



SECURITY INTELLIGENCE
REVIEW COMMITTEE

SIRC Annual Report 2006–2007

**An operational review of the
Canadian Security Intelligence Service**

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Members' Statement

This year marks a significant anniversary in Canada's history. A quarter of a century has passed since the signing of the *Canadian Charter of Rights and Freedoms*, a document that guarantees freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press; freedom of peaceful assembly; and freedom of association. With the adoption of the *Charter*, these freedoms became constitutionally protected and Canadians gained recourse to the courts if the state infringed upon or denied their *Charter* rights.

There is no question that the bedrock values articulated in that historic constitutional document have helped to define what it means to be Canadian. They have had a profound influence on government, including the work of review agencies such as the Security Intelligence Review Committee (SIRC). These freedoms have been brought into sharp relief in recent years when considered along with the state's obligation to protect the safety of its citizens against a growing terrorist threat.

In carrying out our duties, the Committee has often found itself considering *Charter* issues. For example, as part of our reviews, we regularly examine CSIS's execution of judicially authorized warrant powers to ensure that intrusive investigative techniques comply with the law and the terms of the Court, and therefore do not constitute unreasonable search and seizure.

SIRC recognizes that the conduct of security intelligence agencies can prompt impassioned debate about whether the ends can ever justify the means. We also have first-hand knowledge that there are individuals who will seek to exploit Canada's rights and freedoms in order to harm our country, our citizens and our neighbours and friends around the world.

It is against this backdrop that SIRC's annual report features a summary of a Section 54 report that was submitted to the Minister of Public Safety on August 17, 2007. This type of report is relatively rare: only eight have been prepared in the last ten years. This latest report deals with the case of Mohammed Mansour Jabarah, a Canadian citizen and an admitted al Qaida member, who was convicted of terrorist-related offences in the United States.

In reviewing CSIS's role in this matter, we found that some of its actions violated certain rights as guaranteed under the *Charter*. As a result, we have made several recommendations to the Minister of Public Safety and the CSIS Director.

It is important to understand why SIRC takes issue with some of CSIS's actions and we invite readers to consider our analysis carefully. Mohammed Mansour Jabarah is a Canadian who, no matter how heinous his crimes and no matter how much we deplore them, is entitled to all of the rights and freedoms afforded to any other citizen under our *Charter*. Furthermore, an agent of the state must uphold the *Charter* otherwise Canadian officials would be free to pick and choose to whom certain guaranteed rights and freedoms would apply. Clearly, that would be unacceptable to all Canadians.

“An agent of the state must uphold the *Charter* otherwise Canadian officials would be free to pick and choose to whom certain guaranteed rights and freedoms would apply.”

SIRC recognizes that police and security intelligence agencies in the post 9/11 world must deal with daunting challenges, including globalized and technologically sophisticated terrorist groups. We also know that the relative safety that Canadians enjoy is thanks in large part to the efforts of these same agencies on our behalf. But the obligation to ensure public safety ought not to reduce in any way respect for the rule of law.

Mr. Justice Ian Binnie of the Supreme Court of Canada characterized the competing demands of national security and human rights as a “clash of titans.” It is true that at times, human rights and national security objectives may appear to clash. But in a healthy democracy where rights and freedoms have constitutional protection, we firmly believe that they can—indeed they must—coexist. That is a principle which all Canadians should uphold and that every citizen has a continuing responsibility to protect.

INTERNATIONAL REGION

The International Region (formerly Foreign Liaison and Visits) manages the Service's liaison with foreign agencies and coordinates visits to CSIS Headquarters and CSIS regional offices by foreign representatives. It is also responsible for coordinating all Section 17(1) arrangements with foreign security intelligence or law enforcement agencies, as well as the operation of Foreign Officer posts abroad.

As part of CSIS's realignment, a new category of position, Foreign Officers (FO), was created. FO is the Service's generic term for any CSIS employee working at a post or mission abroad. FOs can include the formerly named Security Liaison Officers, the administrative assistants who support them, temporary duty officers who are working in a post, technical officers assigned to a post, and foreign secondment officers. FOs duties include:

- Management and collection of information on threats to the security of Canada;
- Management and collection of immigration security assessments;
- Liaison with foreign governments or institutions; and
- Collaborating and sharing information with staff at Canada's missions abroad.

