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INTERNATIONAL COMMISSION OF JURISTS
Geneva, Switzerland

SRI LANKA:

**THE ACTIVITIES OF THE PRESIDENTIAL COMMISSION
OF INQUIRY
IN RESPECT OF NON-GOVERNMENTAL ORGANISATIONS
(NGOs)**

Report of a Mission to Sri Lanka
in May-June 1991 on behalf of the
International Commission of Jurists

by

Stephen C. Neff

EMBARGO 23 September 1991

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PREFACE

In May - June 1991 Dr. Stephen Neff, a national of the United States of America and a lecturer in Public International Law of the University of Edinburgh, United Kingdom, on behalf of the International Commission of Jurists (ICJ) visited Sri Lanka to study the mandate and operation of the Presidential Commission of Inquiry (hereafter referred to as the NGO Commission) in respect of non-governmental organisations in Sri Lanka.

The NGO Commission consisting of seven eminent persons was established in December 1990 to report on the misuse of funds by NGOs, the legal framework for their supervision and on "such other matters that appear relevant to the determination of the above matters".

In the course of his visit, Dr. Neff met representatives of NGOs, lawyers acting for NGOs, organisations who contribute funds to NGOs, Sri Lanka Government Officials and those connected with the NGO Commission.

The ICJ is very grateful to the members of the Sri Lanka Government and members of the NGO Commission for receiving Dr. Neff and for their assistance and cooperation.

The report prepared by Dr. Neff was critical of a number of aspects of the work of the NGO Commission, including the breadth of its terms of reference and the oppressive nature of some of the requests for information.

Anxious to discuss with the Government and the members of the NGO Commission the criticisms contained in the report, the ICJ submitted the report to the Sri Lanka Government with a request that the Government discuss the issue with a second ICJ delegation, consisting of Sir William Goodhart, Q.C., Barrister-at-Law, London, and Dr. Stephen Neff.

A few days before the ICJ delegation was to leave for Sri Lanka, the Permanent Representative of Sri Lanka to the United Nations in Geneva informed the ICJ that any comment or critique on the manner in which the Commission should conduct its inquiry "would be a violation of the principle of non-interference in matters that are deemed to be sub-judice". The ICJ was therefore asked to renew its request to send the delegation once the NGO Commission had presented its report to the President.

The ICJ in its reply to the Government stated that it did not agree that the proceedings of the NGO Commission were "sub-judice". The ICJ reiterated that it was most reluctant to publish the report without giving the Government and the members of the Commission a chance to discuss with representatives of the ICJ the issues raised in the draft report and were willing to modify any criticism which appeared on discussion to be overstated or unjustified. The ICJ once again asked the Sri Lanka Government to discuss the report with its representatives, to provide visas for them and to let the ICJ know by 6 September, at the latest, whether such a visit could be arranged. The Government of Sri Lanka has not responded to the ICJ's renewed request.

The ICJ is of the opinion that it would be pointless to defer publication of the report until the NGO Commission has completed its work since it would be too late for any procedural defects to be rectified. It however wishes to stress that it has always been and is still ready and willing to develop a genuine dialogue and exchange of information with the Sri Lanka Government about the issues raised in the report.

Adama Dieng
Secretary-General
International Commission of Jurists

September 1991

I. BACKGROUND OF THE NGO COMMISSION

A. THE APPOINTMENT

The Sri Lanka Presidential Commission of Inquiry in Respect of Non-governmental Organisations (hereinafter called the NGO Commission) had its immediate roots in a report, not as yet published, by a government committee, not as yet publicly named or identified. Three of the salient findings of that committee, however, have been made public:

1. That about 3,000 NGOs were functioning in Sri Lanka by 1990;
2. That "no framework has been established for monitoring the activities and the funding" of these groups; and
3. That (most crucially) "some of the funds received from foreign sources as well as generated locally are allegedly being misappropriated and/or being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka".

On the strength of these conclusions (reported in the Gazette of the Democratic Socialist Republic of Sri Lanka No. 641/2 of 17 December 1990), President Ranasinghe Premadasa appointed a Commission of inquiry consisting of seven eminent persons. (For the text of proclamation announcing this appointment, see Appendix 2.) The statutory framework governing the appointment and functioning of such presidential commissions of inquiry is the Commissions of Inquiry Act of 1948 (for the text of which, see Appendix 1).

The terms of reference of the Commission are very broad. They are to "inquire into and obtain information" concerning "the activities" of all NGOs functioning in the country, and also concerning the legal and institutional arrangements which

exist for monitoring and regulating those activities. The NGO Commission is then to report on, in essence, three matters:

1. Misuse of funds

Included in this category is any outright misappropriation of funding. So is any use of funds for purposes "other than the declared objects" of the NGOs concerned. Excessive spending on overheads and similar matters also fall within the commission's area of concern. So does the use of any funds "for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka".

2. The legal framework for the supervision of NGOs

The Commission is to report on whether existing provisions of law for monitoring NGOs are "adequate" and, if not, what "legislative provision" should be made.

3. "Such other related matters as appear relevant to the determination of the above matters".

These original terms of appointment directed the Commission to submit to the president of Sri Lanka a report or interim report within six months (i.e. by June 1991).

The chairman of the NGO Commission is a highly respected former judge of the Sri Lanka Supreme Court, Rajah Sirimevan Wanasundera. The other six members are:

- Joseph Francis Anthony Soza
- Mohamed Nabavi Junaid
- Kandiah Velauthapillai
- Edmund Eramudugolia
- Priyani Elizabeth Soysa
- Irwin Weerackody

The secretary to the Commission is Wimaladharma Ekanayake. Two state counsel assist the Commission: Nihal Jayasinghe and Jayantha Jayasuriya.

B. THE COMMISSION'S METHODS

The NGO Commission has four principal methods of gathering information. They are as follows.

(i) Information Brought Forward by the General Public

About a month after its establishment, the NGO Commission issued, on 10 January 1991, a "Notice to the Public", inviting "Any person or organisation having any information or complaints" or who is "desirous of making representations" on the subject of NGO activities to approach the Commission. (For the text of this notice, see appendix 3.)

(ii) Questionnaires Issued to NGOs

The Commission has also sent out questionnaires to some - but, as yet, by no means all - NGOs, seeking information directly from them. This questionnaire seeks information about the general nature and structure of the recipient NGO - the type of work that it does, its relationship to the government, its organisational structure and so forth. Some of the information sought is quite detailed. The identity of all staff and personnel are called for (not simply of the officers), with additional details about expatriates requested. A complete account is sought of all property (movable and immovable), of all financial liabilities, all disbursements, all "network (affiliations" and "linkages" with both local and foreign bodies. (For the text of this questionnaire, see Appendix 4.)

Certain NGOs have received, in addition, a supplementary questionnaire, calling for further information, some of it very detailed indeed. For the principal officers of the recipient

NGO, for example, the Commission requested details of all personal bank accounts, together with details of the bank accounts of the spouses and children of those officers. For personnel of executive grade, personal bank balances were also to be provided (although not, for this category, details of spouses' and children's' accounts). For NGOs with "other staff" numbering less than twenty-five, basic details were called for regarding all such staff. Detailed particulars of foreign donations or grants to the organisation, both in money and in kind, were requested. So were financial statements for the past five years, together with detailed accounts of "all fixed and current assets and liabilities" shown in the balance sheets for the previous two financial years. In addition, details of "any problems encountered in implementing projects, programmes etc" were to be supplied, with an indication of the "remedial measures taken." (For the text of this supplementary questionnaire, see Appendix 5.)

In addition, it has been reported that some NGOs have even received a second supplementary questionnaire, calling for yet more information.

(iii) Hearings Conducted by the Commission

By the time of the ICJ's mission to Sri Lanka, some twenty-five to thirty witnesses had been heard by the Commission. A small number (some three of four) were called by the Commission itself; the others were persons who had responded to the "Notice to the Public" of 10 January 1991 referred to above. Sometimes, witnesses have met informally with the Commission, rather than in open session, although that is not invariably the case.

The basic running of the hearings appears to be in the hands of the two state counsel attached full-time to the Commission. They are from the attorney general's department, with extensive experience in criminal prosecutions. The state counsel arrange for the appearance of witnesses. At the open sessions of the Commission, the state counsel lead evidence, thereby giving

these sessions something of the aura of a trial. Questions are also put to the witnesses by the Commission members.

Transcripts of the open sessions are kept. They are not made generally available to NGOs, however. But the Commission will allow an NGO to obtain a transcript of the portion of the proceedings with which it is concerned. The only way for NGOs to obtain a complete picture of the proceedings of the open sessions, therefore, is to assign a person or persons to attend the sessions on their behalf and take notes. This is apparently being done by one NGO.

So far, most of the witnesses (as noted above) have come before the Commission of their own accord, in response to the commission's general notice. It is not surprising, therefore, that many of these persons have manifested a critical attitude, or outright hostility, towards NGOs. Much of the testimony, to date, has been more in the nature of rumour, innuendo and prejudice than of solid evidence. But the Commission envisages that any lack of balance or reliability in the testimony will be counterbalanced in due course, and that the Commission accordingly cannot fairly be assessed on the basis of the public proceedings thus far.

(iv.) Police Investigators

There is a police unit attached to the NGO Commission. According to Judge Soza (one of the Commission members), the principal function of this unit, which consists of some three or four persons, is to assist with such matters as the recording of statements. The Commission does not itself issue day-to-day instructions to this unit. That task is left to the state counsel.

As of the time of the ICJ mission, the Commission members had not consulted the records of interrogations which this police unit had conducted. The Commission accordingly could have

had only the most general knowledge of the activities of that unit.

II. FREEDOM OF ASSOCIATION: INTERNATIONAL LEGAL NORMS

The right of freedom of association has been recognised from the outset of the modern international human rights movement as one of the fundamental rights of persons. Article 20 (1) of the Universal Declaration of Human Rights (adopted by the U.N. General Assembly in 1948) states that

"Everyone has the right to freedom of peaceful assembly and association".

Article 29 (2) further provides:

"In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

Although U.N. General Assembly resolutions are not ipso facto legally binding upon U.N. member states, it is increasingly believed by scholars that the principles set out in the Universal Declaration of Human Rights have now become binding upon states as rules of customary international law. There is, however, as yet no authoritative judicial pronouncement to that effect.

More pertinent from the legal standpoint is the statement of the right of freedom of association in Article 22 of the International Covenant on Civil and Political Rights of 1966 (to which Sri Lanka has been a party since 1980). Article 22 provides in relevant part:

1. Everyone shall have the right to freedom of association with others. ...

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. ...

The limitations found in Article 22 (2) and in the Covenant generally, were the subject of examination by an expert meeting convened by the International Commission of Jurists and others in Siracusa, Italy, in 1984. The so-called "Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights", contained in U.N. Document E/CN.4/1984/4 and in *ICJ Review* N° 36 (June 1986) at p. 47 ff, have obtained a wide degree of international acceptance. They provide, notably, that

2. The scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned.
3. All limitation clauses shall be interpreted strictly and in favour of the rights at issue.
16. Laws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable.
20. The burden is upon a state imposing limitations so qualified to demonstrate that the limitations do not impair the democratic functioning of the society.

III. FREEDOM OF ASSOCIATION: PROVISIONS IN THE LAW OF SRI LANKA AND OF SELECTED OTHER JURISDICTIONS

A. SRI LANKA

Article 14 (1) (c) of the constitution of Sri Lanka provides for "the freedom of association". Analogously to the International Covenant on Civil and Political Rights, the constitution makes it clear that the right is subject to some constraints. Article 15 (4) of the constitution states that the

right of freedom of association is "subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or national economy".

The Sri Lanka constitution does not stipulate that legislation which is inconsistent with basic constitutional rights is automatically invalid to the extent of the inconsistency. Instead, it grants to persons who allege that their fundamental rights have been breached the right (set out in Article 17 of the constitution) to apply for relief to the Supreme Court. The court is given the power (under Article 126 (4) of the constitution) to grant "such relief or make such directions as it may deem just and equitable in the circumstance".

B. SELECTED OTHER JURISDICTIONS

The approach of the Sri Lanka constitution to the principle of freedom of association essentially parallels that of the International Covenant on Civil and Political Rights, in that it provides in general terms for the existence of the right, but then subjects it to certain restrictions in the overall public interest. This approach is commonly used in other international human rights instruments - most notably in the European and American Conventions on Human Rights (drafted in 1950 and 1969 respectively). It is also commonly used in state constitutions.

There are, however, various ways in which fundamental rights such as this one can be provided for at the state level. An exhaustive survey is not appropriate here, but very brief mention may be made of the way that a few other states have dealt with the question. The position in India is worth noting, in light of its geographical nearness to Sri Lanka and the shared colonial heritage of the two countries. The United Kingdom may be noted as well, as the common past colonial power of India and Sri Lanka. The United States of America is interesting on the ground that it possesses an extensive case-

law on the subject of freedom of association. Canada is an example of a country with a common law heritage which has enshrined basic human rights into its constitution in recent times. The Netherlands is a more or less randomly selected illustration of a state with a civil law heritage. And Mauritius is, like Sri Lanka, a state with a mixed civil law and common law heritage.

1. India

India provides explicitly in its constitution for freedom of association as one component of what is termed, in Article 19, the "right to freedom". Included within this general right is the right "to form associations or unions" (Article 19 (1) (c)). As in the case of Sri Lanka, the Indian constitution sets forth some explicit limits to this right. Article 19 (4) expressly preserves for the state the right to make laws "imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions" on the right of freedom of association.

On the subject of remedies for alleged violations of the right, the position in India differs from that in Sri Lanka. In India, the constitution provides that any legislation conflicting with the constitution is, to the extent of the inconsistency, invalid.

