

A GUIDE TO NATIONAL PROSECUTIONS IN THE NETHERLANDS

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 in Dutch courts. In this document, you will find the basic information needed to file a complaint in the Netherlands for criminal charges against the person who perpetrated the crime. Dutch judges are fully independent from the legislative and executive powers, and the Netherlands has fully implemented European and international standards for international crimes and guarantees of due process and respect for human rights. The Netherlands has some limitations on filing a complaint when the crime happened outside of the Netherlands, so review this document carefully and contact legal counsel in the Netherlands 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 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 Dutch 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 Dutch 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 Netherlands 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 Netherlands Have Jurisdiction to Hear My Case?

Ordinarily, Dutch courts cannot address crimes that happen outside the territory of the Netherlands, but they have the authority to prosecute certain international crimes under the International Crimes Act (ICA) of 2003 and previous acts, including genocide, crimes against humanity, war crimes, torture, and enforced disappearances. However, the courts require that there be some connection to the Netherlands for an investigation to take place. Use the flowchart below to determine if Dutch courts have jurisdiction to hear your case.



Is There Anyone the Netherlands Will Not Try?

Certain persons are immune from prosecution while they hold public office, including foreign heads of state, heads of government, and ministers of foreign affairs. Once they leave office, they are no longer immune from prosecution. Additionally, diplomats and persons representing member states in international organizations (such as the UN) who are posted to or visiting the Netherlands may enjoy immunity. Diplomats and accompanying persons who are visiting with prior consent of the Netherlands will be granted "official mission immunity" for the duration of that mission under certain conditions. It is advised to consult a lawyer about immunity limitations.

Does the Perpetrator Have to Be in the Netherlands?

If the alleged perpetrator is a Dutch national, then the prosecutor can begin investigations, but has discretion whether to initiate a trial until the suspect comes to the Netherlands voluntarily or through extradition proceedings. If the alleged perpetrator is not a Dutch citizen, then the perpetrator must be present in the Netherlands (or expected to voluntarily travel to the Netherlands in the immediate future) for the prosecutor to start an investigation. If the suspect is in another country, the International Crimes Team has the option of turning over investigation files to the judicial branch of the country where the suspect is located if the country is able and willing to try to case.

Is There a Time Limit for Filing a Complaint?

Genocide, crimes against humanity, war crimes, torture, and enforced disappearances are not subject to a statute of limitations in the Netherlands, but the crimes must have occurred after the date they were criminalized in Dutch law. All crimes listed below were criminalized prior to 2011, so complaints related to crimes that occurred during the Syrian conflict likely have no time limit. However, it is advised to consult a lawyer if you have questions.

The International Crimes Act

The International Crimes Act (ICA) defines genocide, crimes against humanity, and war crimes in line with International Criminal Court definitions. Examples of crimes punishable under the ICA are:

- Murder
- Torture
- Unlawful imprisonment
- Enforced disappearances (secret abduction/detention)
- Attacks on civilian areas
- Rape or sexual slavery
- Forcible population transfers
- Persecution against an identifiable group, such as an ethnic or religious group

2 | FILING YOUR COMPLAINT

How Do I File a Criminal Complaint?

You can file a complaint with the police. A complaint can be made through email, telephone, or in person. You can contact the police at warcimes@politie.nl or 0031 88 662 5743. For brochures in different languages, see <https://www.om.nl/onderwerpen/international-crimes-o/witnessed/>. The police will transfer your complaint to the National Public Prosecutors' Office, which houses the International Crimes Unit. Prosecutors in this office will first determine if the case is admissible.

What Goes in the Complaint?

The complaint can be filed in Dutch, English, Arabic or Kinyarwanda. If you are not fluent in these languages, the police will arrange an independent interpreter (free of charge) to help you file the complaint. To file a complaint that could be used to start an investigation, it is helpful to tell the police everything you know about the following:

- What happened, when and where the event occurred, who was involved (victims, alleged perpetrators, and witnesses), why the event took place, and the sources for your information. It is not necessary you have answers to every question, so be sure to answer accurately without exaggeration.
- Information based on what you personally observed as well as what you were told by others, carefully distinguishing between the two.
- Your safety concerns so that possible protective measures can be assessed.
- Whether you possess any physical or digital documentation (videos, documents, records), including when and where the documentation was produced, who produced it, and how/why you acquired it.

