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9 July 2014

Hon. Prime Minister Sheikh Hasina
Office of the Prime Minister
Gona Bhaban, Old Sangsad Bhaban, Tejgaon
Dhaka, Bangladesh.
Email: pm@pmo.gov.bd

Dear Prime Minister Hasina,

We are writing on behalf of the Centre for Law and Democracy (CLD) and Lawyers Rights Watch Canada (LRWC). CLD is an international human rights NGO that specialises in providing legal and policy expertise to promote foundational rights for democracy, including freedom of association and of expression. LRWC is a committee of Canadian lawyers who promote human rights and the rule of law internationally, and provide support to lawyers and other human rights defenders in danger because of their advocacy.

Our organisations have grave concerns about the proposed *Foreign Donations (Voluntary Activities) Regulation Act, 2014* (the Bill), which has been approved by Cabinet and is pending review by Parliament. We believe that the Bill opens the door to significant governmental control over NGOs' ability to operate and raise funds, and that it fails to respect the rights to freedom of association and freedom of expression, both of which are guaranteed in Bangladesh's constitution, at Articles 38 and 39, respectively, as well as in the *International Covenant on Civil and Political Rights*, which Bangladesh ratified on 6 September 2000.

Maina Kiai, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, noted in his 2012 report that freedom of association includes "the right to seek and secure funding and resources from domestic, foreign, and international entities". However, section 3 of the Bill places strict controls over fundraising from foreign sources, requiring any organisation which receives a foreign donation to register with the NGO Affairs Bureau, and granting the Bureau's Director General (the Director) veto power over the donations on a case-by-case basis. There is no

need for this; at the very most it would be enough to require NGOs to indicate, preferably through a general reporting requirement, perhaps as part of the tax system, what foreign funding they had received.

The requirement to register with the NGO Affairs Bureau is particularly troubling since the Bureau operates as a government department under the Prime Minister's Office. While it is recognised that the right to freedom of association is not absolute, it is clear that the application of any restrictions must be overseen by an independent body, which the Bureau clearly is not. Otherwise, the risk of political interference is too great. This principle has also been clearly recognised in the context of freedom of expression.

This concern is compounded by a requirement that any foreign specialists who are involved must undergo a security check by the Home Ministry. While security is a legitimate general concern, we note that millions of foreigners enter Bangladesh every year for various purposes without being subject to this requirement. As a result, this measure unnecessarily targets those involved in civil society cooperation and should be removed.

These concerns are exacerbated by the fact that section 2(5) of the Bill defines "donations" extremely broadly to include a "contribution of any kind". More than just regulating the flow of money, the Bill would potentially require government approval for any NGO wishing to receive pamphlets, training or even advice from a foreign organisation. There is no conceivable justification for extending this level of oversight over civil society.

Section 5 of the Bill also prohibits the receipt of any "donations" whatsoever by public officials, including judges of the Supreme Court or any other employees of government or statutory bodies. While it is understandable to seek to restrict judges and public officials from receiving cash or private gifts from foreign organisations, the Bill's current wording would prevent them from receiving appropriate forms of support, such as training. Moves to prevent judges from accepting legal educational materials, or civil servants from attending capacity-building training sessions, from foreign organisations serve no useful purposes and have the potential to undermine the development of Bangladesh's public sector.

Given the Bill's broad applicability, its registration requirements are also unacceptably vague and potentially unduly onerous. These rules, set out in section 4 of the Bill, are very unclear. In order to receive foreign donations legally, NGOs are required to file an application with the Director, and to pay a registration fee. Registration is good for ten years, but the application must include information about the source, amount, and specific use(s) to which the funds will be put. NGOs cannot predict, at the time of registration, the source, amount and use of all foreign funding that they will receive over the decade following registration. It is unclear whether a new application is required for each new receipt of foreign funding, which would be unduly onerous, or, if not, how the system is expected to function. Section 6 contains an entirely separate process for obtaining approval from the Director for each individual project undertaken by the NGO, which again represents an unjustifiable level of control over the work of NGOs. The same is true of section 9, which requires that NGOs set up a special bank account for foreign donations and requires a letter of permission from the Bureau to access funds contained in this special account. The point, noted above, about independent oversight of freedom of association also applies here (i.e. any such oversight should be done by an independent body).

The onerous and overbroad nature of the Bill is even more alarming when considered in light of the

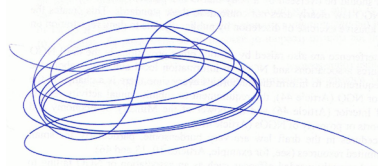
harsh penalties for non-compliance. NGOs found to be in violation of the law can be forcibly dissolved by the Director under section 16, and have all of their assets seized. An appeal against such measures would, according to section 17, be directed to and conducted by the Secretary of the Prime Minister's Office, whose decisions are "deemed final". Not only are these extremely harsh sanctions, which should apply to only the most egregious breach of legitimate rules, but once again the point about independent oversight applies. Furthermore, access to review by an independent and impartial tribunal is denied. These powers are analogous to allowing a government official to close down a media outlet for purported breaches of the law. Only an independent body, subject to a right of appeal before the courts, should have the power to impose such sanctions.

The Bill does not comply with Bangladesh's international law obligations to protect the rights to freedom of association and expression, and the right of civil society to engage in human rights education and advocacy. The proposed Bill opens the door to arbitrary government control over the operations of any NGO which engages in international cooperation, contrary to both the Constitution of Bangladesh and Bangladesh's international legal obligations. CLD and LRWC urge your government to withdraw the Bill from Parliament and to conduct a comprehensive review of its provisions, in consultation with interested stakeholders, before moving forward to adopt any further bill along these lines.

Yours sincerely,



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