



CDDH-ELI(2025)01
10/03/2025

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

**DRAFTING GROUP ON THE ERADICATION OF IMPUNITY FOR
SERIOUS HUMAN RIGHTS VIOLATIONS
(CDDH-ELI)**

Summary of the exchange of views
held with external experts on Tuesday 14 January 2025
at the 3rd CDDH-ELI meeting

1. Introduction

The CDDH-ELI agreed to hold an exchange of views on issues relating to cooperation (cluster 2), criminal law (cluster 3) and the rights of victims (cluster 4).

At its third meeting (14-16 January 2025), the CDDH-ELI held the exchange of views with:

- Amélie BECQUART, Judicial Cooperation Advisor, Office of the Prosecutor, International Criminal Court
- Paolina MASSIDDA, Principal Counsel, Office of Public Counsel for Victims, International Criminal Court
- Markiyan KLIUCHKOVSKIY, Executive Director, Register of Damage Caused by the Aggression of the Russian Federation against Ukraine
- Johanna NELLES, Executive Secretary to the Istanbul Convention at the Council of Europe

2. Summary of discussions

Key points made by Amélie BECQUART

- In the context of renewing cooperation and complementarity under the Rome Statute of the International Criminal Court (ICC), Ms Becquart discussed opportunities to deepen partnerships to strengthen accountability for international crimes. She emphasised that the current period is unprecedented for the ICC and international justice. The Office of the Prosecutor (OTP) is facing an increasing workload, with both the volume of data and the number of cases under investigation growing exponentially, highlighting the need for renewed cooperation in achieving accountability.
- Over the past decade, national and regional responses to international crimes have expanded and diversified, with greater use of universal jurisdiction, the establishment of hybrid courts, and other national initiatives. These developments have created new opportunities for partnerships and enhanced cooperation.
- In response to these changes, the OTP launched a new policy on cooperation and complementarity in April 2024. This policy, developed in coordination with other organs of the Court, places partnerships at the centre of its approach. It focusses on four key areas namely: 1) Strengthening the capacities of national authorities by providing targeted support in affected countries; 2) Providing operational information to assist national authorities in domestic prosecutions, including judicial cooperation requests; 3) Enhancing cooperation with civil society organisations, including the establishment of structured dialogues to prevent duplication of efforts; 4) Bringing OTP operations closer to affected communities by opening national offices dedicated to complementary issues.
- A key element of the new policy is the renewal of institutional partnerships. The OTP has strengthened its engagement with Europol, gaining access to intelligence networks, Eurojust, by participating in Joint Investigation Teams, and Interpol, in facilitating arrests.
- Ms Becquart emphasised the importance of expanding cooperation mechanisms. The OTP has created a dedicated forum to enhance collaboration with national immigration

authorities, holding both virtual and in-person thematic discussions. Additionally, the ICC has established an External Relations Unit, which is responsible for ensuring consistency in cooperative efforts across different cases.

- Several opportunities exist to further strengthen collaboration, including:
 - Digital and media cooperation which is becoming increasingly critical with the growing digitalisation of warfare.
 - War crime evidence collection, requiring increased engagement with military entities, satellite imagery providers, and open-source analysts.
 - The role of civil society, which remains central to OTP investigations. Efforts are being made to streamline cooperation to ensure that crucial evidence is preserved and validated in judicial proceedings.
 - Fugitive tracking and arrests, which remain a priority. The OTP has launched the Fugitive Tracking and Information Centre, integrating data and intelligence-sharing mechanisms to improve arrest efforts.
 - Strengthening cooperation and complementary efforts by identifying and supporting projects that enhance international collaboration in these areas.
- Ms Becquart concluded by stressing that the OTP's mandate is to investigate and prosecute crimes falling within its jurisdiction. However, successful investigations and prosecutions depend on strong partnerships with national authorities, civil society, and international institutions. By reinforcing these cooperative mechanisms, the OTP can enhance its ability to deliver justice for victims of international crimes.

