

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on freedom of religion or belief; Special Rapporteur on minority issues and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 33/30, 31/16, 34/6 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam. A number of concerns are raised with regards to the compilation of the draft NRC, which resulted in a high number of exclusions, predominately of members of minority groups, as well as the objections procedure. Concerns are further raised in relation to the uncertainty regarding the status of those who may be finally excluded from the NRC once the final determinations are made.**

The National Register of Citizens was subject to a previous joint communication by several Special Procedures mandates dated 11 June 2018 (case no. OL IND 13/2018). We regret that, to date, we have not received a response from your Excellency's Government regarding this communication.

In that communication, concern was noted with regard to the State of Assam's ongoing compilation and updating of the National Register of Citizens (NRC). Since that communication, on 30 July 2018, the Office of the State Coordinator of National Registration in Assam published the draft of the NRC. Out of the total registered population of 32.9 million, it has been reported that 4.7 million names were excluded from the draft NRC, of which 3.76 million were rejected, and 248.000 were "kept on hold." Those having "on hold status" appear to be relatives of declared foreigners and so called 'Doubtful Voters' who were given this status by the Election Commission of India, in a review of the Assam electoral rolls in 1997.

While there is no specific data regarding those excluded from the list, as well as those "on hold", it appears that many are from ethnic, religious and linguistic minorities, including Bengali speakers, including both Muslims and Hindus of Bengali descent, Nepali and Hindi linguistic minorities, as well as tribal groups.

A deadline was set by the Supreme Court of India of 15 December 2018, which was extended on 12 December 2018 to 31 December 2018, for all persons who wish to challenge their exclusion from the Draft NRC to lodge so-called "claims and objections".

Verification of the claims has also been extended by 15 days from 1 to 15 February 2019. To date, it remains unclear when the publication of the final NRC will take place.

In this context we would like to raise some serious concerns regarding both the procedure for establishing the draft NRC, as well as with regards to the “claims and objections” procedure.

1. *Concerns with the draft NRC Verification Procedure*

a. *Required documentation – disproportionate impact on minorities, women and children*

According to the established procedure, an exhaustive list of admissible documents were prescribed by the Court for applicants to demonstrate proof of the citizenship for registration in the draft NRC. It is alleged, however, that a large number of people were excluded because of lack of access to the required documentation. This appears to have had a disproportionate impact on those from poor and illiterate and marginalised communities, who often belong to minorities. Many of those excluded reportedly reside in geographically remote areas, making it difficult for them to obtain the documentation required by NRC authorities.

Moreover, it is reported that historic records are often poorly created and maintained, and thus may contain errors and inconsistencies. It is alleged that these errors would also have disproportionately impacted upon poor marginalised, remote and illiterate individuals, often coming from minority communities, as they would have had less opportunities to rectify defects in these records.

In this context, it is reported that many of those excluded are women and children, who were even further disproportionately impacted due to their lack of access to the necessary documentation. For example, married women – especially those with limited or no schooling and those married early – have been especially vulnerable to the process, as many do not have documents linking them to their paternal house. If residing in their husband’s village, many do not have identification documents such as marriage certificates or voter IDs, with many marriages not being registered.

b. *Procedural and technological issues*

There also may have been a number of procedural shortfalls occurring during the registration process which may have contributed to the high number of exclusions. For example, there are allegations of mismatch in the Application Receipt Numbers (ARN) whereby names of people are lodged under families they do not belong to.

Furthermore, it is alleged that in some cases documents submitted reportedly in accordance with the required procedures were not accepted by the verifying authorities, even in cases where these documents were issued by government authorities.

c. *Bias in the determination procedure*

Determinations of eligibility were made by local authorities, with reports of discriminatory practices by key actors, with negative outcomes for the applicants from minority groups. For example, it has been reported that different verification standards regarding documentation were applied to members of minority groups, with suspected ‘non-original’ inhabitants, usually minorities, processed separately, with more stringent verification standards applied.

For example, it has been reported that many minorities, and notably women, submitted Gram Panchayat (village council, hereinafter ‘GP’) certificates as proof of residence, a document which was on the list of eight admissible List B documents. Reportedly, of the total 32.9 million applications, 4.7 million were made using GP certificates. However, a special two-step verification process was put in place for 2.25 million applications identified as eligible ‘non-original inhabitants’. This de facto appears to have instated a more rigorous process of verification for members of minorities, including the Bengali-speaking Muslims and Hindu minority as well as the Nepali speaking minority. Married women considered ‘original inhabitants’ who used GP - certificates – numbering 1.74 million in all - were not required to go through this additional check. This has led to complaints from amongst Bengali-speaking applicants that they were discriminated against.

