



Will Victims' Rights Be Lost in Translation? Bridging the Information Gap in Universal Jurisdiction Cases

RESEARCH ARTICLE

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ABSTRACT

From the nature and rationale of universal jurisdiction trials it follows that the right to information in the form of interpretation and translation is an essential factor in strengthening the nexus between the trial and the victims and affected communities. This normative standard is enshrined in legal rights in the international, EU and ECHR dimension, which applies to victims in particular but to affected communities as well. Although Germany is a frontrunner in investigating and prosecuting international core crimes committed in Syria it leaves a gap with this normative standard. A lack of information and outreach to victims and affected communities poses a risk of their rights becoming lost in translation. It follows from the cases of Anwar Raslan & Eyad Al-Gharib, Taha al-Jumailly and Alaa M that the most pressing problems include a lack of documentation, simultaneous interpretation, Arabic interpretation, and information available to the public. To close the information gap and facilitate 'ownership of the proceedings' to those affected by heinous crimes, a shift in policy of the domestic prosecutor is required: towards a service-oriented and victim centred approach. This conclusion leads to some practical recommendations that could be adopted across many European jurisdiction.

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1. INTRODUCTION

1.1. BACKGROUND

Universal criminal jurisdiction is a powerful tool in the fight against impunity.¹ Where some states lack the will or ability to prosecute perpetrators of international crimes, other states step in to fill the gap by prosecuting these crimes themselves – regardless of whether these crimes were committed on their own territories or by their own nationals.² Performing the project of international criminal justice at national courts likewise allows states to prosecute and punish perpetrators of serious international crimes without having to resort to the costly and lengthy option of prosecution at international criminal courts and tribunals.³

Contrary to the popular belief that universal jurisdiction has been losing its traction, the practice of universal jurisdiction has been expanding, though not entirely obviously.⁴ In recent years, European states have been particularly committed to investigating and prosecuting international crimes related to Syria – a prominent example of this can be found in the prosecution of crimes committed in Syria by the German Public Prosecutor.⁵ Yet the nature of this expansion also explains why universal jurisdiction cases have gone ignored or underreported in recent years. Because these cases take place at the national court level, they are primarily being conducted and reported on in the official national language – which may create a language barrier for victims,⁶ affected communities,⁷ and other interested parties. Alongside undercutting the potential international media coverage of recent universal jurisdiction cases, language barriers present particular challenges for victims and affected communities.⁸ In the context of the recent *Koblentz* judgement, activists, lawyers, legal scholars and journalists alike have highlighted that the lack of interpretation or translation in national proceedings has made it exceedingly difficult for victims and affected communities to engage with the proceedings.⁹ These difficulties can range from victims participating in the proceedings having limited access to translated documents serving as evidence, to affected communities being unable to follow the proceedings due to a lack of reporting in other, more accessible, languages.

According to the rights to information, interpretation and translation, victims must not only be informed about their rights in order to exercise them and about the court proceedings, but this must be done in a language they can understand.¹⁰ What remains unresolved is how states should interpret and recognise these rights given the growing reach of universal jurisdiction and the importance of achieving justice for victims and affected communities. This paper argues that universal jurisdiction cases require a broader approach to victims' rights information, and particularly to the derived right to translation and interpretation.

Given the issues raised, this paper addresses the following research question: in light of the nature and rationale of universal jurisdiction cases, how should Germany recognise the right to interpretation and translation for victims and affected communities as enshrined in European (soft and hard) law in universal jurisdiction cases?

1.2. METHODOLOGY AND AIM

Our paper has the normative aim of identifying and establishing how Germany should approach the right to information (including interpretation and translation) in universal jurisdiction cases. This is particularly important given the unique situation that these cases present in terms of achieving justice for victims and affected communities that may not necessarily reside in Germany or have full command of the German language. We have chosen Germany as a case study because it is considered a frontrunner in investigating and prosecuting international crimes and it operates a strong strategy for structural investigations.¹¹ Victims enjoy a considerable number of participatory rights in Germany.¹² Additionally, German rules on universal jurisdiction are largely unrestricted.¹³ The German court has jurisdiction, regardless of the nationality or place of residence of the accused or victims. Although this is not the primary aim of the paper, studying the German model from a victims' rights perspective may help to identify any remaining challenges that are likewise relevant for other states planning to improve their approaches to universal jurisdiction cases.¹⁴

We build our normative framework in sections 2 and 3 by analysing the theoretical basis of the right to information (and in particular interpretation and translation) and its nexus with victims and affected communities in light of the aims of universal jurisdiction as well as how victims' rights are defined at the international and European levels. Section 4 proceeds with an evaluation of the universal jurisdiction cases in Germany. We identify the gap between this normative standard and the current state of universal jurisdiction cases in Germany. We address how this gap might be bridged in section 5 while also paying attention to the feasibility of our suggestions in light of current legal developments.

Our approach is legal doctrinal, supplemented with interdisciplinary research drawing from the disciplines of transitional justice and victimology.¹⁵ While opting for a purely descriptive and explanatory legal doctrinal approach would have limited our paper to a review of applicable law on victims' rights, this combined doctrinal and interdisciplinary approach allows for a consideration of the context in which universal jurisdiction cases operate and how this may give rise to a different form of victims' rights protection. This predominantly internal perspective allows us to provide suggestions for reform that follow from our legal analysis.¹⁶

The sources used in this paper mirror our methodological approach. In terms of primary sources, we use mostly legal sources, including EU and German legislation on universal jurisdiction and victims' rights, international conventions and soft law instruments, and case law from the European and German levels.¹⁷ We also draw from non-legal sources, mostly from civil society or NGOs, such as reports from NGOs. Our secondary sources are primarily articles and books or book chapters, although we also draw from blog posts and podcasts made by scholars and activists.¹⁸ Additionally, given that the German universal jurisdiction cases are fairly recent, we rely on press releases from German regional courts and civil society organisations to discuss developments.

2. UNIVERSAL JURISDICTION AND THE RIGHT TO INFORMATION FOR VICTIMS AND COMMUNITIES

2.1. INTRODUCTION

Before we investigate the legal recognition of the right to information in the context of language and interpretation rights for victims and communities in German universal jurisdiction cases, it is necessary to analyse the concept of universal jurisdiction and its objectives in relation to the position of those victimised. We do this by outlining the aims of universal jurisdiction set out in the literature as well as in national legislative processes and relating those to the theoretical basis of the right to information as enshrined in literature, case law and soft law.¹⁹ A leading aspect of this discussion is the extent to which the right to information can be attributed to the victim and affected communities.

2.2. THE EVOLUTION OF UNIVERSAL JURISDICTION

2.2.1. Origins and theory

Universal jurisdiction is one of the most controversial concepts in international criminal law.²⁰ For the purposes of this paper, we understand universal jurisdiction to be 'a legal principle allowing or requiring a state to bring criminal proceedings in respect of international crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim'.²¹ These alleged perpetrators are prosecuted under domestic law, on behalf of the international community.²²

First, we discuss the extent of establishment of the principle of universal jurisdiction in international law by means of several ongoing discussions. These help understand and illustrate the operation of the concept. Some scholars regard universal jurisdiction as a post-colonial instrument that results in the 'critical loss of policy and legal space for nations of the Global South' and in a politicisation of prosecutorial policy.²³ Opponents of this view note that the Global South has hosted several

universal jurisdiction prosecutions as well, such as the Habré prosecution in Senegal. Jeßberger also observes a boomerang effect of prosecutions of 'western' suspects in the Global South.²⁴ However, the potential for political abuse of the instrument remains an issue of attention in this regard, which in many ways is inherent to the project of international justice. Despite these controversies, the principle of universal jurisdiction is considered a recognised practice, in several countries, although its scope is still debated.²⁵

This practice finds legal grounding in treaty law and customary international law. The principle was introduced by the Geneva Conventions of 1949, which stated the obligation to prosecute grave breaches, which was followed by amongst others the Convention Against Torture of 1984, which added an extradition clause aligning itself with the principle of *aut dedere aut judicare*.²⁶ Beyond the prosecution of grave breaches such treaties have led domestic courts to assert universal jurisdiction over 'less' grave crimes such as violations of Common Article 3. When a State has not acceded to such a treaty imposing this obligation, customary international law may serve as a legal basis for the employment of universal jurisdiction. However, opinions diverge on whether States are *allowed* to invoke this jurisdictional principle or whether they are *obliged* to due to the *erga omnes* character of international crimes.²⁷ Considering the last resort characterisation of the employment of universal jurisdiction by the Sixth Committee, we can assume that the conclusion leans towards the former option.²⁸

The primary responsibility for the prosecution of international crimes lies on Nation States, if not only for the fact that prosecutions by international bodies by itself would never be up to the task of achieving justice and impunity.²⁹ States assert universal jurisdiction, where other nations fail to comply with their responsibility and as result develop significantly diverging practices.³⁰ Still, some general trends can be found.

First, the conditional approach to the exercise of universal jurisdiction has become common practice. Most States have opted for this approach which consists of domestic statutes that limit the exercise of the principle to those situations where the suspect is present on the territory of the prosecuting State rather than pursuing investigations and extradition with regards to those outside of the direct control of the State (the latter being the absolute approach).³¹ While the aims of global anti-impunity remain central to universal jurisdiction cases, its practical scope has been limited by many States opting for the 'no safe haven' approach towards universal jurisdiction, which aims at preventing criminals from finding safe exile but does not involve States pursuing suspects beyond their borders.³² In such jurisdictions resources for the investigation and prosecution of those involved in atrocity crimes are 'almost exclusively

devoted to prosecutions involving defendants who were resident, asylum seekers or people otherwise present in their territories.³³ Victims and NGOs are thus attracted to more interventionist jurisdictions that pursue a different approach that makes no such distinction as to the objects of prosecutorial activities, also referred to as the ‘global enforcer’ model.³⁴

2.2.2. Aims and goals of universal jurisdiction

The aims of universal jurisdiction prosecutions are manifold and largely overlap with the general aims of international criminal law and transitional justice. A consensus in the literature can be found stating that the primary concern of international criminal justice (of which universal jurisdiction can be considered a subset)³⁵ is the investigating, ‘charging, prosecuting, judging, and sentencing [of] individuals for their acts or omissions constituting genocide, crimes against humanity, and war crimes committed in the recent or remote past’.³⁶ This process is aimed at several (extra-)legal prerogatives which can be found in the literature and legal documents.³⁷ Here we find deterrence, human rights protection, truth-finding (both for the sake of the victims as well as the recording of history), societal reconciliation and the legitimisation of transitioning post-conflict societies.³⁸ Especially from the perspective of victims, subject to investigation in this article, the importance of truth finding may not be understated³⁹ – as also argued by the former head of the Office of the Prosecutor of the ICC, Fatou Bensouda.⁴⁰

The position of the victim is significant in the adjudication of international criminal justice. Cryer argues that bringing justice and redress to victims as such constitutes one of the objectives behind this project of international criminal justice and notes that scholars argue that a wide gap between the increased recognition of the rights of victims in international human rights law and their application in international criminal law cannot be justified.⁴¹ In practice, however, this gap often remains.⁴² A focus on the ‘recognised legal interests’ of victims and ‘the self-evident position that universal jurisdiction is most often exercised at the behest of, and in the interests of, victims’ is missing.⁴³ This is well illustrated by the fact that domestic legislation processes often pay little attention to victims in the legislative aims of universal jurisdiction.⁴⁴ In the next section we uncover the conceptual link of these objectives with the right to truth, information and translation.

