Sieges and forced population transfer in Homs, Syria

From facts to accountability

2018
Forced displacements in Homs, Syria, 2013 – 2017

Charging Bashar Al-Assad for crimes against humanity and war crimes

A report by Syria Legal Network-NL

July 2018

This report is the result of a research project by Syria Legal Network-NL and students of the Law Faculty of the University of Amsterdam on the legal framework for the responsibility of Syrian president Bashar Al-Assad for the crime of forcibly displacing civilians from the city of Homs. The report consists of two parts. The first part summarizes the facts of the forced displacements that took place between 2013 and 2017 in Homs’ suburb Al Waer. The information is based on the quarterly Siege Watch reports that are published by PAX and the Syria Institute since 2016.¹ The second part presents a model indictment against Bashar Al-Assad alleging his criminal responsibility for the crime of forced displacement and the crimes that took place in the context of the forced displacements. Unfortunately, this is an academic exercise, but Syria Legal Network-NL hopes that the report will contribute to clarifying the role of the Syrian government regarding the forced displacements of civilians and the legal framework to establish the Syrian president’s individual responsibility and will assist in future justice mechanisms. We thank the sponsors of this project: PAX, Amnesty International, the Nuhanovic Foundation, the War Reparations Centre, staff and students of the University of Amsterdam. The contents of the report are solely our responsibility.

Syria Legal Network-NL, Amsterdam July 2018

¹ https://siegewatch.org/reports/
Forced displacements in Homs, 2013-2017, the facts

In October 2013, the Syrian city of al-Waer was surrounded by approximately 21 pro-government military points that enforced movement restrictions and regularly shelled the surrounding area. To the north and east of al-Waer, Syrian military forces were in total control: there was a single government-manned checkpoint through which approved government employees and some students could still pass through.\(^2\)

By December 2015, a multi-stage truce agreement for al-Waer was reached between armed opposition groups and government forces. Late 2015, through early 2016, al-Waer was on a path of de-escalation of the siege.\(^3\)

On or around March 10, 2016, the agreement broke down over the issue of the release of detainees, and a complete siege was reinstated when government forces shut down the checkpoints on March 10, 2016. Since the siege was reinstated, no humanitarian aid was allowed into al-Waer, and government forces targeted the neighborhood with intermittent mortar and artillery shelling.\(^4\)

Around mid-April 2016, the food and medicine shortages were so severe that the Homs Provincial Council wrote an open distress letter to the UN, fearing an impending humanitarian disaster. Malnutrition cases and other related medical complications were on the rise. Additionally, government forces damned the Orontes River near al-Waer to create swamps, which in turn led to a serious increase in mosquitos that spread diseases, such as Leishmaniasis, in the besieged neighborhood.\(^5\)

In late May 2016, after years under siege, al-Waer was finally added to the UN list of besieged cities. In mid-June and mid-July, UN aid convoys had reached al-Waer with insufficient means to meet the needs of the population.\(^6\)

Since being added to the UN list of besieged cities, the medical sector in al-Waer had been severely impacted by the intensified siege. There was a lack of fuel and medical supplies that halted any effective treatment for all conditions. Medical evacuations out of the besieged area were generally denied and this led to civilians dying from lack of care even of common diseases.\(^7\)

\(^3\) Ibid.
\(^4\) Siege Watch, Second Quarterly Report, 2016, Pax & The Syrian Institute p. 34.
\(^5\) Ibid.
\(^6\) Siege Watch, Third Quarterly report, 2016, Pax & The Syria Institute, p. 36.
\(^7\) Siege Watch, Third quarterly report, 2016, PAX & The Syria Institute, p. 36.
In late May 2016, after the ending of the agreements in March, violence in al-Waer increased dramatically. There were reports of pro-government forces attacking civilian targets such as offices of a local charity organization, an Internally Displaced Persons (IDP) Shelter, and people lining up for a bakery near government checkpoints. On 28 May 2016, the local negotiation committee accepted an invitation by the Syrian government to attend an emergency meeting aimed at renewing the local ceasefire negotiations. When they left the besieged al-Waer area they were detained and used as leverage to negotiate the release of several soldiers that were being held by local groups. Also in May 2016, government employees and students were informed that they could not return to al-Waer and should evacuate their families due to an impending government raid. While dozens of families fled, at least 50 of the fleeing civilians were captured and arrested by government forces. On 4 June 2016, more civilians were told to evacuate under threat of future government offensives.

