...[U] is a former Syrian opposition politician, now a politician in exile and a businessman; he was a member of the Syrian Parliament from 1994 and was long considered the most prominent dissident and critic of the Assad governments.

The witness testified in particular to the economic and political conditions in the course of the transition of power from Hafiz to Bashar al-Assad, and to his personal experiences of attempting to assert himself as an opposition member and "free entrepreneur" against State-protected families such as the Makhloufs. He has given the Panel insight into the emergence and failure of the Damascus Spring in 2001, which he co-initiated; at the time, it was believed that corruption could be fought, and the economy changed. He had believed that civil society needed to be strengthened to that end and had campaigned in vain as a member of parliament for the admission of critical civil organizations and groupings. He had held a large number of meetings in an open forum to facilitate a national exchange of ideas. In the end, the intelligence services had the forum closed down. When he continued it without permission, he was imprisoned on 5 September 2001. He lost all his assets and was sentenced to five years in prison; the charges were "incitement of the population, regime change by force, and weakening public opinion". However, as a member of parliament, he enjoyed certain privileges while in detention.

In 2006, the witness had again been detained for one day in the Al-Khatib Branch; he had also been subject to police and intelligence service surveillance and had to report regularly to the Al-Khatib Branch. During intelligence service visits, there were also

physical assaults. He was finally arrested again in 2008 and spent two-and-a-half years in Adra prison. After serving his sentence, Ali Mamlouk and Tawfiq Younis, as high-ranking intelligence officers, had made it clear that he should refrain from any further political activity. He was told that a new leaf had been turned and that he would not get off so lightly next time. He, the witness, then gave up his commitment to civil causes in Syria with a heavy heart.

When asked about the relationship between Alawites and Sunnis in Syria, the witness stated that the “real bosses in Syria, especially in the intelligence service”, were the Alawites. However, there were also reports that people of other faiths were more brutal in order to outdo the Alawites and gain their support.

(4) Witness ...[V], who worked at the German Embassy in Damascus, inter alia as a translator, until 2012 and thereafter for the Foundation for Politics and Science in Berlin, testified that torture had already been practised by the Syrian intelligence services in the years before 2011. She said that she had learned of cases of ill-treatment by bastinado, blows to the soles of the feet and the “German chair” to the point of breaking the spine from documents she had translated. People had also died, especially as a result of brutal beatings during interrogations.

(5) In his capacity as a journalist and Islamic scholar – expert witness ...[W] – who also studied in Syria – has been writing about the political development in Syria since the 1990s and has conducted extensive relevant research on the ground during numerous visits. His findings draw on analyses of publications and a large number of conversations with representatives of civil society and opposition groups he knew from the past and with whom he had contact through his time spent in the country and through Syrians living in exile.

The witness stated that already under the rule of Hafiz al-Assad and almost right into the rule of Bashar al-Assad, abuses by the security authorities were part of everyday life in Syria, with the intelligence services occupying a prominent position with sometimes competing responsibilities. In particular, it had been common knowledge even before 2011 “that the regime arrests, tortures and kills. Everyone knew that; this was nothing new”. As early as the late 1970s and early 1980s there had been uprisings which had been quashed, especially those of the Muslim Brotherhood in Hama. The

army had shelled the town and killed 15,000 people. At the time, however, the dissident scene was small and, from the regime's point of view, harmless. "If no one takes to the streets, nothing will happen".

The period before 2011 was in no way comparable to what happened afterwards. However, the "conditions for the greatest cruelty in the apparatus" were already in place; except that in earlier times "people were not killed en masse". As far as working within the regime was concerned, according to the assessment of the witness those who chose a career within the State had no other option but to give in to the terms of the dictatorship. The latter was dominated by Alawites. As a Sunni, one had had to prove oneself, engage in repression for the sake of the system; as a Sunni, one had had to be "the first to say that more people should be arrested".

(6) Other witnesses, who were mainly questioned by the Panel about their experiences as former employees or victims of the regime, also made isolated references to their perceptions of the Syrian State.

Witness ...[X], who was later imprisoned several times as a dissident activist in various facilities of the security apparatus, reported about a climate of fear in her childhood and youth in the 1980s. She remembered an incident from the fourth grade of primary school when she had told friends about statements critical of the regime made by her father. The following day, security forces came to the school.

A witness who was questioned anonymously by the Panel on 16 December 2020 (hereafter: Z 16/12/2020), had been detained in Branch 251 in 2012 and stated that she was a member of the Syrian upper class and had been an active member of the opposition. With regard to the distribution of positions of power among the religious and ethnic groups, she noted that the Syrian regime was not exclusively made up of Alawites. High-ranking Government officials such as ministers, leading parliamentarians and vice-presidents had been Sunnis. While Alawites generally occupied the leading positions in the security authorities, Sunnis could gain access to other top administrative posts.

Witness ...[Y], a long-time employee of the General Intelligence Directorate, has largely confirmed this. Sunnis, too, were able to assume leading positions, although a

distinction had to be drawn between normal civil service positions and sensitive positions within the security apparatus. The Panel took this part of the witness testimony, which mainly concerned the time after the beginning of the conflict, and his experience of the conditions in Branch 251 and Section 40, which showed some discrepancies with other elements of his testimony (see in more detail under III. 1. c) bb), p. 71), as accurate. The Panel reaches this conclusion in view of the consistency of his testimony in the preliminary investigation proceedings and before the Panel – in contrast to the testimony about the circumstances after the start of the conflict – the detailed description of the situation, and its consistency with the observations of witness Z 16/12/2020.

bb) The individual observations of the aforementioned witnesses confirm the assessment that in the period preceding the internal conflict, the social and political developments in Syria had engendered a shift towards autocratic one-party rule with the President as the dominant leader. The political leadership relied on the one hand on a clientelist system where individuals and families close to it occupied key positions in the economy and Government and, on the other hand, on an extensive security apparatus tasked to monitor and suppress any opposition. The witnesses have graphically described how violence against detainees, especially torture and extrajudicial killings, was used as a means – well-known to the public at large – of preserving power. The formation of a pluralistic civil society was thus effectively prevented. Efforts to open up, which were partly motivated by foreign policy considerations, were short-lived. In view of the excessive use of violence that followed, it emerges conclusively that the necessary organizational infrastructure and knowledge – such as prisons for the detention of dissidents and methods for their systematic ill-treatment – were already in place so that all that was needed were relevant orders to the army and the intelligence service for them to apply their well-rehearsed practices in quantitative and qualitative terms to the entire protest movement. It is also evident from the political development described by the witnesses, that the Syrian leadership ultimately continued to apply a conflict management approach based on violent suppression and confrontation which had been tried and tested over the years and, in its view, had proven successful.

With regard to the ethno-religious power relations within the Syrian State apparatus, a

multi-layered picture emerges from the testimonies. While the Alawite religious community historically and as a result of the rule of the Assad family generally enjoyed a privileged position with disproportionate representation in key State positions and, in particular, occupied leading security positions, members of other religious communities, especially the Sunni majority, were also found in leading positions. It is understandable that they felt under pressure to act, in that they had to prove their particular loyalty to the regime. It also seems plausible, however, that in view of the numerical preponderance of Sunnis in the population, the regime was compelled to employ them in its extensive security apparatus and also grant them higher positions for the sake of social pacification.

c) With regard to the evidence, the Panel has also drawn on the reports of an independent international commission of enquiry set up by the United Nations Human Rights Council in view of the events in Syria from March 2011, which were submitted in November 2011 and March 2012 (see in more detail under III. 1. e) aa), p. 80). The account of the historical and social development of Syria summarized in the reports is consistent with the information provided by the experts and witnesses presented above. The reports confirm, in particular, the autocratic rule of the al-Assad family from the military coup in 1971 onwards; the abrogation of civil rights through the decades-long state of emergency; the dominance and control of politics and society by the Syrian Ba'ath Party, human rights violations such as the attack by Syrian Armed Forces on the city of Hama in 1982 with an estimated 10,000 to 25,000 deaths, according to the reports; and State repression in the past four decades – calculated from 2011 – against actual or suspected dissidents who were detained, tortured and sentenced to imprisonment on the basis of unspecified charges. The reports talk about surveillance and repression carried out by a comprehensive intelligence service apparatus and the attendant severe restriction of political life and civil society autonomy.

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

a) With regard to the established structure, development and activity of the Syrian intelligence services and other parts of the Syrian security apparatus in the period before 2011, the Panel relies on the statement of the Federal Intelligence Service of 16 June 2016 concerning the structure of the Syrian intelligence services; the statement made by expert witness Laura Thurmann; and the statements of expert

witness ...[Z], who is a leading member of the non-governmental organisation Commission for International Justice and Accountability (CIJA), which deals with the Syrian conflict.

The Panel had no cognizance of the sources of the Federal Intelligence Service. Expert Thurmann's findings are based on an evaluation of a wide range of sources such as professional publications, press releases and publications by international and human rights organizations. The findings of expert witness ...[Z] are based on a systematic evaluation of anonymous interviews with a large number of victims of the regime and regime employees, which have been carried out by CIJA from the beginning of the internal Syrian conflict. Even if the Panel was not provided the names of the anonymized witnesses and could thus not engage directly with them, witness ...[Z] clearly described that the interviews took place according to a standard format and that the information assigned to the anonymized witnesses was documented and evaluated to record the conflict and its course (see further details under III. 2. a), p. 85). The evidence is consistent with the structure, scope and role of the intelligence services as established. The Panel has also gained the impression that the external structure of the intelligence services and their extensive resources as an instrument for stabilizing the political power apparatus predates 2011, and that the existing services were deployed for the large-scale, violent suppression of the conflict.

b) In line with this and partly based on direct experience, a majority of Syrian witnesses also testified in detail on the history, structure and activities of the Syrian intelligence services.

aa) Expert witness ...[S] outlined the historical development of the intelligence services: As the oldest service, the establishment of the Military Intelligence Department dates back to the 1950s; it was succeeded by the General Intelligence Directorate – popularly known as “State Security” – in the 1960s. The Air Force Intelligence Directorate is the most recent service, founded in the 1970s. The role of the intelligence services had always been to suppress the opposition by means of arbitrary arrests, torture and “disappearances”. It was also common knowledge in Syrian society that the intelligence services engaged in torture. Especially after the violent events of the 1980s, such as the crushing of the Muslim Brotherhood movement and the Communist Workers' Party, the modus operandi had become apparent, right

down to the individual methods of torture. It had been conveyed to the people by the regime itself in order to instil fear. The methods of torture were also part of a general culture, so to speak. Forms of ill-treatment such as “Dulab”, “Shabeh” and the “flying carpet” had already been used regularly before 2011. There had also been deaths in the intelligence branches even before the conflict began.

bb) Witness ...[T] confirmed this; already in the 1970s, dissidents had been arrested and tortured by the intelligence services or had simply disappeared. There were no legal proceedings. He himself had been imprisoned and tortured in branches 251 and 285 of the Syrian General Intelligence Directorate in 1978; in 2006, he had been kidnapped on the street and taken to Branch 285. Already at that time, torture had been ubiquitous in the branches, as he had witnessed personally. As a lawyer, he also knew about this from reports of imprisoned clients. According to the witness, the use of torture in the Syrian security apparatus in the period before 2011 was common knowledge, especially among members of the security agencies this was well known.

The witness – who, as a lawyer, has first-hand knowledge in this area – also stated that employees of the intelligence services were immune from criminal prosecution in the discharge of their duties. Accordingly, it was prohibited by law to bring charges against security staff and prosecution was only possible if authorized by the respective head.

cc) Witness ...[U] described the role of the intelligence services as supporting the system with information and maintaining political control. Since 1963, the Syrian system has been built on “absolution, segregation and violence”. There was no intelligence service that did not use torture.

dd) According to his own statements, the anonymously questioned witness Z 28/07/16, asserts without further specifying that he has been working for 21 years as an employee in the “management” of the General Intelligence Directorate. He outlined the division of the intelligence services into the general, military and “political” intelligence services, as well as the air force intelligence service. The “political” intelligence service was attached to the Ministry of the Interior. He estimated the number of General Intelligence staff at between 30,000 and 50,000 across Syria. Ali Mamlouk was in charge of the Directorate until his death in 2012, after which Dib

Zaytoun took over.

All intelligence services had used torture. In his experience, there had never been an interrogation without ill-treatment of the prisoners. There was no presumption of innocence. The witness further testified to the torture methods used, as established previously, which were similar in all intelligence services. The interrogation procedure was also mostly the same: the prisoner was handcuffed by a guard and questioned by an interrogator. The torture to be carried out by the guards was ordered by the interrogator verbally or by hand signals. In some cases, the methods had also been ordered in writing using codes such as “extended investigations”. It was also common practice to smuggle informers into the prison cells, or to intimidate and “turn around” prisoners, especially political opponents, by way of with trumped-up criminal charges.

c) The report of the United Nations Human Rights Council from November 2011 (see further details under III. 1. e) aa) (1), p. 91) also describes the structure of the Syrian security authorities, a description that is consistent with the evidence above. It highlights the existence of elite units of the army – the Republican Guard and the 4th Division. in particular – which reported directly to the President, a multitude of intelligence services with overlapping remits, and pro-government militia such as the Shabiha and those made up of members of the Ba’ath Party. The Panel has used the information as circumstantial.

III. Re. the findings relating to the beginning and course of the conflict from 2011 onwards, the actors and victims

The findings on the course of the conflict, on the actors and institutions involved and on the number of victims are based on an overall review of the evidence collected by the Panel in this regard. This includes the expert opinion of witness Laura Thurmann, who was also heard in this matter; the statements of expert witnesses ...[V], ...[W], ...[Z], ...[S], ...[T] and ...[U]; and several reports by international and human rights organizations. In addition, there were statements from witnesses Z 28/07/16, ...[AA] and ...[Y], who were questioned as former regime employees, and a large number of victim witnesses who were detained in Branch 251, often after having been arrested by staff of Section 40. The Panel attaches particular evidentiary value to the CCMC

documents of April 2011 made available to it by CIJA via the Federal Criminal Police Office. The number and condition of the people who died in the course of the conflict, their bureaucratic documentation and eventual burial in mass graves is documented impressively by the so-called “Caesar files”, by the statements of the witnesses involved in the documentation of burials ...[BB] and Z 30/07/19, and by the evaluation of satellite images of mass graves.

The details are as follows:

1. General course of the conflict from 2011

a) The general course of the internal Syrian conflict since the spill-over of the “Arab Spring” into Syria in February 2011 in terms of its chronology and escalation was presented by the expert Thurmann on the basis of an extensive evaluation of the existing sources. In particular, the expert was able to give an overview of individual documented events in escalating sequence from spring 2011 to mid-2012. In doing so, she pointed out that, notwithstanding a generally coherent picture of the course of the conflict and the State’s response, given the lack of opportunity for independent surveys and free journalistic activity, numerical values such as casualty figures are not entirely reliable. The Panel goes along with the expert’s statements, which were validated and supplemented by a multitude of other evidence and has based its findings thereon.

With regard to the involvement of the intelligence services in the conflict, the Panel also relies on the expert opinion of expert Thurmann, the expert opinion of the Federal Intelligence Service of 16 June 2016, and the statements of expert witness ...[Z], which coincide not only with regard to the formal responsibility of the individual intelligence services and their role within the Syrian State apparatus, but also in terms of their actual role and activities during the protest movement and the civil war from 2011 onwards. The external structure of the Syrian intelligence services remained the same in 2011; in substance, they were the essential elements of the security apparatus which, along with the military and militias, were used to suppress the protest movement.

b) In connection with the conditions and developments from 2011 onwards, the Panel has also heard the witnesses presented below, some of whom are already listed above, who are critical of the regime and were involved in anti-government activities.

Their statements form a coherent overall picture of a violent, ultimately coordinated and escalating reaction of the security forces to the protest movement from February 2011 onwards. The statements reinforce the notion that the Syrian regime attempted to suppress dissident efforts by force from the very beginning, and that a clear increase in the use of force by the State in qualitative and quantitative terms was evident from the end of April 2011.

aa) Expert witness ...[S] (see above under II. 1. b) aa) (1), p. 51) was also able to report in detail on the events in the wake of the Syrian protest movement and its suppression due to his opposition activities. He was partly a direct participant in protests and demonstrations, partly able to gain an overview of the political security situation through systematic information gathering in the organization he led.

The witness described in detail the spill-over of the Arab Spring from Tunisia and Egypt into Syria. In the beginning, there was support and solidarity on the Internet, followed by a wave of demonstrations. The witness named individual demonstrations at the beginning of the protest movement, including one in front of the Libyan embassy, during which security forces took action against demonstrators, first filming them, then beating them with clubs and arresting them. On 5 February 2011, the Syrian Day of Rage was declared with sit-ins in Damascus and Aleppo. He and other prominent figures, including witness ...[T], had then been summoned and questioned by the internal affairs branch of the General Intelligence Directorate ("State Security"). He had been questioned personally by Tawfiq Younis. State Security defendant him of inciting demonstrations. On 6 March 2011, there was another demonstration in front of the Syrian Ministry of the Interior; when photos of those arrested were held up, the security guards attacked, tearing up the pictures and hitting the demonstrators severely. There had been bloodshed. A philosophy lecturer known to him had been held by two people who hit his head against an electricity pole. On 15 March 2011, there had been a major demonstration in Damascus with a large number of arrests, and the following day a sit-in calling for those arrested to be freed. He, the witness, had been involved in this and had been arrested again. Although the protests were entirely peaceful – a "peaceful demonstration in front of the Ministry of the Interior in Damascus" – a large number of security agents attacked the protesters and started beating them. More than 30 people, including women, were arrested. In addition, there were the well-known incidents of

children scrawling slogans on walls; the children were arrested and tortured.

The security services had been prepared to suppress the opposition movement; the country had been divided into sectors and each sector had been assigned to a specific intelligence branch. In February and March 2011, there had still not been any shooting in Damascus, whereas in Daraa firearms had already been used on 18 March 2011, which had produced the first civilian casualties. Although the demonstrators had made civil demands, there had been an extremely violent response by the security forces. According to the witness, there had been a conscious decision to use violence against demonstrators and not to respond to their demands.

From April 2011, reports of use of firearms became commonplace, first in Homs, then in Damascus and finally throughout the country. There had also been arbitrary mass arrests directed against entire regions. The security forces had started to use violence systematically. Live ammunition was used against demonstrators. The witness, who was arrested himself on 22 March 2011, recalled reports of a Friday demonstration in Damascus in April 2011, during which demonstrators died and others were arrested by the armed forces. On 29 April 2011, dozens were killed during the break-up of a large demonstration in Douma. In June 2011, live ammunition was used against people who were planning a sit-in; there, too, demonstrators died as a result. During this period, the city of Daraa was besieged by the military, which led to solidarity demonstrations that were violently suppressed. The witness remembered the details since they had been recorded in the documentation centre he ran on the basis of reports from participants. In general, it was difficult to determine the exact number of victims.

The, mostly young, people had been systematically tortured and humiliated after their arrest. While at the beginning of the protests those arrested had been held in prison for only one or a few days, later detentions lasted a month. Released prisoners had told him that they would rather die than go through such experiences again.

The security forces' actions had been in line with public statements by the Syrian President. On 30 March 2011, Bashar al-Assad said in a public speech: "If you want open warfare, so be it." Syria then reached a point "where it exploded" in April 2011. He, the witness, had tried to document the human rights violations in the course of his

work for a human rights organization, until all its members had themselves been arrested.

As far as the actions of the Syrian intelligence apparatus were concerned, the witness reported that there had been several changes compared to the time before the protests. Arrests and torture were ubiquitous even before the protest movement began. However, the number of people arrested and killed increased dramatically in 2011, because the activities of the intelligence services were no longer directed solely against narrower opposition circles. The use of torture also changed. He had noticed the differences himself; he was arrested both before and after 2011. Torture methods had been used in the past to extract information. The abuse ended when the detainee disclosed all the information. From 2011 onwards, torture was used primarily as a form of punishment, retribution and instrument to kill or break people psychologically. Torture therefore took place without interrogation. He himself had witnessed, during his time in custody with the Air Force Intelligence Directorate, how a detainee who had been strung up had pleaded in vain to be taken down to confess; the guards were not interested. Opponents of the regime were ill-treated just like people who had been arrested by mistake, because of a mix-up of names, for example. Society was to be kept under control "whatever the cost". In the end, the intelligence services had been given a free hand. They could "do whatever they wanted" without rules. He had been able to observe this himself on the basis of his own multiple periods of detention, most recently between April and October 2012 with the 4th Division.

bb) In line with this, expert witness ...[T] testified, drawing on his work as a lawyer and his contact with a large number of people who had been persecuted by the Syrian authorities, that the approach of the security authorities had changed from the beginning of the protests in 2011. The regime had become increasingly nervous in the spring of 2011 as the protest movement had transformed into a popular uprising. The responses became more and more brutal. The witness illustrated this by means of the protests from February 2011 onwards, which he knew well because they had, among other things, concerned his release and members of his family had participated; demonstrators had been beaten with sticks and arrested. While torture had previously been used against opposition members in order to extract information, after 2011 the focus was no longer on obtaining information, but on retaliation and deterrence. Clients

he had tried to defend had been asked “Do you want freedom?” and were tortured if they answered in the affirmative; the idea behind this had been revenge. The number of people arrested increased alarmingly. Before 2011, there were perhaps 3,000 detainees who were brought before the State Security Court at one time, but from 2011 onwards hundreds of people were arrested every day. The powers of the intelligence services also changed. Before 2011 only key branches such as Branch 251 had had a free hand in carrying out investigations and arrests, while other branches had only been allowed to act on government orders; from 2011 onwards, however, every intelligence branch had been allowed to act as it pleased. Torture methods became more brutal. For example, people were tied to a chair without a seat and a candle was placed underneath; such methods did not exist before 2011.

Everyone who fell into the hands of the security apparatus was tortured. Beatings took place during transport to the respective intelligence service branch; on arrival, institutionalized “welcoming parties” were held. He had witnessed such things himself. From 2006, he had been detained in General Intelligence Branch 285 for five days over a period of five years, including shortly before his release in May 2011. There was a communal cell of 4 by 5 metres, completely overcrowded with 50 to 60 people; the people had been “glued to each other”. He heard the screams of those being tortured throughout the day and night.

Everyone was beaten when they were detained. Extensive torture was not used on known opposition members or those in the media for fear that this could lead to further unrest; in these cases, there were special orders on how to deal with the person in question. It had also happened that people from the opposition had been arrested with the aim of recruiting them to work as informers; here, too, there had been no ill-treatment.

His clients had told him about the conditions in the intelligence service prisons in 2011, that there were detention rooms with hardly any space to stand (“there was only space for one foot”). Detainees had collapsed, hallucinated and finally gone mad. Since there was no ventilation, detainees had also struggled to breathe. People died and were then deliberately left in the cells until they had begun to decompose. Wounds were not dressed. A friend reported to him in 2011, although he could not remember the exact time and place, that 17 people had died in the 27 days of his detention. Some of the

food – slices of bread, potatoes, some jam – was simply thrown into the cells. As a lawyer, he had received the prisoners who were taken from the security facilities to court; most of them had arrived injured, barefoot and sometimes dressed only in their underwear. He had met people weighing 40 kilograms who had weighed 80 kilograms before detention.

Sexual violence against both men and women was also widespread from 2011 onwards, although few victims were willing to speak openly about it. This form of violence had served to humiliate them and their relatives. According to incidents reported to him, prisoners had been raped in front of their relatives. He had helped women to have abortions after their release.

cc) Expert witness ...[W] also travelled to Syria in 2011 and 2012 as part of his journalistic activities. He had tried to find out how the political resistance and demonstrations were organized, and to what extent the State pronouncements that the protest movement involved terrorist groups – especially Islamist groups – were true. In the later course of the conflict, he had tried to research the mass killings and “collection points” for corpses that then became apparent.

The witness stated that at the beginning of the protests in February and March 2011, most of the demonstrations had been spontaneous, in the form of flash mobs. The response of the regime depended on the location. While participants in Damascus had “only” been arrested, in Homs, firearms had been used early on. He had been at one of the demonstration, young men had demonstrated in the middle of the street and women, children and older people had kept to the side so they could get away more easily. “People know they are going to a peaceful demonstration but should expect to be shot at.” In February and March 2011, there were some situations “where there was only beating, on other occasions there was shooting”. In the latter case, however, the regime had spread the word that the shooting did not come from the security forces and had presented weapons that had allegedly been used against the security forces in the media. He said that in August 2011 he had heard shots being fired in Homs and had seen people in hospitals with bullet wounds who had reported having been at a demonstration. Already in April or May 2011, there had been 200 arrests after a demonstration in Homs.

He himself witnessed arrests. He had once been travelling on an intercity bus when a traveller was singled out at a checkpoint, “he had a bag put over his head and was taken away in a van”. Many people had told him about arrests on the street or at demonstrations. In the beginning, he said, the arrested were beaten and tortured; they “disappeared for a while” but were mostly released again with the instruction to refrain from future engagement in activities.

Later on, the regime’s reaction became noticeably more brutal. In June 2011, “you knew the intelligence service would come and open fire on those who attended.” It had been a disturbing sequence: “On Friday there was a demonstration, people were shot, on Saturday they were buried, then there was shooting again at the funerals, then Sunday to Thursday it was quiet, and from Friday it recommenced. That did not stop people; on the contrary: there were demonstrations in more and more places.” In December 2011, there had been shootings at a checkpoint in Homs; from 2012 onwards, when arrests were made the people arrested did often not come back. In December 2011, there had also been sniper nests from which “anyone who went out on the street was shot at”. Such had been the case, for example, in neighbourhoods in Homs that were deemed oppositional. In 2012 and 2013, shooting had become common currency. The demonstrators had started to arm themselves to protect the demonstrations. The witness also testified in detail about the massacre in Houla on 31 May 2012, stating that, contrary to Government claims, his research showed that it could be traced back to excessive use of force by the Syrian security forces. A growing number of armed units – including the army, some with heavy weaponry – had been deployed to demonstrations; arrests were the responsibility of the intelligence services.

The role of the intelligence services also changed in the course of the conflict. If in the past their task had mainly consisted in gathering intelligence, they now largely performed executive functions. Whereas the intelligence services used to compete with each other, they now acted in a coordinated manner. Wanted lists, for example, were shared among the individual services. At checkpoints and during crackdowns on demonstrations, it was often difficult to identify the security forces. “People in uniform wearing trainers” had arrived who were usually members of both the intelligence services and the army. In the past, the different services had had different characteristics. The Air Force Intelligence Directorate and the Military Intelligence Department had been the worst, the Political Security Department had been

considered reasonably decent. These differences had gradually disappeared in the course of the conflict. At the political level, the sadistic terror was virtually orchestrated; according to his research, Ali Mamlouk, the head of the General Intelligence Directorate, played a central, coordinating role in that regard.

Finally, the witness offered his views on the circumstances and motives of desertions, based on his conversations with former regime employees, among others. Accordingly, defectors could be classed roughly into three categories: “Anyone who had already gone in 2011 was a hero. Those who left at the beginning of 2012 did not like the brutality. Those who left at the end of 2012, on the other hand, were just watching the way the wind was blowing, because this was perceived as too late.” The later someone defected, the more likely it was that the person concerned had only left in order not to end up on the wrong side after the expected collapse of the regime. The first desertions had already taken place in summer 2011.

dd) Witness ...[U], who is a prominent opposition politician in Syria, stated that he had taken part in several demonstrations in spring 2011. He recalled a first rally in front of the Ministry of the Interior on 15 March 2011, during which participants were beaten by the intelligence services and about 40 of them were arrested. He had always taken part in the demonstrations held there on Fridays. On 7 May 2011, he himself was attacked and beaten by intelligence officers “until blood was pouring from me”; subsequently, he was taken to Adra prison. Hundreds of people were arrested and also beaten. According to his observations, new groups had been created within the intelligence services to squash the uprisings, which had been recruited specifically to be deployed against the protesters. There were also, possibly staged, counterdemonstrations by Alawites, in which they – armed with axes, large knives and iron bars – chanted anti-demonstrator slogans (“Bashar, don't worry, there are people who drink blood”).