How Can I Seek Compensation?

If you are seeking compensation (available if you “suffered direct injury or loss as a result of a punishable act”) you can fill out an adhesion form, which will attach a civil claim for compensation to your criminal complaint. You will then be referred to as the “injured party.” You can also become an injured party and claim compensation at a later stage, up until the close of the trial. When filing a compensation claim, it may be wise to be represented by a lawyer. Seeking compensation does not require separate proceedings in civil court – all proceedings will occur during the criminal trial. However, if the compensation claim is very complex, the criminal court judge might refer your claim (in whole or in part) to a civil court judge.

In addition to a claim for compensation, “injured party” status allows you other rights:

- The right to inspect and copy some of the prosecutor’s files prior to the start of the trial (though this can be denied for privacy reasons).
- The ability to request that the prosecutor summon witnesses and experts relevant to your compensation claim so that you can question them.
- The right to make a statement during the trial (or for someone else to speak on your behalf) about how the crime has affected your life and other relevant issues.
- The right to appeal an unfavorable compensation decision.

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 clearly unfounded or cannot lead to an admissible criminal prosecution.
- The facts do not qualify as a serious violation of international law.

- A prosecutor may also dismiss the case if the courts of the country in which the crime occurred are willing or able to hear the case or if the International Criminal Court is exercising jurisdiction over the situation. At the time of this writing, neither of those scenarios are applicable to Syria.

If prosecutors are able to establish that jurisdiction exists, they will consider the following factors:

- Seriousness of the allegations.
- Likelihood of cooperation from the country in which the crime took place.
- Likelihood of obtaining evidence (for example, locating other eyewitnesses, relevant documentation, open source information, NGO reports on the specific area or crime).
- Time it will take to gain access to relevant countries, witnesses and other evidence, and
- Likelihood of obtaining a conviction (in terms of legal possibilities).

None of these factors alone will determine whether prosecutors will accept your case. 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 prosecutors decide they will not move forward with your case, you will be notified of their decision and the reason(s) behind it. You are then able to challenge the prosecutor's decision in the Court of Appeals. If the Court of Appeals upholds the decision of the prosecutor, you have no other options for appeal.

3 | APPEARING BEFORE A DUTCH COURT

What Happens Next?

There are 4 phases of procedure once the prosecutor accepts your complaint:

1. Investigation;
2. Pre-trial Phase;
3. Trial; and
4. Sentencing and Appeals.

Investigation Phase: Investigation by Police

Once your complaint is accepted, an investigation will take place. The investigation may involve multiple trips abroad by investigators and prosecutors to countries where witnesses are located in order to conduct interviews and collect other evidence. The investigative team will likely establish contact with the foreign government to try to 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 government interference. Dutch investigators can, however, travel to safe countries if Syrian witnesses have taken refuge there, to interview them. The Dutch immigration services' 1F section (responsible for those suspected of war crimes or crimes against humanity) has been conducting broad investigation and documentation of grave international crimes committed in Syria. If investigators are unable to travel to conduct interviews, they can use information collected by Dutch immigration services to assist in evaluating your claim. Additionally, Dutch investigators are prepared to use intermediaries (individuals or NGOs) located in Syria or other countries to connect with witnesses or to request any other relevant information. Prosecutors can rely upon videos and photos, victim and witness testimonies, social media, documentation and other evidence to determine whether to proceed to trial.

Depending on the presence of photos, videos or documents related to the crime and the number of witnesses that must be heard, the investigation phase can take between one and five years. However, this depends entirely on the case and context.

Pre-Trial Phase: Additional Investigation by an Investigative Judge

Once the investigation is complete, the public prosecutor will decide whether to prosecute the suspect. If the suspect is prosecuted, the case will be brought before the District Court of The Hague. The suspect will be represented by a lawyer from the moment of arrest. The defense lawyer may request the investigating judge of the District Court of The Hague for additional investigation, such as interviewing (new) witnesses in the presence of the investigating judge, prosecutor, and defense lawyer.

Depending on the number of requests by the judges and defense, the pre-trial investigation can take anywhere between one and two years. However, this depends entirely on the case and context.

