

Enhancing Victims' Rights in Mutual Legal Assistance Frameworks

Recommendations for the Convention on International Cooperation
in the Investigation and Prosecution of the Crime of Genocide,
Crimes against Humanity and War Crimes

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INTRODUCTION

Since 2011, a core group of States has sought support for the negotiation of a new multilateral Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes (the Convention). Their initiative—referred to as the MLA Initiative—has rapidly gained momentum and is currently supported by States from all regions of the world. This Policy Submission provides our views on the need to strengthen victims' rights in mutual legal assistance (MLA) frameworks in the lead up to the Diplomatic Conference for the adoption of the Convention. It builds upon the positions taken by our organisations and other civil society organisations (CSOs) in open letters commenting on previous drafts of the Convention.¹

While we welcome this effort to strengthen international cooperation in the fight against impunity for serious international crimes, greater attention must be given to victims' rights provisions in the Convention. A modern multilateral treaty concerning serious international crimes must reaffirm existing international law obligations concerning victims' rights and promote reliance on MLA to realise these rights. Failure to do so will not only undermine the progressive development of the law but will also endanger the very purpose of the Convention—establishing a powerful tool for cooperation in cases where effective victim engagement has proven essential.

This Submission was researched and written by Dr Sarah Finnin of the International Federation for Human Rights (FIDH). It was prepared as part of a joint project between FIDH, REDRESS and the European Centre for Constitutional and Human Rights (ECCHR) aimed at improving access to justice for victims of serious international crimes in Europe. It is based on research conducted throughout 2019 and 2020, including consultations with government authorities, practitioners and experts in victims' rights. It also draws on the experiences of FIDH, REDRESS and ECCHR in supporting victims of serious international crimes around the globe. Our research has been facilitated by the opportunity extended to civil society to participate actively in the MLA Initiative consultation process.

1. The open letters were published in March 2019 and January 2020 and are available at <https://www.fidh.org/en/issues/international-justice/ngos-call-for-the-inclusion-of-victims-rights-into-the-mutual-legal> and <https://www.fidh.org/en/issues/international-justice/ngos-share-their-concerns-with-the-draft-convention-on-international>.

THE ROLE OF MLA IN NATIONAL INVESTIGATIONS AND PROSECUTIONS OF SERIOUS INTERNATIONAL CRIMES

Recent decades have seen increased efforts at the national level to investigate and prosecute individuals and companies responsible for serious international crimes—genocide, crimes against humanity, war crimes, torture and enforced disappearances. Effective investigation and prosecution of such crimes by national authorities inevitably requires access to suspects, victims, witnesses, evidence and assets located outside their territorial reach. Whether those national authorities are in the State where the crimes were committed or in a third State exercising extra-territorial (including universal) jurisdiction, having a strong framework in place to facilitate international² cooperation is essential.

Formal cooperation between States in criminal matters is referred to as **mutual legal assistance** (MLA). MLA can involve a range of activities, such as providing information and evidence, executing searches and seizures, examining crime scenes, facilitating appearance of witnesses, effecting service of legal documents and freezing or recovering assets. MLA is often distinguished from **informal** or **administrative assistance**, through which States can request investigative steps or other forms of cooperation that do not require the use of coercive powers or court orders (such as obtaining public records and interviewing cooperating witnesses). Informal assistance will often depend on the cultivation of professional relationships between foreign counterparts. Nevertheless, informal assistance will be more forthcoming if authorities within the relevant States can rely on a treaty obligation to request or to provide such assistance (particularly where it requires dedication of resources). Moreover, providing a stable, treaty-based framework for cooperation—rather than ad hoc reliance on informal assistance—can help to develop and to share good practices, as well as to promote greater cooperation in the fight against impunity.

The traditional tool of MLA is the **letter rogatory**—a formal request from the judicial authority of the requesting State to a judicial authority of the receiving State, transmitted through diplomatic channels based on principles of comity or reciprocity. Letters rogatory and responses thereto will usually travel via the States' justice and foreign affairs ministries and its embassies, which can be time-consuming, cumbersome and unpredictable. Formal **MLA treaties**—whether bilateral, regional or multilateral³—can expedite this process by establishing central authorities through which such requests can be channelled and by regulating the manner in which they should be made and executed. This allows for more direct communication between practitioners, builds expertise and experience, and enhances predictability. Despite the evident benefits for practitioners, at present no multilateral MLA treaty exists with respect to serious international crimes. Rather, existing statutory international law provides a patchwork of provisions that only apply to specific categories of international crimes.⁴ By contrast, detailed MLA treaties have been negotiated with

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2. As the Convention concerns only inter-*State* cooperation, this Policy Submission does not address the cooperation between national authorities and regional, international, inter-governmental and non-governmental organisations.
 3. While existing bilateral and regional treaties allow for a certain degree of cooperation with respect to serious international crimes, a *multilateral* treaty can facilitate cooperation amongst a wider number of States and can enhance efficiency and consistency of approach. For an example of a bilateral agreement to facilitate the investigation of international crimes, see e.g. Judicial Cooperation Agreement between the Republic of Chad and the Republic of Senegal for the Prosecution of International Crimes Committed in Chad in the period between 7 June 1982 and 1 December 1990 (Dakar, 3 May 2013).
 4. See e.g. United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), art.9; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art.88; Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, art.19.

respect to transnational crimes such as drug trafficking, terrorism and corruption.⁵ These treaties have contributed to a more uniform and streamlined regime of international cooperation amongst a greater number of States, making it more difficult for perpetrators to evade justice.⁶

