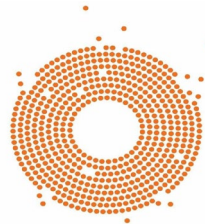




المركز السوري للإعلام وحرية التعبير
Navenda Sūriyayî ya Ragihandinê û Azadiya Derbirinê
Syrian Center for Media and Freedom of Expression



SYRIAN ARCHIVE

**OPEN SOCIETY
JUSTICE INITIATIVE**

BACKGROUND

Victims of Syria's chemical attacks demand justice – Criminal complaints in Sweden

Q&A on the Swedish complaints and the broader legal campaign

On 19 April 2021, together with victims from Syria, the Syrian Center for Media and Freedom of Expression (SCM), Syrian Archive, Civil Rights Defenders (CRD) and the Open Society Justice Initiative (OSJI) submitted criminal complaints against the Syrian government for their use of chemical weapons in two chemical attacks in Al-Ghouta and Khan Shaykhun.

The complaints concern Syrian government sarin nerve agent attacks that happened on 21 August 2013 in the Damascus suburbs of Eastern and Western Ghouta in the Syrian Arab Republic and on 4 April 2017 in the town of Khan Shaykhun in the Idlib Governorate of the Syrian Arab Republic. In both locations, the attacks killed numerous victims including children and caused severe physical or psychological suffering to surviving victims.

On what evidence are the complaints in Sweden based?

The complaints provide the most detailed description available of two sets of sarin attacks: the sarin attacks on Eastern and Western Ghouta, Syria, on 21 August

2013, and the sarin attack on Khan Shaykhun, Syria, on 4 April 2017. They are the product of more than three years of investigation by the NGOs. The complaints and supporting dossiers of evidence comprise extensive witness testimonies, open source investigation, and analysis.

Witness testimonies provide “crime base” evidence, including from civilians directly affected by sarin attacks, first responders, and medical professionals who came to victims’ aid. Witness evidence also demonstrates “perpetrator linkages” to the crimes, drawn from more than 50 “insider/defector” witnesses with knowledge of Syria’s chemical weapons program and the chains of command responsible for carrying out the attacks. All of the witnesses have agreed to provide evidence to Swedish authorities. The NGOs have also compiled open and closed source documentary evidence including photographs and videos, and analysis of relevant chains of commands.

Taken together, the substantial evidence submitted conclusively demonstrates the Syrian government carried out the chemical attacks and indicates which officials should be investigated for their individual criminal responsibility for the chemical attacks.

Who is the subject of the complaint?

The criminal complaints demonstrate that people from the highest levels of Syrian government forces are behind the attacks and could be accused of committing War Crimes by Employing Forbidden Weapons and Crimes Against Humanity. The complaints also point to additional, unknown high-level Syrian government officials who are responsible for Syria’s chemical weapons program and the attacks on Al-Ghouta and Khan Shaykhun.

Why do chemical weapons attack survivors and human rights advocates seek the investigation in Sweden of crimes committed in Syria?

When civilians in Syria rose up in peaceful protest against the Bashar al-Assad regime just over a decade ago, the government responded by shooting protestors, arresting civilians and subjecting them to arbitrary detention and torture. From this initial repression, the conflict spiraled into a decade of atrocities.

One of the Syrian government’s most horrific crimes has been the use of chemical weapons against civilians. To date, more than 300 chemical weapons attacks have been committed in Syria, and the Syrian government is responsible for more than 98% of those attacks.

The scale and gravity of crimes in Syria—and the failure both to prevent them and to ensure widespread accountability—has gravely damaged international law: Syria

serves as a current, visible and ongoing signal that massive and systematic violations of international law can be perpetrated with impunity.

This attack on international order sends a signal to perpetrators and potential perpetrators of crimes globally that only fuels conflict and makes diplomatic solutions to other crises more difficult to achieve. Accountability for crimes in Syria is a crucial step to reversing the erosion of international law and restoring respect for and compliance with the hard-fought-for laws and norms established in the post-World War II era.

Sweden, through the exercise of universal jurisdiction, has a key role to play in investigating the serious crimes committed in Syria and seeking the arrest and prosecution of the responsible officials. Unlike many jurisdictions in Europe, Sweden can investigate perpetrators of chemical weapons attacks even if they are not present in Sweden.

Thus, with these submissions in Sweden, victims and NGOs call on the Swedish prosecutorial authorities to take concrete investigative steps to address the criminal responsibility of high-level officials of the Syrian government for the use of chemical weapons, with a particular focus on the high-level officials of the Presidential Palace, Republican Guard, Syrian Air forces, and Scientific Studies and Research Center named in the complaint.

What are the options for accountability for Syria's use of chemical weapons?

The [International Criminal Court](#) (ICC) is not authorized to investigate crimes committed in Syria except possibly under narrow circumstances (such as where international crimes are committed by nationals of ICC member states). Syria is not a state party to the Rome Statute and Russia and China vetoed a UN Security Council resolution that would have referred the situation in Syria to the ICC.

With the path to the ICC blocked, and no real prospect of independent justice and accountability inside Syria, victims have turned towards other countries—including Sweden, Germany, and France—to investigate cases based on the principle of “universal” jurisdiction. Since 2012, Syrian victims, families, lawyers, individuals and organisations, as well as international human rights organisations, have launched cases in these countries to obtain investigations on, among other crimes, unlawful detention, torture, and, as in the present case, the use of chemical weapons.

Along with these national steps, the use of chemical weapons in Syria has been investigated by several international bodies. In 2013, the UN Secretary General established a UN mission to investigate allegations of chemical weapons use, including the attacks at Al-Ghouta, Syria, on 21 August 2013.

