



Building Trust and Capacity: Civil Society and Transitional Justice from a Development Perspective

Roger Duthie¹

Research Unit
International Center for Transitional Justice

November 2009

Transitional Justice and Development Project

This research project examines the relationship between transitional justice and development, fields that, academically and in practice, have proceeded largely isolated from one another. The project identifies and analyzes specific synergies between justice and development, and articulates how the two types of initiatives ought to be designed and implemented to reinforce the shared goals of citizenship, social integration, governance, and peacebuilding. The project is managed by Roger Duthie, Senior Associate in the Research Unit at ICTJ. For more, visit www.ictj.org/en/research/projects/research5/index.html

Acknowledgements

ICTJ wishes to thank the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Swiss Federal Department of Foreign Affairs (FDFA), whose financial contributions made this research project possible.

About the Author

Roger Duthie is a senior associate in the Research Unit at the International Center for Transitional Justice in New York, where he recently managed a research project on transitional justice and development. His publications include *Transitional Justice and Development: Making Connections* (SSRC, 2009) (co-edited with Pablo de Greiff), and "Toward a Development-Sensitive Approach to Transitional Justice," *International Journal of Transitional Justice* (2008). He previously worked at KPMG, the Carnegie Council on Ethics and International Affairs, and Oxford University Press. He has an M.A. from Yale University and a B.A. from Cornell University.

About ICTJ

The International Center for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse. ICTJ works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved. To learn more, visit www.ictj.org.

© International Center for Transitional Justice 2009. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without full attribution.

Table of Contents

Introduction	4
Civil Society and Development	5
Civil Society, Social Capital, and Development.....	6
Development-Related Civil Society Organizations	8
Development Support to Civil Society	10
Civil Society, Transitional Justice, and Development	11
Civil Society’s Contribution to Transitional Justice—and Its Limited Capacity	11
How Transitional Justice Benefits Civil Society.....	15
Capacity Building Through Engagement	15
Social Capital	18
Capacity Building of Development- and Justice-Related Civil Society Actors.....	19
Lessons Learned from Development Actors’ Experience	21
Conclusion and Recommendations	23

Introduction

Research suggests that transitional justice can make important contributions to processes of development in a number of different ways, both directly and indirectly.² If that is the case, then there are legitimate reasons to support transitional justice efforts as part of a comprehensive approach to development in postconflict and transitional societies. Starting from this premise, I argue in this paper that civil society represents one avenue through which this support can and should be provided.

The term “civil society” is used by both the transitional justice and the development communities, often in a positive light: transitional justice measures are said to contribute to strengthening civil society, and at the same time, to some extent, to depend on it; similarly, development is also said to contribute to and be facilitated by a vigorous civil society. I critically examine these connections to civil society in order to articulate a way of thinking about the relationship between transitional justice and development.

In the first section, I explain why development is concerned with civil society. In particular, I outline two ways in which civil society may contribute to development. First, national and local civil society organizations in general may contribute to social capital, which, it is argued, may be important for development. Second, certain national or local civil society organizations may contribute to development more so than others in terms of their specific function—that is, by doing specific development-related work. In light of these potential contributions, international development actors often support and cooperate with domestic civil society—I discuss this support and cooperation, along with some of the challenges faced in providing it.

In the second section, I explain why, from a development perspective, it also makes sense to consider civil society’s engagement with transitional justice. I first review this engagement—that is, the specific roles that local and national civil society organizations may play in regard to transitional justice efforts. To the extent that transitional justice measures can contribute to development, I argue, the fact that civil society plays such roles should give external development actors reason to

support these groups. This support is particularly important where domestic civil society capacity is weak or nonexistent, which in turn may hinder justice efforts. In addition, however, I explain how civil society can be strengthened both by transitional justice generally and by its own involvement in transitional justice measures—which in turn can also be beneficial, in terms of both social capital and organizational capacity, for development.

I conclude by revisiting the experience of international development actors in providing support to and working with civil society, pointing out how some of the lessons learned from past experience may be useful in transitional justice contexts.

Civil Society and Development

Civil society, writes David Crocker, is a “fashionable and contested concept.” Its “multiple meanings” allow it to be used by different people in different ways, but “usually in a celebratory way.” For his part, Crocker presents three different models of civil society: an anti-governmental approach; an associational model including private voluntary associations making up a “third sector” between the market and the state; and a public sphere model, which “focuses on the communicative activity generated by civil society’s groups and on its potential to strengthen democracy.”³ Michael Edwards also sees three understandings of civil society, two of them being civil society as associational life and as the public sphere, similar to Crocker, but a third being civil society as a society that can be described as civil or good.⁴ Daniel Posner, in contrast, defines civil society as “the reservoir of formal and informal organizations in society outside of state control,” and sees it as “an empty vessel. It can be filled with groups that foster social cooperation and improve people’s lives, or with groups that sow distrust and foment violence.”⁵ While most understandings of civil society take it to be independent from the state and the market, they acknowledge the importance of the interaction between the sectors. Civil society does not replace government and business actors or institutions, “but rather aims to improve their effectiveness and responsiveness.”⁶ There are many different conceptions of civil society, as well as a huge literature on the topic.⁷

I use the term civil society here in the sense of the associational model, referring mainly to local and national (rather than international) civil society organizations and nongovernmental organizations (NGOs)—that is, “formal (professionalized) independent societal organizations whose primary aim is to promote common goals.”⁸ This is done in part to limit the scope of the paper: I do not wish to reduce the concept of civil society to NGOs,⁹ but it is a place to start, and, I believe, a useful one for drawing links between transitional justice and development. I acknowledge that using the term in a broader and more nuanced way may, of course, lead to a more complex and worked out relationship between transitional justice and development. The focus on organizations, however, is also partly a function of how the term civil society is used in the literature on development and transitional justice, and by actors within these fields. The World Bank, for example, defines civil society as “the sphere outside the family, the state and the market,” made up of a “wide array of non-governmental

and not-for profit organizations which have a presence in public life.”¹⁰ Similarly, the UK Department for International Development (DFID) defines the term as “the groups and organizations which occupy a position between the household, the state and the private sector.”¹¹ Importantly, however, I acknowledge, as have others, that this type of narrow focus is part of the problem with the discourse on civil society. This is discussed below.

In terms of “development,” I draw upon broad understandings of the term, including that of “improving the standard of living for all people in poor countries,”¹² and that of human development, which the UN Development Programme (UNDP) defines as: “A process of enlarging people’s choices. The most critical ones are to lead a long and healthy life, to be educated, and to enjoy a decent standard of living. Additional choices include political freedom, guaranteed human rights and self-respect.”¹³ These understandings of development include but are not limited to economic growth.

Again, there is a broader discussion about the relationship between civil society and development than can be captured here. However, it can be said with certainty that the nature of this relationship has over the last few decades been of great interest to the development community. “Civil society has established itself at the beginning of the twenty-first century,” write Jude Howell and Jenny Pearce, “as a significant, even paradigmatic concept in the field of development policy and practice.”¹⁴ Here, I will highlight two ways in which national and local civil society may contribute to development processes: through the concept of social capital, and through the type and function of certain civil society organizations—that is, those working most directly on development issues. I then briefly discuss the experience of external development actors such as donors, many of whom have long worked with civil society actors around the world.

Civil Society, Social Capital, and Development

One of the more commonly invoked, yet still very much contested, elements of the relationship between civil society and development centers around the notion of “social capital.” I use the term acknowledging the huge literature on the subject, the many different understandings of the concept, and the fact that some see it as an elusive and less than useful idea.¹⁵ According to Robert Putnam, whose work on the topic in the 1990s is probably the most influential and whose definition of the term has been taken up by development actors such as the World Bank, social capital “refers to features of social organization, such as networks, norms, and trust, that facilitate coordination and cooperation for mutual benefit. Social capital enhances the benefits of investment in physical and human capital.”¹⁶ Civil society organizations may contribute to the stock of social capital in a community.

