The background of the top section is a dense field of blue coins, likely Euro coins, arranged in a way that creates a sense of depth and texture. The coins are slightly out of focus, with some in the foreground being sharper than others in the background.

# **THE RELATIONSHIP BETWEEN TRANSITIONAL JUSTICE AND CORRUPTION**

Current state of the discussion  
and proposal  
for a research agenda



# **THE RELATIONSHIP BETWEEN TRANSITIONAL JUSTICE AND CORRUPTION**

Current state of the discussion  
and proposal for a research agenda

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This paper has been prepared to inform the consideration of a revised guidance note of the Secretary-General on the United Nations approach to transitional justice, as part of a broad exercise. The paper, however, reflects the views of the author and does not necessarily reflect the views of the United Nations, including its funds, programmes and other subsidiary organs, or of the financial donors to the exercise. It should not be considered as a United Nations document and is not an official record of the United Nations. The exercise has received financial support from, inter alia, the Federal Department of Foreign Affairs of Switzerland.

# CONTENT

<b>Introduction</b> .....	<b>4</b>
<b>A. The state of the discussion of the relationship between transitional justice and corruption</b> .....	<b>5</b>
1. Why is the inclusion of corruption in the transitional justice agenda important? .....	5
2. The debate on how and to what extent transitional justice should address corruption .....	8
3. Views of the United Nations regarding the relationship between transitional justice, corruption and other forms of economic violence and criminality .....	11
<b>B. Addressing corruption (and other forms of economic violence and criminality) in transitional justice: Overview of international experiences</b> .....	<b>14</b>
<b>C. Final reflections and proposal for a research agenda</b> .....	<b>27</b>
1. Reflections .....	27
2. General recommendations and proposal for a research agenda on the relationship between transitional justice and corruption .....	33
<b>References</b> .....	<b>36</b>

# Introduction



There has been an intense debate on the advantages and disadvantages of including corruption and other forms of economic violence or criminality<sup>1</sup> in the transitional justice agenda. This is because such phenomena and the human rights violations and abuses that accompany them are prevalent in countries that transition from war to peace or from dictatorial regimes to more open political systems (before and, regrettably, often after their transitions), and because they threaten democracy and social development. In recent decades, as several countries in transition have incorporated the investigation of these scourges into their transitional justice processes, the debate has moved beyond whether to include a focus on economic violence and criminality in the transitional justice agenda. The scope of the matter, the appropriate instruments to apply and the resulting challenges in terms of the effectiveness of transitional justice as a means of contributing to the consolidation of peace and democracy are also elements of the discussion. The modest – and in some cases disappointing – results of these experiences have stoked the debate and raised new questions about how and to what extent these issues should be addressed.

**The following pages present a brief overview of the main axes of this debate and a reflection on the theoretical, methodological and practical challenges posed by the inclusion of economic violence and criminality, and notably corruption, in the transitional justice agenda.**

The paper has been structured into three parts. The first part gives an overview of the main axes of the discussion on the relationship between transitional justice and corruption. The second part presents some international experiences that have addressed corruption and other forms of economic violence and criminality as part of the transitional justice agenda or in a later phase, emphasizing the scope and form of the approach as well as the global results obtained. The third part offers some reflections on the challenges faced when dealing with such phenomena through transitional justice and proposes specific measures that could be implemented to combat them. Finally, a research agenda is proposed, with the aim of deepening the understanding of the relationship between transitional justice and corruption.

<sup>1</sup> It is not always easy to disentangle the various concepts that are frequently used interchangeably and overlappingly in the literature and in practice, often without clear definition. For policy-making purposes, “corruption” is generally understood as “abuse of public or private office for personal gain”. The United Nations Convention against Corruption does not include a definition of “corruption” as such, but establishes offences for a range of corrupt behaviour (including bribery, embezzlement, misappropriation or other diversion of property by a public official and obstruction of justice). “Economic crime” is a wider category of crimes in the economic sphere, which includes corruption. An even broader term is “economic violence”, defined by Dustin Sharp as “violations of economic and social rights, plunder of natural resources, and various forms of economic crime carried out by authorities in violation of generally applicable criminal law, including large-scale embezzlement, fraud, tax crimes, and other forms of corruption”

# A. The state of the discussion of the relationship between transitional justice and corruption



## 1. WHY IS THE INCLUSION OF CORRUPTION IN THE TRANSITIONAL JUSTICE AGENDA IMPORTANT?

In its beginnings, transitional justice privileged the study and investigation of atrocities and large-scale physical violence – mainly murders, rapes, torture, disappearances and other serious (civil and political) human rights violations and abuses – resulting from armed conflicts or repression by authoritarian regimes. Consequently, **corruption (and wider economic violence and criminality) was either ignored, treated marginally as part of the historical background or considered in the analysis of the general context in which massive civil and political rights violations took place**<sup>2</sup> (Sharp, 2014a; Carranza, 2008, 2020; García Martín, 2019; Bohoslavsky and Torrelly, 2014; Pesek, 2014). There are three main causes for this situation. First, there was the hegemonic human rights discourse

and practice that, for a long time, focused attention on civil and political rights to the detriment of other rights, which in practice caused a compartmentalization of transitional justice<sup>3</sup> (Andrieu, 2012; Sharp, 2014a, 2014b). Second, there was an idea that violations of civil and political rights are subject to judicialization and can therefore be remedied through transitional justice, while violations of economic rights cannot, due to their vagueness and non-binding nature (Gathii, 2014; Carranza, 2008). Third, there was a fear that the inclusion of corruption (and other forms of economic violence and criminality) could deflect time, effort and human and material resources, which could jeopardize the achievement of the wider goals of transitional justice and generally render its agenda unmanageable. **The marginal or peripheral treatment of corruption in transitional justice generated much**

(Sharp, 2014b). It is important to note that economic crime (including corruption) and “violations of economic and social rights” are not the same, but that there are linkages. Rights are entitlements of individuals or groups that create obligations for States, and failure to comply with them engages the international responsibility of the State. Economic crimes relate to individual or corporate criminal responsibility. However, States may be unable to comply with their international obligations if economic crimes and corruption affect the availability of State resources. Furthermore, agents of the State may themselves be involved in economic crimes or turn a blind eye. Such behaviour could engage the international responsibility of the State if, as a result of such conduct, the State fails to comply with its human rights obligations (United Nations, 2014). <sup>2</sup> The first United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence pointed out that transitional justice had “focused on violations of civil and political rights” and, to some extent, had developed in the margins of “important developments in economic, social and cultural rights” (United Nations, 2014). <sup>3</sup> This discourse is said to be related to the existence of a “dominant script” in the field of transitional justice that favoured the denouncing of a limited set of human rights violations. Although this was not exclusive to transitional justice, it reflected a deeper ambivalence regarding the proper status of economic and social rights within the international human rights community (Sharp, 2014b; Gathii, 2014).

**academic and political criticism and had a negative impact on transitional justice processes.** This was particularly true in those countries where such factors played a central role in the origin and development of conflicts or in the emergence, consolidation and permanence of authoritarian regimes. Learning from these experiences and taking into consideration the theoretical and methodological advances in the field of democracy and transitional justice, as well as the new narratives on corruption that emerged in the 1990s,<sup>4</sup> according to which it is the greatest obstacle to economic and social development worldwide,<sup>5</sup> **some countries have addressed corruption (and other forms of economic violence and criminality) as part of transitional justice over the past two decades. This has been done on the basis that such analysis is fundamental to understanding the roots of conflicts and the origin of authoritarian regimes, and is thus necessary in order to clarify the truth and avoid repeating the events that led to violence** (Sriram, 2014; Roht-Arriaza, 2014). Corruption has been addressed with the further aim of ensuring the success of democratic transitions, given its various pernicious effects on a country's economy, politics and society. **From this perspective, the fight against corruption may represent a contribution by transitional justice to democracy and social development.**<sup>6</sup>

