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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Promotion of truth, justice, reparation and guarantees of non-recurrence**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, submitted in accordance with Human Rights Council resolution [18/7](#).

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\* [A/68/150](#).



## **Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence**

### *Summary*

In the light of the current discussions on the post-2015 development agenda, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence emphasizes in the present report to the General Assembly the relevance of justice and rights considerations to sustainable development.

Mindful of the fact that States have legal obligations to pursue transitional justice measures in the aftermath of repression or conflict, the report clarifies that justice, security and development cannot be promoted one at the expense of the other, either through reductionism or strict sequencing.

It argues that serious human rights violations leave in their wake conditions that hamper development, including a weak sense of entitlement and deep social mistrust, in addition to undermining basic capacities constitutive of human development.

Past development frameworks, including the Millennium Development Goals, have failed to track either existing legal obligations or popular aspirations related to justice. Indeed, the goals and indicators adopted have fostered the appearance of development success stories in societies where development is self-evidently undermined by large-scale deficits in security, justice and rights.

Transitional justice measures — contribute to mitigating some of these developmental blockages, in particular if a comprehensive approach is pursued, by providing recognition of rights, fostering individual and institutional trust and building positive social capital. Not all transitional justice measures are applicable in all countries at all times, but efforts to guarantee non-recurrence by strengthening the capacity and the accountability of security and justice services do have universal developmental application.

## I. Introduction

1. This report is submitted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to the General Assembly in accordance with resolution 18/7 of the Human Rights Council. The activities undertaken by the Special Rapporteur from August 2012 to July 2013 are listed in his most recent report to the Human Rights Council (A/HRC/24/42).

2. The Special Rapporteur has identified the relationship between transitional justice and development as one of the strategic topics of interest for his mandate.<sup>1</sup> Part of the reason is that a good number of countries that attempt to implement the measures under the mandate face immense developmental challenges, and a good number of developing countries face abiding “justice deficits” concerning massive human rights violations and abuses in their pasts. Mindful of the ongoing discussions about the post-2015 development goals, in the present report the Special Rapporteur seeks to contribute to that discussion by laying an argument concerning the importance of justice and rights-considerations for development.

## II. Unequal progress of development thought and practice

3. Development thought has progressed significantly since the days when development was considered to be merely a matter of economic growth. Today, owing to the interest in questions of distribution, in the preconditions of growth and in its sustainability, matters relating to institutional design, governance, peace and security, in addition to broader indicators of well-being, are taken to be part of the domain of development.<sup>2</sup>

4. One of the consequences of this broadening of the scope of development thought has been increased attention to questions concerning the relationship between the rule of law, justice, rights and development. A variety of currents in the field of development are converging on and lending support to the idea that economies grow not just by “getting prices right”, by setting efficient market systems, but that markets themselves, not to speak about their growth, rest on a whole host of dispositions, practices, norms and institutions that, among other things, ground the incentives to participate actively in the market in the first place. Among this thick web of dispositions, practices and institutions, the rule of law has a special place. The analyses of development that take as their starting point such notions as social capital, social exclusion and institutionalist economics, among others, lend support to this idea.

5. The practice of development, including its planning and the setting of priorities, however, seems to lag behind the understanding of the expanded scope of development, and so it is still necessary to make the case that justice and rights are relevant to development, both in international and national policy arenas.

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<sup>1</sup> See A/HRC/21/46. As in his previous reports to the Human Rights Council (A/HRC/21/46 and A/HRC/24/42) and the General Assembly (A/67/368), the Special Rapporteur uses herein the expression “transitional justice” to denote the comprehensive approach to the implementation of the four measures referred to in Human Rights Council resolution 18/7.

<sup>2</sup> See *World Development Report 2011, Conflict, Security, and Development* (Washington, D.C.: World Bank, 2011), chaps. 2 and 3.

6. In making the argument about the relevance of justice and rights to development, the Special Rapporteur wishes to eschew the reductionism that he sees so prevalent in these discussions. Without denying the fact that scarcity makes choices inevitable, and that not all things come together all the time, priorities and sequences in discussions about development choices are set without sufficient attention to the interconnections between development on one hand, and rule of law, justice and rights, on the other hand. It is these interconnections that this report wants to emphasize. The aim is to highlight the relevance of justice and rights considerations to development and hence to stimulate greater coherence between development thought and practice.

7. At the same time as underlining the contributions that justice and rights-related considerations can make to development, the Special Rapporteur wants to draw attention to the ways in which justice and rights-enhancing measures themselves presuppose certain developmental capacities that the measures can enhance but are unlikely to be able to bring about on their own. Hence the second aim of the report is to offer a reminder of the fact that the potential of all justice and rights-related measures (transitional justice included) is best secured through drawing links of coordination with other policy interventions, rather than on their own, no matter how broadly conceived the scope of those measures might be.

8. In highlighting the possible contribution that justice and rights-related measures make to development, the Special Rapporteur does 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 this 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.<sup>3</sup>

9. Indeed, the Special Rapporteur has been surprised by the timidity with which discussions about the post-2015 development agenda have engaged questions of justice and rights, a type of diffidence that suggests a lack of conviction about the ways in which justice and rights can contribute to development and, worse, that fails to heed fully what should only be taken as significant global achievements, the institutionalization of binding legal obligations that recognize as a matter of rights many of the questions that the discussions about development goals (the Millennium Development Goals, as well as the post-2015 goals) have treated merely as desirable ends.

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<sup>3</sup> Legally, transitional justice arguably responds to violations of foundational elements of the international legal architecture: a non-exhaustive list would include, among others, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; the International Covenant on Civil and Political Rights; the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention for the Protection of All Persons from Enforced Disappearance; the Geneva Conventions of 1949; the 1977 Protocol Additional (No. I) to the Geneva Conventions of 12 August 1949; and the Protocol Additional (No. II); see S/2004/616; see E/CN.4/2005/102/Add.1; see General Assembly resolution 60/147; and see Human Rights Council resolution 18/7, which in its preambular part refers to relevant sources.

### III. The developmental relevance of human rights violations: adaptive preferences, social trust and human development

10. In many contexts, the old tendency to think about security, justice and development as if they were independent goods manifests itself. This line of thinking implies that they can ultimately, and not just circumstantially, conflict with one another and that each can be pursued through its own means. If this is true, then good policy consists in finding the correct sequence so that a combination that maximizes each can be attained. Variations on this line of thought have one thing in common: the propensity to promote one of these aims at the expense of the others. Either through plain reduction: “Justice is nothing more than the possibility of having stable institutions and of living a productive life”, or through stringent conditionalities: “Without achieving wealth, the desire to achieve stability or justice is nothing more than a pipe dream”.