Putnam also explicitly states that social capital is critical to development. “The social capital embodied in norms and networks of civic engagement,” he writes, “seems to be a precondition for economic development as well as for effective government.” Putnam argues that social capital leads

to economic progress in three ways: first, by fostering norms of generalized reciprocity; second, by facilitating coordination and communication and amplifying information about the trustworthiness of other individuals; and, third, by serving as a cultural template for future collaboration. “Social capital is coming to be seen as a vital ingredient in economic development around the world,” he writes. “Scores of studies of rural development have shown that a vigorous network of indigenous grassroots associations can be as essential to growth as physical investment, appropriate technology, or (that nostrum of neoclassical economists) ‘getting prices right.’”¹⁷ According to Stephen Knowles, many arguments have now been made regarding the ways in which social capital may improve economic performance, which he classifies as: “increasing the number of mutually beneficial trades, solving collective action problems, reducing monitoring and transaction costs (which could alternatively be referred to as solving principal-agent conflicts) and improving information flows.”¹⁸

Christiaan Grootaert and Thierry van Bastelaer usefully divide social capital into three dimensions: its scope, its forms, and its channels. In terms of scope, social capital can exist at the micro-level (as Putnam describes it), at the meso-level, which considers relations among groups, and at the macro-level, which expands the concept to cover “the social and political environment that shapes social structures and enables norms to develop,” including “the most formalized institutional relationships and structures, such as the political regime, the rule of law, the court system, and civil and political liberties”—also referred to as “government social capital” as opposed to “civil social capital.” In terms of form, social capital exists in a structural type—that is, “established roles and social networks supplemented by rules, procedures, and precedents”—and a cognitive type—that is, “shared norms, values, trust, attitudes, and beliefs.” Social capital’s channels refer to the ways in which it affects development. Importantly, according to Grootaert and van Bastelaer, the impact of social capital on development depends upon the interaction between its different levels and forms. They see a strong complementarity, for example, between government social capital and the impact of local-level associations on economic and social outcomes.¹⁹

The thesis that social capital leads to economic progress and development has generated a great deal of discussion and assessment. At the micro level, for example, Paul Collier finds that the “distributional consequences of civil social capital are likely to be mixed.”²⁰ Fabio Sabatini argues that the “empirics of social capital still continue to suffer from a definite difficulty to address macro outcomes in a convincing way”; he identifies six main shortcomings in the literature, including the elusiveness of the concept and its measurement through indirect indicators.²¹ According to Stephen Knack, however, “a consensus has developed on the importance of government social capital for economic performance; a similar consensus is rapidly developing on civil social capital.”²² One consensus in the literature seems to be that social capital can have both negative and positive effects on economic performance and, possibly, development. David Skidmore concludes, for example, that “*some types* of social capital can enhance economic growth and social welfare” (emphasis added). He sets out a number of what he calls “stringent requirements” to be met in order for civil society—through social capital—to “play a positive role on the development process”: strong horizontal associations rather than vertical ones (such as patronage networks); the organization of functional

groups into relatively encompassing associations; social networks being open to new entrants; a culture of trust; and cross-cutting rather than reinforcing social cleavages.²³

Viewed in this way, and again acknowledging the flaws of the concept, social capital is a useful way to explore the relationship between civil society and development. Social capital may not be the answer to the problem of development, as some would like it to be, but it does present us with mechanisms through which civil society may contribute to development.

Development-Related Civil Society Organizations

While the existence of civil society may affect development through its impact on social capital, that existence does not in itself, of course, ensure development. Sierra Leone, for example, is one of the poorest countries in the world, yet in the words of one member of civil society, it is a “heavily organized place. In virtually every chiefdom and every village one finds a women’s group, a youth association, multiple farmers’ associations, the traditional societies of poro and sande (sometimes called ‘secret societies’), a footballers’ association, a petty traders’ group, a marketwomen’s group, a community development association, and others. Sierra Leone is in organizational surplus rather than shortage.”²⁴ Indeed, according to the World Bank’s participatory poverty assessments conducted in 50 countries, NGOs generally only have a “limited presence” and “do not figure prominently in poor people’s lives.” While they often do provide basic services, “there are few examples of NGOs addressing basic structural social inequality.” Community-based organizations, for their part, “often function as local resources to the poor,” but “acting alone have generally not been a force for changes in local power structures or for significant development gains.”²⁵

Civil society organizations may, nevertheless, impact development through their specific functions—that is, through what they do. Broadly speaking, civil society organizations are seen to affect development outcomes both through the direct provision of services and through their advocacy efforts. In certain circumstances, civil society actors such as NGOs may have a comparative advantage over other actors, making them strategically placed to play such a role in development. “Theoretically,” writes one set of authors, “NGOs’ presumed comparative advantages derive in large part from their capacity to respond to a series of government and market failures, filling gaps left by standardized service packages.”²⁶ Similarly, Howell and Pearce describe NGOs as being “conceived as ‘alternative’ deliverers of social services and welfare, thus providing a solution to the incapacities of the state as well as the inequities of capitalist development.”²⁷ NGOs also use their “efforts and influence to promote their values and promote aspects of social, economic, and political development.”²⁸ In terms of specific development-related issues, NGOs work in all of the functional areas of the Millennium Development Goals (MDGs), including health, education, and gender equity.²⁹

This broad comparative advantage comprises a series of more specific advantages sometimes held by civil society actors over government and private-sector actors. According to Stephen C. Smith, for

example, NGOs have certain organizational characteristics that can give them various types of comparative advantage in addressing poverty and hunger, including in program design innovation, program implementation flexibility, specialized technical knowledge, provision of targeted local public goods, common-property resource management design, trust and credibility with the poor and donors, and capacity for representation and advocacy.³⁰ NGOs are thus seen to be potentially more flexible and efficient providers of higher quality and more holistic services,³¹ dependent, of course, on capacity and leadership. “As agents of development,” explains Sarah Michael, “NGOs, with their relative small size, flexibility and access to local expertise, came to be perceived as possessing a comparative advantage over inefficient and increasingly bureaucratic governments.”³²

In particular, civil society organizations are seen to have a potential advantage in terms of reaching and facilitating the participation of citizens at the local level. “This alleged comparative advantage of NGOs over governments in development,” continues Michael, was seen “to include their ability to better reach the poor at the grass-roots level, to form close and lasting relationships with beneficiaries, to ensure meaningful participation by beneficiaries, and to empower and strengthen local people and their institutions.”³³ In the 1980s, civil society was seen to be “the site for the participation of individual citizens in the development process.”³⁴

Two decades later, these advantages are specifically framed in terms of their relevance for the MDGs. African NGOs, argues Michael, have “a unique knowledge of local realities and can help make these globally defined goals more relevant to improving the lives of families and communities at the grass-roots level.”³⁵ More specifically, “NGOs can potentially demonstrate successful approaches in addressing the MDGs, educate and empower particular constituencies, represent constituencies in the design and implementation of MDG programs, build capacity for more effective programs, and more directly-influence development policies of governments and international institutions in support of the goals. NGOs can act as interlocutors and facilitators of public consultations, catalyzing public debate.”³⁶ Indeed, NGOs are “widely understood to play a central role in achieving the eighth goal [MDG] of effective partnership.”³⁷

These, of course, are the *potential* advantages of civil society organizations engaging in development work. As has been pointed out by many others, whether in fact civil society actors such as NGOs systematically demonstrate such advantages over government and other actors and what conditions best enable them to do so is yet to be shown with empirical evidence.³⁸ Indeed, even when NGOs do engage in development activities, they often display considerable weaknesses that make their development impact negligible or negative. “Rather than efficiently pursuing their comparative advantages,” it is explained, “NGOs may instead be insignificant, owing to their small scale and reach, may be selective and exclusionary, elitist, ineffective, and unaccountable to important constituencies.”³⁹ While comparative advantages can and do exist for NGOs, suggests Michael, such advantages have often been taken for granted, leading many donors to channel more money through NGOs rather than governments than may be wise.⁴⁰

Development Support to Civil Society

In response to the potential advantages that civil society offers in terms of development outcomes, many international development actors have long been involved in various ways with civil society throughout the world. These include multilateral agencies such as the United Nations Development Program (UNDP), international financial institutions such as the World Bank, bilateral donors such as the US Agency for International Development (USAID) and the UK Department for International Development (DFID), and private foundations. According to Howell and Pearce, donors have used three broad approaches in their attempts “to nurture, develop, and harness the potential of civil society”: institution and capacity building, partnerships and coalitions, and financial sustainability.⁴¹

First, institution and capacity building includes “a range of activities such as fostering the emergence of new nonstate, nonprofit associations and research institutes; supporting local NGOs with funding, technical advice, and training; as well as encouraging the establishment of a legal and regulatory framework conducive to the development of nonstate organizations.” Second, partnerships involve initiatives aimed at fostering greater coordination between the main types of development actors—states, markets, civil society, and donor agencies, “drawing these different agents together to work toward a common goal,” not as alternatives, but as complements. Third, in the interests of the financial sustainability of civil society, donors have investigated “prospects for domestic sources of financing, to promote the spirit of voluntary work in both their own and aid-recipient countries, to carry our research on local cultures of philanthropy, and to create and foster local foundations.”⁴²

