

Response of TISL to Parliamentary Select Committee on NGOs Regarding Adverse References

The Parliamentary Select Committee for Investigating the Operations of Non Governmental Organisations and Their Impact (hereinafter the Committee) has presented its Interim report to parliament on 8th of December 2008. This report contains references adverse to Transparency International Sri Lanka (TISL) and hence this Response Paper is issued.

Transparency International (TI) is the leading global coalition against corruption that has been instrumental in changing, inter alia, the attitudes of governments, the private sector, donors and other groups globally through different activities at various levels. TISL is the local chapter of this coalition, a separate entity, a company limited by guarantees and accredited by the TI global movement.

TISL along with other South Asian chapters of TI jointly conducted a survey in 2001 and found that **in public perception** the Police is the most corrupt institution in South Asia. In response, TISL started a project intended to identify issues that have contributed to police corruption and introduce measures to improve the police-public relationship and enhance the integrity of the police.

Under Article 28(d) of the Constitution, there is a public duty to “preserve and protect public property and to combat misuse and waste of public property”. The Police is a public institution run on public finances. Both citizens of the country as well as policemen have a duty therefore to do every thing possible to prevent corruption in police.

This is the first ever research study on police corruption in Sri Lanka. This is also a unique state and civil society collaboration for improving governance in the country. It is in that context that the then National Police Commission and IGP agreed to be part of the collaborative activity – hereinafter called Police Project.

TISL was summoned before the Committee by the summons dated 14th March 2007. Annexed to the summons was a document titled Terms of Reference of the Committee. The summons required the TISL to be present “to obtain further clarification regarding the allegations made against TISL in the article entitled “Thorough probe on overseas funded groups, individuals needed” written by Mr. Shamindra Ferdinando and published in the Island newspaper on 31-1-2007.”

An Interim Report of the Committee was tabled in Parliament on 8th of December-2008. On pages 27-28 of the Interim Report, the Police Project is dealt with. TISL states with

responsibility that the said references and findings of the said Committee are inaccurate and without any justification. Hence this response sets out the observations of TISL on each such point with a view to clarifying our position. Further the Committee has failed to even identify the publication by its correct name (i.e. In Pursuit of Absolute Integrity – Identifying Causes for Police Corruption); and instead inaccurately referred to it as “Police of Sri Lanka”.

1. Preliminary Issues

1.1 Adverse Media Publicity

While the Select Committee was sitting, many adverse reports appeared in the media quoting Hon. Vijitha Herath, MP, and Chairman of the Committee in relation to TISL. However, due to the provisions of the Parliamentary Privileges Act, until the report is tabled in Parliament, TISL was prevented from responding to those media reports, though the media reports were biased, inaccurate and irrational.

The delegation of TISL which met the Committee on 21st March 2007 informed the Committee that there was adverse media reportage on the inquiry before the committee. The media often quoted the Chairman of the Committee or published a summary of proceedings of the Committee in a manner that was adverse to TISL. It is interesting however to note that no media publicity was given to the session where TISL was present and satisfactorily explained all the issues raised.

Thereafter, the Sunday Times dated 27th May 2007 carried a report, referring to a meeting of the Committee (when TISL was not present) suggesting the following:

- (a) DIG Bodhi Liyanage had said that there are no official documents at the Police HQ on this project.
- (b) Mr. Vijitha Harath wanted police to submit a report on how permission was given to TISL to conduct the surveys.
- (c) Some Police Officers would have been unaware of why information was collected.
- (d) Mr. Bimal Ratnayaka MP, member of the Committee had ask police whether they would at least now take steps to challenge the contents of the report.

By a letter dated 5th June 2007, TISL informed the Committee that if the Committee considers the above report as being covered by media freedom, it may issue a contradiction by appropriate response. Though no response was received thereafter from the Committee TISL decided not to challenge the accuracy of the report at that stage in view of the provisions of the Parliamentary Privileges Act. Had there been any opportunity

given to the TISL regarding the matters set out in the aforesaid media report, it would have demonstrated beyond doubt to the public and to objective readers that the Committee had been misled on those points and that the Committee had prejudged the issues.

