Extraterritorial Justice: Can Swedish Trials Provide Remedies to Victims of Atrocity Crimes?

Fanny Holm

Department of Law, Umeå University, Umeå, Sweden

ABSTRACT
Accountability for serious human rights violations and atrocity crimes has established itself at the top of the international community’s legal agenda, not least to serve justice to the victims of the crimes. Efforts to refer the atrocities in Syria to the permanent International Criminal Court have been in vain, highlighting the need for third states exercising extra-territorial jurisdiction. Sweden has answered the call to investigate the crimes, and the strong position afforded to victims of crime in the Swedish criminal justice system suggests that it is well-suited to provide them the justice they are entitled to. This article draws on the experiences gained in the seven trials to date in which victims have participated, to assess the extent to which international legal obligations towards the victims are implemented and were accessible to the victims. Through analysis of legal documents and interviews, the author demonstrates that, while the Swedish system has been fulfilling a wide range of international legal obligations towards victims of crime, the remoteness in time and place, the large number of victims involved and other specifics of the investigations and trials, challenge several central aspects of the Swedish system, such as the right to information, support and reparation.

1. Introduction
Grave crimes against civilian populations continue to occur in many parts of the world, not least in the last decade in states such as Syria and Yemen. Many states have taken it upon themselves to create and implement certain rules and policies concerning the victims of genocide, crimes against humanity and war crimes (hereinafter ‘atrocity crimes’ or ‘international crimes’). These undertakings are not directed only towards other states. The victims of atrocities and war have legitimate expectations, similar to victims of ordinary crimes, of their home states as well as states in which they seek refuge – that they will live up to their legal and political obligations.

CONTACT Fanny Holm fanny.holm@umu.se

© 2022 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group
This is an Open Access article distributed under the terms of the Creative Commons Attribution License (http://creativecommons.org/licenses/by/4.0/), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.
The potential for the Nordic states to contribute to the system of international accountability is shown by the trials held in recent years in Sweden, Denmark, Norway and Finland. These trials also have the potential to achieve acknowledgement of the suffering of the victims and to bring them some justice and solace. Among the large numbers of refugees to these states in recent years, a considerable number may have been victims of international crimes, for example in Syria. The number of reports of international crimes has indeed increased dramatically in Sweden, often initiated by the Migration Board identifying suspects during their asylum process.

In studies of national implementation of international standards on victims’ rights, Sweden is often top of the class. Sweden has in place legislation and an organisational set-up that allows victims the enjoyment of certain rights, which are also acknowledged in international and EU legal instruments. These rights or protected interests include information, protection, the right to report crime, an investigation of the crime, participation in criminal procedures, and appeal decisions not to prosecute, legal representation and

---

1For description and analysis of the case decisions that resulted from these trials, see L Lundstedt (ed) (2020). Investigation and Prosecution in Scandinavia of International Crimes, specifically chapters by M Heikkilä, The Criminalisation and Prosecution of International Core Crimes in Finland; S Högestal, A Norwegian Perspective on the Prosecution of International Crimes; M Klamberg, Trials in Sweden, Participants in the Proceedings and the other Actors; L Plum, Investigation and Prosecution in Denmark of International Crimes; The book is volume 66 of the book series Scandinavian Studies in Law.

2The number of asylum seekers from Syria in 2015 was over 51,000, but the numbers have fallen due to changing immigration policy and by 2018 they were down to approximately 2,700. Several international organisations have concluded that many of the abuses committed by individuals from all parties in the conflict in Syria may amount to war crimes and in some cases crimes against humanity; see e.g. Human Rights Council, They have erased the dreams of my children: children's rights in the Syrian Arab Republic, Conference Room Paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN Doc A/HRC/43/CRP.6.

3Email from Swedish Migration Board, 17 September 2019.

4See e.g. MEI Brienen and EH Hoegen, Victims of Crime in 22 European Criminal Justice Systems (Wolf Legal Productions 2000); J Mikaëlsøn and A Wergens, Repairing the Irreparable: State Compensation to Crime Victims in the European Union (Crime Victim Compensation and Support Authority 2001); FIDH, ECCHR, Redress. Breaking Down Barriers: Access to Justice in Europe for Victims of International Crimes, September 2020. For an overview of the position of victims of crime in Sweden, see F Holm, Swedish Law and Practice on Victims of International Crimes’ (2020) 66 Scandinavian Studies in Law 329–56.

5Found in for example the European Convention on Human Rights (ECHR), 1950, ETS 5, Article 6 (see ECtHR, Zontul v. Greece, Appl. No. 12284/07, Judgment of 17 January 2012; ECtHR, Ognyanova and Choban v. Bulgaria, Appl. No. 46317/99, Judgment of 23 February 2006); UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA Res. 40/34, 29 November 1985 (Crime Victim Declaration), Principle 6; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Recommended by General Assembly resolution 55/89 of 4 December 2000, Principle 4; 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, GA Res. 60/147, 16 December 2005 (Basic Principles), Guideline 11 (c), 12 (a) and 24; Recommendation Rec (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure, rule 2, 3 and 6; Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims’ Rights Directive), Articles 3–7.

6Victims’ Rights Directive, Articles 18–24.

7Victims’ Rights Directive, Article 5; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, 1465 UNTS 85 (Convention against Torture), Article 13.

8See e.g. ECHR, Articles, 1 and 13 interpreted together with 2 and 3; Basic Principles, Principle 12; Convention against Torture, Article 13.

9Victims’ Rights Directive, Article 10; ECHR, Article 6 and 13 (see Sottani v. Italy (dec.), 26775/02, 24 February 2005 and Lacerda Gouveia and Others v. Portugal, no. 11868/07, 1 March 2011); Crime Victims Declaration, Principle 6 (b).

10Victims’ Rights Directive, Article 11; Recommendation (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure, Guideline 7; Council of Europe, Recommendation (2000) 19 of the Committee of Ministers on the role of public prosecution in the criminal justice system, adopted 6 October 2000, principle 34.

11Victims’ Rights Directive, Article 13 (legal aid) and 20 (right to be accompanied by legal representative); Crime Victim Declaration principle 6 (c); Basic Principles, guideline 12 (c) (right to assistance); Recommendation Rec (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure, rule 4.5; Recommendation (2006) 8 on assistance to crime victims, rule 4.5.
reparation. Overall, the degree to which these elements are implemented in Swedish legislation is satisfactory. The question on which this article focuses is whether these rights and services are optimally legally and practically accessible to the victims of atrocity crimes, and if not, in which ways some improvement might be achieved.

The investigation and trial of international crimes is a relatively new phenomenon in Sweden. Law enforcement agencies and the judiciary are facing new challenges, such as the substantial number of victims and suspects often involved in atrocity crimes; physical remoteness of the relevant crime sites, evidence and victims; and dependency on cooperation with foreign law enforcement agencies and organisations. Acknowledging the importance of studying implementation in practice in order to gain a full picture of the realisation of victims’ rights, this article addresses the application of legislation in the Swedish investigations and trials; other political or semi-legislative measures taken by the government; and the institutional set-up for victims of international crimes in Sweden.

