



Amnesty International's comments on the European Commission's proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime

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INTRODUCTION

In May 2011 the European Commission presented a proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime¹, as part of a legislative package which includes a communication on strengthening victim's rights in the EU and a regulation on mutual recognition of protection measures in civil matters². The suggestion of creating a single comprehensive legal instrument to improve existing legislation and practical support measures to protect such victims, throughout the EU, was first proposed in the Stockholm Programme, presented in 2009 as part of the EU strategy on promoting citizens' rights across Europe³. The Commission's proposal, which replaces Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings aims to create a comprehensive legal framework which applies to all victims of crime and set minimum standards which will guarantee better protection to crime and violence victims. It also seeks to complement existing and future legislation addressing the rights and needs of special categories of victim.

We focus here on those aspects of the proposal which are particularly relevant to international human rights protection: the rights of victims of human rights violations and abuses which constitute crimes under national or international law (a subset of the overall group of victims to be covered by the Directive), measures to ensure victims of all kinds of crime are not subject to human rights violations during criminal proceedings, particularly where the characteristics of the victim or crime leave the victim at particular risk of such violations, and the need to ensure that victim protection measures are interpreted and applied in a manner consistent with respect for the rights of others, particularly those suspected or accused of having committed the crime.

We welcome the likelihood that many of the proposal's provisions may result in better practical protection of the rights of victims of human rights violations or abuse.

However, the broad scope of the proposed Directive's application raises concerns that it might not adequately reflect the specific rights and needs of victims of human rights violations. These are widely recognised by several international legal instruments. However the proposal's text fails to incorporate internationally recognised standards, running the risk of eroding the safeguards and protection granted to these victims under international law.

¹ Proposal for a Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime, COM (2011) 275/2, 18 May 2011.

² Proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters, COM (2011) 276, 18 May 2011.

³ See "The Stockholm programme - An open and secure Europe serving and protecting the citizens", par. 2.3.4 "Victims of crime, including terrorism".

We also stress the importance for the EU and its member states of ensuring that the measures to protect people and prevent and prosecute crimes comply with the obligation to protect the human rights of all those involved in any criminal investigation or proceeding (ie the victim of the crime, the person suspected or accused of committing it, the witnesses or other parties). In particular, we stress the need to ensure that the rights of victims of crime are interpreted and applied so as to be compatible with the rights of those suspected or accused of committing the crime.

The clear link between the current proposal and the measures outlined in the 2009 *Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings* (which sought to establish a coherent set of procedural safeguards which apply to everyone suspected or accused of committing a crime) is enhanced by the fact that both this proposal and the roadmap are part of the Stockholm Programme. In particular, it is essential to consider the Directive's provisions in parallel with those contained in such measures and ensure that any potentially conflicting rights are addressed coherently. We especially recall, in line with international standards, that the rights of, and measures to protect, crime victims should not be secured at the expense of the fundamental rights of suspects and offenders, such as the presumption of innocence and the right to a fair trial.

This proposal has been presented by the European Commission as the main EU measure for countering violence against women (VAW), domestic violence and female genital mutilation (FGM). We acknowledge that the proposal might improve gender-based violence victims' protection in the EU, to the extent that such victims benefit from the rights and protection measures which, according to the Directive, will apply to all victims, including VAW victims. However, we emphasise that, given its wide formulation and scope and its gender-neutral language, the text is no substitute for a specific and comprehensive EU instrument to counter violence against women and cannot exhaust all possibilities of EU action on VAW and FGM. Given our expertise in violence against women and gender-based violence, developed in part through our END FGM Campaign, our comments pay particular attention to these issues and suggest how EU institutions and member states might act, including by means of the Directive, to enhance protection for women victims.

