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CPA Policy Brief No. 1, 2007

A Commentary on the Commission of Inquiry and the
International Independent Group of Eminent Persons



The Centre for Policy Alternatives (CPA) is an independent, non-partisan organization that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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Executive Summary

CPA and other civil society actors have continuously called on the State and other actors to address 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. Civil society actors welcomed the announcement on September 4, 2006 by President Rajapaksa of an international independent commission to probe abductions, disappearances and extra-judicial killings in all areas of Sri Lanka. The key recommendations made by CPA to the Government and other actors are:

- The development of the mandate of the Commission of Inquiry (Col) and the International Independent Group of Eminent Persons (IIGEP) and appointment of members to both bodies in consultation with relevant stakeholders including victims and affected persons, families and civil society
- Col and IIGEP to be composed of independent and impartial experts able to conduct a comprehensive investigation and inquiry into human rights violations and instill confidence Col to be comprised of both national and international members. This will provide greater legitimacy to the Col as well as facilitate greater access to areas and persons. This will strengthen the independence and impartiality of the Col in all respects.
- Unimpeded access of the Col and IIGEP to all areas, persons and documents.
- Make public the information available to the Col and IIGEP unless perceived as a threat to victims, affected families and witnesses. Further, members of the Col and IIGEP should not be imposed with unnecessary restrictions on issuing statements and reports, unless seen as a threat to the above named persons
- Concrete measures for witness protection within the justice system, taking on board practical difficulties and the public confidence in the police and the military.
- Ensure that recommendations made by both the Col and IIGEP are speedily implemented, with follow up action initiated. If necessary, the establishment of a separate body to ensure the latter
- Suspension of government and military officials who are implicated and under investigation
- Services of international and independent forensic and other experts to be employed when necessary to facilitate the investigations and inquiries

- Establishment of a comprehensive compensation scheme in consultation with relevant stakeholders which will be used as a baseline in deciding on whether compensation should be provided and the relevant amount
- Establishment of an independent body comprising both national and international members to monitor human rights violations.

Policy Brief No. 1, 2007

A Commentary on the Commission of Inquiry and the International Independent Group of Eminent Persons

Introduction

The appointment of the Presidential Commission¹ on November 3, 2006 by President Mahinda Rajapaksa under the Commissions of Inquiry Act², and the subsequent issuance of the Terms of Reference (TOR) for the International Independent Group of Eminent Persons (IIGEP)³, resulted in debate and discussion on the rationale, mandate and powers, membership, and practical outcomes of both the Commission of Inquiry (Col) and the IIGEP. While recognizing that several other critiques have been published on both the Col and the IIGEP, and that certain points highlighted in this paper may change in the near future due to political developments and the changing security situation in the country, the Centre for Policy Alternatives (CPA) firmly believes that key governance, legal and human rights issues need to be brought to the attention of the members of the Col, IIGEP, government officials, the international community, civil society and the public.

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 Rajapaksa of an international independent commission to probe abductions, disappearances and extra-judicial killings in all areas of Sri Lanka was welcomed by civil society actors in a statement⁴. They 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 to monitor the on going situation. While this paper largely focuses on the Col and the IIGEP, it also flags broader issues such as freedom of information, transparency, independence and impartiality of members of the Col and IIGEP, witness protection and compensation.

The Commission of Inquiry (Col)

A) Composition and Appointment of members to the Col

According to the warrant issued by President Rajapaksa, there are eight members appointed to the Col. They are:

1. Hon Nissanka Kumara Udalagama Esquire (Chairman)
2. Upawansa Yapa Esquire
3. Dr. Devanesan Nesiah
4. Kanapathipillai Cathiravelpillai Logeswaran Esquire
5. Madam Manouri Kokila Muttetuwegama
6. Madam Jezima Ismail
7. Somapala Samarasinghe Srimega Wijeratne Esquire
8. Ahamed Javid Yusuf Esquire

While CPA recognizes the experience and expertise of many of the members of the Col, a number of whom have worked in previous commissions and have gained recognition for their contributions to these commissions, there are serious concerns regarding the appointment process of the Col as raised below.

