

## Factsheet – EEAS Mediation Support Project – Knowledge Product

### Transitional Justice in the context of Peace Mediation

This factsheet is designed to provide a “snapshot” insight into transitional justice issues relevant for EU mediators in peace negotiations and EU officials engaged in advising, planning or implementing mediation and dialogue activities aimed at fostering justice. It places mediation and dialogue within a broader conception of justice so as to reflect the comprehensive approach taken by the EU through its various development instruments, its Common Security and Defense policies and through its political dialogues.

These factsheets are “work in progress” and feedback is welcome. More information and support on the issues presented are available from the Mediation Support Team of the K2 Division of Conflict Prevention, Peace Building and Mediation Instruments of the EEAS at [K2@eeas.europa.eu](mailto:K2@eeas.europa.eu)

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#### 01 Background and Scope

Mediation efforts often take place in contexts where the conflicting parties have violated international human rights or humanitarian law and where justice issues arise. Transitional justice is a multidimensional long-term undertaking, defined by the EU Council document ‘Transitional Justice and the ESDP’ as “a framework for confronting past abuse as a component of a major political transformation – from war to peace or from authoritarian rule to democracy” (Council of the EU, 2006). This undertaking may consist of judicial and non-judicial mechanisms focusing on accountability for past abuses as well as the establishment of a sustainable, just and peaceful future.<sup>1</sup> The EU is strongly committed to the principles of international justice, human rights and humanitarian law, the International Criminal Court (ICC)<sup>2</sup> as well as to long-term peace building<sup>3</sup>. The EU’s Concept Note on Mediation and Dialogue<sup>4</sup> notes that the EU’s various activities with regards to mediation and should be sensitive to transitional justice and human rights issues. The following two interlinked and complementary issues are particularly relevant for EU mediation and dialogue in the context of advancing transitional justice.

1. The first issue relates to the **inclusion and handling of justice issues** in peace processes. There exist a variety of transitional justice tools and instruments (see box 2) that can be introduced to peace talks. If not directly involved, the EU can also promote, leverage, support and fund actions that assist third parties to adequately take justice considerations into account in mediation and dialogue.

2. Mediation and dialogue, whether at the official or more unofficial level, can be an **effective strategy** in the broader context of EU efforts towards the goal of justice and can be utilised to address transitional justice needs. As transitional justice issues are rarely fully settled in higher level negotiations, there is much scope for dialogue and mediation mechanisms to help deliver accountability and promote reconciliation as part of the process towards a more just society<sup>5</sup> as well as to achieve restorative justice, aimed at restoring relations between victims and offenders.

The EU should look for entry points to ensure that 1) transitional justice issues and the respect for international law are adequately addressed in the processes of mediation and dialogue for peace and 2) mediation and dialogue accompanies the implementation of justice measures. For example, the EU should consider which role it can play most effectively with regards to mediation and transitional justice. If the strong normative position of the EU or the support to the ICC would compromise direct engagement as mediator at a higher level, other venues of mediation and dialogue support, such as leveraging and supporting third party or grassroots-level mediation, should be sought. Coordination and coherence between different EU instruments as well as the financial and political support for mediation and dialogue measures is crucial for success and should be ensured well beyond actual peace negotiations.

#### Box 1: Key Messages for EU Officials

1. Adopt a comprehensive and context-sensitive approach to transitional justice and assess potential tensions between justice and peace building in mediation and dialogue.
2. Apply a justice-sensitive approach throughout mediation and dialogue and use EU mediation and dialogue efforts to accompany and implement transitional justice measures.
3. Uphold international law and clear principles on prohibitions for amnesty for serious international crimes, but remain flexible and creative with regards to balancing the tensions between peace vs. justice to the extent possible by drawing on the full range of transitional justice tools and mechanisms.
4. Strive to link through EU mediation and dialogue various transitional justice mechanisms in order to diminish some of the tensions between peace, justice and reconciliation.
5. Appreciate the importance of the EU listening and building ownership when engaging in mediation and dialogue with third parties in relation to transitional justice.

