



INTERNATIONAL COMMISSION OF JURISTS

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" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "

His Excellency President Mahinda Rajapaksa
Presidential Secretariat
Colombo 1
Sri Lanka

5 September 2006

OPEN LETTER

Your Excellency,

The International Commission of Jurists (ICJ) is a worldwide network of judges and lawyers united in affirming international law and rule of law principles that uphold and advance human rights. The ICJ is present in 70 countries across all regions of the world, including Asia.

The ICJ is familiar with the situation in Sri Lanka, including the significant security threats facing the country. An ICJ mission to Sri Lanka in 1981 was the first of many visits to explore and report on human rights and the rule of law in the country, as well as to exchange views with Sri Lankan jurists, parliamentarians and officials. In May 1991, the ICJ sent a mission to Sri Lanka to consider the activities of the *Presidential Commission of Inquiry in Respect of Non-governmental Organisations (NGOs)*.

The ICJ has followed the work of the *Select Committee of Parliament for the Investigation of the Operations of Non-governmental Organisations and their Impact* since its establishment in January 2006. The ICJ acknowledges that NGOs, like other organisations and individuals, should be subject to generally applicable and properly legislated national laws and regulations in such areas as financial and tax matters and criminal law. Such laws and regulations should not infringe on the rights to freedom of assembly, association and expression contained in the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka is party.

A vibrant civil society is an essential element of any democracy and the work of NGOs should be encouraged and supported. The strength, diversity and expertise of Sri Lanka's civil society is well-known throughout the world. Any investigation into the operations of NGOs in Sri Lanka should aim to support the legitimate activities of NGOs.

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The basis for the establishment of the Parliamentary Select Committee, as set out in the terms of reference issued in Parliament, is the allegation that some NGOs are engaged in activities that are “inimical to the sovereignty and integrity of Sri Lanka” and “detrimental to the national and social well being of the country”, and that adversely affect “national security”.

The United Nations Special Representative of the Secretary-General on human rights defenders states that “[t]he legality of an organisation’s purposes and its conformity with the law should be reviewed only when a complaint has been lodged against the organisation”.¹ The ICJ would welcome receiving more information about any formal complaints lodged against NGOs that are now under investigation by the PSC.

The Special Representative further states that “only an independent judicial body should be given authority to review an organisation’s purpose and determine whether they are in breach of existing laws”.² Sri Lanka’s long established legal system, would appear to be a more appropriate place to consider any alleged breaches of the law.

If the Parliamentary Select Committee is to continue to function, it will be important to clarify the terminology used in its terms of reference, to ensure there is no scope for misinterpretation. Currently, the terminology used is vague and, given the current security context in Sri Lanka, could be misused for purposes other than those intended by the Parliament. Terms such as “national and social well being of the country”, “national security” and “sovereignty and national defence” require further clarification in this context to avoid misinterpretation.

The terms of reference of the Parliamentary Select Committee include a review of the functioning of foreign-funded NGOs and the transparency of their financial activities. NGOs commonly register under the *Voluntary Social Services Organisation Act* or the *Companies Act* and are therefore subject to the financial oversight of these Acts. Any allegations of fraud or misappropriation of funds by NGOs registered under the *Voluntary Social Services Organisation Act* will be brought to the notice of the Minister by the Registrar who may then refer the matter to a Board of Inquiry. Those NGOs that are registered as non-profit organisations under the *Companies Act* must provide an annual report and statement of accounts to the Registrar of Companies. As existing checks and balances are already in place the ICJ would like to receive further information regarding the need for additional financial reviews.

The ICJ is aware of recent critical statements about some NGOs that have appeared in Sri Lankan media. With this in mind, the ICJ urges the Parliamentary Select Committee to ensure that due process is followed throughout any investigation. Following the decision to investigate, the NGO should be informed of the allegations and the basis on which the Parliamentary Select Committee has commenced the investigation. The NGO should then be provided sufficient time and opportunity to respond and, where serious allegations have been made, to seek legal representation. Members of the Committee should not make statements to the media that may compromise or prejudice the ongoing investigation and its outcome.

To ensure legitimacy, it is important that the Parliamentary Select Committee is not only fair, thorough and impartial in practice, but also perceived to be so. The same applies

¹ Report of the Special Representative of the Secretary-General on human rights defenders, A59/401, 1 October 2004

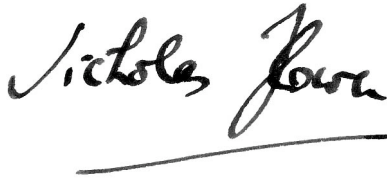
² *Ibid.*

to any advisory committees established to assist the Parliamentary Select Committee. Advisory committees could include individuals with particular expertise, such as those who have experience working with NGOs.

Finally, the ICJ urges Your Excellency to ensure the Parliamentary Select Committee does not take on quasi-judicial functions. If evidence presented to the Committee suggests that crimes may have been committed under Sri Lankan criminal and financial laws, the Parliamentary Select Committee should recommend they be investigated and, where necessary, prosecuted through regular judicial channels.

Given the importance of these issues and the interest of the public in both Sri Lanka and internationally, we are releasing this letter as an open letter.

Please accept, Your Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, reading "Nicholas Howen". The signature is written in a cursive style with a long horizontal line underneath it.

Nicholas Howen
Secretary-General