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## Commonwealth Human Rights Initiative

NGO in Special Consultative Status with the Economic & Social Council of the United Nations

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March 28, 2008

To

**Dr Manmohan Singh**  
Honourable Prime Minister of India

Subject: Open letter to reconsider the Foreign Contribution (Regulation) Bill, 2006

### Respected Prime Minister

We are sending you this open letter to express our deep concern at the restrictive nature of the Foreign Contributions (Regulation) Bill, 2006, approved by your Cabinet. The Bill runs counter to the National Policy on the Voluntary Sector that is pledged to encourage, enable and empower voluntary organisations. In contrast, the Bill permits broad executive discretion, allows subjective satisfaction in decision-making and provides limited recourse to procedural safeguards.

The present Foreign Contribution (Regulation) Act, 1976, Foreign Exchange Management Act, 1999, the Prevention of Prevention of Money Laundering Act, 2002 and the Unlawful Activities Prevention Act, 1967 already provide a robust framework to prevent misuse of funds or their diversion towards anti-national or terrorist activities.

We have reservations on the following grounds:

- The aim of the Bill, as stated in the preamble is to prohibit the acceptance and use of foreign contribution for activities detrimental to 'national interest', a subjective and malleable term, open to capricious interpretation. The purpose of any legislation should be to minimise not increase room for executive discretion.
- The Bill greatly increases executive discretion by prescribing a broad list of grounds to refuse a certificate of registration. Some grounds are indeterminate such as the *likelihood* of diversion of funds for 'undesirable' purposes or not having undertaken 'meaningful' activity or not having prepared a meaningful project for the 'benefit' of the people.
- The Bill requires the certificate of registration to be renewed every five years. Since no time limit is prescribed, organisations considered inconvenient by the government of the day may find themselves subject to motivated procedural delays.

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- The Bill gives the executive, wide discretionary powers to cancel a certificate of registration in the 'public interest'. This is too broad, and open to subjective interpretation. Cancellation of the certificate should only be permitted upon breach of specific legal obligations.
- The Bill vests executive authorities with additional powers to inspect, search and seize the property of voluntary organisations without full and complete adherence to the procedural safeguards laid down in the Code of Criminal Procedure. This has potential for undue harassment and unnecessary interference, which can negatively impact the independence of voluntary organisations.
- The Bill permits unwarranted interference in the internal affairs of an organisation by putting a cap of 50% on 'administrative expenses', a term which is not defined. This provision can seriously impair the work of voluntary organisations committed primarily to research and analysis.
- The Bill seeks to exercise undue control on the financial affairs of voluntary organisations wishing to build a corpus fund by prohibiting investment of foreign contribution or its proceeds in 'speculative' businesses. Since the term is not defined, it remains unclear what investments are considered part of speculative business.
- The Bill arbitrarily prohibits certain categories of individuals from receiving foreign contributions. Individuals against whom prosecution for any offence is pending are debarred, in violation of the presumption of innocence. Additionally, persons convicted of any offence - however minor or unrelated to the legitimate concerns of the government to prevent misuse of funds - are prohibited from receiving foreign contributions.
- The Bill restricts the capacity of voluntary organisations to engage the services of organisations and individuals on a consultancy basis. Transfer of foreign contribution to anyone without a certificate to receive the same is prohibited under the Bill. This needs clarification to ensure that bona fide honoraria or consultancy fees are not precluded.

In the interests of safeguarding fundamental freedoms of speech, expression and association, we urge the Union Cabinet to reconsider passing the proposed Foreign Contribution (Regulation) Bill, 2006. Enactment of such a

Bill can undermine democratic space and the independence of the voluntary sector in India which presently provides significant support to the people of India. This surely cannot be the Government's intention.

With our highest regards,



**B.G Verghese,**  
Chairperson, Commonwealth Human Rights Initiative, New Delhi

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Former UN Undersecretary General  
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