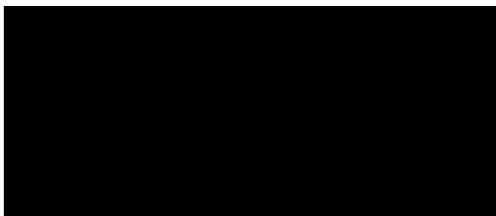




**REGISTERED MAIL**



BN: 107497125RR0001  
File #: 0576488

Dear [REDACTED]:

July 7, 2021

**Subject: Notice of Penalty and Suspension of Receipting Privileges**  
**Human Concern International**

We are writing further to our Administrative Fairness Letter (AFL) dated May 24, 2018, and request for information letters, dated October 29, 2019 and December 20, 2019, in which you were invited to submit representations, including as to why the Canada Revenue Agency (CRA) should not revoke the registration, assess a penalty, and/or suspend the receipting privileges and qualified donee<sup>1</sup> status of Human Concern International (the Organization) in accordance with sections 168(1), 188.1(9) and/or 188.2 of the Income Tax Act (the Act).

We have carefully reviewed and considered your written responses of October 1, 2018, December 6, 2019, January 20, 2020, and June 22, 2020. However, notwithstanding your reply, our concerns with respect to the Organization's non-compliance with the requirements of paragraph 168(1)(d) of the Act and the Income Tax Regulations 3500 and 3501 have not been alleviated. Specifically, it remains our position that the Organization issued official donation receipts containing false information as part of a third party receipting scheme. The receipts issued as part of this scheme were not issued in accordance with the Act and the Income Tax Regulations. Consequently, the Organization is subject to a penalty under subsection 188.1(9) of the Act and suspension of its receipting privileges in accordance with section 188.2 of the Act .

Our AFL raised other non-compliance with the ongoing registration requirements under the Act, including a failure to demonstrate, through adequate books and records, that the Organization exercised ongoing direction and control over its resources, a failure to maintain books and records, and a failure to demonstrate that the Organization conducted any meaningful due diligence on its current and/or prospective partners.

In response to our findings, the Organization agreed to implement corrective measures to maintain proper books and records of account in Canada for all of its activities conducted

---

<sup>1</sup> A "qualified donee" means a donee described in subsection 149.1(1) of the Act.

inside and outside Canada, including through its foreign offices.<sup>2</sup> The Organization also agreed to conduct meaningful and consistent due diligence on all aspects of its operations, including, its foreign offices, employees, and relationships with affiliated organizations and individuals.

Over the course of the CRA's audit, we reviewed the public allegations surrounding the Organization's Pakistan foreign office,<sup>3</sup> and considered the Organization's representations,<sup>4</sup> acknowledging the subsequent acquittals by the court in Pakistan.<sup>5</sup> We also acknowledge that the Organization has taken steps to improve its processes and control over the operations of its Pakistan foreign office, and that it will continue to work with the CRA to ensure ongoing compliance with the requirements of the Act.

The CRA is committed to working closely with charities and to seeking ways to help them meet their obligations. Despite the non-compliance outlined in this Notice, the Organization has taken initial steps towards compliance, and is willing to continue to take appropriate corrective actions.

Therefore, we are prepared to enter into a Compliance Agreement with the Organization. The Organization will be required to meet the terms of such a Compliance Agreement, as approved by the CRA, outlining several corrective measures to address the remaining instances of non-compliance identified during the audit. The Compliance Agreement also stipulates that a review of the Organization's operations may be conducted no earlier than a year from the date of signing the agreement, in order to ensure that it has complied with all of the corrective measures outlined within, and to ensure that the Organization is operating in accordance with the Act.

Should the Organization fail to put into effect the agreed upon corrective measures, or fail to comply with the terms of the Compliance Agreement in any other way, the CRA may pursue revocation of the Organization's registration by issuing a Notice of Intention to Revoke in the manner described in subsection 168(1) of the Act.

In addition to a Compliance Agreement, the Organization is also subject to a penalty under subsection 188.1(9) of the Act and suspension of its receipting privileges and qualified donee status. The penalty relates to the Organization's issuance of official donation receipts containing false information as part of a third party receipting scheme that is not in accordance with the Act and/or its Regulations.

---

<sup>2</sup> Middle East Region office; South Asia office; and East Africa office.

<sup>3</sup> "Police arrest Al-Qaeda funder in Peshawar," The Nation: <http://nation.com> and "Human Concern International bank accounts used to fund al-Qaeda," Washington Times: [www.washingtontimes.com](http://www.washingtontimes.com).

<sup>4</sup> We have considered the Organization's representations of December 6, 2019, January 20, 2020, and June 22, 2020.

<sup>5</sup> "Ex-envoy among six acquitted of terror financing," DAWN: [www.dawn.com](http://www.dawn.com).

## PENALTY

### **Issued a receipt for a gift otherwise than in accordance with the Act and its Regulations**

The Act permits only those organizations that are registered to issue official donation receipts for gifts received. A charity is responsible for all receipts issued under its name and registration number. It must account for the corresponding donations on its annual information return and in its books and records.

Under the common law, “a gift is a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor”. Generally, for purposes of sections 110.1 and 118.1 of the Act, a gift under common law is made if a taxpayer has donative intent, and all three of the following conditions are satisfied:

- there must be a voluntary transfer of property to a qualified donee;
- the property transferred must be owned by the donor; and
- no benefit or consideration must flow to the donor.<sup>6</sup>

The CRA’s website and guidance products clearly set out that a registered charity may not issue receipts for gifts intended for another unregistered organization.<sup>7</sup> The law provides various requirements with respect to issuing official donation receipts by registered charities.<sup>8</sup> All registered charities are expected to take the necessary steps to ensure ongoing compliance with the requirements for registration.

---

<sup>6</sup> See Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value <https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-7-charities-non-profit-organizations/series/income-tax-folio-s7-f1-c1-split-receipting-deemed-fair-market-value.html#toc1>.

<sup>7</sup> See for example:

- Charities and Audits - Non-compliance issues <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/compliance-audits/non-compliance-issues.html#H1>;
- Checklist - Issuing complete and accurate donation receipts <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/checklists-charities/issuing-complete-accurate-donation-receipts.html>;
- Checklists for Charities – Basic Guidelines <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/checklists-charities/basic-guidelines.html>;
- Guidelines for Applying Sanctions <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidelines-applying-sanctions.html>
- Income Tax Folio S7-F1-C1, Split-receipting and Deemed Fair Market Value <https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-7-charities-non-profit-organizations/series/income-tax-folio-s7-f1-c1-split-receipting-deemed-fair-market-value.html#toc1>.

<sup>8</sup> Official donation receipts issued for the purposes of paragraph 110.1(2)(a) or 118.1(2)(a) of the Act, must contain information required by Income Tax Act Regulations 3500, 3501 and 3502.

The integrity of the registration scheme for charities is seriously breached when a registered charity allows an unregistered charity to use its registration number to provide tax relief for donations that are not intended for that registered charity.

In accordance with subsection 188.1(9) of the Act, a registered charity that has been found to contravene the receipting requirements of the Act by knowingly making or furnishing false statements on a receipt issued by the Organization, on behalf of another person for the purposes of subsection 110.1(2) or 118.1(2) of the Act, is liable to pay a penalty equal to 125% of the eligible amount stated on the receipt.

In addition, subsection 188.2(1) of the Act stipulates that when a penalty levied pursuant to 188.1(9) of the Act exceeds \$25,000, then a one-year suspension of the Organization's authorization to issue official donation receipts, must also be applied.

To be liable for a penalty under subsection 188.1(9) of the Act, an organization must have been found to have made or furnished, participated in the making of or caused another person to make or furnish a statement on an official donation receipt that it knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, was a false statement and could be used by or on behalf of another person to obtain a tax deduction credit further to subsections 110.1(2) or 118.1(2) of the Act.

Culpable conduct is defined at subsection 163.2(1) of the Act as follows: "culpable conduct means conduct, whether an act or a failure to act, that (a) is tantamount to intentional conduct; (b) shows an indifference as to whether this Act is complied with; or (c) shows a willful, reckless or wanton disregard of the law." The Supreme Court of Canada, in *Guindon v. Canada*, has said that the standard of culpable conduct is not to be construed less stringently than gross negligence.<sup>9</sup>

The audit found that over the period under review, the Organization issued official donation receipts amounting to \$307,841<sup>10</sup> for gifts not intended for the Organization.<sup>11</sup> Specifically, the Organization entered into arrangements to assist six unregistered organizations,<sup>12</sup> both foreign and domestic, with their fundraising efforts in Canada, whereby the Organization issued official donation receipts for gifts intended for the unregistered organizations' own projects, a practice known as third party receipting.

---

<sup>9</sup> *Guindon v. Canada*, 2015 SCC 41 [2015] 3 SCR 3.

See also for example: *Torres v. The Queen*, 2013 TCC 380; *Ploughman*, 2017 TCC 64; and *Sidhu v The Queen*, 2004 TCC.

<sup>10</sup> This amount is based on 346 official donation receipts issued that contained false statements.

<sup>11</sup> This amount is based on a sample size of projects the CRA reviewed. However, if the CRA would have analyzed all projects conducted during the audit period, this amount could have been higher, resulting in a larger penalty amount.

<sup>12</sup> The six unregistered organizations are: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

It is our position that by entering into third party receipting arrangements to assist unregistered organizations in issuing \$307,841 in donation receipts further to subsections 110.1(2) or 118.1(2) of the Act, for gifts not intended for the Organization, the Organization made and/or participated in making statements on its official donation receipts that it knew, or would be reasonably expected to know but for reasons amounting to culpable conduct, were false.

Our position is based on the following:

- a) The Organization is highly experienced and well resourced.

The Organization has decades of experience, maintaining registered status since January 1983. As represented in its October 1, 2018, response to the CRA's May 24, 2018, Administrative Fairness Letter (AFL), the Organization was initially established to "carry out humanitarian aid in Afghanistan but has since expanded its programs into an array of countries around the world". The Organization also represented that "since it was first established, the [Organization] has spent over \$150 million carrying out projects..." and that "over the years, the [Organization] has worked with approximately 150 project partners around the world."

The Organization further represented that "throughout 38 years of history, the [Organization] has 30,000 active donors...". In regards to tax-receipted donations, we note that during the audit period alone, the Organization issued donation receipts amounting to over \$9 million, as reported on its 2012 and 2013 Registered Charity Information Returns (Form T3010).

Consequently, it's reasonable to expect that the Organization would have the resources, ability, and experience to be knowledgeable about the requirements of the Act, including proper tax-receipting practices.

- b) The Organization appears to have disregarded non-compliance indicators.

Directors / trustees and like officials are persons who govern a registered charity and are responsible for overseeing the operations to ensure it continues to meet its obligations for charitable registration under the Act.

The courts have placed extensive responsibility, known as fiduciary duties, on the directors of charities.<sup>13</sup> Additionally, the fiduciary responsibilities of the directors of charities are clearly laid out on Industry Canada's website,<sup>14</sup> and the Ontario Public

---

<sup>13</sup> See, for example, Ontario (Public Guardian and Trustee) v. Aids Society for Children (Ontario), [2001] O.J. No. 2170 (QL) (S.C.J); Ontario (Public Guardian And Trustee) v. National Society for Abused Women, [2002] O.J. No. 607 (QL); Pathak v. Sabha, [2004] OTC 406 (O.S.C.J); and London Humane Society (Re), 2010 ONSC 5775.

<sup>14</sup> See the following, available on Industry Canada's website: "The Directors", <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05004.html>; "Background paper - Canada Not-for-profit Corporations Act", <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs05170.html#part9>; and

Guardian and Trustee's document "Duties, Responsibilities and Powers of Directors and Trustees of Charities."<sup>15</sup> Included amongst the identified responsibilities is the duty of due diligence and the exercise of power. Directors must further the purposes of the organization and not be inactive or inattentive. The duty of due diligence requires active and concerted effort on the part of directors to be familiar with all aspects of the corporation, including its management and operation, thus enabling them to make informed decisions affecting the charity.

Turning a "blind-eye" or not exercising due diligence where a director is aware or ought to be aware of malfeasance on the part of another director or another person is not acceptable.<sup>16</sup> All directors have a duty to investigate any suspicious circumstances that suggest a charity's resources have not been properly used. Furthermore, action should be taken to address and correct the identified issues.

Throughout the audit, the CRA has pointed to several factors that if not conclusive in themselves, should have at least raised red flags for the Organization prompting them to seek advice from the CRA or a tax professional. One strong indicator in this regard is the unregistered organizations' email communications to both the Organization and the public indicating that they viewed the projects as their own. We note the following examples<sup>17</sup>:

- [REDACTED]
  - On July 11, 2012, [REDACTED] of [REDACTED] sent an email to the Organization stating the following "Please find attached credit card payment at [REDACTED] **annual fund raising dinner, July 7/2012...**". [emphasis added]
  - On December 4, 2011, a donor sent an email to [REDACTED] asking for his "[REDACTED] receipt for taxation purpose." [REDACTED] replies on the same day asking the donor to provide his home address to mail the receipt. The donor replies with his home address and stated that he has given three donations valued at \$360, \$1,000, and \$360. [REDACTED] then forwarded the email to the Organization requesting the Organization to "mail his tax receipt" at the address given.
- [REDACTED] - In an email sent to the Organization, dated November 7, 2012, [REDACTED], representative of [REDACTED], stated the following: "I would appreciate if you would kindly withdraw these two amounts, pledged for **our projects** (Please see the

---

<sup>15</sup> "Primer for Directors of Not-for-Profit Corporations", [https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h\\_c100688.html](https://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h_c100688.html).

<sup>16</sup> Office of the Public Guardian and Trustee. Charities Bulletin #3, "Duties, Responsibilities and Powers of Directors and Trustees of Charities", available at: <https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/charbullet/bullet3.php>.

<sup>16</sup> See Bourgeois, Donald J. The Law of Charitable and Not-For-Profit Organizations. Markham: Lexis/Nexis Butterworths, 2002. P. 232.

<sup>17</sup> See Appendix 1.

attachment). Please let me know once this is done so that I can add \$200 to our credit balance." [emphasis added] The attachment to the email included two contribution pledges for \$200. The pledges stated "**My contribution to [REDACTED] projects in the amount of...**" [emphasis added]

- [REDACTED] - [REDACTED]'s own documentation, that it sent to the Organization, stated that [REDACTED] "...raise[s] funds using Human Concern Internationals (HCI) charitable number and we deposit all funds to HCI." [emphasis added]

In addition, we note that some of the Organization's partner websites, social media websites, and public reports advised the public that donations to their programs are eligible to obtain tax receipts, which is facilitated through the Organization.<sup>18</sup> We noted the following examples in our AFL (these are apart from the six partner organizations identified in Appendix 1):

- [REDACTED] "Contact Us" page on their website refers its potential donors to the Organization for "donations in Canada." It also states that the donations are "tax exempt."
- On both its website and Facebook page, [REDACTED] refers its potential donors to the Organization for donations towards their projects.
- [REDACTED] 2011-2012 Annual Report directs potential Canadian donors to send their donations through the Organization and to state that the funds are "designated for [REDACTED] Pakistan."

In this regard, the audit findings, as presented in Appendix 1 of this letter, provide a reasonable basis for the Organization to have concluded that the donors intended the gifts go to the six non-qualified donees and then the Organization proceeded to issue official donation receipts for these gifts.

Another strong indicator that should have raised a red flag for the Organization is the pattern of the non-qualified donees instructing the dispersal of funds. Our review of the Organization's emails revealed that the individuals and non-qualified donees are directing the Organization when to send them the funds and how much funding to send. We note the following examples<sup>19</sup>:

- [REDACTED] - On February 11, 2012, [REDACTED], representative of [REDACTED] sent an email to the Organization stating: "...Kindly send full amount at once \$10,000 directly to [REDACTED] bank account for the rural project ASAP."

---

<sup>18</sup> See Appendix 1.

<sup>19</sup> See Appendix 1.

- [REDACTED] - On March 3, 2012, the Organization received an email from [REDACTED] where he requested that the Organization transfer \$10,000 to [REDACTED] "by this week". Similarly, on August 27, 2012, the Organization received an email from [REDACTED], where he is informing the Organization that \$15,000 needs to be sent to [REDACTED] "as soon as possible."

Although the Organization represented in its response to the AFL that where it "engages third parties to solicit funds on its behalf, it communicates clearly with all such parties that all funds raised will be owned by the [Organization] and subject to its **full authority**" [emphasis added], we note that the audit did not find any records to support this claim. Rather, our review of the Organization's emails revealed that the individuals and groups are directing the Organization when to send them the funds and how much funding to send.

In addition to the above, shortcomings in direction and control were brought to the attention of the Organization by its own employee. We note the following email, sent on May 17, 2012, from the Organization's Middle East Region office employee, to the Organization's Executive Director at the time, stating:

"...I have big reservation about the way things are being done recently in relation to the programs...More than 80% of the programs...have less direct control by HCI on them, and they are **restricted funds to selected projects that are not designed, neither managed, nor implemented by HCI**...All these programs are loosely controlled by HCI and this is not a good practice at all, especially if we take in consideration the new guidelines that you shared with us that state that **HCI should 'not be merely a conduit to funnel money, and should have direct control, etc.'** We have not reached that stage but still it is not a good practice. I believe we should be in more direct control on these projects. We should identify and design the projects based on our priorities, **we should participate in the implementation, we should supervise, monitor and manage the projects, and we should identify the partners and the beneficiaries in partnership with the partners....**"<sup>20</sup> [emphasis added]

On the same day, the Organization's Executive Director responds to the Middle East Region office employee stating:

"...these are **some special support groups who are raising funds for various projects and asking us to enter in partnerships with specific partners**. If we don't, they will fund/work with other NGOs here, those who are competing with us rather than collaborating with us...We should have more control over the projects for which we channel funds...**Unfortunately, the only way for us to be able to get funds and be visible...is to partner with these Canadian support groups who have been raising funds and rely on their financial support. But in return they want us to accommodate their wishes relating to certain**

---

<sup>20</sup> The email, entitled "Re: Child Sponsorship Program with [REDACTED]" was sent from email address [REDACTED] to email address [REDACTED]

**selected partners, etc. If we don't, we will not get any funds from them...<sup>21</sup>**  
[emphasis added]

Given that the Organization is an experienced registered charity and presents itself as knowledgeable on conduits and direction and control requirements, the audit found that the Organization appeared to have ignored concerns raised by its Middle East foreign office employee and failed to implement any changes with respect to its operations despite acknowledging the non-compliance.

In this regard, the audit found that the Organization acknowledged and subsequently ignored non-compliance indicators that it should have known would have violated the receipting requirements under the Act and jeopardized its charitable registration. We also particularly note the Board's failure to exercise due diligence as pertains to several factors that, as noted above, should have raised suspicions for the Organization, prompting the Board to seek advice on its charitable registration requirements.

c) The Organization failed to seek any professional assistance or contact the CRA.

Despite numerous indicators of non-compliance and acknowledging that some of its operations may be offside, there is no evidence to suggest that the Organization sought any guidance from the CRA or any tax professionals with respect to the third party receipting scheme. However, we note that the Organization sought out professional guidance on other issues. For example, in its response to the AFL, the Organization represented that in 2002, it hired a legal expert<sup>22</sup> on Canadian military and state security laws to ensure "there is no chance that any of its funds are misdirected to terrorist or terrorist groups". Therefore, although the Organization sought expert assistance to minimize the risk of any improper use of the Organization's funds for terrorist or criminal activity, it had failed to seek any assistance and/or guidance to ensure it complied with the Act. We also note that the Organization has consistently retained a Chartered Accounting firm to complete its Annual Information Returns and financial statements for the two year audit period but there is no indication that it sought assistance from the firm despite the possible non-compliance indicators as noted above.

d) Marked Departure from Regular Receipting Practice.

During the period under review, the Organization reported that it issued over \$9 million dollars in donation receipts. As noted in our AFL, in order to assess compliance with the ongoing registration requirements of the Act, the CRA selected a sample of 31 projects, conducted outside Canada, by 31 different partners, to analyze.

Out of the 31 projects/partners reviewed, the CRA found that the Organization entered into receipting arrangements with six unregistered organizations, allowing those organizations to raise and collect funds for their own projects, as detailed in Appendix 1.

<sup>21</sup> The email, entitled '████████', was sent from email address ██████████ to email address ██████████.

<sup>22</sup> Who was also present during our 2014 audit interview.

In this regard, we note that the audit did not find this tax-receipting arrangement with the other 25 unregistered organizations/projects that were included in our sample analysis.

The audit also found that the Organization advised three out of the six unregistered organizations that it was deducting a 5% fee from the funds raised and received in order to allow the Organization “to cover administrative costs of channeling funds.” We note the following examples<sup>23</sup>:

- [REDACTED] - In an email,<sup>24</sup> dated January 25, 2012, the Organization advises the [REDACTED] of the following: “We will be sending the full amount of \$74,800 but would like to advise you that for all following transfers, HCI will be taking off 5% to cover the administration costs of channelling the funds.”
- [REDACTED] - In an email, dated November 19, 2012, the Organization writes the following to [REDACTED]: “It was wonderful talking to you. As agreed, we will channel 39K to [REDACTED] (35K which you said we have with us for this project and 4K as advance from us). This shortfall will be covered later from the funds which you will send us. We will also deduct 5% for administration from the total funds received by us and channeled [sic] to Bangladesh.

However, and similar to above, our audit did not find any evidence to suggest that the Organization charged the other 28 unregistered organizations, that were included in our sample analysis, an administrative fee.

Given the above, the audit found that the Organization’s receipting practices were not in line with the requirements of the Act and the Organization’s conduct in this regard and its marked departure from the other 28 unregistered organizations/projects the CRA analysed suggests that this 5% fee is a fee for service.

e) The Organization’s Response to the CRA’s AFL.

The Organization did not dispute the audit findings that:

- it provided individuals and unregistered organizations with temporary receipt books/acknowledgement receipt books;
- the unregistered organizations collected funds from their donors that were intended to support their own activities;
- the unregistered organizations deposited the funds into the Organization’s bank accounts and provided the Organization with a list of donor names for tax receipting purposes; and

---

<sup>23</sup> See Appendix 1.

<sup>24</sup> The email, entitled “RE: HCI 2011 change to final list of donors,” was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED]

- the Organization transferred the funds back to the non-qualified donees and issued official donation receipts for the funds, in some instances charging the unregistered organizations an administrative fee for processing the funds.

In response to the CRA's concerns regarding the third party receipting scheme and proposed penalty under subsection 188.1(9) of the Act, as set out in the AFL, the Organization advised that it:

“...uses various approaches to fundraising. This can include working with individuals and groups that are connected to the communities in which the project will occur. The [Organization] may appoint these individuals and groups as volunteers to promote the [Organization]'s mission, objectives, and to appeal to their contacts, membership and audience on behalf of the [Organization]. In some cases, funds are collected by these individuals and groups on behalf of the [Organization] and are then forwarded to the [Organization]. This is a common practice for many registered charities, and CRA has specifically recognized it in Charity Policy Commentary CPC-026 Third Party Fundraisers.”

The CRA's Policy Commentary CPC-026 – Third Party Fundraisers – states that a registered charity can enroll a third party organization or retain a fundraiser or other contractor as an agent to organize a fundraising event for the benefit of the charity. However, the charity should maintain control over all monies that are earned as part of the event, and over the receipts that are issued for part of these monies.<sup>25</sup> In this regard, the first paragraph of the guidance states: “Under the Income Tax Act, registered charities can issue official donation receipts to donors for gifts. This tax-receipting privilege is not to be casually farmed out to third parties, even if some of the resulting funds will be flowing back to the charity”.

We do not dispute that some individuals and/or others were appointed by the Organization to collect funds, which the Organization has called third party fundraisers. However, it is our view that the Organization knowingly entered into arrangements to issue official donation receipts for gifts that were intended for the projects/activities of six unregistered organizations. Consequently, we are unable to accept your representation that these six unregistered organizations, were third party fundraisers acting on behalf of and for the benefit of the Organization. The audit found that the funds were collected by the six unregistered organizations with the pre-determined intention to funnel the monies to these unregistered organizations for their programs.

In addition, the arrangement to charge some of the unregistered organizations a 5% administrative fee from the amounts raised is not typical for third party fundraisers. Rather, it is the third party fundraiser who would normally take a fee from the amounts raised.

---

<sup>25</sup> <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-commentary-026-third-party-fundraisers.html>

We would also note that the Organization failed to report on its T3010s for the 2012 and 2013 audit period that it engaged any external fundraisers, nor did it report any gross revenue collected by the fundraisers on behalf of the charity.<sup>26</sup>

While we have considered the Organization's representations<sup>27</sup> that this scheme was an acceptable part of its fundraising practices, it remains our position that these funds were collected on behalf of unregistered organizations, were merely passed through the Organization's bank accounts, and ultimately paid to these unregistered organizations for their own projects.<sup>28</sup>

With respect to the examples provided in Appendix 1 of this letter, the Organization claims that it raised funds for projects that it decided to conduct through intermediaries, over which it sought to maintain direction and control. In this regard, the Organization provided limited documentation in support of the activities conducted by the six unregistered organizations. However, the documentation provided does not demonstrate that the Organization directed and controlled the activities. We note the following<sup>29</sup>:

- The Organization provided the CRA with copies of unexecuted written agreements, in that none of the agreements provided were signed by a representative of the unregistered organizations;
- The Organization provided the CRA with copies of written agreements that did not cover the period under audit;
- The Organization provided the CRA with copies of images that promoted projects that do not appear to correlate with the basic program areas outlined in the written agreements provided; and
- The Organization provided the CRA with copies of trip reports however, our review of these reports found that they appear to describe the activities of the unregistered organizations and not that of the Organization.

Based upon our audit findings, it is our view that the Organization did not maintain direction and control over the use of its resources relating to the activities undertaken by the six unregistered organizations.

---

<sup>26</sup> The Act is a self-reporting and self-assessing tax system which depends upon the honesty and integrity of the taxpayers for its success. In this regard, it is the responsibility of a registered charity to ensure that the information provided to the CRA in its Registered Charity Information Return, schedules and statements, is factual and complete in every respect, including the information and records upon which the Return is founded. See *R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627 at p. 636. See also subsections 230(2) and 230(4) of the Act for the requirement to maintain adequate books and records and the Income Tax Regulations section 3500 for donation receipt requirements.

<sup>27</sup> The Organization's response to the AFL, dated October 1, 2018.

<sup>28</sup> It is apparent in various emails sent to the Organization, where the non-qualified donees are directing the Organization to "immediately" transfer funds to their accounts, that they felt entitled to these funds through prior arrangements. It is our position that the funds passed through the Organization's bank accounts in an attempt to obscure the actual recipient of the donations, which are not qualified donees. In some instances, the Organization informed the unregistered organizations that it will retain a 5% administrative fee for processing and channeling the funds to the unregistered organizations.

<sup>29</sup> See Appendix 1.

Consequently, it remains our position that by entering into third party receipting arrangements to assist unregistered organizations in issuing \$307,841 in donation receipts further to subsections 110.1(2) or 118.1(2) of the Act, for gifts not intended for the Organization, the Organization made and/or participated in making statements on its official donation receipts that it knew, or would be reasonably expected to know but for reasons amounting to culpable conduct, were false.

### **Penalty assessment**

The penalty<sup>30</sup> assessed by the CRA is calculated as follows:

	<b>Fiscal Period Ending March 31, 2012</b>	<b>Fiscal Period Ending March 31, 2013</b>	<b>Total</b>
Amount of donation receipts issued – third party receipting	\$221,440	\$86,401	\$307,841
Penalty applied in accordance with subsection 188.1(9)	125%	125%	125%
Total penalty owing as per subsection 188.1(9)	\$276,800	\$108,001	\$384,801

In accordance with subsection 189(6.3) of the Act, the penalty may be paid to an eligible donee as defined in subsection 188(1.3). An eligible donee in respect of a particular charity is a **registered charity**:

1. of which more than 50% of the members of the board of directors or trustees of the registered charity deal at arm's length with each member of the board of directors or trustees of the particular charity;
2. that is not subject to a suspension of tax-receipting privileges;
3. that has no unpaid liabilities under the Income Tax Act or the Excise Tax Act;
4. that has filed all its information returns; and
5. that is not subject to a security certificate under the Charities Registration (Security Information) Act.

The CRA requires the following documentation to confirm that the eligible donee received the penalty payment:

- a letter addressed to the Director, Review and Analysis Division (mail to address below), signed by an authorized representative of the eligible donee, confirming the penalty payment was received and the amount paid; and
- a copy of either the cancelled cheque or evidence of a non-cash transfer.

---

<sup>30</sup> As noted above, this penalty amount could have been higher if the CRA would have reviewed all projects undertaken during the audit period, rather than a sample size.

Should you choose instead to make your payment to the CRA, please make the cheque payable to the Receiver General for Canada and mail it to:

Director  
Review and Analysis Division  
Charities Directorate  
Canada Revenue Agency  
320 Queen Street, 4<sup>th</sup> Floor  
Ottawa ON K1A 0L5

Please note that in accordance with subsection 149.1(1.1) of the Income Tax Act, the penalty payment made to an eligible donee shall not be deemed to be an amount expended on charitable activities nor a gift made to a qualified donee.

Failure to pay this penalty amount or make arrangements for payment will result in us reconsidering our decision not to proceed with the issuance of a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

If you have any questions or require further information or clarification regarding the penalty payment, please contact [REDACTED] at [REDACTED]

## **SUSPENSION**

In addition, as the penalty under subsection 188.1(9) of the Act exceeds \$25,000, subsection 188.2(1) stipulates that a one-year suspension of the Organization's authorization to issue an official donation receipt and its qualified donee status must be applied.

In accordance with subsection 188.2(3) of the Act, for the duration of the Organization's suspension, the Organization:

- may not issue official donation receipts for gifts it received;
- must, before accepting a gift, inform the donor that it has received a notice of suspension and cannot issue an official donation receipt; and
- must, before receiving gifts from other registered charities, inform them that it is no longer a qualified donee as defined in the Act.

Please note that the Organization has **six (6) days** after the day this letter was mailed, to issue donation receipts for gifts it received prior to the suspension.

Failure to cease receipting will result in the CRA reconsidering its decision not to proceed with the issuance of a notice of intention to revoke the registration of the Organization in the manner described in subsection 168(1) of the Act.

Consequently, for each of the reasons mentioned in our letter dated May 24, 2018, we wish to advise you that, pursuant to subsection 188.1(9) and/or 188.2(1) of the Act, we propose to assess a penalty to the Organization and suspend the Organization's receipting privileges. The Organization's authority to issue an official donation receipt and its qualified donee status as defined by the Act are hereby suspended for one year beginning on July 14, 2021.

### **Appeal process**

Should you wish to appeal this notice of penalty and/or suspension of receipting privileges in accordance with subsection 165(1) and/or 168(4) of the Act respectively, a written notice of objection, which includes the reasons for objection and all relevant facts, must be filed **within 90 days** from the mailing of this letter. The notice of objection should be sent to:

Tax and Charities Appeals Directorate  
Appeals Branch  
Canada Revenue Agency  
250 Albert Street  
Ottawa ON K1A 0L5

In accordance with subsection 188.2(4) of the Act, an application to the Tax Court of Canada may be filed for a postponement of the portion of the suspension period that has not elapsed. The application can only be filed once the notice of objection to a suspension under subsection 188.2(2) has been filed by the Organization.

### **Public notice**

By virtue of paragraph 241(3.2)(g) of the Act, the following information relating to the Organization's penalty assessment and its suspension of receipting privileges and qualified donee status will be posted on the Charities Directorate website:

### **Penalty assessment**

Name of organization:	Human Concern International
Registration number:	107497125RR0001
Effective date of penalty:	July 7, 2021
Reason for penalty:	Issued receipts otherwise than in accordance with the Act and/or the Income Tax Regulations – False information
Act reference:	188.1(9)
Amount of penalty:	\$384,801

## Suspension

Name of organization:	Human Concern International
Registration number:	107497125RR0001
Effective date of suspension:	July 14, 2021
Reason for suspension:	Issued receipts otherwise than in accordance with the Act and/or the Income Tax Regulations – False information
Act reference:	188.2(1)
End date of suspension:	July 13, 2022
Postponement date, if applicable:	

We trust the foregoing fully explains our position.

Yours sincerely,



Tony Manconi  
Director General  
Charities Directorate

### Enclosures:

- Appendix 1 – Third Party Receipting
- CRA's Administrative Fairness Letter (AFL) dated May 24, 2018, and Appendix D
- Organization's response to the AFL, dated October 1, 2018, and Appendix D
- Notice of assessments – Fiscal year end March 31, 2012, and March 31, 2013

cc: Human Concern International  
877 Shefford Road, Unit 4  
Ottawa, ON K1J 8H9

## APPENDIX 1

### Human Concern International

#### **Third Party Receipting**

## **Appendix 1: Third Party Receipting**

According to our audit findings, Human Concern International (the Organization) issued official donation receipts for gifts intended for non-qualified donees. The audit found that the Organization entered into arrangements to assist six partner organizations with their fundraising efforts in Canada whereby the Organization issued official donation receipts for gifts intended for the partner organizations' own projects, a practice known as third party receipting.

This Appendix contains:

- a summary of the issues raised by the CRA in Appendix D of the Administrative Fairness Letter (AFL) dated May 24, 2018;
- a summary of the response provided to the CRA by the Organization, on October 1, 2018, in Appendix D of its letter; and
- the CRA's subsequent position.

1. [REDACTED]

### **Audit Observations**

In Appendix D of our AFL dated May 24, 2018, we advised that the audit found that the Organization issued donation receipts to donors who provided donations intended for the [REDACTED] a non-qualified donee. The Organization's records indicated that [REDACTED] (an [REDACTED] representative) had been given the authority to collect funds on behalf of the Organization, for [REDACTED] s projects. For example, on July 19, 2012, [REDACTED], the Organization's [REDACTED] at the time, wrote an email<sup>1</sup> to [REDACTED] stating:

"Please check the following authorization letter and let me know if it is OK.

To whom it may concern

This letter authorizes [REDACTED] to collect funds on behalf of Human Concern International (HCI). These funds will be collected for [REDACTED] [REDACTED] for educational projects. All funds collected by [REDACTED] will be recorded properly and sent to HCI. HCI will be responsible for channelling the funds to India and monitoring this project. HCI will also issue tax deductible receipts to donors who donate for this project."

[REDACTED] was provided with the Organization's acknowledgement receipts books in which he issues acknowledgement receipts to donors who donate towards [REDACTED]. He also deposits the collected funds into the Organization's bank accounts and sent a copy of the acknowledgement receipts to the Organization who then issues official donation receipts to the donors. For example:

<sup>1</sup> The email, entitled "Letter of Authorization," was sent from email address [REDACTED] to email address [REDACTED]

On February 18, 2012, [REDACTED] wrote an email<sup>2</sup> to the Organization stating:

“I have attached the donation 2011 list and the dates that I have deposited the money. [REDACTED] in 2011, we collected \$50,416. I have sent you every single bank slip and acknowledgement receipt. ... Please send me a new acknowledgement receipt book as soon as possible because mine is complete.”

The email contained two attachments - one was a list of bank deposits and the corresponding date the deposits were made and the other was a list containing the names of donors, their addresses, and the amounts donated toward [REDACTED].

Analysis of the Organization’s fiscal year ending March 31, 2012 (FY2012) donation records showed that most of the donors identified in the attachment to [REDACTED]’s February 18, 2012 email, received a donation receipt from the Organization for their contributions to [REDACTED] through [REDACTED]. In total, the Organization provided \$41,436 in donation receipts for gifts intended for [REDACTED] in FY2012.

On August 27, 2012, [REDACTED] wrote an email<sup>3</sup> to the Organization stating the following:

“I have completed 100 receipts. Today I am mailing out the list of donations as well as the bank deposit slips. Attached is the list of donors as well as the amounts...Also can you send one more receipt book asap...”

The email contained an attachment which provided cash deposit dates and a list of donor names, their addresses, and the amounts donated toward [REDACTED].

Analysis of the Organization’s fiscal year ending March 31, 2013 (FY2013) donation records showed that most of the donors identified in the attachment referred to above received donation receipts from the Organization for their contributions to [REDACTED] through [REDACTED]. The Organization provided \$38,986 in donation receipts for gifts intended for [REDACTED] in FY2013.

In another email<sup>4</sup>, dated November 30, 2012, [REDACTED] stated that he has “...attached the final deposit and calculations for 2012. If any more donations come in December, I will send it.” The email included an attachment which contained a copy of a bank deposit slip for \$685 and a list of donor names, addresses, and the amounts donated to [REDACTED].

Analysis of the Organization’s FY2013 donation records showed that most of the donors listed in the attachment to [REDACTED]’s November 30, 2012 email received donation receipts from the Organization for their contributions to [REDACTED] channelled through [REDACTED]. The Organization provided \$685 in donation receipts for gifts intended for [REDACTED] in FY2013.

<sup>2</sup> The email, entitled “[REDACTED]” was sent from email address [REDACTED] to the following email addresses: [REDACTED] and [REDACTED]

<sup>3</sup> The email, entitled “List of Donations,” was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED] and [REDACTED]

<sup>4</sup> The email, entitled “Final Donations: 2012,” was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED]

In total, for FY2013, the Organization provided \$39,671 in donation receipts for gifts intended for [REDACTED].

Once the funds were deposited by [REDACTED], he instructed the Organization to transfer the funds over to [REDACTED]. For example, on June 5, 2011, [REDACTED] sent an email<sup>5</sup> to the Organization where he summarized the funds that he has raised and requested that the Organization send all remaining funds to India.

Similarly, the Organization received an email<sup>6</sup> from [REDACTED] on March 3, 2012, where he requested that the Organization transfer \$10,000 to [REDACTED] “by this week,” and also requested a new set of receipt books for his 2012 fundraising efforts.

On August 27, 2012, the Organization received an email<sup>7</sup> from [REDACTED] informing them that he has completed a number of receipts and he requested a new receipt book from the Organization. He also informed the Organization that \$15,000 needed to be sent to [REDACTED] “as soon as possible.” [REDACTED] responded to [REDACTED] on August 28, 2012<sup>8</sup> stating “...as soon as the deposit slips and acknowledgement receipts are received by us, we will channel \$15,000 to India.”

As outlined above, the audit findings show that the Organization has entered into a third party receipting arrangement with [REDACTED] and [REDACTED]. [REDACTED] has been authorized to fundraise for [REDACTED] and issues acknowledgement receipts to donors who donate towards [REDACTED]’s projects, and then receive official donation receipts from the Organization.

