



Contribution to the European Commission Victims' Package:
"Taking action on rights, support and protection of Victims of Crime and Violence"

November 2010

Amnesty's International work on victims of crime or violence takes place in the context of its work to ensure the rights of all victims of human rights abuse to access to justice, including reparations, without discrimination; and to ensure that the measures taken by the states to protect persons and prevent and prosecute crimes are in compliance with their obligations to protect the human rights of all. Through its work, the organization has developed particular expertise on grave human rights violations such as torture and terrorism, trafficking in human beings, discrimination, police abuse and violence against women.

The examples highlighted in this response are based on that work, which includes Amnesty International country and thematic research as well as contributions to standard-setting and policy processes at a regional and international level.¹

To meet the objective of the consultation, namely to gather concrete data on specific and practical aspects of victims' protection, **this contribution will focus largely on the needs of women victims of sexual and gender-based violence** – building on the recent work carried out in the context of Amnesty International's global campaign on violence against women and the current European campaign to end female genital mutilation (End FGM) led by Amnesty International Ireland in partnership with a number of organizations in EU Member States.² In addition, a few remarks will be made in relation to the rights of victims of international crimes (genocide, crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances).

Amnesty International would like to draw the Commission's attention to its current research on universal jurisdiction and its individual country reports in the *No Safe Haven* series. The reports published on EU Member States to date demonstrate that there are varying procedural obstacles that stand in the way of the realisation of victim's rights as they are provided for in international law.³

The focus on the rights of women victim of sexual and gender-based violence takes place in a context of growing political commitment to address violence against women at the EU level. It constitutes a natural follow-up to the Commission's consultation on an EU strategy for combating violence against women⁴ and could represent the first step in implementing the new gender equality strategy (2010-2015) presented in the European Commission's Communication of 21 September 2010.⁵

The strategy provides that: "the Commission will adopt an EU wide strategy on violence against women that will aim, for instance, at eradicating female genital mutilation using all appropriate instruments included criminal law, within the limits of the EU's powers, supported by a Europe-wide awareness – raising campaign on violence against women"⁶. Together with the accompanying Action Plan⁷, it specifically provides for action on rights, support and protection of victims of violence.

The examples below have been selected according to their pertinence and concrete character with regards the specified questions in the consultation paper. They should not be interpreted as setting 'priority' victim rights and do not encompass all of Amnesty International's work on victims' rights. With regards to violence against women, the organization's wider approach based on human rights is

¹ See list in annex

² See <http://www.endfgm.eu/en/>

³ See list of Amnesty International reports in annex

⁴ See Amnesty International's contribution to the consultation on an EU strategy for combating violence against women 2011-2015 <http://www.amnesty.eu/static/documents/2010/AIcontribVAW.pdf>

⁵ Com(2010)491final

⁶ See above, page 8.

⁷ SEC(2010)1079/2

outlined notably in its response to the Commission's consultation on an EU strategy for combating violence against women (2011-2015)⁸.

GENERAL QUESTIONS

What are the main obstacles and problems faced by victims of crime or violence in relation to the five categories of needs (recognition, protection, support, access to justice, compensation and restoration)?

Discrimination including multiple discrimination on grounds such as gender, age, immigration status, ethnic or social origin is a major problem faced by victims of crime or violence at all stages, from recognition to reparation. This reality needs to be addressed by EU action to ensure that no victims are left aside, and also to combat pervasive forms of violence against particularly vulnerable groups in society.

Ad hoc measures create further obstacles to achieving meaningful protection of all victims. Building a comprehensive strategy, with prevention and accountability at its core, is essential to help victims rebuild their lives and prevent similar abuse in the future. **With regards violence against women**, the UN Special Rapporteur on violence against women, its causes and consequences has highlighted a number of challenges.⁹ The most evident challenge currently faced in combating violence against women is the implementation of existing human rights standards to ensure that the root causes and consequences of violence against women are tackled at all levels - from the home to the transnational arena. The multiplicity of forms of violence against women as well as the fact that this violence frequently occurs at the intersection of varying types of discrimination makes the adoption of multifaceted strategies to effectively prevent and combat this violence a necessity.

What concrete initiatives would you suggest to ensure that all victims' needs are met? Do you think the EU can contribute to meeting the needs of victims?

Are you aware of good practices, initiatives, programmes (incl. Training programmes) or tools that contribute to meeting the needs of victims?

Examples of good practices and tools that contribute to meeting the needs of victims

Violence against women – Checklist

In order to allow advocates to identify what changes are needed, in law or in practice, to ensure that victims and survivors of sexual or gender-based violence have meaningful access to services and justice, Amnesty International has developed a checklist with six key questions.¹⁰ **The checklist is based on international law and is organised according to the steps that victims would need to take in order to report a crime and seek redress for sexual and gender based violence through the criminal justice system.**

The six key questions that form the basis of the checklist are: (See annex I for full version of checklist)

1. Are the existing laws adequate?
2. Is it safe for a victim to report a crime of sexual or gender-based violence?
3. Is the collection of forensic evidence and provision of medical care appropriate and adequate?
4. Are there specific obstacles which prevent a victim from accessing appropriate services in a timely way?
5. Is the investigation of crimes efficient and thorough?