In their experiences supporting civil society, however, external development actors have faced significant challenges. As articulated by Howell and Pearce in particular, these challenges seem to have arisen in large part from a discourse that essentially ignored the politics created by donor interventions in civil society. The “politics of choice,” for example, in terms of actors’ various agendas, interests, and power, affect the organizations that donors actually decide to work with. Similarly, the “politics of partnerships,” in terms of the interactions between state, market, and civil society actors, can serve to reinforce certain visions and norms over others. Furthermore, the “instrumentalization of civil society” by donors, whereby civil society becomes a means to an end—such as development—rather than an end in itself, leads to the perception among donors that challenges coming from civil society to donor goals represent obstacles rather than “particular visions of development.” The “politics of universality,” in which certain conceptions of civil society are projected onto other societies, leads to the “external manufacturing” of organizations that “lack a distinct social constituency of support and therefore any social or political meaning for local communities.” Finally, there is the “politics of autonomy and dependence,” whereby dependence on donors and competition for funding can distort local agendas and priorities.⁴³ Marcus Lenzen adds to this list the fact that, while filling certain gaps created by the state, an external focus on NGOs as service providers can undermine a weak state even further. Civil society, he writes, has “received an

increasing amount of interest and resources, but too often it has been perceived as a technological ‘fix’ that would automatically contribute to the flowering of democracy and—closely related—to economic growth.”⁴⁴

Thus, while international development actors paid increasing attention to civil society throughout the 1980s and 1990s, their enthusiasm has more recently waned, at least in part a result of these types of challenges. Currently, “the focus of official development assistance is, if anything, moving away from embracing a larger NGO role.” The World Bank, USAID, and DFID, for example, are all “increasingly emphasizing direct support for government budgets.”⁴⁵

Civil Society, Transitional Justice, and Development

Having discussed why development actors are interested in civil society, I now turn to the question of why they should also be interested in civil society’s engagement with transitional justice. First, I review the roles that national and local civil society organizations can play in transitional justice processes. If—as concluded by the broader research project of which this paper is a part—transitional justice measures can contribute importantly to development in a variety of ways, then development actors have reason to support those civil society groups. This is particularly important where domestic civil society is weak. Second, I explain how civil society can be strengthened by transitional justice, and how this is relevant from a development perspective.

Civil Society’s Contribution to Transitional Justice—and Its Limited Capacity

Those who have written about the subject seem to agree that there is an important role for civil society to play in transitional justice processes. “The competences of NGOs and other civil society actors,” writes David Backer, “justify a role in addressing human rights issues that arise in transitional settings. Some even make vital contributions to transitional justice processes.”⁴⁶ Others agree. “Not surprisingly,” observes Eric Brahm, “civil society organizations have often played important roles in promoting and supporting transitional justice experiments around the world.”⁴⁷ According to Priscilla Hayner, civil society is a factor in the effectiveness of transitional justice efforts. “The strength of civil society in any given country—how many and how well organized the nongovernmental advocacy, community-based, research, and other such organizations are,” she argues, “will partly determine the success of any transitional justice initiative. Because of their information, contacts, and expertise in human rights issues, the contribution of nongovernmental organizations (NGOs) can be critical.”⁴⁸ The empirical record, Hayner says, supports this claim:

Civil society has played an important role in every country that has experienced a successful transitional justice endeavor. National NGOs have helped to initiate, advocate for, and shape some of the strongest and most interesting transitional justice

initiatives that have been implemented around the world. In Ghana, Sierra Leone, East Timor, and Peru, for example, national or local organizations played central roles in giving shape to the justice mechanisms put in place to confront past crimes.⁴⁹

Others points out that civil society's engagement with transitional justice measures is not limited to human rights organizations, but includes humanitarian aid organizations, victim and survivor associations, development NGOs, lawyers, academic, mental health and medical associations, religious organizations,⁵⁰ and conflict transformation and peacebuilding groups.

What are the contributions that civil society organizations can make to transitional justice efforts? "A nation's civil society," suggests Crocker, "is often well suited to specify and prioritize the ends of transitional justice as well as choose and implement the means." More specifically, "civil society can play an important role in deliberating about, formulating, scheduling, and prioritizing goals and in forging measures to realize them." And, in addition to such a "public deliberation" function, civil society can help with victim assistance, investigation, and adversarial public action.⁵¹ Brahm sees civil society playing a "central role" in terms of mobilizing society to participate and disseminating the lessons of justice efforts.⁵² Naomi Roht-Arriaza argues that civil society's contribution is necessary in order to address underlying causes of conflict; provide credible and relevant information and insights into local culture, economics, and politics; act as service providers and partners; and follow up on the results and findings of justice measures.⁵³ Backer sees six primary roles for civil society: data collection and monitoring; representation and advocacy; collaboration, facilitation, and consultation; service delivery and intervention; acknowledgement and compensation; parallel or substitute authority; research and education.⁵⁴

As Backer points out, however, the extent of civil society engagement with transitional justice depends on the demand for it—that is, the need, opportunities, and state receptivity to non-state participation.⁵⁵ In developing countries, this demand may be significant because of a lack of resources and state institutional capacity. In Southern African countries, for example, civil society organizations have acted both as pressure groups and service providers in response to the "failure of states to implement sustained, integrated, widely accepted, and effective reconciliation programmes."⁵⁶

It seems, then, that at a general level, there are a number of potential ways in which civil society contributions to transitional justice can be characterized and categorized. What about particular transitional justice measures, such as truth commissions, reparations programs, prosecutions, and institutional reform? Here, too, there is widespread acknowledgement of a potential role for civil society.

For truth commissions, Hayner describes civil society as "the essential ingredient."⁵⁷ According to the UN Office of the High Commissioner for Human Rights' (OHCHR) rule-of-law tool on truth commissions, for example, "national NGOs have a key place in the work of truth commissions. Indeed, the strongest commissions have been those that work in the context of a strong and active

civil society.” The tool advocates the establishment of truth commissions, including their mandates and design, based on a thorough consultation process with victims groups and other civil society organizations. Civil society contributions during the work of a truth commission, it explains, can include: the provision of training and background material; the provision of access to records; making connections within local communities; the accompaniment of victims providing statements in public hearings; lobbying government officials; the provision of support services; and offering public feedback on methodology and impact.⁵⁸

According to the International Center for Transitional Justice’s guidelines for NGOs engaging with truth commissions, civil society actors are “key interlocutors,” often determining the commission’s success. They can play a “vital role” by mobilizing public opinion and engagement, developing or enhancing the commission’s mandate and operational structure, and ensuring its credibility and legitimacy.⁵⁹ In Liberia, to offer a specific example, one practitioner has described civil society’s role to be growing as the truth commission’s work continues. “In addition to serving as a watchdog and assessing and evaluating the work of the TRC,” writes Ezekiel Pajibo, “civil society groups have agreed to work cooperatively and collaboratively with the TRC especially in the areas of community outreach and education, victim mobilization and research on key issues including amnesty and accountability, reparations, memorials and economic crimes.”⁶⁰ In Morocco, where there has been no transition to democracy, the Equity and Reconciliation Commission, a truth commission established in 2004, represented in itself in the view of one author “a negotiation between civil society and the monarch—sometimes cooperative, sometimes adversarial—over the shifting social ground on which Morocco’s political structures are founded.”⁶¹

Civil society groups may also play a role in the design of reparations programs. As with truth commissions, their role can relate to the information they hold and their connections to local communities. The OHCHR tool on reparations programs states:

Civil society organizations may, on their own and, particularly, collectively, have more information about that universe [of victims] than official institutions. Bringing these organizations into the process from an early stage increases the likelihood that they will share information that is relevant for the design of reparations programmes. Throughout the registration process these organizations may have closer links with, and a deeper reach into, victims’ communities than official institutions. Their active efforts are, therefore, necessary to achieve completeness.⁶²

(Completeness here refers to the reparations program’s ability to reach all victims.) Furthermore, observes Roht-Arriaza, “NGOs may be helpful as legal advocates for the poor, helping them document and present their claims,” and they “may be in a better position than a newly-formed government to publicize and administer” reparations programs that distribute benefits in the form of medical and psychological services.⁶³

Efforts to prosecute perpetrators of massive human rights abuses may also benefit in various ways from civil society's engagement. The involvement of local civil society in hybrid tribunals, for example, "can yield important benefits, including access to valuable information and evidence, additional technical expertise, political support, and an additional medium of outreach and public engagement."⁶⁴ For domestic prosecutions as well, civil society organizations can help prosecutors to map out trends of human rights violations, facilitate outreach and feedback, monitor due process standards, and reduce time and costs. Importantly, "they can also contribute to the strategic development of domestic prosecutions in ways that official prosecutorial bodies cannot. Because of their proximity to victims, NGOs can and should develop programmes that allow victims to participate meaningfully in the prosecution process."⁶⁵ Civil society can also "press the judicial system to act upon past human rights violations" in the first place, as happened in Argentina and Chile.⁶⁶