According to practitioners interviewed for this Submission, when investigating serious international crimes, national authorities will generally begin with the evidence already within their reach.⁷ In addition, victims—directly or through their legal representatives or CSOs with local contacts and country-specific knowledge—can provide access to evidence that would otherwise be out of reach of the authorities. After exhausting these possibilities, national authorities may attempt to obtain evidence located on the territory of another State through requests for informal assistance or even without going through official channels at all. However, while some States will allow certain activities on their territory without the need to obtain prior authorisation,⁸ in others this may be seen as a violation of sovereignty and may even constitute a criminal offence.⁹ Moreover, it may render the evidence inadmissible in any eventual judicial proceeding. In such circumstances, authorities will need to turn to formal MLA to complete the investigation.¹⁰

“We are somewhat dependent on what victims bring us. They have access to information that we do not.”
Investigating Judge

Our interviews with practitioners suggest that the manner in which inter-State MLA requests are executed differs from case to case. The requested State may insist on executing the request entirely independently, following its domestic law. Occasionally, investigating authorities from the requesting State are permitted to collect evidence directly, without supervision of local authorities. In other cases, representatives from the requesting State are authorised to be present or to participate in the execution of the request, together with local authorities. The composition of the team engaged in the execution of the request also varies, depending on the needs of the States concerned and any other relevant circumstances (such as security concerns, specific language or other expertise required etc). For example, the Dutch investigating judge has included a psychologist in missions to interview particularly vulnerable witnesses, while Swedish authorities may be accompanied by victims’ counsel where they intend to interview victims.¹¹

Where there is no legal obligation on States to cooperate, execution of requests for assistance will depend on the goodwill of the requested State. However, even where there is an obligation to cooperate,

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5. See e.g. United Nations Convention against Transnational Organized Crime (UNTOC); United Nations Convention against Corruption (UNCAC); United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances; International Convention for the Suppression of the Financing of Terrorism.
 6. See Matti Joutsen, “The Impact of United Nations Crime Conventions on International Cooperation” in Cindy Smith, Sheldon Zhang and Rosemary Barberet (eds), *Routledge Handbook of Criminology* (2011), p.112.
 7. This may entail: conducting open source investigations (relying on the media, reports prepared by CSOs or international organisations, public records etc); interviewing witnesses present on their territory (e.g. military personnel, diplomats, journalists and diaspora communities); gaining access to information held by other government authorities (e.g. diplomatic cables, military or intelligence reports); exercising powers of search and seizure (e.g. obtaining financial, communications, social media, business, medical records or satellite imagery); conducting electronic surveillance; or appointing experts (e.g. to conduct analysis of armed groups, governmental or corporate structures, demographic statistics, financial records or forensic evidence).
 8. For example, certain States do not take issue with foreign authorities contacting cooperating witnesses or serving procedural documents directly, without requesting assistance.
 9. See e.g. Swiss Criminal Code, art.271(1).
 10. National authorities may send letters rogatory or requests for assistance to other States as well as regional, international or inter-governmental organisations. These requests can involve an array of investigative and judicial measures, from collecting witness testimony, examining sites and physical evidence, obtaining access to records (including copies of dossiers where similar investigations or inquiries have been undertaken by other authorities) to extradition. There is no generally applicable format for inter-State requests, however they usually include certain key elements (such as the nature of the investigation, a summary of the relevant facts and the identity of any person concerned).
 11. Interview with Dutch Investigating Judge (20 February 2019); Interview with Swedish War Crimes Commission (10 September 2019).

the extent to which States are willing or able to assist can vary greatly. In addition to the common challenges that exist in all cooperation frameworks,¹² factors that might impact upon the likelihood of timely and comprehensive cooperation in cases concerning serious international crimes include:

- **the attitude of the requested State towards the investigation which is being conducted:** political considerations can result in systematic refusal or delay, particularly where the investigation implicates State agents. As a result, some authorities have referred to lack of cooperation as a reason for not pursuing an investigation into alleged crimes;¹³

- **the security of victims or witnesses participating in investigations:** going through formal channels to contact victims or witnesses abroad may put them at risk of retaliation, in particular where State agents are somehow implicated in the crimes. National authorities are then forced to find other ways to reach those individuals (e.g. relocating them or facilitating their travel to a third State to be interviewed);¹⁴

"We have to inform the country that we're coming and what we're doing. As soon as we decide to meet someone, we have to send the name ahead and that can create a threat. But that's how the system works."

Investigator within a Specialised Unit

- **the institutional framework or general infrastructure/resources of the requested State:** in many (post-)conflict areas, governmental functions may have been disrupted or infrastructure destroyed, hampering efforts to provide assistance (e.g. lengthy conflict, political upheaval or forced displacement may have a significant and long-term impact on the ability of the justice system to function adequately, against which requests for assistance from foreign jurisdictions may be given low priority);¹⁵

- **a volatile security situation on the ground in the requested State:** cooperation may be delayed or ruled out entirely if authorities are unable to execute a request safely. Where a mission on foreign soil remains feasible, the security situation may nevertheless increase the complexity and cost involved (e.g. requesting States may have to negotiate to allow armed officers to participate in missions abroad in order to provide protection to their investigating authorities).¹⁶

While a modern multilateral treaty on MLA cannot resolve all these challenges, we remain convinced that it can facilitate greater international cooperation. We also recognise the need to adopt a text that is acceptable to the widest possible number of States. **Nevertheless, we urge States to give greater attention to victims' rights in the Convention. In light of the important role victims play in any effort to address impunity for serious international crimes, as well as the inherent risks that come with this role, it is imperative that the Convention reaffirm and promote established victims' rights. Moreover, the Convention must adopt a victim-oriented approach to ensure the credibility and legitimacy of such investigations and prosecutions, while ensuring full compliance with the rights of suspects and perpetrators.**

"In our procedures we have always protected the suspect enormously, we have always focused on the defence but less on the witnesses or victims."

Investigator within a Specialised Unit

12. For example, the strength of existing relationships and the degree of trust between the States concerned, differences in domestic legal frameworks, overly complex procedures, language issues resulting in misunderstandings and time constraints.

