

**A GUIDE TO NATIONAL
PROSECUTIONS IN THE
UNITED STATES**
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 be able to seek justice in American courts under U.S. law. This document explains how to file a complaint for criminal charges against your perpetrator or a civil action to receive compensation for the harm caused to you. U.S. courts are limited as to which cases they can hear when acts/crimes occur outside of America, so review this document carefully and consult an American lawyer to determine your eligibility for filing. You can find a list of victims' rights groups at the end of this document.

In this Guide, You Will Learn

1. Opportunities and limits to filing 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 American 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 American 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 the United States 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 the U.S. have jurisdiction to hear my case?

In principle, U.S. criminal law applies to crimes that occurred inside the U.S. However, certain statutes allow criminal charges to be brought for crimes that occurred outside the U.S.

There are two types of cases that can proceed in U.S. courts: criminal cases and civil cases.¹ In criminal cases, charges are brought by the U.S. government against perpetrators. Victims might assist government prosecutors, but they have little control over the proceedings. On the other hand, victims can file civil cases to seek compensation from perpetrators. Generally, the closer you are connected to the U.S. or the closer the act is connected to the U.S., the greater the chance the U.S. has jurisdiction over your case.

1 In the U.S., a criminal prosecution is brought by the Government to vindicate criminal laws. A civil case is brought by a private party to obtain money damages. Civil cases and criminal cases are governed by different procedural and evidentiary rules. Because of these differences, victims are usually unable to join criminal cases as civil litigates. In contrast, many European states allow victims to join criminal suits as civil litigates. A potential exception to the American approach might lie in the Crime Victims' Rights Act which states that "the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding." 18 U.S.C. § 3771. Regardless, victims in the U.S. can still share information with prosecutors to support charges and/or privately file a lawsuit in federal court under certain conditions.

Were you a U.S. national at the time the act occurred?

Yes

Is there possible jurisdiction?

If it was a serious war crime

Yes

If you were subject to involuntary servitude, forced labor, and/or trafficking

Yes

If it was an act of torture or killing

Yes

If it was a terrorist attack

Yes

If the Syrian state was the perpetrator

Yes

If you know of a U.S. business or individual who bribed a foreign official

Yes

Were you a U.S. national at the time the act occurred?

No

Is there possible jurisdiction?

If you know of a U.S. business or individual who bribed a foreign official or engaged in an organized enterprise?

Yes

If the act had a strong connection to the U.S. (for instance, if the defendant is a U.S. citizen living in the U.S. or if part of the alleged act occurred within the U.S.)

Yes

If you know the identity of an individual who committed an act of torture or killing who is, or might in the future, be present in the U.S.

Yes

If you were a victim of involuntary servitude, forced labor, and trafficking, and the perpetrator is in the U.S.

Yes

Are you a family member of a U.S. government employee/contractor harmed in a Syrian state-sponsored act?

Yes

Jurisdiction is present via the Terrorism Exception to the FSIA.

No

N/A

Is there anyone that the U.S. will not try?

Certain individuals are immune from prosecution if they hold a government office, such as heads of state or diplomats. However, officials cannot invoke this immunity for jus cogens violations² (crimes such as torture, genocide, slavery, and certain crimes against humanity). Furthermore, foreign countries generally cannot be sued as an entity (except under the FSIA).³

² “U.S. COURT Alien Tort Statute/Torture Victim Protection Act,” CTR. FOR JUSTICE AND ACCOUNTABILITY (last visited July 8, 2020), <https://cja.org/what-we-do/litigation/yousuf-v-samantar/uscourt-ats-tvpa/>.

³ *Chapter 10: Privileges and Immunities in Digest of United States Practice in International Law*, U.S. DEPT. OF STATE (last accessed July 7, 2020) <https://www.state.gov/wp-content/uploads/2019/05/Chapter-10-of-Digest-Final.pdf> at 420.

Is there a time limit for filing a complaint?

If you are filing a criminal suit under the War Crimes Act, then there is no time limit. However, most civil actions must be filed within ten years of the offense. This limit may be subject to what is called equitable tolling, which allows a court to hear a case filed more than ten years after the events in question. Equitable tolling is available in a number of circumstances, including when victims were unable to seek justice in their home country. To qualify for equitable tolling, plaintiffs must explain why they were unable to sue at an earlier time.⁴ Reasons might include psychological harm or armed conflict.⁵ Some delays are shorter, so it is important to check with a lawyer.

Does the perpetrator have to be in the U.S.?

