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CONCEPT PAPER:

**BUILDING BRIDGES:
PROCESSES FOR BUSINESS-COMMUNITY**

COLLECTIVE
BUILDING OF

TRUTH AND
RECONCILIATION



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ACRONYMS

CHCV	Commission for the History of Conflict and its Victims
CNRR	National Commission for Reparations and Reconciliation
CREER	Center for Responsible Business
FARC	Revolutionary Armed Forces of Colombia
MF	Military Forces
IHRB	Institute for Human Rights and Business
IHL	International humanitarian law
HMG	Historical Memory Group
PJ	Peace and Justice Law
TJ	Transitional Justice
TJ System	Integral System for Truth, Justice, Reparation and Non-Repetition
LRU	Land Restitution Unit
NAP	Colombia's National Action Plan for Human Rights and Business
NHMC	National Historical Memory Center
NGO	Non-Governmental Organizations
PG	Paramilitary Groups
PA	Peace Accord
SJP	Special Jurisdiction for Peace
SNARIV	National System for Assistance and Reparations for Victims
TC	Truth Commission (Commission for truth, Coexistence and Non-Repetition)
TP	Tribunal for Peace
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
VU	Victims Unit

I. INTRODUCTION – SETTING THE SCENE

Colombia's newly initiated Transitional Justice (TJ) process arose out of a peace agreement ("Peace Accord") which in 2016 brought an end to a fifty year-long internal armed conflict after more than five years of negotiations in Havana, Cuba involving the State and the Revolutionary Armed Forces of Colombia (FARC).¹ While the first version of Peace Accord was finalized in Havana, it lost approval through a national plebiscite. However, a second version with amendments was discussed with the FARC, then brought to the Colombian Congress for its final endorsement on November 30, 2016.² In its "Point 5" the Peace Accord includes the Integral System for Truth, Justice, Reparation and Non Repetition (Integral TJ System) which spearheads an official TJ process in Colombia that is encompassed within the implementation of the Peace Accords. That process includes both a special criminal court established through the Peace Accord (Special Jurisdiction for Peace - Jurisdicción Especial para la Paz – JEP or SJP in English) and a non-judicial Truth Commission.

The March 2018 Expert Meeting is set against this background and the goal is to articulate specific policy recommendations regarding private sector participation in the truth and reconciliation process in Colombia at the request of the Colombian Ministry of Justice, drawing upon existing knowledge, expertise and experience presented during the Meeting. These recommendations will then be further developed and shared with the several public entities, civil society and victims' groups, the Truth Commission and organizations working on historic memory, reconciliation and reparation. The expectation is to be able to generate concrete recommendations to aid the Colombian Government in strengthening the methodology and processes of TJ System while also establishing good practices for involving businesses in future TJ projects.

The organizers of this expert meeting developed this Concept Note as a working document to structure the dialogue among a range of experts coming from the fields of transitional justice, conflict resolution, development, reparations and other areas pertinent to arriving at valuable, realistic and informed recommendations for the Colombian government. As highlighted further in this Concept Note, currently there is no guidance or best practices on facilitating business-community reconciliation as a part of a TJ process. Rather, examples of reconciliation processes in TJ projects in other countries have mainly occurred between individual perpetrators and victims and their communities. At the same time, most examples of mediation between businesses and communities have not occurred as part of a post-conflict TJ process. Yet both reconciliation processes in the context of TJ and business-community conflict resolution offer important and interesting methodologies which can lend themselves to creating a new approach that the Colombian Government may adopt to encourage business-community reconciliation as a part of its larger TJ System. It is the aim of the Meeting to begin developing this methodology.

The March 2018 Expert Meeting is the second of a series that began with a Symposium in February 2017 convened in Bogota, Colombia entitled "Collective Building Of Truth And Reconciliation: The

¹ <https://www.theguardian.com/world/2015/mar/15/colombia-end-in-sight-longest-running-conflict>

² <http://www.reuters.com/article/us-colombia-peace-idUSKBN13P1D2>

Contributions and Challenges of Private Sector Participation In Colombia's Transitional Justice Process." The starting point of the dialogue at that event was very basic: In what ways could Colombia's TJ process involve the private sector?

Despite the possible opening to include businesses in the TJ process as highlighted above, Colombian civil society has sidelined the issue of confronting the role of business at all levels, although working hard to prepare and address other key aspects of the transition.³ Thus, the Symposium began with the premise that despite the limited national focus on business in the TJ process, along with limited international practice, it is nevertheless an imperative that the Colombian Government include this focus, especially given its commitment to adhering to the United Nations Guiding Principles on Business and Human Rights (UNGPs).

The 2017 Symposium helped to confirm that Colombia's inclusion of the private sector in its TJ process represents a novel new direction in the field. However, presentations by officials involved in the TJ process confirmed that it would be highly unlikely that the private sector would be held to account by the special criminal court established through the Peace Accord (the SJP). Even though Colombia's peace process occurs within a new global reality in which there is more demand for corporate accountability, there remains many of the same political and social tensions that often foreclose full criminal accountability for a range of actors, including companies.

Thus, the Symposium helped to highlight that more emphasis would need to be placed on non-judicial mechanisms to help bring not only justice and accountability where needed, but also to assure reconciliation to prevent new cycles of violence involving businesses. Participants endorsed the recommendation that there should be a clear connection between TJ mechanisms (for example truth gathering, reparations, development and institutional reform) and the goal of reconciliation. However, there should be sensitivity to how these concepts are shaped by local contexts in order to be responsive to conflicts that remain between businesses and communities but which may not necessarily be directly linked to the armed conflict and thus technically outside the scope of the legal mandate of the Truth Commission. Along these lines, the Symposium helped to highlight the need for the new Truth Commission to avoid becoming too juridical and to adopt restorative justice approaches in its work. This non-judicial approach would open more flexible avenues for engaging the private sector in the TJ process that moves beyond simply calling them to participate in public hearings, as has been the traditional approach. As will be explored in the next section, the government needs guidance on what a more expansive approach could entail.

As Colombia now contemplates a new direction on its own path of TJ, there is a unique opportunity to examine how the government should seek to better involve businesses in the TJ System as it reckons with the past to lay a path for sustainable peace. TJ offers a unique opportunity to address the underlying social conflicts between business and communities, while also laying the foundation for preventing, mitigating and addressing future episodes of violence and conflict. The signing of the Peace Accord does not automatically mean that the social stigma faced by business in the conflict

³ For one of the most significant efforts on peace and development of CSOs see www.redprodepaz.org.co

regions – as contributors and benefactors of the conflict - will vanish automatically. Indeed, signing of any peace agreement does not equate with full peace immediately.

The March 2018 Expert Meeting will seek to address this gap in past practice by exploring non-judicial mechanisms and methodologies that could be incorporated into the government’s TJ System in order to promote local reconciliation between businesses and communities in zones impacted by Colombia’s internal armed conflict.

II. BUSINESS AND TRANSITIONAL JUSTICE PROCESSES: EXPERIENCES TO DATE AROUND THE WORLD

TJ usually occurs as a part of a political transition away from civil war, apartheid, repressive rule, and other situations marked by widespread human rights violations as well as the break-down of the rule of law and democracy. Its aims include building sustainable peace which protects human rights moving forward.⁴ There is no one accepted definition of TJ, however the United Nations defines it as “the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.”⁵

Approximately forty-two countries around the globe have taken the path of TJ, employing both judicial and non-judicial approaches to redressing the past, by forming truth Commissions as well as setting into motion criminal trials, reparation programs, development institutional reform and restorative justice in communities.⁶ Yet, to date, despite the evolution of the TJ field over the last several decades, few of these TJ processes have included any focus on the role of business as non-state actors in violent conflicts. Indeed, only a handful of countries have incorporated the theme of business in their TJ processes.

A preliminary study conducted by the Center for International Law and Policy (CILP) at New England Law|Boston revealed that only eight of twenty nine countries that embarked on a TJ journey included any reference to the private sector or included the private sector in any dimension of their TJ initiatives.⁷ With some rare exceptions, truth commissions have not focused on businesses, with the result that businesses are then not engaged in public hearings, testimony taking and other truth

⁴ Rettberg, Angelica. (2005). Introductory reflections on the relationship between peacebuilding and transitional justice. *Between Forgiveness and the Wall: questions and dilemmas of transitional justice.*

⁵ United Nations Security Council, Report of the Secretary General S/2004/616, ‘The rule of law and transitional justice in conflict and post-conflict societies,’ (23 August 2004), para. 8, 4. Very generally speaking, the field of TJ pertains to “the view of justice associated with periods of political change” after episodes of armed conflict, repression and systematic human rights violations. Ruti Teitel, *Transitional Justice in a New Era*, 26 *Fordham Int’l L.J.* 893, 893 (2003).

⁶ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the challenge of Truth Commissions*, (New York, Routledge, 2011), 256; United States Institute of Peace, *Truth Commission Digital Collection*, <http://www.usip.org/publications/truth-commission-digital-collection>.

⁷ The research relied on the United States Institute of Peace (USIP) TJ database which does not include documentation of every TJ project and thus only partial data. The countries that included some focus on business included Mauritius, Kenya, Liberia, Timor-Leste, Sierra Leone, El Salvador, Uruguay, Rwanda, South Africa. See, Concept Note: *Collective Building Of Truth And Reconciliation: The Contributions and Challenges Of Private Sector Participation In Colombia’s Transitional Justice Process* (CILP & CREER, 2017). [<https://www.nesl.edu/docs/default-source/default-document-library/final-concept-paper-cilp-and-creer-2017.pdf?sfvrsn=2>]

gathering exercises. Reform programs resulting from TJ rarely contemplate how governments should respond to the role of business in its plans for accountability, reform and reconstruction. Prosecutions rarely seek to hold businesses accountable for their role in episodes of violence, resulting in impunity and frustrated justice needs of victims. And finally and most importantly, governments engaged in TJ processes rarely set out a vision of how the private sector should be positively involved in post-conflict reconstruction going forward and, equally, often fail to articulate a clear policy of addressing localized social conflict involving companies with a view to minimizing re-igniting violent conflict. Given this lack of experience, there is minimal understanding of best practices or even good practice with respect to the private sector to draw upon in TJ scenarios.