Over the years, India has generated some case-law on the subject of freedom of association which is of some note. This will be treated in Section IV B below.

2. United Kingdom

The United Kingdom presents the sharpest contrast to Sri Lanka of the countries considered here, by virtue of its total lack of a written constitution. In effect, the "right" of

freedom of association exists in British law by virtue of the fact that there happens to be little in the way of legal restriction upon it. The section in the current edition of Halsbury's Laws on the subject is charmingly brief. It reads, in toto:

"The right of association arises from the paucity of restrictions on the making of contracts and the constitution of trusts, the ease with which companies and trade unions can be formed under the relevant legislation, and the laxity of the law of conspiracy."

(8 Halsbury's Laws of England, sec. 837 (4th ed. 1974), at 554)

{The United Kingdom is, however, a party to the European Convention on Human Rights, which contains positive provisions protecting the right of freedom of association. The European Convention, however, is not part of British domestic law.}

3. United States of America

The United States of America's constitution contains a bill of rights (drafted in 1791). It does not, however, contain any explicit statement of the principle of freedom of association. The nearest that it comes is to guarantee, in the First Amendment, that "the ... right of the people peaceably to assemble, and to petition the government for a redress of grievances". Nevertheless, the U.S. Supreme Court has had little difficulty in holding, as a matter of interpretation, that the principle of freedom of association does enjoy stern constitutional protection.

The remedial position in the U.S.A. is similar to that in India. Laws abridging (or purporting to abridge) rights guaranteed by the constitution can be pronounced by the courts to be invalid to the extent of the inconsistency.

In the U.S.A. there is a rich heritage of case-law on the subject of various aspects of freedom of association. This case-law will be discussed in Section IV D below.

4. Canada

Canada is a country from the common law system but it possesses a written constitution, including a Charter of Rights and Freedoms drafted in 1982. "Freedom of association" is listed in Section 2 as one of the four Fundamental Freedoms in the Charter.

As in the case of Sri Lanka, there is a provision in the constitution allowing for a restriction of the right. The Charter contains a general provision that the rights contained therein may be subjected to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society" (Section 1).

On the question of remedies for infringement, Canada's constitutional law parallels that of Sri Lanka rather than that of India or the United States of America. Section 24 (1) of the constitution gives to any court of competent jurisdiction the power to grant "such remedy as the court considers appropriate and just in the circumstances" in case of violation of constitutionally protected rights.

5. Netherlands

Dutch constitutional law is similar in character to that of Sri Lanka, India and Canada, and also to the International Covenant on Civil and Political Rights. Article 8 states that "the right of association shall be recognized". It immediately goes on to provide that the right may be restricted "by Act of Parliament in the interest of public order".

6. Mauritius

Article 13 of the Mauritius constitution deals with freedom of association in the same vein as those of Sri Lanka, India, Canada and the Netherlands, though in somewhat greater detail. It gives three grounds on which the right may be restricted. First is "in the interest of defence, public safety, public order, public morality or public health". Second is "protecting the rights of other persons". Third is an allowance of "restrictions upon public officers". In all three of these instances, any restrictions must be "reasonably justifiable in a democratic society". The remedy for violation is an application to the Supreme Court.

IV. INSTRUCTIVE CASE-LAW ON FREEDOM OF ASSOCIATION

A. GENERAL CONSIDERATIONS

It is clear from the text of Article 22 of the International Covenant on Civil and Political Rights (quoted above), as well as from the state constitutional provisions cited in the previous section, that the principle of freedom of association is not absolute. There can be, accordingly, no convincing case made that NGOs have an international legal right to function totally free of government supervision under all circumstances. At the same time, it may be confidently asserted that government supervision of NGOs, or inquiry into their activities, should not be so heavy-handed or intrusive as to render the right of freedom of association altogether nugatory. Somewhere in between these two extremes, a balance must be struck.

There is, however, a certain amount of case-law on the subject under the constitutional law of various states. By far the richest source of such law is the United States of America,

whose Supreme Court has dealt, in the course of time, with a number of aspects of the problem. India also had several cases which are worthy of note. Even the United Kingdom, despite its lack of any positive law on the subject, has had to deal with the issue in its courts.

None of this case-law is, of course, binding on the court of Sri Lanka. Nevertheless, many of the issues that have arisen are germane to the present situation in that country - some of them highly so. A brief survey of some of the more important case-law from these states will therefore be instructive (although not determinative).

B. INDIA

The basic provision of the Indian constitution on freedom of association was set out above.

As to the content of the right of freedom of association, the question has arisen in Indian courts whether the right necessarily implies that associations, once formed, have a right to function with sufficient freedom reasonably to achieve their stated ends. The case of *U.P. Shramik Maha Sangh v. U.P.*, (1960), A.A. 45, from one of the lower courts, suggested that it does. "The right to form an association", the court stated, "is not a right to be exercised in a vacuum or an empty or a paper right." It also stated that, "if the purpose (of the association) is restricted, the right (of freedom of association itself) is inevitably restricted".

In *All India Bank Employees' Association v. National Industrial Tribunal*, (1962) S.C.R. 269, however, the Supreme Court stated that the right of freedom of association does not necessarily imply a right on the part of the association itself to fulfill its purposes efficaciously. The reason is that the purposes of a given organisation might be incompatible with the general public interest. To the extent that they are, the right

of the organisation to function effectively must be subordinated to the more general interest of the public. The crucial question, then, when the government is restricting the operations of an NGO is whether the government is truly acting in the general interest, or whether it is merely invoking that general interest as a cloak for unreasonable conduct.

As to when government intervention is reasonable and when it is not, general - admittedly very general - guidelines were laid down by the Supreme Court in the case of *Chintaman Rao v. M.P.*, (1950) S.C.R. 759. In that case, the court cautioned that limitations on basic rights "should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation. ... Legislation which arbitrarily or excessively invades the rights cannot be said to contain the quality of reasonableness. ..." What is clearly implied here is a basic principle of proportionality in areas where basic rights are restricted by legislation. There must be an actual and conscious weighing of the right in question, as against the public interest in its restriction, in order for the restriction to be constitutionally permissible. A mere mechanical invocation of a public or general interest will not suffice.

Nor, it is clear, will mere government suspicion of or dislike of the activities of an NGO justify repressive action. The leading authority to this effect is *Madras v. V.G. Row*, (1952) S.C.R. 597. This case concerned the suppression by the Madras State Government of an NGO called the People's Education Society, on the ground that it was a "front" for the Communist Party, which the state had declared to be unlawful. The suppression was brought about by means of a declaration by the state government that the group was an "unlawful association" - a step authorised by the Indian Criminal Law Amendment Act of 1908. The declaration was published in the Official Gazette, but notice was not given (nor, under the Act, required to be given) to the organisation itself or its officers. Nor was any judicial challenge of the government's action provided for under the law.

The Supreme Court countermanded this measure, on the ground that it was an unreasonable trespass by the government on the right of freedom of association. The constitutional requirement of reasonable conduct on the government's part applied, the court stressed, to both the substantive and the procedural aspects of the interference. On the procedural side, the court held that a provision allowing the government to take steps of this kind against an NGO without an opportunity for judicial scrutiny could not, as a general rule, be held to be reasonable. As for the substantive aspect of the question, the court stated that the mere dislike of an organisation by the government would not, in general, constitute adequate grounds for suppressing it. As a basis for abridging the right of freedom of association, the court held that "subjective satisfaction of the Government ... may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits, and cannot receive judicial approval as a general pattern of restrictions on fundamental rights".

C. UNITED KINGDOM

On the question of the reasonableness of government interference with the right of freedom of association, one recent case from the House of Lords may be noted: *Council of Civil Service Unions v. Minister for the Civil Service*, (1985) 1 A.C. 374. The British Government forbade the employees at a defence intelligence establishment to belong to trade unions (the workforce being already unionised at the time that the prohibition was made). The ground invoked for this sudden and drastic action was national security. The House of Lords upheld the government's action, making it clear that a very high degree of judicial deference to executive views was in order when questions of national security were invoked. Most emphatic of the judges on this point was Lord Diplock, who stated that the final say on questions of national security belonged to "those on whom the responsibility rests, and not on the court of

justice. ..." He went on to state that a national security justification by the government "is par excellence a non-justiciable question. The judicial process is totally inept to deal with the sort of problems which it involves." (It should be noted that the right at stake in this case was not, strictly, the right of freedom of association per se, but rather the right of employees concerned to be consulted about measures vitally affecting them.)

This government action was then challenged before the European Commission on Human Rights, under the European Human Rights Convention's guarantee of freedom of association. That guarantee, however, like the one in the International Covenant on Civil and Political Rights, was subject to "restrictions ... necessary in a democratic society in the interests of national security". The European Commission held this application inadmissible on the ground that it was manifestly ill-founded. {10 European Human Rights Reports 269 (1987).}

D. UNITED STATES OF AMERICA

The United States of America has the largest and most elaborate body of case-law on the question of freedom of association - ironically, in the light of the fact (noted above) that its constitution does not even contain an explicit guarantee of that right as such. In terms of the lessons that this case-law might suggest for the Sri Lanka experience, we will consider these cases in two categories:

first, looking at issues that arise out of legislative investigations into association;

and

second, looking at several aspects of substantive regulation of private associations by governments.

1. Legislative Inquiries and Freedom of Association

Legislative inquiries, by their nature, have a significantly different function from criminal investigations. Criminal investigations are designed to ferret out and punish wrongdoing, in the form of violations of existing laws. The purpose of legislative inquiries, in contrast, is to gather information to enable the legislator to enact the wisest laws possible under the circumstances. It is clearly in the interest of society as a whole that legislators have the right and the opportunity to acquaint themselves with the facts necessary to carry out the legislative function.

At the same time, however, it is important that legislative inquiries not be used as mechanisms for subverting fundamental human rights. They ought not to become devices for harassing or intimidating persons exercising their basic rights, under the mere guise of gathering information for possible future legislation. Here too, there is a balance to be struck between the interest of society at large in effective and informed legislation, and the interest of individuals and groups in the safeguarding of fundamental human rights.

The leading American case on the subject is *Watkins v. U.S.*, 353 U.S. 178 (1957), which concerned a refusal on the part of a person to answer certain questions put by the House Committee on Un-American Activities. The refusal led to a conviction for contempt. The Supreme Court held that the power of the Congress to conduct investigations is very broad, and that the government was entitled to "every reasonable indulgence of legality". At the same time, the legislative investigation power is not unlimited. It must be related to some legitimate congressional task and must not be "an end in itself". Legislative inquiries cannot lawfully be used as vehicles for punishing persons or for abridging fundamental freedoms. The court noted that the mere summoning of a person by a legislative investigation committee for inquiry about his associations constitutes "a measure of governmental interference" for which there must be commensurate

justification in the public interest. "There is no congressional power to expose for the sake of exposure", the court held.

One point that the Supreme Court insisted on very strongly in this case was that the charter or terms of reference of the investigation committee must be reasonably precise, so that individuals summoned before it can have some reasonable idea of when the committee might be over-stepping its mandate. The inquiry in this case failed that test. The committee's charter from its parent body was so broad as to leave the degree of control by the House of Representatives "slight or non-existent", in the court's words. As a result, the defendant was being unfairly treated in that he was unable to form a sufficiently precise idea of the scope of the inquiry.

A similar case was *Scull v. Virginia, ex rel Committee on Law Reform and Racial Activities*, 359 U.S. 344 (1959). It is of special interest in the present context because it concerned a state government investigation which evidently was, in reality, a systematic effort on the part of the legislature to harass civil rights activists. Here too, the Supreme Court dismissed a contempt conviction, on the ground that the purpose of the inquiry was so unclear as to preclude the defendant's knowing why the committee was seeking the information in question.

Of great interest also is the case of *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963). The Florida state legislature was investigating the activities in the state of the foremost civil rights advocacy group of the time, the National Association for the Advancement of Coloured People (NAACP). It issued a subpoena for the membership list of the organisation for the Miami area. The NAACP official who refused to comply with the order was then cited for contempt. The U.S. Supreme Court held that the non-disclosure was justified, stressing that the state was under a duty to "convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest." It referred to "the strong associational

interest in maintaining the privacy of membership lists of groups engaged in the constitutionally protected trade in ideas and beliefs". This consideration was particularly important in cases where (as here) the beliefs held by the group were unpopular ones. In general, the court stressed the importance of guarding against "unjustified and unwarranted intrusions into the very heart of the constitutional privilege to be secure in associations in legitimate organizations..."

It should not, however, be supposed that American courts will lightly hold that legislative investigation committees have unlawfully infringed the right of freedom of association. consider, for instance, the case of *Uphaus v. Wyman*, 360 U.S. 72 (1959). The state government of New Hampshire was investigating the possible presence of subversive persons and groups in the state. The defendant, the executive director of a group called World Fellowship, Inc., administered a camp. The investigators told him to produce his guest list, together with information about his employees and about speakers who had appeared at the camp. He refused, claiming that the request unjustifiably interfered with his, and his guests' and employees', right of freedom of association. The U.S. Supreme Court disagreed, holding that the state government did have a legitimate purpose in undertaking the investigation, that the right of association at stake was "tenuous at best" and that no unreasonable burden was involved in complying with the order.

The position of American constitutional law in this area may be summed up briefly, if in necessarily rather general terms. The right of legislative bodies to conduct investigations is a very broad one, but it is not unlimited. Investigations must be in subject areas that are within the body's capacity to legislate. The terms of reference must be reasonably precise. Investigations must not be mere covers for campaigns of harassment or intimidation. And special scrutiny will be given when the investigative focus is upon controversial or unpopular, but lawful, groups. Within these broad parameters, however, the government's interest in ascertaining relevant facts for the

purpose of legislation will tend to override the privacy interests of private parties.

