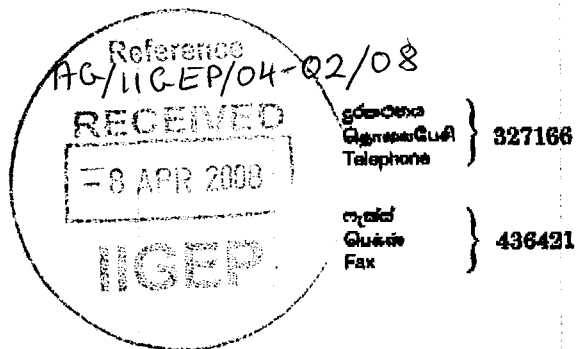




**නීතිපති කළ මැදිරිය**  
 කොළඹ 12, ශ්‍රී ලංකාව.  
 சட்டத்துறை அபிவிதிநிள் கூடம்  
 கொழும்பு 12, இலங்கை.  
**Attorney-General's Chambers**  
 Colombo 12, Sri Lanka.



## **RESPONSE OF THE ATTORNEY GENERAL OF SRI LANKA TO THE 6<sup>TH</sup> PUBLIC STATEMENT OF THE IIGEP**

### **(i) Background to the establishment of the Commission of Inquiry (CoI)**

In November 2006, the President of Sri Lanka HE Mahinda Rajapaksa acting in pursuance of the powers conferred on him by the Commissions of Inquiry Act, appointed a Commission of Inquiry to investigate and inquire into incidents amounting to serious violations of Human Rights including in particular fifteen incidents allegedly amounting to such serious violations. The primary purpose of establishing this fact finding Commission was to create an independent and credible mechanism that would be empowered to collect relevant material through investigation and inquiry enabling the Attorney General to institute criminal proceedings against the perpetrators identified by the Commission for having committed serious violations of Human Rights including in particular the fifteen incidents specified in the Warrant of the Commission. Secondary objectives were to (a) ascertain the correct factual circumstances pertaining to these incidents, (b) ascertain the propriety and adequacy of investigations conducted into these incidents by the routine competent authorities, (c) provide a forum for aggrieved parties to complain of losses and damage caused to them, (d) create a protective environment in which victims and witnesses could testify, (e) establish a mechanism to enable interested parties, the media and the public at large to directly ascertain the truth pertaining to these incidents, and (f) receive recommendations as to the nature of reparation, compensation etc. to be provided to the victims and other affected parties.

In view of the interest shown by certain segments of the international community with regards to certain incidents which were alleged to

amount to serious violations of Human Rights, the mandate (terms of reference) of the Commission to be established were made known to diplomatic representatives of such segments of the international community, and based on suggestions made by them, certain modifications were made to the Warrant establishing the Commission. The Commission was established only after such diplomatic representatives indicated overall satisfaction regarding the terms of reference of the Commission to be appointed. During the discussion phase with representatives of the international community, there was no objection or concern raised regarding the possible participation of the Attorney General or his representatives in the Commission that was to be established. Consequently, the Commission was appointed chaired by a retired judge of the Supreme Court carrying nearly thirty years of unblemished judicial service and comprised of seven other eminent Sri Lankans who reflect the multiple socio-ethnic diversities of the Sri Lankan community. In making appointments, due regard was paid to the need to ensure legal expertise, commitment to the promotion and protection of Human Rights, experience in conducting affairs of commissions of inquiries, management and administration of the affairs of state institutions and non-governmental organizations, need to represent the thinking of civil society and gender balance. The professional integrity, eminence and reputation, of the Commissioners have never been in doubt nor have attempts been made in the past to challenge the propriety of their decisions. It is heartening that, no person has to-date commented adversely regarding such appointments made by the President.

It is in that backdrop, that the criticisms levelled by Members of the IIGEP against the Commission and decisions taken by the Commissioners should be viewed.

The Commission of Inquiry became functional in December 2006.