The Service relies on these foreign posts to assist in liaising with foreign security and intelligence agencies, as well as to coordinate visits to CSIS Headquarters and regional offices by foreign representatives. SIRC's most recent examination of one of these foreign posts is summarized in SIRC Review 2006–01 in this year's annual report.

FEDERAL COURT WARRANTS AND WARRANT STATISTICS

Warrants are one of the most powerful and intrusive tools available to the Service. They provide CSIS with Federal Court authorization to use investigative techniques that would otherwise be illegal, such as the monitoring of telephone communications. For this reason, the use of warrants by CSIS is an important aspect of SIRC's reviews.

Each year, SIRC collects statistics on the Service's warrant applications and on warrants granted by the Federal Court under Sections 12 and 16 of the *CSIS*

Act. SIRC does not have the resources to examine all warrants granted to the Service. It does, however, look at a certain number of warrants as part of its annual review activity.

When SIRC examines a warrant, it looks into all aspects of the warrant process, starting with the development of the warrant application. SIRC verifies whether:

- the warrant application accurately reflected the information held by CSIS;
- CSIS's justification for requesting warrant powers was reasonable; and
- CSIS complied with the applicable legal and policy requirements in applying for warrant powers.

SIRC also looks at the actual warrant approved by the Federal Court and the Service's execution of warrant powers (i.e., how the warrant powers were used by CSIS).

Table 7
Warrant Statistics

	2004–05	2005–06	2006–07
New warrants	40	24	42
Replaced or renewed	207	203	134
Total	247	227	176*

* Included in this number were 25 urgent warrants.

In 2006–07, the Federal Court approved 42 new warrants—almost twice as many as the previous year. However, the Federal Court approved the renewal or replacement of only 134 warrants—a sharp drop from 203 reported in the previous year. Forty-two warrants were either terminated or expired without being renewed during the same period. No warrant applications were denied and all warrant powers requested by the Service were granted by the Federal Court.

In SIRC's 2005–06 annual report, SIRC reported on CSIS's review of the warrant process, which stemmed from a moratorium imposed by the Director after a warrant application was rejected by the Federal Court.²² During this moratorium—in effect from June 22, 2005 to June 28, 2006—there were 38 warrants approved on an exceptional basis by the Director and the Service's General Counsel. As a result of a year-long assessment of the warrant process, CSIS reported to SIRC that it is finalizing a streamlined approach to warrant review which is expected to be in effect by late 2007.

In preparing this report, SIRC asked the Service if the Federal Court had asked for any warrant applications to be modified before they were approved. Three instances were reported.

²² For more information on the moratorium, see “Federal Court Warrant and Warrant Statistics” in Section 2 of SIRC's 2005–06 Annual Report.

Section 3

About SIRC

About SIRC

COMMITTEE MEMBERSHIP

SIRC is chaired by the Honourable Gary Filmon, P.C., O.M., who was appointed on June 24, 2005. The other Members are the Honourable Raymond Speaker, P.C., O.C., the Honourable Baljit S. Chadha, P.C., the Honourable Roy Romanow, P.C., O.C., Q.C. and the Honourable Aldéa Landry, P.C., C.M., Q.C.

All Members of SIRC are Privy Councillors, who are appointed by the Governor-in-Council after consultation by the Prime Minister with the leaders of the Opposition parties.

SIRC provides assurance to Parliament—and through it, to Canadians—that CSIS complies with legislation, policy and Ministerial Direction in the performance of its duties and functions. SIRC seeks to ensure that the Service does not undermine the fundamental rights and freedoms of Canadians. It is the only independent, external body with the legal mandate and expertise to review the activities of CSIS. Moreover, SIRC is a cornerstone of Canada's democratic tradition as it ensures the accountability of one of the government's most powerful organizations.

In addition to attending monthly committee meetings, members preside over complaints hearings, direct staff to undertake reviews, prepare complaint reports in consultation with staff, visit CSIS regional offices, appear before Parliament and exercise other duties associated with their responsibilities.

SIRC meetings and briefings 2006–07

April 5, 2006: The Chair spoke to the Associates of the I.H. Asper School of Business at the University of Manitoba in Winnipeg.

May 1, 2006: The Associate Executive Director and the Senior Counsel met with a delegation from the Czech Parliament.

