Dear Mr. Pinheiro,

We are following up on our recent correspondence to you sent on the 29th of May relating to your confirmation in your email of 25 May 2021 that the Commission’s report A/HRC/46/54 does not include Douma in its list of 38 confirmed attacks. In light of this clarification, for which we are most grateful, we would appreciate if you could answer other critical issues which your clarification raises:

1) Our understanding is that the Douma incident is not included in your report because your standard of proof of ‘reasonable grounds to believe the incident occurred’ (A/HRC/39/65, I.3; p. 3) was not met for this particular incident. Could you kindly confirm that this is the case?

2) We also understand that failure to meet this standard of proof was due to the lack of evidence for the cause of death of the victims, and the inconsistency, evident in your reports, between exposure to just chlorine and the signs and symptoms presented by the victims, as well as the circumstances of their death:

“The available evidence is largely consistent with the use of chlorine,… but does not explain other reported symptoms, which are more consistent with the use of another chemical, most likely a nerve gas”. (A/HRC/38/CRP.3 C.2: p. 14)

“the Commission cannot make yet any conclusions concerning the exact cause of death, in particular on whether another agent was used in addition to chlorine that may have caused or contributed to deaths and injuries.’ (A/HRC/39/65 VI.93; p. 17)

Furthermore, a NYT article published on 20 June 2018 reported how the Commission had doubts about the cause of death and withheld information from the official report issued the same day. It quotes an official as saying “with the April 7 attack in particular, more information was needed, including precisely what killed the 49 people. If we’re not sure what the cause of death was, we may be looking in the wrong place”.

We would appreciate if you could let us know whether the contradiction between the circumstances and means of death of the victims on the one hand, and the signs and symptoms arising from the supposed exposure to chlorine gas, is still unresolved and/or being investigated by the Commission to resolve the incongruity.

3) We would also appreciate if you could explain, as noted in our original communication of 22 February 2021, what the Commission meant in A/HR/39/65, published in early August 2018, when it was referring to ‘a vast body of evidence collected by the Commission’ suggesting the alleged attack had occurred. As you are aware this is at odds with the OPCW Director General’s public statement in which he claimed the bulk of analytical work that led to the conclusions of its final report was conducted after August 2018. Did the Commission possess a vast body of evidence before August 2018 that the OPCW did not have? Was this evidence shared with the OPCW after August 2018 that helped them reach their conclusions that there was ‘reasonable grounds to believe’ chlorine was used as a weapon? Will the commission be sharing the evidence it has gathered about a helicopter dropping a chlorine cylinder with the OPCW IIT as part of its investigation into attribution of responsibility of the chemical attack?
In conclusion, we believe that the Commission has rightly expressed reservations about chlorine gas being the cause of death of the victims in Douma. This assessment aligns with what the OPCW investigators who drafted the Original Interim Report have said. In their Original report, which was suppressed by unknown actors within the OPCW, they concluded, in consultation with four NATO expert toxicologists on chemical weapon poisoning, that the cause of death was inconsistent with exposure to chlorine. This conclusion, as well as any mention of the consultations with the expert toxicologists, was expunged from the official Final Report.

Furthermore, given our shared concerns regarding the circumstances surrounding the civilian deaths in Douma, and the associated controversy over the OPCW's Douma investigation, we ask that the Independent Commission support our request for a full review of the Douma investigation which includes inputs from *all* of the Douma inspectors. We refer you again here to the Statement of Concern published at https://berlingroup21.org and the proposal to the OPCW published at https://berlingroup21.org/bg21-proposal.

I would like to thank you for letting us have the Commission's response to our queries.

With all good wishes,

Yours,

Hans von Sponeck

(on behalf of the BerlinGroup21)