2.3. THE RIGHT TO INFORMATION AND THE GOALS OF UNIVERSAL JURISDICTION CASES

Next to the retributive and deterrent objectives that dominate the field of international criminal justice, there have been calls to strengthen restorative justice principles in the international criminal justice process.⁴⁵ We submit that the stated aims of prosecutions of

international crimes are largely intertwined with the interests of the victim. To explore the extent of the realisation and recognition of these interests in the shape of the ‘hard’ right to information, we must determine how the objectives of universal jurisdiction trials feed into the rights of victims and affected communities conceptually. Our starting point is this link between the aims outlined above and the interests of the victim and affected communities,⁴⁶ at the core of which lies the right to an effective remedy.

The right to an effective remedy

In this paper we consider the right to an effective remedy as the conceptual source of language and interpretation rights.⁴⁷ We characterise this as a development of the framing of prosecutions as a victim’s right, which is associated with the rise of the right of access to justice and the right to an effective remedy, as observed by Bassiouni.⁴⁸ The right to an effective remedy has, contrary to the right to interpretation and translation, been recognised as a State obligation in international law. More significantly it is central to Megret’s conception of an international criminal justice system. In this system a hospitable society is created for the victims of egregious human rights violations.⁴⁹

It should however, be acknowledged that such developments towards more victim-oriented proceedings can occur ‘at the expense of the rights of the accused and legal certainty’.⁵⁰ And while such developments are definitely increasingly recognised in international criminal law, this approach may clash with more liberal approaches to the accused’s right to a fair trial and should at the very least be pursued with caution.⁵¹ McGonigle Leyh for example points out that increased victim participation may for instance invoke risks in relation to the right to an expeditious trial and cause issues of legal uncertainty following from vague rules on the role of the victim in the trial.⁵² This also explains our focus on a service-oriented approach as further elaborated upon below.

In Megret’s ‘hospitable society’ several rights are considered a subset of the right to an effective remedy, which are each connected to the right to truth via a different conceptual link. One of these subsets, the right to truth, can be connected to the effective remedy via several conceptual links. The conceptual line between the two – i.e. how the right to an effective remedy invokes the right to truth – depends on specific (legal) interests that are represented in the case at hand (further illustration of this conceptual model can be found in [Figure 1](#)). For example, in the context of forced disappearances, the right to an effective remedy invokes a right to truth to have the ‘uncertainty of a family member’s fate’ remedied.⁵³ Additionally, in the light of the restorative objectives of universal jurisdiction cases ‘the reparative effect of revealing the truth for victims and their families’

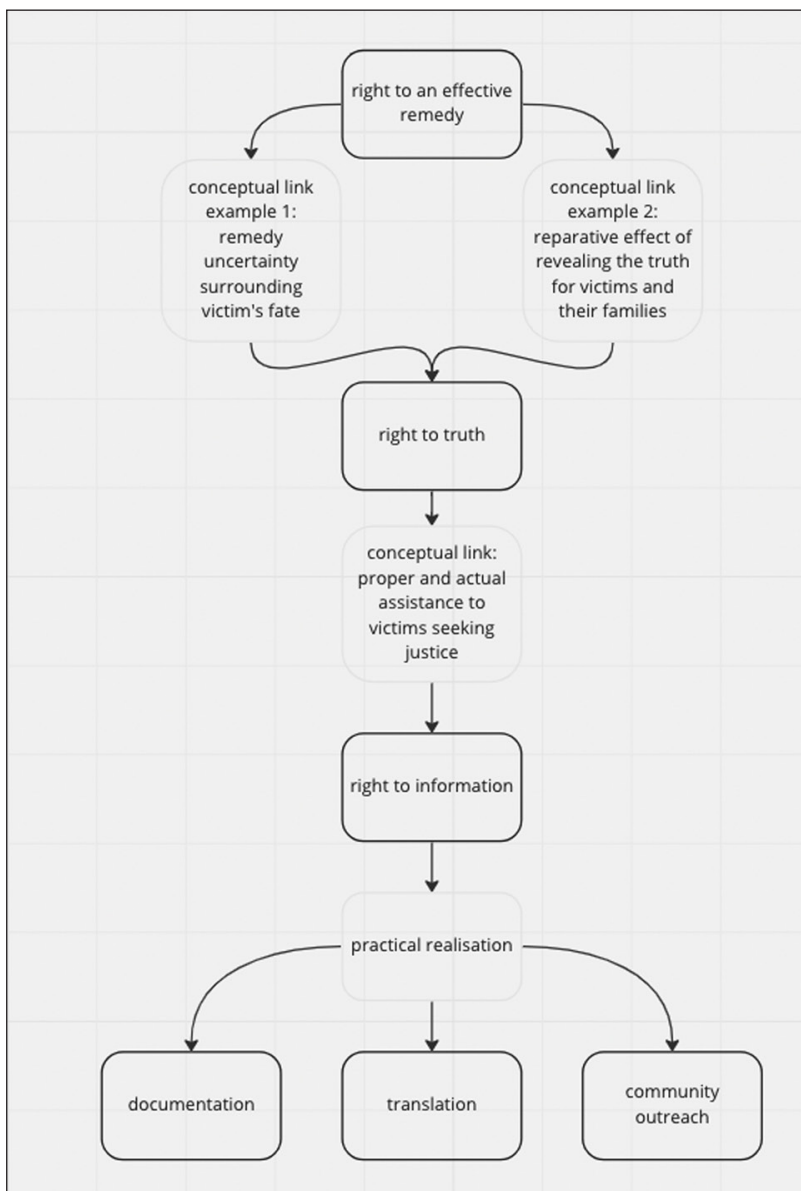


Figure 1 Conceptual model: right to an effective remedy to the right to information.

functions as the main conceptual source.⁵⁴ Essentially the link is thus functional – the connection between goal and realisation. Focusing on the reparative effect of obtaining the truth in this way gives grounding for a similar conceptual link.

The right to truth and its scope of application

It has been suggested that the right to truth extends in its application to both victims and society.⁵⁵ The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, for example, recognises that communities can suffer harm from international crimes.⁵⁶ However, the ‘objections [that] were raised to include collectives in the definition [of the notion of a victim]’⁵⁷ reflect the idea that communities are generally not considered to fulfil the victim definition.⁵⁸ Such a conclusion is required in the sense that a realistic victim policy cannot attribute entire communities the right to fully participate in the trial.⁵⁹ The use of a service-oriented

approach might offer a more realistic approach which, by aligning with the ICC strategy, focuses on outreach, education and information dissemination to affected communities.⁶⁰

The scope of potential rights bearers is in part determined by proportionality considerations, such as the ‘scale and seriousness of the human rights violations in issue’ as well as by how widespread the impunity in relation to said violations is.⁶¹ In the *El-Masri* judgement for example ‘the issue of “extraordinary rendition” attracted worldwide attention’.⁶² The significance of the case, according to the court, lies in the extension of the right to truth to ‘not only [...] the applicant and his family, but also [to] other victims of similar crimes and the general public.’⁶³ This suggests that the ECtHR has recognized that in significant cases – the significance following from the seriousness and extent of the atrocities committed – those that are part of the victimised ethnic, political, racial or social group have legitimate interests in the

information that follows from a trial or investigation. The extent to which such notions are considered established principles of law is discussed in the following chapter.

This broad scope of application recognised by the literature and ECtHR is particularly relevant for universal jurisdiction cases since they often not only concern alleged perpetrators outside of the general jurisdiction of the court but also victims outside of the reach of the court.⁶⁴ The recognition of the right to truth for the general public in this sense aligns with the broad objective of strengthening the nexus between the justice process and the victims and affected communities. Additionally, it contributes to the uncovering of structural truths that can illuminate structural patterns and drivers of conflict and tension in society, enhancing the preventive role of a criminal trial.⁶⁵

The right to information

The original conceptualisation of the right to truth in international human rights law focused mainly on the obligation to investigate human rights violations.⁶⁶ However, dimensions in relation to the dissemination of information were soon added. This resulted in the concept of the right to information as advanced by Romani as well as the right to ‘proper assistance to victims seeking access to justice’.⁶⁷ Not only does the State have an obligation to conduct the investigation but it also has the duty to make the information of the trial available to the victims and affected communities. Without the provision of adequate knowledge, the right to truth cannot be realised.⁶⁸

These conceptual links suggest that victims and affected communities must be able to understand the dissemination of this knowledge, which means that this information must be provided in a language they can understand.⁶⁹ This recentres the focus of universal jurisdiction trials as explained in section 2.2.2, giving outreach a more central role in order to close the gap between the practice and the aims of the trial, which is additionally in line with a service-oriented approach.⁷⁰

2.4. THE NEXUS BETWEEN THE CRIMINAL JUSTICE PROCESS AND THE VICTIM AND AFFECTED COMMUNITIES

The right to information has a two-fold influence on the nexus between the criminal justice process and the victim and victimised community. A universal jurisdiction trial can contribute to connecting victims and communities more significantly to the process by providing information and translation of the trial proceedings and its findings. Secondly, it also broadens the scope of outreach to affected communities, which is crucial in the light of the mass victimisation associated with international crimes.⁷¹ Without such services a gap of information will be left which prevents the inclusion of victims and affected communities in the trial.⁷² Thus we

deem universal jurisdiction trials to be more successful when the nexus between the victim and the criminal justice process is strengthened and broadened. This may be visible in the form of more documentation, phases of the trial and justice process and the investigation being translated, as well as the increased number of communities reached. Additionally, facilitating the relevant information to those victimised in a language they understand can enhance legitimacy and strengthen other aims of the process such as future cooperation of other victims⁷³ and States.⁷⁴

3. INTERNATIONAL AND EUROPEAN LAW ON VICTIMS’ RIGHTS AND THE RIGHT TO INFORMATION

3.1. THE RIGHTS TO INFORMATION, INTERPRETATION, AND TRANSLATION

The right to interpretation and translation, as derived from the right to information forms one of the most essential rights belonging to victims of crimes, despite its soft law character; for the restorative aspects of the trial to become effective, victims must receive accurate information regarding their other rights as well as the development of their respective trials.⁷⁵ Without access to this information in a language they understand, victims and affected communities risk the loss of a genuine connection to the trials. Naturally, this right accompanies other essential rights, such as the right to a fair trial, or the right to witness protection; when a State’s resources are limited, some of these rights ‘compete’ to be realised in practice, which essentially requires a balancing test. We will offer some reflections on this competition and how this balancing works out in section 3.3.

In the section that follows, we examine how the right to information and the derivative right to interpretation and translation, are understood in the following three legal dimensions: the international, European Union, and Council of Europe level. At each level, we explore the nature and scope of the existing instruments, what definitions they provide for victimhood, and how they define the scope and application of the right to interpretation and translation. Considering the focus of this paper on the German system, we analyse legal instruments that apply to Germany.⁷⁶

3.2. THE INTERNATIONAL DIMENSION

Prior to the adoption of any specific instruments on victims’ rights, the rights of victims could implicitly be read in the right to an effective remedy.⁷⁷ The first international instrument on victims’ rights was adopted by the UN General Assembly in 1985. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power describes a State’s duties in providing appropriate and sufficient means of redress for victims of crimes.

Moreover, as it is a soft law instrument, not a formally binding document, the 1985 Victims' Declaration cannot be directly enforced in domestic courts.⁷⁸

Within the 1985 Victims' Declaration victims are broadly defined as 'persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.'⁷⁹ Victims under this definition must have access to justice and must be treated fairly, in addition to access to restitution, assistance and compensation.⁸⁰ Although the Declaration does not directly address the right to interpretation and translation, it does mention that victims must be informed of 'their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information' in Principle 6.