Furthermore, given the long-standing historic dynamics of the region, including in light of the history of discrimination and violence faced in particular by Muslims of Bengali origin due to their status as ethnic, religious and linguistic minority and their perceived “foreignness”, inherent bias may have played a part in this process, given that those assessing the documentation were largely drawn from the majority community, and received little if any training about the process, including on standards of fairness and overcoming bias.

2. Appeals process: Concerns with the “Claims and Objections” procedure

It is understood that those who have been excluded from the Draft NRC have been given an opportunity to file claims and objections, with the impending deadline imposed by the Supreme Court of India of 31 December 2018. By the present date, and just one week before the deadline, it appears that approximately 70,000 claims have been filed – just over 10% of all persons excluded from the list. A number of concerns are raised regarding this process of Claims and Objections.

a. Lack of awareness, of exclusion, and lack of information about grounds for exclusion

It appears that those excluded from the draft NRC were not notified individually. Rather applicants were required to check the status of their applications on a centralised online database. For those excluded, reasons were not provided, rather those individuals had to make an application, using a prescribed form, to request the grounds for rejection, as only once the reason is known can an individual take steps to remedy any deficiencies.

This cumbersome procedure appears to have had a disproportionate impact on poor, illiterate and individuals living in remote and marginalised regions, many of whom may be members of minorities.

It also remains unclear if those “on hold” will be able to participate in the “claims and objections” process, as their cases may be pending under the Foreigners Tribunals

b. Complex modalities to lodge “claims and objections”

The modalities for the claims and objections process have been prescribed by the Supreme Court of India authorised in its judgement of 1 November 2018. In that judgment a new Standard Operating Procedure (SOP) was established. Whilst similar to the original, special measures were prescribed for vulnerable applicants, such as children excluded despite parents’ inclusion and destitute and homeless applicants, for whom rules have been relaxed.

It also appears that since the SOP has been put in place, efforts have been made to make the process more accessible, including through better public awareness; capacity building and sensitising the NRC bureaucracy to better engage with applicants; and introducing measures for oversight of the process.

Despite these attempts by the Supreme Court to better clarify and improve the system, it is alleged that the Claims and Objections process remains overly complex, including the new SOP, which has reportedly further complicated the issue. Firstly, although the objections period opened on 25 September 2018, the SOP was only published one month later, on 1 November 2018. It has also been alleged that there is further confusion on what are acceptable documents and what are not, with the SOP new distinction calling for strict verification standards for weak documents raising the fear of mass rejections.

3. The role of the Foreigners Tribunals and detention practices

It is alleged that the NRC process has been facilitated by special designated Foreigner’s Tribunals set up in various districts of Assam, under the Foreigners Tribunal Act (1946), and the Foreigners Tribunal Order (1964). There are currently 100 Foreigners Tribunals in the Assam, 64 of which were set up in 2015.

It appears that after 2016, less stringent standards were imposed regarding the appointment of members of these Foreigners Tribunals, leading to an exponential rise in the number of persons declared as foreigners. Those ‘Declared Foreigners’ by the Tribunals have no voting rights. Moreover, a large number of Bengali people have also been designated by these tribunals as “doubtful or disputed voters”, effectively depriving them of the right to political participation and representation, and resulting in their “on hold” status in the draft NRC list.

In particular, we note that those designated as Foreigners are systematically detained. There are currently six Detention Camps operational in Assam, which reportedly house more than 900 detainees in prison like conditions with no time limit regarding the detention of “foreigners”. Moreover, there is no system by

which the detention of those designated as foreigners is reviewed. Such detention is in detention centres that are typically within prison premises.

Recently, the Assam state government has sanctioned Rs. 4.6 billion for the construction of a new standalone detention centre for persons declared as ‘irregular foreigners’ with a capacity of 3000.

While we do not wish to prejudge the accuracy of these allegations, we would like to express serious concern regarding the process of developing the draft NRC, the “claims and objections” procedures, and the looming 31 December 2018 deadline for finalisation of the project.

We are particularly concerned that the way in which the NRC update has been conducted potentially affects a great number of Muslims and persons of Bengali descent, as well as other minorities, who may be wrongfully excluded from the updated NRC because of their historical and continuing treatment as foreigners and illegal immigrants in Assam.

Furthermore, given the poor understanding and operationalisation of the “claims and objections” period, as well as the relatively short deadline during which it has been undertaken, it appears that many of those perhaps unduly excluded from the list did not have a fair and adequate opportunity to challenge their exclusion.

Finally, finalisation of the NRC in the current form, has left much uncertainty for those excluded, including fears of losing citizenship, statelessness, as well as fears of indefinite detention, or even deportation.