13. Interview with Ministry of Justice official (15 May 2019); Interview with Investigating Judge (16 May 2019).

14. Interview with Prosecutor within a Specialised Unit (24 September 2019); Interview with Investigator within a Specialised Unit (20 June 2019).

15. Interview with Prosecutor within a Specialised Unit (24 September 2019).

16. Interview with Ministry of Justice official (15 May 2019).

THE CONVENTION MUST REAFFIRM AND PROMOTE ESTABLISHED VICTIMS' RIGHTS

States are obliged under international law to accord a range of rights to victims of serious international crimes.¹⁷ A number of widely-ratified treaties provide examples of provisions concerning victims' rights that can be adapted for the purposes of the Convention.¹⁸ Those rights include, for example:

- the right to complain to competent authorities;¹⁹
- the right to receive information;²⁰
- the right to access support services;²¹
- the right to protection;²²
- the right to be heard;²³ and
- the right to obtain reparation.²⁴

These rights are guaranteed to *all* victims of serious international crimes. Victim status is therefore to be determined by the harm a person has suffered;²⁵ it must not be made dependent on the victim making a formal complaint, nor should it be affected by other limitations on access to justice.

By expressly confirming these *existing* rights, the Convention can play an important role in contributing to their implementation. This is particularly true where neither national authorities in the territorial State nor international courts are able to address serious international crimes. In such circumstances, recourse to national courts exercising extra-territorial jurisdiction often represents the only opportunity for victims to see these rights realised. National authorities investigating and prosecuting serious international crimes have an obligation towards victims in this regard.

We are encouraged by the efforts made over recent years by some national authorities to develop expertise in working with victims and to improve victims' access to information, support

17. See e.g. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN General Assembly Res 60/147, UN Doc A/RES/60/147 (16 December 2005) (Basic Principles and Guidelines). As stated in the Preamble, the Basic Principles and Guidelines "do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of *existing legal obligations under international human rights law and international humanitarian law* which are complementary though different as to their norms" (emphasis added).

18. Key provisions from these treaties are set out in **Annex 2** to this Policy Submission, together with victims' provisions from the International Law Commission's Draft Articles on Prevention and Punishment of Crimes Against Humanity, *Report of the International Law Commission: Seventy-First Session*, UN Doc A/74/10 (2019), ch.IV (CAH Articles).

19. Compare e.g. International Convention for the Protection of All Persons from Enforced Disappearance (CED), art.12; UNCAT, art.13. See also CAH Articles, art.12(1)(a); Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime (EU Victims' Directive), art.5.

20. Compare e.g. CED, art.24(2); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPCRSC), art.8(1)(b); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (PPSPT), art.6(2)(a). See also EU Victims' Directive, arts.4, 6.

21. Compare e.g. OPCRCSC, art.8(1)(d); PPSPT, art.6(3); CED, art.15; UNCAT, art.14. See also EU Victims' Directive, arts.8-9.

22. Compare e.g. UNCAT, art.13; CED, art.12; PPSPT, art.6(1), (5); OPCRCSC, art.8(1)(f). See also CAH Articles, art.12(1)(b); Council of the European Union, *Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – 2019 Revision of the Guidelines* (EU Torture Guidelines), p.29; EU Victims' Directive, arts.18-24.

23. Compare e.g. PPSPT, art.6(2)(b); OPCRCSC, art.8(1)(c). See also CAH Articles, art.12(2); EU Victims' Directive, art.10.

24. Compare e.g. CED, art.24(4)-(5); PPSPT, art.6(6); OPCRCSC, art.9; UNCAT, art.14. See also CAH Articles, art.12(3).

25. Compare e.g. International Criminal Court, *Rules of Procedure and Evidence*, Rule 85; Basic Principles and Guidelines, art.8; *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UN General Assembly Res 40/34, UN Doc A/RES/40/34 (29 November 1985), arts.1-3. See also EU Victims' Directive, art.2(1)(a).

and protection.²⁶ Despite these efforts, victims of serious international crimes continue to face significant barriers that inhibit their effective engagement in national proceedings and prevent them from benefiting from the same rights as other categories of victims.

The fact that many serious international crimes victims normally reside outside the State conducting an investigation or prosecution raises obvious challenges. Moreover, the unique circumstances of such victims—often severely traumatised with limited access to support or rehabilitation, living in ongoing conflict or insecurity—leaves them in need of special protection against intimidation, retaliation and repeat or secondary victimisation. This is compounded by numerous other factors: the sheer number of victims potentially implicated in such proceedings; language issues; cultural differences; lack of infrastructure; and insufficient expertise or resources to dedicate to victim engagement.

While acknowledging these challenges, the Convention must not undermine existing international law standards on victims' rights. We commend the inclusion of a definition of 'victim' and provisions guaranteeing the right to complain, to receive protection, to be heard and to obtain reparation. However, the provisions of the Convention dealing with victims' rights must be further strengthened, in particular through inclusion of the right of victims to receive information, as recognised in other international treaties. As developed below, recognising the crucial role played by victims and promoting their rights in the Convention will enhance its ability to function as a 'practical tool' for States working to end impunity for serious international crimes through national investigations and prosecutions.

RECOMMENDATION 1: The Preamble to the Convention should explicitly acknowledge victims' rights to access truth, justice and reparation, as well as the crucial role they play in supporting domestic investigations and prosecutions of serious international crimes. Article 1 should expressly state that the purpose of the Convention is twofold: strengthening the fight against impunity and upholding victims' rights.²⁷ The Convention should make clear that 'victim' status is determined only by harm suffered and provisions concerning victims' rights should be further strengthened, in particular through inclusion of the right to receive information in Article 60. Suggested wording is provided in Annex 1 to this Policy Submission.

26. FIDH, REDRESS and ECCHR will publish a comprehensive report in September 2020 examining best practices and challenges/obstacles to implementing the EU Victims' Directive in the context of national investigations and prosecutions of serious international crimes in five EU Member States (Belgium, France, Germany, the Netherlands and Sweden). The report will be available on our websites (www.fidh.org, www.redress.org, www.ecchr.eu).