1. The Directive must not detract from the more specific rights of victims of criminal human rights violations and abuse

Various international instruments (treaty and non-treaty standards) and jurisprudence from international bodies, including the European Court of Human Rights, recognise the specific rights of victims of human rights violations and abuse. We consider that any law which addresses victims' rights more generally must include provisions which ensure it is not interpreted as detracting in any way from the more specific and sometimes more robust rights of specific groups.

Some of the international instruments and other sources of particular potential relevance in this regard are listed in Annex 1.

The Explanatory Memorandum to the proposed Directive touches on these issues in some respects but without expressly referring to victims of human rights violations and abuse more generally. The proposal's main text itself does not expressly recognise, reflect or at least preserve the particular rights of victims of human rights violations and abuse.⁴

Among the concerns to which the current proposal gives rise are the following (these examples illustrate the *kinds* of issue to which the proposal, as presently drafted, gives rise, and is far from exhaustive):

- **The proposal fails to include, eg, victims of torture or other cruel, inhuman or degrading treatment or punishment, or victims of criminal violations of human rights at the hands of state agents more generally,** among the groups of victims who may require specialist support services or special protection measures (recitals 13, 18)

⁴ Recitals 7, 13, 17, 18, 19, and 28, and Article 18 of the proposed Directive, refer only to some categories of human rights violation victim.



- **Chapter 3 on ‘Participation in Criminal Proceedings’ appears not to reflect fully states’ obligations to victims of human rights violations in relation to the investigation, prosecution of those responsible, and the right to effective remedy and reparation** under, eg, Articles 2 and 3 of the ECHR (on their own or in combination with the right to remedy under Article 13) or similar provisions of the ICCPR.⁵
- **On the right to reparation** as part of the right to an effective remedy, the proposal fails to reflect international standards providing for specific forms of reparation – beyond compensation and return of property – for victims of human rights violations and abuse: restitution, rehabilitation, satisfaction and guarantees of non-repetition.⁶ For the right to remedy to be effective, accessible procedures for obtaining such reparations are also necessary and must be set up. The proposal (see Article 15) refers only to a general obligation for member states to ensure a decision is taken with regard to the right to compensation. The Commission’s explanatory memorandum indicates that ‘compensation’ will be subject to further study and action and that the current Directive is only a ‘first step’. However, if the Commission’s work on this theme is to be compatible with international standards on the rights of victims of human rights violations, it must reflect the fact that compensation alone cannot always fully satisfy the right to full reparation.
- The proposal focuses on the rights of victims in criminal proceedings. **At least with regard to victims of human rights abuse, it is recognised that protection and other measures must be available not only during the investigation and prosecution, as the proposal contemplates,⁷ but also before and after any criminal proceedings, or indeed in the absence of such proceedings** (eg where no individual perpetrator is identified).⁸
- **The text is not entirely clear about the status and role to be accorded to victims of human rights violations in any criminal proceedings concerning the violation.** In this particular domain the proposal therefore fails substantially to improve the clarity of the provisions enshrined in the Council FD 2001/220/JHA. We welcome the provisions, in so far as they might result in improved respect in practice for the rights of victims of human rights violations and abuse in criminal proceedings, that recognise their right to be heard and supply evidence (Article 9), and the right to receive written acknowledgement of their complaint to the authorities (Article 8). We also welcome the recognition of the right of human rights violations victims to have decisions not to prosecute such cases reviewed (Article 10). However, given the skeletal nature of the provisions in the proposal (presumably given the wide range of circumstances to which the Directive may apply, since it deals with victims of crime in general), the main point is that it is unclear whether in practice

⁵ See eg ECHR [Grand Chamber] comments in *Giuliani and Gaggio v Italy*, App No 23458/02, 24 March 2011, para 303 on the procedural aspects of Articles 2 and 3: In addition, the investigation must be accessible to the victim’s family to the extent necessary to safeguard their legitimate interests”.