**Other reasons** given for including corruption and other forms of economic violence or

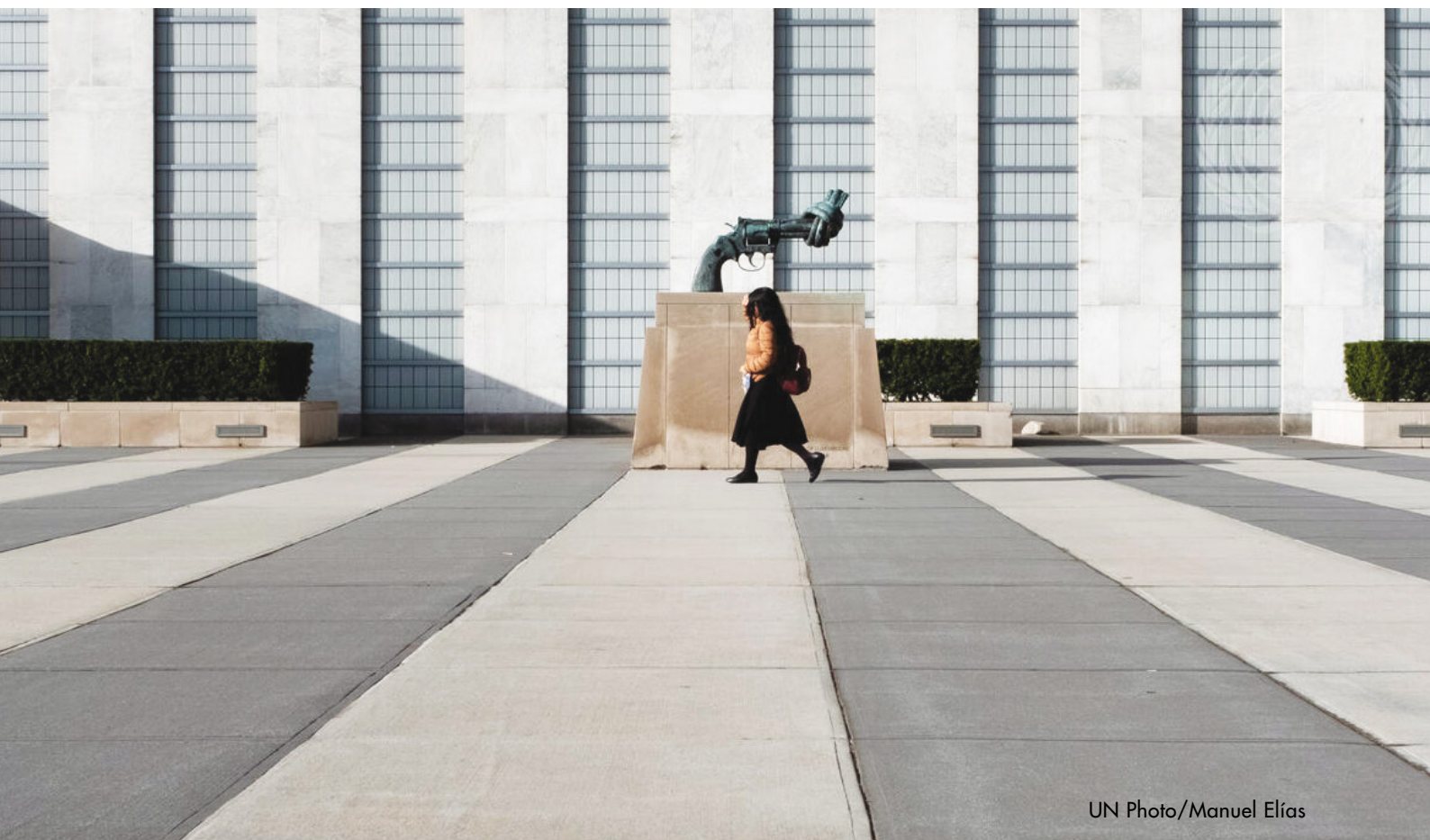
criminality as part of the transitional justice agenda are: (i) **their direct or indirect role in human rights violations that cause suffering or prevent States from guaranteeing those rights** (Duthie, 2014); (ii) **the impunity gap created when physical violence and economic violence are not addressed equally**<sup>7</sup> (Carranza, 2014; Pesek, 2014); (iii) **the intertwining of corruption and economic crime with physical violence and violations of civil and political rights**; (iv) **the contribution, however modest, that the fight against corruption provides in the search for solutions to structural problems such as poverty and inequality through development initiatives** (Duthie, 2014), thus strengthening the redistributive dimension of transitional justice; and (v) that **the reduction of these crimes can contribute to long-term social and political stability.**

Regarding the desirability of including corruption in the transitional justice agenda, it is argued that corruption violates the fundamental human right to fair treatment and equal opportunities, and that this scourge is linked in various ways to violations of human rights, including economic, social and cultural rights, with a disproportionate impact on vulnerable and marginalized groups, including women, youth, children and people with disabilities. Therefore, its inclusion could be a **first step in addressing the "invisibility" of economic rights** and a way to counter the supposed Westerni-

<sup>4</sup> New narratives about corruption emerged at the end of the 1980s as part of the "good governance" agenda sponsored by the Bretton Woods institutions, particularly the World Bank, which placed corruption at the centre of development policy. In its *World Development Report 1997*, the World Bank considered that corruption was detrimental to economic growth and private investment (Gathii, 2014). <sup>5</sup> This view, which attaches significant (and perhaps outsized) importance to corruption as a destructive factor for development, appears to be shared by some organizations within the United Nations system. See, for example, United Nations Office on Drugs and Crime, "Corrupción, mayor obstáculo al desarrollo económico y social en todo el mundo", available at [www.unodc.org/colombia/es/press/2014/diciembre/corrupcion-mayor-obstaculo-al-desarrollo-economico-y-social-en-todo-el-mundo.html](http://www.unodc.org/colombia/es/press/2014/diciembre/corrupcion-mayor-obstaculo-al-desarrollo-economico-y-social-en-todo-el-mundo.html). <sup>6</sup> Some authors point out that the difference between regular justice and transitional justice is that, for the former, the promotion of peace and democracy are secondary objectives, while for transitional justice they are a fundamental objective to be achieved (van Zyl, 2005). <sup>7</sup> The impunity gap is related to the idea of the indivisibility of rights, such that human rights and economic and social rights are indivisible and mutually supportive, so it is essential that transitional justice recognizes them equally. Not doing so would implicitly suggest that certain violations – socioeconomic ones – are permissible (Carranza, 2014).

zation of arguments around transitional justice (Andrieu, 2012). It is also stated that **addressing large-scale corruption, such as the massive misappropriation of State funds or the plundering of the State's natural resources, helps to establish fuller accountability and to satisfy a wider audience than victims of violence** (Pesek, 2014). Additionally, it is considered that **studying and denouncing corruption by authoritarian regimes can contribute to the consolidation of democratic norms and values and to the delegitimization of the previous regime** (Andrieu, 2012). It is further noted that the fight against this scourge can **serve as a catalyst for the realization of rights** – for example, guaranteeing access to education, health and water – and that all forms of corruption tend to violate human rights directly, indirectly

or remotely (International Council on Human Rights Policy, 2010). **Corruption fuels gender inequality**, as it disproportionately limits women's access to public resources, information and decision-making.<sup>8</sup> It has also been stated that the recovery of public money embezzled by officials can be used to finance some transitional justice mechanisms, which would contribute to accountability, reconciliation and the transition to democracy in general (Nouioua, 2020). Finally, it is argued that **addressing corruption as an international crime increases the chances of recovering money that had been illegally taken out of a country by perpetrators**, such as in the cases of Ferdinand Marcos in the Philippines and Augusto Pinochet in Chile.



UN Photo/Manuel Elías

<sup>8</sup> See [www.wilsoncenter.org/publication/the-link-between-corruption-and-gender-inequality-heavy-burden-for-development-and](http://www.wilsoncenter.org/publication/the-link-between-corruption-and-gender-inequality-heavy-burden-for-development-and).

## 2. THE DEBATE ON HOW AND TO WHAT EXTENT TRANSITIONAL JUSTICE SHOULD ADDRESS CORRUPTION

Although, in practice, more and more countries in transition have incorporated a focus on corruption (and other forms of economic violence and criminality) into their transitional justice system (see also part B), the debate on the relevance of such a decision continues, as does the discussion on the form and scope of addressing such issues. This is due, in part, to the unsatisfactory results obtained in those countries where truth commissions have considered the matter, and to the existence of different political and theoretical perspectives on the nature of corruption and wider economic violence and crime and on the scope and the very definition of transitional justice. The main axes of the debate are presented below.

The first axis of debate is related to the **scope and form that the approach to corruption (and other forms of economic violence and criminality) should take within the framework of transitional justice. On the one hand, there are those who, while accepting the need to include this issue in the transitional justice agenda in some way, advocate for caution and moderation when examining it.** This is due to the risks involved in dealing in depth with such complex and broad issues that, by their nature, exceed the scope of action of transitional justice, and which require a significant amount of human, material, institutional and political resources to investigate them seriously – resources that are generally lacking in transitional justice mechanisms. It is further argued that corruption and economic crimes generally take place in com-

plex and uncertain political and institutional contexts, and that too broad an approach could thus jeopardize the entire transitional justice programme. This may be especially important considering that its instruments – truth and reparations commissions in particular – are not best suited to directly addressing economic rights or crimes, as they lack the expertise to develop specialized investigations and specific recommendations in this area, and that attempting to do so may hinder the ability of such entities to fulfil their traditional mandate (Sriram, 2014). Along the same lines, it has been pointed out that adding economic crimes to the mandates of truth commissions or to transitional criminal investigations can overload transitional justice processes, and that trials of economic crimes involve different evidentiary and procedural requirements (de Greiff, 2009). In addition, it is argued that transitional justice instruments are too limited and incomplete, particularly reparations, which are temporary and are unlikely to substantially alter the structural discrimination, poverty or lack of services that most of the victims face (Roht-Arriaza, 2014). For these reasons, those who share this position of caution and moderation advocate for a realistic approach, in which the scope of transitional justice is defined according to the specificities of each country in transition (including the nature of past violations and the resource limitations of the transitional justice institutions), while its field of action is carefully distinguished from that of other disciplines, particularly economic development, with which transitional justice should work in a complementary manner (Sriram, 2014). The idea would be to determine for each case the best combination of transitional justice, development measures



and other actions to achieve the fairest outcome for a society, through both corrective and distributive elements (Duthie, 2014). Following this rather restrictive approach, **transitional justice should deal with the most serious and widespread cases of corruption and other economic crimes that are directly related to human rights violations.** This approach is designed to be more feasible and it would have the advantage of reducing the political resistance of opponents, although its impact in terms of growth and distribution would be rather modest. In fact, some believe that the most important contribution transitional justice can make is to change public narratives about the past, which may have significant implications for the future.<sup>9</sup>

**On the other hand, there are those who advocate for an even more ambitious approach to transitional justice whereby corruption, economic crimes and violations of economic, social and cultural rights in general are addressed in an integral manner.** According to this vision, **transitional justice can contribute to solving some of the structural problems that lie at the basis of conflicts and authoritarian regimes, such as poverty and inequality,<sup>10</sup> including gender inequality.** This would enhance the transformative dimension of transitional justice and could even make progress towards a **“transformative justice”** that, in addition to responding to violations and crimes, responds to structural problems – which, as noted, would imply a paradigm shift in the entire field of transitional justice (Duthie, 2014). Along these lines, it is ar-

gued that, under authoritarian regimes and during conflicts, violations of economic and social rights may be more widespread than violations of civil and political rights, they may involve more perpetrators and affect more victims, and there may be forms of exclusion that, although not criminal, still need to be addressed. Proponents of an ambitious approach therefore suggest that the scope of existing transitional justice mechanisms ought to be broadened to allow a more active role to be taken in the formulation of development policy and post-conflict economic agendas. This, in turn, would require a new conceptualization of the very objectives of transitional justice in much broader terms, linking them to the complex ecosystem of development processes (McDougal, 2014).

