

**Statement by Delegation of Sri Lanka following update by
High Commissioner of Human Rights at the HRC on
29 November 2006** (Ambassador Sarala Fernando)

My delegation thanks the High Commissioner Ms. Louise Arbour for her update statement. We also thank those delegations that expressed interest in Sri Lanka this morning.

[Like other member states, Sri Lanka has faced the brunt of terrorism since many years and has always been committed to the protection of human rights while combating terrorism. Even during the years of conflict we have remained open to international human rights mechanisms and have benefited from their advice to strengthen national protection systems].

It is in this context that we wish to inform the Council of progress made in the establishment of the Commission of Inquiry on 3 November by the President of Sri Lanka to inquire and investigate into a number of alleged serious violations of human rights which had occurred since 1 August 2005. The Commission is required to report back within a period of one year and has the primary objective of enabling indictments where necessary to bring those responsible to justice. The first meeting of the Commission of Inquiry has already been held on 22 November. I hope this clarification responds to the questions raised by my friend, the Ambassador of Switzerland.

The President's initiative to set up an Independent International Group of Eminent Persons (IIGEP) to observe the inquiries and investigations conducted by the Commission of Inquiry has also made progress and invitations have been issued to persons identified with the assistance of States, UN and international organizations. The Terms of Reference of the Commission of Inquiry and the IIGEP were finalized after having consulted a wide range of opinion, including local civil society, OHCHR, and INGOs as well as the representatives of States who have agreed to nominate members to the IIGEP, such as Australia, Canada, Japan, the Netherlands, UK and the USA. The European Union also participated in these consultations and is expected to nominate an expert to the IIGEP. We request these States and the EU to submit their nominations urgently so that the IIGEP would become fully operational. Justice P N Bhagawati, long-time member of the UN Human Rights Committee, has accepted the Government's invitation to serve as the Chairman of the IIGEP.

My delegation appreciates the statement made by High Commissioner Louise Arbour on 6 November, welcoming the establishment of the IIGEP and her remarks of encouragement today.

The Ministry of Disaster Management and Human Rights as a new institution has identified some priority areas for capacity building through the focal point of the OHCHR Senior Adviser within the UN country team in Colombo and we are

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engaging with OHCHR on how best they could meet these needs with the ultimate objective of strengthening national protection systems, which in our view is the only sustainable long term means of promotion and protection of human rights in the country.

On issues of humanitarian access, the Government continues to provide essential supplies by its own efforts to all people affected by the conflict. A Consultative Committee on Humanitarian Assistance has been established where Government and all stakeholders including UN agencies and ICRC meet regularly to address any outstanding issues and which I understand has proved effective. On 20 November, President Rajapaksa announced his intention to open the Muhamalai entry/exit checkpoint on the A9 highway to enable the transportation of essential supplies to the Jaffna peninsula, as an additional initiative in view of the current inclement weather which is expected to last for the next few weeks. The Government will continue to supply the peninsula by using the sea route as it has done in the past several months despite LTTE attacks on ships and threats to distribution channels on the ground in Jaffna.

As the delegation of Japan mentioned, the Government has also recently proposed the creation of safe havens for internally displaced persons in Vakarai area in order to prevent sad incidents such as at Kathiraveli which arose when the LTTE used innocent civilians as human shields. The Government continues to receive and provide shelter for large numbers of persons who are escaping from these LTTE controlled areas in the East.

In the meantime, national efforts continue towards formulating a constitutional framework for a negotiated settlement. As the Foreign Minister stated in Parliament on 21 November, "there is some cause for optimism because for the first time President Rajapaksa is working on finding consensus of everyone at the All Party Conference and a Committee of experts to find a solution ... for the first time there is a window of opportunity and even the UNP (Opposition) leader has stated that his support will be forthcoming in resolving the national question".

The Government has always remained fully committed to further peace talks with the LTTE without pre-conditions. It is our hope that the international community will strengthen our hand by applying pressure on the LTTE to change its violent ways and to come into a negotiated settlement within the contours of democracy, human rights and pluralism. As a democracy since independence, Sri Lanka must always be above reproach, hence our pledge to continue to brief the Council in a comprehensive manner.

In the spirit of open constructive dialogue, we would remind the Ambassador of Switzerland not to divert attention from the fact that the main offender on child soldiers has been identified by the UN by the listing of the LTTE as amongst the worst offenders in the world. The Ambassador of Switzerland would also have surely seen official press statements where we have requested Ambassador

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Rock to provide any evidence on the issue of alleged support being extended to the Karuna group, which is a breakaway faction of the LTTE, as well as our undertaking to investigate immediately if substantive evidence is produced. The Government of Sri Lanka's zero tolerance policy on child soldiers is indeed well known.

To the delegation of Canada which expressed concern on 200,000 IDPs, I would like to say that it was only a few weeks ago that 300,000 persons in Sri Lanka were displaced by the seasonal floods – this may put into perspective figures on IDPs often quoted. Yet the Government has through its own resources taken care of these persons, arranged shelter and food and will even pay a small sum to enable them to reconstruct their damaged homes upon return.

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Statement by the delegation of Sri Lanka at the HRC on 05.12.2006
Item 2: Preliminary Conclusions by the Facilitator on the
Review of Mandates (Mr. Sumedha Ekanayake)

Mr. Facilitator,

Thank you for your useful paper reporting on the 9 meetings the Working Group has held on the review of mandates. This is a subject of prime importance as we strive to agree the procedures for the new Council.