27. Compare e.g. PPSPT, Preamble, art.2; CED, Preamble. See also CAH Articles, Preamble.

VICTIMS ARE THE CORNERSTONE OF ANY VIABLE INVESTIGATION OR PROSECUTION

Victims often represent the cornerstone of any viable investigation or prosecution of serious international crimes before national courts. Without the courage of those victims who act as complainants or witnesses, many such cases would never reach trial. Moreover, involving victims

“Victims enable judges and prosecutors to understand the scale of the crimes committed, their consequences, their violence, so that they become less abstract.”

Prosecutor within a Specialised Unit

assists investigators, prosecutors and factfinders to comprehend the context in which the crimes occurred and their impact. As such, States at the forefront of investigating and prosecuting serious international crimes at the national level are increasingly recognising that engaging, supporting and protecting victims is crucial to building strong cases.

The EU Genocide Network has acknowledged this trend, recommending that measures be taken by national authorities to address the rights and needs of victims and witnesses, and that victims’ perspectives be integrated into investigation and prosecution strategies.²⁸

MLA can play an important role in ensuring victims who reside abroad can exercise their rights during national proceedings concerning serious international crimes. While a number of good practices have emerged in recent years, the full potential of international cooperation has yet to be realised. Provisions that support national authorities in fulfilling victims’ rights should therefore represent an integral part of any MLA framework developed for such cases.

The Convention Should Explicitly Provide for MLA to Facilitate Victims’ Participation and Access to Information

As noted above, victims’ rights to information and to be heard are already established under international law and duly recognised in international treaties.²⁹ Greater reliance should be placed on international cooperation to overcome obstacles to exercising these rights. In particular, MLA should be available to support efforts to inform victims of their rights, to facilitate their effective participation in proceedings,³⁰ and to provide updates on the progress of proceedings.

“Victims feel very far away from extra-territorial proceedings. Challenges surrounding outreach need to be addressed for these proceedings to be meaningful.”

Victims’ Lawyer

Some national authorities devote significant resources to bringing witnesses from abroad to enable them to testify in person. For example, in all five trials concerning the 1994 Rwandan genocide in Belgium, the authorities arranged for witnesses to travel to Brussels to testify before the *cour d’assises* (organising passports and visas; paying for local transport and flights; providing clothing where necessary; and arranging collective accommodation in military/police compounds or hotels).³¹

28. *Strategy of the EU Genocide Network to Combat Impunity for the Crime of Genocide, Crimes against Humanity and War Crimes within the European Union and its Member States*, November 2014, pp.45-46.

29. See above fns.20, 23.

30. Participation in criminal proceedings can take different forms depending on the relevant legal system. For example, in some States victims can participate as civil parties to the proceedings with extensive procedural rights, while in others victims have the right to express their views in the form of a ‘victim impact statement’.

31. Interview with Belgian Federal Prosecutor (15 May 2019); Interview with Belgian Ministry of Justice (15 May 2019).

Similar arrangements were made to facilitate the appearance of Rwandan witnesses before French courts.³² However, most national authorities struggle with putting in place such arrangements and similar efforts have not been made to ensure *victims* and *victim communities* are able to follow proceedings from abroad. One possibility for bridging the gap could be (partial) in-situ proceedings. In Sweden, for instance, the Stockholm District Court travelled to Rwanda for part of the proceedings in each of the three trials relating to the 1994 genocide and allowed victims and their legal counsel to participate via video-link from the Supreme Court in Kigali.³³

Where holding in-situ proceedings abroad is not provided for in a State's legal framework, States may use other means to bring extra-territorial proceedings closer to those affected. These include the translation of judgments, providing easy-to-understand case summaries or issuing press releases in a language victims understand. However, relevant authorities—investigators, prosecutors, courts—may not always consider such outreach activities as falling within their respective portfolios. As a result, victims' counsel or CSOs working on the ground will frequently carry the burden of informing victims and the broader victim community of the outcome of criminal proceedings.³⁴

Some recent practice points towards prosecutorial strategies that factor in the importance of keeping victims and affected communities informed. Dutch authorities, for instance, issued several press releases providing updates on a war crimes trial before the District Court of The Hague in 2017. The press releases—translated into English, French and Amharic—were distributed via their embassy in Ethiopia and published in the local media. The final judgment was also translated into English and made available online.³⁵ Similarly, in 2017 Dutch prosecutors used a variety of means of communication to keep victims in Afghanistan informed of the progress of their investigation, including press releases translated into Dari and English and video-link meetings held at the Dutch embassy in Kabul to which members of the broader victim community were invited.³⁶

“The procedural obligation is limited to those victims who are actually ‘part of’ the charges. But we thought we had a broader obligation to inform the affected community.”
Prosecutor within a Specialised Unit

The availability of MLA to facilitate the provision of information to victims and their effective participation in investigations and prosecutions should be reinforced through an explicit reference in Article 17 of the Convention. Without this, national authorities may feel restricted in the types of assistance they can request or provide, particularly where:

- (a) the request involves procedures that are unfamiliar to their national system (e.g. facilitating townhall-style meetings or informal exchanges to provide victims with updates on proceedings); or
- (b) the request is directed at an authority that is not normally called upon to fulfil such requests in the context of a criminal investigation or prosecution (e.g. ministries or courts who might be requested to allocate funds to translate or disseminate court decisions).

32. Interview with French Judges (19 June 2019); Interview with Victims' Lawyer (18 June 2019).

33. Interview with Victims' Lawyer (20 September 2019); Interview with Victims' Lawyer (15 October 2019); Interview with Swedish Public Prosecution Authority (10 September 2019); Interview with Swedish War Crimes Commission (10 September 2019).

