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ICJ Oral Statement in the Interactive Dialogue under Item 3 on the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff (A/HRC/21/46)

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Distinguished Special Rapporteur,

The International Commission of Jurists (ICJ) welcomes your first report to the Human Rights Council (the Council) in which you elaborate on the four pillars of your mandate. Your mandate, and the way in which the Council engages with it, calls for a comprehensive approach: one that is sensitive to each particular situation; but without compromising the need to ensure accountability and access to justice.

Mr Rapporteur,

Without being exhaustive, the ICJ reiterates the need to ensure that full account is taken of four cross-cutting issues:

1. The ICJ's experience has taught us that the role of judges and lawyers in times of crisis and transition is essential to safeguarding human rights and the rule of law. Integral to this is the independent and effective functioning of judicial mechanisms. Under no circumstance should a situation of crisis or transition be invoked to deny the right to a fair trial or the right to effective access to justice, including effective remedies and reparations. The judiciary and legal profession have an enhanced responsibility to ensure the rule of law and the effective administration of justice. All branches of government must at the same time take necessary measures to ensure that judicial mechanisms can fulfil this role.
2. Deficiencies are often present in the establishment of 'transitional mechanisms'. The transparent and inclusive establishment of such mechanisms, consistent with international standards, is critical to their ability to deliver truth, justice, reparation and guarantees of non-recurrence. Mechanisms must not be used as a means of bypassing the ordinary criminal justice process. Law and practice must not provide amnesties or immunities for gross human rights violations. The ICJ is particularly troubled, in that regard, by the very recent Executive Ordinance in Nepal under which mechanisms are to be established with absolute discretion to recommend the granting of amnesties for gross human rights violations.
3. Especially from the perspective of achieving a sustainable transition, your mandate also demands that economic, social and cultural rights form an integral part of transition efforts. This is particularly so in the development and implementation of post-conflict recovery strategies.
4. Also important is the need for transitional mechanisms to pay due regard to past abuses of human rights by business enterprises.

Finally, in its engagement with your mandate, this Council must act in a non-selective way. It is unacceptable, for instance, that there continues to be a lack action to address the commission of innumerable gross human rights violations under the CIA-led interrogation, secret detention and renditions programme.

Mr Rapporteur,

How do you see the role of this Council in assisting the achievement of the pillars of your mandate, particularly as they relate to the matters addressed in this statement?

I thank you.

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