With its focus on victims in domestic proceedings concerning international crimes, the article contributes to legal scholarship in international criminal law, where emphasis is on the international criminal courts and tribunals. States’ legal obligations to investigate and prosecute international crimes and the complementarity principle of the ICC suggest that domestic prosecution should be the main rule rather than the exception – but only in recent years is this assumption reflected in the frequency of domestic prosecution and in legal scholarship. In this new literature, little attention is devoted to the role of victims in domestic trials. The need for such procedures is evident – not least as shown by recent years’ continuous failure of states on the UN Security Council to unite and to act to ensure accountability of perpetrators and justice for victims of the conflict in Syria. In particular, this article contributes with new knowledge about how a ‘victim-friendly’ state, exercising extraterritorial legislative and adjudicative jurisdiction, faces challenges involved in the practical implementation of international legal obligations and political expectations concerning victims of international crimes. The experiences gathered thus far in Sweden provide important insights into potential pitfalls and lessons to be learned by other states willing and able to exercise jurisdiction.

This article describes and analyses how legal norms work in practice and what actors and institutional factors influence and shape their implementation. This requires a socio-legal method, useful for identifying discrepancies between the law in the books and the law in practice. A mixed methods design, combining desk-based research with qualitative primary research, was implemented. Through interviews with key actors and examination of documents, mainly judgments, preliminary investigation reports and court files, several challenges to meeting Sweden’s obligations are identified and analysed.

12 ECHR, Article 41; Convention against Torture, Article 14; Victims’ Rights Directive, Article 16; Crime Victim Declaration, Principle 8–13; European Convention on the Compensation of Victims of Violent Crimes; Council Directive 2004/80/EC of 29 April 2004 relating to Compensation of Crime Victims, OJ 2004 L 261/15, Articles 1–2.
13 Holm (n 4).
14 According to victimologists; A Wergens, Human Rights for Victims of Non-State Crime: Taking Victims Seriously? (Wolf Legal Publishers 2014) 79.
15 F Cownie and A Bradney, ‘Socio-Legal Studies: A Challenge to the Doctrinal Approach’; M Burton, ‘Doing Empirical Research: Exploring the Decision-Making of Magistrates and Juries’, both in M Burton and D Watkins (eds), Research Methods in Law (2nd edn, Routledge 2017).
16 Prior to which informed, written consent was obtained.
The group of 14 interviewees included one police officer, two prosecutors, one human rights organisation representative, three judges, and seven legal counsel to injured parties. A semi-structured interview guide was constructed around several themes. The interviews were conducted between February and October 2020, then transcribed and thematically analysed.\(^{17}\) The analysis consisted of reading and re-reading the transcripts, after which initial codes were generated,\(^{18}\) responses categorised and themes defined, developed and compared. The quotes presented in this article were translated, by the author, from Swedish to English. The study was approved by the Swedish Ethical Review Board.\(^ {19}\)

The article is structured into nine sections. Sections 2 and 3 provide an overview of the institutional set-up for victims of atrocity crimes in Sweden and a summary of the case-law. In Sections 4–8, the level of implementation in practice in trials concerning atrocity crimes is assessed. The whole spectrum of rights for victims of crime is not included. Emphasis is placed instead on the rights and corresponding state obligations relating to criminal investigation and trial. In the ninth and final section, conclusions are drawn.

### 2. Institutional Set-Up for Victims of International Crimes

Sweden has been an eager proponent of international criminal justice.\(^ {20}\) The Rome Statute of the International Criminal Court was ratified in 2001 and Sweden continues to support the institution, both economically and politically.\(^ {21}\) Following ratification of the Rome Statute, in 2001 Sweden established a war crimes commission within the national police authority. Its activities were sparse until 2007,\(^ {22}\) when a permanent war crimes unit was established.\(^ {23}\) In June 2020, the unit consisted of 15 investigators and two analysts.\(^ {24}\) Sweden has also established, at the Swedish Public Prosecution Authority, a team of approximately 15 prosecutors specialised in crimes with an international dimension.\(^ {25}\) There is no equivalent specialisation in the courts, but most of the 12 trials concluded so far have been adjudicated at Stockholm District Court as a first instance. Nine of the judgments were appealed to the Appeals Court, but only one of them was given leave to appeal to the Supreme Court.\(^ {26}\) There is no particular unit within the judicial system with responsibility for crime victims’ rights; protective

---

\(^{17}\)V Braun and V Clarke, ‘Using Thematic Analysis in Psychology’ (2006) 3(2) Qualitative Research in Psychology 77–101.

\(^{18}\)A deductive analytic approach was used, in that codes were developed with the legal framework in mind; ibid. at 12.

\(^{19}\)Decision nr 2019-01746.

\(^{20}\)As demonstrated by cooperation with ad hoc tribunals as well as the ICC, and efforts for accountability during membership in the Security Council, <https://www.regeringen.se/sveriges-regering/justitiiedepartementet/internationellt-ratsligt-samarbete/internationella-tribunaler-och-domstolar/> accessed 5 January 2021.

\(^{21}\)Sweden is the largest donor to the Trust Fund for Victims, see <https://www.icc-cpi.int/Pages/item.aspx?name=190114-tfv-pr-sweden> accessed 5 January 2021; Sweden was amongst 67 States Parties to protest the freezing of the Chief Prosecutor’s assets by US Government in June 2020, <https://onu.delegfrance.org/We-remain-committed-to-an-international-rules-based-order> accessed 5 January 2021.

\(^{22}\)The first trial concerned a Swedish citizen, Jackie Arklöv, who had been involved in the mistreatment of detainees held by Croat forces, Prosecutor ./.Jackie Arklöv, Stockholm District Court, Case no B 4084-04, judgment 18 December 2006.

\(^{23}\)Now Gruppen for utredning av krigsbrott.

\(^{24}\)Police officer 1; M Klamberg, ‘Myndigheter, aktörer och andra medverkande’ in M Klamberg (ed), Lagföring i Sverige av internationella brott (June 2020) 39–45, at 41–42.

\(^{25}\)Riksenheten för grov internationell och organiserad brottslighet (RIO).

\(^{26}\)Supreme Court, Case no B 5595-19, judgment 5 May 2021. Being given leave to appeal to the Supreme Court of Sweden is fairly uncommon; there are a number of criteria that need to be met.
measures are the responsibility of the Swedish police. Legal support and advice is given by publically-provided legal counsel and health care is provided through the ordinary health care institutions and is not connected to the criminal procedure. There are specialised torture victim units established and run by the Red Cross in several locations in Sweden. Victims of international crimes may be referred to these units from the ordinary health care institutions. General social support for crime victims is the responsibility of the municipalities, but is also provided by local victims aid organisations belonging to the umbrella association Victim Support Sweden. The national authority for crime victims, the Swedish Crime Victim Authority, among other tasks, administers state compensation to victims of crime in cases where it is not paid through, for example, damages paid by the perpetrator or as a result of private insurance coverage.

3. Summary of Cases

The 12 trials concluded thus far all concerned genocide or war crimes. Three of them, Arklöv, Makitan and M.M., concerned the conflict in the former Yugoslavia. Three were related to the genocide in Rwanda; Mbanenande, Berinkindi and Tabaro. Six trials concerned war crimes in Iraq and Syria; Droubi, Al-Mandlawi and Sultan, Abdulkareem, Omar Haisam Sakhanh, Abdullah, Saeed. Victims participated in seven of the completed trials. In addition, at the time of writing, a trial concerning Iran was pending before Stockholm District Court. The term ‘victims of crime’ is not used in the Code of Judicial Procedure (CJP), victims are instead referred to as ‘injured parties.’