This depends on the claim filed. If a claim is filed against the entire state, the perpetrator does not have to be in the U.S. For most of the other claims, however, the defendant must have a connection to the U.S. or be present in the U.S. to be served with a complaint.

Do I have to be a U.S. citizen to file a complaint?

No. However, if you are a U.S. national, meaning that you were a citizen or owed permanent allegiance to the U.S.⁶ at the time the act occurred, or if the act had a connection to the U.S., you will have more pathways and a stronger legal claim.

4 See e.g., *Arce v. Garcia*, 434 F. 3d 1254, 1261 (11th Cir. 2006) (noting that “[t]he interests of justice [...] can weigh in favor of allowing a plaintiff to assert untimely claims if circumstances beyond the plaintiff’s control prevented timely filing. The doctrine of equitable tolling allows a court to toll the statute of limitations until such a time that the court determines would have been fair for the statute of limitations to begin running on the plaintiff’s claims”); *Chavez v. Carranza*, 559 F.3d 486, 493 (6th Cir. 2009) (“[i]n such limited circumstances, where plaintiffs legitimately fear reprisals against themselves or family members from the regime in power, justice may require tolling. These circumstances, outside plaintiffs’ control, make it impossible for plaintiffs to assert their TVPA and ATS claims in a timely manner. In such extraordinary circumstances, equitable tolling of TVPA and ATS claims is appropriate”).

5 *Arce v. Garcia*, 434 F. 3d. at 1263-64 (“[t]he quest for domestic and international legitimacy and power may provide regimes with the incentive to intimidate witnesses, to suppress evidence, and to commit additional human rights abuses against those who speak out against the regime. Such circumstances exemplify ‘extraordinary circumstances’ and may require equitable tolling so long as the perpetrating regime remains in power”).

6 *Parties in INT’L HUMAN RIGHTS LITIGATION IN U. S. COURTS* 231 (Beth Stephens, et al. ed., 2008).

2 | THE PROCESS OF A CRIMINAL COMPLAINT

How do I file a criminal complaint?

To file a criminal complaint, you must contact the U.S. authorities. Because of overlapping jurisdiction, it is sometimes hard to determine the most appropriate authority to contact regarding your complaint. If you have information about war crimes committed in Syria, and the perpetrator is present in the U.S., you may contact the Department of Justice, Human Rights and Special Prosecutions Section (HRSP). HRSP works closely with the Federal Bureau of Investigation's (FBI) International Human Rights Unit which has a tip line. Finally, the Department of Homeland Security's Human Rights Violators & War Crimes Unit (HRVWCU)⁷ works closely with the FBI and Department of Justice and also has a tip line.⁸

Each federal department and agency has its own investigative process, but if they have enough evidence and an identified suspect, they will issue arrest warrants. Prosecutors in the Department of Justice/Offices of the U.S. Attorneys will have the final say in whether to bring charges and a U.S. court can then determine whether it has jurisdiction to consider particular claims.

⁷ "Human Rights Violators & War Crimes Unit," U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (last visited July 20, 2020), <https://www.ice.gov/human-rights-violators-war-crimes-unit>.

⁸ *Id.*

Process from investigation to trial

Phase 1: Preparation for trial/investigation⁹

The Prosecutor's office begins with an investigation. Investigators focus on examining the crime and obtaining evidence, including first-hand testimonies. If there is enough evidence and police have *probable cause*, they will be able to arrest a suspect if they are in the United States. Or, they could seek extradition if the person is located abroad. The prosecutor will then press charges against the suspected individual(s). An initial hearing before the judge occurs, where the defendant learns more about his rights and the charges they are facing. During this hearing, they will be asked to plead guilty or not guilty. If they plead guilty, they admit to committing the crime and are sentenced.

If the defendant does not plead guilty, then a preliminary hearing may be held to determine if there is enough evidence to proceed to trial. If the judge determines there is not enough evidence, then the case is dismissed. If the judge determines there is enough evidence, then the case moves to trial. If the case is moved forward to trial, the prosecutor and defense attorney begin the discovery process where they gather evidence, talk to witnesses, and build their trial strategies. The prosecutor must share with the defense copies of materials and evidence they will use at trial.

Phase 2: Trial¹⁰

Following the investigation and discovery period, the trial begins. During the trial, the judge serves as an impartial person who decides what evidence is shown to the jury. Judges help ensure the process is fair. Both the prosecution and the defense present their case, their evidence, and their witnesses. After everything is presented, the jury makes its decision. In federal criminal trials, the jury must reach a unanimous decision to convict the defendant of a crime. Note that the entire process of preparing for a trial and the trial itself can take months or years to complete.