34. For example, victims' lawyers in Germany have struggled to obtain adequate funding to travel to where their clients are based in order to inform them of the outcome of proceedings. Victims' lawyers and CSOs have had to fund translations of decisions as no official translation into a language understood by the victims is provided. Interview with Victims' Lawyer (2 October 2019); Interview with Victims' Lawyer (7 October 2019). In Liberia, Civitas Maxima and their local partner, the Global Justice Research Project (GJRP), have developed a way to share information concerning cases with victim communities using art: “We created a cartoon which is distributed in the schools in different parts of Liberia to open up discussion. We also work with traditional theatre groups to provide information about the proceedings.” Intervention by Civitas Maxima at Practitioner Workshop (5 November 2019).

35. Intervention by Dutch Public Prosecution Service at Practitioner Workshop (5 November 2019); Email correspondence with Dutch Public Prosecution Service (16 March 2020).

36. Interview with Dutch Public Prosecution Service (22 February 2019).

Such a provision could be enabling rather than obligatory,³⁷ in that it could provide a legal basis authorities could invoke to justify allocating resources (whether human, financial or otherwise) to such actions.

RECOMMENDATION 2: The Convention should provide explicitly in Article 17 that MLA may be afforded to facilitate the provision of information to victims and their effective participation in proceedings. Suggested wording is provided in Annex 1 to this Policy Submission.

The Convention Should Explicitly Provide for MLA to Support Victims' Right to Reparation

Victims of serious international crimes continue to face significant obstacles in gaining access to reparation (including financial compensation) for the harm they have suffered. Access to reparation programs at the local level where the crimes were committed may be possible as part of transitional justice measures.³⁸ However, where prosecutions take place in a third State exercising extra-territorial jurisdiction, victims of serious international crimes are often excluded from accessing State-funded compensation funds.³⁹ Moreover, even where jurisdictions allow victims to obtain a decision on compensation against an offender as part of the criminal proceedings, offenders rarely have the means to pay. Offenders who do possess assets often avoid paying compensation due to the difficulties associated with enforcing such awards—particularly where assets are located abroad and therefore require enforcement proceedings in a foreign jurisdiction.⁴⁰ As a result, few victims of serious international crimes prosecuted on the basis of extra-territorial jurisdiction have ever received compensation from offenders.⁴¹

MLA can play an important role in making the right to reparation effective. **While we welcome the inclusion of the right to reparation in Article 60 of the Convention, the overly restrictive wording of the provision improperly limits this right in cases prosecuted on the basis of extra-territorial jurisdiction.** In particular, it hampers the Convention's ability

"I think the decision that awarded them compensation had a positive impact. But then, all the obstacles that were put in their way discouraged them, as if they were no longer recognised as victims."

Victims' Lawyer

37. While a formal MLA treaty is not required for a State to request or to provide informal assistance, such assistance may be more forthcoming if the requesting or requested State can point to a treaty obligation in order to justify the time and resources required to provide such assistance. Including a reference to provision of information in Article 17 would not *require* that the requesting State go through local authorities if this is not considered necessary.

38. Examples of progressive national legislation acknowledging State responsibility for large-scale human rights violations and establishing administrative regimes to provide reparations exist, although their practical implementation is proving difficult: Guatemala: Guatemalan Government Decree 258-2003, revised by Decree 619-2005; Guatemalan National Reparations Programme at www.pnr.gob.gt; Colombia: Law 1448 on Victims' Right to Comprehensive Reparation and Land Restitution. Additionally, in Chad, domestic courts awarded large reparations to a significant number of victims of the Hissène Habré era: Criminal Court of N'djamena, *Prosecution v. Ismael Hachim and others*, 25 March 2015. See also Basic Principles and Guidelines, Part IX.

39. See our upcoming report examining access to justice for victims of serious international crimes in Europe, which will be available on our websites in September 2020 (www.fidh.org, www.redress.org, www.ecchr.eu).

40. Few mechanisms exist to support victims of serious international crimes in enforcing compensation awards. For example, often victims will need to engage a bailiff or obtain legal support to conduct investigations into an offender's assets and take legal action to enforce the award. Such action can be costly and is rarely covered by legal aid. One exception is the Netherlands, where courts are empowered to impose 'compensation measures', which are penal sanctions enforced by the State. In addition, victims may obtain an advance payment from the Dutch State if they have been unable to recover the full amount from the offender within 8 months of the decision.

41. For example, despite financial awards to victims having been issued by a domestic court in Chad and the Extraordinary African Chambers in Senegal, no reparations have been disbursed so far to victims of Hissène Habré's regime.

to function as an effective tool to enable States to request assistance to identify, trace, freeze, confiscate and/or recover offenders' assets or proceeds of crime. It also limits the possibility to use the Convention as an avenue to support victims' access to documentary proof of the harm they have suffered in such cases (such as official records which are properly notarised and translated).

RECOMMENDATION 3: The Convention should recognise the full scope of the right to reparation and should provide explicitly in Article 17 that MLA may be afforded to facilitate victims' access to reparation. Moreover, the Convention should provide a definition of 'proceeds of crime'.⁴² Suggested wording is provided in Annex 1 to this Policy Submission.

The Convention Should Include a Comprehensive Provision on Protection

The right to protection against all forms of ill-treatment, intimidation and retaliation for victims and witnesses participating in investigations or criminal proceedings is well recognised in existing treaties.⁴³ Protecting individuals who reside abroad—often in (post-)conflict zones, areas facing ongoing insecurity or in refugee/internally displaced persons camps—can be difficult and costly. As one practitioner has stated, “this is probably one of the most important challenges when it comes to successfully prosecuting international crimes because if we cannot protect our victims and witnesses, we will not have any case to take to trial”.⁴⁴ There is no easy solution. Authorities are often forced to improvise and find creative approaches to providing protection or at least minimising the risk of retaliation. A strong provision in the Convention can assist national authorities to call on other States to cooperate in the widest possible range of circumstances.

