

Statement by Hon. Mohan Pieris, Attorney-General of Sri Lanka during the interactive Dialogue with the Special Rapporteur on the independence of judges and lawyers, and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including their oversight, UN Human Rights Council, 2 June 2010

Mr. President,

We have keenly followed the report of the Special Rapporteur on the independence of judges and lawyers and must hasten to congratulate on the depth of the very extensive research that has gone into the compilation of her report. The material contained therein is extremely useful and would surely contribute to the legal literature of this Council. May I be permitted the indulgence however to add a slightly different dimension that the Special Rapporteur might take note of. As observed by Linn Hamnergren in an article on the subject of judicial independence, it is said that for decades, enhanced independence has been understood as central to strengthening judicial activity. However, more recently it has been joined by another element, the demand for greater judicial accountability in the absence of which the drive for independence may go too far giving rise to plethora of new issues. In other words, in a classically independent environment, the judiciary is now placed in the circumstances that it now faces a new kind of responsiveness. This situation has placed the judiciary in a dilemma. It must be appreciated that the more independent the judiciary becomes the more accountability should be provided to prevent the judiciary from being uncontrolled subject to the condition that the degree of accountability does not prejudice its independence. In other words, the judicial independence and accountability should be balanced and that the preservation of human rights although paramount cannot be considered as a free pass to be relieved of the obligation to be accountable. It is my delegation's sincere wish that this aspect of the matter must be driven home in our common goal of upholding the rule of law through human rights.

Mr. President,

We have also carefully considered the contents of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Martin Scheinin and find the report extremely comprehensive and useful to those of us who are in the threshold of drafting appropriate legislation, which will lay down the good practices on legal and institutional frameworks and measures that would ensure respect for human rights by intelligence agencies in the course of combating terrorism. May I hasten therefore to congratulate the Special rapporteurs Sheinin on the hard work that has gone in to the compilation of this report and would sometime in the future draw on his expertise.

Mr. President, I can assure this Council that the 35 elements that have been set out appear to capture the fundamental concerns with the balance that one must seek to strike between the enthusiasm in the collation of intelligence for the preservation of national intelligence and upholding human rights.

We fully concur that good practices in the work of intelligence services not only refers to as you put it, to what is required by International Law, including Human Rights Law, but must surpass the boundaries of legally binding obligations. Although we in Sri Lanka are yet to have a body of

legislation dealing with this subject directly, we are able to identify and follow a substantial number of the 35 elements of good practices that contain in Mr. Scheinin's report, and are careful to ensure that this work took serious cognizance of the rights of the subject in the course of the gathering of such intelligence. We have built in to the mechanism a series of administrative checks and balances that have to be mandatorily followed and subject to stringent supervisory measures. In the case of the more sensitive issues, where the freedom of the subject would require some interference with our criminal procedure and the Constitutional obligations, such action would require the sanction of our courts.

Our courts have been quick to jealously guard the rights of the subjects by being slow to accommodate such interference unless it was satisfied that there is a real threat to national security. We also agree that intelligence services should be overseen by a combination of executive parliamentary and judicial oversight.

We also agree that a mechanism of executive and judicial review must be available to the members of the community who believe that his rights have been infringed and that a mechanism must be built in for appropriate reparation if such a person suffered damage or harm as a result of the unlawful actions of the intelligence services. We also believe that such activity of intelligence service must guarantee the equal protection of the law in terms of the constitution of the republic. This would include the arbitrary use of such powers that the intelligence service may enjoy.

Mr. President,

In the run-up to the setting up of the necessary infrastructure we are also mindful that the personnel recruited as members of an intelligence service must display a degree of professionalism based on the respect for rule of law, that they must operate in a strict regimented and closely supervised environment and trained to recognize and appreciate the principles of proportionality as enshrined in the principles of public law.

Mr. President, we have already entered into many memoranda of understanding between the intelligence agencies of foreign states which contain the parameters for intelligence exchange and the safeguards in the use of such information exchange. I must also hasten to add that we have notwithstanding the signing of many MOUs with other States, incorporating some very salutary features on the exchange of intelligence that the response when a request was made for all practical purposes has been relatively slow. I would therefore strongly urge that the sharing of intelligence when requested be taken as a matter to be given urgent priority, more particularly in matters pertaining to terrorism and the transmission of funds for terrorist activities, financial crimes inclusive of money laundering.

Finally Mr. President may I on behalf of my delegation reiterate our commitment to our common goal of ensuring the world to be a safer place to live in whilst assuring to ourselves the right to an full and unimpeded enjoyment of all human rights. Thank you.