



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

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Response of the Commission of Inquiry to the Public Statement of the International Independent Group of Eminent Persons

The Commission of Inquiry regrets that it has to reject some of the assertions made in the Public Statement issued by the IIGEP.

The Commission has consistently endeavored, throughout the Investigation and Inquiry proceedings, to be transparent and to comply with international norms and standards.

Any shortcomings pointed out by the IIGEP have been promptly addressed and speedily remedied to the extent possible.

The Commission's response to the issues highlighted in the IIGEP's Public Statement is as follows:

Public Inquiry Phase

The Commission is also disappointed with the low level of public attendance at the Inquiry sittings despite due notification via the print, radio and television media. Such notification was issued, though on a modest scale in keeping with the resource constraints. The few surviving victims had disappeared and could not be individually informed. The families of all the victims, their representatives and all other concerned are most welcome to attend the Inquiry hearings.

Holding the inquiries closer to the sites of the killings was considered and rejected for several reasons. It would be prohibitively costly. Moreover, such hearings could be very risky for vulnerable witnesses already at risk; this was the opinion of those of the witnesses who were consulted on this matter.

The Commission has no alternative but to operate within the resource limitations. The Commission is further unavoidably constrained by other restrictions such as in access to the BMICH from time to time for reasons of security. The Commission had to cancel several of the sittings on this account, especially in the latter half of January and the early half of February 2008.

Witness Protection

The Commission has been operating subject to several handicaps including lack of resources, lack of witness protection legislation, and lack of

international support. The lack of resources is a continuing constraint on the effectiveness of witness protection.

International support is needed to train some of the staff for the Commission and, most important, to help to relocate overseas the most vulnerable of the key witnesses and, in respect of witnesses relocated overseas, to obtain their evidence via teleconferencing. While we are disappointed that some of the international support promised has not materialized, we very much appreciate the critically important help provided by IIGEP in locating and securing statements from certain key witnesses who had fled overseas. The Commission has deliberately reserved some of these witnesses exclusively for the Inquiry stage.

Conclusion

The Commission has taken care to bring in eminent Counsel from the Unofficial Bar and, further to make suggestions as and when it appears appropriate, during the proceedings. Moreover, in respect of every witness, the IIGEP Assistants present have been invited to suggest further questions through the Chairman. In fact, contrary to what is alleged in the Public Statement, much valuable evidence has already turned up in the course of both the Investigation and Inquiry hearings.

With regard to the failure of some witnesses to appear or of some documents to be submitted to the Commission, the Commission has held back positive action on account of some ambiguities in the Commission of Inquiry Act.

These have now been cleared by an amendment to the Commission of Inquiry Act in February 2008. The Commission is proceeding to reissue the summons in respect of both witnesses who failed to appear and the documents not received. Any failure to respond will result in the Commission promptly taking the prescribed penal action to enforce compliance.

With regard to the participation of the Official Bar (Counsel from the Attorney General's Department), the Commission has consistently maintained that their services are essential and that excluding them was never an available option. In fact, this issue is now moot in that the amendment of February 2008 to the Commission of Inquiry Act explicitly authorizes the Attorney General to appear before the Commission, to place before the Commission any evidence or other material, to examine any witness summoned by the Commission, and to secure copies of statements and testimonies recorded and other material collected or received by the Commission.

To avoid over dependence on the Official Bar the Commission brought in eminent Counsel from the Unofficial Bar to lead some of the evidence. For example, Mr. Ranjit Abeysuriya, P.C., the former Director of Public Prosecutions has lead virtually all the evidence to date in the investigations and inquiry hearings in Case No. 5 concerning the killing of five students in Trincomalee on 2nd January 2006. But the Official Bar has not been excluded from this or any other case.

The Commission will begin Inquiry hearings into the other cases shortly. It is proposed that in every case some of the evidence will be lead by eminent Counsel from the Unofficial Bar and some by Counsel from the Official Bar.

Regarding the allegations that official correspondence directed to the IIGEP has too often been characterized by lack of respect and civility, in so far as correspondence between the Commission and the IIGEP is concerned, it is correct that they contain mutual complaints and criticisms. However, we see no significant imbalance in the language and tone used by the Commission and the IIGEP. If the reference was to correspondence received from other sources, the Commission is not in a position to respond

It is indeed unfortunate that the optimum level of cooperation and trust needed to maximize productive and harmonious relations between the Commission and the IIGEP has not always been maintained. Nevertheless, some effective cooperation has been possible and such cooperation could have continued. It is therefore regretted that the IIGEP have unilaterally decided to withdraw.

Justice N. K. Udalagama
Chairman