On or around 4 June 2016, there was intensive pressure from pro-government forces on all militants and civilians to evacuate the neighborhood. Despite the pressure, only a few hundred families left. The rest of the population feared being detained at checkpoints, and for not being able to return to the neighborhood in the future. Al-Waer hosts many IDPs from the Old City in Homs who were forcibly evacuated earlier in the conflict.

On 18 June 2016, another attack by pro-government forces aimed at civilians near a bakery killed one person and injured many others. Four other persons were arrested. Throughout August to October 2016 the population estimate in al-Waer dropped due to forcible transfers to northern Homs. The northern cities of al-Rastan and Talbiseh populations increased due to these forcible transfers. In addition, government forces and pro-government militias continued to push the neighborhood to abandon earlier negotiation terms that included a demand for the release of political prisoners. This was systematically done in other besieged areas as well where government negotiators have made these demands through intense military escalation, threats, misinformation, and aid restrictions.

Throughout August to October 2016 the siege of al-Waer continued and was enforced by the Syrian Armed Forces, Syrian National Defense Force militias, and a number of foreign

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8 Siege Watch, Third quarterly report, 2016, p. 37.
9 Ibid.
pro-government forces including: Afghan militias, Iraqi militias, Hezbollah, and Iranian Islamic Revolutionary Guard Corps (IRGC) forces. The attacks were extremely damaging to the already besieged area of al-Waer. On August 19 and 29, 2016, the al-Birr hospital was damaged by shelling by pro-government forces. On the 26th and 27th of August more than 39 airstrikes killed approximately 23 civilians and caused more than 120 injuries. On, the 27th of August 15 air raids targeted civilian homes. During the attack, the al-Waleed hospital was bombed and incendiary munitions were used during the raids.

As a result of bombings on hospitals and general lack of medical supplies, the medical situation largely deteriorated throughout al-Waer. Reports of spreading tuberculosis was rampant and while the Syrian Arab Red Crescent (SARC) offered to evacuate people for treatment, the patients declined citing that they were fearful for their safety if they would leave.

On August 11, 2016, al-Waer’s local council issued another distress call to international organizations, warning that the al-Waleed hospital would shortly run out of supplies and only had enough fuel to run generators for another 24 hours. As a result of the ceasefire deal, basic goods and necessities were transferred into al-Waer and some families were transferred to the northern region of Homs. These transfers were allegedly forcible in nature because they were completed under extreme duress because the civilians of al-Waer believed they would be arrested or die if they would not agree to be transferred.

By the end of October 2016, government forces once again increased restrictions to enter al-Waer. The ceasefire plan and negotiations broke down in November when the local negotiation committee refused to submit the names of fighters as long as the government did not release the status and information on detainees. After the ceasefire agreement and negotiations broke down, al-Waer was once again subject to intense airstrikes and attacks by government forces.

The sieges that al-Waer experienced from November 2016 through January 2017 were at the hands of, and enforced by, Syrian Armed Forces and an array of affiliated groups including the Syrian National Defense Force militias, Iran-backed foreign militias,

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12 Ibid.
13 'Siege Watch, Fourth quarterly report, 2016, p. 41.
14 'Siege Watch, Fourth quarterly report, 2016, p. 43.
15 Ibid.
16 Ibid.
17 Ibid.
Hezbollah, and Iranian Islamic Revolutionary Guard Corps (IRGC) forces that all acted under the control of the Syrian Armed Forces.18

On 6 November 2016, airstrikes and bombardments by pro-government forces killed four civilians and wounded more than twenty civilians. Three children and two women were among the casualties and an elderly man suffered a heart attack as a result of fear during the attacks and subsequently passed away.19

From 15 November 2016 a two-week long assault by pro-government forces was directed against the neighborhood of al-Waer. Barrel bombs, incendiary munitions, elephant missiles, mortars, and shelling pummeled the neighborhood. On the first day of this two-week long assault, 25 barrel bombs hit al-Waer and eight people were killed including two children. Both of al-Waer’s primary hospitals were damaged. This heavy assault forced civilians to seek shelter underground for days that led to greater suffering, as the bunkers were crowded and unsanitary, and diseases spread quickly. The medical sector was unable to treat the injured civilians. Six civilians were killed and 10 were injured when a missile struck a store selling fuel, causing severe fatal burns on victims.20

