

International Independent Group of Eminent Persons

Public Statement

On 1 June 2007, we, the International Independent Group of Eminent Persons (IIGEP), submitted our first Interim Report to the President of Sri Lanka. The report contains our observations and concerns about the President's Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights (the Commission).

We reported to the President that the Commission has so far made hardly any noticeable progress in investigations and inquiries since its inception in November 2006. Moreover, since our formation in February 2007, we have identified and raised a number of concerns with the Commission and the Government of Sri Lanka. We remain concerned that current measures taken by the Government of Sri Lanka and the Commission to address issues such as the **independence** of the Commission, **timeliness** and **witness protection** are not adequate and do not satisfy international norms and standards.

Independence: We are concerned about the role of the Attorney General's Department as legal counsel to the Commission. The Attorney General's Department is the Chief Legal Adviser to the Government of Sri Lanka. Members of the Attorney General's Department have been involved in the original investigations into those cases subject to further investigation by the Commission itself. As such, members of the Attorney General's Department may find that they are investigating themselves. Furthermore, it is possible that they be called as material witnesses before the Commission. We consider these to be serious conflicts of interest, which lack transparency and compromise national and international standards of independence and impartiality that are central to the credibility and public confidence of the Commission.

We are concerned that the Commission's finances are managed by the Presidential Secretariat. The Commission does not have financial independence enabling it to exercise control of its human resources and operations. In particular, the Commission should be allocated sufficient funds to secure the permanent confidentiality, safety and integrity of its victim and witness protection scheme.

Timeliness: We are concerned that the Commission did not commence even preliminary investigations and inquiries until May 2007, despite being constituted six months earlier in November 2006. To date, internal processes have not been transparent; no detailed work plan has been announced; essential staff have not yet been fully recruited; investigative and witness protection units are not functioning; and significantly, evidence already known to be in the possession of Governmental bodies relating to the cases has not been gathered and transmitted to us. Such unnecessary delays undermine public confidence in the ability of the Commission to carry out its mandate in a timely manner.

Witness protection: We are concerned that there are no adequate victim and witness protection provisions under Sri Lankan law. We are of the view that witness protection is absolutely essential in order to investigate serious violations of human rights that are within the Commission's mandate. Appropriate legislation that accords with international norms and standards should be enacted and implemented as soon as possible to protect victims and witnesses.

We regret that the Commission still has no functioning victim and witness protection mechanism. In the absence of appropriate legislation, an effective scheme or functioning protection unit, we fail to understand how the Commission could have invited the public, as it did as recently as 14 May 2007, to come forward and give evidence. As the Commission is operating without witness protection legislation, it is unable to guarantee the safety and security of witnesses. Summoning and examining potential victims and witnesses may create

fear in their minds about safety and security, deterring them from coming forward to give evidence.

Mandates: The Presidential Warrant limits the scope of the Commission to a retrospective and fact finding role. The core work of the Commission is to obtain information, investigate and inquire into alleged serious violations of human rights arising since 1 August 2005, including 16 specific cases; and to examine prior investigations into these cases. The Commission is required to make findings and report to the President on the facts and circumstances pertaining to each case; the descriptions, nature and backgrounds of the victims; the circumstances that may have led to, or resulted in, those persons suffering such deaths, injury or physical harm; the identities, descriptions and backgrounds of the persons and groups responsible for the commission of deaths and other acts; measures of reparation to be provided to the victims; and recommendations in order to prevent the occurrence of incidents in the nature of those investigated and any other recommendations considered as relevant.

The IIGEP, comprising of 11 Members, has been invited by the President to observe the investigations and inquiries of the Commission, in order to ensure transparency and observance of international norms and standards. The IIGEP does not have a mandate to conduct independent investigations and inquiries; nevertheless, we are open to all persons who wish to provide information and evidence on the cases under review by the Commission. Although we are obliged by the Presidential Invitation to transmit third party information to the Commission, it would not be right for us to disclose any information without the consent of the third party, or which may impair the safety or security of such third parties until we are satisfied that effective, functioning and credible witness protection measures are in place.

We regret that public statements from State officials are creating the misleading impression that the Commission and IIGEP have wide mandates and powers and the resources to address ongoing alleged human rights violations in Sri Lanka. This is not the case. In the current context, in particular, the apparent renewed systematic practice of enforced disappearance and the killings of Red Cross workers, it is critical that the Commission and IIGEP not be portrayed as a substitute for robust, effective measures including national and international human rights monitoring.



