



## **FIDH, REDRESS and ECCHR Policy Submission on Draft Multilateral Treaty for Cooperation in International Crimes Cases**

### **Questions and Answers**

#### **What is mutual legal assistance or MLA?**

Mutual legal assistance (MLA) is the way in which different States cooperate in collecting and exchanging information in criminal matters. It allows one State to obtain access to information and evidence, such as witnesses, suspects and victims which are located in another State. Some forms of cooperation—such as searching or seizing property or extraditing a suspect—follow a formal procedure. Others forms of cooperation—such as interviewing cooperating witnesses—are more informal. Traditionally, a State would request cooperation from another State by ‘letter rogatory’, which is a formal judicial request sent through diplomatic channels. This traditional method is being increasingly replaced by ‘MLA treaties’ which allow for more direct communication between practitioners, and make investigations and prosecutions more efficient.

#### **Why is MLA important to investigating and prosecuting serious international crimes at the domestic level?**

It is the duty of every State to investigate serious international crimes—including genocide, war crimes, crimes against humanity, torture and enforced disappearance—and to extradite or prosecute those responsible. If the State where the crimes were committed does not investigate the crimes, investigations and prosecutions may occur in other States—particularly those where the alleged perpetrators or victims are present. Just as alleged perpetrators and victims may be located across the globe, so too is the evidence needed to prosecute these crimes. As such, effective cooperation amongst States is crucial in any attempt to bring such cases to trial.

#### **What is the MLA Initiative?**

Since 2011, a core group of States (Argentina, Belgium, Mongolia, the Netherlands, Senegal and Slovenia) has sought support for the negotiation of a new multilateral treaty on cooperation and extradition in cases involving serious international crimes. This initiative—referred to as the MLA Initiative—is separate from other multilateral frameworks, such as the International Criminal Court, and is now supported by over 70 States from all regions of the world.

#### **Why do we need a new multilateral treaty?**

Despite the evident benefits of MLA treaties in terms of efficiency, consistency and predictability, at present no multilateral MLA treaty exists for serious international crimes. Rather, the existing legal framework provides an outdated patchwork of provisions that only

apply to specific categories of crimes. By contrast, detailed MLA treaties have been negotiated with respect to transnational crimes such as drug trafficking, terrorism and corruption. Providing a stable, treaty-based framework for cooperation in international crimes cases—rather than ad hoc reliance on informal assistance, bilateral arrangements or existing treaties—can promote greater cooperation in the fight against impunity.

### **What crimes will the treaty cover?**

The treaty will govern cooperation and extradition in cases concerning genocide, crimes against humanity and war crimes. Rather than attempt to negotiate new definitions of these crimes, the States involved in the MLA Initiative have chosen to adopt those set out in the Rome Statute of the International Criminal Court. In addition, the current draft of the treaty allows States to cooperate voluntarily and on an ad hoc basis with respect to additional crimes, such as torture, enforced disappearance and the crime of aggression. Thereby, the treaty would allow for future adaptation and would recognise that these, too, are serious international crimes that give rise to the same challenges in terms of MLA.

### **Why are FIDH, REDRESS and ECCHR interested in the MLA Initiative?**

Our organisations have closely followed the MLA Initiative and have actively participated in consultations on previous drafts of the treaty. We have repeatedly expressed our support for a new treaty aimed at strengthening cooperation amongst States in the fight against impunity. However, we have also advocated to bring previous drafts of the treaty into compliance with international law standards in particular regarding the rights of victims (see our open letters issued in [2019](#) and [2020](#)). Our current Policy Submission continues this work, calling upon States to further strengthen victims' rights provisions in the current draft.

### **Why is this important for victims?**

Victims of these crimes have a right to truth, justice and reparation. Investigations and prosecutions are an important component to realise this right, so any treaty that seeks to make investigations and prosecutions of international crimes more effective should expressly recognise rights of victims. Moreover, victims are the cornerstone of any viable investigation or prosecution of serious international crimes before national courts. Victims pursue justice at great personal risk. Without their courage and determination, many such cases would never reach trial. In light of victims' rights, and the important role that victims play, any MLA framework developed for such cases must adopt a victim-oriented approach. In particular, it must reaffirm *existing* international law obligations concerning victims' rights.

### **If these rights already exist under international law, why do they need to be included in the treaty?**

International law guarantees victims of serious international crimes a number of rights which can facilitate their right to truth, justice and reparation. Yet victims continue to face significant barriers that prevent them exercising their rights. MLA can help to overcome these barriers. For example, MLA can enable victims to express their views and can help keep them informed of developments in the case. It can support victims in obtaining reparation for the harm they have suffered by allowing the tracing and recovery of offenders' assets. MLA can also expand the measures available to protect victims from intimidation or retaliation as a result of their involvement in an investigation or trial.

### **What do FIDH, REDRESS and ECCHR say in their Policy Submission?**

We commend the inclusion of provisions guaranteeing certain rights to victims in the current draft of the treaty. However, we say in our Policy Submission that these provisions must be further strengthened, particularly with regard to the right to receive information, the right to protection and the right to reparation. Failure to ensure the treaty reflects existing international law standards concerning victims will undermine the development of law and hamper the treaty's ability to carry out its *raison d'être*: establishing a powerful tool for cooperation in cases where effective victim engagement has proven essential. Our Policy Submission contains concrete recommendations on how the current draft could be further strengthened.

### **What are the next steps in negotiating the treaty?**

In March 2020, the core group of States released a revised draft of the treaty and invited comments from other States and interested parties. The revised draft will serve as the basis for negotiations during a diplomatic conference to adopt the treaty and open it for signature. More information (including the revised draft of the treaty) is available at [www.mla-initiative.com](http://www.mla-initiative.com).

For more questions and answers, please contact [justice@fidh.org](mailto:justice@fidh.org) (French, English, Spanish), [eva@redress.org](mailto:eva@redress.org) (English, Spanish) or [presse@ecchr.org](mailto:presse@ecchr.org) (German, English, Spanish).