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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur in the field of cultural rights ; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: OL Cultural rights (2009) G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (56-23) G/SO 214 (107-9)
PAK 3/2014

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 19/6, 16/4, 24/5, 22/20, and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the Foreign Contributions Bill (the 'Bill' hereby), 2013 and the Policy for regulation of organizations receiving foreign contributions notified on 28 November 2013 by the Ministry of Finance, Revenue, Economic Affairs, Statistics and Privatization/Economic Affairs Division until the Bill reportedly comes into force (the 'Policy' hereby).**

According to the information received:

The Bill, which regulates the utilization of foreign contributions by national and international non-governmental organizations, imposes undue restrictions on such recipients. We note that the Bill was presented to a selected number of people, including representatives of the European Union Delegation to Pakistan on 28 January 2014. In addition, a consultation with a number of civil society organizations was reportedly held on 24 February 2014.

Under the Bill, "a person means:

- (i) an individual;
- (ii) a company licensed under section 42 of the Companies Ordinance, 1984 (XLVII of 1984);

- (iii) an association of individuals or a partnership or firm governed by the Partnership Act, 1932;
- (iv) a society within the meaning of the Societies Registration Act, 1860;
- (v) a religious society, within the meaning of the Religious Societies Act, 1880;
- (vi) a charity within the meaning of the Charitable Endowment Act, 1890;
- (vii) a trust within the meaning of the Trust Act 1882 and a Charitable and Religious Trust within the meaning of Charitable and Religious Trusts Act, 1920;
- (viii) an NGO whether registered or not in Pakistan but does not include an INGO referred to in the Bill;
- (ix) a wakf within the meaning of the Mussalman Wakf Act, 1923;
- (x) a voluntary social welfare agency, within the meaning of the Voluntary Social Welfare Agency (Registration and Control) Ordinance, 1961;
- (xi) a co-operative society within the meaning of the Cooperative Societies Act, 1925; and
- (xii) any other organization or entity by whatever name called, as may be notified by the Federal Government for the purposes of this [Bill]”.

The Bill defines national non-governmental organizations (NGO) as “any non-profit, voluntary organization formed or registered or established or organized under any law for the time being in force on a local or national level to work or operate for the benefit of society”.

The Bill further defines international NGOs as “any international non-profit, voluntary organization established, registered or incorporated outside or inside Pakistan, but working or operating within Pakistan but does not include person as defined [by the Bill]”.

A. Registration

The Bill provides that a person as defined by the law who wishes to utilize foreign contribution equivalent to one million rupees or above in a financial year must apply to the Securities and Exchange Commission for a certificate. The application should include “documents or information and in such form and manner and on such conditions along with such fee, as may be prescribed”. The certificate is valid for a period not exceeding five years. A person who has been granted a certificate must share the details of each foreign contribution received with the Commission. Furthermore, the foreign contributions may not be used for “undesirable purposes which are against the public interest”.

The Bill makes it mandatory for all international NGOs who wish to utilize foreign contributions within Pakistan to obtain “prior registration with the Federal Government”. Furthermore, any registered international NGO which utilizes foreign contributions without being registered under this Bill should re-register

within “a period of four months from the date on which this [Bill] comes into force”. The application for registration must be submitted to the Federal Government and will be vetted by “the Ministry of Interior, the Provincial Governments and/or local governments and other relevant stakeholders”. The Bill also obliges international NGOs to sign a Memorandum of Understanding (MoU) with the Federal Government and to share documentary information on “permitted projects”, “programmes”, “activities”, “the geographical locations” in which the work will be carried out and the “source of foreign contributions”. The duration of the MoU will be up to five years, but “may be terminated earlier by either party after giving [three] months’ notice”. Furthermore, in case of violation of any provision thereof or other grounds stated therein’, the MoU may be terminated and the registration cancelled.

The Policy provides that “any organization registered outside Pakistan and any organization registered within Pakistan and desirous of utilizing foreign economic assistance will need prior registration with the Government... The application [...] will be shared with and vetted by the Ministry of Interior, the Provincial Governments and/or local governments and other relevant stakeholders”.

Concerns are expressed about the aforementioned regime of authorization governing the utilization of foreign funding by persons as defined by the Bill, including national NGOs, as well as international NGOs, especially in light of the numerous institutions which have to vet the application for registration, hence making this procedure highly arbitrary and lengthy. Further concerns are expressed that the wording “undesirable purposes” lacks clarity and may be interpreted in an arbitrary manner to the detriment of the right to freedom of association. In addition, concerns are expressed that unregistered associations cannot access foreign funding. The Special Rapporteur on the rights to freedom of peaceful assembly and of association called upon 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” (A/HRC/23/39, para. 82(b)).