#### Box 2: Transitional Justice Instruments

Various tools and mechanisms exist to support a holistic conception of justice:

1. Prosecutions (through national/hybrid or international courts)
2. Truth commissions (national/hybrid)
3. Vetting/Lustration
4. Reparation/Compensation
5. Reform of institutions
6. Public/Victim consultation

**Table 1: EU various potential roles in relation to mediation and dialogue and transitional justice**

The EU in mediation and dialogue	Examples of potential EU roles
1. European Union as a mediator or facilitator to dialogue:	The EUSR for the African Great Lakes Region was part of an international facilitation team that took a clear position with regards to amnesties and accountability for genocide, war crimes and crimes against humanity in the Goma Process in the DRC.
2. Promoting mediation and dialogue:	EU officials and political figures (EUSRs or EU Commissioners) can engage in dialogue with parties to peace talks and encourage them to include transitional justice issues in these talks and advance human rights commitments through dialogue. EU in its Council conclusions has stated on Syria that when a democratic transition begins it would be ready to support transitional justice. (EU, 2012)
3. Leveraging mediation and dialogue:	In 2004 the European Council used its leverage through making support for the Colombian government's negotiations on the demobilization of the paramilitary conditional to the adoption of legislation that respected international commitments regarding justice, truth, reparation and victims' rights (EU, 2007).
4. Supporting mediation and dialogue:	The EU supported post-conflict governance in Aceh (Indonesia), which included expert advice to the parties and stakeholders on issues of international law, transitional justice, and providing mediation-training. (EU, 2011)
5. Funding mediation and dialogue:	The EU Instrument for Stability has been used to fund actions that put a strong emphasis on mediation and dialogue in the context of promoting accountability for human rights violations and fostering understanding and recognition of the rights of victims

## 02 Key issues and dilemmas

The following sections will highlight the potential dilemmas that EU staff engaged in mediation and dialogue may encounter, as well as provide some possible responses.

### The Peace vs. Justice Debate

There is a complex relationship between transitional justice and peace-building efforts in which "peace" and "justice" often are viewed as conflicting goals. This has led to a long-standing debate on "whether justice or peace should be prioritized in addressing the myriad needs of conflict-affected countries"<sup>6</sup>. The tensions amount from the view that a strong focus on justice dimensions, especially those focused on holding perpetrators accountable, may disrupt peace-building efforts in the short-term, prevent peace agreements and further possibilities for dialogue, lead to insecurity and thus further fuel conflict. On the other hand, justice provisions are seen as necessary for normative reasons, to deter future crimes as well as create trust and belief in the rule of law.<sup>7</sup> Part of the perception of the incompatibility between peace and justice can be subscribed to an overly narrow understanding of transitional justice as being solely concerned with the legal prosecution of perpetrators.

A more holistic understanding of transitional justice that aims at longer-term transformation of societies and institutions and focuses on victims' needs may ease some of the tensions and provides the mediators with a wider range of transitional justice tools when mediating peace<sup>8</sup>. In practice mediators often need to balance some of the conflicting natures of peace and justice. However, with growing international normative requirements regarding justice, the question is not "whether there will be some kind of transitional justice post-conflict, but what the timing, modalities and sequencing might be"<sup>9</sup>.

### A context-sensitive approach to mediation and transitional justice

The options for transitional justice tools, the timing of interventions and their design can vary greatly depending on the local context and changing circumstances. A context-sensitive approach requires detailed knowledge of past human rights abuses, existing structures, justice capacities, the security situation, civil society positions as well as anticipating the social acceptance of certain measures. This is a point the EU has acknowledged in the commitment for a forthcoming policy on transitional justice which is to be developed by 2014.<sup>10</sup>

### Box 3: Provision of Expertise

The EEAS Madagascar desk contacted the EEAS K2 Division for an external EU specialist on amnesties to be supplied to the SADC team involved in advising the SADC team negotiating in Madagascar. Amnesties are a key point of on-going negotiations to bring peace and stability to the country. This expertise was sourced and deployed quickly for a short assignment that had to feed into an on-going process.

