

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL IND 17/2020

21 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 41/12, 43/4 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of police and judicial harassment of the NGO Amnesty International India**.

Amnesty International India (AI India) is an international human rights organization that works to protect human rights. Our concerns over alleged acts of harassment against AI India have already been shared with your Excellency's Government through a previous joint communication dated 28 December 2018 (case no. AL IND 28/2018). We would like to thank your Excellency's Government for its reply that we received more than a year after the communication was sent, dated 30 December 2019. Unfortunately the reply of your Excellency's Government did not entail any substantive responses to the questions posed in the communication, but only stated that the matter was under investigation.

The Foreign Contribution (Regulation) Act (FCRA) has been the subject of previous communications sent by various Special Rapporteurs on 18 June 2015 (case no. IND 7/2015), 10 June 2016 (case no. IND 2/2016) and 21 December 2016 (case no. AL IND 10/2016). We acknowledge receipt of the reply of your Excellency's Government dated 17 August 2015 (NV.52/2015). We regret that no response has been received from your Excellency's Government with regard to the other communications.

According to the information received:

Amnesty International India has two legal entities. "Indians for Amnesty International Trust" (hereinafter AI India) is a registered not-for-profit entity registered in 2012. The second is "Amnesty International India Private Limited" (hereinafter Amnesty India Private Limited), created in 2013.

On 25 October 2018, the offices of AI India and Amnesty India Private Limited were reportedly subjected to a search from the Enforcement Directorate. The Enforcement Directorate is an investigative agency under the Ministry of Finance which primarily enforces the Foreign Exchange Management Act, 1999 (FEMA) and Prevention of Money Laundering Act, 2002 (PMLA). The Enforcement Directorate subsequently froze the

organization's bank accounts in India. The ten-hour-long raid began at 1:30pm on 25 October 2018, when a group of officers from the Enforcement Directorate entered the premises and locked the gates behind them. They reportedly ordered the Amnesty India staff not to leave, to close their laptops and not to use their mobile phones. The Enforcement Directorate subsequently froze the organization's bank accounts in India.

After the events of October 2018, the Department of Income Tax sent investigative letters to more than 30 regular donors of Indians for Amnesty International Trust. However, according to information received, the Income Tax department never directly took up direct communication with the Trust, which suggests that no irregularities or wrongdoings were detected.

On 15 November 2018, AI India had filed the first writ petition in the Karnataka High Court.

On 19 and 20 November 2018, the Ministry of Home Affairs reportedly conducted an investigation into Amnesty India Private Limited's books and other records, after serving due notice. Officers from the Ministry reportedly went to Amnesty India Private Limited's Bengaluru office and questioned the management on Amnesty India's work and finances.

In a statement released after the search, the Enforcement Directorate claimed that Amnesty India Private Limited had bypassed the FCRA after it had been denied the permission from the Home Affairs Ministry to receive funds from abroad. According to the Enforcement Directorate, Amnesty India Private Limited had received 360 million Indian Rupees (approximately 5 Million US Dollars) in foreign funds—in violation of the FCRA. It is reported that the Ministry of Home Affairs has also initiated investigations into the funds received by AI India.

On 22 November 2018, the Karnataka High Court had granted an interim relief to AI India wherein, all domestic funds collected after the search of 25 October November could be utilized for limited purposes. This meant that AI India was able to use its bank accounts again but only to a limited degree.

A similar interim relief was granted to Amnesty India Private Limited by the Karnataka High Court on 21 December 2018 after it had also filed a writ petition challenging the freezing order. This meant that Amnesty India Private Limited was also able to use its bank accounts again but only to a limited degree.

On 15 April 2020 the Cyber Crime Unit of the Police in Lucknow issued a notice to Twitter, ordering it to disclose information about AI India's Twitter account. According to information received, the Lucknow Police did not disclose the offence committed by AI India. The Cyber Crimes Unit justified its request with the claim that a recent tweet from AI India's was posted "with an intention to defame, denigrate and demoralise religion in the society" or "may create riots-like situation in the country". Reportedly, AI India had two days prior called on the Government of Uttar Pradesh to stop intimidating

journalists through the use of repressive laws. Twitter reportedly did not provide any information to the Lucknow Police.

On 15 November 2019, AI India and Amnesty India Private Limited's offices and the residence of one of its directors were searched by the Central Bureau of Investigation. The search was conducted in view of the First Instance Report (FIR) filed by the Ministry of Home Affairs alleging suspected violations of the FCRA.

On 10 September 2020, employees of the AI India and Amnesty India Private Limited realized that the bank accounts of AI India and Amnesty India Private Limited were completely frozen by the Enforcement Directorate. As a result, the organization had to stop all of its work and campaigns as well as let almost all of its staff go.

As of 15 October 2020, AI India has not received any formal charges from any government authorities, despite the fact that the first search by the Enforcement Directorate was carried out more than two years before. The two writ petitions filed in 2018 are still pending for final disposal. The remainder of the funds in the trust have also not been made available to AI India yet.

AI India is planning to file a writ petition at the Karnataka High Court challenging the September 2020 freezing of accounts for the trust. However, due to the current COVID-19 situation and the large number of pending cases, the proceedings are expected to go on for months.

We would like to express our serious concern at the freezing of AI India and Amnesty India Private Limited's bank accounts under the FCRA, a law that we have previously considered to be incompatible with international human rights standards. As highlighted in our previous communications, the application of the FCRA to human rights organizations creates a stigmatizing and chilling effect on the legitimate work these organizations do.