May 12, 2006: The Chair and Executive Director delivered a presentation to Federal Court Judges regarding SIRC's warrant reviews.

June 8, 2006: The Associate Executive Director and Senior Researchers attended the third Review Agencies Forum hosted by the Inspector General of CSIS. In attendance were officials from the Commissioner of the Communications Security Establishment, the Inspector General of CSIS, and the Commission for Public Complaints Against the RCMP.

September 19, 2006: The Executive Director, the Associate Executive Director and the Senior Counsel met with Sir Peter Gibson, UK Intelligence Services Commissioner and a representative from the UK High Commission.

September 22, 2006: The Chair spoke to the Global Business Forum in Banff, Alberta.

September 26, 2006: The Executive Director, the Associate Executive Director and the Senior Counsel met with a Norwegian Parliamentary Committee.

Continued on the next page

SIRC meetings and briefings 2006–07

(continued)

October 2–4, 2006: The Chair, one Committee Member and the Executive Director attended the International Intelligence Review Agencies Conference in Cape Town, South Africa. The Chair also participated in a panel discussion.

October 10, 2006: The Executive Director spoke at a Carleton University seminar on Intelligence, Statecraft and International Affairs.

October 26–28, 2006: The Executive Director and several staff attended the annual conference of the Canadian Association of Security and Intelligence Studies, held in Ottawa.

November 1, 2006: The Chair, the Members of the Committee, the Executive Director, the Associate Executive Director and the Senior Counsel appeared before the Standing Committee on Public Safety and National Security of the House of Commons.

November 17, 2006: The Executive Director spoke at a Carleton University seminar entitled National Security and Intelligence in the Modern State.

December 10, 2006: The Chair appeared on CTV's *Question Period*.

January 31, 2007: The Associate Executive Director, Senior Counsel and Senior Researchers attended the fourth Review Agencies Forum, hosted by the Commission for Public Complaints Against the RCMP.

STAFFING AND ORGANIZATION

SIRC is supported by an Executive Director, Susan Pollak, and an authorized staff complement of 20, located in Ottawa. The staff comprises: an Associate Executive Director, Senior Counsel, a Senior Advisor, a Corporate Services Manager, Counsel, a Senior Paralegal (who also serves as Access to Information and Privacy Officer/Analyst), plus researchers and administrative staff.

Committee Members provide staff with direction on research and other activities that are identified as a priority for the year. Management of day-to-day operations is delegated to the Executive Director with direction, when necessary, from the Chair as Chief Executive Officer.

As part of their ongoing work, the Chair of SIRC, Committee Members and senior staff participate in regular discussions with CSIS executive and staff, and other senior members of the security intelligence community. These exchanges are supplemented by discussions with academics, and other experts.

SIRC also visits CSIS regional offices on a rotating basis to examine the day-to-day work of investigators in the field. These trips give Committee Members an opportunity to be briefed by regional CSIS staff on local issues, challenges and priorities. It is also an opportunity to communicate SIRC's focus and concerns.

During 2006–07, SIRC visited two regional offices.

BUDGET AND EXPENDITURES

SIRC continues to manage its activities within allocated resource levels. Staff salaries and travel within Canada for Committee meetings, hearings, briefings and review activities represent SIRC's chief expenditures. Table 8 below presents a breakdown of actual and estimated expenditures.

	2006–07 (Actual)	2006–07 (Estimates)
Personnel	\$1,817,160	\$1,777,000
Goods and Services	\$809,674	\$1,019,000
Total	\$2,626,834	\$2,796,000

INQUIRIES UNDER THE ACCESS TO INFORMATION AND PRIVACY ACTS

The public may make requests to SIRC under both the *Access to Information Act* and the *Privacy Act*. Table 9 outlines the number of requests SIRC has received under these Acts for the past three fiscal years.

Requests for SIRC's reviews represent the largest portion of these requests. SIRC waives the application fees for all such requests.

	2004–05	2005–06	2006–07
<i>Access to Information Act</i>	21	17	12
<i>Privacy Act</i>	3	5	2

COMMUNICATIONS

Although SIRC's annual report is the main communications vehicle for informing Parliament and Canadians about its work, it has also implemented a modest communications program. SIRC has also undertaken some public opinion research, which shows that Canadians' awareness of review bodies remains very low, although perceptions of their independence and objectivity remain positive.