Successful mediation will have to start with the identification of short- and long-term options for justice prior to peace talks, map implications of their use and react to changing circumstances.<sup>11</sup> If directly engaged in formal mediation, it is essential that EU staff can draw on such expertise, whether from within the EU institutions or through other international and local capacity (EU staff can enquire of the EEAS K2 Division about how to access such expertise). A highly specialised expert team working behind the scenes is highly recommended for successful inclusion and implementation of transitional justice measures. If the EU is not directly involved, third party mediators can still be supported with transitional justice expertise or detailed and swift analysis, or consultation processes can be funded to generate the relevant information for successful mediation processes.

#### Mediation, Dialogue and the involvement of International Criminal Courts

Arrest warrants of the ICC or other Special Courts targeted at members of a negotiating party may negatively affect negotiation dynamics, impede successful agreements, create incentives for leaders to stay in power in order to shield themselves from prosecution, and raise the legitimate concern of violent backlashes.<sup>12</sup> On the other hand, the involvement of Criminal Courts can bring advantages for mediation processes since its pressure may also create incentives for conflict parties to sit down at the negotiation table and reach an agreement. Arrest warrants can also remove spoilers from negotiations and give mediators a basis to frame discussed issues more tightly.<sup>13</sup>

**The EU has committed to cooperate with the ICC on issues of concern to its investigation, including the exchange of (classified) information.** This may also involve the Court's request for EU staff to provide testimony under waived obligation to confidentiality<sup>14</sup> Cooperation with the ICC could be explicitly included in the mandate of EU staff, such as EUSRs. Although no EU staff has yet been called to testify before the ICC it remains a possibility, and it could prove a potential challenge to the EU staff engaged in mediation and dialogue since this might compromise the credibility of the mediator and the trust of the negotiating parties<sup>15</sup> EU mediators may also find themselves in situations in which they face the decision to engage with an individual who has an indictment by the ICC. It seems there is no definite policy on whether EU staff or other high profile political actors engaged in mediation are allowed to meet with ICC indictees. In any case, an ICC indictment may change the way EU Officials are able to engage with individuals. Thus the EU should be prepared to change negotiation dynamics if the ICC intervenes and to adapt their strategies accordingly. Moreover, EU staff engaged in mediation and dialogue should try to avoid and address misunderstandings regarding ICC interventions within society at a more grassroots level.

#### Amnesties

The provision of amnesties brings with it various dilemmas. **There is clear international law that prohibits amnesties for gross human rights violations and international crimes.** The EU prohibits impunity for war crimes<sup>16</sup>, international crimes<sup>17</sup> and generally follows UN principles, which preclude amnesties for war crimes, crimes against humanity, genocide and gross human rights violations. The Rome Statue of the International Criminal Court specifies the crimes that fall under the first three categories. The acts that fall under the broader category of other gross human rights violations are less clear, as these are not formally defined. Yet several human rights treaties lay out such gross violations. The European Convention for the Protection of Human Rights and Fundamental Freedoms, for example, rules out amnesties that impede victims' rights to an effective remedy for violations of the Convention and has repeatedly stressed that if certain violations of the Convention occur, state parties are obliged to launch an effective investigation leading to punishment of those responsible.<sup>18</sup> There also exists UN policy guidance on criminal acts that constitute gross violations such as torture, enforced disappearance and systematic deprivation of essential foodstuffs, health care or basic shelter (see UN, 2009). EU policies are clear on excluding amnesties for crimes committed against children such as the recruitment of child soldiers<sup>19</sup> and for any act of torture<sup>20</sup>. Sexual violence can equally constitute an act of war crime, crime against humanity or a constitutive act with respect to genocide.