1.2 No Specific Allegations Intimated to TISL at any Stage

TISL was never served with any specific charges or allegations at any stage. Instead, the summons was issued to us to be present. Officials of the TISL were present on two days. It transpired later that several identified police officers had been summoned in the absence of the officers of TISL.

In fact it was suggested at the inquiry that the Committee would obtain information from the former IGP as to who gave authority to engage in this study. It was the position of TISL that the previous Police Commission had been informed of the project and was fully aware of it. Two previous IGPs too had given authority for the project. But the Interim Report has surprisingly stated thus:

“The committee had to accuse the Transparency International of their integrity as they furnished incorrect information regarding how they obtained the approval to commence this project.”

This finding is totally inaccurate and without any basis or material. Firstly the TISL submitted all material requested by the Committee. Secondly TISL stands by the basic principled position that civil society does not need the authority from any public institution nor Parliament to scrutinise any institution that is run on public expense. In any event, the Study was a joint collaborative study, which fact was born out from the documents available to the Committee. TISL specifically denies that it ever furnished incorrect information regarding how it obtained the approval to commence the project.

On 30th March 2007, the TISL submitted a memorandum expressing its position on all the issues raised by the Committee on 21st March 2007 particularly because neither procedure nor allegations were not indicated to the TISL. In the said memorandum, TISL specifically invited the Member of the Committee to consider the Report of the TISL on Police objectively

1.3 Proceedings not Available to TISL

By its letter dated 22nd March 2007, TISL sought verbatim minutes of the meeting held on 21st March 2007 but TISL was informed by letter of the Committee dated 30 March 2007 as follows

“Publication of any proceedings in a committee of Parliament before they are reported to Parliament is an offence punishable by the Supreme Court, in terms of

clause 9 of Part B of the Schedule of Parliamentary (Powers and Privileges) Act and hence I regret my inability to accede to your request.”

Thus TISL was totally unaware of what the previous IGPs or other police officers who were summoned by the Committee had stated. In a deliberation leading to adverse findings any person/institution, the inquiring authority has a duty to at least submit the proceedings to parties that would be affected and also to contradict statements with available material. The Committee has failed to follow these cardinal principles of Natural Justice.

1.4 General Comments of Report not Relevant to TISL

Further the Interim Report of the Committee in its recommendations suggests, inter alia, that NGOs were not audited. None of these were relevant to TISL as the accounts of the TISL is not only audited by a reputed audit firm but also published in all possible ways including uploading on the web.

2. What Transpired During the Inquiry

Of the 26 Members of the Committee, during the sittings relevant to TISL, there were a maximum of about 3 to 4 Members present at any given time. On the first date of the inquiry, i.e. 21 March 2007 the Chairman of TISL (who was a non executive Member of the Board) was called in for about 45 minutes and discussed the Auditor General's Department. The members of the TISL delegation were summoned in only after Hon. Fernandopulle MP noted that others were waiting outside.

TISL is confident that at the meeting with the Committee they clarified all queries they had and in fact indicated their satisfaction with the work of TISL.

The only other instance that TISL officers were summoned was 28th June 2007 whereby one Director (former DIG) and the Project Director were briefly called. TISL is confident that no further clarifications were required nor sought by the Committee from the TISL.

