



**PRESIDENTIAL COMMISSION OF INQUIRY TO INVESTIGATE  
AND INQUIRE INTO ALLEGED SERIOUS VIOLATIONS OF HUMAN RIGHTS**

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**COI expresses concern over IIGEP's  
lack of transparency and conduct prejudicial to ongoing investigations**

The COI wishes to object to the release of the Observations contained in the IIGEP's Public Statement sent along with the letter dated 30<sup>th</sup> November 2007 as such observations are prejudicial to ongoing investigations and inquiries of the Commission of Inquiry. The reasons for such objections are set out below.

The COI notes that the opening of the Statement that "*IIGEP reports no indications of implementation of its recommended corrective actions and lays down minimum conditions for the success of the Presidential Commission of Inquiry's impending public inquiries*" is without any basis and contrary to the facts. The IIGEP has in fact made very few suggestions for corrective actions some of which have been accepted and acted upon by the COI. One example is the response to the criticism leveled against COI by IIGEP for obtaining the services of Members of the Official Bar who work under the guidance, supervision and direction of the Commission. Although the COI does not accept the validity of such criticisms, in deference to the views of the IIGEP the COI has enlisted the services of Counsel of the Unofficial Bar including two of the most outstanding members of the legal profession in Sri Lanka – Mr. R.K.W. Goonesekera and President's Counsel Mr. Ranjit Abeysooriya, - who have been assisting the COI for the last several months. The use of the phrase "lays down" is suggestive of an attempt by IIGEP to dictate to the COI and is totally unacceptable. In terms of the Mandate, it is the COI which has the sole prerogative of taking the final decisions on all questions regarding the conduct of the work of the Commission.

Update on Investigations

The IIGEPs assert that they have attended 76 sessions of investigations of the two cases investigated, namely; the killing of 17 Aid Workers of Action Contre La Faim in Muttur, and the killing of 5 youths in Trincomalee.

The COI notes that in fact out of the total number of 76 sessions of investigations conducted, only one member of the IIGEP has been present at 37 of these sittings while only 02 members have been present at 02 sittings and 03 members have been present at 01 sitting. (The total number of IIGEP members appointed by the President is eleven). The attempt to portray the Assistants as representatives of the IIGEP at the proceedings is contrary to the Presidential Invitation which only permits their appointment “to provide necessary assistance” to a Member of IIGEP. In any event only one or sometimes two Assistants out of 10 Assistants have been present at 76 sessions. 8 Assistants have been present at 01 session while 02 have been present at 50 sessions. Thus the IIGEP has not been present to observe over half the proceedings and therefore the credibility of any comments made by the IIGEP must necessarily suffer from the consequences of such absence.

The COI is of the view that the IIGEP’s attempt to observe (without a continued and uninterrupted presence of at least one member of the IIGEP) the working of the COI does not do justice to the functions entrusted to them by the Presidential Invitation and accepted by the IIGEP. The undoubted Eminence and wide experience of the IIGEP cannot be a substitute for on the ground observations by the IIGEP. Otherwise the IIGEP will be reduced to making their comments with regard to the work of the COI on the basis of hearsay which is undoubtedly contrary to international norms and will militate against the credibility and value of such comments.

The COI further notes that due to the lack of an adequate presence of the IIGEP at the sessions, the collective wisdom of the eleven members of IIGEP is unfortunately, not reflected in the observations of the IIGEP as was intended in the Presidential Invitation to the IIGEP.

This is reflected in two recent examples. Firstly, in the issue of the release of the third Public Statement, the IIGEP Secretariat had issued the Statement without reference to the Chairman nor other members of the IIGEP thus depriving the IIGEP of the opportunity of considering the observations made by the COI before releasing the Statement.

The second example relates to what happened subsequent to the discussion COI had with IIGEP Member A Mavrommatis on the 13<sup>th</sup> of December 2007 to achieve consensus between the two parties as to the content of the current Public Statement. The final Statement was received from the IIGEP within a few hours of the meeting. This is a clear indication of the fact that other members of the IIGEP have not been consulted regarding the contents of the Final Statement, who according to the IIGEP members themselves, are residing in different time zones. Such a lack of transparency in the functioning and operation of the IIGEP continues to remain a matter of grave concern to the COI.

On the question of transparency of the process of investigations, the COI notes that despite several explanations made to the IIGEP with regard to the difference between the stages of investigation and inquiry the IIGEP have not taken on board such differences.. The COI thus wishes to restate its position. The purpose of investigations is to unearth evidence and also to prepare the ground for public inquiry. It is axiomatic that investigations conducted in the absence of confidentiality can jeopardize the safety of witnesses as well as create opportunities for potential suspects to take steps to cover their tracks thus frustrating the realization of the objectives of the COI. The COI is unaware of any investigation( as opposed to inquiries) being conducted in public anywhere in the world.

