

Syria: Detention and Abuse of Female Activists

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. World Report: Syria

[Source: World Report: Somalia, HRW, 21 January 2014, available online
[http://www.hrw.org/sites/default/files/wr2014_web_0.pdf]

1. Syria's armed conflict escalated even further in 2013 as the government intensified its attacks and begun using increasingly deadly and indiscriminate weapons, culminating in a chemical weapons attack on the Damascus countryside on August 21

[...]

2. Armed opposition forces, including a growing number of pro-opposition foreign fighters have also carried out serious abuses including indiscriminate attacks on civilians, executions, kidnapping and torture. According to United Nations Secretary-General Ban Ki-moon, as of July 2013 more than 100,000 people had been killed in the conflict. The spread and intensification of fighting have led to a dire humanitarian crisis with millions internally displaced or seeking refuge in neighboring countries.

[...]

B. Syria: Detention and Abuse of Female Activists

[Source: Syria: Detention and Abuse of Female Activists, HRW, 24 June 2013, available at:

[<http://www.hrw.org/news/2013/06/24/syria-detention-and-abuse-female-activists>]

1. Syrian military and pro-government forces known as shabiha have arbitrarily detained female opposition activists as well as female relatives and neighbors of pro-opposition activists and fighters, and in a number of cases, subjected them to torture and sexual abuse.

2. Human Rights Watch interviewed 10 Syrian women who were detained, either due to their own engagement in activities related to government opposition, or that of their family members. Eight were themselves activists who had been detained, all of whom said that security forces and shabiha had abused or tortured them in detention. The abuse included electric shocks, keeping them in stress positions, and using metal rods, wires and nightsticks to beat and torture them. [...] All said security forces detained them at checkpoints or during home raids, and held them for periods lasting up to nearly 14 months between February 2012 and April 2013. In two cases, the women said their captors raped them while they were detained at the Military Intelligence Branch in Tartous, and the Air Force Intelligence Branch in Mezze, Damascus.

[...]

3. [...] Former detainees said that security forces conducting the arrests did not identify themselves, provide legal justification for arrests, inform the women of the charges against them, or tell them where they were being taken. One former detainee was held for about three months in pretrial detention, violating both international legal standards and legislation passed by the Syrian government, in April 2011, that limits detention without judicial review to 60 days.

[...]

4. Fatmeh (all names have been changed to protect interviewees), a 35-year-old activist who helped transport Syrian army defectors from Homs to Deraa, told Human Rights Watch that she was tortured every day during a 15-day stretch in detention at Military Intelligence Branch 215 in Damascus, in March 2012 [...]

5. Fatmeh was released in March 2013, after nearly 14 months' detention.

[...]

6. Six of the women said that the authorities charged them with 'terrorism' or 'terrorist activities,' but released them after months in detention without adequate due process – including judges who refused to examine their case files based on instruction from security divisions, and who remanded them to prison for extended

periods of time without instruction or ruling.

7. 'National Security has looked over your file and we can't do anything,' a judge in Damascus said to one of the women. 'No one is allowed to see your file. You can't be released by a judge.'

[...]

8. According to the Syrian Network for Human Rights (SNHR), 24 female detainees have been tortured to death since March 2011. Human Rights Watch is unable to independently verify the number of female detainees or those who have died in detention, because of denial of access to detention facilities in Syria.

9. Two of the former detainees reported to Human Rights Watch that security forces and prison guards raped and sexually abused them while in detention. Amal, 19, told Human Rights Watch that she was raped on two different occasions: first by an investigator and two officers in October 2012, at the Military Intelligence Branch in Tartous, and a second time by two officers in the Military Intelligence Branch 235 (Palestine Branch) in Damascus, in November 2012. Maysa, 30, told Human Rights Watch about being beaten, threatened with torture, and raped on two separate occasions in June 2012, by a security officer while she was detained in the Investigation Branch at Air Force Intelligence in Mezze, Damascus. After the first rape, Maysa reported the attack to a commanding officer who was interrogating her. The officer slapped the attacker in front of Maysa after she identified him as the perpetrator of the rape, but did not remove him from his post. Maysa told Human Rights Watch that the attacker raped her again the following evening. On two other occasions, in July 2012, a prison guard at the same branch forced Maysa to perform oral sex on him. Brigadier General Abdul Salam Fajr Mahmoud is the director of the Investigation Branch at this facility.

[...]

10. Human Rights Watch has also previously documented the use of sexual violence by Syrian security forces against male and female detainees in more than 20 incidents. The degree to which sexual violence is used in detention remains unclear, due to lack of access to detention facilities by human rights monitors and the reticence of many victims to come forward for fear of stigma or reprisals.

11. Human Rights Watch does not have evidence that high-ranking officers commanded their troops to commit sexual violence in detention, or that sexual violence is widespread and systematic in government detention facilities. However, information received by Human Rights Watch indicates that commanding officers in most cases took no action to investigate or punish those committing acts of sexual violence, or to prevent them from committing such acts. This was despite the assaults taking place in circumstances in which commanding officers knew or should have known the crimes were occurring. In the one case documented by Human Rights Watch where officers appeared to punish a perpetrator through physical violence – the case of Maysa – these actions were inadequate in protecting the detainee from abuse. In no case is there evidence to suggest that perpetrators were prosecuted for their crimes.

[...]