9 Taken from: "Steps In The Federal Criminal Process," U.S. DEPT. OF JUSTICE (last visited July 30, 2020), <https://www.justice.gov/usao/justice-101/steps-federal-criminal-process>.

10 *Id.*

Phase 3: Sentencing and appeals

If the defendant is found guilty of a serious crime (felony), then they will be sentenced to prison. The sentencing length depends on the crime committed. The court follows the U.S. Sentencing Commission's Sentencing Guidelines, which are the official rules that establish sentencing policies for convicted defendants in federal courts. The defendant can appeal the decision if they are found guilty, but the government does not have the right to appeal in a criminal case.¹¹

Know your rights

Victim rights¹²

Following the criminal trial, if you petitioned for civil standing before or during the trial, there will be a hearing to determine if and how much compensation should be awarded to civil parties. You must petition for civil standing before the close of the trial to be eligible, which also gives you the right to appeal if you believe the court awarded insufficient compensation.

- The right to be reasonably protected from the accused;
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused;
- The right not to be excluded from any such public court proceeding, unless the court determines that the victim's testimony would be materially altered if the victim heard other testimony at that proceeding;
- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding;
- The reasonable right to confer with the attorney for the Government in the case;
- The right to full and timely restitution as provided in law;
- The right to proceedings free from unreasonable delay;
- The right to be treated with fairness and with respect for the victim's dignity and privacy, and;
- The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.

Witness rights¹³

- The Fifth Amendment right to protect against self-incrimination;
- The right to be free from any threats or intimidation;
- Entitled to understand what is happening in the case the witness is involved in;
- Entitled to a witness fee for each day of court the witness appears in court in connection with the case;
- The right to not talk to either the prosecution or the defense side, and;
- The right to discuss the case with anyone before or after the trial.

11 “About the U.S. Courts of Appeals,” U.S. COURTS (last accessed July 20, 2020), <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/about-us-courts-appeals>.

12 These rights were established in the Crime Victims’ Rights Act (18 U.S.C. § 3771). Copied from “Crime Victims’ Rights Act,” U.S. DEPT. OF JUSTICE (last accessed July 30, 2020), <https://www.justice.gov/usao/resources/crime-victims-rights-ombudsman/victims-rights-act>.

13 Taken from “Victim Witness Handbook,” U.S. DEPT. OF JUSTICE: U.S. ATTY’S OFFICE FOR THE S. DIST. OF ILL. (last accessed July 21, 2020), <https://www.justice.gov/usao-sdil/victim-witness-assistance/victim-witness-handbook>.

3 | THE PROCESS OF A CIVIL ACTION

How do I file a civil action?

For civil actions, you (the victim) must file a private right of action. Thus, you—not the state—are the plaintiff. In the U.S., you can file an action by yourself, though it is best that you seek and obtain legal representation (see the section on “Know Your Rights – Legal Representation” for more information).

What goes into the complaint?

The complaint must be filed in English and is usually done by a lawyer or law firm. The complaint should describe your information, the defendant’s information, your statement of claim (facts of the event), and your request for relief.¹⁴ Additionally, you will have to show that you exhausted local remedies in Syria. Since Syrian courts are not currently a viable option, this factor will probably be met. You must present sufficient evidence and documents to the court.

How can I seek compensation?

If you have personally suffered damages directly caused by the crime in question, you may seek compensation by addressing it in the civil complaint. As a civil party, you will have more active and direct involvement during the investigation and the trial in comparison to a criminal complaint.

Filing a class action

There may be a potential for a class action lawsuit if there is a large group of people who experienced the same harm by the same alleged perpetrator. A class action permits more than one plaintiff to file a claim on behalf of a “class” or a group of people.

¹⁴ For an example of a civil complaint, see “Pro Se 1 (Rev. 12/16) Complaint for a Civil Case,” U.S. COURTS (last accessed July 9, 2020), https://www.uscourts.gov/sites/default/files/complaint_for_a_civil_case.pdf.