In 2005, the General Assembly adopted another soft law instrument: the 2005 Basic Principles. The 2005 Basic Principles apply to international crimes. Its definition of victims mirrors the Victims' Declaration, changing the previously mentioned acts and omissions to those constituting 'gross violations of international human rights law, or serious violations of international humanitarian law.'⁸¹ Furthermore, the term 'victim' is extended to the victim's immediate family and dependents, as well as anyone who has suffered harm in intervening to assist victims in distress or to prevent their victimisation.⁸² The 2005 Basic Principles do not explicitly address the rights to translation or interpretation, but they reaffirm that victims must have access to relevant information concerning violations and reparation mechanisms (Principle 11) and set out soft law norms for States to ensure that this information is sufficiently disseminated among both victims and the general public (Principle 24). While the suggestion has been made that such rights may in some ways be considered subsets of legally enforceable rights, such as the right to reparations, the normative strength of this position has not been fully realised yet.⁸³ Such soft law principles, constituting part of the right to truth as described by Klinker and Davis, however, face robust international recognition.⁸⁴

Overall, victims' rights to information are firmly entrenched in international soft law instruments. The challenges lie in the extent to which these rights may be considered a state's obligations and in how they can be enforced, the latter of which is an area the EU has made great strides in, as we elaborate upon in the following section.

3.3. THE EUROPEAN DIMENSION

When it comes to victims' rights, the European Union has remained somewhat of a 'late bloomer'.⁸⁵ It was

only in 2001 that the first steps were taken towards consistency in victims' rights protection across the Member States, through the adoption of the Framework Decision (FD) on the standing of victims in criminal proceedings.⁸⁶ For international law it was a first: the sole hard law instrument designed to protect the rights of victims. Previously available legal tools such as the recommendation of the Council of Europe⁸⁷ and the resolution of the General Assembly of the United Nations⁸⁸ fall by comparison under the category of soft law. In doing so, hard law provides a stricter timeline than its counterpart, which is characterised by a more guiding nature of 'law-like promises or statements that fall short of hard law'.⁸⁹

The Framework Decision codifies binding rules at the supranational level on the standing of victims in the legal system of the Member States. In particular, it focuses on the position of cross-border victims and their specific difficulties in attaining justice. A cross-border victim is a foreign citizen that might not speak the language of the host country or understand its legal system or had to return to their country of origin before the start of the legal proceedings.⁹⁰ Consideration for the special challenges of cross-border victims has been a driver for the creation of the FD. The Decision aims to reform the criminal law of Member States to clarify the status and rights of victims.⁹¹ The Framework Decision requires Member States to provide cross-border victims with the same rights and protection as those available to domestic victims, regardless of their nationality. It stipulates that victims should be entitled to legal aid, assistance, and support, as well as the right to be informed about their rights and the progress of the proceedings.⁹² Moreover, the Decision calls for a more victim-centred approach to criminal proceedings, with the aim to ensure that victims are not retraumatized during the proceedings.⁹³ Still, some scholars argued that the FD has failed to establish minimum standards across the Union due to its vague formulae which made it difficult to assess Member State compliance.⁹⁴ While the aim of the Framework Decision was to provide a minimum standard of rights, following the Commission's own assessment, the result of its implementation was 'unsatisfactory'.⁹⁵ The Commission report concluded that Member States had not been able to enforce the Decision in a consistent manner,⁹⁶ with disparities in the levels of protection, procedural rights and support provided to victims present across the Member States.⁹⁷ Further, the report noted that the implementation of the Decision was hampered by limited resources and a lack of awareness of victims' rights among the Member States.⁹⁸ The national disparities are perhaps due to the lack of clear protection for victims' procedural rights in one of the most important human rights instruments, the European Convention on Human Rights (ECHR). While all EU Member States are bound to the Convention and therefore bound to enforce in a

similar manner the rights of suspects and defendants, by comparison fewer rights are afforded by the Convention to victims. Although Article 6(3) of the ECHR does highlight the importance of the right to interpretation in criminal proceedings,⁹⁹ it is regarded as a right enforceable by the suspects and accused individuals, rather than victims.¹⁰⁰ The jurisprudence of the European Court of Human Rights (ECtHR) has expanded the interpretation of this provision,¹⁰¹ yet despite a progressive evolution of the scope and guarantees of this right, it has still remained focused on the capacity of the offender to invoke it.¹⁰²

Awareness of these shortcomings led to soft law initiatives such as the *Stockholm Programme*, which presented an action plan concerning the treatment of victims of sex-based violence and terrorism,¹⁰³ and the *Budapest-Roadmap*, concerned with strengthening the rights of victims in the regards of criminal proceedings.¹⁰⁴ These efforts culminated in the 2012 Victims' Rights Directive the purpose of which was to 'to ensure that victims of crime received appropriate information, support and protection and are able to participate in criminal proceedings'.¹⁰⁵ Compared to the FD and Article 6(3) ECHR, the Directive is more elaborate regarding the right to information and translation, as it offers a clear definition for both and highlights the obligation to inform victims of the availability of such services.¹⁰⁶ However, the right to translation appears not to extend to the right to access restorative justice services as well.¹⁰⁷ This lacuna might impede cross-border victims, who do not understand the language of the country where the proceedings are taking place, from benefiting from their rights to the fullest. However, following the evaluation of the Victim's Rights Directive in 2021, the European Commission is considering a revision to further strengthen the existing rights, with a focus on translation and information in the context of restorative justice.¹⁰⁸ Some of these proposals include 'establishing the right to receive full information about the nature, availability and accessibility of restorative justice services' as well as victims being directly informed about the developments of their case from their respective restorative justice service.¹⁰⁹ These follow the previously discussed aims of universal jurisdiction and could help foster a stronger victims' protection regime across Member States by diminishing linguistic barriers that could prevent access to justice.¹¹⁰

Following the adoption of the Victim's Rights Directive, the EU has adopted multiple Directives to address the rights of specific victims, such as the Directive against sexual abuse and sexual exploitation of children¹¹¹ the Anti-trafficking Directive,¹¹² and the Counter-terrorism Directive¹¹³ granting rights for victims of terrorism. Despite progress, recent reports¹¹⁴ continue to show that victims across the Member States are not always able to benefit from their rights. Such difficulties come primarily from a lack of information, support, and protection

which in turn can lead to further victimisation in criminal proceedings or when claiming compensation.¹¹⁵ The EU's victim rights strategy for 2020–2025, if properly implemented, could help curb some of these shortfalls. Two of the five core aims of the strategy are to improve communication and support for victims.¹¹⁶ There are a multitude of proposals for how this can be accomplished, starting with the adding of more reliable informational resources on the e-Justice Portal,¹¹⁷ and financing more relevant EU funded projects concerning victim's access to justice,¹¹⁸ as well as creating more support services to offer advice, and psychological assistance for victims.¹¹⁹ However, more attention should be placed on the need for such information and support to be delivered in a language that is accessible to the victims or interested parties. A lack of awareness or ability to understand their own legal standing and rights can prevent victims from being able to exercise any of their rights – from accessing support services, to protection of privacy and legal aid. It is only through closing such gaps that the protection that victims can benefit from will continue to grow.

However, these legislative developments that shift the focus of criminal trials towards the restorative justice approach, may in some circumstances be to the detriment of the accused's fair trial rights.¹²⁰ To ensure that the right to a fair trial for the accused is respected, attention must be drawn to the proportionality requirements of fundamental rights limitations.¹²¹ Wijenayake argues that in the context of post-conflict situations, limitations on the right to truth should also be determined through a proportionality test akin to that which has been developed in the human rights jurisprudence.¹²² In the ECHR system this takes shape in the form of a balancing approach where either the public interest is weighed against the interests of the rights holder, or where the interests of multiple legal rights holders are weighed against each other.¹²³ The factors that play a role in this balancing exercise will differ on a case by case basis. In the context of access to records and evidence the Office of the Prosecutor of the ICC for example takes into account 'competing interests such as national security, protection of victims and witnesses or the prosecution's investigations'.¹²⁴

Service-oriented rights meet a proportionality test much easier than full participatory rights. This is in line with the necessity requirements of the balancing act with regards to competing rights – although an impact on the costs and duration of the proceedings may still be foreseeable. After all affording access to resources such as the proposed multilingual e-Justice Portal or real-time in-court translation during a trial will result in increased costs for staffing: interpreters, translation services, attached legal aid and other requirements of a restorative justice system offered in multiple languages can place financial burdens on the judiciary. Furthermore, practical and financial constraints can limit the number

of cases that are selected, which may lead to victims being ‘left out’ in their quest for justice.¹²⁵

To conclude, we have argued in this chapter that while progress has been made at the international level to ensure that victims benefit from increased protection, when it comes to the right to information, and in particular to interpretation and translation, there are fewer explicit provisions. Hard-law recognition of these rights is still developing, and the existing gap in protection is growing closer. A prime example of such developments in the current legal landscape is the EU Victims’ Rights Directive. Yet as the following sections show, such developments are not beyond criticism.

4. UNIVERSAL JURISDICTION AND THE RIGHT TO INFORMATION IN GERMANY

4.1. INTRODUCTION

In this section we zoom in on our case study: Germany. We start by setting out the German framework for universal jurisdiction and victims’ rights in section 4.2. In section 4.3, we discuss three specific Syrian universal jurisdiction cases in Germany. We evaluate these cases in section 4.4 in light of the right to information, identifying the existence of an information gap for victims and affected communities.

4.2. GERMAN FRAMEWORK FOR UNIVERSAL JURISDICTION AND VICTIMS’ RIGHTS

4.2.1. Universal jurisdiction

Germany gives substance to the ICC Rome Statute in German law with the *Völkerstrafgesetzbuch* (“VStGB”).¹²⁶ This law is meant for international crimes: genocide, crimes against humanity, war crimes and crime of aggression.¹²⁷ Section 1(1) makes clear that it applies to all criminal offences specified as “genocide, crimes against humanity and war crimes” in section 1–12 of the VStGB, regardless of the question whether the crime was committed in Germany or whether it has any relation to Germany (“universality principle”).¹²⁸

The German Code of Criminal Procedure (*Strafprozessordnung*, “StPO”) equally applies to the crimes of the VStGB. Section 152(1) authorises the *Staatsanwaltschaft* (Public Prosecution Office) to prosecute the crimes. Section 152(2) obliges him to act in all cases of sufficient factual indication of the commission of a criminal offence. Following the universality principle, the *Staatsanwaltschaft* is also authorised for prosecuting crimes when they have no link to Germany.¹²⁹ However, in the case that the accused is not resident in Germany, the *Staatsanwaltschaft* enjoys discretion according to section 153(f).¹³⁰ In those absolute universal jurisdiction cases, they may dispense with prosecuting when the accused is not resident in Germany and not expected to reside.¹³¹ Moreover, the actual trial can only start when

the accused is brought before court: to ensure a fair trial, the German Constitution requires that an accused can defend himself against the accusations brought against him.¹³²

4.2.2. Victims’ rights in criminal proceedings

Germany implemented the Victims’ Rights Directive with the *Gesetz zur Stärkung der Opferrechte im Strafverfahren* (“3. Opferrechtsreformgesetz”). With this in place, Germany is considered to award victims a considerable number of participatory rights, including a right to information.¹³³ However, these rights are not given effect “automatically”, which means victims cannot enjoy them naturally.

