

Civil Society Dialogue Network Meeting

Towards an EU Policy on Transitional Justice

Thursday, 3 April 2014

Martin's Brussels EU, Boulevard de Charlemagne 80, 1000 Brussels

The Civil Society Dialogue Network

The Civil Society Dialogue Network (CSDN) is a three-year project co-financed by the European Union (Instrument for Stability) aimed at facilitating dialogue on peacebuilding issues between civil society and EU policymakers. The CSDN contributes to strengthening international and regional capacity for conflict prevention and post-conflict co-operation (for more information www.eplo.org). It is managed by EPLO, the European Peacebuilding Liaison Office in cooperation with the EEAS and the EC.

Background

In the EU Action Plan on Human Rights and Democracy, the EU has committed to 'develop policy on transitional justice, so as to help societies to deal with the abuses of the past and fight impunity (truth and reconciliation commissions, reparations, criminal justice, link with ICC), recognising that such policy must allow for tailored approaches to specific circumstances.'¹ This commitment is timely, as the EU has been engaged in numerous transitional justice initiatives across the world for many years, yet without a policy framework to guide these interventions.

The UN Secretary General captured the essence of transitional justice as 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation'.² Transitional justice initiatives frequently happen after tumultuous change – the end of an authoritarian regime and/or violent conflict – and in situations where security, stability and democratization are far from assured. After large-scale and systemic human rights abuse, the demand for justice, vengeance, peace and economic development may be high, and can differ between various parts of the population. Those who stand to gain from the new order may seek to protect their power-bases. Some population groups that have traditionally been excluded may use the opportunity to address long-term structural violence within the society. Indeed, as articulated in the 2011 World Development Report, transitional justice mechanisms are intended to 'signal' a break with an unjust past and lay the foundations for an inclusive society making them particularly critical for furthering gender justice. In these contexts, there may be considerable tension between the objectives of transitional justice – accountability, justice and reconciliation. Transitional justice is therefore a highly political and complex endeavour.

The range of transitional justice mechanisms that may be used to achieve these objectives is dynamic and constantly evolving. Policy-makers, scholars and practitioners do not agree on the precise scope of the field, but at a minimum, according to the UN Secretary General: 'Transitional justice consists of both judicial and non-judicial mechanisms, including prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations. Whatever combination is chosen must be in conformity with international legal standards and obligations.'³

The core principles of transitional justice emerge from international human rights, humanitarian and criminal law, but there is no single blueprint in law for whether, how and when to implement transitional justice. Some countries, such as Mozambique, have decided not to address the past. In Europe, few countries have addressed the legacy of civil war, the Holocaust, World War II and totalitarian regimes in a comprehensive manner.

¹ *EU Strategic Framework and Action Plan on Human Rights and Democracy Luxembourg 25 June 2012 11855/12*. Action plan, point 27.

² *Guidance Note of the Secretary-General 'United Nations Approach to Transitional Justice'*, 2010.

³ *Ibid.*

Although the EU has no comprehensive policy on transitional justice, it has supported (financially and politically) a wide range of transitional justice initiatives. In addition to the International Criminal Court, the EU has also supported other criminal justice initiatives such as the International Criminal Tribunals for the former Yugoslavia and for Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers of the Courts of Cambodia, and the Hissène Habré trial in Senegal. It has supported truth-seeking efforts in Liberia, the Solomon Islands, Bosnia Herzegovina, the Western Balkans and Indonesia and reparations in Peru and Colombia to cite only a few examples.

The European Instrument for Democracy and Human Rights, the Instrument for Stability, the Development Cooperation Instrument and the European Development Fund have all contributed to different transitional justice initiatives. Other entities such as EU Special Representatives (EUSRs) and Common Security and Defence Policy (CSDP) missions could contribute to transitional justice. To date, the EUSRs for the Sudans and the Sahel have been mandated to support the work of the International Criminal Court and among the CSDP missions EULEX Kosovo has been mandated to contribute to war crimes investigations.

A policy framework to guide EU support to transitional justice could help to mitigate two main risks. Firstly, transitional justice is complex and contested. Without a central definition of the objectives of EU support for transitional justice, officials risk backing unsound initiatives and cannot benefit from colleagues' experience elsewhere. Secondly, practitioners and policy-makers generally agree that a holistic approach to transitional justice – where the different mechanisms reinforce each other rather than operate in isolation – is most successful. This holistic approach mirrors the comprehensive approach of EU conflict prevention and crisis management and addresses the link between transitional justice and peace. A policy that guides how the different EU instruments – long- and short-term funding and peacebuilding interventions, political demarches, CSDP and crisis management instruments and others – can assist holistic transitional justice interventions in a comprehensive manner is likely to bring considerable added value to societies attempting to come to terms with their past.

For these reasons, the Civil Society Dialogue Network will hold a meeting to support the development of a sound, comprehensive and inclusive EU transitional justice policy by bringing together experienced practitioners and policy-makers from other institutions and civil society to inform the process.

Objectives

The purpose of the meeting will be to gather input from civil society and other representatives into the development of the EU's policy on transitional justice. It will draw on a comparative analysis of the design and application of policy and guidance on transitional justice by international organisations and individual countries.