Process from investigation to trial¹⁵

Phase 1: Preparation for trial/investigation

Once the complaint is ready, you will file it with the court. Since the human rights acts and laws are federal laws, you will most likely file it in a federal court. When you file it, you must also serve a copy to the alleged offender (to let them know there is a case against them), usually within 30 days of filing. You or someone else can personally serve the alleged offender. You can also serve someone else that lives with the alleged offender or you can mail them a copy with a return receipt request. In the 2019 Marie Colvin case, family members of a U.S. citizen killed in a Syrian government's artillery assault sued the Syrian state.¹⁶ There was no special arrangement between the plaintiffs and the state. Syria is not a party to an international convention on judicial agreements and the plaintiffs could not complete service in the normal 30 days given.¹⁷ Thus, the court's clerk served the Syrian state by sending a copy of the summons and other relevant documents to the Office of Legal Affairs at the State Department. The package reached the Czech Republic Embassy in Damascus and the Czech Embassy gave the package to the Syrian Ministry of Foreign Affairs.¹⁸

To prepare for trial, both parties might identify witnesses and share information and evidence. Cases can be dismissed at the discovery stage if you do not state a valid claim under law, if there is no proper jurisdictional link, or if the alleged offender enjoys any immunity.

¹⁵ Adapted from: "Civil Cases," U.S. COURTS (last visited July 31, 2020), <https://www.uscourts.gov/about-federal-courts/types-cases/civil-cases>.

¹⁶ Colvin v. Syrian Arab Republic, 363 F.Supp.3d 141 (D.D.C. 2019).

¹⁷ *Id.* at 155.

¹⁸ *Id.*

Phase 2: The trial

It is possible that the case is settled before trial. In fact, judges tend to encourage settlement in typical civil cases because trials are expensive and are often delayed. However, not that many human rights cases are settled.¹⁹ If the defendants are not present in the U.S. and do not appear or respond to the proceedings against them, reaching a settlement is not possible, and thus, a default judgment is entered. A default judgment is a ruling by a judge that is often in favor of the plaintiff.

If cases are not settled, it will go to trial where it will be heard by a judge. A wide range of civil cases permit a party to request a jury trial (though this can be waived). During the trial, both sides present their evidence. If the case is heard before a jury, then they will determine if the defendant is responsible for causing the specific harm. If there is no jury trial, then the judge will issue a decision (known as a “bench trial”).

Phase 3: Sentencing and appeals

For civil actions, monetary compensation or injunctive relief can be sought. These damages are often large in sum. In the 2019 Marie Colvin case, the court ordered the Syrian state to pay about \$302 million to the plaintiffs.²⁰ While this number is large, it is important to note that judgments are often not paid because it is difficult to enforce the payment of such a large sum and the alleged offender may not have the assets.

Either the plaintiff or defendant can appeal an unfavorable decision if they have a problem with the trial court proceedings, the law that was applied, or how the law was applied.²¹

19 Cortelyou C. Kenney, *Measuring Transnational Human Rights*, 84 *FORDHAM L. R.* 1053, 1070 (2015) https://fordhamlawreview.org/wp-content/uploads/assets/pdfs/Vol_84/No_3/Kenney_December.pdf.

20 *Colvin v. Syria Arab Republic*.

21 “About the U.S. Courts of Appeals,” *supra* note 10.

Know your rights

Victim/Plaintiff Rights

- There is no absolute right to file anonymously, though lower courts have allowed this practice and the Supreme Court has implicitly endorsed it when the plaintiff would face danger if they disclosed their identity.²²
- Plaintiffs with a credible fear of harm to themselves or their families should be allowed to file with fictitious names.²³ However, this is not a guarantee that your real name will never be disclosed.

Witness Rights

- The Fifth Amendment right to protect against self-incrimination;
- The right to be free from any threats or intimidation, and;
- A witness fee for every day of court the witness appears in court in connection with the case.

²² *The Plaintiff: Who Can Sue in INT'L HUMAN RIGHTS LITIGATION IN U. S. COURTS* 235 (Beth Stephens, et al. ed., 2008).

²³ *Id.* at 236.

4 | ADDITIONAL RESOURCES

Interpretation

The U.S. federal courts provide interpretative services.²⁴

Legal representation

It is possible to file a lawsuit without a lawyer in the U.S. However, considering the detailed nuances and complicated legal nature of human rights violations, it is best to seek an attorney to represent you. For criminal cases, the government will represent your case (note that criminal defendants have a right to counsel, per the U.S. Constitution's Sixth Amendment). For civil matters, however, you will need to seek your own attorney. Below is a list of U.S. NGOs or firms that may be able to assist you:

The Center for Justice and Accountability (CJA)

One Hallidie Plaza, Suite 750 San Francisco, CA 94102

1-(415)-544-0444 | center4justice@cja.org

Human Rights Violators and War Crimes Center

500 12th St. SW, Washington, DC 20536

To report crimes, call: 1-866-DHS-2-ICE

²⁴ “Federal Court Interpreters,” U.S. COURTS (last accessed July 9, 2020), <https://www.uscourts.gov/services-forms/federal-court-interpreters>.

Syria Justice and
Accountability Centre

