



## **Civil Society Dialogue Network Policy Meeting**

### **EU support to transitional justice:**

### **A review three years after the adoption of the policy framework**

3 December 2018, Brussels

## **MEETING REPORT**

### **Introduction**

The overall aim of the meeting was to gather analysis and recommendations from civil society experts on future European Union (EU) support to Transitional Justice. The specific objectives were:

- To reflect on the first three years of implementation of the EU's policy framework on Transitional Justice and identify lessons learned;
- To gather analysis of and recommendations for EU support to victim-centred approaches;
- To gather analysis of and recommendations for EU support to accountability mechanisms in challenging contexts.

This meeting brought together over fifty transitional justice experts from the EU, EU member states, the United Nations (UN), academia and civil society. Discussions were held under the Chatham House Rule. This report includes the key points and recommendations that were expressed.

### **Key Discussion Points**

The participants were generally supportive of the EU's transitional justice policy, including for the fact that the EU had based its policy on the UN's human rights-centred transitional justice policy. Its shortcomings were also discussed, and its lack of attention to gender was identified as a key point to address in implementation. Putting the policy into practice is likely to be the greatest challenge.

Participants discussed the complexities of contemporary transitional justice processes, sharing lessons from diverse institutional and country contexts and reflecting on how to further operationalise EU's transitional justice policy. Information on recent EU developments with regard to transitional justice was also shared, including that a facility for the provision of expertise for justice in conflict and transition, funded by the Instrument contributing to Stability and Peace (IcSP), was about to be set up and that a comprehensive evaluation of EU support to transitional justice in 2014 -2018 would soon be conducted.

This summary focuses on the recommendations participants made to strengthen EU support to transitional justice, paying particular attention to the victim-centred approach and seeking accountability in challenging contexts.

## 1. Background

According to some participants, the adoption of the transitional justice policy has contributed to a steep learning curve within the EU and its delegations. Both UN and EU policies situate transitional justice firmly within the human rights framework. Most participants agreed that human rights were the basis of transitional justice, but also that they should not limit it. No arguments were raised *against* using human rights as the basis, but several participants noted that transitional justice is broader than human rights in legal, institutional, political and ethical terms.

The legal basis for transitional justice is international human rights, humanitarian law and international criminal law. Several participants emphasised that the EU's transitional justice policy has helped focus the EU's continued support to the International Criminal Court (ICC) at a moment when the court is increasingly under attack. The discussion about human rights and the ICC also made some participants caution against a narrow focus on criminal accountability, as it may sideline alternative approaches to accountability. For example, the closing of the International Criminal Tribunal for the former Yugoslavia (ICTY), argued a few participants, have left a void that could have been breached had a broader approach to truth-seeking, reparations and accountability been promoted early on.

Situating transitional justice too firmly within a human rights framework presupposes that the state is the main legal subject and institutional entity in transitional justice processes. A state-centred approach is useful to ensure a focus on institutional reforms, including governance, justice and security sector reforms, which can contribute to non-recurrence. However, a state prism can blind observers – and actors – to the dynamics of contemporary conflict or emerging issues. In many of contemporary conflicts, violations are committed by non-state actors, including jihadist groups, militias, organised criminal networks and military forces controlled by international organisations. Some participants raised concerns that combined the human rights and state prism kept emerging issues, such as accountability for climate and environmental disasters caused by multinational corporations, beyond the scope of transitional justice. Other participants noted that the state is not always the best placed actor to take transitional justice processes forward, and it is important that the EU, civil society and other actors were open to other actors and transitional justice opportunities.

One participant emphasised that transitional justice should not be mainly about law. It should be rooted locally and in ethics. As several contemporary examples show (*inter alia* efforts to include it in the peace processes in Colombia, Syria, Nepal and Afghanistan), transitional justice can be controversial and is never straightforward. It is therefore useful to be attentive to all opportunities including local mechanisms that help ensure focus on victims and communities. Transitional justice needs to be based on ethics and processes need to be creative, and not only focused on law, politics and technical aspects.

Although much of the discussion around the link between human rights and transitional justice emphasised that it is a broad and evolving area, several participants also cautioned against making transitional justice too broad. The four pillars of transitional justice – truth, justice, reparations and institutional reform – are of course intimately linked with broader agendas of rule of law and development. However, a few participants noted that it is important to 'innovate with moderation' and be 'creative within limits', not least because an ever expanding transitional justice field could lose its relevance. For example, the idea that a transitional justice approach should include a focus on corruption received limited support. While many participants agreed that large scale corruption often occurred in situations of

state failure and elite 'take over' of state structures, some argued that corruption was not necessary a violation that could be addressed in transitional justice processes without stretching the notion of transitional justice considerably, while others argue that transitional justice that fails to address corruption is unlikely to succeed in its own terms.

