

Mandates of 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; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: AL
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Excellency,

We have the honour to address you in our capacity as 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; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the latest version of the **draft Foreign Donations (Voluntary Activities) Regulation Act, 2014** (the "Bill" hereinafter), which unduly restricts the right to freedom of association.

An earlier version of the Bill was the subject of an allegation letter sent on 23 October 2012 by 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, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the promotion and protection of human rights while countering terrorism. We thank your Excellency's Government for acknowledging receipt of the letter, but regret that no response to the concerns raised in this letter has been received to this day.

According to the new information received:

On 2 June 2014, the Government of Bangladesh approved the Bill during a regular meeting of the Cabinet. The Parliamentary standing committee is expected to review the Bill soon.

The Bill contains a number of problematic provisions which unduly restricts the right to freedom of association.

1. Compulsory registration with the NGO Affairs Bureau

Article 3 prohibits any “organisations or NGO [from] receiv[ing], undertak[ing] or operat[ing] any voluntary activity by receiving foreign donations or contribution without being registered with the [Non-Governmental Organisations Affairs] Bureau”.

Under Article 4, the application must be submitted to the Director General of the NGO Affairs Bureau who must seek the opinion from the Ministry of Home Affairs to deliver the registration. The application must specify the amount of foreign donation, its source and how the donation will be used. There is no timeframe put in place for responding to applications.

In this regard, 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), emphasis added).

2. Renewal of registration every ten years

Article 4 provides for the renewal of registration every ten years, should the “applicant’s previous ten years activities are found to be satisfactory”.

While noting the improvement over the previous five-year re-registration requirement, we believe that this provision constitutes an undue restriction on the right to freedom of association as it does not meet the test of ‘necessity in a democratic society’ to protect national security, public safety, public order, public health, morals or the rights and freedoms of others, as laid down in article 22(2) of the International Covenant on Civil and Political Rights, and recalled in Human Rights Council resolution 24/5.

3. Project approval by the NGO Affairs Bureau

Article 6 makes compulsory the advance approval from the Director General of the NGO Affairs Bureau for each project an individual or NGO/organization wants to undertake with a foreign donation. The Bureau will seek the opinion about the project proposal from the “concerned Ministry”.

As stated above, association should be able to use funding “without prior authorization or other undue impediments”. Furthermore, as also mentioned by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, “[a]ssociations should be free to determine their... activities and to make decisions without State interference” (A/HRC/20/27, para. 97).

4. Appointment of foreign specialists/consultants/officials and travel abroad

Under Article 8, the Director General of the NGO Affairs Bureau must approve each appointment of foreign specialists/consultants/officials under foreign-funded projects. In this regard, the Director General must seek the opinion of the Home Ministry “for security clearance”. The NGO Affairs Bureau must also be kept informed whenever individuals involved in voluntary activities travel abroad using the foreign funding from the approved budget.

We believe that such provision is abusive as it does not meet the aforementioned test of ‘necessity in a democratic society’.

5. Authority of inspection, monitoring and assessment by the NGO Affairs Bureau

Article 10 entitles the NGO Affairs Bureau to “inspect, monitor and assess the voluntary activities of an individual and NGOs and the progress of the NGOs it has approved from time to time”. Divisional Commissioners, on behalf of the Bureau, are tasked with “monitor[ing] and coordinat[ing] the voluntary activities of the NGOs working within their divisions by prescribed rules”. They review the progress of NGOs on a monthly basis and inform the Bureau of “any irregularities”.

Similarly, we are of the opinion that this provision is vague and abusive, which may be used in an arbitrary way with a view to hampering the work of human rights organizations.

6. Sanctions

Under Article 16, in the event of a breach of a Bill’s provision, the Director General of the NGO Affairs Bureau may, inter alia, cancel or suspend the registration of an NGO or organisation; close down its voluntary activities; impose a fine between one to three times the amount of foreign funding received without approval; and take action as per existing laws of the country. Sanctions can be imposed against officials of the NGO or organisation.

We find this provision particularly worrying in that, as stated by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, “[s]uspension or involuntarily dissolution of associations should be sanctioned by an impartial and independent court in case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in compliance with international human rights law” (A/HRC/20/27).

7. Appeal

Under Article 17, the Prime Minister’s Office is competent for receiving appeals made against decisions taken under the Bill. Its decisions are final.

We believe that such a provision does not allow for a fair review of the appeal. In this regard, The Special Rapporteur on the rights to freedom of peaceful assembly

and of association stated that “[a]ssociations should be able to challenge any rejection before an impartial and independent court” (A/HRC/20/27, para. 95).

8. Power to make rules

Article 19 allows the Government to issue “general or special directives until the official rules are made”.

We are preoccupied, in light of the abovementioned concerns, that this provision is likely to be used in an arbitrary way with a view to unduly restricting freedom of association.

In light of the above, we call on the Parliament to amend the Bill with a view to ensuring its compliance with the aforementioned international human rights norms and standards.

We would be grateful to Your Excellency’s Government if the present letter could be shared with Members of the Parliament for their attention.

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

We are intending to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency’s Government to clarify the issues in question.

Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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

Michel Forst
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 refer to articles 19 and 22 of the International Covenant on Civil and Political Rights, which guarantees the right to freedom of opinion and expression and to the right to freedom of association with others.

We would like to further refer to Human Rights Council resolution 24/5 which highlights, inter alia, the States' obligation to respect and fully protect the right of all individuals to associate freely, online as well as offline, and to take all necessary measures to ensure that any restrictions on the free exercise of this right are in accordance with their obligations under international human rights law.

We would also 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, 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. Furthermore, each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

In addition, we would 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”.