

An illustration on the right side of the page shows a child in a white protective suit and a green gas mask. The child is holding a yellow hose that leads to a yellow flame or smoke plume. In the background, a person is shown falling from a ledge. The entire scene is set against a dark, textured background with a brick wall pattern.

## On Day of Remembrance for All Victims of Chemical Warfare, Most Victims of Chemical Weapons This Century Are Syrians

Justice Will Not Be Achieved without Holding the Head of the Syrian Regime Army Command Accountable for the Killing of Nearly 1,500 Syrian Citizens and Injuring 12,000 Others

Monday 30 November 2020

The Syrian Network for Human Rights (SNHR), founded in June 2011, is a non-governmental, independent group that is considered a primary source for the OHCHR on all death toll-related analyses in Syria.

**SNHR**  
SYRIAN NETWORK FOR HUMAN RIGHTS  
الشبكة السورية لحقوق الإنسان

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## **I. A New and Shameful Failure by the UN Security Council to Punish the Syrian Regime after the Report of the OPCW Investigation and Identification Team (IIT):**

During its 20th session in 2015, the Conference of the States Parties to the Chemical Weapons Convention decided that a memorial Day of Remembrance for all Victims of Chemical Warfare would be observed on November 30 each year, as the brutal Syrian regime's frequently repeated use of chemical weapons against the Syrian people ever since the Syrian Network for Human Rights (SNHR) documented the regime's first use of chemical weapons on December 23, 2012, against the people of Homs city, through the most widespread use of chemical weapons in the modern history, namely the attack on the two Ghoutas in Damascus Suburbs on August 21, 2013, and to all its subsequent CW attacks, as well as the catastrophic failure of the UN Security Council and the international community to deter the Syrian regime for its repeated use of these internationally proscribed weapons, or to hold it accountable in any way, all had increased the grave concerns among those in charge of the 2015 conference, especially since humanity had believed, at least up until 2012, that the use of chemical weapons had been a barbaric historical evil left in the past and that no one would dare to use weapons of mass destruction in the twenty-first century.

Although this day represents an opportunity to renew the Organization for the Prohibition of Chemical Weapons' (OPCW) commitment to eliminating the threat of using this type of munitions, and to promote the objectives of peace, safety, and pluralism, the reality of the Syrian regime's dealings with the organization, the regime's inadequate compliance with the provisions of the Chemical Weapons Convention, and the number of massive falsehoods in the regime's announcement of the destruction of its chemical arsenal, all point to a shameful and bleak picture in the course of ensuring the disposal of these munitions. These failures raise questions among Syrians in particular about the OPCW's ability to achieve its goal of creating a world permanently free of chemical weapons, more especially in light of the UN Security Council's failure to act and take any deterrent steps based on the OPCW's reports. Without any effective executive enforcement, all these reports and statements are effectively empty verbiage, which will unquestionably constitute no form of deterrence to the Syrian regime and its allies, (especially since the regime is backed by a permanent member state at the Security Council, namely [Russia](#)).

This year's Day of Remembrance for all Victims of Chemical Warfare comes as the Syrian regime continues to refuse to admit its deliberate deception of the OPCW, its specialist institutions' continued production of chemical munitions, and its continued development of its chemical weapons program even after it acceded to the Chemical Weapons Convention in 2013; this has been seen in practice through the regime's repeated use of chemical weapons on dozens of occasions, all of which we have documented exhaustively on the SNHR database, and which have also been conclusively proven in reports issued by human rights and international organizations, the latest of which was [the report](#) published by the OPCW Investigation and Identification Team (IIT).

[The 90-day deadline](#) granted by the OPCW's Executive Council to the Syrian regime [following the report](#) published by the IIT in April 2020, in which it accused the Syrian regime of using chemical weapons in al Latamena city on three occasions, provided an additional opportunity for the Syrian regime and its Russian ally to cast doubt on the credibility of the report and insult all the OPCW's member states, assisted by the complete paralysis of the UN Security Council and the indifference of the international community. The reactions of various countries worldwide after the report was issued are shameful and confirm to the surviving victims of chemical weapons in Syria that they are without any support, with this injustice possibly pushing some of them towards intolerance, extremism, and terrorism, especially since the Security Council was supposed to act directly under Chapter VII of the United Nations Charter and punish the Syrian regime economically and militarily for using weapons of mass destruction.

On October 14, 2020, the Secretary-General of the Organization for the Prohibition of Chemical Weapons issued a report<sup>1</sup> confirming that the Syrian regime did not meet the 90-day deadline and has not declared any of the facilities where the chemical weapons used in al Latamena attacks were developed, with the report also noting that the regime hasn't declared any of the chemical weapons it currently possesses, or revealed any information about any of its chemical weapons production facilities; all this means that the Syrian regime has not resolved all or any of the outstanding issues regarding its initial declaration that it would destroy its chemical weapons stockpile, with the report accordingly being submitted to the UN Security Council and the UN General Assembly.