A key problem in appointing members to the Col rests in the broad powers vested with the President in relation to Cols.⁵ Vast powers are vested with the President in the appointment, mandate and functioning of a Commission, with no provision for consultation with relevant stakeholders in the appointment of its members or on deciding on its mandate, powers or duration of the Col. As seen with other government appointments, there is minimum consultation or transparency in the process of appointment.

The present case is yet another example of the centralized and furtive process of establishing government bodies dealing with key issues of public interest. **CPA reiterates the importance of consulting affected persons and families, civil society, international community and other actors in the establishment of a body that is to investigate human rights violations and bring perpetrators to justice.** Such a consultative process ensures inclusiveness and participation of all actors. It will also build public confidence during the course of the investigations and inquiries. Consultation can further ensure that members to the Col are independent, impartial experts, who have the trust and confidence of the people. For example, consultation with family members took place prior to the appointment of the Col investigating the assassination of Lalith Athulathmudali and Lieutenant General Denzil Kobbekaduwa. This instilled confidence among the families and facilitated the work of the Col.

Given the mandate of Col, there are serious concerns as to whether the exclusively national members of the Col will have access to all areas (including LTTE controlled areas) and all persons relevant to the investigations. In

conducting interviews and investigations on sensitive and controversial issues such as human rights and humanitarian violations, utmost impartiality and independence must be demonstrated, instilling in victims and witnesses alike the confidence to share information with the Col. In this regard, the appointment of internationals to the Col to work alongside the nationals would facilitate greater access to areas and persons. As discussed in greater detail below, though the IIGEP can be present at hearings, this is not the same as having a mix of nationals and internationals on the Col. Further, as highlighted below, restrictions placed on the IIGEP could impact adversely on their neutrality and precise role in the process. A question that needs to be asked is as to whether the appointment of the IIGEP is merely to demonstrate an international dimension to the investigations and inquiries, while in reality, imposing various restrictions on the activities of the IIGEP, thereby jeopardizing its work.

Calls by civil society and international groups for the appointment of internationals to the Col and monitoring bodies have led to the criticism from various quarters of the internationalization of the situation and to the argument that under current Sri Lankan law it is not possible to appoint internationals to local Col's. As highlighted elsewhere,⁶ the appointment of international judges from the Commonwealth to the Col looking in to the killing of Lieutenant General Denzil Kobbekaduwa demonstrates that there is precedent for having internationals in local commissions.⁷ Having a mixture of internationals and nationals in the Col would provide greater legitimacy and provide confidence among both nationals and internationals in the investigations.

B) Mandate of the Col

Some opponents of the Col have raised concern whether it is to be provided with judicial powers. The warrant issued by President Rajapaksa does not provide judicial powers to the Col. The Col would merely recommend to the government the steps that could be taken by other actors including the Attorney General's (AG) department. The warrant specifically mentions that within two months of the receipt by the President of the report of the Col, such documents are to be presented to relevant competent authorities of the government including the AG. Therefore, the warrant clearly demarcates the powers of the Col, and ensures that no judicial powers are vested with the Col, countering arguments to the contrary in respect of both the national members of the Col and the members of the IIGEP.

Neither the 1948 Act nor the warrant specifies that reports of the Col be made public. Though there is provision that hearings of the Col can be made public, the absence of any mention of making public reports and findings of the Col, is a cause for concern. This is largely due to previous experience where reports of other Col's were never made public. Similar to previous Col's, this also increases the likelihood of a lack of follow up or implementation of the recommendations. This further adds to the cynicism that this is yet another ploy by the government to demonstrate that steps are being taken to address human rights violations, when in actual fact there are no concrete measures to ensure compliance with good governance principles such as transparency, participation and inclusiveness. In order to ensure justice for the victims and their families it is critical that the commission focuses on securing their confidence, and that of the public at large. CPA reiterates the importance of **making all reports and findings of the Col public**, providing greater legitimacy to the Col and the government's commitment to addressing the human rights situation.

