

Observations by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Pablo de Greiff, on the conclusion of his recent visit to Sri Lanka

Geneva/Colombo, 11 April 2015

I would like to thank the Government of Sri Lanka for the invitation extended to undertake a visit to the country from 30 March to 3 April 2015. In the course of the visit, I was able to meet with high-level Government officials at central and provincial levels, members of the judiciary, civil society organizations, political parties, religious leaders, and victims. I travelled to both the North and the Eastern Provinces, including Batticaloa, Jaffna, Kilinochchi and Vavuniya. I am grateful to the Government for the collaboration during the visit, and to everyone who met with me. I also wish to express my gratitude to the Office of the High Commissioner for Human Rights and to the United Nations office in Sri Lanka for their support and assistance.

The objective of the visit was to examine the opportunities and constraints faced by Sri Lanka in its efforts to address the legacies of massive past violations and abuses, including those that resulted from a conflict that spanned more than thirty years.

Sri Lankans have of late taken decisions that open the possibility of important progress in the protection of rights of all citizens. Those decisions reflect the view that a military victory does not – by far – settle all questions about how people can live together. If handled well, the case of Sri Lanka has the potential to constitute an example for the region and for the world of how a sustainable peace ought to be achieved. Those decisions manifest the end of the country's temporary leave from an international rights architecture that it contributed to construct. Most of the work necessary to redress violations and abuses, however, is still to be done. While long-term comprehensive policies are designed with the appropriate consultations, it is urgent to guarantee the cessation of all violations, and implement victim-assistance programmes.

Overuse of commissions of inquiry leading to a confidence gap

In the past, Sri Lanka has established numerous commissions of inquiry for mass violations. Some of these commissions have produced useful reports, including wide-ranging recommendations. Others have produced reports that have never been made public. Failed, inadequate or uneven implementation of their recommendations has been a common feature. They have not contributed to closing the significant confidence gap between communities, to securing the rights of victims to truth, justice, reparation, and guarantees of non-recurrence, or to making State institutions more trustworthy in the eyes of citizens. On the contrary, the accumulated result of these efforts has

increased mistrust in the Government's determination to genuinely redress those violations. At this critical juncture, the country cannot afford to simply reproduce an approach that is characterized by the proliferation of largely unrelated and inconsequential 'ad hoc' initiatives. Serious consideration needs to be given to establishing transitional justice mechanisms that contribute to building lasting institutions and capacities, and which allow for effective implementation.

#### No shortcuts to reconciliation

Recently, 'reconciliation' has regained significant attention as the country is moving forward. In addition to inclusive political arrangements reconciliation calls for the creation of initiatives that satisfy legally binding rights to truth, justice, reparation, and guarantees of non-recurrence. Far from being alternatives to one another, these initiatives are complementary elements of a reconciliation policy. Hence, there are no 'shortcuts' to reconciliation. Relying on some of the measures at the expense of others, requiring victims to 'choose' between measures while sacrificing others would be both legally unjustified and practically inconducive. For instance, conditioning 'reparation' benefits on the victims' willingness to give up their rights to truth and justice would undermine their character as reparations.

#### The need for a State policy centered on the notion of human rights

There are violations that we cannot simply expect others to forget. Redressing those violations is not a matter of personal recollection, but of fundamental, basic rights. Hence, the aim should be the articulation of a State policy, rather than a particular Government's policy that might be abrogated once new authorities are in place. Being a matter of the promotion of basic rights, initiatives relating to truth, justice, reparation, and guarantees of non-recurrence should be designed and implemented in such a way that they place the notion of human rights at their core. The sole and sufficient criterion for triggering and accessing such initiatives is the violation of the rights, and not considerations relating to identity, affiliation, ethnicity, religion, or partisan politics. This is a message that should be heeded both by State authorities and by civil society in general.

All Sri Lankans – those in the different branches of power, political parties, as well as members of civil society, including religious leaders, the media, and non-governmental organizations – have a responsibility to prevent the instrumentalization of transitional justice measures for the sake of narrow partisan interests. Transitional justice measures must not be thought of as instruments of 'turn-taking' to selectively benefit one side.