This approach has been criticized and questioned from various angles. Some authors have argued that it is aimed at fundamentally changing the priorities of transitional justice, which would make it lose its essence – that is, the investigation and redress of a narrow set of violations. Thus, such an approach would turn transitional justice into a development policy, which would entail a risk of confusing development processes and transitional justice processes, especially in the context of reparations. Other authors argue that, even if transitional justice were “development-sensitive”, it would be debatable whether such links would be transformative enough (Duthie, 2014). Added to this criticism is the concern about the suitability of existing transitional justice mechanisms and

<sup>9</sup> “What transitional justice can and should do, when appropriate, is address the links between economic and social injustice and massive atrocities, draw public attention to these links, and, where possible, suggest the types of broader reforms that are necessary for societal transformation and the establishment of just societies, in the broadest sense of the term” (Duthie, 2014). <sup>10</sup> Rubén Carranza bluntly states that addressing poverty and social inequality must be considered among the strategic objectives of any transitional justice process (Carranza, 2008).

tools – particularly truth commissions and reparations – for carrying out such broad and specialized tasks. Finally, there is concern that too broad an approach could turn transitional justice into something overly analytical and impractical.

A second axis of the debate revolves around **the links between corruption and transitional justice and the challenges that would be entailed for transitional justice given the complexity and breadth of the phenomenon of corruption, and the lack of a clear definition** (Andrieu, 2012; Carranza, 2020). While many may agree that the fight against corruption contributes to democratic transition and that large-scale corruption often causes or fuels human rights abuses, some authors suggest caution in addressing this phenomenon from the transitional justice perspective, citing several reasons. First, there is not always a causal link between corruption and human rights abuse. Indeed, there are even situations where corruption does not have significant implications for human rights (Albin-Lackey, 2014). Second, it is pointed out that corruption is a broad and complex phenomenon that goes beyond the field of human rights, and therefore it is counterproductive for transitional justice to be used to cover it in all its dimensions. This reasoning warns of the temptation to put too much focus on the fight against corruption within transitional justice, treating it as the “root of all evils”<sup>11</sup> (Nouioua, 2020) or considering it as a violation of human rights in itself (Albin-Lackey, 2014). The third argument is that combating

large-scale corruption in transition periods is difficult, because corrupt actors responsible for past abuses, including the State itself, generally continue to hold economic and political power. Additionally, institutions are weak during such periods, which prevents the State from functioning effectively. Both these factors threaten the possibility of advancing in an agile and expeditious way in the fight against corruption and, in some cases, they can allow corruption to thrive without control. Some therefore argue that, during the transition period, the aspiration should not be the eradication of corruption, but rather to implement policies aimed at limiting it (Nouioua, 2020). Fourth, the inclusion of corruption in the conceptual apparatus of transitional justice could dilute its purposes and thus diminish its achievements, which could risk overloading the (already ambitious) agenda of truth-seeking mechanisms (Andrieu, 2012). According to Kora Andrieu, increasing the workload of a truth commission could test the limited resources available for human rights and thus distract commissioners from addressing political violence.

Taking into consideration these complexities, as well as the connections and complementarities that exist between transitional justice and the anti-corruption agenda, **some authors suggest there is a need to design a complementary strategy that applies transitional justice and the anti-corruption agenda to address civil and political rights violations and socioeconomic injustices** in order to improve the ability of a country in transition

<sup>11</sup> This exaggerated understanding of corruption is partly related to the narrative disseminated by different international institutions that consider it as the “major obstacle to economic and social development throughout the world”, which is not only inaccurate but diverts attention from the impact of other factors such as the existence of concentrating and exclusionary economic models and systems.

to achieve accountability, truth, reparation, reconciliation and non-repetition (Andrieu, 2012; Pesek, 2014). Hence, it has been suggested that a **kind of division of labour be implemented between transitional justice and the anti-corruption agenda** (Andrieu 2012; de Greiff, 2009), **with the creation of special commissions dedicated to investigating and denouncing corruption, especially in settings where corruption is widespread and endemic.** This proposal seeks to avoid indefinitely extending the mandate of existing transitional justice mechanisms (Andrieu, 2012). Some authors have suggested that, as cor-

ruption has structural roots in many cases, the mechanisms of transitional justice could be strengthened in relation to institutional reforms (Andrieu, 2012), thus allowing transitional justice to make a concrete contribution to the fight against corruption and to help generate conditions for non-repetition in the medium and long term.

### **3. VIEWS OF THE UNITED NATIONS REGARDING THE RELATIONSHIP BETWEEN TRANSITIONAL JUSTICE, CORRUPTION AND OTHER FORMS OF ECONOMIC VIOLENCE AND CRIMINALITY**

The United Nations system has not been a passive actor in debates on the inclusion of corruption (and other forms of economic violence and criminality) in the transitional justice agenda. The World Conference on Human Rights, held in Vienna in 1993, categorically recognized the indivisibility and interdependence between social and economic rights and civil and political rights. Since then, there has been a growing commitment to recognizing the interdependence between both types of rights (Gathii, 2014).

In 2006, the United Nations High Commissioner for Human Rights, Louise Arbour, gave a speech in which she advocated for more attention to be paid to **“economic and social justice for societies in transition”** and **clearly pointed out the importance of integrating economic and social rights into “the transitional justice framework”** (Arbour, 2006). The High Commissioner further highlighted how specific transitional justice mechanisms had already addressed these rights and argued that “violations of civil and political rights are



OHCHR Photo/Robert Few

intrinsically linked to violations of economic, social and cultural rights". While the speech did not necessarily reflect the official position of the United Nations on the issue, the High Commissioner's statements marked something of a turning point in the debate on the economic and social dimensions of transitional justice and influenced the policy, scholarship and practice of the United Nations in the field of transitional justice.

In 2009, the Human Rights Council adopted a resolution stressing the importance of ensuring that violations of all human rights, including economic, social and cultural rights, are addressed in transitional contexts ([A/HRC/RES/12/11](#)). In March 2010, the Secretary-General of the United Nations issued his guidance note on the United Nations approach to transitional justice, which called on the United Nations to "strive to ensure transitional justice processes and mechanisms take account of the root causes of conflict and repressive rule, and address violations of all rights" (guiding principle 9). The guidance note further emphasized that such an approach was necessary for peace to prevail.

In addition, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence defended holistic approaches in theory and practice, and stressed that human rights violations were not limited to civil and political rights but also included violations of economic, social and cultural rights. Further, he noted that transitional justice could contribute to combating impunity for violations of economic, social and cultural rights, and to preventing their recurrence by laying the foundations



for future-oriented reforms and programmes ([A/HRC/21/46](#)).

This new, more comprehensive understanding of transitional justice has been adopted by the United Nations and the European Union at the institutional level, putting more emphasis on violations of economic, social and cultural rights in the transition. In 2014, the Office of the United Nations High Commissioner for Human Rights published a booklet on how best to address violations of economic, social and cultural rights through existing mechanisms in transitional justice processes. In particular, the publication called for more sustained and detailed research on transitional justice, the root causes of conflict and large-scale violations of economic, social and cultural rights (United Nations, 2014).

In recent decades the fight against corruption has gained priority in the political agendas of international cooperation and the United Nations system, due to corruption's pernicious effects on democracy, inequality, human rights and development. In 2003, the General Assembly decided to proclaim 9 December as International Anti-Corruption Day. The United Nations Convention against Corruption, in force since December 2005, is the sole legally binding universal interna-

tional anti-corruption instrument and covers four main substantive areas: prevention, criminalization and law enforcement measures, international cooperation and asset recovery.

It is worth noting the 2013 and 2017 reports of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff ([A/HRC/24/42](#) and [A/HRC/36/50](#)), which express concern about the expansion of the mandates of most transitional justice measures, including the approach to corruption, without paying due attention to the capacities of transitional justice institutions ([A/HRC/36/50](#)). Additionally, the reports express concern about the increased challenges and internal tensions that a greater combination of functions could generate for such institutions ([A/HRC/24/42](#)). The Special Rapporteur suggested that one possible way to address both systemic issues and individual cases of corruption would be to **establish independent bodies with the professional capacity and expertise required to investigate financial files and resolve individual cases of corruption through arbitration. These bodies could conduct joint investigations and establish meaningful methods for information exchange** ([A/HRC/24/42](#)).

In 2018, in its first meeting to address the links between corruption and conflict, the Security Council considered ways to effectively disrupt the illicit siphoning of money by leaders and other practices that weaken State institutions, thereby making a country susceptible to conflict. **“Corruption breeds**

**disillusion with Government and governance – and is often at the root of political dysfunction and social disunity,”** Secretary-General António Guterres told the 15-member Council, which bears the mandate for the maintenance of international peace and security.<sup>12</sup>

In recent years the United Nations system has been developing a **common position on corruption** and how to address it (United Nations, 2020), based on the conviction that corruption particularly affects poor, marginalized and vulnerable people and disproportionately impacts women, and that this scourge undermines the achievement of the Sustainable Development Goals and has a negative impact on peace, stability, security, the rule of law, gender equality, the environment and human rights (United Nations, 2020).

<sup>12</sup> See <https://press.un.org/en/2018/sc13493.doc.htm>.

## B. Addressing corruption (and other forms of economic violence and criminality) in transitional justice: Overview of international experiences



Over the past two decades, several countries in transition have addressed corruption and other forms of economic violence and criminality as part of their transitional justice processes. These experiences have been diverse in terms of the countries' profiles and the types of transitions that have taken place there, and in the scope of the actions carried out and the mechanisms that have been implemented. **The most widely used transitional justice mechanism has been truth commissions, although in some cases special bodies were also created in a complementary manner.** In some countries, including Guatemala and South Africa, corruption and other forms of economic violence and criminality were addressed long after the end of the transitional justice period.