While the Col is mandated to recommend various measures, and there is provision for these recommendations to be forwarded to the relevant government officials within two months of receipt by the President, there is no provision stating that concrete steps are to be taken by the authorities. It is feared that, similar to previous

commissions and their findings, no concrete steps will be taken. **CPA hopes that the authorities will take note of the findings and recommendations, and take necessary measures speedily to address any human rights violations, including constituting criminal proceedings against alleged perpetrators.**

Minister Mahinda Samarasinghe, Minister for Disaster Management and Human Rights, in a news report mentions the creation of a Witness Protection Unit,⁸ a positive step in addressing issues related to witness protection. According to the warrant the Inspector General of Police, Commanders of the Sri Lankan Army, Navy and Air Force and other relevant state officials are to provide necessary protection and assistance to the members of the Col, members of the IIGEP and witnesses. While it is crucial to have a comprehensive witness protection plan and procedures in place, concern is raised with regard to the effectiveness of having the police and the armed services providing protection to witnesses, when in certain cases the perpetrators are from the police and the armed services. While welcoming measures to introduce a witness protection unit, it is important to **ensure that modalities introduced for witness protection take into consideration the practical dangers faced by witnesses.** Further, having the police and armed forces providing security to the members of both the Col and IIGEP maybe counter productive as witnesses, victims and affected persons may therefore identify the Col and the IIGEP as aligning with the state authorities, thereby raising concerns about their impartiality and independence. This will ultimately prevent many from coming forward to provide evidence or even result in witnesses withholding information out of fear.

While the Col is mandated to concentrate on 15 cases which are set out in the Schedule to the warrant, there is also possibility of new cases being added to the list. While it is important to ensure that investigations are conducted into all human rights violations, concern is also raised about the effectiveness of merely having a Col. Since the appointment of the present Col and the one man Col on disappearances,⁹ there has been no significant decrease in human rights violations - the incidents and magnitude of human rights violations have increased. Therefore the appointment of Col is not perceived as a deterrent. **Events since its announcement clearly indicate and reinforce the argument for an effective and efficient monitoring of ongoing human rights violations.**

International Independent Group of Eminent Persons (IIGEP)

As raised previously, CPA and other civil society actors welcomed the statement by President Rajapaksa on September 4, 2006 pledging the appointment of an independent international commission to probe abductions, disappearances and extra judicial killings. With time the pledge has been sidetracked and transformed into the appointment of a Col (as already discussed) and an IIGEP.

A) Functions of the IIGEP

A fundamental question in relation to the IIGEP is why such a body is appointed when the Col could have comprised both nationals and internationals. The TOR of the IIGEP sets out the role of the IIGEP as:

- an independent and comprehensive investigation into alleged serious violations of human rights
- inquire into the investigations already conducted into the incidents

The TOR further states that such investigations and inquiries would facilitate and enable the initiation of appropriate legal action including the institution of criminal proceedings and efficacious prosecution of those persons who have committed the alleged serious violations of human rights. The above succinctly demonstrates that neither the Col nor the IIGEP will have judicial powers; they have been constituted to investigate, inquire and provide information for future prosecutions. Further, as already discussed previously, there is precedent in appointing internationals to Col, which counters the argument of the 1948 Act not having provision to have internationals in local commissions. **In such a context, the authorities should provide the rationale for a separate IIGEP, with added expenses and administrative resources, when a Col comprising of both nationals and internationals could have sufficed.**