11. To illustrate the point, the Governments of some countries that emerge from conflict including systematic human rights violations are wont to say “Victims do not call for justice; they want development”. This tendency is widespread; it can be observed in countries in all geographical areas and that defy any easy categorization in terms of cultural, religious, legal and historical background, or in terms of developmental stage. The diversity of Governments tempted by this position obviously does not make it correct.

12. The Millennium Development Goals similarly sidelined justice and human rights issues (the preamble of the Millennium Declaration notwithstanding). Some of the countries in the Middle East and North Africa region were widely seen to be successfully progressing in the achievement of the goals set forth in that project. In Tunisia, national income trebled in the three decades to 2010; almost all Tunisian children attended school; child mortality was significantly lower and life expectancy significantly higher than the average for countries at a similar income level. In 2005 only 3.8 per cent of the population lived in extreme poverty according to the lower national poverty line. Inequality also dropped since the 1990s, with a rapidly growing middle class.

13. Tunisia is the most obvious example of a dilemma within the original Millennium Development Goal framework: rapid Millennium Development Goal progress completely failed to predict widespread popular discontent. As a recent paper of the Office of the United Nations High Commissioner for Human Rights makes the point, “some of the most celebrated ‘Millennium Development Goal success stories’ since 2000 are now sites of mass protest decrying widespread deprivation, repression and inequalities masked by the narrow models of economic approaches that have characterized development approaches in the pre-2015 period. Their message is clear: economic growth is not an adequate measure of development. Rather, equality matters, the environment matters and human rights matter. The real test, to a growing global population demanding a life of dignity, is the degree to which they are able to enjoy freedom from fear and want, without discrimination.”<sup>4</sup>

14. Clearly, 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

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<sup>4</sup> Office of the United Nations High Commissioner for Human Rights, “Thematic think piece: Towards freedom from fear and want: Human rights in the post-2015 agenda” (May 2012).

should risk everything in search of fundamental change. If this happened, the framework would have failed to capture bedrock aspirations forcefully expressed by the actions of people who did not need any theory to know that well-being certainly includes economic opportunities, basic personal security and decent governance, but also access to justice, and that these are not totally independent goods that can be either traded off against one another or ordered in a sequence that allows for the indefinite postponement of some. The Special Rapporteur wishes 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.

15. In order to illustrate some of the linkages between justice, security and development, it is useful to start with an account of the challenging conditions that transitional justice measures — understood not as a special, “soft” form of justice, but as a strategy for the achievement of a familiar conception of justice that includes criminal prosecutions, truth-telling, reparations for victims and guarantees of non-recurrence — were designed to help overcome. Human rights violations leave in their wake not just indescribable pain and suffering, but conditions that hamper development, namely, a weakening of people’s agency, their ability to raise claims against each other and, importantly, against the institutions of the State, fundamental to the sense of being a rights-bearer, and deep mistrust.

#### **A. Normative account of human rights violations**

16. Gross human rights violations involve the defeat of normative expectations fundamental to our sense of agency in the world. The expectations that get broken whenever human rights are violated are not just whimsical ones; they are based on general norms; that is, they are expectations whose satisfaction we reasonably feel entitled to. They are expectations about, for example, what constitutes legitimate treatment of others and at the hands of others, about situations in which it is “normal” to expect the assistance of others, about the State being the guarantor, rather than the violator, of fundamental rights, and so on. The very basic, fundamental nature of these expectations explains the pervasive fear that their defeat generates: victims experience a deep sense of normative disorientation (How could this have happened? If this happened, then anything can happen), of solitude (How could anyone do this to me, and, crucially, how come no one prevented it?), and of resentment (This should have never happened; I was entitled to better treatment).<sup>5</sup>

17. This norm-based account of the legacies of massive human rights violations helps in two important ways to establish the importance, for development purposes, of addressing those violations. First, it provides an explanation of how the effects of gross human rights violations ripple from direct victims to much broader constituencies, and thus clarifies that justice is not a matter of interest to victims alone. Ultimately, this is not only a function of bonds of concern or even of relations

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<sup>5</sup> See Pablo de Greiff, “Articulating the Links between Transitional Justice and Development”, in *Transitional Justice and Development: Making Connections*, Pablo de Greiff and Roger Duthie, eds. (New York, Social Sciences Research Council, 2009). The normative account of violations owes a lot to Margaret Walker, *Moral Repair: Reconstructing Moral Relations after Wrongdoing* (Cambridge, United Kingdom, Cambridge University Press, 2006).

of dependence, but mainly, a function of the nature of the norms that are shattered when human rights are violated; namely, the general norms that give rise to the expectations that undergird basic agency and social competence. To the extent that the violation of fundamental rights is at the same time the breach of general norms, everyone is affected by it.<sup>6</sup> No one can be certain about what they are entitled to expect, and therefore about what it is reasonable for them to claim. Contexts in which claims cannot be raised cannot be legitimately described as spheres of rights.

18. Second, and more importantly, the account makes clear that confronting human rights violations is relevant for development purposes for reasons that go beyond their spill-over effects from victims to others — what in a sense is not an irrelevant issue of numbers. The account also deepens our understanding about the way the effects work: massive human rights violations do not simply diminish the capacity for agency, the willingness of people to raise claims and, in that sense, their possibility of initiating action in the world; for development purposes, it may be more compelling to stress that the violations thereby diminish the possibility of having people act together.

19. Illustrating the difficulties that massive human rights violations generate for future social coordination is not difficult. Take, for example, the following characterization of the effects of the years of terror in Argentina in terms of “avoidance strategies” adopted by the population: “people abandoned, first, their political activities; second, they abandoned their political beliefs. They reduced associational activities and denied any evidence that inhumane practices were being carried out. Members of groups that were political targets of State terror cultivated deliberate ignorance about what was going on. People adopted selfish strategies of survival”.<sup>7</sup> There is nothing peculiar about the Argentinean case in this respect. The same phenomenon recurs wherever massive human rights violations take place. This is, in fact, an intended consequence of the exercise of “disarticulating power” deliberately exercised by authoritarian regimes everywhere since it makes coordinated response to the exercise of power virtually impossible,<sup>8</sup> and a predictable consequence of the systemic failures that characterizes regimes where conflict involving massive violations and abuses occur.

20. One way, then, of stating the reasons why any sufficiently ambitious account of development needs to take justice concerns seriously, including the fight against impunity and the effort to redress massive human rights violations, is that these violations have as a consequence diminished capacities for agency and that they create severe social coordination problems. The combination of these effects is a weakened ability to raise claims, which should be a severe concern for any conception of development that goes beyond the barest forms of basic service delivery.