Yet, the course of history has revealed that businesses are often present and sometimes very active in conflict zones. Increasingly, academic and media studies, court cases, and NGO reports reveal the ways businesses may be directly involved in or benefitting from the actions of governments or armed groups in armed conflict. Generally speaking with regard to both Colombia and other countries with histories of internal armed conflict, business may be implicated in massive land grabbing, internal forced displacement, killing or disappearance of civil society leaders and other grave human rights violations that directly injure individuals as well as harm the social fabric of local communities. Certainly, Colombia's own history reveals this pattern of business involvement in the conflict, leading to some high-profile litigation against companies such as those in the extractive and agricultural industries, among others. Different actors may try to capitalize and leverage political and territorial control by exacerbating disputes. It comes as no surprise that at the end of armed conflict there are still many unresolved disputes that emerge.

At the same time, there are examples of companies that have struggled to keep their operations viable in accordance with transparent standards of community engagement in conflict regions and despite demonstrating a genuine commitment to operate in a transparent, responsible and legitimate manner find that their operations ultimately suffer from violence and other disruptions. Companies may be drawn into conflicts despite their desire to stay neutral, such as when a contractor engages in irresponsible behavior or is forced through threats to make illegal payments. Conflict becomes an impediment, a barrier, for pacific coexistence between businesses and communities, civilized dialogue and settlement of differences. Armed conflict also weakens the capacity of State institutions to broker disputes, administer justice and ensure general popular participation in political decision-making. This situation presents unique challenges to resolve both disputes from the past as well as new ones that arise between businesses and the communities—one that Colombia currently faces and must address ideally during its TJ process.

III. HISTORICAL BACKGROUND ON THE COLOMBIA'S TRANSITION TO PEACE

Colombia's internal armed conflict began in the mid-1960s and spanned some five decades, involving the government, paramilitary groups, crime syndicates, and left-wing guerrillas such as FARC. Innocent individuals and communities often bore the brunt of the conflict, with casualties and disappearances numbering in the millions. While the recent peace negotiations between the Colombian Government and the FARC have attracted much international attention to the country's move towards peace, it is important to note that the nation had already begun to engage in this work long before a final peace agreement was brokered—making it one of the only countries in the world to resort to TJ mechanisms before the cessation of hostilities.⁸

A. *The 2017 Peace Accord and Transitional Justice*

In order to continue to build on the existing TJ measures, the Peace Accord included Point 5 to further develop these important processes dedicated to the victims of the conflicts.⁹ Point 5 includes explicit reference to the need to provide the full truth, repair victims and guarantee the prevention of new harms. In particular, the “truth” includes an exhaustive and full account of the circumstances and specific conduct of crimes, as well as necessary and sufficient information to attribute individual responsibility.

Thus, the Peace Accord created a Special Jurisdiction for Peace (SJP) which includes criminal prosecutions among its other TJ goals in order to satisfy the right of the victims to justice and to offer Colombian society the truth while contributing to a stable and durable peace.¹⁰ The SJP will ensure the prosecution of perpetrators of the most serious crimes, but can also offer lower sentences in exchange for the truth. However the obligation to provide the truth does not necessarily include an obligation to accept responsibility, or apologize. The aim of this arrangement is to facilitate the integration of high ranking members of FARC into civil and political life.¹¹

In November 2016, after the Colombian Congress approved the revised Peace Accord with FARC, Colombia's Constitutional Court approved the agreement and allowed Congress to “fast-track” priority legislation necessary for the implementation of the mechanisms contemplated, particularly those related with the TJ System. Colombia's legal framework contemplates this special “fast track” regime that is designed to overcome the slow pace of Colombia's congress in order to more efficiently put into place the legal foundations for the implementation of the Peace Accord. Legislation under the fast track has included key laws to establish the TJ System.

⁸ Lisa J. Laplante & Kimberly Theidon, *Transitional Justice in Times of Conflict: Colombia's Ley de Justicia y Paz*, 28 MICHIGAN JOURNAL OF INTERNATIONAL LAW 49 (2006). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2158419. See also the Concept Note from the 2017 Symposium which set out the history in detail, pp 9-12: <https://www.nesl.edu/docs/default-source/default-document-library/final-concept-paper-cilp-and-creer-2017.pdf?sfvrsn=2>.

⁹ In Spanish: *Sistema Integral de Verdad, Justicia, Reparación y No Repetición (SIVJRNR)*

¹⁰ Final Colombia's Agreement to End Conflict and Build Peace, p. 146

<https://www.mesadeconversaciones.com.co/sites/default/files/24-1480106030.11-1480106030.2016nuevoacuerdofinal-1480106030.pdf>. Unofficial English translation, <http://www.altocomisionadoparalapaz.gov.co/herramientas/Documents/summary-of-colombias-peace-agreement.pdf>

¹¹ See, Point 4 of the Peace Accord, which is referred to as “Political Participation”.

Extraordinary powers have also been granted to President Juan Manuel Santos to issue executive decrees with the force of law to ensure implementation of the Accord. One of those executive decrees is the Decree 588/April 2017, which established the Truth Commission. The Commission is presided over by Francisco de Roux, a Jesuit priest who has more than 40 years of experience in promoting peace and is one of the men behind the CINEP, an influential Jesuit think tank. De Roux and 10 fellow commission members were elected from 193 applicants by an independent selection committee composed of international experts. In November 2017 eleven commissioners were chosen from these applicants by an independent Selection Committee composed by international experts, which considered nominations from around the country and abroad.

The Truth Commission has an initial 3 years mandate, with the possibility to extend it. It will try to reconstruct the reality of the 52-year armed conflict that has left more than 8 million victims, but also has the specific mandate to promote spaces for reconciliation and coexistence among all the actors that were involved and affected by the armed conflict. The Truth Commission only serves to clarify truth and will not have the authority to impose punishments. And evidence obtained in the Truth Commission may not be used against suspects in criminal court cases. Thus, the Truth Commission's methodology will have more of a restorative justice focus.

The Truth Commission is currently in a process of preparation and adjustments for a period of 6 months (counted since the date of election of the commissioners), and will try to reconstruct the reality of the 52-year armed conflict that has left more than 8 million victims, but also has the specific mandate to promote spaces for reconciliation and coexistence among all the actors that were involved and affected by the armed conflict. The Truth Commission will be an impartial and independent mechanism, of transitory and extra-judicial character, and with a territorial-based approach, that will seek to contribute to the realization of the right to the truth for victims, and for society as a whole.

In November 2017, Colombia's Constitutional Court ruled that the Integral System of Truth, Justice, Repair and Non-Repetition, which includes the Special Jurisdiction for Peace (SJP) as established through the Legislative Act 01 of 2017 is constitutional, ahead of a congressional vote on the subject.¹² The Constitutional Court approved unanimously the establishment of such System, with seven votes in favor, but made several modifications to the original text of the Legislative Act. One of the major changes removes the power of judges to compel third parties – including businesses - or civilians investigated for crimes during the armed conflict to appear before the JEP, although such people can do so voluntarily.

After the Constitutional Court decision, Colombia's Congress has backed by a law to regulate the TJ System under the country's Peace Accords with FARC, including the SJP trying FARC guerrillas for war crimes.¹³ The law can also apply to members of the military and civilians who funded illegal groups

¹² Constitutional Court of Colombia. Press release No. 55 corresponding to the plenary session of November 14, 2017.

¹³ Legislative Act 01 of 2017.

like paramilitaries. However, following the Constitutional Court decision, third parties cannot be prosecuted unless they decide to participate voluntarily.

Notably, the inclusion of business was contemplated in the peace negotiations made between the Colombian government and the FARC which seeks the involvement of “civilian third parties” in all components of the *Integral TJ System*.¹⁴ Although the Peace Accord ultimately did not explicitly refer to businesses, the “third parties” reference can nevertheless be interpreted to do so.¹⁵ Moreover, the Peace Accord affirmatively establishes that: “The Truth Commission shall have, as its mandate, to clarify and promote the recognition of the human and social impacts of conflict in society, including the impact on (...) livestock producers, businesswomen and businessmen, among others”. Reading these provisions together encourages the contemplation of a role for business in the TJ System. Yet, given that there have been so few experiences of involving businesses in TJ processes to date, the Colombian Government faces the challenges of developing a careful and informed policy to guide the programming around this particular theme.

B. *The Challenges Ahead*

The TJ System is without doubt a critical cornerstone of the Colombian Peace Accord and is the *sine qua non* condition to peace since it prioritizes victims, assures access to symbolic and material reparations, and accounts for social and cultural diversity of the Colombian territories. Yet, despite all these positive steps, the question still stands whether or not the TJ System will be sufficient for assuring “territorial peace”-- which is understood in Colombia to be a decentralized approach to reconciliation, based on rights, in all parts of the country that bore the brunt of the conflict.¹⁶

Part of the challenges facing Colombia’s aim to foster reconciliation in the territories may be attributed to significant gaps in the TJ structure:

- a) **Jurisdictional gaps:** The many grievances that will not meet the criteria for criminal investigation by the SJP (for example, they are not Crimes Against Humanity even if still considered human rights violations), yet are still considered an unsettled and unaddressed source of conflict that carries difficult memories and perceptions of abuse in communities and thus could obstruct reconciliation.

¹⁴ “[T]he recognition of responsibilities by all direct or indirect participants in conflict and who were involved in serious human rights violations” Joint press statement. Comunicado Conjunto #64, La Habana, 15 de diciembre de 2015. During the negotiations both FARC and Government said that business would be included particularly in the TJ point, but finally the reference in that section of the accord was to third parties in general terms (Although in other sections the accord mention specifically the involvement of companies and entrepreneurs). In conclusion, regarding TJ the third party provision can be interpreted to include them.

¹⁵ The Peace Accord defines third parties as those who, without forming part of the armed organizations or groups, have indirectly participated in the armed conflict and committed crimes in the context of and on the basis of this. The popular common interpretation is that third parties could be particulars, business, organizations, etc.

¹⁶ “To that end, we must complement a rights-based approach to peace with a territorial approach. There are two reasons why we must do this: first, because the conflict has affected some regions more than others; and second, because change will not come if we do not coordinate efforts and mobilize the population in these regions around peace”. Sergio Jaramillo, High Commissioner for Peace. Speech given at Harvard University, March 13, 2013.