In the first six weeks after the beginning of the protest movement, which the witness dates as 15 March 2011, in his view the Government had not yet given instruction to put down the demonstrations by violent means. After that, however, the violence increased significantly. The attack on him of 7 May 2011 could also have been fatal, as he had been hit on the head with an iron bar and had only been able to shield himself with his arm, which had been broken during the attack. Based on what he knew

about the structure of the Syrian power apparatus, this could not have happened without centralized orders.

ee) Witness ...[CC], a cousin of the defendant and an opposition journalist, testified that the security services were on alert from the end of February 2011 and had been strengthened in order to prevent demonstrations; this was reported to him by the defendant himself. The witness testified about a demonstration in Douma on 25 March 2011. The participants had gathered outside a mosque; they were met by a counterdemonstration organized by the regime. From the end of April 2011 onwards, there had been violence at the demonstrations. Demonstrators participating in a rally at that time were surrounded, soldiers and members of the security services got out of vehicles and attacked the demonstrators with batons, dealing blows “the likes of which he had never seen before in his life”. Many people were arrested. The regime had already institutionalized violence at this early stage, as was evident from the growing number of casualties during the Friday demonstrations, who the witness referred to as “martyrs”. The level of violence only increased from then on. Regarding his own detention by the “Palestine Branch” on 8 April 2011, the witness reported that he himself had not been ill-treated because of his position and had been released one day later. Other prisoners, however, had been ill-treated with kicks and punches; he had heard constant screams during his stay. He himself had only been insulted. He said that they had shown sympathy for the work of intellectuals and opposition activists and had tried to recruit him as an informant.

c) The Panel also heard the testimony of former regime officials on the course of the conflict and the activities of the Syrian security forces involved therein:

aa) Witness Z 28/07/16, who was interviewed anonymously, reported on the basis of his experience as a long-standing intelligence officer in the General Intelligence Directorate that the security forces had been given a free hand after the beginning of the unrest and had been assigned more and more competencies as the popular movement grew. Eventually, each branch had been free to do as it pleased. A kind of “state of emergency” had been imposed in the context of which anyone who opposed the regime was considered a traitor. The charges against detainees were already determined beforehand; it was only a matter of them being confirmed and signed by the detainees. Regime employees who defied orders were also considered traitors.

The witness had observed that officers were transferred to another location or to another service, for example, or were questioned about their motives. Refusal to obey orders was certainly a dangerous affair. In most cases, however, an intelligence officer would not dare to resign from the service, not least because of the privileges they enjoyed in the intelligence service.

Because of the numerous arrests made during demonstrations, the number of detainees within the individual branches of the intelligence services had steadily increased in the course of the conflict. The interrogation methods changed; they had been “crazy”. He knew that in Branch 285 of the General Intelligence Directorate, which had central responsibility for interrogations across Syria, people were hung from the ceiling so that the tips of their toes barely touched the ground. Persons interrogated would be electrocuted and doused with hot water. Cigarettes would be stubbed out on their skin, their heads forced under water. There were cases of detainees being forced into shoes with nails in them, or having their penises tied with string, and in the worst cases being hung from them. After having his penis tied off, the detainee was forced to drink water. He knew of one case where the penis was cut off with pliers. Men were brutally raped with a wooden stick. Sometimes more than one hundred prisoners were housed in tiny cells of 4 by 4 metres. The prisoners spent many days there without being interrogated and after that were only tortured. Such methods only started “during the revolution” to humiliate prisoners. When orders finally came that shooting was allowed on the streets, it no longer mattered if people died in their cells.

About three months after the beginning of the movement, instructions were given “from above” to crack down on the demonstrations by any means, including by use of firearms. The orders had come “from Assad”; “everything” was a legitimate target. That was probably the case from the end of May 2011, as the unrest had started in March. To his knowledge, there were no armed groups on the side of the opposition until 2012; only then people began to turn against the regime with violence.

The Panel has no reason to doubt the accuracy of the statements of the witness, which coincide with his testimony in the preliminary proceedings and are detailed and devoid of any tendency to incriminate or exonerate.

bb) According to his own statement, witness ...[Y] is a former member of the

intelligence service who worked for 30 years in various branches of the Syrian General Intelligence Directorate, including 13 years – in the period from 1985 to the end of 1998 – in Branch 251. From 2008 to the beginning of 2016, he held a leading position in Information Branch 255 of the General Intelligence Directorate.

(1) Regarding his activities at the beginning of the internal Syrian conflict, the witness stated that he had scanned and archived documents. This had involved tens of thousands of pages per day, the content of which he could only remember with difficulty. He also compiled statistics. Reports and lists of people who had been arrested or were wanted passed through his hands. The documents also contained instructions on how to arrest and interrogate a person, including “using all methods and means”.

He was aware that many intelligence service branches had resorted to brutal torture. It had already started when he was arrested. For example, people in Branch 285 were beaten with rifle butts, batons and iron bars. He himself had seen more than 15 people killed; they were “bleeding profusely” as they were carried away. This was at the beginning of the uprising, which the witness dated as 15 March 2011. There had been instructions on the use of force; those had been “rigorous and tough”, even if some officers had tried to apply them more leniently. There had been torture before the conflict began, but not on the same scale or in the same manner.

The witness also provided information on the ethno-religious distribution of power in Syria. He explained this in detail for the period before the outbreak of the conflict (see above under II. 1. b) aa) (6), p.57). For the period after the protest movement began, the witness had drawn up a “ranking” of religions for his police interview, with the Alawites at the top, followed by the Sunnis. During his questioning at the main hearing, he explained that he had changed his view in that regard and made a different statement: at the beginning of the conflict, the Alawites seized all power. A low-ranking Alawite had suddenly been able to command a Sunni and to give orders to a much higher-ranking Sunni. The Alawites no longer trusted the other religions. Although senior Sunnis could keep working, they were watched closely by the Alawites.

The witness also reported that although he had only sat in an office in the information branch and worked on a computer, he had been asked to assist with the suppression

of demonstrations. He had refused to do so and had to justify it. He had been questioned about the issue internally. He had eventually deserted, taking time to prepare his escape. He sold his belongings and first wanted to get his family out of Syria. When his son and his wife fled, he was also questioned about this.

(2) The Panel evaluated the evidence given by this witness, who also testified on the treatment of deceased persons (see below under 3. b) dd), p. 106) and on the internal structure of Branche 251 and Section 40 (see below under V. 1. a) cc), p. 114 and V. 2. a) cc), p. 137) critically.

The witness had already pointed out during his police questioning that he could not remember details of his past because he had been “under severe psychological and social strain”. The questioning in the main hearing was initially laborious and fraught with evasive answers from the witness. At first, the testimony of the witness in the main hearing alternated between detailed, specific statements and sweeping assertions and ascriptions, for example on the relationship between Alawites and Sunnis and on the role of Section 40 after the beginning of the conflict. Initially, the witness did not want to provide any information about the actions of the intelligence services during the conflict. It appeared contradictory that the witness was able to remember certain documents concerning the former co-defendant ...[K] which, according to his testimony, had passed through his hands and the overall contents of which he was able to reproduce, whereas when asked by the Panel whether interrogation records had also passed through his hands, he claimed that the large number of documents made it impossible to remember. In addition, on numerous occasions his statement stood in striking contradiction to his statements in his police interview during the preliminary investigation. The Panel gained the impression that the witness answered questions selectively and tendentiously, perhaps in an attempt to allay suspicion of his own shared responsibility, which was a matter of concern for him. There was also a clear tendency to exonerate the two persons defendant at the time.

When confronted about this behaviour during his testimony, the witness stated that those had been “difficult times” in Syria that had “broken everything inside him”. He struggled with memory loss ever since and had “forgotten everything”. In Germany, he often experienced states of shock, in which he tended to forget even his own name. The witness finally had his counsel explain that he and his family felt threatened as a

result of his testimony. He had found opened letters from the Panel in connection with his summons in his letterbox. His sister had been summoned by the authorities in Syria; she had been advised to remind him – the witness – that his siblings were still in Syria. He had also been approached by “friends” with “advice”, which he had actually understood as threats.

However, after the intervention by the Panel, a break in the proceedings and consultation with his counsel, the witness proceeded to testify in a much more frank manner than before, for example about the details of documents he had seen which he had been unable to remember earlier on. He then provided the information referred to about torture and relevant instructions in the intelligence branches. The Panel took these statements to be truthful: they were now detailed, consistent with the testimony of the witness in the preliminary investigation. The information was further elaborated on request and is, in the Panel’s assessment, based on experience. The Panel attaches particular importance to the coherence of the testimony because the threatening situation described by the witness had only arisen after the preliminary proceedings.

By contrast, the Panel did not find the witness’s statements about the shift in the balance of power between the religious groups to be credible. Although other evidence already provided confirms that the Alawites were in a dominant position, a further clear shift in power at the beginning of the Syrian conflict has not been described elsewhere. Unlike the precise account given in the preliminary proceedings, the witness described the developments in rather sweeping and drastic terms. Himself an Ishmaelite, he has described this religious group as the most disadvantaged. In this respect, the Panel has strong evidence that the witness presented a self-interested view that did not correspond to the facts in order to exonerate himself and is therefore not able to take the witness’ statements in this regard into account.

cc) Witness ...[AA], one of the guards in Branch 251, stated that there had been a significant increase in the number of prisoners brought in by bus from April 2011 onwards, which had increased further through to August 2012. Sometimes one vehicle had arrived every day, sometimes even two or three vehicles on several days in succession. The largest transports usually took place on Fridays because the demonstrations also took place that day.

d) Witnesses ...[DD], ...[EE], ...[FF], ,...[GG], ...[HH], ...[N], ...[X], ...[JJ], Z 25/11/2020 and ...[KK] heard by the Panel, who were imprisoned in Branch 251 and, in some cases, in Section 40 before that and who mainly provided information about their imprisonment (see below under V. 1. d), p. 118) and witness “Sami” were able to report on the escalating course of the conflict from February 2011 against the background of their own oppositional activities, participation in demonstrations, other arrests and general perceptions. Their naturally incomplete but direct perceptions fit in with the overall picture of coordinated action marked by systematic violence on the part of the Syrian security forces not only against alleged opposition members and participants in the protest movement, but also against those who were merely suspected of being protesters. The Panel had no reason to doubt the truthfulness of the detailed and clearly experience-based statements made by all of the witnesses listed below.

- As witness ...[DD] reported, the number of arrests shot up in 2011. The aim was to intimidate people by way of mass detentions and to prevent them from taking to the streets again. Many peaceful activists had been killed. Still, the proportion of persons killed was low in relation to the number of persons arrested. Later, from 2012 onwards, fewer arrests were made but many of those arrested were killed.
- Within the context of his professional activity as a film director and documentary filmmaker, witness ...[EE] sought to document the protest movement from its beginning by “grabbing a camera” and going out on the streets with the demonstrators. At the beginning, there were “flying demonstrations” at different locations to dodge the security forces. The film footage – which was later confiscated – showed the use of tear gas and batons, as well as gunfire. The rallies had been infiltrated by security officers posing as demonstrators and abducting participants. According to his testimony, in addition to being taken to Branch 251 the witness was detained for three months from the end of March 2011 by the Air Force Intelligence Directorate and thereafter by other intelligence branches. He had been severely injured by beatings and abuse with razor blades. He had also seen children detained by the Air Force Intelligence Directorate. During interrogations concerning the film footage he had shot in August 2011, he

had received severe blows with hands and elbows and been kicked. Following his detention in Branch 251 in September 2011, he had been transferred to various other intelligence branches, including Branch 285 of the General Intelligence Directorate and a detachment in Najha, where he had also been ill-treated, like all other detainees, by way of beatings with fists, rifle butts and cables.

- Witness ...[FF] reported having participated in demonstrations from 15 March 2011, first in Damascus, later in Harasta. The regime had used violence from day one. Two weeks after his first participation – i.e. at the beginning of April 2011 – shooting with live ammunition had begun. He had almost been killed on one occasion when a shot had passed close to his head. One participant with whom he had been talking about the fear of dying shortly before had been shot dead next to him. The demonstrations had remained peaceful; he had filmed them to document the fact that people who were demonstrating peacefully were being fired upon. At one point, the entire Harasta region was stormed and the streets there were combed. The witness's own imprisonments had specifically aimed to obtain information about opposition members and his own activities as a dissident blogger and journalist. With regard to his time in Branch 285 of the General Intelligence Directorate from October 2011 onwards, which had come after his detention in Branch 251, the witness testified that there, too, large-scale torture had taken place. He had been forced to stand for 24 hours. He had been doused him with water and then been made to freeze by pointing an air conditioner at him. He had been forced to lie down on the floor and the guards had stomped on him. He had been beaten with belts. Other detainees had been hung by their hands in the blazing sun or deliberately hit on the head. Friends had told him of situations in Adra central prison where men were raped with a bottle or a stick, had their penises tied off and scalded.
- Witness ...[GG] stated that he participated in a demonstration in Douma on 25 March 2011 and regularly took part in demonstrations elsewhere thereafter; as a doctor, he had also tried to deliver medicines to besieged regions. There had been no rallies without violence on the part of the security forces. As early as 25 March 2011, they had already been fired upon by the police during a

demonstration. At another protest rally in 2011, the precise date of which he was unable to specify, he had helped a man who had been shot to “get a bullet out of his thigh”. Demonstrators were regularly arrested. Typically, participants were beaten with sticks and the butts of firearms, thrown to the ground, blindfolded and had their hands tied behind their backs with cable ties. They were then pushed into cars with their heads down. Some of those released had told him of torture; other detainees had simply disappeared. The security officers involved belonged to the army and the intelligence services. Uniformed officers in black boots were army personnel, those wearing sports shoes – whether in uniform or not – were intelligence service personnel or paramilitary forces controlled by the intelligence services. The standard weapons of the security forces were Kalashnikovs. In August 2011, he had been arrested for 23 hours by the Palestine Branch; he had been beaten without proper interrogation. This was followed by a second arrest in September/October 2011, when he was detained in Branches 251 and 285. In Branch 285 he had been crammed into a cell measuring 4.5 by 5.5 metres together with 85 prisoners. There were prisoners with open wounds and broken bones who had squalled in pain. He had contracted a bad infection in his eye, which had not been treated.

- Witness ...[HH] reported his arbitrary arrest in July 2012 at a checkpoint manned by militia; the sole reason for his detention was that he was from Aleppo. He was locked up with a large number of people in a place unknown to him immediately after his arrest. Like the other prisoners, he was doused with petrol; a security guard then threatened to light a cigarette. During his onward transport, he was beaten many times, especially at the numerous checkpoints. During his subsequent detentions in branches 251 and 285, he had also been abused by way of punching and kicking.
- Witness ...[N] reported his arbitrary arrest on 26 August 2011 in the course of a raid in Damascus. He had initially been sent to a detention facility at the “10th Division”, where extensive wounds had been inflicted on his back by way of brutal beatings. After being detained in the “Al-Khatib Branch”, he was transferred to the military hospital in Harasta because of his injuries, but he was not treated there; in fact, this was where “the torture really started”. Like other prisoners, he

was chained to the bed, beaten with a whip and wounded with a blade. The abuse had lasted three days, and he had passed out from time to time. The torture was indescribable. For example, another prisoner had said that he had pain in his hand, whereupon his hand had been chopped off. He himself had simply been left on a street, seriously injured (“You can throw him away. He’s done for.”).

- According to her statements, witness ...[X] was an active member of an opposition group and was detained a total of five times between November 2011 and March 2014 in various facilities of the regime. She had taken part in demonstrations since June 2011, which had been peaceful throughout; the security forces had nevertheless anyone they could get their hands on. Often this included people who happened to be at the mosque and were only praying there. The demonstrations were therefore organized as five-minute “flash demos”. She had not witnessed the use of live ammunition herself in Damascus, except at a funeral, but had heard about it in the surrounding area. The security forces had worn military uniforms but were neither part of the regular police nor the army. Before her first arrest in November 2011, she had participated in one of the demonstrations in Damascus; those had mainly taken place on Fridays. After a few minutes, security officers from the Air Force Intelligence Directorate appeared. Since she had witnessed how a twelve-year-old boy had been beaten, she had been arrested herself and abused in a police station alongside other women and men. In February 2012, she had helped to collect medicines for the injured in Homs after the shelling by the Syrian Army. There had been torture in each of the facilities where she had been detained. She had also seen dead bodies in February 2012 in Branch 285 of the General Intelligence Directorate and in summer 2012 in the prison of the Air Force Intelligence Directorate. She had also heard from other women about systematic rapes at intelligence service facilities and checkpoints. In some cases, this was used as a means of humiliation and pressure on the husbands; “women were raped in front of their husbands to make them confess”.
- Witness ...[JJ] testified that in September 2012, following his detention in Branch 251, he was taken to the General Intelligence Directorate in Kafr Sousa and, together with his fellow detainees, was continuously beaten there. It was common

knowledge that torture was taking place in the branches.

- A witness heard anonymously on 25 and 26 November 2020 (Z 25/11/2020) testified that he had taken part in a demonstration in Douma on 18 March 2011. A large number of security personnel of different origins armed with Kalashnikovs arrived in their vehicles. They broke up the demonstration and brutally attacked the demonstrators. They beat them up and dragged them into waiting buses. The same thing had happened that same day during a sit-in in front of the city administration. Eleven people were shot dead by the security personnel that day. He was arrested himself a week later because of his participation in the demonstration and his work as an activist; after his release, he had taken part in the funeral procession for those killed.
- Witness ...[KK] stated that he was one of the activists who were involved in the organization of the demonstrations in Raqqa in spring 2011. The first demonstration there took place on 25 March 2011, followed by two demonstrations per week. They printed the details on slips of paper at a coordination centre and then distributed them. Some of the security forces, especially Shabiha units, sometimes arrived ahead of time and tried to prevent the demonstration; then they took to breaking up the demonstrations with batons. However, he had not known of any deaths until 2012. The witness worked in a non-governmental organization that sought to promote democratic structures and civil society engagement. On that account, he had been wanted and imprisoned several times: in May 2011 by the Military Intelligence Department in Raqqa, by the Criminal Investigation Department at the same location in November 2011 and finally in May 2012 by the Military Police, with subsequent transfers to the Al-Khatib and Palestine branches, among other places.
- Witness "Sami", whose police statement – which is mainly significant for the so-called "Caesar" files – was conveyed to the Panel by the investigating officer, stated that "at the beginning of the revolution", which he dated as mid-March 2011, he had participated in demonstrations in his hometown of Qaboun on the outskirts of Damascus. There, he had seen demonstrators being shot. The other participants were unable to recover the bodies from the streets and had to flee. On another occasion, he saw a demonstrator being shot at and paralyzed. He

said he had seen many arrests during the same period; for example, in one incident alone, about 40 people were arrested in his hometown. Even taking into account the fact that the witness could not be questioned directly, the Panel had no doubts that his detailed statements, which the interrogator described as frank and made without communication problems, corresponded to the truth.

e) In addition, the Panel consulted a number of reports on the course of the conflict, which correspond with the statements of the witnesses and the experts as direct evidence and thus confirm the circumstances.

aa) A description of the course of the conflict that supports the evidence results can be found in reports by an independent international commission of inquiry established by a body of the United Nations.

(1) In view of the outcome of a fact-finding mission in September 2011, which reported a deterioration of the human rights situation in Syria, the United Nations Human Rights Council established an international commission of inquiry, which first reported on the events in Syria in November 2011. The report states that it is based on direct interviews with victims and other witnesses in connection with the events since March 2011.

In summary, the report concludes that limited protests broke out in February 2011 around issues such as poverty, corruption, freedom of expression, democratic participation, and the release of political prisoners, combined with demands for economic and political reforms. In Daraa, protests also erupted in response to the detention and torture of a group of children and spread to the entire country – Lattakia, Baniyas, Damascus, Deir-Ezzor, Homs, Hama and Idlib are identified in this context. On 25 April, wide-scale military operation had taken place in Daraa which had soon spread to other locations in the country with increasingly violent behaviour by State security forces. In November 2011, the Office of the United Nations High Commissioner for Human Rights (OHCHR) estimated that at least 3,500 civilians had been killed by State forces since March 2011. Thousands more had been detained and tortured, with in Homs, Hama and Daraa suffering the highest number of casualties. The violence escalated until about November 2011, when military and security forces

carried out operations in several cities, targeting public gatherings and funeral processions, including by using tanks, and killing 260 civilians in a short period of time.

The report then goes into detail about official statements by the Syrian Government, the founding of the “Free Syrian Army” and the reaction of foreign States. In the section entitled: “Excessive use of force and extrajudicial executions”, the report details how State forces fired indiscriminately at unarmed demonstrators during the dispersal of protests, hitting them in the upper body and head. Defectors had reported that they received orders to shoot at unarmed protesters without warning. In some instances, commanders of operations had ordered protesters to disperse and issued warnings prior to opening fire. Joint operations by the military and security forces and militias with “shoot to kill” orders and numerous casualties, including children, took place in Lattakia in mid-April 2011. One defector had described the orders given under the guise of action against “armed conspirators and terrorists” in detail. At a peaceful demonstration with participants calling for freedom and carrying olive branches; they had been fired on with machine guns and other weapons. Dead and injured people on the ground afterwards. When attempting to bring food, water and medicine to residents of Daraa, aid workers were ambushed on 29 April 2011 and more than 40 people killed, including women and children.

The report also describes the deployment of snipers, the establishment of and violence at checkpoints, the blockades of cities and neighbourhoods followed by raids on homes, and the killing of recruits who fired into the air instead of at demonstrators by security personnel posted behind them. The report also describes the mass arrests of demonstrators and civilians in large-scale raids, for example in the town of Baniyas on 7 May 2011. Activists and journalists were the targets of arrests. Detainees were “routinely tortured”. The people missing or unaccounted for numbered in the thousands. Examples of abductions with disappearance of the victims are also described: Family members simply received no information about the victims; the State authorities advised them to forget about them.

Another section of the report is dedicated to the use of systematic torture involving beatings with batons and cables; electroshocks; being forced to endure stress positions for days; deprivation of food, water and sleep; overcrowded cells; and sexual violence in the form of rape and abuse of sexual organs. There are reports of torture

and killings of children and young people, too, and their transfer to intelligence service facilities. Lethal force was also used against people trying to flee the country. Incidents involving shooting and killing at the Syrian border in August and September 2011 are described.

Finally, the report states that, according to witnesses, the operations of the security forces were characterised by a high degree of coordination. There were concerted actions by different units. Operations, including the instruction to open fire on unarmed demonstrators, were carried out on the orders of high-ranking officers with the rank of colonel or brigadier general.

(2) In another report from February 2012, the chronology of events is continued, again based on the statements of – unnamed – witnesses, publicly accessible sources and Government documents. There was progressive escalation and polarisation. The peaceful protests against the Government continued, as did the violent response by the security forces, supported by Bashar al-Assad, who reaffirmed that “restoring security and fighting terrorism with an iron fist” remained his foremost priority. At the same time, the first operations of the Free Syrian Army – initially largely defensive – took place against Government forces. The Syrian Government puts casualty figures at 2,131 civilian casualties for the period between March and December 2011; other sources refer to 6,399 civilians and 1,680 army defectors killed in the period March 2011 to February 2012. The report also mentions military operations in January and February 2012 in residential areas – villages around Idlib, in Homs, Zabadani, Rif Dimashq, Khaldieh and Hama – with bombardments and heavy weapons fire resulting in numerous civilian casualties. The “shoot to kill” orders against peaceful demonstrators remained in place. Arbitrary arrests continued on a large scale, mainly by surrounding demonstrations and taking those arrested by bus or and truck to detention facilities operated by the intelligence services. In addition, entire neighbourhoods were cordoned off by intelligence services, elite army units and/or Shabiha militia and subjected to raids, resulting in numerous detentions. Sections of military hospitals were converted into torture centres. Doctors and medical staff of regular hospitals had to treat the injured and sick secretly and risked being arrested themselves as a result.

In another United Nations report, “Out of Sight, Out of Mind” published in February

2016, the commission established by the Human Rights Council describes in more detail what it considers to be a nationwide pattern of mass arrests and disappearances of civilians, denial of contact with relatives and deaths by torture in Government prisons from March 2011.

(3) The Panel is aware that the above documentation does not provide direct evidence of the human rights violations set out therein. In particular, it has been unable to verify the statements of the witnesses who were not identified by name in the reports. However, taking into account the nature of the entity that compiled the report and the comprehensive explanation of its basis and limitations – it is emphasised that the authors were denied the opportunity to gain first-hand insight into the situation on the ground by the Syrian Government – the Panel takes the reports as circumstantial evidence of an escalating State response to the largely peaceful protests with a tipping point towards nationwide systematic arbitrary arrests, torture and killings in April 2011.

bb) By the same token, the Panel has used the circumstantial evidence contained in reports by the non-governmental organizations “Human Rights Watch” and “Amnesty International” which, according to their own accounts, stem from direct questioning of numerous victim witnesses of the internal Syrian conflict. Here, too, it was not possible to verify the sources and the evidence was therefore assessed with caution.

(1) The report “We've never seen such horror” traces a sequence of violent reactions by the Syrian security forces, providing death tolls from the beginning of the protest movement. It focuses on events in Daraa Governorate, with an emphasis on the period from 18 to 22 May 2011 and, according to its authors, is based on 50 interviews with Daraa residents and other persons present there during the reporting period, as well as an analysis of publicly accessible press releases.

The arrest and torture of 15 children and young people in Daraa and the protest rallies around the al-Omari Mosque involving several thousand civilians that took place in response from 18 March 2011 onwards are seen as the starting point of the protest movement, which the authors consider to have been still rather insignificant in February 2011. The report lists other protests from 23 to 25 March 2011, as a result of which more than 30 protesters were killed. In Latakia, at least twelve people were killed in protests on 26 March 2011. After Government representatives had been sent to the city in an attempt to calm and pacify the situation, and Bashar al-Assad had publicly

promised reforms and the establishment of a committee of inquiry, the violence escalated in April 2011. Starting on Friday, 1 April 2011, thousands of protesters had taken to the streets in Douma during an anti-government protest, between eight and people were killed. Subsequently, mass demonstrations took place every Friday in major cities across Syria, including Daraa, Baniyas, Homs, Harasta, Lattakia, Idlib and Qamishli. Twenty-five people were killed in Daraa on 8 April 2011, there were 34 deaths in protests and funeral processions on 22 and 23 April 2011, and nationally 22 April 2011 was the deadliest day thus far, with a total of 110 casualties. Witnesses unanimously reported on firing into the crowd with live automatic weapons after tear gas had been used and shots had been fired in the air, although shots were sometimes also fired at the crowds without prior warning. Not only the demonstrators, but also persons trying to help the injured were targeted. From the end of March 2011, snipers were deployed on the rooftop of Government buildings in Daraa, who targeted the head, neck and upper body of protesters.