2. Substantive Regulation of NGOs and
Freedom of Association

(i) Registration

In the United States, there is no absolute bar to requiring voluntary associations to register with the government. The Foreign Agents Registration Act of 1938, for example, has withstood constitutional challenge. (See *Attorney General of the U.S. v. Irish Northern Aid Committee*, 530 F. Supp. 241 (1981).) So has the subversive Activities Control Act of 1950, pursuant to which the Communist Party of the United States was required to register with the government as a subversive organization. (See *Communist Party of the U.S. v. Subversive Activities Control Board*, 367 U.S. 1 (1961).) In these cases, however, it was clear that vital government interests were at stake.

The position is different as regards the "ordinary" exercise of constitutional rights, such as the right of freedom of association. Consider, for example, the case of *Thomas v. Collins*, 323 U.S. 516 (1945). A Texas statute required that "labor organizers" operating in the state had to file certain information with the state government, in return for which they would be issued with a card entitling them to pursue their intended activity. There was no discretion on the government's part -- upon the receipt of the required information, it had to issue the card. The general intention was to enable the outsiders to organize trade unions. The U.S. Supreme Court struck this law down, stressing that the right of freedom of association is cognate with the rights of freedom of speech, of the press and of petition. States are entitled to regulate private gatherings and associations for the purpose of dealing with "fraud and other abuses", the court conceded; but, in so doing, the state "must not trespass upon the domains set apart

for free speech and free assembly." Furthermore, the court explicitly stated that some "clear and present danger" of abuse of the right of free association must be present before the state could impose a requirement like the one here. "If the exercise of the rights of free speech and free assembly cannot be made a crime," the court pronounced, "we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them..." At the same time, it should be noted that the court stated that certain forms of conduct, as distinct from a bare right of association, are subject to state regulation: it mentioned in this connection the solicitation of funds and the recruitment of members.

(ii) Disclosure Requirements

The concept of freedom of association does not, in American constitutional law, imply a right on the part of NGOs to refuse to disclose any information about themselves or their activities to the authorities. The courts do, however, exercise a fairly high degree of vigilance in this area, to ensure that the disclosure requirements do not have the effect (whether intended or not) of undermining vital constitutional freedoms. In the case of *Buckley v. Valeo*, 424 U.S. 1 (1976), for example, the U.S. Supreme court warned that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief" and that it consequently would be sternly watched by the courts. But so would indirect and unintended ones.

For this reason, the courts have consistently stressed the necessity of looking with some considerable care, in cases of this kind, at the precise factual context in which disclosure requirements operate. Regulations which appear reasonable on their face in normal circumstances might, because of special factors, be impermissible. In this regard, the position of human-rights advocacy groups has been found in a number of cases to be of particular concern to the courts.

The most instructive cases in this area emerged from the period the "civil rights revolution" in the United States in the late 1950s and early 1960s. The typical pattern involved attempts by certain states to impede the activities of the leading civil-rights advocacy group, the NAACP. One notable case was *Louisiana v. NAACP*, 366 U.S. 295 (1961). It concerned two state regulatory measures: first, a ban on non-trading associations affiliated to out-of-state organisations whose officers belonged to any "subversive" groups; and second, a requirement that the non-trading association file a full list of its members with the state government. The Supreme Court struck these requirement down. The first was burdensome, in that persons in Louisiana were required to discover and report upon all affiliations of persons in the foreign-affiliated bodies. The problem with the requirement to disclose the list of members was that such disclosure would expose the members to economic reprisals by persons who objected to the activities of the NAACP. The Supreme Court affirmed that "regulatory measures..., no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of first Amendment rights."

In a similar vein was the landmark case of *NAACP v. Alabama*, 357 U.S. 449 (1958), which remains to a large extent the leading American constitutional case in this area. The NAACP was involved in various forms of civil-rights activism: it recruited members in the state; it provided financial and legal aid to black students seeking admission to state educational institutions; and it supported a bus boycott. the state sought a list of the names and addresses of all NAACP members and agents in the state. It also sought disclosure of a large number of records, including bank statements, leases and deeds. The NAACP was cited for contempt for refusing to comply with orders to produce this information.

The Supreme Court stressed that it would submit any constraints on freedom of association to the "closest scrutiny". It also stressed that direct action by the state against the

organisation was not the only form of oppression that the U.S. Constitution precluded: "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association" as a direct ban would. The court stressed the need to look at the general context of the regulations and not simply at their text. Under certain circumstances, the court held, "Inviolability of privacy in group association may be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." The present circumstances, it concluded, were of that kind. A requirement of disclosure of members may appear innocuous - and in many contexts it would be - but in this instance, there was, on the evidence before the court, a very grave danger that NAACP members would be subjected to harassment and that the effectiveness of the organisation would thereby be seriously compromised. It did not matter that the harassment would be at the hands of private parties, rather than of the state itself. Finally, the court noted that the legitimate regulatory interest of the state could be satisfied without the possession of the information in question.

It should be noted that the NAACP, in *NAACP v. Alabama*, conceded that it could be required to disclose the purposes and activities of the group, and the identity of its officers. The case does not stand, therefore, for a right of private advocacy bodies to be free from all governmental scrutiny or regulation. Rather, it stands for the more moderate proposition that such regulation must be carefully designed so as not, in its effects or its intention, unreasonably to inhibit the activities of lawful (if controversial) private bodies.

A similar case was *Bates v. Little Rock*, 361 U.S. 516 (1960). Here, the municipality's concern was to decide, on the basis of the nature of the group's activity, whether it was subject to taxation or not. To this end (or supposedly so), the municipality required from the NAACP a list of its local members, together with financial information (who had paid dues to the organisation and how that money had been used) and a

statement of whether the group had a parent body or not. The NAACP declined to disclose the names of local members and financial contributors, on the basis of "the anti-NAACP climate in this state" and the fear of harassment and reprisals that would result. The U.S. Supreme Court supported this stance, holding that the principle of freedom of association "protected not only against heavy-handed frontal attack, but also from [an organisation's being stifled by more subtle governmental interference." The court held that the law had a "repressive effect", even if the harassment in question was by private parties rather than by the local authority itself. The court insisted therefore that the authority's regulations bear "a reasonable relationship" to its legitimate regulatory interest. This law failed that test, as there was, in the court's view, "no relevant correlation" between the municipality's possession of a full local membership list and its right to levy a tax. The liability to tax was a function only of the nature of the group's activities.

It should be noted that this case, like *NAACP v. Alabama*, does not support the view that human-rights advocacy groups are ipso facto entitled to be free of all government scrutiny. The specific facts of the situation are relevant to a conclusion about just how far the regulatory authority of the state can go. crucial to the decision in this case, for example, was the finding that the risk of harassment of the NAACP as a consequence of the disclosure was "neither speculative nor remote".

The importance of this last point cannot be over-emphasised. The courts will not simply presume that disclosure requirements will have chilling effects on constitutional rights. They will require evidence to that effect; and where such evidence is lacking, disclosure requirements will tend to be upheld. In the case of *Communist Party of the U.S. v. Subversive Activities Control Board*, 367 U.S. 1 (1961), for example, the Supreme Court stated that it would not "make abstract assertions of possible future injury, indefinite in nature and degree", in the area of

disclosure requirements. In that case, the Communist Party presented no evidence that the disclosure sought would deter persons from joining the organisation or from contributing funds to it. The disclosure requirements were accordingly upheld, with the court going to some length to distinguish the case from the NAACP ones.

(iii) Prevention of Misconduct

There has been some American case-law on the extent to which the right of freedom of association can be regulated in the interest of preventing misconduct, such as fraud or corruption, on the part of private groups. It is well established that there is at least some scope for government regulation in this sphere. In the landmark case of *Cantwell v. Connecticut*, 310 U.S. 296 (1940), for example, the U.S. Supreme Court confirmed that persons exercising their right of freedom of religion must expect to suffer "some slight inconvenience" in their activities in deference to the government's right to police fraudulent practices performed under the cloak of religious freedom.

In making use of its regulatory or police power, however, the government must tread warily. It must target its measures narrowly against the abuses themselves and scrupulously avoid policies that sweep too broadly. An excellent illustration of this point is found in *Schneider v. Irvington*, 308 U.S. 147 (1939). This case concerned municipal regulations requiring persons distributing literature to private homes to obtain the permission of the police beforehand. They had to supply evidence of their good character, and of the non-fraudulent nature of their enterprise. In addition, "a burdensome and inquisitorial examination" was required, including fingerprinting and photographing. The government's concern in prescribing this regime was twofold: first, to control the problem of littering; and second, to guard against fraudulent activities by house-to-house canvassers. The Supreme Court struck the law down, on the ground that, even though the concerns were legitimate ones, the measures adopted were impermissibly broad. The way to deal with

the problem of littering, the court held, was to take action against persons committing the offence. It was impermissible for the municipality to go further up the chain of causation, by restricting the right of persons to distribute literature which might (or might not) later be discarded as litter by the recipients. Similarly with the concern over fraud. The proper course of action was to take action against it when and if it occurred, rather than to institute a preventive regime which had the effect of unduly restricting the exercise of ordinary constitutional rights. (For a more recent case of this same general character, see *Hynes v. Mayor and Council of the Borough of Oradell*, 425 U.S. 610 (1976).)

There is some case-law in this area dealing specifically with regulations against the misconduct of human-rights advocacy groups. Perhaps the most instructive one is *NAACP v. Button*, 371 U.S. 415 (1963), concerning regulations of the state of Virginia against the stirring up of litigation through the solicitation of business by practicing lawyers. Laws dealing with this problem had been in existence in the state for many years; but they were amended in the early 1960s, apparently with a view to circumscribing the advocacy activities of the NAACP. The amendments forbade, in extremely sweeping terms, the solicitation of legal business by "agents" of lawyers, thereby potentially interfering with the ability of the NAACP to refer civil-rights cases to its own lawyers for litigation. The U.S. Supreme Court, in considering the law, was mindful of the state's concern over the problem of unethical conduct of lawyers. It cautioned, however, that "a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights". The court also stressed the "delicate and vulnerable" character of basic First Amendment rights and the fact that, as a consequence, these freedoms "need breathing space to survive". Once again, the court insisted on the need to consider the matter not in the abstract, but in light of the actual prevailing circumstances. The court firmly refused to close its eyes to the "intense resentment and opposition" that the civil-rights movement had fostered in the state. It

carefully considered as well the distinctive character of the kind of litigation in which the NAACP engaged - litigation that was concerned not with the mere "resolving of private differences", but rather with the use of advocacy as "a form of political expression". In light of all the facts of the case, the court concluded that this regulatory regime swept too broadly. "A vague and broad statute", it observed, "lends itself to selective enforcement against unpopular causes." So sweeping was the Virginia law that its terms could be read to ban "every cooperative activity that would make advocacy of litigation meaningful". The state was therefore obligated to address the problem of professional misconduct by lawyers by some means that posed less of a threat to groups engaging in the controversial practice of civil-rights advocacy and litigation.

V. THE ICJ MISSION TO SRI LANKA

(30 MAY - 6 JUNE 1991)

One clear conclusion that emerges from the survey of American constitutional case-law on freedom of association is the necessity for considering the question in the light of prevailing concrete circumstances, rather than in the abstract. To that end, the International Commission of Jurists (ICJ) undertook a mission to Sri Lanka, from 30 May to 6 June 1991, to investigate the activities of the NGO Commission and its ramifications. The ICJ representative was Dr. Stephen C. Neff, a national of the United States of America and a lecturer in public International Law at the University of Edinburgh in the United Kingdom.

In the course of his visit, Dr. Neff met with three principal categories of persons: people in the NGO community in Sri Lanka (including lawyers in private practice acting for NGOs); people in the donor community, i.e. persons involved in the contributing of funds to NGOs; and people in the Sri Lanka

government, including persons connected with the NGO Commission itself.

The persons in or connected with the Sri Lanka government whom Dr. Neff contacted were the following:

- Sunil de Silva (Attorney General of Sri Lanka)
- Nihal Jayasinghe (State counsel attached to the NGO Commission)
- Joseph Francis Anthony Soza (former judge, presently member of the NGO Commission)
- Bradman Weerakoon (Adviser to the president of Sri Lanka)

During the mission, Dr. Neff attended one of the public sittings of the NGO Commission, on 5 June 1991.

VI. THE FINDINGS OF THE ICJ MISSION TO SRI LANKA

The findings of the ICJ Mission to Sri Lanka are best presented with respect to each of the three categories of persons with whom the mission made contact.

A. THE NGO COMMUNITY

On the part of the NGO community in Sri Lanka, there was found to be, on the whole, a palpable fear of impending - and even of actual - victimisation by the government. The persons in the NGO community were intensely aware of their vulnerability, in particular of the ease with which xenophobic sentiments among the population at large could be aroused against them. Most vulnerable in this regard are, of course, NGOs obtaining

substantial funding from overseas and NGOs affiliated in some way with foreign groups. NGOs of this type tend to be of an elite character, in the sense that they are generally run by educated, middle-class or upper middle-class, English-speaking persons.

The NGOs which perceive their own position to be the most perilous are the ones involved in human-rights advocacy work (as opposed to groups primarily involved in, say, economic development).

In general, the NGOs are very conscious of the fact that the general political, economic and social climate in the country means that their role in the society at large is of particular importance beyond the specific functions that they perform. This is because many of the traditional bulwarks of pluralist and democratic societies are disturbingly weak in Sri Lanka. (Sri Lanka is, of course, not at all peculiar in that regard among countries in the world.) Most notably, there is little in the way of a vigorously free press. The principal newspapers are widely seen as being under the effective control or at least the strong influence of the government.¹ In addition, the opposition political parties are widely perceived to have little real impact on the way in which the country is governed. The NGOs, accordingly, see themselves very consciously as among the most important guardians of independent activity in Sri Lanka.

