

15th EU-NGO Human Rights Forum - Brussels - December 5-6, 2013

Conclusions on “The Fight against Impunity”

The EU-NGO Human Rights Forum is an annual event that aims to address key policy issues that form part of the [EU Strategic Framework on Human Rights](#). In 2013, under the broad theme of accountability, one of the two thematic strands focused on the “Fight against Impunity for International Crimes/Gross Human Rights Violations”. The different sessions for this thematic strand were designed to feed into three key policy areas and their inter-relationship with national and regional policies:

- a forthcoming EU policy on transitional justice, due to be drafted and adopted in 2014;
- the implementation of a 2013 [EU Toolkit on Complementarity](#) (‘Toolkit for bridging the gap between international and national justice’) and the National Prosecution of Serious Crimes; and
- the assessment and stocktaking of the current [EU Policy on the International Criminal Court \(ICC\)](#).

In assessing current developments and future priorities, the Forum placed an emphasis, through the following conclusions and recommendations¹, on three overarching issues:

The necessity for a multidimensional and interrelated approach

Addressing widespread impunity requires a multidimensional and interrelated approach, crossing many areas of policy making and including a diversity of tools (national criminal litigation, regional human rights litigation, extraterritorial approaches, involvement of the ICC, strategies of naming and shaming, collaboration, documentation of human rights violations, access to archives, and empowerment of victims).

Justice processes should not be understood as having an exclusive focus on prosecuting and punishing the perpetrators. Justice is also about recognising the dignity of victims, including through reparations as well as non-compensatory measures.

The practice of transitional justice is premised on a broad range of different measures, and attention to their timing and sequencing. Every transition is unique and requires a specific set of approaches adapted to any given context. Transitions to stable democracy and peace are long term processes, and it is important to recognize that the search for justice is not linear and will suffer setbacks and regressions.

Recommendations to the European Union and its Member States:

- *Mainstream the fight against impunity across EU policies.* Increased efforts are needed to mainstream the fight against impunity and accountability across EU policies in relationship to partner states and regions, particularly in the areas of rule of law, peace building, security and development but also in relation to trade and other policies. More effort is also needed to integrate the fight against impunity into conflict analysis, including, to assess impunity as a proximate and structural cause of conflict.
- *Provide concrete assistance in key areas backed by political dialogue.* The EU and its member states should increase provision of concrete assistance in a number of areas key to the fight against impunity, whether through support to national authorities for institutional

¹ These conclusions and recommendations are based on the concluding session and summaries provided by Ms L. Muthoni Wanyeki (School of Oriental and African Studies, University of London) and Ms Lotta Leicht (Human Rights Watch) at the Forum and the Rapporteur’s conclusions provided in writing by Muthoni Wanyeki.

reforms or through support to civil society. Areas identified in discussions include: victims and witness protection and support (through national systems, the ICC, and gap-filling); reparations (including support to development of national reparations programs and to the ICC's Trust Fund for Victims); and documentation (including civil society efforts and national or international commissions of inquiry). These assistance efforts need to be backed up by strong and systematic political dialogue to overcome challenges to effective implementation.

- *Ensure long-term policy planning and implementation.* EU and member state planning and policy development should take into account the long-term nature of efforts to combat entrenched impunity and the need for comprehensive approaches.
- *Take advantage of windows of opportunity.* At the same time, however, the EU and its member states should be prepared to take advantage of windows of opportunity for accountability as they arise, and therefore be in a position to support civil society demands for justice in a timely manner, particularly in periods of transition.

A major challenge in the fight against impunity is the lack of political will

Key obstacles in the fight against impunity include: the lack of political will, that is, the willingness on the part of national authorities to permit the independent, impartial, and effective operation of justice mechanisms as well as, necessary reforms, and the avoidance by national authorities of the political manipulation of perceived tensions between peace and justice.

