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CPA on Commission of Inquiry and IIGEP

A Forwarded Report by the Asian Human Rights Commission

The Centre for Policy Alternatives (CPA) has produced a commentary on the Commission of Inquiry (CoI) and the International Independent Group of Eminent Persons (IIGEP) appointed by President Mahinda Rajapaksa in 2006 outlining its key concerns on these matters. Following are extracts from the paper.

The appointment of the Presidential Commission on November 3, 2006 by President Mahinda Rajapaksa under the Commissions of Inquiry Act 1948, and the subsequent issuance of the Terms of Reference (TOR) for the IIGEP, resulted in debate and discussion on the rationale, mandate and powers, membership, and practical outcomes of both the CoI and the IIGEP. The paper aims to not only focus on the key characteristics of both the CoI and the IIGEP, but also to highlight the importance of good governance principles, human rights norms and the rule of law.

At the outset, the importance of investigating human rights violations and holding perpetrators accountable, as well as restoring confidence in the justice system, must be reiterated. CPA and other civil society actors have continuously called on the State and other actors to address several issues, including the deteriorating human rights and humanitarian situation, the reconstitution of the Constitution Council and the appointment of the independent commissions including the Human Rights Commission (HRC) in accordance with the law. The announcement on September 4, 2006 by President Rajapakse pledging to establish an international independent commission to probe abductions, disappearances and extra-judicial killings in all areas of Sri Lanka was welcomed by civil society actors, who pointed out the importance of investigating and bringing to justice the perpetrators and, at the same time, called for an international human rights monitoring body that could monitor the current situation.

Key recommendations

The key recommendations made by CPA in the paper to the Government and other actors are:

- = To develop the mandate of the CoI and IIGEP and appoint members to both bodies in consultation with relevant stakeholders including victims and affected persons, families and civil society. The appointing of members and the conducting of investigations and inquiries should be conducted in a transparent manner.
- = To ensure that the CoI and IIGEP are composed of independent and impartial experts who would be able to conduct a comprehensive investigation and inquiry into the human rights violations and bestow confidence in the process.
- = To have a mixture of national and international members in the CoI which will provide greater legitimacy to the CoI, provide greater access to areas and persons and strengthen the aspect of independence and impartiality in the CoI.
- = To ensure that CoI and IIGEP have unimpeded access to all areas, persons and documents.
- = To make public the information available to the CoI and IIGEP unless perceived as a threat to victims, affected families and witnesses. All reports issued by the CoI and IIGEP should be made public speedily, with all effort taken to implement the recommendations and initiate

criminal proceedings against identified perpetrators.

- = Members of the CoI and IIGEP should not be imposed with unnecessary restrictions on receiving evidence and issuing statements and reports, unless seen as a threat to victims, witnesses and affected persons. CPA urges the authorities to remove undue control on the CoI and IIGEP that could lead to undermining their independence and impartiality.
- = To take concrete measures to have witness protection within the justice system, taking on board practical difficulties and the public confidence in the police and the military.
- = To ensure that recommendations made by both the CoI and IIGEP are speedily implemented, with follow up action initiated. If necessary to establish a separate body to ensure follow up is taken
- = To suspend government and military officials who are under investigation and are implicated with violations within the mandate of the CoI and IIGEP
- = To invite the services of international and independent forensic and other experts to facilitate the investigations and inquiries
- = To establish a comprehensive compensation scheme in consultation with relevant stakeholders which will be used as a minimum in deciding and providing compensation
- = To establish an independent body comprising of both national and international members to monitor human rights violations.

The paper aims to not only highlight certain shortcomings of the CoI and the IIGEP, it also draws attention to larger governance and human rights issues that need to be considered by the authorities and other stakeholders. In light of the non constitution of the Constitutional Council and national commissions, and the lack of confidence in the existing law enforcement agencies, it is essential to establish a mechanism capable of investigating the increasing numbers of human rights violations and delivering justice to the victims and their families. While welcoming an independent mechanism that is capable of investigating and inquiring into human rights violations, the paper questions the rationale and need for two separate bodies, the CoI and IIGEP, and the process in which members to the two bodies were appointed.

The paper also draws attention to the shortcomings of investigations and inquiries by the CoI and IIGEP, as well as shortcomings within the justice system. The issues include delays and bureaucracy within the system, conducting investigations and inquiries in a transparent manner, holding perpetrators accountable and addressing the culture of impunity, key issues that need to be addressed to ensure justice can be delivered speedily and effectively, and thereby reviving public confidence in the system. CPA also reiterates the importance of the CoI and IIGEP having utmost independence and conducts their duties in an impartial and neutral manner. Therefore, CPA emphasizes the importance of removing any undue influence and control on the IIGEP by the authorities, and that they are allowed to receive evidence and issue statements freely. While the paper highlights several key issues that are imperative in conducting investigations and inquiries, it also vital that the process upholds good governance principles, human rights norms and the rule of law.