The role of one NGO in particular should be mentioned in this connection: the Sarvodaya Shramadana Movement (hereinafter, Sarvodaya). It is difficult to identify an analogous group in a modern Western society. Sarvodaya may be characterised very broadly as a movement devoted to the non-violent transformation of society as a whole, from the grass roots upward. It seeks to achieve this ambitious goal through the promotion of self-help,

¹ For a dramatic example of the dangers involved in investigative journalism in the country, see R. Weerakoon, "The Extra-Judicial Execution of Richard de Zoysa", an account of a recent notorious case of the "disappearance" and murder of an independent journalist. The ICJ sent an observer to the Inquiry into the killing. A summary of the observer's report is reprinted in *ICJ Review* N° 45 (Dec. 1990), p. 11 ff

community action and individual character-building, rather than through electoral politics or governmental action. Its manifold functions include some traditional charitable activities such as the care of orphans and handicapped persons and the provision of legal aid. Sarvodaya has a far-flung organisation throughout the country, with a presence in some 6,000 to 8,000 villages (about a third of all the villages in the country). Compared to other NGOs, then, Sarvodaya is a gigantic organisation. Almost all of its funding comes from overseas. It is easy to see that, if it chose to do so, the movement could have an immense impact on the party politics of the country. Its president, Dr. A. T. Ariyaratna, is a charismatic figure of national stature who could, consequently, be either an invaluable ally or a formidable foe of any ambitious politician.

There is a strong feeling in Sarvodaya, which is shared by the wider NGO community and also by persons in the aid-giving area, that Sarvodaya is being relentlessly singled out by the government of Sri Lanka for attacks. There has been a campaign in the government-controlled press against the movement and against Dr. Ariyaratna and his leadership in particular. Dr. Ariyaratna and his family have received death threats over the past several months by telephone.

So great is the mistrust of the Sri Lanka government among NGOs, that there is some suspicion that the Sri Lanka government in reality has little interest in the regulation of NGOs, and that its actual interest lies in merely frightening and intimidating them by two primary means: the orchestration of a press campaign against them, and the establishment of the NGO Commission. On this thesis, the functioning of the NGO Commission is best seen not in isolation, but rather as one element of the broader campaign by the government against NGOs, with the goal being not to suppress them entirely but rather to cow them by mobilising public sentiment against them and to limit their effectiveness by deterring the contribution of funds to them.

Some circumstantial support for this reading of the situation is provided by looking at the relationship between the press and the NGO Commission. There is, of course, no formal connection between the two. Nevertheless, the press devotes considerable attention to the open sessions of the Commission. It was mentioned above that, so far, testimony before the Commission in the open sessions has been largely by persons who have voluntarily come forward in response to the commission's public notice of January 1991. Much of this testimony has been hostile to NGOs. Some persons in the NGO community frankly regard much of the testimony thus far as consisting of wild, uninformed and unsubstantiated allegations against NGOs by cranks and eccentrics of various kinds. The according of substantial press coverage to testimony of this kind has contributed to a general anti-NGO atmosphere in the country. Some persons from the NGO community consequently take the view that the NGO Commission, even if not ill-intentioned itself, is nonetheless, in effect, being used by the government unwittingly as one component of its orchestrated campaign against NGOs.

Even when testimony before the Commission has not been hostile, the press has sometimes managed to give the impression that it was. The most notorious incident of this kind occurred in March 1991, in connection with the testimony of Mrs. Malsiri Dias, who had been a long-serving member of the government's Ministry of Plan Implementation. In the course of her testimony (which was favourable to NGOs), she was asked by the state counsel doing the questioning to read out a news item from the Observer (an English-language Sri Lanka newspaper) from 1985. The article concerned allegations about the use of aid funds from the Dutch funding agency NOVIB by the Gandhiyam Society for the training of Tamil terrorists. In its coverage of this testimony, the Observer (on 26 March 1991) reported the matter in such a way as to give the impression that Mrs Dias was herself endorsing the allegations in the article. The treatment of the incident was even more sensationally prejudicial in the Sinhala language newspaper *Dinamina*. It carried a front-page headline to the effect of "Funds from Dutch Agency Fall into

Tiger Hill: Astonishing Evidence of First Witness". It is true that two days later, state counsel Nihal Jayasinghe announced at the Commission hearings that Mrs Dias had indeed read the article at the state counsel's instigation and that it did not represent her views. This announcement was reported in the press account of that day's session. But the general feeling among persons in the NGO community was that this clarification did little to correct the initial mis-impression and that Mrs. Dias had been the victim of deliberately unethical conduct devised for the purpose of generating sensational and misleading press coverage.

There is further evidence - still of a circumstantial character - to the effect that the NGO Commission may be being used against the knowledge and will of its members for the harassment of NGOs. This additional evidence involves what appears to be the single most disturbing element of the commission's functioning: the use of police investigations in connection with the commission's work.

The principal target, so far, of this police attention has been *Sarvodaya*. As reported by *Sarvodaya*, the organisation has been subject to a litany of harassment:

- On 21 March 1991, one of its national organisers was questioned by two C.I.D. officers at *Sarvodaya* headquarters.
- The following day, one of those officers returned to the headquarters to question the executive director of *Sarvodaya*.
- The following day, persons claiming to be from the C.I.D. acting on behalf of the NGO Commission questioned a driver at one of the *Sarvodaya* centres (no written statement was recorded of this session).
- On 25 March 1991, C.I.D. officers, again claiming to be acting on behalf of the NGO Commission questioned two full-

time Sarvodaya workers at one of the movement's centres, for some fifty minutes. At about this same time, another worker was questioned for two hours (this time without a written statement being recorded).

- On 1 April 1991, a Sarvodaya field director was questioned for some five hours in the building complex in which the NGO Commission operates.
- Two days after that, a coordinator was questioned at one of the Sarvodaya agricultural centres by a person claiming to be from the C.I.D. (with no written statement being made on this occasion).
- On 17 April 1991, a Sarvodaya coordinator of rural technical services was stopped on the streets by a constable who brought him before two men claiming to be from the C.I.D. and to be acting on behalf of the NGO Commission. This person was questioned for some three hours on the road and also instructed to produce certain files and documentation within two weeks. Upon inquiry afterwards, the Deputy Inspector General of the Police maintained that no instructions had been issued by him to his staff to question this Sarvodaya worker on that day. It also appeared that the police officer doing the questioning was using a car with a false car registration at the time.
- On 20 April 1991, a Sarvodaya chief executive was questioned at C.I.D. headquarters.
- . On 16 May 1991, a Sarvodaya resource person was questioned by a C.I.D. officer on behalf of the NGO Commission.
- At the funeral of Dr. Ariyaratna's mother on 19 May 1991, which was attended by very large crowds, a Sarvodaya worker overheard a person claiming to be from the C.I.D. telling a uniformed police officer that there were 30 plaincloths C.I.D. officers present. This same Sarvodaya worker reported

that he had seen this C.I.D. officer with a bundle of photographs with which he was attempting to identify the visitors to the funeral house.

- On 24 May 1991, a coordinator of the Sarvodaya food aid unit was interrogated in various different locations of the building complex where the NGO Commission was based. This questioning ranged very widely (it was conducted by a C.I.D. officer) and was thought by the Sarvodaya official to be taped.
- On 29 May 1991, two Sarvodaya workers were questioned for some six hours at one of the Sarvodaya centres. This session included the inspection of files and other documents. The police officer was from the C.I.D. and claimed to be acting on behalf of the NGO Commission.
- On 3 June 1991, this same officer returned to this Sarvodaya centre to question another worker.

Besides Sarvodaya, reports reached the ICJ mission of two other NGOs which were also the subjects of police attention, apparently in connection with the work of the NGO Commission.

The human-rights NGOs harboured suspicions about the NGO Commission's strategy with respect to the issuing of the questionnaires. As of the date of the ICJ mission, it appeared that the Commission (or at least those in charge of this aspect of its affairs) had refrained, with one exception, from sending the questionnaire to human-rights groups. There was a feeling on the part of some persons in the human rights NGO community that their organisations were to be left to the last, since they were likely to be the ones that would object most vigorously to scrutiny by the NGO Commission. The Commission might therefore wish to direct its attention first to the more compliant NGOs in the expectation that they would readily cooperate with the inquiry. If the human rights groups were later to prove less

cooperative, it would be easier to portray them as acting unreasonably.

More generally, there was a feeling that the government was engaged in a broad campaign of "divide and conquer" vis-à-vis the NGOs. That is to say, it was thought that the government was anxious to exploit divisions and rivalries within the NGO community.

B. THE DONOR COMMUNITY

On the part of the donor community, there is clearly a high level of awareness of, and of concern over, the NGO Commission and its possible implications. Moreover, there is a degree of coordination among donor bodies which bodes well for the NGOs. This coordination takes the form of the organisation, under the auspices of the UN Development Programme (UNDP) of an NGO Donor Forum. This is not so much a body with a fixed membership, as a periodic gathering of any and all donors to Sri Lanka NGOs who are interested in discussing common problems and issues. The formation of the group pre-dates the establishment of the NGO Commission. As of the date of the ICJ mission, there had been three meetings of the forum: on 21 September 1990, on 7 March 1991 and on 25 April 1991.

In general, the donor community shared many of the same concerns and misgivings that the NGOs themselves did, concerning the NGO Commission. The donors with whom the ICJ mission had contacts were highly aware of the vital role that NGOs occupied in Sri Lanka society and firmly opposed to the imposition of any unreasonably strict regulatory regime upon them. They were also aware of the particularly important - and vulnerable - position of human rights advocacy groups within the NGO world. The donors are, for obvious reasons, able to take a somewhat more detached view of the situation than the NGOs themselves are; and their concerns have a correspondingly lesser air of urgency and alarm about them. Nevertheless, it may fairly be said that, broadly

speaking, the misgivings and fears held in the donor community about the NGO Commission parallel those of the NGOs.

There are, of course, differences. One is that the donors appear rather more concerned about the shape that the ultimate regulatory regime will take, whereas the NGOs' concern, so far, is principally with the more immediate question of the operation of the NGO Commission itself. The attitude of the donor community might best be characterised as watchful and concerned, rather than alarmist.

The general view among the donors was that some kind of monitoring or regulation of NGOs would not be unjustified, provided of course that it was not too intrusive or heavy-handed. There was some feeling that the NGO situation in the country was somewhat chaotic or anarchic and that abuses and misconduct were certainly not altogether absent from the NGO realm. It might be reasonable, for example, to require NGOs to notify the government of their existence, to state their functions and to identify their principal officers. Even on this point, however, the donor community is not unanimous. At least one representative of a major donor country is of the view that NGOs should not even be required to notify the Sri Lanka Government of their existence. There appeared to be general agreement that NGOs should be expected to comply with the general laws of the country in such matters as employment standards, the payment of taxes and the payment of duties on imported materials. Reporting on the receipt of foreign funding might be reasonable as well, although it was pointed out that the government already had access to that information through the records of currency exchange transactions of the Central Bank.

Beyond that point, the matter of regulation becomes more problematic. Consider, for example, the question of the misuse of funds by NGOs. The view expressed by persons at U.S. AID was that, from their standpoint, there was no need for the Sri Lanka Government to police the use of funds by NGOs. The reason was

simple. They themselves have a rigorous system of their own for monitoring funds which they donate, and they are content to rely on that. They pointed out that some of the apparently reasonable concerns of the government in this area may in fact be misconceived. One example is the concern about excessive spending by NGOs on overheads and administrative expenses and salaries and the like. At U.S. AID it was pointed out that actually one of the persistent problems that they encounter with NGO donees is a tendency to spend too little money - rather than too much - on overheads and administration, with a consequent reduction in their overall operating efficiency.

There was awareness on the part of the donors of the government's campaign against *Sarvodaya*, and a general feeling that this campaign was unjustified. It was observed by one person that this was not the first occasion on which the Sri Lanka Government had harassed *Sarvodaya*.

C. THE SRI LANKA GOVERNMENT (including the NGO Commission)

Caution is a hallmark of governments, and that of Sri Lanka is no exception. There is, therefore, not surprisingly, a disposition on the part of government officials to stress the fact-finding role of the NGO Commission and the necessity of waiting patiently for the body to present its conclusions. The single most dominant impression from the side of the government and of the Commission itself was that the fears of the NGO community are very considerably exaggerated and that the Commission and the government will act with the most scrupulous fairness.

The basic view of the government is that the NGO community is a most valuable component of Sri Lanka society in general, but that certain abuses are present which it is the duty of the government to correct. One form of NGO misconduct is corruption. There were said to be instances of persons setting up what were essentially sham NGOs and then defrauding fund donors by paying

themselves scandalously high salaries while failing to carry out their ostensible functions. Another form of misconduct was the alleged use of NGOs as conduits for armaments and other forms of support to separatist and terrorist groups. Part of the fear and hostility that the NGO community harboured towards the NGO Commission resulted, it was said, from a justified fear that abuses of this kind would be mercilessly exposed in the course of the inquiry.

There was no disposition on the part of any government or Commission persons consulted during the ICJ mission to trust donors of funds to monitor their donees themselves. It was of course appreciated that donors - especially substantial foreign ones such as U.S. AID - had internal mechanisms for guarding against abuses of funds. These mechanisms, however, were not regarded as sufficiently effective to justify a lack of a Sri Lanka government regulatory regime. The impression given, then, was that some kind of government regulation of NGOs will come in the foreseeable future, and that it is only a question of what form it will take. (There is, in fact, some feeling among certain persons in the NGO community that the government had already decided on the form its regulation would take before it set up the NGO Commission, and that the Commission is either a mere smoke-screen for that decision, or that the commission's only true function is to drum up popular opposition to NGOs, or both.)