<sup>6</sup> This does not imply that the costs of living in normatively weak contexts are evenly distributed. The point is that the diminished agency produced by massive violations and the weakness of protections that such violations manifests generates “costs” for everyone, the well-off included, and that this has an impact on development.

<sup>7</sup> Jaime Malamud-Goti, *Game Without End: State Terror and the Politics of Justice* (Norman, Oklahoma, University of Oklahoma Press, 1996).

<sup>8</sup> As Hannah Arendt put it, “[t]otalitarian government, like all tyrannies, certainly could not exist without destroying the public realm of life, that is, without destroying, by isolating men, their political capacities ...”, Hannah Arendt, *The Origins of Totalitarianism*, 2nd ed. (New York, Meridian Books, 1958).

21. The fact that massive human rights violations lead to diminished agency (including the willingness to raise claims vis-à-vis others, particularly, State authorities) as well as to social coordination problems, helps to buttress the case for the developmental relevance of impunity; indeed, the argument can proceed by analogy with a pair of commonly accepted theses in the development literature, one about the ways in which poverty is detrimental to growth and the other about the significance of civic or social trust for growth. If these theses are correct, then the very same arguments show why human rights violations should be of concern to development actors as well.

## **B. Adaptive preferences and adverse terms of recognition**

22. The first thesis refers to adaptive preferences. Different currents in development work seek to explain how different social conditions affect people's possibilities for agency. These currents dovetail with work in other disciplines that describe how adverse social conditions diminish expectations, the phenomenon of "adaptive preferences". For example, the World Bank, in its *World Development Report 2006: Equity and Development*, takes the position that poverty leads to diminished expectations, which, in turn, has a negative impact on development.<sup>9</sup> Philosophers and social scientists have long argued that people shift their preferences in the light of considerations of feasibility, rather than suffer permanently defeated expectations,<sup>10</sup> and that this levelling of expectations among the disadvantaged operates even in economically prosperous countries, particularly among those affected by structural "horizontal inequalities".<sup>11</sup>

23. One particular version of the thesis frames the negative link between poverty and development in terms of how deep poverty stunts "the capacity to aspire".<sup>12</sup> People aspire to realize particular aims — for example, to attain a particular economic status — only within contexts in which those aims, and, most important, all the more concrete and particular choices that lead to them make sense. This capacity, on the present account, is not evenly distributed in any society. Social experiences and norms have a huge effect in shaping people's capacity to aspire, which, in the case of the poor, leads to what has been called "adverse terms of recognition". The poor operate under conditions in which they are encouraged to "subscribe to norms whose social effect is to further diminish their dignity, exacerbate their inequality, and deepen their lack of access to material goods and services".<sup>13</sup>

24. This account of the diminished agency of the poor, then, can be used as the basis for an analogical argument to illuminate the reasons why massive human

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<sup>9</sup> World Bank, *World Development Report 2006: Equity and Development* (Washington, D.C., World Bank, 2006), chap. 2.

<sup>10</sup> See Robert Goodin, "Laundering Preferences", in *Foundations of Social Choice Theory*, Jon Elster and Aanund Hylland, eds. (Cambridge, United Kingdom, Cambridge University Press, 1986).

<sup>11</sup> See Frances Stewart, ed., *Horizontal Inequalities and Conflict: Understanding Group Violence in Multiethnic Societies* (Basingstoke, Palgrave, 2008).

<sup>12</sup> Arjun Appadurai, "The Capacity to Aspire: Culture and the Terms of Recognition", in *Culture and Public Action*, Vijayendra Rao and Michael Walton, eds. (Palo Alto, California, Stanford University Press, 2004).

<sup>13</sup> Ibid.

rights violations hamper development, tracking the norm-based account of the effects of atrocities offered above. The mechanism is arguably the same in both cases. Both poverty and victimization weaken the capacity to aspire; they diminish people's expectations. Over time, those exposed to human rights violations — not only their direct victims — see their readiness to initiate action and particularly to raise claims against others, especially against State institutions — something that lies at the core of the notion of individuals as bearers of rights — weakened as well. In this way, “adverse terms of recognition” become generalized among not just the poor.

### C. Human rights violations and the depletion of social trust

25. The second thesis broadly accepted by developmental economists is that social or civic trust — the “twin” of social capital — is one of the factors that influence growth and even equity. That trust between people is correlated with growth, and even with increased equity; there seems to be no doubt any longer. Large cross-country studies indicate that increases in levels of trust between people are associated with increases in growth both in gross domestic product (GDP) and investments, and that inequality is associated with lower trust levels.<sup>14</sup>

26. Just as important as trust between individuals, but closer to the main concern of this report, is trust at the macro-political level — that is, as a characteristic not just of relations between persons, firms, and civil society organizations but also of their relations with the institutions of the State. Once again, and perhaps less surprising, empirical research seems to confirm that there are correlations between levels of trust in institutions and economic performance: countries with strong institutions, institutions that, among other things, protect civil and political rights, have higher levels of trust, and it is precisely these countries that turn out to perform best economically, again, in terms of rates of growth and investment.<sup>15</sup> Several cross-national studies using a variety of indicators show strong correlations between respect for civil and political rights and economic growth, and show conversely that violence and political instability are negatively related to growth rates and investment.

27. In order to move beyond mere correlations, a few words about civic trust are in order. The sense of trust in question here is not the thick trust that characterizes relations between intimates, but neither is it reducible to a mere expectation of regularity or predictability. Trust, as an alternative to monitoring and the appeals to sanctions, involves shared normative expectations: I trust someone not merely when I experience confidence in the regularity of his or her behaviour; I can be highly confident that grossly corrupt systems officials will predictably try to extort me, but that, of course, does not mean I trust them; I trust the person when I am convinced that among that person's reasons for actions is a commitment to values, norms and

<sup>14</sup> See Stephen Knack and Philip Keefer, “Does Social Capital Have an Economic Payoff? A Cross-Country Investigation”, *Quarterly Journal of Economics*, vol. 112, No. 4 (1997); see Paul J. Zak and Stephen Knack, “Trust and Growth”, *Economic Journal*, vol. 111 (2001); and see Stephen Knack, “Social Capital, Growth, and Poverty: A Survey of Cross-Country Evidence” in *The Role of Social Capital in Development: An Empirical Assessment*, Christiaan Grootaert and Thierry van Bastelaer, eds. (Cambridge, United Kingdom, Cambridge University Press, 2002).

<sup>15</sup> See Johannes Fedderke and Robert Klitgaard, “Economic Growth and Social Indicators: An Exploratory Analysis”, in *Economic Development and Cultural Change*, vol. 46 (1998).

principles that we share. In dealing with strangers and with institutions in complex and highly differentiated societies, the relevant values, norms and principles are abstract and general. So, we trust an institution when we act on the assumption that the institution's constitutive norms are shared by those who run and participate in the institution.