The report then describes how security forces had carried out large-scale operations against towns and villages considered to be hubs of protests. On 25 April 2011, for example, security forces and the military had moved into of Daraa with tanks, shelled the city for 16 hours and eventually set up numerous checkpoints and posted snipers on rooftops. Electricity and all means of communication had been cut off. Fire had been opened on anyone trying to leave their home. Afterwards, hundreds of people had been arrested in their homes. The city had subsequently remained under military control with inadequate supplies.

On 29 April 2011, more than 200 people were killed, including residents of neighbouring towns who tried to help those under siege on 29 April 2011 and were fired upon without warning by the security forces. The pattern was repeated in several places: on 25 April 2011, security forces surrounded Douma, on 1 May 2011 Zabadani, on 6 May 2011 Baniyas and neighbourhoods of Homs. The report provides detailed information on military operations, including in smaller towns, and the number and location of demonstrators killed in May 2011. Mention is also made of the obstruction and shelling of people attempting to provide medical assistance.

(2) The report "Torture Archipelago", published in July 2012, states that it is based on 200 interviews conducted by Human Rights Watch staff, including of deserters from

the Syrian security services. The interviewees stated that they had been eyewitnesses to abuses and reported on the conditions in intelligence service prisons. On this basis, the report lists the individual organizations of the intelligence service apparatus referred to as the “mukhabarat” and 27 detention facilities operated by the intelligence services. It provides information on their location, the name of the respective intelligence service branch, and the torture methods used. The latter, insofar as the interviewees had observed or been subjected to them, are described in more detail, sometimes using keywords. The victims interviewed are identified by pseudonyms, interview date, and date, branch and place of detention.

(3) The Amnesty International report entitled: “It breaks the human: Torture, disease and death in Syria’s prisons” looks at detentions by the Syrian regime from 2011 to 2015, based on interviews with more than 60 former detainees and employees of a military hospital. It describes the conditions in the detention centres operated by the Syrian intelligence services and in Saydnaya prison and the torture methods used in those facilities.

(4) The Panel considers that there is sufficient basis to use the research set out in the reports at least as circumstantial evidence. Although it was again not possible to check the sources mentioned, the Panel considers it out of the question that all the findings underlying the reports should be inaccurate, given the detailed descriptions which essentially coincide with the accounts of witnesses and experts heard by the Panel, even if individual observations might not be altogether reliable.

2. Central Crisis Management Cell

The position, responsibilities, staffing and activities of the Central Crisis Management Cell (hereafter: CCMC), which is the highest-level central coordinating body and was founded in view of the protest movement, has been described in detail by witness ...[Z]. His testimony is corroborated by witnesses ...[T], ...[S] and Z 28/07/16.

a) Witness ...[Z], an American lawyer previously involved in the prosecution of war crimes in the former Yugoslavia, is the director of the international non-governmental organisation Commission for International Justice and Accountability (hereafter: CIJA), which was established as a foundation under Dutch law in 2012 on account of the

conflict in Syria. According to the witness, the organization is financed by countries such as Germany, Canada, the United States of America, the United Kingdom and the Netherlands. No influence is exerted on the content of its work. Senior members of staff were recruited from among persons with experience in international criminal prosecution, including lawyers or former prosecutors and analysts who had previously conducted investigations in Rwanda, the former Yugoslavia, Cambodia and Sierra Leone. According to the witness, the founders of the organization had already started to compile testimonies and written material from the internal Syrian conflict in 2011 with the idea of making it available to the courts in due course. The work had mainly consisted of interviews and documentation of a large number of witness statements – both civilian victims and former members of the regime and other eyewitnesses – most of whom had testified anonymously. The majority of those people were still in Syria. Questioning of the witnesses followed a set protocol. Each witness was instructed that their testimony could become the subject of criminal proceedings and that they had to tell the truth. The witnesses were able to speak freely without being steered by CIJA staff. The different statements were classified and then compiled into dossiers. Witness ...[Z] presented sample transcripts of witness statements to illustrate the procedure.

A total of more than 2,500 witnesses were interviewed; the period largely spanned the years 2011 and 2012. In addition, a large number of original documents amounting to more than 800,000 pages were “retrieved” from the military and the Syrian intelligence services in the ensuing civil war. In practical terms, local staff of organization would enter an area as soon as the armed groups left; they would then search for documents – including electronic media – in former government buildings and move them to a safe location. The documents were scanned, archived and given a barcode in order to document their origin and content as a traceable source.

Witness ...[Z] stated that the procedure had made it possible to obtain reliable information about the establishment, activity and staffing of the CCMC. As the name already suggested, the committee was founded for crisis management. It was mandated to unify the approach of all government organizations involved in conflict response. Accordingly, the committee consisted of individuals who had already had a leading role in maintaining order, from the regime’s point of view. Formally, it was part the Syrian Ba’ath Party. It comprised the heads of the individual intelligence services,

the Minister of the Interior and the Minister of Defence, as well as other ministers as needed. It ultimately constituted the regime's tough response to the growing protest movement; its aim was to bring about a uniform escalation of the security authorities' actions. Mohammad Said Bekheitan was the chair of the committee up to October 2011, followed by Hassan Turkmani. Its membership had comprised Ali Mamlouk as head of General Intelligence, Jamil Hassan as head of Air Force Intelligence, Mohammed Dib Zaytoun as head of Political Security and Abdel Fatak Qudsiyeh as head of Military Intelligence. The Minister of the Interior, Mohammad Al Shaar, and the Minister of Defence, Daoud Rajiha were also members.

The CCMC documents dated April 2011 were seized from a government building in Idlib by a CIJA employee in 2015 in the manner described. The employee was a Syrian who lived in the area, not a member of the regime. He gained access to the office after Syrian regime employees left Idlib. The document dated August 2011 came from the office of the Military Intelligence Directorate in Raqqa. The document was also located by a staff member after the regime had withdrawn.

Witness ...[Z] further testified that, according to credible information from regime employees, decisions were also passed on to smaller units of the army and the security authorities at the governorate level to guarantee their implementation. All intelligence services, army command posts and police stations were involved in passing on the instructions. The witness submitted additional documents in support of this. In a letter dated 8 August 2011, sections of Branch 243 are instructed by the head of branch to conduct daily raids and patrols, and to arrest demonstrators and others believed to be responsible for the protests. In another letter dated 22 August 2011, which refers to a circular from the Ministry of the Interior dated 16 August 2011, the head of Political Intelligence in Raqqa informs the Ministry of the Interior that specific orders such as, in particular, joint action in certain neighbourhoods and the arrest of "arsonists" and participants in demonstrations had been implemented. The letter uses expressions comparable to those used in the CCMC documents.

b) The documents which, based on their content, can be attributed to the CCMC were inspected externally and translated; some are actual minutes of CCMC meetings, others serve to convey the instructions given by the CCMC. It is apparent from the

documents that each was transmitted by fax.

A document dated 20 April 2011 is entitled “Circular” and, according to its letterhead, comes from the General Command of the Army and Armed Forces and the head of Branch 294 of the – probably Military – Intelligence Department. According to the header, it is “strictly confidential” and “urgent” and is intended for the head of branch. The document refers to the letter of a regional command, which concerns a CCMC meeting. The committee had met on 18 April 2011 and had adopted several decisions, which are listed in detail in the document dated 20 April 2011 and reproduced in the findings. At the end, the document bears two illegible signatures, one of which is entitled “Head of the Intelligence Directorate”. On a seal placed at the bottom of the document, the words “General Command of the Armed Forces” can be made out, as well as the – otherwise illegible – inscription “Intelligence Directorate”. Reference is also made to a mailing which includes, among others, the sections of the intelligence service branch with the “request to make all the necessary arrangements”.

Another document, also dated 20 April 2011, bears the phrase “One Arab nation with an eternal message” in a header and, judging from the address lines, comes from the Syrian leadership of the Ba’ath Party. It is also marked “strictly confidential” and “To be kept with the person in charge only”. This is followed by the heading “Minutes of the meeting”. According to the ensuing text, the CCMC met on 20 April 2011 “headed by Comrade General Secretary” and “continued its examination of the security situation”. This is followed by an enumerative list of orders and (alleged) facts as reproduced by the Panel in its findings. The document concludes with “Be informed and act accordingly, each within their own jurisdiction” and signed by the Ba’ath Party’s Assistant Regional Secretary.

According to its letterhead, the last document, dated 6 August 2011, which is again headed “One Arab nation with an eternal message” and marked “strictly confidential – urgent”, also comes directly from the leadership of the Syrian Ba’ath Party and is addressed to “Comrade Head of the Party’s offices in the Governorate of Hama, Rif Dimashq, Deir-Ezzor, Homs, Idlib and Daraa” in his capacity as “Head of the Security Committee”. It goes on to list the decisions – summarized by the Panel in its findings – passed by the CCMC at its meeting of 5 August 2011. The letter concludes with the “request for the implementation of what is needed for a quick end to the crisis, the

return to security and peace for the citizens". The signature is followed by the line "The Comrade Head of the National Security Bureau".

c) Other witnesses have confirmed the existence and role of the CCMC, sometimes also its instructions regarding the use of violence.

According to witness ...[S], the aim of the committee was to "get a grip" on the demonstrations in a coordinated way; general orders were given to quash the riots for the attention of the intelligence services, the police, but sometimes also to the press. Members included Dib Zaytoun as head of the National Security Bureau, Jamal Hassan as head of Air Force Intelligence, Ali Mamlouk as head of General Intelligence, and the ministers of Defence and the Interior. The CMCC was set up in late March or early April 2011. Witness ...[T] also confirmed its existence.

Witness Z 28/07/16 testified that the Cell, which he had initially referred to as the "directorate for emergencies" and the "cell for handling emergencies" but which he confirmed, when challenged, as being the CCMC, was staffed by security service executives, in particular the heads of the intelligence services Bakhtiar (National Security Bureau), Mamlouk (General Intelligence Directorate) and Hassan (Air Force Intelligence Directorate). The Cell was established by Assad on the basis of a presidential decree to gain control over the popular movement, which was perceived as a crisis. There were also security branches in other locations under the umbrella of the Crisis Cell, so that every town was involved. The committee issued specific instructions from the moment it was established. At the beginning, this had included the instruction to detain people who were linked on social media to silence them. The Crisis Cell also issued an order to branches in the governorates to put pressure on retailers to pass the message on to the people. Finally, there had also been coded orders to use force, such as "taking necessary steps" and "wiping out the resistance". He had seen orders for targeted use of force against demonstrators about three months after the outbreak of the unrest; in his recollection, this was in May 2011.

d) In sum, the Panel has no doubts regarding the establishment, staffing and function of the CCMC. It also takes the documents submitted by witness ...[Z] to be authentic. There were no grounds to doubt that CIJA used the approach described by witness ...[Z]. The witness explained in detail the origin of his knowledge about the course of the conflict and the Syrian security apparatus and provided numerous

supporting documents. The documents he submitted, which contain orders issued by the CCMC, fit with what is known about the hierarchy and power structure of the Syrian State, in particular the role and all-pervading power of the Ba'ath Party. Especially in view of the fragmented nature and convoluted wording of the decisions transmitted and, in particular, given that they are only available as forwarded circulars, the Panel had no reason to suspect that they could be forgeries driven by certain interests. Furthermore, the orders of the CCMC are chronologically consistent with the course of the conflict as described to the Panel by witnesses and the expert.

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

The fact that the Syrian regime had people killed in scores from April 2011 at the latest, documented this in a bureaucratic manner, and had the bodies buried in mass graves also emerges from the statements of former regime employees, satellite photos of suspected mass graves and the origin and assessment of a large number of photographs showing corpses (the “Caesar” files). This is also evidence that a considerable proportion of those killed came from the branches of the intelligence services, including the General Intelligence Directorate.

a) A key piece of evidence of the systematic and extensive killing of detainees in intelligence prisons is the documentation of dead bodies commissioned from a Syrian military photographer (“Caesar”) from late spring 2011 onwards. In 26,938 image files secretly secured and brought out of the country by “Caesar” show the bodies of 6,821 persons – photographed several times – most of whom bear signs of emaciation and torture-related injuries. The corpses were given numbers that were written either directly on the skin with felt-tip pens or on notes attached, which provided information about the origin of the dead.

aa) The Panel was unable to question the military photographer directly, who lives in an unknown location abroad and is known only under the alias “Caesar”. A friend of “Caesar”, who also lives abroad under an unknown identity, is known to the Panel only under the alias “Sami” and was involved in securing, storing and sending the image files from Syria at the time; he, too, was unwilling to testify in person. The Panel was nevertheless able to gain an adequate impression of the origin, content and authenticity of the image files by questioning witness ... [LL], who had been in contact with “Caesar” and “Sami” in 2014, documented their activities and prepared them for

publication, and witness ... [O], who questioned “Sami” during the police investigation, and through a plausibility report on the image files prepared by foreign forensic experts, through inspection of some of the photographs taken by “Caesar” and through an overall forensic evaluation by the expert Prof. Rothschild.

bb) Witness ...[LL], a French journalist and publicist who was questioned by the Panel, had been able to establish contact with “Sami” and through him also with “Caesar” in 2014 via intermediaries in the course of her journalistic work, which regularly took her to Arab States and in 2012 also to Syria. As a result of questioning both of them about the origin of the image files and her own further research, she has published the book “Operation Caesar. In the Heart of the Syrian Death Machine”. The witness “Sami” was questioned by the police in the structural proceedings conducted by the Office of the Federal Public Prosecutor on 9 November 2017; the content of his statements was conveyed to the Panel by the interviewer ...[O].

(1) The Panel has no doubt that witnesses ...[LL] and ...[O], who were heard directly, testified truthfully. In particular, witness ...[LL] testified in detail about the circumstances of establishing contact with witness “Caesar”, which had come about through an editorial assignment, the inclusion of the testimony in her book project at the time, and by gaining the trust of a chain of intermediaries, including “Sami” as “Caesar’s” most important helper. She had been able to question “Sami” in detail, who he had eventually established contact with “Caesar”. After a telephone conversation with “Caesar” via Skype, several personal meetings took place. The witness also explained clearly how she perceived “Caesar’s” motivation in documenting the photos: Syria was a country of absentees; the pictures shed light on the fate of a large number of disappeared people and provided invaluable support to their relatives.

The testimonies of witnesses “Caesar” and “Sami” conveyed by witnesses ...[LL] and ...[O] were detailed, free of contradictions and plausible within and between them; when viewed together with the other elements of this body of evidence, they form a conclusive overall picture. The expert evaluation of the photographic material (see below under cc) and ee), pp. 94 and 96), in particular, confirms the accuracy of the information. The mass burial of dead bodies marked with numbers as described by various former regime employees (see below under b), p. 99) also confirms the information given by “Caesar” and “Sami”. Finally, the fact that witness ...[T], who for

his part refers to information provided by clients in the context of his work as a Syrian lawyer and victims' representative, confirmed both the role of the Syrian military photographers before and after the beginning of the conflict and numerical recording of those killed by means of slips of paper or direct markings on the corpses, provides circumstantial support for the accuracy of that information.

(2) According to the information provided by "Caesar" and "Sami" through witnesses ...[LL] and ...[O], the Panel assumes the following facts:

"Caesar" was a senior member of the military photography staff of the Syrian military police until he fled Syria in August 2013. The photo documentation unit together with the military police, is based in the Qaboun district of Damascus. As part of his original job, "Caesar" and his subordinates had been called on to document military personnel killed or injured as a result of accidents, crimes or combat operations. In this connection, the military hospitals in Mezzeh and Tishreen in and near Damascus also fell under his jurisdiction, the other military hospital in Harasta did not.

From spring 2011, the subject of the documentation changed. "Caesar" was alerted by a staff member to images of civilians shot dead in March 2011. Shortly thereafter, he was himself called to the military hospitals in Tishreen and later Mezzeh by the forensic medicine department and asked to document the corpses collected in the courtyard, which bore signs of torture and ill-treatment, by taking multiple photographs – four to five photographs per corpse. The regime had already divided the bodies into groups of "martyrs", who were identified by their real names and were few in number, "detainees" and "terrorists". The bodies in the categories "detainees" and "terrorists" had numbers either applied to the skin with felt-tip pen or written on slips of paper attached to them. A number or letter – such as "J" for "Jawiyya" ("air") as the designation of the Air Force Intelligence Directorate – identified the intelligence branch in which the respective person had died. Another sequence of digits comprised a prisoner number identifying the person and a forensic medical report number from the military hospitals, which was assigned to the corpses in ascending order up to 5,000 and then recommenced with the addition of a letter. In a few cases, no numbers were given to the dead.

The routine procedure involved a forensic pathologist with the rank of colonel, who was responsible for the Tishreen and Mezzeh hospitals, recorded the external features of

the corpses and wrote a short post-mortem examination report. At the same time, a military photographer was called in. After the forensic number had been assigned, the photographer had to document the corpse by taking multiple photographs – usually three to five. The forensic medicine department then compiled dossiers on the deceased, which included the photographs taken by the military photographers.

According to “Caesar” and “Sami”, there were two key reasons behind the documentation for the Syrian authorities: on the one hand, it was bureaucratically useful to be able to issue a death certificate with a natural cause of death in order to be able to communicate this to the victim’s relatives if necessary. On the other hand, the documentation had a self-monitoring function in ensuring that the fate of detainees was clearly verifiable, proving that they had actually been killed and not released as a result of corruption, for example.

When “Caesar” first became aware of civilian deaths in March 2011, he contacted “Sami”, a friend of his, and told him that he had received photographs of tortured corpses from his colleagues (“I get sent pictures that are so terrible”). According to both witnesses, the condition of the corpses laid out in the courtyard of the hospitals did not correspond to the medical report that “Caesar” received from the forensic medicine departments of the hospitals. There had already been similar, but – according to “Caesar” – “not such brutal” footage. After “Caesar” had secretly put image files on data carriers and smuggled them out of his office, he and “Sami” decided to continue with this activity so that they could both collect image material and take it out of the country. Hereby, “Caesar” and “Sami” intended to bring the fate of people who had disappeared in such large numbers in Syria at the time to public attention and secure evidence. Both expected the Syrian regime to fall before long and its members to be prosecuted. After the planning stage, “Caesar” and “Sami” worked together from May 2011 onwards in the following manner: “Caesar” secretly saved the photo documentation he had made or received through his staff on USB sticks and memory cards, smuggled them out of the office and forwarded them to “Sami”, who in turn saved them in different file folders on a personal computer, deleted the files on the storage media and handed the latter back to “Caesar”. Initially – i.e. in May 2011 – the image files only contained images of a few corpses. However, their numbers quickly rose to between 10 and 20 per day; eventually, in 2012, some 50 to 70 bodies per day

were being documented by military photographers in Damascus.

The security situation and internet surveillance in Syrian made it difficult to bring the images and data out of the country; as a result, various routes with different versions of the data were used. Through intermediaries, “Sami” uploaded the compressed images (250 to 300 KB per image) to the Google Drive platform in 2012. After fleeing to Lebanon in July 2013, he also received a hard drive brought to Lebanon by the Free Syrian Army (FSA) with another compressed version of the pictures, which “Sami” subsequently – first in Jordan and then in Turkey – put into chronological order on the basis of the numbers applied to the bodies, renamed and forwarded via intermediaries to the British law firm “Carter-Ruck and Co.”, which in turn commissioned experts to carry out a plausibility check. The uncompressed original files with a data volume of 1 to 1.3 MB per image and in their original order were also uploaded to the Google Drive Internet platform after being saved on an external hard drive and moved to Syrian territory controlled by the Free Syria Army. These files were also made available to the law firm; a meeting with the forensic experts commissioned by the law firm took place in Qatar at the beginning of 2014. Image material with a further 1,500 shots from the period of July and August 2013 was brought out of the country on a USB stick by “Caesar”, who fled Syria at the end of September 2013.

In view of this sequence of events, which could not be determined in more detail in the absence of the witnesses “Caesar” and “Sami”, who could not be contacted directly, the Panel assumes in terms of time and number that “Caesar” first noticed bodies pointing to ill-treatment and killing by the Syrian security forces in March 2011 – although initially only in isolated cases – that image files depicting 10 to 20 bodies per working day were saved from May 2011 onwards, and that the number of images gradually increased until the end of the documentation in August 2013. This sequence of events is consistent with the total number of photographs of the deceased of 6,821. The Panel assumes that death – based on the explanations by the expert, Prof. Rothschild, reflected below – occurred usually only a few days, at most weeks, before the time the photographs were taken.

cc) As witness ...[LL] confirmed before the Panel, the law firm “Carter-Ruck and Co.” in London, to which the image files were forwarded according to the statements of “Caesar” and “Sami”, commissioned an inquiry team with their forensic evaluation.

Members of the team included, as chair, the former Chief Prosecutor of the Special Court for Sierra Leone, Sir Desmond de Silva, the former First Chief Prosecutor of the Special Court, Prof. David Crane, the former lead prosecutor of Yugoslav ex-President Milosevic at the International Criminal Tribunal for the former Yugoslavia, Prof. Sir Geoffrey Nice, expert forensic pathologist Dr Stuart Hamilton, Professor of Anatomy and Forensic Anthropology Susan Black, and Stephen Cole, the technical director of a forensic investigation company. According to the investigation report, the experts had the opportunity to question the witness "Caesar" in January 2014 to assess the authenticity of the pictures.

After evaluating a selection of 5,500 pictures showing a total of 835 deceased persons, of which 3,500 photographs were examined in detail, the experts came to the conclusion in their written statements that the information provided by "Caesar" and "Sami" about the origin of the pictures conclusively matches with the injuries found on the photographs provided. The bodies depicted showed signs of strangulation, beatings, emaciation and electrocution injuries. Overall, the picture that emerges is that the deceased were very likely to have died from unnatural causes, in particular ill-treatment and torture, even if fatal injuries were ultimately found in only a minority of the cases investigated. In their evaluation, the experts conclude that the material they examined constitutes "evidence of systematic torture and killings of detainees by actors of the Syrian Government".

dd) The origin of the photographs printed out and made available on data carriers in the present proceedings has been explained by the police investigator, witness ...[O]. They are uncompressed data sets brought out of the country via the Internet, supplemented by files from "Caesar" from the months of July and August 2013 and passed on to the Office of the Federal Public Prosecutor by "Sami" in September 2017 via intermediaries in Liechtenstein. According to witness ...[O], this data material was also made available to the expert Prof. Rothschild, who had already been commissioned during the preliminary investigation.

The Panel has inspected a selection of photographs. Without expert assessment, the vast majority of the photographs appear to show corpses of young men, naked and lying either on tarpaulins or dusty ground in an outdoor area. The corpses, some of which are very emaciated, show various signs of injury, including open wounds and, in

the majority of cases, considerable bruises and abrasions, which could be signs of beatings or whippings, sometimes over a large area, but also in a longitudinal direction. Some of the eyes of the corpses were no longer present. Furthermore, the Panel had access to a sample form for a death certificate completed – according to the introductory text – “on behalf of the military public prosecutor’s office”, which had been photographed by witness “Caesar” and passed on to witness ...[LL], according to her own testimony.

ee) All the photographs have undergone a forensic examination by the experienced forensic expert Prof. Rothschild, head of the Institute for Forensic Medicine of the University Hospital Cologne. By means of a clear and convincing presentation, which was accompanied by pictures from the “Caesar” files, the expert gave a comprehensive report with brief descriptions of the individuals photographed categorised according to age, gender and conspicuous features, a transcription and systematization of the numbers visible on the corpses – with the help of translators – a description of the general condition of those shown in the photographs, indications of ill-treatment, torture and violence and the presumed cause of death. He referred to limitations in the assessment of the findings due to the fact that an evaluation based on photographs alone cannot replace an autopsy, since only partial views of the bodies are available and there are limitations to enlargement of the image material. He gave examples of case histories based on individual images.

The expert explained that the photographs show mostly naked male persons in a supine position in an outdoor area. There are 26,938 image files with a total of 6,821 distinguishable individuals. According to the numbering applied to the bodies, their origin is as follows:

<u>Branch</u>	<u>Image files</u>	<u>People</u>
215	13,801	3,551
216	1,108	292
220	210	50
227	8,001	2,049
235	482	127
248	206	54
251	446	110

Air Force (“Air”)	1,515	352
Military police	177	46
Unknown attribution	601	116
Miscellaneous	391	74

The persons depicted were 6,820 men and one woman, with an estimated age distribution of 329 very young, possibly minors, 2,342 persons of younger age, 2,178 persons of middle age, 1,215 persons of advanced age, 531 elderly persons and 226 persons of indeterminable age. The majority of the dead were found on stony or sandy ground, and occasionally there were blankets or tarpaulins under the bodies. In some cases, clothing concealed obvious injuries. The faces were mostly well documented; missing eyes were due to birds or insects eating them after death. 3,912 persons had been photographed in their underwear, 1,547 others had been naked, the rest fully or partially clothed, but with clothing in a dirty and worn condition. Evidence of professional medical treatment such as bandages was found in one in 20 cases. Some of the bodies suggested that a person had died soon after emergency surgery for ballistic trauma.

The photographs clearly served less as medical documentation and more as a general, rather superficial “registry” of the bodies. The systematic production of the photographs with a typical picture “set” of a body in overview, details of the face and neck area and the upper and lower half of the body suggests that there were guidelines to this effect or that it was the same photographer.

The expert explained in detail that, from the point of view of forensic medicine, it could be assumed that all the photographs actually showed dead human bodies, even if certain signs of death in the form of death marks, rigor mortis, decomposition changes or injuries incompatible with life could only be identified in 88.6% of the cases. A large number of the individuals shown exhibited consequences of abuse predominantly using blunt injuries, such as marks of blows in the form of parallel reddened stripes with burst capillary bleeding and blood underflow, which only occur in the case of very violent, repeated blows striking the surface of the body without stopping, causing great pain and even leading to loss of consciousness. Sticks, pipes, cables and similar objects are likely to be the types of blunt instruments used. Many of the bodies also showed widespread blood stains on the legs and feet, indicating that these parts of the

body had been beaten deliberately. In addition to stick-like tools, flat objects had also been used here; the intensity in general indicated systematic abuse involving beating or kicking. In some cases, the impact marks merged in such a way that the number of blows received could not be determined. It was also plausible on the basis of the injury patterns that individuals had been beaten violently and repeatedly in a fixed position. Judging by external appearance, many of the injury marks are explained by the occurrence of simultaneous events. Occasional cases of mechanical removal of finger- or toenails, an extremely painful process in the expert's opinion, were identified.

In many other cases, there were indications of suffocation by mechanical pressure on the neck, in particular considerable force against the front of the neck, in some cases with widespread bleeding over the entire neck area with extensive abrasions, which could have been caused by severe blows and kicks to the neck, but also by standing on the neck. The pattern of haemorrhages suggests that stick-like objects may have been pressed against the neck, possibly from behind. According to the expert, the severity of the abuse could have led to a compression of the trachea and larynx due to bleeding and swelling and to a disruption of the carotid arteries. In some cases, white foam was visible at the front of the mouth as a sign of suffocation or drowning. The expert described mechanical obstruction of the airways as a type of death accompanied by massive fear ("a feeling of annihilation").

Slightly more than half of the persons depicted showed injuries of this sort. Apart from injuries of this sort, more than 60% of those depicted were in a – sometimes significantly – weakened general, nutritional and medical state. The bodies showed extensive wasting and emaciation, which the expert believes is most likely the consequence of food deprivation. Numerous bodies also showed severe signs of deficiencies with significant weight loss, consumption of body fat and muscle atrophy; it was sometimes evident that the deceased had starved to death, as was to be assumed in particular in the case of pronounced emaciation of the body with protrusion of skeletal structures and general muscle atrophy. The expert described starvation as a protracted process with significant pain and discomfort. Many bodies also showed signs of extensive skin diseases, as can be observed in the case of long-term, significant hygiene deficiencies in combination with injuries, malnutrition and parasite infestations. It was obvious that many of the people photographed were in urgent need

of medical attention and care but had not received it. The expert also drew attention to a large number of bondage marks on the wrists with strip-like injuries and evidence of blindfolds.