**(ii) Establishment and mandate of the International Independent Group of Eminent Persons (IIGEP)**

In view of the need to ensure that interested parties are satisfied that the work of the Commission is carried out in a transparent manner and in accordance with international norms and standards, after detailed discussions with the international community, a separate mechanism

called the *'International Independent Group of Eminent Persons (IIGEP)'* was established **to observe investigations and inquiries conducted by the Commission of Inquiry**. The mandate of the IIGEP was discussed at length with diplomatic representatives of the international community and with officials of the office of the United Nations High Commissioner for Human Rights. The mandate of the IIGEP was finalised only after such officials indicated their overall satisfaction regarding the purpose of the mechanism and the mandate to be vested in the IIGEP. The mandate of the IIGEP did not provide for IIGEP Members to 'supervise' the conduct of the CoI or to conduct alternate investigations or inquiries. The IIGEP was only vested with an observation role. Additionally, where certain processes of the CoI were found to be short of international norms and standards, the IIGEP was empowered to suggest corrective action to the CoI. Therefore, it is clear that the role of the IIGEP is to observe the functioning of the CoI. Its mandate does not empower it to observe the functioning of other agencies and institutions of Sri Lanka which may be linked to the CoI, nor could it observe and comment on prevailing overall situation in Sri Lanka pertaining to Human Rights, or observe and comment on the status of legislation and law enforcement.

Consequent to agreement being reached regarding the mandate of the IIGEP, the international community was invited to nominate eminent persons to function as Members of the IIGEP, and such nominees were appointed to the IIGEP along with certain Assistants nominated by them. Certain countries that nominated eminent persons and the European Union undertook to fund the functioning of the IIGEP. The IIGEP became functional in the end of February 2007.

The national CoI and the IIGEP which was required to function in partnership and in harmony was a unique creation established by the Government of Sri Lanka in pursuance of its policies of transparency and commitment towards the enforcement of the domestic law in respect of alleged Human Rights violations. Such a unique hybrid mechanism has never been established in any other country.

It became evident during the initial stages of the CoI and the IIGEP, that certain Members of the IIGEP had originally understood their mandate to include 'supervising' the CoI and 'overseeing' the functioning of the Commission. This became evident when certain leading Members of the IIGEP addressed plenary meetings between the CoI and the IIGEP. That such eminent persons entertained such lack of understanding of their

mandate, is a matter of record and regret. Furthermore, as the IIGEP commenced functioning, it became evident that most Members of the IIGEP were not willing to be present in Sri Lanka and directly observe the work of the Commission, and had instead entrusted substantive duties they were originally required to perform to their respective Assistants. Such Assistants sought on numerous occasions to perform functions which were totally outside their mandate as well as certain functions of the eminent persons which could not be delegated by the respective Members to their Assistants. On such occasions, officers of the Attorney General's Department assisting the Commission who had also taken part in negotiating and settling the mandates of the CoI and the IIGEP, had to bring such excesses to the attention of the CoI and thereby ensure that the Members of the IIGEP as well as their Assistants did not exceed their respective mandates. This was met with resistance by the Members of the IIGEP and their Assistants, and they developed an acrimonious attitude towards those who attempted to restrict their role to that contained in the terms of reference of the IIGEP as reflected in the letter of invitation extended to the IIGEP Members.

**(iii) Officers of the Attorney General's Department**

Following the establishment of the Secretariat of the Commission of Inquiry, one of the first functions of the CoI was to present a request to the Attorney General to nominate some officers of the Attorney General's Department, to assist the Commission in its activities. In view of the request made by the Commission and the provision of the Warrant of the Commission requiring all public servants to assist the Commission when their services are solicited, the then Attorney General the late Hon. K.C. Kamalabayson, PC nominated a team of five officers of the Attorney General's Department headed by the then Solicitor General to assist the Commission. In making these nominations, the then Attorney General identified the need to nominate senior officers who had assisted in the establishment of the Commission and the IIGEP, officers who possessed experience in assisting Commissions of Inquiry and officers who possessed experience in the conduct of criminal prosecutions. They were also persons who possessed necessary experience and unblemished professional integrity. Upon receiving the nominations, being satisfied

with the nominations received, the Commission of Inquiry appointed the nominated officers as Members of the *'Panel of Counsel'* of the Commission of Inquiry, and were required to report on the affairs of the Commission directly to the Commission itself.

