

5th March 2008

**Response of the Attorney General of Sri Lanka
to the 5th Public Statement of the IIGEP**

The Attorney General of the Government of Sri Lanka who is empowered under the agreed terms of reference pertaining to the mandate of the International Independent Group of Eminent Persons (IIGEP) to issue this Response on behalf of the Government of Sri Lanka, wishes to reiterate its concern this time too, that from the timing of the release of the 5th Statement of the IIGEP, it is clear that the IIGEP seeks to cater for an international agenda in the release of Public Statements, in that this time too the IIGEP has timed the release of the Statement to coincide with the ongoing 7th Sessions of the United National Human Rights Council, in Geneva, Switzerland. It would be recalled that on previous occasions too, the IIGEP coincided the release of its Public Statements with sessions of the UN Human Rights Council and other important meetings such as the meeting His Excellency the President had last year with the UN High Commissioner for Human Rights. The timing of the release of the current Public Statement together with its the contents, clearly manifests the true intentions of a majority of the current membership of the IIGP, in that what the eminent persons appear to be interested in, is to ensure an international condemnation of Sri Lanka through the expression of certain views prejudicial to the interests of Sri Lanka based on certain untested hypothesis and distorted facts and circumstances. Expression of such comments to say the least is unwarranted and is in excess of the mandate of the IIGEP.

In particular, specific objection is hereby raised to the averments contained in paragraphs 4, 5, 6 and 7 of the part entitled 'Conclusion' of the Statement of the IIGEP. These averments do not relate to observations of the IIGEP regarding the functioning of the Commission of Inquiry. The relevant comments are of generic nature and relate to the alleged views of members of the IIGEP pertaining to certain situations they claim to exist in Sri Lanka. The Attorney General wishes to emphasise that the said comments are ill-founded and based on certain ill-conceived notions as opposed to reliable and

acceptable facts based on observations of the functioning of the Commission. The Attorney General reiterates that the expression of the relevant views clearly exceeds the mandate vested in the IIGEP by His Excellency the President. The Attorney General regrets that the current membership of the IIGEP has deemed it appropriate to include in its Public Statement averments which are so manifestly in excess of the mandate of the IIGEP.

It would be pertinent to mention that the function of the IIGEP is to only observe the functioning of the Commission of Inquiry appointed to investigate and inquire into alleged serious human rights violations. The mandate of the IIGEP does not include the entitlement to either engage in alternate investigations and inquiries or to comment on political and other commitments or intentions of the Government of Sri Lanka and on alleged phenomena which are of generic character. It is truly unfortunate that a majority of the current membership of the IIGEP has deemed it appropriate to whilst functioning on an invitation extended to them by His Excellency the President, comment in excess of their mandate and thereby tarnish the image of Sri Lanka in the eyes of the international community.

Throughout the functioning of the current membership of the IIGEP, the appearance before the Commission of Counsel from the Attorney General's Department has come under adverse comment. It was originally contended that such counsel whose services were obtained by the Commission faced a 'conflict of interest' and subsequently the criticism was modified as facing a 'competing interest'. The criticism has now once again been shifted to a 'conflict of interest'. The IIGEP has unfortunately failed to appreciate that most of the vital evidence unearthed in the several cases investigated into by the Commission, has been at the instance of questioning by Counsel from the Attorney General's Department. It has throughout been pointed out that the criticism levelled against the Attorney General and his officers was unfounded taking into consideration the unique quasi-judicial character and the nature of the authority vested in the Attorney General of Sri Lanka, unlike the role of certain Attorney General's of other countries who are necessarily a part of the political establishment. Recognition of the role of the Attorney General of Sri Lanka and the need to entrust him the duty of protecting the interests of the State (as opposed to the interests of the incumbent government), was manifest when the Parliament recently unanimously

approved without any criticism or decent an amendment to the Commission of Inquiry Act, empowering the Attorney General of the right to appear before any Commission of Inquiry (either on invitation or on his own volition), examine any witness and present relevant evidence. The unanimity of the honourable Members of the Parliament of Sri Lanka, clearly demonstrated the recognition Sri Lanka accords to the Attorney General in the functioning of commissions of inquiry. This recent development clearly indicates the unfounded and ill-informed nature of the criticism expressed by the IIGEP.