It is incorrect to say that the COI has failed to probe the failings of the original investigations. Records of proceedings show that the members of COI themselves have questioned in depth , Police and other witnesses during the investigations on this point.. The COI disagrees with the contention that the Commission encountered difficulties in securing the cooperation and disclosure of information from state officials. The only instance in which such a situation arose was when some officials stated that they could release such

information only after obtaining permission from their higher authorities as the release of such information could affect national security. The IIGEP is aware of the steps taken by the COI in this regard, namely any refusal to disclose information by state officials on grounds of national security will have to be justified by such persons before the COI. The COI will and remains the sole judge as to whether such a claim is justified or not and a decision on this matter will be taken after due process which is in accordance with international norms. The decision to take up such issues at the public inquiries stage of proceedings will ensure greater transparency rather than doing so at the investigation sessions as suggested by the IIGEP. The COI records that this reasoning has been communicated to IIGEP on many previous occasions.

The conclusion of the IIGEP that the COI as a fact finding body has failed to identify why the original police investigations failed to identify and prosecute the perpetrators is premature. Recommendations in this regard will be made only after due process and after the inquiry is concluded.

The COI denies the serious allegation made by the IIGEP with regard to its independence. The COI will continue to function independently and will not be influenced by the State, the IIGEP or any other agency. The COI wishes to place on record the fact that it is unaware as to why the President has issued a 'clarification', and that no such 'clarification' had been sought by the COI.

In any event, as already informed to IIGEP, the COI does not intend interpreting its mandate in a restrictive manner but rather in an expansive manner. Further the COI is of the view that no agency or individual shall be excluded from investigation or inquiry if such an investigation or inquiry is merited on the basis of material before the COI.

The COI has also invited the IIGEP to submit to the COI any material that supports their claim that the Attorney General or its officers should be subjected to investigation and inquiry. The material submitted thus far to the COI by the IIGEP does not, in the COI's view, support the IIGEP claim that the Attorney General or its officers should be investigated.

Victim and Witness Assistance and Protection

Despite the absence of national legislation for Witness Protection in Sri Lanka, the COI has developed a scheme of witness protection which elaborates rigorously researched rules and study of international best practices. Copies of such rules were shared with the IIGEP at the beginning of the COI's term and did not receive any adverse comment from the IIGEP which suggested that the IIGEP was satisfied by such a scheme. The COI notes that right throughout the investigation process initiated by the COI, this scheme has been and will continue to be in operation.

The COI notes with regret that the IIGEP has resorted to criticizing the mechanism repeatedly which could have the effect of undermining the work of the COI.

In the event of genuine concern of the lack of adequate protection for witnesses, it would have been more befitting for the IIGEP, in the interests of bringing the perpetrators to justice, to bring to the notice of the COI such shortcomings in a direct and discreet manner rather than publicly announcing such dissatisfaction lest it has the effect of discouraging potential witnesses from coming forward to give evidence.

The COI is not responsible for setting up a National Victim and Witness Assistance and Protection Programme. However, the COI to the best of its ability has set up a Victim and Witness Assistance and Protection Unit , consisting of one DIG/Police as Head of the Unit, a senior lawyer as Deputy Head , four senior lawyers as Advisors, one Senior Superintendent of Police as Director and thirteen others. It has also persuaded the Authorities to enact the necessary legislation. The COI has organized a number of training programmes to train its staff where the IIGEP Assistants have also functioned as resource persons. Funds have been obtained from the Presidential Secretariat to send some officers to participate in a Training Programme in Australia. The COI is grateful to Prof. Yokota for facilitating an officer to observe the programme in Japan. The COI regrets the fact that numerous requests to the members of the IIGEP to facilitate training programmes for offices of the Witness Protection Unit has not been successful.

Public Inquiries

Matters raised regarding procedure at inquiries have been explained in the letter of the Chairman dated November 20, 2007 to Judge Jean Pierre Cot. The COI is of the view that if public inquiries were to begin as per current statutory requirements, the process is at risk of being interrupted suddenly by unforeseen circumstances such as the non-availability of one or more Commissioners due to unforeseen circumstances. The COI wishes to state that the reason for urging amendments of the COI Act is not for the purpose of holding public inquiry in smaller groups but rather to ensure that proceedings be expedited and continue without interruption.

Conclusion

The COI does not comprehend how the IIGEP came to hold the opinion that the COI's investigations are not transparent when the IIGEP and their Assistants have been given the opportunity and have in fact questioned witnesses in detail at these sessions. The COI has repeatedly informed IIGEP that at the inquiries the Public including affected parties will be allowed access.

The observation by the IIGEP that there has been no full and timely disclosure by COI is not acceptable. In fact COI has taken every possible step to ensure that such full and timely disclosure has been made and the COI invites members of the IIGEP to be present at investigations on a continuous basis in order to observe such full and timely disclosure.

Justice N. K. Udalagama  
Chairman



