

September 2020

BREAKING DOWN BARRIERS

**ACCESS TO JUSTICE IN EUROPE FOR
VICTIMS OF INTERNATIONAL CRIMES**

EXECUTIVE SUMMARY

fidh



REDRESS
Ending torture, seeking justice for survivors



Gisozi Genocide Memorial
Site, Rwanda © AFP/Eric
Lafforgue 2010

EXECUTIVE SUMMARY

IN THE past decade, six million individuals have sought asylum in the EU, many of them victims of serious international crimes (that is, war crimes, crimes against humanity, genocide, torture and enforced disappearance).

However, among those fleeing mass atrocity and persecution are a small but significant number of perpetrators of international crimes, hoping to escape justice. In addition, EU Member States are increasingly faced with cases of their own nationals' complicity in such crimes (including in the course of their business activities or as so-called foreign fighters). In light of this situation, Member States have established jurisdiction over serious international crimes and have created **specialised units** to identify, investigate and prosecute potential perpetrators.

The EU has also made the **fight against impunity** for international crimes one of its priorities. In recent years, the mandates of both Eurojust and Europol have been extended to improve cooperation and coordination in this area (most notably with respect to crimes committed in Syria). At the same time, the EU has committed to **improving the position of all victims** within the EU, in particular through its Directive on minimum standards for the rights, support and protection of victims of crime (hereinafter the **Victims' Rights Directive** or **Directive**).

This Report examines the extent to which the specialised units within the EU that investigate and prosecute serious international crimes uphold EU standards on victims' rights. It is based on research conducted between 2019 and 2020, including approximately 140 interviews with practitioners and policy makers in five Member States—Belgium, France, Germany, the Netherlands and Sweden. The Report includes five **country chapters** that examine the law and practice in these countries as well as an analysis of **common challenges and emerging best practices.**

The conclusion we have reached is unequivocal: while substantial progress has been made in recent years, victims of serious international crimes continue to face significant legal and practical barriers that limit the exercise of their rights. Many of these barriers stem from the inherent difficulties in investigating and prosecuting such crimes at the domestic level. For example:

- Many victims are unaware of the possibility to report serious international crimes to national authorities. Moreover, the complex legal framework that applies to such cases means victims can only exercise their rights effectively with the support of a lawyer and/or a specialised NGO.
- Some victims (or their family members) continue to live in conflict areas or situations of ongoing insecurity and are therefore hesitant to cooperate in investigations due to the real risk of reprisal. For Member States to provide any protection in such circumstances is both challenging and costly.
- Requiring victims who have suffered severe trauma to revisit traumatic events carries a high risk of secondary victimisation. Yet general victim support services are not equipped to provide the support such victims need and the few organisations that provide the necessary specialised support cannot meet the current demand.
- Facilitating participation in criminal proceedings for large numbers of victims who are geographically dispersed and who do not necessarily speak the language in which proceedings are conducted is often beyond the capacity of national authorities.

On the other hand, a number of barriers to victims accessing justice stem from **failures by EU Member States to implement their obligations under international law** (in particular, their obligations to criminalise serious international crimes in their domestic laws and establish jurisdiction over them). For example, several of the countries under review have yet to criminalise torture and enforced disappearance as stand-alone crimes. In addition, some severely restrict the circumstances in which their domestic authorities can investigate or prosecute crimes committed abroad. These factors both inhibit the ability of those Member States to contribute to the fight against impunity and prevent victims from seeking redress.

Similarly, several barriers to victims accessing justice are the result of **specific policy decisions to restrict access to certain rights** based on the residence or nationality of the victim or the nature of the crime itself. In particular, the political sensitivities surrounding international crimes cases have led some countries to deliberately curtail the possibilities for victims to initiate criminal proceedings or to seek review of decisions not to prosecute. In addition, access to legal aid is often limited and strict eligibility criteria effectively exclude victims of international crimes committed abroad from obtaining State-funded compensation.

Nevertheless, our research has identified **emerging best practices** that improve victims' access to information, support and protection. The creation, professionalisation and increased resources dedicated to the specialised units are leading to measurable improvements in their capacity to investigate and prosecute serious international crimes. Enhanced **training, expertise and gender balance** within the units are also generating advances in the conduct of witness interviews. The specialised units are more proactive in their engagement with the media, civil society and diaspora communities and are increasingly participating in **outreach activities** to raise awareness about their work. Some of the units have also made considerable efforts to inform

victims and affected communities of the **results of investigations or the outcome of proceedings** through publication of press releases in multiple languages, translation of judgments and use of social media. Finally, the opening of **structural investigations** into largescale crimes as well as anticipatory investigations to **collect and preserve evidence** for use before other jurisdictions is beginning to bear fruit.

While we welcome these advances, more must be done to ensure victims of serious international crimes can exercise their rights under the Victims' Rights Directive and under international human rights law. In some cases, this will require **legislative change** to bring criminal procedural laws into compliance with the Directive (particularly with respect to protection against secondary victimisation). The majority, however, require that Member States match their commitment to the fight against impunity with a similar **commitment to victims' established rights to truth, justice and reparation**.

We recommend to EU Member States: that victims be properly recognised as such, without discrimination based on residence or nationality, and regardless of whether the Member State in question has jurisdiction to investigate or prosecute the offender; that greater attention be given to providing victims with information about their rights in a manner that is specifically adapted to their needs; that victims' effective participation in criminal proceedings be supported by improved access to legal representation and robust victim-oriented communication strategies; that access to specialist support services (including rehabilitation measures and psychosocial support) for all victims be improved; that psychological screening be employed prior to interviews with particularly vulnerable victims or witnesses; and that Member States identify and apply measures to assist victims in enforcing compensation awards against offenders.

We recommend that the EU: reaffirm its commitment to the fight against impunity for serious international crimes and to ensuring victims' rights within the field of Justice and Home Affairs; integrate measures to improve the position of victims of serious international crimes into its **Victims' Rights Strategy**; ensure consistency and coherence of its internal and external policies in this field and increase engagement by key EU institutions; foster greater cooperation at the regional and international levels, including through support for the adoption of a new multilateral treaty on extradition and mutual legal assistance for serious international crimes (the so-called MLA Initiative); and support training and capacity-building initiatives to raise awareness surrounding victims' rights.



Suicide car bombing in Sirte, Libya
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