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**Statement by Pablo de Greiff
SPECIAL RAPPORTEUR ON THE PROMOTION OF
TRUTH, JUSTICE, REPARATION AND GUARANTEES OF
NON-RECURRENCE**

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Mr. President, Excellencies, Ladies and Gentlemen,

‘Guarantees of non-recurrence’ is the explicitly forward-looking face of redress for mass violations and implies a preventive function in its very nature.

Prevention is not merely a question of rhetoric. It is crucial to think about ‘guarantees of non-recurrence’ as an object of concrete and deliberate policy-making that can be planned, budgeted, implemented and monitored and not simply as a rhetorical device or an aspiration.

Hence, I dedicate my thematic report to offering a clarification of the concept of guarantees of non recurrence, and a framework with main elements of an actionable non-recurrence policy (A/HRC/30/42). This has been missing so far in most transitional justice debates. The report is to be seen in conjunction with my forthcoming report to the General Assembly, in which I explore the intersection of transitional justice with security sector reform.

My country visit to Burundi (A/HRC/30/42/Add.1, A/HRC/30/CRP.1) and my advisory visit to Sri Lanka¹ are two cases against which the suggested framework can be tested, retrospectively in the former, and prospectively in the latter case.

I

Mr. President,

There is no such thing as a universal non-recurrence policy that can be applied to any type of a transition. Context, needs, and stage in a transitional process matter as much as what institutions are apt to accomplish, the violations that need to be redressed most or that are most likely to recur. Importantly, what is necessary and feasible for prevention changes over time.

Furthermore, we must stop thinking that prevention is merely a question of ‘institutional engineering,’ that institutional reform provides sufficient bulwark to future violations and abuses. In addition to institutional reforms, interventions in the societal sphere to strengthen civil society,

¹ Observations by the Special Rapporteur following his visit to Sri Lanka, see www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15820&LangID=E.

and in the individual and cultural spheres, in order to transform attitudes and mindsets are called for if non recurrence is going to be achieved. In order to develop an effective preventive State policy, interventions in all three areas are necessary.

Since transitional justice work increasingly occurs in conflict and weakly institutionalized settings, it is worth mentioning two basic pre-conditions at the level of official State interventions: first, security for all. Significantly more work needs to be undertaken to protect the rights of individuals in conflict areas including of civilians trapped in the cross-fire of a conflict. Particular challenges arise for the most marginalized groups and individuals in such contexts. Non-recurrence policies rest upon a modicum of security for all and not only for a few (the better-off or those in power).

Second, the provision of legal identity to all persons. Officially recognized identity (substantiated through birth certificates or identity documents) is a gateway for the realization of all fundamental rights and most official procedures relating to civil status, obtaining a nationality, gaining access to States services or social benefits. Strikingly, one out of four babies born in 2012 worldwide was not registered with civil authorities (UNICEF). Civil records are often willfully destroyed or damaged during conflict. Considering how vital legal identity is for individuals to exercise their very basic rights, for example to vote, participate in public affairs, claim redress, obtain education, health care and access to land, transitional States cannot miss the opportunity to remedy this very basic question.

More complex and ambitious efforts at the institutional level pertain to reforms of the justice system (aiming at strengthening the institutional independence of the judiciary and the individual independence of judges) and the security sector (an issue that I further develop in my forthcoming report to the General Assembly). Interventions at this level also include changes in emergency or counter-terrorism legislation preventing the misuse of law-enforcement competences; constitutional reforms, including incorporating the separation of powers principle, removing discriminatory provisions and incorporating a bill of rights; and limiting the purview of military jurisdiction over human rights cases.

Mr. President,

Prevention is not merely a matter of making changes in texts; prevention calls for changes in practice. Thus, in addition to transforming institutions, it will also be important strengthen civil society.

While discussions about transitional processes have recognized the contributions of civil society organizations in terms of advocacy, evidence gathering, monitoring functions, and reconciliation initiatives, the preventive potential of interventions at the societal level has not been sufficiently explored.

It is well known that systemic violations and abuse can only take place through the targeted disarticulation of power. Conversely, experiences of many countries that are successfully pursuing their transitional paths demonstrate the ‘power of aggregation’ of civil society, which carries a decisive preventive function. Where people are not alone raising their claims, victimization is less likely.

Beyond the obvious measures of ceasing criminalization, attacks, intimidation and harassment of civil society representatives and of removing the various obstacles to their operation, the preventive potential of civil society can be strengthened through, inter alia, establishing legal empowerment regimes at the community level (aimed at facilitating legal services to advance the victims’ rights, and promote government accountability); and creating an enabling environment for civil society organizations to fulfill their role, by *pro-actively* promoting fundamental freedoms of expression and opinion, peaceful assembly and association, and religion or belief.