Some of the bodies show no or only minor external injuries or reductions. As these were mainly young and middle-aged males who did not show any signs of fatal conditions, the context in which the pictures were taken could indicate asphyxiation, e.g. due to a lack of oxygen in the air, but also due to gas, poison, drowning or suffocation by soft covering of the respiratory organs. Few bodies showed ballistic trauma from gunshot or explosion wounds, although in individual cases of numerous gunshot wounds against a region of the body or signs of close-range gunshots, executions are also conceivable. There were indications of (electro)thermal effects on individual corpses (52 cases). A natural cause of death could not be assumed for any of the bodies.

Regarding the time of death, the expert stated that the storage of the corpses in the open air and the absence of green discolouration in the lower abdomen area, which occurs at outside temperatures of 21 degrees and above, indicates either that the corpses had previously been kept in cold conditions or that death occurred in close temporal proximity to the photographic documentation.

The Panel accepts and bases its judgment on the findings of the expert, which were verbally substantiated in detail and obviously based on experience and expertise, following meticulous examination and clear explanation of the photographic material – some of which was examined by the Panel as the report was being given – and which are clearly consistent with the latter.

ff) Ultimately, the Panel has no doubts about the authenticity and origin of the pictures as they were presented to it by witnesses ...[LL] and ...[O] and indirectly by the statements of witnesses “Caesar” and “Sami”. In its view, the photographs prove that a large number of deaths occurred in the various intelligence departments of the Syrian regime from May 2011 onwards, as detainees there were tortured to death, killed by starvation or suffocation, or executed.

b) The high number, documentation, and treatment of the bodies of regime victims

are confirmed by several witnesses:

aa) Expert witness ...[W] testified that during his research he had encountered two witnesses who reported that there was a “transshipment point for corpses” in Homs. They had described that the bodies were numbered, photographed and registered. This was at the beginning of 2012; the witnesses had been questioned in April 2012. One of the interviewees was a young conscript; he had seemed very disturbed. He described that he had to pack body parts in plastic bags in a military hospital. From the beginning of March 2012, corpses were constantly being delivered and piled up metres high in a courtyard. He was responsible for photographing the bodies, giving them numbers and then packing them. A doctor who had defected described the collection point in the same way. The dead came from a district of Homs that had declared itself independent, from checkpoints and in large numbers from the prisons of the Military Intelligence Department and the Air Force Intelligence Directorate, in particular. The deliveries had varied between 30 and 400 corpses per day; some of them had been delivered to the hospital by truck. The hospitals in Tishreen and Harasta were also known to be doing this. Another witness told him that he had been allowed to search for his brother’s body; because he had influence, several security guards were assigned to him so that he could search among the bodies for hours. However, according to the witness ...[W], no further evidence was provided by the people with whom he spoke.

The Panel interprets the statement as an indication of a nationwide system of recording a large number of people who died at the hands of the security authorities.

bb) Witness Z 30/07/19, who had already been heard anonymously in the preliminary proceedings, stated that he was an administrator at the Damascus cemetery office. According to his testimony, he was recruited by senior officers of the security services in May or June 2011 to assist in the burial of bodies in mass graves, together with 10 to 15 associates to be designated by him. He had been responsible for the documentation of the delivered corpses. He had done this from 2011 to 2017.

(1) The witness stated that, at the beginning of his work in May or June 2011, he and a group of staff from his office were sent to the Tishreen and Harasta military hospitals where refrigerated trucks were on stand-by to transport bodies. The trucks drove to a place he did not know at first. In a second stage of his work, he later received

lists several times a week, was picked up by a patrol at his place of work and taken to mass graves; large, six to seven metres deep trenches were dug there into which the bodies were dumped. In the end, he drove there himself with his employees in a van provided to him, in order to undertake a comparison with the lists given to them by the drivers of the trucks transporting the corpses. He and his staff were provided with an intelligence service vehicle, a Nissan Sunny, so that they would not be stopped at checkpoints. The witness dated the beginning of this activity, which stayed the same for the following few years, to four to five months after its original start, i.e. September to November of 2011.

The regular transports to the mass graves from the military hospitals in Harasta and Tishreen arrived about twice a week. The bodies that came from the intelligence service branches were collected there. Bodies were delivered from all branches; the witness identified, for example, "State Security", in which he included an unspecified "administration", the "Al-Khatib Branch" and Section 40, the Palestine Branch, branches in the governorates, Branch 215 and Air Force Security patrol branches. The corpses bore numbers on their foreheads or chests. They were then driven to the mass graves, which were located in Najha – about 14 kilometres south of the centre of Damascus on the way to the airport – and Al Kteifa (alternative spelling: Al Qutayfah) – about 40 kilometres northeast of the centre along the motorway to Homs. He heard about the existence of another mass grave near the Mezzeh military airport operated by the Air Force Intelligence Directorate, and about a cemetery operated by the 4th Division from a digger driver who had also dug pits there. The burials that he, the witness, attended took place at night; they left around 4:00 or 5:00 a.m. and returned between 8:00 and 9:00 a.m.

The cemeteries were camps inaccessible to civilians, which were surrounded by a mound of earth two to three metres high in Al Kteifa and a wall seven to eight metres high in Najha. They had to pass through two checkpoints; there were armed patrols of the security services on the premises. He himself kept away from the actual graves; however, he spoke to digger drivers who had reported excavations to a depth of six metres. The drivers of the refrigerated trucks and his other co-workers told him about the graves that had been dug, which he also saw himself. The refrigerated trucks were larger than a container, with a length of about eleven metres. They held 700 to 750 bodies each; the dead were stacked inside. The graves were 100 to 200 metres long

and two to three metres wide; some graves were only 50 metres long. Each grave had a capacity of between 20 and 50 loads. The truck arrived, the doors were opened, the bodies pulled out and thrown across the graves. It smelled awful; his co-workers who were directly involved with the corpses had mostly worn gowns and masks but got sick all the same. His co-workers told him that the corpses – all of them naked – were covered in bruises and bloody wounds. There were signs of torture, such as wounds from electric shocks and extracted fingernails, and in some cases strangulation marks, presumably from executions by hanging. Bodies were also bound with handcuffs and cable ties.

The penis of one corpse had been cut off. There were also corpses of women and children. The witness himself once saw a dead woman hugging a dead child; he had almost collapsed at the sight.

According to colleagues involved in the unloading, some of the bodies had already decomposed and their faces were no longer recognizable. This was also due to chemical substances applied to the faces. Some of the bodies “broke open”; when the trucks were emptied, “rivers of blood and maggots” were seen. The stench waivered across 100 metres over to him, the witness; the first time, he had not been able to eat for several days. Only the corpses from the hospital stank, those from the prison in Saydnaya did not because they had been executed the same night, as an escort officer had told them. There were also cases where people who had supposedly been executed were still alive and an officer had given the order to run them over with a wheel loader.

The witness’s task had consisted in “adding corpses to the lists”. He received the lists from the officers who escorted the delivery vehicles and refrigerated trucks. He, the witness, entered the date, the origin of the individual corpses, i.e. the intelligence service branch, and the total number of dead as provided to him on the documents at the burial sites. For example, he had been told “Palestine Branch, enter 150!” or “Section 40, enter 100!”. According to his co-workers, the bodies also carried numbers, especially the branch number. He had to hand over the completed lists to an officer after the burial; he first made a copy to pass on to his superior. According to the numbers on the bodies and the papers he had received, the bodies came from a variety of intelligence branches, including the Al-Khatib Branch. The corpses were usually

delivered twice a month in 2011 and 2012, but sometimes only once a month, and sometimes not at all.

The witness was unable to give a more precise number of victims. According to his statements during his police interview, some 3,500 to 5,000 bodies were delivered from the Al-Khatib Branch and Section 40 between June and December 2011. In the main hearing, the witness, emphasizing that he was unable to provide exact figures, estimated 3,000 to 5,000 deaths for the whole of 2011. During the preliminary proceedings, he estimated the total number of people buried between 2011 and 2017 at between 1 million and 1.7 million; at the main hearing, he stated that an officer had given him a figure of 1 million dead at an unknown time. However, he personally believed that it might have been 2 to 3 million, based on what his co-workers told him.

The witness was unable to specify the number of operations per week. Regular deliveries from the military hospitals took place at least twice a week. In addition, there were special transports with executed prisoners from Saydnaya prison and special transports where the burials were supervised by high-ranking officers. His subordinates, whom he had to bring along to help, had to unload the bodies from the trucks. They had all been civilian administrative staff and had been forced to work there.

(2) The witness was visibly moved by his statements before the Panel in the face of the ever-present memories and has stated that they haunt him to this day in the form of nightmares. In light of the notable psychological strain on the witness, his interrogation had to be interrupted early and resumed the following day of the main hearing. In the Panel's assessment, even though the witness expressed – understandable – uncertainties in connection with the number of body transports, the number of dead and the technical process of recording them, there is no question about the credibility of his statements, which are otherwise consistent with the results of the investigation. The witness was visibly trying to evoke memories accumulated over the years. His testimony before the Panel was initially disorganized, fragmented and general; yet when prompted, he was always able to provide detail and a set of well-organized facts that resulted in a coherent picture consistent with the witness's testimony in the preliminary proceedings. Occasional contradictions – such as the initial statement that he had been picked up to drive to the mass graves versus a later

correction that a vehicle had been provided – were of minor importance and easily explained by the many years spent working in this area with changing procedures.

The witness's testimony powerfully demonstrates the almost industrial "processing" of those killed by the Syrian security services as the conflict progressed, through their continuous collection, registration and eventual disposal in mass graves, which were laboriously created over years using a lot of machinery. In terms of time, the Panel assumes, in accordance with the statements of the witness but also in view of the evidence from the "Caesar" complex of evidence – which matches the processes described by the witness – that the witness and other staff under his authority were recruited as early as May and June 2011, and that the number of corpses increased continuously in the following period until it reached a more or less consistently high level in the second half of 2011. The precise number of regime victims buried in the mass graves cannot be ascertained. In view of the frequency of the transports reported by the witness, and their capacity, it can be assumed that at least 5,000 people were killed every month from the middle of 2011 onwards, with the number increasing thereafter.

cc) Witness ...[BB], a trained computer scientist and intelligence officer with the rank of lieutenant, worked for the Syrian General Intelligence Directorate from November 2010 to early 2012. According to his testimony, he initially worked in the "information branch" and from 15 November 2010 until the end of 2012 in the "mailroom" of Branch 295 in the Najha detachment south of Damascus.

(1) The witness testified that, in the course of his work in the mailroom of Branch 295, from an unspecified time in the second half of 2011 he regularly received papers comprising a list of dead people, which documented the transport of their corpses. These lists came to him from hospitals, such as the Harasta hospital or hospital number 601 and contained a record of the total number of dead and an identification number the number of the intelligence branch they had come from and the date for each body. The papers bore the stamp of one of the forensic doctors working in the military hospitals. The dead were not named. The branches identified were mainly 215, 235, 251, 285 and 293; these were the numbers of the intelligence service branches from which the deceased came. The lists were addressed to the head of Branch 295;

however, the witness had been able to inspect them. The lists, whose structure the witness outlined in the main hearing, served to prepare for burial.

Branch 295 had been in charge of the region and thus also for the graves. The lists did not come to him on a daily basis, but in clusters – 50 to 100 dead, sometimes considerably more. They were assigned to the refrigerated trucks and matched with their contents. The numbers on the corpses were different from those given to relatives who were trying to ascertain the fate of the deceased. These numbers were selected at random and communicated only as a pretence; they had been just as false as the notification of the families that the victims had died of natural causes. The witness also stated that the bodies transported to the mass graves had come exclusively from Damascus and the surrounding area. They came mainly from the intelligence branches; aside from that, corpses were delivered directly from the Mezzeh, Tishreen and Harasta military hospitals.

Between 50 and 300 bodies were taken by refrigerated truck in the early morning at around 4:00 a.m. to prepared mass graves dug by excavators in the vicinity of Najha, which the witness identified more precisely on a satellite map. Between April 2011 and January 2012, the papers available to him recorded a death toll of more than 8,400. There were two mass graves. One was mainly for people who had been executed and for soldiers who had died in battle. In the other mass grave, only the dead from the prisons of the intelligence services were buried. The witness had no direct access to the mass graves. However, he had been able to observe the excavators digging from a hill. The area was cordoned off and separately guarded “by Iranians”; the drivers of the body transporters had special permission to pass.

(2) The Panel also considers this witness to be credible and his statements to be plausible. The witness gave an open account of his career within the intelligence service, including his aspirations to pursue a career as officer and the rejection of his application. The witness was reticent to testify, claiming that pressure was being put on his family, but when asked repeatedly he was able to provide detailed information, albeit sometimes with difficulty, that was in itself coherent and consistent with the results of other evidence relating to the fate of those killed and the way in which they were documented. The witness specifically identified the location of the mass graves on aerial photographs; the locations are consistent with the evaluation of satellite

images by the Federal Criminal Police Office. Furthermore, during the main hearing the witness was able to explain the sketches of the location of Branch 295 and the mass graves he had prepared during his police interview. Unlike his statements concerning his acquaintance and meeting with the defendant (see below under V. 1. c)), there were no significant deviations from the information provided in his police interview.

The discrepancies regarding the defendant do not, however, raise questions about the credibility of this information, since the Panel has gained the clear impression that the witness concealed other facts about the defendant out of fear for his relatives in the light of specific threats – described by him in detail – emanating from the family of the defendant (see the details under VI. 1. c), p. 148). The Panel further takes it, based on the overall statements of the witness, that in addition to his office work in a mailroom, he received reports about corpse transports for further administrative processing.

(3) It emerges from the information also provided by this witness, that the bodies of killed detainees from the intelligence service branches were collected at central points, especially in the military hospitals, and recorded there before being loaded onto refrigerated trucks or other vehicles, driven to mass graves and buried there. The death lists referred to by the witness, which appear to have been prepared by a forensic doctor or his or her office, fit in with the photographic documentation of the “Caesar” files and the bureaucratic registration of those killed also evident therein.

dd) “Witness ...[Y], a former employee of the Syrian General Intelligence Directorate who worked in a documentation centre at the intelligence headquarters in Kafr Sousa in 2011 and 2012, stated that there had been numerous deaths in the prisons of the intelligence services. That was particularly true for Branch 285. He had seen dead bodies in the yard of the branch. There were refrigerated trucks in which corpses were transported. The bodies came from the detachments of the intelligence services, where they had been collected and taken to an “administrative centre”; he had discovered this through conversations with colleagues. Furthermore, a register of deaths had been kept for administrative purposes only. The witness stated that that type of treatment of the dead had occurred “since the beginning of the uprising”, which he dated as March 2011. He had also seen corpses in the military hospital in Harasta; these had simply been left on the ground, exposed to the sun. Signs of torture were visible on one of the

bodies. Relatives were usually not notified of the deaths; enquiries were either ignored or replied to the effect that the person had never been detained. Relatives had also been falsely informed that a prisoner had died from natural causes.

As already explained (see under III. 1. c) bb), p. 71), the Panel was held to take a critical stance on the testimony of witness ...[Y] because of possible outside influence and a general tendency to exonerate himself. The above information is nevertheless consistent with his testimony during the preliminary investigation. It is detailed and in line with the knowledge he may plausibly have gained from his work. The Panel therefore considers the information to be accurate.

ee) Finally, witness Z 28/07/16, as a former employee of the General Intelligence Directorate, also stated that persons who had died in the intelligence service branches had been taken to hospitals and kept there in refrigerated trucks. If there was not enough space, they were simply thrown on the ground. Death certificates stated that the persons had died of diseases. Lists were drawn up, the bodies were marked with numbers, photographed and finally taken to mass graves. Hardly ever had the body of a deceased person been handed over to the family.

c) The Federal Criminal Police Office's evaluation of aerial photographs from the Damascus region is consistent with the statements of the aforementioned witnesses and the high number of dead to be buried that can be deduced from the "Caesar" files.

According to witness ...[MM], who was involved in the investigation, during the testimony of witness Z 30/07/19, aerial photographs had been examined for signs of the mass graves located by the witness in Al Kteifa. The witness had shown the Federal Criminal Police Office of the location on a map extract with the coordinates 33.756887 and 36.603874. Satellite/aerial photographs of the area in question had subsequently been secured from the Google Maps and Apple Internet services; those showed a worked area that was partly levelled and partly displaying piles of soil and enclosed by mounds of earth. On the higher resolution aerial photos of the Apple service, a long narrow excavation with a length of about 100 metres – according to the specified scale – and what seems to be an excavator can be made out on the right-hand, eastward side of the image. The Panel satisfied itself of this by examining the images, which are referenced in accordance with Section 267(1) sentence 3 StPO (File

Vol. III.5, p. 483 - 485 with regard to images 1 - 6).

The Panel is aware that the evidentiary value of the images is diminished by the fact that – as also testified by witness ...[MM] – they did not reveal the time when they were taken. The witness further stated that the Federal Criminal Police Office had commissioned a time lapse analysis by the German Aerospace Centre. From this, an almost identical image from January 2016 was identified, so that it can be assumed that the photographs were taken around the turn of 2015/2016. The time lapse study also showed that graves that had been created over the years were filled in time and again, others were dug, and the area was finally enclosed by a wall. The graves were up to 120 metres long and between 3 and 5 metres wide. It also emerged that between 2014 and August 2019, the area in use had increased from 19,000 to 40,000 square metres.

The Panel is convinced that these are the mass graves described by the witnesses. The images prove their existence at least from 2014 onwards and circumstantially confirm the statements of the witnesses from earlier times. No structural changes could be found in the area before 2014, but this does not contradict the statements of the witnesses, especially since, according to witness ...[MM], there had been a second, much larger area in the vicinity, which has not yet been investigated.

d) The Panel interprets the evidence detailed in subsections a) to c) as an indication that the Syrian regime, from April/May 2011 onwards, was responsible for a growing number of killings at protests, in prisons and by the intelligence services and wanted to “dispose” of them in secret and en masse with total disregard for the peace and dignity of the dead or the individuality of the deceased persons. The documentation of those killed was not intended to treat them as individuals, but instead was simply a means of bureaucratic control of the procedures implemented and prevention of rescue through bribery. This is also consistent with the fact that relatives were hindered in their search for the disappeared by being given numbers chosen at random. These evidentiary findings fit perfectly with the timeline of the escalation of the conflict; they prove that, in accordance with the instructions passed on by the leadership to the security authorities and implemented by them, violent action was taken against the protests originating from the civilian population from the end of April 2011 at the latest, resulting in a rapidly increasing number of casualties.

4. Military hospitals

The fact that the military hospitals of Harasta, Tishreen and Mezzeh were also involved in the ill-treatment of arrested persons and simultaneously served as collection and documentation points for those murdered in various intelligence service branches is partly substantiated by the presentation of expert witness Thurmann, but above all by the results of the evidence – presented above – on the origin and subject of the “Caesar files”. In addition, witness ...[N] described his own torture and the ill-treatment of other prisoners taken to the Harasta military hospital. Witness Z 30/07/19, who was present at the burial of murdered persons in mass graves on the outskirts of Damascus and had to record the dead on lists, has identified the military hospitals as the place of origin of the bodies. Witness ...[T] stated that surviving detainees had reported that sick prisoners had been taken to military hospitals, tortured and murdered there. The geographical location was the key: since branches 215 and 248 were not far from the Mezzeh military hospital, the injured and sick and any corpses were taken there. Branches 251, 227 and 235 were closer to Harasta and Tishreen hospitals, so those would have been used.

IV. Re. the findings on Department 251 and Section 40 of the Syrian General Intelligence Directorate

1. Branch 251

The Panel based its understanding of the organizational structure of Branch 251 of the Syrian General Intelligence Directorate on the statement of the German Federal Intelligence Service of 16 June 2016. With regard to the remit of the branch, its locations, the conditions of detention there and the treatment of prisoners in the course of the conflict in 2011 and 2012, the Panel drew on the information provided by former regime employees and statements of expert witnesses who are journalists or members of the Syrian opposition.

The witnesses were able to provide detailed information about the procedures used in Intelligence Branch 251 and the conditions prevailing there due to their work in the Syrian intelligence service or the branch itself on the one hand, or their knowledge gained over years of political or journalistic activity, on the other. In addition, the Panel took account of the statements already made by the defendant during his testimony as a witness with regard to his experience of the branch.

The information provided by a large number of witnesses detained in Branch 251 was of overarching, critical importance. They were able to give the Panel an impressive, often shocking first-hand insight into the conditions prevailing in the branch and the treatment of the people detained therein.

a) Former regime employees gave the following summarised testimony before the Panel:

aa) Witness Z 28/07/16, who was questioned anonymously and who, according to his own testimony, worked for 21 years in an unspecified position in the General Intelligence Directorate, provided comprehensive information on the organization and remit of Branch 251.

(1) The branch was one of the central branches of the General Intelligence Directorate for Damascus Governorate and carried the informal names “Al-Khatib Branch” and “Internal Branch”, in addition to its branch number. It was a security branch for Damascus and Rif Dimashq. Beyond that, the branch had a wide range of responsibilities. Accordingly, there were, for example, sections for interrogations, students, workers, political parties, weapons, religions, an economic section, a section responsible for the security of ministries and Section 40, which was in charge of patrols. In addition, there was an external branch and detachments at the governorate level. In essence, its role was to monitor parties and political groups, including by way of infiltration, and to work preventatively to avert damage to the Government. While the other branches of the General Intelligence Directorate were housed in a single building complex in Kafr Sousa in Damascus, Branch 251 was the only branch with separate headquarters. The branch was located near the Red Crescent hospital. Historically, it was under the leadership of Major General Mohammed Nasif; he was succeeded by Lieutenant General Tawfiq Younis, who, to the knowledge of the witness, remained in

charge to the present day. Branch 251 worked independently, although it formally belonged to the central branch of the General Intelligence Directorate. The witness drew an organizational chart showing the structure of Branch 251 and provided the names of the officers in charge of each area.

Branch 251, the witness continued, had 2,500 to 3,000 employees including in its detachments. It employed about 50 interrogators who worked in shifts. The interrogations took place day and night without interruption. The branch had several prisons. There was a distinction between the central prison in the basement of the branch and prisons located outside. The latter were assigned to the sections, which carried out arrests of individuals who were then eventually taken to the branch. Branch 251 had the worst reputation in all of Syria; that had always been the case, it continued until the “beginning of the events”, and it had not changed to the present day.

Suspects were taken to Branch 251 specifically for the purpose of interrogations. In that respect, its role was similar to that of Branch 285, which was the central interrogation branch for the whole of Syria. The investigative work from all Syrian cities and governorates was pooled there and presented to the intelligence chief, Ali Mamlouk. Accordingly, prisoners were sometimes transferred from Branch 251 to the central branch so that investigations could be continued there.

The branch hierarchy was structured in such a way that there was a head of branch, followed by his deputy and then the head of the interrogation section; the interrogators were subordinate to them. Torture was ordered by the head of the interrogation section who, in turn, received orders from the head of branch. If the order was given in writing, coded formulations such as “rigorous interrogation methods” were used. At the end of the interrogation, the further handling of the prisoner was decided, i.e. whether he should be sent to prison or whether further investigations were necessary. The interrogator made the corresponding proposal to the head of branch.

The treatment of prisoners in Branch 251 prisons was similar to that in other intelligence service prisons. On arrival, there was a “welcoming party”, which meant that from the moment of their arrest, detainees were beaten and kicked by every staff member until they arrived in their cell. The torture methods used in Branch 251 also resembled those used in other institutions. In Syria, there was no presumption of

innocence; the person was found guilty from the start. If an answer did not suit the interrogator, torture was used. It was safe to conclude that no detainee in Branch 251 or Branch 285 was ever interrogated without being tortured. There were preconceived outcomes that were merely to be confirmed by the interrogation. The prisoners had no civil rights in the branch. For example, they were only allowed to go to the toilet when a prison guard permitted them to do so; as a result, the prisoners often soiled themselves. Sick or injured prisoners received no treatment. They were left on the floor to die.

(2) The Panel largely takes the statements of the witness as accurate. It is true that the witness, who was exempt from disclosing information that would lead to conclusions about his identity given the dangers this entails, only referred in general terms to his long involvement with the intelligence service and to the fact that his knowledge is based on direct experience of the detention conditions prevailing in the branch and certain orders from decision-makers. However, in view of the comprehensive and detailed statements, the Panel has no concerns that the witness testified untruthfully or, in particular, could have played down or artificially dramatized the situation. The witness's account of the appalling extent of the conditions prevailing in the intelligence service branches is supplemented by detailed information and confirmed by a large number of other witnesses, both close to and critical of the regime. The Panel only regarded certain value judgements with caution, such the witness's description of Branch 251 as the "most terrible" of the Syrian intelligence services, especially since such characterizations contradicted his other statements whereby the intelligence services had progressively aligned their working methods in the course of the conflict.

bb) Witness ...[AA] stated that he was an officer of the guards of Branch 251 and as such in charge of some of the guards working there. He worked in the branch in 2011 and 2012 until his desertion on 5 August 2012. He was tasked to guard the branch from the outside. In the course of this work, he got to know the officers who worked in the branch; he also saw the detainees when they were brought in.

(1) According to the witness, Branch 251 is the security branch of the General Intelligence Directorate, responsible, among other things, for Harasta and Douma. The witness gave precise details of its location on Baghdad Street in Damascus, near the

Red Crescent hospital. The property was enclosed by a wall; there was a checkpoint and a barrier at the entrance. As the witness explained by means of a sketch, the branch comprised a spacious area with parking spaces for the employees and an inner area consisting of two multi-storey buildings with an inner courtyard. The buildings housed the sections. The leadership of the interrogation section had offices above the prison, which was located in the basement. The witness also provided information on the officers in charge of the branch and the sections.

After the start of the unrest, the number of employees, which the witness puts at 80 to 100, doubled. The witness initially put this date at the end of 2011, but on further reflection dated it to March 2011 and an increase in prisoner admissions to April 2011. From then on, one to three vehicles arrived every day. From the beginning of the unrest, prisoners who were arrested during demonstrations and bussed to the branch were subjected to beatings in the square in front of the branch for anything from half an hour to four hours. Instruments such as batons and electric stun guns were used; when the latter were used, the prisoner simply collapsed on the ground. Throughout the period of unrest, the detentions and admissions never stopped.

He said that whenever he was on duty in the underground prison and walked across the yard to the canteen or to a dormitory, he heard the cries of pain and the pleas of the tortured to stop the abuse ("For God's sake, I didn't do anything") through the basement windows. Occasionally, he had also seen a prisoner who was blindfolded walking across the square with a guard. He was told about the conditions in the prison, where he had never been, by a friend; he had not directly seen the torture that had taken place in the offices or in the cellar. However, he knew from stories that the prisoners were being beaten and otherwise ill-treated. They were in desperate condition when they were released. He had also once seen a lifeless person being taken away at night.

Prisoners from Douma also arrived almost daily. The witness recalled in particular one occasion where arrested demonstrators from Douma were delivered by 15- to 20-seater buses. Sometimes, up to 40 people had been crammed into one bus.