⁸ See above: Amnesty International's contribution to the consultation on an EU strategy for combating violence against women 2011- 2015 <http://www.amnesty.eu/static/documents/2010/AIcontribVAW.pdf>

⁹ Integration of the human rights of women and the gender perspective: violence against women the due diligence standard as a tool for the elimination of violence against women E/CN.4/2006/61 20 January 2006.

¹⁰ Six-Point Checklist on Justice for Violence Against Women, ACT 77/002/2010, 8 March 2010

6. Are trials fair, competent and efficient?

The checklist and the specific benchmarks identified under each question provide a useful tool to identify, for each national context, the different obstacles faced by victims in relation to the five categories of needs (recognition, protection, support, access to justice, compensation and restoration). It may be useful as training and working tool for organizations, policy makers and practitioners dealing with women victim of sexual or gender-based violence.

How could the existing EU legislation be improved to meet the needs of victims?

EU legislation

The 2001 Framework Decision on the standing of victims in criminal proceedings unfortunately sets minimum and weak standards and focuses on cross border situations. EU legislation could be improved by strengthening the definitions and standards contained in existing legislation and to incorporate progressive standards. This would enable the inclusion of standards recognised in international and European human rights law and would reflect the jurisprudence of the European Court of Human Rights. Building on the Stockholm programme and the new opportunities created by the Lisbon Treaty, new legislation should seek to secure the highest level of protection for all victims of crime wherever in the EU, in domestic and cross border cases, with due regard to the non discrimination principle and with special attention to vulnerable groups.¹¹

Amnesty International advocates for provisions which ensure that there are protective measures available before, during and after the investigation proceedings. In the context of the investigation and the criminal proceedings, measures must be consistent with the accused' right to a fair trial. All such measures should be developed in order to address the varying individual needs concerned - and in particular acknowledge necessary measures which are both gender sensitive and respect the rights of the child. Furthermore, any piece of legislation should be part of a wider strategy that includes preventive measures and monitoring mechanisms – and commits the EU to analysing the impact of its cooperation instruments from a human rights perspective. The unforeseen or even negative effects of measures to combat violence or crime on victims should be measured and reported in these assessments. Please see developments and examples below.

*Is sufficient information and data collected on victims' policies and needs?
How do you think such information should be collected?*

Examples on data collection

Female Genital Mutilation (FGM) in Europe

Presently the **lack of accurate empirical data and indicators on FGM in Europe** inhibits a comparison or an assessment of the extent of the problem. In turn this seriously undermines EU's capacity to develop efficient policies to protect women and girls victims of FGM.

The End FGM–European campaign led by Amnesty International has formulated precise recommendations to the EU institutions to remedy this situation. They include calls on the EU institutions to request targeted action from its specialised agencies including for:

- the European Fundamental Rights Agency (FRA) to include FGM in its objectives for 2007-2012, i.e. include FGM in the identification of indicators for service providers for children at risk and children's rights; explore the practices and measures that aim to improve the access to health care for female asylum seekers living with FGM;

¹¹ See for instance the approach of the Council *Roadmap with a view to fostering protection of suspected and accused persons in criminal*, which clearly states that EU action in the area of defence rights intends to build upon the ECHR "to expand existing standards or to make their application more uniform"

- the European Institute for Gender Activity (EIGE) to develop and establish human rights sensitive methodological tools that can be used for an EU-wide approach to quantitative and qualitative data on FGM. This should be done in close collaboration with civil society organisations, community representatives and women and girls directly affected by FGM and experienced sociologists, ethnologists and anthropologists;
- Eurostat to coordinate and support the development of national surveys to assess FGM prevalence in the EU. Such surveys should be developed in close collaboration with all stakeholders to take into account the national context.

The UN database on violence against women (VAW)

The UN database on violence against women (VAW) provides a comprehensive and relatively updated mapping of existing measures against VAW worldwide, including specific measures relating to rights, support and protection of victims. Each country page provides the user with a list of available information on measures undertaken by the selected country. These include legal framework, policies, strategies and programmes, institutional mechanisms, services for victims/survivors, preventive measures and training, research and statistical data. The 'good practices' page further provides a full listing of measures identified as good practices, with a particular focus on law, service provision, and prevention.