In response to persistent allegations of chemical weapon attacks in Syria, the OPCW Fact Finding Mission (FFM) was set up in 2014 “to establish facts surrounding allegations of the use of toxic chemicals, reportedly chlorine, for hostile purposes in the Syrian Arab Republic”.

The FFM’s findings were the basis for the work of the OPCW-UN Joint Investigative Mechanism (JIM), an independent body established by the UN Security Council (Resolution 2235, 7 August 2015). The JIM’s purpose was to identify the perpetrators of the chemical weapon attacks confirmed by the FFM. The JIM’s mandate expired in November 2017.

In response to concerns about the Syrian government’s ongoing use of chemical weapons, the OPCW member states established the Independent Investigations Team (IIT) in 2019. As a first, the IIT was established to identify the perpetrators of the use of chemical weapons in specific incidents in Syria, and was authorized to transfer the evidence it collects to the IIIM for further investigation by national authorities.

The International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM), set up in December 2016, is tasked with collecting, preserving, and consolidating evidence, while also preparing files of evidence that can be used by prosecutors in independent criminal proceedings. IIIM has no power to press charges or issue arrest warrants. Instead, it looks to national or international courts to make use of the documented evidence.

What legal avenues are available in Sweden to prosecute the crimes committed in Syria?

Sweden has universal jurisdiction over genocide, war crimes, crimes against humanity and other grave crimes. This allows Swedish authorities to investigate and prosecute international crimes committed on foreign territory by foreign nationals against foreign victims.

The chemical weapons attack on **Khan Shaykhun on 4 April 2017** may be prosecuted as a war crime and a crime against humanity under the 2014 Act on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes.

The Act on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes (“2014 Act”) entered into force on 1 July 2014 and expressly criminalizes several international crimes. The act is not retroactively applicable, which means that crimes that were committed before 1 July 2014 are instead prosecuted as crimes against international law under chapter 22, section 6 of the Swedish Criminal Code,

in the provision's wording before 1 July 2014.

Thus, the chemical weapons attacks on **Eastern and Western Ghouta on 21 August 2013** may be prosecuted as a war crime under chapter 22, section 6 in the Swedish Criminal Code in its wording before 1 July 2014. Although the attacks on Eastern and Western Ghouta fulfill the elements of a crime against humanity, they may not be prosecuted as such under Swedish law as crimes against humanity were not expressly criminalized in Sweden until the 2014 Act entered into force on 1 July 2014.

Has this been investigated in Sweden before?

Sweden has contributed to the efforts in bringing accountability for the crimes committed in Syria by opening structural investigations, as well as by prosecuting individual crimes. Along with several convictions of members of non-state armed groups for killing and inhumane treatment as war crimes in Syria, the first judgment against a former soldier of the Syrian Army was pronounced in Sweden. These steps send a clear signal that those perpetrators who are present on the territory of Sweden will be prosecuted and convicted.

However, Swedish authorities have not issued arrest warrants against those who orchestrate the policy behind grave crimes and are still in Syria.

Which criminal complaints concerning Syria's use of chemical weapons have previously been filed in Europe?

The criminal complaints in Sweden against Syrian government officials alleged to be responsible for the use of chemical weapons is part of a series of criminal complaints across Europe. So far, two other criminal complaints have been filed.

In October 2020, [Syrian Center for Media and Freedom of Expression](#) (SCM), [Syrian Archive](#), and [Open Society Justice Initiative](#) [filed a criminal complaint to the German Federal Public Prosecutor](#) on behalf of more than twenty survivors of chemical weapons attacks.

In March 2021, a group of survivors and NGOs including the Syrian Center for Media and Freedom of Expression (SCM), Syrian Archive, and the Open Society Justice Initiative [sought a French criminal investigation](#) into August 2013 chemical weapons attacks on the city of Douma and on Eastern Ghouta. The complaint was filed with the French head of investigating judges.

What do we hope to see next?

The three NGOs are calling for Swedish prosecutors to form a joint investigation ([JIT](#)) with their German and French counterparts.

We also call on Swedish authorities to investigate the complaints and available evidence, determine which Syrian government officials bear responsibility for the sarin attacks, and to ask the court to detain the suspects in their absence so that arrest warrants may eventually be issued against high-level officials even if they are not currently available for arrest.

The willingness of Swedish authorities to conduct robust criminal investigations into the use of chemical weapons in Syria would be a concrete, valuable demonstration that there cannot be impunity for these crimes.

If the Swedish authorities seek arrest warrants against high-level officials, this would show that the evidence clearly sustains criminal charges against high-level officials, who must face justice. Arrest warrants against high-level officials would further signal important condemnation of Syrian government egregious violation of the global norm against chemical weapons use, and demonstrate to victims that their efforts to achieve justice can obtain practical results.

Beyond the criminal complaints filed by victims and NGOs, we are calling for the OPCW conference of states parties to suspend Syria's "rights and privileges" under [Article 12.2 of the Chemical Weapons Convention](#), which would signal that the Syrian regime's use of chemical weapons has diplomatic consequences.

However, Sweden and other states must take diplomatic steps that go beyond this to ensure that the perpetrators of these attacks are held accountable. States should call for a dedicated debate in the UN General Assembly, where states can make commitments for additional measures to support justice for atrocity crimes in Syria.

Information correct as of: April 2021

Syrian Center for Media and Freedom of Expression (SCM), Syrian Archive, Civil Rights Defenders, and the Open Society Justice Initiative