Even with international prosecutions, civil society efforts can make a difference. In July 2009, after the African Union issued a decision not to cooperate with the International Criminal Court (ICC) regarding its indictment of President Omar al-Bashir, more than 160 civil society organizations from around Africa endorsed a call for African states to commit to enforcing the arrest warrant. In South Africa, where 17 organizations denounced the decision and called on their government to honor its obligations under the Rome Statute, the government soon announced that it would in fact cooperate.⁶⁷

Finally, there is room for civil society organizations to play a role in institutional reform measures, such as vetting processes to dismiss public officials or employees who committed human rights violations in the past. "Broad consultations with civil society and an opinion survey," states the OHCHR tool on vetting, "will ensure a comprehensive identification of the public needs. Particular attention should be paid to the needs of victims, women, minorities and vulnerable groups."⁶⁸ Indeed, one of the lessons learned from the UN's experience with vetting processes during peace operations, says the UN Secretary General's report on the rule of law and transitional justice, is that "civil society should be consulted early and the public must be kept informed."⁶⁹

It seems clear that civil society can play a potentially positive role in relation to transitional justice measures. It is important to note, however, that civil society's contribution can be limited in the context of countries emerging from armed conflict or authoritarian rule, especially underdeveloped countries, for reasons related to capacity among others things. "Unfortunately," as Brahm puts it, "civil society is often weak, disorganized, and lacking independence in post-conflict nations."⁷⁰ Crocker makes the point specifically in relation to transitional justice: civil society, he writes, "is not without some limitations, and there are some dangers in putting undue (and the wrong kind of) emphasis on it. Groups in civil society, especially following prolonged authoritarianism, may be very weak and disunited, which limits their potential impact on transitional justice." In particular, they are limited by "scant resources, outreach, and staying power."⁷¹ Similarly, Backer argues that civil society's relationship with transitional justice will depend in part on the "supply equation"—that is, its ability and inclination to participate. "In transitional settings," he echoes Crocker, "civil society is

often under-developed, under-equipped and diffuse, not to mention politicized and financially dependent. Thus, there is no guarantee non-state actors will be positioned to respond to demand conditions in this or any realm.”⁷²

In Liberia, for example, challenges related to operating in a context of mass poverty and an underdeveloped civil society sector have had a “direct impact on the capacity of the sector to engage with and support the work of the TRC and of transitional justice debates more generally. In particular, they are constrained by financial considerations that limit their ability to sufficiently support the process.”⁷³ Also in Liberia, civil society’s ability to play a role in the reform of the police and military has been constrained by a lack of capacity. “In terms of drawing lessons from the engagement of CSOs [civil society organizations] to date,” concludes Alexander Loden, “the initial starting point should be an appreciation of the enormous lack of capacity to engage with SSR [security sector reform] and the sheer scale of reform and restructuring that is ongoing in a very challenging context.”⁷⁴ In Uganda, civil society is “weak and fragmented, event oriented and donor driven.” Furthermore, in a context where there has been no democratic transition, civil society must work in a “stifling environment,” in which it has only a “restricted space” to advocate for transitional justice. While some civil society efforts are focused on transitional justice issues, such as the Beyond Juba Project, other initiatives, such as the Coalition of Organisations for Reconciliation in Uganda, have proved unsustainable.⁷⁵ Roht-Arriaza suggests that, as service providers connected to transitional justice processes such as reparations programs, civil society groups’ “effectiveness as such can be enhanced if their capabilities and limitations are factored into post-conflict planning.”⁷⁶

How Transitional Justice Benefits Civil Society

While civil society can play a significant role in transitional justice processes, it can also be strengthened by transitional justice—both by its engagement with transitional justice, and independently of this engagement. Here I first show how its involvement with transitional justice can strengthen civil society. Then I discuss the relevance of this from a development perspective, returning to the notions raised in the first section of social capital and the functionality of specific civil society organizations.

Capacity Building Through Engagement

Civil society organizations may be strengthened through their engagement with transitional justice measures. “There can also be an iterative dimension,” writes Backer about the function of collecting data, “whereby the formal [transitional justice] process boosts the efforts of civil society.”⁷⁷ Similarly, Brahm claims that “transitional justice efforts focused on reconstructing society can help reenergize civil society groups and refocus their efforts in new directions.”⁷⁸ And Roht-Arriaza agrees: “incorporating civil society groups, especially those concerned with justice and human rights issues, into a post-conflict accountability strategy can revitalize those groups and allow them to transition from a mission centered response to conflict to one centered on post-transition peacetime issues.”⁷⁹

This argument can be explicitly made regarding each specific transitional justice measure. “While relying on an active civil society for their successful implementation,” observes Jane Alexander, “truth commissions have also inspired the creation of and strengthened civil society initiatives, including those that represent the interests of the most vulnerable groups in society.”⁸⁰ Similarly, with reparations programs, suggests the OHCHR tool on reparations, “participatory processes catalyse the formation of civil society organizations. The mere fact that a reparations programme is on a country’s agenda gives an incentive for potential beneficiaries to organize themselves. Participatory processes add an incentive for such organizations to build up their strength and capacity.”⁸¹ Writing about vetting processes in transitional societies, Alexander Mayer-Rieckh argues that, in order to be effective, such processes need to be part of larger set of institutional reform measures aimed at improving the legitimacy and integrity of public institutions, including measures seeking to empower citizens. These can include “training civil society organizations in monitoring law enforcement agencies and in reporting abuses” and “informing and training civil society organizations, and citizens generally, about accountability mechanisms and how to effectively use them.”⁸²

With prosecution efforts, the issue of strengthening civil society comes up particularly regarding hybrid tribunals, and specifically in the discussion of their “legacy.” This is a term that, according to the OHCHR tool on hybrid tribunals, connotes “policies and processes that help to ensure the domestic justice system operates more effectively and efficiently, consistent with its international human rights obligations,” including a monitoring role for a strong civil society. Legacy incorporates the idea of “demonstration effect,” which may lead to increased trust in the legal system, and which may be enhanced by broader civil society engagement. At the same time, however, this engagement may help civil society as well. “Hybrid courts may play an active role in affirming the important role of local civil society,” states the OHCHR tool, “and, for this very reason, should seek to engage local civil society directly in their work Likewise, the influx of international legal actors that a hybrid can bring may further yield extremely important benefits for civil society in terms of building technical capacity and augmenting political standing.”⁸³

Dustin Sharp claims that trials of former heads of state, such as Augusto Pinochet of Chile and Hissein Habré of Chad, have “enormous catalytic and consciousness-raising potential,” and can have “enormous reverberations within local legal, political, and social spheres.” In particular, he writes, “Pinochet-style prosecutions carry enormous emancipatory possibilities, perhaps most importantly the possibility of strengthening local civil society and building the rule of law.” They have done so, he says, by creating “a space for the NGOs to act with greater freedom and boldness,” and, as a result, “ordinary Chadians have begun to discuss what was once a taboo subject.” Sharp strongly argues in favor of such prosecution efforts adopting what he calls a “development approach,” which crucially, for the discussion here, centers on civil society:

NGOs might begin their work by linking to as many local groups as possible to create an umbrella coalition. The coalition would not consist exclusively of human

rights NGOs and would seek to promote the involvement of a broad cross-section of civil society: human rights NGOs, educational and developmental NGOs, churches, unions, and so on. Funding might be obtained and used as seed money for worthy synergistic efforts in local civil society; marches, rallies, media campaigns, outreach, and leafleting in local languages can serve to explain the case and the cause and to increase political pressure. A development approach would also include attempts to get consistent funding in order to sustain efforts for years after the conclusion of the main prosecution.⁸⁴

The potential for civil society organizations to become strengthened through their engagement with different transitional justice processes seems to exist.

