



**Report**

**EU Member States annual meeting on UNSCR 1325**

**Transitional justice and gender: reducing impunity**

**Brussels, 27 May 2013**

This seminar was part of the European External Action Service efforts to boost the implementation of EU commitments in respect of women, peace and security, as spelled out in the 2008 **'Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security'**. The objective of the seminar was to address impunity reduction and activities in support of women's participation in gender-sensitive transitional justice processes, to present and discuss examples from field level and to provide a platform for exchange of information and best practices.

**Transitional Justice** is the full range of responses to systematic or widespread violations of human rights. Europe's own past demonstrates that addressing a legacy of abuse by ensuring accountability for those responsible and recognising the victims' experience contributes to peace, democracy and the rule of law. Through prosecution initiatives, allowing victims and societies to know the truth about violations, providing reparation for victims, preventing repetition by reforming public institutions, and increasing civic trust in public institutions, transitional justice contributes to implementing European Union commitments to peace, security, development, the rule of law, ending impunity, and respect for fundamental human rights.

The EU does not yet have a Transitional Justice policy of its own. In cooperation with EU Member States and the European Commission, via the EU Strategic Framework and Action Plan on Human Rights and Democracy, a policy is in the process of being developed with a deadline of 2014. The feedback from this meeting will give valuable in-put to the EU's future policy.

Key note speaker: Ms Zainab Hawa Bangura, UN Special Representative of the Secretary-General (SRSG) on Sexual Violence in Conflict.

Ms Bangura has made the fight against impunity her primary priority. No peace agreement should give amnesty for conflict-related sexual violence. When national systems are unable or unwilling to act, the ICC must be supported and funded to function as a last resort.

Ms Bangura has witnessed first-hand the impact of atrocities of sexual violence during her visits to the Democratic Republic of the Congo and Somalia. Victims include young girls and babies just a few months old. The impact on the lives of women can be profound; raped women are often abandoned by their

husbands and the same faith meets children born as a result of rape. At the Panzi Hospital in Bukavu, DRC, 10% of the children are born as a result of rape.

Transitional justice has become a key element in the effective implementation of the women, peace and security agenda. By giving victims access to justice, a voice and a stake in building respect for law and a culture of human rights, they can thereby help establish peace in their countries.

The following three transitional justice mechanisms, in particular, need to become more gender sensitive and implemented with a strong gender perspective in the fight against crimes of conflict-related sexual violence:

**1. To end impunity.**

If the problem of impunity is to be addressed the perpetrators must be **brought to justice**. Our capacity must be increased but also that of national governments to investigate and prosecute violations. Too often it is the victims and survivors who pay for the crime. Worse still, they are often ostracized from their communities. Sexual violence is used as a weapon of war because it is cheap, effective and readily available.

**2. Reparation programmes that provide support for survivors.**

Justice means punishment for the perpetrators but also **redress for the survivors**. Women need help to overcome the physical and psychological trauma of being raped. Survivors need livelihood support to pick up the pieces but also access to health care, social services and legal support. They must be given help to reintegrate into society under reparations programmes and receive official recognition as victims of war.

**3. Truth and Reconciliation Commissions (TRCs) as seen in various post-conflict countries.**

These Commissions can contribute to justice through investigative work, provision of reports, recommendations and by acknowledging war crimes including sexual violence. Victims have a **right to the truth** in order to bring closure. Historically, transitional justice has been inaccessible to victims.

The majority of past TRCs have failed to address sexual violence even when it was widespread in their respective countries. For example, both the TRC in El Salvador and in Guatemala only mentioned a few incidences of gender-based violence despite the prevalence of conflict-related sexual violence throughout both civil wars.

In the past, female survivors have been reluctant to be part of the processes relying on public disclosure and dialogue. Moreover, given female genocide survivors' particular vulnerable social positions (as widows, heads of households with few material resources), they are more likely not to disclose sexual and gender based crimes.

Transitional justice models have tremendous capacity to make women's voices heard. If women make the horror of sexual violence public, they become agents rather than victims of sexual violence.