---

27Secs. 1–2 Police Act (1984:387) (polislagen); Decree (1947:948) on Preliminary Investigation, Sec. 13(f). See also Polismyndighetens riktlinjer för brottsoffer- och personsäkerhetsverksamheten, PM 2017:06, p. 6.
28Målsägandebiträden. Under the Act on Injured Parties Legal Counsel (1988:609) (lag (1988:609) om målsägandebiträde).
29FIDH and others (n 4) 99.
30Kommuner, Ch S Sec. 11 Social Services Act (2001:53) (socialtjänstlagen).
31Brottsofferjouren Sverige.
32Brottsoffermynighetens.
33Criminal Injuries Compensation Act (2014:322) (brottsskadelagen). See generally; <https://www.brottsoffermyndigheten.se>.
34Arklöv: Prosecutor./.Ahmet Makitan, Stockholm District Court, Case no B 382-10, judgment 8 April 2011; Prosecutor./.M.M., Stockholm District Court, Case no B 5373-10, judgment 8 April 2011; Svea Appeals Court, Case no 1248-12, judgment 19 December 2012. The abbreviation ‘M.M.’ is used due to consideration of the accused’s reputation and the fact that he was acquitted.
35Prosecutor./.Mbanenande, Stockholm District Court, Case no B 18271-11, judgment 20 June 2013; Svea Appeals Court, Case no B 6659-13, judgment 19 June 2014; Prosecutor./.Berinkindi, Stockholm District Court, Case no B 12882-14, judgment 16 May 2016; Svea Appels Court, Case no B 4951-16, judgment 15 February 2017; Prosecutor./.Tabaro, Stockholm District Court, Case no B 13688-16, judgment 27 June 2018; Svea Appeals Court, Case no B 6814-18, judgment 29 April 2019.
36Prosecutor./.Droubi, Södertörn District Court, Case no B 2639-16, judgment 11 May 2016; Svea Appeals Court, Case no B 4770-16, judgment 5 August 2016; Prosecutor./.Al-Mandlawi and Sultan, Göteborg District Court, Case no B 9086-15, judgment 14 December 2015; Västra Sverige Appeals Court, Case no B 5306-15, judgment 30 March 2016; Prosecutor./.Abdulkareem, Blekinge District Court, Case no B 569-16, judgment 6 December 2016; Skåne and Blekinge Appeals Court, Case no 3187-16, judgment 11 April 2017; Prosecutor./.Omar Haisam Sakhanh, Stockholm District Court, B 3887-16, judgment 16 February 2017; Svea Appeals Court, Case no B 2259-17, judgment 31 May 2017; Supreme Court, Case no B 3157-17, decision on leave to appeal (prövningstillstånd) 20 July 2017; Prosecutor./.Abdullah, Södertörn District Court, Case no B 11191-17, judgment 25 September 2017; Prosecutor./.Saeed, Örebro District Court, Case no 6072-18, judgment 19 February 2019; Göta Appeals Court, Case no B 939-19, judgment 24 September 2019; Supreme Court, Case no B 5595-19, judgment 5 May 2021.
37Prosecutor./.H.N. Stockholm District Court, Case no B 15255-19. The abbreviation H.N. is used in consideration of the accused’s reputation and right to privacy, given that the case is pending and no conviction has been entered.
38Målsägande.
trials\textsuperscript{39} and in the former Yugoslavia trials.\textsuperscript{40} There was an injured party in only one of the trials concerning Iraq and Syria. That particular case was referred back to the District Court after the injured party had been identified.\textsuperscript{41} The indictment in the remaining five trials concerning events in Syria and Iraq, were based on photos or videos posted online.

The injured parties have all been parties to the legal proceedings, in both the District Courts and the Courts of Appeal. According to Swedish law, the injured party has the opportunity to present their own evidence, to adjust the indictment and to appeal the judgment.\textsuperscript{42} The right to adjust the indictment was only exercised in one of the concluded cases,\textsuperscript{43} whereas in the majority of cases, some or all of the injured parties exercised their rights to invoke evidence and to appeal.\textsuperscript{44}

4. Getting a Foot in the Door

International crimes are often characterised by a large number of victims, perpetrators, and involved events, a connection with armed conflict as well as the involvement of government agencies. Given these characteristics, prosecutorial decisions on the scope and focus of investigations are essential to achieving expediency of the proceedings. However, it is important to keep in mind that these decisions are fundamental also from the perspective of victims; not only are many of the rights of victims of crime connected to the participation in trial, but investigation and prosecution may in themselves be important for the victims. The following sections show how the actions and decisions taken by the Swedish law enforcement agencies in the preparatory stages of the studied cases were, in some respects, wanting or unclear.

4.1. Victims access to making reports

Police reports concerning international crimes have increased steadily in Sweden, with a peak in 2018 (over 140 reports).\textsuperscript{45} The Swedish Migration Agency is under an obligation to report to the police or prosecution authority if a suspicion is raised of war crimes, genocide or crimes against humanity in its cases.\textsuperscript{46} The reports from the Migration Agency are made based on information given by suspected perpetrators of international crimes, and not the victims of those crimes.\textsuperscript{47} These persons find it relevant to provide information of their own potentially criminal conduct, possibly motivated by the advantage this may provide in the asylum-seeking process.\textsuperscript{48} According to the police, these

\textsuperscript{39}They numbered 21, 16 and 28 in the respective cases.
\textsuperscript{40}They numbered 11, 28 and 14 in the respective cases.
\textsuperscript{41}Droubi.
\textsuperscript{42}Ch. 20 Sec. 8 para. 2, Ch. 36 Sec. 17, Ch. 37 Sec.1 CJP.
\textsuperscript{43}Tabaro, where several injured parties adjusted the indictment, mainly by adding more names of victims to the different points of the indictment, but also by changing the classification of one of the listed crimes; Tabaro, District court judgment, p. 18.
\textsuperscript{44}The right to invoke evidence; Arklöf, Makitan, Mbanenande, Tabaro and Berinkindi. The right to appeal; M.M., Mbanenande, Tabaro and Berinkindi.
\textsuperscript{45}Email from war crimes unit, 21 June 2021.
\textsuperscript{46}Sec. 2 para. 1 p. 18. Förordning (2007:996) med instruktion för Migrationsverket.
\textsuperscript{47}Concerning victims from Syria, see report by Human Rights Watch, These are the Crimes we are Fleeing: Justice for Syria in Swedish and German Courts (2017), p. 27.
\textsuperscript{48}Suspicion of serious crimes may be a reason not to expel, based on the principle of non-refoulement, expressed in Ch. 12 sec. 1 Aliens Act (2005:716) (utlänningslagen).
reports account for 90% of the reports concerning international crimes. The increase in recent years is due to the large increase in immigration, especially from Syria. Following changes in migration policy, the number of asylum seekers arriving to Sweden has decreased dramatically since 2018 and this is reflected in the number of reports made. The number of reports to the police in 2020 was 118.

The opportunity of victims to report the crimes and to participate in a criminal procedure is connected to the right to information crime victims enjoy under EU law. Information is important in the early stages, when which persons have been subjected to serious crimes may not yet be known by law enforcement agencies. The right to information in the first contact with authorities, as established in Article 4 of the Victims’ Rights Directive, is poorly transposed into Swedish legislation; there is no legal requirement under Swedish law for agencies to provide this information at that stage. This might also explain why no reports made by the Migration Agency are based on information provided by victims.

Without legislation in place, practice can be expected to work poorly. In 2017, Human Rights Watch reported that persons who have fled from Syria to Sweden have not been informed of their rights as victims, e.g. of the possibilities to participate in criminal trials and to report crimes. The authorities are aware of this problem. There is an ongoing effort by the police and prosecutors to reach out to, for example, refugee groups, in order to increase the number of reports from victims and witnesses, not least since the commencement of so-called ‘structural investigations’. In these and other investigations, the police and prosecutors cooperate with NGOs and international organisations, as well as the Migration Agency. They also distribute information posters, participate in meetings with affected refugee communities and agree to be interviewed by journalists and researchers. Perhaps this indicates that existing legislation, albeit being vague, is sufficient, but the risk is that efforts come to an end more easily if not clearly required by the law, and my advice to comparable states is not to choose this course of action.