On the 28th and 29th of November, schools and prayer services were cancelled due to the intense shelling. The al-Waer negotiating committee met with a Russian officer that resulted in an agreement on a temporary truce. However, shortly after the start of the temporary truce, on 29 November 2016, a flurry of intense negotiations resulted in the government issuing a new ultimatum for the neighborhood to surrender by 14:00 hours on 2 December 2016 or face a new wave of attacks. Such a threat had been directed at al-Waer many times since the beginning of the siege.21

The November 2016 assaults by pro-government forces left the area vastly devastated. A total of 16 civilians were killed during the assault, including two children, and dozens more were injured. The bombings caused major infrastructure damage. Five charity centers serving as civilian shelters were directly targeted including an orphanage, a kindergarten, a religious center, a charity, and a home for the deaf and mute. The orphanage was completely destroyed leaving 35 families displaced. Nine members of the Civil Defense team were injured attempting to rescue civilians. Government forces did not allow those who were injured or in need of medical treatment to leave al-Waer for treatment. As a result, three elderly civilians died due to the lack of heart disease drugs and blood

18 Ibid.
19 Siege Watch, Fifth quarterly report, 2017, p. 45.
21 Ibid.
pressure medication. The conditions deteriorated when students and government employees, who were once able to move intermittently throughout the checkpoints, were banned from bringing any supplies with them when they re-entered al-Waer. Throughout February to April 2017, food and medical supplies dwindled for the trapped civilians, pushing al-Waer to the brink of a complete humanitarian disaster. On 8 February 2017, 11 civilians were killed, including three children and three women, and 45 were injured during the second day of intensified attacks by pro-government forces against al-Waer, marking the start of several weeks of a renewed escalation. In mid-February, the medical staff in al-Waer issued another distress call to the international community about the ongoing lack of medical supplies and rapidly declining supplies. On 20 February, a UN interagency humanitarian aid convoy destined for al-Waer failed to reach its destination, as it was fired at and looted by pro-government forces. Reportedly, 22 out of the 35 aid trucks were diverted by al-Ridha militia group, a sectarian pro-government Shia militia supported by Iran, known as the Syrian Hezbollah, and offloaded in government-controlled Mazraa area. On 17 February 2017, at least 12 airstrikes launched by Russian Sukhol jets hit the al-Waer neighborhood. Two civilians were killed and there was massive infrastructure damage. On 25 February 2017, al-Waer was hit by more than 40 airstrikes, 55 cluster munitions, and constant shelling during an intense wave of attacks by pro-government forces. On 6 March 2017, al-Waer was hit by 18 airstrikes during a wave of intensified attacks by pro-government forces. Two civilians were killed and more than 25 injured. Twelve of the airstrikes were launched after a meeting between the al-Waer negotiating committee and Russian negotiators. On the brink of collapse, al-Waer surrendered to government terms on 13 March 2017. The agreement was reportedly negotiated by Russian mediators who used similar threats as reportedly used by Syrian government negotiators in other localities, warning that the neighborhood would be annihilated if it refused to surrender. The final agreement called for the forced transfer of somewhere between 12,000 to 20,000 people – more than two thirds of them civilians – out of al-Waer to opposition-controlled areas in weekly batches of around 1,500 people each. The forced transfer of people began on 18 March 2017, and the final transfer ended on 19 May 2017. More than 20,000 people civilians ended up

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22 Ibid.
25 Ibid.
being transferred out of the neighborhood, making it the second largest population transfer of the conflict after a similar forced transfer in eastern Aleppo.\textsuperscript{26}

It is reported that, between September and October 2016, approximately six hundred fighters and their families were transferred out of Al-Waer. On 18 March 2017, over 1400 residents of which more than 1000 of them were civilians were forcibly removed from Al-Waer to Jarablus (Aleppo). On 27 March 2017, over 2000 people were transferred to Jarablus. On 1 April 2017, approximately 1900 people were transferred to Idlib. On 9 April 2017, approximately 2200 people were transferred to Jarablus. On 17 April 2017 approximately 1900 people were transferred to Jarablus. On 24 April 2017, approximately 1500 people were transferred to Jarablus and on 30 April 2017, approximately 2200 people were transferred to Idlib.\textsuperscript{27} Most al-Waer residents ended up in IDP camps in Idlib and Aleppo.