In view of allegations ranging from a 'conflict of interest' to 'competing interest' levelled against the Attorney General and his officers by the current membership of the IIGEP, it becomes imperative to reiterate certain matters of fundamental importance.

- (a) The institution of the Attorney of Sri Lanka is not a political institution. It is a government department with constitutional and statutory functions, in the fields of enactment of legislation, fundamental rights, criminal justice and advising the Head of State, State agencies and public officers.
- (b) The Attorney General of Sri Lanka is appointed by the President, when a vacancy arises in such position. Both the incumbent Attorney General and his predecessor were the senior most officers of the Attorney General's Department and Solicitors General, when they were appointed as Attorney General.
- (c) The Attorney General of Sri Lanka is not a Cabinet Minister and does not sit with the Cabinet of Ministers. He does not and is not required to take political decisions.
- (d) The functions and decisions of the Attorney General are amenable to judicial review.
- (e) When exercising functions within the criminal justice system, the Attorney General is required to function in a quasi-judicial manner.
- (f) Other than with regards to offences amounting to bribery and corruption, the Attorney General is empowered to receive and study notes of investigations for the purpose of considering the institution of criminal proceedings and forward indictment or charges against accused persons. Thereafter, the prosecution of the case is conducted by a representative of the Attorney General. Ordinarily, such notes of investigations are received only after the conduct of criminal investigations.

- (g) The Attorney General does not 'get involved' in the conduct of investigations, or 'direct' the conduct of criminal investigations. Law enforcement officers including the police are not supposed to 'act on the instructions' of the Attorney General or his officers. The Attorney General only 'advices' the conduct of investigations, particularly with regard to matters in respect of which his advice is sought and with regards to matters of law.
- (h) Under the criminal justice system of Sri Lanka, it is necessarily the function of the Attorney General to prosecute persons responsible for having committed criminal offences in the course of committing Human Rights violations. During the last ten years, the Attorney General has instituted criminal proceedings against nearly one thousand security forces and police personnel, in respect of crimes committed by them, including Human Rights violations taking the manifestation of crime.

Following their appointment to the Commission, the officers of the Attorney General's Department assisting the Commission have been performing the following functions:

- (a) Drafting the internal rules of procedure of the Commission.
- (b) Recommending action to be taken with regard to public petitions received by the Commission.
- (c) Participating in certain internal meetings of the Commission and expressing opinion.
- (d) Suggesting avenues of further investigation.
- (e) Participating at visits to scenes of crime.
- (f) Examining witnesses who appear before the Commission at investigations and inquiries.

It is of paramount importance to note that, officers of the Attorney General's Department assisting the Commission have not exercised discretionary authority. They have merely 'assisted' the Commission on the direction of the Commissioners. It is of importance to note that, up to this moment, at all instances, the relevant officers have functioned on directives given by the Commission and on instructions of the Commission. At no instance have these officers acted on their own

volition or exercised any statutory function vested in them by virtue of being representatives of the Attorney General. The primary function entrusted to these officers by the Commission in certain cases being investigated and inquired into by the Commission, is to assist the Commission in the examination of witnesses by putting questions to them. In such instances, the scope and the nature of examination of witnesses are determined by the Commission, and often Commissioners have openly indicated to Counsel the areas to be covered during such examination. At no instance have the counsel violated such directives and have at all times acted in the best interests of the Commission. On no occasion have any of the Commissioners complained of the conduct of the counsel assisting the Commission, and in fact have been complementary of their role. The Commission has concluded and openly commented that the assistance of the Counsel from the Attorney General's Department was indispensable to the functioning of the Commission of Inquiry and has withstood pressures exerted on them by the IIGEP to terminate their services.