The EU could replicate a similar database by providing updated information on the measures taken at member state and EU levels, to assist organizations, policy-makers and practitioners working with victims of violence against women. The database must include evaluation and monitoring mechanisms allowing the determination of good practices based on established criteria. Such criteria should include the promotion and protection of rights contained in the Charter of Fundamental Rights and other relevant human rights standards. Inclusion of an evaluation of the impact of the projects in preventing/responding to/protecting against/prosecuting and providing support and remedies for acts of violence against women can also serve as a criterion. At the EU level, a database is necessary to facilitate the identification of various protection gaps and good practices that can be followed up by EU action. Furthermore, the creation of the observatory of gender based violence offers an ideal opportunity to fill this gap and ensure the collection of reliable and comparable data.

The European Network of Contact Points in Respect of Persons Responsible for Genocide, Crimes against Humanity and War Crimes

With respect to international crimes, the European Network of Contact Points in Respect of Persons Responsible for Genocide, Crimes against Humanity and War Crimes serves as an indispensable forum for sharing best practices on the status of victims in relation to proceedings concerning international crimes.

SPECIFIC QUESTIONS BASED ON THE NEEDS OF VICTIMS

Victims' needs are interrelated and accordingly the examples found below under each category can be cross-referenced. These overlaps demonstrate the need for a comprehensive and human rights-centred approach to victims of crime and violence. The step towards this approach by the EU in combating trafficking in human beings was welcomed by Amnesty International and other NGOs in a public statement.¹² However the statement went to add that "a truly holistic and integrated approach would also address the root causes of trafficking and link anti-trafficking policies with migration policies. The need to include prevention and to ensure coherence and continuity of all EU policies – notably in the

¹² NGO statement delivered on the occasion of the European Parliament Seminar on Combating and Preventing Trafficking in Human Beings, 10 June 2010. "In comparison to the 2002 Framework Decision, the proposal [for a new Directive] no longer focuses merely on *combating* trafficking but explicitly commits to *preventing* trafficking and *protecting* the rights of trafficked persons. This is particularly evident with regard to the inclusion of: establishment of mechanisms for early *identification*; *specific protection* of the rights of trafficked persons; *specific safeguards* for trafficked children; and recognition of the importance of *compensation* for trafficked persons. These improvements are critical to the development of an effective and rights based response to trafficking at EU level."

field of immigration, justice, and discrimination - is critical to ensure effective protection of victims of crime and violence. The added-value of EU action in support of victims of violence and crime could be to prioritise initiatives in areas where there are identified protection gaps and incoherencies in policies at national and EU level.”

Whilst devising measures relating to individual needs of victims, the EU should refer to human rights standards and principles developed at international and European levels, including the UN Basic Principles of Justice for Victims of Crime and Abuse of Power.¹³ Furthermore there is a comprehensive coverage of women victim’s needs included in the Special Rapporteur on VAW’s report on reparation.¹⁴

RECOGNITION

Training

As stated in the 2001 EU Council Framework Decision on the standing of victims on criminal proceedings “suitable and adequate training... with particular reference to the needs of the most vulnerable groups... is essential both for victims and for achieving the purposes of proceedings”.¹⁵ Further guidance is provided by the UN Declaration of Basic Principles of Justice for victims of violent crime and abuse of power which states that: “police, justice, health, social services and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid”.¹⁶

Amnesty International submits that training must be **compulsory** for practitioners **throughout their career** - included in the core professional curriculum as a component of the human rights training and through specialised trainings particularly on how to address the needs of the most vulnerable. To facilitate future referrals and ensure a common approach to prevention and protection in attitudes and practices various stakeholders should be convened. Training should go hand-in-hand with preventive work to combat prejudices about the “innocent victim” at all levels of society.

It is inadequate to deploy resources solely for police training. Training must be extended to all relevant actors, including the legal profession to ensure that victims’ rights are “processed” correctly throughout the judicial system, in the best interest of achieving justice for the victim. Monitoring judicial activity concerning handling of victims, including sanctioning of professional misconduct, is equally essential in addressing structural deficiencies in the system.

As part of its campaign to Stop Violence against Women, Amnesty International called on all governments to implement a 14-point programme for the Prevention of Domestic Violence. One call recommended states to fund and implement compulsory training programmes for officials – including police, lawyers, judges, forensic and medical personnel, social workers, immigration officials and teachers – in how to identify cases of domestic violence, how to ensure the safety of survivors and how to collect, safeguard, consider and present evidence.¹⁷ Please see more details and other examples below.

Examples

¹³ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by General Assembly resolution 40/34 of 29 November 1985.

¹⁴ UN Index A/HRC/14/22, 23 April 2010

¹⁵ see paragraph 11 of the Preamble and article 14

¹⁶ see paragraph 16

¹⁸ *No recourse, no safety - the UK Government's failure to protect women from violence*, Amnesty International & Southall Black Sisters, March 2008

Sexual and gender based violence: training gathering and assessing of evidence

Training of medical staff - Medical professionals (and medico-legal examiners) should be trained in the World Health Organisation (WHO) Protocol on the collection of forensic evidence in cases of sexual and gender-based violence. This would enable evidence to be collected in a usable format for the police and prosecuting authorities, and substantially reduce separate forensic medical examinations which violate the right to health and raise serious ethical issues.

