

Statement before the  
House Committee on Foreign Affairs  
*Compassion International Operations in India*

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Chairman Royce, Ranking Member Engel, and distinguished members of the committee, it is an honor to appear here today.

My name is Stephen Oakley. I lead our General Counsel Office at the faith-based non-profit, Compassion International, which is headquartered in Colorado Springs, Colorado. I come to you today to discuss challenges we are facing with our operations in India. But first, let me share a little about our ministry.

Compassion International is the world's leading authority in holistic child development of children living in extreme poverty. Holistic child development means we take a long-term approach to poverty alleviation, going beyond simple assistance in the lives of the children and families we serve. We begin, in some cases, with prenatal care, then continue our program through the duration of childhood, and offer leadership development opportunities for young adults. The impact of our program extends far beyond basic relief efforts to transform lives and communities.

Compassion began its work with children in post-war Korea in 1952. Today, Compassion operates in 26 countries in Asia, Africa and Latin America and Caribbean, providing a range of services designed to meet the physical, mental, emotional and spiritual needs of impoverished and at-risk children. Compassion's support includes many different types of interventions, such as nutrition, health care, counseling, education and job training. As a faith-based non-governmental organization (NGO), Compassion believes that poverty is not just physical or economic, but that it impacts every aspect of a child's life, including spiritual poverty. Poverty tells a recurring lie that poor children don't matter. Therefore, we believe combatting child poverty requires a holistic approach that encompasses every aspect of a child's life.

## **Why Compassion Works with Churches**

Compassion's delivery model is unique among NGOs — Compassion works exclusively with local Christian churches who are best equipped to understand and meet the unique needs of children in their communities. The primary reason we have chosen this model is that the moral and spiritual values which the world-wide church embodies are consistent with those of Compassion and its donors. A second reason we have chosen this model is the NGO community's familiar problem of the "last mile." Getting humanitarian services to the last mile — the point of delivery in extremely poor contexts — is difficult and costly. Compassion has solved this challenge by working with local churches and utilizing them as the delivery system. This approach has benefits for both parties and it allows Compassion to work in very difficult and impoverished contexts efficiently, while also building up the local church as a center of community, safety and hope. This approach has proven incredibly effective. Compassion now works in partnership with over 7,000 churches worldwide, benefiting 1.9 million children supported by a one-to-one child sponsorship model.

## **Compassion in India**

Compassion opened operations in India in 1968. For 48 years Compassion has operated continuously and lawfully, helping over a quarter of a million children break the cycle of poverty. Until 2016, Compassion sent nearly \$50 million per year in humanitarian aid to India, funding nearly 145,000 sponsored children in some of India's most impoverished and remote regions. Compassion's church partners in India employ hundreds of staff through more than 580 child development centers staffed entirely by Indians. Compassion only works through churches which possess a valid license to receive foreign aid.

## **Religious Discrimination Disguised as Taxation**

India's Ministry of Home Affairs (MHA) regulates foreign aid through the Foreign Contribution Regulation Act (FCRA). In 2011, MHA revised the purpose of FCRA to:

“Regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.” (Emphasis added).

At the time of the revision, the significance of this language was not fully understood by many NGOs. The law does not define which activities are “detrimental to the national interest.” However, MHA has used this language as their basis to target religious charities that express views or engage in activity which is lawful, but contrary the current government's ideology. The result has been a clear chilling effect on the free-expression of religion across India.

In 2011, Compassion's field-partner in South India, Caruna Bal Vikas (CBV), was notified that it was selected for an audit by the Commissioner of Income Tax (CIT). In May of 2013, after reviewing the thousands of pages of documents provided by CBV, the CIT asserted that CBV had violated its purposes as a charitable public trust by transferring funds to Indian charities that are registered as religious. Ultimately, the CIT assessed CBV more than \$18 million in illegal tax. This tax was on charitable funds contributed by donors in the United States and twelve other countries intended to help Indian children living in extreme poverty. In making its demand, the CIT ignored that it has no legal mandate to inquire, let alone determine, whether a charity's activities are charitable or religious. The CIT's illegal tax theory is intended to harass, intimidate and ultimately drive out Compassion and its partners from India.