Whether or not officers of the Attorney General's Department could come under enquiry by the CoI, has to be determined by an examination of the Warrant establishing the Commission. The Warrant makes no reference to such effect. In addition to inquiring into the incidents proper, the CoI has been mandated to inquire into the sufficiency and propriety of investigations conducted by the routine competent authorities. Therefore, under this second limb of the terms of reference, only those who took part in the original investigations would come under inquiry. That it was never intended by the President to subject the Attorney General or his officers to enquiry by the Commission is evident by the contents of a letter of clarification dated 5<sup>th</sup> November 2007, sent to the Commission by the Secretary to the President on the occasion of the extension of the term of office of the Commission by another year. Issuing this letter became necessary, in view of certain views expressed by Members of the IIGEP to the President. In the said letter, the intention of the President has been made manifestly clear.

Under the Sri Lankan criminal justice system, there is no 'Special Prosecutor' for criminal cases amounting to Human Rights violations. All prosecutions other than prosecutions for bribery and corruption are at the instance of the Attorney General. Therefore, consequent to the identification of the perpetrators of serious violations of Human Rights

and the collection of evidence against them, it would necessarily be the function of the Attorney General and his officers to consider the institution of criminal proceedings against such perpetrators, forward indictments and prosecute them in courts of law. In the circumstances, it becomes unimaginable that the CoI would in any way seek to enquire into the conduct of the Attorney General, or impeach him or comment adversely regarding his conduct, because it is the very same Attorney General who would one day be called upon to give effect to the recommendations of the CoI to prosecute perpetrators. Therefore, the intention of the President to keep the Attorney General and his officers beyond the scope of inquiry by the CoI is justifiable, understandable and based on sound reason. In the circumstances, it becomes evident that, the afore-stated letter dated 5<sup>th</sup> November 2007, only provided a clarification regarding the mandate of the CoI, and was not intended to narrow down or restrict the scope of its mandate.

If under the existing criminal justice system, the duty of inter-alia launching prosecutions and conducting such prosecutions against those responsible for having committed serious Human Rights violations is vested with the Attorney General, how could it be contrary to the interests of justice for the Attorney General's officers to assist the CoI which has been mandated with the task of identifying the perpetrators who should be prosecuted and collecting evidence against them ?

It would thus be seen that, there is no incompatibility, inappropriateness or conflict of interest between the role of the Attorney General (a) in the criminal justice system of Sri Lanka, and (b) as the principle legal advisor to the State and its agents on the one hand, and the role being performed by his officers assisting the CoI on the other hand. In view of the foregoing, the Attorney General is of the view that officers of the Attorney General's Department, who assist the Commission of Inquiry, do not face either a 'conflict of interest' or 'competing interest' when assisting the Commission of Inquiry.

In recognition of the overall functions of the Attorney General in the administration of justice, the protection of the interests of the State (as opposed to the interests of politicians holding political power or the interests of the particular government), and the need to ensure that the Attorney General plays an integral role in Commissions of Inquiry appointed by the President, recently on a proposal by the government and after consideration by the Parliamentary (multi-party) Consultative

Committee on Justice and Laws Reform, the Parliament unanimously amended the Commissions of Inquiry Act, enabling inter-alia the Attorney General to as of right to appear before any Commission of Inquiry, examine any witness who appears before such Commission, and to present any relevant evidence before such Commission. This specific proposal was not objected to by even a single Member of Parliament. Such is the recognition accorded to the role of the Attorney General and the confidence honourable national legislators have in the functioning of the Attorney General and his officers.

In any event, for the last six months, officers of the Attorney General's Department have not been alone in assisting the Commission. Under the current (amended) organizational structure, whilst officers of the Attorney General's Department comprises the *Panel of Counsel from the Official Bar*, several members of the unofficial bar including the senior most human rights lawyer of Sri Lanka Mr. R.K.W. Goonasekera and one time President of the Bar Association of Sri Lanka and Director of Public Prosecutions Mr. Ranjit Abeysuriya, President's Counsel, comprise the *Panel of Counsel from the Unofficial Bar*. Members of these panels jointly and in harmony assist the Commission in examining witnesses, and take lead roles as indicated to them by the Commission. Such a hybrid system was created by the CoI due to certain concerns expressed by the IIGEP.