Training to address stereotypes – In the course of Amnesty International’s research on rape victims in European Nordic countries, some victims have described their treatment by the judicial system as respectful, while others describe it as being characterised by a feeling of not being believed or as a “legal lottery”. Several studies have showed that in rape cases, the assessments of the credibility of the victim’s version by the police and prosecutor is often influenced by clichés and stereotypes. For example, certain circumstances are perceived to support the notion that the man may not have known that he coerced the women into having sex with him. Among those circumstances are if, prior to the alleged crime, the woman was flirtatious or voluntarily went home with him; or if she had engaged in sexual acts on a previous occasion. The women’s ‘negligence’, her ‘provocative’ clothing or her conduct can also be held responsible for a failure to make it absolutely clear to the man that she did not anticipate any sort of sexual act with him. Research in Sweden has shown that the victim’s verbal skills and social status are of decisive importance in that context. Young and intoxicated women, in particular had problems fulfilling the stereotypical role of the “innocent victim”. Amnesty International is concerned this may in fact result in a victim being made responsible for a crime committed against her. **It is therefore imperative that the investigation authorities adopt a professional attitude to the gathering of evidence, one that is not hampered by discriminatory attitudes about male and female sexuality.** Concrete measures are needed that target the legal system to improve the quality of the rape investigations and the judicial handling of rape cases, include through **training** and wider preventive work at all levels of society to change discriminatory attitude towards male and female sexuality.

In the case of immigrant women who are victims of violence, the stereotype of the “fraudulent claim” made (only to secure legal status) versus the “real victim” is another obstacle to equality before the law that needs to be tackled frontally, in training and awareness raising programmes.

Migrant women in irregular status are often subjected to a double victimisation: by non state actors, sometimes their partners or husband, and then by state actors such as the police which threaten them with expulsion or detention following the request to report a case.¹⁸

Training on FGM: resource pack and reaching to non EU countries

The implementation of both criminal and child protection law is obstructed by the lack of knowledge and attitudes of both professionals and communities confronted with FGM. This affects the protection of women and girls from FGM and the prosecution of perpetrators. To address this issue, one example of a training/awareness raising initiative is the launch of an FGM resource pack in November 2009 by the London Safeguarding Children Board. The core audience consists of professionals who work with children, including midwives and other health professionals, social workers, teachers and police officers. The pack includes information on FGM, guidelines on how to detect abuse and girls at risk, and questions that midwives can ask women attending health clinics.

In addition to supporting such initiatives in Europe, the EU could seek to facilitate cooperation and coordination of training between organisations and professional staff working in the EU and in countries of origin. This would also protect girls who may be at risk of mutilation when travelling abroad.

Victim of racist crimes – training of the police and judiciary

¹⁸ *No recourse, no safety - the UK Government's failure to protect women from violence*, Amnesty International & Southall Black Sisters, March 2008

Amnesty International's report entitled *Victim or suspect: A question of colour: Racial discrimination in the Austrian justice system*¹⁹ documents a variety of attitude-related and structural shortcomings in the efforts of the Austrian police both to combat racism within its own ranks and to extend equal treatment to victims of crime from ethnic minorities.

Whilst training for new police officer is adequate, Amnesty International raised a number of concerns and recommended improvements to the anti-discrimination training. Firstly, the frequently held training sessions are offered only on a voluntary basis and, as a result do not necessarily attract the relevant police officers. **All police officers, not limited to new recruits** should receive such training. Secondly, the broad coverage of the training fails to provide comprehensive training on dealing with victims of racist crime.

It is also worth noting reflections that were raised on a number of occasions by police officers and criminal justice experts in discussions with Amnesty International. Whilst adequate training was certainly essential, it was considered that the main determinant of the culture of a police force were the attitudes and practices that new officers picked up from their longer-serving colleagues. These in turn were heavily influenced by who was seen to be promoted, who was reprimanded and for what type of misconduct. **Only when both these components are fully in place – comprehensive training and the reinforcement of standards through their consistent internal application – will real progress be achieved in eliminating lingering prejudices and bad practices.**

Assessment of victims needs - How should it be ensured that the individual needs of victims are properly assessed (e.g. individual needs assessment when reporting crime)

Identification - How do you think vulnerable victims should be identified? What special measures should be available to them (e.g. provide testimony only once, legal assistance always available, specially trained professionals carry out questioning)?