49Police officer 1.
50See footnote 1.
51Email from war crimes unit, 21 June 2021.
52The need to identify victims and inform those, for instance in contact with health care services, of their rights as victims is not least emphasised by the European Commission in its recently adopted strategy on victims’ rights; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Strategy on victims’ rights (2020–2025), 24 June 2020, p. 4.
53Rather, the legislation refers to a more general obligation of authorities to provide ‘help’ and for the police to provide information to the public, when reasonable to do so; Sec. 6 Administrative Procedure Act (2017:900); Sec. 2 p. 4 Police Act (1984:387). This seems to have satisfied the EU Commission, which initiated an infringement procedure towards Sweden, e.g. for the failure to fully implement Article 4; the procedure was closed in December 2020.
54Human Rights Watch (n 47) 50. According to the EU Commission’s report evaluating the implementation of the Victims’ Rights Directive, many states have faltered in their practical implementation of the article: ‘The effective implementation of the obligation under Article 4 requires that the competent authorities are well trained on how and when to inform victims about their rights’, Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 11 May 2020, p. 4.
55Police officer 1, prosecutor 1; Migration Agency, Annual Report (Årsredovisning) 2019, p. 89.
56See on these, M Ingeson, ‘Strukturella förundersökningar’ in M Klamberg (ed), Lagföring av internationella brott i Sverige (June 2020), 347–54 at 350.
57For example, IIIM, Genocide Network and Europol; police officer 1, prosecutor 1.
58Prosecutor 1; Migration Agency, Annual Report (Årsredovisning) 2019, p. 89.
59Police officer 1, prosecutor 1.
4.2. Victims’ role during the preliminary investigation

The number of preliminary investigations has increased. This is connected not only to the rise in reports made, but also to the fact that more investigators have been recruited to the war crimes unit. At one point in 2020, there were 49 preliminary investigations open. Out of these, approximately 40% concerned Syria and Iraq, while the others concerned suspected crimes in a number of states from where Sweden has been receiving refugees, among them Somalia, Eritrea, Ethiopia, Afghanistan, Libya and Yemen. One interviewed prosecutor pointed out that the number of investigations is not all that is indicative of the work that is being done, because the investigations differ greatly in scope.

During the course of an investigation, information about potential witnesses and victims is gathered in various ways. Sometimes, witnesses and victims spread the word to other victims and witnesses about the investigation. The process differs depending on the context. In investigations concerning Rwanda, where most injured parties live in the countryside under simple conditions, information was spread by word of mouth. In an investigation concerning events at a prison in Iran in the 1980s, information about the ongoing investigation was instead spread via Facebook groups. Via such groups, victims have contacted advocates in Sweden, who in turn have forwarded the information to the police and prosecutor. One prosecutor called this a ‘chain mail-effect’.

The prosecutor decides which victims are in the end included in the indictment. Many times, a large number of injured parties are questioned during the preliminary investigation, but not all are included in the indictment and participate in the trial. The prosecutor decides to prosecute as soon as there is enough evidence to anticipate a guilty verdict. Once that point is reached, prosecutors will not continue to look for more injured parties, regardless of the potential of there being more to be found.

According to several legal counsels, it is necessary to limit the preliminary investigation. As one of them phrased it, ‘In Rwanda, the whole society could be an injured party, really’. One interviewee said that there may be instances where an injured party is included in the indictment, not based on that person’s story contributing to the level of evidence, but because he or she should be given the remedy that participation in a trial may provide. One prosecutor said that it is a very difficult assessment to make and that practical reasons in the end determine who is included and who is not. This is somewhat contradicted by another prosecutor who said that they will ‘go as far as possible to find survivors or persons who can testify about relatives’. One legal counsel stated that whether a victim is included depends on the timing; the earlier someone is

---

60Klamberg (n 24) 42.
61Police officer 1.
62Prosecutor 1.
63Legal counsel 3, 4.
64Prosecutor 2.
65Police officer 1.
66Ch. 20 Sec. 6 CJP.
67Legal counsel 2, 4, 6.
68Legal counsel 4.
69Police officer 1.
70Prosecutor 2.
71Prosecutor 1.
included in the investigation, the greater likelihood he or she will participate in the trial.  
These are confusing facts. On the one hand, it appears as if more victims are being questioned than are in the end included in indictments, but on the other hand, there is no information in interviews about there being decisions taken to terminate preliminary investigations in relation to these victims.

It is unsatisfying that some victims in this way might be tossed out of the system without a formal decision being taken. The right to request review of decisions to close investigations (according to the Victims’ Rights Directive Article 11) cannot be exercised until a formal decision has been taken.

A closely-connected issue is when victims themselves choose not to report a crime or not to participate in an investigation. This happens, according to interviewees, for several reasons. Sometimes, victims are simply eager to leave the past behind; in other cases, the choice not to report is based on a fear of reprisals, directed towards themselves or family left behind in the home state. One prosecutor connected this fear to the fact that victims cannot be anonymous in Swedish trials. This finds support in a report by Human Rights Watch, where distrust of authorities is highlighted as a factor making it difficult for Swedish authorities to make Syrian witnesses come forward and participate in legal proceedings. According to their report, there is also a perception among victims that talking about their experiences during the asylum process may be detrimental to their application. A civil society representative expressed concern that the change in migration policy, where refugees from Syria are only awarded temporary residence permits in Sweden, and the fact that the Migration Agency has deemed Damascus ‘safer’ since 2020, may cause a reduced inclination of victims from Syria to report crimes to the Swedish police.

Thus far, none of the Swedish trials have been the result of reports by the Migration Agency. Only one was the result of reports by victims. Those reports were made with the aid of a Swedish legal advocate, with experience as legal counsel in previous international crimes cases. The three Rwanda cases were initiated by extradition requests from Rwanda. Sweden does not extradite its own citizens, and therefore the decision was made to initiate a Swedish preliminary investigation into the allegations. A number of indictments were based on digital evidence. In one of these, the prosecutor decided not to search for the victim because the case concerned events in Syria during ongoing conflict and Swedish law enforcement agencies would not be able to guarantee the victim’s safety. Eventually the victim was identified by a journalist, and as a result, the Appeals Court decided the case had to go back for retrial at the District Court.

72Legal counsel 4.
73Legal counsel 2, 3, 4 and 7, police officer 1, prosecutor 1.
74Prosecutor 1. Swedish legislation on transparency provides that victims’ identities are made public with the indictment; Ch. 2 Sec. 2 Act on Freedom of the Press (tryckfrihetsförordning), SFS 1949:105; Ch. 35 Sec. 7 Public Access to Information and Secrecy Act (2009:400) (offentlighets- och sekretesslag).
75Human Rights Watch (n 47) 46–47.
76Ibid., 48–49.
77Civil society organisation representative 1. See also Migration Agency legal statement, Rättsligt ställningstagande, Pröv- ning av skyddsbehov för personer från Syrien, RS/022/2020, 25 November 2020, p. 19.
78Prosecutor ./.H.N., pending at the time of writing.
79Main preliminary investigation report, Court case file, file appendix 391, pp. 10–11.
80Prosecutor ./. Droubi, Svea Appeals Court, Case B 4770-16, Judgment 5 August 2016.
In addition to the pending case concerning Iran, there are other investigations that have been initiated by victims or victims’ interest groups. One, which has attracted a lot of international attention, is the investigation into suspected complicity in alleged war crimes, by corporate executives of the oil company Lundin Oil. The investigation was initiated after an NGO report into the situation was presented to the prosecutor. These are examples that indicate that an increasing number of trials might be initiated in the future by victims or in the name of victims, a trend that is probably connected to the commitment of human rights organisations and their capacity to attach comprehensive background information to reports.

