

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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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 the **recent raids on the offices of Greenpeace India and Amnesty International India by members of Enforcement Directorate, as well as the freezing of Amnesty International India's bank account for allegedly violating the Foreign Contribution (Regulation) Act (FCRA) and levelling accusations against Greenpeace India of violating the Foreign Exchange Management Act (FEMA), and allegations concerning a smear campaign targeting Amnesty International India.**

Greenpeace India is a human rights organisation focusing on various environmental issues, including climate change, sustainable agriculture, and preservation of the oceans and prevention of nuclear catastrophes. Amnesty International India is an international human rights organization that works to protect human rights.

The Foreign Contribution (Regulation) Act (FCRA) has been the subject of previous communications sent by various Special Rapporteurs on: 18 June 2015 see A/HRC/31/79, case no. IND 7/2015; 10 June 2016 see case no. IND 2/2016; 21 December 2016 case no. AL IND 10/2016. We acknowledge receipt of the reply of your Excellency's Government dated 17 August 2015 (NV.52/2015). We regret that no response has been received from your Excellency's Government with regard to the other communications.

According to the new information received:

On 5 October 2018, the offices of Greenpeace India were reportedly raided by agents from the Enforcement Directorate, an agency of the Indian government that looks into financial crimes, who claimed to have found "important evidence" of corrupt practices by the environmental non-governmental organization, seizing several document that reportedly indicate the NGO collected funds using fraudulent means.

Greenpeace India is a non-profit environmental organization that has two registered non-profit entities functioning in India. While Greenpeace India Society (GIS) is registered with Tamil Nadu Registrar of Societies, Greenpeace Environment Trust (GET) is a not-for-profit entity registered as a trust and is distinct from Greenpeace India Society.

Following the raid, all twelve bank accounts of GIS were frozen as it was suspected that GIS had incorporated and received funding from a commercial entity called Direct Dialogue Initiatives India Private Limited (DDII), a corporation engaged in the business of ethical fundraising, providing marketing, fundraising and related support services to non-governmental organizations and charitable institutions in India. On 30 January 2018, both the entities of Greenpeace (GIS and GET) and DDII had signed a “Master Services Agreement” in which the two parties agreed that DDII would provide GIS and GET with fundraising, marketing, and other fundraising services at an agreed fee as per market rates.

Agents of the Enforcement Directorate have accused Greenpeace India of violating the Foreign Exchange Management Act (FEMA) by accepting funds from abroad via DDII, which had allegedly received foreign funding and provided it to GIS

On 23 October, Greenpeace India Society filed a Writ Petition challenging the freezing of the accounts in Karnataka High Court. On 5 November, the Karnataka High Court granted partial relief to Greenpeace India Society by allowing it to access its bank accounts to pay out salaries and make other statutory payments upon furnishing a bank guarantee to the Enforcement Directorate in an amount not exceeding Rs.50,60,320. On 14 November, this order was made available to Greenpeace India Society.

As a result of these events, Greenpeace India has starting a massive cut down of its operations. It will be downsized to one-third of its size by beginning of 2019.

On 25 October 2018, the offices of Amnesty International India were reportedly raided by the Enforcement Directorate, who subsequently froze the organization’s bank accounts in India. The ten-hour-long raid began at 1:30pm on 25 October 2018, when a group of officers from the Enforcement Directorate entered the premises and locked the gates behind them. They reportedly ordered the Amnesty India staff not to leave, to close their laptops and not to use their mobile phones.

In a statement, the Enforcement Directorate claimed that Amnesty International India bypassed the FCRA after it was denied the permission from the home ministry to receive funds from abroad. According to the Enforcement Directorate, Amnesty International set up a floating commercial entity in the name of Amnesty International India Pvt. Ltd, which has received Rs. 36 crore in foreign funds—in violation of the FCRA. It is reported that the Ministry of Home Affairs has also initiated investigations into the funds received by Amnesty International India.

It is reported that on 14 November, a prominent Indian news channel ran a two-hour long show on the raid on Amnesty International India, using documents

obtained by the Enforcement Directorate raid, such as Amnesty International India's testimonies and bank documents, as well as the Enforcement Directorate's investigation report. Amnesty International India has allegedly been denied access to the dossier of information several times by the agency.

On 19 and 20 November, the Ministry of Home Affairs reportedly conducted the second raid on Amnesty International India, in which they went to Amnesty International India's Bengaluru office and questioned the management on Amnesty India's work and finances. As of 5 December 2018, no notice or action was taken by the Indian authorities after this visit.

On 22 November, the Karnataka High Court granted interim relief to the Amnesty International India whereby all domestic funds collected after the raid on 25 October could be utilized for specific purposes. Despite this ruling, Amnesty International India has been unable to continue its operations and run campaigns at the same scale as before—all research and campaigns have reportedly been stopped and thirteen research and campaign staff were asked to resign. Further cuts are expected if Amnesty International India continues to be unable to access its full bank accounts. No government authority has reportedly formally accused Amnesty India of any wrongdoing and no formal complaints or First Information Reports have been reportedly filed. Finally, the remainder of the funds in the trust have not been made available to Amnesty International India yet.

