

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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

REFERENCE:
OL IND 11/2019

27 May 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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 33/30, 34/18, 34/6, 34/35 and 40/L.17.

In this connection, we wish to address to your Excellency's Government this follow-up letter with the regard to the ongoing process of the National Register of Citizens (NRC) update in the State of Assam and its potential adverse effects on the lives of millions of people, most of whom belong to minority groups.

Our concerns over the shortcomings of this process have already been shared with your Excellency's Government through previous joint communications dated 11 June 2018 (case no. OL IND 13/2018) and 13 December 2018 (case no. OL IND 29/2018).

In those communications, a number of specific concerns were noted with regard to the NRC process and the role of Assam administrative and judicial authorities, namely the absence of official policy outlining the implications for those excluded from the final NRC; inconsistencies and errors during the application and registration process; entrenched bias and arbitrary application of the required procedures by the verifying authorities disproportionately affecting members of the Bengali-speaking Muslim and Hindu minorities, as well as the Nepali and Hindi linguistic minorities and tribal groups; challenges in accessing the required documentation and serious inconsistencies with regard to the creation and maintenance of historic and family records, with a disproportionate impact on women and children; the tight deadlines imposed on all those excluded from the draft NRC to file a revision claim; the reported complexity of the "Claims and Objections" process and its Standard Operating Procedures (SOP) authorized by the Supreme Court in November 2018; the composition and capacity of the Assam Foreigners' Tribunals to process the cases referred to them, and the alleged pressure by state authorities on members of these Foreigners' Tribunals to "improve results"; the prolonged detention of those designated as "foreigners; and, the vulnerability of the family members of all those declared as "foreigners".

We deeply regret that to date your Excellency's Government has not yet responded to these communications, and therefore it has not provided us with any

additional information and/or clarification to the substantive observations and questions. We deeply regret your Excellency's Government absence of engagement in a dialogue with our mandates on a process with significant implications for the human rights and legal status of millions of individuals, and in particular of those belonging to minorities and living in remote and marginalized areas, most of whom may face statelessness, prolonged detention and forced return to countries in which they may have never lived in the past.

In addition to the information and expressed concerns contained in our previous communications, we wish, through this follow-up letter, to bring to your Excellency's Government's attention new information received by our mandates since 31 December 2018, which was the deadline set by the Supreme Court for the submission of revision claims and objections to the draft NRC.

According to new the information received:

As of 31 December 2018, a total of 3.62 million individual revision claims have been filed, out of the total of 4 million people who had not been included in the draft NRC, released on 30 July 2018. Therefore, approximately 400,000 people, most of whom belong to ethnic, religious and linguistic minorities, appear to have failed to request the review of their application and were not in a position to further substantiate their initial application with additional documents.

In addition, it is reported that until 31 December 2018, more than 200,000 objections were filed against people who were already included in the draft NRC of July 2018. Allegedly, Assamese nationalist groups filed the majority of these objections, just hours before the expiry of the 31 December deadline, and most of these objections may not have been supported by relevant documentation or specific reasons for such an objection, whereas "objectors" may have in some cases provided authorities with false names and/or addresses in order to avoid attending the objection hearing.

On 8 May 2019, during the latest Supreme Court hearing on *Assam Public Works v. Union of India & Ors.*, the NRC State Coordinator informed the Court that many of those who had objected to the inclusion of certain individuals in the draft NRC of July 2018 had not come forward before the appropriate panels dealing with such objections. In its response, the Supreme Court stated that "*The State Coordinator is free to deal with all incidental issues that may arise, in his wise discretion and in accordance with law.*"

Despite the reported complex NRC modalities, including with regard to the verification of List A (legacy) and List B (linkage) documents, the reported inconsistencies and errors during the application and registration process, as well as the significant number of revision appeals and objections, on 24 January 2019, the Supreme Court maintained that the deadline for the publication of the final NRC list would remain 31 July 2019, and it would not be extended. In its

judgement of 8 May 2019, the Supreme Court stated again that “*the process of preparation of the final NRC shall continue to ensure that the publication of the final NRC is made on or before 31.07.2019.*”

On 15 February 2019, the verification of the 3.62 million revision claims has started and it is expected to be completed within a period of only 4 months, on 15 June 2019. This new verification process does not, however, include those who have been already declared as “doubtful voters” by the Election Commission and thus excluded from the July 2018 draft NRC, or those who have been declared as “foreigners” and “descendants of declared foreigners” by the Foreigners’ Tribunals in Assam. District and sub-district officers functioning as authorised officers of the District Magistrate (District Registrar of Citizens Registration) will undertake the hearings for both the revision claims and objections, as per Section 6 “Level of Disposal of Claims and Objections” and Section 7 “Holding of Hearings” of the *Standard Operating Procedure (SOP)*.