On occasion, the Committee is invited to attend and speak at conferences. In September 2006, the Chair delivered a speech to the Global Business Forum in Banff, Alberta, concerning “Global Threats to National Security.” In it, he examined the impact of the current threat environment on Canada’s economic security and well-being, described CSIS’s role in combating such threats and explained SIRC’s review functions.

In October 2006, the Chair delivered a speech on “Country Experiences: Oversight Mechanisms, Challenges and Opportunities” at the International Intelligence Review Agencies Conference, held in Cape Town, South Africa. This biannual conference brings together review agencies similar to SIRC to discuss issues of common concern. The Executive Director and another Member of the Committee were also in attendance.

SIRC’s website represents another important communications vehicle. It is continually updated with information relevant to the security and intelligence community. All of SIRC’s annual reports since its creation are available, plus copies of speeches, backgrounders and other publications, as well as information on the roles and responsibilities of SIRC.

As principal spokesperson, SIRC’s Chair has met with journalists to discuss SIRC’s work and appeared on CTV’s *Question Period*. He also wrote an op-ed piece, which was published in the *Calgary Herald*.

MANAGEMENT ACCOUNTABILITY

SIRC continues to make progress in this area, although as a very small federal agency without dedicated staff responsible for financial and human resource management, SIRC must increasingly rely on external contractors, diverting resources from its core functions.

In 2006–07, SIRC developed a financial management framework to improve the allocation and monitoring of expenditures. The latter aspect has been delayed, however, by technical problems related to software transition, preventing SIRC from realizing the full benefits of a modernized and automated monitoring of its expenditures.

In June 2006, SIRC received the results of an independent, external audit, which was a condition of receiving additional funding approved by Parliament in 2004. This audit found that “SIRC’s internal processes are reasonably well-controlled, thus enabling SIRC to properly manage the expenditure of public funds with prudence and probity.” Coincidentally, the Treasury Board Secretariat initiated

another audit of hospitality and travel expenses of small federal agencies and included SIRC in its ambit. The results of this second audit are expected to be published by the Treasury Board Secretariat in the coming year.

Following the successful development of a Management Action Plan and Risk Assessment in 2004–05, SIRC participated in an online reporting exercise under the government-wide Management Accountability Framework. The results of this exercise will be published by the Treasury Board Secretariat.

Also, SIRC completed a threat and risk assessment by an accredited security officer from the Privy Council Office to ensure compliance with the Management of Information Technology Security initiative. SIRC has also enhanced physical security by upgrading its alarm system and further shielding its hearing room.

Appendix A

SIRC reviews since 1984

SIRC reviews since 1984

This listing is also available on the SIRC website at www.sirc-csars.gc.ca.
Section 54 reports—flagged with an *—are special reports the Committee makes to the Minister of Public Safety.

1. *Eighteen Months After Separation: An Assessment of CSIS Approach to Staffing Training and Related Issues* (SECRET) (86/87-01) *
2. *Report on a Review of Security Screening for Applicants and Employees of the Federal Public Service* (SECRET) (86/87-02) *
3. *The Security and Intelligence Network in the Government of Canada: A Description* (SECRET) (86/87-03) *
4. *Ottawa Airport Security Alert* (SECRET) (86/87-05) *
5. *Report to the Solicitor General of Canada Concerning CSIS Performance of its Functions* (SECRET) (87/88-01) *
6. *Closing the Gaps: Official Languages and Staff Relations in the CSIS* (UNCLASSIFIED) (86/87-04) *
7. *Counter-Subversion: SIRC Staff Report* (SECRET) (87/88-02)
8. *SIRC Report on Immigration Screening* (SECRET) (87/88-03) *
9. *Report to the Solicitor General of Canada on CSIS Use of Its Investigative Powers with Respect to the Labour Movement* (PUBLIC VERSION) (87/88-04) *
10. *The Intelligence Assessment Branch: A SIRC Review of the Production Process* (SECRET) (88/89-01) *
11. *SIRC Review of the Counter-Terrorism Program in the CSIS* (TOP SECRET) (88/89-02) *
12. *Report to the Solicitor General of Canada on Protecting Scientific and Technological Assets in Canada: The Role of CSIS* (SECRET) (89/90-02) *