Table 1 presents some of the countries that in one way or another sought to address corruption and other forms of economic violence and criminality as part of a transitional justice process or in a subsequent period. One of the first was **Chad**, and the **Commission of Inquiry into the Crimes and Misappropriations by Ex-President Habré, His Accomplices and/or Accessories**, which operated from 1990 to 1992, included both civil and political rights violations and crimes of an economic nature

in its mandate. This mandate included illicit drug trafficking as well as embezzlement and theft of public and private property, and covered the financial operations, bank accounts and other assets of former President Habré and his associates (Carranza, 2008; Sharp, 2014b). For these purposes, the Commission of Inquiry was organized into two sections: one dedicated to violations of physical integrity and one in charge of investigating the embezzlement of public property. The Commission's report is a pioneer in illustrating the links between repression, political violence and economic violence, thereby opening a new path to illustrate the socioeconomic effects of political violence (Sharp, 2014b). However, perhaps due to the lack of time, financial resources and experience in forensic accounting, the economic crimes section did not study the links between the large-scale financial crimes, economic and social rights and the general poverty that Chad had historically suffered (Sharp, 2014b). Moreover, the Commission's recommendations were not implemented, although some of those named in the report as accomplices of President Habré were dismissed more than a decade later (Carranza, 2008).

**Table 1***International experiences in addressing corruption and economic violence/crime*

<b>Truth commissions/ specialized commissions</b>	<b>Years</b>	<b>Focus of investigation</b>	<b>Factor generating violence/ impunity</b>	<b>Classification according to Democracy Index 2021*</b>
Chad	1990–1992	Embezzlement, theft of public and private property	Dictatorial regime	Authoritarian regime (1.67)
Sierra Leone	2002–2004	Endemic corruption, violation of economic, social and cultural rights, economic crimes, natural resources	Internal conflict	Hybrid regime (4.97)
Ghana	2003–2004	Economic violence perpetrated by soldiers, violations of labour rights, confiscation of property	Internal conflict	Poor democracy (6.50)
Timor-Leste	2002–2005	Violations of economic and social rights, including the rights to an adequate standard of living, health and education, famine, forced displacement	Foreign occupation	Poor democracy (7.06)
Liberia	2006–2009	Corruption, economic crime, exploitation of natural resources	Internal conflict	Hybrid regime (5.43)
Kenya	2009–2011	Economic, social and cultural rights and economic crimes, including the irregular and illegal acquisition of land, grand corruption, exploitation of natural resources and economic marginalization of communities	Internal conflict	Hybrid regime (5.05)
Solomon Islands	2009–	Economic rights, including the right to property and the right to settle and earn a living, education and health	Internal conflict	N.A.
Tunisia	2011–2012	Corruption, economic crimes, including bribery, embezzlement, waste, fraud, misappropriation of public funds, abuse of power, money laundering	Dictatorial regime	Hybrid regime (5.99)

The Gambia	2016–2018	Corruption and economic crimes, natural resources	Dictatorial regime	Hybrid regime (4.41)
Armenia	2018–	Corruption	Dictatorial regime	Hybrid regime (5.49)
Guatemala	2006–2019	Impunity, corruption	Poor democracy	Hybrid regime (4.62)
South Africa	2017–2021	Grand corruption, fraud and State capture	Poor democracy	Poor democracy (7.05)
Colombia	2018–2022	Economic, social and cultural rights, corruption, economic crimes, including extortion, bribery, pillage, forced labour and control of natural resources and territory	Internal conflict	Poor democracy (6.48)

\*The Economist Intelligence Unit's Democracy Index shows the state of democracy worldwide in 165 independent States and two territories, based on five categories: electoral process and pluralism, functioning of government, political participation, political culture, and civil liberties. Based on their scores on a number of indicators within these categories, countries are classified into four types of regimes: full democracy, poor democracy, hybrid regime and authoritarian regime (Economist Intelligence Unit, 2022).

The **Truth and Reconciliation Commission of Sierra Leone**, which operated from 2002 to 2004, examined the causes of the conflict that took place in the country between 1991 and 2003<sup>13</sup> from an extremely broad perspective, as it investigated violations of all human rights including economic, social and cultural rights (mainly the impact of the conflict on women and youth and on children's health and education) and "other categories of rights such as the right to development and the right to peace" (Truth and Reconciliation Commission, 2004). It also examined the "abuses" committed during the conflict, such as corruption and economic crimes, including the destruction of property, looting and extortion. The Commission analysed the role that mineral resources played in the conflict, which allowed it to connect physical violence

to economic violence, concluding that the exploitation of diamonds was not the cause of the conflict, but rather a factor that fuelled it, while also noting that these resources were used by most of the armed factions to finance their war efforts. The Commission concluded that it was years of misrule, endemic corruption and the denial of basic human rights that created the deplorable conditions that made conflict inevitable, further noting that Sierra Leone "was systematically plundered and looted by all factions in the conflict" (Truth Reconciliation Commission, 2004). In the report's recommendations, which are considered to have been the most comprehensive and holistic issued by any truth commission up to that point (Sharp, 2014b), the Commission called on those in all sectors to fight the "scourge of corruption", which un-

<sup>13</sup> In order to "compile a clear picture of the past", the Commission devoted considerable resources to an examination of the country's pre-conflict history, which was intended to "to locate causes of conflict in Sierra Leone's past, place the conflict within its proper historical context and offer explanations for what went wrong" (Truth and Reconciliation Commission, 2004).



dermined the life force of Sierra Leone and whose threat manifested itself “in many evil forms”, such as “greed, bribery, embezzlement, abuse of power, self-serving deals by public officials, extortion, favouritism and nepotism” (Truth and Reconciliation Commission, 2004). Although it acknowledged that its recommendations were quite broad, the Commission was criticized because the majority of them focused on issues relating to the respect and protection of civil and political rights and the strengthening of the rule of law. Among the few recommendations related to economic violence are those concerning the repeal of laws preventing women from owning land, the need for a stronger anti-corruption commission, better provision of basic services, and better and more transparent use of diamond revenues.

The **National Reconciliation Commission of Ghana**, which operated from 2003 to 2004, included in its mandate the investigation of human rights violations and abuses related to seven categories (killings, abductions, disappearances, detentions, torture, ill-treatment and confiscation of property), and it was also given the flexibility to investigate “any other matter” it deemed necessary to promote reconciliation. Based on this mandate, the Commission documented the economic violence perpetrated by soldiers during military regimes, which helped illustrate the complex relationship between economic violence and political violence that the country had suffered throughout its history. The Commission also examined labour violations as a form of economic violence and catalogued the summary dismissals of public officials by various military regimes as a human rights abuse. Further, it recommend-

ed adopting a number of policies related to economic violence, including the restitution of property and a special monument for merchants, one of the most affected groups due to a combination of physical and economic violence. The Commission’s report is considered to have established an important path in the investigation of economic violence, although it did not delve into an analysis of the effects of economic violence and political violence on the lives of individuals and their families, which made the report reflect a “decontextualized and conventional human rights approach to reporting on violations” (Sharp, 2014b).

The report of the **Commission for Reception, Truth and Reconciliation in East Timor**, which operated in Timor-Leste from 2002 to 2005, extensively examined economic violence under Indonesian occupation and the structural and economic context that made it possible. Although the Commission did not have an explicit mandate to examine violations of economic rights, its final report has a chapter explicitly devoted to exploring violations of economic and social rights, including the rights to an adequate standard of living, to health and to education, and it examines famine and forced displacement. The commission concluded that Indonesia’s “authoritarian style of government” and its “close collaboration with special interests” led it to breach human rights protection standards, adding that violations of the right to an adequate standard of living and the right to health and education had occurred. It considered that, as the occupying power, Indonesia had discriminated against the Timorese and had failed to meet “certain basic needs such as food, shelter, essential medicines and

basic education". The Commission's analysis is generally considered to be comparatively sophisticated, linking a number of policies of Indonesia to violations of economic and social rights in creative and unexpected ways, including the use of education as a propaganda tool as a violation of the right to education, the forced resettlement of villagers in areas with poor soils and in malarial areas as a violation of the right to health, and the manipulation of coffee prices to finance military operations as a violation of the right to an adequate standard of living. The close link between the Commission's work on economic violence and specific violations of economic and social rights under international law also features in the recommendations section, with specific suggestions grouped under headings such as "right to education and cultural self-determination" and "right to health and a sustainable environment". However, despite offering perhaps the most extensive and explicit treatment of economic and social rights of any truth commission to date, the definition that the Commission in Timor-Leste provided for reparation purposes was limited to victims of civil and political rights violations, based on issues of feasibility and needs-based prioritization (García Martín, 2019; Sharp, 2014b). In its final report, the Commission made recommendations on economic, social and cultural rights, stating that the culture of Timor-Leste should be protected and used as a "source of national identity" through various means. In the case of Timor-Leste, the existence of a demo-

cratic regime, albeit imperfect, contributed to the solid work of the Commission.

The **Truth and Reconciliation Commission of Liberia**, which operated from 2006 to 2009, was mandated to investigate serious violations of human rights and international humanitarian law, as well as "economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflicts", which enabled it to study economic violence broadly. The Commission's report directly identified factors such as poverty, inequality, an entrenched political and social system based on privilege, clientelism, endemic corruption and historical disputes over the acquisition, distribution and accessibility of land among the root causes of the conflict (Sharp, 2014b; García Martín, 2019; Requena del Río, 2017).<sup>14</sup> In addition, it expressly identified a direct link between corruption and massive human rights violations. The Commission investigated various economic crimes and their perpetrators (many of which were companies) in different economic sectors, such as timber and mining. However, it did not take the opportunity to hold Liberia accountable under human rights law, even though some of the economic crimes also constituted human rights violations. The Commission stressed that the economic crimes in question involved violations of the principles of equality and non-discrimination. It should be noted that some of these activities, such as the exploitation of child labour and human trafficking, constitute human rights violations in themselves, but the Commission described

<sup>14</sup> The Commission defined economic crimes as "any prohibited activity aimed at generating economic benefits carried out by the State or by non-State actors whose economic activities had incited conflict, or contributed to serious violations of human rights and/or humanitarian law, or that had benefited economically from the conflict; or any activity of a public or private person aimed at generating illicit gain through participation in conduct such as tax evasion, money laundering, looting, trafficking in persons and exploitation of child labour".

them as “economic crimes”. The Commission concluded that “the appalling number and scale of economic crimes in Liberia has grossly deprived Liberia and Liberians citizens of their economic rights and has obstructed the economic development and policy of the state”. Although the Commission did not examine in detail the violations of economic, social and cultural rights, it recommended that Liberia ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (United Nations, 2014).