(2) The Panel also took the statements of this witness to be largely reliable. The witness was clear insofar as the information came from his direct experience; at the

same time, he plausibly explained why he, as a security guard deployed in the outer area – although in a leading function – could not give any further information. In this respect, his statement largely corresponded to the statements he had already given at his hearing before the Federal Office for Migration and Refugees – through witness ...[NN] – and when questioned by the Federal Criminal Police Office – as reported by witnesses ...[OO] and ...[P]. The Panel was not able to accept the witness's estimate of the number of people working in the branch, which is not compatible with the size of the buildings and the number of sections housed therein and contradicts the statements of witness Z 28/07/16, which are more plausible in this respect.

cc) Witness ...[Y], a former member of the intelligence service with 30 years of service in the Syrian General Intelligence Directorate, including 13 years – in the period from 1985 to the end of 1998 – in Branch 251 (see under III. 1. (c) (bb)), stated with regard to the organizational structure of Branch 251 – which he also referred to as the “Interior Branch” – that it had been headed by Major General Tawfiq Younis in 2011 and 2012; the head of the interrogation section had been the former co-defendant ...[K]. The branch occupied its own premises in the centre of Damascus on Baghdad Street near a hospital, consisting of two building complexes. In 2011 the prison was expanded. The witness described the multi-storey building complex and the way in which the sections were divided into offices in more detail. In the course of his archiving activities, he had seen protocols from Branch 251 containing proposals for arrests and the treatment of detainees. Sometimes a “continuation of the detention” was suggested, sometimes this was encoded as the need for an “extension of the interrogation”; very occasionally, a release had been ordered. The witness also explained a sketch he had already prepared during the preliminary investigation, in which he reproduced a typical report of Branch 251. It read: “[Name] was found to have participated in demonstrations.” That entry was followed by a several-page summary of the outcome of the investigation for the attention of the head of branch. The report ended with a proposal for continued detention or imprisonment. There had been no explicit written instruction to use torture, only to obtain information “by whatever means”. There had undoubtedly been torture in Branch 251; he also remembered two deaths.

The Panel has taken the aforementioned statements of the witness as truthful despite

the special circumstances already explained (see under III. 1. (c) (bb)). The witness initially gave contradictory testimony in that, on the one hand, he was able to remember certain documents regarding the former co-defendant ...[K], which he stated had passed through his hands and which he was able to reproduce in terms of content, while, on the other hand, when asked by the Panel whether interrogation records had also passed through his hands he claimed difficulty in remembering things because of the large number of documents. After discussing the reasons for his testimony, however, the witness was willing to provide further information and testified to details of documents relating to Branch, which he initially claimed not to remember and was now able to present in detail and in accordance with his statements during the preliminary investigation; he was also able to provide further clarification when asked to do so. The Panel therefore considered the information to be based in fact. It also considered the detailed description of the location, the buildings and the structure of Branch 251, which the witness had presented in equal detail and in accordance with the statements of other witnesses, to be based on his own experience.

b) Other witnesses who also acquired expert knowledge in the context of their work and experience, have – in summary – testified as follows:

aa) Expert witness ...[S] also gave testimony about the “Al-Khatib” Branch. The branch, he explained, was one of the most important intelligence branches in Syria and interfered virtually everywhere. Its leader was a key confidant of the President. The witness sought to substantiate his claim by way of an example using original documents in which a major cultural event that had already been approved was prohibited by a branch official shortly before it began. He, the witness, had received a travel ban from the branch; branch officials had also prevented the renewal of his license as a lawyer. The branch was tasked to guarantee political security through extensive control of all areas of life, for example through sections responsible for political parties and students. Branch staff had already been deployed at sit-ins and demonstrations in February and March 2011. Torture had been used throughout the branch; as an example, the witness mentioned the “Dulab” method (being forced into a tyre and beaten).

bb) Expert witness ...[T] testified that Branch 251 had performed executive functions and had dealt with arrests and interrogations. It had been a State Security branch,

with 10 sections in the respective governorates and additional sections specifically responsible for Damascus and Rif Dimashq. The branch constituted the internal administration of the intelligence services and fulfilled coordination tasks, with a loyal leader – Tawfiq Younis – at its head. Branch 251 and its sections carried out most of the arrests.

The central interrogation branch, on the other hand, was Branch 285; most prisoners were forwarded there from Branch 251. Since he, the witness, had himself been imprisoned in Branch 285 at one point, he had witnessed the terrible condition prisoners from Branch 251 had been in when they arrived there. In 2011, he had also learned through clients about the dreadful conditions in Branch 251 and about the large number of prisoners – in some cases 500 per day – taken there. He recalled one report, in particular, of a group of imprisoned women who had been forced to sit naked in an area for everyone to see, as a means of humiliation. The witness further described the condition and structure of the branch on the basis of several detentions of his own in 1978, 2005 and 2006.

cc) Witness ...[U] stated that he had been observed and arrested by Branch 251. The “Al-Khatib Branch” was the internal affairs branch, which had the task of keeping an eye on the activities of key people, in particular businessmen, and of preventing undesirable persons from getting involved in political activity, as he himself had experienced. It had originally been founded by Mohammed Nasif, a person close to Hafiz al-Assad, and was used to exert control and obtain information by infiltrating people into ministries. The branch was also responsible for monitoring the chambers of commerce and industry.

It was a well-known fact that torture was used in the branch, just like in the other intelligence branches. During his own detention there in February 2006, he had seen torture equipment such as sticks, whips and hanging devices. He himself was led into a room with people who had been subjected to torture; that had been an unspoken warning to him. The witness also described the location of the branch on Baghdad Street in Damascus and explained that it was very well known among the population. At the beginning of the protest movement in spring 2011, he had witnessed how the head of the branch, Tawfiq Younis, had driven up to a rally in front of the Ministry of

the Interior and addressed him.

dd) Expert witness ...[W] reported that Branch 251 was well known in Syria and that the people he had spoken to in the course of his research were afraid of ending up there. At the same time, it was known that the branch was not designed for extended periods of imprisonment but instead as a transit station.

c) In an interim conclusion, the Panel assesses the above statements as follows:

According to the statements of the above witnesses, which are consistent in essence, Branch 251 had a special position within the structure of the Syrian General Intelligence Directorate. This position was externally represented by its size and separate premises – removed from the other branches of the General Intelligence Directorate located in Kafr Sousa in Damascus – and not least by its fame among the Syrian public at large, which was confirmed unanimously. While the General Intelligence Directorate had already been established to safeguard the existing power structures, Branch 251 was assigned a broad range of responsibilities involving surveillance of society as a whole, and given an executive, investigative and coordinating mandate. Its core task was to monitor and suppress dissident efforts in all areas of society. Accordingly, the branch held a central position in the suppression of the Syrian protest movement. At least in Damascus and environs, the branch was involved in the initial reception and interrogation of arrested persons, who were then forwarded to other agencies, in particular Branch 285 in the central office of the General Intelligence Directorate.

In view of the consistency of the statements made by the witnesses mentioned above, it can be assumed that torture was carried out systematically in the branch using existing equipment and well-established cooperation between all hierarchical levels, and that participants in the demonstrations who were brought in were regularly subjected to ill-treatment on arrival in the courtyard of the branch, in some cases over a prolonged period. The individual statements paint a picture that is consistent with the evidence on the general development of the conflict, where detainees in the branch were deliberately humiliated and ill-treated in order to discourage them from further participation in protests. The large number of admissions described by the witnesses clearly matches the increase in the number of arrests as a result of the suppression of

the protest movement from March 2011 onwards and leads to the conclusion that there was massive overcrowding in the detention rooms located in the branch. When considered in conjunction with the evidence about the general course of the conflict and the violent suppression of the protests orchestrated by the top echelons of the Syrian power apparatus, the branch can be seen to occupy a prominent position within the Syrian security authorities when it comes to the actions against the civilian population. In view of the central importance of the branch and its involvement in the conflict, the Panel is also convinced that the decisions of the CCMC as the governing body were transmitted to the branch and implemented by it.

d) In particular, witnesses ...[EE], ...[FF], ...[PP], ...[DD], ...[GG], ...[N], Z 25/11/2020, ...[QQ], ...[RR], ...[SS] and Z 13/01/2021, who were imprisoned in Branch 251, gave detailed testimony on the conditions of detention and the use of torture, and also on the external structure of the branch with the prison located in the basement.

aa) The Panel had no reason to doubt the truthfulness of the testimony given by any of the witnesses during the main hearing. All witnesses, some of whom had to cope with significant adverse consequences of their traumatic detention and ill-treatment, gave detailed accounts on the circumstances of their abduction and the conditions in Branch 251, which were largely consistent with their testimony during the preliminary investigation. Any uncertainties related to details of usually prolonged detention – such as the sequence of detention rooms – are understandable in view of the passage of almost 10 years and the experiences the witnesses had to process. Those uncertainties did not give cause to question the recollections of any of the witnesses, which were essentially consistent and in line with the statements given by other witnesses. In cases where witnesses had undergone multiple arrests or successive imprisonment in different detention facilities and were unable to assign their experiences to specific dates and facilities, the Panel did not attribute that part of their testimony to Branch 251. The descriptions were predominantly characterised by remarkable objectivity and no desire for revenge. On the other hand, a large number of the witnesses were visibly moved when recalling the dramatic experiences surrounding their imprisonment; in some cases, the main hearing had to be interrupted so that the witness being questioned could collect themselves and continue their testimony.

The Panel is certain that each of the witnesses was actually imprisoned in Branch 251, as the witnesses questioned gave plausible reasons for identifying it either on grounds of their own knowledge of its location in the centre of Damascus or from information provided to them by other prisoners during their detention. All witnesses also made sketches of the extensive area of the underground prison of Branch 251 with a number of individual cells, several larger communal cells, interrogation rooms and an open central area, which were inspected, and explained by the witnesses. The testimonies of both male and female witnesses coincided in that men and women were housed separately in the branch. All witnesses also testified without exception that relatives had not been informed about their whereabouts. Where witnesses were questioned anonymously, this was due to the fact that their relatives remain in Syria under the influence of the Syrian regime and have been threatened with reprisals should the witnesses testify in the present proceedings. Other witnesses who were not heard anonymously have also reported that they have cause for such concern.

bb) The witnesses testified in detail – in summary – as follows:

(1) Witness ...[EE], a Syrian director and documentary filmmaker, was arrested in August 2011 after previous detention in the Air Force Intelligence Directorate and – after intermediate stays elsewhere – detained in Branch 251. Although he dated this detention to October 2011 in his police interview, the witness corrected himself on recollecting that he had spent his birthday – 20 September – in the branch. The reason for his arrest was a number of dissident statements and film documentations of the use of violence by the military and the intelligence services against the civilian population. After his arrest at Damascus airport – just before his intended escape from the country following a warning – he was finally transferred to the “Al-Khatib Branch” after passing through various other intelligence branches.

He spent part of August and the whole of September 2011 in the branch, about two months in total. On arrival in a collective transport, he had been abused by beatings with fists and rifle butts in the yard of the branch during a “welcoming party”; among other things, he had been held by the head and punched in the face. Afterwards, he was held in the prison located in the basement. There had been an area for torture, from which screams “that were not normal” were heard all the time. He was himself

beaten with fists and batons – “my whole body was smashed” – and taken to an overcrowded communal cell estimated at 30 square metres, where there were 200 to 300 prisoners. He had spent two to three days there, and the remaining time isolated in a small single cell. He remembered fellow prisoners with significant injuries, such as a very old man who had been beaten up – “blood everywhere, his body swollen” – and a 14-year-old boy who was taken away and brought back with bleeding feet. Other prisoners had suffered even more significant injuries to their feet and backs, and their faces were also swollen. There were people who were sick but got no medical care and could no longer move. The other prisoners had tried to stop the bleeding of the tortured prisoners who were brought back. Most of the other prisoners in the communal cell sustained injuries; the effects of the torture could be seen on their faces. Some had sustained broken bones. In addition, they had difficulty breathing because of the poor air quality. Some people were half-dead; prisoners lay motionless on the floor in the corridors. He heard the screams of those being tortured all the time, including women and young people.

He was taken for questioning on the second day and on the way was able to see through his thin blindfold how people lying on the ground had been beaten up, some of them no longer moving. He was questioned in the basement area; he had to remain on his knees with his head down. The questions were about his dissident filmmaking activities that were critical of the regime. At the time, he had not yet been beaten, but was threatened; in addition, he could hear the screams of other people being tortured “from all sides” in the open interrogation area. Immediately after the interrogation, he was beaten up, then tied up and tortured almost daily. During a further interrogation in which he had not been asked any more specific questions, he had been beaten on his back and feet with a cable. On another occasion, he had been strung up with only the tips of his toes touching the ground. In this position he was beaten and finally fainted; to the present day, he had problems with his legs because of the abuse. Other prisoners told him that they had been subjected to similar treatment; they also reported on the “Dulab” (tyre) torture method. Once, when had been lying on the floor, a stick had been pushed into his anus; he sustained major injuries as a result and had to have surgery later. The torture was carried out using an arbitrary choice of methods and sequence, “blows to the legs, thighs and lower legs, blows with cables to hands, back, legs. Blows to the feet with a baton, kicks”. Once, they had jumped on him. Cable ties

had been tightened around his wrists in such a way that he later had problems with his hands. Although he had hardly been able to walk because of the blows to the soles of his feet, the guards had forced him to do so. During his time in prison, he was only dressed in his underwear. In his view, staff had extensive freedom to deal with the inmates as they wished.

Regarding the general conditions of detention, witness ...[EE] stated that the prisoners had been provided too little food, some of it spoiled. There were olives, potatoes and – often mouldy – bread. In the communal cell, they had to sleep sitting up. Since there was not enough space, some of the prisoners fell asleep standing up and then fell over. There was a set time for going to the toilet; the rest of the time, they had to hold themselves. When he knocked because he needed to relieve himself, he was beaten. The water supply came from the toilet. The guards counted and you had to decide whether to wash with a hose or drink the water. The air in the cells was very bad; it stank of blood and mould. There was no medical care, only improvised help from other prisoners. The communal cell had no daylight; only during his detention in a single cell there had been a small window. The witness constantly thought that he would be executed and had sustained psychological trauma from his time in prison.

(2) Witness ...[FF], who was active in Syria as a dissident blogger until 2011, was arrested on 24 October 2011. After an interim stay in Section 40, he was transferred to Branch 251, where he remained for 10 to 15 days until he was transferred to Branch 285. He had not been beaten during his (individual) admission to Branch 251. The cell in the basement in which he had been accommodated had measured 2.5 by 3 metres; there had initially been 12 to 20, later 25 people in it. It had been so overcrowded that you had to "interlock" when lying down to be able to sleep; later this was only possible lying on one's side. Water was drunk from the toilet. Food was served twice a day, but in very small quantities. The food provided for 15 people was at most enough to feed five. There was rice, olives and small amounts of jam, all of poor quality. Since there was no daylight in the cell and the artificial lighting was switched on all the time instead, it was not possible to distinguish day from night. When he was admitted, the first thing the other prisoners asked him was what time it was.

During a total of six interrogations, he had to kneel blindfolded. Whenever the interrogator was not satisfied with an answer, he was beaten on the soles of his feet

and his back with a belt and a four-wire cable. He was also beaten like that before the interrogation in order to intimidate him. The interrogations related to his activities and took place several times in a corridor in the basement, but also twice in a special room with an officer. On that occasion, the officer remarked to the guard: "Either you get the names out of him, or you take his place." After the beatings, his feet swelled up and hurt unbearably for a long time; he could not walk. He was once taken to a torture room without a blindfold. There was a table and a military bed and "dozens of torture instruments, military belts and batons". An interrogator had entered the room with a pair of pliers; he had known from fellow prisoners that they were used to pull out fingernails. However, that had not been done to him. He was no longer certain whether he had seen rings for suspending prisoners in Branch 251 or in other places of detention, as he had stated in his police interview in October 2018. There had also been arbitrary group punishments, for example if they were caught talking in the cell without permission. The guard then came in, ordered everyone to face the wall and beat the prisoners, especially their feet.

The other prisoners did not fare any better, some even worse. Some of them bled from their feet. He saw a prisoner being ill-treated in the corridor area for a long time. Detainees were made to kneel for days; water was poured over them and they were beaten as they passed by; he saw this through the ventilation gap in the door. As a result, their knees became inflamed. The knees of a fellow prisoner were cut open so far that the bone showed. Cables with exposed copper wires at the end were deliberately used for beating, causing flesh to be torn from their bodies. There had been no medical treatment. Only one person had come to distribute paracetamol, occasionally also an antibiotic. The other prisoners were aged between 16 and 70. He also heard women's voices from other rooms.

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

(3) Witness ...[PP] was detained several times by different security authorities, including twice in Branch 251. The first time, he was held in the branch for several days

in August 2011, although he could not specify the exact time.

He was a State employee in an administrative branch, ran a shop in the village of Zabadani at the same time, and was arrested at a roadblock there under the pretext that he had brought Israelis into the country and was a fugitive. He was first taken to the State Security section in Zabadani, where there was a small prison, then to the 4th Division – on arrival there he had to walk past a line of soldiers who beat and kicked him – and finally, together with other prisoners, bussed to the Al-Khatib Branch. He had initially been tied up during his interrogations there and had had to kneel blindfolded. Due to his profession as a civil servant, however, he had been allowed to take off both; and because the interrogator knew him, he was released shortly thereafter. During his detention, he saw how other prisoners were interrogated and beaten; when they returned to their cells, you could also tell by looking at them. They were hardly able to walk and had injuries on their backs. The “Dulab” (tyre) was also used as a method of torture.

The witness was no longer able to place his second detention in Branch 251 chronologically; he only remembered his release at the beginning of 2013. He was in an extremely bad condition afterwards; he had not even known his name. The witness, who seemed unsettled during the questioning before the Panel, was not able to answer any further questions; they were “like puzzles” for him. He stated that he feared for his family, who remained in Syria.

(4) Witness ...[DD] was detained in Branch 251 from 2 to 16 May 2011 and from 12 to 19 April 2012. During her first detention, she was beaten repeatedly. This was “normal” there and there was no need for separate orders. She was punched, and once an electric shock device was used. She was questioned about the organizers of a demonstration in which she had participated and was beaten from behind during the questioning if the answers were not what was wanted. She was held in the cellar in a tiny single cell sized 60 by 170 to 190 centimetres, “the size of a grave”. It had not been possible to tell whether it was day or night; an artificial light had been left on. She constantly heard the screams of tortured prisoners, “horrible voices, and the way the whip struck the body”. She had heard the words “I’ll say anything” from one person, but after a short time the beating continued. On another occasion, a person was carried

out of an interrogation room. She herself had been tied up and blindfolded several times in the basement area of the branch. She was only allowed to go to the toilet once a day, during which time she was insulted and beaten. She also saw men being beaten with iron bars on that occasion. She had been told by other women detainees that they had been sexually abused.

There was bread and olives, but far too little of it; she could not eat any of it. The witness vividly explained how she lived in a constant state of fear, “you are in a grave, you cannot see anything, you have no contact with the outside world, all you hear is the screams from the beatings”. Other prisoners had not been able to cope with this and broken down. Fellow prisoners reported their torture using “Shabeh” (hanging), “Dulab” (tyres) and electric shocks. Cigarettes were stubbed out on the knee of one prisoner. An acquaintance of hers had still not been able to walk six months after being detained there. The hygiene conditions were appalling. There were insects everywhere, the detainees got skin diseases, there were no ...[U]e. The witness had to use her socks for her period.

After her second arrest, she was slapped in the face when she arrived in the yard of the branch. She had been threatened and had seen a room with a terrible stench in which torture instruments such as cables and sticks and traces of blood on the floor and walls could be seen. The loudest screams were heard later from that room. She witnessed how a woman imprisoned with her had had to watch her (adult) children being tortured. Her own interrogation took place on the upper floor by the former co-defendant ...[K]. The conditions of detention and torture were essentially the same as when she was first detained.

(5) Witness ...[GG], a doctor and musician, described himself as an activist against the Syrian regime from March 2011 and stated that he was arrested on 30 September 2011 in Douma together with other people who were looking for a demonstration, which had been cancelled due to a high military presence. They were picked up by members of the army, beaten up on the street and then taken by bus directly to the Al-Khatib Branch. The witness remained there for five days, was then taken to Branch 285, brought to court on 16 October 2011, and finally released.

He had already been beaten so severely on the street that one of his ribs was broken.

During transport, the detainees had to lie down; their hair was being set on fire and extinguished by urination. Once in the branch, they had to undress in a large room with several tables and officers behind them and, as a “safety precaution”, stand with their knees bent so that their anus and genital area could be searched for hidden objects.

He was held in a cell that was between 2 by 3 metres and 4 by 3 metres in size; there was a total of eight to 10 prisoners in it. He was suffering great pain, was coughing and also had breathing difficulties because of his broken rib. In addition, he had open wounds on his back and could not therefore lie down without pain. There was no medical care. Some daylight came through a small skylight. The prison conditions were characterised by a lack of food; one potato and a quarter piece of bread were provided per day and, as a result, he had lost 17 kilos in the short time of his stay. He was interrogated a total of three times on the same floor on which his cell was located. His eyes were blindfolded. During his first interrogation, he tried to disclose information only about people who had already been “burnt”. “To avoid the blows, you try to give information that can do as little harm to the others as possible.” He had to lie on his stomach and point his feet upwards. He was then hit on the soles of his feet, lower and upper thighs, always on the same spot, so that the pain was particularly acute. He was beaten with a belt, cable or hose. The tools used to beat him left different wounds. The interrogations lasted 30 to 45 minutes each; at a signal from the interrogator, the guard struck ten to twelve times on each occasion. Apparently, it was a systematic process. His feet were swollen so that he could only walk with difficulty; it was extremely painful. He heard from other prisoners that they had been tortured with the “Shabeh” method (hanging by the wrists).

He did not know what exactly he had been defendant of. It seemed to him that the torture was not intended to obtain information but served the systematic intimidation of demonstrators and the population as a whole. The subsequent court case was a farce. He was asked why he was looking for a demonstration, said nothing about it and was simply released.

(6) Witness ...[N], who ran a car wash in Damascus, was arrested there on 26 August 2011 as part of a major raid. He was first taken to the “10th Division” where he was severely beaten on his legs and back. In particular, he sustained deep wounds on his back, which bled profusely. After a few days, he was bound and gagged – with an

aubergine pushed into his mouth – and taken in a bus together with other prisoners to the Al-Khatib Branch. He remained there for four or five days.

Upon arrival at the branch, he and the other prisoners had to sit down in a row on the floor. Then they were beaten; that lasted for two hours. When he was forced to take off his clothes in the basement of the prison, he was hit for each piece of clothing he removed. The detention room was overcrowded with 400 people; it was already impossible to sit. As it was below ground level, it was impossible to tell whether it was day or night. The air was stuffy; there was a toilet with a vent. People went in there just to get some air.

In a later interrogation, he was confronted with a fictitious accusation – “Why did you blow up the column in Homs? –, defendant of lying, dragged out of the interrogation room on the interrogator’s instructions (“Take him out and teach him a lesson.”) and beaten outside the room. The interrogator then questioned him further and, after the interrogation, instructed the guard to mop the floor, which had been soiled by the witness’s bleeding wounds. During a waiting period, he had been beaten in passing. Next to the interrogation room was a kitchen used as a waiting room, and through a window there he had been able to see that further prisoner transports had arrived at the branch. In the cell, other prisoners were concerned by his heavily bleeding wounds, which smelled bad and were oozing black blood. He was put in a corner, and no one touched him because he was in so much pain. He did not receive any medical care; he was only allowed to get fresh air once and had been put in the yard of the Branch for that purpose. During a further interrogation, the interrogator could not stand the smell coming from him. Throughout his stay at the “Al-Khatib Branch”, he heard loud screams; however, the same was true during his detention at the 10th Division and later in the military hospital.

He was eventually taken to the military hospital in Harasta for his injuries. However, he was not treated there, but was abused further and more severely ill-treated. He was taken in a vehicle and thrown out onto the road, where he was not able to move (“Flies kept landing on my body. I couldn’t shoo them away. My only wish was to die.”). It was only by chance that he was saved by a taxi driver. The extensive and deep injuries on his back, of which the Panel could gain an impression by way of a photograph, were treated in Jordan and required several operations.

(7) Witness Z 25/11/2020, examined anonymously on 25 and 26 November 2020, was detained in the Al-Khatib Branch from 25 March 2011 to 1 April 2011 and again from 5 April 2012 to 10 June 2012. After his arrest on 25 March 2011, he was beaten with other arrested people and bussed to the branch. There, there was a welcoming party in the form of brutal beatings; you had to walk through a corridor of security personnel who beat you as you passed. He received ten blows to his face from a baton, which caused damage to one eye and meant that he had been unable to see for six months. Some of his teeth were also broken. Subsequently, he was kicked so hard by a security guard in the branch that two of his ribs were broken. He was only able to breathe with difficulty after that. He was taken to the Mujtahid hospital in Damascus for examination – tied to a wheelchair, continuously insulted and spat at by the accompanying staff from Branch 251. He was simply told that his eye was “gone” there. The security officers accompanying him tore up the prescriptions he was given in front of his very eye. He was held with 70 other prisoners in a room that was about 70 square metres in size. The rooms of the interrogators were opposite. He heard constant screams from them and from one particular torture room. The people were emaciated. “The food was bad, people had sores, it was hell.”

Torture methods included beatings with sticks and belts and restraining the victims with tyres. When “Fallaqa” was performed, the feet were fixed with a wooden device and a material strap by one guard so that another guard could hit the victim with a belt. He noticed that one of his fellow inmates had bloody fingers, probably because his nails had been torn out. He was also ill-treated during the interrogations. Some interrogations were conducted in the above-ground area of the branch in an officer’s office, where he was beaten and kicked in the stomach. “When you feel the fresh air, you know you are in an officer’s office.” Other interrogations took place in the basement

using the “Fallaqa” technique in a room the walls of which were covered in blood. The employee who had beaten him asked him the questions there. Before his release, he was forced to sign papers in which he undertook not to take part in demonstrations, among other things.

Upon his renewed arrest on 5 April 2012, he was put in a large, crowded room with about 350 people and later in a dark, smaller, equally crowded cell with about 50 detainees. One of the detention cells was located beneath a former garden, as he could see through a skylight. Here, too, he was beaten. He had seen a badly injured person with wounds to the abdomen and infected feet from which maggots crawled; the person was motionless and had been carried out. They said the person had died. Another person had gone crazy after having to stand for four days. The witness further stated that the “Al-Khatib” Branch was well known and notorious in Damascus.

(8) Witness ...[SS], a hospital doctor, was arrested after being denounced on 21 August 2011 and taken to the Al-Khatib Branch. During his numerous interrogations, in which he was kept on his knees, bound and blindfolded, he was defendant of speaking ill of the government, arranging to take part in demonstrations and having contact with the Israeli intelligence service Mossad. In actual fact, he had taken part in demonstrations and, together with a friend, wanted to help the people of the town of Daraa, who were besieged by security forces. In order to obtain information, both the interrogators and the guards beat the witness. During the interrogation, he had to lie down and was whipped on the soles of his feet with a cable; he was also slapped in the face. Instructions were given on how to torture him (“we won’t get anywhere with the cable, bring some wood”). He witnessed – presumably intentionally on the part of the interrogators – how friends of his were ill-treated and interrogated at the same time.

The witness had initially been held in a single cell measuring 180 by 80 centimetres (“it feels like a grave, you have no contact”). Later, he was transferred to a communal cell which mostly housed prisoners from Harasta and Douma and which was 3 to 3.5 by 3 metres in size.