Compassion sought the advice of six different legal and tax counsels in India, all of whom concluded that the CIT had no legal basis for the tax assessment. Compassion is confident its partners and Compassion have followed Indian tax law. Despite the clear inapplicability of the law and lack of authority of the CIT to examine CBV's corporate purposes, the CIT seized CBV's bank account, forcing them to cease operations in May of 2014. CBV's legal challenges to these tax assessments remain pending in court.

### **The Home Ministry's Attack on Freedom of Religion**

Article 25 of the Indian Constitution, entitled "Right to Freedom of Religion" provides: "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise [*sic*] and propagate religion." Article 15 provides: "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them." (Emphasis added). Article 14, entitled "Right to Equality" provides: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

MHA has repeatedly disregarded these constitutional protections. In May of 2016, MHA placed Compassion on a list of international NGOs that had to seek prior clearance from MHA before transferring funds to Indian charities that serve Indian citizens. What was the offense? Compassion's charity towards India's poorest children is rooted in Christian values. MHA evidently views Christian values as a threat to the national interest, particularly if those values are taught to the poor. MHA has never provided Compassion or its partners with any explanation for the prior clearance order, nor has it ever responded to Compassion's multiple efforts to engage in dialogue. This includes Secretary of State Kerry's appeal to Foreign Minister Sushma Swaraj requesting MHA reconsider its baseless decision.

In August of 2016, harassment of Compassion extended to its Compassion East India (CEI) operations, this time in the form of an Enforcement Directorate investigation into "anti-national activity," again without any evidence, or opportunity to be heard. Despite CEI's full cooperation, that investigation remains pending.

Finally, in November of 2016, Compassion learned that both its partners, CBV and CEI, had been denied FCRA renewal without explanation. These decisions are being appealed, but as MHA well knows, any legal challenge to these decisions will take years. MHA knows that, in the case of Compassion and all other charities that they have targeted, time is to their benefit.

### **MHA's Pattern of Harassment**

Over the last three years, the Commissioner of Income Tax (CIT) and the Intelligence Bureau have each made multiple visits to CBV, CEI and dozens of their local church partners in India. In two instances, they have commenced "interviews" after 5 p.m. and interrogated Indian staff overnight — in one instance for eleven hours. They intimidate and ask leading questions like: "you are converting children to Christianity, aren't you?" Even if those false accusations were true, the government is harassing Indian citizens engaged in lawful conduct. Computers and records have been confiscated, more than ten visa applications have been denied in the last two years and in one case, (the author's) an existing visa was cancelled with no explanation. Most recently, MHA has prevented the return of \$330,000 dollars in aid that Compassion attempted to transfer to its Indian partners. The money cannot be received by the intended partner in India or returned to Compassion. This low-level harassment and intimidation by MHA is widespread and not limited to Compassion.

### **India's Violation of Indian Law**

While India's government has wrongly accused Compassion of engaging in illegal conversions and anti-national

activity, it has simultaneously ignored and violated its own laws. Compassion's counsel in India has advised that the Reserve Bank of India (RBI) prior clearance notice misinterprets and directly violates the FCRA in the following ways.

1. First, Section 11(3)(iv) of the FCRA provides when a foreign agency can be placed under a prior permission category. The section states that foreign aid sources can be placed on a prior permission category only after notification is placed in India's Official Gazette explaining who shall obtain prior permission, and the sources of foreign aid which shall be accepted with prior permission from the Central Government, among other requirements. Compassion was given no such notice.
2. Second, the prior clearance notice states that the RBI was directed by MHA under Section 46 of the FCRA. The RBI does not have any authority to enforce the FCRA. Specifically, Section 46 does not provide discretionary power to India's Central Government; it only empowers it to direct or seek aid from other authorities in executing the Act. Therefore, an order under Section 46 must be supported by another provision of the Act. This order specifies no such authority.
3. Third, Section 9(d) restricts how a foreign aid recipient may be placed under the prior clearance category. MHA may require a registered organization to seek prior clearance before receiving foreign aid from a foreign source – but not a blanket prohibition against a single foreign organization or a particular foreign source of aid, as is the case here.
4. Fourth, Section 9(d) may apply only if the government has reason to believe that accepting aid will result in hampering public interest, religious harmony, etc. Such orders are against the aid recipient in India; therefore, they cannot be made without first formally communicating the order to the recipient and providing an opportunity for the recipient to be heard. According to a recent Delhi High Court case, if an order is not passed under the requirements of Section 9(d), is it void.
5. Finally, the burden is on MHA to establish specific findings of an FCRA violation before issuing any prior permission order. MHA has never even notified Compassion that it believes a violation occurred.