⁶ In practice, depending on the particular violation and victim, these can entail a wide range of things. Restitution may include things beyond return of property. Rehabilitation should include medical and psychological care and legal and social services. Satisfaction may include verifying facts and disclosing the truth, search for and return of disappeared persons, judicial decisions restoring the dignity, reputation and rights of the victim and those closely connected with the victim, public apology, judicial and administrative sanctions against those liable for the violations; commemoration and tributes to the victims. Guarantees of non-repetition can include the right to a wide range of institutional changes, special protection for individuals or classes of individual, or review and amendment of laws. The preceding examples are from the 2005 UN 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, paras 18-23. See also para 16 of Human Rights Committee General Comment no 31, and Articles 8-11 of the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNGA Res 40/34 (29 Nov 1985); Article 14 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

⁷ See Chapter 3, Articles 8-16, with the exception of Article 11, but also Articles 17.2, 20, 21 and 22.

⁸ See eg: Article 9 of the 2005 UN 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; Article 2 of the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Para 2.3 of the CoE Rec (2006)8 on assistance to crime victims; Principle I.2 of the CoE Guidelines on Victims of Terrorist Acts.

these provisions would be interpreted and applied so as to ensure that the rights⁹ of victims of human rights violations to participate in criminal proceedings are fulfilled.¹⁰

There are at least three ways to address these concerns:

1. The Directive could incorporate provisions addressing more specific additional rights for particular kinds of victim, beyond those already mentioned in Article 18, including victims of human rights violations.
2. The Directive could extend to all victims of all crimes the fullest and most robust set of rights, ie to the standard required by various instruments for victims of human rights violations.
3. The Directive could more explicitly state not only that it represents a minimum standard, but that it recognises that victims of certain crimes which constitute human rights violations or abuse are entitled to higher standards under applicable human rights instruments.

The proposal's intended reach is in a sense much wider than the issue of victims of human rights violations or abuse *per se*, as it would apply to victims of a much wider range of crimes. In another sense, it is narrower, since these victims have certain rights whether or not the violation or abuse constituted a crime under national or international law. At minimum the Directive must clearly avoid detracting in any way from such victims' more specific rights.

2. Ensuring victims of crime are not subjected to human rights violations in the criminal justice system

The proposal includes rules to address the specific potential needs of victims who are particularly likely to experience further harm or humiliation following the crime. This includes the possibility of secondary or indirect victimisation by or within the criminal justice system itself. States must ensure all victims of crime, like all other persons, are not further victimised by being subjected to human rights violations in the criminal justice system itself, as a result of the actions or omissions of law enforcement or judicial authorities. However, as previously noted, we are concerned about how Articles 18, 21 and 22 are presently formulated. Article 18 paragraphs 1 and 2 identify two sub-categories and four groups of crime victims which are considered vulnerable *a priori*: children, people with disabilities, victims of sexual violence and victims of human trafficking. Regarding the notion of victims who are *per se* vulnerable, we welcome the recognition that special needs can arise for victims in several ways: "due to their personal characteristics" or "due the nature of the crimes to which they have fallen victim".

The Stockholm Programme stressed the importance of providing special support and legal protection to those who are most vulnerable or find themselves in particularly exposed situations¹¹. This concept is endorsed by the Council of Europe, notably in connection with certain victims of crime such as victims of gender-based violence¹². However, it is unclear whether the list of categories of potentially vulnerable victims under the Directive will be considered exhaustive. Presumably the mechanism set out in Art. 18 paras 3 and 4 is designed to identify those who may be vulnerable despite not falling within the specifically named categories. If such a list were to be included, it should be as complete as possible and leave the door open to other victims (whether individuals or groups) to be recognised as also having specific vulnerabilities and needs, based on more general criteria.

In its present form, however, the list omits some categories of victim which might also be regarded as

⁹ Including those set out in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

¹⁰ See also, for instance, Article 68(3) of the Rome Statute of the International Criminal Court, Article 6(b) of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

¹¹ See paragraph 2.3 of the Stockholm Programme.