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Ms Bangura is very proud of what Sierra Leone, with the support of the United Nations, has been able to achieve through the **Special Court for Sierra Leone**. It provides an excellent example of how the goals and objectives of Security Council Resolution 1325 can be put into practice. The Special Court has delivered ground-breaking jurisprudence on sexual violence crimes. It confirms that rape and other forms of sexual violence will be condemned as a war crime and that every resource of the international community will be used to find and persecute perpetrators.

The Special Court for Sierra Leone is proof of what can be achieved through strong political will, the appropriate expertise, the right tools and national ownership. Transitional justice cannot be imposed from the outside and all levels need to be involved, local, national and international, if sexual violence in conflict is to be ended.

The creation of Ms Bangura's office, **the Office of the Special Representative to the Secretary-General on Sexual Violence in Conflict**, and the **Team of Experts on Sexual Violence in Conflict**, as well as the work of UN networks such as **UN Action on Sexual Violence in Conflict**, uniting 13 UN bodies, can help empower and bring justice to women in post-conflict societies, and specifically in the justice systems being rebuilt in these societies.

For example, the Team of Experts work with states to strengthen their capacity by assisting with draft legislation criminalizing conflict-related sexual violence or by providing expertise to help states improve their investigative and prosecutorial capabilities. Both types of assistance contribute to holding perpetrators of sexual violence accountable in national courts.

The Team of Experts brings together experts from UNDP, DPKO, OHCHR, with a senior team leader located in Ms Bangura's office. The Team will also rely on experts from UK Foreign Secretary William Hague's Initiative on the Prevention of Sexual Violence and Justice Rapid Response.

The work of the international criminal justice system, including the work of the Special Court, has contributed to encouraging the **participation of survivors of sexual violence** in investigations and prosecutions. Prosecutions can only succeed if victims have confidence in the judicial system in charge of prosecuting the accused, and feel they will be protected if they participate in the proceedings. Many States still lack witness protection systems, and sexual violence survivors are terrified to testify in open court against offenders for fear of reprisals against them or their families.

Other **barriers also exist**, in some countries, for example, women are forced to pay the equivalent of \$100 for a medical certificate to certify they have been raped. In another country, a victim is required to pay for the food and incarceration costs of her attacker while they are in jail awaiting trial. Sometimes there are fees and court costs that must be borne by the accuser and a lack of resources prevents them from pursuing a case.

Governments must also end impunity for its personnel who commit this crime in times of war as well as ex-combatants who are often integrated into national armies and police forces as a condition of peace accords. These ex-combatants must be vetted to ensure that no one who committed human rights

abuses during war is allowed to wear a government uniform, thereby rewarding them for having violated international law.

**“Mental disarmament”** should also be treated as a key component of the disarmament, demobilization, and reintegration processes by post-conflict governments. The mentalities of soldiers and ex-combatants must change; for example the assumption that rape is part of the spoils of war. The information that this is a serious crime must be communicated from the highest levels of government to the foot soldiers in the field, who commit most of the atrocities.

Ending impunity is a **community-wide effort** and it will only be accomplished when women have a seat at the table during all peace processes, and they have a voice in all measures taken to combat sexual violence. In this context, the Belgrade-Pristina dialogue between Serbia and Kosovo is noteworthy. The EU and High Representative Ashton have registered a major achievement by brokering this historic agreement between the two parties. It also offers an opportunity to reflect on how best to work with 1325, in the Balkans and beyond. How have women been included in the dialogue process? Are their priorities well reflected in the accord? What is the role foreseen for them in the implementation phase, in its design and execution?

Women’s security cannot be separated from the overall security of a country; therefore women must be involved at every level of political and public life as envisioned by resolution 1325. Engaging women is a prerequisite for acceptance, sustainability, and successful implementation of the dialogue. The EU has a very important role in this respect as **facilitator of the dialogue**. Governments also have a responsibility to raise awareness about this issue as solutions cannot be imposed from the outside.

Eradicating impunity requires the strengthening of national justice systems and legal frameworks, increasing access to justice for victims as part of the process of reparation and redress, and raising awareness about this issue so that you change the attitudes, perceptions and behaviours that are at the root of this problem. If women are not valued in peacetime they will not be value in war.