While the Commission’s holistic account of the civil war makes it clear that physical and economic violence are almost impossible to separate when trying to understand the development of the civil war in Liberia, there is criticism that the Commission’s final report treats other dimensions of economic violence too lightly. For example, it was said that land tenure issues were addressed without the necessary rigour, and that the report did not provide any legal analysis of economic, social and cultural rights violations (García Martin, 2019). Furthermore, the absence of a detailed analysis of the connections between the economic crimes and violations of economic and social rights under international law is noted as a major omission. It was noted that economic and social rights received little attention in the report, although there are some vague references to “economic rights”. According to some authors, the failure to consider economic violence as a rights issue was a missed opportunity to use universal vocabulary that would serve to link wartime violations of economic and social rights with pre- and post-conflict violations. The Commission’s report has also been criticized for its poor quality, including a lack of consistency

and coherence between the various sections, the content and the recommendations (Sharp, 2014b). One particular criticism is that the recommendations section is detached from the rigorous documentation and empirical data that one would expect to find in the body of the report, which might have undermined the report’s credibility. Some have argued that the fact that the Commission mainly used secondary sources in its analyses undermined the credibility of the report. For some, this was to do with the constraints of time, money and experience, and it was noted that a commission that does not have these resources “should think carefully about how best to pursue a broad mandate” (Sharp, 2014b).

The **Truth, Justice and Reconciliation Commission of Kenya**, which operated from 2009 to 2011, had an extremely broad mandate, despite concerns expressed by some in the discussions leading up to its establishment. The mandate was broad both in terms of its temporal scope, which dated back to 1963, and in terms of the human rights and “historical injustices” addressed, including heinous acts of physical violence, such as “kidnappings, disappearances, detentions, torture, rape, murder and extrajudicial executions”, “economic rights” and “economic crimes”, such as the irregular and illegal acquisition of land, grand corruption, the exploitation of natural or public resources, and the reality or otherwise of perceived economic marginalization of communities. Unfortunately, the Commission faced many difficulties that affected its work and the quality of the final report: sabotage by political elites, lack of civil society engagement, underfunding that affected its ability to work effectively and cover all issues, lack of specialized and qualified personnel to inves-

tigate economic crimes, and a perception that the pursuit of justice and accountability would threaten the desire for peace and national cohesion. In addition, the work of the Commission was affected by other initiatives that took place at the same time, such as the national conversation on agrarian reform and the constitutional review process, which took considerable attention away from it. In the absence of qualified human resources, time and money, the Commission had to rely heavily on existing reports to establish the link between economic crimes. In the end, it prioritized investigating violations of civil and political rights, given the sizable extent of corruption and economic crimes (Carranza, 2008).

In the **Solomon Islands**, the **Truth and Reconciliation Commission** was established in 2009 to examine ethnic violence stemming from land ownership disputes and economic displacement that ravaged the country between 1997 and 2003 in a period known as “the tensions”. The scope of the Commission’s work included investigating and reporting on a relatively wide range of civil and political rights violations and episodes of physical violence, including killings, abductions, enforced disappearances, torture, rape, sexual abuse, forced displacement, deprivation of liberty and serious ill-treatment. Conversely, the range of economic rights that were specified for the Commission to investigate was comparatively limited, since it only included “rights to own property and the right to settle and make a living”. However, the Commission was also tasked with assessing the impact of the conflict on key sectors such as health and education. The law that created the Commission made it clear that any such assessment had to be made “without diluting

the emphasis on individual victims”, suggesting, according to some, that the National Parliament intended to avoid a lax and overly broad investigation unrelated to concrete human rights violations.

Shortly after the Arab Spring in 2011 and 2012, **Tunisia** began to develop a broad transitional justice process based on a holistic approach. This included the creation of institutions such as the **Truth and Dignity Commission**, whose mandate encompassed violent political repression as well as corruption under the former President Zine El Abidine Ben Ali, the **National Anti-Corruption Authority** and the **Committee of Inquiry into Acts of Corruption and Bribery Committed Under Former President Ben Ali**. In its summary report published in 2012, the Committee on Acts of Corruption concluded that, under Ben Ali, Tunisia had been “the victim of a system of bribery and corruption”, a system that, according to the Committee’s chairman, “took shape gradually, gaining strength bit by bit before taking over state and society.” In addition, the report provided examples of corrupt practices across different sectors of the economy, including property, taxes, agricultural land, broadcasting, and finance. It also highlighted corruption in public procurement, licensing and official decisions issued by State bodies of all kinds (Nouioua, 2020).

At the end of 2013, the **Transitional Justice Law** was enacted, which established a comprehensive transitional justice project aimed at addressing nearly six decades of repressive rule in Tunisia. This law also established the Truth and Dignity Commission as its central institution, tasking it with uncovering the “truth” in relation to Tunisia’s authoritarian

past, while also providing for the establishment of specialized chambers under the Tunisian judicial system and a reparations fund (Salehi, 2021). **The law addresses corruption under two complementary approaches: one focused on the past, investigating pre-revolution corruption to establish the facts and hold the perpetrators accountable, and another approach looking to the future, with the hope of reforming State institutions and creating the laws and mechanisms necessary to combat and reduce this scourge** (Nouioua, 2020). In their mandate to confront nearly 60 years of repressive rule and human rights violations, transitional justice institutions necessarily focused their attention on issues of socioeconomic justice, and the examination of economic crimes was an essential objective. **The case of Tunisia has shown strong links between corruption and economic crimes and violations of civil and political rights, and it has made clear the importance of addressing both serious human rights violations and corruption cases.** However, the goal of pursuing as much justice as possible, and thus addressing the relevant justice issues, led to the overloading of the project, which presented serious limitations of time, capacity and resources. As a result, the Tunisian transitional justice process was unable to fulfil its tasks. In this regard, Tunisia is a good example of what has been called the “problem-capacity” dilemma, which occurs when measures taken within the framework of transitional justice are well suited to the historical, social and political context, and to the capacities and experience of transitional justice practitioners, but whose scope exceeds the limited capacities of the country’s national institutions, especially in the case of a country undergoing significant

political change (Salehi, 2021).

It should also be noted that the transitional justice institutions in Tunisia had serious shortcomings, such as not collaborating with traditional justice institutions and ignoring their own transitory, ad hoc, nature (Salehi, 2021). This lack of coordination between different powers and actors could be at “the top of all mistakes.” Some argue that the failure of the transitional justice project in Tunisia is due to the existence of “a state within another state”, that is, the existence of a captured State (Najet Bacha, in Caranza, 2020) that encourages and allows widespread corruption. In the end, Tunisia’s unstable political, economic and social conditions weakened the State, including the Truth and Dignity Commission, making it impossible to end corruption (Nouioua, 2020). Tunisia has been widely studied as a case where, despite the great efforts made by transitional justice, the country has not been able to get rid of widespread corruption and has not been able to make significant progress towards securing a democratic regime.

**The Gambia** is an interesting case as, after the electoral defeat of the dictatorial regime of Yahya Jammeh in 2016, it embarked on a transition process that implemented a comprehensive transitional justice programme. This included the creation of a **Truth, Reconciliation and Reparations Commission**, a Constitutional Review Commission, a National Human Rights Commission and a **Commission of Inquiry into the financial transactions of former President Yahya Jammeh, his family members and close associates**, as well as a reform of the security sector and public administration (Government of the Gambia, 2022). In July

2018, an independent commission was set up (popularly called the **Jammeh commission**) to investigate allegations of abuse of power, mismanagement of public funds and intentional violations of the Constitution by former President Jammeh and the financial activities of his relatives and close associates. This commission presented its report in 2019, showing that some of the human rights violations were not only intended to entrench Jammeh in power, but were aimed at covering up economic crime and corruption. In addition, it identified Jammeh's assets in the country and recommended their confiscation (in part due to his articulation with the country's Central Bank), although the commission was less successful in obtaining evidence of the former President's accumulated wealth outside the country. The Government accepted most of the commission's recommendations, but not those affecting certain people, arguing that they had no choice but to follow Jammeh's orders (Carranza, 2020).

The Truth, Reconciliation and Reparations Commission published its final report in December 2021, which allowed for a better understanding of President Jammeh's dictatorial regime and the power and wealth he and his family amassed. The Commission concluded that Jammeh and his henchmen committed crimes against humanity and recommended that they be prosecuted. In May 2022, the Government of the Gambia published a white paper (Government of the Gambia, 2022), in which it committed to expand legislative reforms to ensure compliance with the Commission's recommendations. This included strengthening the Law Reform Commission of the Gambia and creating a special prosecutor's office under the Attorney General's

Chambers and the Ministry of Justice. This special prosecutor's office will be assisted by a special investigation unit under the Ministry of Justice made up of local and international experts with a mandate to carry out criminal investigations aimed at prosecuting those responsible for the human rights abuses and violations indicated in the white paper, which also expresses the intention to create a special framework within the national judicial system for the prosecution of perpetrators of human rights abuses and violations and to make legislative changes to grant the office jurisdiction over the crime of torture and international crimes. The tribunal will be located in the Gambia, with the option of holding sessions in other countries depending on the requirements of each case (Government of the Gambia, 2022).