B) Unduly intrusive involvement of the Government

The various forms of restrictions imposed on receiving information and issuing statements by the IIGEP is a matter of particular concern. According to the TOR, there are restrictions imposed on receiving information, which indirectly question the professionalism, independence and neutrality of the IIGEP. The TOR states that if you receive any information from any third party relating to any incident being investigated or inquired into by the Col or any other matter relevant or pertaining to the Col, you will bring such information to the attention of the Chairman of the Col and the AG. In any investigation or inquiry, it is vital to project independence and impartiality as well as to ensure that witnesses feel confident about coming forward with evidence. While cognizant of the Col and IIGEP working closely and sharing information, there is no rationale for the IIGEP to keep the AG informed of information received at this stage of the investigation. As clearly stipulated, the AG and other government actors will step in at a later date when criminal proceedings are to be initiated. Therefore, information can be shared with the AG when the Col and IIGEP completes the investigations and inquiries by way of the reports issued by the two bodies, **ensuring witnesses can come forward with information to the Col and IIGEP without worrying about whether government officials will be provided with their information and accordingly, their security compromised.**

It is also important to note that the call for international involvement in the investigation and inquiry into the incidents was made due to the lack of public confidence in the national law enforcement agencies including the AG. Therefore, allowing the AG so much influence with respect to the process and functions of the IIGEP is counterproductive.

Further concern is raised with regard to the restrictions imposed on members of the IIGEP issuing statements and other documents on their observations about the manner in which the investigations and inquiries are being conducted and have been conducted. According to the TOR, observations cannot be shared with third parties unless there is written notification of at least two weeks to the Chairman of the Col and the AG. It further adds that observations will not be released if the Chairman of the Col or the AG is of the opinion that the information is prejudicial to ongoing investigations and inquiries of the Col or to the protection of national security and public order. The TOR goes on to add that if agreement cannot be reached on issuing of such observations, the statement should contain the objection raised by the Chairman of the Col or the AG. Such control of members of the IIGEP and restrictions imposed on them regarding the issuing of statements and observations raises concern about the freedom and independence the IIGEP will be allowed to enjoy. Such restrictions by the Chairman (a Supreme Court Judge appointed by the Government) and the AG, both government actors, disregards the principles of impartiality, independence, neutrality and fairness that the IIGEP is to uphold. These are in turn

essential in winning public confidence as well as for ensuring that the highest standards and norms are respected in the course of the investigations and inquiries.

The opportunity to issue statements and share observations should be seen as an opportunity to correct any shortcomings of the investigations and inquiries, as well as demonstrate the positive aspects of the process. While the TOR specifically has provision for members of the IIGEP to raise issues which require corrective action, with the Chairman of the Col and while the AG is to be notified of such corrective issues,¹⁰ concern is raised as to why restrictions have been placed on the issuing of statements by members of the IIGEP. This further raises the issue of undue control that the government has over the IIGEP. It is vital that restrictions imposed on the IIGEP are removed so that they have the freedom to share their observations without hindrance to freedom of information and expression. **CPA urges the authorities to remove all restrictions imposed on the members of the IIGEP in issuing statements, ensuring that they have the freedom to conduct their work in a professional and effective manner, and complement the Col and the government's initiatives to address human rights violations.**

The IIGEP is expected to submit several reports containing their observations to the President - a report upon the completion of every three months period, a report following the completion of investigations and inquiries conducted by the Col and prior to the expiry of three months and a report following the final report of the Col and prior to the expiry of three months. Such reports will contain either the collective views or individual views of the members of the IIGEP. It is also recommended to have all reports issued by the IIGEP collated, containing all documents that were submitted to the IIGEP unless perceived by the IIGEP as jeopardizing the safety of victims, witnesses and affected person. While the issuing of several reports is welcome and is an opportunity by the members of the IIGEP to highlight issues and concerns related to the investigations and inquiries as well as recommend measures to be taken, **all effort must be taken to ensure that the reports are freely available to all stakeholders and the public, and that the recommendations are taken on board by the Col and other actors.**

CPA welcomes the provision whereby members of the IIGEP can comment on decisions taken by the government, including the AG, on not instituting criminal proceedings against a particular person or group as recommended by the Col. This provides an opportunity for members of the IIGEP to comment on the process and inform the public and international community of the evidence available on a particular person or group. Such statements can serve to pressure the government to **ensure that there is sufficient evidence available for indictments and that indictments are made in these instances.** Unfortunately, the TOR requires that such observations are communicated to the AG for his comments prior to being released. Further, any observations in the form of a statement by a member of the IIGEP are to carry the comments of the AG. This is an additional restriction on the members of the IIGEP. CPA urges the authorities to remove such a restriction. **We further urge that in order to clarify any confusion that may arise with regard to evidence and other related matters, the AG engage in discussion with the COI and members of the IIGEP once the final report is handed over.**