On November 5, 2020, the UN Security Council held a special session to discuss the issue of chemical weapons disarmament in Syria. Izumi Nakamitsu, the High Representative for Disarmament Affairs, [stated](#) that the OPCW Declaration Assessment Team had visited Damascus and collected samples to replace those gathered during its previous deployment, adding that the OPCW technical secretariat still plans to conduct two rounds of inspections at the Barzah and Jamrayah facilities of the Syrian Scientific Studies and Research Centre in 2020.

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<sup>1</sup> The report entitled "Implementation of EC-94/DEC.2 on addressing the possession and use of chemical weapons by the Syrian Arab Republic" <https://undocs.org/en/A/75/536>

We at the SNHR had hoped that a conclusive decision would be issued under Chapter VII by the United Nations Security Council against the Syrian regime after the report of the UN Secretary-General, more especially after the presentation made by the Organization for the Prohibition of Chemical Weapons, but the Security Council session was deeply disappointing and again reflected the body's state of paralysis and failure to manage a dangerous issue such as this, with its response limited to an exchange of words between representatives of countries, and with the council divided between those condemning the Syrian regime and those defending it; the session did not provide anything new in terms of putting an end to the Syrian regime's violations, just as no initiative was taken to impose political, economic and military sanctions on the Syrian regime under Chapter VII.

The SNHR stresses that the comprehensive international failure on this issue, embodied by the sole opposition consisting of mere ineffectual denunciations of the Syrian regime's confirmed and well-documented use of weapons of mass destruction, has allowed the regime to continue to commit every kind of crime, and to repeatedly violate a convention signed by 193 countries which have significantly adhered to it, with the regime failing even to abide by a request to provide a clear and accurate declaration of its chemical stockpile. It must be noted that the Syrian regime's policy in deceiving the international community and impeding the work of international organizations is the same policy it has pursued since 2011, especially concerning the issue of chemical weapons. We believe that it would have been more beneficial for the OPCW not to repeatedly give new deadlines to the Syrian regime, especially in light of all the violations it has committed and all the obstacles it has placed in front of the international organization's work teams, which took many forms, from deliberately delaying the granting of visas to delaying its responses to the organization's messages, and hindering the access of inspectors to some areas, as well as through its refusal to allow the entry of the OPCW's investigation team to Syria, as happened in June 2019; we referred to these restrictive measures in [a previous report](#) we issued on June 17, 2019.

## **II. The Record of Chemical Weapons Use in Syria, According to the SNHR Database, and Bashar al Assad's Central Responsibility for It:**

On this day, it is necessary to recall the terrible record of the chemical attacks that took place in Syria over the past years, and to commemorate and express solidarity with the deceased victims and survivors of these attacks, who are still waiting for justice and accountability to this day. According to SNHR's database, we have documented at least 222 chemical attacks in Syria since December 23, 2012, up to November 30, 2020. These attacks are distributed according to the perpetrator party as follows:

- A.** The Syrian regime carried out 217 chemical attacks in various Syrian governorates.
- B.** ISIS carried out five chemical weapons attacks, all of which in Aleppo governorate.

All these attacks resulted in the deaths of at least 1,510 individuals, distributed between 1,409 civilians, including 205 children and 260 women (adult female), 94 Armed Opposition fighters, and seven prisoners from Syrian regime forces who were being held in an opposition prison, all of whom were killed in chemical weapons attacks carried out by the Syrian regime. These attacks also caused the injury of at least 11,212 individuals, including 11,080 individuals injured in chemical weapons attacks carried out by the Syrian regime, while an additional 132 individuals were injured in chemical weapons attacks carried out by ISIS.

**The Direct Responsibility of the Commander of the Army and Armed Forces, Bashar al Assad, for Chemical Weapons Attacks:**

The Syrian regime is very centralized, and a huge undertaking such as moving and using chemical weapons cannot be carried out without the knowledge and approval of the head of the Syrian regime, Bashar al Assad, who is at the same time the Commander-in-Chief of the Army and the Armed Forces. Indeed, it is not possible to carry out tasks far smaller than this without his knowledge and approval. International Humanitarian Law takes into account the hierarchical nature of the armed forces and the discipline imposed by leaders and holds commanders criminally responsible on the personal level, not only for the actions and breaches they have personally committed but also for the actions committed by their subordinates. According to the International Committee of the Red Cross' study of customary international humanitarian law, the responsibility of leaders developed into the following customary rules:

- Commanders and other superiors are criminally responsible for war crimes committed pursuant to their orders<sup>2</sup>.
- Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible<sup>3</sup>.
- Commanders ensure that members of the armed forces under their command are aware of their obligations under international humanitarian law<sup>4</sup>.

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<sup>2</sup> ICRC, customary international humanitarian law, Rule 152, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule152](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule152)

<sup>3</sup> ICRC, customary international humanitarian law, Rule 153, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule153](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule153)

<sup>4</sup> ICRC, Additional Protocol (I) to the Geneva Conventions of 1977, Article 87-2, <https://ihl-databases.icrc.org/ihl/INTRO/470>

The Rome Statute of the International Criminal Court strengthens these elements of responsibility and extends them to include crimes against humanity committed in peacetime or war, and war crimes, whether committed in an international or internal armed conflict<sup>5</sup>. The law holds military commanders as well as other superiors, including civilians, responsible for this<sup>6</sup>.