In summary, the audit revealed that the Organization issued donation receipts for gifts intended for [REDACTED] in the amounts of \$41,436 for FY2012 and \$39,671 in FY2013.

#### Organization’s Representations

The Organization summarized the CRA’s concerns with respect to [REDACTED] and the fundraising conducted by [REDACTED].

The Organization claimed that it entered into agreements with [REDACTED] to carry out educational projects in India. In support of this, the Organization provided<sup>9</sup> three unexecuted agreements with [REDACTED] covering the period of May 15, 2012 to December 31, 2012. We note that the agreements were not properly executed as they were signed by only one party, [REDACTED].

<sup>5</sup> The email, entitled “[REDACTED]” was sent from email address [REDACTED] to the following email addresses: [REDACTED] and [REDACTED]

<sup>6</sup> The email, entitled “FW: [REDACTED]” was sent from email address [REDACTED] to the following email addresses: [REDACTED] and [REDACTED]

<sup>7</sup> The email, entitled “List of Donations,” was sent from email address [REDACTED] to the following email addresses: [REDACTED] and [REDACTED]

<sup>8</sup> The email, entitled “List of Donations,” was sent from email address [REDACTED] to email address [REDACTED]

<sup>9</sup> The Organization provided a copy of these agreements with its letter and submission dated October 1, 2018, at tab 211.

for the Organization, and did not contain signatures on behalf of [REDACTED]. The agreements are purportedly for two programs—Zabiha Program and Education Project.

The Organization claimed:

“The funds raised on behalf of the [Organization] and provided to [REDACTED] were pursuant to these agreements. This is an ongoing project in operation for many years, approved by the [Organization] in the manner that it approves other charitable projects.”

The Organization goes on to describe its fundraising method as follows:

“The [Organization] uses a diaspora method of fundraising, which means engaging third parties to assist it in reaching out to the [Organization]’s donor base. [REDACTED] was engaged by the [Organization] for this purpose. The [Organization]’s [REDACTED] issued him a letter authorizing to collect funds for this project, issue acknowledgement receipts, deposit funds in the [Organization]’s account and provide details about the donors to whom the [Organization] issued the tax receipts.”

The Organization referred to the same email of July 19, 2012, between [REDACTED] and [REDACTED], which the CRA referenced in Appendix D of the AFL, and advised:

“[REDACTED] maintained detailed records of all donations, using the methodology directed by the [Organization], to ensure that donations were accounted for properly.

Since the funds were raised and restricted for this particular project, as a matter of trust law they had to be disbursed by the [Organization] for this project. This would be true regardless of whether the funds were raised with third party assistance. Control of donations remained with the [Organization]. It is inaccurate to suggest that [REDACTED] “instructed” the [Organization] to transfer funds. He simply indicated, as a representative of [REDACTED] engaged in the delivery of the project on the [Organization]’s behalf, when funds were needed pursuant to the project agreement with the [Organization].

As such, the [Organization] did not issue receipts for funds donated to another organization. It simply engaged a third party to assist in raising funds for a project carried out through an intermediary as the [Organization]’s own activity.”

#### CRA’s Position

The information and supporting documentation provided by the Organization does not alleviate our concerns regarding the fundraising scheme used with respect to the funds collected by [REDACTED] and subsequently channelled to [REDACTED].

The Organization provided its position that [REDACTED] was authorized by the Organization to collect funds, issue acknowledgement receipts, deposit funds into the Organization’s bank account and provide details about the donors so that the Organization could issue official donation receipts. We do not dispute these facts. However, the Organization has not provided convincing documentation to support its claim that the “[c]ontrol of donations remained with the [Organization].” We do not agree with the Organization’s representation that [REDACTED] simply

indicated, as a representative of [REDACTED] when funds were needed pursuant to the project agreement with the Organization.

In regards to the authorization letter, the Organization stated that its [REDACTED] issued [REDACTED] the letter authorizing him to collect funds for educational projects. However, we note that rather than stating that the funds will be collected for the Organization, the authorization letter states that “these funds will be collected for [REDACTED] for educational projects.” [emphasis added]

The Organization engaged a representative of [REDACTED], [REDACTED] to raise and collect funds for [REDACTED]’s own projects.<sup>10</sup> However, we note that the audit did not find this arrangement with most of the other non-registered organizations/projects that were included in our sample analysis.<sup>11</sup> In our view, the Organization has received for a non-registered organization, effectively lending its registration number and corresponding tax-receipting privileges to a non-registered organization. The Organization ought to have known that it should not engage a third party organization to collect and raise funds intended to support that third party’s own projects.

In addition to the above, we provide the following comments to explain our continuing concerns:

The July 19, 2012, email between [REDACTED] and [REDACTED], which was addressed in both Appendix D of the AFL and the Organization’s representations of October 1, 2018, reads in part:

“[The Organization] will be responsible for **channelling the funds** to India and monitoring this project. [The Organization] will also issue tax deductible receipts to donors who donate for this project.” [emphasis added]

Our concern raised in the AFL was that the Organization was channelling funds to [REDACTED] for [REDACTED]’s own programs. The Organization does not appear to dispute the fact that it channelled funds to [REDACTED].

We turn our attention to the documentation provided in support of the activities conducted by [REDACTED]; namely, the copies of unexecuted agreements. Our review of these agreements revealed the following:

- None of the agreements were signed by [REDACTED]’s representative, even though that representative is listed as [REDACTED]. As noted above, [REDACTED] is purported to be working in dual roles as a fundraiser for the activities undertaken and the representative of [REDACTED]. The Organization claimed that the funds were raised and provided to [REDACTED]

<sup>10</sup> In its October 1, 2018 response to the AFL, the Organization represented that [REDACTED] is a representative of [REDACTED]. Further, the written agreements with [REDACTED] note [REDACTED] as the representative.

<sup>11</sup> As explained in our AFL, our sample analysis was based on 31 projects, conducted outside Canada, by 31 different partners. Out of the 31 projects/partners reviewed, the CRA found that the Organization engaged the representatives of 6 non-registered organizations to raise and collect funds for their own projects. These six non-registered organizations are part of the third party receipting scheme, as explained in this Appendix.

pursuant to these agreements, yet the Organization has failed to provide a copy of a signed agreement.

- The agreements contain almost no detail as to the specific activities undertaken. For example, the Organization only appears to be responsible for making funds available for the projects described as Zabiha Program and Education Project. With respect to [REDACTED]'s involvement, its responsibility appears to be limited to acknowledging receipt of funds, providing a report on how it used the funds, and agreeing to be in compliance with all applicable laws including anti-terrorism financing regulations.

We also advise that the existence of a written agreement is not enough to demonstrate that the Organization meets the own activities test. The Organization must be able to show that it has established a real, ongoing, active relationship with the intermediary and be in a position to provide supporting documentation to the CRA to demonstrate how its resources were expended.<sup>12</sup>

Our AFL advised that our analysis revealed that once [REDACTED] deposited the funds he collected, he instructed the Organization to transfer funds to [REDACTED]. Our AFL listed several emails in which [REDACTED] requested the following be sent to [REDACTED]:

- June 5, 2011—request to send all remaining funds;
- March 3, 2012—request to send \$10,000; and
- August 27, 2012—request to send \$15,000.

The Organization's [REDACTED], [REDACTED], responded to [REDACTED]'s August 27, 2012, email request for \$15,000 stating "...as soon as the deposit slips and acknowledgement receipts are received by us, we will channel \$15,000 to India."

The Organization has not provided any information or documentation to show how it directed and controlled the activities undertaken by [REDACTED]. To the contrary, it appears that [REDACTED] a representative of [REDACTED], entered into an arrangement with the Organization whereby he collected funds for the activities of [REDACTED] and routed the funds through the bank accounts of the Organization in order to obtain donation receipts for gifts to [REDACTED], as a non-qualified donee.

We do not accept the Organization's position that it is simply engaging a third party to raise funds for the Organization's own activity. It is our view that the Organization has been acting as a conduit and issuing receipts for funds intended to support the ongoing operations of a third party entity that is not a qualified donee. Therefore, it remains our position that the Organization issued donation receipts to donors who provided donations intended for [REDACTED], a non-qualified donee, in the amounts of \$41,436 for FY2012 and \$39,671 in FY2013.

---

<sup>12</sup> See notably Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] FCJ no 315 [Canadian Committee for the Tel Aviv Foundation].

### Audit Observations

The audit revealed that [REDACTED] projects were funded with the help of the Organization. [REDACTED] own documentation stated that it "...raise[s] funds using Human Concern International's (HCI) charitable number and we deposit all funds to HCI." [REDACTED] is not a qualified donee.

For example, [REDACTED], President of [REDACTED], sent an email<sup>14</sup> to the Organization on February 1, 2011, stating:

"[REDACTED] is very happy to establish direct partnership with HCI, our past 3 years experience with HCI has been very positive and I am sure that this will even strengthen our cooperation and communication. This will also enable to run our assistance programs in Somali more effective and reach those in need in time. Please find attached the requested documents and feel free to contact me if you have more questions."

The attachments to [REDACTED]'s email included the following documents:

- Banking and Address.doc
- By law [REDACTED].doc
- Revenue Canada – Business Number.doc
- [REDACTED].doc
- Registration.doc
- Organizational details.doc

The document, entitled "Organizational details," states the following under the "Funding support for sources" heading:

"Our funding comes from continuous fundraising effort of [REDACTED] volunteers in Canada and the Somali Diaspora around the world. Canadian and American donations go exclusively through Human Concern International."

In addition, and as noted above, in the same document, under the "Auditors and Audited statements" heading, it stated that [REDACTED] "...raise[s] funds using Human Concern International's (HCI) charitable number and we deposit all funds to HCI."

Moreover, [REDACTED]'s donation page on its website stated "to donate now please go to our partners website HCI."<sup>15</sup>

<sup>13</sup> It appears that the Organization uses the following acronyms to refer to the [REDACTED]  
[REDACTED]: [REDACTED] and [REDACTED].

<sup>14</sup> The email, entitled "Organizational documents," was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED].

<sup>15</sup> [REDACTED] website. Donate. [REDACTED] (Accessed 2018-01-16)

According to the information and documentation provided during the audit, when [REDACTED] receives donations from donors, it deposits the donations into the Organization's bank accounts. The Organization then provides official donation receipts to the donors and then, at [REDACTED]'s request, transfers a lump sum amount to [REDACTED] in support of its projects in Somalia. See the following examples.

On September 12, 2011, [REDACTED] sent an email<sup>16</sup> to the Organization stating that he has deposited the following funds:

- September 7, 2011, \$4,810.00
- September 10, 2011, \$1,826.00
- September 12, 2011, \$3,191.50
- September 12, 2011, \$5,000.00

For a total of \$14,827.50

Similarly, on September 15, 2011, [REDACTED] sent an email<sup>17</sup> to the Organization stating that the following funds have been deposited:

1. September 13, \$5,000.00
2. September 14, \$770.00

In the same email, he also stated that "the total deposit fund from September 07 to September 15 is  $14,827.50 + \$5,770.00 = \$20,597.00$ ."

The attachment to his email included a copy of a bank deposit slip for \$770 deposited into the Organization's bank account.

In another email,<sup>18</sup> dated December 20, 2011, [REDACTED] informs the Organization that [REDACTED] raised a total of \$14,150 and that they deposited \$10,640 into the Organization's bank account. The email contained a copy of the bank deposit slip for \$10,640.

On May 1, 2012, [REDACTED] sent an email<sup>19</sup> to the Organization stating:

"Please find attached a deposit slip from today of \$20,020.00. With the deposit of \$11,135.00 earlier, the total amount is **\$31,155.00** in the months of March to May. We will continue the fundraising and hope to be able to fund most of our programs in

<sup>16</sup> The email, entitled "Funds deposited," was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

<sup>17</sup> The email, entitled "FW: Funds deposited," was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

<sup>18</sup> The email, entitled "RE: Funds deposited," was sent from email address [REDACTED] to email address [REDACTED]

<sup>19</sup> The email, entitled "March-May 2012 deposits," was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

Somalia. Once again thanks for your support and cooperation, we really appreciated [sic].”

The email contained an attachment which was a copy of a bank deposit slip for \$13,500 USD and \$6,520 CAD deposited into the Organization’s bank accounts.

Once funds were deposited into the Organization’s bank account, [REDACTED] then requested the Organization to transfer the funds to [REDACTED]’s projects in Somalia. For example, on May 24, 2012, [REDACTED] sent an email<sup>20</sup> to the Organization stating:

“I have deposited \$5,000.00 dollars today, and there was around \$6,000.00 dollars on the HCI online deposit, that makes a total amount of **\$42,155.00**. As agreed during our last teleconference, I would like to request the release of 50% of the total budget for our projects; the ongoing, the construction of the [REDACTED] and enhancing the rural area schools. The fund needs now is as follows:

1. \$45,000.00 for [REDACTED]
2. \$15,000.00 for the ongoing projects and
3. \$14,500.00 for enhancing the rural area schools.
4. \$770.00 for the goats slaughtered as directed by [REDACTED].

The total fund for this phase is **\$75,190.00**.”

On May 24, 2012, the Organization responded, via email,<sup>21</sup> to [REDACTED] stating: “We will send all the funds requested, plus an additional \$4,730 for the new education initiatives to round it up to a total of \$80,000. If you can, please provide the remaining \$4,370 for that project.”

On May 24, 2012, the Organization transferred \$80,000 to [REDACTED].

According to the information and documentation received during the audit, when [REDACTED] received donations from donors, it provided acknowledgement receipts to the donors who then receive an official donation receipt from the Organization. For example, on November 14, 2012, [REDACTED] sent an email<sup>22</sup> to the Organization stating that he had attached receipts for April and July. In the attachment to his email, there was a copy of four donation acknowledgement receipts, which total \$12,420.

An analysis of the Organization’s FY2013 donation records showed that the donors, who received the acknowledgement receipts noted above, received official donation receipts from the Organization for their contributions to [REDACTED]. Based on the records provided, the audit revealed

<sup>20</sup> The email, entitled “Fund release,” was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED] and [REDACTED]

<sup>21</sup> The email, entitled “RE: Fund release,” was sent from email address [heidi@humanconcern.org](mailto:heidi@humanconcern.org) to email address [REDACTED]

<sup>22</sup> The email, entitled “receipt,” was sent from email address [REDACTED] to email address [REDACTED]

that the Organization issued \$12,420 in donation receipts for gifts intended for [REDACTED] in FY2013.

#### Organization's Representations

The Organization summarized CRA's concerns with respect to [REDACTED] raising funds using the Organization's charitable registration number to issue official donation receipts.

The Organization claimed that [REDACTED] is an intermediary of the Organization carrying out charitable activities on the Organization's behalf in Somalia. In support of this, the Organization provided<sup>23</sup> three unexecuted agreements with [REDACTED] covering the period of August 7, 2011 to September 6, 2011;<sup>24</sup> October 1, 2011 to November 30, 2011, and January 15, 2012 to June 30, 2012. The agreements were not properly executed as they were signed by only one party, [REDACTED] for the Organization, and did not contain signatures on behalf of [REDACTED].

The agreements are purportedly for three programs:

- to provide emergency relief aid in Somalia and Zabiha programs;
- support education project; and
- to provide emergency relief aid and scholarships in Somalia.

The Organization claimed that it did not allow [REDACTED] to use its registration number. The Organization advised that it "...works with [REDACTED], which is a Canadian non-profit organization, to assist in raising funds for the [Organization] to be used in projects conducted through [REDACTED] on behalf of the [Organization]."

The Organization further advised:

"[REDACTED] is a Canadian organization comprised of Somali diaspora who have in depth knowledge about the challenges (basic needs, poverty, illiteracy, clean water, etc.) facing the people of Somalia. The [Organization] encouraged individuals involved with [REDACTED] to become a part of the [Organization]'s core of volunteers and to assist the [Organization] in promoting and raising funds for the projects that the [Organization] has been undertaking in Somalia."

"The fact that the [Organization] uses [REDACTED] to assist it in raising funds does not imply that the [Organization] will carry out projects in Somalia using [REDACTED] as its exclusive agent."

The Organization then advised that in 2011, it was searching for an intermediary to work with in Somalia. The Organization explained that it originally sought to work with an organization called [REDACTED], but decided not to because [REDACTED] was unable to work in certain parts of Somalia. The Organization explained that it then looked for another partner to conduct projects

<sup>23</sup> The Organization provided copies of these agreements with its letter and submission dated October 1, 2018, at tab 213.

<sup>24</sup> The Organization provided a copy of four agreements; however, one of these covering the period of August 7, 2011, to September 6, 2011, was a duplicate.

in Somalia. The Organization asserted that it conducted its due diligence on [REDACTED] and entered into discussions with [REDACTED] personnel, which resulted in the Organization approving [REDACTED] as an intermediary.

The Organization advised:

- an officer of the Organization went to Somalia and had detailed discussions with [REDACTED] personnel;
- a board member of the Organization joined the officer to assess the Organization's emerging role in Somalia;
- in order to be present in Africa and further strengthen the Organization's direction and control, the Organization decided to open its own office in Hargeisa (HCI East Africa); and
- the Organization hired a liaison officer to oversee projects, conduct monitoring and evaluation visits as well as support the Organization's activities in other parts of Africa.

The Organization advised that [REDACTED], president of [REDACTED], is also a volunteer of the Organization who is helping the Organization raise funds for its projects in East Africa. The Organization claimed that "All funds raised were under the [Organization]'s control and were disbursed for charitable projects of the [Organization]." The Organization provided a copy of 10 images which it described as "...various photographs of the [Organization]'s projects in Somalia for which [REDACTED] assisted in raising funds."<sup>25</sup>

The Organization concluded by stating:

"Since the project activities undertaken were the [Organization]'s charitable activities, appropriate tax receipts were issued to donors to the [Organization] in support of these projects.

The [Organization] acknowledges that certain of the statements in the [REDACTED] documents and website are potentially misleading. These statements were made by [REDACTED] without the [Organization]'s consent. The [Organization] will discuss this issue with [REDACTED] to ensure that [REDACTED] clarifies its public statements regarding its role in supporting fundraising efforts for the [Organization]."

#### CRA's Position

The Organization does not appear to dispute the statements made by [REDACTED] in its documentation. Rather, the Organization claims that they are "potentially misleading" and that "these statements were made by [REDACTED] without the Organization's consent." However, we note that [REDACTED] sent these documents to the Organization on February 1, 2011. As documented in our AFL, [REDACTED] President of [REDACTED] sent an email<sup>26</sup> to the Organization on February 1, 2011, stating:

<sup>25</sup>The Organization provided copies of the images with its letter and submission dated October 1, 2018, at tab 214.

<sup>26</sup>The email, entitled "[REDACTED] documents," was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED]

‘[REDACTED] is very happy to establish direct partnership with HCI, our past 3 years experience with HCI has been very positive and I am sure that this will even strengthen our cooperation and communication. This will also enable to run our assistance programs in Somali more effective and reach those in need in time. Please find attached the **requested documents** and feel free to contact me if you have more questions.” [emphasis added]

As such, we don’t agree with the Organization’s representation that the statements in the documents were made without the Organization’s consent, when the Organization requested and received these documents. If the Organization reviewed the documents, it made no attempt to correct [REDACTED] and/or the documents at that time.

The audit found that when [REDACTED] receives donations from donors, it deposits the donations into the Organization’s bank accounts. The Organization then provides official donation receipts to the donors and then, at [REDACTED]’s request, transfers a lump sum amount to [REDACTED] in support of its projects in Somalia. Appendix D of our May 24, 2018 AFL provided several examples of email communications from [REDACTED] to the Organization, along with supporting documentation, which confirmed [REDACTED]’s involvement in the collection and deposit of funds to the Organization’s bank accounts.

In its response, the Organization did not address our particular concerns raised in the AFL such as:

- [REDACTED]’s own documentation stating that it “raise[s] funds using Human Concern International’s (HCI) charitable number and we deposit all funds to HCI,”
- Documentation and emails from [REDACTED]’s president, [REDACTED], that describe the assistance program in Somalia as that of [REDACTED] and not the Organization, and advise that Canadian and American donations to [REDACTED] “...go exclusively through Human Concern International,”
- Emails from [REDACTED], [REDACTED]’s president, which showed he requested funds for projects, which he stated are those of [REDACTED] and not Organization. These included:
  - May 1, 2012 email that advised that [REDACTED] had deposited \$31,155 from March until May 2012 and stated “We will continue the fundraising and hope to be able to fund most of **our programs** in Somalia. Once again thanks for your support and cooperation, we really appreciate it.” [emphasis added]
  - May 24, 2012 email that advised that [REDACTED] deposited \$42,155 and stated “I would like to request the release of 50% of the total budget for **our projects**; the ongoing, the construction of [REDACTED] and enhancing rural area schools.” [emphasis added]
- An email dated May 24, 2012, from the Organization in response to [REDACTED] request confirming “We will send all the funds requested, plus an additional \$4,730 for the new education initiatives to round it up to a total of \$80,000. If you can, **please provide the remaining \$4,370 for that project.**” [emphasis added]

Rather, the Organization claims that it works with [REDACTED] and its president, [REDACTED], is a volunteer representative of the Organization. The only supporting

documentation provided were copies of the unexecuted written agreements and the 10 images described as various photographs of the Organization's projects in Somalia for which [REDACTED] assisted in raising funds.

Our review of these agreements revealed the following:

- None of the agreements were signed by [REDACTED]'s representative, even though that representative is listed as [REDACTED], who works in dual roles—president of [REDACTED] and purportedly as a fundraising volunteer of the Organization.
- The agreements contained almost no detail as to the specific activities undertaken. For example, the Organization only appears to be responsible for making funds available to [REDACTED], for emergency relief, education projects, university scholarships and transportation. With respect to [REDACTED]'s involvement, its responsibility appears to be limited to acknowledging receipt of funds, providing a report on how it used the funds, and agreeing to be in compliance with all applicable laws including anti-terrorism financing regulations.
- The agreements stated that [REDACTED] "...will ensure that funds are not used for any purposes." This statement is puzzling as it is unclear what [REDACTED] could use the funds for since the agreements restrict it from using funds for any purposes.

Furthermore, as noted in the AFL, the existence of a written agreement is not sufficient by itself to demonstrate a charity meets the own activities test. The charity must be able to demonstrate that the terms establish a real, ongoing, active relationship with the intermediary,<sup>27</sup> and are actually implemented.

Our review of the 10 images provided indicates that they are photographs of sponsorship signage that include the Organization's name among others. While some of the photographs appear to match the time period and activities referenced in the agreements provided, other images raise more questions than answers. In particular, some of the images provided do not appear to correlate with the basic program areas outlined in the agreements provided. For example, the photographs shown in images five and six contain signs with the Organization's name and the title "rebuilding of [REDACTED]" However, the agreements provided make no reference to this project.

In addition, the Organization engaged a representative of [REDACTED], [REDACTED] to raise and collect funds for [REDACTED]'s own projects. However, we note that the audit did not find this arrangement with most of the other non-registered organizations/projects that were included in our sample analysis.<sup>28</sup> In our view, the Organization has received for a non-registered organization, effectively lending its registration number and corresponding tax-receipting

<sup>27</sup> See notably Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] FCJ no 315 [Canadian Committee for the Tel Aviv Foundation].

<sup>28</sup> As explained in our AFL, our sample analysis was based on 31 projects, conducted outside Canada, by 31 different partners. Out of the 31 projects/partners reviewed, the CRA found that the Organization engaged the representatives of 6 non-registered organizations to raise and collect funds for their own projects. These six non-registered organizations are part of the third party receipting scheme, as explained in this Appendix.

privileges to a non-registered organization. The Organization ought to have known that it should not engage a partner organization to collect and raise funds for that partner's own projects.

We have considered the documentation provided by the Organization, and we must advise that the Organization has not demonstrated that the activities of [REDACTED] are actually activities of the Organization. While the Organization claimed [REDACTED] acted as its intermediary, none of the documentation provided supports this statement. Furthermore, the Organization has not provided any documentation to refute our findings that in FY2013, it issued \$12,420 in donation receipts for gifts intended for [REDACTED].

3. [REDACTED]

#### Audit Observations

The audit revealed that the Organization is issuing donation receipts to donors who provide donations intended for the [REDACTED], a non-qualified donee.

[REDACTED] is the Secretary General of the [REDACTED]<sup>29</sup> and [REDACTED] is "closely associated" with the [REDACTED]. On September 24, 2014, [REDACTED] sent an email<sup>30</sup> to [REDACTED], who was a new employee for the Organization at the time, stating the following:

"I am [REDACTED] from Calgary and I am closely associated with [REDACTED] in Kenya. I try and raise funds for needy children in Kenya for tuition fees and matters relating to betterment of educational facilities. **Most of the funds I remit to HCI by year end** except one cheque that will come directly from [REDACTED] in the amount of \$10,000 during October/November of this year. I am in the process of sending a few cheques in coming weeks. **I always send with complete details of donors names and addresses. Only forward funds to [REDACTED] once I authorize the transfer as it becomes easier to reconcile the remittances.** [emphasis added]"

[REDACTED]s email appears to show that he receives funding from donors, deposits the funding into the Organization's bank accounts, provides donor information to the Organization for the issuance of donation receipts and then, requests that the Organization transfer the funds to the [REDACTED]. The following examples further illustrate this arrangement.

On August 8, 2011, [REDACTED] sent an email<sup>31</sup> to the Organization stating that he is forwarding cheques from two donors which amount to \$3,000.

<sup>29</sup> [REDACTED] website.

<sup>30</sup> The email, entitled " [REDACTED] " was sent from email address [REDACTED] to email address [REDACTED]

<sup>31</sup> The email, entitled "Remit to HCI.doc," was sent from email address [REDACTED] to email address [REDACTED]

On November 2, 2011, [REDACTED] sent an email<sup>32</sup> to the Organization stating: "I am forwarding the final list of donors. My letter is self-explanatory. When all the funds are received please let me know and you can then forward all the funds at one go."

The attachment to this email contained an Excel document, which was dated November 2, 2011, and provided a list of donors, their addresses, and the amounts donated. The document stated that "this is the final list of donors for [REDACTED] for the year 2011." The list included a donation of \$60,000 from [REDACTED]

On December 6, 2011, [REDACTED] sent an email<sup>33</sup> to [REDACTED] stating that they received the \$60,000 cheque from [REDACTED] and that it was deposited into the Organization's bank account. [REDACTED] also stated that the Organization will channel all funds as one wire transfer, presumably to the [REDACTED]

An analysis of the Organization's FY2012 donation records show that the donors, who were recorded in the Excel document referenced above, received official donation receipts from the Organization for their contributions to the [REDACTED]. Based on the records provided, the audit revealed that the Organization issued \$70,100 in donation receipts for gifts intended for the [REDACTED], a non-qualified donee, in FY2012.

On December 14, 2012, [REDACTED] sent an email<sup>34</sup> to the Organization stating that he is enclosing the final list of funds collected in 2012 for the [REDACTED]. The email contained an attachment, which was an Excel document that provided a list of donors, their addresses, and the amounts donated. The Excel document is titled "[REDACTED] – Kenya Donors List for the Year 2012." The list of donations amounted to \$83,100 which is the same amount the Organization transferred to the [REDACTED] on December 21, 2012.

We also note that the Organization received a project proposal from the [REDACTED] for the \$83,100, which was dated 2012. The proposal included a description of the project which, in summary, stated that the funding will be used to provide school bursaries to poor and needy students in Kenya. The Organization also provided a copy of a written agreement for the funds (\$83,100) which was signed by both parties on December 20, 2012. It was our view that the Organization provided the CRA with the project proposal and written agreement in an attempt to make it appear as if the [REDACTED] was undertaking activities on behalf of the Organization. However, these documents do not demonstrate that the Organization effectively authorized, controlled, and monitored the project. Rather, the documentation appears to be maintained and provided in an effort to obfuscate the true nature of the transaction: namely, that the Organization issued donation receipts for funds intended for the [REDACTED]

<sup>32</sup> The email, entitled "HCl 2011 final list of donors.xls," was sent from email address [REDACTED] to email address [REDACTED]

<sup>33</sup> The email, entitled "HCl 2011 change to final list of donors.xls," was sent from email address [REDACTED] to email address [REDACTED]

<sup>34</sup> The email, entitled "2012 donations.xlsx," was sent from email address [REDACTED] to email address [REDACTED]

In addition, it also appears that the Organization retains a 5% administrative fee for processing the funds for the [REDACTED]. For example, in an email,<sup>35</sup> dated January 25, 2012, the Organization advises the [REDACTED] of the following: “We will be sending the full amount of \$74,800 but would like to advise you that for all following transfers, HCI will be taking off 5% to cover the administration costs of channelling the funds.”

An analysis of the Organization’s FY2013 donation records show that some donors, who were recorded in the Excel document referenced above in the December 14, 2012 email from [REDACTED] received official donation receipts from the Organization for their contributions to the [REDACTED]. The donation receipts they received matched to the amounts listed in the Excel document. Based on the records provided, the audit revealed that the Organization issued \$18,100 in donation receipts for gifts intended for the [REDACTED] in FY2013.

In summary, the audit revealed that the Organization issued donation receipts for gifts intended for the [REDACTED] in the amounts of \$70,100 for FY2012 and \$18,100 in FY2013.

#### Organization’s Representations

The Organization summarized the CRA’s concerns with respect to donations it received that were intended for the [REDACTED]

The Organization acknowledges our view that certain emails appear to show that individuals associated with the [REDACTED] received funds from donors, deposited them into the Organization’s bank accounts, and provided information to the Organization so that the Organization could issue official donation receipts. However, the Organization claims that the [REDACTED] is an intermediary of the Organization.

In support of this claim, the Organization referred to a copy of a 2012 project proposal and written agreement signed December 20, 2012, which we addressed in Appendix D of our AFL. The Organization claimed “Contrary to the CRA suggestion, these documents were not prepared to create a false impression that the [REDACTED] was engaged in work on the [Organization]’s behalf. In fact, the [REDACTED] was appointed by the [Organization] as a real intermediary to pursue an education project consistent with the [Organization]’s purposes.” In support of this claim, the Organization provided three images<sup>36</sup> which it claims are “pictures of students benefiting from this program.”

The Organization then described how [REDACTED] and [REDACTED] are members of the Kenyan diaspora and claimed that they are volunteers helping the Organization raise funds for this educational project. The Organization claimed that “Funds are disbursed after scrutinizing the progress of the project based on project reports and visits by the [Organization]’s personnel, as well as discussion with diaspora in Canada who are involved in supporting this project. Funds are donated to the [Organization] and belong to the [Organization] to support its projects.”

<sup>35</sup> The email, entitled “RE: HCI 2011 change to final list of donors,” was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED].

<sup>36</sup> The Organization provided copies of the images with its letter and submission dated October 1, 2018, at tab 215.

As for the 5% administration fee charged to [REDACTED] for channelling the funds, the Organization asserted:

“As for the ‘retention’ of 5% of the donated funds, there are always administration costs involved in undertaking projects and these costs are part of the [Organization]’s project related expenses. While the language in some communications could be read to suggest that it is an administrative fee retained for services provided to the [REDACTED], in fact the [Organization] is simply confirming that not all funds raised for the project will be transferred to the intermediary. The [Organization] has its own costs to meet in conducting and overseeing the project.”

The Organization stated that “All funds raised were under the [Organization]’s control and were disbursed for its projects. Since the project activities undertaken were the [Organization]’s charitable activities, the [Organization] issued official donation receipts for donations received by the [Organization].”

#### CRA’s Position

The Organization has not provided any new information or documentation to support its claim that activities conducted by [REDACTED] are its own. The only documentation submitted were three photographs, which are images previously provided to the CRA - copies of these photographs appear in the 2012 project proposal referenced in our AFL. The Organization refers to this 2012 proposal and December 20, 2012, signed agreement but provided no other documentation to alleviate the concerns raised in our AFL.

In particular, Appendix D of the AFL identified several emails between [REDACTED], [REDACTED] and representatives of the Organization, which appeared to show that money was being collected and deposited to the Organization’s bank account with the intention of channelling said funds to the [REDACTED] and allowing its donors to receive a donation receipt from the Organization. The Organization has not specifically addressed this concern, other than to claim it is not true.

Similar to the other arrangements above, the Organization engaged representatives of the [REDACTED], [REDACTED] and [REDACTED] to raise and collect funds for the [REDACTED]’s own projects. However, we note that the audit did not find this arrangement with most of the other non-registered organizations/projects that were included in our sample analysis.<sup>37</sup> In our view, the Organization has received for a non-registered organization, effectively lending its registration number and corresponding tax-receipting privileges to a non-registered organization. The Organization ought to have known that it should not engage a third party organization to collect and raise funds intended to support that third party’s own projects.

Furthermore, the Organization’s explanation of the 5% administration fee it charges the [REDACTED] for channelling funds to the project does not support the argument that this activity is

<sup>37</sup> As explained in our AFL, our sample analysis was based on 31 projects, conducted outside Canada, by 31 different partners. Out of the 31 projects/partners reviewed, the CRA found that the Organization engaged the representatives of 6 non-registered organizations to raise and collect funds for their own projects. These six non-registered organizations are part of the third party receipting scheme, as explained in this Appendix.

the Organization's own. If this was the Organization's own activity, it is unclear why it would hold back funds from its own fundraising efforts as administrative fees.

In its response to the AFL, the Organization explained that "there are always administration costs involved in undertaking projects and these costs are part of the [Organization]'s project related expenses", however, we note that the Organization did not inform most of the other non-registered organizations that the CRA analysed as part of our sample that it was deducting 5% "to cover administrative costs of channelling funds."<sup>38</sup>

As a result, our position remains that the Organization issued donation receipts for gifts intended for [REDACTED] in the amount of \$70,100 in FY2012 and \$18,100 in FY2013.

4. [REDACTED]

#### Audit Observations

The audit revealed that the Organization was issuing donation receipts to donors who provide donations intended for [REDACTED] a non-qualified donee. According to the information and documentation provided during the audit, when [REDACTED] receives donations from its donors, it deposits the funds into the Organization's bank accounts. The Organization then provides official donation receipts to the donors and, at [REDACTED] request, transfers the funds to [REDACTED]. The following examples further illustrate this arrangement.

[REDACTED] appears to be affiliated to [REDACTED]. For example, in one written agreement between the Organization and [REDACTED] [REDACTED] is identified as the President of [REDACTED]. In another written agreement, he is identified as the "finance director."

On July 22, 2011, [REDACTED] sent an email<sup>39</sup> to the Organization stating "Please find the last 2 deposit of [REDACTED] fund in your account."

Attachments to the email include a copy of two bank deposit slips, one for \$15,185 deposited on July 21, 2011 and the other for \$1,810, deposited on July 9, 2011.

On September 14, 2011, [REDACTED] sent an email<sup>40</sup> to the Organization stating that he has attached the deposit slip for \$26,255 which was deposited into the Organization's bank account. Attached to the email was a copy of the bank deposit slip of \$26,255, dated September 8, 2011. In addition, [REDACTED] also stated in the email that [REDACTED] is currently operating out of a rented property and that it has decided to purchase land and construct a building. He stated that the new land will cost approximately \$30,000 and that he has attached a

<sup>38</sup> As explained in our AFL, our sample analysis was based on 31 projects, conducted outside Canada, by 31 different partners. Out of the 31 projects reviewed, the CRA found 3 partners/projects where the Organization advised the non-registered organizations that it was retaining a 5% administrative fee "to cover the administration costs of channelling the funds." These three non-registered organizations ([REDACTED], [REDACTED] and [REDACTED]) are part of the third party receipting scheme, as explained in this Appendix.

<sup>39</sup> The email, entitled "RE: [REDACTED] – Fund Deposit," was sent from email address [REDACTED] to email address [REDACTED].

<sup>40</sup> The email, entitled "New commitment for [REDACTED] to purchase the land," was sent from email address [REDACTED] to email address [REDACTED].

draft commitment letter for the Organization's approval. He stated that the Organization should sign and mail this document back to him and that he will send the Organization a project proposal once the letter is approved by the "NGO affairs bureau."

On September 16, 2011, the Organization sent an email<sup>41</sup> to [REDACTED] stating that [REDACTED] has signed the commitment letter and also that "this commitment will be valid only when you channel the amount \$30,000 for our commitment to us." The attachment to the Organization's email includes a copy of the signed commitment letter.

On September 30, 2011, [REDACTED] sent an email<sup>42</sup> to the Organization stating that the "NGO affairs bureau" approved the commitment letter for the \$30,000 to purchase land. He also stated that "As per my knowledge, you should have that fund in our account, if not, please let me know how much we owe you and we will deposit it on your account at next week. [sic]"

On October 1, 2011, [REDACTED] responds, via email,<sup>43</sup> to [REDACTED] stating that [REDACTED] the Organization's [REDACTED] at the time, will send him an agreement to sign and that the Organization will channel the total funds [REDACTED] has remaining with the Organization. [REDACTED] also stated that they will send \$30,000 but will get back any extra funds needed to cover the Organization's 5% administrative costs. As such, it appears that the Organization retains an administrative fee for processing the funds for [REDACTED]

On October 3, 2011, [REDACTED] sent an email<sup>44</sup> to [REDACTED] stating that she has attached the agreement; however, she does not know the project details without the proposal.

[REDACTED] responds to her email<sup>45</sup> on October 3, 2011, stating that the funds are for the purchase of the land. He also attached a copy of the signed agreement to his email.

On November 25, 2011, [REDACTED] sent an email<sup>46</sup> to the Organization stating that he has attached the land registration deed for the Organization's released fund of \$29,500 in September 2011. The attachment to the email includes a copy of the deed.

On December 4, 2011, a donor sent an email<sup>47</sup> to [REDACTED] asking for his " [REDACTED] receipt for taxation purpose." [REDACTED] replies on the

---

<sup>41</sup> The email, entitled "New commitment for [REDACTED] to purchase the land," was sent from email address [REDACTED] to email address [REDACTED]

<sup>42</sup> The email, entitled "Fund release for [REDACTED] in Bangladesh," was sent from email address [REDACTED] to email address [REDACTED]

<sup>43</sup> The email, entitled "Fund release for [REDACTED] in Bangladesh," was sent from email address [REDACTED] to email address [REDACTED]

<sup>44</sup> The email entitled "RE: Fund release for [REDACTED] in Bangladesh," was sent from email address [REDACTED] to email address [REDACTED]

<sup>45</sup> The email, entitled "RE: Fund release for [REDACTED] in Bangladesh," was sent from email address [REDACTED] to email address [REDACTED]

<sup>46</sup> The email, entitled "[REDACTED] Expense report for your fund released on Sept 2011," was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED]

<sup>47</sup> The email, entitled "[REDACTED]" was sent from email address [REDACTED] to email address [REDACTED]

same day asking the donor to provide his home address to mail the receipt. The donor replies with his home address and stated that he has given three donations valued at \$360, \$1,000, and \$360. [REDACTED] then forwarded the email to the Organization<sup>48</sup> requesting the Organization to “mail his tax receipt” at the address given.