3. Does the Police Project in Any Way Adversely Affect the Social Wellbeing of the Country?

TISL reiterate the following salient points in relation to the Police Project:

- (a) The police is an institution funded by the public and it requires to be reviewed by the public as well. Unfortunately no previous attempts have been made by any organisation or the police itself to diagnose the governance problems in the police. The fact that the Police Department should be subject to independent processes of accountability has been implicitly acknowledged by the legislature itself in 2001 when it enacted the 17th Amendment to the Constitution which provides, inter alia, for an independent National Police Commission;
- (b) Studies of this nature would assist the police to build their image as an open organisation, while helping the country to convince the global community that Sri Lanka is a working democracy.
- (c) Under the United Nations International Convention against Corruption, which has been ratified by Sri Lanka, the government is required to work in collaboration with civil society to eliminate corruption. Any unfair interference to prevent future collaborative attempts between public institutions and civil society would adversely affect the social wellbeing of the citizens of the country and the good image of the country.
- (d) Public interaction to improve the police would generate more recognition of the police in society. In fact, the report of the Police Project is now frequently used by academics and policy makers. It has also assisted the police and policy makers to understand why the police have inherent difficulties in policing efficiently. Therefore, such a study is in the public interest and those who assisted the study have done so bona fide.
- (e) It is incorrect to assume that the report has in any way suggested that the police are corrupt and therefore Sri Lanka should be branded a failed state. Those who suggest that the report says the police is corrupt have not read the report or are saying so with ulterior motives to conduct a witch-hunt against the officers who assisted the project in good faith and in the best interest of the department.

4. Does the Police Project in Any Way Adversely Affect National Security?

The Committee's 'findings' that the Police Project has adversely affected national security is totally false and baseless and attention is therefore drawn to the following main points:

- (a) As repeatedly pointed out by the Officers of TISL at the inquiry, this project did not require any classified information from the police. The information that was requested and obtained is as following
 - Institutional Structure of the Police (e.g. Recruitment procedures, promotion scheme, Reward systems, disciplinary provisions)
 - Police Functions (e.g. statistics of crimes, reported cases of police inefficiency & police community relationship, list of disciplinary inquiries conducted)
 - Positive Information (e.g. attempts of Police to combat corruption, protection of human rights, police image building, improving efficiency/effectiveness).
- (b) On the contrary, any decent society or working democracy expects this information to be freely available to the People.
- (c) The project **did not** deal with police intelligence, sensitive information or workings of the STF. It dealt only with the pure policing aspects of the police. Thus there was no request at all to access to any confidential or sensitive information.
- (d) The issues of national security are of paramount importance but it does not mean that legitimate information should be suppressed and people should not have access to such information.
- (e) The Police Project was handled by a team consisting, among others, retired police officers with impeccable integrity. It is therefore important to realise that they would not act in such a way as to adversely affect national security. It is also reasonable to assume that the National Police Commission, the police officers and two IGPPs who assisted the project acted in the interest of the police and the public while obviously keeping in mind the issues of national security.
- (f) It is no secret that in combating crimes and terrorism the police needs to be efficient. A study of this nature would assist the police to diagnose the reasons why the Sri Lankan police are not sufficiently efficient. Therefore this Study in effect assists the police to contribute positively to the national security. Any attempt to prevent such studies amounts to killing the messenger.

5. Donor Contributions from NORAD

The Interim Report has said that

“Norad, which has a notoriety to be aiding the separatist activities of the country, has launched this project through non-governmental organizations, spending large amounts of money.”

TISL has the following response in that regard:

Firstly, it was not NORAD who initiated this project. It was TISL that invited donors to contribute to the implementation of the Project that had been designed without any donors. Secondly NORAD was selected by TISL, out of many possible donors, without any reservation due to their international recognition and proven integrity as a donor who does not interfere with the contents of project proposals. The fact that an adverse public opinion of this donor was created by a few political forces for their collateral purposes does not mean anything to civil society. In fact NORAD has been a funder for many public institutions including the Ministry of Foreign Affairs, the Ministry of Industries, the Ministry of Regional Infrastructure Development, the Ministry of Fisheries and Aquatic Resources and the Ministry of Cultural Affairs and Cultural Fund and there are no logical reasons to refuse funding from such a source.