B. Suspension/cancellation/rejection of certificates

The Bill provides that the Commission may suspend the certificate of persons as described by the Bill if it deems that the suspension is “necessary”, by written order. A person whose certificate has been suspended may not receive any foreign contribution during the suspension period “except as may be allowed by the Federal Government if it consider appropriate, on such terms and conditions as may be prescribed”. The Commission may cancel the certificate of a person if it

deems that it is “necessary in the public interest”, for reasons to be recorded in writing.

In the case that its application for registration or renewal of certificate is rejected or in the case of termination or cancellation of the MoU, the international NGO may apply for the review of the decision within 60 days. The application for review will be considered by a Review Committee which is chaired by “the Secretary, Economic Affairs Division and comprising senior level representatives of the Ministry of Interior, Ministry of Foreign Affairs, other concerned ministries of the Federal Government, the Provincial Governments and/or local governments”. The final decision on the application for review will be taken by the Federal Government after receipt of recommendations from the Review Committee.

The Policy provides for review by a similar review committee in relation to both national and international organizations.

Concerns are expressed about the insufficient safeguards ensuring a fair review when a certificate is suspended or cancelled or when the application for registration or renewal is rejected. Indeed such provisions are vague and may lead to arbitrary interpretation of the law. The Special Rapporteur on the rights to freedom of peaceful assembly and of association called upon States to “ensure that any restriction complies with international human rights norms and standards, in particular in line with the strict test of necessity and proportionality in a democratic society, bearing in mind the principle of non-discrimination” (A/HRC/23/39, para. 81(b)). He further called to ensure that “a detailed and timely written explanation for the imposition of any restriction is provided, and that said restriction can be subject to an independent, impartial and prompt judicial review” (para. 81(c)).

C. Auditing/Monitoring

The Bill obliges any person who has been granted a certificate to provide the Commission with information regarding the amount of each foreign contribution received in cash and in kind, the sources of the foreign contribution, the manner in which it was received, the purposes of the contribution and the manner in which it was utilized.

The Bill further obliges international NGOs to declare the “details of all foreign contributions, along with the terms and conditions of those contributions, as well as details of all bank accounts maintained by it” to the Federal Government. Furthermore, the accounts must be audited on an annual basis “by a Chartered Accountant registered in Pakistan or abroad”. International NGOs must also provide the Federal Government with “a copy of the audited annual statements, along with a certificate from the Auditors to the effect that the foreign

contributions have been utilized for the purposes and in the locations specified in the Memorandum of Understanding”.

The policy obliges national and international NGOs to “declare to the Government all foreign contributions, along with the terms and conditions of those contributions, as well as details of all bank accounts maintained by it”.

In addition, the Bill obliges international NGOs to provide an annual report on their “activities with reference to the purposes, locations and foreign contributions specified in the Memorandum of Understanding (MoU)” to the Federal Government and the concerned Provincial Government/local government. Furthermore, the Planning and Development Departments of the Provincial Governments may “review the activities of the international NGO in the context of their development framework and priorities, and may convey recommendations to the Federal Government”. Moreover, the international NGO is required to “provide any information that the Federal Government may require” and this information may be verified by the Federal Government.

Concerns are expressed that the aforementioned requirements are onerous and bureaucratic, as well as intrusive as the review of their activities by provincial governments may lead to unfounded recommendations. In that regard, the Special Rapporteur on the rights to freedom of peaceful assembly and of association “warn[ed] against frequent, onerous and bureaucratic reporting requirements, which can eventually unduly obstruct the legitimate work carried out by associations. Controls need therefore to be fair, objective and non-discriminatory, and not be used as a pretext to silence critics. Composition of the supervisory body also needs to be independent from the executive power to ensure its decisions are not arbitrary” (A/HRC/23/39, para. 38). He further stated that “fundamentally... associations should be accountable to their donors, and at most, subject by the authorities to a mere notification procedure of the reception of funds and the submission of reports on their accounts and activities” (A/HRC/23/39, para. 37).

The Bill provides that the Federal Government or the Commission may order a special audit of the accounts of an international NGO or person as defined in the Bill where it may “pass such interim orders and directions as it deem appropriate” and “issue such directions for immediate compliance to the INGO or person as it may deem fit”.

Concerns are expressed that this provision is vague and may lead to arbitrariness when applied. In this regard, the Special Rapporteur on the rights to freedom of peaceful assembly and of association called upon Stated to “adopt measures to protect individuals and associations against... undue audits and other attacks in relation to funding they allegedly received” (A/HRC/23/39, para. 82(e)).

The Bill provides that the Commission may “authorize an officer as it may deem fit to inspect the books of account or record” of any person who has been granted a certificate. Furthermore, the officer may require any information relating to the affairs of a person “within such time and at such place as he may specify”.

The policy requires the national and international organizations to “provide to the Government and the concerned Provincial Government/local government on an annual basis a report regarding its activities with reference to the MoU and the foreign contributions. The Planning and Development Departments of the Provincial Governments may review the activities of the organization in the context of their development framework and priorities, and may convey recommendation to the Government from time to time. The organization[s] will be bound to provide any information that the Government may require from time to time. The Government may verify any information provided by the organizations[s]”.