13. *SIRC Report on CSIS Activities Regarding the Canadian Peace Movement* (SECRET) (89/90-03) *
14. *A Review of CSIS Policy and Practices Relating to Unauthorized Disclosure of Classified Information* (SECRET) (89/90-04)
15. *Report to the Solicitor General of Canada on Citizenship/Third Party Information* (SECRET) (89/90-05) *
16. *Amending the CSIS Act: Proposals for the Special Committee of the House of Commons* (UNCLASSIFIED) (89/90-06)
17. *SIRC Report on the Innu Interview and the Native Extremism Investigation* (SECRET) (89/90-07) *
18. *Supplement to the Committee's Report on Immigration Screening of January 18, 1988* (SECRET) (89/90-01) *
19. *A Review of the Counter-Intelligence Program in the CSIS* (TOP SECRET) (89/90-08) *
20. *Domestic Exchanges of Information* (SECRET) (90/91-03) *
21. *Section 2(d) Targets—A SIRC Study of the Counter-Subversion Branch Residue* (SECRET) (90/91-06)
22. *Regional Studies* (six studies relating to one region) (TOP SECRET) (90/91-04)
23. *Study of CSIS Policy Branch* (CONFIDENTIAL) (90/91-09)
24. *Investigations, Source Tasking and Information Reporting on 2(b) Targets* (TOP SECRET) (90/91-05)
25. *Release of Information to Foreign Agencies* (TOP SECRET) (90/91-02) *
26. *CSIS Activities Regarding Native Canadians—A SIRC Review* (SECRET) (90/91-07) *
27. *Security Investigations on University Campuses* (TOP SECRET) (90/91-01) *

28. *Report on Multiple Targeting* (SECRET) (90/91-08)
29. *Review of the Investigation of Bull, Space Research Corporation and Iraq* (SECRET) (91/92-01)
30. *Report on Al Mashat's Immigration to Canada* (SECRET) (91/92-02) *
31. *East Bloc Investigations* (TOP SECRET) (91/92-08)
32. *Review of CSIS Activities Regarding Sensitive Institutions* (TOP SECRET) (91/92-10)
33. *CSIS and the Association for New Canadians* (SECRET) (91/92-03)
34. *Exchange of Information and Intelligence between CSIS and CSE, Section 40* (TOP SECRET) (91/92-04) *
35. *Victor Ostrovsky* (TOP SECRET) (91/92-05)
36. *Report on Two Iraqis—Ministerial Certificate Case* (SECRET) (91/92-06)
37. *Threat Assessments, Section 40 Study* (SECRET) (91/92-07) *
38. *The Attack on the Iranian Embassy in Ottawa* (TOP SECRET) (92/93-01) *
39. *"STUDYNT" The Second CSIS Internal Security Case* (TOP SECRET) (91/92-15)
40. *Domestic Terrorism Targets—A SIRC Review* (TOP SECRET) (90/91-13) *
41. *CSIS Activities with respect to Citizenship Security Screening* (SECRET) (91/92-12)
42. *The Audit of Section 16 Investigations* (TOP SECRET) (91/92-18)
43. *CSIS Activities during the Gulf War: Community Interviews* (SECRET) (90/91-12)
44. *Review of CSIS Investigation of a Latin American Illegal* (TOP SECRET) (90/91-10) *

45. *CSIS Activities in regard to the Destruction of Air India Flight 182 on June 23, 1985*—A SIRC Review (TOP SECRET) (91/92-14) *
46. *Prairie Region—Report on Targeting Authorizations* (Chapter 1) (TOP SECRET) (90/91-11) *
47. *The Assault on Dr. Hassan Al-Turabi* (SECRET) (92/93-07)
48. *Domestic Exchanges of Information* (A SIRC Review—1991/92) (SECRET) (91/92-16)
49. *Prairie Region Audit* (TOP SECRET) (90/91-11)
50. *Sheik Rahman's Alleged Visit to Ottawa* (SECRET) (CT 93-06)
51. *Regional Audit* (TOP SECRET) (September 1993)
52. *A SIRC Review of CSIS SLO Posts* (London & Paris) (SECRET) (91/92-11)
53. *The Asian Homeland Conflict* (SECRET) (CT 93-03)
54. *Intelligence-Source Confidentiality* (TOP SECRET) (CI 93-03)
55. *Domestic Investigations* (1) (SECRET) (CT 93-02)
56. *Domestic Investigations* (2) (TOP SECRET) (CT 93-04)
57. *Middle East Movements* (SECRET) (CT 93-01)
58. *A Review of CSIS SLO Posts* (1992-93) (SECRET) (CT 93-05)
59. *Review of Traditional CI Threats* (TOP SECRET) (CI 93-01)
60. *Protecting Science, Technology and Economic Interests* (SECRET) (CI 93-04)
61. *Domestic Exchanges of Information* (SECRET) (CI 93-05)
62. *Foreign Intelligence Service for Canada* (SECRET) (CI 93-06)
63. *The Audit of Section 16 Investigations and Foreign Intelligence Reports* (TOP SECRET) (CI 93-11)