Key points made by Paolina MASSIDDA

- Ms Massidda discussed how to advance victims' rights and apply a victim-centered approach to justice. To achieve this, it is essential to understand why victims consider justice important and their reasons for participating in justice processes related to crimes they have suffered. Their primary objectives are to establish the facts, identify those responsible, seek accountability, and obtain reparations. Additionally, victims consider it important to be informed about the process, understanding their role to avoid false expectations, and having their voices heard.
- The right to know the truth is fundamental for victims of serious human rights violations. The ICC's jurisprudence recognises victims' important contribution to clarifying facts, which in itself constitutes a form of reparation.
- The Rome Statute allows victims to participate at all stages of ICC proceedings. However, their role during the investigation phase is limited, leading to frustration, particularly due to delays and the scope of crimes under investigation. Ms Massidda emphasised that victims must have the right to a prompt and thorough investigation, a principle that should be reinforced in the 2011 Guidelines.
- The ICC Chambers have consistently held that victims' participation must be effective, not merely symbolic. Effective participation requires security and well-being measures for victims (and witnesses), respecting their dignity and privacy, and considering factors such as age, gender, health status, and the nature of crimes committed, with special attention to sexual violence. Non-discrimination and gender-sensitive approaches are also crucial to ensuring inclusive justice participation. Child victims must be actively involved in justice processes and not be rendered invisible by an adult-centered approach. All these aspects

should be reflected in the 2011 Guidelines, particularly by recognising different categories of vulnerable victims and adapting procedures to meet their needs, ensuring gender-sensitive justice and effective participation of children and youth.

- Given the complexity of ICC proceedings, victims have the right to legal representation, often in groups, given the large number of victims involved. The ICC established the independent Office of Public Counsel for Victims, the first of its kind in international criminal law, to assist and represent victims. The 2011 Guidelines should emphasise access to legal assistance for victims at all stages of proceedings.
- At the ICC, victims can only appeal reparation decisions but not rulings on investigations, admissibility, or victim status. Ms Massidda recommended strengthening the right to an effective remedy and the right to appeal against all decisions affecting victims' personal interests in the 2011 Guidelines, in line with a victim-centered justice approach.
- The ICC's reparations framework allows for both individual and collective reparations for victims of crimes. The court recognises moral, physical, and psychological harm, including for children born of sexual violence. The ICC's Trust Fund for Victims plays a key role in implementing reparations when convicted persons lack financial resources. It was recommended that revised Guidelines promote the establishment of effective reparation mechanisms at both national and international levels.
- Victims view justice as restorative and transformative, not only on an individual level but also within families, societies, and communities. Their participation, both individual and collective, contributes to reconciliation by ensuring accountability and preventing future crimes. Ms Massidda concluded that victims expect justice to be independent, impartial, transparent, and effective. By recognising their voices, ensuring their security, and facilitating legal representation, justice mechanisms can better serve those affected by the most serious crimes.

Key points made by Markiyan KLIUCHKOVSKYI

- Mr Kliuchkovskiy discussed the importance of ensuring justice through compensation and reparation and explained the role of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine, which began its work 18 months ago. The Register plays a crucial role in addressing accountability gaps for gross violations of human rights, international law and international humanitarian law committed by the Russian Federation against Ukraine.
- Gaps in accountability persist because the international legal system struggles to respond to the events that began in 2022, particularly when a state that violates international law refuses to accept responsibility and holds a seat at the UN Security Council. This has been a missed opportunity for the UN, whose mandate is to maintain global peace and security.
- The establishment of the Register of Damage was intended to ensure reparations for Ukraine and Ukrainians. Its foundation rests on the political will of states that are able and willing to take action and is firmly grounded in international law, particularly Article 31 of the 2001 Responsibility of States for International Wrongful Acts, which stipulates that states responsible for such acts are legally obligated to provide full reparations for the harm caused.
- 43 states and the European Union, under the auspices of the Council of Europe, established the Register of Damage for Ukraine as an enlarged partial agreement during the Reykjavik Summit. The Register serves as a platform for collecting claims for

reparations and compensation related to damages, losses, or injuries suffered on Ukrainian territory as the result of Russian aggression since February 2022. It collects claims, ensures they meet basic admissibility criteria, and verifies supporting evidence. However, it is not a court or a claims commission and does not process or award compensation. A claims commission is yet to be established as stated in the Register's mandate. This body will review claims and determine compensation awards.