“We have a moral obligation towards these brave persons who have spoken to us about what they have gone through and we can't just leave them behind and say good luck, we'll see you in court!”

Prosecutor within a Specialised Unit

Article 59 of the Convention should be expanded to ensure adequate protection to all individuals whose safety or well-being might be jeopardised by an investigation, prosecution, extradition or other proceeding within the scope of the Convention—not only those with a formal role. This includes victims (whether they choose to participate in proceedings or not), witnesses, their families and members of their communities, human rights defenders, investigators, lawyers, health care professionals, monitoring bodies and any other individual or institution assisting victims in accessing redress.⁴⁵ In particular, the provision should cover third parties who provide information, support or protection to victims.

At times, CSOs or victims' lawyers provide the support necessary to facilitate victims' participation in investigations and prosecutions, particularly with respect to States with whom national authorities are unable or unwilling to cooperate.⁴⁶ The support provided may include:

“Without legal counsel's help we would have to travel down weeks ahead to arrange meetings, transportation, documents, money ...”

Investigator within a Specialised Unit

42. Compare e.g. UNTOC, art.2(e); UNCAC, art.2(e).

43. See above fn.22.

44. Interview with Prosecutor within a Specialised Unit (10 September 2019).

45. See e.g. EU Torture Guidelines, p.29.

46. For example, investigating authorities will not be able to rely on MLA where revealing the identities of victims to foreign authorities may expose victims to harm.

- **logistical support**, such as obtaining visas and other travel documents, securing (advance) funding to cover travel expenses, arranging travel/accommodation, providing video-link facilities;
- **legal support or representation**, including providing detailed information on rights and updates on proceedings; and/or
- **accompaniment of victims throughout proceedings**, including around-the-clock accompaniment while travelling abroad, psychosocial support during interviews and court hearings, and referrals for specialised support where possible.

For example, legal counsel appointed to represent victims in Swedish proceedings have provided logistical support for interviews conducted abroad (including arranging victims' travel, accommodation and reimbursement of expenses).⁴⁷ Similarly, CSOs have financed and arranged the travel of victims to France to be interviewed.⁴⁸ In several other jurisdictions, CSOs have identified or located victims, facilitated their contact with investigating authorities and initiated proceedings on their behalf.⁴⁹ Given the difficulties national authorities face in ensuring protection for victims against retaliation in such cases, lawyers and CSOs have had to play an important role in **protecting victims**. For example, some CSOs have filed complaints or registered as civil parties in their own name in order to protect victims from exposure.⁵⁰ Others have provided rudimentary protection measures such as temporary relocation.⁵¹

“As NGOs operating on the ground, we are the ones who currently have to carry this burden; we have to develop a protection program without the expertise or financial resources to do it.”

CSO Representative

While such activities are essential to ensuring victims' rights, they have at times put representatives of CSOs and lawyers at risk. For example, one CSO expressed fears during our consultations at being shut down for actively sharing information with foreign authorities and assisting them to interview victims linked to ongoing cases.⁵² Another has faced concrete threats and violence against its employees and their family members, as well as property damage.⁵³ Yet, despite the role that CSOs and lawyers play in supporting national authorities, the current wording of Article 59 may exclude them from its protection.

While acknowledging the limited means available to national authorities to provide protection abroad, we are confident that ensuring a broad provision regarding protection in the Convention and including explicit reference to protection measures in Article 17 will *expand* the means available to them. For example, it could **provide national authorities with a legal basis they can invoke to justify allocating resources** (whether human, financial or otherwise) to provide protection, which in turn could result in the availability of stronger evidence. This may include, for example: identifying or allocating emergency funds to support temporary relocation of individuals put at immediate risk; providing specialist advice and training in conducting risk assessments and developing security protocols; making diplomatic representations or otherwise applying pressure to enable CSOs to

47. Interview with Victims' Lawyer (20 September 2019); Interview with Victims' Lawyer (15 October 2019); Interview with Swedish War Crimes Commission (10 September 2019).

48. Interview with CSO (5 July 2019); Interview with French Central Office for Combatting Crimes against Humanity, Genocide and War Crimes (OCLCH) (20 June 2019). In other cases, CSOs have provided advance funding to cover travel expenses, with reimbursement taking over a year. Email correspondence with CSO (6 March 2020); Interview with Victims' Lawyer (18 June 2019).

49. Interview with CSO (16 January 2020); Interview with Investigating Judge (16 May 2019); Email correspondence with CSO (6 March 2020).

50. In several jurisdictions (such as Belgium and France), registering as a civil party requires that victims be identified in the file. The fact that CSOs are permitted to act as civil parties enables them to support victims who wish to initiate investigations yet fear retaliation if their identity is revealed to the accused. Interview with CSO (5 July 2019); Interview with Victims' Lawyer (14 May 2019).

51. Interview with CSO (2 April 2019); Email correspondence with CSO (6 March 2020).

52. Interview with CSO (16 January 2020).

53. Email correspondence with CSO (6 March 2020).

continue carrying out their work without interference. Similarly, lawyers and CSOs would benefit from the ability to invoke such a provision in their engagement with different national authorities (in particular, when interacting with those outside the specialised war crimes units, such as consular or immigration officials, civil servants or court officials).

RECOMMENDATION 4: Article 59 of the Convention should be expanded to facilitate greater cooperation in applying measures to protect individuals whose safety or well-being might be jeopardised by investigations or criminal proceedings. In particular, the provision should cover third parties—such as CSOs and victims’ lawyers—who provide information, support or protection to victims or otherwise cooperate in investigations and criminal proceedings. The Convention should provide explicitly in Article 17 that MLA may be afforded to ensure access to adequate protective measures. Suggested wording is provided in Annex 1 to this Policy Submission.

