Statement by Mr. Pablo de Greiff
SPECIAL RAPPORTEUR ON THE PROMOTION OF TRUTH, JUSTICE, REPARATION AND GUARANNEES OF NON-RECURRENCE

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Honourable Chair,  
Distinguished delegates,  
Ladies and gentlemen,  

I have the great honour to address this distinguished Assembly for the second time in my capacity as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. I wish to begin by commending the cross-regional support which my mandate has enjoyed since its establishment by the Human Rights Council in 2011. The support across regions demonstrates that States and other relevant actors hold a shared understanding that atrocities must be redressed. This is so as a matter of law, of morals, and indeed for the prospects of improved security and sustainable human development.

In my report to the Assembly this year I focus on the relevance of justice and rights considerations to development. The report seeks, in part, to make a contribution to the ongoing debates at the Assembly on the post-2015 development agenda. The outcome of the negotiations on the new development framework must live up to the commitment made by Heads of States and Governments, during the “Special Event towards achieving the Millennium Development Goals,” held on 25 September here in New York, to a comprehensive approach to development with human rights and the rule of law at its core and to the legitimate expectations of individuals and groups across the globe.

Honourable Chair,  

Justice and development are far too often considered as different and independent goals, and continue to be addressed by a multiplicity of actors through different approaches. Justice has far too often been traded off against short-term economic development, or for the sake of ‘stability’. This contravenes clear legal obligations to fight impunity for human rights violations, and goes against a more robust understanding of development, sustainable human development.

A limited and narrow approach to development, which ignores justice considerations, will not be human – insofar as it ignores fundamental aspirations for the sake of which people again and again show themselves ready to take great risks – nor is it sustainable. The framing of the post-2015 development goals should not lead again to a situation in which people in the countries that achieve these goals still feel they should risk everything in search of fundamental change. If this happens, the framework would fail to capture bedrock aspirations forcefully expressed by the actions of people that did not need any help to know that well-being certainly includes economic opportunities, basic personal security, decent governance, but also access to justice. These are not totally independent goods that can be neither traded off against one another nor ordered in a sequence that allows for the indefinite postponement of some.

I wish to suggest that this “Tunisia test” be applied to the new post-2015 framework: goals and indicators established should not foster the appearance of a development success story in societies where development is self-evidently undermined by large-scale deficits in security, justice and rights.
Furthermore, the post-2015 development agenda should shed the timidity which has characterized discussions about the role of justice and rights in development. The new framework has to take on board a significant global achievement, the institutionalization of binding legal obligations recognizing as a matter of rights many of the questions that discussions about development goals (the Millennium Development Goals as well as a good part of the debates about the post-2015 goals) have treated merely as desirable ends.

Distinguished delegates,

Allow me to elaborate these points in the time that I have been allotted. In highlighting the possible contribution that justice and rights-related measures make to development, I do not wish to make the argument that the justification of justice and rights related measures rest on their ability to contribute to development goals. The sort of justice and rights-related measures that are the main topic of my report are the subject of existing legal obligations, and beyond this, are firmly grounded in moral arguments that are as compelling as they are broadly based. Thus, I begin by emphasizing, emphatically, that States have a legal obligation under international law to establish effective mechanisms of redress and prevention in the aftermath of repression or conflict. These measures contribute to the realization of the right to truth, to justice, to reparation and guarantee non-recurrence.

While wishing to emphasize the legally binding obligations underlying the implementation of redress and prevention measures in the aftermath of repression or conflict, in the report I examine the ways in which the legacies of human rights violations can hamper development. The report identifies three different ways in which violations can hinder development; through a downward shift in preferences, through the depletion of trust or social capital, and through the undermining of capabilities. In contexts of gross human rights violations or serious violations of international humanitarian law, these are phenomena that affect not just direct victims but that ‘spill over’ from victims to society as a whole, therefore magnifying their negative developmental impact.