5. Overcoming Distances: Participating in Trial from Afar

The majority of victims participating in the Swedish international crime trials have been citizens and residents of another state. That other state is usually both their original home country, as well as the state where the crimes took place. This state of affairs has implications for the level of protection, counsel and support provided.

5.1. Examinations during investigation and trial

Victims may participate in different ways and different parts of the investigation. The police in international crime cases strive to meet injured parties in person for questioning, in order to build confidence and to get a statement that can form the basis for a decision to prosecute. Many times, there is only one opportunity, during a trip abroad to the victim’s location, to question a victim. According to one interviewee, this constitutes a major challenge, considering that questioning concerns traumatic experiences that may have taken place a long time ago. The special situation caused by Covid-19 has resulted in remote questioning, via videoconferencing, in many examinations with victims living abroad.

Examinations of injured parties also take place at the trial stage. Such examinations have taken place in all cases. The majority have been conducted orally (in person or via video link) before the court during the main hearing. That a large proportion of injured parties are residents of states other than Sweden affects the way examinations are conducted. Some injured parties have travelled to Sweden, but most have not. Injured parties have instead made their way, for example, to a court or the Swedish embassy in the country where they reside. The examination is conducted from there.

---

81 V Häggblom, ‘Lundin, oljan & rättvisan’ (2021) (3) Amnesty Press 2021.
82 Coercive measures can be used if victims of crime do not volunteer to be examined, for example; Ch. 23 Sec. 7–9 CJP on the conditions for retrieval and detention for questioning (medtagande till, hämtning till och kvarstannande för förhör).
83 Search of premises is another measure that victims may be subjected to during the investigation, see Ch. 28 Sec. 1 and Ch. 27 Sec. 15 CJP.
84 Police officer 1.
85 Ibid.
86 The rules governing the conduct of examinations during the hearing are found in Ch. 46, Sec. 6, para. 2 CJP.
87 Ch. 5 sec. 10 CJP sets out the conditions for allowing videoconference in court hearings.
88 Act on International Cooperation in Criminal Cases (2000:562) (lag (2000:562) om internationell rättslig hjälp i brottmål).
89 They are then given temporary residence permit for the duration of the trial, Ch. 5 Sec. 15 Aliens Act (2005:716).
90 Swedish authorities request permission to take up evidence abroad, under LIRB.
via video link. In several trials, the court conducted an on-site examination of the scene of
the crime and examination of several persons in Rwanda.91

The choice of examination method (on-site, via video link, etc.) can be made based on
a number of factors. The courts have referred to legal certainty and the principle of best
evidence as the basis for taking up evidence on-site.92 According to a prosecutor, the
courts follow the suggestions of the prosecutors in their choice of examination
method. The prosecutor bases his or her suggestion to use video on the assessment
that the victim is not able to travel alone.93 Another prosecutor said that there are situa-
tions where it may affect the examination to have the victim travel to Sweden, while in
others, this is the best course of action.94 In the court case file in Mbanenande, the pro-
secutor is quoted as stating that attendance in Stockholm would be associated with great
difficulties and could have an impact on statements and the value of the evidence.95 In
Tabaro, the prosecutor found it most appropriate to examine the victims living in
Canada, Denmark and Belgium in Stockholm.96 In the same case, according to injured
parties’ legal counsel, they had asked all victims and none objected to being examined
on video link.97

In Berinkindi, the prosecutor had expressed in the preparatory hearing that, for prac-
tical reasons, there was a need to examine injured parties and witnesses during the main
hearing in Rwanda. The prosecutor further pointed out that it generally influences the
value of evidence to have examination in front of the court on the ground in Rwanda.
The prosecutor also pointed to the value of this way, showing that examinations in
Rwanda more generally are not interfered with by Rwandan authorities or others.98

One judge summarised the deliberations in stating that it came down to creating con-
ditions under which examination was ‘possible to carry out’.99 One judge pointed out
how dependent the court was on local authorities.100 The success of cooperation and pro-
cedure for conducting examinations depends on the state concerned. In investigations
concerning crimes with connection to a regime still in power, as is the case in Syria
and Iran, cooperation with the domestic law enforcement agencies is not in question.101

From a victim’s perspective, it may be an advantage for examinations to be conducted
nearby, as the injured parties do not need to travel to Sweden for the trial. One legal
counsel also pointed out that bringing a person to Sweden for a lengthy trial is prob-
lematic because that person may risk losing his or her job in the home state.102

---

91Tabaro, District Court Judgment, p. 179; Tabaro, Appeals Court Judgment; Berinkindi, District Court Judgment, p. 138,
Berinkindi, Appeals Court Judgment; Mbanenande, District Court case file, entry 219, Appeals Court Judgment p. 5.
92Mbanenande, District Court Judgment, pp. 39–40; Stockholm District Court, Press release 5 November 2012, cited in
InfoTorg Juridik, Åtal i Rwandamålet, 5 November 2012, <http://infotorgjuridik.se/premium/mittjuridiken/
article184588.ece> accessed 21 June 2021.
93Prosecutor 2.
94Prosecutor 1.
95Mbanenande District Court case file, entry 216.
96Tabaro, Main hearing record, District Court case file, file appendix 190, p. 5.
97Tabaro, Court case file, file appendix 92, p. 6.
98Berinkindi, Court case file, file appendix 74, p. 3. The question of interference was raised by the defence in the case; see
the Court’s deliberation on the matter, District Court Judgment pp. 40–53; see also the book written about the Tabaro
case by the defence lawyer, T Bodström, När folkmordet kom till Sverige: Om en advokats dilemma (Norstedts 2019).
99Judge 1.
100Judge 3.
101Police officer 1.
102Legal counsel 5.
5.2. Protection and support during the trial

The right to protection is established in Article 18 of the EU Victims’ Rights Directive, as well as in other instruments. It may, however, be difficult for Swedish law enforcement agencies to provide the same protection abroad as in Sweden, due to the lack of enforcement jurisdiction, as pointed out by several interviewees. The problem has attracted attention in relation to trials in other, comparable, states as well. In one such study, it was shown that states’ protection of victims abroad has in practice been more limited, partly because law enforcement personnel have not perceived it as their duty to assist victims abroad. Whether this poses a serious problem is somewhat unclear. The legal counsel have not experienced any situations where an injured party was under threat or in need of protection during the investigation and trial. Only one of the counsel had been appointed counsel for a victim who in the end decided not to participate out of fear. All but one counsel expressed that they did not experience any need for protection for the victims they had represented.

A diametrically different picture is provided by the police. According to the police interviewee, most victims abroad are in need of protection. The interviewee confirms that the Swedish police authority is dependent on the foreign state in question to investigate any threats or other crimes directed towards a victim during a Swedish investigation, and that its own ability to help with protective measures is very limited. In some states, local law enforcement agencies are responsive, and in others, they are not; for instance when the victims are refugees in the country of residence. The Swedish police try to have a discussion with victims about how to avoid risk, reports the interviewee, for instance by not talking to media about their participation in the Swedish investigation. The same interviewee called for the possibility of anonymous victims and witnesses, unavailable under Swedish criminal law.