The International Court of Justice has affirmed that “According to a well-established rule of international law, which is of customary character, ‘the conduct of any organ of a State must be regarded as an act of that State’”. In the case of the Democratic Republic of the Congo v. Uganda (see above), the International Court of Justice upheld that “The conduct of individual soldiers and officers of the UPDF is to be considered as the conduct of a State organ. The contention that the persons concerned did not act in the capacity of persons exercising governmental authority in the particular circumstances, is therefore without merit”<sup>7</sup>.

Generally speaking, international criminal courts require that three elements must be proved before a person may incur superior responsibility for the crimes committed by subordinates:

- The existence of a relationship of superiority and subordination between the accused and the perpetrator of the underlying offence;
- the knowledge of the superior that his subordinate had committed or was about to commit the crime;
- the failure of the superior to prevent the commission of the crime or to punish the perpetrators.

We believe that all these requirements are fulfilled in the case of the Syrian regime and the relationship of the head of the regime and its leaders and the strict and centralized chain of command, meaning that the head of the Syrian regime Bashar al Assad and the higher-ranking leaders are all directly involved through the use of chemical weapons of mass destruction in committing violations that amount to crimes against humanity and war crimes against the Syrian people.

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<sup>5</sup> The Rome Statute of the International Criminal Court, Article 25, <https://www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf>

<sup>6</sup> The Rome Statute of the International Criminal Court, Article 28, <https://www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf>

<sup>7</sup> Report of the International Court of Justice (1998-1999) <https://www.icj-cij.org/public/files/annual-reports/1998-1999-en.pdf>

Report of the International Court of Justice (2004-2005) <https://www.icj-cij.org/public/files/annual-reports/2004-2005-en.pdf>

### III. Recommendations:

#### **UN Security Council and the United Nations, According to Chapter VII of the Charter of the United Nations:**

- Impose economic, political, and military sanctions on the Syrian regime as a form of moral compensation for the victims' families.
- Call on the Syrian regime's allies to condemn its use of chemical weapons, work with the rest of the world to hold the Syrian regime accountable, and pressure it to enter into a political process that leads to a real political transition towards democracy, which would contribute to lifting sanctions and moving towards democracy and stability.
- The Syrian issue must be referred to the International Criminal Court and all those who are responsible for using chemical weapons should be held accountable, while Russia must stop using the veto, as it is a party to the Syrian conflict, and the UNSC states' veto power should be withheld when crimes against humanity and war crimes are committed.
- Since it has been proven that the UN Security Council has failed for nine years to date to end any of the Syrian regime's crimes against humanity or to refer them to the International Criminal Court, the United Nations General Assembly should intervene based on Resolution No. 377 of 1950 (the Uniting for Peace Resolution), and work to refer the case to the International Criminal Court and hold all those involved in using chemical against Syrian citizens accountable.
- Initiate fundamental reforms, particularly in the area of the use of the veto under international law and human rights, and establish strict limitations and standards for the use of the veto.
- Place the public interest, especially that of victims and affected countries, and the attainment of just security and peace before the economic and political gains and interests of any permanent member state.

#### **The European Union, the United States of America, Canada, Australia, and the rest of the world that imposed sanctions on the Syrian regime:**

- Insist on a permanent link between the issue of sanctions and the achievement of a real political transition since easing the sanctions in the presence of the same individuals and entities involved in crimes against humanity and war crimes means providing support to these repressive entities, and impose direct sanctions on the backers of the Syrian regime, primarily Russia and Iran.
- Increase the provision of humanitarian assistance to the World Health Organization to work in all regions of Syria, and ensure that its work is practiced freely away from the influence of local organizations affiliated with the Syrian regime in the areas under its control.



- Continue to work to hold the Syrian regime to account for its use of weapons of mass destruction.
- In light of the continued failure of the UN Security Council, it is imperative to consider establishing a civilizational and humanitarian alliance under clear criteria aimed at providing urgent protection for civilians from brutal regimes in the event of committing war crimes and crimes against humanity.

**Executive Council of the Organization for the Prohibition of Chemical Weapons (OPCW):**

- Put pressure on the Security Council to intervene under Chapter VII of the Charter of the United Nations, given that a Member State's use of weapons of mass destruction is assumed to constitute a serious threat to international peace and security.
- If the Security Council fails and is unable to make a decision, responsibility should be transferred to the United Nations General Assembly, and if this fails, responsibility should pass to the international community, especially the civilized democratic nations which claim to uphold human rights.
- Work more on the issue of holding accountable all Syrian regime individuals involved in the use of chemical weapons, including senior leaders. We at the Syrian Network for Human Rights have full details on our database of those involved in committing violations, as well as data on a large number of the individuals who contributed to the use of chemical weapons, and we will, according to the agreement signed with the Investigation and Identification Team, coordinate for further cooperation in this context.
- Suspend Syria's rights and privileges, request all state parties to take collective measures against the Syrian regime and make clear and serious recommendations to the United Nations Secretary-General and the UN Security Council.



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