

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on freedom of religion or belief

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/21, 34/6, 34/35 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the adoption, on 8 January 2019, by the *Lok Sabha* (House of the People) of the *Citizenship (Amendment) Bill 2016*.

According to the information received:

The *Citizenship (Amendment) Bill 2016* seeks to amend the *Citizenship Act* of 1955 and it was introduced in *Lok Sabha* (House of the People – lower house) on 19 July 2016. After being approved by the lower house, on 8 January 2019, the bill is to be presented before the *Rajya Sabha* (Council of States – upper house) for further consultation and approval.

The *Citizenship Act* of 1955 provides for the various ways in which citizenship in India can be acquired and it regulates registration of Overseas Citizen of India Cardholders (OCIs). However, the new *Citizenship (Amendment) Bill 2016* amends few of the sections of the 1955 Act and introduces provisions, which appear to be discriminatory against a number of ethnic and religious minorities who may have migrated to India from Afghanistan, Bangladesh and Pakistan. These amendments could also have serious implications for all those persons belonging to minorities, who have failed to prove their citizenship in processes such as for example the National Register of Citizens (NRC) in the State of Assam (cases OL IND 29/2018 and OL IND 13/2018).

In Section 2, subsection 1, clause *b*, the *Citizenship Act* of 1955 provides a definition of “illegal migrant”, as “a foreigner who has entered into India: i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or, ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time”.

The new *Citizenship (Amendment) Bill 2016* introduces a provision under the clause *b* of Section 2, subsection 1, which provides that Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan will not be treated as “illegal migrants”, provided also that they have been exempted by the Central Government under relevant provisions of the *Passport (Entry into India) Act* of 1920 and of the *Foreigners Act* of 1946. The bill, therefore, offers the possibility to Hindus and the other five religious minorities, who have entered India without valid travel document, or with an expired travel document, to apply for Indian citizenship through the process of naturalization, thus excluding other minorities.

In addition, the new *Citizenship (Amendment) Bill 2016*, reduces the aggregate period of residence in India or of service to the Government of India, from a minimum of eleven years to six years, and only for Hindus and members of the other five religious minorities mentioned above, from Afghanistan, Bangladesh and Pakistan (additional provision under clause *d* of the Third Schedule of *Citizenship Act*, 1955).

On 3 February, following public protests against the bill, in particular in states of northeastern India, the president of the Bharatiya Janata Party (BJP) and member of the *Rajya Sabha* (upper house), Mr. Amit Shah, publicly declared that his party would bring the bill before the *Rajya Sabha* only if there was a consensus among all political parties.

We wish to express our concern over the recent approval by *Lok Sabha* (lower house) of the *Citizenship (Amendment) Bill 2016*, which amends the *Citizenship Act* of 1955 and which appears to discriminate against a number of ethnic and religious minorities in India.

Although the proposed provisions of the bill provide for an improved framework with regard to the acquisition of Indian citizenship through naturalization, this improvement is reserved exclusively to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, thus excluding members of other minorities who may find themselves in the same situation described in the provisions of the *Citizenship Act* of 1955, the *Passport (Entry into India) Act* of 1920 and of the *Foreigners Act* of 1946. Furthermore, we note with concern that the proposed bill does not seek to substitute the term of “illegal migrant” included in the *Citizenship Act* of 1955, with that of “irregular migrant” or of “migrant in irregular situation”, in order to bring the text closer to the terminology currently used in international law.

We note that a number of public protests against the bill have been reported, mainly in states of northeastern India, due to a widespread belief that the Government’s alleged intention behind the bill is to ultimately provoke demographic changes in these regions, which are heavily populated by Muslim and other ethnic and religious minorities.

The approval of the *Citizenship (Amendment) Bill 2016* can be seen also in the context of the current finalization of the updated National Register of Citizens (NRC) in the State of Assam. We have previously drawn the attention of your Excellency's Government to the issue of the NRC process in Assam and we have raised concerns over its discriminatory character, in particular against Muslims and persons of Bengali descent, as well as other minorities, who are treated as foreigners and "illegal migrants" in Assam (see cases OL IND 29/2018 and OL IND 13/2018). The arbitrary exclusion of these and other minorities from the NRC process and from the proposed provisions of the *Citizenship (Amendment) Bill 2016* would perpetuate discrimination against them, and consolidate a climate of uncertainty, including fears of prolonged statelessness, detention, or even deportation. Prolonged uncertainty and the resulting aggravation of tensions between communities may also increase the risk of violence against minorities. We regret that we have not received, to date, any response to our letters with regard to the National Register of Citizens (NRC).

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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide clarification on the rationale and the legal basis explaining the provisions of the *Citizenship (Amendment) Bill 2016* amending the *Citizenship Act of 1955*;
3. Please provide detailed information on the implications for those individuals that fall within the category of "illegal migrant", under Section 2, subsection 1, clause b of the *Citizenship Act of 1955*, and who are not Hindus or members of the other five religious minorities mentioned in the *Citizenships (Amendment) Bill 2016*;
4. Please provide information on measures undertaken to eliminate any discriminatory treatment of minorities 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.

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. It will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we would also like to invite your Excellency's Government to transmit this letter to the Chairperson of the *Rajya Sabha* (Council of States – upper house) and to the Minister for Home Affairs.

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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Special Rapporteur on the human rights of migrants

Fernand de Varennes
Special Rapporteur on minority issues

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
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Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Annex
Reference to international human rights law

In connection with above 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 (ICCPR), to which India is a State Party since 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".

With regards to the potential discriminatory impact of the *Citizenship (Amendment) Bill 2016*, we would like to remind your Excellency's Government of its obligation the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), ratified by India on 3 December 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, 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".

We would like also to bring the attention of your Excellency's Government to the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Human Rights Council (A/HRC/38/52), which identifies and reviews contemporary racist and xenophobic ideologies, and institutionalized laws, policies and practices, which together have a racially discriminatory effect on individuals' and groups' access to citizenship, nationality and immigration status. We would like to draw specific attention to her recommendations and especially to "take specific steps to end statelessness, including by putting an end to the practices and policies identified [in the report] that render persons stateless and in doing so, make them vulnerable to extreme human rights violations" (para.67 (c)).

Finally, 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." (para. 50 and 56)