At this point, however, some words of caution about the relationship between transitional justice and civil society are necessary. That this catalytic potential will be successfully exploited, for one thing, is by no means a given. Nor is it to be assumed that the effects of transitional justice processes on civil society as a whole will necessarily be unproblematic. To begin with, ensuring such a positive result will depend on the design and process of justice measures, as well as effort and resources. Sharp, for example, acknowledges that what he is proposing is not easy to achieve. “Efforts that include projects like distributing seed money to local organizations and the training of local lawyers and legal aid groups,” he notes, “imply a commitment to a problem that even the biggest NGOs may be unable to sustain. The prosecution of Hissein Habré has been run on a shoestring budget. Even obtaining funds for more limited efforts aimed at moving the prosecution forward has been challenging.”⁸⁵

More generally, for transitional justice processes to engage civil society requires participatory processes and broad consultation, as noted regarding reparations programs. These are not always part of justice measures, and they do not happen by accident. Furthermore, even with participatory processes, the relationship between justice measures and civil society may be “complex”—as one study describes the role of NGOs in the South African truth commission, for a host of different reasons. While the commission in South Africa may have “opened some doors for future NGO initiatives”—by, for example, facilitating NGO networking, creating opportunities for funding, and impacting the environment in which they operate—the authors of the study conclude that the TRC “did not draw on their existing strengths, or help them build capacity with regards to reconciliation, human rights and psychological services to the degree that it could have.”⁸⁶ Along these lines, Backer suggests that transitions “can have the paradoxical effect of diminishing civil society’s capacity, at least in the short run,” through the loss of staff to government as well as financial backing as donors alter their funding priorities.⁸⁷ Transitional measures could contribute to this loss of capacity.⁸⁸ In general, though, the actual effect that transitional justice has on civil society organizations will depend on the nature of the interactions, which will be dependent on many factors.

Social Capital

From a development perspective, it is useful to think about how transitional justice relates to both civil society and the notion of social capital—in two mutually reinforcing ways. First, transitional justice can promote or foster trust, which can be a precondition for civil society. Second, as explained above, transitional justice can directly strengthen civil society, which in turn increases social capital. We might think of the former as transitional justice’s impact on cognitive social capital (shared norms, values, trust, attitudes, and beliefs) and the latter as its impact on structural social capital (roles and networks supplemented by rules, procedures, and precedents).

Trust is an integral element of cognitive social capital, and it is central to the relationship between social capital and development, as is clear from Putnam’s and others’ articulations of that relationship. The precise nature of the relation between trust and civil society groups and associations—that is, whether trust is a precondition for or a consequence of civic engagement—however, is not always so clear in the social capital literature. Putnam, for example, seems to suggest that trust is fostered by civic engagement, while others such as Francis Fukuyama argue that trust is a precondition for it.⁸⁹ To Daniel Posner, however, the relationship works in both directions. “High levels of trust and norms of reciprocity—together commonly referred to in the literature as ‘social capital,’” he writes, “facilitate the emergence and perpetuation of civil society groups by giving confidence to those who might otherwise be hesitant to volunteer their time and energy that the contribution they make to the group’s activities will be met in kind.” At the same time, trust and norms of reciprocity “do not simply emerge spontaneously. They are themselves the by-products of interaction within civil society groups.”⁹⁰ To the extent that transitional justice measures can generate trust, then, they may contribute to this mutually reinforcing relationship between trust and civil society groups, and thereby potentially to development.

Pablo de Greiff connects transitional justice to trust through the concept of “civic trust,” which he explains as a disposition that involves the expectation of a certain pattern of behavior based on shared normative commitments. It can exist horizontally—that is, between individuals who are members of the same political community—and vertically—that is, between citizens and their public institutions. “Arguably,” he writes, “different transitional justice initiatives, singly and collectively, are meant to promote trust through action.”⁹¹ The civic trust promoted by the different transitional justice measures, then, may be related to civil society’s role in development a few different ways. First, the trust between individuals fostered by transitional justice may serve to reinforce the trust generated by civil society organizations. Second, to the extent that trust is a precondition of a strong civil society, transitional justice may promote trust between individuals that serves to enable the existence of civil society organizations. Either way, transitional justice measures, in this sense, may contribute to the stock of civil social capital in a given community. Finally, if, as de Geiff argues, transitional justice measures contribute to vertical civic trust—that is, between citizens and public institutions—then they may be contributing to government social capital, which, as was suggested,

may be complementary to the positive relationship between civil society associations and economic outcomes.

A second way in which transitional justice may relate to social capital (and thereby development) is through its impact on civil society organizations themselves, in the ways discussed in the previous section. Trust still plays a role in the link to development here, but in this case as an outcome of stronger civil society organizations, rather than the other way round. In other words, even if transitional justice measures were themselves to generate no trust whatsoever, they may indirectly affect the stock of social capital in a community by strengthening or weakening actual civil society organizations. The function of those organizations here does not matter. This is because, as Putnam explains: “Successful collaboration in one endeavor builds connections and trust—social assets that facilitate future collaboration in other, unrelated tasks Unlike conventional capital, social capital is a ‘public good,’ that is, it is not the private property of those who benefit from it Social capital typically consists in ties, norms, and trust transferable from one social setting to another.”⁹² Posner also underscores this point: “the purpose of the group should be irrelevant to its ability to generate trust among its member. Trust and norms of reciprocity are formed as a positive externality of collective activities undertaken for other purposes.”⁹³ Thus, to the extent that transitional justice measures impact civil society organizations—regardless of what they do, whether they are human rights NGOs, religious groups, labor unions, or development organizations—then those justice measures may have an effect on social capital—and development.

Capacity Building of Development- and Justice-Related Civil Society Actors

From a development perspective, it is also relevant to consider the capacity-building effect that engaging with transitional justice can have on civil society organizations with particular functions. Indeed, certain organizations may have specific functions that allow them to play a direct role in both transitional justice processes and development and poverty reduction work.

To begin with, civil society organizations that usually work on development issues, and may be thought of as development organizations, may become involved with transitional justice processes. As Roht-Arriaza points out, transitional justice processes do in fact involve development organizations. And, as Sharp advocates, they could involve them even more: the many challenges that would accompany adopting a more development approach, he argues, “should not, however, preclude bringing other community development organizations under the tent of NGOs working on a prosecution.”⁹⁴ With regard to civil society organizations that provide assistance and counseling to victims who participate in transitional justice processes, Backer observes that these are the sorts of organizations that “also undertake local reconstruction, reconciliation and development initiatives, especially in societies torn apart by civil war and communities wracked by political, ethnic and religious conflicts.”⁹⁵

The notion of “legal empowerment” suggests some possible examples here. Conceptualized as distinct from, yet complementary to, the “rule of law orthodoxy”—which focuses primarily on state,

mainly judicial, institutions, and which Stephen Golub describes as the “dominant but problematic paradigm that the international development community has pursued across the globe”—this alternative approach to development work seeks to focus more directly with poor and disadvantaged groups. “Often operating under the de facto rubric of social development,” explains Golub, “legal empowerment involves the use of legal services, legal capacity-building and legal reform by and for disadvantaged populations, often in combination with other development activities, to increase their freedom, improve governance and alleviate poverty.”⁹⁶ Importantly, for the purposes of this discussion, legal empowerment involves “an emphasis on directly strengthening the roles, capacities and power of the disadvantaged and civil society, as opposed to focusing on state institutions,” but still seeks to “create partnerships between civil society and the state.”

The types of activities captured by the notion of legal empowerment can include paralegal services as well as civil society efforts to monitor justice institutions and perhaps even to play a role in vetting the members of the judiciary and police in postconflict contexts.⁹⁷ Vivek Maru, the co-founder of an organization called Timap for Justice in Sierra Leone, describes this community-based paralegal program’s work as including “supporting communities in pursuit of economic and social-structural development.”⁹⁸ This type of legal work would seem to cover the activities of certain organizations that do or could work with both transitional justice processes and more development-related initiatives. David Backer points out that in a number of countries in Latin America, Africa, and Europe that have undertaken transitional justice measures, civil society organizations have provided legal services and representation for both victims and perpetrators of human rights violations. “There has also been a recent trend across Africa to train paralegals,” he notes, “which provides a quick, effective means of developing a pool of people who are equipped to take formal statements and conduct follow-up investigations.”⁹⁹

In Sierra Leone, the Sierra Leone Court Monitoring Programme (SLCMP) “has been one of the few consistent local voices to give independent comment on developments at the Special Court.”¹⁰⁰ This initiative, originally called the Special Court Monitoring Program, seeks “to promote judicial accountability in Sierra Leone by monitoring criminal proceedings at the Special Court for Sierra Leone as well as domestic institutions such as the national court system and the Anti-Corruption Commission.”¹⁰¹ It is, then, an example of a civil society organization working directly with both transitional justice processes and development issues, perhaps within the paradigm of legal empowerment. Also in Sierra Leone, the Freetown-based Lawyers Centre for Legal Assistance (LAWCLA) is a civil society organization, founded during the country’s transition, which seeks “to make the law and justice more accessible to indigent members of the public,” by providing legal services to the poor. LAWCLA also researches transitional justice issues including the Special Court and the truth commission—and the relationship between them—as well as reparations for human rights abuses and the impact of the Special Court on national courts.¹⁰²

Similarly, in Timor Leste, the Judicial System Monitoring Programme (JSMP) was originally established to monitor the Ad Hoc Human Rights Tribunal in Indonesia and the Special Panels for Serious Crimes in Timor Leste, but “very quickly extended court monitoring and judicial system

analysis to include the operations of Timor Leste’s District Courts.” JSMP’s outreach work was initially aimed at informing the East Timorese about the decisions of the Tribunal and the Special Panels, but has “expanded to include human rights training, training of judicial officials and district workshops explaining judicial processes and civil and political rights.” It now has a Women’s Justice Unit “to focus on cases involving women victims of domestic violence as a result of researching the situation of women in the formal justice sector,” as well as a Victim’s Support Service,” a legal referral and legal aid service for women.¹⁰³ Again, it is an organization that may fall within the sphere development-related work of legal empowerment.

