

Statement

SNHR Welcomes OPCW's Request to Hold Individuals Responsible for the Use of Chemical Weapons, including Those Who Gave Orders, to Account

The OPCW Executive
Council Should Have Made
Recommendations to the Security
Council Rather Than Giving the
Syrian Regime 90 Days



I. The Syrian Regime Has Massively Exceeded the Level of Non-Compliance to the Point of Repeated, Deliberate and Measured Planning and Use of Chemical Weapons

On Thursday, July 9, 2020, The Executive Council of the Organization for the Prohibition of Chemical Weapons (OPCW) adopted a [decision](#) after discussing [the first report](#) of the OPCW Investigation and Identification Team (IIT), in which it confirmed the Syrian regime's use of chemical weapons in Latamena city in Hama suburbs three times, two of which were carried out by the use of sarin gas.

Although the decision condemned the Syrian regime's use of chemical weapons, and affirmed the regime's total failure to declare and destroy its chemical weapons, it - that is, the decision - resorted to paragraph 36 of [Article VIII](#) of the Chemical Weapons Convention and chose to [give the Syrian regime 90 days to redress the situation](#), requesting that the Syrian regime declare the procedures by which chemical weapons were developed and produced, declare all the weapons it possesses, and resolve all of the outstanding issues.

However, paragraph 36 of Article VIII talks about situations where there are doubts, concerns, or cases of non-compliance, and we in the Syrian Network for Human Rights (SNHR) believe that the Syrian regime has already massively exceeded the level of doubts and cases of non-compliance, to the point of repeatedly using chemical weapons deliberately and in a planned manner, and accordingly urge all the states parties to the Chemical Weapons Convention, the Executive Council and decision makers worldwide to remember a very important point:

"On January 4, 2016, the Organization for the Prohibition of Chemical Weapons had [announced](#) that the last substance of the Syrian chemical weapons (75 cylinders of hydrogen fluoride) had been destroyed, while the chemical attacks in Latamena had taken place 14 months later, constituting new evidence of the extent of the misleading and deception that the Syrian regime has practiced against the international community and the Organization for the Prohibition of Chemical Weapons, including the Executive Council."

II. Welcoming the Affirmation on the Issue of Accountability and the Denial of Impunity for Those Responsible for the Use of Chemical Weapons:

The decision of the OPCW Executive Council reaffirmed that individuals responsible for the use of chemical weapons in Syria, including the leaders responsible for giving orders, should be held accountable.

The Syrian regime is a totalitarian regime which is not expected to implement any orders, including those far simpler than the use of chemical weapons, without direct orders from the top leaders including the General Command of the army and the armed forces, with the use of chemical weapons requiring the coordinated participation of several regime institutions in order to carry out successful attacks and ensure their accurate implementation; these bodies are led by the regime's military and intelligence institutions and its Chemical Weapons manufacturing agency. The use of chemical weapons in Syria has become widespread and systematic, constituting crimes against humanity, as well as war crimes, with local, regional and international media, as well as Syrian social media pages, being constantly filled with numerous instances of the use of chemical weapons in Syria by the regime, meaning that it is impossible for the Syrian regime leadership to deny knowledge or awareness of this.

We in the SNHR rely on the identification of the relevant rules of customary humanitarian law in holding commanders and other senior officials responsible for war crimes committed by their subordinates pursuant to their orders ([Rule 152](#)), and to hold them accountable if they knew, or had reason to know, that these subordinates were about to commit or were committing such crimes and failed to 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 ([rule 153](#)); the International Criminal Court Statute (ICC Statute) expands the elements of this responsibility to include crimes against humanity, which are committed in time of peace or war, and war crimes. This law also holds military commanders in addition to senior officials, including civilians, responsible for this ([Article 25 and 28 of the ICC Statute](#)). In addition, combatants bear responsibility for their actions, even if they were carrying out orders from those of higher rank, and it is an inad-

equate excuse to claim that the combatant was acting according to orders issued by higher authorities, meaning that those who commit war crimes and crimes against humanity should be held individually criminally responsible for their actions. The International Criminal Court Statute also states: “The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility,” meaning that although such an order may be considered one of the mitigating circumstances in considering the penalty for this crime, it doesn’t absolve the crime’s perpetrator from his/her responsibility. The SNHR has repeatedly warned, through reports and statements, of the need to refrain from carrying out any acts that lead to committing war crimes or crimes against humanity, in addition to noting that international law provides that, even duress, the perpetration of war crimes or crimes against humanity or extermination only become acceptable as a defense in extreme situations where there is no option but to kill or be killed ([The International Criminal Tribunal for the former Yugoslavia, Erdemovic case, March 5, 1998, Para. 17](#)).

III. Recommendations to the Executive Council of the Chemical Weapons Convention

- Based on the Syrian regime’s barbaric, extensive history of using chemical weapons, the reports of the Joint Investigative Mechanism of the Organization for the Prohibition of Chemical Weapons, and the United Nations, as well as the latest report of the Investigation and Identification Team, the Executive Council should have resorted directly to [Article XII of the CWC](#) by suspending Syria’s rights and privileges, requesting all states parties to take collective measures against the Syrian regime, and making clear and serious recommendations to the United Nations General Assembly, the Secretary-General, and the UN Security Council.
- Responsibility should be promptly transferred to the Security Council, which should be requested to intervene in accordance with 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.

- In the event that the Security Council fails and is unable to take a decision, responsibility should be transferred to the United Nations General Assembly, and if this fails, responsibility passes 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 figures involved in the use of chemical weapons, including senior leaders. We in 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 framework.