Quite aside from the discussion about the post-2015 goals, the report seeks to highlight the developmental potential of justice related measures such as those under my mandate. Transitional justice measures—truth, justice, reparation and guarantees of non-recurrence—can be conceived as measures that counteract negative adaptive preferences by providing recognition to victims as rights-bearers; that promote civic trust, and generally, both protect individual capabilities and strengthen the rule of law. In other words, the measures promote development fundamentally by counteracting the isolating, socially fragmenting and marginalizing effects of unredressed human rights violations, allowing people to resume or assume for the very first time the developmentally crucial role of unhindered agents, claims-raisers, rights-holders.

Ladies and gentlemen,

In order to satisfy existing legal obligations I recommend in my report that States renounce the untenable practice of strict sequencing and reductionism. From this perspective, justice cannot be postponed indefinitely under the excuse of achieving economic growth first. Nor can justice be reduced to mere development programmes, stable institutions and a productive economy. A new post-2015 development agenda, which aims to be comprehensive, has to move beyond the failings of the original MDGs framework. I therefore
recommend the incorporation of goals on access to justice and remedy in the post-2015 development agenda. And while it is true that not all countries have legacies of abuse that call for all the measures under my mandate, measures to prevent the occurrence or recurrence of abuses by the security and justice sectors relate to the universal aspirations of the post-2015 development framework. These include the expansion of legal identity through birth or civil registration, reduction in the reliance on confessions as the sole source of evidence for convictions, improvements in violence reduction (in particular for the crimes such as homicide and rape), improvement in the resolution under due process of violent crimes. These measures have universal relevance across countries at different levels of development, and have the important quality of being rights-based measures which also contribute to other developmental goals. Including this type of measure within the development agenda is also important to mobilise resources – we cannot face a situation where development funding is available to build schools, but not to ensure that children can travel safely to school or that their birth can be registered to ensure their access to health and educational services.

Furthermore, I would like to encourage development agents to reflect in their programming and practice theoretical advances in development thereby firmly anchoring justice and right-related concerns in the new development agenda. Development thought has progressed to the extent that the concept of human development today encompasses in addition to concerns about growth and distribution, aspects related to institutional design, good governance, peace and personal security, and indeed broader indications about the capabilities of individuals to achieve well-being. Yet, practice is lagging behind.

Development promoters should heed the lesson that justice, security, and development are linked with one another, and specifically, that in the absence of justice neither security nor development can be fully realized. I wish to illustrate this point by observing that widely mistrusted security agencies, as is often the case in the aftermath of repression or conflict, face difficulties in fulfilling the task of providing citizens with security. Moreover, in the absence of access to justice and the protection of rights that ultimately enable individuals to raise claims, participation and ownership in development programmes, which are recognized as crucial to their success are little more than rhetoric. More effective cooperation between justice, security and development actors at the political level, as well as on the ground, is imperative for the success of all these areas of policy intervention.

Honourable Chair,

Having argued for the developmental significance of justice-related measures, and in particular, having illustrated in the report both general and particular ways in which the measures under the mandate can contribute to development, before closing, I will reiterate an important caveat: needless to say, these measures do not exhaust the developmental agenda of countries where they are implemented. On their own, they cannot bear the weight of the social, political, and economic transformations that are called for in most of the countries where massive or systematic human rights violations have taken place.

Since a successful transitional process will likely require deep socio-economic restructuring, I call for the adoption of the corresponding initiatives, stressing, all the while, on the significance of the role that the measures under the mandate can play in such processes of transformation.
Ladies and Gentlemen,

I shall conclude by re-stating that justice considerations, including transitional justice, have a legitimate place in the post-2015 development agenda, an agenda that aims to be comprehensive in providing solutions for our global challenges. Justice and development complement and mutually reinforce each other. I therefore strongly reiterate my call for the new development framework to incorporate clear goals in the area of access to justice and remedy. I stand ready to personally assist in this process.

Thank you.