The StPO also prescribes the rights of the victims in proceedings started on the principle of universal jurisdiction. In Germany, these rights depend on the victim’s role in the proceedings: either as *Verletzte* or in some situations as *Nebenkläger*.

A *Verletzte* (best translated as “aggrieved person”) can report an offence to the *Staatsanwaltschaft*.¹³⁴ *Verletzte* is not defined by German law, but its meaning has to be derived from the context.¹³⁵ It is the person whose rights are violated by the crime, including a natural or legal person whose rights are indirectly violated.¹³⁶ If the *Verletzte* does not speak German, he shall be provided with the necessary assistance to be able to make the report in a language they understand.¹³⁷ Information about the victim support services is available through a website.¹³⁸ It is up to the *Staatsanwaltschaft* to decide whether there are sufficient factual indications to start proceedings. The *Verletzte* has very limited possibilities to seek review of a decision not to prosecute.¹³⁹

Once the proceedings have started, a victim can join the proceedings as *Verletzte* and make a claim for compensation against the accused.¹⁴⁰ When doing so, the *Verletzte* enjoys a couple of procedural rights (following Chapter 4 StPO). The *Verletzten* should be informed about their rights, also of the possibility to join as a *Nebenkläger*, as early as possible.¹⁴¹ They should be notified of the status of the proceedings (termination of the proceedings, the place and time of main hearing, charges against the accused and the outcome of the court proceedings).¹⁴² If the *Verletzte* does not speak German, they shall be notified in a language they understand.¹⁴³ Importantly, for the effectuation of these rights it is necessary that the victim is known as *Verletzte* to the *Staatsanwaltschaft* and the Court.¹⁴⁴

Going a step further, certain persons can join the proceedings as *Nebenkläger*.¹⁴⁵ This right is available to the aggrieved person (*Verletzte*) and their close family members in case of certain “serious” crimes, under which the international core crimes generally fall. It is the court that decides on the possibility to join as a *Nebenkläger*: the criterion is “whoever is aggrieved”.¹⁴⁶ This allocation can be requested once the proceedings have started and at every stage of the trial.¹⁴⁷ A *Nebenkläger* is a formal

party to the proceedings and has additional procedural rights that they can enjoy independently.¹⁴⁸ In light of the context of the right to interpretation and translation, a *Nebenkläger* has the right to be notified of decisions and to request an interpreter “insofar this is necessary to exercise his rights”.¹⁴⁹ A *Nebenkläger* enjoys the same rights to free interpretation and translation as an accused person, again “insofar this is necessary to exercise his rights”.¹⁵⁰

The protection of the position of the victim in criminal proceedings is regarded to be in line with the international obligations.¹⁵¹ The Victims’ Rights Directive applies to all criminal proceedings taking place in EU countries, therefore also in universal jurisdiction cases taking place before national courts.¹⁵² Germany has implemented this directive. With the *Nebenkläger* role, it allows victims of international core crimes to actively participate in the proceedings.

While this sounds promising, the effectuation of these rights depends on the classification of the victim in the proceedings. This leaves us with the question whether potential victims of international core crimes have the knowledge and adequate access to actually enjoy them.¹⁵³ Other important aspects to consider are that the German Court constitution requires court proceedings to be in German and that the courts only have to make a record that indicates the main findings but are not obliged to deliver full transcripts of the proceedings.¹⁵⁴

4.2.3. Role of the prosecutor

The exercise of victims’ rights in Germany is strongly related to the starting of investigations and eventually the proceedings. The *Staatsanwaltschaft* can open universal jurisdiction cases when they have received factual indications of core crimes committed by a person. This can be the result of a criminal complaint by a victim, NGO or third party, or of the conducted ‘monitoring process’ of the *Staatsanwaltschaft*.¹⁵⁵

The *Staatsanwaltschaft* conducts a monitoring process to gather information on potential situations of international core crimes based on mostly publicly available sources.¹⁵⁶ For these purposes, Germany has several specialised police and prosecuting units.¹⁵⁷ The *Zentralstelle für die Bekämpfung von Kriegsverbrechen* (‘ZBKV’) of the Federal Criminal Police Office is assigned with the investigations into international core crimes.¹⁵⁸ They receive a lot of information from the German migration authority (‘BAMF’) and active NGOs.¹⁵⁹

Once the *Staatsanwaltschaft* has decided that there are enough factual indications to start investigations against an identifiable suspect, the investigations will be conducted directly against him.¹⁶⁰ When there is no identifiable suspect, the *Staatsanwaltschaft* can decide to open structural investigations. This procedure is not regulated by the StPO. It allows the *Staatsanwaltschaft* to investigate organisational structures that are possibly

responsible for the core crimes and enables him to secure evidence.¹⁶¹ Structural investigations can lead to an ‘initial suspicion’ that a person has committed an international crime, which will be a reason for the *Staatsanwaltschaft* to start a trial.¹⁶²

Kaleck and Kroker have argued that these structural investigations demonstrate an approach to universal jurisdiction that is promising to combat impunity of perpetrators of international crimes.¹⁶³ While in many cases, investigations into international core crimes are pressured by the presence of a perpetrator on the territory of a State, these investigations are less susceptible to political pressure.¹⁶⁴

In the process, the *Staatsanwaltschaft* enjoys discretion in two ways. They can decide that there is not enough evidence to investigate or prosecute. There are very limited possibilities to challenge or review such a decision.¹⁶⁵ In addition, the *Staatsanwaltschaft* can decide not to prosecute when the case lacks any connection to Germany.¹⁶⁶ It has led thereto that no investigations are led when there is no chance of gathering evidence within Germany and the prosecutors would solely have to rely on the assistance of other states.¹⁶⁷

4.3. UNIVERSAL JURISDICTION CASES IN GERMANY

At the time of writing, Germany has started several criminal trials based on universal jurisdiction, many of which have been started with the help of civil society organisations.¹⁶⁸ Of these trials, those against Anwar Raslan and Eyad Al-Gharib, Taha al-Jumailly, and Alaa M have garnered much concern regarding sufficient access to the trials for victims and affected communities.

4.3.1. Anwar Raslan and Eyad Al-Gharib

The trials against Anwar Raslan and Eyad Al-Gharib, two former officials at the Syria General Intelligence Directorate, marked the beginning of the German universal jurisdiction trials on Syrian torture cases.¹⁶⁹ These cases at the Koblenz Higher Regional Court were also the first cases on torture in Syria to take place globally.¹⁷⁰ In connection to his role in the torture of over 4,000 detainees at the Branch 251 intelligence and prison unit, Anwar Raslan was charged with crimes against humanity, murder, and sexual assault.¹⁷¹ Eyad Al-Gharib, who was also stationed at Branch 251, was charged with aiding and abetting crimes against humanity.¹⁷²

The case was started following a number of criminal complaints filed in a number of European jurisdictions by the European Center for Constitutional and Human Rights (ECCHR) together with victims and other civil society actors.¹⁷³ Witness testimonies from victims played a significant role in issuing the arrest warrants for the two former officials.¹⁷⁴

The ECCHR supported 29 torture survivors during the proceedings, 14 of whom joined as *Nebenkläger*.¹⁷⁵

In accordance with German law, simultaneous Arabic-German translation was available for those participating. There was no simultaneous interpretation available for the limited public gallery, and permission to record audio of the trial to be translated at a later time was consistently refused by the Koblenz court.¹⁷⁶ In its judgement of August 18th 2020, the German Constitutional Court issued an interim order to the Koblenz court to make sure that accredited Arabic-speaking journalists have access to simultaneous German-Arabic translation.¹⁷⁷ The Constitutional Court substantiated its order stating that the Syrian population, both in Syria and in other parts of the world, had a “great need” for information on the trials.¹⁷⁸ The Koblenz court announced in early January 2022 that the Anwar Raslan verdict would be translated into Arabic following the court session, and that simultaneous interpretation during that session would be available to the audience as well as both accredited and non-accredited Arabic-speaking journalists.¹⁷⁹

4.3.2. Taha al-Jumailly

The cases against Syrian national Taha Al-Jumailly at the Frankfurt Higher Regional Court and against his wife, German national Jennifer Wenisch, at the Munich Higher Regional Court did not only concern crimes against humanity, but war crimes and genocide as well.¹⁸⁰ The couple had enslaved and abused a Yazidi woman and her 5-year-old daughter Reda; the young girl died of heatstroke after being chained to a window in direct sunlight, deprived of any food or water.¹⁸¹

Similar to the Koblenz cases, there was no simultaneous interpretation available for the public gallery. Importantly, the public gallery was already limited in the number of available seats due to the COVID-19 pandemic. Neither were audio recordings of the trial permitted. What sets the trial against Al-Jumailly apart from the Koblenz cases, however, is the presence and involvement of Reda’s mother, who joined the cases as a *Nebenkläger* and key witness. She became involved after the Yazda, a Yazidi NGO, interviewed her in order to document crimes against the Yazidi and noticed parallels between her testimony and the indictment against Al-Jumailly. Yazda then got in touch with the German prosecutors, who brought Reda’s mother to Germany under witness protection.¹⁸²

4.3.3. Alaa M.

On November 10th, 2021, the Frankfurt Higher Regional Court began its trial against former Syrian doctor and intelligence officer at Mezzeh No. 601 military hospital, Alaa M. Syrian national Alaa M. was charged with the commission of crimes against humanity, including murder and torture.¹⁸³

The main trial began in January 2022.¹⁸⁴ Citing financial reasons and the fact that the defendant has waived his right to translation, the Frankfurt Court has stated that

simultaneous interpretation will not be provided during the trial.¹⁸⁵ Trial observers were for example also not permitted to take handwritten notes by the court, falling in line with the position of other German courts that fail to recognise such proceedings as historical.¹⁸⁶

4.4. THE INFORMATION GAP IN GERMANY

Many Syrians consider the trials taking place in Germany to be a great step towards justice for victims and affected communities.¹⁸⁷ The trials have provided individual victims with the opportunity to participate directly in the proceedings, particular in the role of *Nebenkläger*. At the same time, the trials have received criticism for the limited information they have relayed to the broader victimised community.¹⁸⁸ In other words, civil society organisations as well as victims themselves consider the nexus between the criminal justice process and the victimised communities in these trials to be insufficient.¹⁸⁹

Compared to affected communities located outside of Germany, the victims participating in the trials have more access to the trials, though this access is limited since the only official court language is German. Unless a victim is participating in the trials as a *Nebenkläger*, they do not have access to simultaneous German-Arabic interpretation; even then, interpretation is limited to the necessary exercise of a *Nebenkläger*’s rights. Victims participating as witnesses also have access to interpretation insofar as that is necessary for their testimony in accordance with German law.¹⁹⁰ Otherwise, simultaneous interpretation is not available to the public gallery. This makes it difficult for Arabic-speaking victims to follow the trials.¹⁹¹

Simultaneous interpretation was made available to accredited Arabic journalists, and later to non-accredited journalists as well, during the Koblenz cases.¹⁹² This allowed journalists to follow the trials and report on the proceedings to Arabic-speakers wishing to follow them too, providing for more outreach where it was otherwise lacking. Although organisations like SJAC had already been working to provide transcripts and court reports in Arabic for each court appearance, this was the first time the German courts recognised a need for their own procedure to meet the needs of the Syrian population for information and justice.¹⁹³

However, this acknowledgement has not yet led to the German courts permitting audio recording of the trials. Unlike most international criminal trials, which are meticulously documented and translated, the German courts have refused multiple requests to record the trials, primarily for privacy reasons.¹⁹⁴ Audio recordings would have extended the reach of the trials, allowing for those unable to sit in the public gallery to follow the trial, and allowing civil society organisations more opportunities to document the trials themselves. This limited documentation of the trials may be considered a missed opportunity for justice and reconciliation.¹⁹⁵

Outreach during the investigation stage was limited too. Victims have been able to join as witnesses or as *Nebenkläger* only when they were aware of these opportunities. The ability to join the proceedings in the public gallery was extremely limited, also in part due to the circumstances surrounding COVID-19. Germany did not always play an active role in recruiting witnesses either; the NGO Yazda, focused on documenting the experiences of Yazidi survivors, was responsible for finding Reda's mother, the key witness and *Nebenkläger* in the trial against Taha al-Jumailly. Her testimony was vital in securing the conviction, and on a personal note, the trial meant a lot to her in securing justice for her child, herself, and the Yazidi community.¹⁹⁶ A single trial can be incredibly symbolic for victimised communities, even if individual members themselves did not directly suffer at the hands of the defendant on trial or were affected to a lesser extent.