During the Q&A session, Ms Bangura stressed the important **role of religious leaders** in condemning sexual violence. Religious leaders still have an important influence in many of the countries affected. When needed, some leaders have gone into the bush to meet face-to-face with the soldiers responsible for atrocities inflicted on women. Ms Bangura has encouraged religious leaders to be more vociferous in condemning sexual violence.

She also **encouraged the EU to continue**, as it has done in the past, putting pressure on countries affected by sexual violence in conflict. She acknowledged that governments are not willing to speak out about this violence; preferring to be in denial and often blame outsiders, not their own soldiers, for sexual crimes committed in their countries. Pressure from the EU has obliged governments to take responsibility in acknowledging these crimes.

**Session I: Gender justice in Bosnia and Herzegovina – 18 years after Dayton – how far have we come?**

During this session, Impunity Watch (NGO), presented the state of play of prosecutions of sexual and gender related crimes committed during the armed conflict in Bosnia and Herzegovina from 1992-95 and implementation of the UNSCR 1325 in Bosnia and Herzegovina. The unsatisfactory situation in Bosnia and Herzegovina was also commented on by the UN SRSG on Sexual Violence in Conflict, who will travel to Bosnia and Herzegovina in June 2013. DG Enlargement, European Commission, elucidated the EU's contribution to the solution of the open court cases on war crimes in Bosnia and Herzegovina and the EU's efforts to enhance the Bosnian rule of law structures in the framework of the preparation for the accession to the EU.

During the armed conflict in Bosnia and Herzegovina, around 100 000 people died, 2.2 million people were displaced, 200 000 detained, 13 000 people are still missing, and 20 – 50 000 women and 3000 men were raped. However, only 30 cases of sexual violence were prosecuted until now. National courts in Bosnia and Herzegovina rendered only 338 judgements on war crimes, 130 cases are on-going and investigation was not yet opened in 1100 cases. Some activities on implementation of UNSCR 1325 have already been implemented (e.g. the National Action Plan for implementation of UNSCR 1325 for period 2010-13 (new plan for period 2014-2017 is under preparation), amendments of BiH criminal code regarding the definition of sexual violence, enforced disappearance and torture, recognition of victims of sexual violence as victims of war and adoption of law on the witness protection programme in 2013, but the political will is missing to deal with the problem of sexual violence during the Bosnian war and improve the situation victims. The Transitional Justice Strategy of Bosnia and Herzegovina and Programme of assistance to victims of war sexual violence (2013 – 2016) has been prepared, but is not yet adopted by the Parliament. The attempts to establish a Truth Commission in Bosnia and Herzegovina failed as in other countries of the Balkan region. The protection of witnesses in local courts is not sufficient. Reparation for war crimes is comparable to social benefits based on income, not on crimes committed. With regard to compensations for wartime sexual violence, BiH entities legislation is not harmonized. Payments for women victims of sexual violence are provided only in one of two entities in the Federation of Bosnia and Herzegovina. There is no law for victims of torture, mainly former detainees of concentration camps, who often remain jobless and poor. Decisions of the Constitutional Court of BiH in favour of families missing members are not enforced.

The EU applies a comprehensive approach to improving the situation in the security and justice sector of Bosnia and Herzegovina. The EU Police Mission (EUPM), which was closed down on 30 June 2012, monitored and assessed implementation of police reform and accountability, and provided training over the last 10 years. Since 2011, the European Commission has been engaged in the Structured Dialogue on Justice with Bosnia and Herzegovina with the aim of further consolidating the judicial system to ensure it is independent, effective, impartial and accountable, in line with the relevant EU standards and acquis. One of the goals of this structured dialogue is to speed up the prosecution of the war crime cases. Bosnia and Herzegovina could not become a candidate country for accession to the EU with such a large backlog of unresolved war crime cases. The European Commission allocated 50 million euros for the period mid-

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2014 until 2018 from the Instrument for Pre-Accession Assistance (IPA) to help national authorities with investigation and prosecution of war crime cases. This amount will enable the authorities to increase the number of prosecutors, provide them a special training in close cooperation with ICTY and finance psychological support staff for witnesses. The European Commission has created a facility for witness protection together with UNDP.