Trial Phase: Court Hearings

The District court in The Hague is the primary entity in which trials under the International Crimes Act take place. The trial will be presided over by three judges. It is rare that the judges will summon witnesses for questioning and allow for cross-examination during the trial phase. Instead, the judges will primarily assess the case based on the paper file. The prosecution will explain the case and the injured party may make a statement. Then, the defense counsel will be heard and parties will exchange arguments, with the accused party being granted the last word. If you did not file an adhesion form with your initial complaint but now wish to join as an injured party and be awarded compensation, you must raise this as soon as possible during the trial phase.

Depending on the case and the context, the trial phase can take between two and four weeks. After the judges close the trial, they will announce the verdict (including the judgment on your compensation claim) within another two to four weeks.

Sentencing and Appeals

During the trial, the prosecutor will suggest a sentence, but the final sentencing decision rests with the judges. If the defendant is found guilty, there is no minimum sentence, but the International Crimes Act specifies a maximum penalty for each crime, ranging from 15 years to life imprisonment. The judgment also includes a decision on your compensation claim (if and how much compensation will be awarded). The court may also decide that some of your claims for compensation are too complicated to be decided in criminal court. If this occurs, you have the right to file undecided portions of your claim in civil court.

Either the defendant or prosecution can appeal an unfavorable decision to the Court of Appeals within two weeks of the verdict. The rewarded portion of your claim for compensation will automatically be claimed again in appeals. To claim the denied or undecided portions again, you will need to join the appeals phase as an injured party. If neither the defendant nor the prosecution appeals the judgment and your compensation claim exceeds 1,750 euros, you also have the right to appeal compensation judgments to a civil court. You may only claim compensation in appeals if you already did so during the initial trial.

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. In order for the police to be able to protect you, share your safety concerns as soon as possible.
- 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 physically present during proceedings and to give a statement during proceedings indicating the effects of the crime and what sentence you would like the suspect to receive.
- The right to be informed about the location of the suspect, including if the suspect is released or has escaped.

For more information, the National Government website (www.rijksoverheid.nl) has a brochure titled Rights of Victims of Criminal Offences. Victim Support Netherlands (Phone: 0900-0101) can provide you with more information on your rights. Victims of sexual violence can contact the Centre for Sexual Violence (Phone: 0800-0188) for more information and additional assistance.

Witness Rights

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

- The right to protection. Witnesses may request to be interviewed away from their home community and to request to travel to another city or abroad to participate in the interview. Witnesses also may request protection, facilitated by the investigator. Witnesses also have the right to be updated on the progress of the case after their interview has taken place. In extreme cases, witnesses may request to be temporarily or permanently relocated to the Netherlands.
- Witnesses have the right to be paid compensation for any expenses related to travel or missed work as a result of the investigation.
- Although witnesses must answer questions during interrogations, they do not have to answer questions that would incriminate themselves in a crime.

Interpretation

The initial criminal complaint can be filed in Dutch, English, Arabic, or Kinyarwanda. If you are not fluent in these languages, the police will arrange an independent interpreter (free of charge) to help you. A copy of your report can be given to you in Dutch or English. If you do not speak Dutch or English, you may request a translation by an interpreter. All court proceedings are conducted in Dutch, but you may request a certified interpreter for the duration of the proceedings if needed.

Legal Representation

Dutch law does not oblige you to be represented by a lawyer as a victim or an injured party. However, as these cases and legal proceedings are complex, you are advised to retain a lawyer if you want to file a claim for compensation as an injured party. If you do not have the means to pay for legal services, you may be entitled to free legal assistance under certain circumstances. For more information about free legal

assistance, you can contact the 'Juridisch Loket' through one of the 30 Legal Services Counter offices located throughout the Netherlands (listed here: <https://www.juridischloket.nl/contact/>) or via telephone at 0900-8020.

Below is a list of Dutch NGOs and law firms that may be able to assist you:

REDRESS Nederland

Laan van Meerdervoort 70, 5th Floor, Rm. 5.33, 2517 AN

Den Haag, the Netherlands

Telephone: +31 708 919 317 | Email: info.nederland@redress.org

Prakken d'Oliveira Human Rights Lawyers

Linnaeusstraat 2-A,

1092 CK Amsterdam

Telephone: +31 20 344 6200 | info@prakkendoliveria.nl



Photo by Lens Youngi Homs

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.

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