28. Accounts of the developmental impact of civic trust have centred on its contribution to diminishing transaction costs, and, in its absence, to lowering rates of investment. Aside from the effects of massive human rights violations on individuals, there is then another way in which this type of violations can be said to diminish agency. Systematic violations have effects not only on individuals' capacity to aspire, but also on their willingness to coordinate action with one another. As pointed out before, it is not uncommon for the populations of areas that have known massive violations to lead substantially more reclusive lives than they led before the violations, to withdraw from public spaces and to disengage from social networks. There is a significant literature on the negative impact of authoritarianism on levels of civic trust and the depletion of social capital in the Central and Eastern European countries,<sup>16</sup> and reference has already been made to the Argentinean case, as instances of a general phenomenon.<sup>17</sup>

29. This report links a norm-based account of victimhood (rights violations shatter normative expectations fundamental to our sense of agency in the world) with a norm-based account of civic trust, to make the case that development actors should be concerned with the effects of human rights violations. One does not need to agree with the details of the social capital literature to acknowledge that unaddressed massive human rights violations make social coordination more difficult and that this has developmental consequences.

#### **D. Human rights violations and the undermining of human development**

30. The argument in this report has thus far proceeded on the basis of an economistic slant on development. This implies that justice and rights-related considerations are taken to be wholly external to development since the latter, from this perspective, is conceived of largely in terms of growth. Expanding the underlying conception of development will only facilitate perceiving the links between development and transitional justice.

31. Without question, the best-known expanded conception of development in contemporary discussions is the notion of "human development".<sup>18</sup> Amartya Sen's

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<sup>16</sup> See Janos Kornai and Susan Rose-Ackerman, *Building a Trustworthy State in Post-Socialist Transition* (New York, Palgrave, 2004); see Helmut Rainer, and Thomas Seidler, "Does Democracy Foster Trust?" in *Journal of Comparative Economics*, vol. 37, chap. 2 (2009).

<sup>17</sup> Take, as an illustration, a description of the effects of the years of terror in Argentina: "People avoided sensitive issues unless they were certain of the loyalty of the audience. Careless disclosures were as dangerous as deliberate reports. Vast portions of society sequestered themselves in their own family circle, restricting non-kin relationships to old friends. This tactic proved to be extremely isolating ...", Jaime Malaumud-Goti, *Game without End: State Terror and the Politics of Justice* (Norman, Oklahoma, University of Oklahoma Press, 1996).

<sup>18</sup> United Nations Development Programme Human Development Reports have been the primary vehicle for the dissemination of this concept of development.

and Martha Nussbaum's work provide an indication of the scope of the notion. The point of their "capabilities approach" is to think about development in terms of the real possibilities people have to "do or be certain things deemed valuable".<sup>19</sup> Nussbaum proposes a methodology and also a resulting list of 10 complex general capabilities.<sup>20</sup> Sen has refused to produce such a list, concentrating rather on the formulation of the reasons why freedom in general is important both in itself and instrumentally for development, and on the articulation of links between five types of freedoms: political freedoms, economic facilities, social opportunities, transparency guarantees and protective security.<sup>21</sup>

32. Clearly, massive human rights violations constitute an affront and lead to the diminution of these capabilities. Violations and abuses undermine most of the basic capabilities in Nussbaum's version of a capability account of development; that is, most of those capacities that make a life human. These include longevity (life), bodily health and bodily integrity, all of which are diminished in obvious ways by systematic violations; the exercise of emotions (which according to her require "not having one's emotional development blighted by fear and anxiety");<sup>22</sup> the ability to use practical reason (stunted by atrocities to the extent that their legacies lead to, among other things, great distortions in one's sense of control over one's own life plans); the capacity to engage in forms of affiliation that are free from humiliation and that exemplify respect, including equal worth; and the ability to have basic control over one's political and material environment — all of which are diminished or undermined in the wake of violations. These effects, as is well known, can be transgenerational,<sup>23</sup> and, as argued before, ripple out from victims to non-victims. Thus, if development is understood in terms of basic capabilities, as it is by Sen and Nussbaum, unaddressed atrocities constitute an obstacle to development.

33. There are countless ways of understanding the concept of development and as many ways of setting its boundaries, and hence its relationship with other concepts. However, a general observation can still be made; even on economic conceptions of development, it is still possible to argue that justice relates to development instrumentally (an empirical claim that can be borne out — or not — by the evidence); any expansion of the conception of development is likely to tighten its conceptual and practical links with justice.

34. To illustrate the point, conceptions of development that take seriously its security preconditions should have an interest in the links with justice, for the security sector will find it difficult to achieve its aims if it is widely mistrusted. After all, absent totalitarian supervision, security services require the minimal trust

<sup>19</sup> See Martha Nussbaum, "Capabilities and Human Rights" in *Global Justice and Transnational Politics*, Pablo de Greiff and Ciaran Cronin, eds. (Cambridge, Massachusetts, MIT Press, 2002).

<sup>20</sup> These include: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation (friendship and respect); being able to live in relation to the world of nature; play; and control over one's political and material environment; see Nussbaum, "Capabilities and Human Rights" in *Global Justice and Transnational Politics*, Pablo de Greiff and Ciaran Cronin, eds. (Cambridge, Massachusetts, MIT Press, 2002).

<sup>21</sup> Amartya Sen, *Development as Freedom* (New York: Knopf, 1999).

<sup>22</sup> See Martha Nussbaum, "Capabilities and Human Rights" in *Global Justice and Transnational Politics*, Pablo de Greiff and Ciaran Cronin, eds. (Cambridge, Massachusetts, MIT Press, 2002).

<sup>23</sup> See Yael Danieli, ed., *International Handbook of Multigenerational Legacies of Trauma* (New York, Springer, 2007).

of those they serve, among other things for their mere willingness to report crimes that they have either suffered or witnessed.<sup>24</sup>

35. Similarly, in the absence of the robust sense of agency associated with the capacity to raise claims, including claims of entitlement against the institutions of the State, the core of the sense of being a bearer of rights, which is fundamentally undermined in contexts in which human rights violations remain unredressed, participation and ownership in development, widely recognized to be crucial for sustainability, will prove to be nothing more than rhetoric.