The IIGEP complains that a senior officer of the Attorney General's Department who is also assisting the Commission had 'given advice, directions to investigating officials during original police investigations'. The material based upon which such an allegation is being made has not yet been tendered to the Attorney General by the IIGEP. It is surprising that, IIGEP Members who claim to be concerned about international norms and standards, did not pay due regard to the fundamental international norm, of presenting to the person against whom the allegation is made the material against him and obtaining his observations. In the absence of such presentation of allegedly incriminating material, what ethical or moral right does the IIGEP have to make an accusation of that nature against a senior officer of the Attorney Generals Department? Isn't such conduct on the part of the IIGEP consistent with the existence of a sinister plot by the current membership of the IIGEP to make unfounded allegations in order to tarnish the good image of state institutions, so as to justify the arrival of

alien (international) observers to monitor the Human Rights related situation in Sri Lanka ? In any event, the Attorney General vehemently denies that any of his officers assisting the Commission have issued 'directives' to police investigators regarding the conduct of investigations into cases being inquired into by the CoI. Officers of the Attorney General's Department have treated all cases before the CoI in the manner in which all such cases ought to be handled and have only exercised their legitimate statutory functions with regards to such cases.

Due to reasons not within the control of the Government of Sri Lanka, IIGEP Members have hitherto observed on an average merely ten sessions out of nearly one hundred sessions of the Commission of Inquiry. Nor have their respective Assistants continuously observed the sessions. Certain Assistants have not been present at the Commission one more than three sessions. This state of poor attendance reflects the true nature of the interest shown in the affairs of the CoI by the IIGEP. However, admittedly they have the benefit of verbatim transcripts of proceedings held so far. Under these circumstances, it is astonishing that Members of the IIGEP who are critical of the functioning of Counsel from the Attorney General's Department, could not with the aid of such transcripts, point out to a single line of questioning of witnesses by such Counsel, and indicate as to how such examination was in fact flawed or contrary to the interests of justice or inappropriate. This shows that in actual fact, the IIGEP is unable to point out to any tangible professional impropriety on the part of the *Panel of Counsel from the Official Bar*.

It is also pertinent to note that, purely due to the need to prevent unnecessary controversy, the Attorney General offered to withdraw his officers from the Commission even if one Commissioner of the eight member Commission felt that it was not necessary or inappropriate to retain the services of such counsel. However, neither the Commission nor any particular Commissioner made such indication. Under such circumstances, it was not possible for the Attorney General to withdraw the services of officers of the Attorney General's Department from the Commission of Inquiry.

**(iv) Functioning of the Commission of Inquiry and Commissioners**

The IIGEP has made certain adverse comments regarding the functioning of the Commission of Inquiry. As the Commission is an independent body exercising quasi-judicial powers, the Attorney General does not wish to comment on the conduct of the Commission.

The Attorney General is perturbed by the failure on the part of the IIGEP to comment positively on the vast amount of useful and important progress and inroads the CoI has so far made in the direction of the ascertaining the truth pertaining to the several incidents under investigation and inquiry. Due to the need to treat as confidential such material collected by the CoI during its investigations, this Statement will not reveal details of such progress made by the CoI.