\textsuperscript{26} Siege Watch, Sixth quarterly report, 2017, p. 51, 53-54.

\textsuperscript{27} Pax & TSI ‘Siege watch’ (2017), Sixth quarterly report, p. 54.
Indictment

Case No. WRC-1-2018

The Prosecutor of the International Criminal Tribunal for Syria
vs
BASHAR AL-ASSAD

The Prosecutor charges:
BASHAR AL-ASSAD
with
Crimes against Humanity
and War Crimes

as set forth below:
1. The accused

1. Bashar AL-ASSAD was born on 11 September 1965 in Damascus, Syria.

2. Bashar AL-ASSAD is the sitting President of Syria since his election on 17 September 2000. He is currently serving his third mandate. Bashar AL-ASSAD is the General Secretary of the ruling Arab Socialist Ba’ath Party and Regional Secretary of the party’s branch in Syria. The Ba’ath Party has been in power in Syria since 1963.

3. From 1998, Bashar AL-ASSAD was the Commander of the Syrian military presence in Lebanon during the Lebanese Civil War and following this he became the President of Syria. Bashar AL-ASSAD is also the Commander in Chief of the Syrian Armed Forces, as stated in Article 105 of the Syrian Constitution, and is responsible for all acts performed by the Syrian Armed Forces. Bashar AL-ASSAD appoints civilian and military employees in accordance with Article 106 of the Syrian Constitution.

4. Throughout the entirety of the Syrian conflict, Bashar AL-ASSAD has been living in Damascus, serving as President as well as Commander in Chief, which puts him in the position of the highest political and military leader of Syria.

2. Individual criminal responsibility

5. Bashar AL-ASSAD is individually responsible for the crimes charged against him in this indictment pursuant to Article 25(3) (a) and Article 25(3) (b) of the Rome Statute of the International Criminal Court. Individual criminal responsibility includes perpetrating (committing), whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible, or otherwise ordering the commission of such a crime which in fact occurs or is attempted set forth in the Indictment.

6. Bashar AL-ASSAD, by virtue of his high-ranking position as President of Syria and Commander in Chief of the Syrian Armed Forces from 17th of September 2000 to present, as well as being the General Secretary of the ruling Arab Socialist Ba’ath Party and Regional Secretary of the Party’s branch in Syria, played a central role in perpetrating and
ordering the permanent removal of Syrian inhabitants from the al-Waer district of Homs between October 2013 and until on or around 30 May 2017 which amounts to the crime of forcible transfer of population: a violation of international humanitarian law and Crimes Against Humanity pursuant to Article 49(1) or the Fourth Geneva Convention of 12 August 1949 in relation to the Protection of Civilian Persons in Time of War, Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977, and finally Article 7(1)(d) of the Rome Statute respectively, as alleged in this Indictment.

7. Bashar AL-ASSAD, at all times relevant to this Indictment, held the position of President of Syria and Commander in Chief of the Syrian Armed Forces, the General Secretary of the ruling Arab Socialist Ba’ath Party and Regional Secretary of the Party’s branch in Syria. The Syrian Military, as well as pro-government government forces, have been very instrumental in forcibly displacing Syrian residents from areas within al-Waer by surrounding al-Waer, creating government-manned checkpoints, executing the orders from Syrian authorities to forcibly remove Syrians. Order in this context refers to the mode of responsible of ordering denoting to the command by a superior or a person in a position of authority to his/her subordinates or other persons to act in a certain way resulting to a criminal conduct.28 To determine the existence of an order, it is sufficient that, the said person ordering is in a position of authority to give such orders. As such, there need not necessarily be any formal superior-subordinate relationship.29 The order may be drawn from the circumstances surrounding the conduct. As such, the order must not necessarily be in written or any particular form. 30Bashar Al-Assad, the President of Syria and Commander in Chief of the Syrian Armed Forces, is vested with the powers to make orders. There was no way his military would carry out the acts of forcibly transferring Syrian residents from areas within al-Waer without orders from him. Based on the circumstances, it can be drawn that Bashir Al-Assad President of Syria and Commander in Chief of the Syrian Armed Forces ordered the forcible transfer of Syrian residents from areas within al-Waer.