#### **IV. Truth, justice, reparations and guarantees of non-recurrence as instruments of recognition and social trust**

36. Given the occasion that motivates this report, the argument thus far has concentrated more on the importance of justice and rights considerations to development than on the specific contributions that the four measures under this mandate can make to a robust development agenda. Nevertheless, the Special Rapporteur is interested in highlighting the ways in which these measures can be thought to contribute to mitigating some of the blockages to development left by human rights violations identified in the earlier parts of the report, in particular, the adverse terms of recognition and the high degree of social and institutional mistrust.<sup>25</sup>

37. Reversing adverse terms of recognition. Arguably, the various transitional justice measures aim at providing recognition to victims.<sup>26</sup> The type of recognition that is relevant is one that acknowledges the victims' status as victims, the violations and the abuses to which they were subject, gives public space to their stories and tries to reverse the marginalization which they typically suffer. But this is not all. In fact, it is even more important to recognize their status as rights bearers. How do truth, justice, reparations and guarantees of non-recurrence promote this aim? Truth-telling mechanisms explicitly provide a forum for acknowledgement by the State of victim's experiences and responsibility for violations and abuses; prosecutions by affirming that the violation of the rights of others shall be punished; reparations by

<sup>24</sup> This is a complex form of trust that can be parsed out in more detail; see Pablo de Greiff, "Vetting and Transitional Justice" in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Alexander Mayer-Rieckh and Pablo de Greiff, eds. (New York, Social Sciences Research Council, 2007).

<sup>25</sup> Three caveats are in order: first, the claims in this section are not about the capacity of transitional justice measures to overcome developmental blockages *tout court*, but those produced by human rights violations; nor are they claims about the causal *sufficiency* of the measures under the mandate to overcome those blockages, but rather, about their capacity to contribute to such improvements. Finally, the claims are not predictive but "explanatory" in character; the overall argument is part of an effort to understand how transitional justice interventions can be thought to work, rather than part of an effort to predict what effects their implementation will bring about. For a fuller version of the arguments in this section see, Pablo de Greiff, "Theorizing Transitional Justice", in *Transitional Justice and Development: Making Connections* (New York: Social Sciences Research Council, 2009), Melissa Williams, Rosemary Nagy and Jon Elster, eds., *NOMOS*, vol. LI (New York, New York University Press, 2012).

<sup>26</sup> On the notion of recognition, see Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge, Massachusetts, MIT Press, 1995); and *Disrespect: The Normative Foundations of Critical Theory* (Cambridge, Massachusetts: Polity Press, 2007).

signalling that the State takes violations of rights sufficiently seriously as to mobilize resources, something that typically involves the expenditure of “moral capital” as well. Finally, institutional reforms, as a main instance of guarantees of non-recurrence, with vetting processes as a starting point, contributes to recognizing people as rights-bearers to the extent that it reaffirms the force of norms according to which State officials are public servants, and that from these norms flow rules about job retention, promotions and dismissals. These mechanisms are often very powerful vehicles for providing voice to marginalized groups in society. In Morocco, for example, the truth commission recognized for the first time, in public hearings, the experience of women subjected to sexual and other forms of violations as part of State-sponsored repression. In Guatemala, the Commission of Historical Clarification played a crucial role in making public the atrocities to which indigenous communities had been subjected to during the conflict. The subsequent trial of General Ríos Montt, a legal case that as of this writing is still to be concluded, afforded victims the recognition that comes from having their word taken seriously by a court and society at large the equalizing benefits of seeing a formerly seemingly all-powerful person having to submit to the discipline and procedures of a court.

38. Hence, the measures under the mandate can promote individual improvements in welfare by acknowledging people’s stories, desire for justice and rights to compensation and, perhaps more importantly, by giving them channels of voice and recognition as having equal rights. Transitional justice measures can be seen as a set of judicial and non-judicial measures that serve to signal the significance of the status of persons as rights bearers. This is a not inconsequential contribution when one thinks of the demands displayed during the Arab Spring: the polling of citizens in these and other countries have noted that they place justice and accountability among their highest priorities, along with practical concerns such as security and job creation.

39. Fostering social trust and positive social capital. The argument concerning the trust-inducing potential of transitional justice measures must start by reiterating the point that trust should not be reduced to mere empirical predictability, but that it involves an expectation of a shared normative commitment. Trusting an institution, the case that is particularly relevant for us, amounts to assuming that its constitutive rules, values and norms are shared by its members or participants and are regarded by them as binding. How do transitional justice measures promote this sense of civic trust? Prosecutions can be thought to promote civic trust by reaffirming the relevance of the norms that perpetrators violated. Judicial institutions, particularly in contexts in which they have traditionally been essentially instruments of power, show their trustworthiness if they can establish that no one is above the law. View the effect of the Nuremburg trials, the prosecution of Charles Taylor or that of both senior and junior military officials in Chile and Argentina.<sup>27</sup> An institutionalized effort to confront the past through truth-telling exercises might be seen by those who were formerly on the receiving end of violence as a good faith effort to come clean, to understand long-term patterns of socialization and, in this sense, to initiate a new political project around norms and values that this time around are truly shared. This was part of the point behind the South African Truth and Reconciliation

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<sup>27</sup> See Helen Lutz and Caitlin Reiger, *Prosecuting Heads of State* (New York, Cambridge University Press, 2009).

Commission. Reparations can foster civic trust by demonstrating the seriousness with which institutions now take the violation of their rights, a seriousness that is manifested, to put it bluntly, by the fact that “money talks” — and so do symbolic reparations measures; that even under conditions of scarcity and competition for resources, the State responds to the obligation to fund programmes that benefit those who were formerly not only marginalized but also abused. Chile and Morocco, for instance, have valuable lessons to teach in this area.<sup>28</sup> Finally, vetting can induce trust, and not just by “re-peopling” institutions with new faces, but by thereby demonstrating a commitment to systemic norms governing employee hiring and retention, disciplinary oversight, prevention of cronyism and so on. Bosnia-Herzegovina, post-Dayton, established an ambitious vetting programme,<sup>29</sup> and Argentina managed to vet, albeit indirectly, promotions to the highest ranks of the military.<sup>30</sup>

## V. Specific contributions of truth, justice, reparations and guarantees of non-recurrence to development

40. The present report has concentrated thus far on contributions that transitional justice measures can make to address two of the most severe overarching developmental gaps faced by societies where massive human rights violations have taken place, namely, a weakened sense of what it means to be a rights-bearer and a deep sense of mistrust, particularly in institutions. It is possible, however, to frame the contribution to development of each of the measures under the mandate in more concrete terms. Following is a non-exhaustive list.

### A. Prosecutions and development

41. Trying cases for human rights violations strengthens the rule of law.<sup>31</sup> To the extent that the rule of law is a precondition of development, prosecutions may have beneficial, if indirect, effects on development.

42. In the face of more severe human rights violations, property crimes tend to receive little attention, despite the fact that they are part and parcel of the experience of abuse for many people. They were certainly pervasive in the German Holocaust, Argentina, the former Yugoslavia, Morocco and Timor-Leste. Authoritarian and conflict-affected regimes also often get involved in economic activities that constitute serious if not illegal market distortions, including money laundering, aggressive rent-seeking and abuse of natural resources, monopoly

<sup>28</sup> On Chile, see, Elizabeth Lira, “The Reparations Policy for Human Rights Violations in Chile”, in Pablo de Greiff, *The Handbook of Reparations*, (Oxford, Oxford University Press, 2006).