Although deeper reflections on the involvement of civil society organisations are beyond the scope of this paper, it is clear that these organisations have played an important role in facilitating justice for victims. While cooperation with civil society organisations is certainly to be encouraged, the question is raised as to whether language barriers are the reason why these organisations have played such a crucial role in supporting the trials and whether German courts should have worked on outreach themselves. In this light, other aspects of the right to information offer valuable opportunities to explore.

We can thus witness that a first step has been made with respect to the right to truth and its associated translation rights, by the German court's recognition of the interest of the Syrian population in information. However, most of the burden is currently being carried by civil society. This while, as outlined in chapter 2, the German State has a clear duty to uncover structural truths in relation to serious crimes which does not only apply to *Nebenkläger* and *Verletzte* but also to victims of similar crimes and the general public.¹⁹⁷

This follows from the wide impact of the Syrian civil war, as illustrated by the 4.000 torture victims of Anwar Raslan. Particularly, it became clear in the case of Taha al-Jumailly that many members of the Yazidi ethnic group experienced similar crimes as his victims, which is signified by the classification of genocide. In line with the normative framework of section 2, this victimised community and the Syrian population should thus be given access to their right to truth, information and translation. Their interests follow from the benefit that highlighting the patterns and drivers of the immense conflict and tension in society can bring with respect to the restorative principles of international criminal justice.

We understand that there are good reasons underlying the German system of allowing certain victims' rights only to those who join the proceedings as *Verletzte* or even as *Nebenkläger*, such as the right to be informed

about decisions in a language they understand and to request interpretation. Decisions to provide interpretation and translation could be subject to proportionality considerations, such as time and costs, as discussed previously in chapter 3. However, the above discussion does show the need of the affected communities in universal jurisdiction cases to be informed about the proceedings in a language that they understand. This could be achieved relatively easily by improving the documentation of the trials. Even providing better information about the right to join as *Nebenkläger* could be an improvement. The German courts have a number of steps to take in order to overcome the information gap and strengthen the nexus between the universal jurisdiction process and those affected.

5. BRIDGING THE INFORMATION GAP

5.1. INTRODUCTION

With ongoing structural investigations and broad possibilities to assert universal jurisdiction, there is much to be encouraged about the German approach to universal jurisdiction. Yet, in section 4.4 we have been able to identify general trends that complicate the accessibility of the German universal jurisdiction cases for the victims and affected communities. This obstructs the establishment of outreach that meets the increasingly recognised principles regarding the right to information. The most pressing problems include the lack of simultaneous interpretation during court sessions, the lack of available court and media reporting in Arabic, the lack of audio documentation, and the limited information available to the general public about how to get involved with the trials.

In the following sections we aim to make recommendations and suggest improvements to bridge this information gap. These include a shift in policy in the process of investigating and prosecuting under the principle of universal jurisdiction. From this policy shift, practical changes of the current practice could follow, that, as we argue, will strengthen the victims' right to interpretation and translation.

5.2. SHIFT IN POLICY: TOWARDS A SERVICE-ORIENTED AND VICTIM CENTRED APPROACH

As explained in section 2, competing views on the role of States on the exercise of the principle of universal jurisdiction exist.¹⁹⁸ Many European countries have shifted away from perceiving themselves as a global enforcer of criminal justice and combating impunity, to safeguarding their own country's interests in ensuring they are not seen as a "safe haven" for committers of international core crimes.¹⁹⁹ Subsequently, they have limited themselves to investigate and prosecute cases with a significant connection to their territory or residents.²⁰⁰ This policy choice is largely unavoidable in

light of practical and political concerns. However, this focus on domestic interests has been paired with a lack of effort to strengthen the nexus between the universal jurisdiction process and affected communities. We identified a conceptual connection between the universal jurisdiction investigation and prosecution process and the responsibilities of States in relation to the right to truth and information.²⁰¹ Providing victims and affected communities with adequate knowledge also appears to slowly move beyond soft law to hard law. In light of these developments, we submit that a shift in policy concerning the universal jurisdiction process towards the earlier described nexus and a service-oriented approach is warranted.

This would require European jurisdictions to be aware of the role universal jurisdiction proceedings play in connecting the victims to the criminal justice process.²⁰² In this role victims and affected communities may be enabled to take ‘ownership of the proceedings’ and be given true representation during the trials. This requires providing them with the crucial information regarding the trial in a language they understand.²⁰³ These observations do not only relate to the trial phase. The use of prosecutorial discretion in Germany in universal jurisdiction cases seems to be mostly under the influence of NGO involvement and the monitoring processes of the Staatsanwaltschaft. Facilitating engagement from NGOs and representatives of affected communities cannot only be useful in this phase but also in later stages in the criminal trial.

At the same time, civil society organisations should not disproportionately bear the burden of closing the information gap. Germany also has some steps to take in that regard. For example, it was a “fortunate coincidence” that the NGO Yazda happened to interview Reda’s mother about her experiences ahead of the Al-Jumaily trial and that she became a key witness and *Nebenkläger* as a result.

5.3. PRACTICAL RECOMMENDATIONS

Following the proposed policy shift Germany has several available steps in the direction of enhancing victims’ access to truth and information.²⁰⁴ These steps reflect an extended reading of international and European standards on the principles surrounding victims’ rights. This may be extended to affected communities and the general public in addition to direct and indirect victims, together with the normative framework on assessing universal jurisdiction cases, formulated in section 2. Moreover, these recommendations may also be valuable in other European jurisdictions.

Firstly, the trials in Germany should not only be accessible to the directly participating victims, but also to the communities affected by the atrocities and ideally the general public as well. In Germany, this access must occur in the form of interpretation and court reporting

in Arabic.²⁰⁵ If resources are limited, Germany should at least extend this interpretation to Arabic journalists in all universal jurisdiction cases; though ideally all victims and members of affected communities sitting in the public gallery should have access to the trials in a language they understand. This is crucial in serving justice that is not just superficial, but justice that is truly felt by the victims.

Court reports on the trials are currently only written in the German language, with some press releases written in English. Civil society organisations like SJAC and ECCHR have stepped in to fill the gap here, providing court reports in Arabic. Courts could cooperate with these organisations to provide official court reports in Arabic. There is likewise room for cooperation in the area of outreach. Germany may generally consider adopting a different approach in victim outreach and information dissemination on the trials. Civil society organisations can play a crucial role in connecting victims to the trials, as seen in the Al-Jumaily case, but they should not bear a disproportionate burden.

As argued in section 4.4, universal jurisdiction cases have also appeared to offer limited access in terms of opportunities to participate. While there will always be a reasonable limit to the number of participants, Germany can make stronger efforts in making sure victims are aware of their right to participate as *Verletzte* or *Nebenkläger*. If seats in the public gallery are limited, Germany should consider streaming proceedings online.

Finally, Germany should be aware of the task it has embarked on in terms of serving justice to the victims and communities affected by the actions of the defendants it is prosecuting. Germany must ensure that these trials are well archived, ideally including audio or video recordings of the court sessions, so that they can be used to build a formal store of cases against torture and other international core crimes committed (by the Syrian State).²⁰⁶ Recording the trials would also improve their outreach.

These recommendations could be adopted as individual policies for universal jurisdiction cases in any European jurisdiction. However, it might also be valuable to adopt these lessons as procedural recommendations or soft law on universal jurisdiction cases, building on the Princeton Principles, at the international or European level. In summary, we argue that although Germany is a frontrunner in investigating and prosecuting international core crimes committed in Syria on the basis of the principle of universal jurisdiction, a lack of information and outreach to victims and affected communities poses the risk of their nexus to the process, particularly in the shape of their access to truth and information, becoming lost in translation.

5.4. CONCLUDING REMARKS AND POLITICAL CONCERNS

Based on the previous arguments one might wonder whether we question the achievements of the German universal jurisdiction trials. We mean the contrary. By

illustrating aspects of restorative justice that deserve more attention in the current proceedings, we underscore the significance and potential of the German trials. We encourage European States to intensify the efforts to include, as strongly as possible and as many as possible, victims and affected communities in the justice process by affording them the right to translation. Arguably, the right to information and its interpretation and translation dimensions have been largely ignored in the previous trials. This can negatively impact the judicial process, leading to reduced transparency, a lessened sentiment of justice and reconciliation for the affected community, difficulty for future historical and legal study as well as downplay the importance of universal jurisdiction trials.

We are aware of the practical concerns of our recommendations. A first point of concern that may result from affording broader access to translation is the time this might take, which can cause costly delays as well as conflict with the accused's right to a fair trial, as illustrated by the ICC's proceedings.²⁰⁷ However, our emphasis on service-related rights which does not directly impact the proceedings and thus does not impact the rights of the accused disproportionately, compensates for this concern.²⁰⁸ At the same time, providing information and translation will allow those attending the trial and victimised communities to follow the proceedings.

Additionally, potential sources for concern are found in the costs of outreach and the additional pressure the universal jurisdiction trial might place on an already overburdened judiciary.²⁰⁹ In this sense it is crucial that the burden to enforce international criminal law in domestic courts across the world or at the least in Europe is shared. These concerns require careful attention but do not stand in the way of realising the victims' rights to information.

One of the reasons why the German courts currently appear hesitant in committing to efforts to close the information gap may relate to the fear of becoming a forum State and the danger of infringing upon the powers of the executive and legislative branches by interfering in partially legal and partially political processes.²¹⁰ The strengthening of service-oriented victim rights by itself will naturally not bring about this direct result, however, such measures may be associated with a potentially larger policy shift towards more globally oriented enforcement that is not the main object of the discussion in this paper as such. While the fear of opening these 'floodgates' is understandable, – which has been realised to a certain extent in Argentina and South Africa²¹¹ – Germany, next to other EU jurisdictions, has an opportunity to show the right example. Furthermore, this process will have to take place against the background of the previously described loss of legal space for the Global South. Courts should heed further contributing to such political effects through the application of universal criminal jurisdiction.

Throughout this paper we have illustrated that future cases amongst which the Alaa M case will be of crucial importance for victims and victimised communities. Will the court recognise the interests of the victims and increase the nexus between them and the justice process? Will the court contribute to reconciliation of post-conflict societies? Or will the rights of those affected by egregious crimes remain lost in translation? The answer will be revealed as the trials unfold.

