

# REDRESS

*Ending Torture. Seeking Justice for Survivors*

## **A victim-centred prosecutorial strategy to respect victims' rights and enhance prosecutions<sup>1</sup>**

July 2014

Regional and international instruments and jurisprudence increasingly recognise that victims of serious human rights violations and international crimes have a series of rights. This includes the right to an effective remedy, the right to be protected, the right to be informed of the status and progress of proceedings, the right to participate and the right to reparation. Prosecutions are a critical means to ensure victims' rights. The rights of victims must therefore be an integral part of framing, developing and pursuing prosecutorial strategies.

Engagement of victims at the outset of developing a prosecutorial strategy is crucial to foster implementation of relevant victims' rights. It also helps enhance effectiveness as it enables prosecutors to take decisions based on the widest perspective of evidence available, including in regard to:

- Identification of the range of possible charges:<sup>2</sup> Ensuring victims' input at the outset of framing the overall prosecutorial strategy can later help prosecutors to take cases forward, and to investigate, and frame charges according to crimes committed. This is best done at an early stage, as it can serve as additional incentive for victims to come forward and present testimony, and will prevent the need to amend the strategy or indictments at a later stage. A strategic decision to engage victims at an early stage, potentially leading to prosecution services to be aware of and bring cumulative charges where appropriate can help to reflect the multidimensional nature of international crimes. Cases at the ICTY and ICTR have demonstrated that victims have a decisive role to play in the identification of the charges.<sup>3</sup> At the Extraordinary Chambers in the Courts of

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<sup>1</sup> This is a submission by The Redress Trust to the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, dated 2 July 2014.

<sup>2</sup> See REDRESS, 'Comments on the OTP Draft Policy Paper on Sexual and Gender Based Crimes,' February 2014, at <http://www.redress.org/downloads/publications/REDRESS%20COMMENTS%20ON%20OTP%20DRAFT%20POLICY%20PAPER%20ON%20SEXUAL%20AND%20GENDER%20BASED%20CRIMES%20-%2024%20February%202014.pdf>.

<sup>3</sup> See for instance ICTR, *Prosecutor v Akayesu*, ICTR-96-4-T, 2 September 1998; extensive evidence of Akayesu's encouragement of both individual and gang rape, as well as forced nudity, resulted in the submission of an amended indictment by the prosecutor on 17 June 1997 that included charges of rape and other inhumane acts characterised as crimes against humanity and that referenced rape in the counts of genocide. Akayesu was later convicted for, inter alia, rape as a crime against humanity, and rape as a crime of genocide. However, the failure to include charges at the outset prevented future prosecutions for sexual violence crimes at the ICTR, see REDRESS and African Rights, *Survivors and Post-Genocide Justice in Rwanda- their experiences, perspectives and*

Cambodia, the intervention of Civil Parties at the investigations stage resulted in investigations and subsequently in charges of forced marriage, a crime which resulted in thousands of victims but remained hidden until then.<sup>4</sup> At the ICC, the OTP similarly indicated that it “will increasingly seek opportunities for effective and appropriate consultation with victims’ groups and their representatives to take into account the interests of victims.”<sup>5</sup>

- Measures of protection:<sup>6</sup> victims’ testimonies will be necessary in the vast majority of cases to support the prosecution’s case. Victim and witness protection therefore is a condition precedent to justice. Early engagement with victims- including at the stage of developing a prosecutorial strategy- can help prosecutors to ensure that victims’ right to protection is respected from the outset and to identify relevant protection concerns and to take suitable measures so as to help victims coming forward to testify.<sup>7</sup>
- Securing reparation for victims: Integrating victims’ perspectives at an early stage of a prosecution will furthermore prepare the ground to implement victims’ right to reparation. It enables prosecutors (and investigators) to carry out full and effective investigations into suspects’ / perpetrators’ assets in relation to the cases it decides to pursue, so that upon conviction, they can form part of the reparation awarded to victims. In the same light, early engagement of victims will help raise awareness among prosecutors of the harm suffered by the victims, and it would be important for prosecution services to be sensitive to evidence that might emerge in that respect, to be taken into account in developing

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hopes’, November 2008, pp.95-98 at

<http://www.redress.org/downloads/publications/Rwanda%20Survivors%2031%20Oct%2008.pdf>.