Well before the 6<sup>th</sup> Public Statement of the IIGEP was finalized, Counsel looking after the interests of the Sri Lanka Army and its Commander, raised an objection to one Commissioner of the Commission continuing to function in the Inquiry into the killing of 17 workers of the ACF. The basis of the objection was that, the relevant Commissioner was an 'Advisor', 'Member of the Unit Core Staff of the Conflict and Peace Analysis Unit', and was otherwise 'closely associated and involved' with a Non Governmental Organization called the 'Centre for Policy Alternatives (CPA)', which organization along with several other organizations were permitted in late March 2008 by the CoI to take part in its proceedings in terms of Section 16 of the Commissions of Inquiry Act, on the basis that the organizations were 'concerned' in the inquiry in issue. Following their application, these organizations including the CPA were in fact given the right to intervene in the proceedings, which right includes legal representation, examining witnesses, opportunity to present evidence and an entitlement to receive documentation such as notes of investigations. In view of the foregoing, it was contended by Counsel for the Sri Lanka Army that the relevant Commissioner violated the rules of natural justice by (a) not making a prior declaration of his interests and involvement with the CPA, at the time the organization sought to intervene, & (b) continuing to sit at Inquiry sessions notwithstanding the objection being raised. It was contended that this matter was of primary importance to the legal sanctity of the proceedings, and if the situation was not immediately remedied, could flaw the legality of the proceedings and its outcome. It would thus be seen that the instant objection raised against the afore-stated Commissioner is a very serious and tangible challenge and deserves careful and objective consideration. If indeed the

relevant Commissioner has violated principles of natural justice in a situation where he is required by law to have abided by such principles, the conduct of the relevant Commissioner would fall short of internationally accepted norms and standards. It would also be in violation of applicable national legal principles, thus exposing the proceedings and the outcome of the CoI to judicial review. In this context, it is surprising that the 6<sup>th</sup> Public Statement of the IIGEP makes no reference at all to such an important matter and does not contain the views of the IIGEP regarding this very important issue.

On behalf of the Government of Sri Lanka, the Attorney General wishes to take this opportunity to express the fullest confidence of the Government regarding the Commission of Inquiry. The Government of Sri Lanka is confident that the Commission will continue to conduct its investigations and inquiries in an independent and impartial manner, and will comprehensively give effect to its mandate. The Government of Sri Lanka is hopeful that the findings of the Commission will contain inter-alia the identities of the of perpetrators of serious violations of Human rights, and that the CoI will collect and submit sufficient reliable evidence that would enable the Attorney General to prosecute such perpetrators in courts of law.

#### **(v) Victim and Witness Protection**

Less than half the number of countries around the world, have even some form of legislation to provide protection to victims of crime and witnesses. Well before the IIGEP commented on the need for witness protection legislation, the Law Commission of Sri Lanka, the Attorney General and the National Centre for Victims of Crime, initiated processes aimed at developing a new law to be enacted by Parliament, to provide protection to victims of crime and witnesses. Subsequently, these three processes were consolidated, and a comprehensive new law was drafted to provide assistance and protection to victims of crime and witnesses. Once enacted, Sri Lanka will stand alone as a unique country that has a single law to provide both assistance and protection to victims and witnesses of conventional crime and human rights violations. Furthermore, the proposed law would provide assistance and protection to not only victims of crime and witnesses who have been interviewed by the police and appear in courts, it will provide assistance and protection

to victims and witnesses before Commissions, such as the present CoI. The proposed law has been developed paying due regard to relevant international norms and best practices. The underlying policy for the new law as developed by the Attorney General's Department met with the approval of the Cabinet of Ministers, and was subsequently drafted by the Legal Draftsman. The final Bill received constitutional clearance from the Attorney General and has recently been approved by the Cabinet. The Bill will now be scrutinized by the Supreme Court for constitutionality and will be presented in Parliament as an 'urgent bill'. In the circumstances, it is likely that the new law will be enacted by Parliament very soon and will thereafter become operational.

Notwithstanding the absence of national legislation for the protection of victims and witnesses, the CoI developed and initiated its own *Scheme for the providing of Assistance and Protection*. This scheme is implemented by the *Victims and Witnesses Assistance and Protection Unit (VWAPU)* of the CoI. All witnesses who appear before the CoI are initially screened by the VWAPU and necessary action is taken to provide security if there exists such a need. Once enacted, the new witness protection law will strengthen endeavours of the CoI in providing protective measures to witnesses of the Commission.

The commitment towards ensuring the protection of victims of crime and witnesses was recently seen when the CoI acting on a proposal and arrangements made by the IIGEP took steps to receive and record the evidence of certain witnesses who testified from an overseas location through video conferencing.