¹² Article 12.3 of the CoE Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011): "Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre."



requiring special protection (ie as “vulnerable” in the proposal’s language). The examples we cite below are not an exhaustive range of victims of crime or violence who might be seen as “vulnerable”. Nor are we attempting to set “priority” victims’ rights. Instead, we seek to show that the list in the current text is clearly incomplete and should be redrafted to ensure it is broader in scope than is currently the case.

- **Victims of hate crime and other crimes motivated by discrimination.** Discrimination, including multiple discrimination, on grounds such as gender, age, sexual orientation, gender identity, religion or belief and ethnic or social origin is a major problem victims of crime and violence face at all stages, from recognition to reparation. People who belong to certain groups are more vulnerable because their personal characteristics expose them more to crime and violence and, owing to social pressure, they are less likely to report crimes and thus benefit from the protection and support to which victims with recognised legal status are entitled. ECtHR case law clearly establishes that under Art. 14 of the ECHR, member states have a positive obligation to fight racial, sexual and religious discrimination¹³. CoE bodies have issued several studies and documents, in accordance with this principle, to encourage member states to act against such discrimination¹⁴. For example, the 2010 *Recommendations to member states on measures to combat discrimination on grounds of sexual orientation or gender identity* reaffirm ECtHR case law on Art.14, and indirectly stress some of the characteristics which expose this category of crime victim to further harm or humiliation¹⁵. A 2011 CoE publication details even more explicitly the type of social pressure to which LGBT hate crime victims are generally exposed and which would qualify them as a vulnerable group¹⁶. The 2010 EU Agency for Fundamental Rights (FRA) report *Discrimination on grounds of sexual orientation and gender identity* also highlights these people’s specific needs and the various forms of discrimination, including crimes, of which they are victims. It also signals “a clear trend towards legislative inclusion of LGBT people as potential victims of persecution”.¹⁷ If this is true for victims of hate crimes motivated by sexual orientation or gender identity, it also applies to victims of other kinds of hate crimes¹⁸. Victims of crime who face discrimination in society, and particularly by law

¹³ See the Court’s reasoning in the case of *Nachova and others v. Bulgaria*, judgment of 26 February 2004, paras. 155-162, concerning killings with racist connotations:

¹⁴ See e.g. Recommendation No. R (97) 20 of the Committee of Ministers to Member States on “Hate speech” (Adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers’ Deputies); “Additional protocol to the convention on cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems” signed in Strasbourg 28.1.2003; “Combating all forms of discrimination based on religion”, Report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE); Recommendations and Country Reports of the European Commission against Racism and Intolerance, which is a monitoring body of the CoE.

¹⁵ Recommendation CM/Rec (2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers’ Deputies) Appendix I(A)(3) The CoM calls on member states to “introduce appropriate measures to encourage the victims and witnesses of hate crimes or other hate-motivated incidents based on sexual orientation or gender identity to report these acts”, such as “setting up training programmes in order to ensure that the different structures of the law enforcement authorities, including the judicial system, possess the knowledge and skills required to provide victims and witnesses with adequate assistance and support” and “placing special emphasis on the setting up of independent and effective machinery for receiving and investigating reports of hate crimes or hate-motivated incidents allegedly committed by law enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives”.

¹⁶ “Discrimination on grounds of sexual orientation and gender identity in Europe” 2nd edition, September 2011, CoE publishing. See for instance section 1 of the Recommendations, or in the Summary: “LGBT persons run a serious risk of becoming victims of a hate crime or a hate-motivated incident, especially in public places. Violence may also take place within a family setting. Moreover, some state agents, such as the police, have been involved in blackmailing and harassing LGBT persons. Often LGBT persons do not report such violence to the competent authorities due to lack of trust in law-enforcement agencies, who may have no training in investigating effectively such hate-motivated crimes and incidents” (page 8).

¹⁷ See the FRA report “Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity”, 2010.