- b) **Territorial gaps:** There are communities with tensions and disputes originating during the armed conflict but which may fall outside the mandate of the Truth Commission, in part due to limited resources and time.
- c) **Accountability gaps:** The many grey areas regarding who should take responsibility for the violation of environmental, economic, security and minority rights that have not been and will not be adjudicated to address negative impacts and harms. This situation is due to the fact that it is difficult to tell whether local conflicts, polarization and negative impacts were a consequence of the government and its policy decisions, or of company practices, or both. Conflicts in these communities often arose out of a combination of these factors. For example, some negative impacts arose out of the failure of the State to protect the rights of inhabitants such as through consultative processes or limitations to freedom of expression and assembly due to the armed conflict¹⁷.

It is these gaps that the TJ System will need to keep in mind and which will be an important focus of the Expert Meeting as approaches to conflict resolution are developed.

C. Experiments in Colombia - Building on the Dialogue Exercises Conducted by CREER with Business and Communities in Colombia on Truth, Reconciliation and Coexistence

Since September 2016, in a joint effort with the Institute for Human Rights and Business (IHRB) and the Center for International Law and Policy (CILP) of New England Law | Boston, the Regional Center for Responsible Business and Entrepreneurship (CREER) launched a line of research to examine the challenges and opportunities that non-judicial mechanisms of the Peace Accord represent regarding the involvement of business in the collective construction of truth, reconciliation and coexistence in the territories.

Under this line of research, in September 2017 the project "Collective Building of Truth, Reconciliation and Coexistence: Challenges between Business and Communities" was launched, with the ultimate goal of providing guidance for methodological and strategic approaches to the implementation of a territorial peace approach. The research revealed insights shared by all parties at the local level—from business and community—about the challenges and opportunities of involving the business sector in Colombia's TJ process especially considering the conditions of local environments.

CREER conducted focused dialogue exercises in different regions of the country –specifically in municipalities that were historically affected by the internal armed conflict- to identify the concerns,

¹⁷ There are several cases document by organizations such as 'Verdad Abierta', PAX and the Historical Memory Centre, where communities and their leaders became victims due to their standing in favor or against projects or government decisions enabling business licenses, projects, etc.

barriers, expectations and prejudices of both business and communities with respect to the implementation of the TJ mechanisms established by Peace Accord.¹⁸

These focus groups helped CREER identified main findings regarding points of convergence and divergences in opinions held by members of the business sector and local communities. This investigation revealed both the challenges to and opportunities for fostering reconciliation and co-existence at the local level through the TJ process. The most important of these findings include:

1. *Points of Convergence between Business and Communities*

Challenges:

- At the local level, most participants in the focus groups knew very little concerning the contents of Peace Accord, including mechanisms that are intended to generate spaces for dialogue and participation.
- They believe that the implementation of the Peace Accord is taking place in an accelerated manner; and in some cases, without the population knowing what is currently being carried out. The foregoing has led to a general feeling of apprehension, especially facing the participation in spaces for dialogue and consultation.
- They do not have in-depth knowledge of the object and scope of the integral system of truth, justice, reparation and non-repetition nor the judicial and non-judicial mechanisms intended to reach these goals.
- They do not feel represented by those who lead the SJP and the Truth Commission.
- They stated that the difficulties in the relationship between businesses and communities have been due to the ignorance of their roles in society. The business sector claims it is seen by the communities as actors with money that are not willing to contribute to the development of the communities. Local communities claim to be seen by business as a "problem" that interferes with their operations.

¹⁸ This study began by selecting (1) municipalities historically affected by the armed conflict; (2) municipalities with a large presence of small and medium-sized business that allowed a comparative analysis with the economic dynamics of large cities; (3) municipalities targeted and prioritized for the Development Programs with a Territorial Approach - PDET. Seven municipalities belonging to three large regions of the country were selected: 1). PACIFIC REGION: Cali, Buenaventura and Palmira; 2). MAGDALENA REGION: Barrancabermeja and San Pablo; 3). LLANOS ORIENTALES REGION: Vista Hermosa. The research consisted mostly of focus groups that included seven dialogue exercises with business (with approximately 50 representatives) and six dialogue exercises with communities (more than 30 organizations).

Opportunities:

- The participants of the study felt there was still time to share information regarding the TJ mechanisms contemplated in the Peace Accord and that they are willing to go to spaces created to raise awareness about the purpose and scope of the mechanisms.
- The participants of the study indicated willingness to share the information with their peers (in the case of business) and in geographical areas that have difficulty accessing information (in the case of communities).
- Business and communities affirmed that it is necessary for the State to open spaces for dialogue, in which each actor will come to know how they benefit from the implementation of the Peace Accord.
- Many, but not all participants, in the study felt truth gathering was important although there was agreement that it was fundamental that the State clarify the truth about its role in past violence such as how former public officials were involved in abuses and human rights violations.
- Communities and business also discussed the need for the government to have more presence in the territories where they live and work in order to guarantee the security of its population from threats of violence such as from other illegally armed actors who have started to occupy the geographic zones left by FARC, including criminal gangs.
- There is a common willingness to sit down and talk about the integral development of the territory, on the basis of first establishing conditions of relationship and a methodology.

2. Points of Divergence between Business and Communities

Challenges:

- Business and communities differ about what should be the central beneficiaries of the Peace Accord. The private sector affirm that the TJ System should benefit the entire society; while communities consider that it must benefit the victims of the armed conflict as a priority.
- Small and medium-sized local businesses consider that until now no spaces have been generated from the State in which their voices can be heard; this has led to a limited discourse surrounding their participation in the conflict.
- Communities fear that the implementation of development projects in the territories where they live will be executed in a bureaucratic manner and respond more to political favours than to needs of the inhabitants of these areas.

- Businesses consider that there is a bias coming from civil society on what their relationship with armed actors has been in the context of the internal armed conflict. They claim that they are seen generally as accomplices-perpetrators, which ignores their own situation as victims.
- Some communities consider that business will not participate in the Truth Commission or in any other mechanism contemplated in the Peace Accord which promotes reconciliation, because in many cases these businesses have benefited directly from the internal armed conflict.

Opportunities

- Several businesses believe that there are already local peacebuilding and reconciliation initiatives promoted from the private sector which should be taken into account to learn from their experience in the territories that will be the focus of the TJ process.
- Communities consider it necessary for the State to train victims and other vulnerable populations to participate in important economic activities in the region. They also want the State to provide information and advise them on how the legal economy develops and which documents are fundamental for their inclusion in the economy.
- Communities consider it imperative that State takes advantage of the disposition that both parties have to sit down and dialogue, for which is needed a methodology that allows a horizontal dialogue, and provided guarantees of security for all.

The findings of this initial research help to reveal important opportunities as well as challenges to implementing a TJ system which contemplates localized reconciliation processes that include both businesses and communities. They also set a background for contemplating how businesses would be integrated into the main non-judicial mechanisms of a TJ System, specifically truth, reparations and micro reconciliation processes.

IV. THE NON-JUDICIAL DIMENSIONS OF TRANSITIONAL JUSTICE & THE INVOLVEMENT OF BUSINESS IN TRUTH AND RECONCILIATION

A. Relevance to the Expert Meeting

As a starting point for the Expert Meeting, participants will be asked to help explore what processes for reconciliation might look like in the Colombian context, and specifically what it will entail with relation to the private sector. There is little specific guidance to build on to date on the methodology of achieving reconciliation, even without considering the whole dimension of adding business to the discussion. TJ processes often set out reconciliation as a goal of the overall TJ agenda but with very little guidance on how to conduct such processes to arrive at that particular goal. These shortcomings call for the development of additional spaces and methodologies to address local

conflicts of multiple origins to support and complement the work of the Colombian Truth Commission, whose aim also includes reconciliation. Importantly, now that it is clear that businesses will not be subject to criminal processes in Colombia—at least through the TJ System—it becomes imperative to begin to think through non-judicial mechanisms for helping to achieve justice and accountability, while also contributing to lasting peace.

With that in mind, the sections below set out:

- Some theoretical models of how reconciliation has been understood in TJ settings.
- Explores the relation of the concept of reconciliation to both truth gathering and reparations—both of which are often viewed as core components of TJ projects and also believed to lead to reconciliation.
- Discusses Colombia’s understanding of reconciliation as it relates to its TJ System.
- Presents lessons learned and best practices from other emblematic local reconciliation processes to transfer to the current process in Colombia.

These discussions will be followed by questions to consider during the Expert Meeting.

B. Theoretical Models of Reconciliation

While conventional definitions of reconciliation often refer to the mending of relations between two opposing parties who presumably had a prior good relation, this understanding can be challenged when contemplated in TJ settings which entails complex victim-perpetrator relations that does not fit nicely into traditional definitions. Most commentators from both academia and practice have recognized the difficulty of adopting one definition of the term *reconciliation* despite the fact that it is such a common aspect of TJ projects, most often figuring as a central goal. Indeed, many countries opt to jump start a TJ process by establishing a Truth *and Reconciliation* Commission. Thus, some common understanding of the term *reconciliation* becomes necessary in order to assure the development of appropriate policies and programming, as is the current case with Colombia.

A comprehensive review of the literature on the concept of *reconciliation* begins to provide some general framework. To arrive at a workable definition, a starting point may begin with the very general idea of “building or rebuilding relationships damaged by violence and coercion.”¹⁹ Yet, this idea begs the question: Who are the reconciling parties? What is required to achieve the goal of reconciliation between these parties? Answering these questions again depends on context. As the initial findings of this research reveals, the best approach to understanding and facilitating reconciliation in post-conflict settings entails flexibility and adapting to the particular situations and settings that may even vary in the same country.