<sup>29</sup> See Alexander Mayer-Rieckh, “Vetting to Prevent Future Abuses: Reforming the Police, Courts, and Prosecutor’s Office in Bosnia and Herzegovina,” in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Alexander Mayer-Rieckh and Pablo de Greiff, eds. (New York, Social Sciences Research Council, 2007).

<sup>30</sup> See Valeria Barbuto, “Strengthening Democracy: Impugnación Procedures in Argentina” in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Alexander Mayer-Rieckh and Pablo de Greiff, eds. (New York, Social Sciences Research Council, 2007).

<sup>31</sup> The Special Rapporteur devoted his first report to the General Assembly to the topic of transitional justice and the rule of law, and therefore he will not rehearse the arguments in the present report; see A/67/368.

formation and crony licensing agreements.<sup>32</sup> Even if these behaviours are neither prosecuted nor become the independent object of investigation, information about them collected as part of criminal investigations may have some deterrent effect, or may make a contribution to transparency, which is, arguably, a contribution to development.

43. There are those who argue that the developmental impact of transitional prosecutions would be enhanced if investigations and prosecutions were to focus directly, and not incidentally, on “economic crimes” and if the class of perpetrators was enlarged to include both those who enabled human rights violations by, among other things, making their perpetration economically feasible by sustaining the structures without which systemic crimes would not have been possible, and those who knowingly benefitted from those violations.<sup>33</sup>

## B. Truth-telling and development

44. Truth commissions have made significant recommendations concerning the reform of judicial systems and the strengthening of the rule of law, which, again, is strongly linked with development. Even the Chilean Truth and Reconciliation Commission, limited to investigating crimes leading to death, made far-reaching recommendations concerning the judicial system. The Guatemalan, Peruvian, South African, Liberian, Sierra Leonean and Kenyan commissions went even further, including in their reports broad-ranging analyses of the general socioeconomic structures within which violations took place.<sup>34</sup>

45. In the course of investigating human rights violations, and because of the investigatory leeway truth commissions have, they can recommend the removal of personnel and the restructuring of institutions that may act as developmental blockages.

46. Truth commissions gather information about victimization that may be crucial for purposes of economic reintegration; this is true both of categories of persons and of geographical areas that were the particular targets of violence, and which therefore need special programmes if they are to be effectively reintegrated into national economies. To illustrate the point: the commission in Guatemala emphasized how State policy led to the victimization and deepened marginalization of indigenous communities already living in precarious conditions;<sup>35</sup> similarly, the Peruvian commission examined the differential impact of violence both State-sponsored and perpetrated by the Shining Path on the Andean and Amazonian

<sup>32</sup> See Tony Addison, “The Political Economy of the Transition from Authoritarianism” in *Transitional Justice and Development: Making Connections*, Pablo de Greiff and Duthie, eds. (New York, Social Sciences Research Council, 2009).

<sup>33</sup> See Emily E. Harwell and Philippe Le Billon, “Natural Connections: Linking Transitional Justice and Development through a Focus on Natural Resources,” in *Transitional Justice and Development: Making Connections* (New York, Social Sciences Research Council, 2009).

<sup>34</sup> See A/67/368; see also Pablo de Greiff, “Truth-Telling and the Rule of Law,” in *Telling the Truths: Truth Telling and Peace Building in Post-Conflict Societies*, ed. Tristan Anne Borer (Notre Dame, Indiana, University of Notre Dame Press, 2006) and A/HRC/24/42.

<sup>35</sup> Comisión de Esclarecimiento Histórico, *Guatemala memoria del silencio* (United Nations Office for Project Services, June 1999).

communities;<sup>36</sup> and Morocco's commission acted similarly in focusing on the way in which areas that had illegal detention centres were deliberately deprived of infrastructure and other forms of investment.<sup>37</sup>

47. Again, there are those who argue that the developmental effects of truth commissions would be enhanced if their mandates were expanded or modified so as to make the investigation of economic crimes, including corruption and the exploitation of "conflict resources", among others, as central to their mission as is the investigation of human rights violations. In his most recent report to the Human Rights Council (A/HRC/24/42), on truth commissions, the Special Rapporteur expressed some concerns about the ability of truth commissions to satisfy ever expanding mandates.<sup>38</sup> Nevertheless, there are configurations of functionally differentiated yet coordinated commissions that can make significant contributions to an expanding catalogue of crimes and violations in need of disclosure in times of transition.<sup>39</sup>

### C. Reparation and development

48. Because reparations involve the direct distribution to victims of a set of goods, including economic transfers, those who are interested in the developmental impact of transitional justice initiatives have placed particular stock in this measure.<sup>40</sup> Monetary compensation to individuals for human rights violations may be thought to boost the economic capacity of the beneficiaries, which in turn may be thought to enhance development. This can arguably be augmented if the benefits are crafted in ways that are "developmentally sensitive" by, for example, distributing not just cash but also shares in microfinance institutions.<sup>41</sup>

49. Since "reparations" under international law includes "restitution",<sup>42</sup> restitutory practices, particularly those that seek to clarify and strengthen property or use rights, serve development ends by means of concrete instruments, such as titles.<sup>43</sup>

<sup>36</sup> See Comisión de la Verdad y Reconciliación, Informe Final de la Comisión de la Verdad y Reconciliación, vol. 1 (Lima, 2004); see also Claudia Paz y Paz Bailey, "Guatemala: Gender and Reparations for Human Rights Violations" and Julie Guillerot, "Linking Gender and Reparations in Peru: A Failed Opportunity" in *What Happened to the Women? Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marín (New York, Social Sciences Research Council, 2006); and Ruth Rubio-Marín, Claudia Paz y Paz Bailey, and Julie Guillerot, "Indigenous Peoples and Claims for Reparation: Tentative Steps in Peru and Guatemala" in *Identities in Transition*, Paige Arthur, ed. (New York, Cambridge University Press, 2011).

<sup>37</sup> See the summary of the commission's final report: Authority on Equity and Reconciliation, Summary of the Final Report (Rabat, Authority on Equity and Reconciliation, 2007).

<sup>38</sup> See A/HRC/24/42.

<sup>39</sup> In his report on the country visit to Tunisia he expresses his views about the particular way in which the law establishing the Truth and Dignity Commission in Tunisia proposes to deal with cases of corruption; see A/HRC/24/42/Add.1.