<sup>4</sup> See decision of Office of the Co-Investigating Judges, Order on Request for Investigative Action Concerning Forced Marriages and Forced Sexual Relations, Document No. D268/2, 18 December 2009.

<sup>5</sup> OTP ICC, ‘Policy paper on Sexual and Gender Based Crimes, June 2014, para.2, at <http://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

<sup>6</sup> See REDRESS, ‘Ending threats and reprisals against victims of torture and related international crimes: a call to action’, December 2009, also for protection measures offered in a variety of contexts, pp. 36-39, at <http://www.redress.org/downloads/publications/Victim%20Protection%20Report%20Final%2010%20Dec%2009.pdf>.

<sup>7</sup> See REDRESS & FIDH, ‘Universal Jurisdiction Trial Strategies- Focus on victims and witnesses, p.21, referring to the ICTY case of Haradinaj et al; [http://www.redress.org/downloads/publications/Universal\\_Jurisdiction\\_Nov2010.pdf](http://www.redress.org/downloads/publications/Universal_Jurisdiction_Nov2010.pdf); see also Hester van Bruggen, Dutch prosecutor within the Dutch ‘War Crimes Unit’, who in the same report refers to several examples of intimidation and measures taken as a result, pp.25-29; see also letter sent by REDRESS AND OTHERS to the EU Genocide Network on 16 May 2014 at [http://www.redress.org/downloads/publications/Civil%20society%20letter%20to%20EU%20Genocide%20Network%20\(ns\).pdf](http://www.redress.org/downloads/publications/Civil%20society%20letter%20to%20EU%20Genocide%20Network%20(ns).pdf) (‘Network Letter’), referring to the case of Ignace Murwanashyaka and Stanton Musoni, who are currently standing trial in a German court for crimes committed by the FDLR in the Eastern DRC. Two counts of rape and enslavement relating to sexual violence (as well as one count of recruitment of child soldiers) were provisionally dropped at the request of prosecutors in 2013. See ECCHR, FDLR-Leadership Trial in Stuttgart, Third Status Report of February 2014, available at <http://www.ecchr.de/index.php/kongo-war-crimes-trial.html>; See for instance testimony of Jacqueline Blam, Rwandan genocide survivor who testified before a Dutch court, and highlighted that the “Prosecutor’s team and the police conducting the investigation were very professional, supportive and they really listened to me...” “Psychological support was available at all times, all day long.” [http://www.redress.org/downloads/publications/Universal\\_Jurisdiction\\_Nov2010.pdf](http://www.redress.org/downloads/publications/Universal_Jurisdiction_Nov2010.pdf), p.23; a description of psychological support and other measures provided for witnesses during investigations in Rwanda is also contained in the judgment of *Public Prosecutor v Yvonne N.*, Case No. 09/748004-09, District Court of The Hague, 1 March 2013, paras.22-25. See <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI%3ANL%3ARBDHA%3A2013%3A8710>.

prosecutorial strategies. Freezing, seizure and confiscation of assets is one of the matters suggested for a proposed new international treaty on mutual legal assistance related to serious international crimes.<sup>8</sup>