C) Relationship between the Col and the IIGEP

The TOR goes on to state that the Col should be conducted in a manner that would enable one or more persons of the IIGEP to observe such investigations and inquiries. An active role for the IIGEP in the investigations

has not been delineated. Therefore the role of the IIGEP seems to be merely to observe the investigations and inquiries. The TOR also adds if any advice, assistance, services, resources, facilities, opportunities including access to witnesses interviewed by the Col, and information and material is required by the IIGEP in the performance of its said role and for the purpose of ensuring the transparency of the investigations and inquiries, the IIGEP should bring such requirements to the attention of the Chairman of Col and the head of the IIGEP. The TOR further states that the AG is to be kept notified of such requirements. Such restrictions raise concern as to the exact role of the IIGEP. In particular, since in reality the IIGEP has little powers in respect of the investigations and inquiries, as to whether it has been appointed by the government to satisfy the international community through the presence of internationals. An additional concern, given the overarching requirement of independence from the state relates to the requirement of having to inform the AG. That the legitimacy of the process is to be provided by the IIGEP ensuring transparency of such investigations and inquiries, and that such investigations and inquiries are conducted in accordance with basic international norms and standards, should also be noted in this context.

The TOR also states that the Col may request a member of the IIGEP to provide technical or other advice. This indicates that it is within the discretion of the Col to solicit support and advice and that there is no mandatory measure to ensure that the IIGEP is fully involved in the process. As discussed below, with limited involvement in the investigations and inquiries and the restrictions imposed on the issuing of reports and statements, the IIGEP has a limited role to play in addressing the human rights violations.

D) Appointment of members to the IIGEP

Several entities have been invited to nominate members to the IIGEP. These include the United States of America (USA), European Union (EU), United Kingdom, Japan, Netherlands, Australia, Canada, Office of the High Commissioner for Human Rights (OHCHR) and the Inter-Parliamentary Union (IPU). Direct invitations have been issued by the Government of Sri Lanka to Mr. Andreas Movromatis and to former Chief Justice of the Supreme Court of India, Justice Bhagwati to serve as as Chairman of the IIGEP. As with the appointment of the Col, in the case of the IIGEP too, consultation with relevant actors including victims, affected persons and civil society should have taken place. This would have ensured that the appointment process to the IIGEP was participatory and inclusive.

As stated in the TOR, members of the IIGEP are not expected to spend long periods of time in Sri Lanka, and will be expected to work on a rotational basis agreed upon by them. Such a level of involvement also raises issues on the exact nature of work to be conducted by the IIGEP, as none of the members are expected to be continuously present during the investigations and inquiries. **Visits by the members on a rotational basis may prove counter productive. They will not be identified by victims, witnesses and affected persons as being fully involved in the process** and the latter's confidence in the process could be adversely affected. As one of the reasons given in the TOR is for members of the IIGEP to ensure there is transparency in the investigations and inquiries and that international standards are followed, this too will become difficult if continuous presence is not possible.

E) Need for follow up

CPA welcomes the provision for the final report to be published in the government gazette and for the reports of the IIGEP to be presented to Parliament within three months from the date of the final report of the Col being submitted to the President. Yet there are concerns regarding the provision granting the President power to withhold information if he is of the opinion that the information is prejudicial to 'national security' and 'public order'. Such a provision raises grave concern since the President is to have unchecked powers to withhold any information as he sees fit. There is no definition given as to what falls within the ambit of 'national security' or 'public order' and there is concern in respect of the benchmarks which would be used by the President to facilitate his decision making. Consequently there is the likelihood of arbitrary decision making and the abuse of such power by the President. These powers also question the principles of transparency and accountability, two principles that constitute the essence of such a process.