<sup>40</sup> See Naomi Roht-Arriaza and Katharine Orlovsky, "A Complementary Relationship: Reparations and Development", in *Transitional Justice and Development: Making Connections* (New York, Social Sciences Research Council, 2009).

<sup>41</sup> See Hans Dieter Seibel and Andrea Armstrong, "Reparations and Microfinance Schemes" in *The Handbook of Reparations*, Pablo de Greiff, ed. (Oxford, Oxford University Press, 2006).

<sup>42</sup> See resolution 60/147 of 16 December 2005, annex, para. 19.

<sup>43</sup> See Chris Huggins, "Linking Broad Constellations of Ideas: Transitional Justice, Land Tenure Reform, and Development", in *Transitional Justice and Development: Making Connections*, Pablo de Greiff and Roger Duthie, eds. (New York: Social Sciences Research Council, 2009).

50. The trend in large-scale reparations programmes is in the direction of greater “complexity”; that is, towards the distribution of measures that go beyond monetary compensation, such as provisions for health and education.<sup>44</sup> Both of these are themselves factors of development. Discussions about the provision of health and educational services as reparations can also disclose gaps in existing institutions and provide an incentive for improving them, and not necessarily just for the direct victims.

51. There is also an emerging trend in reparations rhetoric (if not always in practice) towards “collective” or “community” reparations. The Guatemalan commission made recommendations to this effect, as did the Peruvian and the Moroccan commissions, both of which are slowly starting their implementation. That questions linger about whether such measures can be sufficiently differentiated from development programmes speaks to their theoretical developmental impact.<sup>45</sup>

52. As with other transitional justice measures, the impact of reparations could (in theory) be thought to be enhanced if we were willing to countenance innovations to current practices (beyond those mentioned). The simplest way of doing so would be to increase the categories of violations for which reparations benefits are offered, to include, for instance, certain types of economic crimes.<sup>46</sup>

#### **D. Guarantees of non-recurrence and development**

53. Guarantees of non-recurrence, unlike the other “pillars” of the mandate, truth, justice and reparation, is not a category that designates a measure or a set of measures, but a function that can be played by a variety of initiatives. To the extent that the category refers to particular measures, in practice, the label refers to institutional reforms, primarily, vetting and the restructuring of the security and justice sectors, both of which can have important developmental effects.

54. At least in part because, generally speaking, vetting procedures are administrative rather than criminal in nature, they can make use of less stringent evidentiary and procedural rules that may make them more efficient than criminal trials as forms of redress for certain types of crimes.<sup>47</sup> These may include typically hard-to-prove economic crimes, such as illicit enrichment and money laundering, among others. Vetting procedures can use as criterion of screening and exclusion a

<sup>44</sup> See Pablo de Greiff, “Repairing the Past,” in *The Handbook of Reparations*, Pablo de Greiff, ed. (Oxford, Oxford University Press, 2006).

<sup>45</sup> Despite the importance of establishing links between reparations and development programmes, they ought not to be confused with one another; strictly speaking, these are different programmes, entail different types of acknowledgment of responsibility, normally serve different constituencies and ought to distribute slightly different types of goods, and for different reasons. I elaborate this argument in Pablo de Greiff, “Justice and Reparations” in *The Handbook of Reparations*, Pablo de Greiff, ed. (Oxford, Oxford University Press, 2006).

<sup>46</sup> Just as with respect to the possibility of similarly enhancing the impact on development of the other transitional justice measures, these choices concerning reparations will also present difficulties, including the possible dilution of benefits among an increasingly large universe of victims.

<sup>47</sup> See Alexander Mayer-Rieckh, “On Preventing Abuse: Vetting and Other Transitional Reforms” and Federico Andreu-Guzmán, “Due Process and Vetting” in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Alexander Mayer-Rieckh and Pablo de Greiff, eds. (New York, Social Sciences Research Council, 2007).

concept of “integrity” with farther reach than the usual human rights criteria used by the other redress measures, thus making it possible, in theory, to screen for economic abuses.<sup>48</sup>

55. But it is largely on account of an expected “peace dividend” that comes about from institutional reform under the umbrella of security sector reform that this sort of measure awakens enthusiasm among those interested in the development potential of transitional justice. The savings, both direct and indirect, of eliminating, for example, security agencies involved in massive human rights violations — savings from reduced security-related expenditures, from efficiencies that result from increased security, and so on — the argument goes, could be put to better use in the area of development.<sup>49</sup>

56. Of perhaps more relevance to the universal aspirations of the post-2015 development framework are more gradual measures that may be taken to prevent recurrence (or occurrence) of abuses within the security and justice sectors. 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 most serious crimes, such as homicides and rapes) and 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 that also contribute to other developmental goals.

## VI. Caveats and limitations

57. This report has highlighted both general and specific ways in which the four measures under the mandate, singly, and, particularly, collectively, can contribute to development. These contributions certainly warrant the interest in the measures on the part of development promoters. Especially considering the magnitude of the challenges faced by development actors in contexts in which massive human rights violations have taken place, it would be short-sighted to ignore instruments for the realization of development goals.

58. The report, however, has not focused on a topic that is certainly important; namely, the question of reverse causality or dependence. While it may be true that transitional justice can make a contribution to development, the developmental preconditions of the implementation of transitional justice measures have not been sufficiently explored. It should not be forgotten that trials require operative courts; reparations programmes require, among other things, resources to distribute; even the mildest form of institutional reform, vetting, requires institutions strong enough to withstand having personnel removed. It is not clear that these preconditions obtain everywhere that massive human rights violations have taken place. In particular, post-conflict countries may fail to satisfy these preconditions. Given that

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<sup>48</sup> On integrity in vetting procedures, see Mayer-Rieckh, “On Preventing Abuse”, in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Alexander Mayer-Rieckh and Pablo de Greiff, eds. (New York, Social Sciences Research Council, 2007).

<sup>49</sup> On this general issue, see Alexander Mayer-Rieckh and Roger Duthie, “Enhancing Justice and Development Through Justice-Sensitive Security Sector Reform”, in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Alexander Mayer-Rieckh and Pablo de Greiff, eds. (New York, Social Sciences Research Council, 2007).

the measures under the mandate are grounded in legal obligations, the question is not whether these obligations ought to be satisfied, but how. Much more work needs to be done in order to provide an answer to this question.

59. The Special Rapporteur has already pointed out the tendency on the part of many Governments to pass development programmes as transitional justice programme, a tendency that takes both mild and extreme forms; the latter consists in the assertion that justice can be reduced to development, that violations do not really call for justice but for development. The milder form consists in pretending that development programmes are reparation programmes. Both forms of the tendency constitute a failure to satisfy abiding obligations that include both justice and development initiatives.

