

31/05/11 AM

**Statement by Hon. Mohan Pieris, Attorney-General of Sri Lanka during the  
Interactive Dialogue on the Report of the Special Rapporteur  
on extrajudicial, summary or arbitrary executions, Christof Heyns  
17<sup>th</sup> Session of the Human Rights Council, 30 March 2011**

**VERSION REVISEE  
REVISED VERSION**

Mr. President,

Whilst welcoming the Special Rapporteur's efforts to provide the government an opportunity to respond to his technical note, we would like to observe that the whole exercise did not achieve its full potential. Firstly the report contained blurred and illegible images which were not of a quality that could be examined and therefore precluded the government from making a proper assessment. It would therefore be useful for legible copies to be made available in a timely manner. A request was also made to provide documents in their original forms. These too were transmitted by way of a scanned document of a faxed document. The illustrations in the Spivac report were also illegible which meant that the images on which many assertions were made could not be revealed in time. We assure the SR that the outcome will be shared with him once such analysis is complete.

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Mr President

We need to build mutual confidence between the office of the Special Rapporteur and the Government of Sri Lanka which share a common objective of ensuring of the upholding of the rule of law. To this extent it is important that disclosure is made fully and unconditionally at the earliest opportunity in a spirit of constructive engagement and transparency. No less could be expected from an engagement with a sovereign nation.

Sri Lanka notes that the expert document submitted by Mr Spivac concludes that the reports are authentic. By a public assertion on the 15<sup>th</sup> of October 2009, he seeks to change this position with regard to the extended video which also includes the 2009 video. What reliance can we then place on evidence of this nature? Should he then be ultra cautious in the reception of unverified material of a political flavor?

We would also urge the Special Rapporteur to endeavour to move away from the practice of engaging the same experts in evaluating the 2010 video lest it lends itself to a general reaffirmation of the conclusions of 2009. It is suggested that it would be more prudent for the Special Rapporteur with all the resources available to him to identify other experts of equal or better repute to examine and evaluate



the videos. The commissioning of the self same experts who had arrived at definitive conclusions will lead to allegations of bias on the part of the Special Rapporteur.

May I say a word of Spivac's report. The government has discovered that Mr Spivac is a technical representative for a brand of special software which was used to enhance the 2009 video and which was shared by the two other experts.

This procedure does not augur well for the concept of independence as after all justice, they say, should not only be done but should appear to be done.

Mr President

It is well established that an expert should provide an objective and unbiased report within his competence and not play the role of an advocate,

The Special Rapporteur seems to have assumed that neither the AG nor the LLRC has given any consideration to the videos. You will be pleased to learn that the LLRC has taken cognizance of this matter and heard the testimony of the most competent expert who has conducted research with a view to ascertaining the veracity of the video. It is to be noted that the LLRC had taken cognizance of this matter well before the Special Rapporteur had prepared his report. Would not it



then be prudent for the Special Rapporteur to have held his hand to await the findings of the LLRC?

Mr President

It is our view that the Special Rapporteur should facilitate the testimony of the experts before the LLRC with a view to assisting the LLRC to strike the right balance in executing its mandate.

You will also note that as far back as 2009 the Attorney General has given his serious consideration to the video immediately after its broadcast. The Attorney General complained to the OFFCAM in the UK and demanded an inquiry into the conduct of Channel 4 which declined to provide the original version of the video.

It has to be highlighted that the legal efficacy of any report or publication is hinged upon the fundamental requirement of impartiality and a complete lack of bias, having regard to the rules of natural justice. It is our respectful position that having regard to the reception of complaint in the first instance, rules consonant with natural justice were not complied with by a culpable failure to afford an opportunity to Sri Lanka to respond.

Reports by NGO's, human rights defenders and media personnel are quick to report the tragic incidents which result in the deaths or injuries of civilians occurring during armed conflicts to communicate the most generalized





conclusions in a very short time of casualties which per se appear to be violations of international law or even war crimes. In most times than not there is a complete failure to examine and find out the legal basis upon which the operation was carried out.

It is easy to comprehend the sensitivity with which the civilian losses are perceived. But it is equally important that one does not rush to conclusions. We must therefore bear in mind that it is fundamentally indispensable that any legal inquiry such as the one undertaken by a Special Rapporteur more particularly with regard to an internal armed conflict cannot assume conclusions without taking into consideration the facts and circumstances surrounding the military operations as a whole. One would accept without demur that the humanitarian operation conducted by the GOSL was to free its own citizens from forced captivity and to that end the GOSL was legally justified in resorting to the use of necessary force. We are conscious of the principle of proportionality in the context of zero casualties policy that was adopted in the context of the humanitarian operation.

It is respectfully submitted that the process adopted in regard to the publication of the videos and subsequent steps taken fall far short of this requirement and is



tainted with the fundamental vice of bias and partiality. The fact that the contents of the video were not made available to the Sri Lankan government by Channel 4 lends support to the suspicion that the broadcast of the videos was for a collateral purpose.

The Government of Sri Lanka is ready to constructively engage with the Special Rapporteur in the future on the basis of transparency and fair processes being adopted. Progress achieved through domestic procedures and mechanisms will be communicated to the Special Rapporteur upon completion of internal processes.

Thank You Mr President.