Furthermore, the EU assists Bosnia and Herzegovina in international cooperation on prosecution of war crimes. The Protocol on sharing information and evidence in war crime cases between the Prosecutors' offices of Bosnia and Herzegovina and Serbia was signed in Brussels on 31 January 2013 under the patronage of the European Commission. This protocol should ensure that war crimes suspects, using existing legal means to escape justice, are brought before the law and sentenced, if found guilty. A similar protocol on cooperation between prosecutors of Bosnia and Herzegovina and Croatia will be signed on 3 June 2013. The EU coordinates its activities with ICTY, OSCE and national authorities of Bosnia and Herzegovina in this field.

The EU also promotes gender equality in Bosnia and Herzegovina. Political participation by women remains low (e.g. there is no female minister in the government). The 40% quota for women within the public administration, as stipulated by the Gender Equality Law, has not been reached.

### **Summary of the discussion:**

In reaction to the question on the EU's engagement in the implementation of the UNSCR 1325 in Bosnia and Herzegovina in comparison to the Kosovo-Serbia dialogue and recent adoption of the agreement for Northern Kosovo and its implementation plan, it was referred to the EULEX mission in Kosovo, which contributes with international prosecutors and judges to prosecution of war crimes. However, this was not the case in Serbia. Signature of the association agreement between the EU and Serbia in 2008 (not yet in force) was conditioned by the full cooperation of Serbia with ICTY. After the expected decision of the EU Council to open accession negotiations with Serbia in June 2013, the progress made by Serbia in the chapter 23 on judiciary and fundamentals rights and the chapter 34 on justice, freedom and security will be assessed by the European Commission already from the early stage of the accession process. The EU should urge Serbia to intensify the prosecution of war crimes at national courts.

Regarding Bosnia and Herzegovina, the primary objective of the 1995 Dayton Peace Agreement was to stop the war and transitional justice was not properly handled at the time, which should be taken into account in future agreements. The prosecution of war crimes cases, including sexual violence, must be finished in a timely manner, otherwise the witnesses and perpetrators will have died, which in reality means impunity. There is a need for comprehensive strategy for transitional justice. The EU cooperates with government and civil society. OSCE is also involved in assisting the war crimes prosecution in Bosnia and Herzegovina. Until mid-2014, OSCE with financial support of some EU Member States, carries out a project on enhancing capacity of courts and prosecutors. Together with UK, OSCE provides gender sensitivity training for prosecutors in Bosnia and Herzegovina. A Member State delegate emphasized the need for local ownership of the reforms recommended by international community. The EU always calls for local ownership of the judicial reforms. E.g. some war crimes cases were transferred from the state

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level to BiH entities and local judges to accelerate their handling. Another EU MS delegate enquired about the role of international judges and prosecutors who worked together with national judges and prosecutors at the War Crimes Chamber of the Court of Bosnia and Herzegovina from 2005 to 2012. It was noted that only a small number of war crime cases were given to international judges. National judges waited for decision of the international judges, which caused the high backlog of unresolved cases.

### **Recommendations from the Panel:**

- 1) Comprehensive reform of legislation in Bosnia and Herzegovina, including war time sexual violence, forced disappearance, law for victims of torture,
- 2) Reparation for victims,
- 3) Acceleration of processing of war crimes,
- 4) Implementation of the witness protection programme,
- 5) Change of mentality in society – punishment of perpetrators, not victims,
- 6) Local ownership of judicial reforms,
- 7) Increasing the EU's leverage in the framework of the association and stabilisation process as well as the accession process to the EU in Western Balkans countries to prosecute the war crimes,
- 8) Inclusion of gender and human rights in mandates of the EU CSDP missions,
- 9) Raising awareness by the international community (EU, EU Member states, UN, OSCE and other actors) about the problem of war time sexual violence with the government of Behn, Parliament, local authorities and civil society.

### **Session II: EU Member States Initiatives on Transitional Justice**

During this session two EU Member States' initiatives were presented: the UK's Preventing Sexual Violence in Conflict Initiative and the German National Action Plan on the implementation of SCR 1325 for the period 2013 – 2016 (NAP). These two presentations on Member States' activities were complemented by the view of the International Centre for Transitional Justice (NGO).