Following the 2018 revolution that ended a decade of authoritarian rule in **Armenia**, the new Government embarked on **trials for corruption and human rights violations**. One of the first steps was to adopt anti-corruption reforms for five years, during which time the Government planned to introduce constitutional, electoral and judicial reforms. Additionally, the Government seeks to establish a truth commission to deal with specific types of human rights violations and abuses since 1991, including election-related abuses, political persecution following elections, and the use of the power of eminent domain to unjustly and unjustifiably seize the property of citizens and to provoke the deaths of soldiers in non-combat situations. It is not planned to include corruption as a general truth-seeking theme, however, because it is considered that it would not be efficient to do so, given the pervasive nature of corruption

in the country (Carranza, 2020). Although the main promise of the Government that took office in 2018 involved the fight against corruption, the task has not been easy, due to the lack of qualified human resources, the inadequate communication between the anti-corruption and transitional justice agencies and the general lack of political will in the country (Carranza, 2020). In 2019 the **Corruption Prevention Commission of the Republic of Armenia** was created, but its potential is limited by a lack of fiscal authority as, while it can uncover cases of corruption, it has no power to indict alleged criminals. Armenia is currently going through a difficult political situation, and efforts to consolidate democracy have not gone as well as expected.

**Colombia** provides the most recent experience and constitutes an interesting case because the transitional justice process there has taken place in the context of a democracy, albeit one where a long-standing internal conflict persists.<sup>15</sup> In 2017, the **Commission for the Clarification of Truth, Coexistence and Non-Repetition** (the Truth Commission of Colombia) was created, with an extremely broad mandate that included, among other powers, the investigation of “practices and facts that constitute serious violations of human rights and serious breaches of International Humanitarian Law (IHL), in particular those that reflect patterns or have a massive character, that took place on the occasion of the armed conflict, as well as the complexity of the contexts and territorial dynamics in which these occurred” (Truth Commission of Colombia, 2022). Under this broad man-

date, the Truth Commission investigated the impact of the conflict on economic, social, cultural and environmental rights and the way it had affected different populations; the historical context; the origins of the conflict; the factors that facilitated the persistence of the conflict; forced displacement, dispossession of land and the resulting consequences; and the relationship between the conflict and the growing of illicit crops, the production and marketing of illicit drugs, and the laundering of drug trafficking assets.

In the recently published final report, the Truth Commission concludes that armed conflict actors committed multiple and repeated violations and that the main victims have been civilians, the majority of whom “have been those who, in addition to being victims of structural violence, surviving in the midst of poverty and misery in territories affected by violence and deprivation, have also suffered the consequences of the armed conflict” (Truth Commission of Colombia, 2022). The Commission emphasizes the analysis of the roles of regions and the control of natural resources in the conflict, noting that, beyond confrontation to gain control of the conflict, “the struggle for territory has not only had an insurgent or counterinsurgency purpose, it has also been related to drug trafficking, money laundering and, in some territories, to economic and extractive projects”. A novelty of the Truth Commission’s report is that it links the dynamics of the conflict in the regions and its effects on the environment with economic management and the economic model. In this regard, it points out that “the effects on the communities’ lives and their close

<sup>15</sup> As the Truth Commission itself pointed out, “it is striking that in Colombia the massive violations of human rights took place in a democratic country, with free elections, a structure of the State with division of powers, rights-based laws and independent media”, which implies that “democracy was built in the midst of the spaces left by the war” (Truth Commission of Colombia, 2022).

relationship with nature have been imposed in the internal armed conflict, in relation to economic interests in the territories for infrastructures, extractive projects or illegal economies" (Truth Commission of Colombia, 2022).

Regarding the role of natural resources in the conflict, the Commission's report states that "the conception of a part of Colombia as a country that matters only as a source of natural resources, has led to the expansion of a development model based on extractivism and the implementation of policies through coercion and weapons" and "has turned the problems linked to the development model and the economy into part of the armed conflict, with numerous human rights violations against leaders or communities who declare themselves in resistance or who seek to protect their territories from extensive palm or coca cultivation". The report adds that the "maintenance of a strict commitment to economic openness, privatizations and the reform of the State, without considering the territorial inequalities existing during the nineties, deepened the socioeconomic disparities between the territories and the different social groups within the country."

It is necessary to emphasize the role that the Truth Commission attributes to the State in the conflict in Colombia, noting that the "State has been built in the midst of the war and its character has been forged in a strong tension between legitimacy, legality and crime ... The complex relationship between ends and means has led to the fact that, at certain junctures, some State institutions have committed all kinds of human rights violations and committed acts of corruption tolerated and justified even by intricate legal mecha-

nisms." In the recommendations section of its report, the Commission makes explicit reference to the need to combat corruption, calls on the Attorney General's Office to apply internal measures to prevent it, and recommends that the national Government and the Congress of Colombia create a transitional commission for clarification and independent, international or mixed (national and international) investigation. This commission would be tasked with investigating "public and private corruption, on a medium and large scale, and all crimes that contribute to, or are associated with, the commission of these acts, including those related to criminal finances and illegal economies", emphasizing "macro cases prioritized with the aim of strengthening the investigation and prosecution work of the Special Investigation Unit (UEI) of the Attorney General's Office."

In contrast, some countries created mechanisms to combat corruption and economic crime long after the transitional justice process had been completed. Two relevant cases are those of Guatemala and South Africa. In **Guatemala**, 16 years after the signing of the 1986 peace accords, a proposal emerged from civil society for the United Nations to develop a mechanism to help the Government combat impunity. In 2003, an initial agreement was signed between the United Nations and the Government to create a commission that was granted independent prosecutorial powers. In 2004, the commission was declared unconstitutional by the Constitutional Court, which ruled that the Constitution granted the public prosecutor's office a monopoly on the prosecution of crime. In the following two years, an alliance of international and civil society actors promoted a new agreement,



and in 2006 a new agreement between the United Nations and the Government of Guatemala was signed on the establishment of the **International Commission against Impunity in Guatemala**. The agreement was approved by the Congress of the Republic of Guatemala in August 2007.

The Commission was an independent international investigative body designed to work within a national jurisdiction to support the Attorney General's Office in the investigation and prosecution of "illegal security forces and clandestine security organizations and any other criminal conduct related to these entities operating in the country" (art. 1 (1) (a) of the agreement). To achieve its purposes and objectives, the Commission was assigned three functions: (a) to determine the existence of these groups and organizations; (b) to collaborate with the State in the investigation, prosecution and punishment of members of such groups and organizations; and (c) to recommend to the State of Guatemala the policies and institutional reforms necessary to dismantle these illegal security groups and clandestine security organizations (art. 2 (1)) (Michel, 2021). The Commission's mandate was renewed four times, and it ceased operations on 4 September 2019. In its 12 years of existence, the International Commission against Impunity in Guatemala participated in the identification of more than 60 criminal networks and investigated more than 120 criminal cases. During its 12 years of work as a private prosecutor, the Commission collaborated with the Public Ministry to achieve more than

400 convictions in 25 cases. The impact on prosecutions and convictions shows that the Commission effectively improved prosecutorial and judicial independence, providing protection to "investigators, prosecutors, witnesses and judges" (Michel, 2021). Despite all its virtues, however, the experiment of the Commission had major flaws, the main one being its temporary design. The Commission's mandate was for a period of two years, renewable only by agreement of both parties. It was renewed four times and ended when political support for the institution waned during the Administration of Jimmy Morales from 2016 to 2020, to the point that President Morales declared the Commissioner, Iván Velázquez, "persona non grata" in August 2017 in retaliation for an investigation of electoral fraud involving the political party headed by Morales.<sup>16</sup> The International Commission against Impunity in Guatemala was an unprecedented hybrid legal space of governance (Michel, 2021; Calvet Martínez, 2019), which, despite not being a typical transitional justice mechanism, nevertheless contributed to the achievement of objectives such as the fight against impunity and strengthening the rule of law. Importantly, the Commission has been credited with laying the foundation for the prosecution of other complex crimes in Guatemala, including sexual violence in the Sepur Zarco case. (SáCouto, Ford Ouoba and Martin, 2022).

In **South Africa**, the **Truth and Reconciliation Commission** was harshly criticized for failing to investigate corruption and economic crimes linked to the apartheid system. How-

<sup>16</sup> This stance against the International Commission against Impunity in Guatemala was made possible by the withdrawal of political support for the institution by the Trump Administration of the United States of America.

ever, its final report did address institutional reform in various areas, including economic, social and cultural rights and the root causes of the conflict, and it stressed that “the recognition and protection of socio-economic rights are crucial to the development and sustaining of a culture of respect for human rights”, as well as making a number of recommendations aimed at the eradication of poverty and discrimination.

To overcome the serious omission of the Truth and Reconciliation Commission, activists created the **People’s Tribunal on Economic Crime** in 2017, linking the continuity of post-apartheid corruption with the fact that it had not been addressed in previous transitional justice processes. The Tribunal was led by civil society and held public hearings on the United Nations sanctions against arms during apartheid, the 1999 arms agreement and contemporary State capture. The Tribunal’s advantage was its ability to identify the continuity of violations, particularly those of an economic nature that included powerful corporations. Moreover, unlike a judicial court, the Tribunal was not limited in the type of evidence it could hear, allowing public participation and contributions to the disclosure of the truth and the creation of a public record on past and present violations. In its final conclusions, the panel recommended that the State continue to investigate and prosecute those responsible for the crime of corruption, and it held that State capture was, “to some extent also a result of the corrupt activities that had gone before it. Absent the violation of United Nations sanctions, and the corrupt Arms Procurement Package, the kind of state capture described in the evidence would probably



Anti-corruption Monument of Rwanda at night  
by BalukuBrian/CC BY 4.0, cropped from original

not have occurred. The examples of state capture mentioned here are the tip of the ice-berg.” In 2018, the Government of South Africa created the **Judicial Commission of Inquiry into Allegations of State Capture** (also known as the Zondo Commission) to investigate specific economic crimes during and after apartheid. This body’s mandate was to gather evidence related to allegations of grand corruption, fraud and State capture over the previous decade, including allegations of corruption related to the conduct of government departments, the former President, the Cabinet and other officials involved in fraudulent tenders, corruption and other irregular and corrupt conduct.

