

**Mandates of 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:
OL OTH 27/2017

9 November 2017

Honourable Justice Dattu,

We have the honour to address you in our capacities as 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 32/32 and 34/5.

Allow us to remind you that over the last few years, we have been following closely various developments regarding the **Foreign Contribution Regulation Act (FCRA) and its adverse impact on the rights and work of a number of human rights defenders in India.**

This letter is a follow-up to our letter dated 6 January 2017 (communication OL OTH 2.2017) which praised the 16 November 2016 intervention made by the National Human Rights Commission (NHRC). The NHRC's intervention mainly aims at informing the public that it had taken suo motu cognizance of the cases of human rights non-governmental organizations (NGOs) which were denied renewal of their licence to receive foreign funding under the FCRA.

We hereby renew our appreciation to the NHRC's intervention. In its intervention, the NHRI noted that "prima-facie it appears that FCRA license non-renewal is neither legal nor objective and thereby impinging on the rights of the human rights defenders both in access to funding including foreign funding". The NHRC followed this observation with a set of three directions to the Ministry of Home Affairs (MHA) of the Government of India (GoI) to be complied within four weeks i.e. on 14 December 2016.

The initial step taken by the Indian NHRC is a positive development to ensure that the right to freedom of association is respected and protected in India. We would like to underscore that the right to freedom of association does not only include the ability of individuals or legal entities to form and join an association, but also to seek, receive and use resources – human, material and financial – from domestic, foreign and international sources.

Nevertheless, we regret that almost a year has lapsed and there is still no publicly available information that would indicate that the NHRC's directions have been followed.

The NHRC in its first intervention in this case, directed the MHA to respond to Mr. Kiai's FCRA analysis. We recall that, by info note dated 20 April 2016 (available at: <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>), the former UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Mr. Maina Kiai, argued that the FCRA is not in conformity with international law, principles and standards. The ability of civil society organisations to access resources, including foreign funding, is a fundamental part of the right to freedom of association under international law, standards, and principles – and more particularly

part of the right to form an association. He further stressed that India's limitations on access to foreign funding do not meet "the stringent test for allowable restrictions" under international law. This test requires that restrictions be (1) prescribed by law; (2) imposed solely to protect national security or public safety, public order, public health or morals, or the rights and freedoms of others; and (3) "necessary in a democratic society." The FCRA fails on all three prongs of the test. The call to repeal the FCRA was restated in the joint statement by Maina Kiai, together with the UN Special Rapporteur on Human Rights Defenders and the UN Special Rapporteur on Freedom of Expression, of June 16, 2016.

We understand that there may have been two responses submitted by the MHA. More specifically we understand that the second response was submitted by the MHA after the NHRC expressed its dissatisfaction over the first response. However, the MHA has reportedly submitted the same information that it had submitted initially. Moreover, AHRDF and Human Rights Defenders Alert – India (HRDA) appears not to have access to the response submitted by MHA, despite their repeated requests, including to you in person.

In this regard, we would also like to bring to your notice the response submitted by MHA in the Delhi High Court in CPSC's FCRA non-renewal case (W.P. No 10527/2016).

In its response, the MHA indicates CPSC's involvement in the sharing of information with various UN Special Rapporteurs and embassies. This points out to a clear case of reprisal on CPSC, where the Government of India has targeted CPSC for engaging with international human rights mechanisms in relation to its work on the protection of human rights defender and related to the submissions to the Universal Periodic Review (UPR). India's commitment at the UN Human Rights Council and its pledge for the Council's membership clearly lay out the roadmap for engagement with UN human rights mechanisms and the facilitation of civil society in doing so.

We do strongly believe that the NHRC has a significant role to play in the case of CPSC to address the issue of FCRA misuse by the Government. Ensuring the fundamental right to freedom of association, including the right to access foreign funding, clearly falls within the NHRC's mandate. The misuse of the FCRA by the Government as well as the targeting human rights organisations, is a matter of serious concern, particularly so as it takes place in the world's largest democracy.

Therefore, we encourage the NHRC to continue its efforts to advocate for domestic legislation to be brought in full compliance with the State's obligations under international human rights law.

While we once again appreciate the NHRC for all what it has carried out, we urge your good offices to:

1. Share all documents submitted by MHA with CPSC and call for their immediate response, if they have still not adequately responded.
2. Allow oral representation in the case, preferably now to CPSC's counsel, in accordance to its first order dated 16 November 2016.

3. Intervene in W.P. No 10527/2016 before the Delhi High Court, especially on the charge of CPSC engaging with the UN Special Rapporteurs for human rights work.
4. Consider possible NHRC's interventions before all courts where similar matters regarding FCRA non-renewal and cancellation of renewals are being challenged.

We take this opportunity to assure the Honourable Justice Dattu that we remain available for any further exchange and assistance that the NHRC may require in the context of the ongoing cases related to the FCRA.

We look forward towards to your positive actions and response on the same. In the meantime, we will continue to follow closely the ongoing procedure before the NHRC, as well as the various High Court cases in relation to the cancellation of FCRA licences.

Please accept, Honourable Justice Dattu, the assurances of our highest consideration.

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