Chairman, IIGEP

RESPONSE FROM THE CHAIRMAN OF THE COMMISSION OF INQUIRY TO THE IIGEP'S PUBLIC STATEMENT

It was in November 2006 that the President of Sri Lanka established this Commission of Inquiry. From the date of the establishment of the COI, it commenced taking effective measures to develop, establish and set in place its internal working structures. This was done by the development of the 'Organizational Structure and Rules of Procedure of the Commission', 'Mandate, Organizational Structure and the Rules of Procedure of the Victim and Witness Assistance and Protection Unit', and the 'Mandate, Organizational Structure and Rules of Procedure of the Investigation Unit'. I believe it was necessary for the Commission to in keeping with best practices and international norms develop these structures prior to commencing any investigations or inquiries. Had the COI rushed into commence investigations and inquiries without having its own internal systems in place, a justifiable criticism could have been made that the COI had 'rushed into work, without developing an appropriate and systematic internal and transparent system'. These internal constitutional documents have been made available to the IIGEP, and any form of comment has been received only with regards to the role of counsel from the Attorney General's Department in the COI. Thus, the Commission can infer that, the rest of the system and the rules are in the view of the IIGEP in accordance with international norms and standards.

Soon following the development of internal mechanisms and structure, the Commission commenced its first investigation, based on a Plan of Investigation developed and adopted by the COI. The first case being investigated is the incident pertaining to the killing of 17 aid workers of ACF in Muttur, in August 2007.

An issue has been raised that, the participation of counsel from the Attorney General's Department affects public perceptions pertaining to the independence of the COI. It was the COI that invited the Attorney General to nominate a few officers to assist the Commission. Following the nominations being sent, the COI considered the nominations and appointed five officers who possess necessary academic qualifications, experience and expertise to serve as members of the Panel of Counsel of the Commission. The Commission was satisfied with their professional abilities and integrity. These officers do not possess any prerogative power when functioning in the Commission in any particular manner, nor would they have any reason not to act in the best interests of justice and fair play. None of them or any other officer of the Attorney General's Department have taken part in any criminal investigation, or directed the conduct of criminal investigations. That is the statutory function of police officers. Under the Sri Lankan law and practice, during the course of an investigation, the Attorney General and his officers only provide legal 'advice' to criminal investigators. The professional function of the Attorney General commences only upon the completion of criminal investigations, for the purpose of considering the institution of criminal proceedings. Thereafter, he launches and conducts the criminal prosecution, which functions are done in a quasi-judicial manner. In the COI, officers of the AG's Department have a very limited function, and that too to be exercised in accordance with directions and under the supervision of the COI. The Commission does not see any basis to doubt that officers of the Attorney General's Department would find themselves investigating their own officers. In view of the terms of reference of the COI, we do not see any basis to even doubt that a need would arise to summon officers of the Attorney General's Department to testify as witnesses. We are also satisfied that, they do not face any situation involving a conflict of interest. We are satisfied regarding their professional integrity and the professional services being rendered to the COI by officers of the Attorney General's Department.

When the Chairman of the IIGEP originally made his observations known to the COI regarding the participation of Counsel from the AG's Department in the COI, with the view to creating an institutional mechanism in which the independence of counsel assisting the COI would be manifest, the COI established a parallel Panel of Counsel comprising members of the unofficial bar. Two very senior and eminent private practitioners were appointed by the COI to work alongside officers of the AG's Department.

Indeed, due to the absence of legislation at a national level regulating the provision of assistance and protection to victims of crime and witnesses, the COI has been constrained in its activities in regard to the development of a victim and witness Assistance and Protection scheme. The COI understands that, a national law on the matter is presently being developed by the Law Commission. Notwithstanding the absence of such specific legislation, the Commission has developed its own 'Scheme of Assistance and Protection', and upon being submitted to the IIGEP, it has not yet adversely commented on the scheme. Thus the Commission reasonably believes that, even according to the IIGEP, the 'Mandate, Organizational Structure and Rules of Procedure' of the 'Victim and Witness Assistance and Protection Unit' and the 'Scheme of Assistance and Protection' are in accordance with international norms and standards. The COI has had to start from the very beginning by setting in place the scheme, recruiting necessary personnel, and obtaining necessary resources. Therefore, it has taken some time to effectively set in motion the system of assistance and protection.