- Enabling victim participation: Prosecutors and investigators can also proactively and systematically take steps at the outset to ensure that survivors are able to participate in their role as victims rather than merely as witnesses for proceedings. Prosecutors should provide victims with information about their rights in the legal system in question, for example the right to participate as a civil party, have legal representation, appeal against decisions not to prosecute, or apply for compensation and other forms of reparation, as applicable. This is an important minimum step to ensure that victims can enjoy the fullest possible participation in the proceedings, and provide fully informed consent for their participation.<sup>9</sup> When victims are not informed about their rights as victims rather than merely as witnesses, they not be able to fully realise their rights to participate, enjoy legal representation, and obtain reparation among others.<sup>10</sup> For example, prosecutors and/or investigators in a number of countries including France and Germany do not have a practice in international crimes cases of routinely informing witnesses about their rights as victims, which may partly explain why a number of victims involved in the trial of Pascal Simbikangwa in France and the “FDLR Leadership Trial” in Germany have only acted as witnesses rather than civil parties. In contrast, much larger numbers of victims have participated as civil parties and been awarded compensation in several Rwandan genocide trials in Belgium.<sup>11</sup>

In short, early engagement of victims is a strategic decision that helps the prosecutor to get it right from the outset. It is likely to contribute to an overall prosecutorial strategy resulting in prosecutions that take into account the rights of victims, reflect the magnitude of the crimes committed and thereby do justice to victims.<sup>12</sup> How and

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<sup>8</sup> Permanent Declaration on International Initiative for opening Negotiations on a Multilateral Treaty for Mutual Legal Assistance and Extradition in Domestic Prosecution of Atrocity Crimes (crimes of genocide, crimes against humanity and war crimes), presented at a side event sponsored by Argentina, Belgium, the Netherlands and Slovenia at the 23<sup>rd</sup> session of the UN Commission on Crime Prevention and Criminal Justice, 12 May 2014 [copy on file with REDRESS].

<sup>9</sup> See Articles 3-6, EU Directive 2001/220/JHA of 25 October 2012 on minimum standards on the rights, support and protection of victims of crime.

<sup>10</sup> See Articles 3-6, EU Directive 2001/220/JHA of 25 October 2012 on minimum standards on the rights, support and protection of victims of crime.

<sup>11</sup> See for example the case of Bernard Ntuyahaga, Judgment of La Cour d'Assises de L'Arrondissement Administratif de Bruxelles-Capitale, 5 July 2007, and reparation decision of Cours d'Assises of 11 September 2007, copies on file with REDRESS; see *Avocats Sans Frontières, Le process de Bernard Ntuyahaga: Les elements clés du dossier*, 2007 (available from ICC Legal Tools Project); the participation of victims as civil parties was also due to efforts of NGOs and the Rwandan diaspora in Belgium.

<sup>12</sup> See also the OTP ICC, Policy Paper on Participation, April 2010, which emphasises that as part of its prosecutorial strategy, the OTP is systematically addressing “the interests of victims in the work of the Office, seeking their views at an early stage, before an investigation is launched, and continuing to assess their interests on an on-going basis, p.3, at [http://www.icc-cpi.int/iccdocs/asp\\_docs/RC2010/RC-ST-V-M.1-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/RC-ST-V-M.1-ENG.pdf); the OTP also stresses that it “welcomes direct interaction with victims and victims associations starting at the earliest stages of its work in order to take their interests into account when it defines the focus of its investigative activity”, p. 8; accordingly, the OTP ICC takes a “victim –centred approach in all aspects of [its] work,” see OTP Prosecutorial Strategies, 11 October 2013, p.13, at [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/policies%20and%20st](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/policies%20and%20st)

what prosecutors (can) do to integrate victims' rights and their perspectives at the outset may differ from context to context. However, examples in past cases at national and international level which may be considered relevant to the process of developing an overall prosecutorial strategy have included:

- Even prior to the issuance of an indictment, prosecutors can take practical steps so as to integrate victims' evidence, concerns and perspectives in the framing of their strategy. The OTP ICC policy paper on participation for instance refers to "town hall meetings with victims groups, which have contributed to the definition of incidents and charges brought forward by the prosecution"<sup>13</sup> emphasising that there is "scope for further development of such interaction during early stages of its work", and that it "pro-actively" monitors and considers open source information and information sent by victims groups, NGOs and others."<sup>14</sup> Similar strategies may be used at the stage of developing an overall strategy.
- A variety of prosecution services specialized in the investigation and prosecution of international crimes in Europe and North America have produced leaflets and posters with information on their mandate, providing contact details of prosecutors and encouraging victims to come forward. These leaflets/ posters are distributed in those services' own countries by the Red Cross, asylum service providers, immigration authorities and others and enable victims/ witnesses to provide information electronically through their websites, which also contain useful information about their work and past cases.<sup>15</sup> To complement these efforts members of the Dutch unit, for example, took the opportunity while visiting Rwanda to conduct radio interviews and provide information about previous cases in which perpetrators had been convicted, with a view to encouraging further victims to come forward for a new investigation. While the situation might be somewhat different for prosecution services in other contexts, it is equally important that they are known, accessible and considered trustworthy so as to encourage victims to come forward.
- As an example of outreach, the Extraordinary African Chambers (EAC) in Senegal - established to investigate and prosecute former president of Chad Hissène Habré – established a communications office shortly after it was established and began its investigations, and has been publicising both the court and ongoing investigations in both Chad and Senegal. This has included prosecutors conducting radio interviews and outreach sessions with victims during a number of rogatory commissions in Chad. In addition to this, networks of local NGOs and victims' associations are assisting victims, over 1,000 of whom have applied to

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[ategies/Documents/OTP-Strategic-Plan-2012-2015.pdf](#); for an example of how a lack of full consultation and engagement of victims at the outset can lead to failed prosecutions, see UN News Centre, [DR Congo mass rape verdict fails to deliver justice to victims, says UN envoy](#), 8 May 2014).

<sup>13</sup> OTP ICC, Policy Paper on Victims' Participation, April 2010, p.7.

<sup>14</sup> Ibid.

<sup>15</sup> REDRESS is aware of leaflets and/or websites used by units of police and/or prosecutors specialised in the investigation and prosecution of international crimes in The Netherlands, Germany, the United States, and Denmark.

join the proceedings to date. An international NGO with experience of outreach to victim communities is also implementing a “sensitization” project in partnership with the EAC to train journalists and media about international justice issues and lay the groundwork for further outreach.<sup>16</sup>

- A mapping of actors with potential information about a given situation, including for instance prosecution authorities of other countries, as well as international courts/ tribunals, human rights commissions and missions of inquiry, is important. It helps to identify lessons learned in terms of e.g. protection, and to assess whether and potentially which victims have already provided testimony so as to prevent, where possible, victims from testifying multiple times. It also minimises the risk of re-traumatisation, as well as witness fatigue, which is a phenomenon particularly in relation to witnesses in Rwanda, who have often been questioned multiple times by investigators of European countries, Canada, the United States as well as the ICTR.<sup>17</sup> Cooperation mechanisms such as the EU Genocide Network, or the planned AU Network of specialised prosecutors, can help to facilitate such coordination and cooperation among authorities as well as with tribunals/ courts. One investigator indicated to FIDH and REDRESS that an important and time saving starting point for any investigation is to contact authorities of other countries who may have some experience in investigating crimes in that country. Indeed, this is common practice of the Dutch prosecution services when faced with a new case in order to “not make the same mistakes our colleagues made and also the other way around.”<sup>18</sup>

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<sup>16</sup> See website of the Extraordinary African Chambers: <http://www.chambresafricaines.org/>; Martien Schotsmans, Director of RCN Justice & Démocratie, in conversation with REDRESS in March 2014.

<sup>17</sup> Reference to Rwanda report on survivors perspectives

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[http://www.redress.org/downloads/publications/The\\_Practice\\_of\\_Specialised\\_War\\_Crimes\\_Units\\_Dec\\_2010.pdf](http://www.redress.org/downloads/publications/The_Practice_of_Specialised_War_Crimes_Units_Dec_2010.pdf)