#### Box 4: International Criminal Courts – Two examples

The hybrid Special Court in Sierra Leone (which received some EU funding through EIDHR), mandated to bring justice to the conflict in Liberia, unsealed an indictment against Charles Taylor, then president of Liberia, shortly before he was to attend peace negotiations in Accra in 2003. Ghanaian officials resisted the efforts to apprehend Taylor and hand him to the Court. The timing of the Court's indictment was heavily criticized not only in Africa. (Geis et Al. 2009, p.5). The EU Presidency in 2003 being aware of the tensions, stated, that the indictment should not impede peace negotiations underway in Ghana and deployed Hans Dahlgren, the presidency's special representative to the Mano River Union countries to promote dialogue.

Removing Radovan Karadzic and Ratko Mladic (a key demand of the EU) from peace talks through indictments by the Criminal Tribunal for former Yugoslavia (ICTY) did not lead to feared violence but made peace talks more serious and facilitated a deeper agreement (Akhavan, 1998; Hayner, 2009).

#### Box 5: Amnesties, Truth and Reconciliation in South Africa

South Africa's Truth and Reconciliation Commission granted amnesties while at the same time recognizing committed atrocities of the past and bringing uncomfortable truth to light. It has been argued that this strategy, as opposed to separating all perpetrators from victims via punishment and retribution for all apartheid era crimes, has created the foundation for reconciliation within the South African society.

**While amnesties for these crimes cannot be granted, amnesties for other crimes, such as treason, may be acceptable.** Amnesties can be a valuable tool in overcoming deadlocks in peace negotiations and may be used as incentives. Under certain circumstances amnesties allow reconciliation and create conditions under which truth can emerge, such as in South Africa (see box 5). Limited amnesty for some groups might arise out of humanitarian reasons, such as for ex-combatants that need to be reintegrated into society, prisoners of war or civilian detainees. Amnesties for such groups are foreseen in the Geneva Conventions (Article 6(5) Additional Protocol II).<sup>21</sup> However, amnesties can also exacerbate rather than solve conflicts as a culture of impunity may become institutionalized and the victims' need for justice suppressed, and thereby further aggravating grievances.<sup>22</sup>

**EU staff engaged in formal high-level mediation and dialogue should set out the non-negotiable provisions in a clear manner.** If amnesties for selected groups of less serious offenders are granted, for example as part of disarmament, demobilization and reintegration (DDR) of ex-combatants schemes, they should ideally be linked to other non-judicial transitional justice mechanisms such as truth telling. Amnesty provisions should not foreclose other accountability tools such as vetting<sup>23</sup>. If negotiation parties insist on blanket amnesties that would implicitly include serious crimes despite the boundaries of international law, it may help to push for clarity of the exact crimes the party wishes to include and those explicitly excluded. Once clearly spelled out and on the table, 'a very broad amnesty may be politically less palatable'.<sup>24</sup> If parties still insist on broad amnesties, EU officials can reiterate the consequences of such inclusion in the form of international condemnation, negative reception of the peace agreement, intervention by the ICC, or lack of funding for implementation. This is ideally backed by increased leverage and pressure from the EU and the international community to support mediation efforts.<sup>24</sup>

#### **Restorative Justice: Focus on Justice for Victims**

Victim-centered non-judicial transitional justice efforts such as reparation and compensation are important areas to address by mediators and negotiating parties<sup>26</sup>. Even though they might be of limited nature relative to the experienced violations, they are an important form of acknowledgement and contribute to a society's healing and rehabilitation process. Yet, reparation or compensation programs for victims, if not carefully designed, bear the risk of unleashing underlying tensions and may exacerbate harm and exclusion of victims<sup>27</sup>. Victim-focused approaches are usually a long-term process and are often only undertaken after DDR processes and when the institutional setting allows for successful implementation. Yet, long delays of victim-focused measures can cause resentment among the victims and lead to grievances<sup>28</sup>.