The UN Basic Principles of Justice for Victims of Crime and Abuse of Power, states that:

“A person may be considered a victim, under this Declaration, *regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted* and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”²⁰

This implies that the recognition of the victim is not made conditional on the outcome of the investigation including by making protection conditional to the victims' cooperation with the police. In the context of EU policy against trafficking in human beings, Amnesty International, together with other NGOs and experts including the Group of Experts on trafficking set up by the Commission, have urged the Commission to review the 2004 Directive on the residence permit issued to non-EU member country nationals who are victims of trafficking. It is recommended that a review ensures that the delivery of such permits does not depend on the victim's cooperation with the police. A minimum three month recovery and reflection period for victims trafficking with guarantees of legal stay is essential to allow victims of trafficking adequate time to receive assistance and recover from their ordeal, as well as make an informed decision as to whether to cooperate with the authorities in criminal proceedings. As highlighted in Amnesty International's research on rape victims²¹, good professional treatment of the victims according to their individual needs is also of decisive importance for the continuation and outcome of the investigation itself, as it will affect their ability to describe what has happened in the greatest detail and their willingness to continue participating in the investigation.

¹⁹ *Victim or suspect: A question of colour: Racial discrimination in the Austrian justice system*, 9 April 2009 entitled: EUR 13/002/2009

²⁰ UN Basic Principles of Justice for Victims of Crime and Abuse of Power, paragraph 2

²¹ Case closed: rape and human rights in the Nordic countries, March 2010 ACT 77/001/2010

Any proper assessment of the victim's needs implies first of all a safe environment to report the crime. See below.

Assessment of victim needs

Example of sexual or gender-based violence and crime

As outlined in the checklist developed by Amnesty International (please see general questions above), states must ensure that victims of sexual or other forms of gender-based violence have access to safe and timely avenues to report the crime. This implies the following:

- States must ensure that the police and other law enforcement officers in no way intimidate, threaten or humiliate victims, either when they file the complaint or during the subsequent investigation. These principles must be included in enforceable codes of conduct for police, including through provisions for holding officers accountable in cases where survivors have not been treated appropriately. (See also developments below on training);
- Victims should be interviewed in a secure and private environment by women officers;
- Victims should be allowed to bring an advocate into any meeting with the police, law enforcement officer or other investigators;
- Police officers should as routine practice, assess the safety of the complainant and implement measures to ensure the victims' safety during the ongoing investigation – for example by enforcing a civil injunction if available to forbid a perpetrator from approaching the complainant. In no case should a complainant be put in 'protective custody';
- All cases must be registered immediately and full information about the progress and regular updates provided to the complainant and the victim's advocate.

Demonstrated in Amnesty International research on victims of rape, proper collection of evidence is often crucial to achieving justice. Appropriate and adequate collection and processing of forensic evidence must be effective, must not exclude victims on grounds of costs or location or further traumatise the victim (see also developments above on training).

Identification

Example of trafficking

In the common statement on the new EU anti-trafficking Directive²² NGOs have indicated that the Handbook National Referral Mechanisms Joining efforts To Protect the Rights of trafficked persons (ODHIR, 2004) is a good reference for the establishment of national referral mechanisms for early and adequate identification of trafficked persons. NGOs have advocated for multidisciplinary teams, including representatives from civil society, responsible for identification.²³

In its research on Macedonia²⁴, Amnesty International noted with concern that in the absence of effective protocols on the identification of internally trafficked persons, these persons be denied the protection, services and support afforded to trafficked persons. They may be prosecuted for other

²² See footnote 11

²³ According to analytical research in one Western European country, more than 40 per cent of all trafficked persons are now identified through outreach work by non-governmental organizations, local authorities, and hotlines. Clients of prostitutes and other citizens identify more than 22 per cent of trafficked persons. Only 13.9 per cent of trafficked persons qualified for assistance are being identified and referred by the police – see Handbook page 59

²⁴ *Little by little we women have learned our rights', The Macedonian government's failure to uphold the rights of Romani women and girls*, 2007 AI Index: EUR 65/003/2007

offences related to their situation as a trafficked person, including prostitution, while perpetrators may go unpunished. In recent years, the EU has witnessed a considerable increase of internal trafficking, both within Europe and between member states. Any provision for protection including identification, must apply to all victims of trafficking whether trafficked from outside the EU or within – including within one EU member state.

One aspect to consider in the identification process is the importance of “**self-identification**”, i.e. having efficient measures in place for making people aware of their rights to receive justice and reparations.

PROTECTION

It is crucial that protection measures are in place before, during and after the investigation and the prosecution of perpetrators, as well as in the absence of a prosecution. This applies also to protection of family members of the victims and of persons who provide assistance to the victims. While witness protection programmes are important, they can therefore not be the only mechanism envisaged.