Becoming involved with justice measures may serve to strengthen development organizations’ general capacity—in the same way as with a human rights organization—which they can then apply to more direct development work. At the same time, however, the engagement of development organizations in a transitional justice process may serve to influence the work of that process itself. For example, if anti-corruption, health, education, judicial reform, or economic and social rights organizations participate in the consultation process leading up to the establishment of a truth commission, they may successfully seek to get those issues included within the commission’s mandate. If these organizations are involved from the start, they may be better positioned to ensure that a truth commission’s recommendations in these areas are actually implemented. Similarly, the involvement of development groups and practitioners may influence the crimes addressed by prosecution efforts or the types of benefits awarded by a reparations program and the efficacy with which those benefits are delivered. As the ICTJ guidelines for NGOs engaging with truth commissions put it, “NGOs that choose to engage with a commission can potentially integrate their agendas into the commission’s work.”¹⁰⁴

Lessons Learned from Development Actors’ Experience

In their experience working with civil society groups, development actors have faced many challenges and learned many lessons. A number of these lessons, related to both social capital and capacity building, seem particularly relevant in a transitional justice context.

Above I looked at how transitional justice could make a positive contribution to development through trust and therefore social capital. As recognized in the literature on social capital and development, however, whether this contribution is positive or negative depends on the nature of the civil society actors that are involved. I return here to Posner’s understanding of civil society as an “empty vessel,” which “can be filled with groups that foster social cooperation and improve people’s lives, or with groups that sow distrust and foment violence,”¹⁰⁵ as well as Skidmore’s contention that civil society is best positioned to make a positive contribution to development if it is made up of strong horizontal associations rather than vertical ones, relatively encompassing associations, networks that are open to new entrants, a culture of trust, and cross-cutting rather than reinforcing social cleavages.¹⁰⁶

The point here is that if transitional justice measures in some way strengthen the capacity of civil society organizations that reduce capital, by sowing distrust and fomenting violence, that are exclusionary or vertical, or that generate bonding social capital (only within groups) rather than bridging social capital (between different groups), then transitional justice may in fact serve to hinder development. So while transitional justice practitioners may want to think about ways in which they can strengthen certain kinds of civil society organizations in certain situations, they may also want to think about ways in which they can minimize the extent to which they catalyze other kinds of organizations. “In post-conflict settings NGOs tend to mushroom,” states the OHCHR tool on hybrid courts, “although they are not necessarily reliable. For this reason, it will be important for a court to map the general state of civil society and to understand the dynamics from conception and through the period of its mandate. In this regard, it would be helpful to create an NGO liaison position within hybrid courts that will act as a regular forum for interaction between the court and civil society.”¹⁰⁷

In terms of capacity building, as the development literature suggests, the fact that a civil society actor engages in development work does not mean that its impact on development outcomes will be either significant or positive. If such development organizations turn out to be insignificant, selective and exclusionary, elitist, ineffective, and unaccountable to their constituencies,¹⁰⁸ then it may be wise for transitional justice practitioners to reduce their efforts to build the capacity of such organizations, or to take steps to minimize or avoid inadvertently building such capacity. In other words, the benefits of strengthening development-related civil society actors should not be taken for granted, as often was the case with donors.¹⁰⁹

Other challenges faced by international development actors working with and supporting civil society should be heeded by transitional justice practitioners who work with civil society—highlighted above are the politics of choice, partnerships, universality, instrumentality, and dependence. In arguing for a participatory approach to transitional justice, which would inherently involve civil society in some way, Patricia Lundy and Mark McGovern make precisely this point. “If a key task today is to consider what principles might underpin a ‘bottom-up,’ participatory approach to transitional justice,” they write, “lessons to be learnt from how such strategies towards development emerged, what key concepts have underwritten this process, and some of the problems and issues that have arisen with their implementation.”¹¹⁰ Key concepts in this process include participation, empowerment, and community-based processes, all of which are used in the field of transitional justice. Lundy and McGovern point to the Ardoyne Commemoration Project in Belfast, Northern Ireland and the Recovery of Memory’s (REMHI) *Nunca Más* initiative in Guatemala as examples of transitional justice efforts influenced by participatory theory as it emerged from the field of development. They emphasize the problems of cooption and romanticization of participatory approaches—which involve the imposition of external agendas and the denial of power dynamics within civil society, as discussed above—as particularly relevant for transitional justice practitioners.¹¹¹

There is indeed reason to believe that external transitional justice interventions create their own politics with regard to civil society in some of the same ways as development interventions. For example, “organizations without a specific truth commission or transitional justice focus” but which make the attempt to get involved can “get lost in the crowd.”¹¹² Engagement with groups other than human rights ones may simply not happen to any significant degree. In Peru, for instance, the truth commission, in generating its reparations proposals, engaged with human rights NGOs and victims’ organizations but not Andean peasants’ organizations, indigenous peoples’ organizations, or environment and development-related organizations. While often addressing the same people, the former groups’ agenda centered on justice, truth, and reparations, while the latter ones’ focus was on land, natural resources, education and health.¹¹³ There may also be competition or tension between civil society groups of different types. As the ICTJ guidelines point out, “because truth commissions mobilize comparatively large resources and attract both national and international attention, they may divert attention from pre-existing NGO agendas,” which can leave some NGOs “frustrated that their priorities are being upstaged.”¹¹⁴

Finally, transitional justice practitioners’ definitions of civil society may influence the type of justice processes that they support and engage. It is only recently, for example, that local, informal (often called traditional) justice and reconciliation processes in countries such as Timor Leste, Uganda, Sierra Leone, Mozambique, Peru, and Rwanda, which frequently center on elements of civil society other than formal NGOs, have captured the interest of mainstream transitional justice (and development) actors. Furthermore, when they were given attention, it was initially in an overly romanticized way which ignored their internal power dynamics and in some ways significantly flawed nature.¹¹⁵

Conclusion and Recommendations

This paper has used the concept of civil society to draw links between transitional justice and development. I have argued that civil society represents one avenue through which, from a development perspective, it makes sense to support transitional justice. Civil society organizations are often involved in transitional justice efforts in important ways. Since transitional justice can contribute to development, as suggested by this research project, then there is reason for development actors to support local and national civil society participation in transitional justice. Furthermore, civil society’s involvement with transitional justice may have an additional positive effect on development through its impact on social capital and organizational capacity. Finally, it may be useful, in a transitional justice context, to consider the lessons learned from development actors’ experience with civil society.

Given this argument, I suggest that transitional justice practitioners and development actors consider working together in the following ways:

- Transitional justice practitioners and development actors should think about how they might strengthen the type of civil society that makes a positive contribution to development, one made up of strong horizontal associations, encompassing associations, open networks, a culture of trust, and cross-cutting social cleavages; at the same time, they should think about how to avoid strengthening the capacity of civil society organizations that hinder development by sowing distrust and fomenting violence, that are exclusionary or vertical, or that generate bonding rather than bridging social capital.
- Transitional justice practitioners and development actors should take account of the ways in which they can intentionally or inadvertently build the capacity of civil society actors that can work both with transitional justice processes and on development-related issues; they should not assume, however, that just because an organization works on transitional justice or development issues that it is making a significant or positive contribution.
- Transitional justice practitioners should in general look to the experience of development actors working with civil society in order to learn from the challenges faced and the strategies used to meet those challenges; in particular, they should consider the politics that are created by transitional justice interventions that involve or impact civil society.
- Researchers in both transitional justice and development should conduct future research and dialogue to explore how broader understandings of the concept of civil society may be used to establish a more sophisticated picture of how transitional justice and development are connected.

¹ Thanks to Pablo de Greiff, Undine Kayser-Whande, and Stephen Golub for comments on drafts of this paper, as well as the participants at the project meeting in Bonn for their feedback. The views expressed here do not represent those of ICTJ.

² See Pablo de Greiff and Roger Duthie, eds., *Transitional Justice and Development: Making Connections* (New York: Social Science Research Council, 2009), as well as the additional project papers available online.

³ David Crocker, "Civil Society and Transitional Justice," in *Civil Society, Democracy, and Civic Renewal*, ed. Robert Fullinwider (Lanham, MD: Rowman and Littlefield, 1999), 381-384.