Instead of thinking about reconciliation as one process, an ideal approach contemplates a range of situations that runs along a continuum that contemplates “levels” of reconciliation with the most

¹⁹ Sylvia Rognvik; Enrique Sanchez, *Building Just Societies: Reconciliation in Transitional Settings*, UN Workshop Report (2012). At 206.

basic level beginning with the individual--either with or without the perpetrator's involvement-- and eventually expanding to include communities and even whole nations. This continuum may be organized around the concepts of "micro" and "macro" reconciliation [See, Graph 1].²⁰

Graph 1: Levels of Reconciliation

Micro-Reconciliation	Macro-Reconciliation
<i>Personal- victim and perpetrator</i>	<i>Political-Civil</i>
<i>Community/societal-based</i>	<i>Economic-Social</i>

The process of "micro-reconciliation" may involve more conventional one-on-one mediation but also may entail localized processes of restorative justice for the communities where these individuals reside.²¹ Given its localized nature, this level may acquire religious overtones of forgiveness and personal healing. The next level of "macro-reconciliation" entails a more expansive political-civil healing between the State and the individuals and their communities harmed by episodes of recent war, political violence and repression—the types of situations typically addressed by TJ. Since the government failed to protect the rights of its citizens, it seeks to offer a form of restitution by responding to these violations with mechanisms of justice like truth, reparations and trials. The macro-level might expand even further to encompass addressing the underlying socio-economic inequalities that contributed to the violence.

While the conceptualization of levels of reconciliation may prove convenient for starting to conceptualize different understandings of reconciliation in TJ settings, they still require further thought on the methodologies and processes needed to achieve these visions and how the two levels are linked. The next section presents some universal prescriptions found in most local reconciliation processes. In drawing upon best practices and lessons learned, Colombia will benefit in developing a thoughtful policy with regard to business-community reconciliation.

C. *An Overview of Prescriptions for Achieving Reconciliation*

A number of academics and practitioners have offered guidelines and prerequisites for achieving reconciliation. While we do not suggest any one of these is definitive or superior, they do offer some initial baseline agreement as to some of the more common objectives and basic principles of a reconciliation policy that could be considered in Colombia's official programming around reconciliation.

²⁰ Lisa J. Laplante, *Just Repair*, 48 CORNELL JOURNAL OF INTERNATIONAL LAW 101 (2015).

²¹ Kimberly Theidon, *Intimate Enemies: Violence and Reconciliation in Peru* (2014).

Priscilla Hayner, whose authoritative tome on Truth Commissions includes a chapter on reconciliation, recognizes that at the simplest level, reconciliation may be the cessation of conflict and peaceful co-existence. Such an end is usually achieved through a cease fire and signed peace agreement.²² In this regard, Colombia could be said to have achieved reconciliation. This assumes that with time memories will fade and so there is no need to do anything. However, experience shows that such a policy would be unwise as memories can be passed through generations to create upheaval further down the line. Even in the short term, underlying resentments can erupt into new hostilities or new forms of violence. Hayner recognizes that a more robust vision of reconciliation may be required such as truth telling and addressing underlying socio-economic conditions.

Similarly, psychologist Brandon Hamber who has worked in both South Africa and Northern Ireland's TJ settings, proposes different "strands" of reconciliation that correspond to aspects of micro and macro reconciliation²³:

1. *Developing a Shared Vision of an Interdependent and Fair Society*

This strand involves a whole society at all levels while accommodating different opinions and beliefs to reach a common vision of inter-dependent, just, equitable, open and diverse society. This strand may relate to underlying tensions relating to ethnic, social and identity based separations. It is thus the strand that might be most related to cultural sensitivities. It also must address power imbalances and create power-sharing as a way to start building trust at the highest levels. Reconciliation under this strand may also involve reintegration of the offenders into society.

2. *Acknowledging and Dealing with the Past*

This strand requires the acknowledgement of the hurt, loss, and suffering of victims, and thus also entails creating truth gathering, mechanisms for justice, healing, restitution and reparation, and restoration (including an apology). Also, individuals and institutions must acknowledge their role in conflict and learn in constructive way to guarantee non-repetition of violence. This strand most closely resembles the overall TJ approach that includes an array of justice mechanisms and suggests they all lead to reconciliation.

For example, a Truth Commission would be a key instrument in facilitating this type of process, with the idea of identifying and raising awareness of the truth being a key component. Although looking at the past may seem unnecessary in some views of reconciliation, understanding the historical factors that lead to the conflict to avoid future conflict can be beneficial in the reconciliation process. Along these lines, creating sites of memory can be important to remind future generations how to identify dangers in the future and to commemorate the fate of victims. In many communities where conflict arose,

²² Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the challenge of Truth Commissions* (2010), pp. 11-12

²³ Brandon Hamber and Gráinne Kelly. "Beyond Coexistence: Towards a Working Definition of Reconciliation." In *Reconciliation(s): Transitional Justice in Postconflict Societies*, edited by Joanna Quinn, 2010) pp. 286–310.

memorial ceremonies that have commemorated their dead may help with reconciliation. Genuine apologies may be needed, but not always required in reconciliation. Other forms of reparations, both monetary and non-monetary, would also fall under this strand.

3. *Building Positive Relationships*

This strand complements the last one by recognizing that the society must address issues related to trust, prejudice and intolerance to help communities accept their commonalities and differences while embracing and engaging with others. Importantly, this strand includes an element of healing. Other commentators similarly recognize the need to heal trauma at all levels of society (personal, community-based, and national). Along these lines, public health expert Audrey Chapman indicates that reconciliation requires:

- The community is able to understand the trauma;
- Injuries and losses are shared and acknowledged;
- The community must be willing to let go of the vengeance done in the past;
- Justice must somehow be achieved through punitive or restorative justice;
- All parties must be committed to repair and reestablish the relationship and create a new social covenant.²⁴

Her recommendations underscore the psycho-social aspect of reconciliation which often cannot be separated from the healing of both individuals and communities. In effect, the process re-humanizes the “other”.

This strand may also contemplate replacing violence as a tool for resolving conflict with dialogue and conflict resolution skills. This work involves building trust which is a building block of social development and strengthening civic institutions and social relationships that aid in a transition from a divided society.

4. *Significant Cultural and Attitudinal Change*

Somewhat similar to the other strands, this one requires a change in how individuals relate to each other and the attitudes they hold. Thus a culture of suspicion, fear, mistrust and violence must be replaced by spaces to hear and be heard. Hamber equates this vision to a culture of human rights in which human differences are tolerated while each citizen is an active participant in society and has a sense of belonging.

5. *Substantial Social, Economic, and Political Change*

The final strand which closely resembles the most expansive version of macro-reconciliation requires the identification, reconstruction and transformation of structures that give rise to

²⁴ Chapman, Audrey R. “Coming to Terms with the Past: Truth, Justice, and/or Reconciliation.” *The Annual of the Society of Christian Ethics*, vol. 19, 1999, pp. 235–258. JSTOR, JSTOR, www.jstor.org/stable/23560084. At 248.

estrangement and conflict. Similarly, commentators recognize that economic growth is essential to reconciliation, mentioning that three key components include growing economic and social interdependence, expanding means of communication and interaction, and increasing productivity. Along these lines, Hayner would add that this approach requires addressing gross inequalities that produce oppression, recognizing the dehumanizing aspect of poverty and inequality. This strand could also relate closely to reparations, both individual and collective as well as institutional reform relating to economic and social matters.

South Africa may present the most salient example of what happens when the underlying economic inequalities go unaddressed in a national process of reconciliation, where poverty and de facto segregation sustained tensions. Increasing economic disparity between rich and poor since the completion of the TRC's work has resulted in a skewed outcome, as racial groups share equal status in moral, political, and legal senses, but for the most part remain economically segregated. And given that the government has only paid a fraction of reparations recommended by the TRC, there has been substantial bitterness and resentment that undermines reconciliation.

The sum of commentary reviewed suggests that reconciliation can only be achieved through all aspects of TJ -- including truth commissions, reparations, trials and institutional reforms. Yet, these various mechanisms can take years to form and then encounter many obstacles to full implementation makes some observers cynical about the concept of reconciliation, even suggesting that we abandon the goal. Other commentators are more realistic and imagine a more modest approach that understands that reconciliation is an incremental approach where every small step counts and every effort carries value. Ideally, any policy of reconciliation would be holistic in nature, contemplating many different processes and programs. Notably, this approach does, however, require knowing the end point and goals of reconciliation to determine what those processes might entail and how to gauge if they are successful.

D. Colombia's Approach to Reconciliation as a Part of the TJ System

Notably, the government of Colombia has indicated some reluctance to adopt the term "reconciliation" as a part of its TJ process, making it stand apart from other countries which embarked on a similar path. Indeed, the TC in Colombia is formally called the Commission for the Clarification of Truth, Coexistence and Non-Repetition". Yet, among its objectives it clearly states that the TC should work on co-existence and reconciliation:

In order to contribute to the objective of non-repetition and reconciliation, the activities of the TC, towards the fulfillment of its mandate, will aim to promote coexistence among Colombians, especially in the territories most affected by the internal conflict.

To this end, the TC will ensure that the spaces or hearings that will be established serve to strengthen respect and tolerance and citizen confidence in the norms that guarantee the

validity and respect for human rights. In this sense, the TC will also help to lay a solid foundations for the building of peace.²⁵

Co-existence is understood in Colombia as "the creation of a transformative environment that allows for the peaceful resolution of conflicts and the construction of the broadest culture of respect, tolerance and democracy."

Therefore, the TC is in charge of promoting both coexistence and reconciliation in the territories impacted by the armed conflict. However, the difference between these two concepts is not expressly stated, nor is it specifically mentioned the form or methodology that will be developed to achieve them.

Yet, in Colombia there are no explicit considerations on how reconciliation should be understood, especially as it relates to business-community conflict. It is set out as a goal with no clear signposts about how to carry out reconciliation processes. Nor are there clear standards of business behaviour that should mark a difference with the past and in which way business as a societal force will contribute locally to processes that involve those territories more affected by conflict than others and their populations. It remains to be explored whether conditions for reconciliation and resolving disputes are assumed to be built into the Truth Commission process or are outcomes derived from other aspects of the Peace Accord, especially those related to rural reform and citizen participation. While this observation rings true in general, it is especially relevant to the business-community dynamic.