On February 8, 2012, [REDACTED] sent an email<sup>49</sup> to the Organization stating “We are running out of HCI receipt book and Deposit book. Could you please mail US 10 receipt books and 2 deposit books at the following address...” In the same email, [REDACTED] has attached a copy of a bank deposit slip for \$370 and states that it is for receipt number [REDACTED] and a copy of another bank deposit slip for a \$1,000 donation.

On July 11, 2012, Mr. [REDACTED] sent an email<sup>50</sup> to the Organization stating the following “Please find attached credit card payment at [REDACTED] annual fund raising dinner, July 7/2012...” The attachments include completed donation pledges from various donors. The donation pledge templates state that the donor: “...authorize my financial institution to transfer \$XXX from my/our account to [REDACTED] partner, Human Concern International, Canada beginning date XXX. I/we have attached a void check or credit card info with this pledge form.”

On November 23, 2012, [REDACTED] sent an email<sup>51</sup> to the Organization stating that he has attached two deposit slips and an auto withdrawal of credit card. The attachments to his email included: a copy of bank deposit slips of \$3,460 and \$3,810, both dated September 6, 2012, a copy of a bank deposit slip of \$2,000, dated October 11, 2012, the Organization’s completed acknowledgement donation receipts and donation pledges. As noted above, the donation pledges state that the donations will go to the Organization. As per the acknowledgement donation receipts, most of them stated that the donation is for “[REDACTED]” Subsequently, on November 26, 2012, the Organization transferred \$39,000 to [REDACTED].

An analysis of the Organization’s FY2013 donation records show that the donors who received acknowledgement receipts from [REDACTED] received official donation receipts from the Organization for their contributions to [REDACTED] In FY2013, the Organization issued \$8,010 in donation receipts for gifts intended for [REDACTED]

In addition to the above, we also note that [REDACTED] donation webpage linked to the Organization’s website for credit card donations.<sup>52</sup>

---

<sup>48</sup> The email, entitled “RE: [REDACTED]” was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED], and [REDACTED].

<sup>49</sup> The email, entitled “Donation update from [REDACTED] Bangladesh,” was sent from email address [REDACTED] to email address [REDACTED].

<sup>50</sup> The email, entitled “[REDACTED] Fund,” was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED] and [REDACTED].

<sup>51</sup> The email, entitled “RE: [REDACTED] Fund balance at HCI on Nov.22, 2012,” was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

<sup>52</sup> [REDACTED] website. *Collaborators.* [REDACTED] (Accessed January 17, 2018)

Given the above, it appears that the Organization entered into a third party receipting scheme with [REDACTED] by issuing donation receipts to donors who provide donations intended for [REDACTED]

#### Organization's Representations

The Organization summarized the CRA's concerns with respect to donations collected that were intended for [REDACTED].

The Organization claimed that “[REDACTED] is based in Srinagar, Munshigonj in Bangladesh. A committee of Bangladeshi diaspora helped the [Organization] to raise funds for an education and skilled training project carried out by [REDACTED] on the [Organization]'s behalf.”

The Organization provided<sup>53</sup> a copy of two signed agreements between itself and [REDACTED], which were both executed after the audit period.<sup>54</sup>

The Organization made the following claims:

- a committee of Bangladeshi diaspora helped the Organization to raise funds for an education and skilled training project carried out by [REDACTED] on the Organization's behalf;
- the diaspora group was engaged as third party fundraisers and provided acknowledgement receipts;
- the group has been authorized by the Organization to raise and deposit the funds into the Organization's account as well as provide details about the donors contributing for this project; and
- tax receipts are issued for donations received by the Organization.

The Organization also explained that the government of Bangladesh (NGO Bureau) requires the funding commitments in advance in order to approve the receipt of foreign funds by intermediaries registered in Bangladesh. Funds are disbursed after receiving the NGO Bureau's approval.

The Organization advised:

“Periodic project visits were undertaken by [the Organization's] personnel (Financial Officer, Fundraising/Communication Officer) as well as volunteers from the diaspora to review this particular project and other projects in Bangladesh.”

In support of this claim, the Organization provided<sup>55</sup> an email and trip itinerary of the Organization's Communications Officer. The trip itinerary is dated January 2012 and is titled “Visit Report.” The report describes the experience of [REDACTED], Event and

---

<sup>53</sup> The Organization provided copies of these agreements with its letter and submission dated October 1, 2018, at tab 216.

<sup>54</sup> The written agreements are dated April 24, 2013 and September 12, 2013.

<sup>55</sup> The Organization provided copies of these documents with its letter and submission dated October 1, 2018, at tab 217.

Communication Officer. The itinerary was attached to a chain of emails from November 19, 2012 to December 18, 2012. One of these emails, dated November 19, 2012 from [REDACTED] the Organization's [REDACTED] to [REDACTED] president of [REDACTED] read:

“It was wonderful talking to you. As agreed, we will channel 39K to [REDACTED] (35K which you said we have with us for this project and 4K as advance from us). This shortfall will be covered later from the funds which you will send us. We will also deduct 5% for administration from the total funds received by us and channeled [sic] to Bangladesh. [emphasis added]

As I told you, [REDACTED], our Events and Communications Officer is currently in Bangladesh. We are arranging visits for her to various projects funded and/or supported by us. One such project is [REDACTED] [REDACTED] I am glad that you have agreed to facilitate her visit to this very important project. Please advise your office in Bangladesh to contact her. She can be reached through the above email address.”

The Organization's response concluded with its position that:

“Funds raised are designated and restricted for this particular project and must be disbursed on an instalment basis as per project needs and its progress. The control of the disbursement of funds remained with the [Organization]. This is an ongoing project of the [Organization] which was initiated years ago. It was entirely appropriate of the [Organization] issue official donation receipts to donors to the [Organization] in support of this project.”

#### CRA's Position

The two signed written agreements provided by the Organization in its submission were executed after, and did not cover, the period under audit. Additionally, the agreements contain almost no detail as to the specific activities undertaken. For example, the wording in the agreements suggests that the Organization's role is “...to provide support to the [REDACTED] [REDACTED]” and defines the Organization's responsibility as being limited to making specific dollar amounts available to [REDACTED] (\$37,150 in the April 24, 2013 agreement and \$32,500 in the September 12, 2013 agreement). With respect to [REDACTED] involvement, its responsibilities appear to be limited to acknowledging receipt of funds, providing unspecified services to the community, providing a report on the activities of the centre, and agreeing to be in compliance with all applicable laws including anti-terrorism financing regulations.

Additionally, as noted above, the existence of a written agreement is not enough to prove that a charity meets the own activities test. The charity must be able to show that the terms establish a real, ongoing, active relationship with the intermediary,<sup>56</sup> and are actually implemented.

---

<sup>56</sup> See notably Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] FCJ no 315 [Canadian Committee for the Tel Aviv Foundation].

The Organization has not addressed the concerns raised in our AFL and the numerous emails we identified that appear to show [REDACTED] president of [REDACTED], collecting funds intended to support the activities of [REDACTED] and routing the funds through the Organization's bank account with the intention to:

- obtain an official donation receipt for the donors; and
- channel the funds to [REDACTED] for its own programs.

While we do not dispute the Organization's claims that it provided acknowledgement receipts to third parties, agreed to accept donations into its bank account and issue receipts to the donors, the Organization has not alleviated our concern that funds were collected on behalf of [REDACTED] and used for [REDACTED] own program - the [REDACTED]

The email communications identified in our AFL clearly identified that [REDACTED], president of [REDACTED], was collecting and depositing funds into the Organization's bank account. The emails also showed that [REDACTED] directed the Organization to channel funds to [REDACTED] and that both parties were aware of the 5% administration fee being applied for this service. The emails and most of the acknowledgement donation receipts issued by these third party fundraisers also showed that donations were for "[REDACTED]." Further, Appendix D of our AFL noted the following emails:

On September 16, 2011, the Organization sent an email<sup>57</sup> to [REDACTED] stating that [REDACTED] has signed the commitment letter and also that **this commitment will be valid only when you channel the amount \$30,000 for our commitment to us.** [emphasis added] The attachment to the Organization's email included a copy of the signed commitment letter.

On September 30, 2011, [REDACTED] sent an email<sup>58</sup> to the Organization stating that the "NGO affairs bureau" approved the commitment letter for the \$30,000 to purchase land. He also stated that "[a]s per my knowledge, **you should have that fund in our account. If not, please let me know how much we owe you and we will deposit it on your account next week.**" [emphasis added]

The Organization has not addressed why the emails indicate that the Organization was asking [REDACTED] for the \$30,000 to cover the purchase of the land or why [REDACTED] reply revealed that if the \$30,000 is not already in the Organization's bank account, it will "deposit it on your account next week."

In regards to the 5% fee, the Organization explained that "there are always administration costs involved in undertaking projects and these costs are part of the [Organization]'s project related expenses", however, we note that the Organization did not inform most of the other non-

---

<sup>57</sup> The email, entitled "New commitment for [REDACTED] to purchase the land," was sent from email address [REDACTED] to email address [REDACTED]

<sup>58</sup> The email, entitled "Fund release for [REDACTED] in Bangladesh," was sent from email address [REDACTED] to email address [REDACTED]

registered organizations, included in our sample analysis, that it was deducting 5% “to cover administrative costs of channelling funds.”<sup>59</sup>

In addition, the Organization has not addressed the July 11, 2012, email<sup>60</sup> from [REDACTED] where [REDACTED] is informing the Organization that he has attached the completed donation pledges he received from the July 7, 2012 “[REDACTED] annual fund raising dinner”. [emphasis added]

Similarly, the Organization has not provided a response regarding why a donor contacted [REDACTED] [REDACTED] asking for his donation receipt, instead of contacting the Organization.

Furthermore, our review of the itinerary report provided by the Organization’s event and communication officer, [REDACTED] found that her report and the emails describe the [REDACTED] and its programs to be those of [REDACTED] and not that of the Organization. For example,

- the “Project background” described the activities of [REDACTED] and not that of the Organization.
- [REDACTED] noted that she suggested that [REDACTED] migrate from a paper to digital record keeping system after reviewing its books, which indicates that the records she reviewed are those of [REDACTED] and not the Organization.
- [REDACTED] described her input to [REDACTED] by making a “...recommendation that there should be more colour, pictures, art, maps, historical charts etc. in each classroom which were very dull and dark.” [REDACTED] report cited her recommendation “...to make [the skill development facility’s embroidery work an] income generating project by marketing and selling these products.” [REDACTED] wrote that [REDACTED] “...welcomed the idea and will try to implement it.” It appears from these descriptions that the Organization does not have direction and control over the activities; rather, it merely provides suggestions to [REDACTED]
- [REDACTED] report concluded with the recommendation that the Organization continue to support this project and wrote “And if [the Organization] is able to raise more funds, then [the Organization] should consider these new factors into the project implementation in the near future.” It would appear that the factors she was referring to were her recommendations for digital record keeping, more colour in the classrooms, and implementing an income generating project.

---

<sup>59</sup> As explained in our AFL, our sample analysis was based on 31 projects, conducted outside Canada, by 31 different partners. Out of the 31 projects reviewed, the CRA found 3 partners/projects where the Organization advised the non-registered organizations that it was retaining a 5% administrative fee “to cover the administration costs of channelling the funds.” These three non-registered organizations ([REDACTED], [REDACTED] and [REDACTED]) are part of the third party receiving scheme, as explained in this Appendix.

<sup>60</sup> The email, entitled “[REDACTED] Fund,” was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED] and [REDACTED].

Also, the email chain included with the itinerary submission<sup>61</sup> did not alleviate our concerns that funds were being raised for [REDACTED] programs and not those of the Organization. As noted above, the communications advised:

- the Organization agreed to channel \$39,000 to [REDACTED];
- the Organization was to deduct 5% for administration from the total funds received by the Organization and channelled to Bangladesh; and
- the Organization has “...some sort of role in this as small as it is.”

The Organization engaged a representative of [REDACTED] to raise and collect funds for [REDACTED] own projects. However, we note that the audit did not find this arrangement with most of the other non-registered organizations/projects that were included in our sample analysis.<sup>62</sup> In our view, the Organization has received for a non-registered organization, effectively lending its registration number and corresponding tax-receipting privileges to a non-registered organization. The Organization ought to have known that it should not engage a third party organization to collect and raise funds intended to support that third party’s own projects.

The information and documentation provided in the Organization’s response to our AFL does not alleviate our concern that it issued official donation receipts to donors who channelled funds to [REDACTED] through a third party receipting scheme. The Organization’s claim that the [REDACTED] is an ongoing project it initiated years ago is not supported by the records we were provided. Therefore, it remains our position that the Organization issued \$8,010 in donation receipts for gifts intended for [REDACTED].

## 5. [REDACTED]

### Audit Observations

The audit revealed that the Organization facilitated gifts to [REDACTED] and issued donation receipts to donors who provided donations intended for [REDACTED], a non-qualified donee. It appears that [REDACTED] collects funds from donors for its programs, issues acknowledgement receipts to the donors, deposits the funds collected into the Organization’s bank accounts, and then requests that the Organization transfer the funds to [REDACTED]. The following examples from the audit evidence our position.

[REDACTED] appears to be the Canadian representative for [REDACTED]<sup>63</sup> On February 11, 2012, [REDACTED] sent an email<sup>64</sup> to the Organization stating:

<sup>61</sup> The Organization provided copies of these documents with its letter and submission dated October 1, 2018, at tab 217.

<sup>62</sup> As explained in our AFL, our sample analysis was based on 31 projects, conducted outside Canada, by 31 different partners. Out of the 31 projects/partners reviewed, the CRA found that the Organization engaged the representatives of 6 non-registered organizations to raise and collect funds for their own projects. These six non-registered organizations are part of the third party receipting scheme, as explained in this Appendix.

<sup>63</sup> The written agreements between the Organization and [REDACTED] identify [REDACTED] as the Canadian representative for [REDACTED]. He is the signatory for [REDACTED] on the agreements.

<sup>64</sup> The email, entitled “Re: [REDACTED] RURAL PROJECT,” was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED].

“I am sending herewith three receipts for the total amount of \$10,000 received for [REDACTED] rural projects. I am also forwarding [REDACTED] 3 receipts of deposits of \$10,000 in HCI accounts. Kindly send full amount at once \$10,000 directly to [REDACTED] bank account for the rural project ASAP.”

The email contains attachments that include a copy of bank deposit slips, which were deposited into the Organization’s bank account. The deposits are as follows:

- |                    |                 |
|--------------------|-----------------|
| • January 17, 2012 | \$3,300         |
| • January 21, 2012 | \$3,900         |
| • January 26, 2012 | <u>\$2,800</u>  |
| Total              | <u>\$10,000</u> |

The email also contained another attachment which included a copy of three donation acknowledgement receipts for donations made to the Organization. The “comments” box on the acknowledgement receipts for all three stated “[REDACTED] Rural Project.” The three acknowledgement receipts total \$10,000.

An analysis of the Organization’s FY2012 donation receipt records showed that the donors, who were given donation acknowledgement receipts referenced above, received official donation receipts from the Organization for their contributions to [REDACTED]. The acknowledgement receipt numbers matched to the donation receipts listed in the Organization’s receipting database. Based on the records provided, the audit revealed that the Organization issued \$10,000 in donation receipts for gifts intended for [REDACTED] in FY2012.

On February 17, 2012, [REDACTED] sent an email<sup>65</sup> to [REDACTED] stating that the Organization has sent the \$10,000 as requested plus an additional \$4,000 for the month of March to [REDACTED]. The attachment to her email included the [REDACTED] outgoing payment transfer for \$14,000 to [REDACTED] sent on February 17, 2012.

We would also comment that the written agreements between the Organization and [REDACTED] all include the following statement, albeit the time period is different:

“For its part, HCI agrees to make available to [REDACTED] C\$4,000 per month for a time period of November 2012, through October 2013. **The monthly transfer is contingent upon deposits made to HCI for obligation.**” [emphasis added]

Given the above, it appears that the Organization was facilitating gifts to a non-qualified donee and issued donation receipts to donors who provided donations intended for [REDACTED].

#### Organization’s Representations

The Organization summarized the CRA’s concerns with respect to the donations collected that were intended for [REDACTED].

<sup>65</sup> The email, entitled “FW: Scanned image from [REDACTED]” was sent from email address [REDACTED] to email address [REDACTED].

The Organization advised that “[REDACTED] is one of the largest, best organized and highly respected educational institutions in India. The [Organization] engaged it in 2011 to carry out educational projects on the [Organization]’s behalf.” The Organization provided<sup>66</sup> copies of written agreements with [REDACTED] which were previously provided to the CRA and referenced in Appendix D of our AFL.

The Organization advised:

“The Indian diaspora involved in supporting this project comes mainly from the state of Gujarat, where this educational project is located. They are helping poor and needy students in Gujarat, India to receive quality education for free. [REDACTED] volunteers for the [Organization] as well as for [REDACTED] with the sole aim to help the [Organization] with this project.

“All funds raised come to the [Organization] and are properly recorded in the [Organization]’s [REDACTED] system and are allocated for this project. Funds are disbursed as per the needs of the project after following the [Organization]’s standard practice of project evaluation. The [Organization]’s personnel as well as volunteers, board members frequently visited this project.

“It was entirely appropriate of the [Organization] issue official donation receipts to donors to the [Organization] in support of these projects.”

#### CRA’s Position

As noted above, the existence of a written agreement alone is not sufficient by itself to demonstrate that a charity meets the own activities test. The charity must be able to show that it has established a real, ongoing, active relationship with the intermediary and be in a position to provide supporting documentation to the CRA to demonstrate how its resources were expended.<sup>67</sup>

Appendix D of our AFL noted our concern that the written agreements between the Organization and [REDACTED] all included the following statement:

“For its part, HCI agrees to make available to [REDACTED] C\$4,000 per month for a time period of November 2012, through October 2013. **The monthly transfer is contingent upon deposits made to HCI for obligation.**” [emphasis added]

However, the Organization’s submission provided no clarification of the \$4,000 monthly transfer obligation that is contingent upon [REDACTED] obtaining the funds to deposit into the Organization’s bank account, as noted in the written agreement. Nor did the Organization’s submission address

---

<sup>66</sup> The Organization provided copies of the agreements with its letter and submission dated October 1, 2018, at tab 218.

<sup>67</sup> See notably Canadian Committee for the Tel Aviv Foundation v Canada, 2002 FCA 72 at para 30, [2002] FCJ no 315 [Canadian Committee for the Tel Aviv Foundation].

our concern regarding the “comments” box on the acknowledgement receipts it received<sup>68</sup> from [REDACTED] on February 11, 2012 which stated that the receipts were for “[REDACTED] Rural Project”.

The CRA advised that based on our review of the documentation noted in Appendix D of the AFL, it appears that the Organization is facilitating gifts to a non-qualified donee and issuing donation receipts to donors who provide donations intended for [REDACTED]

The Organization has provided no new information to alleviate our concern other than to dispute our finding, and explain the benefits of the program, which in our view is that of [REDACTED] The Organization claims that its personnel as well as volunteer and board members frequently visited the project, yet it provided no evidence of such claims.

Furthermore, the Organization’s submission did not address CRA’s concern that [REDACTED] Canadian Representative of [REDACTED] sent an email to the Organization on February 11, 2012, advising that \$10,000 was received for [REDACTED] rural projects, which was deposited into the Organization’s bank account. [REDACTED] requested the Organization to “Kindly send full amount at once \$10,000 directly to [REDACTED] bank account for the rural project ASAP.”

The Organization advised CRA that “[REDACTED] volunteers for the [Organization] as well as for [REDACTED] with the sole aim to help the [Organization] with this project.” The Organization engaged a representative of [REDACTED] [REDACTED] to raise and collect funds for [REDACTED] own projects. We note that the audit did not find this arrangement with most of the other non-registered organizations/projects that were included in our sample analysis.<sup>69</sup> In our view, the Organization has received for a non-registered organization, effectively lending its registration number and corresponding tax-receipting privileges to a non-registered organization. The Organization ought to have known that it should not engage a third party organization to collect and raise funds intended to support that third party’s own projects.

As our concerns with respect to the funds raised for [REDACTED] have not been alleviated, it remains our view that the Organization facilitated gifts to non-qualified donees and in FY2012, issued \$10,000 in donation receipts to donors who provided donations intended for [REDACTED]

## 6. [REDACTED]

### Audit Observations

Based on our review of the Organization’s records, it appears that [REDACTED] was collecting funds for [REDACTED] projects, depositing the funds into the Organization’s bank accounts and the Organization was then issuing donation receipts to donors who provided funds intended for [REDACTED] projects. In some instances, the funds are referred to as “credit balances” presumably to mean that the Organization is holding the funds designated for [REDACTED] projects.

<sup>68</sup> The email, entitled “Re: [REDACTED] RURAL PROJECT,” was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED]

<sup>69</sup> As explained in our AFL, our sample analysis was based on 31 projects, conducted outside Canada, by 31 different partners. Out of the 31 projects/partners reviewed, the CRA found that the Organization engaged the representatives of 6 non-registered organizations to raise and collect funds for their own projects. These six non-registered organizations are part of the third party receipting scheme, as explained in this Appendix.

████████████████████ was recorded on the Organization's listing at Corporations Canada as one of the Organization's directors. Furthermore, the Organization's current website listed him as a director. In addition to his role with the Organization, ██████████ appeared to also be the ██████████ ██████████ ██████████ (████████████████).<sup>70</sup>

On February 6, 2012, ██████████ identified as "HCl – Accounting" sent an email<sup>71</sup> to ██████████ stating:

"I am attaching for your review two lists. The first excel list is the list of deposits made by you since July 2011... Please review this list for completeness and accuracy. That is please review that the list of deposits is complete and that the fund allocation is as per what you wanted. The challenge here was that you sent us a list of deposits and corresponding date however the fund allocation was not clarified at the time of deposit, therefore if upon your review there are deposits which must be re-allocated kindly let me know and I will ██████████ make the adjustment. The second list is the list of donors and their respective donation and allocation. This list corresponds to the acknowledgement receipt book and word document listing of donors and their contribution for 2011. This list must also be reviewed for completeness and accuracy. The challenge here was that the list of donors was sent separately from the bank deposit slips, therefore it was imperative to ensure that all donor donations are documented and that deposits are complete."

The email contained two attachments, as noted above ("two lists"). The first attachment was an Excel document that listed 37 bank deposits made by ██████████ between July 18, 2011 and December 28, 2011. The fund designation for 33 of the bank deposits stated "████████" and they total \$134,989. The second attachment was a PDF document, entitled "Cash Receipts Journal," which appears to show names of donors, the amounts donated, the donation dates, and the fund designation which stated "India, ██████████"

An analysis of the Organization's FY2012 donation records showed that most of the individuals recorded in the PDF document received a donation receipt from the Organization for their contributions to ██████████. In total, the Organization provided \$99,904 in donation receipts for gifts intended for ██████████ in FY2012.

In addition, on December 27, 2012, ██████████ sent an email<sup>72</sup> to the Organization stating:

"Before the year is over, I would like to request you to make a note of two deposits. One was made on November twenty-sixth... The amount was four thousand one hundred... For the second deposit, please see the deposit paper herewith. It is for eight thousand five

---

<sup>70</sup> ██████████ website. ██████████ ██████████ (Accessed June 13, 2017)

<sup>71</sup> The email, entitled "2011 Deposits and Allocations," was sent from email address

████████████████ to email address ██████████

<sup>72</sup> The email, entitled "Two Deposits made to HCl Account (1) in late November and (2) early December," was sent from email address ██████████ to email addresses ██████████ and

████████████████

hundred dollars...We need to take care of projects for over one hundred thousand dollars –credit balance with HCI – which we will carry forward in the year 2013.”

The attachments to the email contained a copy of a bank deposit slip for \$8,500, dated December 2, 2012, and a copy of a cheque for \$8,000 from a donor, dated December 1, 2012. The cheque was written out to the Organization’s name; however, the memo stated “[REDACTED]”. An analysis of the Organization’s FY2013 donation receipt records revealed that this donor received an official donation receipt for \$8,000 from the Organization for their contribution to [REDACTED]

Furthermore, in another email<sup>73</sup> sent to the Organization, dated November 7, 2012, [REDACTED] stated the following: “I would appreciate if you would kindly withdraw these two amounts, pledged for our projects (Please see the attachment). Please let me know once this is done so that I can add \$200 to our credit balance.”

The attachment to the email included two contribution pledges for \$200 total. The pledges stated “My contribution to [REDACTED] projects in the amount of...” and for method of payment, there was an option to enclose a cheque payable to the Organization. Each pledge was for \$100.

An analysis of the Organization’s FY2013 donation receipt records showed that both these donors received official donation receipts from the Organization for their \$100 contributions to [REDACTED]. Based on the records reviewed, the audit showed that the Organization issued \$8,200 in donation receipts for gifts intended for [REDACTED] in FY2013.

In addition to the above, it appears that the Organization retained a 5% administrative fee for processing the funds for [REDACTED]. For example, on September 21, 2012, [REDACTED] sent an email<sup>74</sup> to [REDACTED] regarding sending funds to [REDACTED]. In her email, [REDACTED] stated the following: “...but regarding the 5% admin we are taking off, has that been discussed with him [REDACTED] before or should I mention something to him about it?”

In summary, the audit revealed that the Organization issued donation receipts for gifts intended for [REDACTED] in the amounts of \$99,904 for FY2012 and \$8,200 in FY2013. Given the above, it appears that the Organization was facilitating gifts to a non-qualified donee and issuing donation receipts to donors who provide donations intended for [REDACTED].

#### Organization’s Representations

The Organization summarized the CRA’s concerns with respect to the donations collected that were intended for [REDACTED] and [REDACTED] dual roles as both a director of the Organization and president of [REDACTED].

The Organization claimed that:

---

<sup>73</sup> The email, entitled “Two pledges of \$100.00 each...,” was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED].

<sup>74</sup> The email, entitled “RE: A Project with [REDACTED] in India,” was sent from email address [REDACTED] to email address [REDACTED].

- [REDACTED] is also a [REDACTED] of the Organization that was authorized to promote the Organization's projects and solicit donor support;
- all funds raised by [REDACTED] were on behalf of the Organization and promptly deposited into the Organization's account;
- [REDACTED] was authorized to issue acknowledgement receipts to donors and send donation records to the Organization;
- once funds were received by the Organization, they were checked for accuracy and recorded in the Organization's [REDACTED] system under various projects;
- all funds received by the Organization belonged to the Organization and it was responsible for making decisions about the projects it would fund;
- the designation “[REDACTED] project” was used by the Organization as a Project Code to identify the source of funds—it did not mean these funds were for [REDACTED] since the funds were for several projects in many countries;
- these funds were properly designated to several of the Organization's projects such as healthcare, education, poverty alleviation, basic needs etc.;
- the term “Credit Balance” is a wrong use of words. In fact, it refers to funds that were already utilized for such projects and the additional funds that will be sent once proper reports have been received and a decision has been made about continuing with implementing these projects;
- several staff and donors conducted monitoring and evaluation visits to these projects and to the Organization's intermediaries in India to ensure that the Organization's funds are promptly utilized, projects are satisfactorily implemented, and proper direction and control is maintained. In support of this claim, the Organization provided<sup>75</sup> a 10 page report on 16 partner organizations its representatives visited over a 13 day period in 2014; and
- [REDACTED] was not serving on the Organization's board during the audit period (2011-2013). He joined the Organization's board in September 2015. Prior to this, he was serving on the [REDACTED] board, but it was before he was engaged with the Organization as a [REDACTED]

The Organization concluded with the statement:

“Once again, it must be emphasized that funds received by the [Organization] were not intended for [REDACTED] they were solely and exclusively for the [Organization]'s projects. The [Organization] did not facilitate gifts to a non-qualified donee or issue donations receipts to donors on [REDACTED] behalf. These projects were the [Organization]'s projects. Donors contributed to the [Organization] for these projects, which were implemented through its intermediaries. Since funds came to the [Organization] from donors, tax receipts were promptly issued to them. Diaspora/support groups/donors may provide their opinion, suggestions and advice about needs around the world and the type of projects that would address these needs, but it is within the [Organization]'s discretion to consider and proceed with their suggestions about the projects and intermediaries. All projects must meet the [Organization]'s criteria for selection and the projects must meet all requirements regarding direction and control described above in the AFL response.

---

<sup>75</sup> The Organization provided a copy of this report with its letter and submission dated October 1, 2018, at tab 219.

All applicable transactions are recorded and accounted for properly within the [Organization]'s donor tracking and accounting system to ensure all donations are both legitimate and properly accounted for."

CRA's Position

We acknowledge the Organization's clarification on the role [REDACTED] played as a [REDACTED] of the Organization, and the fact that he was authorized to raise funds, issue acknowledgement receipts, and deposit funds to the Organization's account. We also acknowledge the Organization's claims that it verified the accuracy of these deposits.

However, the information and documentation provided does not alleviate our concern that our analysis revealed that:

- \$99,904 in donation receipts were issued for funds received for "India, [REDACTED]" in FY2012; and
- \$8,200 in donation receipts were issued for funds received for contributions to [REDACTED] in FY2013.

The Organization's claim that the designation "█████ project" was used as a Project Code to identify the source of funds, and the funds were used for its own projects was not supported by any documentation provided by the Organization. The only documentation submitted was the 10 page report prepared by [REDACTED] Financial Accountant of the Organization, on 16 partner organizations visited in 2014, which is outside the audit period. Our review of this report found that it appears to describe the activities of various independent projects to which the Organization provides funds. For example, we highlight some of the excerpts from the report below:

- [REDACTED] at Varoda, Gujrat – [REDACTED] provided the following as his complete description of this visit: "[REDACTED] has been serving humanity through their medical treatment services. **They provide** medical needs to patients who cannot afford to pay for service. **They also provided** relief materials from [the Organization] fund when Kashmir, India was affected by the flood. I found that this institution was very well organized." [emphasis added]
- [REDACTED] – [REDACTED] description was very brief and read, "[REDACTED] [REDACTED] is very similar to [REDACTED] This school incorporates [REDACTED] learning with the curriculum. I found it to be very well organized." [REDACTED] report suggests that the madrasa did not maintain separate books and records for funds it received from the Organization.
- [REDACTED] in Monshigonj, Bangladesh – the report described this as a school funded by the Organization. [REDACTED] described some deficiencies with the school such as failing to maintain standard accounting payment procedures, poorly organized reporting systems, receipts and disbursements not maintained correctly, cash payment vouchers not abiding by standard accounting procedures, accounting and inventory records not being reviewed by trustees in a timely manner, and not maintaining separate books and records for funds received from the Organization.

While the report provided was prepared after the audit period, our review found that the activities described in it appear to be those of other entities rather than projects undertaken by the Organization itself. The CRA recognizes that many of the projects described in the report could be considered charitable; however, the report does not show that these are activities of the Organization. To the contrary, our review of the material leads us to the view that the report merely describes the activities of others for which the Organization provided funds to.

Furthermore, the Organization provided this report in support of its claim that the [REDACTED] funded projects were its own. However, we are unable to make this connection. The report referenced a visit to [REDACTED] at Varoda, Gujrat. While we acknowledge the report described this one activity of [REDACTED] the description was just that – a description of [REDACTED] activity and not that of the Organization.

Furthermore, the Organization's submission did not address the fact that the contribution pledges attached to the email, dated November 7, 2012, sent from [REDACTED] to the Organization, stated "My contribution to [REDACTED] projects in the amount of...". [emphasis added]

Turning back to the original issue raised in Appendix D of our AFL, which was the third party receipting scheme whereby funds were channelled through the Organization's bank account with the purpose of providing a donation receipt to donors for funds intended to support the projects of [REDACTED] we must advise that the documentation provided did not alleviate our concerns. As noted above, we do acknowledge [REDACTED] role in collecting funds, issuing acknowledgement receipts, depositing funds to the Organization's bank account, and providing donor information. However, the information and documentation, as detailed in Appendix D of the AFL, showed some funds were collected and channelled to [REDACTED] with the purpose of issuing a donation receipt to donors who would otherwise not be eligible to receive one.

The Organization's response did not directly address many of the concerns raised, and the examples provided, in the AFL, which include:

- email communications that show funds were collected and designated for [REDACTED] projects;
- our analysis of donation receipt records that showed \$99,904 in receipts were issued for funds received for "India, [REDACTED]" in FY2012, and \$8,200 in receipts were issued for funds received for contributions to [REDACTED] in FY2013; and documentation that identified that the Organization retained a 5% administrative fee for processing funds for [REDACTED] The Organization explained that "there are always administration costs involved in undertaking projects and these costs are part of the [Organization]'s project related expenses", however, we note that the Organization did not inform most of the other non-registered organizations that were included in our sample analysis that it was deducting 5% "to cover administrative costs of channelling funds."<sup>76</sup>

---

<sup>76</sup> As explained in our AFL, our sample analysis was based on 31 projects, conducted outside Canada, by 31 different partners. Out of the 31 projects reviewed, the CRA found that the Organization advised three non-registered organizations that it was retaining a 5% administrative fee "to cover the administration costs of channelling the funds." These three non-registered organizations ([REDACTED] and [REDACTED]) are part of the third party receipting scheme, as explained in this Appendix.

Again, the Organization engaged a representative of [REDACTED] to raise and collect funds for [REDACTED] own projects. We note that the audit did not find this arrangement with most of the other non-registered organizations/projects that were included in our sample analysis.<sup>77</sup> In our view, the Organization has received for a non-registered organization, effectively lending its registration number and corresponding tax-receipting privileges to a non-registered organization. The Organization ought to have known that it should not engage a third party organization to collect and raise funds intended to support that third party's own projects.

As such, the Organization has not alleviated our concerns with respect to this third party fundraising scheme as it related to official donation receipts issued for funds collected for, and channelled to, [REDACTED]. We therefore maintain our position that the Organization issued donation receipts for gifts intended for [REDACTED] in the amounts of \$99,904 for FY2012 and \$8,200 in FY2013.

## 7. Other

### Audit Observations

According to our open source research, we note that some of the Organization's partner websites, social media websites, and public reports advised that donations to their programs are eligible to obtain tax receipts, which is facilitated through the Organization. We noted the following examples in our AFL:

- [REDACTED] ( [REDACTED] ) "Contact Us" page refers potential donors to the Organization for "donations in Canada." It also states that the donations are "tax exempt."<sup>78</sup>
- On both its website<sup>79</sup> and Facebook page,<sup>80</sup> [REDACTED] refers its potential donors to the Organization for donations towards their projects.
- [REDACTED] ( [REDACTED] ) 2011-2012 Annual Report directs potential Canadian donors to send their donations through the Organization and to state that the funds are "designated for [REDACTED] Pakistan."<sup>81</sup>

### Organization's Representations

The Organization advised that it undertakes projects with the above mentioned intermediaries. The Organization stated:

"The [Organization] had made appeals on its own website and social media. Its intermediaries such as [REDACTED] and [REDACTED] also made appeals on their website and social media without the [Organization]'s consent. Upon learning about this, the

---

<sup>77</sup> As explained in our AFL, our sample analysis was based on 31 projects, conducted outside Canada, by 31 different partners. Out of the 31 projects/partners reviewed, the CRA found that the Organization engaged the representatives of 6 non-registered organizations to raise and collect funds for their own projects. These six non-registered organizations are part of the third party receiving scheme, as explained in this Appendix.

<sup>78</sup> [REDACTED] Contact Us. [REDACTED] (Accessed October 6, 2015)

<sup>79</sup> [REDACTED] website. Donate/ Contact Us. [REDACTED] (Accessed August 17, 2015)

<sup>80</sup> [REDACTED] About. [REDACTED] (Accessed August 17, 2015)

<sup>81</sup> [REDACTED] Annual Report 2011-2012. [REDACTED] (Accessed January 19, 2016)

[Organization] communicated with its intermediaries to remove this from their website and social media.

“The [Organization] was not aware that [REDACTED] has made similar statements. The [Organization] intends to contact [REDACTED] as well to direct them to discontinue this misleading practice.”

#### CRA’s Position

The CRA acknowledges that the Organization has taken steps to ensure its partners’ websites, social media websites, and public reports do not advertise that official donation receipts can be obtained, which is facilitated by the Organization.

#### **Conclusion**

Based on our review of the information and documentation provided in the Organization’s representations of October 1, 2018, the CRA maintains its position that the Organization engaged in third party receipting schemes when it entered into funding arrangements with non-registered organizations. The Organization issued donation receipts for gifts not intended for the Organization as follows:

#### **Fiscal period ending March 31, 2012**

Third party organization	Amount of donation receipts issued
[REDACTED]	\$41,436
[REDACTED]	\$70,100
[REDACTED]	\$10,000
[REDACTED]	\$99,904
<b>Total</b>	<b>\$221,440</b>

#### **Fiscal period ending March 31, 2013**

Third party organization	Amount of donation receipts issued
[REDACTED]	\$39,671
[REDACTED]	\$12,420
[REDACTED]	\$18,100
[REDACTED]	\$8,010
[REDACTED]	\$8,200
<b>Total</b>	<b>\$86,401</b>

As noted above, the audit found that the Organization issued donation receipts for \$221,440 in fiscal year ending March 31, 2012 and \$86,401 in fiscal year ending March 31, 2013 as part of its third party receipting schemes.

According to subsection 188.1(9) of the Act, a registered charity that has been found to contravene the receipting requirements of the Act by issuing receipts on behalf of, or in the name of, another person, is liable to pay a penalty equal to 125% of the amount reported on the

donation receipt. As such, the Organization is liable to pay penalty amounts of \$276,800<sup>82</sup> for the fiscal year ending March 31, 2012 and \$108,001<sup>83</sup> for the fiscal year ending March 31, 2013.

In addition, given that the amount of the penalty under subsection 188.1(9) exceeds \$25,000, subsection 188.2(1) stipulates that a one-year suspension of the Organization's authorization to issue official donation receipts must be applied.<sup>84</sup> As such, the Organization's tax receipting privileges will be suspended for one year, including its status as a "qualified donee".

---

<sup>82</sup> Calculated as \$221,440 X 125%

<sup>83</sup> Calculated as \$86,401 X 125%

<sup>84</sup> See CRA's publication, entitled "Guidelines for applying sanctions," under the sub-heading, False information on official donation receipts, at <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidelines-applying-sanctions.html>.