The UK's Preventing Sexual Violence in Conflict Initiative was endorsed by a historic G8 declaration in April, 2013. It is a political commitment that intends to increase the number of prosecutions, support the national capacities to deal with rape and sexual violence and improve international coherence of actions against such crimes.

In order to achieve these objectives, a normative framework is foreseen that reaffirms existing legal commitments on the one hand and on the other hand, is leading forward on international justice. It is envisaged to establish an international protocol (not legally binding, rather guidelines) to improve the

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collection of data on the following key issues: (1)definition of sexual violence, (2)relevant international regimes, (3)providing rehabilitation support, (4)collecting forensic and physical evidence, (5)conducting investigation, (6)documentation information and (7)ethical considerations. A standard documentation will also improve coordination between sectorial responses and ensure that support to victim-survivors is integrated throughout all phases of investigation and documentation. Three core expert groups will work on the collection of data until 2014. Another means to quash impunity for crimes of sexual violence in conflict is a reinforced peace and security commitment that leads to a stronger involvement of women in all peace negotiations supported by G8, exclusion of sexual violence from amnesty provisions and peace-building prevention and a stronger support of the UN, and other multilateral efforts to ensure adequate training for international peacekeeping forces. National governments should be encouraged to review the training provided to their national military and police, and to consider the issue in all reform efforts.

In general, it is important that the political commitment made in April is operationalized now. In this respect, national ownership is of utmost importance. The UN, e.g. through its Special Representative on Sexual Violence in conflict, could be helpful in fostering a more cooperative attitude of countries with sexual violence in conflict, which would also mean providing more funding for the UN SRSG's office. At the same time a continued political campaign is needed to get more than the G8 countries involved (e.g. at the UN Security Council debate on prevention of sexual violence on 24 June 2013 and at the UNGA ministerial week in September 2013).

Germany recently adopted its National Action Plan on the implementation of UNSCR 1325 (NAP). Already before the adoption of the NAP, Germany implemented SCR 1325 and supported activities with several hundred thousand EUR. The NAP aims at providing a comprehensive and coherent approach to the implementation of SCR 1325 and its follow up resolutions. It should inform the broad public on possible actions. Apart from the three usual 'Ps', namely prevention, participation and protection, it also deals with preparation and prosecution/reconstruction. The NAP was established in close cooperation with civil society and the Parliament. The second revised NAP will be more focused and take on board some of the criticism received (e.g. weak part on prevention). For the time being, this issue is handled by an Inter-ministerial Working Group.

To effectively prevent violence, the promotion of legal and social equality is a key component. The strengthening of women's positions is an essential component of any empowerment of women and a greater participation of women in all aspects of crisis prevention, conflict management and post-conflict peace-building should be sought. Training programmes for crisis management should include a specific training on 'women, peace and security' as is currently implemented in the project ENTRi (partly funded by the EU) and since 2012 included in the regular courses of the Baden-Wuerttemberg Police Academy. The protection of women and girls, but also of men and boys, is of a great concern. All victims should therefore have access to the judiciary and to fair treatment. In this respect it is also important to educate the population in conflict or post-conflict regions making it very clear that sexual violence is considered a crime against humanity and sharing best practices on how to deal with this issue.

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The International Center for Transitional Justice highlighted that gender related violence could affect both women and men. Systematic sexual violence has long been regarded as an unfortunate side effect of war. This perception changed with SCR 1325, but transitional justice should not only deal with sexual violence. Other violations such as displacement, which disproportionately affects women, should also be addressed. Women becoming the head of households because husbands have been killed could also be considered as vulnerable victims. These aspects should be included in an integrated approach to transitional justice. For the success of transitional justice processes, it is vital to include women's rights groups from an early stage.

ICTJ's Gender Justice programme receives support from the EU, UN Women, the Netherlands, Sweden, Finland, Denmark and Luxembourg. It provides comparative information and technical assistance to international and national policy makers, transitional justice practitioners, women's groups and other civil society groups involved in these issues. ICTJ has been actively engaged in the MENA region, Tunisia, the Occupied Palestinian Territory, Nepal, Colombia, and African countries such as Cote d'Ivoire and Kenya, and have also provided technical assistance to UN bodies. ICTJ will continue to work in those countries with the aim of giving these societies the tools they need to face abuses of the past and with the hope that women are not left behind when a country overcomes political repression and violence.

