

TIME RECEIVED
August 17, 2015 1:21:26 PM GMT+02:00 0041229068696
17/08/2015 12:47 permanent mission of India

DURATION PAGES
113 4
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STATUS
Received
P.001/004



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NV.52/2015

17 August 2015

The Permanent Mission of India to the Office of the United Nations and other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to joint communication No. AL IND 7/2015 dated 18 June 2015 from the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defender; regarding the alleged arbitrary freezing of funds of Greenpeace India, and more generally the alleged increased restrictions placed upon associations in regard to accessing funding, has the honour to enclose herewith a response to the points raised in the above-mentioned joint communication.

The Permanent Mission of India to the Office of the United Nations and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



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**Permanent Mission of India
Geneva**

**Consolidated Response on the points raised by Special Procedure
mandate holders relating to Greenpeace India Society (GIS) with
reference to Joint Communication No.AL IND 7/2005
dated 18 June 2015**

In Government of India (GoI), the Ministry of Home Affairs administers the Foreign Contribution (Regulation) Act, 2010 for regulating the receipt of foreign contribution by the NGOs so that the same is utilized for bonafide welfare activities, while maintaining due regard for concerns relating to national interest and security.

2. Preamble to the Foreign Contribution (Regulation) Act [FCRA] 2010 states:

"The Foreign Contribution (Regulation) Act, 2010 is intended to consolidate the law regulating the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associates or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith. The Act extends to the whole of India, to its citizens outside India and also to associate branches or subsidiaries outside India, of companies or body corporate, registered or incorporated in India."

3. There is a prohibition on accepting foreign contribution by the category of persons mentioned in Section 3 of the Act. The Act permits only those categories which do not fall under Section 3 to accept foreign contribution, and accordingly, certain associations accept foreign contributions.

4. With a view to ensuring that the object and purpose of the aforesaid Act is achieved, there are clearly defined regulations incorporated in the Act with respect to the use of foreign contributions, requirement of registration, etc. One such provision is that of Section 11 under which registration was granted to Greenpeace India Society (GIS) under the Foreign Contribution (Regulation) Act, 1976 in 2005.

5. In order to maintain separation between foreign and domestic contributions, under Section 17 of the Act, any association granted a certificate can receive foreign contribution only in one single account in a designated

branch of a particular bank which is specified in the Application for registration. Section 17, however, permits such registrants to open one or more accounts in one or more banks for "utilizing" the foreign contribution received by it in order for associations to account for specific projects, etc, separately. The statutory provisions under Section 17, however, prohibit credits other than foreign contribution being deposited in such "utilizing accounts".

6. It was found by the authorities concerned that GIS received large foreign contributions, which were diverted to "utilization accounts" and merged with domestic contributions, thereby making it impossible to identify utilization, contrary to the provision of Section 17 of the Act.

7. It was also found that four additional utilization accounts were in existence, and foreign contribution was being diverted and merged with domestic contributions. Post-inspection, it was discovered that a fifth additional utilization account, making a total of 5 FCRA utilization accounts, which were not intimated to concerned government authorities, in this case, the Ministry of Home Affairs.

8. Section 8 of the Act prohibits utilization of foreign contribution beyond 50% towards administrative expenses. This provision was violated for 8 successive years, starting from financial year 2005-06 to 2012-13.

9. Under Sections 23 and 24 of FCRA 2010, the Government of India has powers to seize accounts and records of the association and further article or currency may also be seized if the same is received by any person in contravention of the Act.

Section 23 reads:

"If the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been or is being, contravened by – (a) any political party; or (b) any person; (c) any organization or (d) any association, it may, by general or special order, authorize such gazetted officer, holding a Group A Post under the Central Government or such other officer or authority or organization, as it may think fit (hereinafter referred to as the inspecting officer) to inspect any account or record maintained by such political party, person, organization or association, as the case may be, and thereupon every such inspecting officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise for the purpose of inspecting the said account or record."

Section 24 reads:

"If after inspection of any account or record referred to in Section 23, the inspecting officer has any reasonable cause to believe that any provision of this Act or of any other law relating to foreign exchange has been, or is being contravened, he may seize such account or record and produce the same before the Court, authority or tribunal in which any proceeding is brought for such contravention; provided that the authorized officer shall return such account or record to the person from whom it was seized if no proceedings is brought within six months from the date of such seizure for the contravention disclosed by such account or record."

10. In April 2015, proceedings were initiated against Greenpeace India Society (GIS) under FCRA 2010, after following due procedure as mentioned in the Act and Rules, nearly after a decade of having granted FCRA registration (September 21, 2005) to GIS.

11. In case of GIS, action was taken after it was found that it violated various sections of FCRA under which it has been registered after following due procedure and giving ample opportunities to clarify its position. In 2012 and 2013, the Government requested GIS to reply to its questionnaire and on the basis of replies received, an inspection of accounts of GIS was done during September 24-27, 2014. After the inspection, GIS was given another opportunity to clarify its position on violations of various Sections of FCRA 2010. After taking this reply in consideration, the registration of GIS was suspended on April 09, 2015 and simultaneously a show cause notice was issued, giving it yet another opportunity to clarify its position so that the Government of India can take a further decision on its registration.

12. India is a democratic country having a robust FCRA under which the organizations are allowed to work without Government interference as long as they do not do anything in violation of various sections of FCRA. Nearly 3.1 million NGOs are working in India freely of which nearly 44,000 were FCRA registered.

13. Action was taken against a few NGOs due to various irregularities committed by them with respect to provisions of FCRA, 2010. If, the FCRA registration of an organization has been under suspension, it is free to open a new account to accept local contributions from domestic donors. Also, out of nearly 3,000 foreign donors, only 0.5% (16) have been kept under prior permission category. These 16 are also not barred to donate, but only with the prior approval of the Government of India.