Furthermore, we are deeply troubled that the actions of the Enforcement Directorate and different Government's departments seem to have taken place as retaliation for AI India's outspoken reports on Jammu and Kashmir, as well as the Delhi riots of February 2020. The temporal proximity of AI India's campaign actions and the respective retributive actions of the Governments against this organisation are a strong indication that the Government tried to intimidate, muzzle and punish AI India for its reporting on and advocacy against human rights violations in the country. This further increases the risks already faced by human rights defenders, activists and any persons working for human rights NGOs in India, who also dedicate themselves to reporting on and condemning such violations.

The situation is exacerbated by the alleged smear campaign against Amnesty International India. The leak of a dossier on Amnesty India to the press, allegedly by the Enforcement Directorate based on its ongoing investigations, indicates a potentially deliberate attempt by the Government to tarnish AI India's reputation.

We reaffirm our position that the ability to access foreign funding is an integral part of the right to freedom of association, and reiterate our concerns at the

highly detrimental impact of the FCRA, which seem to be increasingly used to obstruct Indian civil society's access to international funding.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As per our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful to your government if you could provide observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal basis for the decision of the Enforcement Directorate to freeze the bank accounts of AI India and how this decision complies with India's obligations under international human rights law.
3. Please provide information on the timeline and potential deadlines for the ongoing investigation and possible dates for the court hearings.
4. Please provide information about how the FCRA is compatible with international human rights norms and standards, in particular with article 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), particularly on the measures taken to ensure its enforcement does not limit the rights to freedom of expression and association.
5. Please indicate what measures have been taken by the Government to ensure that laws and policies to monitor funding transactions do not adversely impact on the associations' and human rights defenders' ability to access funds.
6. Please indicate what measures have been taken to ensure that human rights defenders, including human rights lawyers, in India are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that ongoing intimidation against AI India and other human rights NGOs and their staff be immediately stopped and that, unless the formal charges were to instantaneously be communicate to AI India, the ongoing

investigations against them be halted, their bank accounts unfrozen and its legitimate work be continued. We also urge the Government to stop the current attacks against human rights NGOs under the disguise of the FCRA and amend the law to ensure its compatibility with India's human rights obligations under international law.

Please accept, Excellency, the assurances of our highest consideration.

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to take this opportunity to draw your attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

We recall articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which guarantee the right to freedom of opinion and expression and the right to freedom of association respectively. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and necessary and proportionate to the aim pursued.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/23/39), in which he called upon States to, *inter alia*, "recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association" and that "regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding" (paras. 82 (c) and (d)). He also urged states "to ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities."(para. 82 (b)).

The Special Rapporteur on the situation of human rights defenders noted in his report to the Human Rights Council (A/64/226) that the only legal grounds upon which an interference with the freedom of association that is prescribed by law can be justified is if it meets the test as outlined by article 22, paragraph 2 of the ICCPR. This provisions requires the interference in question to be pursuant to 'legitimate aims', such as in the interests of national security or public safety; public order (*ordre public*); the protection of public health or morals, or the protection of rights and freedoms of others. Without such a legitimate aim, interference is rendered contrary to international human rights law.

In the context of non-governmental organization's activities, the Special Rapporteur has further argued that "difficulties in the formation and registration of human rights associations; criminal sanctions for unregistered activities; government interference, supervision and monitoring of NGO activities; and difficulties in accessing funding may restrict the right to freedom of association and therefore must reach the very high threshold under article 22, paragraph 2, of the International Covenant on Civil and Political Rights in order to be admissible." (A/64/226, para. 58.)

With regard to allegations that AI India is being targetted for its critical reports on human rights in India, we underscore that article 19's guarantees extend especially to political discourse, commentary on one's own and on public affairs, discussion of human rights and journalism, among others (CCPR/C/GC/34, para. 11). In its General Comment 25, the Human Rights Committee set out that "the free communication of

information and ideas about public and political issues between citizens, candidates and elected representatives is essential.” (CCPR/C/21/Rev.1/Add.7, para. 25). It requires the full enjoyment and respect for the rights and freedoms to “engage in political activity individually or through political parties and other organizations ... to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas” (Id.).

We would also like to draw your Excellency’s Government’s attention to an analysis on international law, standards and principles applicable to the Foreign Contributions Regulation Act 2010 and Foreign Contributions Regulation Rules 2011 by the Special Rapporteur on the rights to freedom of peaceful assembly and association. In this analysis, the Special Rapporteur noted the legitimate article 22 restrictions on the freedom of peaceful assembly and association and argued that the potential legal justifications for restricting an organization’s access to foreign funding due to such notions as “‘political nature’, ‘economic interest of the State’ or ‘public interest’ violates the right because these terms or definitions are overly broad, do not conform to a prescribed aim, and are not a proportionate responses to the purported goal of the restriction.” The Special Rapporteur further concluded that these restrictions create an “unacceptable risk that the law could be used to silence” organizations espousing priorities that differ from the government’s, and as such, the restrictions “do not meet the obligations of the Union of India under international law, standards and principles.”

We would also like to refer your Excellency’s Government to the duty to respect, protect, and fulfil the rights of individuals to engage in human rights work without fear of reprisal or harassment, as set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Furthermore, article 13 of the Declaration is particularly relevant as it provides that “everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.”

We additionally take note of Article 12 of this Declaration, which requires States “to take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.” The Special Rapporteur on the rights to freedom of peaceful assembly and of association has also reminded States of this obligation in his report to the Human Rights Council (A/HRC/23/39), calling upon States “To adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to funding they allegedly received.”

We finally note that, while the Declaration is not, in itself, a legally binding instrument, the fact that it was passed by consensus by the General Assembly and the fact that it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding to which India has acceded, such as the ICCPR, the Declaration therefore represents a very strong commitment by States, including India, to its full implementation.