⁴ Michael Edwards, *Civil Society* (Cambridge: Polity Press, 2004).

⁵ Daniel N. Posner, "Civil Society and the Reconstruction of Failed States," in *When States Fail: Causes and Consequences*, ed. Robert I. Rotberg (Princeton: Princeton University Press, 2004), 237.

⁶ Thania Paffenholz and Christoph Spurk, "Civil Society, Civic Engagement, and Peacebuilding," *Social Development Papers*, no. 36, World Bank, Washington, DC, October 2006, 3.

⁷ For recent discussions, see Edwards, *Civil Society*; Mary Kaldor, *Global Civil Society: An Answer to War* (Cambridge: Polity Press, 2003).

⁸ Kerstin Martens, "Mission Impossible? Defining Nongovernmental Organizations," *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 13, no. 3 (2002): 282. See also Jennifer M. Brinkerhoff, Stephen C. Smith, and Hildy Teegen, "Introduction," in *NGOs and the Millennium Development Goals: Citizen Action to Reduce Poverty*, ed. Jennifer M. Brinkerhoff, Stephen C. Smith, and Hildy Teegen (New York: Palgrave Macmillan, 2007), 10.

⁹ For a critical take on this tendency, see Neera Chandhoke, "Civil Society," *Development in Practice* 17, no. 4 (2007): 607-614.

¹⁰ World Bank, "Issues and Options for Improving Engagement Between the World Bank and Civil Society Organizations," World Bank, Washington, DC, 2005, 3.

¹¹ UK Department for International Development (DFID), "Civil Society and Development: How DFID Works in Partnership with Civil Society to Deliver the Millennium Development Goals," DFID, London, 2006, 2.

¹² Gerd Junne and Willemijn Verkoren, *The Challenge of Postconflict Development*, in *Postconflict Development: Meeting New Challenges*, ed. Gerd Junne and Willemijn Verkoren (Boulder: Lynne Rienner, 2005), 3.

¹³ United Nations Development Programme (UNDP), *Human Development Report* (New York: UNDP, 1990), 10.

¹⁴ Jude Howell and Jenny Pearce, *Civil Society and Development: A Critical Exploration* (Boulder/London: Lynne Rienner Publishers, 2001), 1. For an overview of the broader discussion about civil society and development, see pages 13-38.

¹⁵ See www.socialcapitalgateway.org for useful links to much of the social capital literature.

¹⁶ Robert D. Putnam, "The Prosperous Community: Social Capital and Public Life," *The American Prospect*, no. 13 (1993): 35-42.

¹⁷ Ibid.

¹⁸ Stephen Knowles, "The Future of Social Capital in Development Economics Research," paper prepared for the WIDER Jubilee Conference, Helsinki, June 17-18, 2005. See also: David Skidmore, "Civil Society, Social Capital and Economic Development," paper prepared for the International Studies Association, Los Angeles, CA, March 14-18, 2000; Michael Woolcock and Deepa Narayan, "Social Capital: Implications for Development Theory, Research, and Policy," *The World Bank Research Observer* 15, no. 2 (2000): 225-249.

¹⁹ Christiaan Grootaert and Thierry van Bastelaer, "Introduction and Overview," in *The Role of Social Capital in Development: An Empirical Assessment*, ed. Christiaan Grootaert and Thierry van Bastelaer (Cambridge: Cambridge University Press, 2002), 2-4.

²⁰ Paul Collier, "Social Capital and Poverty: A Microeconomic Perspective," in *The Role of Social Capital in Development*, 39.

²¹ Fabio Sabatini, "The Empirics of Social Capital and Economic Development: A Critical Perspective," Fondazione Eni Enrico Mattei Working Paper, January 2006.

²² Stephen Knack, "Social Capital, Growth, and Poverty," in *The Role of Social Capital in Development*, 73.

²³ Skidmore, "Civil Society, Social Capital and Economic Development."

- ²⁴ Vivek Maru, “Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide,” *Yale Journal of International Law* 31 (2006): 457.
- ²⁵ Deepa Narayan with Raj Patel, Kai Schafft, Anne Rademacher, and Sarah Koch-Schulte, *Voices of the Poor: Can Anyone Hear Us?*, chapter 4, “Civil Society Institutions” (New York: Oxford University Press, 2000), 102, 111.
- ²⁶ Jennifer M. Brinkerhoff, Stephen C. Smith, and Hildy Teegen, “Beyond the ‘Non’: The Strategic Space for NGOs in Development,” in *NGOs and the Millennium Development Goals*, 61.
- ²⁷ Howell and Pearce, *Civil Society and Development*, 91.
- ²⁸ Brinkerhoff, Smith, and Teegen, “Introduction,” 11.
- ²⁹ Ibid.
- ³⁰ Stephen C. Smith, “Organizational Comparative Advantages of NGOs in Eradicating Extreme Poverty and Hunger: Strategy for Escape from Poverty Traps,” in *NGOs and the Millennium Development Goals*, 132-138.
- ³¹ Brinkerhoff, Smith, and Teegen, “Beyond the ‘Non,’” 62.
- ³² Sarah Michael, *Undermining Development: The Absence of Power Among Local NGOs in Africa* (Bloomington, IN: Indiana University Press, 2004), 6.
- ³³ Ibid. See also Brinkerhoff, Smith, and Teegen, “Beyond the ‘Non,’” 63.
- ³⁴ Howell and Pearce, *Civil Society and Development*, 90.
- ³⁵ Michael, *Undermining Development*, 2.
- ³⁶ Brinkerhoff, Smith, and Teegen, “Beyond the ‘Non,’” 64-5.
- ³⁷ Brinkerhoff, Smith, and Teegen, “Introduction,” 9.
- ³⁸ Smith, “Organizational Comparative Advantages of NGOs,” 144; Michael Edwards, “Some Practical Limits of the NGO Role: A Critical Perspective,” in *NGOs and the Millennium Development Goals*, 50.
- ³⁹ Brinkerhoff, Smith, and Teegen, “Beyond the ‘Non,’” 65.
- ⁴⁰ Michael, *Undermining Development*, 6.
- ⁴¹ Howell and Pearce, *Civil Society and Development*, 93, 102.
- ⁴² Ibid., 102-112.
- ⁴³ Ibid. See also, particularly on the politics of universality and choice, Marcus H. Lenzen, “The Use and Abuse of ‘Civil Society’ in Development,” *Transnational Associations* 54, no. 3 (202): 170-187. On the politics of partnerships, see Julie Hearn, “The ‘Uses and Abuses’ of Civil Society in Africa,” *Review of African Political Economy* 28, no. 87 (2001): 43-53: “The current development agenda of ‘partnership’ not only undermines autonomy but can also contribute . . . to the current version of civil society in Africa becoming a means for stabilizing rather than challenging the social and political status quo”; Terje Tvedt, “Development NGOs Revisited: A New Research Agenda,” in *Reconceptualising NGOs and Their Roles in Development: NGOs, Civil Society and the International Aid System*, ed. Paul Opoku-Mensah, David Lewis, and Terje Tvedt (Aalborg: Aalborg University Press, 2007), 45: “the NGOs mushrooming in the developing countries express not necessarily societal needs and values in the country, but mirror the needs and values expressed at UN conferences, donor conferences etc”; and Sarah C. White, “Depoliticizing Development: The Uses and Abuses of Participation,” in *Development, NGOs, and Civil Society*, ed. Deborah Eade (Oxford: Oxfam GB, 2000), 142-155.
- ⁴⁴ Lenzen, “The Use and Abuse of ‘Civil Society.’”
- ⁴⁵ Brinkerhoff, Smith, and Teegen, “Introduction,” 2.
- ⁴⁶ David Backer, “Civil Society and Transitional Justice: Possibilities, Patterns and Prospects,” *Journal of Human Rights* 2, no. 3 (2003): 297.
- ⁴⁷ Eric Brahm, “Transitional Justice, Civil Society, and the Development of the Rule of Law in Post-Conflict Societies,” *International Journal of Not-for-Profit Law* 9, no. 4 (2007): 62.
- ⁴⁸ Priscilla Hayner, “Responding to a Painful Past: The Role of Civil Society and the International Community,” in *Dealing with the Past: Critical Issues, Lessons Learned, and Challenges for Future Swiss Policy*, ed. Mô Bleeker and Jonathan Sisson, KOFF Series Working Paper (Bern: Swiss Peace, 2005), 45.
- ⁴⁹ Ibid.
- ⁵⁰ Naomi Roht-Arriaza, “Civil Society in Processes of Accountability,” in *Post-Conflict Justice*, ed. M. Cherif Bassiouni (Ardsey, NY: Transnational Publishers, 2002), 98.
- ⁵¹ Crocker, “Civil Society and Transitional Justice,” 381, 384-390.