- The Register of Damage has adopted an intensive and fast-paced approach. Nine months after it opened, it had already received over 30,000 claims, but only in one category (property damage). Additional categories are expected to be opened in the near future.
- The claim collection process is dictated by the scale and complexity of the war's consequences. To handle the expected millions of claims, the Register relies exclusively on digital evidence. This decision is driven by necessity and ensures efficiency in processing claims. The Register is integrated into the "Dia" application and web portal, operated by the Ukrainian government, providing a secure, fraud-resistant platform for submitting claims.
- The Register follows a victim-centered approach, based on key principles: inclusivity – ensuring all persons who have sustained harm can submit a claim; participation – allowing claimants to directly participate in the process without intermediaries; accessibility – enabling individuals to submit claims easily without requiring legal or technical assistance; and security – providing a safe and secure platform for claimants to submit sensitive information. Gender-sensitivity is also a critical cross-cutting element, including specific considerations for torture survivors and victims of conflict-related sexual violence, irrespective of gender.
- Innovative methods are being used to process claims efficiently, including AI-driven tools to manage large volumes of submissions.
- The Register collaborates closely with civil society platforms to ensure national and international stakeholders remain informed and to maximise outreach to potential claimants.
- Significant progress has already been made, laying a solid foundation for the next steps. The Register is the first step in a comprehensive compensation mechanism. The next step is the establishment of a claims commission, for which preparatory meetings have already taken place with the participation of 53 states. The Council of Europe plays an active role in accountability mechanisms and is leading efforts to establish the claims commission, ensuring the continued development of justice and reparations for victims in Ukraine.

Key points made by Johanna NELLES

- Ms Nelles discussed the importance of integrating a gender perspective into efforts to combat impunity for serious human rights violations. This means recognising and addressing the gender-based differences in status and power between women and men in society, as well as how their experiences of human rights violations differ.
- Applying a gender perspective also involves analysing and addressing the root causes of impunity with an understanding of how gender dynamics operate. In the criminal justice system, this requires acknowledging the gendered differences of human rights violations and recognising different levels of impunity. For women and girls, this exists at two levels: first, the individual perpetrator, and second, the state actors responsible for prevention and protection.

- From the perspective of the Istanbul Convention – the Council of Europe treaty on violence against women – it has helped position gender-based violence against women and girls as a human rights violation when the state and its actors fail to effectively prevent such violence and protect victims. This is known as the due diligence principle. The European Court of Human Rights has interpreted Articles 2 and 3 of the Convention in cases related to domestic violence and rape. The Court has a long history of identifying state failures in protecting women from violence by their husbands or partner. Since the landmark *Opuz v. Türkiye* case in 2009, the Court has consistently ruled on states' positive obligation to protect women's right to life by taking adequate measures to shield them from abusive partners when a known risk exists.
- The Istanbul Convention provides a detailed framework for due diligence and establishes positive obligations on states to protect women and girls from everyday violence. It requires states to adopt legislative and other measures to prevent, investigate, prosecute, and provide reparation for acts of violence covered by the convention.
- The monitoring of the Istanbul Convention has shown progress in addressing these forms of violence, but criminal justice systems still struggle to hold perpetrators accountable. GREVIO, the independent monitoring body of the Istanbul Convention, has assessed its implementation in 36 parties and found persistently high levels of impunity. This impunity extends to all forms of violence covered by the Istanbul Convention.
- Intimate partner violence and rape – both significantly gendered crimes overwhelmingly committed by men against women – are among the areas where impunity remains high. Many cases are dropped at various stages of the criminal justice system, and despite increased reporting rates in several countries, prosecution rates have remained stable or even declined. Monitoring findings reveal that this impunity is often due to inadequate case-building, including poor evidence collection, an over-reliance on victim testimony, and a lack of capacity or training to conduct trauma-informed interviews with victims. Additionally, insufficient attention is paid to risk assessment and management, while victim support services and legal representation remain limited.
- Impunity also exists at the reporting stage. GREVIO has identified poor police responses to domestic violence callouts and instances where police actively discourage women from reporting. This is often due to insufficient training for both new and serving law enforcement officers.
- Building trust in the justice system is crucial for women and girls to come forward, yet many do not report due to shame, fear of negative stereotypes, concerns about not being taken seriously, or economic dependence on the perpetrator – all of which contribute to impunity.
- Regarding the second level of impunity, the Istanbul Convention's due diligence obligation requires not only police but all state officials to take preventive and protective measures. However, GREVIO has found that very few mechanisms exist to hold state actors accountable when they fail in their duties. Moreover, in many jurisdictions, victims have no civil remedies to challenge state authorities that fail to take necessary preventive or protective measures. Strengthening accountability mechanisms, improving training, and ensuring adequate resources for state bodies are essential to addressing these gaps.
- Finally, concerning impunity in cases of conflict-related sexual violence, GREVIO's report on Bosnia and Herzegovina highlighted that out of the estimated 20,000 to 50,000 women and girls who experienced such violence during the conflict, most have yet to receive justice or reparation. With reports of sexual violence against women and men emerging