NOTES

- 1 In the following references to universal jurisdiction refer to the concept of universal criminal jurisdiction.
- 2 Wolfgang Kaleck and Andreas Schüller, 'Universal Jurisdiction Gains New Momentum' (*Forum for International Criminal and Humanitarian Law* 2019) FICHL Policy Brief Series No. 96 4.
- 3 Naomi Roht-Arriaza, 'Just a "Bubble"? Perspectives on the Enforcement of International Criminal Law by National Courts' (2013) 11 *Journal of International Criminal Justice* 537, 540–541.
- 4 Máximo Langer and Mackenzie Eason, 'The Quiet Expansion of Universal Jurisdiction' (2019) 30 *European Journal of International Law* 779, 781.
- 5 Alexander Dünkelsbühler, Alexander Suttor and Lea Borger, 'Universal Jurisdiction without Universal Outreach?' (*Völkerrechtsblog*, 13 January 2021) <<https://voelkerrechtsblog.org/universal-jurisdiction-without-universal-outreach/>> accessed 15 December 2021; Charlotte Bailey, 'Syrian War Crimes on Trial in Germany: Will Justice Be Lost in Translation?' *The New Humanitarian* (21 October 2021) <<https://www.thenewhumanitarian.org/2021/10/21/syrian-war-crimes-trial-germany-will-justice-be-lost-translation>> accessed 15 December 2021.
- 6 We understand 'victims' to refer to 'persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, either through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power, or acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. In the case of the latter acts and omissions, this definition includes the family of direct victims. See UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc A/RES/40/34 (1985) ('1985 Victims Declaration') and 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, UN Doc A/RES/60/147 (2005) ('2005 Basic Principles').
- 7 In this context of this paper, the term 'affected community' is used to refer to the victims' family, co-nationals, ethnic group or religious community whether residing in their country of birth or as a diaspora.
- 8 Langer and Eason (n 4) 781.
- 9 International Federation for Human Rights, European Center for Constitutional and Human Rights, and REDRESS, 'Breaking down Barriers: Access to Justice in Europe for Victims of International Crimes' (2020) 15 <https://www.ecchr.eu/fileadmin/Publikationen/Breaking_Down_Barriers_EN_web_FINAL_2020-11-08.pdf> accessed 8 January 2022; Bailey (n 5); Dünkelsbühler, Suttor and Borger (n 5).
- 10 International Federation for Human Rights, European Center for Constitutional and Human Rights, and REDRESS (n 9) 18.
- 11 Wolfgang Kaleck and Patrick Kroker, 'Syrian Torture Investigations in Germany and Beyond: Breathing New Life into Universal Jurisdiction in Europe?' (2018) 16 *Journal of International Criminal Justice* 165, 176. It is true that France also has a strategy of structural investigation, but the conditions these take place in limit their reach.

- 12 Alexandra Lily Kather and Silke Studzinsky, 'Will Universal Jurisdiction Advance Accountability for Sexualized and Gender-Based Crimes? A View from within on Progress and Challenges in Germany' (2021) 22 *German Law Journal* 894, 897.
- 13 Kather and Studzinsky (n 12) 895.
- 14 Patrick Kroker, 'Universal Jurisdiction in Germany: The Trial of Onesphore R. before the Higher Regional Court of Frankfurt German Practice' (2011) 54 *German Yearbook of International Law* 671, 673; Open Society Justice Initiative and TRIAL International, 'Universal Jurisdiction Law and Practice in Germany' (2019) Briefing Paper 16 <<https://www.justiceinitiative.org/uploads/0b3c66af-68e0-4fd3-a8e0-d938a6e2b43b/universal-jurisdiction-law-and-practice-germany.pdf>> accessed 8 January 2022.
- 15 Bart van Klink and Sanne Taekema, 'On the Border. Limits and Possibilities of Interdisciplinary Research' [2011] *Law and Method. Interdisciplinary Research into Law* 7, 5; Jan Vranken, 'Exciting Times for Legal Scholarship' (2012) 2 *Law and Method* 42, 42.
- 16 Sanne Taekema, 'Relative Autonomy, A Characterisation of the Discipline of Law' (*Social Science Research Network* 2010) SSRN Scholarly Paper ID 1579992 <<https://papers.ssrn.com/abstract=1579992>> accessed 26 January 2022, 10–11.
- 17 Vranken (n 15) 43.
- 18 The blog posts and podcasts are primarily used as a source for the signalling of demands from civil society and the issues experienced by those closely interacting with the universal jurisdiction proceedings.
- 19 Relevant case law has been selected on the basis of applicability to European jurisdictions.
- 20 Robert Cryer, Darryl Robinson and Sergey Vasiliev, *An Introduction to International Criminal Law and Procedure* (4th edn, Cambridge University Press 2019) 56.
- 21 Kenneth C Randall, 'Universal Jurisdiction Under International Law' (1988) 66 *Texas Law Review* 785, 785.
- 22 Howard Varney and Katarzyna Zduńczyk, 'Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes' (*International Center for Transitional Justice* 2020) 3.
- 23 Bhupinder Chimni, 'The international law of jurisdiction: A TWAIL perspective', (2022) 35 *Leiden Journal of International Law*, 29–54; see also Jessica Doumit, 'Accountability in a Time of War: Universal Jurisdiction and the Strive for Justice in Syria Notes' (2020) 52 *Georgetown Journal of International Law* 263, 274.
- 24 Florian Jeßberger, 'Universal Jurisdiction and international crimes – constraints and best practices, Briefing A (Subcommittee on Human Rights (DROI) in association with the Committee on Legal Affairs (JURI) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE)), 2018, at 9; see also Roht-Arriaza (n 3), 542.
- 25 Some dissent still remains, however. For example, Alfred Rubin, 'Actio Popularis, Jus Cogens and Offences Erga Omnes' (2001) 35 *New England Law Review* 265, 265; see also Cryer, Robinson and Vasiliev (n 20) 57. For more on the general recognition see Donald Francis Donovan and Anthea Roberts, 'The Emerging Principle of Universal Civil Jurisdiction', (2006) 100(1) *AJIL* 142, at 142.
- 26 Varney and Zduńczyk (n 22) 9–10; See also Doumit (n 23) 273; As to be observed in art. 49 Geneva Convention (GC) I, art. 50 GC II, art. 129 GCIII, art. 146 GC IV, which did not yet include the obligation to extradite. See ICJ judgement in *Belgium v Senegal*, Judgment, ICJ GL No 144, ICGJ 437 (ICJ 2012), 20th July 2012, United Nations [UN]; International Court of Justice [ICJ] paras 88 and 92 for more on the *aut dedere aut judicare* principle.
- 27 Varney and Zduńczyk (n 22) 11.
- 28 Cedric Ryngaert, 'Universal Jurisdiction and international crimes – constraints and best practices, Briefing B (Subcommittee on Human Rights (DROI) in association with the Committee on Legal Affairs (JURI) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE)), 2018, at 6.
- 29 See UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998 article 17; Stephen Macedo (ed), *The Princeton Principles of Universal Jurisdiction: Princeton Project on Universal Jurisdiction* (Princeton University, Program in Law and Public Affairs 2001) at 16, 23–24; Cryer, Robinson and Vasiliev (n 20) 69.
- 30 Germany, for example, strongly adheres to the legality principle and does not apply rules that follow from customary international law, while some other States allow judges to rely directly on international rules and principles, see Varney and Zduńczyk (n 22) 12.
- 31 Fannie Lafontaine, 'Universal Jurisdiction: The Realistic Utopia' (2012) 10 *Journal of International Criminal Justice* 1277, 1281–1283. This approach to UJ is also referred to as 'secondary UJ' or 'conditional UJ'. For examples see The Netherlands (Cedric Ryngaert, 'Opsporing en vervolging van internationale misdrijven in Nederland: Enige reflecties over de verruiming van de mogelijkheden tot opsporing en vervolging van internationale misdrijven in Nederland' (2012) 37 *NTM/NJCM-Bull* 25) and Argentina, Denmark, and Congo.
- 32 Naomi Roht-Arriaza (n 3) 542.; The UK also denies a 'global prosecutor' approach, see Amina Adanan, 'United Kingdom Policy Towards Universal Jurisdiction Since the Post-War Period' (2021) 21 *International Criminal Law Review* 1025.
- 33 Langer and Eason (n 4) 807.
- 34 Ibid; for more on the distinction between these two models see Máximo Langer, 'Universal Jurisdiction Is Not Disappearing. The Shift from "Global Enforcer" to "No Safe Haven" Universal Jurisdiction' (2015) 13 *Journal of International Criminal Justice* 245.
- 35 Cryer, Robinson and Vasiliev (n 20) 56.
- 36 Thijs Bouwknegt, 'The International Criminal Trial Record as Historical Source' in Nanci Adler, *Understanding the Age of Transitional Justice: Crimes, Courts, Commissions, and Chronicling* (Rutgers University Press) 118; this aspect of criminal justice aims is commonly referred to as 'retributive' and is thus closely intertwined with the anti-impunity norm.
- 37 The fact that these aims are considered extra-legal, would, from a purely legal perspective, delegitimise these aspects of a criminal trial. However, according to Luban it cannot be denied that these aims are part of international criminal justice and transitional justice, ensuring their legitimacy. See David Luban, 'Fairness to Rightness: Jurisdiction, Legality, and the Legitimacy of International Criminal Law' [2008] *Georgetown Public Law Research Paper*.
- 38 UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, preamble (deterrence); Tricia D Olsen, Leigh A Payne and Andrew G Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy (USIPP 2010)* 34 (truth-finding); Alexander KA Greenawalt, 'The Pluralism of International Criminal Law' (2011) 86 *Indiana Law Journal* 1063, 1103 and Lafontaine (n 31) 1302 (social reconciliation and transitional societies).
- 39 There are plenty of anecdotal examples. Two can be found here: *Long Night's Journey into Day: The Cradock Four* (2009) <<https://www.youtube.com/watch?v=Azz-F0mbWP8>> accessed 3 January 2022; VPRO; 'De Man Met de Schep' (*vpro.nl*, 12 January 2020) <<https://www.vpro.nl/programmas/in-europa/lees/verhalen/de-man-met-de-schep.html>>.
- 40 As quoted in Bouwknegt (n 36) 120. It has even led some scholars to argue that in some circumstances amnesties may be traded for full revelation of the truth about egregious crimes. Such a discussion falls far outside of the scope of this paper but for the benefit of our present research it does illustrate the significance of access to information and truth for victims, see Diba Majzub, 'Peace or Justice – Amnesties and the International Criminal Court' (2002) 3 *Melbourne Journal of International Law* 247.
- 41 Cryer, Robinson and Vasiliev (n 20) 446.
- 42 Devika Hovell, 'The Authority of Universal Jurisdiction' (2018) 29 *The European Journal of International Law* 427, 449–451.
- 43 Ibid 453.
- 44 Take for example, the Dutch legislative process before adjustments to the Law on International Crimes (*Kamerstukken II 2009/2010*, 32 475, nr. 4), where the victim's right to justice is shortly mentioned by some parties (PVV and SP), but the main focus of the questions of the parties in Parliament is the recognition of the anti-impunity and concerns around the means and efficiency of these norms. The UK also places

