

IIGEP

International Independent Group of Eminent Persons

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PUBLIC STATEMENT

IIGEP REPORTS NO INDICATION OF IMPLEMENTATION OF ITS RECOMMENDED CORRECTIVE ACTIONS AND LAYS DOWN MINIMUM CONDITIONS FOR THE SUCCESS OF PRESIDENTIAL COMMISSION OF INQUIRY'S IMPENDING *PUBLIC* INQUIRIES

The International Independent Group of Eminent Persons (the IIGEP)¹ was mandated by HE the President of Sri Lanka to observe the investigations and inquiries carried out by the Commission of Inquiry (the Commission), in order to ascertain that its work is conducted in a transparent manner and in accordance with international norms and standards. In this context, the IIGEP convened its quarterly plenary session in Colombo in November 2007, during which the IIGEP held meetings with HE the President as well as the members of the Commission of Inquiry to convey its latest observations on ongoing *in-camera* investigations and discuss matters arising with regard to the Commission's move to *public* inquiries. The following observations by the IIGEP cover the period up to and including the 30th November 2007.

Update on investigations

Since the Commission commenced *in-camera* investigation sessions in May 2007, the IIGEP or their representatives have attended 76 sessions (up to 12 November 2007) of the two cases under investigation, namely the killing of the 17 *Action Contre La Faim* aid workers in Muttur in early August 2006 and the killing of 5 youths in Trincomalee on 02 January 2006.

In addition to the IIGEP's observations in previous statements, the IIGEP further notes shortcomings in the following areas pertaining to the conduct of investigations by the Commission: the failure of the Commission to effectively probe the failings of the original police investigations into the cases under consideration as well as the difficulties encountered by the Commission in securing cooperation and disclosure of information from state officials and other persons.

Established by Presidential Warrant, the Commission is required to investigate and inquire into the propriety and efficacy of the investigations already conducted by the Police into the incidents contained in the mandate, including the "possible reasons that may have influenced or been relevant to the conduct of investigations", and comment on such investigations. As a fact-finding body, a critical aspect of the Commission's work is to identify why the original police investigations failed to identify and prosecute the perpetrators of these serious crimes. The Commission has so far not succeeded in discharging this most crucial element of its mission.

On 13 November 2007, the Commission received confirmation of the extension of the Warrant by one year to 2 November 2008. The letter from the Presidential Office was copied to the IIGEP and subsequently published on the Government's official websites.

The Presidential letter included a “clarification” from the Presidential Office that serves to relieve the Commission from the requirement “in any way to consider, scrutinize, monitor, investigate or inquire into the conduct of the Attorney General or any of his officers with regards to or in relation to any investigation already conducted into the relevant incidents”, while allowing the Commission to “continue to obtain the assistance of officers of the Attorney General’s Department “. The members of the IIGEP have been given assurances by HE the President and the Chairman of the Commission that the directive contained in this letter does not have the effect of preventing the Commission from examining the Attorney General or his officers on any relevant question arising in the investigations and inquiries. The IIGEP, however, questions the need for this specific “clarification” and is of the opinion that this statement at the very least constitutes an interference in the independence of the Commission. It may, in fact, explain why the Commission has so far shown no intention to question the officers of the Attorney General’s Department on their involvement in the prior relevant investigations, despite evidence of such involvement. In the circumstances, this communication from the President’s Office erodes the independence and neutrality of the Commission, and could impede the search for the truth.

Additionally, the work of the Commission is hampered by the difficulties it has encountered in summoning state officials to give evidence and disclose relevant information. In fact, state officials have refused to render the required answers to relevant questions by invoking “national security” issues. The Commission has thus far not used the powers invested in it by the Commission of Inquiry Act of 1948 and the Presidential Warrant to bring contempt proceedings against witnesses who refuse to provide vital information to the Commission.

Victim and witness assistance and protection

The Commission is still functioning with an ineffective witness protection scheme which is undermined by the absence of a national victim and witness assistance and protection program and legislation. Although the Commission has created its own scheme, and has in place a Victim and Witness Assistance and Protection (VWAP) Unit, the IIGEP notes the lack of adequate training for the VWAP staff. While the IIGEP welcomes the recent visit to Australia by several senior members of the VWAP Unit to observe international practices, the members of the Unit have yet to receive appropriate training. In addition, the Commission is seriously constrained by inadequate financial and operational support from the Government. These factors have prevented the Unit from becoming operational.

A draft national witness assistance and protection Bill is currently proceeding through the official constitutional approval process. The IIGEP is not privy to the contents of the draft Bill, and is therefore not in a position to verify whether the IIGEP’s earlier suggestions relating to international norms and standards have been integrated into the draft Bill.

Public inquiries

The Commission has recently announced that it will soon begin public inquiries into the killing of the 17 *Action Contre La Faim* aid workers and the killing of 5 youths in Trincomalee.

Given this development, the IIGEP has sought information from the Commission on its preparedness to move to public inquiries. In particular, the IIGEP requested the Commission’s workplan for the public inquiry phase; its procedures for conducting the public inquiries; its policy and procedures for non-compliance with the Commission’s summons; its procedures for the calling and sequencing of witnesses; its capacity to analyse information and material from the investigation stage; its policy to exclude all or part of the public from inquiries; its witness risk assessment criteria; its procedures to safeguard confidential information; its planned measures to publicly announce and report on inquiries; its measures to ensure the rights of families of victims to be informed and have access to hearings; and its procedures for assessing compensation for victims. In particular, the IIGEP has sought assurances that vulnerable, at-risk witnesses will not be called before public inquiries, until effective witness protection measures are in place.

The Commission has, however, postponed public inquiries pending an amendment to the Commissions of Inquiry Act by Parliament that would enable the members of the Commission to

conduct public inquiry sessions in smaller groups and thus speed up the process. The IIGEP, however, is of the opinion that the Commission should not delay the commencement of inquiries on this basis. The IIGEP notes that the present Act does not have a quorum rule.

Conclusion

The above issues reinforce the IIGEP's prior assessment that the Commission of Inquiry's process falls short of international norms and standards. The Commission's work also lacks transparency. For instance, all sessions conducted by the Commission have been held to the exclusion of the public, the victims and their families and, on occasions, the IIGEP. In addition, there continues to be a lack of full and timely disclosure of information to the IIGEP. The IIGEP reiterates its concerns regarding the Commission's lack of independence, ineffective witness protection measures and shortcomings in the investigations.

At its November meeting, the IIGEP concluded that the persistent disregard for its observations and recommendations by the Government of Sri Lanka and the Commission of Inquiry tends to render the IIGEP's continued role irrelevant. With the Commission's mandate extension and the imminent start of public inquiries, the IIGEP urges the Commission and the Government to take immediate steps for implementing corrective action.

END

ⁱ The IIGEP consists of the following 11 Eminent Persons: Justice P.N. Bhagwati (India) (Chairman), Judge Jean-Pierre Cot (France), Mr. Marzuki Darusman (Indonesia), Mr. Arthur E. "Gene" Dewey (USA), Prof. Cees Fasseur (Netherlands), Dr. Kamal Hossain (Bangladesh), Prof. Bruce Matthews (Canada), Mr. Andreas Mavrommatis (Cyprus), Prof. Sir Nigel Rodley (UK), Prof. Ivan Shearer (Australia) and Prof. Yozo Yokota (Japan).