#### Comprehensive redress needed

If transitional justice policies are to respond effectively to human rights violations, they need to be designed in such a way that their scope, including their temporal scope (the period during which the violations that they seek to redress occurred), expresses the determination to concentrate on the redress of basic rights comprehensively, rather than the rights of some at the expense of others. Although the final days of the armed conflict, because of the intensity of the violence deserve special scrutiny, they by no means exhaust either the catalogue of rights or the holders of rights that call for redress. The history of Sri Lanka includes rights violations and rights holders that both precede and that go beyond the direct participants in the conflict. A comprehensive redress policy cannot target, either for benefits or for responsibilities, one community alone. The initiatives must track violations wherever they occurred and independently of the identity or affiliation of the victims or the perpetrators. Only this can serve to strengthen the rights of all Sri Lankan citizens.

### Consultation and participation

Consistent with the idea that truth, justice, reparation, and guarantees of non-recurrence are measures intended to promote fundamental rights, the design and implementation of these measures call for consultative and participatory methods. This has not been the hallmark of past Sri Lankan efforts. Consultation with those affected by the violations is essential from a conceptual standpoint for rights cannot simply be foisted but need to be exercised. Citizens cannot be simply presented with 'solutions' in the design of which they were given no role. It is equally crucial from a practical standpoint, for transitional justice measures depend, to a large extent, on the willingness of victims and others to participate, for example, by sharing pertinent information with the relevant institutions. It is also necessary from the standpoint of effectiveness, for the measures, after all, should respond to the needs and expectations of their potential beneficiaries. And it is called for in terms of their sustainability for these are inevitably long-term projects that will likely depend on the willingness of stakeholders to defend them over time from the contingencies of politics. This is more likely to happen if the stakeholders can claim ownership over them. Moreover, civil society organizations in Sri Lanka have accumulated great expertise and knowledge on transitional justice matters. This potential needs to be effectively taken advantage of.

Finally, regarding the importance of process and participation, in a country in which there are, as a consequence of conflict, reportedly close to 90,000 women-headed households, it is imperative to design and implement measures of truth, justice, reparation, and guarantees of non-recurrence in a way that facilitates both the effective and informed participation of women, and to guarantee that the outcomes promote and protect their rights. Likewise, special attention should be paid to the situation of affected children, adolescents, and the disabled.

Immediate action: Missing persons, harassment, violence, detention, land and psycho-social support

In all cases, but particularly in those characterized by low levels of trust, consultations take time. However, it is imperative for Sri Lanka to take some immediate action to demonstrate its commitment to redressing past violations. The solution to this dilemma should not undercut the conditions on which both the legitimacy and the effectiveness of transitional justice measures rest.

Immediate action must include clarifying the fate of the disappeared, for the suffering which follows from these cases generates rights violations on their own; refraining from arbitrary detentions, which likewise undermine trust and give rise to further violations; addressing land issues, which involve considerations both of justice and of livelihoods; and putting an immediate end to continuing forms of harassment, violence and unjustified surveillance of civil society and victims, in particular women in the Eastern and Northern provinces, which cast a serious doubt on current efforts. Progress on each of these domains, in conjunction with the provision of urgently needed psycho-social support to victims, is feasible in the short run. It is also a necessary condition that builds trust, thereby enabling victims' participation in any future transitional justice mechanism.

To conclude, in rejoining the international community of rights, Sri Lanka will find more than willing partners. Let me be clear; the issues at stake do not primarily involve obligations to others, the international community, but ultimately, to its own citizens. The obligations that stem from an international system which Sri Lanka contributed to constructing, are the expression of what the country thought States owe to their own citizens. These obligations include the right to the full truth about the violations that took place during a long swath of its history; to the investigation, prosecution, and punishment of those responsible for those violations; to the effective and equitable reparation of the violations; and to measures that seek to prevent the recurrence of those violations in the future.

There is no single model for the satisfaction of these rights. But there are experiences that may offer useful lessons about how to achieve these goals, experiences that involve different institutional designs, including different balances between national and international processes, which should be the subject of informed and open deliberations in the country. My mandate, as well as other international instances, including the Working Group on Enforced and Involuntary Disappearances, which the Government has already invited, stands ready to contribute to these deliberations.

Mr. de Greiff was appointed by the United Nations Human Rights Council as the first Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence in 2012. As a Special Rapporteur, he is independent from any government and serves in his individual capacity. Mr. de Greiff has extensive professional and academic expertise on transitional justice issues, including on the four measures under this mandate (truth, justice, reparations and guarantees of non-recurrence).

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