Other than reviewing the proposal, approving terms of reference, contracting, receiving published reports and making agreed payments, NORAD has not played any part in the operational, decision making or information sharing process as a part of the contract. It is therefore totally incorrect to assume that the NORAD had any interest through this project to obtain sensitive information. Further there was no evidence to suggest either that the ‘sensitive information’ was made available to the TISL or that such information was ‘passed on’ to NORAD, as insinuated by the Committee. Interestingly, prior to TISL was even summoned, the Silumina dated 11th March 2007 carried a news item quoting the Chairman of the Committee suggesting that it has been revealed that sensitive information about the police has been sold to Norway by TISL through this project and that an agreement had been signed between a Norwegian NGO and TISL to obtain such information. TISL firmly states that these statements are totally false and without any merit.

6. Fairness of the Police Project

The integrity of the Police Project, which was a collaborative effort by the police and civil society, is reflected from the following:

- (a) It evolved as a result of the dire need that was identified by the 2002 Public Perception Survey.

- (b) The police and the public were the sole beneficiaries of the project. As indicated, the police was immensely benefited by the project.
- (c) Nothing was released out of the project to the public without prior approval of the police. At all stages the police was consulted. For example, the questionnaires that were used for the surveys were reviewed and approved by the IGP. The draft report was sent to the Police Department for review, critique and comment before finalization for publication. There was an opportunity for the Department and its top team to object, correct, request changes or deletion of data/information from the report.
- (d) Project was completely audited by a reputed audit firm and the findings were to the satisfaction of all concerned.

7. Inquiry Into Why People Have Access to Information!

This inquiry is fundamentally on the issue of releasing information from the police. In any civilised country, all organs of the State including Parliament, respect the right to information. Many countries have Right to Information Laws, passed by parliaments and respected by the State. The chilling effect of such an inquiry is to discourage public institutions from giving even legitimate information to the public of this country. In an environment of secrecy such as this, political parties, public authorities, organisations of all sectors thrive in corruption not only on finances but also on abuse of authority. Therefore the release of such information is a prerequisite for the public to regain confidence in public institutions.

8. Conclusion

In view of the above, TISL concludes that the Committee has failed to given a fair opportunity to TISL or to follow basic Rules of Natural Justice before coming to adverse findings against it. Further the Committee has deliberately ignored that the positive aspects of the project.

If Sri Lanka has a Right to Information Law, then TISL, activists or any academic institution does not have to depend on the police to obtain the information that was sought from them. Secrecy dominates the public sphere of Sri Lanka to the detriment of the

public. TISL strongly advocates that **the principle that all information available to the Members of Parliament should be equally available to voters**. Therefore we request the Committee to recommend to the Parliament to enact a Right to Information law permitting public to access all information that is available to the MPs.

With regard to the manner in which this Committee had come to these findings, TISL suggest the following

- (a) A fair and transparent procedure should be adopted in relation to Parliamentary Committees while ensuring that the Members will not abuse their authority either in relation to the conduct of the proceedings or by misusing privileged information to advance the agenda of their respective political parties.
- (b) All Committees in Parliament making findings against individuals and organisations should act with highest respect to the two basic rules of Natural Justice (i.e. *nemo iudex causa sua* – one should not be the judge of his own case and *audi alteram partem* – give all fair opportunities before coming to a findings).
- (c) It is the paramount duty of the Committee to ensure that the Committee will not be prejudiced by extraneous considerations nor allow the political theories, affiliations and policies of Members of the Committee to impact any findings.
- (d) Amend Section 9 of Part B of the Schedule of the Parliamentary Privileges Act by deleting thereof and enabling the public to express views on any of the matters deliberated before the Parliament or its Committees prior to a report being tabled before parliament.

Finally, TISL wishes that the Parliament and its Committees be mindful of the chilling effect of the right to information of the people of this country. This right could be prejudiced as a result of the unfair findings of the Committee on the Police Project revolving around the simple question of “who gave what information”. This is particularly of concern in a country where secrecy is the norm of the day.

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