**(vi) Resignation of IIGEP Members and the future of the CoI and IIGEP**

As pointed out by the Attorney General in the *'Response of the Attorney General to the 5<sup>th</sup> Public Statement of the IIGEP'*, the IIGEP is a mechanism created by His Excellency the President. Thus, it remains the prerogative of the President to continue to retain the mechanism or terminate its functions. Public Statements issued by the IIGEP is at the instance of the current membership of the IIGEP. Notwithstanding the absence of any reasonable ground, if the current membership of the IIGEP wishes to resign from the IIGEP, that is a matter within the discretion of such members. It is noted that such resignations coincide

with the ending of the European Union's funding for the IIGEP. However, the outgoing Members of the IIGEP do not possess any authority to 'terminate the observation role of the IIGEP'. Therefore, it would be seen that, the commencing sentence of the 6<sup>th</sup> Public Statement (Summary) of the IIGEP, which reads as '*The IIGEP concluded at its meeting in Colombo in November 2007 that it should terminate its observation mission at the end of March 2008 ...*', is by itself a statement totally outside the mandate of the current membership of the IIGEP. The picture presented by the 6<sup>th</sup> Public Statement, is that, the functioning of the IIGEP would come to an end and would cease to function. Thus, the Attorney General of Sri Lanka is unable to understand how such eminent persons if they were acting in good faith, in accordance with their conscience and in furtherance of the application of their professional eminence, could make a statement which is so blatantly outside their mandate.

If either, one or more Members of the IIGEP wish to resign from their position that is indeed a matter for such Members. However, the Government of Sri Lanka vehemently objects to the current membership of the IIGEP seeking to 'terminate the IIGEP'. That is not a function the membership of the IIGEP could engage in. There is at this point of time no decision by the Government of Sri Lanka to terminate the IIGEP. Therefore, if any vacancy arises in the IIGEP, reasonable measures would be taken by the government to fill such vacancy and re-activate the IIGEP.

It has been pointed out on previous occasions too that the current membership of the IIGEP and their respective Assistants have acted in excess of their mandate. Conduct involving (a) meeting a Magistrate in Chambers before whom a case coming within the scope of the Col was being heard, (b) making unsolicited proposals for enactment of new legislation, (c) initiating contact with witnesses of the Col and interviewing them, (d) giving interviews to the media, and (e) making political statements clearly in excess of the mandate, are clear instances where the Members of the IIGEP and their Assistants have exceeded their mandate.

The main reason cited by the Members of the IIGEP who intend to resign, is that certain corrective measures proposed by the IIGEP to the Commission of Inquiry have not been implemented and that there are certain obstacles they have noted impeding the proper functioning of the Commission of Inquiry. As pointed out by the Commission of Inquiry and

by the Attorney General, several meaningful measures have been taken by the Commission and by the Government to give effect to such recommendations made by the IIGEP. Such measures already adopted by the Commission and by the Government include (i) establishing the *Panel of Counsel from the Unofficial Bar*, (ii) expediting the enactment of a law to provide protection to victims and witnesses, (iii) receiving the evidence of witnesses living outside Sri Lanka through video conferencing, and (iv) enhancing financial allocations for the Commission and making such financial resources readily available to the Col. Under such circumstances, it cannot be stated that the relevant competent authorities have not paid due regard to recommendations made by the IIGEP. Thus, the Attorney General perceives that the reasons cited by the current membership of the IIGEP to justify resignation, are mere excuses to camouflage the actual reasons for their premature departure.

The Attorney General wishes to observe that in any event, the Commission of Inquiry can fully and independently continue to function without any impediment, notwithstanding an inactive IIGEP.

His Excellency the President has not intimated his intention of prematurely terminating the mandate of the Commission of Inquiry. Its term of office has already been extended by one year. The Government of Sri Lanka will continue to provide necessary resources to the Commission of Inquiry, enabling the commission to continue with its investigations and inquiries into the several incidents amounting to serious violations of Human Rights. Following the completion of investigations and inquiries, and the receipt of the Report of the Commission containing findings and recommendations, necessary action will be taken by the relevant competent authorities to give effect to such recommendations, including the launch and conduct of prosecutions against persons who have been identified and found responsible for committing Human Rights violations and against whom reliable and sufficient evidence exists to conduct such prosecutions in courts of law.