Questions to Explore

- What should "reconciliation" mean in Colombia's the TJ System?
- What might be the different understanding of reconciliation and co-existence?
- Is it possible to reach a common definition of both terms?
- It is possible to talk about reconciliation without the concurrence of all the actors involved in the conflict?
- What is a working definition of the concept of reconciliation and co-existence as it relates to businesses and communities in the context of Colombia.
- Is it possible to achieve the aspiration of reconciliation without looking at the past and revealing all the truth?
- What is the narrative of the past that allows reconciliation and moral reparation to victims and all affected parties (communities, labor unions, business, etc.)?
- If a narrative is needed for healing and reconciliation what is the process and methodology that will support such a joint effort? Who will help to facilitate it?
- What are the events that can might re-open wounds that lead to stagnation or exacerbation of conflict?

²⁵ Article 10 Decree 588 of 2017.

- What levels of reconciliation would be relevant to business-community reconciliation?
- Are there any additional conceptualizations of reconciliation useful for a policy on business-community reconciliation?
- Would omitting the truth about business amount to a validation of negative business activities and undermine the justice process?
- What are the incentives for business to collaborate in the TJ System?

E. Truth Building & Reconciliation – Is it Possible and Why Is It Important for Communities and Businesses?

As recognized above, one of the primary aims of a TJ process and a supposed requirement for achieving reconciliation is to establish “the truth” about the past. This aim arises out of the desire to set the record straight through an official and objective report usually produced by a Truth Commission that concisely explains the causes and consequences of past episodes of political violence. This process also helps to guarantee the victims’ right to truth which is now a recognized human right.²⁶ However, it is often the *process* of constructing the truth that matters as much as the final *product*. The idea being that victims often feel empowered and may even have a cathartic experience through the act of telling their truth, and not because they desire only to have their story end up in a final published report. In fact, some countries find that victims continue to find ways to “tell their truth” long after a TC ends its work thus signifying a greater need to have one’s experience heard, acknowledged and recorded.

At the same time, there is much debate as to whether the truth telling process is necessarily helpful to victims. In addition, there is disagreement as to whether a full and complete truth can ever be achieved through a TJ process. More controversial is whether the process leads to reconciliation, and whether that goal is even appropriate to ascribe to the work of a Truth Commission. Implicit in this assertion is that there is not always a clear idea of what reconciliation actually means in a TJ context, since it can actually mean different things to different people. Thus while the South Africa experience put great emphasis on individual victims and their families forgiving perpetrators in the name of reconciliation; Peru understood the complexity of that goal and chose instead to view reconciliation as repairing truth between the governed and the government.

Additionally, and relevant to this meeting, there are important questions regarding the connection of truth building, reconciliation and business participation found in the Colombian Peace Accord and yet there is still not much guidance on how the two will relate. There needs to be much more guidance on how to establish the conditions and pathways to create a positive and productive interplay between reconciliation and truth as it relates to business. Without clear incentives for the business sector to participate in truth building and reconciliation, especially as businesses will not be called to face criminal charges, there is no guarantee that businesses will cooperate or collaborate with the Truth Commission especially since they may worry about reputational risks. Yet without

²⁶ Sam Szoke-Burke, Searching for the Right to Truth: The Impact of International Human Rights Law on National Transitional Justice Policies, *Berkeley Journal of International Law*, Vol. 33, Issue 2 (2015), pp. 526-578.

business involvement, Colombia will be left with only a partial truth of the past, which could undermine both reconciliation and territorial peace. It lies with the new Truth Commission to address these risks.

There are some common characteristics that thread through each of the unique experience of countries that have adopted truth Commissions. They often focus on taking testimonies from a wide range of stakeholders, but primarily victims, although some seek the involvement of perpetrators. While methodologies may vary, truth commissions often take private statements from individuals dispersed throughout the country as well as hold public hearings. To support these testimonials, truth commissions may also conduct forensic investigations, survey historical and media archives, and integrate studies from academics and NGOs, among other sources. Importantly, civil society often accompanies this official process by working with victims to contribute to the truth commission as well as helping to identify sources of information. In some cases, civil society and victims associations will conduct their own truth seeking activities, such as through art, theater, books and other forms.

In the case of Colombia, there have already been various stages in the pursuit of the truth through the formation of various bodies established to contribute to this quest for truth. Its objectives of Colombia's various Truth Commissions have included:

- Contribute toward the historical clarification of what happened during the armed conflict;
- Promote and contribute to the recognition of the victims;
- Establish the responsibility of those that were involved directly or indirectly in the armed conflict; and of the society as a whole; and
- Promote coexistence across the country.

The various bodies have included:

- First, as mentioned above, the Law 975 created the Historical Memory Group, which began to collect testimony from victims to construct an official narrative of origins and harms caused by the internal armed conflict.²⁷
- More recently, there was the formation of the Commission for the History of Conflict and its Victims (CHCV) was instituted August 2014, within the framework of the peace negotiations between the national government of Colombia and the FARC on August 26, 2012.²⁸ The Commission, which was formed only for the purpose of the peace negotiations, was composed of twelve experts who were selected through an agreement between the two negotiating parties, with the objective of contributing to an understanding of the complexity of the historical context of the armed conflict and providing inputs for the delegations in the

²⁷ <http://www.centrodememoriahistorica.gov.co/en/about-the-national-center-about-the-national-center> For further discussion, see Emad Ansari et al., *Historical Memory in Colombia: The Work of the Grupo de Memoria Historica* (2014).

https://www.centrodememoriahistorica.gov.co/descargas/IEDP_2012_COLOMBIA_Human_Rights_Report_GMH.pdf

²⁸ All the reports of the Commission are available at the following link: <https://www.mesadeconversaciones.com.co/comision-historica/ensayos>

discussion of the different points of the Peace Accord, especially the issue of victims. A report on three key points defined by the parties set out: (a) the origins and multiple causes of the armed conflict; (b) the main factors and conditions that have facilitated or contributed to the persistence of the armed conflict; and (c) the most notorious effects and impacts of the conflict on the population.

- Finally, the newest truth commission established by the Peace Accord as discussed above.

The Peace Accord as well as the Decree 588 of 2017 (which established the Truth Commission) has reconciliation and coexistence as a core aspiration in general terms, but it does not frame the participation and role of all actors, nor does it set procedures to ensure in practice that all actors contribute the truth. For the purposes of this meeting, it is important to recognize that despite the fact that there is very little international practice to build on, Colombia will have to create new pathways and processes to involve business in the truth building process.

That said, the Peace Accord states that the Truth Commission will have as its general mandate to “...clarify and promote the recognition of the human and social impact of conflict in society, including the impact on business.” The implication is that the Peace Accord accepts that the armed conflict has impacted business (although not necessarily in the same way as on direct victims and their families) and that the implementation of the TC needs the participation of business to contribute to fostering the economic and social conditions that lead to peace. The common aspiration of the parties to the Peace Accord appears to be the desire to “turn the page” and jointly work on territorial reconstruction where business enterprise can play a legitimate role and can work towards gaining a social license to operate.

Questions to Explore

Broad Questions on Business involvement in Truth Seeking

- Why is it important for companies to contribute to the truth seeking process?
- How can business be shown that this truth gathering is an opportunity?
- How does a methodology account for different sizes and types of businesses?
- What is the best way to include business in the truth seeking process? - What kind of incentives can be incorporated for companies to be actively involved in building truth?
- What barriers must be overcome to involve business in the truth process?
- What might be the anticipated narrative of businesses? Will they appear as victims or perpetrators or a bit of both?
- Should businesses be expected to take responsibility for wrongdoing, even if at the moral level?

Involving Businesses in the Truth Commission

- Should business be invited to provide private testimony? What type of questions would be appropriate?
- Should the focus be on all kinds of business or a particular kind? (small, medium and large? A particular industry? A certain location?)
- Should there be a public hearing on business involvement in the conflict?
- Will there be regional differences in business involvement in truth construction?
- What type of violations should be the focus of any investigation on business involvement (e.g. only civil and political rights or also social, economic and cultural rights?)
- Should there be any type of promise of confidentiality? Should the archives be protected?
- What would be some of the risks and challenges to involving business in the TC's work?
- How could the Truth Commission address the reputational risks entailed in the construction of a narrative for reconciliation without rewarding abusive behavior and at the same time avoid unjust social punishment for actions occurred in the midst of conflict

Other possible types of truth seeking processes

- What other truth-seeking processes should focus on business involvement in the conflict?
- Is the Truth Commission enough to guarantee the construction of truth in the various territories of the country? Or are additional or other mechanisms needed over time?

F. Reparations: Pathways for Involving Businesses in Reconciliation Processes

Similar to truth, reparations programs feature as another central component of any TJ process and is often associated with reconciliation processes. While a few Truth Commissions have included reparations as a part of their work, most of them typically include recommendations for reparation programs as a part of their final report. The governments of those countries must then pass laws and set up government offices to register victims and distribute reparations.

Importantly, these programs help to guarantee the right to reparations held by victims. International human rights bodies, like the Inter-American Court of Human Rights, have helped to solidify recognition of this right, while providing some general guidance on implementing reparations. In particular, the United Nations *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (Basic Principles), approved by the U.N. General Assembly in 2005, further solidifies this developing norm.²⁹

²⁹ General Assembly Resolution, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,; A/RES/60/147 (16 December 2005), http://www.americanbar.org/groups/law_students/about_us/leadership/leadership_opportunities.html#liaison .

Overall, jurisprudence has stressed that reparations must be victim-focused so as to avoid any new forms of victimization. Importantly, the manner in which reparations are implemented can also have a reparative impact, especially if communities are involved in the design of reparation programs. The inclusion of victims is important for meeting the general guidance provided by the Basic Principles which establishes that reparations should be “adequate, effective, prompt and appropriate.”³⁰ One of the challenges of meeting these still evolving parameters is to contemplate the many different types of human rights violations that result in a wide spectrum of harms that need to be repaired. Moreover, there may be large numbers of victims as well as different regional impacts.

Colombia has and will deal with some of the challenges and complexity of designing reparation programs to address a wide range of human rights violations as well as categories of victims which includes those who individually and collectively have suffered harm due to events that occurred during the armed conflict and that resulted in a violation of international humanitarian law and serious violations of international human rights law. It will also need to give special attention to women, children, the elderly, indigenous people and Afro-Colombian communities. At the same time, it will face the complicated task of taking into account the previous reparation programs outlined above, while also identifying their shortcomings.