### **Summary of the discussion:**

During the discussion it was pointed out that the German Foreign Office, as initiator of the NAP, has had an important coordinating role among the six German ministries involved, including the Center for International Peace Missions and the German armed forces, as it attributes tasks to each of them. It also facilitates coordination at the international level. The NAP drew political attention to the issue and higher levels were becoming more aware of it. In the 'Rwanda' court case (pending in a Stuttgart court) it became obvious how difficult it is to get witnesses and secure proof.

Concerning the international protocol of the UK's initiative, it was clarified that the protocol should not predetermine where justice was to be served. It should rather set an internationally acceptable framework facilitating complementarity between the national and international level.

### **Recommendations by the panel:**

1. "Add your voice" - involve a wider number of states and leaders who share concerns on sexual violence in conflict,
2. Support countries in being credible to their own citizens,
3. Shift the narrative from a punitive and blaming one to a supporting one,
4. Back the UNSR's efforts,
5. Include more women in the judiciary,
6. Better involve the Missions/Embassies in third countries,

7. Consider how to impress more fear of prosecution on possible perpetrators,
8. Encourage people to speak up by informing them of best practices

### **Session III: The UN approach to Transitional Justice - Actions & challenges**

A representative of the UN High Commissioner for Human Rights outlined the importance of gender and accountability to sustain legitimacy and prospects for reconciliation and how to successfully address them by taking into account several elements such as measures to overcome impunity, recognition of women's experience in uncovering the truth, gender-sensitive reparation programs, measures to promote women's access to justice and prevention of re-occurrence of violations against women. Measures to overcome impunity and promote women's access to justice should include coherent and comprehensive efforts and resources to reform discriminatory legal frameworks and should ensure gender-responsive and unbiased law enforcement and judicial institutions and processes. Concerning gender-sensitive reparation programs, legal and institutional frameworks and processes must be put in place and must be adequately financed, so as to guarantee accessibility by women and fair assessment of the harm inflicted upon them. There must also be adequate recognition and consideration of women and girls' experience/participation in efforts to uncover the truth. In terms of preventing recurrence of violations, societies emerging from conflict and instability provide a timely opportunity to develop and institutionalize policy, and legislative and other measures to advance women's human rights and overcome deep-rooted patriarchal customs and norms.

UN Women underlined that gender sensitive approaches to transitional justice mechanisms implies more than expanding the range of rights violations to include gender-based and sexual crimes, and explained that making transitional justice work for women also entails procedural reforms to remove all barriers to women's access to justice. It was also pointed out how prosecutorial and truth seeking processes must be matched by an equal prioritization of reparative justice. Appropriate reparations programmes can lead to fundamental change in women's lives in addressing the underlying gender inequalities that render women vulnerable to human rights violations and break the patterns of subordination. Ensuring adequate investment and focus on gender-sensitive programming will have a significant impact on women's access to justice and their ability to secure redress.

#### **Summary of the discussion:**

The speakers reiterated that without accountability, human rights will be denied, crime will flourish and impunity for past conflict-related crimes will persist, undermining legitimacy and prospects for reconciliation. They illustrated that post-conflict transitional justice must encompass a 'gender justice' as a central feature, otherwise it ultimately fails in its objective to reform and address the inequalities that prompted the violations associated with the conflict and sustains a context of injustice, particularly for women. Concerning the implementation of the Guidance Note of the Secretary-General on United Nations Approach to Transitional Justice, and in particular, the extent such a note trickles down to field level, the speakers explained that the dissemination of the Guidance Note allows its implementation at

country level. Recommendations on avoiding gaps between the Guidance Note and the future EU policy on transitional justice were also expressed. The audience underlined the importance of lessons learned in transitional justice and gender. In relation to the UN Human Rights Due Diligence Policy, the Human Rights Profiling project was briefly explained as it constitutes an essential basis for the identification and development of future strategies for vetting out perpetrators and other transitional justice mechanisms. (No recommendations given by this panel).