The number of fellow prisoners in the cell varied; sometimes there were 30 to 50 people. In one night, so many new prisoners were brought in that they could not all sleep on their backs. He was not certain how many times he was interrogated (“you

are very scared, it's hard to remember exactly, maybe seven to 10 times"). Other prisoners were also ill-treated; he remembered a mentally ill prisoner who was treated particularly brutally. New inmates were beaten up in the square in front of the cells during "welcoming parties". When there was a short circuit in a fan, all the prisoners in the cell were collectively punished by being beaten for at least an hour. Cries of torture were heard. The food was insufficient in quantity and of poor quality, blankets were full of lice. Visits to the toilet had to be quick and at set times. Medical care was very poor. For example, a diabetic was given insulin, while another prisoner with a severe toothache was only given a glass of salt water. They were psychologically broken and lived in fear and uncertainty ("in Syria you never know how long you will be detained"). After 77 days at the Al-Khatib Branch, he was transferred to another detention centre in Kafr Sousa. He later received a document – submitted to the Panel – according to which the witness was defendant of "interfering with the State by providing false information that undermines the morale of the nation and engaging and participating in demonstrations".

(9) A witness who was questioned anonymously on 13 January 2021 and who was formerly active in the opposition in Syria (henceforth: Z 13/01/2021) was, according to his testimony, arrested on 8 December 2011 together with others at a demonstration and taken by bus to Branch 251, with a stopover at Section 40. The witness described having been beaten and electrocuted on the feet in the building of Section 40. The prisoners were also arbitrarily beaten during their journey to the Al-Khatib Branch and on arrival there; a 16-year-old boy had a screw forced into his back during the journey. Even the employee in the branch who had removed the cable ties used for restraint had hit him, the witness, with the cutters. He had been pushed into the cell, hit the floor and fainted. During the interrogations, he received blows to his back with a whip.

The conditions of detention were terrible. Some of the new arrivals were covered in blood and had to be carried into the cell. No one took care of a man suffering from epilepsy. The food consisted of a few olives and some bread with jam; some people fought over it. He lost a lot of weight during his time in prison. Screams were heard all the time. He was held at the branch for seven days. The worst thing had been the fear; he had constantly wondered when his life would end ("They could call my name at any time and then I wouldn't be coming back").

On 5 April 2012, he was arrested again and transferred to the Al-Khatib Branch after an interim stay in Section 40, where he had been abused with the “Fallaqa” method, among other things. He had first been taken to a huge cell with 200 prisoners, and later to a smaller cell sized 4 by 5 metres which housed 65 people. All the detention rooms were overcrowded; the cells seemed to be a converted canteen and a former interrogation room. Some of the prisoners could only sleep standing up. Some other prisoners lost their minds through lack of sleep and were hallucinating. There was also a child aged 14 in the cell who was regularly tortured by being beaten on the feet. Medical treatment was again inadequate. He himself had a high fever and was given an injection to treat it.

(10) The police statements of witnesses ...[QQ] and ...[RR], who were abroad and not available for personal questioning, were conveyed to the Panel by the police investigators, witnesses ...[O] and ...[TT]. In view of the interview and translation arrangements described by the witnesses, the Panel has no doubt that the witnesses made statements during their police interviews as reported and recorded by the investigators. In view of the vivid details in the statements of the two witnesses and their consistency with the evidence in all other respects, the Panel also took the following statements as accurate in substance:

According to his police statement, witness ...[QQ] was a member of an opposition political movement and co-organizer of the first demonstrations in February 2011, before he was arrested on 19 February 2011 and taken to the Al-Khatib Branch. He was in custody for a total of eight months and 20 days. For about two months of that time, he was held in a single cell in the prison located in the basement of the branch; he was not able to distinguish one day from another because of the constant darkness in his cell. His interrogations had concerned his role in the opposition, his activities on social media and the names of other members of the organization. Since he was not cooperative, he was ill-treated from his second interrogation onwards. He received blows to his back and legs, and also to his feet with a cable and a spiked iron bar. He was forced into a tyre and beaten there in a motionless position. He then had to stand in a corridor facing the wall; everyone who passed by hit him. Due to the blows on the soles of his feet, he was unable to walk. He had also been suspended by his wrists;

his arms had swollen as a result, and he was burned on the arm in the meantime. He fainted during the torture. He also witnessed the torture of fellow prisoners, such as an Iraqi who was doused with water and then tortured with electric shocks. After about one month in detention, the branch had become more chaotic because of the higher number of admissions. The screams of those being tortured were then also heard very frequently. He was eventually taken to Branch 285.

According to his police statement, witness ...[RR] spent several days in the Al-Khatib Branch in May 2011. He had been held there in a cell sized 2 by 1 to 1.5 metres. Through a slit under the door, a large rat entered his cell. During his interrogations, in which he was defendant of taking part in demonstrations, posting messages on the internet and having contact with the opposition and foreign entities, he was beaten including with the “Fallaqa” technique. He was also tortured after his interrogations; he had had to lie down and was kicked and beaten. He heard screams of men from the torture rooms and also screams of women from the opposite direction. Eventually he was taken to Kafr Sousa and released from there.

(11) According to their statements, witnesses ...[HH], ...[UU], ...[X], ...[JJ], ...[KK] and a witness who was heard anonymously on 16 December 2020 (hereafter: Z 16/12/2020) were detained in Branch 251 at different times in 2012. From their statements about the conditions of detention and ill-treatment of prisoners – which are only of secondary importance with regard to the time of the established offence – there are no significant deviations from the experiences of the witnesses who were already detained in 2011. The witnesses explained the local conditions in the branch, in particular its location in Damascus and the layout of the underground prison, in an equally consistent manner with sketches they made.

For example, witness ...[HH], who was detained in July 2012, reported being beaten across the toes with a cable during his interrogations and arbitrary punishments of other detainees. In the overcrowded, stinking and damp communal cell with more than 300 people, it was only possible to sleep sitting up. The food was nowhere near enough; he lost 15 kilograms. Screams were heard all the time.

Witness Z 16/12/2020, who was arrested in May 2012, reported being crammed into a 2 by 1-metre-sized single cell together with a woman who was eight months pregnant

over a period of 21 days. Sounds of torture could be heard; she had observed the welcoming blows to newly arrived prisoners. Women also showed signs of torture. The guards had gone into the men's communal cells at night and beaten the prisoners there. The witness lost 8 kilograms in 35 days of detention due to the small quantity of food and its poor quality - mouldy bread, for example. Toilet visits had been allowed only at the discretion of the guards. Following the arrest of a large number of women, she was taken with them to a communal cell which was in extremely bad condition – “dirty, no air, a bad smell”, infested with lice, cockroaches, rats and moths, and so overcrowded that it was impossible for everyone to sleep at the same time. She was then transferred to Branch 285 for a few days. During her interrogations, a guard (“Abu Ghadab” = “Father of Wrath”), who was considered particularly brutal among the prisoners, had struck the floor next to her with a whip as a threat. The witness attributed the fact that she had been treated in a privileged manner and had not been beaten herself to her special social position; she did not give any further details in view of the fact that she could then be identified.

According to his testimony, witness ...[UU], who was arrested on 4 February 2012, was detained arbitrarily along with many other people by military personnel during a raid on the village of Al Abbadeh on the outskirts of Damascus; even the mayor and the imam were among them. Taken to the Al-Khatib Branch, he and a large number of other people were arbitrarily beaten with fists, hoses and whips, first on arrival and then repeatedly within the branch. There were collective punishments for talking in the cell. Prisoners who were being tortured were constantly heard shouting and pleading. The light was left on all the time; it was impossible to tell whether it was day or night. Again and again, people were added to the cell, some of whom showed terrible signs of torture. A child aged between 10 and 15 years was also brought in with a gunshot wound to his leg and was nevertheless beaten. A man over the age of 70 was also beaten. During his interrogation, the witness was asked to confess and was hit on the legs by the interrogator. He sustained a fracture as a result; the resulting wound itself became infected. He had then given false testimony and had to sign a blank sheet of paper. In the cell, they slept on top of each other; the food was “just enough to stay alive”. The witness noted that the worst thing about his imprisonment had been the uncertainty about their fate. After 10 or 15 days in the branch and an interim stay in another prison, he was brought before a judge, given a stamp on his hand and allowed

to leave.

Witness ...[X] testified to having been arrested on the night of 4 to 5 February 2012, taken to the Al-Khatib Branch and held there for three days. The reason for this was her work as an activist; she collected medicines with others to help people injured in the shelling of Homs. She was questioned every day about her political commitment. She was beaten immediately after her arrest and when she was brought to the branch for questioning. Near her cell in the basement, there was a place where imprisoned men were abused; their screams could be heard throughout. One man who had been particularly brutally tortured suddenly fell silent. In most cases, at least two people were tortured at the same time. The staff had been more violent towards men than towards women. The witness had received verbal insults and sexual threats and had been deliberately touched on the breast by a guard. She was held in a small single cell measuring 1.80 by 1 metre, in which there were three detainees. There were no facilities for personal hygiene, even when the witness got her period.

According to his testimony, the witness ...[JJ] was arrested on 4 September 2012 at a checkpoint in the immediate vicinity of the Al-Khatib Branch. The witness reported about a completely overcrowded detention room with more than 200 people in it and no space for everyone to sit or lie down, with artificial light permanently on, insufficient liquid and food supply, stuffy air and inadequate opportunities to go to the toilet. According to the witness's description, there was an underground detention room that was added to the prison later. He was interrogated several times and had been bound and blindfolded while kneeling in front of the interrogating officer. During the interrogations, he was beaten on the soles of his feet with a belt or a cable for a long time and with unbearable force, sometimes with his legs fixed; one foot then became inflamed. Fellow prisoners were injured, had open wounds, some had sustained bullet wounds in demonstrations; many also had skin diseases.

According to his testimony, witness ...[KK] was arrested in Raqqa at the beginning of May 2012 and, after stopovers in Deir-Ezzor, Homs and a military police station in Qaboun, was taken to the Al-Khatib Branch, where he was detained for three to four days. After arriving in the Branch, all those admitted were forced to face the wall and were beaten. The cells were overcrowded. The prisoners had rashes and allergies, and vermin stuck to their clothes. Because of the overcrowding, the humidity was very

high; there was no ventilation. All day long, “really loud” screams could be heard resulting from torture. He was told by other prisoners about torture by electric shock and the “Shabeh” method. Most of the people in his cell had signs of torture. There were broken bones, swellings due to blows, marks on the wrists from being suspended. He was interrogated and beaten several times, among other things with a fan belt-like object across his entire body. The interrogation took place on an upper floor where the smell was not as bad. If an answer was unsatisfactory, he was slapped, kicked and beaten. He was repeatedly made to squat down and was then hit hard in that position.

cc) In summary, the Panel assesses the above statements as follows:

It emerged from the individual impressions gained by the witnesses that procedures and treatment of prisoners after admission to Branch 251 differed in some cases significantly from one another. This applies, for example, to the length of detention in the branch, which ranged from a few days to months and even years, although some of this is only known from hearsay. The type of accommodation ranged from small(er) single cells to communal cells the size of a room or hall, which were described as anything from full to so overcrowded that it was impossible to lie down and even breathing was difficult. Some cells were described as having no daylight, others having some natural light, albeit only through small openings. The choice of torture method also followed no discernible pattern, with the exception of the “Fallaqa”, which was the preferred method used during interrogations. Moreover, the type of abuse used for each detainee differed ranging from “standard” torture methods to sadistic excesses. From an organizational point of view, the branch was geared towards torture, with specially equipped “torture rooms”, torturing equipment and well-rehearsed procedures, for example between the interrogator and the staff member carrying out the ill-treatment. The frequency and purpose of the interrogations and the – for the prisoners agonizing – waiting periods in between also varied considerably.

The lack of a clear, goal-oriented process in the otherwise bureaucratized Syrian State structure, including the security apparatus, indicates that from the beginning of the protest movement, the security authorities had to “deal with” a large number of prisoners, for whom their facilities were not designed, without any specific charge, by way of sometimes improvised ill-treatment. The different forms of ill-treatment suggest

that the guards carrying out the abuse were given a free hand; in some cases, the procedure was characterised by sadistic ingenuity. Justifications for the detentions were staged by way of forced confessions. This approach is consistent with the approach of the security authorities in administering collective punishment and creating a deterrent, as described by other witnesses in the general course of the conflict.

For the prisoners sent to Branch 251 and exposed to the conditions there, who were deliberately left in the dark about the reason for their imprisonment and their further fate, the variations in treatment created an impression of arbitrariness. Despite the many differences, however, the testimonies powerfully show that the branch was characterised by inhumane accommodation and a climate of extreme violence and fear for all those detained there. Especially prisoners held in the underground prison area were exposed to arbitrary treatment by the guards in charge there. Detainees' statements were almost invariably extorted by torture; on the other hand, there was not always an obvious connection between brutal ill-treatment and obtention of information. This led to violent excesses with life-threatening consequences for the victims, also in view of the lack of medical care.

The testimonies of the witnesses as a whole allow the firm conclusion that those sent to Branch 251, at least from April 2011 onwards, were faced with systematic use of brutal physical – also sexualised – violence; with inhumane detention conditions as a result of massive overcrowding, lack of hygiene, inadequate provision of toilet facilities and insufficient supply of fluids and food; as well as massive psychological pressure due, among other things, to the constant sound of the screams of tortured fellow prisoners and the sight of prisoners who had been tortured and severely injured in the cell.

The treatment described by the witnesses is also in line with the objective of non-specific, broad use of force against the civilian population with the aim of intimidation and deterrence pursued by the Syrian power apparatus. The Panel takes it that the aforementioned conditions, in particular the use of torture, applied to all persons arbitrarily detained at demonstrations, rallies and raids. The Panel has found that exceptions where direct physical force was not used only applied in cases of targeted arrests of certain prominent figures, or in the case of prisoners who turned out to be acquainted with a staff member.

Finally, the Panel recognizes from the statements of witnesses ...[Y], Al Hammadah and Z 25/11/2020, that the underground prison of the branch was extended to include further detention rooms below an outdoor area at some point before April 2012. This appears to be a consequence of the rapid increase in the number of prisoners in the branch from the beginning of the protest movement observed by the majority of witnesses.

2. Section 40

The Panel was also able to get an idea of the activities of Section 40 by reviewing the testimonies of various witnesses.

a) In this respect, the statements of the following witnesses were significant:

aa) Witness Z 28/07/16, a former long-time employee of the General Intelligence Directorate, testified that Section 40 was part of Branch 251 and was called the “patrol branch” or the “counter-terrorism branch”. The section acquired a very bad reputation after Hafiz Makhoulf took over as its leader. Makhoulf had many arrests made and, as Bashar al-Assad’s cousin, had a free hand.

Section 40 was responsible for patrolling inside Damascus. If Branch 251 was looking for a certain person, the section was tasked to arrest the person and bring them to Branch 251. However, the section often exceeded its powers. Detainees were also interrogated by the section itself and not always transferred to Branch 251, but instead, by Hafiz Makhoulf’s decision, sent directly to Branch 285. The section had about 100 to 200 employees, and its head had an office within Branch 251. He, the witness, heard that people had been killed in the section.

bb) Witness ...[AA], a senior officer of the guards in Branch 251, testified that the staff of Section 40 were responsible for arrests on behalf of Branch 251. The unit also conducted patrols and manned checkpoints. They engaged with Branch 251 only insofar as they brought prisoners to it. During his training, the witness once noted in that employees were being sought for the section. Certain physical aptitudes were required for this. The applicant’s curriculum vitae also had to be impeccable in terms of unquestionable loyalty to the regime. They were always volunteers, i.e. non-

conscripts. The section was given special weight because of the family connections of the head, Hafiz Makhlof, who was the son of one of Bashar al-Assad's aunts.

cc) Witness ...[Y], a former long-time employee of the General Intelligence Directorate, described Section 40 as part of the interrogation section of Branch 251; in his testimony, however, he also described this relationship the other way round, to the effect that the interrogation section was part of Section 40. In any case, the real decision-maker was Hafiz Makhlof. The latter gave instructions to the interrogators in Branch 251; Makhlof was ultimately the de facto head of the entire General Intelligence Directorate. The titular head, Major General Ali Mamlouk, came down from his office to greet Makhlof. Makhlof gave instructions concerning the arrest of demonstrators and the duration of their detention. He, the witness, had been present when Makhlof gave the order to arrest all 1,000 people participating in a rally at a mosque.

As already explained (see under III. 1. c) bb), p. 71), the Panel had reservations about accepting the testimony of witness ...[Y] without restriction. Apart from the general inconsistencies in the witness's testimony, his statements about Section 40 were noteworthy to the extent that he claimed knowledge of the details of the internal power structure of Branch 251 and Section 40 even though he had not worked in the branch since 1998, but instead the – geographically remote – headquarters of the General Intelligence Directorate, where his duties had been limited to archiving documents. Even when asked, the witness was not able to provide concrete information about the specific facts on which his assessment was based and the occasions on which he claimed to have made his observations. However, the claim that the commander of a sub-unit with personnel numbering in the hundreds across two hierarchical levels was the de facto head of the most important Syrian intelligence service (according to other witnesses) would have required such corroboration. The way in which the head of Section 40 was greeted by the head of the General Intelligence Directorate is not sufficient evidence for this. The witness's assertion is also not supported by the evidence, which only proves that Hafiz Makhlof acted on his own authority in the management of the section under his command, which was accepted due to his link to the upper echelons of the regime.

dd) Expert witness ...[T] also confirmed that Section 40 was subordinate to Branch

251 and described it as being responsible for Douma. The section received its instructions from Branch 251. People were arrested by the section and – in some cases after interrogation – taken to Branch 251. The section did not have a large prison of its own, which is why most prisoners were handed over directly to Branch 251. The head of the section was Hafiz Makhlof, a cousin of the President. Although he had considerable influence, he reported to the much larger Branch 251. Interrogations in Branch 251 were carried out by its staff.

ee) With regard to Section 40, expert witness ...[S] also stated that it was a section of Branch 251, which assumed certain functions on behalf of the branch. Several of his colleagues were arrested by the [section]. The head of the [section] was Hafiz Makhlof, a cousin of Bashar al-Assad, which is why the [section] was of great importance internally. The section was responsible for Damascus region but had interfered more widely because of the position of its head.

ff) Witness Alassa reported that Section 40, headed by Hafiz Makhlof, had a particularly brutal reputation. He described it as an instrument of power with the purposes of suppressing demonstrations and torturing detainees. This was common knowledge.

gg) Expert witness ...[Z] (see above under III. 2. a), p. 97) testified that, on the basis of the findings available to him, Section 40 was part of Branch 251. The section was known as the “City Branch” and the “Jisr al Abiat” Branch. It was seen as particularly powerful and notorious. It was striking, that messages from Section 40 had been sent directly to another branch and not – as was usually the case – via the head of Branch 251. The letterhead of Branch 251 had been used.

hh) A majority of the aforementioned victims of the regime who were taken to Branch 251 and ill-treated there have testified that they were first arrested by Section 40 and briefly detained in premises of this unit:

Witness ...[DD] was arrested by staff of Section 40 on 2 May 2011 during a women’s demonstration in Damascus, taken to the section’s premises and from there to Branch 251. She reported that Section 40 was also known as “Hafiz Makhlof”. The men who

took her away had beaten her and “touched her in sensitive places”. She had spent two hours in Section 40 without being questioned there. When she was arrested for the second time on 12 April 2012 during a sit-in in front of the Syrian Parliament as part of the “Stop the Killing” campaign, she was also taken initially to Section 40. The security personnel were ready and knew that they were coming. They immediately started arresting the women involved. She had received “terrible beatings” with truncheons in Section 40; she had been beaten, spat on and insulted for an hour with the other inmates. After her temporary stay in the Section, she was transferred to Branch 251 by van. The witness described the location of Section 40 to the effect that it was located on a street called “White Bridge” (= “Jisr Al-Abyad”). There is a large iron gate, an open courtyard and residential buildings immediately surrounding it.

Before being transferred to Branch 251, witness ...[FF], according to his own statement, was also arrested by alleged staff of Section 40 on 24 October 2011 and taken to the section premises for two to three hours. During his arrest, his laptop was taken from him; in the section, he had been briefly questioned in the about his Facebook account. It was known that the section was headed by Hafiz Makhoulf, brother of the influential businessman Rami Makhoulf and cousin of Bashar al-Assad. It was also common knowledge that the section was responsible for arrests and storming buildings “on behalf of Branch 251”.

Witness Z 16/12/2020 stated that she and others were arrested in Damascus on 4 May 2012 and taken to Section 40. Plainclothes security personnel stormed their office at gunpoint, searched them, checked their IDs and blindfolded the men or pulled their T-shirts over their heads. In the section, the men arrested with her had been beaten. She was taken to witness the torture of an acquaintance, who had been beaten and tormented with electric shocks, to force her to give disclose the access to her email and Facebook accounts. She spent one night in the section and was then driven to Branch 251 and beaten on the way.

Witness Z 25/11/2020 testified to having been arrested by Section 40 staff on 4 May 2012 and taken to the section building in the Damascus area of Jisr Al-Abiat. He had been greeted there with beatings and had remained in the section for one day before being taken to Branch 251.

According to his police statements, which were conveyed to the Panel by his interviewer, witness ...[RR] was summoned to Section 40 in the Damascus district of Jisr Al-Abiat in May 2011 and questioned there about Facebook posts that were critical of the Government. After the witness pointed out that he had contact with the President's media spokesperson, he was released. He was summoned to the section again the following day, where he was tied up and taken to the Al-Khatib Branch.

b) A synopsis of the information presented confirms the impression that Section 40 was primarily involved in carrying out arrests, searches, raids and suppression of demonstrations and passing detainees on to Branch 251, where their further fate was decided. At the same time, the section had its own service building with a small detention facility in the Damascus district of Jisr Al-Abiat. There, the section carried out preliminary investigative activities such as the examination of seized objects and the questioning of detainees; it could not be determined whether this was due to official or appropriated jurisdiction.

According to the unanimous statements of all witnesses, the section occupied a special position as a result of its responsibilities and, in particular, because of the prominence and closeness to the Government of its head. The witnesses' statements permit the conclusion that the section was certainly used as a flexible instrument to combat the protest movement quickly and effectively in the greater Damascus area. The description by witness ...[AA] of the special demands on the physical fitness and loyalty to the regime of section staff can be reconciled with the role of the unit. The Panel also accepts that the head of the section, Hafiz Makhoul, took advantage of his special position based on his family connection with President Bashar al-Assad to exercise his own power, which is in line with the structure of the Syrian State system based on personal relationships and loyalties. The fact that the head was entitled to his own office in Branch 251 – as witness Z 28/05/16 stated – like other heads of sections, is also taken by the Panel as accurate. On the other hand, the witnesses' statements did not confirm – as claimed by witness ...[Y] – that he held a dominant position in Branch 251 or even in the General Intelligence Directorate as a whole; this would seem to contradict the separate accommodation of the section, its merely supportive role of arresting and delivering suspected dissidents confirmed by all other witnesses, and the operational autonomy of Branch 251, which was consistently described by former

employees of the regime and by witnesses detained in Branch 251.

Finally, according to the witnesses' statements, it was accepted that in Section 40 – just like in all other branches of the intelligence services involved in handling prisoners – the detainees were treated in a manner characterised by violence.

V. Re. the findings relating to the circumstances of the defendant

1. The findings on the family circumstances and the background of the defendant are essentially based on his own statements at his hearing at the Federal Office for Migration and Refugees on 9 May 2018 and at his subsequent interview as a witness on 16 August 2018. On both occasions, the defendant outlined his background and education – without contradictions. Witness ...[CC], a cousin of the defendant, confirmed this information insofar as he himself had knowledge of it; he testified, in particular, that the defendant had grown up in the village of Muhasan (alternative spelling: Mouhassan) and had later attended a secondary school. He was informed about the desertion of the defendant at the beginning of January 2012 by his older brother; the defendant had also been officially reported missing.

The more detailed family circumstances, in particular the number and age of the children and the marriage of the defendant, are based on excerpts from the defendant's family register which made their way into foreigner's file via the defendant and the Federal Office for Migration and Refugees.

2. For the time after the defendant's desertion in January 2012 until his entry into Germany, the Panel was only able to arrive at limited findings.

The circumstances of the defendant's residence in terms of periods and places prior to his entry into Germany cannot be ascertained with certainty. The same is true for the time and place of the defendant's reunification with his family. It remains equally unclear when the defendant departed for Turkey, whether – and if so, when – he was reunited with his family in Syria, and whether they left the country together. Here too, the main information available comes from the defendant himself. During his hearing before the Federal Office for Migration and Refugees, he described in detail how, after his desertion on 5 January 2012, he had initially gone alone to his home village, while his family had first remained in Damascus and eventually followed him. However, his

statements about movements between individual villages, alleged targeted attacks on his home village and his parents' house, and his own observations of such attacks – despite having left the village beforehand – are not particularly conclusive. It also seems implausible that the defendant's parents' house was targeted with rockets as a reaction to his desertion. The defendant provided no information on the whereabouts of his family, whom he claims to have "brought to safety". The subsequent events, in particular the departure for Turkey, were only reported by him in the singular – "he" had left. In his testimony, too, the defendant provided succinct information about himself alone, but not about the fate of his family after his desertion.

It is also striking that after his arrival in Germany, the defendant submitted excerpts from his family register dated 4 February 2016, issued by the Syrian Ministry of the Interior, "General Directorate for Civil Affairs", each accompanied by a translation into German, prepared by a Damascus translation agency on 12 April 2016. This could be an indication that the defendant's family or parts thereof had stayed in Damascus until April 2016 and were preparing to flee to Germany, or that they were at least able to obtain the documents through intermediaries and have them translated. In general, it seems questionable that the defendant, who was reported missing, managed to obtain civil status documents from the Syrian authorities at all. An indication that the defendant stayed longer with his family in Syria, however, is above all the fact that the Syrian civil status certificates he brought with him show the dates of birth of his children as 1 January 2014 and 1 January 2015, with Deir-Ezzor as their place of birth. If this is true, the defendant would most likely still have been in Syria at least in 2014.

After all, the Panel cannot accept unquestioningly the date of his departure for Turkey, which, both at his hearing before the Federal Office for Migration and Refugees and during his testimony, the defendant had narrowed down very precisely to mid-February 2012 – 12 February 2012 in the case of the latter, the period between 9 and 13 February 2012 in the case of the former. The same applies to the time of the border crossing from Turkey into Greece, which on both occasions was dated as 20 February 2016.

3. The entry into Germany and the living circumstances of the defendant here have their basis in the contents of the file kept on the defendant at the Foreigners' Registration Office ...[c] as conveyed by witness ...[VV] and – in connection with the

asylum procedure – in the information provided by witnesses ...[L] and ...[M] from the Federal Office for Migration and Refugees. This concerns, in particular, the course and status of the asylum procedure, the circumstances of entry into Germany, the transfer of the family to an initial reception centre and the final allocation of a flat in ...[c].

The findings regarding the defendant's criminal record are based on the extract from the Federal Central Criminal Register concerning him and the penalty order issued against him by the...[a] District Court of 24 July 2018. The findings with regard to the status of execution of the aforementioned order is based on information on file about payments made by the defendant; according to the final order issued by the Trier Public Prosecutor's Office in this regard, the fine has been paid in full and the proceedings have been settled. Another proceeding against the defendant on grounds of "having injured two Afghan nationals from the neighbouring property by punching them" on 7 July 2018 has been dropped. The dates and circumstances of his arrest, release from custody and re-arrest have been presented to the Panel by police officers ...[P] and Schneider who were involved in the process. According to the information provided by them, the defendant's detention – especially his re-arrest – came as a complete surprise. The defendant assumed that there had been a misunderstanding during his first arrest and complained of heart and breathing problems during the second, possibly due to psychological reasons.