In a region with very poor record-keeping, the current status of the verification process has the potential to create a massive category of people who are on Indian territory but cannot prove citizenship of either India or Bangladesh, thereby risking becoming stateless.

It is further feared that this entire process is stoking ethnic tensions in a region that has already experienced a tumultuous history of identity-based tensions, and suffered from strained inter-communal relationships, including multiple outbreaks of serious violence.

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 clarification regarding all cases brought to our attention, we would appreciate your responses to the above allegations, and to the following requests:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned concerns and allegations.
2. Please provide detailed information on any steps your Excellency’s Government may have taken to ensure that the substance and implementation

of the NRC update, including the administration of the claims and objection period, complies with India's obligations under international human rights law and standards. In particular, please provide details on steps taken to ensure that the NRC update does not result in statelessness or human rights violations, in particular, arbitrary deprivation of citizenship, mass expulsions, and arbitrary detention.

3. Please provide details on safeguards ensuring that members of ethnic, religious and linguistic minorities are not discriminated against in the framework of the NRC update and the determination of their citizenship status. In this context, please provide disaggregated data on the race, ethnicity and religion of individuals who have been excluded from the draft NRC as well as individuals who have been declared as foreigners by Foreigners' Tribunals. If unavailable, please explain why.
4. Please provide detailed information on the implications for those individuals who will be excluded from the final NRC. In particular, please elaborate whether they will face detention or deportation.
5. Please provide details on measures taken to ensure access to effective remedies for individuals excluded from the NRC.
6. Please provide information on measures undertaken to eliminate any discriminatory treatment of minorities, including the Bengali Muslim minority, with regard to the right to nationality and to ensure that no person belonging to ethnic, religious or linguistic minority is arbitrarily deprived of her or his nationality.
7. Please provide information on steps taken to ensure adequate training of members of Foreigners' Tribunals, police and NRC authorities on relevant human rights norms and standards, particularly those relating to non-discrimination and to persons belonging to ethnic, religious and linguistic minorities.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. 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 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.

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.

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Annex
Reference to international human rights law

In connection with the alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights norms and standards:

Firstly, we would like to bring to the attention of your Excellency's Government the international standards regarding the protection of the rights of persons belonging to minorities, in particular the International Covenant on Civil and Political Rights, ratified by India on 10 April 1979. Article 27 of the ICCPR establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, "to enjoy their own culture, to profess and practice their own religion, or to use their own language".

We would furthermore like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

With regards to the potential discriminatory impact of the NRC update, we would like to remind your Excellency's Government of its obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by India on 3 Dec 1968. Article 1 (1) defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". The Committee on the Elimination of Racial Discrimination has frequently reiterated that discrimination based on religious grounds is covered by ICERD in cases where it intersects with other forms of discrimination prohibited under article 1(1).

We recall that Article 2 (1) of ICERD obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups. To this end, States must ensure that public authorities and institutions on the national and local level act in compliance with this obligation. In accordance with article 6, States Parties must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction, but also provide access to remedies and adequate reparation to victims of racial discrimination.

We would also like to draw the attention of your Excellency's Government to the right to nationality as enshrined in various international legal instruments ratified by India. The right to nationality entails the right of each individual to acquire, change and retain a nationality. Article 5 (d) (iii) of ICERD is particularly relevant as it explicitly obliges States parties to guarantee the right of everyone to equality before the law, including in the enjoyment of the right to nationality, without discrimination on any prohibited grounds. In this connection, the Committee on the Elimination of Racial Discrimination has reiterated that the deprivation of citizenship on the basis of race,

colour, descent or national or ethnic origin violates States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality (see e.g. General Recommendations No. 30, para. 14).

Furthermore, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on the Rights of Minorities), establishes in article 1 the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end. Moreover, States are required to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1).

We also would like to draw your Excellency's Government attention to the recommendations of the Special Rapporteur on minority issues in his recent report to the General Assembly "Statelessness: A minority issue" (A/73/205),; in particular his conclusions and recommendation in which he recalls that "States must not arbitrarily or discriminatorily deny or deprive minorities of citizenship" and notes that "State requirements for the granting of citizenship, including in relation to any preference in terms of linguistic, religious or ethnic characteristics, must be reasonable and justified in order not to constitute a form of discrimination prohibited under international law." (paras 50 and 56)

With respect to the potential disenfranchisement of those excluded from the updated NRC, we would like to reiterate that Article 5(c) of ICERD requires States to ensure non-discrimination and equality before the law in the enjoyment of political rights. This includes the right to participate in elections, to take part in Government and public affairs, and to have equal access to public services.

Finally, we draw attention to the United Nations 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4.1 establishes that "States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".