The new TC will begin its work contemplating a wide range of reparations measures that the government has tried to provide. The Colombian Government, through the Victims Unit, created a collective reparation program (Law 1448 of 2011) to ensure that affected groups would have access to comprehensive reparations. For example, this law established the Victims’ and Land Restitution program which led to measures of:

- Restitution
- Compensation and indemnization
- Rehabilitation both physical and psychological
- Satisfaction: which focuses mainly on moral reparations
- Measures of non-recurrence.

Thus, Colombia is one of the first countries to begin a peace process that will take into account the effects of the internal armed conflict on “subjects of collective reparation.” In particular, Law 1448 established the definition of “collective victims” to include ethnic and non-ethnic communities, groups, organizations and social movements which experienced a negative impacts due to the armed conflict. Some of these harms include harms to their community organization, culture, possibilities of access to education and health and even their livelihoods.

Based on these antecedents and given that these reparation measures are currently in operation, the Peace Accord contemplates the strengthening and continuity of these measures through an approach called "Measures of integral reparation for the construction of peace" with emphasis on:

³⁰ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

- Concrete actions to contribute to reparation by the FARC
- Early acts of recognition of responsibility for harms against individuals and communities
- Land restitution
- Collective processes of returning individuals to the lands they had to abandon
- Psycho-social rehabilitation

The Expert Meeting will explore different pathways for businesses to contribute to healing wounds to the social fabric of Colombian society, beyond any type of reparation measures ordered by the Peace Tribunal. This form of reparation would amount to a type of solidarity with the victims. Regardless of how many business leaders will be prosecuted (keeping in mind that under Colombia's criminal law companies cannot be sanctioned) the question then becomes how business will be expected to contribute to reparations as a way to assure peace, especially in communities where they caused or contributed to adverse human rights impacts. This includes all those situations when companies operated in environments where there was a severe institutional vacuum.

The Expert Meeting will also explore how business might be involved in supporting the reparation process monetarily. For example, while most countries fund their reparations programs through state funds and international donations, the SJP's prosecutions could in theory lead to additional funds from individual perpetrators, although it is unclear if they would be paying direct to their victim or contributing to a general fund. Such an arrangement would be novel and without much precedent.

That said, it may be that businesses may contribute to development in communities impacted by the armed conflict. Development often overlaps with collective reparations, especially when they take on a development-like feel, which has led to some controversy when victims feel the government is sidestepping its obligations to provide reparations. Yet, focusing on collective reparations and development may be one avenue for involving business. And the Peace Accord even contemplates this arrangement in section 6.1.3 ("...other measures to help ensure the implementation of the peace accord").

In order to help ensure the implementation of the Peace Accord, the drafters viewed the participation of the business sector in raising productivity, market access and sustainability in general as a way to sustain peace. The practical consequence of this agreed text is the recognition of the role of business in local development and its connection with the ultimate goal of the Peace Accord to help the country overcome poverty and economic and social exclusion.

In this regard, it is important to highlight that the Peace Accord includes, in addition to the Truth Commission, other local strategies that promotes reconciliation and development and which potentially may overlap with reparation processes or at least have a "reparative effect." In particular, it lead to the creation of the Development Programs with a Territorial Approach (Programas de Desarrollo con Enfoque Territorial –PDET), created by Decree 893 of 2017; and the strategy for the Areas Most Affected by the Conflict (ZOMAC), established by Decree 1650 of 2017. Both strategies contemplate and involve the joint participation of business and communities in local discussion forums to establish the needs and possibilities of development and generation of investments at a social and economic level in order to rebuild the territory and overcome the existing gaps. The

strategies in question prioritize the municipalities that historically were most affected by the armed conflict and call for the participation and involvement of all the local actors and sectors. Their implementation is currently headed by the Ministry of Finance and Public Credit, the National Planning Department (DNP) and the Agency for Territory Renewal (ART).

Questions to Explore:

- How should businesses be involved in reparation programs instituted by the government?
- Should companies contribute to a special fund? Should there be a tax? Should all companies pay or just those identified as connected to human rights violations?
- If they contribute to reparation funds, should it be a legal obligation or only a moral one?
- What is the overlap between reparations and development (collective reparations)?
- How could companies participate in the construction of a new collective project to rebuild the territories?
- What would be the ideal methodology of the implementation process?
- How would business involvement with reparations and development contribute to reconciliation? Would it undermine reconciliation?
- How can business involvement be balanced with a victim focus?
- How might business be involved in the reconstruction of institutions and governance as part of a TJ process?
- How might the PDETs and Zomac processes connect to the TJ process?
- What should be the role of the State in the construction of a social license for companies to operate in regions affected by the armed conflict?
- How can these processes help to overcome distrust that has developed during the years of conflict?

G. Local-Micro Reconciliation Processes – Where Does Business Fit In?

Despite the theoretical discussion of models of reconciliation, in reality there are only a handful of documented examples of how the process works especially given its somewhat nebulous quality which makes it a difficult subject for empirical research. Notable is that those cases that are most discussed in the literature tend to capture more localized-micro-versions of reconciliation. Also important for the discussion of the expert meeting is to point out that few of the emblematic cases drawn from TJ include processes between businesses and communities. Even when these countries did attempt to integrate businesses such as South Africa the results were mixed. For example, when the South African TRC had public hearings in South Africa they allowed businesses to submit as victims of the apartheid even if businesses were reluctant to take responsibility for their role in the same system or to acknowledge how they benefited from it.³¹ While it was proposed that businesses contribute to a special fund to contribute to reparations and development, this plan failed to work.

³¹ After the TRC: Citizenship, Memory, and Reconciliation. At 10.

Although there are few examples of TJ reconciliation processes that have involved businesses, there are some emblematic case studies that did involve non-state actors that may offer some comparative perspective. It is important to recognize that because every country has a unique conflict there will always be distinct qualities that influences the direction and tenor of any post-conflict recovery process and thus any effort at reconciliation. Features that can influence the ultimate approach relate to population size, economic resources, organizational strength, moral claims and other elements. That said, there are some common experiences that help to highlight some guidance that may be used in the development of Colombia's approach to business-community reconciliation processes. Examples the Mato Oput in Uganda, Nahe Biti Boot in East Timor, and Gacaca courts in Rwanda offer a comparative look at how local, grassroots reconciliation processes may proceed [see Annex 1 for fuller explanations of these processes]. Based on an overview of these emblematic micro-reconciliation processes, some general guidelines may be considered in the development of a reconciliation process.

- **Grassroots or government sponsored.** As many of the case studies reveal, sometimes organically developed grassroots movements that begin on the local level create sustainable results for peacebuilding, as well as creating collaboration and partnerships to ensure the success of the peacebuilding long-term. But it may not always be the case that communities initiate these processes on their own but may need some type of intervention. To facilitate the reconciliation process new organizations can be established. Although old organizations can be rebranded to help focus the reconciliation process, they may still risk being seen as not adequate and thus must adapt to respond to public perceptions. At the same time, if a new organization is seen as an outsider and was not part of the conflict, they may be perceived as a legitimate party to help sustain the reconciliation process.
- **Political Will and local willingness.** While all TJ processes require some political will, some need political buy-in more than others if they require changes in the law and government. Likewise, to be able to deal with the conflict in the past and have the community move forward and develop, the community must be open to the transition and ensure the proper implementation of the process.
- **Stakeholders.** Parties that have a stake in the reconciliation process can include individuals on the local level, such as survivors, or local leaders, non-governmental organizations ("NGOs"), or governmental entities. Local individuals that participate can include anyone from the community. Symbolic individuals are elders or descendants of founding ancestors. These individuals can make peace between the two sides.
- **Inclusivity.** It is important to understand the communities and the potential for members who may feel marginalized from grassroots as well as state sponsored processes, an effect observed in East Timor which termed the formal process as "elite" and started creating parallel processes. Women also play an important role although often excluded since they are significantly underrepresented in post-conflict life and during the rebuilding transition for the community.

- **Special consideration for vulnerable populations.** The interests of the most vulnerable population groups, including children, displaced individuals, and refugees. Where there is violence against women, women must be included in the reconciliation, and gender must be addressed in reconciliation.
- **Outreach.** To ensure that ceremonies are accessible for the community, the ceremony can be broadcasted so that the whole community can watch and feel that they are being part of the reconciliation process.
- **Building Trust.** Local reconciliation processes require the building of trust to be successful, while at the same time may be a way to build trust. Reconciliation processes require a minimum level of safety and security, and presume an end in violent conflict so that individuals are free to move and speak.
- **Cultural sensitivities and honoring of tradition.** Reconciliation can be adapted to include certain traditions, both cultural and religious. The integration of a society's culture into reconciliation can create an outline of how the reconciliation should take place, which includes certain rituals that may or may not strive towards forgiveness. When religion is involved, as it was in South Africa, might help create a cooperative social behavior for society. Often reconciliation processes that rely on indigenous legal traditions often grounded in religious principles and community customs help to rebuild community harmony and trust. Some of their rituals included oral storytelling of myths, parables, and stories that were passed down in their community from generation to generation. There is also ceremonial dancers, gestures, movements that were already accepted within the community. Relying on known rituals may increase cooperation with a project. However, using traditional rituals in the reconciliation process can easily favor the elderly of the community and cause disadvantages for the youth of the community. If traditional methods are used, ensuring that the ritual or symbols used are accepted by all of the community, including individuals of different backgrounds, age, and gender. As seen with Indigenous people rights, ensuring that their group identity was recognized increased their acceptance of an apology, a willingness to be active in the reconciliation, and reduced the feeling of inequality in the process. However, although tradition and rituals placed in the reconciliation process can be beneficial for the healing of the community, concerns sometimes arise when the rituals are used to heal and solve issues that have never occurred before. Using tradition can also be time consuming since some rituals can only be completed at specific sacred sites, it can cause a burden and mean that the reconciliation process is inaccessible for communities.
- **Practical and achievable proposals and promises.** Promises made during reconciliation need to be practical and not made to end the conflict, especially if such promises cannot be achieved. Being practical during the reconciliation process can sometimes mean acknowledging past conflicts within the parties, addressing the root causes of those conflicts, and focusing the conversation to ensure that the past conflicts do not continue.