8. Bashar AL-ASSAD is also, or alternatively, criminally responsible as a commander and a superior for the acts of his subordinates pursuant to Article 28 of the Rome Statute of the International Criminal Court. A military commander or person effectively acting as a

28 Prosecutor v Jean Paul Akayesu, Case No. ICTR-96-4-T, (Judgement, 02 September 1998) Para.483; Prosecutor v. Radislav Krstic, Case No. IT-98-33-T (Judgement, 02 August 2001) para 601
29 Prosecutor v. Kordić & Ćurčić, Case No. IT-95-14/2-T (Judgement, 26 February 2001) Para.388
30 Prosecutor v Tihomir Blaškić, Case No. IT-95-14-T (Judgement, 3 March 2000) Para 281
military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control. As the case may be, as a result of his or her failure to exercise control properly over such forces, where: that military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and that military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution. Similarly, with respect to superior and subordinate relationships not described in the aforementioned, a superior is criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where: the superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes; the crimes concerned activities that were within the effective responsibility and control of the superior; and the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

9. Bashar AL-ASSAD, by virtue of his high ranking position as President of Syria and Commander in Chief of the Syrian Armed Forces, the General Secretary of the ruling Arab Socialist Ba'ath Party and Regional Secretary of the Party’s branch in Syria, had the powers to appoint civilian and military employees and terminate their services thus the authority and responsibility to prevent or punish violations of international humanitarian law committed during by his subordinates but failed to exercise that power.

10. Bashar AL-ASSAD had reason to know that, during the period between October 2013, until on or around 30 May 2017, his subordinates under his control were responsible for the violations of international humanitarian law and the crimes against humanity of forcibly transferring the residents from Al-Waer. It can be drawn that, as President and head of the Syrian Army, he in fact was aware of such transfers. Bashar AL-ASSAD failed to take necessary and reasonable measures to prevent such acts, or to punish the perpetrators thereof.

11. From at least October 2013, until on or around 30 May 2017, Bashar AL-ASSAD participated to permanently remove Syrian inhabitants from the al-Waer district of Homs by means which included the commission of the following crimes charge in this indictment: forcible transfer.

12. In October 2013, al-Waer was surrounded by approximately 21 pro-government military points that enforced movement restrictions and regularly shelled the surrounding area. To the north of al-Waer, and also to the east, Syrian military forces were in total control: there was a single government-manned checkpoint through which approved government employees and some students could still pass through.

13. By December 2015, a multi-stage truce agreement for al-Waer was reached between Armed Opposition Groups and government forces. Late 2015, through early 2016, al-Waer was on a path of de-escalation of the siege.

14. On or around March 10, 2016, the agreement completely broke down over the issue of the release of detainees, and a complete siege was reinstated when government forces shut down the checkpoints on March 10, 2016. Since the siege was reinstated, there had been no humanitarian aid allowed into al-Waer, and pro-government government forces targeted the neighborhood with intermittent mortar and artillery shelling.

15. Around mid-April 2016, the food and medicine shortages were so severe that the Homs Provincial Council wrote an open distress letter to the UN, fearing an impending humanitarian disaster. Malnutrition cases and other related medical complications were on the rise. Additionally, government forces damned the Orontes River near al-Waer to create swamps, which in turn led to a serious increase in mosquitos that spread diseases, such as Leishmaniasis, in the besieged neighborhood.

16. In late May 2016, after years under siege, al-Waer was added to the UN besieged list. In mid-June and mid-July, UN aid convoys had reached al-Waer with insufficient means to meet the needs of the population.
17. Since being added to the UN besieged list in May 2016, the medical sector in al-Waer had been severely impacted by the intensified siege. There was a lack of fuel and medical supplies that halted all effective treatment for all conditions. Medical evacuations out of the besieged area were generally denied and those denials led to civilians dying from lack of care from common diseases.

18. In late May 2016, after the ending of the agreements in March, violence in al-Waer increased dramatically. Reports of pro-government forces attacking civilian targets such as offices of a local charity organization, and an Internally Displaced Persons (IDP) Shelter, and people approaching a bakery near government checkpoints were recorded.

