

CONCLUSIONS AND RECOMMENDATIONS FROM THE NGO WORKSHOP HELD ON THE MARGINS OF UKRAINE ACCOUNTABILITY CONFERENCE ON 13 JULY 2022

On 13 July 2022, Ukrainian NGOs, members of Ukraine 5AM and Tribunal for Putin coalitions, with the support of the Ministry of Foreign Affairs of the Netherlands, the International Criminal Court Office of the Prosecutor and the European Commission, held a workshop for organisations of civil society discussing challenges and opportunities in accountability processes for Ukraine. The workshop took place on the margins of [Ukraine Accountability Conference](#) in the Hague on 14 July. It was joined by 40 international and regional civil society organisations for the first two sessions and final session was attended by Minister of Foreign Affairs Wopke Hoekstra, Prosecutor of the International Criminal Court Karim Khan, as well as representatives of the UN Team of Experts on Rule of Law and Sexual Violence in Conflict, Eurojust/EU Genocide Network, the European Union Advisory Mission (EUAM), and the European Commission's Directorate General for Justice and Consumers (DG JUST). The event was organised with the support and held at The Hague Humanity Hub. The outcome of the workshop was a set of recommendations developed by the civil society organisations premised on the shared common aim of ensuring the highest quality justice for victims of serious international crimes in this conflict, and around the globe. [The recommendations were presented](#) to the states and international organisations represented at the Ukraine Accountability Conference the next day.


During the workshop the NGOs revisited the meaning and interpretation of "justice", explored the existing gaps in the approach to justice and accountability in Ukraine, examined lessons learned pertaining to the identified issues from other situations such as Libya, Georgia, Palestine, Myanmar, Timor-Leste, Venezuela, Syria, Afghanistan, and the Central African Republic, among others. Participants also discussed the possible solutions and the role of the International Criminal Court, other international initiatives and the role of NGOs in shaping the legal landscape so that we collectively can ensure the highest quality of justice and accountability is achieved for all the victims of this and other armed conflicts.


Contrary to the popular narrative, the war in Ukraine did not start on 24 February 2022. It started in February 2014, when the Russian Federation illegally annexed and occupied Crimea followed by the armed hostilities in eastern Ukraine. Throughout all these years Ukrainian and international NGOs have been documenting alleged grave crimes, worked on building capacity of the domestic authorities to prosecute them effectively, advocated for necessary changes to the legislative framework and ratification of the Rome Statute by Ukraine. Yet Ukraine's failure to prioritise justice effectively resulted in the severe deterioration of the situation since the full-scale invasion by the Russian Federation. Many gaps that had existed in the legal system prior to the full-scale invasion on 24 February 2022 continue to exist at the domestic as well as international level. They put the entire justice project in Ukraine in great jeopardy.


Lack of effective legislative and institutional framework, lack of professional knowledge and expertise among investigators, prosecutors and judges, ongoing reform of the judicial system of Ukraine – all point to lack of capacity. Lack of political will by Ukrainian authorities, but also their partners, to effectively solve these existing problems, to ensure independence, impartiality, and integrity of the investigations also remains an issue of great concern. The latest data shows that only 2% of Ukrainian people trust Ukrainian courts, which highlights the long-standing problem of overall trust and confidence in the domestic legal system. Moreover, there is confusion and lack of clarity as to the many international initiatives, their respective roles, the results they are expected to yield and how they complement and inform each other. Some of these coordination issues have been identified in other situations such as Syria, Myanmar and Bangladesh, Darfur, Palestine and others.


The situation which Ukrainian people found themselves in since February 2022 shocked almost the entire world whose response was steadfast and unequivocal. We have already seen many initiatives from different states and organisations, many of them aimed at supporting Ukraine's domestic authorities, others supporting the International Criminal Court: from several groups advising the Office of the Prosecutor General of Ukraine, to establishing joint investigative teams or opening structural investigations in many states. And while it is commendable that justice and accountability following so many situations of armed conflict in the world is finally at the forefront of the collective efforts, six months later questions as to their effectiveness still remain and doubts continue to rise.


To that end the fundamental questions the NGOs tried to also reflect on during the workshop were:


 What kind of justice do we envisage for Ukraine and for other situations: real, based on international legal standards of due process or fanciful, based on cutting corners and political gains?

 Due process is the bedrock of any accountability related initiatives. Political gains, cutting corners, rushing towards justice, no longer makes it real Justice;

 Are we willing to sacrifice some of the quality to achieve and demonstrate quantity?

 We owe it to those who have been bearing the brunt of this or any other war to ensure that they get the best quality of justice;

 Whose interests and whose values is justice supposed to serve and what are they?

 For us the only possible options are victims, survivors, people and their dignity, respect, truth, compassion, humanity;



Finally, is the existing architecture of justice for Ukraine capable of ensuring justice for the victims of this war?



The simple answer to the latter is NO. Therefore, the overall conclusion is that strategic changes to the existing approach are needed.

To this end the NGOs made the following recommendations:

1

Ensure that Ukraine ratifies the founding document of the ICC, the Rome Statute as a matter of priority as a testament of the commitment to justice and accountability, and aligns its legislation with international law to ensure effectiveness of the investigations of grave crimes.

2

Initiate establishment of a hybrid (mixed international-national) mechanism for Ukraine to ensure continuous building of the capacity of national authorities, effective implementation of the principle of complementarity of the ICC and coordination of different initiatives, transparency and impartiality of the investigations, prosecutions and trials.

3

Ensure effective cooperation with and engagement of NGOs in developing any further initiatives pertaining to justice and accountability given our long-standing expertise in national contexts, with the ICC and other international mechanisms, as well as direct connection with and trust from the victims and affected communities.

4

Ensure integrity, independence, impartiality and transparency of the ICC by refraining from political statements that suggest a one-sided approach to investigations and providing sustainable funding to the court through its regular budget to guard prosecutorial and judicial independence to make tough decisions;

5

Based on continuous evaluation of lessons learnt, boost global efforts aimed at ensuring justice and accountability at domestic and international levels, including before the ICC, so as to avoid any perception of a two-tier global accountability system in which some victims are more deserving than others.

6

Search for effective solutions should be based on the collective commitment and responsibility of states due to the far-reaching consequences of the armed conflicts for the entire world; they should be strategic, based on long-term political commitment, national system justice needs; with a detailed level of coordination with other meaningful initiatives so that the overall effect yielded is tangible for the victims of armed conflicts.

In order to advance our common aim for justice, and to grapple with the reality, these recommendations will help formulate a strategic change to the current approach. Not only will these changes serve justice in Ukraine, but can set down markers to adopt effective approaches in other situations as well.