

EU VICTIMS' RIGHTS DIRECTIVE REVISION

Adopt Language that is Inclusive of All Victims of All Core International Crimes, Including Torture and Enforced Disappearance

February 2024

In June 2020, the European Commission adopted the European Union's (EU) strategy on victims' rights (2020-2025) to improve access to justice for all victims of crime. Following the adoption of the strategy, the Commission was tasked with assessing whether a revision of the EU Directive 2012/29/EU was necessary. This initiated the current process of the Directive's revision, with several Amendment Proposals being published.

In our initial [brief](#) containing REDRESS' recommendations to the proposed amendments, we recommended that the Directive adopts the language of **"core international crimes, including torture and enforced disappearance"**:

"The current language of the proposed amendments extends to victims of "crimes falling within the jurisdiction of the International Criminal Court" (ICC) (GS Note, page 27). These are genocide, war crimes, crimes against humanity, and (to an extent) aggression. **Torture and enforced disappearance** do not fall under the ICC's jurisdiction unless they are committed as part of the crimes listed above. They are nonetheless recognised as core international crimes both under international humanitarian and human rights law, for which States have an obligation to prosecute or extradite perpetrators, regardless of where the offence took place, the nationality of the perpetrator(s), or of the victim(s). **Victims of these crimes must have equal access to justice, protection and support.**"

This additional brief provides further clarification with regard to the definition of "core international crimes" versus "crimes falling within the jurisdiction of the International Criminal Court." It aims to promote language that is inclusive of all victims of core international crimes, which is more in line with EU Member States' obligations under international treaties and international customary law to investigate and prosecute [torture](#) and [enforced disappearance](#).

KEY TAKEAWAYS

The proposed language of "core international crimes" would ensure that the Directive protects all victims of the most egregious international crimes, including torture and enforced disappearance as standalone crimes.

Torture and enforced disappearance do not fall under the ICC's jurisdiction unless they are committed as part of war crimes, crimes against humanity or genocide.

The language of "core international crimes, including torture and enforced disappearance" aligns with the obligations of the EU Member States under international treaties such as the [United Nations Convention Against Torture \(UNCAT\)](#) and the [International Convention for the Protection of All Persons from Enforced Disappearance \(ICPPED\)](#) to investigate and prosecute such crimes.

As the number of extraterritorial jurisdiction cases pursued in the EU grows, including in cases of torture and enforced disappearance, victims of these crimes seeking justice in Europe deserve to enjoy the same rights and protection afforded to victims of other crimes.

Core International Crimes, Including Torture and Enforced Disappearance versus Rome Statute Crimes

Articles 6-8*bis* of the Rome Statute list four core international crimes that fall within the jurisdiction of the ICC. These crimes include genocide, crimes against humanity, war crimes, and the crime of aggression. Torture falls in the scope of the Rome Statute if it is committed as part of genocide or constitutes a crime against humanity or a war crime, and enforced disappearance if it constitutes a crime against humanity, the Rome Statute does not cover these two crimes as stand-alone crimes.

Practically speaking, a victim of torture or enforced disappearance who does not meet all the elements of crimes against humanity or war crimes would be excluded from the scope of the Directive. This means that, to enjoy their rights under the Directive, the victims would have to prove that these offences were committed “as part of a widespread or systematic attack against the civilian population”, that the torture was committed in the context of an armed conflict or was associated to it, or that acts amounting to torture were carried out with the intent to commit genocide.

Many victims of torture and enforced disappearance suffer from these crimes outside of the framework of any wide-scale attack against the civilian population or armed conflict. This is the case, for instance, when victims are subjected to torture in a detention setting in peacetime, or when a political dissident is subjected to an enforced disappearance without a wider pattern of similar violations committed in the same context, and there is no action from their home State to investigate the offence, or redress their harm. These victims should not be deprived of their rights under the Directive, if they benefit from the exercise of extraterritorial jurisdiction in an EU country, be it by virtue of the presence of a perpetrator on EU soil, or another trigger for a State to exercise its jurisdiction.

Further, the prohibition of both torture and enforced disappearance gives rise to States’ obligations to “prosecute or extradite” under international law.

EU Member States’ Obligations under ICPPED and UNCAT

The prohibition of torture has been widely acknowledged to have the status of customary international law¹ and to constitute a peremptory norm of international law (*jus cogens*), with such prohibition being considered as one of the “most fundamental standards of the international community.”² It is present in many international instruments of universal application (such as the Universal Declaration of Human Rights of 1948; the 1949 Geneva Conventions for the protection of war victims; the International Covenant on Civil and Political Rights of 1966), and it has been introduced into the national law of almost all States.