In summary, the FCRA registration renewals for Compassion's partners were rejected in violation of the law. The only reason for denying the renewal was "*On the basis of Field Agency Report, the competent authority has decided to refuse your application for renewal.*" The Field Report was never shared with Compassion or its partners; therefore, it cannot be the basis for an alleged FCRA violation. In fact, there was never an inquiry or proceeding pending under the FCRA or a show cause order for any possible violation. The FCRA permits a registration denial only when an organization has violated a provision of the FCRA. The registration rejection was simply ordered without proper application of the facts and the law.

MHA knows that they can use the inefficiency and massive delays of the Indian bureaucracy as a weapon – forcing charities like Compassion to either accept their determinations, or spend years seeking redress in a painfully slow and often corrupt legal system. In short, India's Home Ministry is using those aspects of India's bureaucracy, which are most in need of urgent reform, to systematically target NGOs with agendas and views that differ from its own.

### **The Future of Compassion and other NGOs in India**

The present-day reality in India is sobering. India has a population of 1.3 billion people in a land area slightly more than one-third the size of the United States. The United Nations estimates that over 30 percent of the world's 400 million children living in extreme poverty are in India alone. India has nearly one million registered

charities and is one of the world's largest recipient of NGO aid. Despite this reality, India's present government appears to be on a campaign to eliminate foreign NGOs — particularly those that the government perceives have agendas which are not in alignment with its policies. In the past two years, the government has waged a quiet campaign against a range of charities, religious and non-religious, which the government perceives as a threat. This list includes Greenpeace, Ford Foundation, Amnesty International and a variety of others, large and small.

This is troubling for a country which prides itself on the label of “the world's largest democracy.” Indeed, the democratic ideal of freedom of religion and the free expression of religion, which are cornerstones of the Indian constitution, appear to be under attack from within India. This, combined with a culture of indifference to the poor, have led India to the brink of becoming a limited access country from the standpoint of the NGO sector, while simultaneously making no provision for the resulting burden that India will face on its own. While the government of India may not notice the expulsion of NGOs, India's 120 million children living in extreme poverty certainly will.

The United States is one of India's most important partners. In turn, India is a valued strategic partner of the United States. India remains a country that the U.S. should vigorously engage in a robust bilateral dialogue. This dialogue should include making the discriminatory treatment of NGOs a point of significant discussion in the broader U.S./India relationship. U.S. policy should include incentivizing India to protect freedom of all speech, protection of minority religions and perspectives, and care for the poor.

Using the Indian government's own numbers, just 4 percent of Compassion's funds in India are used for moral and spiritual values education – values which transcend all religions. The remaining 96 percent is the routine but essential provision of food, medicine, clothing, school fees and related humanitarian aid to support tens of thousands of at-risk infants, children and youth living in extreme poverty. Simply put, Compassion's primary mission is to release children from poverty, not convert them.

The measure of a constitutional democracy is not how it panders to the majority, but rather how it protects the minority. India is a wonderfully diverse country with dozens of ancient people groups, languages, cultures and religions. The present Indian administration needs to demonstrate that its weakest and smallest citizenry are afforded the same rights and protections and those in power.

To conclude, Compassion International is approximately three weeks away from permanently withdrawing its humanitarian operations from India. As the single largest contributor of aid for children living in extreme poverty in India, that is not our desire. Our hope is that this committee will act. Specifically, we ask that this committee demand that the government of India rescind the prior clearance order of MHA so that Compassion can fund the sponsored children under its care. Additionally, we ask this committee to demand that the government of India reinstate the FCRA's of Compassion East India and Caruna Bal Vikas, so that Compassion may pay its employees in India. Finally, on behalf of Compassion's 145,000 sponsored children and the remaining 130 million that other NGOs of all faiths attempt to serve, we ask that you use your influence as lawmakers to advocate for those that the Indian government ignores.