60. Despite the developmental effects of the implementation of truth, justice, reparation and guarantees of non-recurrence, the Special Rapporteur emphasizes that these measures do not exhaust the development agenda of the 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 and systematic human rights violations have taken place.

61. While transitional justice can make both the general and the specific contributions to development outlined in this report, among others, none of its constitutive measures have been functionally designed, for example, to achieve deep socioeconomic restructuring, and hence they have no such capacity. Since a successful transitional process will likely require such restructuring, the Special Rapporteur emphatically calls for the adoption of the corresponding initiatives, insisting, all the while, on the significance of the role that the measures under the mandate can play in such processes of transformation.

## VII. Conclusions and recommendations

### A. Conclusions

62. **In the light of the ongoing discussions about the post-2015 development goals, the Special Rapporteur highlighted, in the present report, the importance of justice and rights considerations to development.**

63. **The Special Rapporteur notes that 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 security and, indeed, broader indications about the capabilities of individuals to achieve well-being.**

64. **Recent experience demonstrates that narrow developmental efforts that exclude justice and rights considerations fail to achieve sustainable human development. Some countries that had been considered success stories owing to the progress they had made on the Millennium Development Goals were subsequently confronted by massive political upheavals with protestors demanding personal security, good governance and access to justice, alongside economic opportunities. These and other events strongly contradict the thinking of certain Governments that justice, security and development are**

independent aims that can be merely sequenced or, worse, pursued one at the expense of the other.

65. In this context, the present report has discussed the relevance of justice, including transitional justice, to development by underlining the consequences of human rights violations and abuse. Whether they occur during authoritarian regimes or conflict, massive rights violations weaken the sense of people as rights-bearers and undermine social trust, both of which hamper development.

66. The measures under the mandate, truth, justice, reparation and guarantees of non-recurrence, then, may have both general and particular beneficial developmental effects. At the general level, transitional justice can mitigate adverse forms of recognition in the wake of human rights violations by signalling the status of victims as equal rights bearer through acknowledging people's stories, desire for justice and rights to compensation and by offering voice and recognition to individuals. Implementing transitional justice after repression and conflict can also foster civic and institutional trust and build positive social capital, as the measures reassert the normative commitment that was shattered by massive human rights and humanitarian law violations and abuse.

67. The measures can also make specific contributions to development. Criminal prosecutions strengthen the rule of law. The contributions of truth commissions are manifold, ranging from recommendation for reforms of the judicial system and the strengthening the rule of law to recommendation for vetting programmes. The reports of commissions may also provide analysis, information and incentives for the economic reintegration of victims of rights violations, and the identification of geographical areas or communities that were particular targets of violence, which often coincide with marginalized groups and regions. Reparation programmes involve the direct distribution to victims of a set of social and economic goods. The provisions of health care and education services as reparatory measures can have institutional impacts benefitting also non-victims. Restitution programmes can also enhance development aims by means of concrete instruments, such as titles. Vetting and security sector reform, as part of guarantees of non-recurrence, can similarly carry important positive development effects including enhancing trust in security sector institutions, important for development, and by removing personnel that may act as spoilers of development.

68. It is with regard to the fourth measure of his mandate — guarantees of non-recurrence — that the Special Rapporteur wishes to particularly underline the potential for actions with universal application for the post-2015 framework. If the framework is to apply to all countries; it must select goals and measures that are relevant in all situations. Not all transitional justice measures are relevant in all countries at all times; but those that aim to strengthen the capacity and the accountability of security and justice institutions are universally relevant, whether for high, middle or low income countries, for post-conflict countries or for those that simply wish to diminish the chances of conflict escalating in future.

69. Despite the important contributions that truth, justice, reparation and guarantees of non-recurrence can make to development, the Special Rapporteur emphasizes that these measures cannot achieve on their own deep

social, political and economic transformations that are called for in the aftermath of conflict or repression. He therefore stresses empathically that coordination between justice, security and development initiatives is crucial for the success of transitional processes in post-authoritarian or post-conflict settings. Such coordination can in turn reinforce the essential role that transitional justice measures play in these societies.

## **B. Recommendations**

70. The Special Rapporteur recalls that States have abiding legal obligations under international law to implement in the aftermath of repression and conflict measures that realize the right to truth, justice, reparation and guarantee non-recurrence. In order to satisfy these obligations, States should renounce the rhetoric and avoid actions that reduce justice to developmental programmes. The Special Rapporteur further urges States not to reduce justice merely to stable institutions and a productive economy, and to renounce strategies that indefinitely postpone justice under the excuse of achieving economic growth first.

71. In line with States' international legal obligations to secure justice and development, the Special Rapporteur urges States to move beyond the failings of the original Millennium Development Goals framework, where the goals and indicators fostered the appearance of development success stories in some societies where development was self-evidently undermined by large-scale deficits in security, justice and rights. The Special Rapporteur therefore encourages the incorporation of goals on access to justice and remedy in the post-2015 development agenda. Transitional justice could be subsumed under this goal, with particular reference to the universal application of measures to guarantee non-recurrence. The Special Rapporteur takes note of the report of the Secretary-General's High-Level Panel of Eminent Persons, which reveals an understanding of the importance of integrating justice consideration into the new development goals and encourages further bolder steps in this direction.

72. The Special Rapporteur encourages development agents to reflect in their practice theoretical advances in development thought, thereby firmly anchoring justice and right-related concerns in the new development agenda.

73. In particular, the Special Rapporteur encourages development promoters to heed the lesson that justice, security and development are linked to one another and, specifically, that in the absence of justice, neither security nor development can be fully realized. To illustrate, widely mistrusted security agencies will have difficulties fulfilling the tasks of providing citizen security; lacking a robust sense of the possibility of claims-raising, participation and ownership in development programmes, recognized as crucial for their sustainability, is little more than rhetoric.

74. The developmental significance of transitional justice measures lies in the possibility of fulfilling the normative expectations of victims of past human rights violations as well as others, thereby contributing to strengthened agency, capacity to undertake coordinated action and the participation of victims and non-victims in developmental processes. In this context, the Special Rapporteur urges States to adopt a comprehensive transitional justice approach.

**Implementing such programmes requires funding and capacities, some of which will require international support.**

**75. Despite the developmental potential of comprehensive transitional justice policies, the measures under the mandate, on their own, will not be able to bear the full weight of making up for the developmental deficits of countries emerging from repression or conflict. None of the measures have been functionally designed to achieve deep socio-economic restructuring, and hence they have no such capacity. Since a successful transitional process will likely require such restructuring, the Special Rapporteur emphatically calls for the adoption of the corresponding security and development initiatives, insisting, all the while, on the significance of the role that the measures under the mandate can play in such processes of transformation, especially when coordination with security and development initiatives is explicitly sought.**

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