## C. Final reflections and proposal for a research agenda



### 1. REFLECTIONS

This paper provides an overview of issues regarding the relationship between transitional justice and corruption. It illustrates the theoretical and practical learning in transitional justice in this area, as well as the difficulties, dilemmas and challenges faced when dealing with complex and extensive issues that are determined by a large number and variety of factors, and whose effects clearly transcend the human rights field. Noting that the inclusion of corruption in the transitional justice agenda is an international trend that is likely to continue in the future, some ideas and reflections are set out below that could be useful in defining concrete strategies and mechanisms to address corruption within transitional justice, as well as clarifying and establishing the limits of action of transitional justice on this issue.

Firstly, the international experiences that have included corruption and other forms of economic violence or criminality as part of a transitional justice agenda appear to show that,

overall, the inclusion of such problems may not have contributed significantly to their eradication and may not have improved the effectiveness of transitional justice in terms of its contribution to democracy and social development. **In most experiences, corruption continued to expand during the transition period, and truth commissions were overwhelmed by the expansion of the mandate, or they had neither the financial and political resources nor the technical capacity required to effectively fulfil the new responsibilities assigned to them. Moreover, in all cases, the transition to a democratic regime did not fully materialize or take place at all, regardless of the implementation of transitional justice mechanisms** (see table 1). In view of this reality, it is urgently necessary for the academic and professional community in general, and for the United Nations in particular, to **reflect on the implications for transitional justice of adding the approach to corruption and economic crimes as part of the mandate and objectives of truth commissions**.<sup>17</sup> It is of little use to advance towards a holistic vision of transitional justice if, in practice, its real impact on the major trends that

<sup>17</sup> As early as 2013, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, warned about the risks of expanding the mandate of truth commissions, which, because they lacked sufficient financial resources, were generally politically weak and had a relatively short period of operation – among other reasons – were finding it increasingly difficult to meet growing expectations ([A/HRC/24/42](#)).

condition and define transitions is insignificant, or, worse, if the inclusion of additional issues jeopardizes its strategic objectives related to truth, justice, reparation and non-repetition. This reflection is even more necessary if one considers that, for some time now, the international community, including international financial institutions, has been promoting a powerful anti-corruption agenda that is backed by many political, economic, technical and institutional resources and is implemented globally, regardless of the political realities of the countries concerned.

**A first step** in this direction is to **adequately conceptualize the phenomenon of corruption and to examine the extent to which transitional justice can address it in a way that can contribute to its eradication or reduction, while understanding how the phenomenon of corruption may have a negative impact on transitional justice processes.** Corruption is a structural and extremely complex phenomenon that goes far beyond the field of transitional justice and encompasses practically all areas of social life, especially in those countries where it is endemic and its practice is widespread. In addition, corruption is generally linked to the concentration of wealth and power and is often an instrument used by political and economic elites to control the State and put it at the service of their particular or corporate interests. In such circumstances, any claim about making significant progress in eradicating corruption through transitional mechanisms is naive and even counterproductive to the strategic political objectives of transitional justice. **At the same time, large-scale corruption and impunity for it may have a negative impact on a transitional justice process and undermine its objectives, including in relation to non-recurrence.**

Taking a realistic approach does not mean that transitional justice should not be used to seek to address corruption in any way. Instead, it implies that transitional justice policy should be developed and implemented within a sufficiently broad and flexible framework that allows and encourages complementarity with anti-corruption efforts. This may consist of various mechanisms, including specialized anti-corruption commissions.

**In addition, it is important that corruption is addressed on a case-by-case basis in transitional justice contexts, that is, taking into account the history of the country, the specific characteristics of corruption there, the country's institutional and power structures, its level of democratic development and, in particular, the capacities and nature of the State in transition.** The aim is to take a realistic approach that allows transitional justice to contribute to combating corruption without jeopardizing its other dimensions or its strategic objectives related to truth, justice, reparations and non-repetition – but also to contribute to and benefit from parallel anti-corruption efforts.

**A case-by-case analysis** would help to overcome the criticisms of transitional justice that, first, problems are too often not identified before measures are implemented, and that, second, the field of transitional justice research has become too self-referential. **In sum, the inclusion of corruption and economic crime in the transitional justice agenda as part of a broader peacebuilding and peace-sustaining agenda should be based on a rigorous examination of the causes, nature and effects of corruption and should take a two-pronged approach: examining what happened in**

**the past to clarify the facts and seek the truth, and looking to the future to prevent it.**

A responsible and efficient approach to corruption and economic crimes requires, **as a preliminary step, a comprehensive and realistic assessment of the capacities and resources that are available to the country in transition, including those that come from international cooperation,** so that it can investigate and combat these scourges. Most of the international experiences studied suggest that, to some extent, transitional justice processes do not achieve their objectives because countries lack these resources.

**A second step** would be to identify and clearly establish the short-, medium- and long-term objectives that transitional justice seeks to achieve by addressing corruption and economic crimes in countries in transition, either through its own mechanisms or in close coordination with others. This is especially important when the transition is led by weak States that have little or no autonomy – or that have even been captured by the perpetrators themselves – and whose societies have little democratic tradition, while corruption and inequalities are endemic problems related to the functioning of the economic and political system. In countries with one or more of these characteristics, the overall contribution of transitional justice to the consolidation of peace and democracy – two objectives often endorsed by these processes – will always be limited, regardless of whether it explicitly addresses corruption and economic crimes. **Therefore, it is essential to clearly define the concrete added value that the inclusion of these issues within transitional justice and coordinated peacebuilding processes brings to transitional justice and to countries in transition.** The overview of issues

in the preceding parts of this report suggests that there is an added value related to the positive impact of the fight against corruption and economic crimes in terms of clarifying the truth, in some cases with the delivery of justice and the achievement of non-repetition. However, in some concrete experiences, corruption has continued to be rampant during and after the transition, even though it has been expressly and broadly addressed by the transitional justice processes or thereafter. The situation is all the more serious considering that, in many of the international experiences presented in this report, the transition to democracy did not fully occur or occur at all, and countries continue to struggle with their authoritarian legacy.

**A third step is to consider the nature of transitions, particularly their origin, their determinants and their dynamics, since the ability to make significant progress in the fight against corruption and economic crimes depends on this to a large extent.** As has been pointed out for the countries of sub-Saharan Africa – unlike countries such as Argentina and Chile, where transitional justice measures were implemented in the midst of transitions that followed “relatively clear instances of regime change” – in most African countries, transitional justice has been carried out in “negotiated transitions, without a clear break with the past and/or with ongoing conflicts” (Bosire, 2006). On the other hand, it is important to consider that, at first, transitional justice took place in countries that transitioned from authoritarianism to democracy (including those of the Southern Cone), although this process has since been used “in other instances, as well, including regimes transitioning to authoritarianism and in regimes experiencing no

political transition at all”<sup>18</sup> (Whigham, 2020). As the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence put it, the measures defined within the framework of the transitional justice mandate “have been progressively transferred from their ‘place of origin’ in post-authoritarian settings, to post-conflict contexts and even to settings in which conflict is ongoing or to those in which there has been no transition”.<sup>19</sup> The Special Rapporteur further noted that “the recent transitions in the Middle East and North Africa”, while bearing “some important similarities to the transitions from authoritarianism ... have distinctive characteristics that need to be taken into account. For example, while most typical post-authoritarian transitions were led by previously existing parties and aimed at a ‘return’ to temporarily interrupted traditions and institutions, the most recent transitions in these regions cannot be characterized as such” ([A/HRC/21/46](#)).

Each transition is framed in a different context. While in authoritarian contexts violations often involve abuse of State power, in many contexts of conflict, in which institutions are already under great pressure, violations are usually the result of widespread social conflict where there are a large number of violent agents. Indeed, as the international experiences reviewed above suggest, in the past two decades there have been several types of transition generated by different situations, in-

cluding the overthrow of dictatorial regimes, the end of internal conflicts and advances in the process of democratization (see table 1). **The situation is more complex in that, in the past three decades, transitions have coincided with the implementation of a new economic model of neoliberal inspiration that, in addition to influencing the transition itself, has had a significant impact on the dynamics of corruption and economic crimes.** The political implications of this situation are important since, in many cases, the actors who support and defend political reform and justice issues are not necessarily the same as those who support and defend economic and social reform. Depending on the type of transition in question, the origin, reproduction, permanence and extent of corruption and economic crimes is different, as is the capacity of national institutions to deal with them. From a broader perspective, the characterization of transitions should lead to a clear definition of the relationship between transitional justice and democracy and, consequently, of what is meant by democratic transition and what its limits are. These definitions are important because, as international experience shows, democratization processes are not linear, are susceptible to setbacks and generally transcend transitional justice processes.<sup>20</sup>

**A fourth step**, related to the previous one, is to **carry out a political economy exercise to study the balance of power before**

<sup>18</sup> The cases of Ghana and Sierra Leone provide examples. The Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone of 1999 (the Lomé Peace Agreement) was the third peace agreement aimed at ending the conflict and establishing democracy in the country. The National Reconciliation Commission of Ghana was the latest in a succession of accountability measures implemented by various Governments since the coup that deposed President Kwame Nkrumah in 1966. <sup>19</sup> For an analysis of the differences between post-conflict transitions and early post-authoritarian processes and their implications for transitional justice, see the 2017 report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence ([A/HRC/36/50](#)).

<sup>20</sup> On this point it is worth mentioning the experience of Central America over the past three decades. After making significant progress in the establishment of representative democracy and registering important advances in respect for human rights – partly due to the political reforms implemented in the post-war phase – the region began, after a few years, to register a general deterioration in all areas of social life, including a dangerous democratic setback (Segovia, 2022).