¹⁸. Another example of such concerns is with respect to Roma people. Amnesty International’s report “Violent attacks against Roma in Hungary: time to investigate racial motivation” found that for instance in Hungary, authorities often fail to identify and respond effectively to violence against Roma (note how this is also due to the lack of training or guidelines for police officers and prosecutors on how to investigate hate crimes and treat alleged victims) and that, with regard to victims of such crimes, state-provided assistance, support and reparation are often inadequate. See also the FRA report on Roma (“EU-MIDIS, European Union Minorities and Discrimination Survey, Data in Focus Report: The Roma”, 2009) whose findings prove that the majority of Roma do not report experiences or discrimination (79%); assault or threat (69%) or harassment (84%) to the authorities, either because of lack of trust or simply because they are unaware of where and how to report. The recently published FRA report “The Racial



enforcement officials and in the criminal justice system, therefore need specific protection measures which are not among those in chapters 3 and 4 and for which the proposal should provide. To date, the EU has failed to follow CoE recommendations on countering discrimination via the criminal justice system and has not taken any action to address the specific needs of victims of hate crime and crime motivated by discrimination in the context of criminal investigations or proceedings. The Lisbon Treaty¹⁹ and the existing EU anti-discrimination framework²⁰ provide a sound basis for developing new instruments to fight discrimination in member states' justice systems. We therefore believe the EU should build on the links between its anti-discrimination law and policies and those in the field of justice and home affairs and should not miss this opportunity to protect particularly vulnerable groups and ensure no victims are left without adequate protection and support, through provisions which ensure that specific measures are available before, during and after the proceedings.

- As noted above, another type of victim category which European and international instruments and jurisprudence recognise as having special needs arising from the nature of the crimes committed against them is **victims of torture or other cruel, inhuman or degrading treatment**. It is unclear why this category should not be included in the list of Article 18(2), if it is to be included in the Directive. Indeed, because victims of criminal human rights violations have generally, by definition, suffered violation at the hands of state agents, it might be felt that all such victims need special protection in their subsequent dealings with law enforcement and judicial officials, who are part of the same state apparatus responsible for those crimes,²¹ and that they should be included in any such list.
- **Victims of terrorism and other criminal human rights abuses by armed groups** are another category of victim which international instruments have recognised as having particular needs arising from the nature of the acts perpetrated against them.²² These include: (i) A right to access and receive effective remedy and reparation – in all its components – for harm suffered; (ii) Involvement in investigations and trial; (iii) Receiving adequate financial compensation and other assistance; (iv) A means of establishing the truth about the abuses to which they were subjected; and (v) The right to see those responsible brought to justice through fair trials. Again it is unclear why, if there is to be a list of categories of victims, such victims would not be included.

Equality Directive: application and challenges”, 2012, also details that among the reasons why victims of discrimination face difficulties in obtaining access to justice and adequate assistance and protection measures there is not only a lack of knowledge of their rights or available procedures but also a reluctance to report incidents, which in part results from fear of intimidation by the perpetrators (see also in this regard the FRA report “EU-MIDIS at a glance: Introduction to the FRA’s EU-wide anti-discrimination survey”, 2009).

¹⁹ See Article 19 and Article 67.3 TFEU: “The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.

²⁰ This includes Council Framework Decision 2008/913/JHA of 28 November 2008 on combating racism and xenophobia by means of criminal law, the Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the so-called “Race Equality Directive”) and more recently the Commission’s Communication “An EU Framework for National Roma Integration Strategies up to 2020 of 5 April 2011.

²¹ See the instruments mentioned in the preceding section, particularly 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 Serious Violations of International Humanitarian Law.

²² See eg CoE Convention on the Prevention of Terrorism, Article 13; CoE Guidelines on the Protection of Victims of Terrorist Acts (2005); Martin Scheinin, Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism “Ten areas of best practices in countering terrorism”, UN Doc A/HRC/16/51 (2010) paras 24 and 25; also Amnesty International, “Principles on the rights of Victims of Terrorism”, AI Index IOR 40/019/2008 (September 2008), ANNEX I, as well as 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 Serious Violations of International Humanitarian Law (in relation to violations of international humanitarian law by armed groups).