from Ukraine, it is critical to ensure that these crimes are effectively addressed. This once again underscores the need to apply a gender perspective in the investigation and prosecution of serious human rights violations.

Discussion

- Cooperation with civil society as part of a victim-centred approach was discussed as a crucial aspect of international justice. The OTP engages with civil society at two levels: advocacy and political dialogue to support the ICC's functioning, and direct cooperation in investigations. Civil society plays a key role in gathering evidence and facilitating contact with victims and witnesses. To standardise and expand this cooperation globally while ensuring victim protection and the preservation of evidence for future proceedings, the ICC has developed specific guidelines, in collaboration with Eurojust. Additionally, ICC policies on the use of intermediaries and a victim strategy have been established to guide interactions between different ICC offices and civil society organisations.
- The discussion also addressed the definition of victims as set out in the 2011 Guidelines, exploring the possibility of expanding it to reflect a collective approach that better responds to the scale of violations. This would allow for recognition not only of individual victims but also of victims as part of broader groups or communities. In this regard, the ICC has recognised both natural persons and certain institutions (e.g. religious, humanitarian, and charitable organisations) as victims in judicial proceedings, provided they have suffered direct harm. Additionally, in specific cases such as in the Central African Republic, the ICC has recognised religious leaders and communities as victims, given the targeted violence they suffered. A broad definition of victims is seen as essential for capturing the full extent of harm in grave violations, particularly when individual victims are unwilling or unable to fully convey the extent of their victimisation and the damages suffered.
- The challenges in claiming war crime reparations were also discussed. The Register of Damages currently imposes no limitation period on claims due to the ongoing war. Once hostilities cease, discussions will take place on setting deadlines for submitting claims. In contrast, Ukrainian civil courts face obstacles related to jurisdiction, participation, and foreign immunities when seeking compensation from the Russian Federation. Enforcement of judgements also remains an obstacle, highlighting the importance of establishing a dedicated Claims Commission as a key mechanism for victim reparations.
- The discussion further examined the evolving challenges from states' perspective in strengthening accountability. The principle of complementarity is central to the Rome Statute, yet different countries face distinct difficulties in prosecuting international crimes. A major obstacle is the allocation of resources, as states often prioritise domestic crimes over war crimes, genocide, and crimes against humanity. Linking international crimes with other criminal activities, such as drug trafficking and forced disappearances, can help develop more comprehensive legal policies. Additionally, specialised units and interdisciplinary forums for practitioners have proven useful for effective investigations and prosecutions, as they provide states with valuable expertise.
- Finally, combating impunity requires placing victims at the core of justice efforts. Legal frameworks and judicial processes must be designed with victims' needs in mind to ensure meaningful impact. Emphasising a victim-centred approach at both national and international levels can contribute to more effective justice and accountability mechanisms.