#### **Session IV: How to ensure justice for women and an independent and effective International Criminal Court**

The discussion opened with information about EU's policy in support of the ICC, which is outlined in the EU Council decision on the ICC and the EU's Action Plan on the ICC of 2011. EU supports i.a. enhancing the efficiency and effectiveness of the ICC, including the participation of witnesses and victims in the Court's proceedings, and application of the principle of complementarity acknowledging the ICC as a court of last resort for the perpetrators of the most serious crimes of concern to the international community (genocide, crimes against humanity and war crimes) when states concerned are not able or willing to prosecute them. All EU Member States have passed the necessary legislation to implement the Rome Statute of the ICC. The EU also contributes to the improvement of judicial systems in third countries.

Even if the ICC is a permanent court, it belongs to the tools of transitional justice because it investigates and prosecutes crimes already during conflict and ensures accountability with the goal to stop the violence. It prosecutes and punishes the leaders of a country ordering the use of gender-based violence as a weapon. The ICC is sometimes criticized for undermining peace efforts. But a peace process is sustainable only when accountability is ensured.

A representative of Women's Initiatives for Gender Justice recalled that the UNSCR 1325 fills the gap of impunity for gender-based violence in conflict and supports accountability during the peace process. Agreements on amnesty for crimes and vetting process must be refused. Greater participation of women in peace negotiations and inclusion of gender provisions in peace agreements is necessary. Prosecution of the most serious crimes of international concern at the national level should not use lower standards than prosecution before the ICC. Charges for sexual violence were used in six situations before the ICC, 17 out of 18 individuals were charged with sexual violence, and 55 % of all charges were for sexual violence crimes. Rape is recognized as the equivalent of slavery, torture or can be an element in a charge for genocide. In the future, the ICC should apply a larger gender framework for its charges. Among the successes of the ICC, the assistance to victims was mentioned (e.g. in eastern DRC and Uganda), and furthermore, the decision on reparation for victims in the Lubanga case from DRC in 2012, surrender of the former Deputy Chief of General Staff of Forces Patriotiques pour la Libération du Congo (later M23), Bosco Ntaganda, from DRC to the ICC in March 2013. The number of self-referrals of situations to the ICC by states is positive, as well as two referrals by the UNSC (Sudan/Darfur and Libya) – however financing

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of the prosecutions only by contributions from the ICC State Parties is not fair. The ICC provides international standards and is a collective institution, which should not be driven by interests of states.

Some challenges in connection with the prosecution of gender-based violence by the ICC were pointed out by No Peace Without Justice (NGO). Despite a number of charges for sexual violence brought by the ICC Prosecutor, the ICC judges dismissed many of them during confirmation of charges procedure or issuance of arrest warrants. The ICC Prosecutor did not provide enough evidence for these charges. Investigation of sexual violence in the field should be improved, e.g. through more continuous presence and better engagement with victims. Furthermore, budgetary cuts of the ICC agreed by the Assembly of State Parties were mentioned while the workload of the ICC was increasing (115 million euro for 2013 in comparison to ICTY: 140 million USD).

One of the achievements of the ICC Rome Statute was to enable the participation of victims in the proceedings. The number of victims participating in ICC proceedings grows continuously. The ICC has developed an outreach programme for addressing victims. Civil society plays a role in the consultation of victims. It was argued that most of the 6000 recognized victims in 12 cases at the ICC were men and that the charges presented by the ICC Prosecutor were disconnected to those who were recognized as victims.

The ICC investigations and prosecution can be complementary to the transitional justice measures to ensure the greatest possible amount of accountability. The ICC will prosecute only those bearing the greatest responsibility because of lack of political will and technical difficulties at national level. The ICC is not bound by amnesty provisions. During the peace negotiations in Uganda, the ICC did not actively prosecute the indicted persons (Joseph Kony and others), but neither did it withdraw the case. It's not about peace versus justice, but about the right timing and sequencing of both. Reconciliation is not about forgiveness, but accountability.

### **Summary of the discussion:**

A representative from International Centre for Transitional Justice referred to the need for tailor-made solutions for each situation regarding of selection of right transitional justice measures and their sequencing. Prosecution at national level depends on the ability of the state to prosecute. Transitional justice should lead to reconciliation between citizens and the state – to renew trust in national authorities.

