

International Independent Group of Eminent Persons
Public Statement

15 June 2007

Further to our previous public statement of 11 June 2007, we, the International Independent Group of Eminent Persons (IIGEP) are concerned that the conduct of the President's Commission of Inquiry to Investigate and Inquire into Alleged Serious Violations of Human Rights (the Commission) is inconsistent with international norms and standards. Failure to take corrective action will result in the Commission not fulfilling its fact-finding mandate in conformity with those norms and standards.

Central to our concerns is the role of the Attorney General's Department in the Commission. On 27 February 2007, we raised these concerns with the Chairman of the Commission, stating that the conflict of interest arising from the involvement of the Attorney General's Department in the Commission compromises national and international principles of independence and impartiality that are central to the credibility and public confidence of the Commission. We urged the Commission to reconsider the role of the Attorney General's Department and to appoint independent counsel in its place. On 12 May 2007, the Commission conceded that the IIGEP's concerns of a conflict of interest were valid. This understanding was confirmed in writing by the IIGEP on 13 May 2007.

Contrary to this understanding, on 14 May 2007 the Chairman of the Commission publicly announced that the Attorney General's Department was to make a statement outlining the nature of the case currently under investigation and would lead evidence of witnesses. Despite further representations by the IIGEP on this issue, to date the role of the Attorney General's Department remains unchanged.

During the initial sessions of investigation and inquiry, conducted between 14 and 29 May 2007, the IIGEP observed examples of a lack of impartiality. Prior to the presentation of any evidence, when publicly outlining the case, counsel from the Attorney General's Department stated *as fact* matters which are controversial in the case. Furthermore, the witness was improperly led, material questions were not asked by the counsel from the Attorney General's Department and information relied on by the witness and the Attorney General's Department was not made available to the IIGEP. The Commission does not seem to have taken sufficient corrective measures to ensure that its proceedings are transparent and conform with international norms and standards of independence, impartiality and competence.

Throughout these initial sessions, the Commission heard one witness's full testimony and part of a second witness's testimony. Taking evidence in this manner will not, in our opinion, reveal the information and evidence necessary to identify perpetrators of human rights violations and enable the Commission to achieve its mandate in a timely manner.

P N Bhagwati
Chairman, IIGEP

RESPONSE FROM THE CHAIRMAN OF THE COMMISSION OF INQUIRY TO THE STATEMENT

This Statement also contains the views of the IIGEP pertaining to the issue relating to the participation of Counsel from the Attorney General's Department in the work of the Commission. The Commission has dealt with this issue in its observations regarding the first Public Statement of the IIGEP. We wish to state that, the Commission is satisfied regarding the professional services being given to the COI by members of the Panel of Counsel from the Official Bar (Attorney General's Department). They remain under the supervision of the Commission and the Counsel perform functions entrusted to them in accordance with the wishes of the Commission.

The Commission is presently taking necessary steps to activate the Panel of Counsel from the Unofficial Bar.

We are confident that, in accordance with the rules of procedure of the Commission and the practices of the Commission applied so far, the Commission would be able to identify those responsible for having committed Human Rights violations pertaining to incidents being investigated and inquired into by the COI.

The Commission wishes to take this opportunity to request the IIGEP to ensure that, at least one Member of the IIGEP is present in Colombo to observe the investigations and inquiries of the COI. We feel that, such direct observation of the Commission by Members themselves would provide to the IIGEP a clear picture and would erase possibly doubts regarding the efficacy of the Commission.

The Commission is also of the opinion that Counsel who outlined the nature of the first case being investigated into the killing of 17 workers of ACF, presented a fair account of events pertaining to the incident based on material before the Commission and facts already in the public domain. We are also of the view that Counsel examined witnesses in an impartial manner and with the view to eliciting relevant facts and circumstances. Furthermore, throughout the sessions conducted by the Commission, Commissioners have been actively involved in examining witnesses. Already the Commission has been able to achieve considerable progress in the case. The Commission is firmly of the view that, by adopting the presently applied procedures, the Commission would be in a position to properly give effect to its mandate.

RESPONSE FROM THE ATTORNEY GENERAL TO THE 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.