19. On 28 May 2016, the local negotiation committee accepted an invitation by the Syrian government to attend an emergency meeting aimed at renewing the local ceasefire negotiations. When they left the besieged al-Waer area they were detained and used as leverage to negotiate the release of several soldiers that were being held by local groups.

20. In late May 2016, government employees and students were informed that they could not return to al-Waer and should evacuate their families due to an impending government raid. While dozens of families fled, at least 50 of the fleeing civilians were captured and arrested by government forces. On 4 June 2016, additional civilians were told to evacuate under threat of future government offensives.

21. On or around 4 June 2016, there was intensive pressure from pro-government forces for all militants and civilians to evacuate the neighborhood. Despite the pressure, only a few hundred families had left. They feared being detained at checkpoints, and also fearing that they would be unable to return to the neighborhood in the future. Al-Waer hosts many IDPs from the Old City in Homs who were forcibly evacuated earlier in the conflict.

22. On 18 June 2016, pro-government forces attacked civilians outside of a government-controlled bakery. One person was reportedly killed, many others injured, and four other persons were arrested.

23. Throughout August to October 2016 the population estimate in al-Waer dropped due to forcible transfers to northern Homs. The northern cities of al-Rastan and Talbiseh populations were raised from these forcible transfers. In addition, government forces and
pro-government militias continued to try and push the neighborhood to abandon earlier negotiation terms that included a demand for the release of political prisoners. This is systematically done in other besieged areas as well: The government negotiators have made these demands through a mixture of intense military escalation, threats, misinformation, and aid restrictions.

24. Throughout August to October 2016 the sieges remained. The sieges were enforced by the Syrian Armed Forces, Syrian National Defense Force militias, and a number of foreign pro-government forces including: Afghan militias, Iraqi militias, Hezbollah, and Iranian Islamic Revolutionary Guard Corps (IRGC) forces.

25. Throughout August to October 2016 the following attacks were extremely damaging to the already besieged area of al-Waer: On August 19 2016 the al-Birr hospital was damaged by shelling from pro-government forces, and ten days after the shelling’s it was targeted once more; On the 26 and 27th of August there were more than 39 total airstrikes that killed approximately 23 civilians and caused more than 120 injuries, and also on the 27th of August there were 15 air raids that targeted civilian homes and the al-Waleed hospital was bombed during this time. Not only were there shelling and mortars used in the siege, incendiary munitions were used as well.

26. In late August 2016, because of bombings on hospitals and general lack of medical supplies, the medical situation largely deteriorated throughout al-Waer. Reports of spreading tuberculosis was rampant and while the Syrian Arab Red Crescent (SARC) offered to evacuate people for treatment, the patients declined citing that they were fearful for their safety if they left.

27. On August 11, 2016, al-Waer’s local council issued a distress call to international organizations, warning that the al-Waleed hospital would shortly run out of supplies and only had enough fuel to run generators for another 24 hours.

28. On September 1, 2016 the negotiating committee worked out a deal with the government to return to an earlier ceasefire deal. The negotiating committee had to accept a deal with conditions that were previously vastly unacceptable because the severe military escalation forced the civilians of al-Waer to accept anything they could get.
29. Because of the ceasefire plan, basic goods and necessities were able to be transferred into al-Waer and some families were transferred to the northern region of Homs. These transfers were forcible in nature because they were completed under extreme duress, with the only viable options left to the civilians of al-Waer would be to surrender or die.

30. By the end of October 2016, government forces once again increased access restrictions. The ceasefire plan, as well as future negotiations, broke down in November when the local negotiation committee refused to submit the names of fights until the government released the status and information on detainees. After the ceasefire agreement and negotiations broke down, al-Waer was once again subject to intense airstrikes and attacks from the government.

31. The sieges that al-Waer experienced from November 2016 through January 2017 were at the hands of, and enforced by, Syrian Armed Forces and an array of affiliated groups including the Syrian National Defense Force militias, Iran-backed foreign militias, Hezbollah, and Iranian Islamic Revolutionary Guard Corps (IRGC) forces.

32. On 6 November 2016, pro-government airstrikes and bombardments killed four civilians and wounded more than twenty civilians. Three children and two women were among the casualties and an elderly man suffered a heart attack as a result of fear during the attacks and subsequently passed away.