- **Individuals with irregular migration status.** The proposal makes no mention of protecting the rights of crime victims who have irregular migration status under national law. Such victims are particularly vulnerable to exploitation and deprivation of access to justice if they fear that reporting the crime or otherwise engaging with the criminal justice system will result in their expulsion or other punitive measures. In its 2011 report, the EU Agency for Fundamental Rights (FRA) detailed the negative effects that practices which are widespread in EU member states have on access to justice for crime victims who have irregular immigration status²³. For example, identification checks resulting in police profiling discourage victims from reporting crimes and increase the risk of secondary victimisation²⁴. Also, certain public service providers' reporting obligations, especially those which criminalise irregular stay, effectively prevent irregular migrants from reporting abuses and seeking redress²⁵ or benefiting from health or support services to which they should be entitled. We consider that the EU should remedy these shortcomings and prioritise initiatives in areas, such as this one, where no specific safeguards exist and protection gaps at national and EU level are more blatant, owing to the lack of legislation.

3. The victims' rights package in the context of the EU strategy for combating violence against women

On several occasions the European Parliament and Council have urged the Commission to develop a policy framework to combat violence against women (VAW)²⁶.

The Commission has since committed itself to producing a comprehensive EU strategy and other policy proposals to combat VAW, domestic violence and female genital mutilation (FGM) in the 'Action Plan implementing the Stockholm Programme' adopted on 20 April 2010. Developing an EU-wide strategy on combating VAW, including female genital mutilation, is also one of the first actions proposed by the Commission in its *Strategy for equality between women and men (2010-2015)*, released in September 2010.

Despite official commitments, the Commission has not adopted a comprehensive strategy and has not yet recognised the need to develop such a specific instrument to work on VAW. Plans for legal measures on VAW, particularly female genital mutilation, and the establishment of a European Observatory on Violence against Women²⁷ do not appear on the Commission's work programme.

In this context, the Commission has presented the victim's rights package as the main EU measure to address VAW.²⁸

We acknowledge that some of the proposal's provisions might improve protection of certain victims of gender-based violence in the EU, but only to the extent that they fall within the more general category

²³ "FRA Report Fundamental rights of migrants in an irregular situation in the European Union" 2011

²⁴ See page 40 of the report.

²⁵ See pages 42-46

²⁶ European Parliament Resolution on the elimination of violence against women, P7_TA (2009)0098, 26 November 2011. In this resolution, Parliament asked the Commission to submit a targeted and more coherent EU policy to combat all forms of VAW. Council Conclusions on the eradication of violence against women in the European Union, 3000th Employment and Social Policy Council meeting, 8 March 2010. In these conclusions, the Council points out that the Commission should devise a general framework of common principles and necessary instruments to prevent and fight VAW.

²⁷ European Parliament resolution on priorities and outline of a new EU policy framework to fight violence against women (2010/2209(INI)), 5 April 2011: in this resolution, Parliament asks the Commission to consider establishing an Observatory on Violence against Women based on reporting relevant court cases. The Council has also called for this in its conclusions on the eradication of violence against women.

²⁸-European Commission's [website](http://ec.europa.eu/justice/genderequality/files/progressreport_equalwomen_2010_en.pdf): European Commission, Report on Progress on Equality between Women and Men in 2010, 2011 (http://ec.europa.eu/justice/genderequality/files/progressreport_equalwomen_2010_en.pdf); Ms Reding's Speech: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/694&format=HTML&aged=0&language=EN&guiLanguage=en>; Ms Reding's article in Parliament magazine : http://www.theparliament.com/latest_news/article/newsarticle/violence-against-women-viviane-reding/.

of victims of the wider range of crimes covered by this directive. The explanatory memorandum and recitals refer to some of the EU's commitments to combat VAW and help locate the current proposal in this debate. However, since the proposal is mainly designed to address needs common to all types of crime victims, whatever the crime's character or the victim's gender, it fails fully to acknowledge or adequately address the particular situation of VAW victims.