#### **Justice and Security Sector Reform and Transitional Justice**

Justice and Security Sector Reform (SSR) poses a fundamental dilemma for peace mediators: there is no justice without security and no security without justice. Similarly, the demand for justice is often greatest in situations where the capacity and institutional setting to allow for justice is weakest<sup>31</sup>. In its Concept for European Community Support for SSR, the EU Commission has stated that one of the objectives of SSR is to contribute explicitly to the rule of law and the protection of human rights.<sup>32</sup> Equally, the EU Concept for Support to DDR states that DDR needs to be carried out in a comprehensive peace-building framework and be linked to transitional justice provisions.<sup>33</sup> The imperative of the rule of law, which requires the prosecution of offenders among security forces and within justice institutions as well as the exclusion of serious offenders from new offices through vetting processes, points to short-term trade-offs between justice, successful reform and security provision<sup>34</sup>. Serious challenges exist when ex-combatants are embedded in security forces and stand to lose from reforms or when former rebels are to be integrated in security forces as part of peace deals. Yet, the establishment of a secure and transparent environment and the reform of the security sector is a prerequisite for the successful implementation of transitional justice mechanisms<sup>35</sup>. In the long term this can often only be achieved by adopting a holistic and justice-sensitive approach to SSR.<sup>36</sup> Nonetheless, mediators integrating DDR in negotiations often have to strike various balances.<sup>37</sup>

### **Box 6: Reparation Schemes**

In 2008 the victim compensation programme in Nepal got politicised resulting in groups being played off against each other, as parties aimed to fill victims lists with their own people (Heininger, 2010, p.190).

**Reparation and Compensation schemes require careful identification of the eligible groups.** Programs designed too narrowly may cause resentment amongst excluded but equally economically disadvantaged society members while a too wide definition of victims may run into logistical challenges of implementation and leave victims disappointed, as was the case with the Darfur victim reparation program.<sup>29</sup> The generation of eligibility lists for victims' compensation schemes can become politicized, especially in contexts where power imbalances characterize the institutional landscape and where legitimate authorities have not yet been established. Programs that are perceived as biased towards one particular group can yet again lead to an outbreak of violence or distrust in the new government.<sup>30</sup> The role of mediation in this context can be twofold: First, mediators in high-level negotiations could ensure that such schemes are based on fair criteria if part of the negotiated agreement. Second, alongside technical support, mediation and dialogue can accompany the implementation and ease tensions that may arise.



Two dilemmas are particularly relevant. Granting amnesties to ex-combatants to support their re-adaptation to society may run counter to victim's aspiration for accountability and justice. And ex-combatants with short-term benefits as part of their reintegration process can provoke resentment and envy among victims that do not receive compensation. There is scope, however, for DDR, and in particular reintegration, to be complemented by other transitional justice mechanisms. Grassroots-level dialogue and mediation can be helpful in bringing former combatants into dialogue with communities and victims in order to support reconciliation processes<sup>38</sup>. The fact that ex-combatants often can be both perpetrators as well as victims and have an interest for truth-telling themselves may help the process of reconciliation.<sup>39</sup>

It may prove difficult for mediators to follow an ambitious security and justice agenda in uncertain and dangerous security situations or when the institutional setting is very weak, a legislative basis missing and information not readily available. In these cases it may be helpful to begin with smaller steps and focus on introducing preparatory mediation and dialogue measures for future justice tools at a later stage. Strengthening the participation of the public and creating forums to deal with justice questions can facilitate subsequent justice-sensitive approaches to larger institutional reforms. Yet, these steps should not be delayed as reforms may become more difficult if a culture of impunity becomes embedded in society and institutions.<sup>40</sup>