It was also recalled that the delay in prosecutions in the Uganda case could be perceived by the citizens as a weakness of the ICC and should not women's rights organizations participate? It was commented that the ICC did not delay the prosecutions in the Ugandan case; it was only quiet during the critical phase of peace talks. The ICC Registry is responsible for outreach activities including with women's victims. ICC cooperates with grass root women's organizations.

A question was raised on the misconception of the ICC as a court targeting Africa and the need for a better communication strategy. In the case of Mathieu Ngudjolo Chui in the DRC situation, the ICC Trial Chamber acquitted the person of all charges, including for sexual slavery and rape, and ordered his

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release in December 2012, but the Prosecutor appealed the verdict. In Kenya, there is a threat of suspension of cooperation with the ICC regarding the newly elected President Kenyatta charged for his involvement in post-election violence in 2008. In Uganda, the ICC Prosecutor was criticized that he did not charge the army of the governmental side. The ICC has a representative for contacts with the Kenyan government in Kenya.

### **Recommendations of the Panel:**

- 1) Harmonise work on UNSCR 1325 and work on the ICC and transitional justice,
- 2) Include the gender perspective in EU activities in 4 points of the EU Action plan on the ICC: universality and integrity of the ICC Rome Statute, independence of the ICC and its effective and efficient functioning, cooperation with the ICC and implementation of the principle of complementarity,
- 3) The EU should include more gender aspects in its work in third countries on transitional justice,
- 4) The EU should give conditional support to third countries, demanding from third countries to deal with gender-based violence,
- 5) Enhance the ICC part in the national action plans on implementation of the UNSCR 1325

### **Concluding points:**

- The EU champions the implementation of the UN's "Women, Peace and Security" resolutions and addressing the violations experienced by women during conflict, and call for women's participation in transitional justice, is crucial.
- In reviews of the Human Rights Strategy and of the Development Strategy, it is indicated that time is ripe for a reconceptualization and strengthening of the EU's approach to international justice and ending impunity for serious human rights violations, something which is also supported by the EEAS.
- The European Union promotes transitional justice and human rights as part of its security strategy. It is integrated into broader EU crisis management initiatives, in our Common Security and Defence Policy (CSDP) missions; in Security Sector Reform (SSR) and Disarmament, Demobilization and Reintegration (DDR) initiatives; is a priority in the Enlargement policy, the European Neighbourhood Policy and the development policy, following the revised Cotonou Agreement. The EU is committed to transitional justice through its support for and cooperation with the International Criminal Court.
- Common Security and Defence Policy Missions play an important role in supporting prosecution initiatives, truth-seeking processes, SSR, DDR and reform of the judiciary. The planning process for each CSDP mission assesses how the mission can contribute to or support the development of national strategies for peace, including by addressing past abuse. Almost all 15 CSDP missions have human rights and/or gender focal point.

## EUROPEAN EXTERNAL ACTION SERVICE

- The EU supports initiatives at the United Nations (including the recent Memorandum of Understanding with UN Women, support to the UNSG SRs), the African Union, the Organization for Security and Cooperation in Europe (OSCE) and other regional organizations to strengthen the field of transitional justice.
- The European Union provides funding for transitional justice measures through several instruments: European Initiative for Democracy and Human Rights, Instrument for Stability, European Neighbourhood Policy, development aid programmes and geographical programmes.
- There are important links between pursuing transitional justice in third countries and policies and actions taken within the European Union, such as the Stockholm Programme and the European Network of Contact Points for work related to the ICC.
- The way in which justice-related issues are addressed in peace negotiations, whether negatively through amnesty (insofar as permitted under international law) or positively through provisions for accountability measures, can have serious consequences for the pursuit of justice post-conflict. Mediators can play an important role in safeguarding justice issues in peace processes and ensuring that victims' voices are incorporated into negotiations.
- There is no 'one size fits all' approach to transitional justice, and responses must be designed to address the needs of the particular context. National consultations which take into account the interests of victims should inform the design and purpose of accountability mechanisms. All transitional justice approaches must be gender-sensitive and pay particular attention to the needs of children.

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