Sri Lankan Response to the Report of Philip Alston, Special Rapporteur on Extra-Judicial Executions

Tuesday, 03 June 2008
Last Updated Tuesday, 03 June 2008

Sri Lankan Response to the Report of Philip Alston, Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions The Eighth Session of the United Nations Human Rights Council is currently being held at the Palais des Nations in Geneva, Switzerland. During the Interactive dialogue held today on the reports of the UN Special Rapporteurs, Sri Lanka responded to the report of Mr. Philip Alston, Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions. Given below is the statement made on this occasion by Prof. Rajiva Wijesinha, Secretary-General of the Secretariat for Coordinating the Peace process.

03 June 2008 “Sri Lanka welcomes the continuing concern with Sri Lanka indicated in the follow up report on Sri Lanka by the Special Rapporteur. It regrets that this was issued without proper consultation with Sri Lanka, despite attempts to engage with him and to seek his advice and assistance with regard to strengthening mechanisms with regard to the problems he mentions. Sadly the Special Rapporteur did not seem willing to engage. This may have been due to suspicions that arose at the time of his initial report, which seemed to have been leaked to hostile forces which made use of it to denigrate the then government. Subsequent similar incidents have made it clear however that improper behaviour occurs much lower down in the UN system, and the Special Rapporteur himself is above reproach. Hence attempts to contact him last year, and despite delays the letter to which he refers obliquely in this follow up report, but to which he never responded. This is perhaps understandable because it begins by saying, ‘I would have complained about delays in the UN bureaucracy, but unfortunately I have had an example of even greater delay here’. In short, those of us trying to improve the situation with regard to human rights are stymied at all turns by bureaucracies, occasionally made worse by malignancy but generally suffering only from incompetence. However in this regard I should quote the remark of the Canadian representative at the United Nations, in the recent debate on the protection of civilians, when he said ‘In Afghanistan, indiscriminate acts of violence, such as suicide bombings, were a potent reminder of why support for the Afghan Government was so important.’ Though he did not say it, he was implicitly rebuking Sir John Holmes who had, in his usual balanced fashion, said, ‘In Afghanistan and Iraq, civilians remained victims of suicide attacks as well as aerial bombardments and search operations against anti-Government elements.’ While drawing attention to ‘civilian casualties resulting from air strikes and search operations conducted by national and multinational forces, as well as the number of so-called “force protection incidents”, in which civilians were shot at after being considered a threat to military convoys or for not obeying instructions at checkpoints. Sir John is further quoted as saying ‘he did not for one second underestimate the challenge in Afghanistan, Iraq and other contexts, of engaging an enemy whose members were difficult, if not impossible, to identify, and who saw the surrounding civilian population as a shield from attack. It was an enemy for whom the principles of distinction and proportionality appeared to have no practical meaning or application. Nevertheless, any military response must itself comply with international humanitarian law and demonstrate respect for the dignity of those already exposed to insurgent attacks.’ Sri Lanka continues to ask itself why, in our case, the challenge continues to be underestimated, why despite the FBI – and who can doubt the veracity of what the FBI says? – asserting that the Tigers are one of the most dangerous of terrorist groups, it is assumed that our record has to be perfect, while elsewhere some elements in the international community bend over backwards to suggest that support for a democratic government fighting against terrorism is important. The Special Rapporteur, it should be stressed, seemed to understand this in his previous report, and we fully accept the point that, even in the context of fighting terrorism, we need to ensure adherence to the rule of law. It is for this reason that we have instituted measures to minimize abuses, and that we welcome further assistance to improve the situation. With regard to the specific points made, we note the suggestions the Special Rapporteur made with regard to the monitoring functions of the Sri Lanka Monitoring Mission, and that this suffered a setback when the LTTE drove out representatives from three countries. Despite this, the Peace Secretariat and the SLMM were improving monitoring, including through local monitors whose role had been enhanced, with for the first time Tamils representing the government in three districts hitherto left to the LTTE. It should be noted that a UNHCHR office representative did not obviously agree with the Special Rapporteur’s view and thought a UN presence necessary to supplement what he saw as the relative incompetence of the SLMM, another classic example of the infighting that makes progress so difficult. With the abrogation of the Ceasefire and the departure of the SLMM, the obvious candidate to replace it as to monitoring was the National Human Rights Commission. Unfortunately the previous two years had seen a consistent campaign to run down the Commission, with the UN failing to use funding it had to appoint UN volunteers to Regional Offices. It also backed out of a Project to fund the HRC Backlog Project, which contributed to the downgrading of the Commission. In short, what we would like is concerted action to strengthen our national mechanisms, and not underhand attempts to undermine them so as to ensure an enhanced role for an international bureaucracy, which we find equally slow, at much greater cost. The Special Rapporteur had indeed been specifically asked for assistance to strengthen the Regional Offices of the National Human Rights Commission, and even though he may have felt this was outside his brief, the courtesy of a response would have been welcome. Similarly, we appreciate his initial comments with regard to police training, and would welcome assistance to improve it. However for three years Sri Lanka endured an International Police Support Group which drank a lot of tea and produced nothing, except an excellent Swedish Project to improve investigation. The Special Rapporteur ignores this, perhaps because he did not know about it. He is substantially right however in that, apart from a useful British project on Community Policing, the Police Support Group achieved nothing, and certainly not with regard to language training, which as he noted was eminently desirable. Sadly, perhaps because of reliance on such mechanisms, Sri Lanka also did not move sufficiently swiftly in these areas,

