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Mr. Chairman, thank you for the opportunity to present on the "Observation of the Progress of National Reconciliation and Reconstruction in Sri Lanka," a project organized by the Government of Japan (GoJ) in association with Columbia University.

I was part of a fact-finding delegation to Sri Lanka, including officials from Bangladesh, Brazil, Italy, Japan, Romania and South Africa. His Excellency Mr. Tsuneo Nishida, Permanent Representative of Japan to the United Nations, prepared a chairman's report based on discussions by the delegation with the Government of Sri Lanka (GSL), the UN country team, Colombo-based diplomats, Sri Lankan civil society, and members of parliament. While my statement draws on the chairman's report, the views expressed herein are entirely my own.

Post-war efforts by the GSL have focused on humanitarian assistance, resettlement, reconstruction, rehabilitation, and reintegration. The GSL deserves substantial credit for progress in these areas, including de-mining.

The GSL had an opportunity to heal the country's wounds after decades of civil war. However, it has failed to act with magnanimity. Reconstruction has not effectively advanced the goal of reconciliation.

Progress with reconciliation is further undermined by the GSL's failure to conduct credible domestic investigations of alleged violations of International Humanitarian Law (IHL). An independent international investigation of alleged war crimes under the auspices of the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) is necessary to address allegations.

Lessons Learnt and Reconciliation Commission (LLRC)

A "trust deficit" exists among Sri Lankans, arising from the GSL's inadequate efforts to implement recommendations of the LLRC.

The LLRC final report (16 December 2011) noted, “The clear need to heal the wounds of the past and to make recommendations to reconcile the nation by recognizing all victims of conflict, providing redress to them, thereby promoting national unity, peace, and harmony.” The GSL approved a National Action Plan (NAP) on 26 July 2012. However, the NAP omits many LLRC recommendations.

- The criteria and process for deciding which recommendations would be included in the NAP have not been explained.
- In some instances, the GSL is proceeding on the basis that it has completed tasks which in fact are ongoing. These include investigating illegal armed groups, rehabilitating child combatants, and prosecuting those accused of conscripting children.
- In important cases, the NAP takes a passive approach. For example, in response to LLRC recommendation for domestic legislation to criminalize enforced or involuntary disappearance, the NAP suggests studying the need for such legislation. In response to the LLRC recommendation on legislation concerning the right to information, the NAP states: “The Cabinet will decide the suitable time frame for drafting legislation.”
- The NAP assigns some issues to bodies such as the Parliamentary Select Committee (PSC) and the Land Commission, neither of which has been established. Devolution and power-sharing, decentralizing police powers, judicial review of legislation, and the recommendation to sing the national anthem in both languages have been assigned to the PSC. In total, eight items (9.150, 9.152, 9.214, 9.215, 9.228, 9.236, 9.237, and 9.277) have been referred to the PSC. Nine items (9.126, 9.128, 9.129, 9.131, 9.132, 9.133, 9.134, 9.135 and 9.136) have been referred to the Land Commission.
- The LLRC recommends investigations of alleged violations of IHL, including incidents of attacks on civilians (9.9 and 9.37a), disappearances of persons after they surrendered or were arrested (9.23), and the credibility of the Channel 4 video that showed summary execution of civilians (9.39). Rather than provide for an independent mechanism to implement accountability recommendations of the LLRC, the NAP redefines those initiatives as “ongoing” internal investigations, assigning them to the Ministry of Defence (MoD).

Summary Detention

The Emergency Act was lifted in August 2011, but similar powers of summary detention are authorized under the Prevention of Terrorism Act (PTA). The allowable period for administrative detention prior to seeing a magistrate was recently extended from 24 to 48 hours, and persons can be held for up to 30 days with unlimited extensions.

Demilitarization

The GSL lifted state of emergency provisions on 30 August 2011. However, high security zones still function in the Jaffna district. Outside of Jaffna district, many high security zones were just converted to government-held land with no effective change in status, only name. The SLA has

recently confiscated land to build 10,000 houses in Kilinochchi. The military retains a significant presence in the north. It is extensively involved in economic activities, such as farming and fishing with the military. It provides free trucks to market, making civilian enterprises non-competitive. Just this week, the SLA commander opened a brand new army-run shopping center in Killinochchi. The MoD also controls the NGO and INGO registration process, performing tasks suited for a civilian authority.

Land Claims

Land claims and property restitution in the North and East are complicated by lost and multiple title documents issued by both the GSL and LTTE. The NAP for LLRC implementation recommends the establishment of a Fourth Land Commission to address issues related to property rights (within 24 months). The Commission has been established, but not implemented.

Political Dialogue

The LLRC recommends “Finding a Political Solution” (9.185); “Establishing a Power-Sharing Mechanism” (9.235); and “Making General Progress on Devolution” (9.236). Effected stakeholders, including the Tamil National Alliance (TNA), seek expanded powers for local government, including police powers, and fiscal decentralization. It also seeks greater minority and cultural rights, including expanded use of the Tamil language in local administration. Property rights are also a priority for the TNA. The GSL and the TNA started talks in January 2011. Over 12 months, 18 meetings have been held. The TNA tabled a number of detailed and specific proposals, to which the GSL did not respond. Government representatives did not attend the last 3 scheduled meetings. The last round was in February 2011. Political dialogue is stalled.

Local Elections

Local elections still have not been held in the Northern Province. Though they are proposed for September 2013, delays in holding local elections have further undermined confidence.

Governance

Other democracy challenges include impeachment of the Chief Justice Shirani Bandaranayake. Serious restrictions exist on freedom of expression. More than 600 journalists have been killed for exposing abuses of power, crimes, and human rights violations in the past 20 years. Since 2007, 27 journalists have fled the country; only 3 have returned. Websites are blocked. Freedom of association is restricted. The problem is ongoing, with protesters prohibited from leaving Vavuniya just this week. I was told by a leading civil society group in Jaffna that they were threatened when invited to meet our delegation. Civil society all over the island is facing increased threats.

Accountability

The LLRC report includes recommendations on accountability, including:

- Investigation(s) into reported Deliberate Attacks in Civilians (.9.37a)
- Investigation(s) into alleged Abductions and Enforced Disappearances (9.46)
- Establishment of a Special Investigation Commission (9.51)
- Issuance of Death Certificates (9.52)
- Legal Aid and Financial as well as Mental Assistance for the families of missing persons (9.58)
- Make Available Access of a Database of Detainees to Next of Kin (9.63)
- Access to Detainees (9.65)

The SLA and Navy have appointed Boards of Inquiry to study alleged violations and consider the relevant LLRC recommendations. In January 2012, the SLA created a 5-person court of inquiry headed by a Major General to investigate violations of IHL and International Human Rights Law (IHRL). As prescribed in the NAP, the court is charged with referring cases to the Attorney General (AG) for prosecution within 24 months. To date, no cases have been referred to the AG.

Last year's resolution on Sri Lanka at the UN Human Rights Council (UNHRC) suggested that the GSL take genuine steps on accountability. However, no genuine steps have been taken, as recognized in many independent reports, most recently by the Office of the High Commissioner for Human Rights (OHCHR). In addition, the GSL rejected 100 recommendations, many of them pertaining to accountability, during the November 2012 Universal Periodic Review (UPR) hearings at the UNHRC. The MoD has completed two reports related to alleged war crimes. One focused on the LLRC recommendations and the other on claims that the SLA was responsible for civilian casualties at the end of the war. The first report was publicly released (15 February 2015). It dismisses suggestions of SLA involvement in disappearances, detentions and other human rights violations, calling these accusations a conspiracy of the LTTE and the West. The second report purportedly exonerates the SLA from responsibility for civilian deaths at the end of the war.

Investigation by the MoD of its armed forces casts doubt on the objectivity of investigations, highlighting the need for an impartial independent inquiry. In light of the GSL's failure to conduct credible domestic investigations, an independent international investigation of alleged war crimes under the auspices of the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) is necessary to address allegations.

Conclusion

Sri Lanka is more polarized now as a society than at any time since the end of the war in 2009. The war is over, but conflict is ongoing. The GSL can do more to convey a "message of care"-- the intention to create a new, better, more inclusive and compassionate society-- which would also go a long way to addressing the root causes of conflict.

The international community can help advance the goal of reconciliation by staying engaged. Its engagement can take a variety of forms including, for example, providing foreign aid for demining, supporting programs for war-affected women and children, and assisting the GSL to expand minority language use.

Additional efforts are needed to encourage implementation of LLRC recommendations, as well as implementation of Sri Lanka's commitments under the UPR. The UN should use the full of its mechanisms to foster international cooperation, including continued engagement by the UNHRC.