- this at the core of their understanding of the rationale for the existence of UJ. For example, see the Summary record of the 12th meeting of the Sixth Committee held on 15 October 2010, (10 November 2010) UN Doc. A/C.6/65/sr.12, para. 32 and Adanan (n 32).
- 45 Brianne McGonigle Leyh, *Procedural Justice? Victim Participation in International Criminal Proceedings* (Intersentia 2011) 59.
- 46 Luke Moffett, 'Meaningful and Effective? Considering Victims' Interests Through Participation at the International Criminal Court' (2015) 26 *Criminal Law Forum* 255, 255.
- 47 While this is in part a consideration of our own volition this is not a completely new interpretation of the conceptual links we describe. Bassiouni for example already indicates how aspects of the right to an effective remedy (strongly related to the right to access to justice according to McGonigle Leyh (n 45) at 100) and the right to truth are interlinked on the basis of soft law principles, see Mahmoud Cherif Bassiouni, 'International Recognition of Victims' Rights' (2006) 6 *Human Rights Law Review*, 203 at 260; and McGonigle Leyh for instance describes how the right to an effective remedy comprises several elements including the 'victim's right to seek redress, which includes [...] ascertainment of the truth'. See McGonigle Leyh (n 45) 100–101. In the following we describe how these *conceptual* starting points in our view result in the link to language and interpretation rights.
- 48 Bassiouni (n 47) 263.
- 49 Hovell (n 42) 454.
- 50 McGonigle Leyh (n 45) 127–128.
- 51 *Ibid.*
- 52 McGonigle Leyh (n 45) chapter 8.3.
- 53 Sam Szoke-Burke, 'Searching for the Right to Truth: The Impact of International Human Rights Law on National Transitional Justice Policies' (2015) 33 *Berkeley Journal of International Law* 526, 537.
- 54 *Ibid* 538; *El-Masri v. The Former Yugoslav Republic of Macedonia*, Judgment, App. No. 39630/09, Eur. Ct. H.R., concurring opinion Judges Tulkens, Spielmann, Sicilianos and Keller.
- 55 *El-Masri* (n 54) para 191.
- 56 Carlos Fernández de Casadevante Romani, 'International Law of Victims' (2010) 14 *Max Planck Yearbook of United Nations Law Online* 219, 238.; 1985 Victims Declaration (n 6). A more recent confirmation of this scope of these principles can be found in the 2005 Basic Principles (n 6). We further elaborate on the basic principles in the next chapter.
- 57 Theo van Boven, 'Victims' Rights To A Remedy And Reparation: The New United Nations Principles And Guidelines' in Carla Ferstman and Mariana Goetz (eds), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity* (Brill Nijhoff 2009) 35.
- 58 Cryer, Robinson and Vasiliev (n 20) 448.
- 59 Romani (n 56), 252; Van Boven (n 57), 34–35.
- 60 Gaele Carayon and Jonathan O'Donohue, 'The International Criminal Court's Strategies in Relation to Victims' (2017) 15 *Journal of International Criminal Justice* 567, 572.
- 61 *El-Masri* (n 54) concurring opinion, para 4.
- 62 *El-Masri* (n 54) para. 191.
- 63 *Ibid.*
- 64 By definition the crimes subject to universal jurisdiction have resulted in a crime against humankind in general as well.
- 65 Szoke-Burke (n 53) 533.
- 66 *Ibid*
- 67 Romani (n 56) 225; Bassiouni (n 47) 261–262. This also follows directly from the concurring opinion in the *El-Masri* case, where the connection between truth and right to information is considered to be directly following from each other.
- 68 Romani (n 56) 225.
- 69 *Ibid* 234; Wolfgang Kaleck, 'From Pinochet to Rumsfeld: Universal Jurisdiction in Europe 1998–2008' (2009) 30 *Michigan Journal of International Law* 927, 976; International Commission of Jurists, 'The Right to a Remedy and Reparation for Gross Human Rights Violations: A practitioners' guide' (2018) 106.
- 70 Carayon and O'Donohue (n 60) 572.
- 71 Antony Pemberton and others, 'Coherence in International Criminal Justice: A Victimological Perspective' (2015) 15 *International Criminal Law Review* 339, 349–351.
- 72 See for example Mansour Omari, 'Reflections on the Syrian Torture Trial in Koblenz' (*Amnesty International | Campaigns blog*) <<https://www.amnesty.org.uk/blogs/campaigns-blog/reflections-syrian-torture-trial-koblenz>> accessed 20 January 2022, which expresses the disconnect between the victims and the trial by a lack of translation.
- 73 Alice Bosma, Marc Groenhuijsen and Max De Vries, 'Victims' Participation Rights in the Post-Sentencing Phase: The Netherlands in Comparative Perspective' (2021) 12 *New Journal of European Criminal Law* 128, 134.
- 74 Suzan van der Aa, 'Post-Trial Victims' Rights in the EU: Do Law Enforcement Motives Still Reign Supreme?' (2015) 21 *European Law Journal* 239, 239.
- 75 For instance, the capacity to receive information pertaining to the access of legal support or receiving compensation as highlighted in Article 4 of the 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 (Victims' Right Directive) [2001] *OJ L* 315.
- 76 For instance, conventions that have been ratified by the German State or directive that have been transposed into national law; see also section 4.
- 77 Van Boven (n 57) 22.
- 78 Bassiouni (n 47) 217.
- 79 1985 Victims' Declaration (n 6) Principle 1
- 80 Yvonne McDermott, 'Victims and International Law: Remedies in the Courtroom?' (2009) 4 *Hague Justice Journal* 197, 198.
- 81 2005 Basic Principles (n 6) Principle 8.
- 82 2005 Basic Principles (n 6) Principle 8.
- 83 Yasmin Naqvi, 'The right to truth in international law: fact or fiction?' (2006) 88 *International Review of the Red Cross*, 248 and 273.
- 84 Melanie Klinker and Howard Davis, *The Right to the Truth in International Law: victims' rights in human rights and international criminal law* (Routledge 2020) 41.
- 85 Particularly when looking at the 1985 Victims Declaration (n 6) or the Council of Europe's Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure of 1985.
- 86 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings [2001] *OJ L* 082.
- 87 Council Recommendation (EC) of 28 June 1985 Recommendation No. R (85) 11 on the Position of the Victim in the Framework of Criminal Law and Procedure [1985].
- 88 1985 Victims' Declaration (n 6).
- 89 Andrew Guzman and Timothy Meyer, 'International Soft Law', (2010) 2 *Journal of Legal Analysis* 174.
- 90 Marc Groenhuijsen and Anthony Pemberton, 'The EU Framework Decision for Victims of Crime: Does Hard Law Make a Difference?' (2009) 17 *European Journal of Crime, Criminal Law and Criminal Justice* 43.
- 91 Marianne Johanna Lehmkuhl, 'The Value of Legal Provisions for an Adequate Treatment of Victims of Crime: Does the Victims' Rights Directive of the European Union Set a New Benchmark?' in Janice Joseph and Stacie Jergenson (eds), *An International Perspective on Contemporary Developments in Victimology* (Springer International Publishing 2020) 182.
- 92 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings [2001] *OJ L* 082.
- 93 *Ibid.*
- 94 Groenhuijsen and Pemberton (n 90) 43–59.
- 95 Theo Gavrielides, 'The Victims' Directive and What Victims Want From Restorative Justice'. (2015). *Victims & Offenders* 12(1) 21–42.
- 96 *Ibid.*
- 97 *Ibid.*
- 98 *Ibid.*
- 99 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 6(3).

- 100 Maciej Fingas, 'The Right to Interpretation and Translation in Criminal Proceedings – Challenges and Difficulties Stemming from the Implementation of the Directive 2010/64/EU' (2019) 9 *European Criminal Law Review* 175.
- 101 Nikolaos Vogiatzis, 'Interpreting the Right to Interpretation under Article 6(3)(e) ECHR: A Cautious Evolution in the Jurisprudence of the European Court of Human Rights?' (2021) 22 *Human Rights Law Review*.
- 102 Fingas (100) 175.
- 103 The Stockholm Programme [2010] OJ 1 115/01.
- 104 Council Resolution 2011 introducing a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings [2011] OJ C 187.
- 105 (Victims' Right Directive), Article 1.
- 106 *Ibid*, arts 3 and 4.
- 107 *Ibid*, art 12.
- 108 "Restorative Justice in the Revised Victim's Rights Directive" (*European Forum for Restorative Justice* November 25, 2022) <<https://www.euforumrj.org/en/node11/restorative-justice-revised-victims-rights-directive>> accessed January 31, 2023.
- 109 *Ibid*.
- 110 *Ibid*.
- 111 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.
- 112 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.
- 113 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (the 'Counter-terrorism Directive').
- 114 Report from the Commission to the European Parliament and the Council on the implementation of the Victims' Rights Directive, COM (2020)188 final, see: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A188%3AFIN>.
- 115 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). COM(2020) 258 final.
- 116 *Ibid*.
- 117 *Ibid*, 6–10.
- 118 *Ibid*.
- 119 *Ibid*.
- 120 McGonigle Leyh (n 45) 346.
- 121 See for instance Article 6 ECHR, Article 47 CFR, Article 10 UDHR.
- 122 Vishakha Wijenayake, 'The plurality of truth in post-conflict societies and the 'right to truth' in international law' (2018) 26 *Sri Lanka Journal of International Law* 31, 47.
- 123 Stavros Tsakyrakis, 'Proportionality: An assault on human rights?' (2009) 7(3) *International Journal of Constitutional Law* 468, 475.
- 124 The Office of The Prosecutor (ICC), Policy Paper on Victims' Participation (2010) 13.
- 125 McGonigle Leyh (n 45) 12.
- 126 *Völkerstrafgesetzbuch* (Code of Crimes against International Law, hereafter: VStGB) of 26 June 2002, *Bundesgesetzblatt* (Federal Law Gazette, hereinafter BGBl.) 2002 I, p. 2254; cf. *BTDrucksache* 14/8524.
- 127 Section 6–13 VStGB.
- 128 For the 'aggression crimes', an additional requirement applies section 1(1) that when the crime is committed abroad, the accused must be German, or the crime must be directed to Bundesrepublik Deutschland.
- 129 Thomas Beck and Christian Ritscher, 'Do Criminal Complaints Make Sense in (German) International Criminal Law?: A Prosecutor's Perspective' (2015) 13 *Journal of International Criminal Justice* 229, 232.
- 130 International Federation for Human Rights, European Center for Constitutional and Human Rights, and REDRESS (n 9) 63.
- 131 This provision attempts to balance Germany's commitment to universal jurisdiction and the limited resources for conducting investigations on foreign territory. See Mark Swatek-Evenstein, 'Julia Geneuss, Volkerrechtsverbrechen Und Verfolgungsermessen: 153f StPO Im System Volkerrechtlicher Strafrechtspflege [Crimes against International Law and the Discretion to Prosecute]' (2015) 13 *Journal of International Criminal Justice* 203. See also: *BT Drs. 14/8524* (Draft of the German government for the introduction of the Code of Crimes Against International Law) 37: "Im Einzelnen beruht § 153f StPO auf folgenden Gedanken: Grundsätzlich ist im Lichte von § 1 VStGB davon auszugehen, dass für alle Straftaten nach dem VStGB unabhängig von Tatort und Nationalität der beteiligten Personen die deutsche Justiz zuständig und die Staatsanwaltschaft nach dem Legalitätsprinzip zum Einschreiten verpflichtet ist. Da es vorrangig darum geht, die **Straflosigkeit der Täter** völkerrechtlicher Verbrechen durch internationale Solidarität bei der Strafverfolgung zu verhindern (...) Andererseits sollte **eine Überlastung der deutschen Ermittlungs Ressourcen** (...) vermieden werden." (own emphasis).
- 132 Section 103(1) Grundgesetz für die Bundesrepublik Deutschland ("GG").
- 133 Kather and Studzinsky (n 12) 895; International Federation for Human Rights, European Center for Constitutional and Human Rights, and REDRESS (n 9) 66.
- 134 Section 158 StPO.
- 135 Lutz Meyer-Goßner, *Strafprozessordnung. Beck'sche Kurz-Kommentare*, (55th edition, C.H.Beck. 2012) 1517, as referred to in: Eva Küblbeck (FRANET), 'Victim Support Services in the EU: An overview and assessment of victims' rights in practice' (Country Study Germany 2014) 22; Christopher Knauer (red.), *Münchener Kommentar zur Strafprozessordnung: StPO, Band 3/1* (2019 C.H. Beck), Comments on § 406d.
- 136 Christopher Knauer (red.), *Münchener Kommentar zur Strafprozessordnung: StPO, Band 3/1* (2019 C.H. Beck), Comments on § 406d.
- 137 Section 158(4) StPO. According to Eva Küblbeck and Beate Rudolf, 'Country Study Germany' (European Union Agency for Fundamental Rights 2014) <https://fra.europa.eu/sites/default/files/fra_uploads/country-study-victim-support-services-de.pdf> accessed 1 February 2022, section 2.8, victim support services in Germany offer translation and interpretation services in many different languages.
- 138 Küblbeck and Rudolf (n 136) 2.8, question 4.
- 139 International Federation for Human Rights, European Center for Constitutional and Human Rights, and REDRESS (n 9) 66.
- 140 Section 403 StPO. This claim resembles a civil liability action (Section 404(2) StPO).
- 141 Section 406i and 406j StPO.
- 142 Section 406d(1) StPO.
- 143 Section 406d(1) last sentence StPO.
- 144 Section 406d(1) StPO: "auf Antrag mitzuteilen" ("notify upon request"). See: Küblbeck and Rudolf (n 136) s 2.4.
- 145 Section 395(1) StPO.
- 146 Section 396(2) StPO, article 395(1) StPO.
- 147 Section 395(2) and (4) StPO. The VStGB crimes are not explicitly referred to in Section 395 StPO, but the VStGB crimes (crimes against humanity, war crime, genocide) often fall under the crimes mentioned there (murder, rape, assault etc.). Moreover, Section 395(3) StPO provides that the Verletzte can join as Nebenkläger in other cases as well, when becoming a Nebenkläger is deemed necessary to safeguard his interests "for specific reasons, in particular on account of the serious consequences of the act".
- 148 Section 397, 397a, 400–401, 406d, 406e, 406i StPO; section 187(4) *GVG*; International Federation for Human Rights, European Center for Constitutional and Human Rights, and REDRESS (n 9) 66; Open Society Justice Initiative and TRIAL International (n 14) 22; Kerstin Braun, 'Giving Victims a Voice: On the Problems of Introducing Victim Impact Statements in German Criminal Procedure' (2013) 14 *German Law Journal* 1889, 1896.
- 149 Section 397(1) StPO; Section 397(3) StPO jo. Section 187(2) *GVG*.