- **Funding.** Some of these strands require more time and resources. One of the hardships with reconciliation is when an individual becomes reliant on foreign economic aid. An issue with foreign economic aid is that once the funds are spent, the volunteers may leave to find employment. Where the funding source is given can also cause criticism to the process, especially if a community may believe that the funder has a private agenda. Where NGOs are participating by either participating or facilitating the reconciliation process, sustainability of the process must be assured. In some NGOs that are externally funded, once the funding is completed, the assistance in the reconciliation process ceases and the likelihood for the reconciliation process to sustain is slim. When funding for the NGO occurs, sometimes individuals from the NGO must continue as volunteers to complete the reconciliation process.

Questions to Explore

- Which steps, principles, procedures, methodologies or approaches are most relevant to the business-community reconciliation model?
- Are there any key points for good practice to follow or experience with particular approaches that work or does not work well?
- What are some particular challenges that must be anticipated and addressed when facilitating a micro-reconciliation process?
- How might progress of micro-reconciliation between businesses and communities be gauged?

V. DRAWING FROM THE EXPERIENCE OF BUSINESS – COMMUNITY CONFLICT RESOLUTION

In light of the fact that there are few examples of business-community reconciliation experiences arising out of TJ processes, the field of conflict resolution may offer additional models to shape the approach to business-community reconciliation in Colombia's peace process. There are many different approaches to resolving conflicts which may offer different methodologies for developing processes of reconciliation through truth gathering, the implementation of reparations and development. For the purposes of this concept note, the term "conflict transformation" will be used to reference an evolving methodology suitable for TJ processes which may not necessarily fit neatly into any one form of conflict resolution.

To jump-start a conversation on the relation of conventional conflict resolution methodologies to a TJ process, it may be possible to draw upon the experience of non-judicial remedies employed often as part of the growing movement of corporate accountability. Unlike most other TJ processes around the world, Colombia's is one of the first to take place parallel to the development of global standards related to business accountability for adverse human rights impacts. Specifically, the United Nations Human Rights Council unanimously approved the UNGPs in 2011, providing a useful three-pillar framework that informs our discussion by addressing the role of government, businesses and victims in resolving harms caused or contributed to by businesses.

Pillar I of the UNGPs sets out that the State has a duty to protect human rights and emphasizes that international law requires the State to assure that businesses are held accountable for such harms and that victims have access to adequate and effective remedies. Pillar II of the UNGPs clarifies that businesses have a responsibility to respect human rights, including through company level actions that prevent, mitigate and remedy any such harm. Finally, Pillar III of the UNGPs recognizes the victims' right to access a remedy for human rights violations and abuses no matter what entity causes or contributes to them. Notably, the UNGPs specifically address the role of states and businesses in conflict zones given that these situations lead to a heightened risk of human rights violations and abuses.³²

Colombia has taken steps to implement a National Action Plan (NAP) pursuant to the UNGPs, including provisions that relate directly to the TJ process now underway. In particular, the NAP addresses the goal of non-repetition by addressing the institutional structures and culture that led to tensions, polarization, exclusion, lack of accountability and delegitimization of the State and the private sector. At the same time, while important, the UNGPs are not sufficient to address all of the issues that arise with relation to company contribution to human rights abuses associated with the armed conflict, an issue that will also be explored during the expert meeting. The NAP still lacks detailed directives on how specific pathways to ensuring remedies for business human rights abuses should be developed in addition to mechanisms for improving interactions between communities, the State and companies.

There is a wealth of experience of mediated dialogue between businesses and communities that relate to grievances brought by employees as well as residents of the community where businesses operates. Indeed, examples of business-community mediations have drawn greater attention since the UNGPs were approved. Organizations like Accountability Counsel³³ have profiled many of the cases that they are working on and Access Facility³⁴ offers a database of mediations experiences. Local organizations like Peru's ProDialogo also offer years of experience mediating between communities and businesses. The cases taken up by organization like these include a great diversity of companies who use mediation to resolve social conflicts, including those from the extractive sector, manufacturing, agriculture and other industries that interface with local communities. Moreover, the forum in which these mediated dialogues may take place in company level grievance mechanisms, often referred to as Operational Level Grievance Mechanisms (OGMs), or may be facilitated by entities like the Office of the Compliance Advisor Ombudsman (CAO) World Bank Group, National Contact Points, NGOs, and other organizations. Businesses may voluntarily engage in these processes because it helps assure that they can continue operating, resume trade, encourage foreign investment, and rehabilitate financial institutions which ultimately also may benefit the community.

As a form of conflict resolution, mediation –like the concept of reconciliation—can take many forms and there are a diverse number of theoretical models with their own methodologies. The following

³² UNGPs, Principle 7 sets out guidance for states on “[s]upporting business respect for human rights in conflict affected areas.”

³³ <https://www.accountabilitycounsel.org/>.

³⁴ <http://www.accessfacility.org/>

sections are designed to cull some general theory and models to begin to dialogue on what would be the appropriate models and methodologies to transfer to the post-conflict, TJ setting of Colombia with regard to business-community reconciliation projects.

A. An Overview of Conceptual Models and Prescriptions for Mediation

As a general matter, mediation is a form of dispute resolution that is voluntary, placing decision-making power in the hands of the involved parties through a commitment to the process which is typically facilitated by a neutral third party. The neutral third party withholds his or her own opinion regarding the resolution of the dispute and instead identifies the parties' issues and interests which allows them to arrive at mutually acceptable solutions. This type of mediation can be distinguished from other forms of dispute resolution that might entail judgment or suggestions. Generally, resolutions through mediation are not binding unless the parties, by mutual voluntary consent, bind themselves to any agreement made throughout the mediation process.

Depending on the nature of the dispute, it is possible in some situations that the parties may pursue redress through other recourse mechanisms of dispute resolution if a resolution is not made. Yet, it is inaccurate to assume that mediation is a formal process used to resolve clearly defined claims that otherwise could be litigated. In community disputes, mediation may in fact be more ideal given the nature of the claims that typically arise and the types of remedies that might be valued. Even when affected communities raise a claim, a legal cause of action is not always created. Sometimes a claim raised can reveal impacts that both the company and the community can find mutual interest in addressing. Mediation offers flexible, tangible (employment opportunities) and intangible (an apology) remedies that may prove to be more useful when it comes to resolving company-community disputes. As a methodology, it also allows for the continuation of an ongoing relationship between the parties to resolve conflicts as they arise, thus creating positive relationships.

Some important features of mediation that make it a model that may lend its principles to a process of reconciliation between businesses and communities in TJ settings is that it is a dialogue-based process which can be used for all kinds of disputes at any stage of the relationship between businesses and affected stakeholders. Three principles are important to consider in evaluating the process of mediated dialogue:

1. **Power.** It is important to consider the power dynamic between companies and communities when it comes to establishing and implementing mediation as a way to resolve grievances. Mediation provides spaces to resist status quo power structures and biases that accompany them. Yet, at the same time, mediation may assume that all parties will have the capacity to come together in order to work towards a common goal – this is called a collective agency. This precondition- the capacity to join together- allows for actual collective action. Often, for conflicts to be resolved and solutions to be found, the use of informal forms of dialogue leads to the building of collective agency. A more conscious policy may need to consider capacity building to assure a power balance in the process of mediation.

2. **Dialogue.** Mediation as a methodology is based on dialogue which leads to the co-development of knowledge and an emphasis on the building of mutual understanding through human connection. Dialogue is a developmental process which allows people to express their opinions from stories and experiences, motivated by a desire to build mutual understanding. Dialogue does not come from time constrained consultations with aims to gather relevant information in order to meet extractive project objectives such as litigation. While not always a pre-requisite for justice, permitting space for dialogue allows for the measurement of whether mechanisms in practice capture the essence of understanding that is required to respond to conflict. This understanding is directly linked to the likelihood that those who raise their concerns perceive the processes and outcomes to be fair. In order to attain procedural justice, people must feel that they have the institutional space to voice their opinion through dialogue in a meaningful way within the decision-making process.
3. **Participation.** To have mechanisms that facilitate participation and collaboration between parties in theory builds trusts and secures broad-based support of the mediation mechanism. Cases that lack participatory processes have contributed to the escalation of company-community conflict. Parties who participate in conflict management systems and have a stake in controlling the process have a greater chance of perceiving decisions made as being fair which can deescalate the conflict.

These three principles offer insight into general principles that could structure company-community reconciliation processes as a part of Colombia's TJ process. Through mediated dialogue, communities and companies would focus on supporting local efforts in conflict resolution rather than building a remote process that holds risks of an ineffective international top-down approach. For example, to reduce conflict over land use and resource management, the three-dimensional justice framework of power, dialogue and participation could be used as a tool for local decision-making and conflict resolution.

B. Lessons Learned and Best Practices of Facilitating Mediated Dialogue

Drawing from an overview of cases of business-community mediation, it is possible to identify some general observations that may be relevant for a policy on business-community reconciliation in Colombia's TJ process. Significantly, some of these principles overlap with those discussed above as they relate to local reconciliation processes associated with TJ.

- **Inclusive processes.** Participants in the mediation process need to include vulnerable individuals, including women and youth. One of the most important aspects of the process is recognizing the important role of women. In many cases the involvement of women in the mediation process, is not only influential but strongly needed to attain the overarching goals of the process. The inclusion of women in the discussion and involving women in a central role, ensures that the outcome is well perceived by all stakeholders. In addition to participants, women can be a beneficial component of the mediation process by acting as facilitators.