The level of support abroad depends on context. Counsel were generally very satisfied with the victims’ support service available in Rwanda, which included providing victims with transportation to Kigali and accommodation whilst there. In other places, legal counsel have had to assist more actively with those types of practical arrangements. Judges confirmed that the logistical planning was the main challenge involved in these trials.

Several interviewees criticised the situation that no psychological support is provided to victims in connection with the investigation and trial. This is particularly problematic for the majority of victims residing abroad, unable to access Swedish healthcare services. Several interviewees expressed concern that victims are required to participate and mentally relive traumatic experiences during examination, only to find themselves

---

103Legal counsel 2, 6, 7.
104O’Leary, ‘Redress’ Driving Forward Justice: Victims of Serious International Crimes in the EU (October 2014) 26.
105Legal counsel 4.
106Legal counsel 5.
107Police officer 1. There is an ongoing investigation concerning abuse of judicial procedure (övergrepp i rättssak) connected to the investigation concerning war crimes in Sudan, allegedly instigated by board members of the company Lundin Petroleum, see <https://www.dagensjuridik.se/nyheter/ytterligare-en-framgang-for-lundin-petroleum-i-domstol/> accessed 16 June 2021.
108Legal counsel 4, 6.
109Judge 1, 2, 3 (all).
110Legal counsel 4, police officer 1, human rights organisation representative 1.
left alone, without any form of support afterwards. The legal question is whether Sweden can be said to live up to the support required by, for example, the Victims’ Rights Directive, in relation to victims residing abroad, as the rights granted by the Directive also expressly apply to such victims. Three interviewees called for the need to establish the possibility to provide victims with Swedish or local health care in connection with the criminal procedure. One counsel suggested that a psychologist accompany the court when it goes abroad. These are measures Sweden could take to fully live up to the Directive, and other states should consider the same. The support currently available to victims travelling to Sweden should not be overestimated, either. Two counsel expressed the need for they themselves to take care of practicalities connected with their client victims’ travel to Sweden to participate in the trial, although their paid role was as legal representation only, because the state was not providing this necessary support otherwise.

6. Timely and Adequate Legal Representation

International and EU law sources establish a right to legal representation, but this right is often expressed as a more general right to a remedy, or to legal aid, assistance or guidance, and the precise requirements for such remedy, aid or representation are vague. A right to counsel is in place in Sweden since a reform in 1988, providing victims of serious crimes with the right to cost-free representation by a lawyer. This places Sweden at the forefront in international comparison. The decision to appoint injured parties legal counsel is taken by the court, typically after an application by the prosecutor. In the international crime cases, all injured parties have had legal counsel appointed to them. This means that the international legal requirement for legal representation was met in the trials, at least after the date of appointment of the counsel.

Counsel have been appointed at different stages of the investigation. In some cases, they were appointed at the same time as the defence counsel, before the suspect was arrested, and also before the first questioning of the victim. In other cases, counsel was appointed later in the investigation. One counsel was critical that the defence counsel, but not him, had been present during the first examination in one of the trials. That situation allegedly affected the victims negatively. Several legal counsel expressed that the earlier they are appointed, the better, and that over time, these appointments have been made earlier. One counsel expressed it as such:
The earlier we are appointed the greater possibilities to create good conditions [ ... ] One should always remember that the stories told by the victims are often a precondition for a guilty verdict.

There are no special qualifications under law concerning who is appointed as counsel for victims of international crimes; the same qualifications to be appointed to represent any crime victim apply. However, the characteristics of international crimes and investigations require a special commitment, and in the view of several interviewees, advocates with experience of international crime cases should be prioritised. One judge said they were looking for experienced, professional and empathetic advocates. The counsel were all in the end advocates who had extensive working experience and most had undergone education regarding victims of crime. Several counsel had been appointed in several of the international crime cases. One of the judges commented that the court strived to appoint, in every case, at least one injured party’s legal counsel with previous experience from international crimes cases.

In order for the obligation to provide legal representation to be met, the manner in which representation is carried out should also be of interest. The Victims’ Rights Directive establishes a right for victims to be accompanied by their legal representative during criminal investigations – a requirement met by current Swedish law. Once appointed, counsel have the responsibility under the Swedish law to safeguard the interests of the injured party in the case, to give support and help to the injured party and to prepare claims for damages. This means that Swedish law and practice in international crimes cases also live up to the specific requirements in international legal instruments that legal representation should be provided whenever there are claims for damages.

There are certain characteristics of international crimes cases that affect how legal counsel carry out these tasks. The majority of counsel expressed that the measures they take are very different in international crime cases, with victims residing abroad, rather than in ‘ordinary’ criminal cases. The challenges include how to get in contact with persons who do not have computers and telephones, to explain things such as why the Swedish justice system is interested in their case, and how to pay compensation to victims without bank accounts. Counsel also expressed that representation was influenced by victims’ illiteracy and unfamiliarity with travelling. There was

\[122\] See Sec. 4 Act on Injured Parties Legal Counsel (1988: 609).
\[123\] Judge 1, 2, prosecutor 1, 2, police officer 1.
\[124\] Judge 1.
\[125\] Five out of seven legal counsel had worked as advocates for approximately 30 years or more.
\[126\] Judge 2.
\[127\] Article 20; The right to be accompanied by counsel during questioning follows from Ch. 23 sec. 10 para. 5 CJP.
\[128\] Sec. 3 Act on Injured Parties Legal Counsel (1988: 609); This includes providing victims with information during the investigation and trial, but it should be mentioned that during the preliminary investigation, victims cannot require insight into all information, due to secrecy regulation (förundersökningssekretess), Ch. 18 Sec. 1, Ch. 35 Sec. 1 Public Access to Information and Secrecy Act (2009:400).
\[129\] See, for example, Rule 7(1) and (2) Council of Europe Recommendation (2006) 8 on assistance to crime victims; Article 14 Torture Convention does not state this explicitly, but the Committee against Torture has elaborated on an interpretation of the rule to this end; General Comment No. 3: Implementation of article 14 by States parties, 13 December 2012, U.N. Doc. CAT/C/GC/3, p. 7.
\[130\] Legal counsel 3, 5.
\[131\] Legal counsel 4.
\[132\] Legal counsel 3, 4.
\[133\] Ibid.
\[134\] Legal counsel 4, 6.
need for interpreters in most of the counsel’s meetings with their clients. Some interviewees expressed concern that some immigrant groups in Sweden are small and that, as a result, it may be difficult to find an interpreter who is neutral in the case.\textsuperscript{135} However, counsel overall were satisfied with how the provision of interpretation worked, both outside and within the courtroom.