Owing to its broad approach, the proposal cannot be considered a major EU instrument in combating VAW, nor a substitute for specific proposals and actions which address the needs of these victims. In line with the due diligence principle, any EU measures on VAW should clearly address as a whole issues of prevention, protection, prosecution and reparation.

We believe that to be considered an effective protection measure for sexual and gender-based violence victims²⁹, an EU directive (in the form of an amendment of the existing proposal or a separate subject - specific directive), should:

- Make **clear reference** in the recitals **to international and European standards on VAW** such as the UN Convention on the Elimination of All Forms of Discrimination against Women and the CoE Convention on preventing and combating violence against women and domestic violence
- **Explicitly include provisions on how to prevent** the causes and consequences of VAW. Prevention measures should include a campaign to raise awareness of the need for zero tolerance of VAW and promoting gender-sensitive and empowering educational policy, programmes and processes. With specific forms of gender-based violence such as FGM, communities should be engaged in prevention work to ensure a long-lasting impact.
- **Identify special needs of gender-based violence victims, including access to appropriate services and special protection measures** (inadequately covered by Art 7, 17, 18, 21, 25). Victims of sexual or other gender-based violence should have immediate access to appropriate health services³⁰, including the collection of forensic medical evidence, short and long-term psychological counselling, and trauma care. Special services should also include safe accommodation, programmes promoting economic independence, and special legal counselling. Special protection measures are also required during the proceedings. This includes ensuring the interview takes place in a secure and private environment and at an appropriate time, maintaining the victims' anonymity if they wish and allowing them to choose the interviewer's sex. It also includes measures to ensure that the relevant authorities assess the lethality risk and the risk of repeated violence.
- **Providing for specific training, and ensuring professionals adopt appropriate attitudes to gender-based violence** (inadequately covered by Arts 3, 4, 20, 21, 24 and 25). Court officials and police and those providing victim support (e.g. social, health and education staff) should be sensitised to sexual and gender-based violence crimes and trained in handling victims. There should be provisions on professionals' duty to preserve victims' dignity and developing a non-discriminatory attitude.

To date, the EU institutions have yet to meet expectations that they would provide EU instruments to counter VAW. We urge the Commission to act appropriately. The current EC proposal on victims of crime is general in nature and is no substitute for a specific and comprehensive EU instrument on VAW. To obtain effective measures to prevent all forms of violence and protect women, the EU and its member states should develop and adopt such an instrument, and sign and ratify the *Council of Europe Convention on preventing and combating violence against women and domestic violence*.

²⁹ Recommended reading: Amnesty International, Six-point checklist on justice for violence against women, ACT 77/002/2010, March 2010 (<http://www.amnesty.org/en/library/asset/ACT77/002/2010/en/4c736156-f18a-40c7-95a9-9e8677c562b9/act770022010en.pdf>)

³⁰ It should respect the right to health and the AAAQ framework which require health services to be available, accessible, acceptable, and of good quality.



4. Directive provisions must be compatible with the human rights of people suspected or accused of crimes

Recital 7 declares that the proposal respects fundamental rights, including the right to a fair trial, but there is no provision in the Directive declaring that its rules must be interpreted as subject to or compatible with the accused's right to a fair trial, and some provisions raise particular concerns.

Several of them (eg Recitals 17 and 22, and Articles 17-23) refer to measures which might limit the accused's ability, directly or through their counsel, to test the authenticity, quality, reliability, and accuracy of evidence presented against them or which might be exculpatory in criminal proceedings (ie by allowing video recorded interviews to be used as evidence in court, non-disclosure of information concerning the victim's identity and whereabouts, etc).³¹ The proposal also implies that with respect to victims who are vulnerable to re-victimisation "by the offender", such special measures should be the rule and access to them limited "only in exceptional circumstances, such as balancing the fundamental rights of the suspected or accused person" (Recital 17).