On the 14th of May 2007, the COI commenced investigating the first case, i.e. the killing of 17 workers of ACF. This was based on a previously developed 'Plan of Investigation', a copy of which has been transmitted to the IIGEP, and in respect of which the IIGEP to-date has not made any adverse comments. This leads to the inference that the IIGEP is satisfied that the said plan of investigation meets with international norms and standards. The investigation takes two forms. On the one hand, members of the Commission directly interviews possible witnesses. Parallel to that, officers of the Investigation Unit acting under the supervision of the Commission conducts fresh criminal investigations. So far, the Commission has been conducting Sessions of Investigations on two days of the week, and from the 1st of June 2007, sessions will be held on three days of the week. These days have been made known to the IIGEP in advance. The Investigation Unit works daily. In the circumstances, since the COI has commenced its work proper and is committed to work continuously, the Commission hopes that the IIGEP would give effect to its mandate and members of the IIGEP would be present in Sri Lanka to observe the work of the COI.

The Commission is presently engaged in a discussion with the Presidential Secretariat to ensure that, funds required for the efficient functioning of the COI are available readily. The Government has assured the COI that it will make available all required resources for the Commission.

Members of the Commission are confident that, the COI could continue to discharge its functions independently, and that, the mandate of the Commission can be implemented in the best interests of justice. The Commissioners are committed to ensure that, perpetrators of serious violations of Human Rights (who have been involved in incidents falling within the mandate of the Commission) are properly identified and sufficient material is collected enabling their prosecution in courts of law.

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RESPONSE FROM THE ATTORNEY GENERAL TO THE IIGEP'S PUBLIC STATEMENT

In November 2006, based on a previously agreed set of terms of reference His Excellency the President took steps to invite eleven (11) eminent persons to form the 'International Independent Group of Eminent Persons' (IIGEP) to observe investigations and inquiries due to be conducted by the Commission of Inquiry (COI) established to investigate and inquire into alleged serious violations of Human Rights occurring in Sri Lanka since 1st August 2005. The mandate of the IIGEP is to observe and comment on the investigations and inquiries conducted by the COI, with regard conformity with international norms and standards. The Government of Sri Lanka is pleased to note that, the international community commenced nominating eminent persons to serve in the IIGEP, only after they were satisfied regarding the terms of reference of the COI and the IIGEP.

Following invitations having been extended to the international community, nominations were received, and the International Independent Group of Eminent Persons was established on the 10th of February 2007, with the last nomination being received on the 9th February 2007. Thus, the Commission could effectively commence their work only from the 12th of February 2007, on which date the Commission held its first plenary meeting with members of the IIGEP. Had the COI commenced investigations and inquiries prior to the establishment of the IIGEP, the international observers could not have observed the functioning of the COI.

The Government is aware that, the COI spent its initial months for the development of internal systems, rules of procedure and recruitment of necessary staff. Now that such internal requirements have been met, the government is pleased to learn that the Commission is in a position to proceed to investigate and inquire into cases on the schedule of the warrant of the COI. Since early May 2007, the COI has commenced investigating into the incident involving the murder of 17 workers of ACF.

The Government of Sri Lanka remains committed to provide necessary financial and other resources to ensure that the COI functions smoothly and efficaciously giving effect to its mandate. Already a considerable sum of money has been allocated by the Presidential Secretariat to the COI. Up to now the Presidential Secretariat has allocated to the Commission the entire sum of money requested by the Commission based on an approved budget. Once the COI develops and submits to the government its budget for the remaining period, the Presidential Secretariat will provide necessary funds to the Commission for its future activities. The Government of Sri Lanka remains totally committed to fund the victims and witnesses assistance and protection programme of the Commission. Furthermore, the government has accelerated an initiative to enact national legislation pertaining to providing assistance and protection to victims and witnesses.

With the view to providing the Commission greater operational flexibility, the government has initiated a process aimed at amending the Commissions of Inquiry Act. The proposed amendments are to go before Parliament very shortly.

The Government of Sri Lanka is of the view that, in view of the terms of reference of the IIGEP, it is inappropriate for the IIGEP to propose the setting up of an 'international monitoring mechanism to address ongoing alleged Human Rights violations. The mandate of the IIGEP is to observe the functions of the COI and comment on compliance with international norms and standards, and to also propose correctional action to be taken by the

COI. The Government expects that the IIGEP would make observations and recommendations in terms of its mandate as contained in the letters of invitation and accepted by Members of the IIGEP.

The Government of Sri Lanka wishes to avail itself of this occasion to reiterate its expectation that at least one out of the eleven eminent persons be present in Sri Lanka to observe the investigations and inquiries of the COI.