It is fundamentally important that the **reports of the Col and IIGEP are available to all relevant actors, the public and international community. This is necessary to demonstrate the sincerity of the government's commitment to address human rights violations and to reverse the culture of impunity. This will also invest the process with transparency and strengthen the legitimacy of the Col and IIGEP.** The skepticism towards the appointment of the Col and IIGEP, is largely due to reports of prior Cols not being available to the public and their recommendations not being implemented. Making the reports public is the first step by the government in demonstrating its genuine interest and good faith; it has to be followed through with the implementation of the recommendations.

According to the TOR, the Secretary to the Ministry of Justice will be the head of the Secretariat of the IIGEP, with representatives of the President, Minister of Disaster Management and Human Rights and the AG. The Secretary to the Ministry of Foreign Affairs will also be attached to the Secretariat. **CPA expresses concern on the overly intrusive role government officials are to play in the Secretariat to the IIGEP, as this could weaken the IIGEP's image of independence and impartiality.** It is also vital that the staff of the Secretariat are independent and not connected to the government or any other political and military body. **CPA urges the authorities to provide all necessary support, and to ensure that staff recruited to assist the IIGEP and the Secretariat are independent of any government, political or military affiliation and patronage.**

General Concerns

Concerns regarding both the Col and the IIGEP in relation to appointment, mandate and powers and the process of investigations and inquiries have been made in the previous sections. This section looks at other equally important issues that need to be considered.

● **Follow up: speedy trials and setting up of a separate body**

As already highlighted, skepticism over Cols in general largely stems from reports not being made available to the public and the lack of implementation of recommendations. Only a few commissions have led to separate criminal proceedings, with the reports, recommendations and evidence of many of the others being lost or forgotten. A weakness in the system is the lack of comprehensive follow up to ensure that the perpetrators are held accountable and that criminal and other proceedings are initiated. Such a weakness in the present day has led to large scale human rights violations, perpetrators not being held accountable and the development of a culture of impunity. The few cases that are presently before the courts such as the killing of the five youth in Trincomalee (January 2005), the killing of 17 staff members of Action Contre Le Faim (ACF) in Muttur (August 2006) demonstrate the delays and frustrations with the criminal justice process in Sri Lanka.

In such a climate, the government must ensure that the findings of the reports of the Col and IIGEP are followed through and relevant action taken. CPA urges that the AG initiates trials speedily using the information from all reports and other sources. Whenever criminal proceedings are not initiated, even though there is evidence to the contrary, the President should require that justifications are provided for the decisions not to institute criminal proceedings. Wherever clarification is needed in respect of the findings of the Col or the IIGEP, there should be discussion between the AG and the Col/IIGEP to this end.

To ensure there is follow up of the reports and findings, **CPA urges the government to establish a body to implement and follow through on the recommendations of the Col and IIGEP.** This body should be comprised of government officials representing relevant ministries, nominees from entities that were invited to nominate members to the IIGEP and other relevant actors.

● **Suspending government and military officials during investigations and inquiries**

In the event the findings of the Col and/or the IIGEP identifies the perpetrators as military or government officials, steps should be taken to suspend such persons from office until the completion of investigations and inquiries and any possible criminal proceedings. **CPA urges the government to suspend any government or military personnel during the course of investigations and inquires and criminal proceedings, where there is evidence to demonstrate their involvement in any human rights violations.** Authorities also should ensure that no immunity is granted to any perpetrator of human rights violations, including military and government officials.

● **Forensic and other experts**

CPA also urges the authorities to **invite the services of international and independent forensic and other experts to assist the Col and IIGEP in the course of investigations and inquiries**. It is also urged that technical support of independent individuals and groups be sort whenever necessary to facilitate the investigations and inquiries.

● **Compensation**

Compensation to victims and affected persons also needs to be addressed by the government. At present there is no comprehensive plan focusing on compensation to victims of human rights violations. **A comprehensive plan on compensation should be formulated by the government in consultation with affected persons, civil society, religious groups and other actors, thereby ensuring that a diversity of views is taken on board and that the process is inclusive**. A compensation scheme can be used by the Col, the IIGEP and the government as a baseline for decisions on whether compensation is to be granted and the modalities and scale of doing so.