Thus, and given the ECtHR's and UN Human Rights Committee's approach to such issues, the accused's right to a fair trial, especially the right to test the evidence against him or her, is not the "exception" but the rule. Instead, it is measures restricting such rights which are to be treated as the "exception" requiring justification in each case³².

The difficulty is also that before and during the criminal proceeding, the accused is entitled to the presumption that he or she has not committed any offence.³³ (This in itself is not adequately acknowledged by the proposal, which appears to refer to the accused as "offenders", rather than "alleged offenders", before or during the trial – see eg Articles 17(2), 19).

The proposal should avoid being interpreted in a way which conflicts with or undermines respect for the fundamental rights of those suspected or accused of involvement in criminal offences. It should therefore either more expressly recognise the rights of such people, or include a clause expressly stating that the Directive's provisions are without prejudice to and must be interpreted in a manner consistent with the human rights of others. This includes people accused of responsibility for criminal offences, especially with regard to the presumption of innocence and the right to a fair trial.

³¹ This is in contrast with Article 6.3 (d) ECHR, which states: "Everyone charged with a criminal offence has the following minimum rights: [...] to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

³² ³². The European Court, for instance, has said: "In some cases it may be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest. However, only such measures restricting the rights of the defence which are strictly necessary are permissible under Article 6 § 1 [authority omitted]. Moreover, in order to ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial [authorities omitted] ECtHR, Grand Chamber, *Jasper v The United Kingdom*, Application no. 27052/95, 16 February 2000, para 52. The Court has also noted that convictions should never be based either solely or to a decisive extent on anonymous statements (e.g. Grand Chamber, *A and others v The United Kingdom*, Application no 3455/05, 19 February 2009, para 208).

³³ See Article 6.2 ECHR, Article 11 of the Universal Declaration of Human Rights; Article 14.2 ICCPR; Art. 48.1 of the EU Charter of Fundamental Rights.



ANNEX 1

- UN 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 Law³⁴
- International Covenant on Civil and Political Rights, Article 2(3), as described in the Human Rights Committee jurisprudence and General Comment no 31 *“The nature of the general legal obligation imposed on States Parties to the Covenant”*, 26/05/2004³⁵
- UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, Articles 13 and 14
- International Convention on the Elimination of All Forms of Racial Discrimination, Article 6, including as interpreted by the UN Committee on the Elimination of All Forms of Racial Discrimination in its General Recommendation No 26 on Article 6 of the Convention³⁶
- Convention on the Elimination of All Forms of Discrimination against Women, article 2(c), as interpreted by the Committee on the Elimination of All Forms of Discrimination against Women including in its General recommendation No 28 on the core obligations of states parties under Article 2³⁷ and particularly General Recommendation 19 on violence against women³⁸
- International Convention for the Protection of All Persons from Enforced Disappearance, articles 12 and 24
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- Article 13 of the European Convention on Human Rights, as interpreted and applied by the European Court of Human Rights in its jurisprudence, and procedural obligations under other provisions (Articles 2 and 3 in particular) to investigate and take other measures in relation to alleged violations of those articles
- Council of Europe Convention on Action against Trafficking in Human Beings
- Council of Europe Convention on preventing and combating violence against women and domestic violence
- Council of Europe Guidelines on the protection of victims of terrorist attacks

³⁴ Adopted and proclaimed by United Nations General Assembly resolution 60/147 (16 December 2005).

³⁵ UN Doc CCPR/C/21/Rev.1/Add. 13 (26 May 2004) paragraphs 8, 15-19.

³⁶ UN Doc A/55/18, annex V (24 March 2000).

³⁷ UN Doc CEDAW/C/GC/28 (16 December 2010), para 34.

³⁸ Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993).