#### **The importance of broad-based support to transitional justice**

Mediation and dialogue at a more grassroots level, as well as outreach to civil society and NGOs, become important besides high-level negotiations, as it is also here that the success of transitional justice measures is decided. Civil Society often provides valuable input to ongoing debates and can play an important part in the implementation of justice mechanisms.<sup>44</sup> Unofficial dialogue processes may also produce documents that can be valuable inputs to the design of justice provisions in peace agreements. In addition, mediation and dialogue at unofficial levels are substantial avenues for advancing restorative justice and for countering war rhetoric and perceptions of helplessness<sup>45</sup>, which is essential to ensure broad-based support to transitional justice mechanisms. EU staff engaged in higher-level mediation should try to ensure a broad-based ownership of envisaged justice mechanisms. Transitional justice tools need to pay attention to local culture and traditions and have input from victims. Mediation teams should stress the importance of hearing relevant stakeholders through formal or informal processes and work towards an inclusive and informed process<sup>46</sup>. Civil society can be included in official talks through appointed civil society leaders who may bring their experience of unofficial dialogue to the official table. Yet, a crucial issue here is the careful choice of legitimate civil society groups and leaders with which to engage, so as to not enshrine existing power imbalances and inequalities. Under certain circumstances the inclusion of civil society actors may hinder progress due to lack of consensus regarding peace and justice issues<sup>47</sup>. In this case it is advisable to strengthen dialogue between civil society actors to form common positions. Providing further training and other assistance to civil society organizations 'can greatly enhance civil society contribution to promoting justice, and in monitoring the implementation of justice measures'.<sup>48</sup>

Consideration of the needs of victims may be constrained by the challenges of finding adequate representatives of victims, of reaching out to victims if these are not easily accessible, and of defining victimhood when the lines between victim and perpetrator are blurred. Still, mediators should ensure that the interests and needs of victims are prioritized and put at the heart of transitional justice measures to the greatest extent possible. To this end the EU can support public opinion surveys, sophisticated analyses, interest profiles of actors, and debates on justice issues to provide mediators with timely information.<sup>49</sup> It may also support Track I mediation teams with travel logistics or security measures to enable them to be in touch with civil society, in order to consult on justice needs. Unconventional means of national mediation and dialogue in relation to justice issues can also include educational TV or radio programs in order to reach a wider audience.

#### **The introduction of justice to the negotiation table**

During higher-level mediation or dialogue there may be different windows of opportunity for EU officials to proactively introduce justice issues to the table, sensitize parties regarding transitional justice issues and draw on local and international experience. A strategic and context-specific approach to introducing justice questions and their sequencing needs to be taken. Introducing issues too early may risk lack of trust and can limit successful settlement. Mediators could await the build-up of momentum in talks before introducing justice issues.<sup>41</sup> Including transitional justice in peace agreements should, however also not be rushed through, as this can lead to ill-defined commitments in final agreements.

When including justice commitments in agreements, it is impossible to frame all the details of future justice interventions. Peace agreements should commit parties to future justice mechanisms, which are often sequenced in different stages focusing first on the most immediate needs for justice, such as the return of internally displaced persons and the reintegration of ex-child combatants. Experience has shown that it is important to be very clear in the language of the agreement in order to avoid different interpretations and deviant practices after the agreement has been signed.<sup>42</sup> "A mediator should be aware that badly drafted provisions may hinder future justice initiatives"<sup>43</sup>. Yet, some degree of constructive ambiguity may be key to reaching an agreement.

#### **Box 7: Unconventional means of mediation**

The EU supports reconciliation efforts of the society in Timor-Leste after past human rights abuses in order to consolidate peace. The production of an educational soap opera with the aim to start a process of reflection linked to the 2006 crisis is funded through the Instrument for stability.

### A comprehensive transitional justice process

The transitional justice tools introduced in peace mediation and dialogue should ideally be linked in order to focus on all justice dimensions as well as to ease some of the dilemmas and trade-offs. To avoid that the reintegration of ex-combatants or the introduction of victims' compensation schemes fuel tensions, these, as we have seen, can be linked to truth-seeking processes and dialogue and be coordinated with development-financed programs restoring social justice. Other individuals, who have been affected by war but may not fall under victim reparation or compensation schemes, could be addressed through accompanying

### Box 8: Linking Transitional Justice tools

"In Colombia compromises related to prosecution were [...] linked to non-penal measures of transitional justice, including truth-telling and reparations" (Herman et Al., 2011, p.13). The EU provided financial support to both victim support and the national truth process.

Role	Key questions to inform the EU's engagement
<i>The EU as a mediator</i>	<ol style="list-style-type: none"> <li>How do EU law, international law, EU normative guidelines on international human rights law and international humanitarian law, other EU policies with regards to transitional justice, such as the Common Security and Defense Policy (CSDP), as well as the specific mandate of EU staff influence the approach to transitional justice? (<b>How to do it:</b> Check whether the mandate of EU Officials (such as EUSR, HOM) or EU political appointment conflicts with a high-level role as a mediator, e.g. includes clauses to cooperate with the ICC; Follow developments with regards to the EU Human Rights Action plan, requiring a transitional justice policy to be prepared until 2014).</li> <li>How can transitional justice issues be best introduced, sequenced and linked with each other to address a holistic understanding of justice? What could be the potential negative consequences of introducing justice issues? How to mitigate risks? (<b>How to do it:</b> Examine what possible political or financial incentives the EU could deploy in relation to specific justice measures).</li> <li>What might be the consequences of an ICC intervention for the mediation/peace process? How are negotiation dynamics likely to change? How could a negative impact on negotiations of ICC intervention be mitigated? (<b>How to do it:</b> Monitor through the EU Delegation and at the capital level whether the ICC is likely to get involved and anticipate strategy or arrest warrants of the ICC, do scenario-planning of likely consequences and develop adaptive measures).</li> </ol>
4. <i>Leveraging Mediation and Dialogue</i>	<ol style="list-style-type: none"> <li>Does the EU have leverage to pressure negotiating parties to accept relevant holistic transitional justice measures within peace agreements? (<b>How to do it:</b> Explore ways for the EU to provide funding or political incentives for adoption of holistic transitional justice measures as an incentive to the parties to agree them...some preplanning may be necessary to ensure rapid implementation post-agreement.)</li> </ol>
6. <i>Promote Mediation and Dialogue</i>	<ol style="list-style-type: none"> <li>What scope is there for EU officials to officially promote transitional justice in the context of third party mediation and dialogue? Is there scope to draw on the EU's own experience? (<b>How to do it:</b> Assess whether public promotion of transitional justice dimensions in peace negotiations by EU high-level EUSRs, other EU officials can positively influence mediation processes. For the EU's own experience contact EEAS K2 Division)</li> </ol>
<i>Supporting Mediation and Dialogue</i>	<ol style="list-style-type: none"> <li>What information, transitional justice expertise and technical support needs to be made available to the mediators or the parties to conflict? How can local information including the needs of victims, be accessed to ensure society input? (<b>How to do it:</b> Analyse what specific expertise on transitional justice questions is available to the EU (including MS), the UN or civil society internationally and locally; Identify information and knowledge gaps on local justice needs and assess whether and how these can be closed, e.g. through facilitating access to society or setting up consultations and dialogue, or utilizing support through the partially EU-financed UN Mediation Support Unit).</li> </ol>
9. <i>Funding Mediation and Dialogue</i>	<p>Identify and fund relevant mediation and local actors and dialogue processes that focus on transitional justice measures, reconciliation and healing in specific contexts where this would be both valuable and complementary with what others fund. (<b>How to do it:</b> Utilize the IfS, the EIDHR and other regional instruments to fund the implementation of transitional justice measures involving dialogue and mediation where there is demonstrated need and a level of buy-in from key stakeholders. Ensure that such initiatives are both informed by the "reality on the ground" (by utilizing the EU Delegation and other EU Missions) and consistent with wider political strategies (driven from headquarters).</p>