VI. Re. the findings relating to the concrete involvement of the defendant

1. Career of the defendant in the Syrian intelligence service

The findings on the defendant's entry into the Syrian intelligence service, his activities there, the branches he worked for, and his rank are largely based on his own testimony made at his hearing before the Federal Office for Migration and Refugees and before the Federal Criminal Police Office. They also have their basis in several pieces of evidence, some of it circumstantial, confirming the activities of the defendant.

a) The Panel has no doubts about the truthfulness of the defendant's own statements. They seem credible in their own right; they are detailed and conclusive, correspond with each other on the two occasions on which the defendant was interviewed, even though those interviews had a different focus, and also appear to be

based on experience, given, for example, that he spoke about his successful work as a “tough” instructor willingly and with undisguised pride. The defendant obviously did not try to gloss over the function of the intelligence service and his own activity in it, especially since he related the reason for his eventual desertion and his application for asylum to that activity. In view of the wealth of detail in his statements on training, office and operational activities, in particular on the actual crime, the Panel also excludes the possibility that the defendant could have exaggerated his career and the nature of his work. A possible motive for false incrimination could lie in the attempt to create a reason for asylum. However, the circumstances of his desertion and subsequent persecution would have been sufficient for this; moreover, the defendant added detail to his statements in his testimony before the Federal Criminal Police Office, which was not associated with any advantage for him under asylum law or otherwise.

Finally, the defendant also expressly confirmed that he was working for the Syrian security forces in his written statements submitted to the Panel, in which he stated in general terms that he had no alternative but to continue this – unspecified – activity at the time.

b) The activity of the defendant and the time of his desertion are confirmed by the statements of witness ...[CC], a cousin – son of the defendant’s father’s sister.

aa) The witness first reported on his own political attitude regarding the situation in Syria at the time. According to his statements, he had already been politically active during the Damascus Spring, participated in opposition meetings and discussions, and subsequently appeared as an author of political articles. In March 2011, he took part in demonstrations and witnessed operations by the security forces. On 8 April 2011, during a demonstration in Damascus in the Kafr Sousa neighbourhood, he was arrested and interrogated for one day by the intelligence service – the so-called Palestine Branch. After a personal conversation with a head of branch there, he had been released without ill-treatment. He was referred to as an educated person and treated better than other prisoners, who were called terrorists and beaten. He had to disclose his Facebook login and email passwords and was warned to refrain from further engagement in dissident activities; at the same time, he was offered the opportunity to cooperate in spying on the activities of the opposition.

The witness testified that after attending secondary school, the defendant had volunteered to join the security forces or the Ministry of the Interior. His rank was ultimately that of a staff sergeant or warrant officer. The defendant worked for the “State Security”; he, the witness, did not know exactly what this meant. In any case, his role had been to monitor other people and various political groups. The organization served preserve power.

The defendant first underwent six months of basic training. He, the witness, opened a dental practice in Al Dachadile, south of Damascus, after graduating from university in 2001. During that time, he met the defendant, who also lived in the area and whose family members frequently came in for treatment. At that time, the defendant was a sports instructor for State Security in the Najha region. Later, the defendant told him that he had moved to the “Religious Affairs Branch”, where he was in charge of monitoring Friday sermons and preachers. To the witness, the defendant clearly positioned himself politically as being “in favour of the revolution”. When the defendant came to his office in early February or early March 2011, they talked about the situation in the security forces. The defendant reported that they were on high alert and knew that the revolution was coming. He, the witness, had heard that the defendant had warned a person named “Atassi”, who was to be arrested; this was reported to him by the defendant’s brother – and again shortly before his questioning in the main hearing. The witness did not have the impression that the defendant wanted to harm anyone; otherwise, he would have broken with him. Many members of the security services came to him for treatment. You can tell who people are, he said.

The defendant did not relate much about his other activities. However, it was clear that the security personnel “always went out on Fridays” and monitored places where demonstrations were expected. From 2011 onwards, the defendant’s work had no longer been routine, according to his description. The regime had mobilised all its forces to fight the revolution. The defendant had once recounted an event in which there was a bus with detainees. A colleague of the defendant had taken a stick to join the “welcoming party”. The defendant had been “angry” about this because that was not “his thing”. The defendant mentioned the name of Hafiz Makhoulf and his harshness and brutality several times. Makhoulf also used firearm and once had got out of his jeep, put his foot on a step of the car and started shooting at demonstrators.

That was what the defendant told him.

He, the witness, did not know exactly whether the defendant had worked in Section 40. It could be that the defendant or one of his brothers had told him so. In any case, the defendant himself spoke a lot about Hafiz Makhlouf, recounting for example, that he expected loyalty from his employees. Makhlouf was publicly known as the head of Section 40. When asked about the section's reputation, the witness replied that such sections were "a kind of butchery for slaughtering humans", that people were beaten and tortured there, and that a section headed by Hafiz Makhlouf must have been "hell". The defendant had also told him, the witness, that there had been a lot of mistrust in the branch. The staff, especially those of Sunni background, had their service weapons taken away and only given back when there were demonstrations.

The defendant had already talked about a possible "split" (meaning: desertion) in August or September 2011. But he wanted to take care of his family first. On 5 January 2012, the witness had learned of the defendant's desertion from the defendant's eldest brother. A "communiqué" was also issued announcing that the defendant was missing; this was a common practice of the authorities.

bb) The Panel believes the witness. No evidence has emerged that he might have lied about his own political activity and imprisonment. His account of the knowledge he had gained of the defendant's career and activities through the defendant also appears credible.

The witness was clearly trying to remember his encounters with the defendant and what he had said, some of which took place a long time ago, has openly revealed gaps and uncertainties in his knowledge and was, on the other hand, able to recount situations in detail. At the same time, he took a distant stance vis-à-vis the security forces, whom he sweepingly characterised as "butchers", also in light of his own experiences. The Panel certainly had reason to question the sometimes seemingly uncritical attitude of the witness towards the defendant in view of the witness's own oppositional activities, his own experiences in prison and the brutal reputation of the section led by Hafiz Makhlouf that he described. The witness replied that he did not see any contradiction in this. The defendant had repeatedly signalled his clear support for the revolution; he, the witness, had accepted his assurances of a critical inner

attitude towards the regime. When confronted with the charges, the witness stated that he simply did not know such details, especially since he had not met with the defendant on a regular basis. When asked whether his own light treatment after his arrest on 8 April 2011 could be attributed to an intercession by the defendant on his behalf, the witness vehemently denied this and stated that his arrest had been reported on social media.

Even though certain exculpatory tendencies could be identified in the testimony, in particular when the witness was unable to provide any tangible evidence of the defendant's critical attitude towards the regime, in the Panel's view this does not cast doubt on the testimony. On the one hand, it is obvious that the defendant, knowing of his cousin's dissident attitude and oppositional activity, whitewashed his own activity and portrayed himself as being inwardly inclined towards the "revolution". The Panel therefore accepts that the defendant did indeed express himself to the witness as described by the latter; this also applies to the conversation with the defendant about desertion in mid-2011, which the witness reported. On the other hand, the benevolent attitude of the witness ...[CC] towards the defendant fits in with the statements of a number of witnesses who – although victims of the most severe assaults themselves in some cases – called for a differentiated view of former regime employees, especially those who deserted. Finally, it is understandable that the witness found himself in a conflict of loyalties between his oppositional activity and his family ties to the defendant and wanted to believe what the defendant said. The Panel therefore does not believe that the witness specifically wanted to exonerate the defendant due to the close family relationship, but that he simply reproduced the statements of the defendant truthfully – and was unable to verify them in any more detail.

cc) Overall, the witness's account confirms the defendant's career in the Syrian intelligence service as described by the defendant himself, in part down to the details of his various deployments. The Panel cannot discount the possibility that the defendant had an internally critical view of the events from 2011 onwards in view of the statements made by the defendant to the witness ...[CC], although this did not become apparent in the defendant's verifiable actions. However, the alleged "warning" of an individual of an imminent arrest, recounted by the witness ...[CC], is too vague for the Panel to take it as a verifiable ascertainable fact. The witness was only able to recount snippets of information that he had heard from third parties, in particular from

one of the defendant's brothers.

c) The testimony of witness ...[BB] also confirms that the defendant was involved in active operational work for the Syrian intelligence service until the end of 2011 and that he worked as a trainer previously.

aa) The witness ...[BB] testified that he was an employee of the Syrian General Intelligence Directorate in Information Branch 255 from November 2010 to the beginning of 2012; he had also worked in Training Branch 295 of the General Intelligence Directorate in the Najha detachment south of Damascus. As already described (see above under III. 3. b) cc), p. 106), the witness was involved in the administrative processing of body transports to mass graves on the southern outskirts of Damascus. On the occasion of one transport, the witness had recognized the defendant as a member of the guarding escort team.

When questioned by the Panel, the witness referred to Branch 295 of the Syrian General Intelligence Directorate as a training department and in this respect confirmed the defendant's statements about the beginning of his intelligence activities. He was able to indicate the location of the branch in Najha, south of Damascus, on a map, including training sites and living quarters for trainees. The witness also stated that he was from the same region as the defendant – Muhasan. Unlike in his police interview, the witness denied knowing the defendant from earlier times in Branch 295. However, he had met the defendant at a crossroads when he was escorting a refrigerated truck with a total of 10 intelligence service staff on a pickup truck; there had been about 50 to 60 corpses in the refrigerated truck. The defendant and the other individuals had been armed with guns. The witness was not able to say whether it had been a machine gun, as the witness had stated during his police interview, "also because of the pressure on him". When asked how he knew the defendant, the witness replied that he had been told the name of the defendant by a colleague. He also knew from colleagues that the defendant worked for State Security. At the trial, the witness recognized the defendant.

In his police interviews of 24 July and 14 August 2019, mediated by witnesses ...[P] and ...[MM], witness ...[BB] had made more comprehensive statements which partly contradicted his testimony in the main hearing. The Panel can exclude communication difficulties in view of the reverse translation of the interviews, the signatures on each

page of the minutes and the handwritten corrections on the part of the witness; moreover, the witness himself stated at the trial that he had been able to communicate well. In the matter itself, witness ...[BB] stated in his police interview that he was acquainted with the defendant. He had met him for the first time as a member of the State Security staff deployed in Douma in Branch 295; the defendant had been there for training. As an employee of the detachment in Douma, the defendant had been responsible for the suppression of demonstrations there – according to the witness's recollection in a leading position.

In his police interview, the witness had also given more details about his subsequent encounter with the defendant and the latter's role in transporting corpses. The name of the defendant had, for example, appeared on the written notification of a transport of corpses. He, the witness, had received a file from his unit with a list of the dead transported to the mass graves; the witness had also been informed by telephone of the vehicles and their registration numbers. They met at 5:00 a.m. at an intersection near Branch 295; a refrigerated truck and two pickups with fixed machine guns drove up. He recognized the defendant because of their previous acquaintance. He, the witness, had merely greeted him. He waved the transport on after both sides exchanged a password. The meeting lasted about 15 minutes; the convoy then drove towards a mass grave guarded by "Iranians". According to his recollection, the encounter took place in 2012.

bb) The Panel accepts the statements made by the witness during the main hearing (see above under III. 3. b) cc)) and, in addition, in his police interview.

During the main hearing, it was evident that the witness did not want to confirm various statements from his police interview out of fear, although they corresponded to the truth. He refused to provide further details about his acquaintance with the defendant on the stereotypical grounds that he could no longer remember; it was not possible to obtain further explanations about the gaps in his memory from the witness, including when he was asked about his police interview. At the same time, the witness acknowledged during the main hearing that his family, who were still in Syria, had been threatened by distant relatives of the defendant's family. According to the statements of the police interrogator, witness ...[P], witness ...[BB] had already contacted the Federal Criminal Police Office after his police interview because his family was being

threatened and he did not want to give any more information.

The witness's statements at the trial regarding his acquaintance with the defendant were implausible, lacking in detail and obviously fabricated. Thus, the claim that he saw the defendant only once and fleetingly among a multitude of escorts when a convoy passed through does not seem compatible with a concrete recollection of the defendant after 10 years. The witness not only recognized him in person in the main hearing; already in his police interview, he had spontaneously identified the defendant on an electoral photograph and explained clearly that he knew him from working with him previously in Branch 295. According to the police interviewers, witnesses ...[P] and ...[MM], witness ...[BB] had shown himself willing to provide information in his police interviews of 24 July and 14 August 2019 and had not only provided detailed information about the premises used by Branch 295, the two mass graves, his own activities, the contents of the lists of deceased persons received by him and the delivery of corpses. He had also explained, in response to various questions, how he knew the defendant and what his area of responsibility had been. The witness had revealed uncertainties only in the classification of the branch numbers and the assignment of the individual branches to the different Syrian intelligence services. As has already been shown, the witness was informed of his rights correctly and had his police statements translated back to him; they were signed by him and corrected by hand at certain points. When questioned about this during the main hearing, the witness did not claim any difficulties in understanding.

All of this indicates that the witness deliberately refrained from giving detailed information about the defendant at the main hearing, information which he had accurately communicated during the preliminary proceedings. Where the witness stated during the main hearing that he could no longer remember details of what he had seen at the time, the Panel therefore referred back to his testimony from the police interviews.

cc) In conclusion, the testimony of the witness first confirms the activity of the defendant in a branch of the General Intelligence Directorate with jurisdiction over Douma, which was responsible for the suppression of demonstrations there. Since witness ...[BB] himself left the intelligence service at the beginning of 2012 and had met the defendant in 2012, the testimony proves that the defendant was still working

as an employee of the Syrian intelligence service around the turn of 2011/2012, evidently Section 40.

d) The Panel also concludes from several documents that the defendant worked for Branch 251 of the Syrian General Intelligence Directorate. An older service ID card issued by the General Command for Military and Armed Forces from 1997, which the defendant brought to Germany, and which is in his foreigner's file, designates him as a "sergeant" and the nature of his service as "volunteer".

Another service document of the defendant, issued to him as an employee of the Syrian General Intelligence Directorate, stems from an analysis of the defendant's mobile phone, on which images of the document were stored, as was conveyed to the Panel by witness ...[P], who was involved in the analysis. The identity card bears the inscription "Syrian Arab Republic" on the front with a signature marked "General Intelligence Directorate" in both Latin and Arabic letters, below which is a photograph of the defendant with the words "Head of the General Intelligence Directorate" in Arabic script underneath. The front also bears the word "Security" in capital letters, an identity card number and a stylized eagle with a Syrian flag. On the back of the identity card appears the name of the defendant, an abbreviation of rank for "non-commissioned officer", the designation "Branch 251", an uncompleted section for type of weapon and weapon number, the identity card number and a date of issue reading March 2010. There is also a request to authorities to provide assistance to the holder of the card.

2. Concrete actions contributing to the offence, post-offence conduct

The concrete act of participation of the defendant that has been established is also primarily based on his statements during his hearing before the Federal Office for Migration and Refugees on 9 May 2018 and his testimony on 16 August 2018, insofar as they are not subject to any inadmissibility. The defendant's statements on both occasions were conveyed in the main hearing by witnesses ...[L], ...[M], ...[P] and ...[O], who also testified to the situation in the respective hearing and interview.

a) The events described by the defendant during his testimony and his own involvement in the suppression of the demonstration in Douma in September or October 2011 are coherent and sufficiently detailed; there are no contradictions or other discrepancies that would support the assumption that the defendant is

incriminating himself unjustly. This also applies with regard to the fact that the defendant had already described the incident at the demonstration during which Hafiz Makhoulouf opened fire, albeit without indicating any specific involvement of his own, in the context of his hearing before the Federal Office for Migration and Refugees. There is no evidence that the defendant would have falsified the additional details on the incident he provided to the Federal Criminal Police Office in the hope that he might benefit from it.

The suppression of the demonstration in Douma in September or October 2011, as described by the defendant, fits easily into the overall picture of the course and escalation of events in Syria in 2011, namely that from April 2011 at the latest the Syrian regime's violent response to demonstrations involved the use of blunt instruments and firearms, arbitrary arrests of demonstrators and their transfer to the detention facilities of the security authorities, and aimed at quashing the protest movement by force. The delivery of detainees to Branch 251 by bus and their reception in an orgy of violence cynically described as a "welcoming party" is confirmed by witnesses Z 28/07/16 and ...[AA] and by several victim witnesses; this, too, shows that the statements of the defendant are based on experience.

It is also certain – as already shown (see above under III. 2.) – that Section 40 functioned as a "clearance and attack squad" of Branch 251 on the ground, possibly also of other branches of the Syrian General Intelligence Directorate, and that it was called upon to suppress demonstrations, carry out arrests and deliver those arrested to the branch, so that the incident is also consistent with the remit and de facto activity of this intelligence unit. The branch's territorial responsibility for Douma, in particular, has been confirmed by witness ...[AA]. The fact that delivery of detainees was made directly, i.e. without intermediate transfer to the section, is also not unusual, according to the witnesses heard about the activities of the section.

Lastly, the incident is confirmed by the testimony of witness ...[CC] (see above under V. 1. b), p. 144). The defendant mentioned to him – as the witness described – an incident in Syria in which there had been at least one bus with detainees and a "welcoming party", which was attended by a colleague of the defendant. In this context, the defendant also mentioned the involvement of Hafiz Makhoulouf, namely that he had got out of his jeep and shot at demonstrators. In view of this original detail, the Panel

has no doubt that the defendant's report to the witness refers to the incident subject to the present proceedings of the suppression of the demonstration in Douma.

b) With regard to the number of demonstrators arrested with the assistance of the defendant and taken to Branch 251, the Panel puts the figure, in favour of the defendant, at – only – 30 people.

The defendant did not indicate a specific number either in his hearing before the Federal Office for Migration and Refugees or in his testimony, insofar as this could be used. However, he stated that the detainees were taken to the branch on "buses". The Panel has assumed a minimum of two vehicles in this connection.

Witness ...[AA], a guard at Branch 251, reported the regular arrival of buses with detainees in Branch 251, especially from Douma. According to the witness, there was space for 15 to 20 people on smaller buses; however, sometimes they were overcrowded in his experience. Based on this, the Panel sets the number of prisoners transported in each bus at 15, giving the defendant the benefit of doubt, so that the total number adds up to 30 people.

c) The Panel bases its decision on the assumption that, in accordance with the habitual treatment of persons arrested and taken to Branch 251, all demonstrators taken to the branch with the assistance of the defendant were also subjected to the most severe physical and psychological abuse and the conditions of detention generally prevailing in Branch 251 during the period of the offence, assuming that they were detained in the branch for at least several days. There is no evidence that any of the detainees enjoyed any preferential treatment; moreover, given that the detainees were arbitrarily arrested protestors and not known dissidents arrested specifically, this is also unlikely. Only specifically arrested, well-known dissidents were likely to enjoy a certain degree of privileged treatment, while those detained during arbitrary mass arrests could expect violent treatment aimed at deterrence in line the overall objectives of the security authorities. On the other hand, it cannot be established that any of the 30 demonstrators in question died in Branch 251 as a result of ill-treatment or conditions of detention, or that they were subjected to sexual assault.

d) With regard to the subjective side of the offence, the Panel assumes that the

defendant knew about the remit of Section 40 and about the escalation of events on the streets as the attacks of the security forces intensified. He also had knowledge of the purpose of the specific operation against the demonstration in Douma and knew that arrested demonstrators were to be taken to Branch 251. He was aware of the ill-treatment and detention conditions awaiting detainees in the branch, and of the fact that their arbitrary detention did not meet even the basic requirements of the rule of law. The Panel concludes this from the following:

In September 2011, the defendant had already been in Section 40 for three months; the section's area of responsibility and its actual operations were therefore already known to him, also because of his many years of experience of intelligence work. Since the section's only task was that of a "grab squad" which controlled the streets, carried out searches, made arrests, dispersed gatherings and transferred those arrested to detention facilities – including the section's own facility – it is absolutely inconceivable that its function could have remained unknown to the defendant, even though the Panel was not able to establish any other specific acts on his part. This is particularly true because most of the witnesses close to or critical of the regime were able to provide information about the branch based on their general knowledge of the conditions in the Syrian security apparatus. The fact that the defendant had already been informed about the section before his transfer is evident from his chronological description of his intelligence activities before the Federal Office for Migration and Refugees, in which he referred to the section in general terms as "dangerous". The witnesses heard by the Panel who worked in the intelligence service, including those of lower ranks, namely witnesses ...[AA], ...[BB], ...[Y] and Z 28/07/19, were also able to describe the structure of the intelligence services and the remit and conditions at least of their own branch.

The general conditions in Syria in the course of 2011 up to the operation in question were also well known to the defendant. The incidents from February 2011 onwards in the wake of the Arab Spring, the growing demonstrations and their violent repression by the security forces were common knowledge in Syria. According to the statements of expert witnesses ...[S] and ...[T], it was widely known among the population that even under the rule of Hafiz al-Assad the Syrian Government had made use of the intelligence service apparatus and other security forces to intimidate opposition groups, using detentions and violence to prevent their work. Apart from a brief interlude

of opening, this had not changed under the rule of Bashar al-Assad. The events in Douma and subsequently throughout the country from February 2011 onwards were dramatic and, even though the Syrian regime tried hard to keep them out of the press, were broadcast through a variety of social media and foreign Internet outlets. There is no reason to assume that the defendant was unaware of these findings, which were common knowledge in Syria. Above all, the defendant had intimate insider knowledge of the efforts deployed in this regard due to his work in the Syrian intelligence apparatus, which had the specifically mandate to suppress the burgeoning civilian movement. His preparation and duties – which ranged from military-style training and his own activity as a trainer geared towards violent action against opponents of the regime, through spying on mosques and surveillance of a certain district of Damascus, to his transfer to Section 40 which was in charge of direct violent action on the streets – aimed at identifying and suppressing opposition efforts. His knowledge of the overall situation in Syria is also evident from the testimony of witness ...[CC], who reported conversations as early as February or March 2011 in which the defendant had expressed sympathy with the opposition movement.

Against this background alone, it is clear that, from the outset, the defendant was aware of the purpose of operations such as that against the demonstration in Douma. The defendant also explicitly stated in his testimony that there had been orders to kill demonstrators since “the beginning of the unrest” and, when asked, had explicitly referred to the demonstration in Douma. It can be concluded from his statement whereby he had received corresponding orders with regard to the demonstration, which had included a description of the way in which the demonstrators were expected to behave – “they just sit there and won’t move” – that the defendant had been informed about the operation and its purpose in advance of the demonstration. In view of the extent and the necessary coordination – according to the defendant Section 40 alone deployed 250 staff – it can also be assumed that he was given instructions about the exact mission and the actions expected of him beforehand. This is particularly likely because the defendant held a rank above the enlisted men as higher non-commissioned officer. Accordingly, the defendant also know that those arrested at the demonstration would be taken to Branch 251.

Finally, the defendant also knew that the detainees would be subjected to the

established ill-treatment, torture and inhumane detention conditions after their removal to Branch 251. It emerges from the overall review of the testimonies of the Syrian witnesses heard that the conditions, activities and procedures in the detention centres of the Syrian intelligence service were public knowledge in Syria. Witnesses ...[BB], ...[AA] and Z 28/07/16 as employees of the intelligence services were able to provide greater detail. It is impossible that the defendant would have been unaware of these circumstances since, as a warrant officer, he was not of low rank. This holds particularly true because several witnesses, including witness ...[DD] and witness ...[FF], reported ill-treatment even in the stopover facilities operated by Section 40 in Damascus. The Panel therefore takes it that the defendant was well informed about the conditions in the section both from direct experience and from reports of colleagues. He was already working in Branch 251 from February 2010, had therefore been in and out of its buildings and had heard the screams of the tortured, which, according to his own testimony in his police interview, could be heard even in the cafeteria of the branch. According to his own testimony, the defendant visited the branch prison – although it cannot be ruled out that this was after the incident in question – and was also able to report on torture techniques. By his own admission, the defendant not only knew that torture had already been carried out in Branch 251 before the riots, i.e. before March 2011, he was even able to explain in his police interview what had changed after the riots: “The punishments increased and the guards could do whatever they wanted.”

The motives for the defendant’s eventual desertion could not be ascertained with certainty. The Panel gives the defendant the benefit of the doubt in accepting that – as he had already asserted in his hearing before the Federal Office for Migration and Refugees – he turned his back on the regime out of discomfort at the fact that he was increasingly being required to use violence against demonstrators. Obviously, the fact that the clashes with demonstrators and other opponents of the regime had become more extensive and brutal and that a foreseeable militarization of the conflict would have meant that the continuation of his work for the intelligence service would have been associated with considerable dangers for the defendant may also have played a role. As established, the defendant was also aware through his involvement in transporting corpses that the suppression of the protest movement was resulting in high numbers of victims.

e) By contrast, the Panel is unable to establish that the defendant was in a situation at the time of the incident in question that would not have allowed him to refrain from committing the offence because of a present danger to his own life or physical safety or because of similar dangers to close relatives, or that he committed the offence solely for that reason or specifically for that reason.

aa) The Panel cannot find any evidence of a willingness on the part of the defendant to commit the offence in order to avoid serious disadvantages for himself or close third parties. On the contrary, it accepts on the basis of various pieces of circumstantial evidence that the defendant participated voluntarily and without any inner conflict in the suppression of the demonstration and the removal of the demonstrators to Branch 251.

(1) The defendant, as a long-time intelligence officer, was already aware of the security services' actions against opposition movements in the period before February 2011. From the general media, but in particular due to his affiliation with Branch 251, he also knew that the intelligence services were primarily used to suppress the dissident protests, with preference given to Section 40 as the rapid reaction force; it was involved in this from February 2011, i.e. already in the period before the incident in question. Even if the defendant did not initially work in the section and there is no concrete evidence of later participation in such operations with the exception of the established involvement in the offence, it can be ruled out that he would have had no knowledge of this, especially given his position as a high-ranking non-commissioned officer. In view of the instructions forwarded to the intelligence services on the basis of the decisions of the CCMC of April 2011 for systematic use of even lethal force, the defendant was also aware of the escalation of the security situation from May 2011 onwards. When he joined Section 40 in July 2011, he knew what to expect.

Although it cannot be established that his original transfer to Section 40 was primarily due to the defendant's own efforts, the testimony of witness ...[AA] indicates that his employment presupposed a corresponding aptitude and particular loyalty to the regime; the notion that it was carried out against the declared will of the defendant can therefore be ruled out. This is confirmed by the fact that the defendant had an aversion to office work and had himself previously arranged a return to the "operational side" of

the intelligence service, as is evident from his hearing at the Federal Office for Migration and Refugees. In particular, the defendant could have used his knowledge of the section's activities to oppose a transfer. There is as little evidence of this as there is of any concrete attempts to leave the section or even, if necessary, to desert in the months after the transfer, in which the defendant quickly gained an impression of his new job in view of the increase in intensity of the protests on the one hand and the more brutal reaction of the security forces on the other. Nor does the defendant assert this in his letter to the Panel.

(2) It cannot be assumed that it would have been possible for the defendant to leave the service only at the beginning of 2012.