33. Beginning on 15 November 2016 there was a two-week long pro-government force-backed assault against al-Waer. Barrel bombs, incendiary munitions, elephant missiles, mortars, and shelling pummeled the neighborhood. On the first day of this two-week long assault, 25 barrel bombs hit al-Waer and eight people were killed including two children. Both of al-Waer’s primary hospitals were damaged. This heavy assault forced civilians to seek shelter underground for days that led to greater suffering, as the bunkers were crowded and unsanitary, where diseases such as lice spread quickly. The medical sectors were wholly unable to treat the injured civilians from this assault. On one occasion during the assault, six civilians were killed and 10 were injured when a missile struck a store selling fuel, causing severe fatal burns on victims.

34. On the 28th and 29th of November, schools and prayer services were cancelled due to the intense shelling, and the al-Waer negotiating committee reportedly met with a Russian
officer that resulted in an agreement for a temporary weeklong truce. With the start of the temporary local truce on 29 November 2016, a flurry of intense negotiations resulted in the government issuing a new ultimatum for the neighborhood to surrender by 14:00 hours on 2 December 2016 or face a new wave of attacks. This threatening ultimatum had been issued to al-Waer many times over the past years, and passed without capitulation.

35. The November 2016 pro-government assaults on al-Waer left the area vastly devastated. A total of 16 civilians were killed during the assault, including two children, and dozens more were injured. The bombings caused major infrastructure damage. Five charity centers serving as civilian shelters were directly targeted including: an orphanage, a kindergarten, a religious center, a charity, and a home for the deaf and mute. The orphanage was completely destroyed leaving 35 families displaced. Nine members of the Civil Defense team were injured attempting to rescue civilians. Government forces did not allow those who were injured or in need of medical treatment to leave al-Waer for treatment; as a result, three elderly civilians died due to the lack of heart disease drugs and blood pressure medication. Once the conditions deteriorated more-so, students and government employees, who were once able to move intermittently throughout the checkpoints, were banned from bringing any supplies with them when they re-entered al-Waer.

36. Throughout February to April 2017, food and medical supplies dwindled for trapped civilians, pushing al-Waer to the brink of a complete humanitarian disaster. Those tactics, including the intimidation and constant threats from the government, were intended to force al-Waer to surrender to the government. Prior agreements had stalled over the issues of the release of detainees.

37. On 8 February 2017, 11 civilians were killed, including three children and three women, and 45 were injured during the second day of intensified pro-government attacks against al-Waer, marking the start of several weeks of escalation. In mid-February, the medical staff in al-Waer issued a distress call to the international community regarding lack of medical supplies and rapidly declining supplies with the high number of injuries. On 20 February, a UN interagency humanitarian aid convoy destined for al-Waer failed to reach its destination, while en route it was fired at and looted by pro-government forces. Reportedly, 22 out of the 35 aid trucks were diverted by al-Ridha militia group, which is a
sectarian pro-government Shia militia supported by Iran, known as the Syrian Hezbollah), and offloaded in government-controlled Mazraa area.

38. On 17 February 2017, at least 12 airstrikes launched by Russian Sukhoi jets hit the al-Waer neighborhood. Two civilians were killed and there was massive infrastructure damage.

39. On 25 February 2017, al-Waer was hit with more than 40 airstrikes, 55 cluster munitions, and constant shelling in a single day during an intense wave of pro-government attacks.

40. On 6 March 2017, al-Waer was hit with 18 airstrikes during a wave of intensified pro-government attacks. Two civilians were killed and more than 25 injured. Twelve of the airstrikes were launched after a meeting between the al-Waer negotiating committee and Russian negotiators.

41. On the brink of collapse, al-Waer surrendered to government terms on 13 March 2017. The agreement was reportedly negotiated by Russian mediators who used similar threat tactics reportedly used by Syrian government negotiators in other localities, promising that the neighborhood would be annihilated if it refused to surrender. The final agreement called for the forced transfer of somewhere between 12,000 to 20,000 people – more than two thirds of them civilians – out of al-Waer to opposition-controlled areas in weekly batches of around 1,500 people each. The transfer of people began on 18 March 2017, and the final transfer ended on 19 May 2017. More than 20,000 people civilians ended up being transferred out of the neighborhood, making it the second largest population transfer of the conflict after eastern Aleppo.
CHARGES