In the end, however, institutional reforms and an empowered civil society do not amount to the sort of social transformation that guarantees non-recurrence. One more piece is missing, namely, interventions at the individual and cultural levels. I am calling at Member States and other actors to devote more attention to interventions at the level of the cultural sphere and

individual dispositions. Educational reforms, cultural interventions, including memorialization, and archives should form a *living* part of any State's non-recurrence policy. Such initiatives should aim at fostering analytic thinking and critical debate as well as a better understanding of the contemporary challenges of exclusion, violence and repression.

In this context, contribution of well-preserved, protected and accessible archives can be important. It is against this background that I am presenting, in the annex to this report, the outcome of a year-long process of consultations and expert deliberations: the Set of General Recommendations on Archives, for the consideration of this Council.

One largely untouched aspect in the area of 'guarantees of non-recurrence' is the provision of psychosocial support and trauma counselling. This area of work is central for repairing the social contract (the relationship between the State and the individual) and social cohesion (relationships of individuals with one another) after periods of violence and/or oppression. These twin goals are essential to offering victims *and* society the highest possible guarantees available that violations will not reoccur. My advisory visit to Sri Lanka has re-emphasized that more concerted efforts need to be undertaken to fully develop the potential of such initiatives to further reconciliation.

Finally, I would like to emphasize the importance of economic transformations as a preventive tool. This goes far beyond the established correlation between unrest and certain types of (long-entrenched) inequalities. It relates prominently to the fact that in many countries in which the predominant or exclusive source of paid employment is the State, the stakes of losing power reach an existential dimension. Consequently, this entails significant incentives for highest officials to remain in power – even through blatantly obvious illegal means. The permanence of regimes in power through illegitimate means greatly undermines any preventive and reconciliatory effort. The current situation in Burundi, which I visited last December, offers a shockingly clear example of such a case.

II

Mr. President,

In light of the alarming changes in Burundi since my visit and particularly since the end of April 2015, I am offering you an update on the recent situation (distributed in the room, A/HRC/30/CRP.1) in addition to my country visit report (A/HRC/30/42/Add.1) in relation to the key issues pertinent to my mandate.

My visit coincided with two main developments in Burundi: First, the new Truth and Reconciliation Commission was inaugurated. While this eventually only happened 14 years after the signing of the Arusha Agreement, this ‘break-through’ had given some hope to parts of Burundian society of another chapter of history being opened. Second, the UN Peace Mission (BNUB) was wrapping up simultaneously. Again, the timing is telling. The Peace Mission departed five months *ahead* of the decisive elections (planned for April/May 2015), and following more than a decade of heavy substantive and financial investment by the United Nations, including by its Peace-building Commission, and other parts of the international community.

At the farewell party of BNUB organized by the then Minister of Foreign Affairs, Mr. Kavakure (dismissed in May 2015), Burundi claimed for itself the status of a ‘normal developing country.’ At the end of my visit, I offered a clear reminder both to Burundi and its partners that human rights lie at the core of development, both conceptually and practically. I have reiterated this message repeatedly against the background of events that have unfolded since April 25, when President Nkuruziza’s candidacy for a third term was announced.

Since that announcement, Burundi has appallingly turned away from the path it had followed since the 2000 Arusha Agreement. It has not only turned away from its commitment to become a rule-of-law-based society. What is more is that the ‘tradition of impunity’ of the past decades has not only been further entrenched, it has become a very deliberately used tool of repression and violence.

In relation to the over 100 killings, hundreds of arbitrary arrests and many documented cases of torture and ill-treatment since the end of April 2015, no effective and thorough investigations are being undertaken except for one prominent case of a senior Government's security adviser, in which the President required an investigation team to "report back within a week".

As the situation on the ground has changed so dramatically, I am not addressing the detailed issues elaborated in my visit report. Instead, I am raising alarm that the international community, regional and international organizations included, cannot afford to simply stand by and wait for new mass atrocities to recur. This would risk a major conflict in the Great Lakes region, the proportions of which no one can predict.

People in Burundi and the region have endured untold suffering and the worst imaginable violations. They must be spared another cycle of violence, with the misery and destruction that violence and repression always leave in their wake.

Against this background, I urge this Council and the international community that any future political settlement needs to ensure that it addresses long-standing, systemic failures. These pertain to 1) creating real opportunities to uncover the truth of past mass violations by an independent entity; 2) making sure that the cycle of impunity is broken by abolishing the 'temporary' immunities for criminal individual responsibility which have become a limitless amnesty; 3) refraining from further delaying the responsibility for international crimes; 4) offering both immediate victims assistance programmes for the most vulnerable, and, in parallel, device a comprehensive reparations scheme, including education and health benefits; and 5) working towards a State structure and a society that are apt to prevent future mass violations to reoccur.

The glimmer of hope still present at the time of my last December's visit has been extinguished subsequently by ruthless repression and violence for political ends. The general situation of insecurity reigning in the country is a direct consequence of the violence and threats

by the youth militia supported by the ruling party prior and during the elections and of the blatant subversion of carefully designed nation-building mechanisms established by the Arusha Agreement and Burundi's constitution . The 'tit-for-tat killings' that have shaken the country in the past weeks exemplify the climate of general insecurity, which no one, including the ruling party, is currently spared from.

This highly volatile situation requires a resolute and immediate response by the international community and this Council in particular – a response which ensures an impartial assessment of human rights violations on the ground, notwithstanding the identity or affiliation of the victim or the perpetrator; a response, which would break the 'tradition of impunity' which lies at the heart of most of the country's difficulties.

The Council as the main human rights entity of the United Nations has to give a concrete and clear sign so as to prevent the recurrence of the worst imaginable violations. Only by a determined action, can this Council live up to the long-standing international promise – a promise inscribed in one of the few memorials in Burundi "Plus jamais ça."

III

Mr. President,

I am confident that the earlier described framework to design an effective State policy on non-recurrence will be useful for Sri Lanka, which I visited in an advisory role in March/April 2015.² At the end of the visit I noted that – 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.

To fully realize this potential Sri Lanka needs to work on parallel tracks. On the one hand, a deliberate *process* needs to be devised by which the country will move ahead towards a

² Observations by the Special Rapporteur following his visit to Sri Lanka, see www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15820&LangID=E.

comprehensive transitional justice strategy addressing the manifold challenges the country is facing such as the in-depth reform of the justice system and the security sector (military, police, intelligences services included), the establishment of independent truth-seeking mechanisms, the design of a comprehensive reparation scheme to name a few. Such process needs to be guided by carefully designed and conducted consultations (not a one-off consultation) that will involve all sectors of Sri Lankan society, and foremost victims of past gross violations. A firm commitment by the authorities is indispensable to take such long-term process forward.

Simultaneously, immediate action must include clarifying the fate of the disappeared, , addressing land issues, making sure that long-standing practices of arbitrary detentions; of surveillance and harassment—particularly of women in the Eastern and Norther provinces, many of them already victims of the conflict—have really come to an end, and last but not least, providing psycho-social support to victims. Progress on each of these domains together with concrete steps in relation to ensuring criminal accountability, such as the prevention of the destruction of archives, including those in the hands of the military and the intelligences services; the gathering of evidence to prepare future criminal cases; the establishment of a truly effective witness and victims' scheme, directed by an entity which would be genuinely trusted by the victims in particular.

The results of the numerous past commissions of inquiry and the failed efforts to provide for criminal accountability have severely eroded the trust of the victims and society. As I stated before, at this critical juncture, the country cannot afford to simply reproduce an approach characterized by the proliferation of deliberately half-hearted initiatives that lack basic trust by the population and that have failed to remedy fundamental institutional deficiencies. These systemic deficiencies resulting from the long-entrenched discrimination, the 30-year long conflict and the subsequent repressive regime have not disappeared over night. To address them, a long-term process is required. The debate about whether accountability procedures should be national or international is a proxy for the basic questions of how to guarantee that whatever institutions are set up can be reliably trusted by citizens to do their job independently, and of where the specialized capacities to carry out complex investigations into mass atrocities are going to come from. Any accountability strategy needs to provide answers to these basic questions.

IV

In relation to Tunisia, a country whose situation I have followed since my visit in 2012, I would like to call on the authorities and the society to provide the Truth and Dignity Commission with the space and an enabling environment so that it can live up to its task. In turn, I call on the Commissioners to overcome their personal and professional disagreements which have caused delays and prejudice and create obstacles for the transitional justice process. They should start working together with a shared vision as *one* National Commission and not as representatives of narrower constituencies. Members of truth commissions are always given a historic responsibility vis-à-vis victims and society. I also call upon the Commission to create space for dialogue and consultation with civil society actors, particularly victims, enabling them to express their views and concerns on transitional justice matters.

V

Mr. President,

I have the pleasure to announce that the Government of the United Kingdom of Great Britain and Northern Ireland has invited me to visit the country this November. The Government of Cote d'Ivoire had already issued an invitation for a visit last year, which I hope I will be able to undertake in 2016. Further pending visit requests concern Brazil, Cambodia, the Democratic Republic of the Congo, Guatemala, Guinea, Indonesia, Kenya, Rwanda and Sri Lanka. I reiterate my call to Governments to respond to country visit requests in an expeditious manner.

An additional central undertaking of the mandate is the process of regional consultations carried out over the past three years. I am in discussion with a couple of governments in the region host the fifth and last consultation – the Regional Consultations on transitional justice for

Asia-Pacific this December. The results of all the five consultations will form part of the study as requested by the Council.

I thank you for your attention.