



Transitional Justice Architecture and Corporate Accountability

Intervention on the floor during panel II

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Thank you Madame Chair,

I speak on behalf of the Center for the Study of Law, Justice and Society- Dejusticia, a think-do tank based in Colombia, where we have studied the impacts of corporate malpractice on the environmental and ethnic rights of communities across Latin America. Recently, we have focused on the intersectionality between two vibrant agendas in the human rights realm, business and human rights and transitional justice.

Given that the main purpose of this panel is to discuss the primary obligations of States on human rights obligations and the scope of the binding instrument specially regarding prevention, remedy, accountability, and access to justice in order to have a comprehensive international instrument that can set standards on relevant issues, such as corporate liability on civil and criminal cases, we want to emphasize the importance of having standards that take into account the special needs of societies around the globe trying to overcome the reality of armed conflict.

In the aftermath of violence, States that have suffered thousands of cases of severe human rights violations need to create a whole new institutional apparatus that will hold accountable the multiple actors of conflict: state agents, non-official forces, politicians, and corporate actors. This need is mainly based on the international duty to prosecute and punish these violations as stated in several international instruments. For instance, provisions under the UN Convention Against Torture or the International Convention for the Protection of All Persons from Enforced Disappearance.

In addition to the aforementioned challenges, States creating transitional justice mechanisms such as Truth Commissions and Tribunals face the difficulty of trying to achieve a sustainable peace. Accountability, in this sense, should not only focus on satisfying the right to justice of victims of grave violations. It should also fulfil the State's commitment to the truth, integral remediation and, on a broader scope, the guarantee of non-repetition of grave human right violations and promote development in their territories. Thus, the strengthening of transitional justice mechanisms in post-conflict scenarios is crucial. Beyond the end of the conflict, the correct implementation of these measures can promote development, ensuring the recognition of victims as citizens and, in the special rapporteur on the promotion of truth, justice, reparation and non-repetition, Pablo de Greiff, words, "foster[ing] civic and institutional trust and build[ing] positive social capital".¹

¹ General Assembly. A/68/345

In regards to the accountability of corporate actors in transitional justice, the evidence shows that both TNC's and other companies are rarely held accountable or, if they are, it is usually in a limited scale. The complicity of corporate actors is not usually taken into account in the design of Truth Commissions or in the rules of proceedings of Tribunals for transition that deal with mass crimes committed during the conflict where economic actors have offered cooperation to armed actors as Pablo de Greiff stated in a recent report.² In this sense, an agenda that highlights the importance of considering corporations in the prosecution of grave human rights violations during conflict is paramount.

Madame Chair, Colombia is a clear example of how the government has set aside corporate accountability issues when designing transitional justice mechanisms intended to establish accountability for crimes committed during half a century of armed conflict. During the peace process held between 2003 and 2005 with right-wing paramilitary groups, the transitional mechanisms created to hold accountable those responsible of human rights violations only focused on the armed actors, with almost complete impunity for corporations. Although almost 500 economic actors, including individual entrepreneurs, companies and TNC's, have been mentioned in judicial decisions up to 2015, only few have been condemned in an ordinary jurisdiction. This impunity gap needs to be addressed if we want to guarantee the success of any transitional justice process.

In Colombia, despite a number of attempts to hold corporate accomplices accountable, the political environment tends to diminish any legal and extralegal transitional mechanism. The most recent chapter of this long history was the October 2nd plebiscite, which intended to legitimate the peace accord reached between the Colombian government and the FARC guerrilla. In one of their main campaign statements, the Accord's opposition said that "private property was in danger" and that "the accord only tried "to turn to victims into perpetrators", alluding to a clause of the accord that stated that any determinant, habitual support or financing to armed groups would be investigated. In order to maintain the impunity gap, the opposition of the Accord stated that all corporate actors were obligated by the armed groups to finance them. Given that the peace accord was rejected in the plebiscite, putting issues of corporate complicity on the table has been extremely difficult.

Consequently, we highly encourage the Working Group to be sensitive of the complex situation of societies overcoming a legacy of violence and past atrocities and to make clear to States, in the body of a Treaty regarding TNC's and other companies, that corporate complicity in grave human rights must be prosecuted in a transitional justice model. Furthermore, access to remedies must be effective for victims in the design of transitional justice architecture in order to satisfy the right to justice of victims of grave human rights and to achieve non-repetition of violence and social development.

Thank you Madame Chair.

² In the Rapporteur words: "Mass violations usually require not just complex organization of the "armed" operations that immediately cause the violations, but the coordination of those operations with supportive political and economic actors, and even with social and cultural entrepreneurs, capable of mobilizing large groups and resources. A prosecutorial strategy at the domestic level which seeks to have long-term impact should therefore target the "nodes" in this web of actors." See: General Assembly. A/HRC/27/56.