Example of international justice

As regards international crimes, Amnesty International has identified that there are a number of challenges to provide protection to victims of genocide, crimes against humanity, war crimes, torture, enforced disappearances and extrajudicial executions. Amnesty International has long called for the EU to establish an effective EU-wide victim and witness protection program, including, where necessary, the relocation of victims and witnesses and their families, which would provide protection for victims, witnesses and their families before during and after the proceedings, as appropriate, including in other EU countries.²⁵ It is unclear whether the European Protection Order would provide support to victims of these crimes.

Domestic violence – protection order – example of Albania

Amnesty international's report entitled, *Ending domestic violence in Albania: the next steps*²⁶ provides insight into the protection order serving as a means to protect women victim of domestic violence. The report notes that the introduction of protection orders²⁷ represents an important step towards ensuring the right of Albanian women to live without violence. Yet, according to Amnesty International's research, although a significant number of women have applied to the courts for such orders, most have subsequently withdrawn their petitions. This shows that further steps are needed to ensure women receive legal and other support when filing petitions, and also that issued protection orders are actually enforced.

The major problem is the weak conditions of protection orders, partially caused by a combination of discrimination and pragmatism by the judiciary. Some judges show reluctance to order an eviction of the abusive partner from the family home, although this is provided for in law. In other cases, an order is made for the perpetrator and victim to live in different parts of the apartment, to avoid a situation of homelessness where housing is scarce and incomes are low. As stated by Arian Calaj from the NGO

²⁵ European Union: Using universal jurisdiction as a key mechanism to ensure global accountability AI Index: IOR 61/013/2007

²⁶ *Ending domestic violence in Albania: The next steps*, March 2010, EUR 11/001/2010

²⁷ In July 2007, Tirana District Court issued the first emergency protection order under the new law. The protection order was issued for two weeks and prohibited a man from threatening, attacking or communicating directly with his ex-wife and two children. At the subsequent court hearing, two weeks later, the court prolonged the protection order for a further three months.

Tjeter Vizion (Different Vision), “The fact that the victim will have to live under the same roof as her abuser does not give her a chance. This happens because the state does not have any structures in place to respond to the needs not only of the victim but also of other members of the family – shelters, advice lines, rehabilitation programmes for victims, their children and the abusers.” Edlira Haxhiymeri of the Tirana Shelter told Amnesty International, “The Protection Order is misinterpreted. In many cases the woman is the one who has to leave the house together with her children and look for emergency accommodation, while the perpetrator continues to live as before without any consequences.”

SUPPORT

*What services to provide?
What support to foreign victims?*

Example of violence against women

The experience of organisations dealing with domestic violence reveals that the point at which women try to flee violence can be the most dangerous. Women seeking help to escape violence are vulnerable, and access to support and refuge can, quite literally, save their lives.

It takes courage for women to make the decision to leave a violent partner or a violent situation such as trafficking.²⁸ Crucial to their decision is what will happen when they leave. Thus, support and protection at this time is essential so the woman can regain her strength, stop being afraid, recover from abuse and move forward.

As reported in Amnesty International and Southall Black Sisters’ joint-report *No recourse, no safety*, it is critical that *all* women in desperate need of safety can access basic levels of protection and support, regardless of their immigration status. Amnesty International have found that in the UK women are prevented from accessing any form of emergency refuges because they cannot claim a housing benefit or income support, i.e. they have “no recourse to public funds”. This has a devastating impact on a group of particularly vulnerable women who are subsequently forced to face a stark choice – either to stay trapped in a violent situation or become homeless and destitute. In addition, support organisations are put in an unacceptable position where they cannot financially afford to assist a victim they know to be in danger.

Under the 2002 Domestic Violence Rule, a woman who is a spouse or long-term partner of a British national or someone who is settled in the UK can apply to stay in the UK permanently if their relationship breaks down during the two-year probationary period if she can prove that domestic violence was the cause. Yet, this provision is useless if women are not given vital support and protection between the time of reporting the domestic violence to the police and the application processing time. Again this example illustrates the need to ensure coherence and continuity of measures between EU law in the field of justice and asylum and immigration when devising an EU strategy to protect victims of violence.

ACCESS TO JUSTICE

Roma

²⁸ Research in the UK has shown that on average women will endure 35 incidents of domestic violence before reporting to anyone (see www.refuge.org.uk)

Research from the EU Fundamental Rights Agency (FRA) found that the majority of Roma do not report experiences of discrimination (79%), assault or threat (69%) or harassment (84%) to authorities, either because of lack of trust, or simply because they are unaware of where and how to report. Although EU law requires states to prohibit racial discrimination and to provide victims with access to judicial remedies, very few discriminated Roma benefit from this legal protection. According to the FRA research, less than half are even aware that racial discrimination is illegal, and less than a quarter know of an organization – whether a NGO or a state body – that may be able to offer assistance in pursuing a claim. Even those who are aware of their rights face significant obstacles in enforcing them, often due to high costs of private legal representation and the shortage of free legal aid.