#### **(vii) Conclusions**

The Government of Sri Lanka regrets that the current membership of the IIGEP has decided to resign from their positions and vacate office. Their

premature departure is unwarranted and causes unnecessary inconvenience to the Government of Sri Lanka. The Government of Sri Lanka will take necessary measures to re-activate the IIGEP. Even if the IIGEP cannot be re-activated, the Government of Sri Lanka sees no impediment at all for the Commission of Inquiry to continue to function independently, impartially and engage in investigations and inquiries comprehensively, in a transparent manner, and in accordance with applicable international norms and standards. The Government will continue to provide necessary resources to the CoI enabling it to efficaciously give effect to its mandate.

In view of the facts and circumstances contained in this Response, the Attorney General of Sri Lanka after careful and serious consideration, is compelled to infer that the resignation of the current membership of the IIGEP has been orchestrated by interested parties, and is not occasioned due to the reasons contained in the 6<sup>th</sup> Public Statement of the IIGEP. The purported 'reasons' amount to in actual fact mere 'excuses'. The decision to resign by the current membership of the IIGEP as well as the contents of the several Public Statements including the present 6<sup>th</sup> Public Statement, has been made with ulterior motives and in particular the view to buttress the argument that there exists a dangerous situation in Sri Lanka and that national institutions are not independent and efficacious, and hence it would be necessary to establish in Sri Lanka a UN Human Rights Monitoring Mission. Such intentions are manifest by the contents of the concluding part of the 6<sup>th</sup> Public Statement, which contains sweeping political statements regarding the purported situation in Sri Lanka and commentaries on Sri Lanka's obligations under international law. Averments pertaining to the overall Human Rights situation in Sri Lanka, which are clearly outside the mandate of the IIGEP, is clear evidence of international political intentions on the part of the authors of the 6<sup>th</sup> Public Statement of the IIGEP. Such averments apart from being clearly and manifestly outside the mandate of the IIGEP, appears so evidently as having been intentionally included in the Statement so as to portray a negative image regarding Sri Lanka, and to justify foreign (alian) intervention initially in the form of UN HR Monitors. The timing of the release of Public Statements also manifests this intention. It would be recalled that, all previous Public Statements were also issued to coincide with international events such as Sessions of the UN Human Rights Council, where interested parties could make use of the IIGEP Statement. The 5<sup>th</sup> Public Statement was issued two and a half

weeks ago, to coincide with the 7<sup>th</sup> Session of the UN Human Rights Council. The present 6<sup>th</sup> Public Statement is issued at a time when preparations are underway for Sri Lanka's first appearance before the new Universal Periodic Review (UPR) mechanism by the United Nations Human Rights Council.

The Government of Sri Lanka has on several previous occasions stated its opposition to the proposal made by the UN High Commissioner for Human Rights for the establishment of a UN Human Rights Monitoring Field Mission in Sri Lanka. The Government has pointed out inter-alia that this proposal had been made without (a) applying objective criteria previously considered and adopted by the international community, (b) without objectively assessing the prevailing situation in Sri Lanka, and without (c) due regard to the unique security and other subjective considerations relevant to Sri Lanka. As previously also pointed out, the proposal would not be efficacious given the environment in which it is required to function, would not be sustainable, and would not serve to protect the Human Rights of the people of Sri Lanka. In view of its direct impact on the sovereignty of the country, the arrival of such UN Monitors, would amount to an unlawful interference in the domestic affairs of Sri Lanka and would in view of its direct impact on the sovereignty of the country be resisted at whatever cost by the Government of Sri Lanka.

*C. R. de Silva*  
C.R. De Silva, *President's Counsel*  
Attorney General of the  
Democratic Socialist Republic of Sri Lanka

**C. R. DE SILVA**  
**ATTORNEY GENERAL**

*8<sup>th</sup> April 2008*

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