There certainly appears to be a strain of hostility towards NGOs in official Sri Lanka circles. The question is of the extent to which that hostility is reasonably founded. In this regard, the stress on misconduct of NGOs clearly serves an important function: it justifies increased government controls of NGOs while enabling the government to claim, with greater or lesser credibility, that it is not opposed to NGOs as such, but merely seeks to curb specific abuses. There is evidence, however - admittedly of a rather circumstantial and impressionistic character - that the government's attitude to NGOs is more hostile than the public (and even private) pronouncements would

indicate. One such bit of evidence has been mentioned above: the apparently firm belief on the part of government officials - on what seem to be à priori grounds - that donors of funds to NGOs are incapable in principle of protecting their own interests by guarding against abuses.

In addition, there appears to be a general belief on the part of Sri Lanka officials that NGOs are, virtually by their very nature, out of touch with the mainstream of Sri Lanka life. NGOs are said to be aloof, cut off from the lives of the bulk of the people of the country. The implication is that they have thereby become somewhat arrogant, that they are in danger of losing (if they have not lost already) the ability to appreciate what the people of Sri Lanka really need. There is a very distinctly "populist" flavour about this line of thought, entailing a general and rather vague and ill-focussed resentment of the "common people" of the country against the elite who dominate the major NGOs. This view was sometimes expressed in surprisingly vigorous and emphatic terms. At a certain level, of course, there is nothing particularly disturbing about such views - it is the very essence of a pluralist, democratic society that all views may be aired with as much vigour and persuasiveness as the advocates can manage. There is, however, a dark side to this "populist" outlook. It can merge with disturbing ease into mere xenophobia and bigotry; and it can be manipulated for evil ends. More specifically for present purposes, there is the fear among many in the NGO community (as noted above) that the NGO Commission is being, in effect, manipulated or duped into serving as a vehicle for the government's mobilisation of populist sentiments of this kind.

That point was put forthrightly to former Judge Joseph Francis Anthony Soza, a member of the Commission, during the ICJ mission. Judge Soza's reaction had two aspects. He pointed out that the Commission had no control over the general context in which it is operated. Most notably, it had no control over the high degree of attention which the press was devoting to its activities, or to distortions which occurred in the reporting of

the commission's sessions. Misgivings about the overall atmosphere in which the commission's inquiry was proceeding might therefore be well grounded (it may be inferred).

Quite different was Judge Soza's position on the other aspect of criticism of the Commission: criticisms of the commission's own functioning and particularly of its fairness. However highly charged the general atmosphere might be in the country regarding the role of NGOs, Judge Soza was most emphatic that the Commission itself was not engaged on any "witch hunt". The Commission members, he stressed, were experienced people who were resolutely fair-minded and independent. The witnesses who appeared before them might be biased. But there was no danger whatever that the Commission members would be pressured or hoodwinked into anything. Nor would the Commission be in any way swayed by sensationalist reporting in the press. It may be the case that the evidence which the Commission had heard thus far tended, on the whole, to be hostile to NGOs. But the NGOs would have the fullest opportunity to present their cases in due course, and the Commission would, at the end of its inquiry, weigh all of the evidence before it with the most scrupulous care and fair-mindedness. Any fears that NGOs might have to the contrary were, he strongly insisted, utterly misplaced.

Judge Soza also addressed himself specifically to the question of the use that the Commission was making of the police to investigate NGOs. (This, it will be recalled, was the single most disturbing facet of the NGO Commission's activities, in the eyes of the NGO community.) The basic function of the commission's police unit, he explained, was to take preliminary statements of potential witnesses so as to provide necessary background for the commissioners. There was nothing sinister about this, he stated, and nothing in the way of harassment of NGOs. No complaints about police misconduct had reached the Commission. If any did, Judge Soza firmly promised that the Commission would look thoroughly into them.

Not all of Judge Soza's comments on this matter were so reassuring. He did concede that the Commission members themselves did not supervise or instruct the police unit on a day-to-day basis. The state counsel did that. Nor had the Commission, as yet, consulted the records of police interrogations that had been undertaken. The impression gained was that, as many in the NGO community had surmised, the Commission was not actually very well informed about many of the things being done in its name.

One major conclusion emerged from the ICJ mission's contacts with the Sri Lanka Government, and particularly with the two persons associated with the NGO Commission (Judge Soza and state counsel Nihal Jayasinghe). That was the tendency to lay great stress on the fairness of the Commission itself. The unimpeachable impartiality of the chairman, for example, was repeatedly emphasised - and indeed, the mission never encountered a single dissenting opinion on that score. The problem is that the fears of the NGO community lay elsewhere - basically, in the general context in which the inquiry was taking place, rather than in doubts about the impartiality of the seven persons who comprise the Commission. The serious misgivings harboured by persons in the various NGOs - and particularly the human rights NGOs - lie not so much in what the Commission itself is doing, as in what is being done in its name as well as, more broadly, what the government might be doing to exploit the commission's activities for its own ends. The importance of this point cannot be over-emphasised. No amount of assurance - and there has been a great deal - as to the fairness of the Commission membership can allay these fears. For the very basis of the fears is not that the Commission itself is evil, but rather that the Commission is not really in control of the broader flow of events.

VII. RECOMMENDATIONS TO THE GOVERNMENT OF SRI LANKA

A. GENERAL CONSIDERATIONS

The government of Sri Lanka, like any government, functions in a sort of dual capacity. On the one hand, it is the custodian and guardian of the general interest of the society at large. In this capacity, it is the right - if not indeed the duty - of the government to subordinate the private interests of individuals to those of the larger collectivity. At the same time, however, the government is the guardian of the fundamental human rights of persons subject to its jurisdiction. When acting in this capacity, the state is obliged to take the greatest care to ensure that the interests of the larger society - however legitimate they may be in principle - do not unreasonably trespass into the realm of basic rights. The problem, of course, lies in determining what is reasonable.

The single most important consideration to bear in mind in this regard is one that has been stressed on several occasions already. That is the impossibility of striking the correct balance between the rights of the many and the rights of the few by considering the matter in the abstract rather than the concrete. This was a dominant theme extending throughout the American case-law on freedom of association. It also lies at the root of the mistrust that many NGOs harbour about the Commission - that the commission's functioning must be evaluated not in isolation but rather in the full context in which it is operating.

The general conclusion must be, therefore, that the government of Sri Lanka cannot discharge its obligations in the human rights sphere simply by pointing to the impartiality of the members of the Commission which it has appointed to look into the activities of NGOs. It should, rather, be held to be under an obligation to take what steps are feasible to ensure

that the entire process of inquiry into NGOs, in the broadest sense, is conducted as fairly as possible. Looking to the future - i.e. to the regulatory regime which might ultimately be enacted - the same general consideration applies. In light of all of the particular circumstances of the case, the government of Sri Lanka is obliged to institute a type of regulatory regime which is tailored as narrowly as possible to the protection of the legitimate public interest while leaving, at the same time, the maximum "breathing space" for the principle of freedom of association.

Because of the very nature of these guiding principles, it is impossible, on the strength of the single brief mission undertaken thus far by the ICJ, to state in elaborate detail what steps the Sri Lanka Government needs to take (or refrain from taking) in the specific situation at hand. Nevertheless, certain conclusions on the more important issues may be offered with some cautious confidence, both as to the functioning of the NGO Commission and, for the longer run, as to the ultimate regulatory regime, if one should be imposed, for NGOs in Sri Lanka.

B. THE NGO COMMISSION

The most important consideration may be stated readily enough, if in necessarily rather general terms. The Commission must be genuinely, and not merely nominally, a vehicle for finding facts that will be relevant to the regulation of NGOs. It may not be used as a device for intimidating NGOs. Drawing on the analogy of the American case-law, it should be stressed that what is crucial here is not the motivation of the government in setting up the Commission, but rather what the actual effect of the commission's operations is, in the actual prevailing circumstances in Sri Lanka. The impartiality of the members of the Commission is, to be sure, a most important factor in this area. But it is not the decisive one in itself. The decisive factor - or rather complex set of factors - is the overall

context in which the commission's investigation takes place. If the Commission functions in such a way as to lead to harassment of NGOs, then the commission's manner of operation should be changed. It is not crucial (again drawing on the lessons from the American case-law) that the harassment is the result, in the immediate and proximate sense, of the actions of parties other than the government or the NGO Commission.

Bearing this general principle in mind, several aspects of the commission's operations call for serious re-examination. One is the extreme breadth of the terms of reference (see Appendix 2). This is an extremely worrying factor when considered in conjunction with two other aspects of the commission's activities: (a) the general notice of January 1991, inviting any one from the public at large to come forward to testify, and (b) the high level of press attention accorded to the commission's hearings. These three factors, in combination if not singly, make for an unacceptably repressive atmosphere. This way of operating makes for the airing of wild accusations which receive significant publicity. The result is all too likely to be the building up of a general atmosphere of hostility against NGOs, irrespective of the precise findings which the Commission may produce in due course.

It is obviously too late to rescind the general notice of January 1991. But the Commission should exercise considerably more discrimination in the choice of its witnesses. There is nothing intrinsically wrong with inviting the general public to come forward with information or views - on the contrary, it is positively a good thing for the Commission to sample as broad a cross-section of public opinion as possible. Evidence of this kind should, however, be submitted in writing rather than taken orally, where it attracts publicity of often undeserved prominence. The better procedure is probably to use such information only for the purpose of deciding what witnesses to call. The Commission should then have a firm policy of reaching its conclusions only on the basis of the public oral testimony. By this means, the more irresponsible and sensationalist

accusations against NGOs can be prevented from doing inordinate harm, without the Commission being in any way deprived of sources of information which it might legitimately wish to have.

Restrictions on press reporting of the Commission's hearings are undesirable in principle, as infringements of freedom of the press. The press is not, to be sure, always responsible. Nevertheless, it should always be as free as possible.

Another general consideration of the utmost importance is that the NGO Commission's activities ought not to cross over the line from information-gathering into the sphere of criminal prosecution. Police investigations should, at a minimum, be undertaken only under the most careful supervision of the Commission itself, rather than of the Commission's staff. The preferable course of action is that police investigations in the Commission's name ought to be stopped altogether and the police unit attached to the Commission disbanded. If the authorities wish to investigate possible crimes, with a view to prosecuting those responsible, they should do this through the normal law enforcement channels. As things stand presently, there is unacceptably great scope for police harassment of NGOs under the general auspices of the Commission.

The amount of information sought from the NGOs in the questionnaire and the supplementary questionnaire (see Appendices 4 and 5) appears excessive - yet another consequence of the extreme breadth of the Commission's terms of reference. The lesson from the American case-law might be borne in mind here, that a commission of inquiry ought not to engage in exposure for the sake of exposure. The greater the intrusion of the government into the internal workings of associations and into the private lives of persons connected - sometimes only extremely tangentially - with NGOs, the greater the threat to the vital rights of privacy and freedom of association. No neat formula can mark off the permitted from the forbidden in this area. But the guiding principle should be that a commission of inquiry should not be allowed to engage in comprehensive and

indiscriminate investigations into every single instance of the phenomenon that it is investigating. It should be borne in mind, instead, that the Commission's proper task is to obtain a reasonable idea of the kind of abuses that might exist in the area that it is investigating, together with a reasonable idea of the extent of those abuses (and hence of the urgency of the need for legislation). The Commission's proper task, in other words, is to express its opinion as to what regulatory regime, if any, would be appropriate for NGOs, not to ferret out every single individual instance of wrong-doing whether possible or actual. Here again, the danger is that the Commission will cross the fine line that divides information gathering from law enforcement. There is even a threat in this regard to the sacrosanct legal principle of a presumption of innocence. In this situation, it looks as if NGOs are being placed under a burden of establishing their bona fides - with the contempt power being held in reserve for those who refuse to cooperate. (See, in this connection, Sections 7, 10 and 12 of the Commissions of Inquiry Act of 1948, in Appendix 1.)

C. THE SUBSTANTIVE REGULATION OF NGOS

It may be premature to expound on this subject, since the NGO Commission has not yet produced its findings. Nevertheless, certain general standards should be borne in mind that any regulatory regime should meet. Here again, the considerations are necessarily of a rather general nature.

The most important consideration is that, when the vital human right of freedom of association is at stake, the government is obligated to tread warily. The state may certainly have valid regulatory interests. But those interests must not be allowed to function as instruments of harassment. Regulations must be fitted as carefully as possible to the particular problems that they are addressing.

The most obvious conclusion to emerge from this general point concerns the general character of any regulatory regime affecting NGOs. Broadly speaking, there are two possible strategies to follow in this area: a preventive one and a reactive one. These descriptions are largely self-explanatory. A reactive regime is oriented towards the identification of abuses after they have occurred, with a view then to punishing the miscreant responsible. A preventive system, in contrast, is designed to ensure that misdeeds do not occur at all. A preventive regime, by its nature is likely to entail more heavy-handed and comprehensive regulation than a reactive one.

Preventive regimes are, in general, anathema when they involve a trespassing upon fundamental human rights. Perhaps the clearest example involves freedom of speech (or liberty of expression), in which there is a long-standing rejection, in principle, of policies of prior restraint. The same should apply in the area of liberty of association, which is a right of a similarly fundamental character. The conclusion, then, is that, while the government of Sri Lanka is entitled to be concerned about the problem of fraudulent practices by NGOs, that concern should, in principle, manifest itself in a policy of vigorous prosecution of such wrongs after they occur. It should not be used to justify a control system so heavy-handed as to dissuade persons from joining or contributing funds to NGOs.