Typically, counsel in these cases are appointed for a large number of victims each. One counsel confessed the difficulties in representing a large number of victims in the same trial, and that the contacts are kept low due to this state of affairs.\textsuperscript{136} Another counsel said that it was necessary to have a "budget" approach to representation, by keeping down the number of meetings (in Rwanda) with victims.\textsuperscript{137} That said, they were allowed funding for travel to the states in question, and also other costs involved in the effective representation of their clients.\textsuperscript{138}

Several legal counsel have taken measures that are not typically within their responsibility as victims’ counsel, such as accommodating transport to or from the main hearing, and explaining practical matters not related to the criminal procedure. This has been particularly the case when victims are to travel to Sweden to participate in trials – counsel may need to help victims who never have left their hometown or village with matters such as booking flight tickets and providing (winter) clothes.\textsuperscript{139} One counsel expressed that ‘these cases include a lot of pro bono work’.\textsuperscript{140}

\section*{7. Access to Reparations and Trial-related Cost Compensation}

The right to reparations is expressed in many international and regional legal instruments, but typically in vague rules, where it is uncertain how far obligations go in relation to victims of international crimes, especially when committed abroad.\textsuperscript{141} Swedish law is forthcoming in terms of a right to put forward claims for damages in international crimes cases.\textsuperscript{142} In the Swedish trials, almost all injured parties brought actions for damages.\textsuperscript{143} A reason given by one of the counsel for a victim not claiming damages was that it would not bring the victim’s siblings back.\textsuperscript{144} A large proportion of claims were approved. In one case, the defendant was acquitted by the Court of Appeal and the action for damages was therefore also dismissed.\textsuperscript{145} In two of the cases, the action for damages was dismissed for one or more of the injured parties on the ground that the accused was not convicted of the unlawful act in that part.\textsuperscript{146}

In the first genocide trial, the actions for damages were dismissed despite conviction, on the grounds that the matter should be assessed according to Rwandan law while the

\begin{thebibliography}{99}
\bibitem{135}Legal counsel 3, police officer 1.
\bibitem{136}Legal counsel 3.
\bibitem{137}Legal counsel 7.
\bibitem{138}As established in the Judgments in all cases with injured parties; FIDH and others (n 4) 98.
\bibitem{139}Legal counsel 5, 6.
\bibitem{140}Legal counsel 2.
\bibitem{141}F Holm, \textit{Justice for Victims of Atrocity Crimes: Prosecution and Reparations under International Law} (Umeå University 2017).
\bibitem{142}Damages Act (1972: 207) (\textit{skadeståndslagen}); Ch. 22 Sec. 2 CJP; Act on Injured Parties Legal Counsel.
\bibitem{143}All but one in Tabaro.
\bibitem{144}Legal counsel 2.
\bibitem{145}M.M., Appeals Court Judgment.
\bibitem{146}See Tabaro, Appeals Court Judgment and Berinkindi, District Court Judgment, p. 140, partly affirmed in the Appeals Court Judgment.
\end{thebibliography}
claim was made under Swedish law.¹⁴⁷ In the later cases relating to events in Rwanda, Rwandan law has been applied, not as an explicit choice of law on the part of the court, but in view of the fact that the choice of law was undisputed between the parties. In these cases, the injured parties presented an investigation into the content of Rwandan tort law.¹⁴⁸

In some cases, injured parties have instead based their claims on Swedish law. In these cases, the courts have based their assessments on Swedish law without any explanation as to how the choice of law was made.¹⁴⁹ Presumably conflict of laws here too was undisputed between the parties.¹⁵⁰ The judgments would have gained clarity if they expressly mentioned this. Only in three cases were damages awarded under Swedish law, and only in these cases has compensation been awarded for violation of personal integrity (kränkning).¹⁵¹

In one of these cases, the damages were reduced on the basis of the defendant’s ability to pay and were settled at low amounts, in relation to the severity of the crimes. The courts also chose not to separate the various grounds for damages (violation of personal integrity and pain and suffering).¹⁵² In another case, SEK 125,000 was awarded in damages for violation of personal integrity.¹⁵³

The consequences of applying foreign law need to be considered. On 22 August 2018, two million Rwandan francs, the amount awarded in the Berinkindi case to injured parties for the loss of a close relative,¹⁵⁴ accounted for just over SEK 20,000. For the victims residing in Rwanda, this may be a reasonable level of compensation, but if the victims had resided in Sweden, it would have been more appropriate to apply Swedish law. However, the private international law applicable at the time of the offences allowed no exceptions to the rule of lex loci delicti.¹⁵⁵ With the EU’s adoption in 2007 of the Rome II Regulation, the new main rule is instead lex loci damni.¹⁵⁶ The Regulation contains exceptions to the main rule, allowing Swedish courts, under certain conditions, to apply Swedish law in determining damages concerning offences committed abroad.¹⁵⁷ These exceptions could be relevant in international crime cases involving victims residing in Sweden, and in trials in other EU member states as well. In addition to the level of compensation, the forms of reparation may differ between states, corresponding in

¹⁴⁷ Mbanenande, District Court Judgment, and affirmed in the Appeals Court Judgment.
¹⁴⁸ Tabaro, District Court Judgment, p. 179, Tabaro, Appeals Court Judgment; Berinkindi, District Court Judgment, p. 138, Berinkindi, Appeals Court Judgment.
¹⁴⁹ See, for example, Droubi, District and Appeals Court Judgments. In Makitan the claim for damages and the assessment was made according to Swedish law with explicit reference to this being the parties’ will, Makitan, District Court Judgment, p. 81.
¹⁵⁰ According to legal counsel 4, this was the result of a deal struck between the counsel and the defence lawyer, to apply Swedish law. The counsel also expressed that it rarely is possible to strike such deals, because it is generally more beneficial for the accused to have the damages tried under the other state’s tort law.
¹⁵¹ Arklöf, District Court Judgment; Makitan, District Court Judgment; Droubi, District Court Judgment, affirmed by the Appeals Court.
¹⁵² Makitan, 8 April 2011.
¹⁵³ Droubi, District Court Judgment, affirmed by the Appeals Court.
¹⁵⁴ See, for example, Berinkindi, Appeals Court Judgment, p. 60.
¹⁵⁵ Lex loci delicti means the law of the place where the tort was committed and the rule was established by the Supreme Court in NIA 1969 p. 163.
¹⁵⁶ The law of the place where the injury occurs.
¹⁵⁷ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), Article 4.2, referring to the law of the country where both claimant and the person sustaining damage are habitually residing, and Article 4.3, referring to the law of the country most closely connected to the tort/delict.
varying degrees to the Basic Principles’ forms of reparation. This is also something that should be taken into consideration in the choice of law.

Enforcement of court decisions on damages is the responsibility of the Enforcement Authority.158 Judgments containing decisions on damages in criminal cases are automatically sent to the Authority, which in turn sends information to the victim about how to seek their assistance in enforcing the judgment. The victim him- or herself is required to seek their assistance in order for the Authority to initiate enforcement measures (such as attachment of earnings). This information is sent in case the Authority has an address to the victim, normally found on the judgment. In relation to most of the victims in international crime cases, where the address is not put on the judgment, this means victims will not receive any information.159 They are dependent on the help of their legal counsel but, as pointed out, the responsibility of legal counsel formally ends with the finalisation of the trial, and measures taken by counsel to collect any damages will not be reimbursed. Nevertheless, all counsel have taken measures pro bono to help their clients.160 This does seem to be corresponding poorly with Sweden’s obligations concerning reparations imposed by, for example, the EU Victims’ Rights Directive; it can be argued that victims should not only possess the right to make claims, but also means to enforce any judgments following such claims.