In a new report entitled, *Violent attacks against Roma in Hungary: time to investigate racial motivation*, Amnesty International describes among other reports of violence, a series of nine attacks against members of the Romani communities across Hungary which occurred between 2008 and 2009 claiming six lives.²⁹ The report finds that Hungarian authorities have failed to identify and respond effectively to violence against Roma, including by not investigating possible racial motivation, and details the shortcomings in the responses of the Hungarian criminal justice system to hate crimes. Existing provisions to combat hate crimes are inadequately implemented, primarily due to the lack of police capacity to recognize and investigate hate crimes and correspondingly the lack of training to enhance this capacity. There are neither guidelines for police officers on how to investigate hate crimes and how to treat alleged victims, nor for prosecutors on overseeing these investigations. Similarly, state-provided assistance and support for victims of hate crimes is inadequate. In terms of prevention, the authorities lack effective measures to map the nature and scale of the issue; there is no collection of disaggregated data on hate crimes which hampers the authorities' ability to identify trends and develop suitable responses. The report concludes with recommendations to the authorities to ensure that effective and human rights compliant measures are taken to prevent future racially motivated attacks in Hungary and that any such incidents are promptly, independently, impartially and thoroughly investigated; those responsible for criminal conduct are brought to justice in fair proceedings; and the victims are treated with dignity and receive adequate reparation, in a manner that is consistent with the authorities' obligations under international human rights law.

Racism in the police and justice systems

The issue of institutional racism has been documented in Amnesty International reports on the Austrian judicial system and police ill-treatment in France and Greece. The research highlights the persistence of racist violence and discriminatory practices by police officers, including unequal treatment of victims because of their racial origin.³⁰

Victims of police ill- treatment

In its report, *Public outrage: Police officers above the law in France*,³¹ Amnesty International found that victims and witnesses who made complaints about ill-treatment by police officers were frequently accused of insulting or assaulting police officers. Amnesty International believes that such charges exacerbate the existing climate of impunity by intimidating victims and witnesses and discouraging them from making complaints. A call to the French government was made to ensure effective, independent and impartial investigations into every incident of suspected human rights violations by law enforcement officers, including racist abuse, unlawful killings, torture and other ill - treatment.

²⁹ *Violent attacks against Roma in Hungary: Time to investigate racial motivation*, November 2010 EUR 27/0001/2010

³⁰ *Victim or suspect - A question of colour: Racial discrimination in the Austrian justice system*, April 2009 EUR 13/002/2009; *Public outrage: Police officers above the law in France*, April 2009 EUR 21/003/2009; *Greece: Alleged abuses in the policing of demonstrations*, March 2009 EUR 25/001/2009

³¹ *Public outrage: Police officers above the law in France*, April 2009 EUR 21/003/2009

The above example highlights the situation for victims of violence by law enforcement and non state violence, particularly for cases of racially motivated violence. To address the needs of victims, the EU should build upon the linkages between EU law and policies against discrimination and those in the field of justice and home affairs.

The aim to prevent and combat racism and xenophobia is explicitly included in Article 67 TFEU (former article 29 TEU) regarding EU's common action in the field of police and judicial cooperation. Together with the Race Directive implementing equal treatment irrespective of racial and ethnic origin, this provides a strong basis for developing new instruments, policies and safeguards to fight discrimination in EU Member States' justice systems. One clear step could be to ensure that racial discrimination in police and justice systems, including inappropriate and unequal treatment of victims, is included within the monitoring of the Race Directive's implementation.

Reports of ill-treatment and discrimination of migrants, including at immigration control, also demonstrates the need for discrimination to be explicitly addressed within the EU's immigration policy. Lack of a secure legal status is a major obstacle to accessing justice. Often persons in an irregular situation do not approach authorities to report acts of violence or crime for fear of deportation. Difficulties in accessing legal advice are also evident due to them not meeting legal and/or financial requirements.

As stated in the report, *No recourse no safety*, in the case of irregular migrant women who are victims of gender-based violence "the government has to ensure that any restrictions it puts in place affecting people on the grounds of nationality are proportionate and do not violate the most basic and fundamental rights, such as the right to life". In response to the argument that restrictions on access to benefits (and therefore to services including refuge centres) act as a deterrent discouraging immigrants from entering the EU who could pose a threat to public safety, national security and economic well-being, Amnesty International notes that: "The notion that [such] women put their lives in danger or subject themselves to ostracisation and stigma following divorce or separation order to access housing or benefits is not sustainable. Nor is the argument that it is easy to give a false history of violence to experts".

Trafficking in human beings – guardians to assist children victims

Appointment of an independent, qualified guardian to act in the child's best interests is an essential part of the assistance and support regime for children who are separated from their families, or where there is a conflict of interest between the family and the child. An explicit obligation is needed to ensure that the child throughout the procedure, is informed on his/her situation, rights and services available in a language well understood by the child and which responds to the child's maturity.