**REGISTERED MAIL**

Human Concern International  
877 Shefford Road, Unit 4  
Ottawa, Ontario  
K1J 8H9

BN: 107497125RR0001  
Our File No: 0576488

Attention: [REDACTED]

May 24, 2018

**Re: Audit of Registered Charity: Human Concern International**

Dear [REDACTED]:

This letter is further to the audit of the books and records of the Human Concern International (the Organization) conducted by the Canada Revenue Agency (CRA). The audit relates to the operations of the Organization for the period from April 1, 2011 to March 31, 2013.

We have now completed the review of the Organization's books and records and have identified the following areas of non-compliance with the relevant requirements of the *Income Tax Act* (the Act)<sup>1</sup> and the Income Tax Regulations:

<b>AREAS OF NON-COMPLIANCE:</b>		
<b>Issue</b>	<b>Reference</b>	
1 Ceased to comply with the requirements of the Act for its continued registration	149.1(1);149.1(2)(c); 168(1)(b); 188.1(4); 188.1(5)	
2 Failed to comply with or contravened any of sections 230 to 231.5 of the Act	230(2); 230(4); 231.1(1); 168(1)(e)	
3 Issued a receipt for a gift or donation otherwise than in accordance with the Act and the Income Tax Regulations	Regulation 3500 and 3501; 168(1)(d); 188.1(7); 188.1(9); 188.2(1)	
4 Failure to file an information return as required under the Act	149.1(14);168(1)(c)	

The purpose of this letter is to provide a detailed description of the specific areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to afford the Organization an opportunity to submit representations and present additional information it considers should be taken into account in determining a remedial course of action.

<sup>1</sup> *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. I.

## **1. Ceased to comply with the requirements of the Act for its continued registration**

Subsection 149.1(1) of the Act requires that a charitable organization devote all of its resources to “charitable activities carried on by the organization itself.” Generally speaking, in order to maintain charitable registration, an organization must demonstrate that it is constituted exclusively for charitable purposes, and that it devotes its resources to charitable activities in furtherance thereof.

As outlined by the Supreme Court of Canada in its decision in *Vancouver Society of Immigrant and Visible Minority Women v. Minister of National Revenue (M.N.R.)*,<sup>2</sup> the determination as to whether an organization qualifies as a charity, as that term is understood in a legal sense is, in essence, a two-part test:

- (i) the purposes of the organization must be exclusively and legally charitable under common law, and must define the scope of the activities engaged in by the organization; and
- (ii) all of the organization’s resources must be devoted to these activities.<sup>3</sup>

In addition, for an organization to be considered charitable under the Act, it must be found to operate for a public benefit.<sup>4</sup> The determination of the public benefit requirement also involves the application of a two-part test:

- (i) The first part of the test generally requires that a tangible or objectively measurable and socially useful benefit be conferred.
- (ii) The second part of the test requires the benefit be directed to the public or a sufficient section of the public. This means a charity cannot have an eligible beneficiary group that is negligible in size, or restrict eligible beneficiaries based on criteria that are not justified by its charitable purpose(s); and provide an unacceptable private benefit as it pursues a charitable purpose.

To summarize, the CRA must be satisfied that an organization’s purposes are charitable at law, that there is a clear relationship and link between the activities and the purposes, and that the activities themselves do not fall outside the bounds of what has been judicially recognized as charitable. In conducting this review, we are obliged to take into account, and draw reasonable inferences from, all of the relevant information that may be available.

Our preliminary findings regarding the Organization’s non-compliance with these requirements are set out in the paragraphs below under the following headings:

1.1	Failure to demonstrate that it is constituted for exclusively charitable purposes
1.2	Failure to demonstrate that the Organization exercised direction and control over its resources
1.3	Absence of Due Diligence

<sup>2</sup> [1999] 1 S.C.R. 10, at para. 155-159 (hereafter referred to as *Vancouver Society*).

<sup>3</sup> *Vancouver Society*, ibid. note 3, at para. 159.

<sup>4</sup> See CRA’s Guidance CPS-024, *Guidelines for Registering a Charity: Meeting the Public Benefit Test*, at <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-024-guidelines-registering-a-charity-meeting-public-benefit-test.html>.

### 1.1 Failure to demonstrate that it is constituted for exclusively charitable purposes

Among the various aspects that an audit may examine is whether a charity advances purposes which are charitable at law. Maintaining charitable registration demands that a charity continue to meet the existing statutory and common law requirements associated with registered status. It is important to understand that although a charity's formal purposes may have been accepted at the time of its registration, it is possible they may subsequently be determined to no longer qualify as charitable at law. In addition, the activities and focus of an organization may have changed since its initial registration. Such changes may adversely affect the organization's present day eligibility for continued registration.

To be exclusively charitable, the law requires that purposes fall within one or more of the following four broad categories (also known as 'heads') of charity:<sup>5</sup>

- relief of poverty;
- advancement of education;
- advancement of religion; and
- other purposes beneficial to the community in a way the law regards as charitable.<sup>6</sup>

As outlined in CRA's guidance CG-019, *How to Draft Purposes for Charitable Registration*,<sup>7</sup> a charitable purpose should contain three elements. Each stated purpose should identify these three elements whether expressly, or implicitly through its context:

- the charitable purpose category – to establish that the purpose falls within one of the four broad categories of charity outlined above.
- the means of providing the charitable benefit – to define the scope of the activities that can be conducted to directly further the purposes and ensure the provision of a charitable benefit.
- the eligible beneficiary group – to ensure that charitable benefit is provided to the public or to a sufficient section of the public.

Furthermore, it is a basic and important principle of charity law that to be charitable, the purposes of an organization should be expressed as clearly as possible. If the wording is too broad or vague, it will not be clear that a purpose advances a recognized charitable purpose, conveys a public benefit, and defines the scope of the organization's activities. **Broad** means the purpose may allow the organization to conduct non-charitable activities. **Vague** means the wording may be interpreted in various ways. The courts have determined that where there is any

---

<sup>5</sup> These four broad categories of charitable purposes were first classified by Lord Macnaghten in *Commissioners for Special Purposes of the Income Tax v. Pemsel*, [1891] A.C. 531 (P.C.). The Supreme Court of Canada explicitly approved of the classification approach for the first time in *Guaranty Trust Co. of Canada v. Minister of National Revenue*, [1967] S.C.R. 133.

<sup>6</sup> This fourth category identifies an additional group of specific court-recognized purposes. It does not mean that all purposes that might be considered beneficial to the public qualify as charitable at law.

<sup>7</sup> This guidance is available at:

<https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-019-draft-purposes-charitable-registration.html>.

doubt as to whether a purpose is charitable, or where there is a mix of charitable and non-charitable purposes, an organization should not be registered as a charity.<sup>8</sup>

The Organization was incorporated under the *Alberta Societies Act* on February 11, 1980 as the Afghanistan Relief Fund, and subsequently changed its name to Human Concern Relief Fund Society – Calgary on November 25, 1981. The Organization was registered as a charity effective January 1, 1983. On October 17, 1986, it incorporated under the *Canada Corporations Act*, under the name by which it is now known. The Organization transitioned to the *Canada Not-for-Profit Corporations Act* on October 14, 2014.

### **Current Audit**

The Organization's purposes, as currently set out in its Articles of Continuance<sup>9</sup> under the *Canada Not-for-Profit Corporations Act* are as follows:

- a. *To extend help to refugees and afflicted people;*
- b. *To receive gifts, legacies, bequests, grants and other donations, in cash and kind, to be used exclusively for the purposes of HCI;*
- c. *To provide medical services for refugees and afflicted people;*
- d. *To provide educational facilities for refugees and afflicted people;*
- e. *To print, publish and distribute literature that highlights conditions of refugees and afflicted people;*
- f. *To carry out work for the relief of poverty and physical needs; and in particular, but without limiting the generality of the foregoing, for the relief of the suffering out of famine, earthquake, pestilence, war or any other large scale emergency, or due to inadequacy of group or national, social or economic resources, in Canada or elsewhere, so far as such object constitutes a legally charitable object;*
- g. *To carry on informational and advisory programme to bring an awareness of hunger and general poverty of refugees and afflicted people to Canadians, and to raise funds to teach the hungry to feed themselves and generally promoted projects to make the poorer and afflicted communities in underdeveloped areas and/or countries self-supporting;*
- h. *For the charitable purposes of HCI or in the course of the execution of any charitable trusts undertaken by it, to purchase, take on leases or in exchange, hire or otherwise acquire any real or personal property and rights or privileges which HCI may think necessary or convenient for the promotion of its charitable objects, and to construct, maintain and alter any building or erection, necessary or convenient for the work of HCI;*
- i. *To co-operate with other societies and organizations, whether incorporated or not, which have aims and objectives similar, in whole or in part to the aims and objectives of HCI; and*
- j. *To do any and all activities which shall be lawful, for HCI to carry out any of the foregoing aims and objectives or any other objectives beneficial to HCI.*

---

<sup>8</sup> In *Earth Fund v. Canada (M.N.R.)*, 2003 D.T.C. 5016, 2002 FCA 498 at para. 20, the Court held that "As a matter of law, the appellant is not entitled to registration as a charity unless all of the appellant's corporate [purposes] and activities are exclusively charitable."

<sup>9</sup> These purposes are identical to the ones found in the Organization's 1986 Letters Patent.

In our view, purposes (a), (c), (d), (e), (f), (g), (i), and (j) are broad and vague, and fail to necessarily define the scope of the activities the Organization may pursue to further each purpose.

For example, we consider purposes (a), (c) and (d) to be broad and vague, to such an extent that it is not clear which charitable purpose category they fall into, nor the precise nature of the benefit the Organization aims to deliver. Language such as “To extend help...,” “To provide medical services...,” and “To provide education facilities...,” does not clearly define the means or the scope of providing a charitable benefit. Additionally, the term “afflicted people” is vague and does not clearly define an eligible beneficiary group. It may be acceptable to restrict benefit to people afflicted by such conditions associated with disease, being aged, or impairment of physical or mental function; however, simply stating “afflicted people” does not clearly define the beneficiary group.

We have considered purposes (c) and (g) under the categories of advancement of education and relief of poverty.

However, purposes (e) and (g) do not appear to describe charitable purposes under the category of the advancement of education. The advancement of education in the charitable sense has been interpreted narrowly by the courts. It must necessarily involve more than just the provision of information. In order to advance education in the strict legal sense, the courts have reasoned that an organization must demonstrate, through its purposes and activities, that it is directly involved in the formal training of the mind, or that it is involved in the improvement of a useful branch of human knowledge which allows for the public dissemination of any new knowledge gained through study and research.<sup>10</sup> Thus, in relation to purposes (e) and (g), we must note that printing, publishing and distributing literature on a particular matter and/or public awareness campaigns do not necessarily satisfy either of the two requirements mentioned above.

With regard to consideration under the relief of poverty, we are concerned that while certain wording used in purpose (g) appears to be an attempt to address poverty-related needs, the chosen wording does not restrict the beneficiaries to those that are necessarily poor. To relieve poverty in the charitable sense means to bring relief only to the poor. The poor are not simply the destitute, but anyone lacking essential amenities available to the general population.<sup>11</sup> While terms such as ‘the needy’, ‘underprivileged,’ and ‘refugees’ are acceptable synonyms, the terms ‘afflicted people’ and ‘afflicted communities’ as expressed in purpose (g) does not necessarily restrict the beneficiary class to those that are poor.

Also in regards to purpose (g), the courts have held that fundraising is not, in and of itself, charitable and while a charity may conduct some fundraising in support of its charitable activities, a charity may not be established for the purpose of raising funds. The Organization’s

---

<sup>10</sup> See *Positive Action Against Pornography v. Minister of National Revenue (M.N.R.)*, 88 DTC 6186 (F.C.A.).

<sup>11</sup> See CRA Summary Policy CSP-P03, *Poverty*, at <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/summary-policy-p03-poverty.html>.

purpose (g) establishes it, “to raise funds...” In light of the above, we advise that this purpose does not qualify as charitable.<sup>12</sup>

As pertains to purpose (f), it lacks the degree of certainty and clarity necessary to restrict the Organization to exclusively charitable activities, despite the apparent attempt to make the wording acceptable by adding: “...so far as such object constitutes a legally charitable object”.

In addition, the Organization’s purpose (i) is similarly considered to be broad and vague, failing to identify a charitable purpose. Furthermore, as worded, the purpose could allow for the provision of resources to organizations that are not qualified donees,<sup>13</sup> an undertaking prohibited by the Act.<sup>14</sup>

Likewise there is concern with respect to the charitable nature of object (j), as it fails to adequately restrict the nature of the activities that can be undertaken by the Organization. “*To do any and all activities which shall be lawful*” or “*any other objectives beneficial to HCF*” does not restrict the Organization to activities that are necessarily charitable.

In regards to purposes (b) and (h), we consider these to be power clauses rather than purposes. Power clauses generally specify the authority or powers of an organization and the boundaries within which it must operate to further its purposes. While power clauses typically are not set out among an organization’s purposes, it does not offend any legal requirements if they are intermingled with purpose clauses.

As a result of the above findings, the Organization has not demonstrated that it is established for purposes that are exclusively charitable. It is, therefore, our preliminary position, that the Organization ceases to comply with the requirements of the Act for its continued registration.

#### 1.2 Failure to demonstrate that the Organization exercised on-going direction and control over its resources / Gifting to non-qualified donees

As noted above, subsection 149.1(1) of the Act requires that a registered charity operating as a charitable organization devote all of its resources to “charitable activities carried on by the organization itself.” A registered charity, therefore, can only use its resources (for example, funds, personnel, and property) in two ways, whether inside or outside Canada:

- on activities undertaken by the organization itself, that is to say, on its own activities (those which are directly under the charity’s control and supervision and for which it is able to render itself fully accountable for the funds expended); and
- on gifts to qualified donees.

Except where it gifts funds to a qualified donee, the CRA requires a charity to show that it effectively directs and actually controls the use of its resources on an on-going basis, including in

<sup>12</sup> For more information on this topic, please consult our Guidance CG-013, *Fundraising by Registered Charities*, at <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/fundraising-registered-charities-guidance.html>.

<sup>13</sup> A “qualified donee” means a donee defined in subsection 149.1(1) of the Act.

<sup>14</sup> See section 3 below on third-party receipting.

situations in which the charity carries out its activities through an intermediary.<sup>15</sup> A number of Federal Court of Appeal decisions have confirmed that a charity working with an intermediary must exercise on-going control over any activities carried out on its behalf, and over the use of its resources.<sup>16</sup> In particular, as noted in *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)*:

[T]he Minister is entitled to insist on credible evidence that the activities of a charitable organization are, in fact and law, activities being carried on by the charitable organization itself.

Simply facilitating the activities of another does not constitute direction and control—whether or not those activities may “advance” an organization’s goals or purposes. Where a registered charity undertakes an activity through an intermediary, it must be able to:

- substantiate that it has arranged for the conduct of that specific activity on its behalf, based on the fact that it will further the charity’s charitable purposes, and after being satisfied that the intermediary is capable of conducting the activity on the charity’s behalf; and
- demonstrate that it maintains direction and control over, and is fully accountable for, that activity - supervising/directing, and making significant decisions in regard to, its conduct on an on-going basis.

A registered charity, therefore, cannot act as an intermediary for resources transferred to, or for amounts used by, organizations that are not registered Canadian charities or otherwise considered to be qualified donees. In other words, a registered charity may not merely act as a channel or conduit through which tax receipts are provided for donations that are intended for the use of another organization to which a Canadian taxpayer could not make a gift and acquire tax relief.<sup>17</sup>

In order to meet the onus of establishing it has met the requirements of the Act, a registered charity must keep books and records that will provide a means of verifying that its resources have been devoted to charitable activities carried on by it, and / or to an entity that, at the time, was a qualified donee. In particular, a charity should maintain copies of operating agreements, contracts and project reports, as well as all records that demonstrate the charity’s internal decision-making mechanisms, such as minutes of board and executive meetings, copies of

---

<sup>15</sup> For further information in this regard, see the CRA’s publication CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada*, at <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html>, as well as CG-004, *Using an Intermediary to Carry out a Charity’s Activities within Canada*, available at <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/using-intermediary-carry-a-charitys-activities-within-canada.html>.

<sup>16</sup> See *The Canadian Committee for the Tel Aviv Foundation v. Canada (Minister of National Revenue)* [2002] FCA 72; *Canadian Magen David Adom for Israel v. Canada (Minister of National Revenue)* [2002] FCA 323; and *Bayit Lepletot v. Canada (Minister of National Revenue)* [2006] FCA 128.

<sup>17</sup> Ibid.

relevant correspondence and communications, operational policies and procedures, as well as source documents such as invoices and receipts.<sup>18</sup>

The Organization is involved in numerous projects conducted outside Canada. To carry out these projects, the Organization collaborates with partners. The Organization claims that the projects are its own activities, and the partners are acting as intermediaries.

In order to meet the definition of charitable organization under the Act,<sup>19</sup> the Organization is required to establish that it maintains continued direction and control over the substantive charitable activities that are ostensibly being carried out on its behalf. In this regard, the existence of an arrangement with an intermediary, written or otherwise, is not enough to prove that a charity meets the own activities test. The Organization must be able to show that the terms of any arrangement establish a real, on-going, active relationship with the intermediary,<sup>20</sup> and are actually implemented.

For the purposes of this audit, we selected a sample group of 31 projects conducted outside Canada through partners<sup>21</sup> for analysis (see Appendix A for our review of these projects). The documentation provided in support of these projects most frequently consisted of project proposals completed by the partner organizations and a written agreement. Our comprehensive review of all materials relating to these projects included these proposals, the written agreements, meeting minutes, and emails, which evidenced the following:

#### Project Proposals

- The Organization created a project proposal template which it provides to its partners to complete;
- The partners complete the project proposal<sup>22</sup> which usually include project start and end dates, the name of the partner applying for funding, and the cost of the project. The body of the proposals generally describe the activities of the partners, not the Organization, including who the beneficiaries will be and what the funds will be used for;
- The audit also found that in some cases, the Organization apparently accepted and funded the partners' activities without knowledge of any specifics or details related to the partner's activities, based on limited information supplied by the partner in its project proposal.

---

<sup>18</sup> Subsection 284(1) of the Act states a "record" includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form.

<sup>19</sup> "Charitable organization" is defined in subsection 149.1(1) of the Act.

<sup>20</sup> See, for example, *The Canadian Committee for the Tel Aviv Foundation vs. Her Majesty the Queen*, 2002 FCA 72 (*Canadian Committee for the Tel Aviv Foundation*) at para. 30.

<sup>21</sup> For the purposes of the audit, the Organization provided an Excel spreadsheet, entitled "HCI Projects 2011-2012 and 2012-2013." A review of this spreadsheet revealed that the Organization had approximately 150 different partners. Our sample analysis was based on 31 projects, conducted outside Canada, by 31 different partners.

<sup>22</sup> During the audit interview, the Organization represented that it requests its partners to submit project proposals for activity funding. The Organization will send its project proposal template to its partners and request that they complete the template. The partners complete the project proposal templates with information regarding their own activities, and return them to the Organization for funding.

(Audit Interview, October 27, 2014, Question 4.1)

### Written Agreements (agreements)

The audit found that the agreements are deficient in that they do not contain:

- a detailed description of the activity, failing to document its exact nature, scope, and complexity. The agreements do not specify exactly what the activity involves, how it furthers the charitable purposes of the Organization, and the charitable benefit it provides;
- provisions outlining how the activity is to be carried out by the partner organization on the Organization's behalf – setting parameters and describing the deliverables, milestones, and performance benchmarks that are to be measured and reported;
- details as to how the Organization supervises and monitors the activity, and the partner carrying out the activity, including the mechanisms that enable it to give instructions about, have input into, and modify the nature or scope of, the activity on an on-going basis;<sup>23</sup> and
- the signature of all parties, along with the date.<sup>24</sup>

In our opinion, the agreements fail to establish that the Organization maintains continued direction and control over any substantive charitable activities of its partners, so as to make those activities the Organization's own under the Act.

The CRA requires that a charity take all necessary measures to direct and control the use of its resources when carrying out activities through an intermediary. When carrying out activities through an intermediary, the following steps are strongly recommended:

- a clear, complete, and detailed description of the activity that is to be conducted, how it furthers the charitable purposes of the organization and how it is to be carried out by the partner on the organization's behalf, including parameters, deliverables, milestones or goals;
- provision for real and effective monitoring and supervision of the activity, and the partner carrying on the activity, with mechanisms for someone accountable to the organization to give instructions about, have input into, and modify the nature or scope of, the activity on an on-going basis;
- a requirement for the organization to receive regular, meaningful reports as the activity progresses. To be meaningful, reporting requirements must specify issues to be covered, and when they must be submitted, to ensure the organization has the opportunity to make significant decisions in regard to the conduct of the activity on a timely and on-going basis;
- provision that the organization will make payments by instalments based on confirmation of reasonable progress and that the resources provided to date have been applied to the specific activities outlined in the agreement;
- a provision for withdrawing or withholding funds or other resources at the Canadian charity's discretion;

<sup>23</sup> Although the Organization showed some degree of monitoring over a few of its partner organizations by requesting and receiving project progress / completion reports, it did not demonstrate that it was the body making decisions and setting parameters relating to the projects.

<sup>24</sup> In some cases, agreements were signed after the Organization sent the funds. See, for example, the [REDACTED]

- a provision for maintaining adequate records at the charity's address in Canada;
- a provision for the Canadian charity's funds and property to be segregated from those of the agent and for the agent to keep separate books and records; and
- the signature of all parties, along with the date.

Moreover, the nature of the relationship that is created between the Organization and its partners indicates that during the audit period, the Organization may have acted as a conduit and funnelled the funds for the benefit of its partners.

In effect, even should each term of the agreements be fully implemented, based on the nature and terms of the arrangements between the parties, once the Organization approves a project proposal, its involvement in, and authority over, the actual conduct of any activity is essentially limited to receiving such information as might be conveyed by the partner. After-the-fact reporting of actions already taken cannot be equated to active participation in the undertaking of activities.

It is our position that this conclusion is supported by the fact that the audit revealed no evidence of:

- regular documented communication or reporting<sup>25</sup> between any representative of the Organization and the partners relating to a substantive charitable activity;
- any actual organizational supervision, direction or control over substantive charitable activities. To the contrary, it would appear that the Organization is not involved with this component of an activity in any way; and
- in some instances, the Organization retains a 5% administrative fee for processing funds. If these were the Organization's own activities, it is unlikely it would have removed funds from its own fundraising as administrative fees.<sup>26</sup>

In these circumstances, any activities clearly remain those of the partner, and do not become the Organization's own in compliance with applicable legal requirements. Rather, the arrangements between the Organization and its partners simply facilitates the ability of the partner to carry out the latter's activities. In the case of activities, the Organization does this primarily by providing a way for non-qualified donees to receive funding while continuing to conduct their own activities.

In its July 29, 2015 letter, the Organization represented that it has "developed and adopted a Partnership (Agency) Agreement which details the subordination and control mechanisms governing every approved instance of funding by HCI for activities conducted abroad by a designated implementation partner." The Organization also attached to its letter the "Partnership (Agency) Agreement" document. It is our view that this document appears to be a template agency agreement which essentially lays out the structure for the relationship between the Organization and its "agents."

---

<sup>25</sup> Although the Organization showed some degree of monitoring over a few of its partner organizations, it did not demonstrate that it was the body making decisions and setting parameters relating to the projects.

<sup>26</sup> See, for example, the [REDACTED], the [REDACTED] and the [REDACTED] analyses in Appendix D.

The template agency agreement supplied by the Organization contains several terms and conditions that are important to the establishment of direction and control. For example, there is a requirement for:

- a disbursement schedule with payments being based on confirmation of reasonable progress;
- reporting requirements by which the agent will provide “financial and narrative reports” to the Organization;
- provision for monitoring and supervision of the activity;
- the Organization to withdraw or withhold funds if the agent fails to comply with the agreement; and
- a provision for the agent to provide books and records to the Organization’s address in Canada.

That being said, it is our position that essential contractual terms are lacking. Specifically, the agency agreement template provided generally lacks one or more of the following:

- a clear, complete, and detailed description of the activities that are to be conducted by the agents, how they further the charitable purposes of the Organization and how they are to be carried out by the agents on the Organization’s behalf, including parameters, deliverables, milestones or goals;<sup>27</sup>
- a detailed description of budgets and timelines for the activities; and
- a provision for the Canadian charity’s funds and property to be segregated from those of the agent and for the agent to keep separate books and records.

#### Other Documentation Provided

We also note the Organization’s meeting minutes do not reflect any detailed discussions concerning these projects. For example, there is no documentation to show the Organization’s leadership had discussions concerning:

- selecting which countries to work in;
- the type of activities to undertake and how the activities will be carried out;
- the activities overall goals;
- who benefits from the activities (e.g. selection criteria / beneficiaries);
- what goods and services the Organization will provide;
- when the activities will begin and end; and
- which intermediary will carry out the activities on behalf of the Organization (e.g. partner selection).

The records do not demonstrate that the Organization, rather than the partners, exercised decision-making authority over the delivery of what is purportedly the Organization’s own activity.

As noted above, the CRA selected a sample group of 31 projects to review. Of these 31 projects, the Organization failed to demonstrate that 16 projects, which were conducted through

---

<sup>27</sup> The Organization has not provided detailed descriptions of the activities the agents are carrying out. The Organization only provided a template version of the agency agreement.

arrangements with its partners, were its own activities.<sup>28</sup> In this regard, it is the CRA's preliminary position that the Organization made a disbursement by way of a gift, other than a gift made in the course of charitable activities carried on by it, or to a donee that is a qualified donee at the time of the gift.

In addition to the above, the CRA found that for the periods under audit, the Organization made gifts to non-qualified donees, as per the Qualified Donees Worksheet (form T1236) attached to the Organization's fiscal year end 2013 *Registered Charity Information Return* (T3010).

Based on the records we reviewed in the sample analysis and the Organization's Qualified Donees Worksheet (form T1236), the Organization gifted resources as follows:

**Fiscal period ending March 31, 2012:**

Non-Qualified Donee	Gift amount
[REDACTED]	\$12,000
[REDACTED]	\$55,000
[REDACTED]	\$30,000
[REDACTED]	\$27,000
[REDACTED]	\$50,000
<b>Total</b>	<b>\$174,000</b>

---

<sup>28</sup> Out of the 31 projects reviewed:

- the Organization failed to demonstrate that 16 projects, which were conducted through its partners organizations, were its own activities (see Appendix A);
- the Organization failed to maintain / provide books and records pertaining to 7 of these projects (see section 2 below); and
- the Organization engaged in third-party receipting schemes with 6 partner organizations (see section 3 below and Appendix D).

**Fiscal period ending March 31 2013:**

Non-Qualified Donee	Gift amount
[REDACTED]	\$30,000
[REDACTED]	\$40,000
[REDACTED]	\$26,000
[REDACTED]	\$52,000
[REDACTED]	\$32,500
[REDACTED]	\$85,000
[REDACTED]	\$30,000
[REDACTED]	\$70,000
[REDACTED]	\$49,556
[REDACTED]	\$34,000
[REDACTED]	\$51,284
<b>Organization's Qualified Donees Worksheet (form T1236):</b>	
[REDACTED]	\$5,500
[REDACTED]	\$10,550
[REDACTED]	\$45,000
[REDACTED]	\$10,000
<b>Total</b>	<b>\$571,390</b>

Paragraph 149.1(2)(c) of the Act states that the Minister may, in the manner described in section 168, revoke the registration of the Organization where it makes a disbursement by way of a gift, other than a gift made (i) in the course of charitable activities carried on by it, or (ii) to a donee that is a qualified donee at the time of the gift.

In these circumstances, subsections 188.1(4) and (5) of the Act also provide for the levying of a penalty when a registered charity at a particular time in a taxation year, confers on a person an undue benefit which includes amounts provided to non-qualified donees.

As per paragraph 188.1(4)(a), a registered charity that confers on a person an undue benefit may be subject to a penalty of 105% of the value of the benefit.

The undue benefit penalty of 105% was calculated based on the 16 instances identified, as per Appendix A, and the Organization's Qualified Donees Worksheet (form T1236) attached to its fiscal year end 2013 T3010, where the Organization gifted funds to non-qualified donees. Given that the Organization undertakes numerous projects through its partners, which were not included in our sample analysis, we believe that these penalties could potentially be higher. However, based on our audit findings, the Organization is liable to pay a penalty of \$182,700<sup>29</sup> for fiscal year ending March 31, 2012 and \$599,960<sup>30</sup> for fiscal year ending March 31, 2013.

**Foreign Office Activities**

The issues relating to the legal requirement that a registered charity conduct its own charitable activities, which were identified in the context of the Organization's partners above, apply

<sup>29</sup> Calculated as \$174,000 X 105%

<sup>30</sup> Calculated as \$571,390 X 105%

equally to the Organization's activities conducted through its three foreign offices.<sup>31</sup> Specifically, we would expect the Organization to demonstrate that its arrangements with each of its foreign offices establish direction and control over the activities being carried out by the foreign offices. In our view, the Organization has not satisfied that onus.

It is our position that based on our review of a sample size amount of the project activity reports sent to the Organization by its three foreign offices, the Organization does not exercise direction and control over most of the activities conducted by its three foreign offices. See Appendix B for our analysis.

On March 31, 2015, the CRA wrote to the Organization requesting "all documentation defining and governing the relationship between HCI Canada and its overseas offices." On May 27, 2015 the Organization responded with a letter that included two sections and appendices relating to its relationship with its foreign offices. The Organization stated:

- i. "HCI always had a process in place that showed direct control and knowledge of the organization structure, affiliation, personnel complement and operations of its overseas offices."
- ii. "These offices act as 'agents' of HCI. As such they are fully subject to the direction, control, inspection, accounting and audits by HCI Headquarters and its Board of Directors. They are also required to submit progress reports, financial reports and audit statements."
- iii. "Any proposal for project initiated by these agents are submitted to HCI headquarters for prior approval before any funds are transferred to the said agent."
- iv. "HCI is in the process of formalizing a formal agency written agreement with each of its foreign intermediaries."

However, despite the Organization's representations, the audit findings revealed the following:

- the Organization did not demonstrate that it had input into, guided or even participated in on-going decisions relating to many of its foreign office activities. Our analysis of the sample of project activity reports, submitted to the Organization by its foreign offices, appears to show, in some cases, after-the-fact descriptions of activities already completed by the foreign offices;
- the Organization did not provide any evidence to demonstrate its prior approval of potential projects or any financial reports / audit statements regarding the foreign offices' activities;
- the project activity reports submitted to the Organization were mostly deficient in practice in that they lacked the necessary details for the Organization to demonstrate direction and control;
- no duplicates of books, receipts, or invoices were retained by the Organization here in Canada; and
- the repeated use of identically-worded updates in the project activity reports demonstrates a disregard to provide timely and detailed information on the activities.

---

<sup>31</sup> The Organization has three foreign offices located in Beirut, Lebanon, Peshawar, Pakistan and in Hargeisa, Somaliland.

Accordingly, in our view, the actual relationship between the Organization and its foreign offices is one in which the former does not exercise direction and control over the activities conducted by the foreign offices.

As noted above, the Organization represented in its letter of May 27, 2015 that it was in the process of formalizing agency agreements with each of its foreign offices. Subsequent to this letter, on July 29, 2015, the Organization provided the CRA with three Memorandums of Understanding (MOUs) that it put in place between it and its foreign offices. These MOUs (one for each foreign office) essentially lay out the framework for the relationship between the Organization and its “satellite foreign offices.” It is our view that these MOUs appear to be agency agreements between the Organization and the foreign offices.

The MOUs supplied by the Organization contains several terms that are important to the establishment of direction and control. For example, there is a requirement for:

- a disbursement schedule with payments being based on confirmation of reasonable progress;
- reporting requirements by which the agent will provide “financial and narrative reports” to the Organization in accordance with a fixed schedule;
- provision for real and effective monitoring and supervision of the activity;
- the Organization to withdraw or withhold funds if the agent fails to comply with the agreement; and
- a provision for the agent to provide books and records to the Organization’s address in Canada.

That being said, it is our position that essential contractual terms are lacking. Specifically, the agency agreements provided generally lack one or more of the following:

- a clear, complete, and detailed description of the activities that are to be conducted by the agents, how they further the charitable purposes of the Organization and how they are to be carried out by the agents on the Organization’s behalf, including parameters, deliverables, milestones or goals;<sup>32</sup>
- a detailed description of budgets and timelines for the activities; and
- a provision for the Canadian charity’s funds and property to be segregated from those of the agent and for the agent to keep separate books and records.

In these circumstances, it is our view that the Organization has failed to establish compliance with the legal requirements relating to the conduct of activities. We would also note that these finding are consistent with the findings of our two previous audits from 1990 and 1996.<sup>33</sup> Under the Act, when a registered charity fails to maintain effective direction and control over resources

---

<sup>32</sup> The Organization has not provided detailed descriptions of the activities the agents are carrying out. The Organization only provided a template version of the agency agreements.

<sup>33</sup> The Organization was previously audited for fiscal periods ending August 7, 1990 and March 31, 1996. These audits found that the Organization did not maintain adequate books and records to support its expenditure of funds to its foreign offices and a lack of evidence supporting the Organization’s ability to direct and control its partner organizations. The non-compliance issues identified in both audits were communicated verbally to [REDACTED] [REDACTED] who served as the [REDACTED] of the Organization until [REDACTED] November 2016.

provided to a non-qualified donee, the result is the same as gifting to a non-qualified donee. As stated in subsection 149.1(2)(c) of the Act, the Minister may, in the manner described in section 168, revoke the registration of the Organization.

### 1.3 Absence of Due Diligence

A registered charity should conduct meaningful and continuous due diligence on all aspects of its operations, including its partners in program delivery, in order to prevent the charity's resources from being used in a manner that would contravene Canadian law and the charity's requirements for on-going registration.

We would expect a Canadian organization that carries out operations internationally – particularly in concert with partner agencies in unstable and strife-torn regions of the world – to be in a very good position to be aware, from its own local knowledge and on-the-ground contacts, whether particular organizations active in the region are aligned or connected with groups that are engaged in activities that could result in revocation of the organization's registration.

Relating the above to the Organization, a majority of the programs are conducted outside Canada by foreign partner organizations. These foreign partners operate in a number of countries, including Palestine, Lebanon, Afghanistan, Libya, Pakistan, and Somalia. In recent years, the Organization has focused some effort on the delivery of aid in Syria and to Syrian refugees in neighbouring countries, including Turkey. We note that some of these countries are or have been involved in numerous struggles, including geopolitical issues, intra-state conflicts involving militias, terrorist and / or criminal organizations and broader regional security concerns.

While we acknowledge that the Organization has written procedures for due diligence in Section 42, *Special Provisions - Exercise of "Due Diligence" and Other Legislative Requirements*, of the Organization's By-Laws, our review of the Organization's actions in relation to these procedures found no supporting documentation to suggest that it implemented due diligence procedures in any meaningful way.

The Organization's records did not reveal any supporting documentation to indicate that the Organization conducted adequate due diligence and background checks on its current partners and / or potential new partners. The audit did not find any record of a committee or discussions of any kind in the meeting minutes regarding decisions with respect to potential partners and due diligence procedures. In addition, for the partner organizations the CRA analysed as part of its sampling method, we found no completed questionnaires<sup>34</sup> in the audit documentation, no record demonstrating discussions and verifications with local contacts and no documentation regarding information on the potential partner, such as its work history, board of directors, and publicly available information with respect to the partner's activities and operations. As such, our audit

---

<sup>34</sup> During the October 2014 audit interview, the Organization represented that it requests potential partners to complete a questionnaire and that the Organization establishes a relationship with these new partners based on the answers provided in the questionnaire. The CRA then requested, in its letter of March 31, 2015, that the Organization provide a copy of the questionnaire the Organization sends to potential implementing partners and if available, copies of the completed questionnaires for all the implemented partners used by the Organization during the audit period. Subsequently, on May 27, 2015, the Organization provided the CRA with a copy of the questionnaire. However, it did not provide copies of any completed questionnaires.

findings demonstrate that the Organization failed to adhere to its written procedures with respect to exercising due diligence. See Appendix C for our sample audit findings.

In addition, we note that the Organization's written agreements include a provision that states the partner "[w]ill use the funds in compliance with all applicable anti-terrorist financing and asset control laws and regulations."

The CRA would advise the Organization that a statement / clause within a memorandum of understanding or agreement is not sufficient, in and of itself, to demonstrate due diligence. It is the responsibility of the Canadian registered charity to take the necessary steps to establish, document and undertake policies and procedures to ensure that its resources are not directly or indirectly used to support terrorism as part of its books and records.

While there is no express due diligence requirement under the Act, all registered charities are expected to take the necessary steps to ensure compliance with the requirements for registration. Due diligence measures are simply a matter of good governance practice that can, if conscientiously and genuinely implemented, serve to lessen the risk that a charity's resources will be used in a manner that could result in revocation of its registration. Registered charities should ensure that they have a good understanding of the background of their partners and individuals, and their affiliations to other organizations. There are, of course, many resources publicly available to charities, including some produced by the CRA, to help Canadian charities identify vulnerabilities to terrorist abuse.<sup>35</sup>

## **2. Failed to comply with or contravened any of sections 230 to 231.5 of the Act**

Subsection 230(2) of the Act requires that every registered charity keep records and books of account<sup>36</sup> at an address in Canada recorded with the Minister or designated by the Minister containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act. Failure to maintain proper books and records in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status.<sup>37</sup>

---

<sup>35</sup> See for example, the following CRA publications:

- Guidance CG002 – Canadian Registered Charities Carrying Out Activities Outside Canada, at <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidance-002-canadian-registered-charities-carrying-activities-outside-canada.html>;
- Checklist for Charities on Avoiding Terrorist Abuse, at <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/checklists-charities/checklist-charities-on-avoiding-terrorist-abuse.html> and
- Charities in the International Context, at <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/charities-international-context.html>.

<sup>36</sup> Subsection 248(1) of the Act defines a record in the following way: “*record* includes an account, an agreement, a book, a chart or table, a diagram, a form, an image, an invoice, a letter, a map, a memorandum, a plan, a return, a statement, a telegram, a voucher, and any other thing containing information, whether in writing or in any other form.”

<sup>37</sup> *College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency)*, (2004) FCA 101; subsection 168(1) of the Act.

Subsection 231.1(1) of the Act permits an authorized person to inspect, audit, or examine the books and records of a taxpayer and any document of the taxpayer or of any other person that relates or may relate to the information that is or should be in the books or records of the taxpayer or to any amount payable by the taxpayer under the Act.