The meeting also discussed how transitional justice relates to the broader peacebuilding efforts. One participant pointed out that transitional justice can have a 'peacebuilding deficit' and that it is important that a human rights focus on transitional justice does not marginalise reconciliation as a component and result of processes. Other participants noted that a victim-centred, rather than a primarily state-centred, approach to reconciliation will help exclude elite- or perpetrator-centred power-sharing approaches and are more likely to include approaches aimed at increasing reconciliation between victims and perpetrators, including building victims' trust in the state.

## 2. Operationalising Victim-Centred Approaches

The victim-centred approach is the centrepiece of the EU's transitional justice policy, and all participants agreed that it should remain so. However, the discussion sought to further develop what an inclusive victim-centred approach meant for policy, programming and funding.

Several participants cautioned against 'ticking the box' kind of support to victims. Each victim group and each conflict is different, and all engagement should be based on knowledge of the history and dynamics of national (or regional and local) conflicts. It is important that conflict analyses integrate understanding of how victims and victims' groups may be used for political purposes in national and local contexts or how their experiences and interests may diverge. Several participants emphasised the importance of including a focus on victims from both urban and rural communities (not forgetting remote communities), from different socioeconomic groups and from different generations. However, one participant stressed that even if 'victims' and the organisations that seek to represent them are often as diverse as society as a whole, this should not make the EU shy away from applying a victim-centred approach. Very little in conflict and post-conflict societies is easy and straightforward, and this is also true for engagement with victims. Making sure that victims are integrated and can make their voices heard will contribute to better transitional justice processes and most likely to more sustainable peace.

Several participants noted that although there is no lack of reference to women victims, they – both in general and as part of specific victim groups – often have limited possibilities to participate in transitional justice processes. Much more effort is needed to engage with women victims, and to ensure that the mechanisms adequately take into account and address their experiences and needs, and that women play full roles in designing and governing transitional justice mechanisms.

It was noted that the EU and the international community have limited understanding of the consequences of conflict-related sexual violence and how to deal responsibly with such violations in transitional justice processes. This may take a very long time: some women are only now stepping forward and speaking about the sexual violence that they suffered during the conflict in the Balkans; they can do it now because their parents have died and their children have grown up.

A gender perspective on transitional justice should not be limited to questions of participation and conflict-related sexual violence; it is about understanding that men and women victims,

and victims from different communities, can have contradictory experiences of conflict and of violations during conflict. It is about recognising and analysing violations suffered by women and girls, boys and men.

### 3. Accountability in Challenging Contexts

Many of the discussions during the day came to focus on the changing political climate in Europe and across the globe. Transitional justice is about the past and for the future, but this also means that past violations and unaddressed grievances from past conflicts can be the breeding ground for future conflicts. Consequently, participants underlined in several discussions that accountability and transitional justice is a perspective that may be just as important for early warning and prevention as it is for post-conflict reconstruction and recovery.

The challenge going forward for the EU policy is to ensure that the policy is implemented and, as was raised by several participants, that a transitional justice lens is used on emerging issues. Global politics have radically changed since the policy was adopted, and conflict cycles are difficult to break. It was emphasised by several participants that transitional justice is an evolving field, and it is important to support and allow creativity when seeking to support avenues for justice across contemporary transitions and conflict zones.

One of the issues that several participants raised with a sense of urgency was the shrinking space for civil society and independent media, and the situation of human rights defenders. The EU is one of the main international actors that politically and financially supports civil society and human rights defenders in particular. While this support is important in all situations, several participants noted that it was especially important in conflict-affected and post-conflict societies, as well as in societies going through political transitions.

## **Recommendations**

Recommendations made by the participants focused on how to further develop the policy without redrafting or amending it, and how to operationalise it more effectively.

In order to strengthen its support to transitional justice, the EU should continue to:

- Ensure that the EU's transitional justice policy is aligned with and in support of the UN's human rights-centred transitional justice approach and that it integrates a gender-sensitive approach;
- Develop and advocate for the EU's principled approach to peace agreements, i.e., to ensure that human rights and transitional justice are part of peace agreements;
- Support the ICC in general and also in specific country contexts where the ICC's involvement is challenged and complicated;
- Build on its own history and wealth of experience relevant to transitional justice. This includes recognising the dangers of rising nationalism and the political movement in some Member States to whitewash their role in the Holocaust;
- Financially support transitional justice initiatives, including but not limited to those run by the UN, both in-country and at the multilateral level, and use the EU's political and financial leverage to demand that UN initiatives are more inclusive and complement and support national and local initiatives.

In order to further operationalise EU support to transitional justice, in Brussels and especially in EU delegations, the EU should:

- Integrate a gender-inclusive transitional justice perspective into its conflict analysis, recognising that conflicts may erupt where previous grievances and violations have not been addressed. EU delegations already play an important role in this regard;
- Provide operational guidance for how the policy can be implemented in regional and country contexts, focusing equally on the EU's role as a political actor and as a major donor in the transitional justice field. EU delegations should be encouraged to take a regional approach to transitional justice when relevant;
- Ensure political, technical and economic support to transitional justice mechanisms throughout their life cycle;
- Invest in awareness raising and capacity building for EU staff in Brussels and in delegations on transitional justice;
- Strengthen/operationalise an EU network of transitional justice experts and focal points across EU institutions and delegations, making sure that the transitional justice experts and focal points liaise with human rights and gender focal points;
- Make sure that the EU budget includes earmarked funding for transitional justice, civil society and for victim-centred programming, and seek to ensure possibilities for small and flexible grants for victim-centred engagements;
- Include references to transitional justice in the next Multiannual Financial Framework (MFF) 2021-2027;
- Ensure that EU support to transitional justice takes into account the commitments of the EU Strategic Approach to Women, Peace and Security (2018).