The following questions will be addressed:

- How to design and adopt a transitional justice policy?
- How to ensure effective implementation of a transitional justice policy within a complex institutional system?
- How to integrate transitional justice and other policy areas including peacebuilding, statebuilding and development?

Participants

The CSDN meeting will bring together 30 to 40 participants, including EU policy-makers and representatives from civil society with working knowledge of the EU as well as selected experts from international organisations (UN, AU, etc.) and EU Member States involved in the implementation of transitional justice policies. Registration will be limited to one representative per organisation.

Discussion paper

A discussion paper setting out preliminary thinking on the EU's policy will be prepared by the EEAS and circulated in advance of the meeting.

Agenda

8h45	Registration of participants
9h00	<p>EU and transitional justice: state of play</p> <p>Introductory remarks</p> <ul style="list-style-type: none"> • <i>Anette Mandler, EEAS</i> <p>Presentation of preliminary thinking of transitional justice policy and the drafting process:</p> <ul style="list-style-type: none"> • <i>Jana Kralova, EEAS</i> <p>Comments/reactions by:</p> <ul style="list-style-type: none"> • <i>Laura Davis, expert on transitional justice and EU policy</i> <p>The session will consist of introductory remarks which will be followed by a facilitated discussion.</p> <p>Moderator: <i>Catherine Woollard, EPLO</i></p>
10h15	Coffee Break
10h30	<p>Developing a transitional justice policy: sharing experiences</p> <p>This session draws on the experience of UN, AU and states that have policies for supporting transitional justice and dealing with the past and have gained extensive experience in this field.</p> <p>Key questions to be discussed are:</p> <ul style="list-style-type: none"> • What is the advantage of having a policy, rather than ad hoc decision making? • How can policy adapt to reflect the social, political and security realities in a country? • What should be included in a transitional justice policy in terms of scope and themes? What should be kept out of a transitional justice policy? • How can it be ensured that transitional justice is integrated in other policy areas including peacebuilding, state building and development? • How to ensure that transitional justice is gender responsive? • What do others want of the EU? <p>Comments from representatives of multilateral organisations:</p> <ul style="list-style-type: none"> • <i>Lucie Viersma, Rule of Law and Democracy Unit, UN Office of the High Commissioner for Human Rights</i> • <i>John G. Ikubaje, Department of Political Affairs, African Union Commission</i> <p>Followed by reactions from participants and facilitated discussion</p> <p>Comments from a national and civil society perspective:</p> <ul style="list-style-type: none"> • <i>Mô Bleeker, Swiss Federal Department of Foreign Affairs</i> • <i>Habib Nassar, PILnet</i> <p>Followed by reactions from participants and facilitated discussion</p> <p>Moderator: <i>Stijn Houben, EEAS</i></p>
12h30	Lunch
13h30	<p>From policy to practice: implementing support to transitional justice</p> <p>This session draws on experience from headquarters and in-country to consider the roles international and national civil society can play in shaping, participating in and monitoring implementation.</p>

	<p>Key questions to be discussed are:</p> <ul style="list-style-type: none"> • How can civil society contribute to shaping, implementation and monitoring and how can participation and involvement of societies be ensured? • How to operate in context where political will is limited? • What are the crossovers/tensions between transitional justice initiatives and other policy areas such as development assistance? • What particular efforts may be necessary to ensure the participation of marginalised groups and how can a gender orientation to and a victim-centered perspective of transitional justice be included? <p>The session will consist of short introductory remarks which will be followed by a facilitated discussion.</p> <p>Contributions:</p> <ul style="list-style-type: none"> • <i>Paul Seils, ICTJ</i> • <i>Marcus Lenzen, Conflict Adviser, DFID (in personal capacity)</i> • <i>Carola Becker, GIZ</i> <p>Moderator: <i>Marc Van Bellinghen, EEAS</i></p>
<p>15h00</p>	<p>Coffee break</p>
<p>15h30</p>	<p>Lessons from past engagement and recommendations for the EU policy</p> <p>The EU has supported numerous transitional justice initiatives around the world. This session draws on these experiences and collects suggestions and recommendations to inform the EU's policy on transitional justice.</p> <p>Key questions to be discussed are:</p> <ul style="list-style-type: none"> • How to ensure a holistic approach to transitional justice? • What was the EU's added value in different cases? Could the EU's engagement in these transitional justice endeavours have been improved? • Are there upcoming developments in the field of transitional justice with relevance for the EU policy? • How can it be ensured that the policy will be implemented and what can be learned from related policy areas (e.g. Action Plan for Human Rights) in this respect? <p>Contributions</p> <p>Overview of EU support to transitional justice in field of development assistance:</p> <ul style="list-style-type: none"> • <i>Petra Hagelstam, DG DEVCO</i> <p>Overview of latest state of play in field of transitional justice with relevance to EU policy:</p> <ul style="list-style-type: none"> • <i>Thomas Unger, External Adviser to the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and Researcher at the Antonio Cassese Initiative for Justice, Peace and Humanity</i> <p>Moderator: <i>Catherine Woollard, EPLO</i></p>
<p>17h00</p>	<p>Closing remarks: Looking ahead to an EU policy on transitional justice</p> <ul style="list-style-type: none"> • <i>Engelbert Theuermann Chair of Council Working Party on Human Rights</i>
<p>17h10</p>	<p>End of meeting</p>