- 150 Section 187(4) jo. Section 187(1) GVG; Küblbeck and Rudolf (n 136) 2.6.5.
- 151 Anne-Katrin Wolf and Maja Werner, 'Victims' Rights Looking Good on Paper – How Criminal Prosecution in Germany Fails Victims of Sexual Violence' (2021) 22 *German Law Journal* 800, 804–805; European Union Agency for Fundamental Rights (ed), *Victims' Rights as Standards of Criminal Justice* (Publications Office of the European Union 2019) 9 and 37.
- 152 International Federation for Human Rights, European Center for Constitutional and Human Rights, and REDRESS (n 9) 106.
- 153 *Ibid.* 67–68.
- 154 Section 187(2) GVG and Section 271–273 StPO.
- 155 Beck and Ritscher (n 128) 232.
- 156 *Ibid.* 233.
- 157 For example, Zentralstelle für die Bekämpfung von Kriegsverbrechen ("ZBKV"); the German migration authority, the Bundesamt für Migration und Flüchtlinge ("BAMF") plays a big role here as well.
- 158 Open Society Justice Initiative and TRIAL International (n 14) 19.
- 159 Klaus Zorn, 'Die Zentralstelle Für Die Bekämpfung von Kriegsverbrechen Und Weiteren Straftaten Nach Dem Völkerstrafgesetzbuch (ZBKV)' 762, 762; International Federation for Human Rights, European Center for Constitutional and Human Rights, and REDRESS (n 9) 63; Karolina Aksamitowska, 'Digital Evidence in Domestic Core International Crimes Prosecutions: Lessons Learned from Germany, Sweden, Finland and The Netherlands' (2021) 19 *Journal of International Criminal Justice* 189, 195.
- 160 Kaleck and Kroker (n 11) 179.
- 161 Kaleck and Kroker (n 11) 179; Open Society Justice Initiative and TRIAL International (n 14) 16; International Federation for Human Rights, European Center for Constitutional and Human Rights, and REDRESS (n 9) 63.
- 162 They can even arrange the request of an arrest warrant against the suspect to ensure his presence in Germany to start a trial: Kaleck and Kroker (n 11) 180.
- 163 Kaleck and Kroker (n 11) 189.
- 164 Kaleck and Kroker (n 11) 190.
- 165 International Federation for Human Rights, European Center for Constitutional and Human Rights, and REDRESS (n 9) 67.
- 166 See section 4.2.1; section 153f StPO; International Federation for Human Rights, European Center for Constitutional and Human Rights, and REDRESS (n 9) 63.
- 167 Open Society Justice Initiative (n 14) 18.
- 168 Kaleck and Kroker (n 11) 183.
- 169 Doumit (n 23) 264.
- 170 *Ibid.*
- 171 Raslan was sentenced to life in prison on January 13th 2022 for his participation in torture-based crimes against humanity, 27 counts of murder, 25 counts of assault, and additional counts of rape and sexual assault. See 'Koblenz Court Issues Verdict in the Case of Anwar Raslan' (*Commission for International Justice and Accountability*, 13 January 2022) <<https://cijaonline.org/news/koblenz-syria-verdict-anwar-raslan>> accessed 20 January 2022.
- 172 Al-Gharib was convicted of aiding and abetting in 30 counts of crimes against humanity on February 24th, 2021 and was sentenced to four and a half years imprisonment. See 'Koblenz Court Issues Verdict in Eyad A. Case' (*Commission for International Justice and Accountability*, 24 February 2021) <<https://cijaonline.org/news/2021/2/24/koblenz-court-issues-verdict-in-eyad-a-case>> accessed 20 January 2022.
- 173 'First Criminal Trial Worldwide on Torture in Syria' (*European Center for Constitutional and Human Rights*) <<https://www.ecchr.eu/en/case/first-criminal-trial-worldwide-on-torture-in-syria-before-a-german-court/>> accessed 20 January 2022.
- 174 *Ibid.*
- 175 *Ibid.*
- 176 'A Missed Opportunity: Court Denies Recording of Closing Statements in Koblenz' (*Syria Justice & Accountability Center*, 30 September 2021) <<http://syriaaccountability.org/updates/2021/09/30/a-missed-opportunity-court-denies-recording-of-closing-statements-in-koblenz/>> accessed 20 January 2022.
- 177 Federal Constitutional Court (Bundesverfassungsgericht), 18. August 2020, BvR 1918/20.
- 178 Abstract of the Federal Constitutional Court's Order of 18 August 2020 – 1 BvR 1918/20 [CODICES] <https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/08/rk20200818_1bvr191820en.html> accessed 19 January 2022, at section II. In German: "Ein entsprechend großes Informationsbedürfnis besteht gerade in der syrischen Bevölkerung – in Syrien selbst und unter Exilanten in anderen Teilen der Welt." Syrian journalist Mansour Omari and a representative from the Syria Justice and Accountability Center (SJAC), with support from the ECCHR and the Open Society Justice Initiative, were the ones to bring this case before the Constitutional Court.
- 179 Mansour Omari, 'Koblenz Court Announced That the Verdict's Reasoning Will Be Consecutively Translated into Arabic' (*Twitter*, 1 October 2022) <<https://twitter.com/MansourOmari/status/1480550074262474753>> accessed 20 January 2022.
- 180 'Higher Regional Court Frankfurt/Main sentences Taha Al-J. to lifelong imprisonment for genocide and other criminal offences' (*Ordentliche Gerichtsbarkeit Hessen*, 30 November 2021) <<https://ordentliche-gerichtsbarkeit.hessen.de/pressemitteilungen/higher-regional-court-frankfurt-main-sentences-taha-al-j-to-lifelong-imprisonment>> accessed 20 January 2022.
- 181 Alexandra Lily Kather and Johanna Gross, 'Truly Historic: The World's First Conviction for Genocide against the Yazidi' (*Völkerrechtsblog*, 17 December 2021) <<https://voelkerrechtsblog.org/truly-historic/>> accessed 20 January 2022.
- 182 Hannah el-Hitami, 'The Yazidi Trial in Germany: How to Prove Genocide in a Single Case?' (*JusticeInfo.net*, 29 October 2020) <<https://www.justiceinfo.net/en/45808-yazidi-trial-germany-prove-genocide-single-case.html>> accessed 20 January 2022.
- 183 'Opening of the main trial for crimes against humanity' (*Ordentliche Gerichtsbarkeit Hessen*, 11 November 2021) <<https://ordentliche-gerichtsbarkeit.hessen.de/pressemitteilungen/opening-of-the-main-trial-for-crimes-against-humanity>> accessed 20 January 2022; TRIAL International, 'Universal Jurisdiction Annual Review 2021' (2021) 50 <https://trialinternational.org/wp-content/uploads/2021/04/TRIAL_International_UJAR-2021.pdf> accessed 20 January 2022.
- 184 Human Rights Watch, 'Syria: German Trial For Wartime Atrocities Opens: Role of Military Doctor in State Torture at Issue' (*Human Rights Watch* 19 January 2022) <<https://www.hrw.org/news/2022/01/19/syria-german-trial-wartime-atrocities-opens>> accessed 11 February 2023.
- 185 Drake Lucas, 'Germany Should Translate Trials on Syria into Arabic: Translation Could Engage More Syrians in European Justice Process' (*Human Rights Watch* 2022) <<https://www.hrw.org/news/2022/01/13/germany-should-translate-trials-syria-arabic>> accessed 20 January 2022; Mansour Omari, 'Frankfurt/Main Higher Regional Court Spokesperson' (8 December 2021) <<https://twitter.com/MansourOmari/status/1468531009318699018>> accessed 20 January 2022.
- 186 Patrick Kroker and Felix Lüth, 'One Year On – Remembering the Al-Khatib Syrian Torture Case and Reflecting on the Documentation of International Crimes Cases in German Courts' (*EJIL:Talk!* 12 January 2023) <<https://www.ejiltalk.org/one-year-on-remembering-the-al-khatib-syrian-torture-case-and-reflecting-on-the-documentation-of-international-crimes-cases-in-german-courts/>> accessed 19 March 2023.
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- 210 This falls in line with the shift from global prosecutor to no safe haven approaches. Due to the sensitive nature of universal jurisdiction processes with respect to the political implications and restrictive legislation, the Spanish Constitutional Court has, for example, been much more cautious in their approach compared to before 2009, amongst others with respect to the right of access to court for victims. See Nicolás Zambrana-Tévar, 'Ruling of the Spanish Constitutional Court Legitimising Restrictions on Universal Criminal Jurisdiction' (*EJIL: Talk!*, 6 February 2019) <<https://www.ejiltalk.org/ruling-of-the-spanish-constitutional-court-legitimising-restrictions-on-universal-criminal-jurisdiction/>> accessed 1 February 2022.
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COMPETING INTERESTS


The authors have no competing interests to declare.

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