Input from the International Center for Transitional Justice (ICTJ)

To the Office of the United Nations High Commissioner for Human Rights (OHCHR) for the preparation of the report on lessons learned and good practices of transitional justice that contribute to peace and development (pursuant to Human Rights Council Resolution 51/23)

October 2024

ICTJ welcomes the opportunity to submit this document to OHCHR as input for the preparation of the upcoming report on transitional justice in the context of sustaining peace and sustainable development. The document draws from the reports of the Working Group on Transitional Justice and SDG16+, which ICTJ convenes, as well as from multiple recent ICTJ research studies. This submission is meant to complement previous input provided to OHCHR in the preparation of its 2022 report on the topic (A/HRC/49/39) (including a multi-country study on prevention).

Working Group on Transitional Justice and SDG16+

The 2019 report of Working Group on Transitional Justice and SDG16+ emphasizes the specific challenges to peace and development created by the legacies of serious and massive human rights violations, as well as the contributions that transitional justice can make to SDG target areas such as violence reduction, access to justice, rule of law, and inclusive institutions. Following that report, and in line with HRC Resolution 51/23's call for the consideration of transitional justice as a strategic tool of sustainable peace and development, the 2023 report of the Working Group, "Toward Victim-Centered Change," recommends ways in which transitional justice can be better integrated into national and local development agendas.

The 2023 report argues that such integration can be advanced by establishing links between transitional justice and development in practice and policy. This includes the provision of social services, infrastructure, livelihood projects, and psychosocial support to victims and affected communities within a reparative justice framework. In Peru, reparations included measures to improve Indigenous women's access to justice, better

education, and medical care. In Chile, the reparations program included a specialized health care system, educational scholarships, and pensions to prevent victims from falling into poverty. In Peru, Morocco, and Colombia, collective reparation programs have responded to communities targeted or affected by violence and/ or exclusion, while in Tunisia, the transitional law mandates collective reparations for marginalized regions.

Integration also includes the incorporation of goals and progress related transitional justice into development plans and reporting processes. In Colombia, the National Development Plan (2023) explicitly included compliance with a number of the Colombian truth commission's recommendations. In Uganda, civil society actors have used the government's Annual Sustainable Development Goals Conference to increase awareness among national and international policymakers about access to justice for victims of conflict-related atrocities, and to discuss strategies for collecting and incorporating transitional justice-related data in the government's Voluntary National Reviews (VNRs). Other countries that have included transitional justice in their VNRs include Central African Republic, The Gambia, Liberia, Colombia, Sierra Leone, Timor Leste, and South Africa.

The 2023 Working Group report also draws attention to three general strategies that can improve transitional justice processes by making them more victim centered and participatory and enhance their potential contribution to development goals:

- Strengthening collective action and shared political agendas among victims' groups and networks, civil society actors, and broader social and political movements to generate the advocacy, mobilization, agency, and support needed to both address immediate harms and transform structures of exclusion and inequality.
- Further incorporating transitional justice into responses at multiple levels—local, national, regional, and global—and through both formal and informal institutions to more effectively address the scope and complexity of development problems such as displacement, sexual and gender-based violence, and psychosocial harm.
- Adopting a long-term, inter-generational perspective on the monitoring, operationalization, and impact of transitional justice to maintain the support and engagement necessary to enhance its role in bringing about meaningful change and preventing a recurrence of the past, including through implementation of truth commission recommendations.

Reparations and Sustainable Development

At a narrower level, ICTJ research demonstrates the specific contributions that reparations can make to sustainable development. In a 2023 comparative study, "Advancing Victims'

Rights and Rebuilding Just Communities," we examine the strategies and efforts of local civil society actors to advocate for and shape reparations and highlight the synergies between these efforts and sustainable development in The Gambia, Uganda, Tunisia, and Colombia. The study frames reparation as an integral element of broader societal efforts to bring about meaningful and long-term change. It also addresses HRC Resolution 51/23's recognition of the fundamental role that civil society plays in transitional justice.