My delegation is of the view that we must in this effort build on the initiatives and efforts of the former Commission to enhance the effectiveness of the special mechanisms. The Asian Group has also made a serious contribution through its discussion paper and inputs at the 60th session of the Commission which resulted in decision 2005/113. Sri Lanka supports the statement made by the Ambassador of Saudi Arabia as the Coordinator of the Asian Group on 2nd October at the Working Group on the review of mechanisms which dealt with a number of issues such as the crucial importance of the special procedures in promoting and protecting human rights, the need for these mandates to be fulfilled with the highest standards of independence, impartiality and objectivity as well as the need for enhanced coordination between the special procedures and the work of the Human Rights Council to avoid overlap and duplication as well as reflecting an appropriate balance and according equal importance to civil and political rights, and economic and social and cultural rights including the right to development which is specifically taken up in several paragraphs of the Council's founding resolution GA 60/251.

One of the key issues mentioned in your report, Mr. Facilitator, is that a 'consensus has been emerging that the country mandates should be established only after meeting predictable criteria' in order to avoid politicization. We agree that such country mandates should be established only as a matter of last resort and subject to broad previous discussions including through the UPR mechanism which is intended as a new non-adversarial means of country review. An objective means of assessment of the concerned country could be obtained through reference to different human rights instruments as well as various reports of the UN system such as by UNDP, ILO, WHO and so on. The country concerned should be offered every opportunity to benefit from technical assistance upon request and based on specific needs identified by the country concerned.

My delegation welcomes the decision taken by the Council at its second resumed session mandating the Working Group to review the matter of a Code of Conduct for the Special Procedures. The Code of Conduct should be comprehensive and address various aspects such as standardised guidelines for country visits including provision for the comments, views and observations of the government

concerned to be duly included as annexes to these reports. Another important question is on the issue of promotion by the mandate holders of their views, even before engaging in a cooperative dialogue with the country concerned. We are also of the view that the Special Procedures should endeavour to underline and encourage positive steps taken by the countries concerned and try to proffer reasonable solutions where gaps exist.

Another area of key importance is the question of the appointment of the mandate holders. In view of the decision, that the Bureau of the Human Rights Council should be organisational in character, it is therefore appropriate that these appointments should be the prerogative of the Council, probably through an election process based on equitable geographical nomination through consultation with the regional groups. Each regional group could propose a list of suitable candidates and as far as possible, the list could be refined through informal consultations before coming up for election by the Council. We believe election should be by secret ballot so as to ensure the independence of the appointed mandate holders. We are also of the view that difficult as it may seem we should try to agree on an overall limit of the total number of mandate holders. We are therefore supportive of the proposal that each of the current mandates could be examined individually with a view to rationalising, avoiding duplication and overlap.

In conclusion, Mr. Facilitator, we believe a good start has been made and we look forward to continuing these important discussions under your leadership.

**Right of Reply exercised by Delegation of Sri Lanka at HRC
8 December 2006 (Mr. Shavindra Fernando)**

During this right of reply, I wish to respond to Amnesty International (AI)'s statement made today as well as its document dated 17 November.

1. It is clear that AI has not considered at all the terms of reference of the Commission of Inquiry appointed to inquire into alleged serious violations of Human Rights. The Warrant of the Commission has been published in the Gazette and is a public document. AI has not considered the said public document prior to the issue of the Report or making this statement.
2. AI has not taken into consideration the final document reflecting the terms of reference of the International Independent Group of Eminent Persons (IIGEP). If a request was made to GOSL, the said document could have been made available for consideration by AI. If AI had considered the final document containing the terms of reference of the IIGEP, it would not have entertained the stipulated concerns regarding the terms of reference of the IIGEP, including concerns relating to alleged non-publication of reports of the IIGEP.
3. Prior to the finalization of the terms of reference of the Commission of Inquiry and the IIGEP, the GOSL engaged in detailed and wide ranging discussions with representatives of sovereign governments, officials of international human rights organizations (including the Office of the United Nations High Commissioner for Human Rights) and representatives of the Sri Lankan civil society (including members of the Human Rights Advisory Committee of the Ministry of Human Rights). It was only after broad agreement and consensus was reached regarding the terms of reference, that the GOSL finalized the documents. It would be superfluous to recommend to the GOSL to engage in consultations with the Sri Lankan civil society regarding the mandates of the COI and IIGEP. There is no basis for such concerns of AI.

4. GOSL representatives have explained to AI reasons as to why foreign nationals cannot be appointed as Commissioners of the Commission of Inquiry. The Commission of Inquiry exercises a form of judicial power and hence it would be contrary to the sovereign powers of the people for foreign nationals to be called upon to exercise such powers and functions.
5. Since the appointment of the eight Commissioners of the Commission of Inquiry, no person has adversely remarked about the standing, integrity or suitability of any of the Commissioners. The eight Commissioners represent all three major ethnic communities, comprise of two females, and are persons of high standing, sound integrity, impartiality and professional eminence. Five of them are human rights activist/proponents.
6. All sovereign countries, international organizations (including the Office of the United Nations High Commissioner for Human Rights) and the several internationally recognized eminent persons directly invited by the GOSL have agreed and consented to the terms of reference of the GOSL. They have all agreed that the terms of reference of the IIGEP enables members of the IIGEP to fully and independently comprehensively discharge their role as observers.