In order to meet this requirement, a charity must keep adequate books and records so that any official donation receipts that are issued, as well as income and expenses, can be verified. In addition, the Act requires that a charity keep information that will allow the CRA to determine whether its activities continue to be charitable. This information should include, for example, minutes of meetings, correspondence, publicity brochures or advertisements, and detailed information regarding its charitable activities.

The CRA policy relating to the maintenance of books and records is based on several decisions of the courts,<sup>38</sup> which have held, among other things, that:

- It is the responsibility of a registered charity to demonstrate that its charitable status should not be revoked.<sup>39</sup>
- A registered charity must maintain, and make available to the CRA at the time of an audit, meaningful books and records, regardless of its size or resources. It is not sufficient to supply the required books and records at some later date.<sup>40</sup>
- The failure to maintain proper books, records, and records of account in accordance with the requirements of the Act is itself sufficient reason to revoke an organization's charitable status.<sup>41</sup>

As outlined below, the audit has identified a number of deficiencies where books and records were not provided and/or maintained, as such, the CRA was not able to verify income, expenses, and donations.

## 2.1 Activities outside Canada

As noted above, the CRA selected a sample group of 31 projects to review in depth. Of these 31 projects reviewed, the Organization failed to maintain and / or provide books and records pertaining to the following seven projects:

<sup>38</sup> See *Jaamiah Al Uloom Al Islamiyyah Ontario v. Canada (National Revenue)* 2016 FCA 49, and *Opportunities for the Disabled Foundation v. Canada (National Revenue)* 2016 FCA 94

<sup>39</sup> See *The Canadian Committee for the Tel Aviv Foundation v. Canada* (2002) FCA 72

<sup>40</sup> See *ibid*. See also *The Lord's Evangelical Church of Deliverance and Prayer of Toronto v. Canada*, (2004) FCA 397).

<sup>41</sup> See *College Rabbinique de Montreal Oir Hachaim D'Tash v. Canada (Minister of the Customs and Revenue Agency)*, (2004) FCA 101. Also see *Opportunities for the Disabled Foundation v. Canada (M.N.R.)*, (2016) FCA 94.

Partner organization	Date of fund transfer	Amount (CAD)	Activity <sup>42</sup>	Transfer ID
[REDACTED] <sup>43</sup>	January 23, 2012	\$57,739	[REDACTED]	[REDACTED]
[REDACTED]	February 3, 2013	\$100,000	[REDACTED]	[REDACTED]
[REDACTED]	October 15, 2012	\$12,345	[REDACTED]	[REDACTED]
[REDACTED]	October 18, 2012	\$26,820	[REDACTED]	[REDACTED]
[REDACTED] <sup>44</sup>	January 8, 2013	\$97,911	[REDACTED]	[REDACTED]
[REDACTED] <sup>45</sup>	March 27, 2013	\$4,500	[REDACTED]	[REDACTED]
[REDACTED] <sup>46</sup>	November 21, 2012	\$180,500	[REDACTED]	[REDACTED]

The CRA has not been provided with supporting documentation in order to effectively review these activities. Therefore, the CRA is unable to determine whether or not these activities could be considered charitable based on the information provided.

As pertains to [REDACTED] we note that this organization appears to have a similar name to a Canadian registered charity, [REDACTED]. As noted above, the Act requires that a registered charity only use its resources in two ways, whether inside or outside Canada: on activities undertaken by the organization itself and gifts to qualified donees.

Based on the information provided, the relationship between [REDACTED] and [REDACTED] is not clear. In order to meet the onus of establishing it has met the requirements of the Act, a

<sup>42</sup> Activity description based "Schedule 6 - Revised HCI Projects 2011-2012 and 2012-2013", which the Organization provided to the CRA on October 23, 2017.

<sup>43</sup> It would appear that on January 23, 2012, the Organization sent a lump sum amount of \$208,032 to its Pakistan office, which then sent \$57,739 to [REDACTED]

<sup>44</sup> The Organization received an invoice, dated December 21, 2012, from [REDACTED] for medical supplies. The invoice provides a description of the items and the item price. The invoice amounts to 74,554 GBP. The Organization transferred \$97,911 to [REDACTED]. The CRA has not been provided with supporting documentation in order to effectively review this activity. No documentation was provided to support this wire payment to [REDACTED] other than the invoice.

<sup>45</sup> This appears to be the first time the Organization entered into a funding arrangement with [REDACTED]. However, the Organization provided no documentation to support that it conducted research or exercised due diligence before establishing this relationship. See Appendix C for our due diligence findings.

<sup>46</sup> While we acknowledge that [REDACTED] is a registered charity, we note that the Organization sent the funds to [REDACTED]. The Organization has not provided sufficient books and records to demonstrate that [REDACTED] was conducting activities on behalf of [REDACTED]

registered charity must keep books and records that will provide a means of verifying that its resources have been devoted to charitable activities carried on by it, and / or to an entity that, at the time, was a qualified donee. The Organization has not provided us with supporting documentation to determine if it gifted its resources to [REDACTED] or to a non-qualified donee.

In addition, during the 2014 audit interview, the Organization represented that the books and records supporting the activities of its three foreign offices are maintained overseas. Although the Organization represented that it could obtain the records, the Act requires that every registered charity keep records and books of account at an address in Canada recorded with the Minister or designated by the Minister containing information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under the Act.

## 2.2 Total Revenue (line 4700, T3010)

The Organization's reported total revenue for the 2013 fiscal year-end consisted of three revenue streams<sup>47</sup>: i) receipted gifts; ii) non-receipted gifts; and iii) "miscellaneous".<sup>48</sup> Receipted and non-receipted gifts accounted for approximately 99% of reported revenue, whereas miscellaneous accounted for less than 1% of the reported total revenue, to account for items such as, rental income, and investment income.

The Organization provided the CRA with two separate data sets for Donors Lists<sup>49</sup>, in support of the amounts reported on its T3010s for the 2012 and 2013 fiscal year-ends. After a review of the initial data set, the CRA advised the Organization that there were large discrepancies with respect to total revenue, and the receipted and non-receipted gifts. The Organization attributed the discrepancy to a deferred revenue reporting method and provided the CRA with a new data set for the Donors Lists. The CRA was unable to reconcile either data set with the amounts reported on the Organization's T3010s. See appendix E for a detailed analysis.

It is the CRA's position that the Organization failed to maintain or provide books and records to support its reported total revenue (line 4700).

It is our opinion that, for each of the reasons outlined above, the Organization has failed to provide and / or maintain books and records as required in section 230 to 231.5 of the Act. Under

---

<sup>47</sup> The Organization's total reported revenue, per year-end 2013 T3010 return:

	Amount (\$)	% of Rev.
Received Gift (line 4500)	4,489,352	45.0%
Non-receipted Gift (line 4530)	5,450,743	54.6%
"Miscellaneous" revenue (lines 4540 - 4655)	38,178	0.4%
<b>Total revenue – Reported (line 4700)</b>	<b>9,978,273</b>	<b>100.0%</b>

<sup>48</sup> Named herein as "miscellaneous" revenue due to an immaterial amount involved for capturing revenue line numbers from 4540 through 4650 in T3010 return.

<sup>49</sup> The initial data set for Donors List was provided at the time of the commencement of the audit as part of CRA's books and records requests. Subsequently, the Organization provided a revised Donors List upon CRA's request made on March 8, 2017.

paragraph 168(1)(e) of the Act, the Minister may revoke the registration of a charity because it failed to comply with or contravenes section 230 to 231.5 of the Act.

### **3. Issued a receipt for a gift or donation otherwise than in accordance with the Act and its Regulations (Paragraph 168(1)(d) of the Act and Regulations 3500 and 3501)**

The Act provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Income Tax Regulations 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3, *Gifts and Official Donation Receipts*. A registered charity is in contravention of the Act and the Income Tax Regulations when it issues donation receipts that contain incorrect, incomplete, or deliberately false information.

The purpose of the registration scheme for charities under the Act is to ensure that only those organizations that are registered may provide official donation receipts. The integrity of the scheme is seriously breached when an unregistered organization arranges with a registered charity for the use of the registered charity's registration number to provide tax relief for donations that are not made to that registered charity, a practice known as third-party receipting. A registered charity may not issue receipts for gifts intended for another unregistered organization, or allow non-registered organizations to use its charitable registration number.

Registered charities must comply with the law, failing which penalties and / or suspensions may be applicable pursuant to sections 188.1 and / or 188.2 of the Act. These include suspension of the Organization's authority to issue official donation receipts and suspension of its status as a "qualified donee." While the purpose of a sanction is to provide an alternative to revocation, notice may still be given of our intention to revoke the registration of an organization by issuing a notice of intention to revoke in the manner described in subsection 168(1) of the Act.

The audit findings reveal that the Organization appears to have engaged in third-party receipting schemes when it entered into funding arrangements with non-registered organizations. Based on the information and documentation reviewed, it is our preliminary view that the Organization issued donation receipts for gifts not intended for the Organization as follows:

#### **Fiscal period ending March 31, 2012**

Third-party organization	Amount of donation receipts issued
[REDACTED]	\$41,436
[REDACTED]	\$70,100
[REDACTED]	\$10,000
[REDACTED]	\$99,904
<b>Total</b>	<b>\$221,440</b>

**Fiscal period ending March 31, 2013**

Third-party organization	Amount of donation receipts issued
[REDACTED]	\$39,671
[REDACTED]	\$12,420
[REDACTED]	\$18,100
[REDACTED]	\$8,010
[REDACTED]	\$8,200
<b>Total</b>	<b>\$86,401</b>

The audit found that the Organization issued donation receipts for \$221,440 in fiscal year ending March 31, 2012 and \$86,401 in fiscal year ending March 31, 2013 as part of its third-party receipting schemes. Please see Appendix D for our analysis of these receipting arrangements.

Furthermore, according to subsection 188.1(9) of the Act, a registered charity that has been found to contravene the receipting requirements of the Act by issuing receipts on behalf of, or in the name of, another person, is liable to pay a penalty equal to 125% of the eligible amount stated on the receipt. As such, the Organization is liable to pay penalty amounts of \$276,800<sup>50</sup> for the fiscal year ending March 31, 2012 and \$108,001<sup>51</sup> for the fiscal year ending March 31, 2013. Please see Appendix D for the penalty calculations.

In addition, as under subsection 188.1(9) of the Act, given that the penalty amount exceeds \$25,000, subsection 188.2(1) stipulates that a one-year suspension of the Organization's authorization to issue an official donation receipt must be applied.

**4. Failure to file a complete and accurate information return**

Pursuant to subsection 149.1(14) of the Act, every registered charity must, within six months from the end of the charity's fiscal period (taxation year), without notice or demand, file a T3010 with the applicable schedules. It is the responsibility of the Organization to ensure that the information that is provided in its T3010, schedules and statements, is factual and complete in every respect.

A charity must keep track of its expenditures during the fiscal period in such a way that it is able to give amounts that are reasonably accurate. A charity cannot arbitrarily allocate its revenue and expenditures at the end of the fiscal period. It must be able to justify its amounts. While the categories on the return may not correspond exactly to the categories used by a charity to record its expenditures, we need to know how much the charity spent on these categories to determine if it meets all of its requirements under the Act. A charity is not meeting its requirement to file an Information Return if it fails to exercise due care with respect to ensuring the accuracy thereof.

Our findings regarding the Organization's non-compliance with these requirements are as follows:

<sup>50</sup> Calculated as \$221,440 X 125%

<sup>51</sup> Calculated as \$86,401 X 125%

#### 4.1 Donations Received Amounts – Received (line 4500) and Non-receipted (line 4530), YE 13

As illustrated under section 2.2 *Total Revenue (line 4700, T3010)*, above, it is the CRA's opinion that the Organization failed to accurately report received and non-receipted donations amounts resulting in under-reported received donation and over-reported non-receipted donation.<sup>52</sup>

#### 4.2 Total Expenditures on Activities Outside Canada (line 200, Schedule 2) – YE 12 and 13

The Organization provided the CRA with two data sets to support the amount reported for activities outside Canada on its T3010s for the 2012 and 2013 fiscal year-ends. The CRA was unable to reconcile either data set with the amount reported on the Organization's T3010.

The audit findings with respect to the initial data provided by the Organization found the following discrepancies between the T3010 and the financial statements:

YE:	13	12
Activities outside Canada - T3010 (1)	8,388,918	6,447,221
Activities outside Canada - FS <sup>53</sup> (2)	8,771,154	7,224,031
Variance [(1)-(2)]	(382,236)	(776,810)

When asked about the variances, the Organization indicated that its reported Schedule 2 of T3010 was "compiled from HCI's Detailed Project Sub-ledger GL, in an excel spreadsheet," which had contained a number of input errors, such as numbers entered as text in Excel, numeric transposing errors; some inaccurate / incomplete amounts; and certain amounts relating to payments made to domestic suppliers for services or materials related to the country projects not appearing in the Excel Schedule 2.

With corrections to the aforementioned deficiencies above, the Organization submitted documents, entitled, *Reconciliation of T3010 Schedule 2 to Audited Financial Statements*, for YE 12 and 13, under the schedule numbers of Schedule 7 and Schedule 5, respectively, which recorded revised amounts for Activities outside Canada, per Detailed Project GL.

<sup>52</sup> Donations received comparison between T3010 and revised Donors List:

	Received (Ln 4500)	Non- Received (Ln 4530)
per T3010 (1)	4,489,352	5,450,743
Donors List, Revised (2)	5,006,426	4,715,737
Over/(Under)-reported [(1)-(2)]	(517,074)	735,006

<sup>53</sup> *The Schedule of Donations Disbursed*, in the *Notes to Financial Statements*, included domestic and the US projects. Hence, in order to arrive at the overseas amount only, the amounts attributable to the domestic and the US projects were excluded in the analysis, as follows:

YE:	13	12
Financial Statements	8,808,708	7,292,796
Less: Domestic & US Projects	(37,554)	(68,765)
<b>Financial Statements - Overseas only</b>	<b>8,771,154</b>	<b>7,224,031</b>

A comparison between these revised amounts for Activities outside Canada and the T3010 indicated significant variances, as follows:

YE:	13	12
Activities outside Canada - T3010 (1)	8,388,918	6,447,221
Activities outside Canada - Revised, per Detailed Project GL <sup>54</sup> (2)	8,902,027	6,748,718
<b>Variance [(1)-(2)]</b>	<b>(513,109)</b>	<b>(301,497)</b>

The Act requires every registered charity to file an information return and a public information return for the year in prescribed form and containing prescribed information.<sup>55</sup> The prescribed information is that which is deemed by the prescribed form, the Form T3010, *Registered Charity Information Return*. The Form T3010 further requires that an officer certify that the information provided is, to the best of his knowledge, "correct, complete and current". A charitable organization must provide the necessary and substantive information required by the T3010, which is relied on by the CRA in administering the Act and made available to the public.<sup>56</sup> By failing to provide the prescribed information, the Organization failed to file its returns as required by the Act for all fiscal periods under review.<sup>57</sup> The errors in its books and accounts, along with the discrepancies in the reporting of its revenues and expenses, have resulted in the Organization filing unreliable returns for the fiscal periods ending March 31, 2012 and March 31, 2013.

It is the CRA's position that the Organization has improperly certified that it has filed returns that are correct and complete, and therefore has not met the requirement of the Act to file a prescribed information return. This constitutes sufficient reason to revoke the Organization's status as a registered charity under paragraph 168(1)(c) of the Act.

## **Conclusion**

On the basis of our audit findings, it is our preliminary view that, for each of the reasons outlined above, there are sufficient grounds for the revocation of the Organization's registration as a charity under subsection 168(1) the Act.

## **The Organization's options:**

### No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may give notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

<sup>54</sup> Activities outside Canada – Revised:

YE:	13	12
Preliminary total, per Detailed Project GL	8,952,704	6,845,089
LESS: Domestic and US Projects	(50,677)	(96,371)
<b>Activities Outside Canada - Revised</b>	<b>8,902,027</b>	<b>6,748,718</b>

<sup>55</sup> Ss. 149.1(14) and (15), 244(16) and 248(1) "prescribed", of the Act.

<sup>56</sup> See *Opportunities for the Disabled Foundation v. Canada (National Revenue)* 2016 FCA 94

<sup>57</sup> See *Estate of Lily Bullard v Canada*, 2004 TCC 294 at paras 39-40.

### Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 45 days** from the date of this letter. After considering the representations submitted by the Organization, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include:

- no compliance action necessary;
  - the issuance of an educational letter;
  - resolving these issues through the implementation of a Compliance Agreement;
  - the application of penalties and/or suspensions provided for in sections 188.1 and / or 188.2 of the Act; or
  - giving notice of its intention to revoke the registration of the Organization by issuing a Notice of Intention in the manner described in subsection 168(1) of the Act.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us.

If you have any questions or require further information or clarification, please do not hesitate to contact me at the number indicated below.

Yours sincerely,

Charities Directorate  
Canada Revenue Agency  
Ottawa ON K1A 0L5

**Attachments:**

- Appendix A: Lack of Direction and Control / Gifting to Non-Qualified Donees
  - Appendix B: Lack of Direction and Control over the Organization's foreign offices
  - Appendix C: Due Diligence Findings
  - Appendix D: Third-Party Receipting
  - Appendix E: Total Revenue (line 4700, T3010) – YE13



## APPENDIX D

### Human Concern International

#### Third-Party Receipting

## Appendix D: Third-Party Receipting

### **Audit Findings**

The audit found that the Organization issued official receipts for gifts intended for non-qualified donees. The Organization's emails document that it entered into arrangements to assist non-qualified donees with their fundraising efforts in Canada by providing them with temporary receipt books / acknowledgement receipt books and subsequently issuing official donation receipts for gifts intended for the non-qualified donees' own projects. It is apparent in various emails sent to the Organization, where the non-qualified donees are directing the Organization to "immediately" transfer funds to their accounts, that they felt entitled to these funds through prior arrangements. It is our view that the funds passed through the Organization's bank accounts in an attempt to obscure the actual recipient of the donations, which are not qualified donees. The following describes our findings.

1. [REDACTED]

It is our view that the Organization is issuing donation receipts to donors who provide donations intended for the [REDACTED], a non-qualified donee. The Organization's records indicate that [REDACTED] (an [REDACTED] representative) has been given the authority to collect funds on behalf of the Organization, for [REDACTED] projects. For example, on July 19, 2012, [REDACTED], the Organization's Executive Director at the time, wrote an email<sup>1</sup> to [REDACTED] stating the following:

*Please check the following authorization letter and let me know if it is OK.*

*To whom it may concern*  
*This letter authorizes [REDACTED] to collect funds on behalf of Human*  
*Concern International (HCI). These funds will be collected for [REDACTED]*  
*[REDACTED] for educational projects. All funds collected by [REDACTED]*  
*[REDACTED] will be recorded properly and sent to HCI. HCI will be responsible*  
*for channelling the funds to India and monitoring this project. HCI will also issue*  
*tax deductible receipts to donors who donate for this project.*

[REDACTED] was provided with the Organization's acknowledgement receipts books in which he issues acknowledgement receipts to donors who donate towards [REDACTED]. He also deposits the collected funds into the Organization's bank accounts and sends copies of the acknowledgement receipts to the Organization who then issues official donation receipts to the donors. For example:

On February 18, 2012, [REDACTED] wrote an email<sup>2</sup> to the Organization stating the following:

---

<sup>1</sup> The email, entitled "Letter of Authorization," was sent from email address [REDACTED] to email address [REDACTED].

*I have attached the donation 2011 list and the dates that I have deposited the money. [REDACTED], in 2011, we collected \$50,416. I have sent you every single bank slip and acknowledgement receipt." ... "Please send me a new acknowledgement receipt book as soon as possible because mine is complete.*

The email contains two attachments - one is a list of bank deposits and the corresponding date the deposits were made and the other is a list containing the names of donors, their addresses, and the amounts donated toward [REDACTED].

Analysis of the Organization's fiscal year ending March 31, 2012 (FY2012) donation records show that most of the donors listed in the attachment to [REDACTED] February 18, 2012 email, received a donation receipt from the Organization for their contributions to [REDACTED] through [REDACTED]. In total, the Organization provided \$41,436 in donation receipts for gifts intended for [REDACTED] in FY2012.

On August 27, 2012, [REDACTED] wrote an email<sup>3</sup> to the Organization stating the following:

*I have completed 100 receipts. Today I am mailing out the list of donations as well as the bank deposit slips. Attached is the list of donors as well as the amounts...Also can you send one more receipt book asap...*

The email contains an attachment which provides cash deposit dates and a list of donor names, their addresses, and the amounts donated toward [REDACTED].

Analysis of the Organization's fiscal year ending March 31, 2013 (FY2013) donation records show that most of the donors in the attachment referred to above received donation receipts from the Organization for their contributions to [REDACTED] through [REDACTED]. The Organization provided \$38,986 in donation receipts for gifts intended for [REDACTED] in FY2013.

In another email<sup>4</sup>, dated November 30, 2012, [REDACTED] states that he has "attached the final deposit and calculations for 2012. If any more donations come in December, I will send it." The email includes an attachment which contains a copy of a bank deposit slip for \$685 and a list of donor names, address and the amounts donated to [REDACTED].

Analysis of the Organization's FY2013 donation records show that most of the donors listed in the attachment to [REDACTED] November 30, 2012 email received donation receipts from the Organization for their contributions to [REDACTED] channelled through

---

<sup>2</sup> The email, entitled " [REDACTED] " was sent from email address [REDACTED] to the following email addresses: [REDACTED] and [REDACTED].

<sup>3</sup> The email, entitled "List of Donations," was sent from email address [REDACTED] to the following email addresses: [REDACTED] and [REDACTED].

<sup>4</sup> The email, entitled "Final Donations: 2012," was sent from email address [REDACTED] to the email addresses [REDACTED] and [REDACTED].

[REDACTED]. The Organization provided \$685 in donation receipts for gifts intended for [REDACTED] in FY2013.

In total, for FY2013, the Organization provided \$39,671 in donation receipts for gifts intended for [REDACTED].

Once the funds are deposited by [REDACTED], he instructs the Organization to transfer the funds over to [REDACTED]. For example, on June 5, 2011, [REDACTED] sent an email<sup>5</sup> to the Organization where he summarizes the funds that he has raised and requests that the Organization send all remaining funds to India.

Similarly, the Organization received an email<sup>6</sup> from [REDACTED] on March 3, 2012, where he requests that the Organization transfer \$10,000 to [REDACTED] “by this week,” and requests a new set of receipt books for his 2012 fundraising efforts.

On August 27, 2012, the Organization received an email<sup>7</sup> from [REDACTED] informing them that he has completed a number of receipts and requests a new receipt book from the Organization. He also informs the Organization that \$15,000 needs to be sent to [REDACTED] “as soon as possible.” [REDACTED] responds to [REDACTED] on August 28, 2012<sup>8</sup> stating “as soon the deposit slips and acknowledgement receipts are received by us, we will channel \$15,000 to India.”

As outlined above, the audit findings show that the Organization has entered into a third-party receipting arrangement with [REDACTED] and [REDACTED]. [REDACTED] has been authorized to fundraise for [REDACTED] and issues acknowledgement receipts to donors, who then receive official donation receipts from the Organization.

In summary, the audit revealed that the Organization issued donation receipts for gifts intended for [REDACTED] in the amounts of \$41,436 for FY2012 and \$39,671 in FY2013.

## 2. [REDACTED]<sup>9</sup>

It appears that [REDACTED] projects are funded with the help of the Organization. [REDACTED] own documentation states that [REDACTED] “raise[s] funds using Human Concern

<sup>5</sup> The email, entitled “[REDACTED]” was sent from email address [REDACTED] to the following email addresses: [REDACTED] and [REDACTED].

<sup>6</sup> The email, entitled “FW: [REDACTED],” was sent from email address [REDACTED] to the following email addresses: [REDACTED] and [REDACTED].

<sup>7</sup> The email, entitled “List of Donations,” was sent from email address [REDACTED] to the following email addresses: [REDACTED] and [REDACTED].

<sup>8</sup> The email, entitled “List of Donations,” was sent from email address [REDACTED] to email address [REDACTED].

<sup>9</sup> It appears that the Organization uses the following acronyms to refer to the [REDACTED]: [REDACTED].

Internationals (HCI) charitable number and we deposit all funds to HCI.” [REDACTED] is not a qualified donee.

For example, Mr. [REDACTED], President of [REDACTED], sent an email<sup>10</sup> to the Organization on February 1, 2011, stating the following:

[REDACTED] is very happy to establish direct partnership with HCI, our past 3 years experience with HCI has been very positive and I am sure that this will even strengthen our cooperation and communication. This will also enable to run our assistance programs in Somali more effective and reach those in need in time. Please find attached the requested documents and feel free to contact me if you have more questions.

The attachments to Mr. [REDACTED] email include the following documents:

- Banking and Address.doc
- By law [REDACTED]
- Revenue Canada – Business Number.doc
- [REDACTED].doc
- Registration.doc
- Organizational details.doc

The document, entitled “Organizational details,” states the following under the “Funding support for sources” heading:

*Our funding comes from continuous fundraising effort of [REDACTED] volunteers in Canada and the Somali Diaspora around the world. Canadian and American donations go exclusively through Human Concern International.*

In addition, and as noted above, in the same document, under the “Auditors and Audited statements” heading, it states that [REDACTED] “raise[s] funds using Human Concern Internationals (HCI) charitable number and we deposit all funds to HCI.”

Moreover, [REDACTED] donation page on its website states “to donate now please go to our partners website HCI.”<sup>11</sup>

According to the information and documentation provided during the audit, when [REDACTED] receives donations from donors, it deposits the donations into the Organization’s bank accounts. The Organization then provides official donation receipts to the donors and then, at [REDACTED] request, transfers a lump sum amount to [REDACTED] in support of its projects in Somalia. See the following examples.

On September 12, 2011, Mr. [REDACTED] sent an email<sup>12</sup> to the Organization stating that he has deposited the following funds:

<sup>10</sup> The email, entitled “[REDACTED] documents,” was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED].

<sup>11</sup> [REDACTED] website. Donate. [REDACTED] (Accessed 2018-01-16)

- September 7, 2011, \$4,810.00
- September 10, 2011, \$1,826.00
- September 12, 2011, \$3,191.50
- September 12, 2011, \$5,000

For a total of \$14,827.50

Similarly, on September 15, 2011, Mr. [REDACTED] sends an email<sup>13</sup> to the Organization stating that the following funds have been deposited:

1. September 13, \$5,000
2. September 14, \$770

In the same email, he also states that “the total deposit fund from September 07 to September 15 is  $14,827.50 + \$5,770.00 = \$20,597.00$ .”

The attachment to his email includes a copy of a bank deposit slip for \$770 into the Organization’s bank account.

In another email<sup>14</sup>, dated December 20, 2011, Mr. [REDACTED] informs the Organization that [REDACTED] raised a total of \$14,150 and that they deposited \$10,640 into the Organization’s bank account. The email contains a copy of the bank deposit slip for \$10,640.

On May 1, 2012, Mr. [REDACTED] sent an email<sup>15</sup> to the Organization stating the following:

*Please find attached a deposit slip from today of \$20,020.00. With the deposit of \$11,135.00 earlier, the total amount is \$31,155.00 in the months of March to May. We will continue the fundraising and hope to be able to fund most of our programs in Somalia. Once again thanks for your support and cooperation, we really appreciated.*

The email contains an attachment which is a copy of a bank deposit slip for \$13,500 USD and \$6,520 CAD into the Organization’s bank accounts.

---

<sup>12</sup> The email, entitled “Funds deposited,” was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED] and [REDACTED].

<sup>13</sup> The email, entitled “FW: Funds deposited,” was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED] and [REDACTED].

<sup>14</sup> The email, entitled “RE: Funds deposited,” was sent from email address [REDACTED] to email address [REDACTED].

<sup>15</sup> The email, entitled “March-May 2012 deposits,” was sent from email address [REDACTED] to the following email addresses: [REDACTED] and [REDACTED].

Once funds are deposited into the Organization's bank account, [REDACTED] then requests the Organization to transfer the funds towards [REDACTED] projects in Somalia. For example, on May 24, 2012, Mr. [REDACTED] sent an email<sup>16</sup> to the Organization stating the following:

*I have deposited \$5,000.00 dollars today, and there was around \$6,000.00 dollars on the HCI online deposit, that makes a total amount of \$42,155.00. As agreed during our last teleconference, I would like to request the release of 50% of the total budget for our projects; the ongoing, the construction of the [REDACTED] [REDACTED] compass and enhancing the rural area schools. The fund needs now is as follows:*

*\$45,000.00 for [REDACTED]  
\$15,000.00 for the ongoing projects and  
\$14,500.00 for enhancing the rural area schools.  
\$770.00 for the goats slaughtered as directed by Kaleem.*

*The total fund for this phase is \$75,190.00.*

On May 24, 2012, the Organization responds, via email<sup>17</sup>, to Mr. [REDACTED] and states: "We will send all the funds requested, plus an additional \$4,730 for the new education initiatives to round it up to a total of \$80,000. If you can, please provide the remaining \$4,370 for that project."

On May 24, 2012, the Organization transferred \$80,000 to [REDACTED].

According to the information and documentation received during the audit, when [REDACTED] receives donations from donors, it provides acknowledgment receipts to the donors who then receive an official donation receipt from the Organization. For example, on November 14, 2012, Mr. [REDACTED] sent an email<sup>18</sup> to the Organization stating that he has attached receipts for April and July. In the attachment to his email, there are copies of four donation acknowledgment receipts, which total \$12,420.

An analysis of the Organization's FY2013 donation records show that the donors, who received acknowledgement receipts noted above, received official donation receipts from the Organization for their contributions to [REDACTED]. Based on the records provided, the audit revealed that the Organization issued \$12,420 in donation receipts for gifts intended for [REDACTED] in FY2013.

<sup>16</sup> The email, entitled "Fund release," was sent from email address [REDACTED] to the following email addresses: [REDACTED] and [REDACTED].

<sup>17</sup> The email, entitled "RE: Fund release," was sent from email address [REDACTED] to email address [REDACTED].

<sup>18</sup> The email, entitled "receipt," was sent from email address [REDACTED] to email address [REDACTED].

Moreover, and as noted in Appendix B, the Organization's East Africa Office activities are mainly conducted by [REDACTED]. Although we acknowledge that the Organization monitored some of [REDACTED] activities through on-site visits and received detailed reports from [REDACTED], it is our view that the site visits and reporting on [REDACTED] activities are done in an effort to obfuscate the true nature of the transaction; namely, that the Organization issued donation receipts for funds intended for [REDACTED].

3. [REDACTED]

It appears the Organization is issuing donation receipts to donors who provide donations intended for the [REDACTED], a non-qualified donee.

Mr. [REDACTED] is the Secretary General of the [REDACTED] [REDACTED]<sup>19</sup> and Mr. [REDACTED] is "closely associated" with the [REDACTED]. On September 24, 2014, Mr. [REDACTED] sent an email<sup>20</sup> to Ms. [REDACTED], who was a new employee for the Organization at the time, stating the following:

*I am [REDACTED] from Calgary and I am closely associated with [REDACTED] [REDACTED]. I try and raise funds for needy children in Kenya for tuition fees and matters relating to betterment of educational facilities. **Most of the funds I remit to HCI by year end except one cheque that will come directly from [REDACTED] in the amount of \$10,000 during October/November of this year.** I am in the process of sending a few cheques in coming weeks. I always send with complete details of donors names and addresses. Only forward funds to [REDACTED] once I authorize the transfer as it becomes easier to reconcile the remittances.*  
[emphasis added]

Mr. [REDACTED] email appears to show that he receives funding from donors, deposits the funding into the Organization's bank accounts, provides donor information to the Organization for the issuance of donation receipts and then, requests that the Organization transfer the funds to the [REDACTED]. The following examples further illustrate this arrangement.

On August 8, 2011, Mr. [REDACTED] sent an email<sup>21</sup> to the Organization stating that he is forwarding cheques from two donors which amount to \$3,000.

On November 2, 2011, Mr. [REDACTED] sent an email<sup>22</sup> to the Organization stating: "I am forwarding the final list of donors. My letter is self-explanatory. When all the funds are received please let me know and you can then forward all the funds at one go."

<sup>19</sup> [REDACTED] Annual Activities Report 2011.

<sup>20</sup> The email, entitled " [REDACTED] " was sent from email address [REDACTED] to email address [REDACTED].

<sup>21</sup> The email, entitled "Remit to HCI.doc," was sent from email address [REDACTED] to email address [REDACTED].

<sup>22</sup> The email, entitled "HCI 2011 final list of donors.xls," was sent from email address [REDACTED] to email address [REDACTED].

The attachment to this email contains an Excel document, which is dated November 2, 2011, and provides a list of donors, their addresses and the amounts donated. The document states that "this is the final list of donors for [REDACTED] for the year 2011." The list includes a donation of \$60,000 from [REDACTED].

On December 6, 2011 [REDACTED] sent an email<sup>23</sup> to Mr. [REDACTED] stating that they received the \$60,000 cheque from [REDACTED] and that it was deposited into the Organization's bank account. [REDACTED] also states that the Organization will channel all funds as one wire transfer, presumably to the [REDACTED].

An analysis of the Organization's FY2012 donation records show that the donors, who were recorded in the Excel document referenced above, received official donation receipts from the Organization for their contributions to the [REDACTED]. Based on the records provided, the audit revealed that the Organization issued \$70,100 in donation receipts for gifts intended for the [REDACTED], a non-qualified donee, in FY2012.

On December 14, 2012, Mr. [REDACTED] sent an email<sup>24</sup> to the Organization stating that he is enclosing the final list of funds collected in 2012 for the [REDACTED]. The email contains an attachment, which is an Excel document that provides a list of donors, their addresses and the amounts donated. The Excel document is titled "[REDACTED] Donors List for the Year 2012." The list of donations amounts to \$83,100 which is the same amount the Organization transferred to the [REDACTED] on December 21, 2012.

We also note that the Organization received a project proposal from the [REDACTED] for the \$83,100, which is dated 2012. The proposal includes a description of the project which, in summary, states that the funding will be used to provide school bursaries to poor and needy students in Kenya. The Organization also provided a copy of a written agreement for the funds (\$83,100) which was signed by both parties on December 20, 2012. It is our view that the Organization provided the CRA with the project proposal and written agreement in an attempt to make it appear as if the [REDACTED] was undertaking activities on behalf of the Organization. However, these documents do not demonstrate that the Organization effectively authorized, controlled, and monitored the project. Rather, the documentation appears to be maintained and provided in an effort to obfuscate the true nature of the transaction; namely, that the Organization issued donation receipts for funds intended for the [REDACTED].

In addition, it also appears that the Organization retains a 5% administrative fee for processing the funds for the [REDACTED]. In an email,<sup>25</sup> dated January 25, 2012,

<sup>23</sup> The email, entitled "HCI 2011 change to final list of donors.xls," was sent from email address [REDACTED] to email address [REDACTED]

<sup>24</sup> The email, entitled "[REDACTED] 2012 donations.xlsx," was sent from email address [REDACTED] to email address [REDACTED].

<sup>25</sup> The email, entitled "RE: HCI 2011 change to final list of donors," was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED].

the Organization advises the [REDACTED] of the following: "We will be sending the full amount of \$74,800 but would like to advise you that for all following transfers, HCI will be taking off 5% to cover the administration costs of channelling the funds."

An analysis of the Organization's FY2013 donation records show that some donors, who were recorded in the Excel document referenced above in the December 14, 2012 email from [REDACTED], received official donation receipts from the Organization for their contributions to the [REDACTED]. The donation receipts they received matched to the amounts listed in the Excel document. Based on the records provided, the audit revealed that the Organization issued \$18,100 in donation receipts for gifts intended for the [REDACTED] in FY2013.

In summary, the audit revealed that the Organization issued donation receipts for gifts intended for the [REDACTED] in the amounts of \$70,100 for FY2012 and \$18,100 in FY2013.

#### 4. [REDACTED]

It is our view that the Organization is issuing donation receipts to donors who provide donations intended for [REDACTED], a non-qualified donee. According to the information and documentation provided during the audit, when [REDACTED] receives donations from its donors, it deposits the funds into the Organization's bank accounts. The Organization then provides official donation receipts to the donors and, at [REDACTED] request, transfers the funds to [REDACTED]. The following examples further illustrate this arrangement.

Mr. [REDACTED] appears to be affiliated to [REDACTED]. For example, in one written agreement between the Organization and [REDACTED], Mr. [REDACTED] is identified as the President of [REDACTED]. In another written agreement, he is identified as the "finance director."

On July 22, 2011, Mr. [REDACTED] sent an email<sup>26</sup> to the Organization stating "please find the last 2 deposit of [REDACTED] fund in your account."

Attachments to the email include a copy of two bank deposit slips, one for \$15,185 deposited on July 21, 2011 and the other for \$1,810, deposited on July 9, 2011.

On September 14, 2011, Mr. [REDACTED] sent an email<sup>27</sup> to the Organization stating that he has attached the deposit slip for \$26,255 which was deposited into the Organization's bank account. The attachment to the email includes a copy of the bank deposit slip of \$26,255, dated September 8, 2011. In addition, Mr. [REDACTED] also states in the email that [REDACTED] is currently operating out of a rented property and that it has decided to purchase land and construct a building. He states that the new land will

<sup>26</sup> The email, entitled "RE: [REDACTED] – Fund Deposit," was sent from email address [REDACTED] to email address [REDACTED].

<sup>27</sup> The email, entitled "New commitment for [REDACTED] to purchase the land," was sent from email address [REDACTED] to email address [REDACTED].

cost approximately \$30,000 and that he has attached a draft commitment letter for the Organization's approval. He states that the Organization should sign and mail this document back to him and that he will send the Organization a project proposal once the letter is approved by the "NGO affairs bureau."

On September 16, 2011, the Organization sent an email<sup>28</sup> to Mr. [REDACTED] stating that [REDACTED] has signed the commitment letter and also that "this commitment will be valid only when you channel the amount \$30,000 for our commitment to us." The attachment to the Organization's email includes a copy of the signed commitment letter.

On September 30, 2011, Mr. [REDACTED] sent an email<sup>29</sup> to the Organization stating that the "NGO affairs bureau" approved the commitment letter for the \$30,000 to purchase land. He also states that "[a]s per my knowledge, you should have that fund in our account. If not, please let me know how much we owe you and we will deposit it on your account next week."