It is reported that the restrictions placed on Greenpeace India and Amnesty International India occur in the context of increased limitations on civil society's access to funding. In September 2015, the Government cancelled the FCRA registration of Greenpeace India Society. As a result, Greenpeace India had lost close to 30-40% of its staff and had to shut critical projects on coal power plants and water consumption.

Serious concern is expressed at the freezing of Amnesty International India's bank account under the FCRA, a law that we have previously considered to be incompatible with international human rights standards. We express additional concern at the accusation levelled against Greenpeace of violating the FEMA. The application of these laws to human rights and environmental organizations creates a stigmatizing and chilling effect on that type of legitimate work.

Further concern is expressed at the use of unannounced raids on the offices of both organizations, in which the staff were not allowed to leave, close their laptops, or turn off their phones. These methods of reviewing an organization's compatibility with the law create fear and distrust towards the government and appear to be incompatible with international human rights law, standards, and practice.

Finally, concern is expressed at the alleged smear campaign against Amnesty International India, in what seems to be an attempt to tarnish the organization's reputation in the absence of formal charges. The ostensible leak of a dossier on Amnesty India allegedly by the Enforcement Directorate based on its ongoing investigations, indicates a potentially deliberate attempt by the government to tarnish Amnesty India's reputation. Such a smear campaign follows a similar attempt to discredit Greenpeace India since 2014, when the Indian government accused it of "anti-national activities" and seized its

foreign funding. A Delhi High Court judge later ordered the funds to be released as the seizure was arbitrary and unconstitutional.

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

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.

As per 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 to your government if you could provide 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 Enforcement Directorate to freeze the bank accounts of Amnesty International India. Please also explain how this decision complies with India's obligations under international human rights law.
3. Please provide information on the accusations against Greenpeace India of violating the Foreign Exchange Management Act (FEMA). Please also explain how this decision complies with India's obligations under international human rights law.
4. 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.
5. Please indicate what measures have been taken by the Indian Government to ensure that legislation and policies to monitor funding transactions do not adversely impact on the associations' and human rights defenders' ability to access funds.
6. 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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to allow both Greenpeace India and Amnesty International India to continue their operations without undue interference, including by providing them with full access to their respective sources of funding.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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 above alleged facts and concerns, we would like to take this opportunity to draw your attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

We recall articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR) to which India acceded in 1979, which guarantee the right to freedom of opinion and expression and the right to freedom of association respectively. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and necessary and proportionate to the aim pursued.

The Special Rapporteur on the situation of human rights defenders noted in his report to the Human Rights Council (A/64/226) that the only legal grounds upon which an interference with the freedom of association that is prescribed by law can be justified is if it meets the test as outlined by article 22, paragraph 2 of the ICCPR. This provision requires the interference in question to be pursuant to 'legitimate aims', such as in the interests of national security or public safety; public order (*ordre public*); the protection of public health or morals, or the protection of rights and freedoms of others. Without such a legitimate aim, interference is rendered contrary to international human rights law.

In the context of non-governmental organization's activities, the Special Rapporteur has further argued that "difficulties in the formation and registration of human rights associations; criminal sanctions for unregistered activities; government interference, supervision and monitoring of NGO activities; and difficulties in accessing funding may restrict the right to freedom of association and therefore must reach the very high threshold under article 22, paragraph 2, of the International Covenant on Civil and Political Rights in order to be admissible." (A/64/226, para. 58.)

We further recall the report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/23/39), in which he called upon states to, *inter alia*, "recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association" (para. 82 (c)) and 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" (para. 82 (d)). He also urged 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)).

We would also like to draw your Excellency's Government's attention to an [analysis on international law, standards and principles applicable to the Foreign Contributions Regulation Act 2010 and Foreign Contributions Regulation Rules 2011](#) by the Special Rapporteur on the rights to freedom of peaceful assembly and association. In this analysis, the Special Rapporteur noted the legitimate article 22 restrictions on the freedom of peaceful assembly and association and argued that the potential legal

justifications for restricting an organization's access to foreign funding due to such notions as "political nature", "economic interest of the State" or "public interest" violates the right because these terms or definitions are overly broad, do not conform to a prescribed aim, and are not a proportionate responses to the purported goal of the restriction." The Rapporteur further concluded that these restrictions create an "unacceptable risk that the law could be used to silence" organizations espousing priorities that differ from the government's, and as such, the restrictions "do not meet the obligations of the Union of India under international law, standards and principles."

We would also like to refer your Excellency's Government to the duty to respect, protect, and fulfil the rights of individuals to engage in human rights work without fear of reprisal or harassment, as 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, article 13 of the Declaration is particularly relevant as it 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."

We additionally take note of Article 12 of this Declaration, which requires States "to take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has also reminded states of this obligation in his report to the Human Rights Council (A/HRC/23/39), calling upon States "To adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to funding they allegedly received."

We finally note that, while the Declaration is not, in itself, a legally binding instrument, the fact that it was passed by consensus by the General Assembly and the fact that it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding to which India has acceded, such as the ICCPR, the Declaration therefore represents a very strong commitment by States, including India, to its full implementation.