-
- ⁵² Brahm, “Transitional Justice, Civil Society, and the Development of the Rule of Law,” 62.
- ⁵³ Roht-Arriaza, “Civil Society in Processes of Accountability,” 99-101.
- ⁵⁴ Backer, “Civil Society and Transitional Justice,” 302-305.
- ⁵⁵ *Ibid.*, 301.
- ⁵⁶ Christopher J. Colvin, “Civil Society and Reconciliation in Southern Africa,” *Development in Practice* 17, no. 3 (2007): 326.
- ⁵⁷ Priscilla Hayner, *Unspeakable Truths: Facing the Challenge of Truth Commissions* (New York and London: Routledge, 2001), 234-239.
- ⁵⁸ Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions* (New York and Geneva: United Nations, 2006), 7, 33-34.
- ⁵⁹ International Center for Transitional Justice (ICTJ), “Truth Commissions and NGOs: The Essential Relationship,” Occasional Paper Series, ICTJ, April 2004, 4, 9.
- ⁶⁰ Ezekiel Pajibo, “Civil Society and Transitional Justice in Liberia: A Practitioner’s Reflection from the Field,” *International Journal of Transitional Justice* 1 (2007): 294.
- ⁶¹ Luke Wilcox, “Reshaping Civil Society through a Truth Commission: Human Rights in Morocco’s Process of Political Reform,” *International Journal of Transitional Justice* 3 (2009): 55.
- ⁶² Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes* (New York and Geneva: United Nations, 2008), 15-16.
- ⁶³ Roht-Arriaza, “Civil Society in Processes of Accountability,” 109.
- ⁶⁴ Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts* (New York and Geneva: United Nations, 2008), 22-21.
- ⁶⁵ Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Prosecutions Initiatives* (New York and Geneva: United Nations, 2006), 6, 11, 17, 27.
- ⁶⁶ Brahm, “Transitional Justice, Civil Society, and the Development of the Rule of Law,” 65.
- ⁶⁷ Howard Varney, “In the End, South Africa Did the Right Thing,” *City Press*, August 16, 2009.
- ⁶⁸ Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Vetting: An Operational Framework* (New York and Geneva: United Nations, 2006), 14.
- ⁶⁹ United Nations Security Council, “The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary General,” S/2004/616*, August 23, 2004, 18.
- ⁷⁰ Brahm, “Transitional Justice, Civil Society, and the Development of the Rule of Law,” 62.
- ⁷¹ Crocker, “Civil Society and Transitional Justice,” 390.
- ⁷² Backer, “Civil Society and Transitional Justice,” 301.
- ⁷³ Pajibo, “Civil Society and Transitional Justice in Liberia,” 294.
- ⁷⁴ Alexander Loden, “Civil Society and Security Sector Reform in Post-conflict Liberia: Painting a Moving Train without Brushes,” *International Journal of Transitional Justice* 1 (2007): 304.
- ⁷⁵ Jackee Budesta Batanda, “The Role of Civil Society in Advocating for Transitional Justice in Uganda,” Institute for Justice and Reconciliation, Wynberg, South Africa, 2009, 1, 4-6.
- ⁷⁶ Roht-Arriaza, “Civil Society in Processes of Accountability,” 100.
- ⁷⁷ Backer, “Civil Society and Transitional Justice,” 302.
- ⁷⁸ Brahm, “Transitional Justice, Civil Society, and the Development of the Rule of Law,” 66.
- ⁷⁹ Roht Arriaza, “Civil Society in Processes of Accountability,” 100.
- ⁸⁰ Jane Alexander, “A Scoping Study of Transitional Justice and Poverty Development: Final Report,” prepared for the UK Department for International Development (DFID), January 2003, 53.
- ⁸¹ OHCHR, *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes*, 16.
- ⁸² Alexander Mayer-Rieckh, “On Preventing Abuse: Vetting and Other Transitional Reforms,” in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, ed. Alexander Mayer-Rieckh and Pablo de Greiff (New York: Social Science Research Council, 2007), 503.
- ⁸³ OHCHR, *Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts*, 2, 6, 20-21.

- ⁸⁴ Dustin N. Sharp, “Prosecutions, Development, and Justice: The Trial of Hissein Habré,” *Harvard Human Rights Journal* 16 (2003): 159, 173-176.
- ⁸⁵ *Ibid.*, 160, n. 56.
- ⁸⁶ Hugo van der Merwe, Polly Dewhirst, and Brandon Hamber, “Non-governmental Organisations and the Truth and Reconciliation Commission: An Impact Assessment,” Centre for the Study of Violence and Reconciliation, 1999, 26-32.
- ⁸⁷ Backer, “Civil Society and Transitional Justice,” 306.
- ⁸⁸ See ICTJ, “Truth Commissions and NGOs,” 33.
- ⁸⁹ Howell and Pearce, 38, n. 4. As Sabatini suggests, “the possibility exists that people self-select into association groups, depending on their original levels of generalized trust and reciprocity.” Sabatini, “The Empirics of Social Capital,” 12. And, for Skidmore, trust was a necessary condition for civil society to make a positive contribution through social capital to development. Skidmore, “Civil Society, Social Capital and Economic Development.”
- ⁹⁰ Posner, “Civil Society and the Reconstruction of Failed States,” 242.
- ⁹¹ Pablo de Greiff, “Apologies in National Reconciliation Processes: On Making Trustworthy Institutions Trusted,” in *The Age of Apology: Facing Up to the Past*, ed. Mark Gibney et al (Philadelphia: University of Pennsylvania Press, 2008), 132. See also Pablo de Greiff, “Theorizing Transitional Justice,” in *Transitional Justice*, ed. Melissa Williams and Rosemary Nagy, Nomos XLX (forthcoming).
- ⁹² Putnam, “The Prosperous Community.”
- ⁹³ Posner, “Civil Society and Reconstruction,” 242.
- ⁹⁴ Sharp, “Prosecutions, Development, and Justice,” 160, n. 56.
- ⁹⁵ Backer, “Civil Society and Transitional Justice,” 304.
- ⁹⁶ Stephen Golub, “The Rule of Law and the UN Peacebuilding Commission: A Social Development Approach,” *Cambridge Review of International Affairs* 20, no. 1 (2007): 47-48.
- ⁹⁷ *Ibid.*, 56, 64.
- ⁹⁸ Maru, “Between Law and Society,” 458.
- ⁹⁹ Backer, “Civil Society and Transitional Justice,” 304.
- ¹⁰⁰ OHCHR, *Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts*, 20, n. 47.
- ¹⁰¹ www.slcmp.org/drwebsite/aboutus/aims_objectives.shtml. The SLCMP was assisted in its start-up phase by ICTJ.
- ¹⁰² www.lawcla.org/.
- ¹⁰³ www.jsmp.minihub.org/Language_English/aboutus_english.htm.
- ¹⁰⁴ ICTJ, “Truth Commissions and NGOs,” 16.
- ¹⁰⁵ Posner, “Civil Society and the Reconstruction of Failed States,” 237.
- ¹⁰⁶ Skidmore, “Civil Society, Social Capital and Economic Development.”
- ¹⁰⁷ OHCHR, *Rule-of-Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts*, 20-21.
- ¹⁰⁸ Brinkerhoff, Smith, and Teegen, “Beyond the ‘Non,’” 65.
- ¹⁰⁹ Michael, *Undermining Development*, 6.
- ¹¹⁰ Patricia Lundy and Mark McGovern, “The Role of Community in Transitional Justice,” in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, ed. Kieran McEvoy and Lorna McGregor (Oxford: Hart Publishing, 2008), 108.
- ¹¹¹ *Ibid.*, 110-112.
- ¹¹² ICTJ, “Truth Commissions and NGOs,” 13.
- ¹¹³ Ruth Rubio-Marín, Claudia Paz y Paz Bailey, and Julie Guillerot, “Indigenous Groups and Claims for Reparation: Tentative Steps in Peru and Guatemala,” paper prepared for the ICTJ project “Identities in Transition,” forthcoming.
- ¹¹⁴ ICTJ, “Truth Commissions and NGOs,” 13.
- ¹¹⁵ See, for example, Roger Duthie, “Local Justice and Reintegration Processes as Complements to Transitional Justice and Disarmament, Demobilization, and Reintegration,” in *Disarming the Past: Transitional Justice and Ex-Combatants*, ed. Ana Patel, Pablo de Greiff, and Lars Waldorf (New York: Social Science Research Council, 2009); Luc Huyse and Mark Salter, eds., *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: International Institute for Democracy and Electoral Assistance (IDEA), 2008).