However, it is reported that there are significant challenges with regard to the staffing of the review panels, and officers handling revision claims and objections may lack sufficient training, thus increasing the likelihood of revision errors, which in some cases may be also due to prejudice and bias against the claimants. In addition, it is reported that no changes can occur at the revision stage in the so-called “legacy person” or in the family tree declared by the applicant at the initial application stage.

Furthermore, there has been lack of clarity regarding the link between on the one hand the NRC update and the electoral rolls, and on the other hand the NRC update and the judicial processes before the Assam Foreigners’ Tribunals:

- The first concerns the status of all those persons whose names appear in the electoral rolls but are not included in the final NRC list. The issue was raised during the hearing of the case *Gopal Seth & Anr. vs Union of India & Ors.* The Supreme Court has reportedly not taken a clear stance on this matter. Instead, it asked the Election Commission to provide detailed information on the number of names included or deleted from the electoral rolls between 2017 and 2019, and stated that this information would remain in a “sealed cover”, to be opened only on the orders of the Court.
- The second concerns the right of all those excluded from the updated NRC list, as a result of a Foreigners’ Tribunal’s decision, to challenge this exclusion before an appellate body. The issue was raised during the March 2019 hearing by the Supreme Court of the case of *Abdul Kuddus vs Union of India & Ors.* The argument by the State of Assam and the Indian Government has been that the judicial decision of a Foreigners’ Tribunal should supersede the executive process of the NRC update and that there should not be an appellate body. On 17 May, the Supreme Court held that

the decision by a Foreigner Tribunal will be binding and will prevail over the decision to include or exclude a person from the NRC list.

It is reported that all of those excluded from the final NRC list will be referred to the Foreigners' Tribunals in Assam, where according to Section 9 of the Foreigners Act of 1946 they will be requested to prove that they are not "irregular foreigners". However, it is reported that often these notifications for appearance before the Foreigners' Tribunals do not reach the concerned individuals, which ultimately lead to *ex parte* cases, without their presence.

There are currently 100 such tribunals in the state of Assam. However, the reported intention of the Assamese state authorities is to increase their number to 1,000, in order to handle the cases of all those left out of the final NRC. There are concerns regarding the composition of the new Foreigners' Tribunals, including with regard to judges and prosecution members. The Supreme Court is informed about this plan and has sought information about the recruitment process, and the Assam authorities have indicated their intention to approach retired judges.

Those declared as "foreigners" have slim chances of appealing the Foreigners' Tribunals' decisions to the Gauhati High Court. It has been reported that, to date, almost all contested cases have been dismissed by the High Court and only some of them have been remanded back again to the Foreigners' Tribunals for a re-hearing.

Influenced by the NRC process in the state of Assam, other similar initiatives have appeared in other states in north east India. On 18 March 2019, the Mizoram state legislature passed the *Mizoram Maintenance of Household Registers Bill*, which reportedly aims at detecting foreigners and identifying "genuine residents" of the state, by creating separate registers for "residents" and "non-residents", with names and photographs. The rationale behind the approval of this bill is explicitly stated in the Bill's "Statement of Objects and Reasons" which mentions that "[I]nflux of foreigners into Mizoram through its porous borders has remained a serious concern for several decades. In many cases the benefits of development and welfare programmes are found eaten away to a large extent by such foreigners who clandestinely stayed back and got assimilated in the people of the State by taking advantage of the mistaken identity and of difficulties in detecting them." A number of stakeholders in India have raised concerns over the approval of this Bill as well as over the process of verification of the information contained in these registers, which is to be undertaken by "state-level NGOs", designated by the Government of Mizoram.

Inflammatory public statements against the so-called "foreigners" and "infiltrators" and the need to remove them from India have been reported during the current election period, whereas allegedly the *2019 Election Manifesto* of the Bharatiya Janata Party (BJP) mentions the intention of its leadership to expand the

implementation of the NRC to other parts of the country. Under the section “Combating Infiltration” the BJP Manifesto reads:

There has been a huge change in the cultural and linguistic identity of some areas due to illegal immigration, resulting in adverse impact on local people’s livelihood and employment. We will expeditiously complete the National Register of Citizens process in these areas of priority. In future we will implement the NRC in a phased manner in other parts of the country.

In light of the new information received, we wish to reiterate our concerns expressed through our previous letters (OL IND 13/2018 and OL IND 29/2018), as well as the formulated questions contained therein, to which your Excellency’s Government has not yet provided us with a response.

