



Why Criminals Are Not Prosecuted in Syria

In the upcoming days we will commemorate the second anniversary of one of the most ferocious and ruthless massacres in our modern era, the Ghouta Chemical Massacre. SNHR and Human Rights Watch have proved that the Syrian regime was the sole responsible for the toxic gas attack on Al Ghouta. On 21 August 2015, the Syrian regime launched an attack on eastern and western Ghouta in Damascus suburbs. On that day only, one thousand one hundred twenty seven individuals were killed, including 201 women and 107 children; quarter of the victims was women and children and not less than nine thousand five hundred individuals suffered from toxic gas poisoning. In Mo'adamiyat Al Sham in western Ghouta, 64 individuals were killed including 4 women and 10 children. SNHR documented the victims' names, pictures, and other details.

Now, In the light of this anniversary, we constantly ask ourselves: “Why criminals are not prosecuted in Syria?”

From the legal perspective, two crimes were committed. Firstly, this massacre amounts to a crime against humanity. The Syrian regime has been committing widespread and indiscriminate crimes against the Syrian people since 2011, according to Rome Statute.

Secondly, this crime amounts to a war crime since the weapon used by the Syrian government is considered as an internationally prohibited weapon, according to the eighth article of Rome Statute and Geneva Protocol. Logically, and since the ruling regime, which controls the judiciary system in Syria, is the same party who committed this massacre, the perpetrators cannot be prosecuted in Syria. Therefore, the Syrian community has no other choice other than the International Criminal Court. However, the Syrian regime does not recognize jurisdiction of the ICC and therefore, it is not authorized to issue any verdict against the regime, unless the Security Council requests that from the court.

Nonetheless, since 2011 and up till now, Russia and China's vetoes had obstructed justice that we have been waiting for, thus sending a message to the Syrian regime to continue to massacre its own people comfortably while the United Nations express its “utmost condemnation” and “grave concern”. The draft resolutions demanded that all parties involved in the Syrian conflict, are to be held accountable, not only the Syrian regime. However,





Assad regime has continuously breached and violated the Security Council resolutions, thus insulting it while no effective measures from the Security Council have been taken.

Certainly there are different options other than the ICC, but it brings us back to the Security Council that stands impotent before the Syrian community. The Security Council can establish a similar court like the International Criminal Tribunal for Rwanda (1994) or the International Criminal Tribunal for Yugoslavia (1993) since the crimes being perpetrated in Syria are considered to be war crimes and crimes against humanity, which endangers the international security and stability. “Uniting for Peace” resolution (November 1950) can be a different option, but it was applied only three times and needs the alliance of different countries. Another option would be the “Universal Jurisdiction” which allows states or international organizations to claim criminal jurisdiction over an accused person regardless of where the alleged crime was committed, and regardless of the accuser’s nationality, country of residence, or any other relation with the prosecuting entity.

However, the Security Council issued three resolutions concerning the Syrian regime’s use of toxic gases, two of them threatened to use Chapter VII of the Charter of the United Nations. Resolution 2118 issued on 27 September 2013 stated in article 23:

“In the event of non-compliance with this resolution, including unauthorized transfer of chemical weapons, or any use of chemical weapons by anyone in the Syrian Arab Republic, to impose measures under Chapter VII of the United Nations Charter” and “the use of chemical weapons anywhere constitutes a threat to international peace and security”.

Further, resolution 2209 was issued on 6 March 2015 and we assure that the Syrian regime has violated both resolutions. The Syrian Network for Human Rights recorded not less than 125 breaches for resolution 2118, including 56 breaches for resolution 2209.

The last resolution, 2235, demanded the Organization for the Prohibition of Chemical Weapons to determine the criminals, as if the Security Council is unaware of their identities!