It is probably safe to conclude - although there is no firm international law authority on the matter - that certain very basic regulatory steps may be justified in the NGO sphere. The state is probably at liberty to require all NGOs to notify the government of their existence, to provide a statement of their functions and to identify their officers. It seems likely that the government can reasonably claim certain powers to inspect the accounts of such groups as well. These are the sorts of regulations to which ordinary companies are typically bound to submit, and they seem basically reasonable.

It may be noted that Sri Lanka possesses a regime broadly of this kind with respect to one very special category of NGOs: voluntary social service organisations. This category of NGOs is in a special position because of the nature of the tasks they undertake, which is the provision of reliefs and services to particularly vulnerable groups of persons, such as the mentally retarded or physically disabled, the poor, sick, orphaned and destitute, together with disaster victims. (This definition is found in Section 18 of the relevant law, the Voluntary Social Service Organisations Act of 1980, the text of which is set out in Appendix 6. In conversations with Sri Lanka officials some dissatisfaction was openly expressed with this law, to the effect that it was insufficiently strict.)

On the question of regulating the sources of funding of NGOs, it would appear that there is no justification for a general prohibition, or even restriction, on the right of an NGO to receive as much funding from foreign sources as it is skillful or fortunate enough to raise. There may be cases, to be sure, in which funds from particular foreign sources might legitimately be found by a government to be undesirable. But the raising of funds is one of the most important attributes of the effective functioning of the right of freedom of association. There seems no reason why association across national boundaries should be prohibited or restricted in the general case.

A notorious instance in which direct restrictions on the acquisition of funds by NGOs from foreign sources were imposed involved the Republic of South Africa. Its Affected Organizations Act of 1974 allowed the government to declare organisations to be "affected". When that happened, it became a criminal offence for persons either to canvass for or to receive funds from a foreign source. This legislation was used, predictably, against anti-apartheid organisations. It rightly attracted widespread condemnation from the human rights community.

One final point concerns the possibility of there being different regulatory regimes for different types of NGOs. There is some receptivity on the NGO Commission, at least in principle, to the idea that different categories of NGOs might be entitled to different degrees of autonomy. The concern here is that the position of human rights advocacy groups in particular must be protected to the greatest extent possible. A case can certainly be made for stricter regulation of NGOs which are charitable in the somewhat narrow sense of having identifiable persons under their more or less continuous care. NGOs which run, say, nursing homes or boarding schools or mental institutions would fall into this category. To the extent that their charges are not able to look after their own interests effectively, a case could be made for a government mechanism that would do so on their behalf, but a mechanism which - it cannot be over-emphasised - may not be a mere cloak for the subverting of the proper functioning of the NGO in question.

It might be noted that the United Kingdom's regulatory regime for NGOs is broadly of this character. The basic legislative framework is the Charities Act 1960, which confers onto persons called charity commissioners an array of powers. Charitable groups (with some exceptions) are required to register with the commissioners and to provide certain information to them about their activities. The commissioners have the right to institute inquiries into particular charities or into classes of charities. They can call for the production of a wide variety of types of evidence. They can also compel persons administering charities to attend and give oral evidence to them under oath. They possess contempt powers similar to those of courts of law. They also have the power to impose a range of penalties onto charities which misbehave. They may remove officers, transfer property, freeze bank accounts and impose restrictions of various kinds onto the activities of charities.

These are quite substantial powers, but it should be appreciated that, under British law, the definition of a charity

is relatively narrow, so that many NGOs doing work of a public service character would not so qualify. (Amnesty International, for example, has never been regarded as a charity within the meaning of British law. See *McGovern v. Attorney-General*, 1981 3 All E.R. 492.) Although distinctions will inevitably be difficult to draw in marginal cases, it would appear that a good case could be made for distinguishing human rights advocacy groups from charities of the kind just described. The true function of human rights advocacy groups is not to undertake relief work for victims of oppression, but rather to safeguard and promote the rule of law for the society as a whole. For such groups, strict scrutiny of the kind arguably appropriate for charities would be unnecessary, and probably even harmful.

More broadly, it may be concluded that the stricter the system of NGO regulation in general, the greater will be the justification for considering human rights advocacy to be entitled to qualitatively different treatment. This entitlement would be based upon the general interest of Sri Lanka society as a whole in the existence of a climate of vigorous human rights protection. Admittedly, the lighter the regulation of this category of NGOs, the greater will be the scope for the kind of abuses and misconduct that the NGO regulatory system is designed to combat. In that sense, risks are involved in treating these NGOs differently and more lightly than others. But in the interest of effective protection of human rights norms for the whole of the society, this risk (which, it may be supposed, is not great) should be taken.

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APPENDIX 1

COMMISSIONS OF INQUIRY

Acts

No. 17 of 1948,
8 of 1950,
40 of 1953,
8 of 1955,
29 of 1955.

AN ACT TO ENABLE THE APPOINTMENT OF COMMISSIONS OF INQUIRY, TO PRESCRIBE THEIR POWERS AND PROCEDURE, TO FACILITATE THE PERFORMANCE OF THEIR FUNCTIONS, AND TO MAKE PROVISION FOR MATTERS CONNECTED WITH OR INCIDENTAL TO THE AFORESAID MATTERS.

[8th September, 1948.]

Short title.

1. This Act may be cited as the Commissions of Inquiry Act.

(2) When a new member has been appointed under the provisions of subsection (1), it shall not be necessary for any evidence which may have been taken before the commission prior to such appointment to be retaken.

Power to appoint Commissions of Inquiry.

2. (1) Whenever it appears to the President to be necessary that an inquiry should be held and information obtained as to—

- (a) the administration of any department of Government or of any public or local authority or institution ; or
- (b) the conduct of any member of the public service ; or
- (c) any matter in respect of which an inquiry will, in his opinion, be in the interests of the public safety or welfare,

the President may, by warrant under the Public Seal of the Republic, appoint a Commission of Inquiry consisting of one or more members to inquire into and report upon such administration, conduct or matter.

(2) Every warrant issued under this Act shall—

- (a) set out the name of the member or each of the members of the commission ;
- (b) where a commission consists of more than one member, specify the member who is to be the chairman of the commission ;
- (c) contain the terms of reference of the commission ; and
- (d) include a direction whether the inquiry or any part thereof shall or shall not be held in public.

Appointment of additional members.

3. (1) The President may add to the number of members of any commission appointed under section 2, and where any member so appointed or added dies, or resigns, or desires to be discharged, or refuses or becomes unable to act, the President may appoint a new member in his place.

4. The President may, from time to time, by endorsement under his hand on a warrant issued under this Act, enlarge the time for the rendering of the report of the commission appointed by such warrant, whether the time for the rendering of such report has expired or not.

Enlargement of time.

5. The President may at any time alter for the purposes of section 3 or section 4, or revoke, any warrant issued under this Act.

Alteration or revocation of warrant.

6. No warrant issued under this Act shall lapse by reason of, or be otherwise affected by, the death, absence from Sri Lanka, resignation or removal of the President who issues the warrant, or by his otherwise ceasing to hold the office of President.

Change of President.

7. A commission appointed under this Act shall have the following powers :—

Powers of commission.

(a) to procure and receive all such evidence, written or oral, and to examine all such persons as witnesses, as the commission may think it necessary or desirable to procure or examine ;

(b) to require the evidence (whether written or oral) of any witness to be given on oath or affirmation, such oath or affirmation to be that which could be required of the witness if he were giving evidence in a court of law, and to administer or cause to be administered by an officer authorized in that behalf by the commission an oath or affirmation to every such witness ;

- (c) to summon any person residing in Sri Lanka to attend any meeting of the commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession ;
- (d) notwithstanding any of the provisions of the Evidence Ordinance, to admit any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings ;
- (e) subject to any direction contained in the warrant—
- (i) to admit or exclude the public from the inquiry or any part thereof ;
- (ii) to admit or exclude the press from the inquiry or any part thereof ;
- (f) to recommend that any person whose conduct is the subject of inquiry under this Act or who is in any way implicated or concerned in the matter under inquiry be awarded such sum of money as, in the opinion of the commission, may have been reasonably incurred by such person as costs and expenses in connexion with the inquiry. In this paragraph, "costs and expenses" includes the costs of representation by attorney-at-law, and travelling and other expenses incidental to the inquiry or consequential upon the attendance of such person at the inquiry.
- (b) to require by written notice the Commissioner-General of Inland Revenue to furnish, as specified in the notice, all information available to such Commissioner-General relating to the affairs of any person whose conduct is being inquired into by the commission or of the spouse or a son or daughter of such person, and to produce or furnish, as so specified, any document or a certified copy of any document relating to such person, spouse, son or daughter which is in the possession or under the control of such Commissioner-General.
- (2) A commission appointed under this Act may exercise any power conferred on the commission under subsection (1) of this section, and any person to whom the commission issues any direction in the exercise of such power shall carry out such direction notwithstanding anything to the contrary in any other law.

9. The members of a commission appointed under this Act shall, so long as they are acting as such members, be deemed to be public servants within the meaning of the Penal Code, and every inquiry under this Act shall be deemed to be a judicial proceeding within the meaning of that Code.

Members of commission to be public servants and inquiries to be "judicial proceedings" under the Penal Code.

10. Every offence of contempt committed against or in disrespect of the authority of a commission appointed under this Act shall be punishable by the Court of Appeal under Article 105 (3) of the Constitution.

Punishment of contempt.

11. (1) Every summons shall, in any case where a commission consists of one member only, be under the hand of that member, and in any case where a commission consists of more than one member, be under the hand of the chairman of the commission :

Summons.

Provided that where a person has been appointed under section 19 to act as secretary, any such summons may, with the authority of the commission, be issued under the hand of the secretary.

(2) Any summons may be served by delivering it to the person named therein, or if that is not practicable, by leaving it at the last known place of abode of that person.

Swearing of
oath
by members
of a
commission.

8. (1) All or any of the following powers may be conferred by the President on a commission appointed under this Act if the commission so requests:—

- (a) to require by written notice the manager of any bank in Sri Lanka to produce, as specified in the notice, any book or document of the bank containing entries relating to the account of any person whose conduct is being inquired into by the commission or of the spouse or a son or daughter of such person, or to furnish, as so specified, certified copies of such entries ;

(3) Every person on whom a summons is served shall attend before the commission at the time and place mentioned therein, and shall give evidence or produce such documents or other things as are required of him and are in his possession or power, according to the tenor of the summons.

(b) be conclusive evidence that the determination set out in the certificate was made by the commission and of the facts stated in the determination.

Failure to obey summons, to give evidence, &c.

12. (1) If any person upon whom a summons is served under this Act—

(a) fails without cause, which in the opinion of the commission is reasonable, to appear before the commission at the time and place mentioned in the summons; or

(b) refuses to be sworn or, having been duly sworn, refuses or fails without cause, which in the opinion of the commission is reasonable, to answer any question put to him touching the matters directed to be inquired into by the commission; or

(c) refuses or fails without cause, which in the opinion of the commission is reasonable, to produce and show to the commission any document or other thing which is in his possession or power and which is in the opinion of the commission necessary for arriving at the truth of the matters to be inquired into,

such person shall be guilty of the offence of contempt against or in disrespect of the authority of the commission.

(2) Where a commission determines that a person has committed any offence of contempt (referred to in subsection (1)) against or in disrespect of its authority, the commission may cause its secretary to transmit to the Court of Appeal a certificate setting out such determination; every such certificate shall be signed by the chairman of the commission, or where the commission consists of only one person by that person.

(3) In any proceedings for the punishment of an offence of contempt which the Court of Appeal may think fit to take cognizance of as provided in section 10, any document purporting to be a certificate signed and transmitted to the court under subsection (2) shall —

(a) be received in evidence, and be deemed to be such a certificate without further proof unless the contrary is proved; and

(4) In any proceedings taken as provided in section 10 for the punishment of any alleged offence of contempt against or in disrespect of the authority of any commission, no member of the commission shall, except with his own consent, be summoned or examined as a witness.

13. Every person who gives evidence before a commission appointed under this Act shall, in respect of such evidence, be entitled to all the privileges to which a witness giving evidence before a court of law is entitled in respect of evidence given by him before such court. Privileges of witnesses.

14. Where the President in the warrant of appointment of a commission or by subsequent Order declares that this section shall apply in relation to such commission, the following provisions shall have effect, that is to say:— Special immunity for witnesses.

(a) Subject as hereinafter provided, no person shall, in respect of any evidence, written or oral, given by that person to or before the commission at the inquiry, be liable to any action, prosecution or other proceedings in any civil or criminal court.

(b) Subject as hereinafter provided, no evidence of any statement made or given by any person to or before the commission for the purposes of the commission shall be admissible against that person in any action, prosecution, or other proceedings in any civil or criminal court:

Provided, however, that nothing in the preceding paragraphs shall—

(i) abridge or affect or be deemed or construed to abridge or affect the liability of any person to any prosecution or penalty for any offence under Chapter XI of the Penal Code, read with section 9 of this Act; or

- (ii) prohibit or be deemed or construed to prohibit the publication or disclosure of the name or of the evidence or any part of the evidence of any witness who gives evidence at the inquiry, for the purpose of the prosecution of that witness for any offence under Chapter XI of the Penal Code.

provision on
of
has given
insects.

15. The presumptions which, under section 80 of the Evidence Ordinance, are applicable to the documents therein mentioned shall apply to every document produced before any court and purporting to be a record or memorandum of the evidence or any part of the evidence given by a witness examined before a commission appointed under this Act and purporting to be signed by the members thereof.

costs by
attorney-at-law.