Discussion

I. Classification of the Situation and Applicable Law

1. (Document A, paras [1]-[2])
 1. Using the information in Document A, how would you classify the situation in Syria? On what criteria is your determination on classification based? What additional information, if any, do you need to determine whether the situation constitutes an armed conflict? Who are the parties to the conflict? Which criteria have to be fulfilled for a situation to be classified as a non-international armed conflict? Which set of rules applies in the present case? (GC I-IV, Common Art. 3; P II, Art. 1)
 2. Does IHL apply to the entire territory of Syria? (GC I-IV, Common Art. 3; P II, Art. 1)

II. Treatment of Persons – Detention

2. (Document B, paras [1]-[5])
 1. Does IHL accept or even authorize detention of persons by parties to the conflict? Under what circumstances may persons be detained during international armed conflicts? During non-international armed conflicts? What are the reasons that could justify the detention of female activists in the present case? What about female relatives of activists? (CIHL, Rule 99; GC I-IV, Common Art. 3; AP II, Arts 4-6; GC III, Arts 21 and 118; GC IV, Arts 41-43, 68, 70, 78-79; P I, Art. 75)
 2. Does a person detained during an armed conflict have a right to challenge the legality of his/her detention without delay before an independent and impartial court? According to IHL? According to International Human Rights Law (IHRL)? (CIHL, Rule 99; GC III, Arts 21; GC IV, Arts 43, 78-79; P I, Art. 75, P II Art. 6)
 3. Must a person detained in a non-international armed conflict be either tried or released? (CIHL, Rule 99; GC I-IV, Common Art. 3; P II, Arts. 4-6)

IV. Treatment of Persons – Torture

4. (Document B, paras [1]-[2], [4], [8]-[9])
 1. Is torture prohibited under IHL? Under human rights law? If yes, is there a difference between the protection against torture afforded by IHL and by human rights law? Is the obligation under IHL to treat persons humanely more restrictive than the prohibition of cruel, inhuman or degrading treatment? (CIHL, Rule 93; GC I-IV, Common Art. 3; P II, Art. 4(2); GC I, Arts 12 and 50; GC II, Arts 12 and 51; GC III, Arts 13 and 130; GC IV, Arts 27, 32 and 147; P I, Art. 11, 75(2)(a) and 85)
 2. Is there an obligation to investigate allegations of torture and punish the perpetrators according to IHL? According to human rights law? Do you think that these requirements were fulfilled in the present case?

(CIHL, Rule 93 and 158; GC I, Art. 49; GC II, Art 50; GC III, Art. 129; GC IV, Art. 146; P I, Art 85)

5. 5. Can rape in itself amount to torture under IHL? Under IHRL? If yes, under which circumstances? (CIHL, Rules 90 and 93; GC I-IV, Common Art. 3; P II, Art. 4(2)(a) and (e); GC I, Art. 12; GC II, Art. 13; GC III, Art. 14; GC IV, Art. 27; P I, Art. 75(2))

[See also: **ICTY, The Prosecutor v. Delalic** , IT-96-21-T, Trial Chamber, Decision, 16 November 1998, [Discussion, paras. 475 – 497. Findings, paras. 494-497]. Available online at: http://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf]

V. Treatment of Detainees – Rape and Other Forms of Sexual Violence

6. (Document B, paras [1]-[2], [9]-[10])

1. How does IHL protect against rape and other forms of sexual violence? Does IHL expressly prohibit rape and other forms of sexual violence in international armed conflicts? In non-international armed conflicts? Are there particular advantages/disadvantages of the precise wording used to articulate the prohibitions in IHL treaties? (CIHL, Rules 90 and 93; GC I-IV, Common Art. 3; P II, Art. 4(2)(a) and (e); GC I, Art. 12; GC II, Art. 13; GC III, Art. 14; GC IV, Art. 27; P I, Art. 75(2) and 76))
2. Does IHL impose an obligation on States to investigate allegations of rape and other forms of sexual violence committed in international armed conflicts? In non-international armed conflicts? Do you think that the actions of the Syrian authorities to address the allegations of sexual violence were adequate? Do you think that the same obligation is incumbent on armed non-state actors? Why/Why not? (CIHL, Rule 93 and 158; GC I, Art. 49; GC II, Art 50; GC III, Art. 129; GC IV, Art. 146; P I, Art 85)
3. Does IHRL impose an obligation on States to prevent and repress rape and other forms of sexual violence? To investigate allegations of rape and other forms of sexual violence? If yes, do you think that the obligations imposed on States under IHL and IHRL are different? If different, which regime is more protective for the victims? Finally, can IHRL be said to require armed non-state actors to investigate and punish perpetrators of rape/sexual violence within their own ranks? Why/Why not?

7. (Document B, para. [9]) Under IHL, does it matter whether the rape victim is a civilian, a combatant, a fighter, a militant sympathizer, or a terrorist? Man, woman or child? (CIHL, Rule 93, 134 and 135; GC I-IV, Common Art. 3; P II, Art. 4(2); GC I, Art. 12; GC II, Art. 13; GC III, Art. 14; GC IV, Arts 27; P I, Arts 75(2), 76 and 77)

8. (Document B, paras [9]-[10])

1. Is rape a war crime? What additional measures could help put an end to this practice? Would an additional international instrument be useful? What provisions should it contain? (CIHL, Rule 156; GC I, Art. 50; GC II, Art 51; GC III, Art. 130; GC IV, Art. 147; P I, Art. 85; ICC Statute, Art. 8(2)(b)(xxii) and (e) (vi))
2. Is the determination of a systematic pattern of violations relevant for IHL? For international criminal law?

To identify war crimes? To identify crimes against humanity? (ICC Statute, Arts 7 and 8)

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