COUNT 1

FORCIBLE TRANSFER OF POPULATION AS CRIMES AGAINST HUMANITY

42. Bashar AL-ASSAD by virtue of his high-ranking position as President of Syria and Commander in Chief of the Syrian Armed Forces from 17th of September 2000 to present, the general Secretary of the ruling Arab Socialist Ba'ath Party and Regional Secretary of the Party’s branch in Syria, played a central role in, perpetrating and ordering the forcible transfer of Syrian residents in the al-Waer district of Homs. In addition, Bashar AL-ASSAD knew or had reason to know that forcible transfers were about to be or had been committed by his subordinates, and he failed to take the necessary and reasonable measures to prevent such acts or punish the perpetrators thereof.

43. As described above, on or around October 2013 through May 2017, the Syrian Military, as well as pro-government government forces, forcibly displaced Syrian residents from areas within al-Waer in which they were lawfully present.

44. As alleged, Bashar AL-ASSAD participated in perpetrating and ordering the crime of forcible transfer of Syrian resident in the al-Waer district of Homs. Crimes against humanity are committed where there is an act committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. In the case of al-Waer these elements are plainly evidenced. As described above in paragraphs 12, 14, 18, 22, 24, 25, 30-33, 35, and 37-40, there were attacks on the population of al-Waer in the form of airstrikes, sieges, shelling, cluster munitions, and many other varieties of ground attacks were used on the civilians, such as attacking a government ran bakery while al-Waer civilians were around it. As for the widespread and systematic nature of these attacks, this can be evidenced in paragraphs 12, 23, 34, and 36; it has been shown that government officials made similar types of forced agreements with besieged areas in order to gain the upper hand and force the collapse of these areas. This crime against humanity was plainly hostile to the civilian population of al-Waer because the attacks were indiscriminate in their nature. This indiscrimination can be shown throughout paragraphs 18, 20, 25, 32, 33, 35, 37, and 40. Lastly, the element of knowledge must be shown within a crime against humanity charge. Here, the knowledge shown is the
knowledge of Bashar AL-ASSAD in the use of government tactics and government force (i.e. military force) to forcibly transfer the population of al-Waer out of the area and into government-controlled areas by use of attacks. This can be evidenced in paragraphs 12-15, 17-20, 22, 24, 25, 27-31, 33-37, 40, and 41. Bashar AL-ASSAD is the President of Syria, and is also the Commander in Chief of the military. These acts in al-Waer did not go unnoticed, and he either knew, or should have known, of the ruthless atrocities being committed against civilians in the al-Waer district of Homs.

45. Many of the Syrian residents who were forcibly displaced from their homes in al-Waer have since been moved to Aleppo and Idlib, which are government controlled areas within Syria.

46. As a result of these acts, most of the Syrian residents of al-Waer have been, and are continuing to be, forcibly displaced.

Bashar AL-ASSAD is criminally responsible for:

**COUNT 2**

FORCIBLE TRANSFER OF POPULATION AS A WAR CRIME

48. Bashar AL-ASSAD by virtue of his high-ranking position as President of Syria and Commander in chief of the Syrian Armed Forces from 17th of September 2000 to present, the general Secretary of the ruling Arab Socialist Ba’ath Party and Regional Secretary of the Party’s branch in Syria, played a central role in, perpetrating and ordering the forcible transfer of Syrian residents in the al-Waer district of Homs. In addition, Bashar AL-ASSAD knew or had reason to know that forcible transfers were about to be or had been committed by his subordinates, and he failed to take the necessary and reasonable measures to prevent such acts or punish the perpetrators thereof.
49. As described above, on or around October 2013 through May 2017, the Syrian Military, as well as pro-government government forces, forcibly displaced Syrian residents from areas within al-Waer in which they were lawfully present.

50. As alleged, Bashar AL-ASSAD participated in perpetrating and ordering the crime of forcible transfer of Syrian resident in the al-Waer district of Homs. In this instance, the crimes that have been committed are in violation of Article 8(2)(a)(vii) stating “(2) For the purposes of this Statute, ‘war crimes’ means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (vii) Unlawful deportation or transfer or unlawful confinement.” In the case of al-Waer these elements are plainly evidenced.

Bashar AL-ASSAD is criminally responsible for:

Amsterdam
July, 2018

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