Recommendations

During 2006–07, SIRC made 19 recommendations, 8 stemming from reviews it conducted and 11 from complaints investigations. These are summarized below.

	SIRC recommended that...
Review 2005-05	<ul style="list-style-type: none"> • The 1987 Memorandum of Understanding between CSIS and the Department of Foreign Affairs and International Trade be updated to designate Foreign Affairs as the lead agency in cases involving Canadian citizens detained abroad. • CSIS amend its policies so that emails are automatically retained unless there is a conscious decision to delete them. • CSIS clearly communicate to its employees what would constitute “recorded information,” as distinct from “transitory records,” and should therefore be filed and retained under applicable federal legislation. • Whenever possible, CSIS keep written records of its interdepartmental consultations, including but not limited to its formal and informal consultations with the Departments of Foreign Affairs and Justice. • CSIS ensure that the storage, retention and retrieval of all operational information under its control, including email messages, is in accordance with applicable federal legislation, including the <i>CSIS, Privacy, Access to Information and Library and Archives of Canada Acts</i>. • CSIS request and obtain written advice from the Department of Justice in operations where an individual is questioned in circumstances which may give rise to a detention, in order to ensure that the individual’s <i>Charter</i> rights are respected, and in all occasions when it is unclear whether the Service’s activity falls within its statutory mandate under Section 12 of the <i>CSIS Act</i>.
Review 2006-07	<ul style="list-style-type: none"> • CSIS create policy to address the varying degrees of risk of screening applicants, and to ensure that these briefs are uniform and consistent. • CSIS obtain written consent forms for security assessments in cases where the Service cannot access them after the fact (i.e. foreign agencies).

	SIRC recommended that...
Report 2006-01	<ul style="list-style-type: none"> • The Canadian Human Rights Commission not investigate this complaint.
Report 2006-02	<ul style="list-style-type: none"> • CSIS implement a procedure to verify that individuals about to be interviewed by CSIS for citizenship or immigration interviews be given adequate written notice by Citizenship and Immigration Canada that CSIS intends to interview them.
Report 2006-03	<ul style="list-style-type: none"> • CSIS create and implement a policy requiring that its employees be informed of their right to legal representation and be given an opportunity to consult with a legal representative before and while an interview is conducted for the purposes of either a breach of security or a breach of conduct investigation. • CSIS create a roster of lawyers from the private sector who have a Top Secret clearance whom CSIS employees may retain. • CSIS create and implement a policy by which its investigators must declare a conflict of interest when an individual seeks their opinion about the retention of legal counsel. • CSIS create and implement a policy requiring that its employees input relevant information in a timely manner. • CSIS amend its policy dealing with the destruction of investigative materials—including audio-cassettes and notes—concerning a breach of security investigation or a disciplinary investigation. • CSIS remind its employees that SIRC has the statutory right to access all information under the control of CSIS—except for matters of Cabinet confidence—including audio cassettes, handwritten notes and email messages, and that care should be taken to not destroy information that could have an impact on SIRC’s ability to exercise its right to access such information. • CSIS place greater emphasis on employees’ obligations with respect to the protection of classified information in its orientation course and other security briefings.
Report 2006-04	<ul style="list-style-type: none"> • CSIS formally retract a statement and that it do so by informing the Minister of Citizenship and Immigration, the Minister of Public Safety, the Federal Court of Canada and the publishers of two newspapers. • CSIS apologize to Human Concern International for having made an unsubstantiated statement.