On October 1, 2011, [REDACTED] responds, via email,<sup>30</sup> to Mr. [REDACTED] stating that Ms. [REDACTED], the Organization's [REDACTED] at the time, will send him an agreement to sign and that the Organization will channel the total funds [REDACTED] has remaining with the Organization. [REDACTED] also states that they will send \$30,000 but will get back any extra funds needed to cover the Organization's 5% administrative costs. As such, it appears that the Organization retains an administrative fee for processing the funds for [REDACTED].

On October 3, 2011, Ms. [REDACTED] sent an email<sup>31</sup> to Mr. [REDACTED] stating that she has attached the agreement; however, she does not know the project details without the proposal.

Mr. [REDACTED] responds to her email<sup>32</sup> on October 3, 2011, stating that the funds are for the purchase of the land. He also attached a copy of the signed agreement to his email.

On November 25, 2011, Mr. [REDACTED] sent an email<sup>33</sup> to the Organization stating that he has attached the land registration deed for the Organization's released fund of \$29,500 in September 2011. The attachment to the email includes a copy of the deed.

---

<sup>28</sup> The email, entitled "New commitment for [REDACTED] to purchase the land," was sent from email address [REDACTED] to email address [REDACTED]

<sup>29</sup> The email, entitled "Fund release for [REDACTED]," was sent from email address [REDACTED] to email address [REDACTED]

<sup>30</sup> The email, entitled "Fund release for [REDACTED]," was sent from email address [REDACTED] to email address [REDACTED]

<sup>31</sup> The email entitled "RE: Fund release for [REDACTED]," was sent from email address [REDACTED] to email address [REDACTED]

<sup>32</sup> The email, entitled "RE: Fund release for [REDACTED]," was sent from email address [REDACTED] to email address [REDACTED]

On December 4, 2011, a donor sent an email<sup>34</sup> to Mr. [REDACTED] asking for his “[REDACTED] receipt for taxation purpose.” Mr. [REDACTED] replies on the same day asking the donor to provide his home address to mail the receipt. The donor replies with his home address and states that he has given three donations valued at \$360, \$1,000 and \$360. Mr. [REDACTED] then forwards the email to the Organization<sup>35</sup> requesting the Organization to “mail his tax receipt” at the address given.

On February 8, 2012, Mr. [REDACTED] sent an email<sup>36</sup> to the Organization stating “we are running out of HCI receipt book and deposit book. Could you please mail us 10 receipt book and 2 deposit book at the following address...” In the same email, Mr. [REDACTED] has attached a copy of a bank deposit slip for \$370 and states that it is for receipt number 27261 and a copy of another bank deposit slip for a \$1,000 donation.

On July 11, 2012, Mr. [REDACTED] sent an email<sup>37</sup> to the Organization stating the following “Please find attached credit card payment at [REDACTED] annual fund raising dinner, July 7/2012...” The attachments include completed donation pledges from various donors.

The donation pledge templates state that the donor: “authorizes my financial institution to transfer \$XXX from my account to [REDACTED] partner, Human Concern International, Canada beginning date XXX. I have attached a void check or credit card info with this pledge form.”

On November 23, 2012, Mr. [REDACTED] sent an email<sup>38</sup> to the Organization stating that he has attached two deposit slips and an auto withdrawal of credit card. The attachments to his email include: a copy of bank deposit slips of \$3,460 and \$3,810, both dated September 6, 2012, a copy of a bank deposit slip of \$2,000, dated October 11, 2012, the Organization’s completed acknowledgement donation receipts and donation pledges. As noted above, the donation pledges state that the donations will go to the

---

<sup>33</sup> The email, entitled “[REDACTED] report for your fund released on Sept 2011,” was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED].

<sup>34</sup> The email, entitled “[REDACTED]” was sent from email address [REDACTED] to email address [REDACTED].

<sup>35</sup> The email, entitled “RE: [REDACTED]” was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED], and [REDACTED].

<sup>36</sup> The email, entitled “Donation update from [REDACTED].” was sent from email address [REDACTED] to email address [REDACTED].

<sup>37</sup> The email, entitled “[REDACTED].” was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED] and [REDACTED].

<sup>38</sup> The email, entitled “RE: [REDACTED] Fund balance at HCI on Nov.22, 2012,” was sent from email address [REDACTED] to the following email addresses: [REDACTED], [REDACTED] and [REDACTED].

Organization. As per the acknowledgement donation receipts, most of them state that the donation is for "████████" Subsequently, on November 26, 2012, the Organization transferred \$39,000 to █████.

An analysis of the Organization's FY2013 donation records show that the donors who received acknowledgement receipts from █████ received official donation receipts from the Organization for their contributions to █████. In FY2013, the Organization issued \$8,010 in donation receipts for gifts intended for █████.

In addition to the above, we also note that █████ donation webpage links to the Organization's website for credit card donations.<sup>39</sup>

Given the above, it appears that the Organization has entered into a third-party receiving scheme with █████ by issuing donation receipts to donors who provide donations intended for █████.

5. █████

It appears that the Organization is also facilitating gifts to █████ and issuing donation receipts to donors who provide donations intended for █████. █████ is not a qualified donee. It appears that █████ collects funds from donors for its programs, issues acknowledgement receipts to the donors, deposits the funds collected into the Organization's bank accounts, and then requests that the Organization transfer the funds to █████. The following examples from the audit evidence our position.

Mr. █████ appears to be the Canadian representative for █████.<sup>40</sup> On February 11, 2012, Mr. █████ sent an email<sup>41</sup> to the Organization stating the following:

*I am sending herewith three receipts for the total amount of \$10,000 received for █████ rural projects. I am also forwarding █████ 3 receipts of deposits of \$10,000 in HCI accounts. Kindly send full amount at once \$10,000 directly to █████ bank account for the rural project ASAP.*

The email contains attachments that include copies of bank deposit slips, which were deposited into the Organization's bank account. The deposits are as follows:

- January 17, 2012      \$3,300
- January 21, 2012      \$3,900
- January 26, 2012      \$2,800
- Total                      \$10,000

<sup>39</sup> █████ website. *Collaborators.* █████ (Accessed January 17, 2018)

<sup>40</sup> The written agreements between the Organization and █████ identify Mr. █████ as the Canadian representative for █████. He is the signatory for █████ on the agreements.

<sup>41</sup> The email, entitled "Re: █████," was sent from email address █████ to email addresses █████ and █████.

The email also contains another attachment which includes a copy of three donation acknowledgement receipts for donations made to the Organization. The “comments” box on the acknowledgement receipts for all three states “[REDACTED].” The three acknowledgement receipts total \$10,000.

An analysis of the Organization’s FY2012 donation receipt records show that the donors, who were given donation acknowledgement receipts referenced above, received official donation receipts from the Organization for their contributions to [REDACTED]. The acknowledgement receipt numbers matched to the donation receipts listed in the Organization’s receiving database. Based on the records provided, the audit revealed that the Organization issued \$10,000 in donation receipts for gifts intended for [REDACTED] in FY2012.

On February 17, 2012, Ms. [REDACTED] sent an email<sup>42</sup> to Mr. [REDACTED] stating that the Organization has sent the \$10,000 as requested plus an additional \$4,000 for the month of March to [REDACTED]. The attachment to her email includes the [REDACTED] outgoing payment transfer for \$14,000 to [REDACTED], sent on February 17, 2012.

We would also comment that the written agreements between the Organization and [REDACTED] all include the following statement, albeit the time period is different:

*For its part, HCI agrees to make available to [REDACTED] C\$4,000 per month for a time period of November 2012, through October 2013. The monthly transfer is contingent upon deposits made to HCI for obligation.* [emphasis added]

Given the above, it appears that the Organization is facilitating gifts to a non-qualified donee and issuing donation receipts to donors who provide donations intended for [REDACTED].

## 6. [REDACTED]

Based on our review of the Organization’s records, it appears that Mr. [REDACTED] is collecting funds for [REDACTED] projects, depositing the funds into the Organization’s bank accounts and the Organization is then issuing donation receipts to donors who provided funds intended for [REDACTED] projects. In some instances, the funds are referred to as “credit balances” presumably to mean that the Organization is holding the funds designated for [REDACTED] projects.

Mr. [REDACTED] is recorded on the Organization’s listing at Corporations Canada as one of the Organization’s directors. Furthermore, the Organization’s current website lists him as a director. In addition to his role with the Organization, Mr. [REDACTED] appears to

<sup>42</sup> The email, entitled “FW: Scanned image from [REDACTED]” was sent from email address [REDACTED] to email address [REDACTED].

also be the president of the  
([redacted]).<sup>43</sup>

On February 6, 2012, Mr. ██████████, identified as "HCI – Accounting" sent an email<sup>44</sup> to Mr. ██████████ stating the following:

I am attaching for your review two lists. The first excel list is the list of deposits made by you since July 2011...Please review this list for completeness and accuracy. That is please review that the list of deposits is complete and that the fund allocation is as per what you wanted. The challenge here was that you sent us a list of deposits and corresponding date however the fund allocation was not clarified at the time of deposit, therefore if upon your review there are deposits which must be re-allocated kindly let me know and I will [REDACTED] make the adjustment. The second list is the list of donors and their respective donation and allocation. This list corresponds to the acknowledgement receipt book and word document listing of donors and their contribution for 2011. This list must also be reviewed for completeness and accuracy. The challenge here was that the list of donors was sent separately from the bank deposit slips, therefore it was imperative to ensure that all donor donations are documented and that deposits are complete.

The email contains 2 attachments, as noted above ("two lists"). The first attachment is an Excel document that lists 37 bank deposits made by [REDACTED] between July 18, 2011 and December 28, 2011. The fund designation for 33 of the bank deposits state "[REDACTED]" and they total \$134,989. The second attachment is a PDF document, entitled "Cash Receipts Journal," which appears to show names of donors, the amounts donated, the donation dates and the fund designation which states "[REDACTED]."

An analysis of the Organization's FY2012 donation records show that most of the individuals recorded in the PDF document received a donation receipt from the Organization for their contributions to [REDACTED]. In total, the Organization provided \$99,904 in donation receipts for gifts intended for [REDACTED] in FY2012.

In addition, on December 27, 2012, Mr. [REDACTED] sent an email<sup>45</sup> to the Organization stating the following:

*Before the year is over, I would like to request you to make a note of two deposits. One was made on November twenty-sixth... The amount was four thousand one hundred... For the second deposit, please see the deposit paper herewith. It is for eight thousand five hundred dollars.... We need to take care of projects for over*

43 website. [REDACTED] (Accessed June 13, 2017)

<sup>44</sup> The email, entitled "2011 Deposits and Allocations," was sent from email address [REDACTED] to email address [REDACTED]. Identify [REDACTED]

<sup>45</sup> The email, entitled "Two Deposits made to HCI Account (1) in late November and (2) early December," was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED].

*one hundred thousand dollars –credit balance with HCI – which we will carry forward in the year 2013.*

The attachments to the email contain a copy of a bank deposit slip for \$8,500, dated December 2, 2012, and a copy of a cheque for \$8,000 from a donor, dated December 1, 2012. The cheque is written out to the Organization's name however the memo states “[REDACTED]”. An analysis of the Organization's FY2013 donation receipt records reveals that this donor received an official donation receipt for \$8,000 from the Organization for their contribution to [REDACTED].

Furthermore, in another email<sup>46</sup> sent to the Organization, dated November 7, 2012, Mr. [REDACTED] states the following: “I would appreciate if you would kindly withdraw these two amounts, pledged for our projects (Please see the attachment). Please let me know once this is done so that I can add \$200 to our credit balance.”

The attachment to the email includes two contribution pledges for \$200 total. The pledges state “My contribution to [REDACTED] projects in the amount of...” and for method of payment, there is an option to enclose a cheque payable to the Organization. Each pledge is for \$100.

An analysis of the Organization's FY2013 donation receipt records shows that both these donors received official donation receipts from the Organization for their \$100 contributions to [REDACTED]. Based on the records reviewed, the audit showed that the Organization issued \$8,200 in donation receipts for gifts intended for [REDACTED] in FY2013.

In addition to the above, it appears that the Organization retains a 5% administrative fee for processing the funds for [REDACTED]. For example, on September 21, 2012, Ms. [REDACTED] sent an email<sup>47</sup> to [REDACTED] regarding sending funds to [REDACTED]. In her email, Ms. [REDACTED] states the following: “...but regarding the 5% admin we are taking off, has that been discussed with him [REDACTED] before or should I mention something to him about it?”

In summary, the audit revealed that the Organization issued donation receipts for gifts intended for [REDACTED] in the amounts of \$99,904 for FY2012 and \$8,200 in FY2013. Given the above, it appears that the Organization is facilitating gifts to a non-qualified donee and issuing donation receipts to donors who provide donations intended for [REDACTED].

## 7. Other

According to our open source research, we note that some of the Organization's partner websites, social media websites, and public reports advised that donations to their

<sup>46</sup> The email, entitled “Two pledges of \$100.00 each...,” was sent from email address [REDACTED] to email addresses [REDACTED] and [REDACTED].

<sup>47</sup> The email, entitled “RE: A Project with [REDACTED],” was sent from email address [REDACTED] to email address [REDACTED].

programs are eligible to obtain tax receipts, which is facilitated through the Organization. For example, we note the following:

- [REDACTED] “Contact Us” page refers potential donors to the Organization for “donations in Canada.” It also states that the donations are “tax exempt.”<sup>48</sup>
- On both its website<sup>49</sup> and Facebook page,<sup>50</sup> [REDACTED] refers its potential donors to the Organization for donations towards their projects.
- [REDACTED] 2011-2012 Annual Report directs potential Canadian donors to send their donations through the Organization and to state that the funds are “designated for [REDACTED].”<sup>51</sup>

### Conclusion

The audit findings reveal that the Organization appears to have engaged in third-party receipting schemes when it entered into funding arrangements with non-registered organizations.

A registered charity is in contravention of the *Income Tax Act* (the Act) and its Regulations when it issues donation receipts that contain incorrect, incomplete, or deliberately false information. The purpose of the registration system for charities under the Act is to ensure that only those organizations that are registered may provide official donation receipts.

It is therefore our preliminary view that the Organization issued donation receipts in contravention to the Act and Regulation 3501. Such a non-compliance practice is significant enough that, for this reason alone, constitutes grounds for revocation pursuant to paragraph 168(1)(d) of the Act.

Moreover, subsection 188.1(9) of the Act also provides for the levying of a penalty when a registered charity that has been found to contravene the receipting requirements of the Act by issuing receipts when there is no gift or when the receipt contains false information is liable to pay a penalty equal to 125% of the eligible amount of the gift as it appears on any false receipt, plus a year’s suspension of tax receipting privileges, if the total of all such penalties exceeds \$25,000.<sup>52</sup>

According to our audit findings, the Organization is liable to pay a penalty of \$276,800 for FY2012 and \$108,001 for FY2013, as calculated below. In addition, given that the total of all such penalties exceed \$25,000, the Organization’s tax receipting privileges

<sup>48</sup> [REDACTED] *Contact Us.* [REDACTED] (Accessed October 6, 2015)

<sup>49</sup> [REDACTED] website. *Donate/ Contact Us.* [REDACTED] (Accessed August 17, 2015)

<sup>50</sup> [REDACTED] page. *About.* [REDACTED] (Accessed August 17, 2015)

<sup>51</sup> [REDACTED] *Annual Report 2011-2012.* [REDACTED] (Accessed January 19, 2016)

<sup>52</sup> See CRA’s publication, entitled “*Guidelines for applying sanctions*,” under the sub-heading, *False information on official donation receipts*, at <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/guidelines-applying-sanctions.html>.

would be suspended for one year if revocation of its charitable registration was not being pursued.

**Fiscal period ending March 31, 2012**

	Amount of donation receipts issued	Penalty applied in accordance with subsection 188.1(9) of the Act	Penalty owing as per subsection 188.1(9) of the Act
[REDACTED]	\$41,436	125%	\$51,795
[REDACTED]	\$70,100	125%	\$87,625
[REDACTED]	\$10,000	125%	\$12,500
[REDACTED]	\$99,904	125%	\$124,880
<b>Total penalty owing as per subsection 188.1 (9) of the Act for fiscal period ending March 31, 2012</b>			<b>\$276,800</b>

**Fiscal period ending March 31, 2013**

	Amount of donation receipts issued	Penalty applied in accordance with subsection 188.1(9) of the Act	Penalty owing as per subsection 188.1(9) of the Act
[REDACTED]	\$39,671	125%	\$49,589
[REDACTED]	\$12,420	125%	\$15,525
[REDACTED]	\$18,100	125%	\$22,625
[REDACTED]	\$8,010	125%	\$10,012
[REDACTED]	\$8,200	125%	\$10,250
<b>Total penalty owing as per subsection 188.1 (9) of the Act for fiscal period ending March 31, 2013</b>			<b>\$108,001</b>

October 1, 2018

Private and Confidential

### **By Fax and Overnight Courier**

Canada Revenue Agency  
Charities Directorate  
13<sup>th</sup> Floor, 320 Queen St., Place de Ville  
Ottawa ON K1R5A3

Dear

**Re: Human Concern International (the “Charity” or “HCI”)  
BN: 107497125 RR0001; Your File No: 0576488**

We are writing in response to the administrative fairness letter dated May 24, 2018 (the “AFL”) (Tab 1), which reported on the preliminary audit findings of the Canada Revenue Agency’s (“CRA”) audit of the Charity for the period from April 1, 2011 to March 31, 2013 (the “Audit Period”). The AFL alleges various instances of non-compliance by the Charity with the *Income Tax Act* (Canada) (the “Act” or “ITA”) and states that CRA may give notice of intent to revoke the Charity’s charitable registration if these concerns are not addressed. The AFL invites the Charity to make written representations and provide additional information in response to the AFL. We believe that the information below should address CRA’s concerns such that revocation must be found to be unnecessary and inappropriate.

The allegations made by CRA in the AFL are broadly as follows:

- the Charity is not formed for exclusively charitable purposes;
  - the Charity has failed to maintain direction and control when working with intermediaries outside Canada;
  - the Charity has failed to maintain books and records demonstrating compliance with the Act;
  - the Charity has issued official donation receipts for gifts that were in substance intended for other non-qualified donees; and
  - the Charity has failed to file an accurate information return.

We have discussed each of the issues raised in the AFL with the Charity and wish to respond to each in turn. We have included with this response additional information that was either not provided, or not explained fully, when CRA conducted its field audit of the Charity. With the benefit of this further information and explanation, we believe that it will be

clear that the allegations against the Charity are based on incomplete facts and are largely unfounded.

The Charity was formed and operates for exclusively charitable purposes. The Charity has also in substance maintained direction and control over the use of its funds when working with third parties to carry out charitable activities. While we acknowledge that some record-keeping and accounting errors occurred during the Audit Period, these issues have in most cases already been rectified and do not justify the revocation of the Charity's charitable registration. The Charity has also not engaged in any inappropriate receipting practices. It has issued receipts only for gifts to the Charity and has used these gifts on humanitarian projects carried out by or on behalf of the Charity. Finally, the Charity has investigated certain discrepancies that were identified in its T3010 information returns during the Audit Period and has provided detailed explanations of these issues.

The information in this response will demonstrate that any instances of non-compliance in the Audit Period can be adequately addressed in a compliance agreement that will assure CRA that the Charity will comply in full with the Act. These issues have in most cases already been addressed by the Charity, which has worked steadily to improve its compliance practices since the audit was conducted. At all times the Charity has sought in good faith to comply in full with the Act, and the Charity remains fully committed to compliance.

Enclosed with this letter is a document book containing various relevant documents and authorities.

### **Background**

Before addressing the specific allegations and issues raised in the AFL, we believe that it will be beneficial to provide background on the Charity. It is important to understand that the Charity is formed for exclusively charitable purposes and that its activities benefit thousands of needy persons around the world. Any technical issues identified in the audit should not distract from the larger picture. The Charity plays an important role as a trusted charity within the Muslim community in Canada that does immense good around the world.

### ***History and Charitable Mission***

The Charity is the oldest and most longstanding Muslim international relief charity in Canada. It was established in 1980 and was registered as a charity under the Act in 1983. The Charity was founded to deliver humanitarian aid and improve the lives of poor and needy individuals and families around the world. The Charity was established originally to carry out humanitarian aid in Afghanistan but has since expanded its programs into an array of countries around the world. The Charity's focus across all of its program areas is on eliminating poverty, improving livelihoods and social conditions of those in need, supporting gender equality, and encouraging participative policies. The Charity's values are echoed in the Universal Declaration of Human Rights and other United Nation human rights instruments (Tab 2).

The Charity's projects have included the following:

- emergency aid (e.g., emergency food relief, medical aid, shelters, hygiene kits, etc., for victims of natural disasters and military conflicts)
- food distribution programs
- various educational programs, including to promote female education worldwide
- community economic development projects in developing countries to promote sustainable economic improvements and quality of life (e.g., agricultural aid, water resources, micro-finance)
- hospitals and mobile clinics
- mental health and trauma counselling programs
- women's shelters
- orphanages
- youth and children's scholarship programs

Since it was first established, the Charity has spent over \$150 million carrying out projects of this nature. It has responded to numerous famines and humanitarian crises, including the East Africa Famine (1985), Bosnian war (1993), Pakistan floods (2010), and Syrian refugee crisis (2015). The Charity also provides aid and support within Canada to help Canadians who are living in poverty or living with disabilities, including Aboriginal communities. Over the course of its existence, the Charity has provided needed humanitarian aid and development support to over one million individuals and families around the world. It does not limit itself to providing aid and support to the Islamic world or to Muslim beneficiaries.

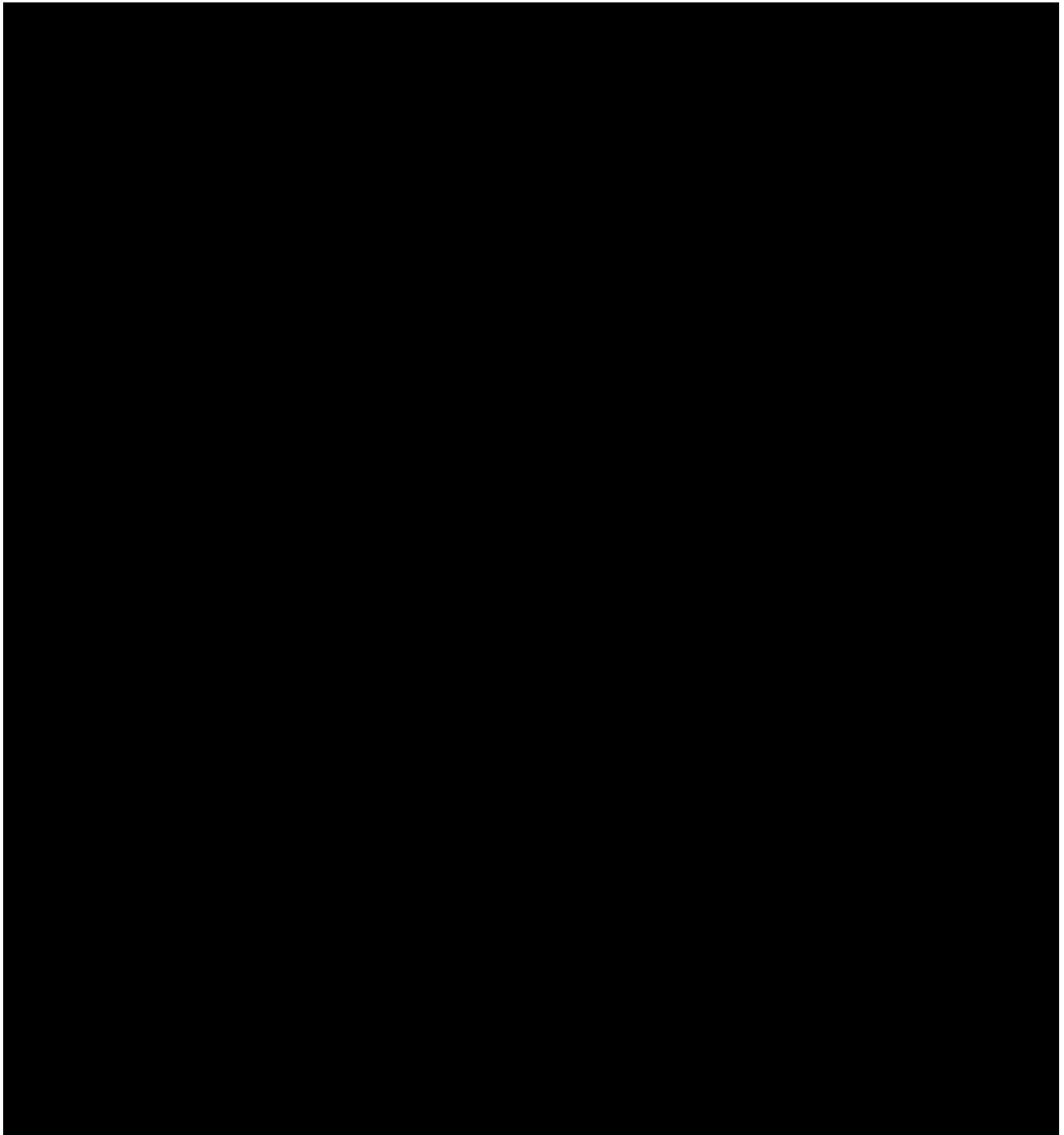
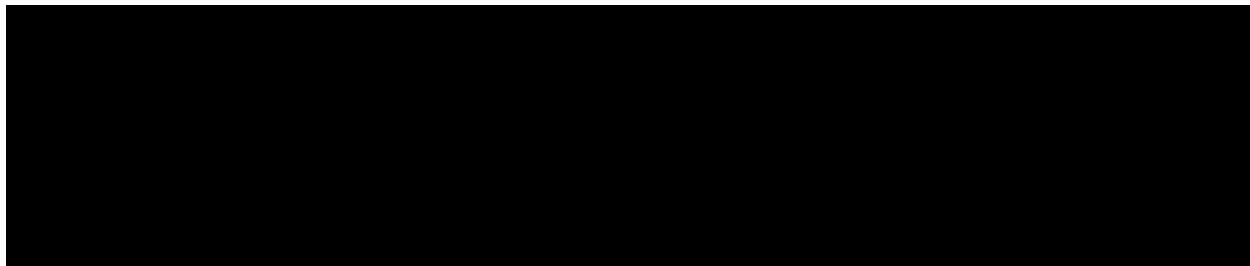
Over its many year history, the Charity has received numerous letters of support from prominent government officials and humanitarian organizations, in Canada and around the world, recognizing its enormous contribution to humanitarian relief and development. We enclose a sample of such letters (including from [REDACTED] [REDACTED], which were included in the Charity's 2000 Annual Report (Tab 3). The Charity also received the [REDACTED] Social Responsibility Award in 2013 from [REDACTED] (then the Chairman of [REDACTED], now [REDACTED]) (Tab 4).

#### ***Unfounded Allegations of Supporting Terrorism***

The Charity is, and has always been, opposed unequivocally to all forms of terrorism. As noted, the Charity espouses values consistent with core United Nations human rights instruments. It has rigorous processes in place to ensure that none of its funds are misused or redirected to any terrorist or terrorist organization. The Charity's current processes in this regard are described below.

Unfortunately, notwithstanding the foregoing, the Charity has in the past been the subject of misunderstandings by other government agencies that have led to unfounded allegations that certain of its funds have been misdirected to support terrorism.





In order to assist it in ensuring that there is no chance that any of its funds are misdirected to terrorists or terrorist groups, the Charity hired [REDACTED] of the law firm [REDACTED] [REDACTED] in Ottawa, in 2002. [REDACTED] is one of the foremost Canadian legal experts on Canadian military and state security laws, and worked with the Charity to ensure that its processes and procedures minimized the risk of any improper use of the Charity's funds for terrorist or criminal activity.

The Charity is vigilant in reviewing all project partners, including by checking Canadian, US, United Nations and (where applicable) European Union terrorist watchlists. CRA has noted certain allegations made against one of the Charity's partners, [REDACTED]. As set out in detail in Appendix C to this AFL response, the Charity took extreme care in vetting [REDACTED] and found it to have an excellent reputation, having been recognized by numerous international organizations, including the United Nations Economic and Social Council. When allegations of terrorist ties later surfaced in certain media reports, the Charity engaged in further due diligence in respect of [REDACTED] and ceased working with [REDACTED] in 2014. We comment further on the Charity's due diligence in respect of [REDACTED] below.

The Charity continues to be vigilant against the risk of misuse of any of its funds or resources. It responded to the very unfortunate incidents above by redoubling its efforts in this regard. As discussed below, the Charity applies the same vigilance to its tax compliance obligations, although it has only recently obtained charity tax advice as sophisticated as the national security advice that it has been obtaining from [REDACTED].

### ***Fundraising***

For many years, the Charity received most of its funding from the Canadian government and several international bodies (e.g., [REDACTED]). Attached at Tab 6 is a list of funding provided to the Charity since 1989, together with contemporary excerpts from the Charity's newsletter describing the projects funded with these grants. After the events of September 11, 2001, and the public controversies described above, the Charity saw a reduction in funding from the Canadian government and other international agencies.

Following the reduction in government funding, the Charity has relied on public donations to carry out its work.

The Charity receives funding from various sources. Many Muslims across Canada rely on the Charity for their annual zakat. The zakat is a religious obligation for all Muslims to give a percentage of their accumulated wealth to aid the poor. The Charity receives donations which it applies to its various humanitarian projects around the world.

The Charity also operates a child sponsorship program similar to those conducted by other large and well-respected Canadian charities. Donors provide regular funding to the Charity to enable it to carry out charitable relief and development programs to support the needs of children in disadvantaged communities around the world. The Charity receives progress reports on the children supported through this program and prepares progress updates for its child sponsors (examples enclosed at Tab 7).

The Charity also relies on a longstanding practice of diaspora fundraising. The Charity, because of its long history and track record working in a large number of communities around the world, has developed a strong reputation as well as connections and contacts

[REDACTED]

[REDACTED]

among many groups in Canada that have emigrated or been displaced from their countries of origin. These groups maintain strong ties to these countries and have a close understanding of the issues faced by people in those countries. The Charity works with these groups to identify needs in local developing communities, and to raise funds from these groups in support of projects carried out by the Charity to address these needs. This is discussed further below.

### ***Audit History***

The AFL notes that the Charity was audited by CRA in respect of fiscal periods ending in 1990 and 1996. The AFL states that CRA found at that time that the Charity did not maintain adequate books and records to support that expenditures through its foreign office were its own activities. You have confirmed, however, that the CRA did not send any written audit findings to the Charity in respect of either of these audits. While you believe that the then CRA auditor communicated these findings verbally with the then-executive director of the Charity, we confirm that the Charity has no record of this and has been carrying on its activities in reliance on the CRA having reviewed it without presenting any formal audit findings to it previously. While the Charity has endeavoured at all times to comply with the Act and to maintain practices and procedures that ensure appropriate transparency and accountability over its expenditures overseas, the Charity was not provided with any guidance on which to take specific action following these audits.

A prior CRA audit that is never reported formally to the subject charity is not something that should in fairness be a negative factor. In the mind of charities that are audited, CRA not reporting is actually evidence that CRA approves of the charity's compliance approach. For charities that have not had the benefit of specialized charity tax advice, this is a reasonable approach for a charity to take.

The current audit was conducted in 2014 in respect of the Audit Period. The Charity provided CRA with a chart setting out each of the projects and project partners with which the Charity worked during the Audit Period. Over the years the Charity has worked with approximately 150 project partners around the world. CRA selected a sample of 31 projects, which it reviewed and which form the basis of the issues raised in the AFL.

During the Audit Period as well as the field audit in 2014, certain administrative challenges adversely affected the Charity's ability to respond fully to the auditor's questions and to provide all relevant documentation. The Charity went through a period of turnover in key roles during the Audit Period – in particular with respect to its Accountant and Program Development Officer. This resulted in the loss of some institutional memory as well as a "learning curve" with regard compliance during the Audit Period, which resulted in some of the record-keeping errors that CRA identified in the audit. Also, during the CRA field audit itself in 2014 the Charity's Program Development Officer had only been in her position for a few months, which made it more difficult for her to identify all relevant documents in respect of projects.

Furthermore, while the Charity benefitted from excellent legal counsel in respect of security law and anti-terrorism measures, the Charity did not have the benefit of specialized expertise with respect to charity tax compliance. This resulted in the Charity not fully understanding the technical requirements in the Act regarding record-keeping and direction

and control. The Charity understood that it was required to carry out its own activities and to maintain transparency and accountability in respect of all projects and partners, but did not have specialized guidance on these issues. This resulted in some errors in its record-keeping practices. It also prevented the Charity from answering CRA's inquiries in a way that addressed each of CRA's concerns from a tax compliance perspective. As such, CRA was not provided with all relevant documentation in respect of the Charity's projects.

### **Steps Since Audit**

Since the audit, the Charity has worked diligently to improve its processes to ensure compliance with the Act.

Among other things, the Charity has instituted a range of new template forms for the vetting of project partners, the description of specific projects, and project reporting. These are described further below, and are used to ensure that all requirements regarding the documentation of direction and control are met consistently in respect of each project.

The Charity has also made governance changes to improve its compliance. This has included the creation of a specialized Compliance Committee with the specific mandate of overseeing and improving compliance with respect to antiterrorism, operating through intermediaries, and direction and control. It has also included thorough improvements, with the advice of legal counsel, to all aspects of the Charity's internal governance. In 2015 the Charity developed and has been working to implement a list of critical improvements across both its project monitoring and compliance functions as well as its internal corporate governance (list attached at Tab 8a). Also attached at Tab 8a is list of planned and completed improvements to the Charity's internal governance and management functions.

The Charity has also worked to develop its Board expertise. Attached at Tab 8b is a summary of the qualifications of the Charity's current Board of Directors.

The Charity has also hired a new executive director, [REDACTED], who brings a renewed emphasis on compliance and record-keeping. A copy of [REDACTED] curriculum vitae and bio is attached at Tab 9. [REDACTED] brings an expertise in charity law and compliance which added further strength to the Charity and represents a fundamental shift as compared with the Charity's previous executive directors. While the Charity's former longstanding executive director, [REDACTED] endeavoured in good faith to ensure appropriate transparency and accountability over projects, he did not have technical expertise in charity tax regulatory rules and was unable to keep up with the developments in the tax rules around direction and control, particularly following the decisions in *CMDA*<sup>1</sup>, *Tel Aviv*<sup>2</sup> and *Bayit Lepletot*<sup>3</sup> in 2002 and 2006. The Charity's interim executive director, [REDACTED], who replaced [REDACTED] for a very brief period in 2016 also created challenges for the Charity, as he destroyed many of the Charity's records mistakenly believing that they were no longer needed. [REDACTED] deficiencies contributed

---

<sup>1</sup> *Canadian Magen David Adom for Israel / Magen David Adom Canadien pour Israël v. Minister of National Revenue*, 2002 FCA 323 (Tab 10)

<sup>2</sup> *Canadian Committee for the Tel Aviv Foundation v. R.*, 2002 FCA 72 (Tab 11).

<sup>3</sup> *Bayit Lepletot v. Minister of National Revenue*, 2006 FCA 128 (Tab 12).

to some of the errors in the Audit Period, and [REDACTED] poor record-keeping practices added further delays in the Charity's ability to provide CRA with records related to the Audit Period. The arrival of [REDACTED] in November 2016 has spurred a concerted effort to improve all aspects of the Charity's compliance practices.

All of these steps reflect a generational change in the Charity, one that fully recognizes the technical expertise required to ensure compliance with the Act and that is committed to ensuring that the Charity has the expertise and resources to maintain compliance.

Several of these measures are discussed further below.

### ***Summary of Background***

The above background demonstrates several key points about the Charity:

- the Charity is a longstanding, non-partisan, non-political and inclusive charitable organization, and the oldest Muslim international relief charity in Canada;
- the Charity engages in a wide range of humanitarian and social development programs that have provided needed aid and support to tens of thousands of individuals and families over the course of its existence;
- the Charity is dedicated to compliance, having hired what it understood to be the best legal expertise in the area of security and anti-terrorism. It has worked in good faith throughout its history to comply. The Charity has since hired specialists in charity tax regulatory requirements and continues to work to improve its processes and procedures;
- certain administrative challenges prevented the Charity from responding fully to the questions asked by CRA on audit; and
- the Charity has taken numerous steps since the Audit Period to improve compliance.

### **The Role of Islamic Charities in Canadian Society**

It is important that CRA consider in the public interest the message that would be given by revoking the charitable registration of the Charity. The Charity is the oldest and most well established Islamic relief and development charity in Canada. It is viewed in the Canadian Muslim community as being careful to comply with the law. It has obtained sophisticated security law advice. It has sunk significant resources into ensuring direction and control over its projects. Its volunteers and staff have traveled around the world supervising its projects. While 20 or 25 years ago CRA may have mentioned some compliance issues verbally to a long departed staff member of the Charity, CRA has fundamentally never raised formally any compliance issues in the past despite two prior audits.

If the CRA revokes the Charity's registration in the above circumstances, there is a real possibility that this will convey a message to the Muslim community in Canada that it is not a real and welcome part of Canadian society and that its philanthropy is not legitimate.

[REDACTED]

[REDACTED]

We do not believe that CRA or the Government of Canada more broadly wants to suggest such a message. We therefore suggest that in addition to the detailed technical tax submissions and factual background in this letter, the broader public interest should be considered by CRA and by the Government more broadly in this matter.

## **The AFL**

With this background in mind, we will address each of the issues raised in the AFL.

### **1. Ceased to Comply with the Requirements of the Act for Continued Registration**

#### **1.1 Failed to demonstrate that it is constituted for exclusively charitable purposes**

##### **(i) CRA position**

The AFL states that the Charity's formal statement of purpose contains language that is broad and vague and fails to define the scope of activities the Charity may pursue in furtherance of these objects. The AFL also states that certain of the Charity's purposes are broad and vague such that it is unclear into which charitable purpose category the purpose falls. The AFL also notes technical issues with the language in the Charity's statement of purposes. For these reasons, the AFL states that the Charity has not demonstrated that it is established for purposes that are exclusively charitable.

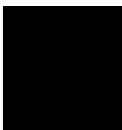
##### **(ii) Charity Response**

CRA registered the Charity as a charity in 1983, when the Charity was incorporated under the Alberta Societies Act (Tab 13). The Charity's objects were set out in its Letters Patent when it incorporated under its current name under the *Canada Corporations Act* in 1986 (Tab 14). The Charity was twice audited by CRA, in 1990 and 1996. There is no record of CRA raising any concerns with the Charity's objects at those times.

