

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:
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31 May 2018

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 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged intimidation and reprisals against the Centre for Promotion of Social Concerns (CPSC), and the executive director of one of its sub-programs, Mr Henri Tiphagne**. CPSC is a registered charitable trust that has been functioning for the past 35 years. CPSC has a program unit called People's Watch, which has been carrying out human rights monitoring, human rights interventions, human rights education and rehabilitation for over two decades.

The Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association have previously raised their concerns regarding the Foreign Contributions Regulation Act (FCRA) and in particular the response that was submitted by the Ministry of Home Affairs (MHA) to the National Human Rights Commission (NHRC), in which the MHA refers to CPSC's involvement in the sharing of information with various UN special procedures mandate holders and diplomatic missions (see OL OTH 27/2017).

In the above-mentioned communication the mandate holders, among other issues, also referred to the response submitted by the MHA to the Delhi High Court as well as to the MHA regarding the non-renewal of the CPSC's FCRA registration:

“In the year 2011-13, Henri Tiphagne, executive director, People's Watch, was noticed to be receiving foreign contributions. He was found to be providing material and information to UN special Rapporteurs and US embassy and British High Commission officials, portraying India's human rights record in negative light, on the basis of that funding. Further, Henri Tiphagne was using foreign contributions to the detriment of India's image. By using foreign money, he marked himself and his organization CPSC as defender of human rights in India and helped foreign forces to project the image of India in a poor light”.

The Special Rapporteurs considered the above as ‘a clear case of reprisal against the CPSC, where the Government of India targeted the CPSC for engaging with international human rights mechanisms in relation to its work on the protection of human rights defenders and related to the submissions to the Universal Periodic Review (UPR)’ (OL OTH 27/2017, dated 9 November 2017).

Furthermore, the former UN Special Rapporteur on the right to freedom of peaceful assembly and of association, Mr Maina Kiai, previously also analysed the FCRA in an info note (available at: <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>) and argued that the FCRA is not in conformity with international law, principles and standards.

According to the new information received:

CPSC has been engaged in a lengthy court proceeding, and in a separate process in front of the NHRC, in connection with their registration under the Foreign Contribution Regulation Act (FCRA). The court hearings have been previously adjourned on a number of occasions, since October 2016.

On 13 April 2018, the Delhi High Court held the latest hearing in the case of CPSC’s registration under the FCRA. Based on the Ministry of Home Affairs’ (MHA) petition, it is reported that the next court session had now been adjourned to 31 August 2018.

It is further reported that the MHA is resorting to repeated adjournments in order to delay proceedings in the court.

The non-renewal of CPSC’s FCRA licence has also been challenged before the Indian National Human Rights Commission (NHRC).

While we do not wish to prejudge the accuracy of these allegations, we express our serious concerns regarding the fact that the continued denial of granting FCRA status to the CPSC may constitute an act of reprisal relating to their activities of submitting relevant information to various UN human rights mechanisms, including in particular the Special Procedures of the Human Rights Council and the Universal Periodic Review (UPR) mechanisms. These concerns are further strengthened by the wording of the submission of the MHA to the NHRC, which explicitly links People’s Watch (a sub-program of CPSC) and its executive director, Mr Henri Tiphagne, to providing materials to UN human rights mechanisms. Additionally, the latest delays in the judicial process may have the effect of violating India’s obligations under article 19 and 22 of the International Covenant on Civil and Political Rights.

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

As 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 therefore be grateful for your observations on the following matters:

1. Please provide any information and comment you may have concerning these allegations.
2. Please provide additional information concerning the reasons for the additional delay in the judicial process relating to the granting of FCRA status to CPSC and how it is in conformity with India's obligations under article 19 and 22 of the ICCPR.
3. Please also provide information about how the allegations of the Ministry of Home Affairs provided in their submission to the National Human Rights Committee on contacts of the CPSC, People's Watch or Mr Henri Tiphagne with international human rights mechanisms, is in line with India's international human rights obligations to refrain from reprisals for legitimate human rights activities.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

Clement Nyaletsossi Voule

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 the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards.

The right to freedom of association is incorporated in article 22 of the International Covenant on Civil and Political Rights (ICCPR), and article 22 (1) provides that everyone 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. The Government of India, at the time of acceding to the ICCPR in 1979, formulated a reservation: "with reference to (...) article(s) (...) 22 of the International Covenant on Civil and Political Rights the Government of the Republic of India declares that the provisions of the said (article) shall be applied in conformity with the provisions of article 19 of the constitution of India". Article 19 of the Government of India provides the 'right to form an association', not the 'right to freedom of association with others' as the ICCPR.

We would also like to recall that the Human Rights Committee states in General Comment 24 on issues relating to reservations made upon ratification or accession to the Covenant: 'Nor should (...) reservations seek to remove the autonomous meaning to Covenant obligations, by pronouncing them to be identical, or to be accepted only insofar as they are identical, with existing provisions of domestic law'. (UN Doc CCPR/C/21/Rev.1/Add.6 (1994), para 19). Thus, the right to form an association needs to be interpreted in conformity with international law, principles and standards for all matters concerning the formation of associations, such as access to resources being an integral part of the right to freedom of association. Restrictions to the right, or any part of the right, must meet the requirements under international law.

We moreover refer to article 19 of the ICCPR, guaranteeing the right to freedom of expression. Restrictions to this right must meet the high threshold established under article 19(3). In this connection, we highlight that the Human Rights Committee has stated that article 19(3) may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.

Additionally, we would like to call attention to article 13 of the Declaration on Human Rights Defenders (Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN GA resolution 53/144, of 9 December 1998) which provides 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 freedoms through peaceful means...". The Special Representative of the Secretary-General on the situation of human rights defenders, Ms Hina Jilani also stated that 'governments must allow access by NGOs to foreign funding as a part of international cooperation, to which civil society entitled to the same extent as Governments' (UN Doc A/59/401 (2004) at para 82 (I)). Similarly, Human

Rights Council resolution 22/6 calls upon States to ensure that ‘no law should criminalize or delegitimize activities in defense of human rights on account of the origin of funding thereto’.

Furthermore, the former Special Rapporteur on the rights to freedom of peaceful assembly and of association called upon States, in his 2013 report, to the Human Rights Council to ‘(b)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; (c) To recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association and of other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights; (d) To recognize that regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding (UN Doc A/HRC/23/39 of 23 April 2013, para 81).