## Endnotes

- <sup>1</sup> Bloomfield, D. (2012) 'Justice for the Past, Justice for the Future: Towards Broadening the Transitional Justice Agenda in Peace Processes', mediatEUR Discussion Paper.
- <sup>2</sup> The EU is a major supporter of the ICC and promotes universal support for the Rome Statute in its own political dialogues. All 27 EU Member States are signatories to the Rome Statute
- <sup>3</sup> Council of the European Union (2009) 'Concept on Strengthening EU Mediation and Dialogue Capacities', 15779/09; Council of the European Union (2006) 'Transitional Justice and the ESDP', 10674/06; European Union (2009) 'Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL); European Union (2012) 'Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of the tenth anniversary of the entry into force of the Rome Statute of the International Criminal Court', 12091/1/12 REV 1.
- <sup>4</sup> Council of the European Union (2009) 'Concept on Strengthening EU Mediation and Dialogue Capacities', 15779/09; Council of the European Union (2006) 'Transitional Justice and the ESDP', 10674/06; European Union (2009)
- <sup>5</sup> Hayner, P. (2009) 'Negotiating Justice – Guidance for Mediators', Centre for Humanitarian Dialogue; Herrberg, A., Guenduez, C. and Davis, L. (2009) 'Engaging the EU in Mediation and Dialogue – Reflections and Recommendations', IFP Mediation Cluster Synthesis Report; Bloomfield, D. (2012).
- <sup>6</sup> Chandra, L., Martin-Ortega, O. and Herman, J. (2009) 'Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice', JAD-PbP Working Paper Seires No.1.
- <sup>7</sup> Ibid.
- <sup>8</sup> Bloomfield D. (2012)
- <sup>9</sup> Sharp, D. (forthcoming) 'Beyond the post-conflict Checklist: Linking Peacebuilding and Transitional Justice through the lens of critique', *Chicago Journal of International Law*.
- <sup>10</sup> Council of the EU (2012) 'EU Strategic Framework and Action Plan on Human Rights and Democracy', 11855/12.
- <sup>11</sup> United Nations (2012) 'Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution – Report of the Secretary General, A/66/811; Sisson, J. and Bleeker, M. (2010) 'Dealing with the Past in Peace Mediation', in, Swiss Confederation, FDFA (Ed.), *Dealing with the Past*, Politorbis, No.50.
- <sup>12</sup> Hayner, P. (2009)
- <sup>13</sup> Ibid.; Chandra, L. (2007) 'Conflict Mediation and the ICC: Challenges and options for pursuing peace with justice at the regional level', International conference Building a Future on Peace and Justice, Study workshop, 1.
- <sup>14</sup> Council of the European Union (2006) 'Agreement between the International Criminal Court and the European Union on cooperation and assistance', Official Journal L115.
- <sup>15</sup> Heyner, P. (2009)
- <sup>16</sup> Council of the European Union (2009) 'EU Guidelines on Human Rights and International Humanitarian Law'.
- <sup>17</sup> UN General Assembly (1998) 'Rome Statute of the International Criminal Court' (last amended 2010).
- <sup>18</sup> UN, 2009
- <sup>19</sup> Council of the European Union (2009) 'EU Guidelines on Human Rights and International Humanitarian Law'.
- <sup>20</sup> Council of the European Union (2010) 'Guidelines to EU policy towards third countries on torture and other cruel and inhuman or degrading treatment or punishment – an up-date of the Guidelines'.
- <sup>21</sup> CSS ETH Zurich and Swisspeace (2009)
- <sup>22</sup> Penman, A. (2007) 'The peace-justice dilemma and amnesty in peace agreements', *Conflict Trends*, No. 3: 8-13
- <sup>23</sup> Swisspeace, 2010.
- <sup>24</sup> Hayner, P. (2009), p.14.
- <sup>25</sup> Ibid.
- <sup>26</sup> Council of the European Union (2009) 'Dealing with the Past in Peace Mediation', *Peace Mediation Essentials*.
- <sup>27</sup> Iliff, F., Maitre-Muhl, F. and Sirel, A. (2011) 'Adverse Consequences of Reparations', Reparations Unit, Briefing Paper No.6.
- <sup>28</sup> Chandra, L. and Garcia-Godos, J., Herman, J. and Martin-Ortega, O. (2012) *Transitional Justice and peacebuilding on the ground: Victims and excombatants*. London: Routledge
- <sup>29</sup> Iliff, F. et Al. (2011)
- <sup>30</sup> Ibid.
- <sup>31</sup> Ibid.
- <sup>32</sup> European Commission (2006) Communication from the Commission to Council and the European Parliament: A concept for European Community Support for Security Sector Reform, COM (2006)253 final
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