After hearing the evidence, the Panel is unable to accept that – as the defendant claims in his written statement – he was subject to extensive monitoring solely due to his Sunni religion, which severely limited his opportunity to take action. According to the consistent statements of the expert Thurmann and several other witnesses, some of whom were also experts, the top leadership positions – especially those in the security authorities – were occupied by Alawites. However, there is no evidence that there was dominance of this sort among non-commissioned officers and enlisted men. Rather, it emerges from the same evidence that Syrians of the Sunni faith were employed in the Syrian authorities – including in the security sector – in significant numbers, given the clear numerical preponderance of Sunnis in the Syrian population. There is no concrete evidence that they would have been subjected to surveillance – which is barely feasible in the circumstances – solely because of the protest movement. Particular distrust of Sunnis in Section 40 in general and of the defendant in particular does not correspond with the fact that the defendant, as a Sunni, was chosen in July 2011 according to his own testimony for what was a particularly important and sensitive task from the regime's point of view of working in the section and that he was able to remain in it despite the escalation of the conflict. On the contrary, the defendant was entrusted with the armed escort of a transport of corpses, which was subject to particular secrecy, even shortly before his desertion.

No other specific reasons that prevented desertion at an earlier point are apparent. Thus, it can be assumed that the defendant, as a non-commissioned officer of higher

rank, had been living in economically secure circumstances for quite some time, which would have allowed him to leave the service, to desert if necessary and to smuggle everyone out with the economic means at his disposal. An escape to his hometown, which would have proved risky for him as a deserter intelligence agent both when passing through areas in the hands of the opposition and through areas loyal to the regime, would have been equally possible for him as early as mid-2011. According to his own testimony, his family initially lived largely unmolested in Damascus after his actual desertion at the beginning of 2012, so that the assumption that desertion before the crime would have entailed considerable danger for them also lacks any basis in fact. All in all, it is not apparent what prevented the defendant from fleeing to his village at an earlier point in time in order to initiate further efforts to leave the country from there, as necessary.

(3) The Panel concludes from all this that the desire to cut himself loose from the regime was not yet present in the defendant at the time of the offence. His continued work in the section – which also secured his livelihood and that of his family – rather indicates that the defendant had at least acquiesced to his new area of responsibility and in any case was performing his duties voluntarily until the end of 2011. In his written statement, the defendant also describes his final decision to desert only in January 2012. The Panel therefore accepts this.

bb) Furthermore, it is not evident that the defendant would have had absolutely no reasonable options for avoiding participation in the specific offence from an objective point of view. The Panel does not fail to recognize that an open refusal to obey orders would have resulted in serious difficulties for the defendant, which could have gone as far as his own arrest and detention in an intelligence service prison. However, at any stage of the operation – when it was announced before being transported to the place of deployment, during the operation and while still on site – the defendant would have had the opportunity to refrain from further participation by simulating acute illness or injury. In view of the confusing situation he himself described, the deployment of a large number of units and divisions and the pursuit of demonstrators through Douma, the defendant could also have immediately used the situation to break away. The risk associated with such a course of action, exposing himself to the suspicion of disloyalty, and the organisational and economic challenges associated with an abrupt desertion

would also have been reasonable for him to accept in view of the seriousness of the offence – arresting innocent people and taking them for torture in prison.

The claim of the defendant in his written statement that he had to wait until – unspecified – areas were in opposition hands in order to be able to flee through them is not sustainable. The route to the Turkish border through opposition territory was no less dangerous for a former intelligence service agent than the route through territory held by the regime, which he would have had to cross anyway. The witnesses “Sami” and “Caesar” – as presented to the Panel by witnesses ...[LL] and ...[O] – stated that the latter had to travel through rebel-controlled territory on the way to his office, in which he had frequently undergone checks and in which his work for the Syrian regime proved to be extremely dangerous.

C. Legal assessment

The defendant is criminally responsible for the charged crime of aiding and abetting a crime against humanity in the form of torture and severe deprivation of liberty.

I. Re. the requirements of section 7 VStGB

1. Widespread and systematic attack against any civilian population

The Panel considers the events in Syria from the end of April 2011 to constitute a both widespread and systematic attack against the civilian population within the meaning of the preliminary requirement laid out in the chapeau of section 7(1), VStGB.

a) Following the legal definition in article. 7(2) (a) of the Rome Statute of the International Criminal Court (hereafter: ICC Statute) – an attack against a civilian population is to be understood as a course of conduct involving the multiple commission of acts referred to in section 7(1) nos. 1 to 10 VStGB. A collective group – not necessarily a State – must be behind the attack. A civilian population is a larger group of people that are attacked based on shared distinguishing characteristics – such as inhabiting a geographical area or a common political will. For a State, its own civilian population can also be a possible object of crime. Typically, the measures are not directed at the victims individually, but as members of a group. The attack need not necessarily be directed against the entire population residing in an area. Rather, it is

sufficient that action is taken against a significant number of individuals (see BGHSt 64, 10, marginal 164; BGH, ruling of 3 February 2021 - AK 50/20, marginal 32; Werle, in: Münchener Kommentar, StGB, 3rd ed., Section 7 VStGB, marginal 15, 21 with further refs.).

A widespread attack is understood to be an action carried out on a large scale with a high number of victims. The attack is considered systematic if the use of force is organized and carried out in a consistently planned manner (BGHSt 55, 137, marginal no. 27; BGH, ruling of 3 February 2021 - AK 50/20, marginal no. 32 with further references).

b) Applying this definition to the case at hand, the actions of the Syrian regime since April 2011 fulfil the conditions of the preliminary requirements of section 7(1) VStGB. According to the findings made, as early as March 2011 security forces used violence against peaceful demonstrators and other – including suspected – members of the opposition. This initially affected only a few demonstrations that arose in the wake of the sporadic spill-over from the Arab Spring in response to the measures of the Syrian regime. As the peaceful civil movement grew, the violent reactions by the Syrian authorities, in particular the army and the intelligence services, grew and started to include widespread and organized arrests, prolonged detentions, torture and even killings of actual or alleged opponents of the regime.

The Government of Syria and its subordinate authorities used massive violence against participants of the protest movement, suspected or actual opposition members and civil society activists, as well as completely uninvolved civilians. This was politically motivated and served to suppress the protests by directly crushing them and intimidating the population, and thus at the same time preserving the power of the existing Government under the leadership of Bashar al-Assad. Accordingly, the Panel considers the Syrian State leadership as well as the leaders and the officials of the security organs, particularly the intelligence services, as the acting collective implementing the attack. The target of the attack was a broad majority of civilians who had actually or only presumably joined the protest movement or were critical of the Syrian Government; as early as March 2011, they were increasingly subjected to systematic and regular arbitrary violence by the State, which can be seen as fulfilling at least the requirements of section 7(1) nos. 1, 5, 6 and 9 VStGB.

From the end of April 2011, the attack was to be considered as widespread and systematic. The systematic nature of the attack is evident from the fact that from this point onwards the violent actions of the security forces had been centrally coordinated by the highest political and military leaders around the State President in through a governing body set up for this purpose. The Panel further recognizes that the violent acts brought about a high number of civilian casualties, running into the thousands every month. Killings by the security forces at demonstrations, at checkpoints and other places, ill-treatment at detention facilities, the prolonged and increasing use of violence and the nationwide action, especially in the larger cities such as the greater Damascus area, Douma, Daraa and Homs, demonstrate a multitude of violent acts that constitute a widespread attack.

2. Main offence: Torture and severe deprivation of liberty

All of the demonstrators arrested with the assistance of the defendant and brought to Branch 251 were subjected to torture within the meaning of section 7(1) no. 5 VStGB and severely deprived of their liberty within the meaning of Section 7(1) no. 9 VStGB as part of the overall crime against the civilian population.

a) The offence as per section 7(1) no. 5 VStGB is committed by anyone who, as part of the overall offence, tortures a person who is in his or her custody or otherwise under his or her control by causing that person substantial physical or mental harm or suffering where such harm or suffering does not arise only from sanctions that are compatible with international law. The “seriousness” of the harm or suffering requires a sufficiently great degree of the impairment caused by the offence and must be assessed taking into account all the circumstances of the case, in particular the nature of the act and its context. However, permanent damage to health or pain of extreme severity are not a required, nor is a degree of severity akin to that set out in section 226 StGB (BGHSt 64, 89, marginal 63; BGH, rulings of 5 September 2019 AK 47/19, marginal 38, of 25 September 2018 StB 40/18, marginal 22, and of 17 November 2016 AK 54/16, marginal 27). Massive psychological impairments can also lead to the assessment as torture (see BGH, ruling of 6 June 2019 - StB 14/19, marginal 64; see also art. 1(1) United Nations Convention against Torture; ECtHR NJW 2010, 3145, 3146).

In the present case, the Panel was not able to determine in which way the participants in the demonstration – who are not known individually – were specifically treated in Branch 251. However, it was established that all participants were severely beaten upon their arrival and were subsequently subjected to further physical abuse within the branch, at least in the form of beatings. Taking into account the inhumane conditions of detention, the continuous perception of loud cries of pain from fellow prisoners and the frightening and gruelling uncertainty about their own impending treatment, the Panel considers the suffering of each victim to clearly exceed the threshold of seriousness.

b) At the same time, the detention of the arrested participants in the demonstration, aided by the defendant constitutes a severe deprivation of physical liberty in contravention of a general rule of international law within the meaning of section 7(1) no. 9 VStGB. The crime is to be assumed, in accordance with article 7(1) () of the ICC Statute, if the victim is prevented from leaving his or her current location without a basis that can be recognised under international law. “Severe” requires an overall consideration of the circumstances of the case, which includes in particular the duration and circumstances of the deprivation of liberty (see BT-Drucks. 14/8524, p. 22; Werle loc.cit. Section 7 VStGB marginal 103 ff.).

The Panel considers the deprivation of liberty, which undoubtedly existed for every person arrested in Branch 251, to be severe. In each case, it was carried out without legal grounds; there was no order related to the individual case that even came close to meeting the requirements of the rule of law. The detained persons were not given any reasons for their detention; they were not given information on legal remedies or legal assistance. Relatives were not informed, and the persons concerned were not informed of the duration of the detention, which was thus unforeseeable for them. The detention was characterised by excessive violence and generally inhumane conditions. The detention was also not of a very short duration. Even if some of the 30 persons arrested were only detained for a comparatively short period of a few days in Branch 251, the deprivation of liberty weighted heavily in view of the serious other circumstances, which made even a short stay in the branch unbearable.

c) The fact that the individual offences committed against the detainees are part of

and linked to the overall offence of a widespread and systematic attack against the civilian population, which was already ongoing at the time of the offence, requires no further explanation. For as a matter of law, the main perpetrators who ordered and carried out the individual acts of torture and deprivation of liberty in Branch 251 are only held liable for one offence. This flows from the fact that in the case of individual offences which, as in the present case, are connected in material, temporal and spatial terms, their functional link with the same overall offence within the meaning of section 7(1) VStGB does, in principle, mean that they are to be assessed as a whole (BGHSt 64, 89, marginal 53; Werle loc. cit. Section 7 VStGB marginal 141).

II. Aiding and abetting the offence on the part of the defendant

The defendant aided and abetted the main offence in the form of the individual offence against the 30 individual detainees within the meaning of section 27 StGB. He aided the offence by contributing to the arrest of the victims of the offence and their removal to Branch 251 through consistent action. This facilitated the commission of the offences against the detainees within the meaning of section 7(1) nos. 5 and 9 VStGB in the first place. On the other hand, in the absence of a concrete act of support, it cannot be assumed that the defendant aided and abetted the further acts committed – even if only psychologically – in the context of the attack against the civilian population, even though they were committed in the intelligence service branches to which he belonged (see BGHSt 64, 89).

III. Justification and culpability

The defendant also acted unlawfully and culpably. Insofar as the defendant invokes necessity as defence within the meaning of section 35 StGB, the requirements of the provision are not met. At the outset – and as established –, the Panel does not find any subjective necessity in the sense of a situation of duress which the defendant would have wanted to escape. Moreover, from an objective point of view, it would not have been unreasonable to act in accordance with the law; it is not evident that it would have been impossible, or possible only at unacceptable risk, for the defendant to refrain from committing the offence. In view of the seriousness of the offence, the Panel considers that there were heightened expectations for the defendant to give careful consideration to the possibility of refraining from the offence, and to make every effort

to this effect, including by accepting risks and personal restrictions. All the more because the defendant, as a long-standing member of the intelligence service, was aware of the role of Section 40 and there is no evidence that he had taken any precautions to avoid participating in crimes under international law.

Yet there is no evidence of any consideration of or attempt to evade the offence. On the contrary, as established, alternative courses of action would still have been available at the time the offence was committed and there is no plausible reason why the defendant felt compelled to postpone his escape – without his family – until January 2012.

IV. Obstacles to criminal prosecution

There are no obstacles to criminal prosecution. In particular, the defendant cannot invoke immunity as an official of a foreign State in the broadest sense (see BGH NJW 2021, 1326).

D. Sentencing

I. Overview

Within the context of sentencing, the Panel first had to determine the penalty range. Departing from the standard range of penalties for offences committed under section 7(1) VStGB, the Panel had to assess whether to find, considering all relevant sentencing criteria without taking into account mitigating grounds established by law - here: aiding and abetting on the part of the defendant pursuant to section 27(2), sentence 2, section 49 (1) StGB, and possible cooperation with the investigation pursuant to sections 46b, 49(1) StGB –, or whether to assume, taking them into account (section 50 StGB), a less serious case under section 7(2) VStGB. The Panel concluded that the offence constitutes a less serious case under section 7(2) VStGB, applying the mitigation provision under section 27(2) StGB, and lowered the penalty (again) in application of section 46b StGB. Based on this framework, the Panel weighed the circumstances which spoke in favour and against the defendant and thereby arrived at the substance of the specific term of imprisonment. The details are as follows:

II. Penalty range

1. Section 7(1) VStGB

Section 7(1) VStGB provides for imprisonment of not less than five years for cases of torture under section 7(1) no. 5 VStGB, and for imprisonment of no less than two years for severe deprivation of liberty under section 7(1) no. 9 VStGB. Since the main offence that was aided and abetted by the defendant also falls within section 7(1) no. 5 VStGB, a (standard) range of penalties between five and 15 years was assumed to begin with (section 52(2) sentence 1, section 38(2) StGB).

2. Section 7(2) VStGB, Section 27(2) StGB

The Panel then considered whether a less serious case under section 7(2) VStGB, with a penalty range of two years to 15 years, was to be assumed. An offence can be deemed less serious only if a consideration of all the circumstances of the offence, including all subjective aspects and the offender personality, shows it to be so different from normal cases that it warrants the application of exceptional punishment. Here, all relevant exculpatory and incriminating circumstances must be taken into account, regardless of whether they are inherent in the offence itself, accompany it, precede it or follow it. Where individual exculpatory criteria are insufficient to justify the assumption that the case is less serious, circumstances which in themselves constitute a statutory mitigating factor should also be included.

The fact that the defendant incriminated himself both during his hearing before the Federal Office for Migration and Refugees and when subsequently questioned as a witness by the police, and that his conviction was largely based on his own testimony, essentially weighed in favour of the defendant. Even though the defendant did not enter a plea during the main hearing, the general acknowledgement of his work for the Syrian intelligence service contained in the written statement submitted to the Panel constitutes a partial confession to be used in his favour. The fact that the defendant was part of a military-style command structure at the time he contributed to the offence and that he was thus under a certain pressure to act also carries exculpatory weight. Lastly, it had to be weighted in his favour that the defendant voluntarily broke away

from the intelligence service comparatively early – when seen in the context of the course of the internal Syrian conflict – at the beginning of 2012 and fled, accepting risks for himself and his family. The Panel also considers in favour of the defendant that he had already taken an inner distance to his work for the regime and the attacks on the civilian population committed by the Syrian security authorities, which increased in scope and brutality in the course of 2011, before his desertion. Moreover, the defendant had no previous convictions at the time of the offence; the offence was committed nine-and-a-half years ago. With regard to the fine of 20 daily payments imposed by the ...[a] District Court, which was punishable by cumulative sentence in principle but had already been served, no provision for hardship allowance was made in view of the nature of this punishment (see BGH NStZ-RR 2008, 370; StV 2020, 838; ruling of 5 May 2021 - 6 StR 15/21).

As far as incriminatory evidence is concerned, the Panel took account of the large number of persons the defendant handed over to the prison of Branch 251. Although he did not abuse the victims himself, the defendant was well aware that in light of the unbearable conditions of detention and the systematic torture the inhumanity of the treatment meted out to the detainees in the prison was hard to top. This circumstance therefore weighs heavily in the light of the offences under section 7(1) no. 5 VStGB. The fact that the defendant aided and abetted an offence that constituted two offences covered by section 7(1) VStGB is also an aggravating factor. It also had to be taken into account that at the time the defendant committed the offence of aiding and abetting – as he well knew – the attack on the entire civilian population was so ruthless, brutal and widespread, involving the entire State system, that it met the preliminary requirement laid out in the chapeau of section 7(1) VStGB. It had thereby reached a level that goes beyond the average case. The fact that the defendant placed himself at the service of the intelligence service apparatus for many years before the commission of the offence although he knew about the brutal and unlawful treatment of opponents of the regime by the intelligence service also weighs against him. He did not limit his activity to office work, but instead became an informer at his own request. Finally, for a period of six months he worked in a section which engaged in ongoing repression on behalf of the Syrian regime, continuously committed crimes within the meaning of section 7 VStGB in the form of arrest, ill-treatment and detention of dissidents, and was known and notorious for such conduct.

Considering these circumstances alone, the Panel does not find the general mitigating factors to be prevailing to an extent as to justify the application of exceptional sentencing provisions under to section 7(2) VStGB. The high degree of unlawfulness of the offence was decisive in this regard. This is only mitigated when further considering the fact that the defendant is not defendant of perpetrating, but merely of aiding and abetting, which results in itself in a shift in penalty range under section 27(2), Section 49 (1) StGB. Taking this circumstance into account, the Panel considers the offence, when seen in conjunction with the aforementioned incriminating and exculpatory aspects, as a less serious case and, instead of the otherwise applicable shift in penalty range pursuant to section 49 StGB, has treated it as such. There was no need to take into consideration that the defendant had cooperated with the investigation (see below under 3.). In assuming a less serious case, the Panel is aware that if section 49 StGB instead of section 7(2) VStGB were applied, the minimum sentence would remain the same and the maximum sentence would be reduced to 11 years and three months. Overall, given that the penalty to be imposed will not be in the upper range, and in light of the additional mitigation according to sections 46b, 49 StGB yet to be applied, it nevertheless considers the assumption of a less serious case to be an appropriate treatment of the offence in light of the self-incrimination by the defendant, his breaking with the regime and the other aspects already mentioned.

3. Section 46b StGB

In view of the defendant's statements in the preliminary proceedings, the Panel had grounds to consider a further shift in penalty range according to sections 46b, 49 StGB, and concluded that such a shift was appropriate.

a) The cooperation with the investigation relates to the former co-defendant ...[K], whose proceedings were separated from those of the defendant in February 2021 after a joint main hearing to that date and is continued separately. With regard to the applicable penalty, the Panel also makes supplementary findings – set out hereafter – which are not relevant to the guilty verdict and are based on the testimony of the defendant before the Federal Criminal Police Office on 16 August 2018. At that time, the defendant made further statements incriminating the former co-defendant ...[K] as a leading officer of Branch 251 for being jointly liable; the statements were included in the charge against the co-defendant. The Panel does not see any reason to exclude the testimony beyond the point in time that determines its admissibility for the guilty verdict. At the same time, given that the accused was not duly instructed, the testimony is excluded from the present proceedings for his protection and any cooperation with the investigation could not be taken into account.

As testified by the interviewers of the defendant at the time, witnesses ...[O] and ...[P], the defendant provided detailed information about Syrian General Intelligence Branch 251 during his interview on 16 August 2018. He indicated which districts the branch was responsible for after the unrest began, namely Douma and Harasta. The branch also operated checkpoints where regular arrests took place. The defendant also provided the names of senior officers, including the former co-defendant ...[K]. The relevant orders for the deployment of Section 40 had come from Branch 251. Especially those detainees who were believed to possess “information” had been taken to Branch 251; the “investigators” there had been in charge, namely the investigation section led by ...[K]. The defendant also provided information about the duties of the former co-defendant. The latter had been responsible for gathering information. The defendant cited typical questions asked by investigators of those arrested, such as “Who supports you?”, “Who finances you?” and “Who organizes these demonstrations?”. The information had been obtained from the prisoners “through beatings, Shabeh, Dulab, flying carpet and German chair”, by forced prolonged standing in shackles, and by way of food deprivation. Such torture techniques were carried out in the basement of Branch 251. In addition, the defendant made a drawing of the office of the former co-defendant ...[K], indicating the distance between the office and the prison, as well as cross-sections and floor plans of the branch. He also indicated the number of employees who had been subordinate to ...[K]. According to

the defendant, the prison of Branch 251 was part of the interrogation section run by the former co-defendant, whom the defendant described as a “very experienced investigator”. At the same time, the defendant stated that on one occasion, which had particularly stayed in his mind, the former co-defendant ...[K] had refused to beat arrested demonstrators.

Regarding the number of prisoners who were transferred to Branch 251, the defendant stated that, since the start of the conflict, buses with prisoners had arrived daily, sometimes twice a day. The prison, which was designed for about 100 prisoners, had been completely overcrowded with 400 prisoners; prisoners constantly had to be transferred to Branch 285.

As far as deaths in Branch 251 were concerned, the defendant testified that on one occasion he had seen how a detainee had been hit on the head with a metal bar by a guard after getting off the bus on arrival in Branch 251 and had died as a result. He also stated that people often died “during the investigative work” in Branch 251. They were wrapped in blankets and taken from the basement prison at night, either to a cemetery in Najha or to a hospital.

Between May and June 2011, he had seen 10 dead bodies being carried out of the basement.

b) The police investigators, witnesses ...[O] and ...[P], stated that they took into account the statements made by the defendant in their investigation of the then co-accused ...[K]. The information provided by the defendant was included in the preliminary proceedings against the former co-defendant ...[K], who, according to the charges laid by the Federal Prosecutor General on 18 October 2019, which the Panel accepted, is defendant of killing 58 people for abject motives and torturing at least 4,000 as part of a widespread and systematic attack on a civilian population, among other things. In terms of attribution of the charges, the prosecution largely relies on the prominent position of the former co-defendant ...[K] as head of investigations in Branch 251 of the Syrian General Intelligence Directorate. When it comes to the murder allegations, 11 counts of murder are based solely on the testimony of the defendant.

The information about the structure and remit of Branch 251 and the personality of the

former co-defendant ...[K] is also of considerable importance for assessment of the charge against the co-defendant, even beyond the involvement in the offence with which the defendant is charged. As was already evident to the Panel through the joint taking of evidence against the two defendant, insights into internal organizational and responsibility structures can only be gained through a synopsis of generally accessible sources, expert analysis, individual perceptions of victim witnesses and, in particular, the statements of former regime employees with more comprehensive and direct experience from their field of work. In this context, witnesses who worked in at least an overlapping area in terms of time and place are naturally of particular importance. Apart from the defendant, only the witness ...[AA], who was deployed as a security guard and whose experience was limited in view of this role, and witness ...[Y], whose testimony was of variable quality, had worked in Branch 251.

The information provided by the defendant is not subject to any restriction on admissibility in the ongoing proceedings against the co-defendant ...[K].

c) The Panel interprets the testimony given by the defendant as cooperation with an investigation within the meaning of section 46b (1) sentence 1 no. 1 StGB. The offence with which the former co-defendant is charged falls under section 100a (2) no. 10(b) StPO. Although the defendant was also a participant in the offence under international criminal law with which the co-defendant has been charged, his cooperation with the investigation clearly extends beyond his own involvement in the offence, which was limited to a single arrest and delivery of prisoners (section 46b (1), sentence 3 StGB). The offence of the defendant and the charges against the former co-defendant are also sufficiently connected insofar as they are linked by the same attack on the civilian population and by the physical and spatial overlap in the same intelligence branch. Finally, this knowledge was disclosed before a decision was taken on opening the main proceedings against the defendant. The fact that the defendant did not provide any further information during the main hearing does not preclude the assumption of cooperation with an investigation within the meaning of section 46b StGB (BGH NStZ 2009, 394; ruling of 2 June 1988 2 StR 248/88; Maier, in: Münchner Kommentar, StGB, 4th ed., Section 46b marginal 30). Nor can it be assumed that the defendant did not act voluntarily within the meaning of section 46b (1) sentence 1 no. 1 StGB as a result of an obligation to testify as a witness in criminal proceedings (see

BGHSt 55, 153, 155), especially since he would have been free, at least in part, to refuse to testify as an accused.

d) Within the framework of the subsequent overall consideration (see BGHSt 55, 153) of whether the defendant should benefit from a reduced sentence as provided under section 46b StGB, the Panel took particular account of the circumstances described in section 46b(2) StGB. The nature and scope of the disclosed facts are to be regarded as particularly significant. It is true that, as explained, other evidence was already available in the preliminary proceedings, including against the former co-defendant ...[K], regarding the structure of the Syrian intelligence services and their role at the start of the internal Syrian conflict from February 2011. This includes, in particular, the expert opinions obtained from the Federal Intelligence Service, expert Thurmann and the statements of the former regime employees Z 28/07/16, ...[Y], ...[N] and ...[BB]. However, witnesses ...[Y] and ...[AA] were the only employees of Branch 251 who were able to provide information, albeit inadequate, on the person of the former co-defendant ...[K]. The rather detailed information provided by the defendant about the remit and personality of the co-defendant were highly significant in this respect.

Nonetheless, in the assessment of the Panel, the fact that the defendant was able to make statements about killings in the branch which, insofar as they are to be attributed to the former co-defendant ...[K], can be traced back to his testimony alone and could only be proven by him carries even greater weight. Notwithstanding the fact that the killings are part of an overall offence under section 7(1) VStGB, they constitute a violation of the most valuable individual rights. The seriousness of the offence and the significance of the cooperation with the investigation are therefore to be regarded as very high. Moreover, it is a clearly more serious crime than the defendant's own involvement in the offence; for example, the defendant cannot be proven to have aided and abetted a homicide. During his police interview, the defendant testified willingly, despite the obvious risk of self-incrimination; he also testified about other regime employees and their activities who are not under investigation to date. Although the defendant did not agree to cooperate further with the investigating authorities and did not repeat his charges in the main hearing, this circumstance does not weigh heavily against accepting a shift in the range of sentencing in view of the special nature of the

information, some of which is inadmissible, and the considerable level of self-incrimination that would inevitably be associated with more far-reaching disclosures.

4. As a result, the Panel therefore applied mitigation under section 7(2) VStGB in accordance with section 49(1) StGB. Accordingly, the term of imprisonment had to range between six months and 11 years and three months.

III. Sentencing in the narrower sense

In determining the term of imprisonment to be imposed, the Panel took into account and reconsidered all of the previously mentioned sentencing criteria. Again, the Panel took into account the cooperation with the investigation, which had already led to a shift in the penalty range, and the mitigating circumstances applied, finding a less serious case, in particular the less serious offence of mere aiding and abetting, although this was considered less significant. Once again, the fact that without the defendant's own statements in the run-up to the preliminary investigation, an indictment and conviction would not have been possible, and the defendant's voluntary and comparatively early renunciation of his intelligence activities in Syria, carry particular weight. Particularly incriminating was nevertheless the number of victims in whose torture and deprivation of liberty the defendant aided and abetted.

Upon global assessment of the aforementioned grounds, the Panel imposes at term of imprisonment

four years and six months

as a sanction appropriate to the offence and the level of culpability.

E. Costs, negotiated agreement

The decision on costs is based on section 465 StPO.

The judgment was not preceded by any negotiated agreement (section 257c StPO).

Dr Kerber

Wiedner

Jeserich

Kapischke

Lenz