16. Every person whose conduct is the subject of inquiry under this Act, or who is in any way implicated or concerned in the matter under inquiry, shall be entitled to be represented by one or more attorneys-at-law at the whole of the inquiry; and any other person who may consider it desirable that he should be so represented may, by leave of the commission, be represented in the manner aforesaid.

and other

17. (1) On the conclusion of any inquiry under this Act, and on the recommendation of the commission, the Minister may, by Order under his hand, award to any person whose conduct has been the subject of such inquiry or who has been in any way implicated or concerned in the matter under inquiry or to any bank whose manager has complied with a notice issued in connexion with such inquiry by the commission in the exercise of powers conferred on the commission by the President under section 8 (1) (a) such sum of money as the Minister may, in his discretion, specify in the Order as sufficient to meet the costs and expenses which may have been reasonably incurred by such person or bank in connexion with the inquiry.

In this subsection "costs and expenses" includes the cost of representation by attorney-at-law, and travelling and other

expenses incidental to the inquiry or consequential upon the attendance of such person at the inquiry, and, in the case of a bank, the clerical, travelling and other expenses consequential upon the compliance with the aforesaid notice.

(2) All moneys awarded by Order of the Minister under subsection (1) shall be a charge upon the Consolidated Fund; and the payment of all such moneys is hereby authorized.

18. No civil or criminal proceedings shall be instituted against any member of a commission in respect of any act bona fide done or omitted to be done by him as such member.

Protection of
members of
commission.

19. (1) The President may appoint any person to act as secretary to a commission and such person shall perform such duties connected with the inquiry as the commission may order subject to the directions, if any, of the President.

Appointment of
secretary and
interpreters.

(2) A commission may appoint any person to act as interpreter in any matter arising at the inquiry and to translate any book, document, or other writing produced at the inquiry.

20. No stamp duty shall attach to or be payable for any process issued by or by the authority of a commission appointed under this Act.

Process issued
under Act to be
exempt from
stamp duty.

21. Every process issued by a commission appointed under this Act shall be served and executed by the Fiscal.*

Service of
process.

22. The members of any committee appointed to investigate charges framed against an officer in the public service may, by Order under the hand of the President, be appointed to be a Commission of Inquiry under this Act for the purposes of such investigation; and upon such appointment the provisions of this Act shall apply as though a warrant under section 2 had been issued to such members for the purposes for which they were appointed members of the committee.

Vesting of
members of
committees
appointed to
inquire into the
conduct of
public officers
with powers of
commission.

* A separate Fiscal is now appointed to each Court under section 52 (1) of the Judicature Act.

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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 641/2 — 1990 දෙසැම්බර් 17 වැනි පසු — 1990.12.17

No. 641/2—MONDAY, DECEMBER 17, 1990

(Published by Authority)

PART I :: SECTION (I) — GENERAL

Proclamations, &c., by the President

P. O. No. PPA/N/170/90.

BY HIS EXCELLENCY RANASINGHE PREMADASA, PRESIDENT OF
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

R. PREMADASA.



To:

1. Rajah Sirimevan Wanasundera Esquire,
2. Joseph Francis Anthony Soza Esquire,
3. Mohamed Nabavi Junaid Esquire,
4. Dr. Kandiah Velauthapillai Esquire,
5. Edmund Eramudugolla Esquire,
6. Prof. (Mrs.) Priyani Elizabeth Soysa,
7. Irvin Weerackody Esquire.

GREETINGS:

WHEREAS the Committee appointed to consider all aspects of the activities of Non Governmental organisations functioning in Sri Lanka, has reported that:

- (a) about 3000 Non Governmental Organisations, both local and foreign are functioning in Sri Lanka today;
- (b) no framework has been established for monitoring the activities and the funding of the said organisations;
- (c) some of the funds received from foreign sources as well as generated locally are allegedly being misappropriated and/or being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka;

It appears to me to be necessary to establish a Commission of Inquiry for the purposes hereinafter mentioned:

NOW, THEREFORE I, RANASINGHE PREMADASA, PRESIDENT, reposing great trust and confidence in your prudence, ability and fidelity, do, in pursuance of the provisions of section 2 of the Commissions of Inquiry Act (Cap. 393), by these presents appoint you, the said:

1. Rajah Sirimevan Wanasundera Esquire,
2. Joseph Francis Anthony Soza Esquire,

3. Mohamed Nabavi Junaid Esquire,
4. Dr. Kandiah Velauthapillai Esquire,
5. Edmund Eramudugolla Esquire,
6. Prof. (Mrs.) Priyani Elizabeth Soysa,
7. Irvin Weerackody Esquire,

to be my Commissioners, to inquire into and obtain information in respect of;

- (a) the activities of the Non Governmental Organisations, both local and foreign which are functioning in Sri Lanka today which have been registered under the Voluntary Social Service Organisations (Registration and Supervision) Act No. 31 of 1981 or which have not been so registered;
- (b) the provisions of law if any which have been promulgated for monitoring and regulating the activities and the funding of such organisations;
- (c) the institutional arrangements if any which are currently in existence for monitoring and regulating the activities and the funding of such organisations;
- (d) whether any of the funds received from foreign sources as well as generated locally have been misappropriated and/or are being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka;
- (e) the adequacy or otherwise of the existing provisions of law and the institutional arrangements for monitoring and regulating the activities and the funding of such organisations;

and report on:

- (a) whether any of the funds received from foreign sources and/or generated locally have been misappropriated and/or are being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka, by any such organisations, or by any person or persons;
- (b) whether any funds received from foreign sources or generated locally, are being used for any purpose other than the declared objects of any such organisations;
- (c) whether any such organization is apportioning funds disproportionately for buildings, equipment, vehicles, staff and other establishment overheads, at the expense of the objectives publicly declared in their incorporation orders or constitutions and which are intended to ameliorate the social and economic deprivation in Sri Lanka;
- (d) whether the existing provisions of law, for monitoring the activities and the funding of such organisations, are adequate, and if not, what legislative provision would be required to prevent such funds being misappropriated and/or from being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka, or resulting in the exploitation of labour rendered by any person or group;

NOTICE TO THE PUBLIC PRESIDENTIAL COMMISSION OF INQUIRY

IN RESPECT OF NON-GOVERNMENTAL ORGANISATIONS

His Excellency, RANASINGHE PREMADASA, President of the Democratic Socialist Republic of Sri Lanka in pursuance of Section 2 of the Commissions of Inquiry Act (Chapter 393) has appointed the following Commission of Inquiry to consider all aspects of the activities of Non Governmental Organisations functioning in Sri Lanka.

1. Rajah Sirimevan Wanasundera Esquire, Chairman,
 2. Joseph Francis Anthony Soza Esquire,
 3. Mohamed Nabavi Junaid Esquire,
 4. Dr. Kandiah Veiauthapillal Esquire,
 5. Edmund Eramudugolla Esquire,
 6. Prof. (Mrs.) Priyani Elizabeth Soysa,
 7. Irvin Weerackody Esquire,

Mr. Wimaladharna Ekanayake, Secretary,
2. The Commission is empowered to inquire into and obtain information in respect of —
 - (a) the activities of the Non Governmental Organisations, both local and foreign which are functioning in Sri Lanka today which have been registered under the Voluntary Social Service Organisations (Registration and Supervision) Act No. 31 of 1981 or which have not been so registered;
 - (b) the provisions of law if any which have been promulgated for monitoring and regulating the activities and the funding of such organisations;
 - (c) the institutional arrangements if any which are currently in existence for monitoring and regulating the activities and the funding of such organisations;
 - (d) whether any of the funds received from foreign sources as well as generated locally have been misappropriated and/or are being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka;
 - (e) the adequacy or otherwise of the existing provisions of law and the institutional arrangements for monitoring and regulating the activities and the funding of such organisations;

and report on :

- (a) whether any of the funds received from foreign sources and/or generated locally have been misappropriated and/or are being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka;

- (a) whether any funds received from foreign sources and/or generated locally have been misappropriated and/or are being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka, by any such organisations, or by any person or persons;
- (b) whether any funds received from foreign sources or generated locally, are being used for any purpose other than the declared objects of any such organisation;
- (c) whether any such organisation is apportioning funds disproportionately for buildings, equipment, vehicles, staff and other establishment overheads, at the expense of the objectives publicly declared in their incorporation orders or constitutions and which are intended to ameliorate the social and economic deprivation in Sri Lanka;
- (d) whether the existing provisions of law, for monitoring the activities and the funding of such organisations, are adequate, and if not, what legislative provision would be required to prevent such funds being misappropriated and/or from being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka, or resulting in the exploitation of labour rendered by any person or group;
- (e) such other related matters as appear relevant to the determination of the above matters;

The above Commission is further empowered to hold all such inquiries and make all other investigations into the aforesaid matters as may appear necessary.

Any person or organisation having any information or complaints, or is desirous of making representations in respect of the several matters enumerated in the terms of reference set out above, is kindly requested to communicate with the Commission, without delay. The Commission would appreciate if such information, complaint or representation is made in writing and sent before the 15th February, 1991, to enable the Commission to organize its work and attend to it expeditiously.

The attention of the public is drawn to the special immunity from action, prosecution, or other proceedings, in terms of Section 14 of the Commissions of Inquiry Act (Cap. 393) granted by His Excellency the President, in respect of evidence, written or oral, given to, or before the Commission.

The public would be notified of the dates of public sittings of the Commission.

Wimaladharmas Ekanayake

Secretary, to the Commission,

Room-4-101,
Bandaranaike Memorial International
Conference Hall,
Buddhaloka Mawatha,
Colombo 07.
10th January 1991.

693802, 693803.

Room No. 4-101,

B.M.I.C.H.,

Colombo 07,

Sri Lanka, February, 1991.

Sir,

I have to refer to the Presidential Commission of Inquiry appointed by His Excellency Ranasinghe Premadasa, President of the Democratic Socialist Republic of Sri Lanka dated 14th of December 1990 under Section 2 of the Commissions of Inquiry Act (Cap. 393) to consider and report on the working and activities of Non-Governmental Organisations functioning in Sri Lanka. While it is the declared policy of the Government to give a major role to Non-Governmental Organisations, to strengthen their roles and to establish and develop more meaningful Government - N.G.O. relations in the future, it has become necessary owing to public opinion for the Government to establish this Commission. The notice published by the Commission calling for information and representation from the public and which contains the necessary particulars relating to the Commission including its Terms of Reference is annexed for your information.

It would be observed that apart from specific references to certain unlawful and improper activities of Non-Governmental Organisations, the Commission has also been requested to review generally the workings of Non-Governmental Organisations in Sri Lanka and to report inter alia on "the adequacy or otherwise of the existing provisions of law and the institutional arrangements for monitoring and regulating the activities and funding of such organisations".

The Commission has therefore decided to examine and review the working of Non-Governmental Organisations and for this purpose we seek your co-operation and assistance.

The Commission has prepared a Questionnaire setting out broadly the items and areas on which the Commission expects information and material and may be used as a guideline. For the present the Commission would request the information to relate to the past three years except otherwise indicated. This would be supplementary to any other action the Commission may take where necessary. This is issued at this stage so that the relevant material could be collected and marshalled for the public sittings.

I would be grateful if you can answer the Questionnaire and send us a reply within a period of three weeks. If any matter needs further clarification, a Supplementary Questionnaire would be sent or the matter could be elucidated at an interview. The Commission has no objection to your using any convenient format or arrangement in answering the Questionnaire.

By order of the Commission.

Secretary

QUESTIONNAIRE

1. Description of NGO.
 - National, Local or International
 - Country of origin or registration:
 - Names, addresses and nationality of members of Board of Management:
 - Head Office, branch offices:
 - Subsidiaries:
 - Capacity it functions in Sri Lanka:
 - Nature of activities:
 - Whether Funding Organisation or
 - Programme or Project Organisation
 - or Organisation which has a working arrangement or collaboration with local NGOO
 - in any capacity or
 - Is a voluntary Service organisation or
 - Is a research organisation:
 - or Religious Organisation doing social or welfare work
 - If International NGO
 - Organisation, Management structure, Decision-making and Funding provisions vis-a-vis Head office and Sri Lankan office:
 - Whether approved by Home Government:
2. Date of establishment in Sri Lanka:
 - Commencement of functions:
3. Agreement or Memorandum of Understanding with the Government:
4. Immunities and privileges and other concessionary measures accorded:
5. Representation on Government Committees, and Liaison with the Administration:
6. Registration under the Law, or, administratively, with the Ministries or Departments concerned:
7. Organisational structure in Sri Lanka, with particular reference to the structure of Management and Financial control:
 - Constitution or memorandum/Articles of Association of the NGO:
 - Structure of Management:
 - Manner of appointment and management:
 - Decision making authority and process:
 - Financial Control:

8. Staff and Personnel:

- Management level and others:
- Volunteers, Consultants - nature and area of expertise:
- Salaries, Allowances, perquisites, privileges and immunities:
- Names, addresses, nationality, period of stay in the case of expatriates:

9. Nature of work:

- Programme or Project - Sector:
- Target group, geographical area, time-frame, scale of operations:
- Field Office and field officers:
- Strategies and Priorities:
- Monitoring, supervision, Progress, results and Evaluation-Internal/External:

10. Resources and Finances:

Assets:

- Immovable property:
 - Land and buildings:
 - Free-hold or Trust:
- Movable property:
 - Cash, Bank Accounts with names of Banks Savings Account, Foreign A/CC, IRR A/CC, NRFC A/CC, FCBU A/CC
 - Securities, Bonds, Investments:
 - Valuables, equipment, vehicles:
- Other financial dealings:

Liabilities:

- Loans, Debts, Over-drafts:
- Other financial liabilities:

Funding Patterns:

- Grants, loans, interest, concessionary measures:
- Income, and income-generating activities:

Grant-or

- Whether Government, Embassy, International NGO, Foreign or Local NGO, or Private Donors:

Disbursements:

- Nature, date, purpose, payee,

11. Nature of ownership or control of assets and funds:

- Ownership, Trust, or any other basis of title:

12. Accounting Procedures:
 - Accounting System:
 - Internal/External Audit:
 - Certified Statements of Accounts for the past five years:
 - Reports and Financial Statements sent to Principals abroad:
13. Network/affiliations, linkages-local, foreign - particularly with grass-root organisations and Citizens' Committees:
14. Surveys, Research Papers on Social problems whether published locally or abroad with copies:
15. Suggestions for further measures for establishing and developing the NGOO Sector, and to strengthen NGOO-Government links:

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 ජනාධිපති පරීක්ෂණ කොමිෂන්

அரசாங்கம் சம்பந்தம் அற்ற அமைப்புகளின் செயல்களின்
 பரிசீலனை குழு

FEDERAL COMMISSION OF INQUIRY
 in Respect of non-Governmental Organisations



රූම 4-101, බන්දරනායක අනුස්මරණ ජාත්‍යන්තර
 සම්මන්ත්‍රණ ශාලාව,
 බෞද්ධලෝක මාවත, කොළඹ 7.