The Organization transitioned to the *Canada Not-for-Profit Corporations Act* (Canada) on October 14, 2014 (Tab 15). On the basis of its understanding that CRA had accepted its purposes as exclusively charitable, the Charity retained identical language in its articles of continuance. It provided a copy of its articles of continuance to CRA on October 30, 2014, noting explicitly that the objects were identical to those in its previous incorporation document, and CRA confirmed its acceptance of the articles of continuance on December 15, 2014 (Tab 16). CRA did not raise any issues with the Charity's statement of purpose at that time.

As such, at all times the Charity has understood that its formal statement of purpose was exclusively charitable and had been accepted and approved as such by CRA.

If CRA has changed its position with respect to the wording of the Charity's charitable purposes, it is not appropriate to propose revocation of registration as the first response to this. A very large number of charities were registered by CRA with purposes that do not necessarily conform to CRA's current specifications as set out in Guidance CG-019. As a matter of administrative fairness, the Charity should be provided with the opportunity to update its statement of purpose to conform to CRA's requirements. To cite the CRA-



approved wording of the Charity's purposes as a basis for revocation, while giving the Charity no opportunity to revise the statement of purpose, is not appropriate.

The Charity is prepared to revise its statement of purpose to ensure that there is no question in CRA's mind that it is constituted for exclusively charitable purposes. The Charity is prepared to discuss appropriate language for its statement of purpose with CRA and to commit to revising its purposes as part of a compliance agreement. Regardless of any outdated language in the Charity's formal statement of purpose, the Charity is established, and has always been established, for purposes that are exclusively charitable.

**1.2 Failure to demonstrate that the Charity exercised ongoing direction and control over its resources / gifting to non-qualified donees.**

**(a) Work with Non-Affiliated Project Partners**

**(i) CRA Position**

The AFL states that CRA reviewed a sample of 31 projects conducted outside Canada through various third party intermediaries. It states that for 16 of these projects, the Charity failed to demonstrate that these projects were the Charity's own activities. CRA states that its preliminary position is that the Charity's transfers of funds to its partners in respect of these projects constituted gifts other than gifts made in the course of charitable activities carried on by the organization itself. As such, CRA alleges that these transfers amount to gifts to non-qualified donees.

The AFL reviews the evidence collected in the course of the audit. CRA's findings as set out in the AFL can be summarized as follows:

- The Charity created a project proposal template which it provides to partners to complete. CRA states that the body of the proposals generally describe the activities of the partners, not the Charity. CRA states that in some cases the Charity apparently accepted and funded the partners' activities without details related to these activities (AFL, p. 8).
- The Charity entered into agreements with its project partners that were deficient in that they did not contain: (a) a detailed description of activities, (b) provisions outlining how the activity is to be carried out by the partner organization, (c) details as to how the Charity monitors the activity, including the mechanisms by which it gives instructions, and (d) the signature of all parties, along with the date (AFL, p. 9).

CRA states that the agreements fail to establish that the Charity maintains direction and control over any substantive activities of its partners, citing the recommendations in CG-002 for charities carrying out activities through intermediaries. The AFL states that the Charity may have acted as a conduit and funnelled the funds for the benefit of its partners.

- The Charity did not appear to exercise ongoing oversight of projects once approved. The AFL states that the Charity was limited to receiving after-the-fact reporting and that this cannot be equated to active participation in the undertaking of the activities. The audit revealed no evidence of regular documented communication between any

representative of the Charity and its partners relating to substantive charitable activity. The AFL states that in some instances the Charity received a 5% administrative fee for processing the funds, which CRA states is inconsistent with the project being the Charity's own activities.

CRA also reviewed a new template agency agreement provided by the Charity on June 29, 2015. The AFL states that certain terms were present that are important to establish direction and control but that certain terms are still lacking.

The AFL also states that the Charity's meeting minutes do not reflect any detailed discussions concerning the projects. The AFL states that the documents do not reflect the Charity as the decision-maker with respect to the projects, but rather the project partner.

The AFL also notes that the Charity listed 16 organizations on its Qualified Donees Worksheet (form T1236) that are non-qualified donees.

Appendix A to the AFL details CRA's findings on each of the 16 projects.

CRA states that the alleged gifts to non-qualified donees enable the Minister to revoke the Charity's registration. CRA also states that these gifts trigger penalties under paragraphs 188.1(4) and (5). The AFL states that CRA has calculated penalties of 105% of the "gifts" to non-qualified donees in the context of the 16 projects identified as non-compliant, in the amount of \$182,700 for the fiscal year ending March 31, 2012 and \$599,960 for the fiscal year ending March 31, 2013.

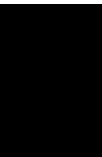
#### ***(ii) Charity Response***

The Charity is committed, and has always been committed, to ensuring that it maintains direction and control over each of its charitable projects overseas and to ensuring that all such projects conducted through third party intermediaries constitute the Charity's own charitable activities. The Charity disagrees with CRA's position that it failed to exercise direction and control over the projects that CRA reviewed in the course of the audit.

Below, we will describe in general terms the approach that the Charity takes for each project that is conducted through an intermediary organization. As will be clear from this summary, the Charity endeavours diligently at all stages of the project to comply with the Act and with each aspect of CRA's guidance for registered charities working with intermediaries. While occasional errors naturally occur – as with any organization managing a large number of projects – there can be no question that the Charity has worked in good faith at all times and has complied in substance with the requirements in the Act.

After addressing the Charity's general approach to projects, we will address CRA's specific findings in respect of the projects identified in the AFL.

Attached is a chart summarizing the "life cycle" of a charitable project conducted by the Charity through an intermediary (Tab 17). The Charity adheres to these processes for all projects. Many aspects of the processes have been developed and refined since the audit years, all in an continuing effort to improve and enhance the Charity's compliance with the Act.



Project Initiation – Partner Due Diligence

A project begins when the Charity identifies a local charitable need that is within the Charity's capacity to address and that is aligned with the priority areas identified by the Charity's Board at the relevant time.

Areas of need can come to the Charity's attention in different ways. The Charity's approach to diaspora fundraising brings it into contact with a wide range of individuals and groups with close ties to particular regions or communities around the world. These individuals and groups will often identify needs in these areas, as well as their desire to assist the Charity financially in addressing these needs if possible. The Charity also has a well-developed network of local partner organizations with which it works, as well as foreign offices. These organizations are also well-positioned to identify local needs that align with the Charity's mission.

Upon identifying charitable need or potential project area, the Charity begins an initial due diligence process that is carried out by the Charity's executive director, Project Development Manager and Program Officer, under the oversight of the Charity's Board. This includes a review of the charitable need that is proposed to be addressed. The Charity considers the urgency of the cause, the amount of funding that may be necessary, as well as its own policies and charitable priorities. The Charity also considers various legal aspects of the proposed project, the project partner and location. This includes the accessibility of the proposed project location and the safety and security of personnel on the ground, as well as whether the project location is subject to international sanctions that would affect the Charity's ability to operate. Since the Audit Period, institutional profiles of all existing and active intermediaries are updated each April.

The initial due diligence process also includes identifying potential project partners with which the Charity may be able to work to carry out the project. Any potential partners are vetted carefully (Tab 18). During the audit years, the Charity used specific partner application forms (Tab 19). This form was used by Charity staff in evaluating potential partners, and required a review of (among other things) (a) the partner's local registration and organizational structure, (b) whether the partner's values align with those of the Charity, (c) the partner's capacity to administer the project, and (d) the willingness of the partner to change internal organizational structures and processes to align with the Charity's transparency requirements. The Charity also reviews project partners for their past implementation of projects with the Charity, both with respect to their success in carrying out the project and achieving its objectives as well as their compliance with reporting and accountability requirements. The Charity also checks carefully that neither the organization nor its principals are on any Canadian, US, or United Nations terrorist watch lists.

In more recent years, the Charity has enhanced its partner review and vetting process. This includes the following documentation for each new partner:

- Local NGO Institutional Profile Form (Tab 20): This is developed through a questionnaire posed to potential implementing partners to ascertain their legal status, background details, experience and expertise to implement the Charity's projects.

- Partner's Compliance Review Form (Tab 21): This form is a tool used by the Charity to exercise extra due diligence and control and covers details about the project history, fund code balance and its history, sponsors, as well as security checks for traceability, accountability and transparency through the review of various relevant websites.
- [REDACTED] This is a report produced by [REDACTED] that allows the Charity to screen all partners and their principals on international terrorist watch lists (Tab 22)

Enclosed is an example of a completed partner information form and supporting documentation for a project partner, [REDACTED] Tab 23).

In most cases, formal documentation reflects only part of the due diligence that is conducted by the Charity on its project partners. The Charity engages in robust discussions with each potential partner. It also relies on assistance from its foreign offices to verify the status of a potential project partner, its local reputation and track record, and its real capacity to carry out projects on the Charity's behalf. The Charity's many local contacts established through its practice of diaspora fundraising also assist it in conducting due diligence and learning about the organizations with which it is considering working.

It should be noted that many of the partners reviewed by CRA in respect of the Audit Period are longstanding partners that the Charity has worked with for many years or decades. The Charity's initial due diligence on these partners was conducted many years ago, and is maintained through regular contact and reporting in respect of ongoing projects. As such, the more recent partner assessment templates developed by the Charity were not necessarily completed prior to engaging in the specific projects that CRA reviewed in the Audit Period. Nonetheless, the Charity maintains diligent oversight over the partners with which it works. The ongoing personal relationship and trust that develops from a longstanding track record of effective partnership between a charity and an intermediary provides a high degree of reliability when using the partner for further projects. This approach is used by most sophisticated charities that establish longstanding relationships with implementing organizations. CRA confirms in section 7.1 of Guidance CG-002 that a charity can and should take into account past experience working with an intermediary organization in determining the measures of direction and control that will be used.

On the basis of this review of the potential project area and project partner, the Charity decides whether it wishes to move forward in considering the project.

#### Project Proposals

If, on the basis of its initial review, the Charity wishes to move forward in considering a project, the Charity will communicate with the potential project partner (by phone, by email, and in face to face meetings) and call for a project proposal. In most cases, the Charity requests the potential project partner to provide an initial draft of a project proposal, as the project partner has the requisite local expertise and the understanding of how as a practical matter it would best be able to carry out the project.

As noted in the AFL, the Charity uses a template form of project proposal for each of its projects conducted through third party intermediaries. The Charity provides the form of project proposal (Tab 24) as well as a set of proposal guidelines (Tab 25) to assist the partner in completing it. The project proposal requires a detailed description of the background to the project (social, economic and political features), a detailed description of how the partner would propose to carry out the project, expected outcomes and budget.

Since the audit years, the Charity has improved and updated its template forms of project proposal to provide additional details on the project, its rationale, activities and budget, as well as its risks. Enclosed at Tab 26 are copies of the updated forms of project proposals. There are different forms of project proposal templates depending on the nature of the project, reflecting information that is relevant to each category of project. Improvements to the project proposal templates include:

1. Project Summary and Project Rationale
2. Project delivery modality
3. More detailed budget breakdown
4. Detailed breakdown on beneficiaries
5. Risk Assessment
6. Monitoring and Evaluation
7. Requirement to add financial proof and pictorial reports

We enclose a sample of a completed proposal which reflects the level of detail that the Charity now expects from its partners (Tab 27).

The project proposal is used in conjunction with the project agreement (discussed below). The proposal clearly meets the requirement set out in CRA Guidance CG-002 (Tab 28) for a detailed description of the activity to be conducted. The project proposal indicates the beneficiaries of the activities undertaken, precise locations of the activities, a budget for the activities, start and completion dates of the activities, deliverables and milestones. Any contributions made by other supporting organizations are also included in the project budget in the proposal.

The AFL suggests that the use of a project proposal template by the Charity is problematic or indicates that the proposals are in fact for projects of the partner and not the Charity. This is simply not accurate. The use of template forms of project proposal ensures consistency and standardization in the information that is collected and developed in respect of each project. It is a common practice among registered charities, and reduces the chance that crucial information is omitted.

Furthermore, the fact that the Charity calls for proposals from its project partners does not mean that the project is really that of the partner. CRA recognizes in CG-002 that Canadian

registered charities can use the assistance of local agents on the ground in developing the details of the any proposed charitable project.<sup>4</sup> CRA also recognizes that day-to-day decision making in respect of the project can be delegated to a local agent with knowledge of the facts on the ground.<sup>5</sup> This is entirely logical. CRA recognizes that local organizations already on the ground and working in the local community will have a far superior understanding of the local circumstances, local needs and the practical logistics of carrying out the project. It is entirely reasonable for a registered charity to utilize this local knowledge in developing the project plan. The Charity's use of the project proposal forms is designed to do precisely this. It does not in any way suggest that the project is not that of the Charity.

It must also be understood that the project proposal is not prepared in a vacuum. It follows from discussions with the Charity at the initial project review stage during which the Charity and the potential partner review the project, its objectives and whether the project partner is suited to carrying out the project on the Charity's behalf.

In some cases, the Charity may carry out aspects of a larger project that is being conducted by its partner organization. The Charity applies the same rigour in vetting the project as with any other. The Charity makes clear to each project partner that the work done by the partner using the Charity's funds is the Charity's own charitable activity. Implementing partners are required to display the Charity's name and logo on all pertinent project locations. The partner is also required to inform the community about the Charity's involvement in the project. The Charity's logo is displayed at project sites (Tab 29).

In some cases, where the Charity responds to an emergency disaster or crisis, this necessarily reduces the time available to prepare written project proposals. In these urgent situations, the Charity communicates by phone to gather information more quickly. Once satisfied on the basis of its verbal discussions with the intermediary, the Charity will work to raise funds for the project. A one-page proposal template for emergency situations is issued together with an agreement to document the commitments entered into verbally (but no less binding) with the intermediary, while the Charity's staff work simultaneously with the Charity's Board as necessary to approve the required funding. The Charity will always complete its vetting of the project partner before releasing any funds. While this results in a somewhat accelerated review process, and can result in written documentation that is less detailed than for non-emergency projects, this is inevitable when responding to crises that require immediate intervention. This is the approach followed by all major Canadian charities involved in international disaster relief.

#### Project Approval

Once the project proposal has been received, the Charity conducts a detailed review and asks for further information and clarification as required by the Charity's regulations, policies and procedures.

---

<sup>4</sup> CG-002, *Canadian Registered Charities Carrying Out Activities Outside Canada*, at 6.2. In the example provided of a Canadian charity hiring a local organization as agent to carry out a project in a developing country, CRA states that "*The non-qualified donee provides advice to help the charity develop the details of the plan for the activity.*"

<sup>5</sup> CG-002 at 6.2.



Once the project plan has been settled, the partner fully vetted, and all required information has been submitted to the Charity, the project is reviewed by the executive director of the Charity, who has authority to approve the project within guidelines and policies set by the Board (Tab 30). There is internal discussion between the executive director and program team with respect to potential projects. For those projects that meet the Charity's requirements, the executive director gives final approval.

As such, the Charity exercises appropriate rigour in reviewing project proposals. All proposals are subject to at least two levels of review within the Charity before they are approved. The Charity does not approval all projects that are proposed or considered (attached at Tab 31 is an example of a proposed project that the Charity refused after considering the proposal and determining that it did not meet local needs). The Charity exercises appropriate direction and control over the selection and approval of projects.

#### Written Agreement

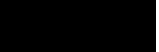
Once a project has been approved, the Charity prepares and enters into an agreement with the implementing partner for the project.

The form of agreement used during the audit period (Tab 32) sets out the terms for a transfer of funds from the Charity to the partner for use in the project, and provides for the following:

- the project partner must provide the Charity with written, pictorial and financial reports on the activities of the above project and inform local recipients of the Charity's role in the project;
- the partner must cooperate with the Charity in carrying out the activities set out in the proposal;
- funds transferred to the partner cannot be used for any purposes other than the specified projects;
- the partner is required to "use funds in compliance with all applicable anti-terrorist financing and asset control laws and regulations";
- the partner must "maintain close communication on further development, implementation, reporting and accounting concerning HCI's contribution"; and
- the agreement allows for the amendment, extension or termination of the contract in writing.

The AFL states that the form of agreement used in the Audit Period did not contain all elements recommended by CRA Guidance CG-002. It should be noted and is acknowledged by CRA that there is no legal requirement for a written agreement of any kind. Furthermore, the written agreement used by the Charity is supplemented by an understanding developed in discussions and communications between the parties.

That being said, the Charity proceeded to develop and implement an updated form of agency agreement for use with its project partners (Tab 33). The Charity did so in an effort



to better document the terms under which its project partners carry out projects on its behalf. The updated agreement describes roles and responsibilities of both parties. These responsibilities include compliance, monitoring and evaluation, book keeping, etc. The agreement is substantially more detailed than the previous form of project agreement.

The AFL states that while the new agreement is improved, certain recommended terms are still missing. Specifically, the AFL states that the following terms are not included:

- a clear, complete and detailed description of the activities that are to be conducted by the agent;
- a detailed description of budgets and timelines for the activities; and
- a provision for the Charity's funds to be segregated from those of the agent and for the agent to keep separate books and records.

The requirement for a detailed budget and project description are included in Schedule A to the agreement. The Charity also reviews a detailed project proposal for each project. The communications between the Charity and its intermediaries make clear that the agreement is to be read in conjunction with the project proposal.

Furthermore, the agreement specifically requires the agent open a separate bank account and be in a position to account for the Charity's funds separately from its own in the course of its final project reporting. Section 9 of the agreement states as follows:

If AGENT has not already done so at the commencement of this Agreement, it shall forthwith proceed to open and maintain a separate bank account for the receipt and disbursements of any and all funds provided by HCI to the AGENT for the purposes of the Project.

As such, we submit that the revised form of agreement does contain the elements noted as lacking in the AFL. If CRA believes that additional revisions to the form of project agreement are necessary, the Charity is prepared to discuss and make these changes as part of the resolution of this audit.

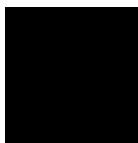
#### Monitoring and Reporting

The AFL states as follows (p. 10):

In effect, even should each term of the agreements be fully implemented, based on the nature and terms of the arrangements between the parties, once the Organization approves a project proposal, its involvement in, and authority over, the actual conduct of any activity is essentially limited to receiving such information as might be conveyed by the partner. After the fact reporting of actions already taken cannot be equated to active participation in the undertaking of activities.

It is our position that this conclusion is supported by the fact that the audit revealed no evidence of:

-- regular documented communication or reporting between any representative of the Organization and the partners relating to a substantive charitable activity;



-- any actual organizational supervision, direction or control over substantive charitable activities. To the contrary, it would appear that the Organization is not involved with this component of an activity in any way; and

-- in some instances, the Organization retains a 5% administrative fee for processing funds. If these were the Organization's own activities, it is unlikely it would have removed funds from its own fundraising as administrative fees.

In these circumstances, any activities clearly remain those of the partner, and do not become the Organization's own in compliance with applicable legal requirements. Rather the arrangements between the Organization and its partners simply facilitates the ability of the partner to carry out the latter's activities.

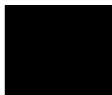
We strongly disagree with this characterization of the Charity's involvement in the projects it conducts through its partners.

The AFL states that the Charity is limited to receiving "after the fact reporting of actions already taken". This is true for all charities conducting activities through partners. It is the nature of reporting. CRA's published policy makes clear that a charity operating through an intermediary can delegate day-to-day decision making to its intermediaries with superior local and technical expertise, provided that the Charity receives appropriate reporting to enable it to monitor the agent's activities.

It is furthermore inaccurate to suggest that the Charity is disengaged from its projects while they are underway. The Charity maintains regular contact with its project partners (sample communications attached at Tab 34; see also extensive discussion in Appendix A). This includes communications by phone, by email, and through face to face meetings, in addition to formal reporting from the partner.

Representatives of the Charity also conduct regular visits to project sites to monitor and evaluate the projects. These representatives include members of the Charity's Board of Directors, founding members, as well as other staff. Enclosed at Tab 35 is a list of monitoring trips undertaken by the Charity to its various regions of operation since 1992. Following each of these visits, the Charity prepared a newsletter article reporting on the visit (enclosed at Tab 36). The Charity also receives internal reports from staff and diaspora volunteers that conduct field visits. Enclosed at Tab 37 are numerous examples of written reports on project visits from the Charity's representatives, including photographs. The visits include meetings with the implementing partners, meetings with beneficiaries, and involve a review of the implementing partner's books and records. While reporting in respect of these visits during the Audit Period did not have a standard format, the Charity now provides a template form of report for representatives conducting site visits, to guide them in interviewing the partner and reviewing the project. This template is attached at Tab 38.

With respect to interim monitoring, it should be noted that the Charity established its foreign offices (HCI South Asia and HCI East Africa) and strategic partner in Lebanon specifically for the purpose of assisting the Charity in overseeing and supervising projects in their respective regions. Each foreign office delivered quarterly reports to the Charity which include, among other things, reports on projects in their regions. Examples of these reports are included at Tab 39a. The Charity's foreign offices conduct site visits to projects and report to the Charity. Attached at Tab 39b is an email from the Charity's executive director



in October 2011 instructing HCI South Asia's regional director to undertake monitoring visits immediately and admonishing him for not fulfilling his duties in this regard. Attached at Tab 39c is an example of a project partner in Pakistan contacting the Charity to confirm a visit by HCI South Asia staff in 2013.

The Charity has also worked to improve the level of formal interim reporting from its third party intermediaries. For long term projects lasting more than a year, the implementing partner is required to submit a quarterly interim report. Examples of such interim reports are attached at Tab 40.

All partners during the audit period were required to provide a Project Completion Report following completion of the project (Tab 41). The report provides a narrative, pictorial and financial record of the activities carried out by the agent. An example of a completed Project Completion Report is attached (Tab 42). The Charity reviews each Project Completion Report, and verifies it against the project agreement and activity description in the project proposal.

Specific monitoring reports and communications in respect of the projects cited by CRA in the AFL are included in Appendix A to this letter.

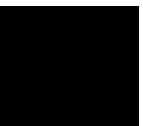
As such, the Charity maintained oversight and implemented diligent processes for monitoring the progress of its projects during the whole of their implementation. While it is true that this process has become more formalized since the Audit Period, the Charity has always monitored its projects to ensure compliance. The Charity believed, reasonably, that establishing local regional offices with close geographic proximity to its project sites to assist in ongoing monitoring, together with the communication and reporting from project partners directly to the Charity, met the Charity's requirements for direction and control under the Act. It did allow the Charity to maintain effective oversight over its projects.

The project monitoring and reporting conducted by the Charity was also used to determine whether to continue working with particular project partners. As noted above, a review of past compliance is part of the Charity's vetting process when reviewing potential project partners for any new project.

#### Other Documents/Issues

The AFL states that the Charity's Board minutes do not contain a record of substantive discussion of ongoing projects.

The Board receives quarterly reports from two Canadian branch offices (Toronto and Montreal), as well as from the Charity's foreign offices (HCI South Asia and HCI East Africa) and its strategic partner in Lebanon (HCI Middle East). These reports contain details about current projects and activities, which are reviewed at quarterly Board meetings. The purpose of these reports is to keep the Board informed of all the Charity's projects, and to allow it to evaluate and exercise control over these projects. The minutes of Board meetings at which these reports are discussed do note the discussion. As is a typical corporate governance best practice, the Board minutes do not include a stenographic report of the discussion. However, the Board does engage in a robust discussion of the Charity's ongoing projects at these meetings.



The Board receives reports from its branch offices on the activities for the past fiscal year (Tab 43), supplementary reports on the current fiscal year (Tab 44), as well as a Planned Activities Report (Tab 45) which sets out planned activities for the upcoming year. The Board reviews and approves these activities, subject to any modifications it deems appropriate.

The inclusion of 16 non-qualified donees in the Charity's Qualified Donees Worksheet (form T1236) was a purely inadvertent error. As described in more detail in Appendix A to this letter, the Charity worked with each of these organizations using the process described above. The Charity endeavoured to ensure direction and control and to ensure that it met the requirement to carry out its own charitable activities in respect of these projects. The Charity is prepared if necessary to file a correction to its T3010 returns in the relevant years.

#### Governance Improvements re Compliance Process

The Charity has worked steadily to improve its compliance procedures. Many of these developments occurred in years after the Audit Period. This included various updates and enhancements to the forms that the Charity uses in the context of its projects. It also included internal governance changes to dedicate increased focus and resources to compliance matters.

In 2014, the Charity's Board established a formal Compliance Committee. The Compliance Committee's Charter is attached at Tab 46. The Committee's primary objective is to *"promote an organizational culture that encourages a commitment to compliance with applicable governing legislation in Canada"*, and the Committee's role includes the development and recommendation of policies to the Board to improve compliance with respect to the selection of partners, selection of projects, and guidelines for ongoing project and partner monitoring and evaluation.

The Charity has also created a specific Compliance Officer staff position. The Compliance Officer's duties are summarized in the job description enclosed at Tab 47. The Compliance Officer reports regularly to the executive director and to the Compliance Committee. The Compliance Officer's role is to oversee the Charity's compliance program, including its policies and procedures.

As with many registered charities, improving compliance is an ongoing process. The Charity continues to work to improve its processes and ensure that all compliance requirements are met. This includes through the development of formal policies and committees, as noted, as well through ongoing discussions among staff. For example, we enclose an email from [REDACTED] then executive director, on April 6, 2017 (Tab 48) to senior staff outlining both the practical challenges associated with compliance, as well as a clear commitment to ensure that the Charity is meeting these requirements and the need to improve processes where appropriate.

#### Appendix A

The Charity has reviewed the documentation in relation to the specific projects identified by CRA in Appendix A to the AFL. Attached to this response is an Appendix A setting out the Charity's detailed response in respect of each project.

### Summary

Based on the foregoing, there is no question that the Charity endeavoured in the Audit Period to implement processes that would ensure that it maintained appropriate oversight at each stage of its projects. It reviewed and carefully vetted each project partner. It carefully considered each project proposal and ensured that an appropriate level of detail for the implementation of the project had been settled. It also worked to monitor its projects using methods that it believed were appropriate and efficient in the circumstances.

We acknowledge that some documentation and record-keeping errors occurred in the audit years. The Charity has worked diligently to improve its processes in this regard. This includes through new and more detailed agreements and reporting templates, and through revisions to the Charity's internal processes. The Charity works to ensure that it maintains better and more consistent reporting from its partners, both on an interim and final basis. Enclosed with this letter at Tab 49 is a sample of communications and reports from one of the Charity's project partners subsequent to the Audit Period. It is clear that the Charity has maintained detailed documentation of its direction and control over its projects. This is the basis – subject to comments from CRA – on which the Charity is operating and will continue to operate going forward. The Charity is prepared to commit to these procedures and templates as part of an appropriate compliance agreement.

#### **(b) Foreign Office Activities**

##### **(i) CRA position**

The AFL states that the Charity has also failed to demonstrate that projects conducted through the Charity's foreign offices were the Charity's own activities.

The AFL states that CRA reviewed samples of project activity reports with the Charity's foreign offices, and takes the position that the Charity failed to exercise direction and control. It states that the Charity did not demonstrate prior approval of projects or have input into ongoing decision-making related to its foreign office activities. It also states that project activity reports were mostly deficient and lacked detail, including "identically-worded updates" that "demonstrate a disregard to provide timely and detailed information on the activities". It also states that the Charity failed to retain duplicate receipts and appropriate books and records.

The AFL states that the MOUs with foreign offices provided by the Charity to CRA on June 29, 2015, like the agency agreement templates provided on the same date, contain some important terms necessary to demonstrate direction and control. However, CRA states that a few essential terms are still lacking.

The AFL states that CRA's findings are consistent with the findings of two prior audits in 1990 and 1996. The AFL states that the non-compliance identified in both audits was communicated verbally to [REDACTED], then executive director of the Charity.

Appendix B contains more details on particular projects reviewed by CRA in the course of the audit.

**(ii) Charity Response**

The Charity established its two foreign offices in South Asia and East Africa, as well as a strategic partner in Lebanon, to perform several functions:

- to assist the Charity in overseeing the projects and partners operating on behalf of the Charity in their local regions;
- to conduct field visits to the Charity's projects; and
- in some cases, to implement directly projects and programs on behalf of the Charity.

The two foreign offices (HCI South Asia and HCI East Africa) are controlled by the Charity. Specifically:

- HCI South Asia (sometimes called "**HCI SA**" or "**HCI Pakistan**") is operated by a committee of three individuals that report to a regional director. The Charity selected these committee members through meeting with and interviewing them. The regional director reports directly to the executive director of the Charity, who engages in regular visits to HCI SA.
- HCI East Africa ("**HCI EA**") is operated by an individual employee, a Liaison Officer who is paid directly by the Charity and reports to the Charity. The job description of the Liaison Officer is attached at Tab 50.

The Charity's strategic partner in Lebanon, sometimes referred to as "**HCI Lebanon**" or "**HCI Middle East**", was established in 1989. Due to restrictions under Lebanese law that prevented the Charity from establishing a formally affiliated branch office, HCI Lebanon was established as a separate NGO in Lebanon. It is governed by a local board and regional director, who oversees projects on behalf of the Charity.

The Charity's foreign offices and strategic partner serve principally to better enable the Charity to exercise ongoing direction and control over the projects that the Charity carries out using non-affiliated intermediaries. The Charity's foreign offices are established in the communities in which the Charity's projects take place, and thus are in an optimal position to assist the Charity in evaluating potential project partners and overseeing projects. The foreign offices report to the Charity regularly on project progress. The Charity also uses its foreign offices for advice and suggestions on ways to practice better controls and improve the effectiveness of its work on the ground.

Attached are examples of communications between foreign offices and the Charity regarding the foreign office's operations and assistance in monitoring projects conducted by other agents (Tab 51). In one such communication, for example, the Charity's executive director discusses with the Liaison Officer at HCI East Africa about a planned project visit trip in Somaliland, to visit the offices of the Charity's partner [REDACTED] as well as others (Tab 51b). The Charity's executive director requests detail on the itinerary for the trip as well as reporting. There are numerous examples of this type of communication, as well as ongoing reporting from the Charity's foreign offices (see examples above at Tab 39).

[REDACTED]

[REDACTED]

As such, it is important to understand that many of the projects reported on by foreign offices are not projects being carried out by the foreign office itself. Rather, the reporting from and communication with the foreign office and strategic partner is to assist the Charity in monitoring other intermediaries that the Charity has engaged to carry out the project on the Charity's behalf.

In some cases, foreign offices and the strategic partner conduct projects directly on behalf of the Charity. In these cases, the foreign offices act as agents of the Charity. As with other intermediaries, they are subject to direction, control, inspection, accounting and audit by the Charity. The Charity maintains oversight over projects conducted directly through foreign offices through periodic visits, activities reports submitted by the foreign offices, as well as financial reports and audited statements. Examples are attached at Tab 52. Regular communication is maintained with them through emails and telephone calls.

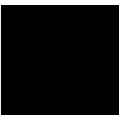
The process by which projects are selected and implemented through foreign offices and the strategic partner in Lebanon is similar to that used when the Charity operates through non-affiliated entities. All projects and activities undertaken by these offices are initiated and/or approved by the Charity. In some cases, foreign offices will submit project proposals based on emergency needs in the area (e.g., floods/earthquake in Pakistan, Syrian refugee crisis, famine/drought in Somalia). The project proposal is then scrutinized by the Charity in the same manner as proposals submitted by non-affiliated entities. Where needed, the Charity will seek further clarification and detail. Proposals must be approved by the Charity's executive director as with all other projects.

Because the Charity itself established the foreign offices and strategic partner and maintains a continual relationship with them, the Charity does not formally complete Partner Information Forms for each project that will be carried out directly by a foreign office. In some cases, foreign offices will, with the Charity's approval, work with local intermediary organizations to facilitate the implementation of projects. The foreign office assists the Charity in conducting initial due diligence on the potential intermediary. The Charity collects and reviews the same information for these intermediaries as with those with which it operates directly. The Charity has also worked with its foreign offices to ensure that the foreign office enters into a formal agreement with the local intermediary (Tab 53).

The Charity has formalized a formal written agency agreement with each of its foreign offices. These agreements were shared with CRA in 2015 (Tab 54). These agreements are in a similar form as the updated agreements used with non-affiliated intermediaries. These agreements were implemented for all projects beginning in 2016.

We acknowledge CRA's comments in reference to the newly developed agreement, citing the alleged absence of certain contractual terms. These are the same terms noted above with respect to the updated agency agreement used with non-affiliated intermediaries (i.e., alleged lack of detail on project, lack of provision for segregation of the Charity's funds). As noted above, the requirements for detailed project descriptions and a budget are set out in Schedule A to the agreement.

With respect to the segregation of Canadian Charity's funds and property, we note that in Pakistan the only source of HCI SA's funding is from the Charity; there is therefore no need to segregate funds. All properties in Pakistan belong to the Charity. The Charity submitted



documentation confirming ownership of these properties to CRA in 2017. The Charity's other foreign offices and strategic partner also receive funding exclusively (or nearly so) from the Charity. As such, there is no need to segregate the Charity's funds.

The Charity exercised ongoing monitoring over projects conducted through its foreign offices. A great deal of communications were done over the phone, by email, and through face to face meetings, as well as through formal reports from each office. The Charity's staff also conducted regular monitoring and evaluation visits.

Each foreign office submits quarterly reports to the Charity on its activities. CRA has been provided with copies of various of these reports that were prepared during the Audit Period. The AFL states that these reports are in some cases deficient, in that they do not provide sufficient detail on each project and do not include detailed financial accounting. We provide detailed responses in respect of these reports in Appendix B to this letter. These reports, together with other communications with the Charity to track funding and expenses by the foreign office, did allow the Charity to maintain oversight. The Charity is prepared to implement reporting templates for its foreign offices similar to those used with non-affiliated intermediaries.

With respect to CRA's comments that the findings in this audit were consistent with findings during previous audits, it must be emphasized that the Charity received no formal communication in respect of these previous audits. CRA states that concerns were communicated verbally to the then-executive director. Whatever comments may have been made to the executive director by the auditor some 20 or 25 years ago – and we have seen no records of any kind to verify this – this cannot be equated to a formal finding of non-compliance that was properly communicated to the Charity. It cannot be suggested that the Charity has defied or ignored previous audit findings. If CRA identified non-compliance in these audits in respect of which it expected specific action to be taken, it had an administrative law obligation to communicate these findings and any required corrective action clearly and in writing. The Charity received no findings of non-compliance and so continued to operate in the same manner. The Charity continually works to exercise direction and control and to ensure appropriate oversight, as is demonstrated in the Charity's many communications with its foreign offices and project partners. However, it is inappropriate to suggest that the Charity has failed to follow directions arising from the previous audits.

#### Appendix B

Attached to this letter is Appendix B which addresses CRA's specific comments on each of the Charity's foreign offices.

#### Summary

The Charity works with its foreign offices and strategic partner in Lebanon to supplement and assist its direct monitoring of projects conducted through other intermediaries. Where the Charity carries out activities through the foreign offices directly, the Charity exercises appropriate direction and control over these activities. The Charity is prepared to commit to specific reporting templates and protocols that will provide certainty to both the Charity and



CRA that it can document that all such projects constitute the Charity's own charitable activities.

### **1.3 Absence of Due Diligence**

#### **(a) CRA position**

The AFL states that a Charity should conduct regular and meaningful due diligence on all aspects of its operations, including its partners in program delivery. The AFL states that while the Charity has written procedures for due diligence, there is no supporting documentation to demonstrate that the Charity implemented these procedures. The AFL states that the Charity's records did not reveal records of background checks on current or potential partners, minutes of committee meetings or discussions of any kind regarding partners or due diligence, records of discussions and verification with local contacts, and no documentation and information on potential partners.

The AFL states that while there is no express due diligence requirement under the Act, all registered charities are expected to take necessary steps to ensure compliance with the requirements for registration. The AFL states that due diligence measures are simply a matter of good governance practice that can serve to lessen the risk that a charity's resources will be used in a way that could result in revocation of registration. The AFL states that registered charities should ensure that they have a good understanding of the background of their partners.

CRA sets out more specific findings in Appendix C to the AFL.

#### **(b) Charity Response**

CRA's assertions with respect to the due diligence performed by the Charity on its project partners are both factually inaccurate and legally problematic.

As CRA acknowledges, there is no free-standing "due diligence" obligation in the Act. The Act requires only that a charity devote its resources to charitable activities carried on by the organization itself. CRA and the courts have further interpreted a requirement that the Charity exercise direction and control. Nothing inherent in either of these requirements imposes a due diligence requirement. CRA states that due diligence is a good governance measure that helps to reduce the risk that the Charity's resources will be used in a way that could result in revocation of registration. This is true. However, this does not make "due diligence" an independent compliance requirement, and it is deeply problematic that the AFL suggests that it is and that CRA would purport to rely on this as a basis for imposing sanctions on the Charity.

Furthermore, it is simply inaccurate to suggest that the Charity did not conduct appropriate due diligence in respect of its project partners. The Charity completely agrees that due diligence is an important part of its stewardship of its funds and the effective delivery of its charitable programs. The Charity is also of course aware of legal requirements outside the *Income Tax Act* that prohibit the funding of terrorist or criminal organizations. The Charity takes these obligations very seriously. Indeed, much of the Charity's work with [REDACTED] was aimed at ensuring that its due diligence processes had no gaps.

[REDACTED]

[REDACTED]

As described above, the Charity conducts full and rigorous due diligence on each of its intermediaries implementing projects outside of Canada. This includes verifying the constating documents and local registration of the entity, conducting a careful review of the organization and its principals to ensure that they are not listed on Canadian, US or United Nations terrorism and sanctions watch lists, as well as by conducting online research on the organization and its principals to ensure that they are not involved in any negative or controversial activities. The Charity also reviews each organization's capacity to carry out the project and, if the organization has worked with the Charity in the past, the Charity reviews that organization's compliance with the requirements imposed by the Charity. As CRA notes, the Charity has specific policies in this regard.

In our view, it is clear that the Charity conducts appropriate due diligence for each of its project partners and there is no justification for imposing sanctions on the Charity for an apparent lack of due diligence.

Appendix C contains specific responses to CRA's particular concerns regarding specific project partners.

## **2. Failed to comply with or contravened any of sections 230 to 231.5 of the Act**

The AFL states that the Charity failed to comply with the record-keeping requirements in sections 230 to 231.5 of the Act.

### **2.1 Activities outside Canada**

#### **(a) CRA Position**

The AFL states that out of the 31 projects it reviewed, the Charity failed to maintain or provide books and records in respect of seven (7) specific projects. CRA states that it was not provided with supporting documentation in order to effectively review these activities. CRA was therefore unable to determine whether or not these projects can be considered charitable.