- **Neutral, third parties.** An important lesson learned was the involvement of decision makers, or persons of actual power and influence, early in the process with clearly defined roles and boundaries. With caution on utilizing government officials who may not have the same motivations as the process, but simply seek to advance their own goals. Utilizing third-party neutrals can be beneficial for their experience and expertise. Having a moderator who carries experience can bring confidence in the process for the parties. Although having independent parties participate in the mediation to be more influential and engage the community more in the mediation process can also benefit in coming to an agreeable solution. Utilizing third party neutral entities to oversee or help with implementation, is seen as helping maintain a level of trust between the stakeholders. Finding a person or entity who is known to both sides yet is independent and thus satisfies both parties.
- **Listening skills.** An important part of the practice of mediation is fostering non-transactional communication. Listening and getting to know people, understanding their aspirations, not limiting communication to the desire by the company to extract an agreement from a community.
- **Representation and transparency.** When representatives are used by parties, the representatives must share the information with their constituents which may be described as “feedback loops.” The use of feedback loops in the community should be developed based on the consultation. Being transparent during the process, including disclosing funding and budgets for mediation can be used to build the community’s trust. There needs to be an emphasis on the right to self-determination that is honored throughout the process. Ground rules should be set to address confidentiality and information shared during the mediation.
- **Government involvement.** During a mediation process, the government and all other parties involved should discuss the appropriate role for the government. When there is a company-community dispute, having government involvement can help ensure that the company complies with governmental statutes. Corporate disputes can cause national-level issues that cannot be ignored.
- **Background research and preparation.** Before the mediation begins, time must be spent to understand the different factors, historical, and the different perspectives involved in the conflict. It is important to conduct research on the community conflict before starting the mediation process. Understanding the political structures may be necessary to understand the underlying problems. Participants also need to decide how much in depth into the conflict they want to discuss. Although conflicts may include several issues, prioritizing one or two main issues may focus the mediation process to create a realistic outcome. Roundtable participation in the early stages helped create trusting relationships during the mediation.

- **Capacity Building.** One of the greatest challenges to business-community mediation relates to building community capacity to participate in the mediations. This difficulty could be minimized utilizing methods such as: early communication with the affected conflict community, building trust throughout the process with the community, maintaining proper feedback loops and formal grievance tracking mechanisms, to help the process evolve, and eliminating internal conflicts quickly, as well as keeping the constituency informed.
- **Relation to grievance mechanisms.** Mediation processes in this context were often connected to some type of grievance mechanism either situated within a company or connected to an international or inter-state entity.
- **Outreach and awareness raising.** Creating outreach initiatives for the affected communities to raise awareness of available remedies, and maintaining a constant flow of communication, was integral to fostering trust with all stakeholders. Although mediation does have its benefits, an individual's unfamiliarity with the process can deter individuals or businesses from pursuing this as a process to resolve conflict. To avoid this outcome, parties entering into mediation should create a framework that will outline the process and guide parties and their representatives how agreements can be made. This principle also assures the type of transparency needed to make the process more legitimate.
- **Location.** The physical locations of the process were also observed as an important factor in creating a fluid and responsive procedure. While basing a responsive office in a capital city may be amenable to an MNC, stakeholders observed that the affected communities are usually not in capital cities. The creation of a fluid process able to respond directly to conflict areas is foundational for the constant evolution of the process to stakeholder needs.
- **Funding and Resources.** The amount of budget given for a mediation can affect how long the process can last. In scenarios where the budget was not enough to last the entire mediation, alternatives for funding or using volunteer resources may be necessary when the budget has been exhausted before the mediation is completed.
- **Constant learning.** Like the use of a more fluid process, the integration of the reconciliation framework into the corporate culture of MNCs, was observed as a necessity for the process to constantly evolve and not be sidelined. This practice ensures the success of the reconciliation process, with a focus on human rights from a human perspective within corporate culture, rather than a public relations perspective. Furthermore, constantly being open to adapting the implementation of the process and its mechanisms to the needs and traditional healing practices of the affected communities, is one of the best practices advocated. When implementing a reconciliation or mediation process, the change agents should not be "getting on with the job," or simply addressing the goals of the MNC. Instead a focus on the community needs, grievances, and local reconciliation methods, was observed as the proper course of implementation.

- **Mediation outcomes overlapping with reparations and development.** Mediation can be an effective way to provide communities with access to remedies after conflict. Through the mediation process that encourages focused dialogue between parties, local changes can be made efficiently and remain sustainable for the community. Other reparations have been done through housing, food aid, and business development. Mediation has been used to ensure that food is provided for families in a post-conflict area. Food aid can be done as food provided directly to the community or assistance for farming in the area. When such suggestions in mediation are offered experts can assist to ensure that the aid is feasible and parties can be held accountable for the food aid to support their local communities. For example, food aid as a reparation can be done to provide households with two years' worth of food, which will be used to benefit the community and continue with its development. Housing reparations can allow community members living in poor conditions to improve those conditions. In addition, school materials to help educate future generations of parties that were affected by the conflict and support advancements in the education system and in the society. In scenarios where land use was in conflict, compensation can be given to herders to allow individuals to use the pastures that their animals use.

Significantly, many of these factors overlap with those identified through an analysis of case studies of micro-reconciliation processes.

Questions to Explore:

- What type of business-community case study is most helpful for understanding the possibilities and challenges of business-community reconciliation as part of a post-conflict recovery process?
- Are there limitations to transferring peace time mediation experiences to post-conflict recovery experiences?
- Who should facilitate mediated discussions in business-community reconciliation processes? (eg. a third party, company, or the government)?
- What mediation method(s) should be used as part of truth gathering, reparations and development?
- What should be the expected outcomes of these mediated processes?
- Which stakeholders (local communities, governments, religious organizations, NGOs, or businesses) should be involved in the process?

ANNEX 1: Case Studies: Examples of Reconciliation Processes in Transitional Justice

a) Uganda

Uganda used an approach referred to as Mato Oput. The preliminary pact on accountability and reconciliation, signed by the government of Uganda and the Lord's Resistance Army (LRA) in 2007, specifically called for the promotion of traditional justice mechanisms like Culo Kwor, Mato Oput, Kayo Cuk, Ailuc, and Tonu ci Koka, even if they required some necessary modifications. For example, Mato Oput, which means to drink "the bitter root," is an Acholi understanding of life based on "apology, remorse, and the acceptance of responsibility for one's actions." In this ritual, the whole community partakes in the bitter drink that symbolizes the idea of never tasting the bitterness in the future; the ritual involves both the victim and the perpetrator, as well as the whole community. In this cleansing ceremony, all participants are removed of evil spirits as a way to redress past harms. There is mixed evidence that the Acholi people, who were most impacted by the conflict, preferred these traditional approaches over prosecution. However, the Acholi leaders did ask the International Criminal Court to withdraw its arrests warrants against LRA leaders to allow Ugandans to handle their crimes through traditional methods. Moreover, there may be generational differences with younger people not necessarily agreeing with traditional approaches to resolving conflict.

b) East Timor

East Timor relied on traditional ritual practices as part of its TJ experience. East Timor's transition began after a 1999 referendum led to independence from an oppressive Indonesian occupation dating back to 1975. From 2000 to 2002, the U.N. Transitional Administration in East Timor helped to establish the Commission for Reception, Truth and Reconciliation (*Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste*), or CAVR; its purpose was to undertake a nationwide truth-seeking process that included organized community reconciliation hearings. In particular, the CAVR included a "Community Reconciliation Process," the aim of which was to help reintegrate estranged members of communities who committed politically motivated crimes deemed "less serious" than other more egregious crimes. The process sought to facilitate a reintegrative process by eliciting confessional testimony from those who had previously harmed their communities and community members and presenting this testimony in a public forum in which it could be challenged by those that it concerned. Under this approach, panels brokered an agreement in which 1,371 perpetrators would undertake certain actions— like community service or paying reparations to victims— with an understanding that they would be reintegrated into the community upon completion. These community-based hearings allowed victims, perpetrators, and the rest of the community to participate, on a voluntary basis, in processes employing customary local rituals such as the "nahe biti boot" that is normally used to settle matters between families and clan members. This process often involved churches, local government, local chiefs and commissioners who ran the process with hundreds of community members who came to watch the proceedings. Often local communities initiated their own versions, finding the state procedures too complex and bureaucratic. CAVR also held Victims' Hearings and Healing Workshops designed to help restore the dignity of community members. While it is true that some victims felt frustrated that perpetrators did not face criminal prosecution, there was a reported overall high rate of satisfaction among the victims. The East Timor

experience highlights that restorative justice helps repair not only relationships but also the structures and institutions in which these relationships reside. One drawback, however, was that few women participated. The Commission recognised the existence of practical, cultural and economic barriers to women's participation as direct victims, which it would strive to overcome¹.

c) Rwanda

Rwanda, which experienced a genocide in 1994 of the Tutsis at the hands of the majority Hutus, became famous for using Gacaca courts to facilitate reconciliation not only between victims and perpetrators but the community as a whole. Gatherings took place in communities “on the lawn” to facilitate dialogue with the help of neutral mediators who served as quasi judges during which time testimonies were given by victims and perpetrators. The goal of this mechanism was to gather the truth as well as met out some degree of justice in order to facilitate reconciliation. The goal would be to reintegrate offenders into the community after providing an apology and some form of reparation. Importantly, the Gacaca process took place against the backdrop of both national and international criminal courts. There is ample analysis of the Gacaca courts that is both positive and critical, but overall crediting them to helping reconcile local communities.

d) Sierra Leone

In 1999, the Lomé Peace Agreement brought an end to the civil war in Sierra Leone that lasted some 11 years and left approximately 50,000 dead. The Truth and Reconciliation Commission operated from 2002-2004, complementing the work of the Special Court for Sierra Leone which was set up by the government and the United Nations to prosecute persons with the greatest responsibility for serious violations of international humanitarian law and human rights. At the local level, survivors willingly reintegrated ex-child soldiers through reconciliation that was done through ritual action and support. Symbols from their culture, such as consecrated water, kola nuts, cooking, and eating together helped recreate a community. Before these rituals began, 14 districts had four-month long consultations with communities who were affected by the conflict. These communities included different individuals from government, to women, ex-combatants, religious leaders, community leaders, and elders. The consultations assessed whether individuals were ready to reconcile and whether there were resources already available in their community to initiate and sustain the reconciliation process. In Sierra Leone, reconciliation ceremonies included religious readings, traditions that were symbolic to the community, music, and dancing and apology from tribal chiefs. These processes mimicked their traditional ceremonies which involved ceremonial dancers, gestures, movements that were already accepted within the community and were received as peacemaking efforts to establish harmony within the community. Community representatives, especially survivors of conflict are important individuals to include in reconciliation. Providing these individuals with recognition and dignity is only the beginning solution and was necessary for judgements and policy that would allow communities affected by conflict move forward.