The key role of civil society in building political will was noted, alongside the related importance of supporting the development of a robust and diverse civil society with the capacity to engage in research, monitoring and political dialogue that might form the building blocks needed to seed political will.

Recommendations to the European Union and its Member States:

- *Restate EU commitment to the fight against impunity at the highest political and institutional level.* The EU and its member states should seek out opportunities to clearly restate commitment to the fight against impunity and recognise the importance of implementing the right to justice as an important goal, regardless of its utility to other interests. The EU and its member states should seek to support victims and survivors and increase pressure on those who commit human rights abuses and violate international humanitarian law. The EU needs to formulate strategies based both on consultation and collaboration and on confronting government policies where necessary.
- *Enhance consistent political dialogue recognising the integral nature of justice to sustainable peace and development.* Political dialogue should foreground the fight against impunity, including support to national and regional processes as well as the ICC, and resist manipulation of tensions between justice and other interests that only serve to undermine the former. The Foreign Affairs Council should organise an annual public debate on human rights and the fight against impunity to give publicity to issues.
- *Ensure consistency in EU support for justice.* A core concern in the fight against impunity rests in the equal application of the law; international partners, including the EU and its member states, should be consistent in their support for justice across all political contexts, including in pressing for the universality and integrity of the Rome Statute of the ICC.
- *Foster state institutions.* International partners, including the EU and its member states, should invest, and help build, existing mechanisms. The principle of complementarity

remains paramount to national ownership, as well as being essential for the effective functioning of the ICC. Consequently, EU support to institutional reforms across the entire criminal justice chain—from investigations to prosecutions to the trial—is central. Support must go beyond capacity building and maintain a focus on coordination mechanisms, accountability, including through oversight and vetting processes, and efforts to address corruption.

Victims and civil society are central

The human rights community and survivors/victims' communities have been central in achievements towards ending impunity. Efforts to achieve justice often place human rights defenders in situations of risk and extract a high psychosocial toll, and there is need for international partners, including the EU and its member states, to take on a greater share of this burden. Victims should not be forced to defend the “utility” of justice, but rather it should be recognised as a right in and of itself.

Recommendations to the European Union and its Member States:

- *Prioritise and support voices of civil society, victims and survivors.* The EU and its member states should include, and leverage, the voices of civil society and victims and survivors at the country level in political dialogues with partner states and (regional) organisations. The EU should make it non-negotiable that when engaging in dialogue on rule of law, justice and human rights in partner countries that they will *always engage civil society* as well, in order to ensure that dialogue with partner countries is informed by the experiences and inputs of civil society and victims and survivors. This should go hand-in-hand with consistent and stable financial and political support to civil society and victims and survivors' associations considering their key role in fighting impunity, including via EU delegations and member state representation at the country level. Efforts should also be made to find creative solutions to support that might be outside the standard framework, for example to diaspora communities, peace missions or punctual trial monitoring.
- *Ensure transparency and local ownership at the country-level.* This is of particular relevance to the upcoming development of an EU transitional justice policy, where wide consultation should be foreseen, including with member states, EU delegations and national civil society given their key role in designing and implementing programming at the country level.
- *Support robust outreach programs.* Robust outreach should be part of accountability processes, including at the ICC to bring justice closer to victims and affected communities. ICC states parties should be willing to ensure sufficient resources for the ICC to be able to implement robust programs of outreach.
- *Support among ICC states parties for enhancing access of victims.* Victims' participation before the ICC risks being increasingly emptied of real meaning. ICC states parties should support the access of victims to their participation rights and related procedural rights including tendering of evidence, including through ensuring sufficient resources for the court.
- *Support reparation programs.* Reparation programs are primarily the responsibility of states, but can be supported concretely by international partners, including the EU and its member states. While moral vindication, including recognition of crimes, is critical, reparation programs also need to address livelihoods and include marginalised communities; reparations must be accompanied by a transformation of underlying political and social factors that led to the violation happening in the first place.