Protection Should Encompass Protection against Secondary Victimization

Article 59 should be drafted in the broadest possible terms to ensure protection against all forms of harm linked to participation in or cooperation with investigations or proceedings. In particular, Article 59(1) should be expanded to ensure **protection against secondary victimisation**—that is, engaging with the victim in the aftermath of the crime in a manner that causes further harm or deepens their victimisation. For example, secondary victimisation can be caused through: unprotected contact with the offender on court premises or in the courtroom; lack of recognition of the harm caused to the victim; harsh or persistent questioning or cross-examination (particularly for victims of torture) and unnecessarily detailed questions about a traumatic event, both of which may trigger flashbacks; requiring victims to revisit traumatic events without offering adequate psychosocial support; or treating the victim as an instrument to achieve a certain judicial outcome (including by denying victim status and instead forcing a person into the role of a witness).⁵⁴ In addition, the measures envisaged by Article 59(3) should be expanded to include the establishment of procedures or evidentiary rules to permit victims to participate in proceedings and give evidence in a manner that ensures their **safety, well-being and privacy**.⁵⁵

Again, including such a provision could be enabling rather than obligatory, in that it could give authorities a legal basis upon which **to justify allocating resources or otherwise facilitating such actions**, particularly where the request is to employ protection measures that are unfamiliar to their national system. Measures that can substantially diminish the risk of secondary victimisation include, for example: voluntary psychological screening to assess the needs of vulnerable victims and to identify appropriate protective measures; enabling advance/informal contact with victim-witnesses to familiarise them with the process of giving evidence; providing after-care immediately following an interview/hearing or therapeutic follow-up; enabling use of video-links for victims who wish to observe or to participate in proceedings; permitting legal representatives, psychologists or other support persons to accompany victim-witnesses during interviews or while giving evidence; permitting non-disclosure of sensitive information that is not relevant to the case; or limiting intrusive questioning.

54. For example, victims who wish to remain anonymous due to fears of retaliation are often excluded from registering as civil parties or injured persons, and are thereby treated as mere witnesses, with implications for their right to be informed of updates or to express their views and concerns during proceedings.

55. *Compare e.g.* EU Victims’ Directive, arts.18-24.

RECOMMENDATION 5: Article 59 of the Convention should be expanded to ensure protection against secondary victimisation, including through procedures to permit victims to participate or to give evidence in a manner that ensures their safety, well-being and privacy. Suggested wording is provided in Annex 1 to this Policy Submission.

CONCLUSION

Our organisations—drawing on our experience supporting victims of serious international crimes and extensive consultations with national authorities, practitioners and victims’ rights experts—urge States involved in the MLA Initiative to strengthen the Convention’s provisions on victims’ rights. A modern multilateral treaty concerning serious international crimes must, at a minimum, reaffirm existing obligations under international law. Moreover, promoting reliance on MLA to realise victims’ rights will enhance the Convention’s ability to function as a practical tool for States working to end impunity through national investigations and prosecutions.

ANNEX 1 – PROPOSED AMENDMENTS TO THE CONVENTION (version 20/03/2020)

Preamble

[4] Considering the rights of victims, witnesses and others in relation to the crimes covered by this Convention, as well as the right of offenders to fair treatment, ...

[10] Mindful that during the 20th century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity **and recognising the rights of such victims to access truth, justice and reparation,**

[new 11] **Acknowledging the crucial role played by victims and witnesses in investigations and prosecutions of serious international crimes and the need to strengthen efforts aimed at ensuring their protection, support and empowerment, ...**

Article 1. Purpose

1. The purpose of this Convention is:
 - a. to facilitate international cooperation in criminal matters between States Parties with a view to strengthening the fight against impunity for the crime of genocide, crimes against humanity and war crimes; **and**
 - b. **to uphold the rights of victims of such crimes to truth, justice and reparation. ...**

Article 17. Purpose of the request

Mutual legal assistance to be afforded in accordance with the provisions of this Convention shall include, but not be limited to: ...

- i. Identifying, freezing or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes **or for other purposes as set out in Article 23; ...**
- l. Measures to allow for the adequate protection of victims, ~~and~~ witnesses **and others, and to facilitate the exercise of victims' rights, as set out in Articles 59 and 60; ...**

Article 23. Confiscation

...

2. **[NEW] For the purposes of this Convention, "proceeds of crime" is defined as any property derived from or obtained, directly or indirectly, through the commission of a crime within the scope of this Convention. ...**
4. When acting on the request made by another State Party in accordance with this article, State Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can ~~give compensation~~ **provide reparations** to the victims of the crime or return such proceeds of crime or property to their legitimate owners. ...

PART VI. Victims, witnesses and **experts others**⁵⁶

[New]⁵⁷ **Article X. Definition of victim**

1. For the purpose of this Convention, **and without prejudice to any broader definition provided for in international or national law**, a "victim" is a natural person who has suffered harm as a result of the commission of any crime covered by this Convention.
2. **For the purpose of this Convention, the status of "victim" is not limited by a person's procedural role or standing under domestic law. In particular, a person who satisfies the above definition shall be recognised as a victim regardless of whether a formal complaint has been made to competent authorities and regardless of whether the perpetrator of the crime is identified, apprehended, prosecuted or convicted.**

Article 59. Protection of victims, witnesses and **experts others**⁵⁸

1. Each State Party shall take the necessary measures to **protect** ensure that victims, witnesses and their relatives and representatives, experts, as well as other persons participating in **or cooperating with** any investigation, prosecution, extradition or other proceeding within the scope of this Convention, shall be protected against ill-treatment, or intimidation **or secondary victimisation** as a consequence of any complaint, information, testimony or other evidence given **in respect of any such investigation, prosecution, extradition or other proceeding**.
2. Each State Party shall take the necessary measures to ensure that any person who alleges that crimes covered by this Convention have been or are being committed has the right to complain to the competent authorities. States Parties shall undertake to examine these complaints in order to determine whether there is reasonable ground to believe that these crimes have been or are being committed.⁵⁹
2. The measures envisaged in paragraph 1 may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:
 - a. Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
 - b. Establishing procedures or** providing evidentiary rules to permit **victims to participate in the proceedings and** witnesses and experts to give testimony in a manner that ensures the safety, **well-being, dignity and privacy** of such persons.
3. States Parties shall consider entering into agreements or arrangements with other States Parties for the relocation of persons referred to in paragraph 1.