Given that reparations programs can help to reduce the development obstacles created by the legacies of past violations, but also that the main challenges faced by such programs include a lack of inclusiveness and a lack of implementation, our research shows that local actors employ the following strategies with regard to reparations:

- Collective action is used in countries such as The Gambia to advocate for the operationalization of reparations programs that address the needs of victims and reduce barriers to development. Collective action includes victims and survivors themselves and their representation in victims' groups and networks and other civil society organizations. Collective action can increase agency, empowerment, inclusion, and social cohesion, and when alliances and coalitions are formed across civil society actors with a range of mandates, it can increase the likelihood that reparations contribute to changing underlying structures of marginalization.
- Direct engagement with relevant government institutions, as in Uganda, Colombia, and The Gambia, can include advocacy; lobbying; bringing victims, community members, and decision makers together; mobilizing and training victims to take a leading role in this process; and raising awareness among legislators and policymakers. The targets of this work include not only the bodies in charge of transitional justice policies, like the ministry of justice, but also a range of ministries and departments in implementation—including ministries of finance, welfare, land, health, and education and legislative bodies, such as parliament, local government councils, and national assemblies.
- In contexts where reparations have not been implemented, civil society can provide direct support to victims and affected communities, as in Uganda. This can include assistance in collective healing, child tracing, financial support, livelihoods, housing, land, education, medical care, psychosocial support, skills training, legal aid, and reintegration. This support can be particularly valuable for specific groups that face social barriers, such as youth activists and those who suffered sexual and gender-based violence and children born of war. While such support can help to partially fill the gap left by the absence of a reparations program, however, it does

not involve state acknowledgment of wrongdoing and therefore does not fulfill the obligation to repair.

- Another strategy outside the framework of a reparations program is to advocate for development policies and programs to orient more to the needs of victims and affected communities at both the national and local levels, as in The Gambia and Uganda. For example, development plans in areas such as poverty reduction, land, education, and health can facilitate or reinforce reparations programs. Moreover, development programs can prioritize victims and affected communities, addressing their needs and potentially providing "building blocks" for future reparations.

The research also illustrates that civil society faces a series of challenges in this work. This includes having limited data about victims, harms, and needs, which hinders the effectiveness and reach of reparations; a lack of civil society coordination, which stems from lack of capacity and experience in civic engagement; a lack of coordination among government institutions, reducing the impact of direct engagement with government; difficulty accessing funding; and civic space that is often limited by restrictions, fear of reprisals, and government interference.

There are also synergies between criminal justice processes and reparations and, in turn, development. To the extent that criminal accountability processes are participatory and accessible, for example, they can complement reparations in increasing the agency of victims and communities. Accountability efforts to address corruption and economic crimes can also be reparatory by generating funds through asset recovery and exposing exclusionary economic systems; in The Gambia and Tunisia, funding reparations from asset recovery is adopted policy.

Sanctions for perpetrators that are imposed within a restorative justice paradigm further demonstrate that retribution, reparation, and development can be combined at the design level and ideally in practice as well. In Colombia, restorative sanctions projects imposed by the JEP include programs can directly relate to development goals and aim to transform the structural inequalities that led to and perpetuated the conflict. These include rural development programs, illicit crop substitution programs, environmental recovery programs, and programs to improve access to basic services.

Finally, the transformative impact of reparations is likely to be limited if they are not embedded in broader reform that seeks to prevent recurrence of violations and marginalization, dismantle exclusionary and corrupt systems, and build more just and inclusive societies. Such processes can include constitutional reform, which can set up more inclusive legal and administrative frameworks; security sector reform, which is a key

element of development; and institutional reform in the judicial, health care, and education systems, which have important bearing on access to justice and enjoyment of economic, social, and cultural rights. It is also important not to ignore the transnational element of exclusive and abusive systems, including the role of international financial institutions and donor governments in maintaining unjust development models. The need to embed reparation within broader reform is demonstrated in the area of gender justice and equality, where violence, discrimination, and marginalization are integrally connected and require change at the political, social, economic, and cultural levels.

Mental Health and Psychosocial Support

ICTJ research also demonstrates the relevance of a psychosocial approach to transitional justice to broader peace and development, building on HRC Resolution 51/23's recognition of MHPSS as a means of addressing the grievances and impact of past violations. Our 2024 study, "The Search for People's Well-Being," pushes beyond the conception of MHPSS programming solely as a form of service provision and instead applies it as a way to make transitional justice more impactful on the well-being of victims, communities, and broader social systems.

At the level of formal transitional justice processes, a psychosocial approach can be integrated in different ways. In Colombia, for example, the Emotional Recovery Strategy at the Group Level program provides psychosocial care to survivors of the armed conflict through support groups explicitly within the framework of reparation, while the JEP has created an innovative approach to "psycho-legal care," which aims to provide victims with the emotional tools that they need to participate in the JEP's legal processes.

Beyond formal processes, the application of a psychosocial lens should be foundational for all aspects of transitional justice work. Key points of consideration for both civil society and government actors involved in transitional justice include: embedding work in local communities, creating conditions for positive participation, overcoming stigma, identifying clear roles, building collaboration across silos, developing a long-term process, focusing on all stages of work, considering trauma among leaders and institutions, securing adequate funding, and measuring progress.