The Government of Sri Lanka has now finalised the drafting of the Bill for the Protection and Assistance to Victims of Crime and Witnesses. As this Statement goes into publication, the Bill will be presented to the Cabinet of Ministers for their final approval and thereafter to the Supreme Court for constitutional review. It will thereafter be presented to Parliament as an urgent bill. It is expected that the enactment and enforcement of the provisions of the new law will ably assist the Commission of Inquiry in providing necessary protection and assistance to victims and witnesses of Human Rights violations being inquired into by the Commission. Measures of protection the proposed new law would provide includes the facility to provide personal protection, re-identification and relocation of such persons and thereby protect them from possible harassment, intimidation and reprisals.

After engaging in complex and time consuming investigations, on the 3rd of March 2008, the Commission of Inquiry commenced the Public Inquiry into the killing of the 17 aid workers of the ACF in Muttur, Trincomalee. It is of significant importance to note that, notwithstanding the several criticisms made by the IIGEP regarding the functioning of the Commission, a senior diplomatic representative of the Government of France and a senior officer of the ACF were present at the Public Inquiry to observe the sessions. The presence of such observers would enable all parties to observe and arrive at objective conclusions regarding the functioning of the Commission of Inquiry.

The current membership of the IIGEP has intimated that '*the IIGEP has decided that it will terminate its operation in Sri Lanka*'. This decision coincides possibly with the ending of funding by the European Union to the IIGEP. It is regrettable that the current membership of the IIGEP has in this regard decided to execute a function in respect

of which they have absolutely no authority or even an entitlement. The IIGEP is an institution created by His Excellency the President. Therefore, it is only His Excellency the President who has the legal authority and entitlement to retain the institution, modify its mandate or terminate the functioning of the IIGEP. Therefore, the current membership of the IIGEP does not have the mandate to 'terminate the IIGEP'. What the current membership is entitled to do, is to if they so desire resign from the IIGEP and leave the institution. As intimated by the current membership of eminent persons, if they either as a group or individually leave the IIGEP, the Government of Sri Lanka will take steps to reconstitute the IIGEP with an alternate group of eminent persons who are likely to work according to the mandate of the IIGEP and in constructive partnership with the Commission of Inquiry.

In this regard, it would be pertinent to note that the existence of the IIGEP is in no way a condition pre-requisite for the functioning of the Commission of Inquiry. The IIGEP is a mechanism to secure additional information regarding compliance with international norms and standards. Therefore, even if there is an interim period in the future with no functioning member of the IIGEP, the Commission of Inquiry could function without any impediment in the execution of its mandate.

The Attorney General of Sri Lanka has confidence that the Commission of Inquiry will continue to comprehensively and impartially execute its mandate in search of the truth pertaining to the several incidents amounting to serious violations of Human Rights. Such investigations and inquiries by the Commission would hopefully lead to the identification of the perpetrators of these heinous crimes, and would enable the Attorney General to prosecute such persons in courts of law. The recommendations of the Commission would also enable the Government of Sri Lanka to provide redress to the relevant victims and take other corrective action including preventive measures.

With reference to previous responses issued by the Attorney General, the IIGEP has characterised such responses as amounting to lack of respect and civility. The Attorney General wishes to inform the IIGEP that robust and objective responses to Public Statements of the IIGEP should not be viewed as stemming from lack of respect and civility. In

the face of unfounded allegations and comments that are highly prejudicial to the interests of Sri Lanka, the Attorney General cannot assume a subservient stance in responding to the IIGEP. The Attorney General expects the current membership of the IIGEP to understand the need for the Attorney General to articulate his position in a direct and forthright manner.

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