Enforcement of damages was successful in two of the Rwanda cases.161 In those cases, part of the decisions on damages was covered after assets had been sequestered during the investigation.162 As the victims did not have bank accounts, the legal counsel brought the money in person to Rwanda.163 It was the first time compensation to the genocide victims was paid from abroad and therefor the payments received a lot of attention in Rwanda.164

According to the Criminal Injuries Compensation Act, victims are able to claim compensation from the Swedish state for criminal injuries in cases where the report has not led to the perpetrator being found, where perpetrators who have been ordered to pay damages do not have the means to cover them, or the victim is unable to receive full compensation from elsewhere (typically insurance). However, criminal injuries compensation for crimes committed abroad is only paid to persons who were resident in Sweden when the crime was committed,165 which excludes this type of compensation in all cases. The injured party’s legal counsel already pointed out this shortcoming in connection with the Arklöf trial, and proposed setting up a special fund for the victims.166 Another interviewed counsel suggested that an exception to the main rule could be introduced, allowing state compensation when special reasons warrant it, such as cases of very serious crimes with a connection to Sweden.167

---

158 Kronofogden.
159 Telephone interview with Enforcement Authority lawyer, 17 June 2020.
160 Except for one counsel who had not yet represented a victim all the way to a final judgment.
161 According to legal counsel in those cases.
162 Legal counsel in those cases.
163 Ibid.
164 According to the legal counsel in one of the cases, a press conference was arranged in relation to the payments, initiated by the Rwandan Prosecutor’s Office.
165 Sec. 2 para. 2 Criminal Injuries Compensation Act (2014: 322).
166 Legal counsel 7.
167 Legal counsel 1.
Several legal counsel pointed out that it may be challenging to manage victims’ expectations in relation to compensation. As seen, most victims do not receive any damages even after a court decision in their favour.

Victims have received compensation for their costs involved in participating in the trial – such as travel costs and loss of earnings. In Swedish trials, this is normally reimbursed by the court after a victim has participated, but here, most of the counsel have made expenses for their clients. This again shows how counsel go beyond their regular duties in international crimes cases.

8. Perceptions of Victims

Aside from the practical challenges, described above, to access various rights, there are in addition challenges that have to do with the different actors’ perception of the victims and the context of the crimes. Several judges mentioned that evaluation of evidence was particularly challenging in these trials, following the complex series of events in the indictments and the unfamiliar context. As mentioned, Rwanda’s involvement in the genocide cases has been the subject of debate. The defence counsel in Berinkindi argued that such involvement affected the victims’ credibility, but the courts found the evidence to be nonetheless robust. The District Court pointed to the fact that the evidence consisted of numerous accounts provided by persons from different backgrounds and positions. With regard to this, the District Court found that it should have been nearly impossible to fabricate evidence without leaving clear traces of undue influence. A similar conclusion was drawn in Tabaro. The injured parties’ legal counsel in the cases expressed a strong belief that no such influence had been exerted on their clients, but one legal counsel also conceded that there are particular challenges involved in representing victims in a dictatorship. This counsel spent more thought on credibility and reliability (trowårdighet and tillförlitlighet) than the counsel usually does.

It is worth mentioning the discussion in one of the judgments that the credibility of the victims’ stories benefits from the fact that they have not been able to receive any criminal injuries compensation from the Swedish state. Admittedly, the analysis led to credibility being strengthened in the case, but supporting credibility on this basis seems remarkably cynical. Similar credibility discussions do not usually occur in connection with victims heard in ‘ordinary’ trials.

The actors’ perceptions regarding the victims is something that should be taken more into consideration. The risks involved in allowing perceptions of who can legitimately be perceived as a victim form the basis of Nils Christie’s famous theory on the ideal victim, also applicable to international criminal law. The ideal victim of international crimes

---

168 Legal counsel 1, 3, 6.
169 Judge 1, 2.
170 Berinkindi, District Court Judgment, p. 53; Confirmed by Appeals Court Judgment, p. 12.
171 Ibid.
172 Tabaro, District Court Judgment, pp. 146–71; Confirmed by Appeals Court Judgment, pp. 18–23.
173 Legal counsel 2, 3, 4. See also above, footnote 98.
174 Legal counsel 2.
175 M.M., District Court Judgment, p. 39.
176 See C Schwöbel-Patel, ‘The ‘Ideal’ Victim of International Criminal Law’ (2018) 29(3) The European Journal of International Law.
has been described as weak, vulnerable, dependent and subject to grotesque crimes and injuries. One of the risks a victim runs when not fitting this description is the risk of being excluded from benefits such as the right to reparations, but perhaps also exclusion from being seen as credible in the eyes of courts. Whether such perceptions have influenced the view on the credibility of victims in the trials is difficult to say, but the discussion above indicates that the victims are viewed differently than ‘ordinary’ crime victims, in terms of credibility. Such ‘suspicion’ should be discussed openly, both in order to identify the specificities of the crimes (such as the risk of state involvement) and to avoid arbitrary departures from a correct and legally certain application of the legislation concerning victims. One way to achieve this would be to introduce further education about these crimes and their victims, for all legal professionals involved.

9. Conclusions

This article shows that the rights provided in domestic Swedish legislation to victims of crime generally are being applied in cases concerning international crimes, at least after their legal counsel have been appointed. This seems to be the result of two things; first, the system’s built-in routines for providing victims with several rights; and second, the personal commitment of those involved. The interviews have not indicated that it is the result of a perception of international legal obligation concerning victims’ rights, which resonates with the attitude, according to an earlier study, of the Swedish Government towards victims’ rights in international criminal instruments.

That said, there are challenges involved in the application of the law relating to victims of international crimes in Sweden. Questions have been raised concerning which individual victims are allowed to participate in a trial in the first place, and whether decisions to close investigations are being taken in relation to those victims who are not included. This suggests that the right to review decisions to close investigations is not accessible to all victims.

The situation that most victims are living abroad may create difficulties for both public authorities and counsel; the article shows that the rights of victims may not, under at least current practice, be available for victims abroad, and rights such as to protective measures, medical and other support, may not be respected. This elevates the importance of clear information on what the Swedish actors are allowed to, and able to, assist with, but also of review by legislators, since such rights are guaranteed under existing law.

The number of victims entails that their counsel are not able to provide the same support as in ‘ordinary’ cases, which must be kept in mind in the future. The scope of the trials and level of support are also a question of budgeting, where interviews have shown that counsel take this into consideration in the support level they provide. Such findings send a message to stakeholders to take victims’ rights into consideration when decisions on budgets and the number of trials are being taken. At the end of the

---

177 Ibid.
178 Thus far, only the prosecutors (prosecutor 1) and the police have had training on issues relating to victims of international crimes. The training for the police was limited to the topics of memory and PTSD; email from war crimes unit, 23 June 2021.
179 Holm (n 4).
day it might be better to hold fewer trials that are well-executed, rather than more, in which the state’s obligations towards victims are not fully met.

The article also highlights how the absence of legislation involves a risk of arbitrary practice. This applies to the role of legal counsel in the process of enforcing damages and the compensation of expenses incurred by victims, as well as to the right to information in the first contact with authorities. The Swedish lawmaker should review this situation without delay.

The article also highlights the need for education of legal professionals, or other ways of raising awareness of different perceptions of victims of international crimes, and how such perceptions may influence legal practice.

Hopefully the challenges and pitfalls experienced in the Swedish trials can provide guidance to other states considering exercise of extraterritorial jurisdiction over international crimes. Other states should learn from mistakes made, adopt any best practices found and, above all else, not be discouraged by the challenges involved.

Data Availability Statement

The research presented in the article is based, *inter alia*, on interviews. The interview guide, as well as key codes, recordings and transcripts, are stored in the author’s computer and, after finalisation of the project, in a locked storage space, as approved by the ethics committee. The material cannot be provided open access due to considerations regarding the privacy and integrity of the participants. However, access to files may be attained, by contacting the author. Decisions to grant access will be taken on a case-by-case basis, in accordance with Swedish legislation on research ethics, transparency and secrecy.

Funding

This work was supported by the Swedish Crime Victim Fund [grant number: 3140/2018].

ORCID

Fanny Holm † http://orcid.org/0000-0002-9823-0087