56. Compare CAH Draft Articles, art.12 (referring to victims, witnesses and others).

57. We recommend that the definition of 'victim' be set out in a separate article at the beginning of Part VI, as it is also applicable to Article 59.

58. Compare CAH Draft Articles, art.12 (referring to victims, witnesses and others).

59. We recommend that this provision be moved to Article 60 concerning victims' rights.

Article 60. Victims' rights⁶⁰

1. For the purpose of this Convention, a "victim" is a natural person who has suffered harm as a result of the commission of any crime covered by this Convention.
1. Each State Party shall take the necessary measures to ensure that any person who alleges that crimes covered by this Convention have been or are being committed has the right to complain to the competent authorities. States Parties shall undertake to examine these complaints in order to determine whether there is reasonable ground to believe that these crimes have been or are being committed.
2. **Each State party shall, in accordance with its domestic law, take appropriate measures to ensure victims receive information about their rights and updates on the progress and results of any investigation, prosecution or judicial proceeding in a language they understand.**
3. Each State Party shall, ~~subject to~~ **in accordance with** its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.
4. Each State Party shall take the necessary measures to ensure ~~in its legal system that the victims of a crime covered by this Convention, committed through acts attributable to the State under international law or committed in any territory under its jurisdiction,~~ have the right to obtain reparation for material and moral damages, on an individual or collective basis, consisting, as appropriate, of one or more of the following or other forms: restitution; compensation; satisfaction; rehabilitation; cessation and guarantees of non-repetition.

60. We recommend that the paragraphs within this provision be rearranged in a more logical order.

ANNEX 2—EXAMPLES OF VICTIMS’ RIGHTS PROVISIONS

*International Convention for the Protection of All Persons from Enforced Disappearance*⁶¹

Article 12

1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the **complainant, witnesses, relatives** of the disappeared person and their defence counsel, as well as **persons participating in the investigation**, are protected against all **ill-treatment or intimidation** as a consequence of the complaint or any evidence given. ...
4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of **pressure or acts of intimidation or reprisal** aimed at the **complainant, witnesses, relatives** of the disappeared person or their defence counsel, or at **persons participating in the investigation**.

Article 15

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to **assisting victims** of enforced disappearance ...

Article 24

1. For the purposes of this Convention, **“victim” means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.**
2. Each victim has the **right to know the truth** regarding the circumstances of the enforced disappearance, the **progress and results of the investigation** and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.
3. ...
4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the **right to obtain reparation and prompt, fair and adequate compensation.**
5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:
 - (a) Restitution;
 - (b) Rehabilitation;
 - (c) Satisfaction, including restoration of dignity and reputation;
 - (d) Guarantees of non-repetition. ...

61. Opened for signature 20 December 2006, 2716 UNTS 3 (entered into force 23 December 2010). The Convention currently has 62 States Parties.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000)⁶²

II. Protection of victims of trafficking in persons

Article 6. Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the **privacy** and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - a. **Information** on relevant court and administrative proceedings;
 - b. Assistance to enable their **views and concerns to be presented and considered** at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the **physical, psychological and social recovery** of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - a. Appropriate housing;
 - b. Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - c. Medical, psychological and material assistance; and
 - d. Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the **physical safety** of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of **obtaining compensation** for damage suffered.

62. Opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003). The Protocol currently has 175 States Parties.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography⁶³

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
 - a. Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
 - b. Informing child victims of their rights, their role and the scope, timing and progress of proceedings and of the disposition of their cases;**
 - c. Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected,** in a manner consistent with the procedural rules of national law;
 - d. Providing appropriate support services** to child victims throughout the legal process;
 - e. Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
 - f. Providing, in appropriate cases, for the **safety** of child victims, as well as that of their **families and witnesses** on their behalf, from **intimidation and retaliation**;
 - g. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims. ...

Article 9

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to **adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.** ...

63. Opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2002). The Protocol currently has 176 States Parties.

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁶⁴

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the **right to complain** to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are **protected against all ill-treatment or intimidation** as a consequence of his complaint or any evidence given.

Article 14

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to **fair and adequate compensation**, including the means for **as full rehabilitation as possible**. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

64. Opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987). The Convention currently has 169 States Parties.

Article 12. Victims, witnesses and others

1. Each State shall take the necessary measures to ensure that:
 - a. any person who alleges that acts constituting crimes against humanity have been or are being committed has the **right to complain to the competent authorities**; and
 - b. **complainants, victims, witnesses, and their relatives and representatives, as well as other persons** participating in any investigation, prosecution, extradition or other proceeding within the scope of the present draft articles, shall be protected **against ill-treatment or intimidation** as a consequence of any complaint, information, testimony or other evidence given. Protective measures shall be without prejudice to the rights of the alleged offender referred to in draft article 11.
2. Each State shall, in accordance with its national law, enable the **views and concerns** of victims of a crime against humanity to be presented and considered at appropriate stages of criminal proceedings against alleged offenders in a manner not prejudicial to the rights referred to in draft article 11.
3. Each State shall take the necessary measures to ensure in its legal system that the victims of a crime against humanity, committed through acts attributable to the State under international law or committed in any territory under its jurisdiction, have the **right to obtain reparation** for material and moral damages, on an individual or collective basis, consisting, as appropriate, of one or more of the following or other forms: **restitution; compensation; satisfaction; rehabilitation; cessation and guarantees of non-repetition.**

65. *Report of the International Law Commission: Seventy-First Session*, UN Doc A/74/10 (2019), ch.IV.



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