● **Independent Monitoring**

The increase in human rights violations since the appointment of the Col demonstrates that such an appointment alone is not a deterrent and that much more needs to be done to monitor the present situation. Further, the mandate of the Col and the IIGEP is limited to 15 cases (with the possibility of new additions) and therefore does not look at all human rights violations, particularly the most recent incidents. Further, existing mechanisms such as the Human Rights Commission do not presently have the capacity to deal with large scale human rights violations. While measures need to be taken to appoint the HRC in accordance with the 17th Amendment to the Constitution, as well as to build the capacity of the HRC, there is an urgent need for immediate action.

Therefore, it is important to have an independent body of individuals to monitor the present human rights and humanitarian situation. This should be a body comprising of both internationals and nationals who have expertise in a broad range of human rights and humanitarian issues. Fundamentally, they need to demonstrate that they are independent and impartial and they must have access to all areas of the country. CPA urges the government to consult with relevant actors including affected persons, government officials, civil society, international and national agencies and the international community in the appointment of such a body.

Conclusion

This paper has highlighted certain shortcomings in the Col and the IIGEP and draws attention to larger governance and human rights issues that need to be considered by the government 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 that is able to investigate the increasing numbers of human rights violations and deliver justice to the victims and their families. Whilst also recognizing the potential of the COI and the IIGEP, the paper nevertheless questions the rationale underpinning the establishment of two bodies and the process of appointment to them.

The paper also draws attention to the shortcomings of the COI and IIGEP arising from their mandate and TORs, which are likely to be revealed once the work of these bodies commences in earnest. The paper also points out the shortcomings in the justice system which will impact on their work. These relate to bureaucratic and other delays, issues of transparency and accountability – all of which are fundamental to reversing the culture of impunity, ensuring justice to the victims and of instilling public confidence in human rights protection in Sri Lanka. In this context, CPA hopes that the government will ensure that the information obtained and the reports issued are made available to the public and that the actions identified in the reports are speedily implemented. CPA also reiterates the importance of the Col and IIGEP having the freedom to conduct their duties in an impartial and neutral manner. Therefore, CPA emphasizes the importance of allowing the IIGEP to receive evidence and issue statements freely. Undue influence and control of the IIGEP by the authorities must be removed. At all times, the process must uphold principles of good governance, human rights norms and the rule of law, if it is to contribute to justice and human rights protection in Sri Lanka.

Endnotes

¹ Warrant issued on November 3, 2006

² Section 2 of the Commissions of Inquiry Act 1948 as amended

³ Comments on the IIGEP are based on the most recent TOR dated November 24, 2006

⁴ Statement dated September 4, 2006. www.cpalanka.org

⁵ These powers include: Appointing a Col, consisting of one or more members (Section 2); Appointing the chairman of the Col (Section 2(2)(b)); Provide TOR for Col(Section 2(2)(c)) ; Power to make the Col or parts of it public (Section 2(2)(d)); Appointing new members at his/her discretion (Section 3); Power to expand time period of Col and the due date of final report (Section 4); Power to alter or revoke the warrant (Section 5); Appointing of Secretary to Col (Section 19); and Providing additional powers to the Col (Section 8)

⁶ Sri Lanka: Observations on a Proposed Commission of Inquiry and International Independent Group of Eminent Persons, Amnesty International, ASA 37/030/2006

⁷ Hon Justice Austin Neeabeohe Evans Amisshah, Hon Justice Sir Kenneth James Keith, KBE and Hon Justice Muhammadu Lawal Uwais were appointed by President D.B Wijetunga on May 20, 1993.

⁸ Daily Mirror, January 4, 2006

⁹ Appointing Mahanama Tilakaratne, retired Judge of the High Court, Gazette No 1462/30, September 15, 2006

¹⁰ Section 5 of the TOR