In relation to new multilateral mechanisms aimed at addressing accountability in difficult contexts, the EU should:

- Continue to support UN commissions or other multilateral inquiries into violations of international humanitarian and human rights law, including through help ensure that the findings of these inquiries are also taken into account by the UN Security Council;
- Lead the way in supporting creative approaches by mechanisms to improve the chances of accountability (e.g. the International Impartial and Independent Mechanism (IIIM) in Syria), and guard against self-limiting by other mechanisms (e.g. Iraq). To do so, the EU will need to be able to assess mechanisms' approaches against robust conflict and context analysis that integrates gender analysis in a given situation;
- Tie the establishment of such mechanisms to specific objectives in a given conflict (not only to the general principle of accountability);
- Encourage such mechanism to be more inclusive and creative with the interpretation of their mandates, and mainstream gender better;
- Further develop the EU's understanding of alternative accountability mechanisms that can be supported, but that are not limited to criminal accountability.

In order to ensure that EU support to transitional justice contributes to long-term peacebuilding objectives, the EU should:

- Reflect on its experiences of supporting transitional justice in complex conflict situations (e.g. Afghanistan, Iraq, Rwanda, Syria and Tunisia), including over the long term (e.g. Western Balkans);
- Evaluate past experience to maximise integrating gender analysis from all stages, from conflict analysis to design and implementation of transitional justice mechanisms and approaches.

To ensure that victim-centred approaches are at the heart of all EU's support to transitional justice the EU should:

- Further develop the victim-centred approach as the centrepiece of the transitional justice policy, recognising that victims are seldom a homogenous group but include different women, men, boys and girls who will have differing experiences and needs, and that mechanisms for fact-finding, consultation, political messaging, programming, including funding, monitoring and evaluation need to take the diversity into account;
- Seek to mention victims and victim-centred approaches in political statements;
- Help ensure that victims' groups are able to have their voices heard in international, regional and national forums;
- Invest in reaching out beyond capitals and urban centres in their national and local engagement and support for victims, which requires addressing the security and economic conditions for victims to participate;
- Invest in gathering information (e.g. through research, surveys, etc.) on what victims understand as justice, as well as on their feelings about the processes put in place. Recognise that engaging with victims at any levels will and should be allowed to take time;
- Invest in 'organic capacity building', i.g. through exchanges between groups of victims.

In order to ensure overall policy coherence between the EU's transitional justice policy and other EU policies, the EU should:

- Most importantly, clarify the relationship between the transitional justice policy and the EU Global Strategy (EUGS), making sure that the principled pragmatism (as per the EUGS) remains principled and based on international law;
- Place transitional justice and more particularly accountability mechanisms within the EU's broader commitment to rule of law (justice and security sector reform);
- Strengthen the relationship between the transitional justice policy, the EU's Strategic Approach to Women, Peace and Security and the Gender Action Plan;
- Consider developing operational guidance that indicates what may be possible and desirable in different conflict situations;
- Make sure that the EU's commitment to upholding human rights, and human rights defenders, as well as peace and peace activists is integrated with its transitional justice policy, bearing in mind that women human rights defenders and peace builders have different needs and experiences than their male counterparts.

In order to liaise with and make the most of its relation with civil society, the EU should:

- Communicate clearly how it works on transitional justice at the multilateral and national levels, in order to make sure that civil society can constructively engage and provide support;
- Seek to integrate inclusive civil society representatives into its network of transitional justice experts and focal points, or in other ways make use of civil society expertise in this network.

In order to support the EU's transitional justice policy, civil society organisations should:

- Support the EU on conflict analysis, as civil society often has different presence and access. Excellent conflict analysis integrates gender analysis and is the starting point of all engagements in conflict situations, and this demands a focus on victims and past and present crimes;
- Share its expertise on consultations, mapping and qualitative and quantitative surveys with the EU, especially focusing on victim-centred approaches.
- Share its expertise on monitoring and evaluation processes with the EU, in particular on the definition of relevant indicators.

**The Civil Society Dialogue Network**

The Civil Society Dialogue Network (CSDN) is a mechanism for dialogue between civil society and EU policy-makers on issues related to peace and conflict. It is co-financed by the European Union (Instrument contributing to Stability and Peace). It is managed by the European Peacebuilding Liaison Office (EPLO), a civil society network, in co-operation with the European Commission (EC) and the European External Action Service (EEAS). The third phase of the CSDN will last from 2017 to 2020. For more information, please visit the [EPLO website](#).