Similar concerns are expressed that these provisions are vague and may lead to arbitrariness when applied.

D. Restriction to utilize foreign contribution

The Bill provides that “any international NGO or a person who receives any foreign contribution shall utilize such contribution only for the purposes and locations permitted by the Federal Government or the Commission”. The specified purposes of foreign contributions listed in the Bill are the following: Education, Health, Women, Children, Poverty Alleviation, Rural development, Relief Work, Welfare, Culture and Sport.

Concerns are expressed that the Bill narrowly defines the permissible areas of work of persons as defined in the Bill, including national and international NGOs who may receive foreign contributions and thus unduly limits the right to freedom of association.

E. Limitations on permissible activities

The Bill does not allow an international NGO or person to distribute “any material or pamphlet causing or likely to cause religious resentment in the area of its activities”. Furthermore, it may not indulge in activities which are considered “detrimental to national interest, sovereignty and integrity of Pakistan or dubious in nature or in violation of cultural and religious sentiments of the people”.

Concerns are expressed that this provision unduly restricts the right to freedom of association in that grounds for restricting are too vague and fall short of complying with international human rights norms and standards. Again, the Special Rapporteur on the rights to freedom of peaceful assembly and of

association called upon States to “ensure that any restriction complies with international human rights norms and standards, in particular in line with the strict test of necessity and proportionality in a democratic society, bearing in mind the principle of non-discrimination” (A/HRC/23/39, para. 81(b)). He further called to ensure that “a detailed and timely written explanation for the imposition of any restriction is provided, and that said restriction can be subject to an independent, impartial and prompt judicial review” (para. 81(c)).

In this context, we would like to draw the attention of your Excellency’s Government to paragraph 48 of the General Comments 34, in which the Human Rights Committee states that “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. [] Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”

In addition, as stated in the Universal Declaration on Cultural Diversity (art. 4), and reiterated in resolution 10/23 of the Human Rights Council (para. 4), no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope. Concern is expressed that the prohibition of activities considered to be in violation of cultural and religious sentiments of the people may jeopardize the work of women’s rights defenders. As stressed by the Special Rapporteur in the field of cultural rights, women’s rights must not be sacrificed in the name of culture. In the same way that all human rights standards constantly evolve, cultural beliefs and understandings, normative rules and values, as well as practices are continuously created, contested and (re)interpreted. In transforming their culture(s) by adopting new ideas and modes of operation, concerned people often continue to draw upon the moral and spiritual resources within their own traditions (A/67/287, paras. 74 and 80 (h)).

F. Offences and penalties

Under the Bill, “any person... who conceals or assists any person in concealing, utilization of any foreign contribution without registration under this [Bill] shall be punishable with imprisonment for a term which may extend to one year or with fine, or both”.

Concerns are expressed about such criminalization in light of the aforementioned regime of authorization governing the utilization of foreign funding by persons as defined in the Bill, including national NGOs, as well as international NGOs.

In this connection, we would like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights, which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Similarly, we would like to refer to article 22 which provides that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."

We would like to further refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

We would like to recall the right to freedom of religion or belief set forth in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR).

In this context, we wish to draw the attention of your Excellency's Government to article 6 of the 1981 Declaration, which stipulate that "in accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms: (b) to establish and maintain appropriate charitable or humanitarian institutions; (f) to solicit and receive voluntary financial and other contributions from individuals and institutions.

The General Assembly has repeatedly and by consensus urged States to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience and religion or belief to all without distinction, inter alia, by reviewing whenever relevant, existing registration practices in order to ensure that such practices do not limit the right of all persons to manifest their religion or belief, either alone or in community with others and in public or private; by ensuring that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom of all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected. (see General Assembly resolutions 60/166, 61/161, 62/157, 63/181, 64/164, 65/211, 66/168, 67/179 and 68/170).

In addition, we would like to refer Your Excellency's Government to the fundamental principles 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations; and

- article 13 which stipulates 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 freedom, through peaceful means, in accordance with article 3 of the declaration.

We would also like to draw your attention to resolution 22/6 adopted on 21 March 2013 by the Human Rights Council, which calls upon States to "respect, protect and ensure the right to freedom of association of human rights defenders and, in this regard, to ensure, where procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law".

Resolution 22/6 also calls upon States to ensure "(a) that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy"; and (b) "that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration (...), other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto". (A/HRC/RES/22/6, OPs 8 and 9)

In light of the above, we call on Your Excellency's Government to either withdraw the Bill, or amend it with a view to ensuring its compliance with the aforementioned international human rights norms and standards.

We would appreciate a response to the aforementioned concerns within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

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

Farida Shaheed
Special Rapporteur in the field of cultural rights

Frank La Rue
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders