

A GUIDE TO NATIONAL PROSECUTIONS IN FRANCE

FOR CRIMES COMMITTED IN SYRIA



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PURPOSE OF THIS DOCUMENT

If you experienced a serious violation of your rights in Syria, you might have an option to seek justice before French courts. In this document, you will find the basic information needed to file a complaint in France for criminal charges against the person(s) who perpetrated the crime. The French judiciary primarily relies on national laws to settle disputes. It has fully implemented European and international standards for international crimes, guarantees of due process and respect for human rights. Fully independent from the legislative and executive powers, French judges oversee trial proceedings and may play an active role throughout the investigation. France has some limitations on filing a complaint when the crime happened outside of France, so review this document carefully and contact legal counsel in France to determine if you are eligible to file a complaint.

In this Guide, You Will Learn

1. Opportunities and limits for submitting a complaint;
2. How to file a complaint;
3. The process from investigation to trial; and
4. The rights of victims and witnesses

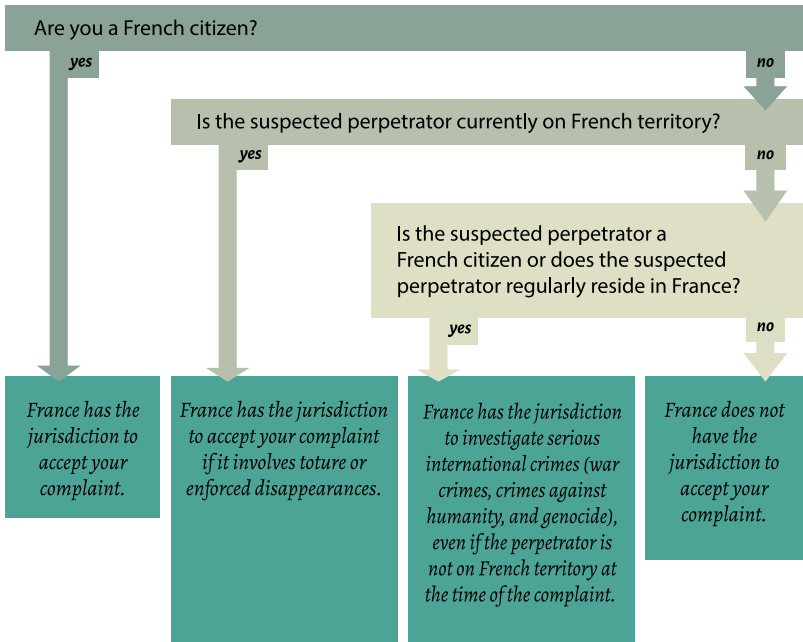
The Syria Justice and Accountability Centre (SJAC) is a Syrian-led, multilaterally supported nonprofit that envisions a Syria defined by justice, respect for human rights, and rule of law. SJAC promotes transitional justice and accountability processes in Syria by collecting and preserving documentation. The purpose of the documentation SJAC collects is to create a record of the conflict and to push for appropriate justice mechanisms that will respond to the needs and interests of Syrians.

The information in this document is true and complete to the best of SJAC's knowledge. This document is intended to provide helpful information on the French legal system and is not meant to be used, nor should it be used, as a substitute for legal advice. It is highly recommended you contact a licensed lawyer with experience in French law before initiating any proceedings. A frivolous complaint could lead to consequences, such as a defamation lawsuit or fines. Also, please be advised that litigation always carries costs and expenses. SJAC and the authors of this document are not responsible for legal actions taken in France and are not liable for any costs or negative consequences incurred by any persons reading or following the information of this document.

1 | DETERMINING JURISDICTION

Does France Have Jurisdiction to Hear My Case?

In principle, France can only investigate and prosecute crimes that occurred on French territory. However, French courts have jurisdiction in certain situations if a crime occurred in Syria. Jurisdiction is available to French citizens who are victims of grave international crimes abroad. If you are not a French citizen, there may still be options for prosecution depending on the nature of the crime and the perpetrator's relationship to France. Provisions in French law allow for complaints for genocide, war crimes, and crimes against humanity, as well as torture and enforced disappearance. Use the flowchart below to determine if French courts have jurisdiction to take your case:



Is There Anyone that France Will Not Try?

France does not have specific provisions on immunity, but has adopted customary law principles in past cases to hold that foreign heads of state, foreign ministers and ministers of foreign affairs are immune from prosecution during their tenure. After their time

in office, they may lose immunity for serious international crimes carried out while they were in office. The Ministry of Foreign Affairs can provide guidance on issues of immunity, but the prosecutor or investigating judge makes the final decision on whether to proceed. A prosecutor's decision on immunity can be appealed to the head of the national prosecution office, and an investigative judge's decision can be appealed to the courts.

Is There a Time Limit for Filing a Complaint?

