

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 IND 10/2016

21 December 2016

Excellency,

We have the honour to address you in our capacities 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, 32/32 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 order to cancel registration of the non-governmental organization **Lawyers Collective** to receive foreign contribution under the Foreign Contribution (Regulation) Act (FCRA), which appears to be related to the legitimate work of the human rights organization and its co-directors.

Lawyers Collective was established in 1981 and is one of the leading public interest service providers in India with a proven record of human rights advocacy, legal aid and litigation. Lawyers Collective's membership comprises of professional lawyers, law students and human rights activists. It provides expert legal assistance to the underprivileged, especially women and children, workers in the unorganized sector and other members of marginalized groups.

Lawyers Collective, including its co-directors Ms. **Indira Jaising** and Mr. **Anand Grover**, were subject to one previous communication dated 10 June 2016, case no. IND 2/2016. We regret that no response has been received from your Excellency's Government with regard to that communication.

The FCRA was the subject of a previous communication sent by various Special Rapporteurs on 18 June 2015 see A/HRC/31/79, case no. IND 7/2015. We acknowledge your Excellency's Government's response on 17 August 2015, and reiterate our concerns in the context of the recent developments.

According to new information received:

On 1 June 2016, the Ministry of Home Affairs of India suspended registration of the Lawyers Collective for six months, accusing the organization and its directors, Ms. Indira Jaising and Mr. Anand Grover, of violating FCRA regulations. The accusations were based on results of inspection of their accounts between 19 and 23 January 2016, by a team of officers designated by the Ministry. The news about suspension had been published on Ministry's website, before Lawyers

Collective received an official notification from the Ministry and had an opportunity to respond to the accusations.

The communication from special procedures dated 10 June 2016 raised a number of serious allegations about the stigmatizing effect of the procedural irregularities observed during the inspection, as well as the detrimental impact of the suspension of the FCRA registration on the human rights work of Lawyers Collective.

Six months later, Lawyers Collective received an order dated 27 November 2016 informing of the cancellation of its registration to receive foreign contribution under Section 14(1), Foreign Contribution (Regulation) Act (FCRA), effective on 29 November 2016. The cancellation order was based on the grounds that Lawyers Collective allegedly violated the terms and conditions of its registration certificate as well as the provisions of the FCRA, and acted against ‘public interest’. The organization denied the allegations listed in the order, which reportedly disregarded Lawyer’s Collective’s replies in fact and in law.

The order also referred to new allegations such as “diversion” of foreign contribution and utilization for “personal gain”, which are claimed to be unsupported by facts and defamatory in objective.

As a consequence of the cancellation order, Lawyer Collective is no longer permitted to accept international funding for its work.

Serious concern is expressed at the cancellation of Lawyers Collective’s registration to receive foreign contribution under FCRA, which appears to be related to the legitimate human rights work of the organization, as well as of its co-directors, Ms. Indira Jaising and Mr. Anand Grover.

Further concern is expressed at the incompatibility of FCRA with international human rights standards, as well as its application that has had the stigmatizing and chilling effect on the legitimate human rights work of Lawyers collective and broader civil society.

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 FCRA, which has been increasingly used to obstruct Indian civil society’s access to international funding.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with 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.

It is 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 for your 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 Ministry of Home Affairs to cancel the registration of Lawyers Collective, despite the organization's cooperation in providing evidence rebutting all allegations. Please also explain how those measures comply with India's obligations under international human rights law.
3. 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 in the way in which its enforcement limits the rights to freedom of expression and association.
4. Please indicate what measures have been taken by the Indian Government to ensure that legislation and policies to monitor funding transactions to associations do not adversely impact on the associations' and human rights defenders' ability to access funds.
5. 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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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.

David Kaye
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

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the rights to freedom of expression and opinion and freedom of association, as per article 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which India acceded on 10 April 1979.

We would like to remind your Excellency's Government that any limitation to the right to freedom of expression must comply with the high threshold established under article 19(3) of the ICCPR. As stated by the Human Rights Committee, article 19(3) must never be invoked as a justification for the muzzling of human rights and for unduly limiting the free flow of ideas. (CCPR/C/GC/34). We would in this regard highlight that extensive registration regulations may in some occasions amount to censorship, which is incompatible with article 19. Consequently, society as a whole may not be able to access important information and issues that some may consider as sensitive or controversial. We would like to reiterate that the right to freedom of opinion and expression, as well as to access information is of central importance in the effective functioning of a democracy.

We would like to further refer to the information note¹ issued by the Special Rapporteur on the rights to freedom of peaceful assembly and of association on 20 April 2016 on the compatibility of the 2010 FCRA with international human rights norms and standards. In this note, the Special Rapporteur concluded that "the Foreign Contribution Regulation Act and Regulations appear to contravene the Union of India's obligations under the ICCPR to ensure the rights of all under its jurisdiction to free association because it imposes a total ban on associations' access to foreign funding on vaguely defined grounds for a broad purpose not included in the ICCPR's enumerated list of legitimate aims" (para. 36).

In addition, in his report (A/HRC/23/39), 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" (para. 82(b)).

¹ Information note available here: <http://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteIndia.pdf>

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 and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we wish to refer to articles 5 and 6 of the UN Declaration on Human Rights Defenders, which provide for the right to freedoms of association and expression, while article 13 reiterates 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 would also like to refer to Human Rights Council resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13). Moreover, we would also like to refer to Human Rights Council resolution 22/6, which urges States to ensure that laws affecting human rights defenders are “clearly defined, determinable and non-retroactive”(OP 11).

Finally, the above-mentioned facts also seem to be in contravention of the Basic Principles on the Role of Lawyers, in particular principle 16, which stipulates that Governments must ensure that lawyers can perform their professional functions without intimidation, hindrance, harassment or improper interference, and that they do not suffer, or be threatened with, prosecution or other sanctions, and principle 23 that provides that lawyers like other citizens are entitled to freedom of expression, belief, association and assembly.