but this has now been remedied, though certainly action could be quicker. It is unfortunate that, though he had been informed of it, the Special Rapporteur did not note attempts to improve Tamil language training, and also improve Human Rights training for the police, including replicating the very helpful ICRC course for the army with the relevant branch of the police. Some greater credit might also have been appropriate for the first measures in years to proactively recruit Tamils to the police. Another area with which the Special Rapporteur deals at length is the question of paramilitaries, which he had emphasized earlier in just a single recommendation. Had he engaged more actively with the government, instead of relying only on selective sources, without even it seems looking at rebuttal of some allegations he reproduces, he would have realized that the Sri Lankan government has dealt more successfully with the question of reintegrating former terrorists than any other regime dealing with terrorism in recent years. Quite simply, without engaging in confrontation that would have led to even greater suffering for the Tamil people, the government has managed to integrate those elements in the former Karuna faction who want to move towards pluralistic democracy. The establishment of the TMVP as a political party was a great step forward, and though initially elements in the international community, harping on the past, refused to provide it with the democracy training it craved, this will be remedied in the future. Karuna choosing himself to go into exile in Britain helped in this process since he was unlikely to fit into democratic practices and, whilst some associates may still be inclined to violence, the establishment of an elected authority that includes other communities will help in the process. This will be slow, but it is preferable to confrontation, especially in the context of the LTTE continuing to disrupt, including by killing TMVP candidates. In this context it should be noted that, although when two journalists were killed in late May in Jaffna, the immediate assumption was that this was the responsibility of EPDP cadres, latest reports suggest that one of those killed was close to the EPDP leader, and the LTTE was probably responsible. This further confirms the difficulty of moving towards normalcy, which is why firm dealings with the LTTE are necessary, and why we would welcome the categorical support the Canadian ambassador extends to the Afghan government, and which certainly his government seems to be trying to provide against the LTTE now in Canada, although belatedly, after massive funding from there contributed over the years to the ordeal the Sri Lankan people are facing now. Another area in which the Special Rapporteur seems to have been carried away by adverse propaganda is in his statements about civilian casualties. He quotes figures from an International Crisis Group publication, knowing full well that the head of the group has been trying desperately for years to have himself called in to replace the Norwegian facilitators, and has insinuated false allegations against the Sri Lankan government in the process, including references to ethnic cleansing, which on questioning he – like the Special Rapporteur – knows was ever attempted in Sri Lanka only by the LTTE. The Special Rapporteur, in citing ICG figures, does not even seem to have looked at the government releases that contest those figures. By careful examination of what might be termed worst case statistics, namely those put out in the independent Sri Lankan press or LTTE media outlets after any incident, government has been able to show that the incidence of civilian casualties is minimal. Any of these must of course be regretted, but it is equally unfair on forces that have a much better record than any other fighting terrorism to ignore the circumspection with which they operate. For instance the Special Rapporteur talks twice about aerial bombardments, whereas in the eighteen months since hostilities restarted, civilian deaths were alleged in only five incidents out of a total of 168 air strikes, and in two of those the government was categorical that illicit broadcasting facilities were legitimate targets. Detailed discussion of all this, what might be termed a game of atrocity snap, is not appropriate however in plenary session at the UN Human Rights Council, and therefore we would welcome an opportunity to engage actively with the Special Rapporteur. We believe it is inappropriate for a Report of this sort to be brought before the Council before the country in question has had an opportunity to respond to it, and have adjustments that can be justified incorporated into the text. We hope very much that the Council will ensure that proper procedures of that sort are followed for the future. At the same time we appreciate the general sincerity of this Special Rapporteur, as of all those who have visited Sri Lanka in recent months, and hope that bureaucratic bungles will not prevent active and productive engagement with him in the future. Finally, his comments with regard to the International Independent Group of Eminent Persons seem to reflect assertions made elsewhere, which have been adequately dealt with in Sri Lanka’s response to questions during the Universal Periodic Review. We can only note the concluding comments of Justice Bhagwati in this regard, and the state of denial about these that engulfed one of his associates, who then claimed to pronounce on behalf of the panel as a whole. We feel the whole exercise was vitiated by the bad faith of just one or two people who were involved, and we hope that similar approaches by a limited few will not stand in the way of the improvements we seek in our polity, for which assistance and advice, if not patronizing and perverse, will always be welcome.”