Genocide and crimes against humanity are not subject to a statute of limitations in France. War crimes are subject to a statute of limitations of twenty or thirty years, depending on the severity of the violation. Incidents of torture and enforced disappearances that do not qualify as a war crime or crime against humanity are subject to a statute of limitations of twenty years.

Does the Perpetrator Have to Be in France?

If the perpetrator is a French citizen, victims may initiate a complaint before any police officer (or gendarme), with the prosecutor, or directly with the Investigating Judge even if the perpetrator is not on French territory. If the perpetrator is not a French citizen, the victim must be a French citizen or regularly reside in France at the time of the complaint in order for French courts to have jurisdiction over war crimes, crimes against humanity, and genocide. If the perpetrator is not a French citizen but is currently on French territory, French courts have jurisdiction for cases involving torture or enforced disappearances.

Do I Have to be a French Citizen to File a Complaint?

No, you do not have to be a French citizen to file a complaint.

Examples of Crimes Covered by French Law:

The following are examples of serious international crimes if they took place in the context of an armed conflict or as part of a larger pattern of violations:

- Murders
- Rape or sexual slavery
- Torture
- Forcible population transfer
- Enforced disappearances

2 | FILING YOUR COMPLAINT

How do I file a Criminal Complaint?

All complaints can be filed before any police officer or gendarme. They can also be filed directly before the Prosecutor or, in some cases, before the head of the investigative judges. In France, there is also a specialized war crimes unit (the National Office for Investigation of Crimes Against Humanity) that investigates cases of crimes against humanity, war crimes, torture, and enforced disappearances. This is the best place to file your claim.

The National Office for Investigation of Crimes Against Humanity can be contacted directly at the following address: oclch@gendarmerie.interieur.gouv.fr.

What Goes into the Complaint?

The complaint must be filed in French. If you are not fluent in French, you can ask the public prosecutor's office for an interpreter (free of charge) to help you in filing the complaint. The record submitted should describe the facts on which your complaint is based. Organizing the facts according to the legal elements of the crime, if possible, is helpful, though this is usually done by a lawyer or law firm.

How Can I Seek Compensation?

If you have personally suffered damages directly caused by the crime in question you may seek compensation by filing a civil party complaint. In addition to compensation, civil party status gives you the ability to appeal an unfavorable verdict and the opportunity for more active and direct involvement during the investigation and the trial. Privileges afforded to civil parties in a case are extensive and can include, but are not limited to, the ability to request the investigating judge to conduct lines of inquiry, have complete access to the case file, and to question witnesses and the accused during the investigation and trial.

How will the Prosecutor Decide Whether to Accept My Complaint?

Upon acceptance, prosecutors must first determine if your case is admissible. The following are grounds for inadmissibility:

- The complaint is manifestly unfounded or cannot lead to an admissible criminal prosecution; or
- The facts do not qualify as either a serious violation of international humanitarian law or a violation of domestic French law; and
- If the claim is related to torture or enforced disappearances, French law does not necessitate that the other cases take priority; French courts could investigate the claim simultaneously with another body. For all other serious international crimes, the prosecutor may dismiss the case if it can be brought before the court of the country in which the crime occurred or if the ICC is exercising jurisdiction over the country. At the time of this writing, neither of those scenarios are applicable to Syria.

If prosecutors are able to establish jurisdiction for the crimes, they will consider the following factors:

- Seriousness of the allegations; and
- Likelihood of obtaining a conviction.

However, none of these factors alone will determine whether your case is accepted. Prosecutors will consider the entirety of your complaint as well as the context in which the complaint was filed.

What Can I do if the Prosecutor Does Not Take My Case?

If a prosecutor declines to open an investigation, you will be informed of the decision and the reason for the dismissal. You may file an administrative appeal with the head of the national prosecutor's office. The decision of the head prosecutor is final and not subject to further appeal. If your appeal is denied, or more than three months have passed since you registered the complaint, you can file a civil party claim with an investigative judge. For civil party complaints filed with an investigative judge, the prosecutor can provide input, but the judge makes the final decision. If the judge decides to dismiss the complaint after an initial investigation, both you and the prosecutor have a right to appeal the decision before the *Chambre de l'Instruction*.

3 | APPEARING BEFORE A FRENCH COURT

What Happens Next?

There are 3 phases of procedure once your complaint is accepted:

1. Investigation;
2. Trial; and
3. Sentencing and Appeals.

Investigation

The National Office for Investigation of Crimes Against Humanity must turn the case over to an investigating judge. Generally, these investigations will be carried out by an investigating judge with the assistance of the judicial police. The investigation may involve multiple trips abroad by investigators to collect evidence to countries where witnesses are located in order to conduct interviews, but they are also able to conduct interviews by video conferencing. The investigating team may also rely on intermediary organizations or individuals to aid in the investigative stage abroad. The investigating team will likely establish contact with the foreign government and obtain permission to conduct investigative work in that country. Investigators are permitted to travel to the country in which the violation took place, but are unlikely to do so for crimes committed in Syria due to security concerns and the potential for governmental interference. These investigations typically include interviews with the accused party and other relevant witnesses. If you are a civil party to the case you may request various investigative measures and petition to sanction any inaction on the part of an investigating judge.

Once the investigation has concluded, the investigating judge will make a decision as to whether there is enough evidence for a criminal court to begin proceedings. If the investigative judge decides not to move forward with the case, they are required to inform you of this decision. As a civil party, you then have the right to appeal this decision with the *Chambre de l'Instruction*.

Trial in the First Instance

The trial will be presided over by three judges and six lay jurors. The president judge will introduce the case by concisely presenting the facts against the accused, including elements of both the prosecution and defense concerning the accused. At the end of this introduction, the president judge will speak as to the legal qualifications surrounding the objective facts of the charge(s). Next, the president judge will take the defendant's statement and ask him questions. Following the defendant, the various witnesses will give their statements —after which, the president judge, prosecutor, defense counsel, and the civil party can all question the witness. After the testimonies from the witnesses are finished the civil party, the prosecutor, and the defense counsel may be heard, respectively. A reply is allowed to the civil party and the prosecutor, but the defense always has the last word. The president judge will then close the trial and the judges and jury will retire to their chambers for deliberations. The judges and the jurors will decide on both the culpability of the accused, and, in case of conviction, on the sentence.

After the court has announced a judgement on the public action, if you are a civil party to the case, the judges will also announce if and how much compensation should be awarded after hearing arguments on claims for damages by the relevant parties. You must file as a civil party at the time of your criminal complaint in order to be eligible for compensation. This also gives you the right to appeal if you believe the court awarded insufficient compensation.

Appeals

The District court in The Hague is the primary entity in which trials Either the defendant, prosecution, or civil party can appeal an unfavorable decision to the cour d'assises within 10 days of the announcement of the judgement. If appealed, the case will be heard before an appeals chamber consisting of three judges and nine jurors. The appeals chamber will rehear the case on its merits and render its own verdict.

4 | KNOW YOUR RIGHTS

Victim Rights:

- The right to respectful and correct treatment by police and justice authorities from the time of the facts until the enforcement of the final judgment;
- The right to receive information, including on procedural matters or the ongoing investigation;
- The right to give information, ensuring authorities take your story and interests into account during all stages of the proceedings;
- The right to protection and respect for your privacy. Justice and police authorities have a legal obligation to protect you in case you are being threatened, at any stage in the proceedings;
- The right to testify in a closed session if it is needed to protect your safety;
- The right to legal counsel and (legal) aid, which may allow for the waiver of certain costs and expenses related to criminal proceedings as well as psychological assistance when requested;
- The right to be informed about the location of the suspect, including if the suspect is released or escapes;
- The right to be informed every six months about the status of your case by the investigating judge;
- The right to receive free translation of essential parts of your file from the judge in charge of the case; and
- The right to be assisted throughout the trial by a victim support association.

Witness rights:

Witnesses in the investigation and trial also have certain rights, including:

- The right to anonymity. Witnesses have the right to provide testimony in closed session, without providing any identification publicly, and without being forced to attach their signature to any statements. In cases of grave danger to the witness or the witness's family, the witness has the right to be protected by an alternative identity; and
- Although witnesses must answer questions during interrogations, they do not have to answer questions that would incriminate themselves.

Interpretation

The initial criminal complaint must be filed in French. When filing your complaint to the public prosecutor, you have the right to an interpreter if you do not speak fluent French. You have the right to receive a translation of all essential parts of your file. You can request a copy of the entirety of your case file in a language you understand, though the law does not require that one be given to you free of charge. All court proceedings are conducted in French, but you have the right to a certified interpreter (provided by the courts) for the duration of the proceedings if needed.

Legal Representation

French law obligates you to be represented by a lawyer during proceedings if you are a civil party in a case. If you do not have the means to pay for legal services, you are eligible for free legal assistance. You can apply for assistance through your lawyer, in a law center, at a town hall, at the court of your place of residence, or at the court dealing with the case.

Below is a list of French NGOs and law firms that may be able to assist you. Please note that these organizations have limited capacity and will not be able to accept every request for assistance:

FIDH

17 Passage de la Main d'Or 75011 Paris

+0033 1 43 55 25 18



Photo by Lens Youngi Homs

If you are unable or unwilling to file a formal complaint but would like your experiences securely recorded with the **Syria Justice and Accountability Centre (SJAC)**, please contact SJAC at info@syriaaccountability.org. The benefits of participating in a private interview with SJAC are that you:

1. Preserve your personal experience and suffering;
2. Have lodged your personal experience with an organization that can connect you with future justice mechanisms if and when they arise; and
3. Will help build a record that can be used to drive justice and accountability overall for Syria.

Syria Justice and
Accountability Centre