அறை இலக்கம் 4-101, பன்னாட்டுத் தர்ப்புள்ளி
 சம்பந்தம் இல்லாத அமைப்புகள்,
 பொதுநலனாக பாதுகாக்கப்பட்ட, கொழும்பு 7.

Room No. 4-101, Bandaranaike Memorial International
 Conference Hall,
 Bauddhaloka Mawatha, Colombo 7.

දුරකථන අංක/දුරකථන අංක/Tele. Nos. 693801, 693802, 693803

ලේඛන අංකය
 සහ අංකය
 No.

S23

Regd.

25th March 1991.

Sir,

Questionnaire on NGOO

I have to refer you to my letter dated 7th February 1991, and to state that the information and material relating to certain items in the Questionnaire issued to you along with my letter under reference need further clarification.

2. Accordingly a supplementary Questionnaire (numbered 1a, 2a, 3a, etc; corresponding to the Question numbers 1, 2, 3, etc; in the previous Questionnaire.) setting out further information, material and clarifications required is sent herewith.

3. I would be grateful if you will furnish answers to the supplementary Questionnaire and send a reply within a period of three weeks.

4. If information relating to any of the questions have already been furnished, such questions need not be answered again.

5. Your co-operation in this regard would be greatly appreciated.

By order of the Commission.

Wimaladharma Ekanayake.
 Secretary to the Commission.

[Handwritten signature]
 .. Asst. Secy

Supplementary Questionnaire

- 1a. Addresses of Head Offices (abroad/Sri Lanka) and all Branch Offices, Project Offices etc;
- 1b. Names and addresses of other NGOO which have working arrangements or collaboration with the organisation.
- 3a. Copies of following documents :-
 - i. Agreement or Memorandum of understanding with the Government,
 - ii. Certificate of registration with Government Departments,
 - iii. Articles of Association,
 - iv. Memorandum of Association,
 - v. The constitution / charter (including foreign head office)
 - vi. Relevant Act of incorporation; rules and regulations framed under the Act.
 - vii. Manuals of accounting procedures,
- 4a. List of items imported free of customs and other duties and taxes.
- 7a. Delegation of Authority, if any, by Board of Management in respect of Finance and Administration.

8a. Staff and Personnel

Please furnish the following information as well.

A. Board of Management / Local Representatives / Delegates

- i. Name
- ii. Nationality
- iii. Address
- iv. Designation
- v. Salary
- vi. Other Allowances
- vii. Other privileges
- viii. Balance as at 31st December 1990, of each of the bank Accounts (Current, N.R.F.C, I.R.R., Savings, F.O.B.U., Fixed deposits , Joint Accounts, etc;)
indicating the Name & branch of the Bank and the Accounts Number.
- ix. Names and addresses of their spouses and children and details of personal bank accounts, held by the said spouses and children as per item viii above (each person separately)

- 2 -

B. Executive Grades

- i. Name and address
- ii. Nationality
- iii. Designation
- iv. Salary
- v. Other allowances
- vi. Other privileges
- vii. Balance as at 31st December 1990 of each of the bank Accounts - (Current, N.R.F.C., I.R.R., Savings, F.O.B.U., Fixed deposits /etc; ^{Joint Accounts,}) indicating the Name & branch of the Bank and the Account Number.

C. Expatriates / Volunteers

- i. Name
- ii. Date of arrival
- iii. Resident Visa No. & Period of validity
- iv. Country and Agency
- v. Nature of assignments
- vi. Scheduled date of completion of assignments
- vii. Date of departure

D. Other Staff (if less than 25 only)

- i. Name
- ii. Designation
- iii. Salary
- iv. Other allowances
- v. Other privileges

9a. Location (District and Address) of Projects, if possible

10a. Particulars of foreign donations, or grants received in the form of cash Cheques, Telegraphic transfers, drafts & any other form of transfer of funds.

- i. Date of receipt
- ii. Name & address of the donor
- iii. Country
- iv. Currency and amount
- v. Amount in Sri Lankan rupees
- vi. Purpose of donation
- vii. Expenditure on the specific project and the date of completion of the project.

Contd; 3

10b. Foreign donations and grants received in the form of Equipment & Materials.

- i. Date of receipt
- ii. Name and address of the donor
- iii. Country
- iv. Invoice No.
- v. Description
- vi. Value - Foreign currency
Sri Lankan rupees
- vii. Purpose of Donation
- viii. Value of unutilized items as at end of 31st December 1990.

10c. Income Tax and Turn over Tax file numbers (if applicable)

12a. Copies of the following documents

1. Financial statements for the last 5 years
(Receipts and payments A/c, Income and Expenditure A/c, Profit and loss A/c, and Balance Sheet supported with schedules .)
11. Following details of all fixed and current assets and liabilities as shown in the Balance Sheets, prepared in respect of last 2 financial years and as at date.
 - Land & Buildings - Location, extent, ownership, date of purchase, value of land, value of buildings.
 - Fixed Assets - Items, cost, depreciated value, rate of depreciation & date of purchase,
 - Fixed deposits & Savings A/cc etc; - Name of the Bank and branch, date of deposit, amount,
 - Other Bank A/cc - Name and branch of the bank, balance
 - Debtors - Name, amount, nature

<u>Age analysis of debtors</u>	
Month - 0-3	Year 1-2
3-6	2-3
6-12	over 3
 - Creditors - Name, amount, nature and age analysis.

- 4 -

111. Copies of statements of accounts sent to principals
abroad

lv. Evaluation reports

v. Detailed Audit reports for the last 5 years

vi. A list of books and accounting records maintained.

12b. Identified Losses (if any)

(details indicating; ^{date,} item, reason for the Loss, Value, action taken,
how it is shown in the accounts)

15a. Were any problems encountered in implementing projects, programmes etc;
if so brief description and the remedial measures taken.

APPENDIX 6

**VOLUNTARY SOCIAL SERVICE ORGANIZATIONS
(REGISTRATION AND SUPERVISION)**

Act
No. 31 of 1980.

AN ACT TO PROVIDE FOR THE REGISTRATION WITH THE GOVERNMENT OF VOLUNTARY SOCIAL SERVICE ORGANIZATIONS, TO PROVIDE FOR THEIR INSPECTION AND SUPERVISION; TO FACILITATE THE CO-ORDINATION OF THE ACTIVITIES OF SUCH ORGANIZATIONS; TO GIVE GOVERNMENTAL RECOGNITION TO SUCH ORGANIZATIONS WHICH ARE PROPERLY CONSTITUTED; TO ENFORCE THE ACCOUNTABILITY OF SUCH ORGANIZATIONS IN RESPECT OF FINANCIAL AND POLICY MANAGEMENT UNDER THE EXISTING RULES OF SUCH ORGANIZATIONS, TO THE MEMBERS OF SUCH ORGANIZATIONS, THE GENERAL PUBLIC AND THE GOVERNMENT; TO PREVENT MALPRACTICES BY PERSONS PURPORTING TO BE SUCH ORGANIZATIONS; TO REGULARISE THE CONSTITUTION OF VOLUNTARY SOCIAL SERVICE GROUPS WHICH HAVE NOT BEEN LEGALLY RECOGNIZED; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO:

[Not in operation on 31st December, 1980.]

Short title and
date of
operation.

1. This Act may be cited as the Voluntary Social Service Organizations (Registration and Supervision) Act, and shall come into operation on such date* (hereinafter referred to as the "appointed date") as the Minister may by Order published in the Gazette appoint.

within the area of his jurisdiction, exercise, perform or discharge all or any of the powers, duties or functions vested in, assigned to, or imposed upon the Registrar, by or under this Act.

Appointment
of officers.

2. (1) There may be appointed for the purposes of this Act by name or by office, a Registrar of Voluntary Social Service Organizations (hereinafter referred to as the "Registrar").

3. Subject to the provisions hereinafter contained every voluntary social service organization (hereinafter referred to as a "voluntary organization") shall be registered under this Act. Organizations that require to be registered.

(2) There may be appointed by name or by office such number of Deputy Registrars and Assistant Registrars of Voluntary Social Service Organizations, and other officers as may be necessary for the purposes of this Act.

4. Every application for registration under this Act, shall be made to the Registrar in the prescribed form and shall be accompanied by such documents as may be prescribed. Such application shall be signed by the Secretary of the voluntary organization. Application for registration.

(3) Every Deputy Registrar or Assistant Registrar shall, in the exercise of his powers, performance of his duties and discharge of his functions, be subject to the general direction and control of the Registrar.

5. If the Registrar is satisfied that a voluntary organization has complied with the provisions of this Act he shall register such organization. Registration.

(4) Every Deputy Registrar or Assistant Registrar may, subject to the general direction and control of the Registrar,

6. Any person aggrieved by the decision of the Registrar refusing to register any voluntary organization may, within thirty Appeal from refusal to register.

* Not in operation on 31st December, 1980. In operation from 1st February, 1982 — See Gazette No. 179 of 5.02.1982.

days of such refusal, appeal to the Secretary to the Ministry charged with the subject of Social Services against such refusal.

Evidence of registration.

7. A certificate of registration signed by the Registrar shall be conclusive evidence of the fact that the voluntary organization therein mentioned, is duly registered unless it is proved that the registration of such organization has been cancelled.

Address of organization.

8. Every voluntary organization registered under this Act shall have an address registered with the Registrar in accordance with the rules of such organization, to which all notices and communications may be sent, and shall within seven days of any change of such address notify to the Registrar of such change.

Powers of Registrar.

9. The Registrar or any officer authorized by him in writing in that behalf shall have the power—

(a) to enter and inspect at all reasonable hours of the day, the premises of a voluntary organization registered under this Act for the purpose of ascertaining whether satisfactory standards of service are maintained in such organization;

(b) to bring to the notice of the Minister any allegation of fraud or misappropriation of funds committed by such organization;

(c) to attend any meeting of the executive committee of such organization or a general meeting of the members of such organization, upon the written request of all or a majority of the members of the executive committee of such organization, or with the concurrence of the office bearers of such organization or the Minister. The Registrar or the officer so attending shall not have the right to vote at such meeting.

Minister to refer certain matters to Board of Inquiry.

10. Where, in respect of a voluntary organization registered under this Act, any allegation of fraud, or misappropriation is made by any person, the Minister may refer such matter to a Board of Inquiry.

11. (1) The Minister may appoint a Board of Inquiry consisting of six persons of standing who are not public officers.

(2) The Minister may, for the purposes of this Act, constitute a Board of Inquiry or Boards of Inquiry, each consisting of three members chosen from the Panel. The Minister may nominate one member to be the Chairman of a Board of Inquiry.

(3) The members of a Board of Inquiry shall be paid such remuneration as may be determined by the Minister in consultation with the Minister in charge of the subject of Finance.

12. (1) Where a matter is referred to a Board of Inquiry under section 10, such Board shall inquire and report on such matter to the Minister.

(2) The procedure for the hearing and disposal of any matter referred to such Board shall be in accordance with the regulations made in that behalf.

(3) Such Board shall submit the report on its findings to the Minister within fourteen days after the conclusion of the inquiry.

13. For the purpose of an inquiry under section 12, a Board of Inquiry shall have the power—

(a) to summon and compel the attendance of witnesses;

(b) to compel the production of documents;

(c) to administer any oath or affirmation to any person.

14. Upon the receipt of the report of the Board of Inquiry in terms of section 12 (3), the Minister shall refer such report to the appropriate authority for steps to be taken according to law.

15. (1) The Minister may make Regulations in respect of any matter required by this Act to be prescribed or in respect of which regulations are authorized by this Act to be made.

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded from the date of disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded shall be published in the Gazette.

Penalty for non-compliance with this Act.

16. (1) Every person who wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar or other person duly authorized by him in that behalf, and every person who wilfully or without any reasonable excuse disobeys any summons, or lawful written order issued under the provisions of this Act, or fails to furnish any information lawfully required from him by a person authorized to do so, under the provisions of this Act, shall be guilty of an offence under this Act.

(2) Every person who commits any offence referred to in subsection (1) shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding two hundred and fifty rupees.

Protection of officers.

17. No suit or proceedings shall be instituted against any officer appointed

under this Act for any act which is done in good faith in the performance of his duties or the discharge of his functions under this Act.

18. In this Act, unless the context otherwise requires—

“community hostel” means any place of residence made available to any person by an organization formed by a group of persons on a voluntary basis, which provides food and other facilities for the person residing therein; and

“Voluntary Social Service Organization” means any organization formed by a group of persons on a voluntary basis and—

(a) is of a non-Governmental nature;

(b) is dependent on public contributions, charities, grants payable by the Government or donations local or foreign, in carrying out its functions;

(c) has as its main objectives, the provision of such reliefs and services as are necessary for the mentally retarded or physically disabled, the poor, the sick, the orphans and the destitutes, and the provision of relief to the needy in times of disaster,

and includes a community hostel.