International justice

In the *No Safe Haven* series, Amnesty International called for states to ensure that victims and their families are fully informed of their rights and of developments in all judicial proceedings on universal jurisdiction concerning crimes under international law.

COMPENSATION AND RESTORATION

Victims of crimes under international law

The right of victims and their families to recover reparations for crimes under international law, whether during peace or armed conflict, has been confirmed in provisions of a number of international instruments adopted since the Convention against Torture was adopted in 1984. These instruments do not restrict this right geographically or abrogate it by state or official immunities. They include the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the 1998 Rome Statute of the International Criminal Court and two instruments adopted in April 2005 by the Commission on Human Rights. The first of these two instruments, the UN Basic Principles and

guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and international humanitarian law (Van Boven-Bassiouni Principles), was adopted in December of that year by the UN General Assembly and the second was the UN Updated set of principles for the protection and promotion of human rights through action to combat impunity (Joinet-Orentlicher Principles). Both instruments, which were designed to reflect international law obligations, have been cited by Pre-Trial Chamber I of the International Criminal Court in its determination that the harm suffered by victims of crimes under international law includes emotional suffering and economic loss. Both instruments also recognize that there are five forms of reparations: restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition. Most recently, the UN Human Rights Council adopted by consensus the International Convention for the Protection of All Persons from Enforced Disappearance with a very broad definition of the right to reparations and referred it to the UN General Assembly for adoption at its 61st session in 2006. This right is inherent in the right to a remedy, as guaranteed in Article 2 of the 1966 International Covenant on Civil and Political Rights (ICCPR). Indeed, the international community recognized the rights of victims to civil recovery directly against foreign states for war crimes a century ago in Article 3 of the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land.

In addition to guaranteeing full reparations (i.e. all five forms of reparations) there has to be effective and accessible procedures for obtaining such reparations. One of the challenges is that some countries provide for reparations through separate civil proceedings and others through the criminal proceedings. For instance Swedish legislation provides for victim participation in the proceedings, but fails to provide full reparations.³²

Rights of victims of torture –Interim report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment – 10 August 2010

The following extract summarises the rights of victims of torture to reparations:

- Victims of torture have a right to complain to a professional authority which is independent from the authority accused of torture and which has the obligation to promptly and impartially examine all allegations or suspicions of torture.
- Victims and witnesses should be protected against all ill-treatment or intimidation as a consequence of their complaints or any evidence given.
- If torture is established by a competent authority, victims should enjoy the right to fair and adequate reparation, including the means for as full medical, psychological, social and other rehabilitation as possible. States, therefore, have a legal obligation to establish or at least support a sufficient number of rehabilitation centres for victims of torture and to ensure the safety of their staff and patients. The Special Rapporteur also urges States to ensure that survivors of torture who seek refuge in their countries have access to adequate medical and psychosocial treatment. Screening procedures allowing for the early identification of torture victims can be instrumental in that regard. Asylum authorities should be required to consider seriously the medical expertise of domestic rehabilitation centres and take account of their assessments when deciding upon asylum requests. Health professionals should be provided with training on how to apply the Istanbul Protocol. The Special Rapporteur also calls upon Governments, not least those responsible for the practice of torture, to contribute generously to the United Nations Voluntary Fund for Victims of Torture.

³² See quotes from AI report: *Sweden: End Impunity Through Universal Jurisdiction (No Safe Haven Series)* AI Index: EUR 42/001/2009

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ANNEX :

List of Amnesty International Reports

Violent attacks against Roma in Hungary: Time to investigate racial motivation, November 2010 AI Index: EUR 27/0001/2010

Ending domestic violence in Albania: The next steps, March 2010 AI Index: EUR 11/001/2010

Case closed: rape and human rights in the Nordic countries, March 2010 AI Index: ACT 77/001/2010

Six-Point Checklist on Justice for Violence Against Women, March 2010 AI Index: ACT 77/002/2010

Victim or suspect - A question of colour: Racial discrimination in the Austrian justice system, April 2009 AI Index: EUR 13/002/2009

Public outrage: Police officers above the law in France, April 2009 AI Index: EUR 21/003/2009

Greece: Alleged abuses in the policing of demonstrations, March 2009 AI Index: EUR 25/001/2009

No recourse, no safety - the UK Government's failure to protect women from violence, Amnesty International & Southall Black Sisters, March 2008

'Little by little we women have learned our rights', The Macedonian government's failure to uphold the rights of Romani women and girls, 2007 AI Index: EUR 65/003/2007

European Union: Using universal jurisdiction as a key mechanism to ensure global accountability, October 2007 AI Index: IOR 61/013/2007

Sweden: End Impunity Through Universal Jurisdiction (No Safe Haven Series) AI Index: EUR 42/001/2009