#### **(b) Charity Response**

The Charity has reviewed its records in respect of these projects. Unfortunately, certain documentation has been lost due to various factors. The Charity hired a new accountant in 2013 and a Project Development Officer in 2014 and some documentation appears to have been lost in the transition. Some data was also lost when the Charity replaced its desktop computers between 2013-2016 and migrated its computer system to a new platform in 2016. Unfortunately, certain of the Charity's records were also destroyed in 2016 by an interim executive director at the Charity as a result of a mistaken belief that they were no longer needed. The Charity has since replaced this interim executive director. The Charity has been working to obtain replacement copies of its records from its project partners, but this is a challenging process. Nonetheless, we confirm as follows:

- [REDACTED] was retained as intermediary to assist with various projects, including the construction of an orphanage in Pakistan. The Charity had worked with the organization previously, as noted in the attached Supplementary

Activity Report from HCI SA (Tab 55a). The Charity received photos of the constructed orphanage (Tab 55b).

- [REDACTED]. This organization was appointed as the Charity's agent to conduct health projects through its hospital facilities in India in 2013. Attached is a project visit report from 2014 by [REDACTED], the Charity's Finance and Accounts officer, in which he visited the project site and reported on progress and further needs (Tab 56a). The project was also visited by the Charity's Communications Officer, [REDACTED] on April 14, 2013 (email confirming itinerary attached at Tab 56b).
- [REDACTED]. The Charity purchased dental equipment from [REDACTED], in order to facilitate the provision of dental care for those in need in Syria. Attached is a list of items purchased by the Charity (Tab 57).
- [REDACTED]. This project also involved the purchase of equipment for a dental facility in Syria. Attached is a list of items purchased by the Charity (Tab 58). Together with the purchase of dental equipment from [REDACTED] these projects were referred to as the "Turkey Dental Clinics Project".
- [REDACTED]. The Charity purchased pharmaceuticals for a clinic in Syria. This was undertaken in connection with the Charity's work with [REDACTED] described further in Appendix A to this AFL response. Attached is a list of the pharmaceuticals purchased by the Charity (Tab 59).
- [REDACTED]. The Charity entered into an agreement in March 2013 with [REDACTED] for the support of 75 children in need in Syria (Tab 60). Attached are email communications between the Charity's executive director, staff and [REDACTED] (Tab 61).
- [REDACTED] This organization – which is distinct from the Canadian charity [REDACTED] – was appointed as the Charity's agent in 2012 to carry out Syrian relief work with refugees. We enclose a copy of the project agreement in respect of the transfer of funds (\$180,500) identified by CRA (Tab 62). This transfer encompassed several sub-projects, and we attach completion reports for these projects, along with certain proposals and a breakdown of the total amount, at Tab 63a. The Charity's executive director also visited this partner to review this and other projects undertaken on behalf of the Charity (picture of visit attached at Tab 63b).

It is true that during the audit years, books and records of the foreign offices supporting the activities of the Charity were being maintained overseas but were always available to the Charity upon request. The Charity has gathered these books and records and will maintain them at its head office in Ottawa. All books and records will be maintained in Canada going forward.

## 2.2 Total Revenue (line 4700, T3010)

### (a) CRA Position

The AFL identifies a discrepancy with respect to the revenue reported in the Charity's 2013 T3010 return. CRA states that the Charity's total reported revenue for the 2013 consists of three streams: (i) receipted gifts, (ii) non-receipted gifts, and (iii) miscellaneous. CRA observed certain discrepancies in the amounts reported for receipted and non-receipted gifts based on donor lists provided by the Charity. CRA provides details of these discrepancies in Appendix E to the AFL.

### (b) Charity Response

#### *Receipted versus Non-Receipted Revenue*

Prior to the issuing of the AFL, the Charity completed an investigation into these financial discrepancies by hiring an expert external consultant [REDACTED]. The consultant's report was submitted to CRA, and the report concluded that the discrepancies arose because the Charity has a fiscal year (April-March) that differs from the calendar year when receipts are issued, which in turn resulted in discrepancies due to the fact that receipts for gifts in the first three months of the calendar year are not receipted in the current fiscal year but rather in the following year.

For the 2013 fiscal year (April 1, 2012 to March 31, 2013), the Charity issued tax receipts in February 2013 for all gifts in the 2012 calendar year. However, gifts in the final 3 months of the 2013 fiscal year (January - March) were receipted in February 2014. The Charity filed its T3010 return in September 2013 for its fiscal year ending March 31, 2013, before receipts had been issued for gifts received in these final 3 months, and after it had been audited by its external auditor, [REDACTED]. The T3010 return was accurate at the time, and no discrepancy was reported. The amounts of receipted and non-receipted gifts were clear, matched the Charity's [REDACTED] Database, and were audited by its external auditor. However, in February of 2014, receipts were issued for gifts received in the three months of January - March 2013. At that point, the amount of receipted and non-receipted gifts changed, and the amount of \$533,601.27 shifted from non-receipted to receipted revenue. This amount was reported by the Charity to CRA on the T3010 as non-receipted, because of this fiscal year difference.

As corrective action to ensure this will not occur again, the Charity has already taken the following actions:

- The Charity has started monitoring and auditing this process monthly. After the Charity has analyzed a full year's results, it will establish controls over this process to be monitored and measured regularly to ensure the full compliance with CRA rules and regulations. The Charity has hired two professional chartered accounting firms to assist it in this process: [REDACTED] (Chartered Professional Accountants - CPA, CMA) and [REDACTED] (CPA - ACCA) (Tab 64).
- The Charity has changed its fiscal year end to move to a calendar year starting in 2019, which was approved by CRA (Tab 65). Thus, the Charity's fiscal year will

match the calendar year and be easier to track and reconcile with respect to receipted and non-receipted revenue.

- The Charity has already studied and received quotes from [REDACTED] (owners of its database system) to implement [REDACTED] in 2019, which is a complete database and financial solution attached to the [REDACTED] System (see attached at Tab 66).
- The Charity is now also studying the possibility of issuing an official donation receipt immediately after one-time donations are made and issuing a consolidated receipt in February for monthly donations in the previous year.

The Charity is confident that it will be able to minimize if not eradicate these variances between the T3010 and its database with the solutions introduced above, and it will continue to move forward with these new best practices.

#### *Gap Between T3010 and Revised Donations Received*

The Charity has reviewed CRA's comments in Appendix E with respect to CRA's attempt to reconcile the total donations (receipted and non-receipted) generated by the Charity's [REDACTED] reports and the revenue presented in the audited financial statements, and what was reported in the March 31, 2013 T3010 information return.

As stated in Appendix E, CRA determined a difference of approximately \$217,000. The Charity's explanation is that the [REDACTED] reports reflect donation revenue received on a cash basis. The financial statements reflect revenues adjusted for deferred revenues for externally restricted projects that will be completed in future years. For financial statement purposes, the net change in the deferred revenues was recorded as an increase or decrease to accounting revenues.

For the fiscal year ended March 31, 2013, the net change in deferred revenues from note 7 of the audited financial statements was approximately \$297,000, which was reflected as an addition to revenues. This leaves a final difference of approximately \$79,000.

CRA conducted a further analysis in Appendix E to the AFL in which it compared total deposits received by the Charity as indicated on its bank statements to the revenues reported in the audited financial statements and the T3010 return. On page 3 of Appendix E, CRA has calculated total deposits of \$7,549,810. CRA then calculated expected cash revenues per the reported T3010 by deducting the approximately \$217,000 difference noted above, gifts in kind, investments and other non-donation revenue, and came up with \$7,306,722. The difference between \$7,549,810 and \$7,306,722 was \$243,088. CRA then concluded that this difference represents revenues that the Charity failed to capture in its accounting system.

The Charity has done its own analysis of total cash deposits to determine if CRA's conclusion is correct. The Charity's analysis involved the following process:

- summarizing for each bank account the total "credit" transactions from the monthly bank statements, which reflect the deposits/increase to the bank accounts (during

the 2012-13 fiscal year, the Charity used three bank accounts at [REDACTED] – 2 Canadian accounts and 1 US dollar account);

- summarizing any NSF for returned deposits;
- summarizing transfers between bank accounts;
- identifying wire transfer returns – these represent wire transfers sent to project partners that could not go through and were therefore returned to the Charity. The amounts are not revenue, but a reversal of project expenses; and
- identifying other receipts such as HST rebates received, insurance settlement proceeds and rebates that were not recorded as revenue (either as reduction of accounts receivable or netted against related expenses).

Please see the attached schedule summarizing the results of this analysis (Tab 67):

- Part 1 of the schedule reconciles the revenues presented on the audited financial statements and the T3010 to the reported cash donations (receipted and non-receipted). This amounts to \$7,195,074.
- Part 2 of the schedule presents the Charity's analysis of cash deposits per the bank statements, adjusted for the items noted above (NSF deposits, transfers between bank accounts, returned wire transfers, other non-revenue transactions). The Charity's final total for this analysis is \$7,255,344.

The difference between these two numbers is \$60,270.

- Part 3 of the schedule recalculates the total receipted and non-receipted donations per the revised [REDACTED] listings provided to CRA, then compares it to the Part 1 calculation.

After deducting the donations in kind amount from the [REDACTED] totals, final cash donations amount to \$7,274,593. The difference between this amount and the Part 1 amount of \$7,195,074 is an amount of \$79,519.

Both comparisons show a difference of less than \$100,000. While the Charity has been unable to reconcile these figures perfectly, it is possible that other non-receipted revenue could be found with more time. As such, the Charity believes that it has properly captured its revenues in its accounting system.

**3. Issued a Receipt for a Gift or Donation otherwise than in accordance with the Act and its Regulations**

**(a) CRA Position**

CRA alleges that the Charity has engaged in third-party receipting by engaging in funding arrangements with non-qualified donees. CRA identifies several third party organizations in the audit years in respect of which the Charity is alleged to have issued official donation receipts for gifts that were not intended for the Charity but rather for the third party

[REDACTED]

[REDACTED]

organizations. CRA proposes to impose penalties under section 188.1 for improper receipting.

The basis for CRA's position is set out in Appendix D to the AFL. CRA cites various communications between CRA and its project partners which CRA believes indicate that the Charity was merely acting as a conduit to flow funds to these entities and enable receipts to be issued to donors to these organizations.

**(b) Charity Response**

The Charity has not engaged in third party receipting. This allegation appears to be based on a misunderstanding of the Charity's fundraising practices, as well as its practices with respect to project selection and implementation.

As discussed above, the Charity collaborates with socially engaged individuals, support groups and organizations that are familiar with issues and needs in their local communities worldwide. Such groups will sometimes bring issues to the Charity's attention as potential projects for the Charity's consideration. The Charity reviews and vets all such proposals in accordance with its policies and practices described above. In some cases, the Charity will determine that the project is consistent with its mission and priorities and will proceed to move forward with it. In other cases, the Charity will determine that the project is not aligned with its mission, is beyond its capacity, or will otherwise not move forward with the project. The Charity has foregone funds offered to the Charity upon determining that it would not be able to use the funds effectively.

The key is that the Charity does not accept funds or engage in project-specific fundraising until it has reviewed and approved a project. The Charity also makes clear to donors that they do not have the right to direct the Charity with respect to the spending of a donation. Attached is an email in which the regional director of HCI Middle East confirms that he explained to donors who wanted to specify particular beneficiaries of a project that this is not permitted, and that the Charity does not simply funnel funds to directed recipients (Tab 68).

The Charity uses various approaches to fundraising. This can include working with individuals and groups that are connected to the communities in which the project will occur. The Charity may appoint these individuals and groups as volunteers to promote the Charity's mission, objectives, and to appeal to their contacts, membership and audience on behalf of the Charity. In some cases, funds are collected by these individuals and groups on behalf of the Charity and are then forwarded to the Charity. This is a common practice for many registered charities, and CRA has specifically recognized it in Charity Policy Commentary CPC-026 *Third Party Fundraisers* (Tab 68b). The Charity has specific policies with regard to fundraising and receipting that confirm its commitment to compliance with the Act.

Upon receipt of these funds together with a list of donors and the amount donated by them, the Charity would issue tax receipts directly to each donor for the eligible amount of their gift.

Where the Charity engages third parties to solicit funds on its behalf, it communicates clearly with all such parties that all funds raised will be owned by the Charity and subject to its full authority. Where funds are raised to support a particular project, these funds become

restricted for use for that project as a matter of charitable trust law. However, the Charity retains full authority to execute the project using such intermediaries as it sees fit and only in accordance with the Charity's ongoing direction and control. While the Charity will consider suggestions from its partners and from any supporting groups, the Charity makes all final decisions on its own after complete evaluation.

As such, under no circumstances has the Charity ever lent its charitable registration to any outside organization for receipting purposes. The Charity has only ever issued tax receipts for funds received by the Charity and utilized for projects undertaken by the Charity. Project funds are disbursed only in accordance with the procedures above and subject at all times to the Charity's direction and control.

Attached as Appendix D to this letter is a detailed response to the specific allegations raised by CRA.

#### **4. Failure to File an Accurate T3010 Return**

##### **4.1 Donations Received Amounts**

###### **(a) CRA Position**

As noted above in section 2.2, the AFL identified certain discrepancies in respect of the Charity's T3010 return for its fiscal year ending in 2013. CRA alleges that the charity under reported receipted gifts and over-reported non-receipted gifts.

###### **(b) Charity Response**

The Charity's explanation for this issue is set out above under section 2.2. As noted, the Charity has changed its fiscal year to a calendar year to better reconcile the recognition of revenue as between its financial statements and its T3010 return.

##### **4.2 Total Expenditures on Activities Outside Canada**

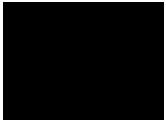
###### **(a) CRA position**

CRA identifies discrepancies as between the Charity's reported expenditures outside Canada on its T3010 returns for 2012 and 2013, and its Detailed Project General Ledger.

###### **(b) Charity Response**

The Charity has reviewed this issue carefully and consulted with its financial auditor.

The AFL attempts to reconcile Activities Outside Canada as per schedule 2 of the T3010 to the amounts recorded in the audited financial statements. In the Charity's initial response to CRA, the Charity provided details of the amounts that made up the original T3010 schedule as well as the details of the general ledger accounts. As part of this process, the Charity provided a schedule that reconciled the total per the T3010 schedule to the general ledger account details, then this latter amount to the amount recorded in the audited financial statements.



CRA has indicated in the AFL that it noted and appears to accept the reconciling of items between the three amounts (page 22). However, in doing a revised comparison, it appears that CRA has not compared the correct numbers. Specifically, CRA did not take into account that the Charity noted that the project expenses include payments to domestic suppliers for services or materials related to the country projects and therefore do not appear on the T3010 Schedule 2.

The Charity has prepared a new reconciliation for foreign expenditures for both the 2012 and 2013 fiscal years (Tab 69). The reconciliation begins with the total preliminary general ledger amount for each year, which is the number that CRA began with (as noted in footnote 54 on page 24 of the AFL). The reconciliation includes two columns that segregate this amount between amounts paid to foreign suppliers and amounts paid to domestic suppliers. The reconciliation then shows how the final audit adjustments reconcile the total to the final amount presented in the audited financial statements. It then compares the amount for foreign supplier payments to what was reported on Schedule 2 of the T3010.

For the year ended March 31, 2013, the variance is approximately \$88,000 versus the variance of \$513,000 stated by CRA (noted on page 24 of the AFL). This represents input errors that were made. It is our view and the view of the Charity's financial auditors that a difference that is below \$100,000 is reasonable for an organization of this size.

For the year ended March 31, 2012, the variance is larger - approximate \$429,000. The main reason for the difference is that approximately \$402,000 of expenses had been posted as a direct reduction to the deferred revenue accounts in the general ledger and not to the expense accounts. Otherwise, the remaining difference of \$27,000 is reasonable and reflects other input errors.

In summary, the revised schedules reconcile the amounts recorded per the financial statements to what was reported on the T3010 schedule 2 for 2012 and 2013. For 2013, the final variance is below \$100,000. For 2012, there was a larger reporting error identified. However, the reason for the error is isolated to that specific year.

Ultimately, the books and records of the Charity after recording the final audit adjustments are accurate and are represented in the audited financial statements.

## **5. Revocation and Intermediate Sanctions are Not Appropriate**

The Charity submits that the submissions above demonstrate that revocation is not an appropriate sanction in this case. Even if the Charity has been non-compliant with applicable tax rules in certain minor ways, the areas of alleged non-compliance are not such that it is appropriate to revoke the registration of the Charity. The Charity remains committed to full compliance with the Act and is prepared to work with CRA to ensure its full compliance. This can be accomplished with an appropriate compliance agreement. The Charity submits that this is consistent with CRA's audit policy, as set out in CRA's current published guidance on the audit process for registered charities (Tab 70)<sup>6</sup>.

---

<sup>6</sup> <http://www.cra-arc.gc.ca/chrts-gvng/chrts/dtng/dt-prcss-eng.html>

According to CRA's published guidance, revocation of registration is only appropriate where one or more of certain elements are present. These elements are:

- the non-compliance is serious and intentional;
- the non-compliance has had a substantial, adverse effect on others (beneficiaries, donors, or funders); or
- the charity had a previous record of serious non-compliance or cannot or will not follow the rules.

The Charity submits that none of these conditions are met.

First, the Charity submits that it has not in fact engaged in serious or intentional non-compliance. The Charity has substantially complied with all obligations under the Act. The Charity has operated on the entirely reasonable understanding that its activities and mode of operations were accepted by CRA as fully charitable and compliant with the Act. The Charity cannot be said to have engaged in serious or intentional non-compliance. Indeed, the Charity hired the leading security law counsel in the country to assist it in its compliance.

To the extent that the Charity has failed to comply with the Act, this has not in any way adversely affected any beneficiaries, donors or funders. The Charity's funds were used appropriately on charitable relief and development projects. There is no suggestion by CRA otherwise.

Furthermore, the Charity is clearly both willing and able to bring itself into compliance with the Act. The Charity has never been subject to any formally communicated finding of non-compliance in the past. The Charity has worked in good faith to improve its processes. The Charity has a sincere commitment to compliance and has made (and continues to make) a good faith effort to rectify any problematic practices in the past.

The cumulative effect of the above is that revocation is inappropriate.

Furthermore, there is no justification for imposing intermediate sanctions, either for improper receipting or for gifts to non-qualified donees. As discussed above, the Charity has not engaged in any improper third party receipting. Furthermore, it has not made gifts to non-qualified donees; rather it has provided funds to its project partners pursuant to specific arrangements that are designed to ensure direction and control over the projects. The inclusion of non-qualified donees in the Charity's form T1236 was a mere inadvertent error.

## **Conclusion**

As stated above, the Charity has been operating since 1980, and since then it has disbursed over \$150 million to those in need in Canada and abroad. The Charity has very deep grassroots in the Muslim community, and in Canadian society. Throughout 38 years of history, the Charity has 30,000 active donors and has worked with more than 1000 Canadian organizations including other charities, NGOs, non-profit associations, government agencies, educational institutions, student clubs, UN agencies, companies, and many more. The Charity is a proud Canadian institution which has a very significant number of Canadian stakeholders working with it, supporting it, depending on it, and who will be



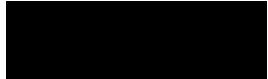
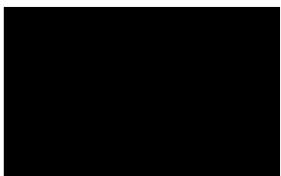
affected adversely by its demise. Not only is the Charity the first Muslim charity in Canada that was principally and professionally engaged in multi-jurisdictional international relief and development work, it continues to be one of the very few Canadian charities raising the Canadian flag in Muslim communities across the globe. The Charity announces proudly that it is Canadian in all its activities, promotion, marketing, and events. With all its improvements and commitments, the Charity will excel in serving humanity around the world as the oldest Canadian Muslim charity engaged in international relief and development work.

When you have had an opportunity to review the foregoing, we would propose that we arrange a meeting in Ottawa to provide additional clarity and to discuss a resolution to this audit through an appropriate compliance agreement. Please contact me at your convenience to discuss.

Sincerely,

A black rectangular redaction box containing a handwritten signature.

Encl.

A black rectangular redaction box.A large black rectangular redaction box at the bottom left.

## APPENDIX D

### THIRD PARTY RECEIPTING

CRA alleges that in some instances, the Charity appears to have issued official donation receipts for gifts that were in substance gifts to another organization that is not a qualified donee. This is not accurate. The Charity's AFL response sets out the Charity's general response to this allegation. In all cases, the Charity raised funds for projects that it decided to conduct through third party intermediaries, and over which the Charity sought to maintain direction and control. While in some instances the Charity engaged third parties to assist it in its fundraising efforts, this should not be interpreted to suggest the Charity is engaged in receipting for gifts to third parties.

Below is the Charity's response to certain specific allegations made by CRA in Appendix D to the AFL.

1. [REDACTED]

The AFL asserts that the Charity issued donation receipts for donations intended for [REDACTED]. CRA notes that a representative of [REDACTED] appears to have been authorized to collect funds on behalf of the Charity. CRA notes that [REDACTED] was provided with a donation acknowledgement book which [REDACTED] used to issue acknowledgements to donors to the Charity. Funds raised by [REDACTED] were deposited in the Charity's bank account and the Charity issued official donation receipts to these donors. CRA states that these donations were in fact gifts to [REDACTED]. CRA states that [REDACTED] "instructed" the Charity to send funds raised to [REDACTED]. CRA states that "the [Charity] issued donation receipts for gifts intended for [REDACTED] in the amount of \$41,436 for FY2012 and \$39,671 in FY2013.

This characterization of the relationship between the Charity and [REDACTED] – or of [REDACTED]'s role in raising funds – is not accurate. [REDACTED] is an organization based in India. The Charity entered into agreements with [REDACTED] to carry out education projects in India (Tab 211). The funds raised on behalf of the Charity and provided to [REDACTED] were pursuant to these agreements. This is an ongoing project in operation for many years, approved by the Charity in the manner that it approves other charitable projects.

The Charity uses a diaspora method of fundraising, which means engaging third parties to assist it in reaching out to the Charity's donor base. [REDACTED] was engaged by the Charity for this purpose. The Charity's executive director issued him a letter authorizing to collect funds for this project, issue acknowledge receipts, deposit funds in the Charity's account and provide details about the donors to whom the Charity issued the tax receipts (Tab 212). [REDACTED] maintained detailed records of all donations, using the methodology directed by the Charity, to ensure that donations were accounted for properly.

Since the funds were raised and restricted for this particular project, as a matter of trust law they had to be disbursed by the Charity for this project. This would be true regardless of whether the funds were raised with third party assistance. Control of donations remained with the Charity. It is inaccurate to suggest that [REDACTED] "instructed" the Charity to transfer funds. He simply indicated, as a representative of [REDACTED] engaged in the delivery of

[REDACTED]

the project on the Charity's behalf, when funds were needed pursuant to the project agreement with the Charity.

As such, the Charity did not issue receipts for funds donated to another organization. It simply engaged a third party to assist in raising funds for a project carried out through an intermediary as the Charity's own activity.

2. [REDACTED]

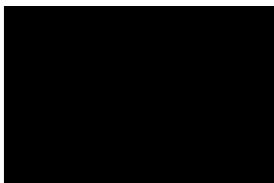
The AFL states that [REDACTED] appears to raise funds for its projects using the Charity's registration number. CRA cites [REDACTED] audited statements documents that state that [REDACTED] raises funds using Human Concern International's (HCI) charitable number and we deposit all funds to HCI". CRA also notes that [REDACTED] website states "to donate now please go to our partners website HCI". CRA states that when [REDACTED] receives donations from donors, it deposits the donation in the Charity's bank accounts, whereupon the Charity provides official donation receipts to the donors. CRA states that the Charity then, "at [REDACTED] request", transfers funds to [REDACTED] in support of projects in Somalia. CRA reviews email chains allegedly reflecting this process. CRA states that the Charity issued donation receipts totalling \$12,240 for donations intended for [REDACTED] in FY2013. CRA acknowledges that the Charity did monitor [REDACTED] activities and received detailed reports. However, CRA states that this is done to "obfuscate the true nature of the transaction; namely, that the [Charity] issued donation receipts for funds intended for [REDACTED].

As with [REDACTED], CRA mischaracterizes the relationship between the Charity and [REDACTED]. [REDACTED] is an intermediary of the Charity carrying out charitable activities on the Charity's behalf in Somalia. Attached are agreements between the Charity and [REDACTED] (Tab 213).

The Charity did not allow [REDACTED] to use the Charity's registration number. Rather, the Charity works with [REDACTED], which is a Canadian non-profit organization, to assist in raising funds for the Charity to be used in projects conducted through [REDACTED] on behalf of the Charity.

[REDACTED] is a Canadian organization comprised of Somali diaspora who have in depth knowledge about the challenges (basic needs, poverty, illiteracy, clean water, etc.) facing the people of Somalia. The Charity encouraged individuals involved with [REDACTED] to become a part of the Charity's core of volunteers and to assist the Charity in promoting and raising funds for the projects that the Charity has been undertaking in Somalia.

The fact that the Charity uses [REDACTED] to assist it in raising funds does not imply that the Charity will carry out projects in Somalia using [REDACTED] as its exclusive agent. In 2011, the Charity decided that funds raised by Somali diaspora would be utilized for certain projects in Somalia and initially intended that the implementing intermediary will be a local organization called [REDACTED]. However, after lengthy discussions with [REDACTED], the Charity determined that [REDACTED] was not able to work in certain parts of Somalia (e.g. Puntland, Galkayo and Mogadishu North). The Charity then looked for another partner with which it could conduct relief and development projects in regions of Somalia that the Charity could not otherwise access through its other existing partners. The Charity's Project Development Officer at the time introduced the Charity to [REDACTED]. Upon conducting its due diligence on [REDACTED], the Charity determined that it would work with [REDACTED],



which the Charity determined could facilitate the implementation of the Charity's projects in these areas. A Charity Project Officer went to Somalia and had detailed discussions with [REDACTED] personnel, which resulted in the Charity approving [REDACTED] as an intermediary in the areas where they had strong presence in Somalia.

A board member of the Charity joined the Charity's personnel to assess the Charity's emerging role in Somalia. In order to be present in Africa and further strengthen the Charity's direction and control, the Charity decided to open its own office in Hargeisa (HCl East Africa) and hired a liaison officer to oversee projects, conduct monitoring and evaluation visits as well as support the Charity's activities in other parts of Africa.

[REDACTED] is part of the Somali diaspora, and is a Charity volunteer representative who is helping the Charity raise funds for its projects in East Africa.

All funds raised were under the Charity's control and were disbursed for charitable projects of the Charity. Attached are various photographs of the Charity's projects in Somalia for which [REDACTED] assisted in raising funds (Tab 214). Since the project activities undertaken were the Charity's charitable activities, appropriate tax receipts were issued to donors to the Charity in support of these projects.

The Charity acknowledges that certain of the statements in the [REDACTED] documents and website are potentially misleading. These statements were made by [REDACTED] without the Charity's consent. The Charity will discuss this issue with [REDACTED] to ensure that [REDACTED] clarifies its public statements regarding its role in supporting fundraising efforts for the Charity.

3. [REDACTED]

As with [REDACTED] and [REDACTED], CRA states that the Charity issues official donation receipts to donors for donations intended for [REDACTED]. The AFL notes certain emails that, in CRA's view, show individuals associated with [REDACTED] receiving funds from donors, depositing them in the Charity's accounts, and providing donor information to the Charity so that the Charity can issue official donation receipts. The individuals then request that the funds be transferred to the [REDACTED]. CRA acknowledges that the Charity provided it with an project proposal and written agreement in respect of the funds transferred to the [REDACTED] in 2012, but states that the agreement appears to have been designed to make it appear as if the [REDACTED] was undertaking activities on behalf of the Charity. CRA states that the Charity did not demonstrate direction and control over the projects. CRA also states that the Charity retained a 5% administrative fee "for processing the funds for the [REDACTED]". CRA states that the Charity issued official donation receipts for gifts intended for the [REDACTED] in the amount of \$70,000 in FY2012 and \$18,100 in FY2013.

The [REDACTED] is an intermediary registered in Kenya. The Charity has been implementing an educational project for poor and needy students through this intermediary. CRA was provided with copies of the project proposal and agreement in respect of this project. Contrary to the CRA suggestion, these documents were not prepared to create a false impression that the [REDACTED] was engaged in work on the Charity's behalf.

[REDACTED]

In fact, the [REDACTED] was appointed by the Charity as a real intermediary to pursue an education project consistent with the Charity's purposes. The Charity monitored the project as with all others (attached at Tab 215 are pictures of students benefitting from this program).

In Canada, this project is supported mainly by Kenyan diaspora who assist the Charity in raising funds for the Charity's charitable activities. The group involved with this initiative was encouraged by the Charity to become a part of its core of volunteers and assist it to raise funds for the projects that the Charity undertakes in Kenya. [REDACTED] and [REDACTED]

[REDACTED] are members of the Kenyan diaspora and have volunteered to help the Charity raise funds for these projects. The funds raised with the help of Kenyan diaspora are utilized by the Charity for this educational project. Funds are disbursed after scrutinizing the progress of the project based on project reports and visits by the Charity's personnel, as well as discussion with diaspora in Canada who are involved in supporting this project.

Funds are donated to the Charity and belong to the Charity to support its projects. No receipts are issued for donations not made to the Charity.

As for the "retention" of 5% of the donated funds, there are always administration costs involved in undertaking projects and these costs are part of the Charity's project related expenses. While the language in some communications could be read to suggest that it is an administrative fee retained for services provided to the [REDACTED], in fact the Charity is simply confirming that not all funds raised for the project will be transferred to the intermediary. The Charity has its own costs to meet in conducting and overseeing the project.

All funds raised were under the Charity's control and were disbursed for its projects. Since the project activities undertaken were the Charity's charitable activities, the Charity issued official donation receipts for donations received by the Charity.

4. [REDACTED]

CRA states, as with the other organizations listed in Appendix D, that the Charity has issued receipts for donations intended for [REDACTED]. CRA cites email chains and deposit records and states that [REDACTED] receives and deposits donations with the Charity, whereupon the Charity provides official receipts and transfers funds to [REDACTED].

[REDACTED] is based in Srinagar, Munshigonj in Bangladesh. A committee of Bangladeshi diaspora helped the Charity to raise funds for an education and skilled training project carried out by [REDACTED] on the Charity's behalf. The CRA received copies of the project agreements in relation to this project during the audit (Tab 216).

This project was initiated with help from the Bangladeshi diaspora and was approved by the Charity as one of its projects. The diaspora group has been engaged as third party fundraisers and provided with acknowledgement receipts. The group has been authorized by the Charity to raise and deposit the funds in the Charity's account as well as provide details about the donors contributing for this project. Tax receipts are issued for donations received by the Charity.

[REDACTED]

The government of Bangladesh (NGO Bureau) requires the funding commitments in advance in order to approve the receipt of foreign funds by intermediaries registered in Bangladesh. The Charity has been releasing such letters to its intermediaries. Funds are disbursed after receiving the NGO Bureau's approval. Periodic project visits were undertaken by HCI personnel (Financial Officer, Fundraising/Communication Officer) as well as volunteers from the diaspora to review this particular project and other projects in Bangladesh (see attached trip itinerary of the Charity's Communications Officer at Tab 217).

Funds raised are designated and restricted for this particular project and must be disbursed on an installment basis as per project needs and its progress. The control of the disbursement of funds remained with the Charity. This is an ongoing project of the Charity which was initiated years ago. It was entirely appropriate of the Charity issue official donation receipts to donors to the Charity in support of this project.

5. [REDACTED]

CRA states that the Charity has issued receipts for donations intended for [REDACTED] CRA cites email chains and deposit records and states that [REDACTED] receives and deposits donations with the Charity, whereupon the Charity provides official receipts and transfers funds to [REDACTED].

[REDACTED] is one of the largest, best organized and highly respected educational institutions in India. The Charity engaged it in 2011 to carry out educational projects on the Charity's behalf. CRA received copies of the agreements between the Charity and [REDACTED] (Tab 218).

The Indian diaspora involved in supporting this project comes mainly from the state of Gujarat, where this educational project is located. They are helping poor and needy students in Gujarat, India to receive quality education for free. [REDACTED] volunteers for the Charity as well as for [REDACTED] with the sole aim to help the Charity with this project.

All funds raised come to the Charity and are properly recorded in the Charity's [REDACTED] system and are allocated for this project. Funds are disbursed as per the needs of the project after following the Charity's standard practice of project evaluation. The Charity's personnel as well as volunteers, board members frequently visited this project.

It was entirely appropriate of the Charity issue official donation receipts to donors to the Charity in support of these projects.

6. [REDACTED]

CRA states that it appears that [REDACTED] is collecting funds for [REDACTED] projects and depositing them in the Charity's accounts whereupon the Charity issues official donation receipts. CRA states that in some instances these funds are referred to as "credit balances" which CRA interprets to mean that the funds are designated for [REDACTED] projects. CRA notes that [REDACTED] was both a director of the Charity and the president of [REDACTED] CRA [REDACTED]

cites emails and deposit records and states that it appears that the Charity is issuing receipts for donations intended for [REDACTED].

[REDACTED] served as a volunteer representative of the charity. In 2011, discussions were held with him about the charitable projects needed for the poor and needy people in different countries around the globe, particularly in India. He was authorized by the Charity to raise funds for these projects. As a volunteer representative, he was authorized to promote the Charity and its projects, conduct awareness raising programs to solicit donor support, participate in and arrange for fundraising events as well as make personal contacts with various donors and support groups: individuals, Mosques, Community Centres, businesses and organizations. This is consistent with the Charity's diaspora fundraising practices.

All funds raised by him on behalf of the Charity were promptly sent to the Charity. Funds were either deposited by him in the Charity's account and or sent to the Charity directly by him or by the donors themselves. He was also authorized to issue acknowledgement receipts to individual donors as a record of their donations and send records to the Charity of all donations made by donors. All funds were designated for projects of the Charity, including through [REDACTED] as intermediary.

Once these funds were received by the Charity, they were promptly checked for accuracy and recorded in the Charity's [REDACTED] system under various projects. All funds received belonged to the Charity and the Charity was responsible for making decisions about the projects that would be funded after following the process of receiving and scrutinizing proposals received from the Charity's intermediaries (see process described generally in the Charity's AFL response).

The designation [REDACTED] was used by the Charity as a Project Code to identify the source of funds. It did not mean that these funds were for [REDACTED] since the funds donated to the Charity were for several projects in many countries. These funds were properly designated to several of the Charity's projects such as healthcare, education, poverty alleviation, basic needs etc.

The term "Credit Balance" is a wrong use of words. In fact, it refers to funds that were already utilized for such projects and the additional funds that will be sent once proper reports have been received and a decision has been made about continuing with implementing these projects.

Several staff and donors conducted monitoring and evaluation visits to these projects and to the Charity's intermediaries in India to ensure that the Charity's funds are promptly utilized, projects are satisfactorily implemented, and proper direction and control is maintained (Tab 219).

[REDACTED] was not serving on the Charity's board during the audit period (2011-2013). He joined the Board of the Charity in September 2015. Prior to this he was serving on the [REDACTED] board, but it was before he was engaged with the Charity as a volunteer representative.

Once again, it must be emphasized that funds received by the Charity were not intended for [REDACTED]; they were solely and exclusively for the Charity's projects. The Charity did not

[REDACTED]

facilitate gifts to a non-qualified donee or issue donations receipts to donors on [REDACTED] behalf. These projects were the Charity's projects. Donors contributed to the Charity for these projects, which were implemented through its intermediaries. Since funds came to the Charity from donors, tax receipts were promptly issued to them. Diaspora/support groups/donors may provide their opinion, suggestions and advice about needs around the world and the type of projects that would address these needs, but it is within the Charity's discretion to consider and proceed with their suggestions about the projects and intermediaries. All projects must meet the Charity's criteria for selection and the projects must meet all requirements regarding direction and control described above in the AFL response.

All applicable transactions are recorded and accounted for properly within the Charity's donor tracking and accounting system to ensure all donations are both legitimate and properly accounted for.

## 7. OTHER

CRA claims that certain of the Charity's partner websites, social media websites and public reports advise that donations to their programs are eligible to obtain tax receipts facilitated through the Charity: specifically, [REDACTED], [REDACTED], [REDACTED].

The Charity did undertake projects with the abovementioned intermediaries. The Charity has also engaged with diaspora in the Canadian community to help fundraise for these projects. The Charity had made appeals on its own website and social media. Its intermediaries such as [REDACTED] and [REDACTED] also made appeals on their website and social media without the Charity's consent. Upon learning about this, the Charity communicated with its intermediaries to remove this from their website and social media.

The Charity was not aware that [REDACTED] has made similar statements. The Charity intends to contact [REDACTED] as well to direct them to discontinue this misleading practice.



## NOTICE OF ASSESSMENT - AVIS DE COTISATION

Date of mailing - Date de l'envoi July 7, 2021	Business Number – Numéro d'entreprise 107497125RR0001	Taxation year - Année d'imposition 2012
---	--	--

### NAME OF ORGANIZATION – NOM DE L'ORGANISME

Human Concern International

Penalty amount	Amount paid	Balance owing
\$276,800 Montant de la pénalité	\$0 Montant payé	\$276,800 Solde dû

### Explanation of assessment – explication de la cotisation

Penalty assessed in accordance with subsection 188.1(9) of the Income Tax Act for issuing official donation receipts containing false information.

Pénalité imposée conformément au paragraphe 188.1(9) de la Loi de l'impôt sur le revenu pour la délivrance de reçus officiels de dons contenant de faux renseignements.

Bob Hamilton  
Commissioner of Revenue  
Commissaire du revenu

Canada

Canada



## NOTICE OF ASSESSMENT - AVIS DE COTISATION

Date of mailing - Date de l'envoi July 7, 2021	Business Number – Numéro d'entreprise 107497125RR0001	Taxation year - Année d'imposition 2013
---	--	--

### NAME OF ORGANIZATION – NOM DE L'ORGANISME

Human Concern International

Penalty amount	Amount paid	Balance owing
\$108,001 Montant de la pénalité	\$0 Montant payé	\$108,001 Solde dû

### Explanation of assessment – explication de la cotisation

Penalty assessed in accordance with subsection 188.1(9) of the Income Tax Act for issuing official donation receipts containing false information.

Pénalité imposée conformément au paragraphe 188.1(9) de la Loi de l'impôt sur le revenu pour la délivrance de reçus officiels de dons contenant de faux renseignements.

Bob Hamilton  
Commissioner of Revenue  
Commissaire du revenu

Canada

Canada