All the 27 EU member States are parties to the UNCAT.³ The UNCAT imposes an obligation on States Parties to criminalise torture and prosecute or extradite perpetrators.⁴ It also contains specific provisions with regards to victims’ rights, in particular requiring States Parties to ensure that victims of torture have enforceable right to fair and adequate compensation.⁵

Similarly, the prohibition of enforced disappearance under international law is absolute and has attained the status of a peremptory norm.⁶

1 International Criminal Tribunal for the former Yugoslavia (ICTY), [Judgment](#) of 16 November 1998, ‘The Prosecutor v. Zdravko Mucić, Hazim Delić, Esad Landžo and Zejnil Delalić; Celebici camp.’

2 European Court of Human Rights (ECtHR), [Al-Adsani v. The United Kingdom](#).

3 OHCHR, Ratification Status for CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

4 UNCAT, Article 5(2); ICJ, Judgment of 20 July 2012. [Questions Relating to the Obligation to Prosecute or Extradite](#).

5 Article 14, UN Convention against Torture (CAT).

6 IACtHR, Goiburú et al. v. Paraguay, Merits, Reparations and Costs, Judgment of 22 September 2006, Series C No. 153, para. 84.

The ICPPED, which has been ratified by the majority (19 out of 27) of the EU Member States,⁷ contains an obligation to investigate and prosecute enforced disappearance. Further, this obligation has been considered to attain a status of a jus cogens norm by the Council of Europe and the Inter-American Court of Human Rights (IACHR).⁸

The Right of Victims to Equal Protection under the Law

Crucially, victims of torture and enforced disappearance can invoke extraterritorial, including universal, jurisdiction in many EU Member States, in particular in Denmark, Finland, Ireland, Italy, Luxembourg, The Netherlands, Spain, and others.⁹

An increasing number of EU Member States have been investigating and prosecuting allegations of core international crimes based on universal jurisdiction. As of 2022, 6,000 cases of international crimes were being investigated or prosecuted in the EU,¹⁰ with this number having increased in 2023.¹¹ A number of these cases concern standalone crimes of torture or enforced disappearance. For instance, in one of the earliest cases of prosecuting torture under the principle of universal jurisdiction, a Dutch Court convicted Congolese National Sebastien Nzapali for complicity in acts of torture committed in the Democratic Republic of Congo in 1996. In 2008, a French Court convicted Khaled Ben Saïd, a former Tunisian Vice-consul in France, for acts of torture perpetrated by Zoulaikha Gharbi, who at the time of the lodging of the complaint lived in France as a refugee.¹² More recently, in the ongoing proceedings in France against the executives of French company Amesys, the Paris Court of Appeals confirmed the indictment of Amesys and its two executives for complicity in torture committed in Libya under Gaddafi's regime.¹³ In this case, at least six Libyan victims joined the proceedings as civil parties. In Germany, the authorities are currently investigating torture and enforced disappearance committed against civilians during the Argentinian dictatorship, on the basis of a criminal complaint submitted by the sister of a man who forcibly disappeared in 1976.¹⁴

These cases demonstrate that victims of core international crimes that do not fall under the jurisdiction of the ICC, such as torture and enforced disappearance as standalone crimes, often seek redress in EU Member States under the principle of universal jurisdiction. The Directive should guarantee their equal protection and support and ensure that such crimes are included in its scope.

7 Out of eight EU Member States that have not ratified the ICPPED, six have signed it, signalling their intention to proceed to ratification and to refrain from acts that would defeat the object and the purpose of the Convention.

8 See: [Council of Europe](#), Missing persons and victims of enforced disappearance in Europe, March 2016; [Diana Contreras-Garduno and Ignacio Alvarez-Rio](#), A Barren Effort? The Jurisprudence of the Inter-American Court of Human Rights on Jus Cogens.

9 REDRESS, [Universal Jurisdiction in the European Union](#).

10 Eurojust, [At a Glance: Universal Jurisdiction in EU Member States](#).

11 TRIAL International, [Universal Jurisdiction Annual Review 2024](#).

12 FIDH, 'Khaled Ben Saïd, former Tunisian Vice-consul in France, condemned for torture by the Criminal court of Strasbourg,' December 2008.

13 TRIAL International, [UJAR 2023](#), p. 32.

14 TRIAL International, [UJAR 2021](#), p. 55.

ABOUT US

[REDRESS](#) is an NGO that pursues legal claims on behalf of survivors of torture in the UK and around the world to obtain justice and reparation for the violation of their human rights.

The [Global Initiative Against Impunity for International Crimes and Serious Human Rights Violations: Making Justice Work](#) is a civil-society led initiative, co-funded by the European Union, that aims to confront the global rise in impunity for core international crimes and serious human rights violations by supporting a comprehensive approach to justice and accountability. The GIAI is led by Civil Rights Defenders, Coalition for the International Criminal Court, European Centre for Constitutional and Human Rights, FIDH, Impunity Watch, Parliamentarians for Global Action, Women's Initiatives for Gender Justice, REDRESS and TRIAL with the support of two associate partners, the International Commission of Jurists and the Auschwitz Institute for the Prevention of Genocide and Mass Atrocities.

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