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**and during the transition in order to clearly define the scope and type of approach to corruption and economic crimes that transitional justice can take within an overarching peacebuilding and peace-sustaining strategy.** This exercise is important because, as some international experiences show, the margins of political action to combat these scourges are established entirely or partly by the same actors who participated in the conflicts, by those actors who controlled and obtained advantages from the authoritarian or dictatorial regimes that are expected to change or by the elites who control or have decisive influence over them.<sup>21</sup> Indeed, while peace agreements are not strictly seen as a transitional justice toolbox mechanism (as they focus primarily on the engagement and

negotiation phases, rather than the transition phase), they can largely dictate what types of transitional justice mechanisms will be acceptable to the parties later (McDougal, 2014; van Zyl, 2005).

**A fifth step** concerns the need to have an **in-depth understanding of the relationship between transitional justice and the States in transition** since, as experience shows, the relationship between corruption and transitional justice is conditioned – and often determined – by the conditions within a State that exist in societies in transition. **This includes the State’s political, institutional and financial strength, its degree of autonomy from elites and external actors, its degree of centralization and its territorial presence, among other aspects.**

<sup>21</sup> In the case of El Salvador, the negotiating parties decided to exclude the socioeconomic issue in general and discussion of the economic system in particular. In Liberia the peace accords included too many details regarding the composition of the Truth and Reconciliation Commission, and the proposed membership reflected the composition of the parties to the peace talks, thus subjecting the body to political fragmentation, such that membership was determined not on the basis of integrity, independence or commitment to human rights, but rather on the basis of loyalty to a political party (van Zyl, 2005).

**In the experiences presented above, States are characterized by economic, political and institutional weakness and little autonomy from economic and political elites.** In some cases, the fight against corruption has further weakened some State institutions. The classification of the existing conditions within States is fundamental to transitional justice, not only because the success of the transition depends to a large extent on States, but also because the instruments of transitional justice can contribute to democratizing States, without which the fight against corruption is practically impossible, as shown by some of the international experiences that have been analysed. According to some authors, it is precisely the absence of appropriate conditions in some African States that have implemented transitional justice processes that largely explains the disappointing results obtained (Bosire, 2006). According to Lydiah Kemunto Bosire, the fact that expectations of transitional justice efforts in these countries remain unfulfilled is due to “an institutionally demanding understanding of transitional justice that is not congruent with the quality and capacity of state institutions in times of transition” (Bosire, 2006).

Secondly, taking into account the structural nature of corruption, as well as the limitations of the traditional transitional justice mechanisms to combat it – especially truth commissions and reparations – **it is strategically essential that the approach of transitional justice to corruption and economic crimes includes institutional reforms.** This is precisely the mechanism that makes it possible to tackle the structural causes of corruption: carrying out institutional reforms that go beyond the period of application of transitional justice,

even if those reforms do not produce concrete results in the short term. Strengthening the mechanism of institutional reform would reinforce the level of institutionality in relation to the objectives of the traditional mechanisms of transitional justice (justice, truth, reparation and non-recurrence). Additionally, doing so would significantly contribute to making transitional justice complement – not replace – the global anti-corruption strategy that the international community has been promoting for decades, while strengthening the division-of-labour strategy suggested by some authors, between transitional justice and the anti-corruption agenda. Institutional reform is one of the least studied and explored areas of transitional justice, even though it is necessary to bring about lasting change in the aftermath of conflict or repression and in order to remove the structural causes that give rise to and reproduce corruption. **The inclusion of institutional reform in the fight against corruption implies expanding its scope beyond justice-related reforms.**

Thirdly, the international experience of the past two decades suggests that, regardless of the empirical evidence and the limitations of transitional justice mechanisms, **the tendency to incorporate corruption and economic crimes as part of the transitional justice agenda will continue in the future, due to the diverse interests that exist in countries in transition** (national, regional and international), as well as the existence of maximalist political and ideological currents. In this context, the pressures and the temptation to expand the scope of action of transitional justice will surely increase. This entails a very high risk since, if it is not handled properly and in a well-coordinated fashion within an overarching peacebuilding and



peace-sustaining strategy, such an expansion could compromise the credibility and effectiveness of transitional justice in terms of its contribution to truth, justice, reparation and non-repetition.

## **2. GENERAL RECOMMENDATIONS AND PROPOSAL FOR A RESEARCH AGENDA ON THE RELATIONSHIP BETWEEN TRANSITIONAL JUSTICE AND CORRUPTION**

### **1. General recommendations**

In consideration of the above reflections, the following recommendations could enhance the contribution of transitional justice to the fight against corruption.

**(a)** Strengthen and expand the transitional justice mechanisms related to domestic institutional reforms, emphasizing the following aspects:

**(i)** reforms that allow for the vetting, strengthening, diversification (i.e. gender parity and representation of marginalized groups) and effective independence of the existing judicial bodies in countries in transition, which are generally weak, corrupt and dependent on the executive branch;

**(ii)** reforms that allow for effective coordination and cooperation among the various institutions of the judiciary and between the judiciary and other State institutions involved in the fight against corruption, such as the security ministry, the national police, the financial superintendencies and the central banks;

**(iii)** reforms to strengthen cooperation

between national institutions and international institutions involved in combating corruption and economic crime;

**(iv)** reforms that allow the participation of organized civil society in the definition and implementation of public policies related to the accountability of institutions and high-level public servants.

**(b)** Create independent and specialized international commissions to fight impunity and corruption, as a complement to the work of the national institutions that are formally responsible for dealing with such scourges and of transitional justice mechanisms, particularly the truth commissions. This requires avoiding at all costs the specialized commission being viewed as, or considering itself as, a supranational body with unlimited powers that can act outside the national institutions and the interests of relevant national actors, so that a coalition may be constructed for the fight against corruption. The design of these international commissions should be based on a realistic diagnosis of the correlation of political forces existing in the country in transition that could support or limit the commission's work. In addition, the design of a such commission should consider the nature and scope of corruption, the strengths and weaknesses of national institutions and the contribution that the commission could make to the construction of a solid national institutional framework that could contribute to the fight against corruption in the medium and long term.

**(c)** Establish protocols or agreements among international actors that promote transitional justice and those that manage the global anti-corruption agenda, including the United States

of America, the European Union and international financial institutions, to allow for coordinated and complementary action in the countries in transition, ensuring that all these actors contribute to an overarching peacebuilding and peace-sustaining strategy. Among the main aspects that should be included in these agreements are:

*(i)* harmonization of anti-corruption narratives with public policies that have been recommended in the socioeconomic field;

*(ii)* definition of common criteria for the implementation of a “cross-conditionality” strategy to use economic aid as an anti-corruption tool;

*(iii)* coordination mechanisms for the identification and repatriation of ill-gotten capital;

*(iv)* clear identification of the role of business sectors in corruption and their role in the fight against it;

*(v)* definition of priority areas of institutional support related to the fight against corruption.

**(d)** Implement a situational diagnosis of the country in transition, using a historical and political economy approach, to identify the actors and factors that support the development of an anti-corruption strategy framed within the transitional justice process, as well as those that may hinder such a strategy or make it unviable. In such a diagnosis, an analysis of the State, of the political and economic elites and of organized civil society must occupy a central place.

## **2. Proposal for a research agenda**

Taking into account the considerations mentioned above, the following is a proposal for a research agenda on the relationship between transitional justice and corruption. The implementation of this agenda would contribute to clarifying and defining the limits of action of transitional justice and the types of approaches that could be developed to address corruption and economic crimes seriously. The central elements that could form part of this agenda are the following:

**(a) A mapping of the various ways in which the phenomenon of corruption (clearly defined) has been articulated and “problematized” in transitional justice countries**, to assist with a clearer circumscription of the issue. Issues to consider in this regard include:

*(i)* The processes for defining the scope of action and the approach to corruption, including:

- a.** The internal and external actors that participated in the process;
- b.** The diagnosis that served as the basis for decision-making;
- c.** The criteria used to define the scope and the instruments used;
- d.** The short, medium and long term objectives that were set;
- e.** The instruments used;
- f.** The results obtained;

*(ii)* Comparative analysis of corruption in countries in transition, including:

- a.** Its characterization;
- b.** Its role in the origin and reproduction of conflicts and/or repression;
- c.** Its impact on the dynamics of the transition;
- d.** Its impact on the democratization process;

*(iii)* Analysis of the links and complementarities that can be established between transitional justice and the field of development in order to combat corruption.

**(b) An examination of the extent to which transitional justice and anti-corruption efforts (including combating impunity for corruption) have been conceived and coordinated under overarching peacebuilding and peace-sustaining strategies and projects,** and of what lessons may be learned from such examples. Issues to consider in this regard include a critical study of transitional justice mechanisms based on their capacity and efficiency in addressing corruption and in searching for new mechanisms, with an analysis of the role that institutional reform could play in the fight against corruption in the medium and long term.

**(c) A comparative analysis of transitional contexts where corruption was included within the transitional justice agenda.** Among the criteria that should be used for the selection of countries are:

- (i)* different types of transition;
- (ii)* different types of corruption and economic crimes;
- (iii)* different instruments used;
- (iv)* different results obtained; and
- (v)* the time periods examined.

Some or all the experiences presented in this report should be included in the analysis.

**(d) An analysis of the extent to which anti-corruption efforts (including combating impunity for corruption) may or may not have had a beneficial influence on the transitional justice process, and of what lessons can be learned from such experiences in terms of prioritization, modalities and coordination between both agendas.**

*(i)* Comparative analysis of the relationship between corruption and economic crimes and of the implementation of neo-liberal-inspired economic models, including the impact of anti-corruption measures on the violation of economic and social rights;

*(ii)* A comparative study of the relationships that exist in countries in transition between transitional justice, democracy and corruption;

*(iii)* A comparative study of the relationships that exist in countries in transition between the violation of economic, social and cultural rights, corruption and economic crimes;

*(iv)* A study of the influence of narratives about corruption on transitional justice processes and on transitional justice theory;

*(v)* A study of the role of international cooperation, including by the international financial institutions, in the fight against corruption in countries in transition, including policy recommendations and their effects on corruption.

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