Furthermore and while we do not wish to prejudge the accuracy of the received information, we note with regret that the new information submitted to our respective mandates depicts a worrying situation with regard to the implementation of the NRC update and the reported significant challenges faced by all those who have been excluded from the draft NRC list released in July 2018. We are concerned at the tight schedule which is set for the processing of approximately 3.62 million revision claims and the reported decision of the Supreme Court not to extend the deadline for the release of the final NRC, beyond the 31st of July 2019, despite the alleged procedural irregularities and inefficiencies, in particular with regard to access to relevant documentation and the insufficient capacity of the reviewing bodies and panels.

Furthermore, concern is expressed over the filing of a significant number of objections against individuals included in the draft NRC of July 2018, many of which may not have been substantiated through the submission of evidence material. Such objections may place all those individuals who were initially included in the draft NRC, as well as their families, into a critical situation to prove their citizenship before the Foreigners’ Tribunals, with the risk of being declared as “foreigners”, face de facto statelessness, and without having the opportunity to appeal the Foreigners’ Tribunals’ decisions. They could be sent to one of the six detention facilities currently operating in Assam for this purpose (Goalpara, Kokrajhar, Silchar, Jorhat, Dibrugarh and Tezpur), or “pushed back” to their “country of origin”, as indicated in the State of Assam’s affidavit of 28 January 2019, in the case *Harsh Mander vs Union of India & Anr.*

Furthermore, we express our concern over the reported uncertainty with regard to the relationship between the NRC process, the established electoral rolls and the decisions by the Foreigners’ Tribunals, and the absence of a clear framework on how to deal with inconsistencies among those three parallel processes, which may produce conflicting outcomes for one and the same person.

Finally, we note with concern the intended plans of the Assam state authorities to expand the institutional capacity for the identification of “foreigners” through a significant increase in the number of Foreigners’ Tribunals, the Supreme Court’s tacit

support to such plans, the emulation of the NRC process by other states in the north east of India, as well as the rising tide of bigotry, stigmatization and scapegoating of all those perceived as “foreigners” and “infiltrators”, most of whom belong to racial, ethnic, religious or linguistic minority groups in India.

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 appreciate your responses to the questions formulated in our previous communications (OL IND 13/2018 and OL IND 29/2018), as well as to the above observations and allegations, and to the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide updated information regarding the current administration of the revision claims and objections.
3. 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 objections, 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.
4. Please indicate the measures undertaken with the view to ensuring that persons who filed revision claims or whose inclusion in the draft NRC has been subject to objection, and who belong to racial, ethnic, religious and linguistic minority groups, are not discriminated against in the claims or objections process, and that they have been provided with the opportunity to appeal the decision.
5. Please provide updated information with regard to the reported intention of the Assam authorities to increase the number of Foreigners’ Tribunals and to intensify the campaign of identification of “foreigners” in Assam. Please provide information on the total number of persons referred to the Foreigners’ Tribunals since 1 January 2019, their ethnicity and religion, as well as the number of those declared as “foreigners”.
6. Please indicate how many of those declared as “foreigners” are detained in the six detention facilities currently operating in Assam, including the

length of their detention to date. Please indicate how many of those declared as “foreigners” have been already deported.

7. Please indicate the measures undertaken to counter the adverse effects of the adoption and implementation of the Mizoram Maintenance of Household Registers Bill, on those considered as “non-residents” in the state of Mizoram, and to eliminate any discriminatory treatment against them, and in particular against persons belonging to ethnic, religious or linguistic minorities.
8. Please provide information on measures undertaken to eliminate any discriminatory treatment of minorities, including the Bengali Muslim minority group, with regard to the right to nationality and to ensure that no person belonging to ethnic, religious or linguistic minority group is arbitrarily deprived of her or his nationality.
9. Please provide information on the measures undertaken to effectively counter hate speech against and stigmatization of racial, ethnic, religious and linguistic minority groups in India, and to ensure that those responsible in fomenting racial and ethnic hatred are prosecuted and sanctioned. Please provide information on investigations of cases of hate speech and incitement to hatred, in particular by political and religious actors, and the outcomes of such investigations.

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 recurrence 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.

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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, 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". In this connection, we also refer to article 19 of the ICCPR, guaranteed the right of "everyone" to seek, receive and impart information of all kinds, through any media and regardless of frontiers. In this connection, we highlight that the right to access to information constitutes a fundamental component of the right to freedom of expression. As underlined by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, obstacles to access to information can undermine the enjoyment of civil and political rights, in addition to economic, social and cultural rights. Core requirements for democratic governance, such as transparency, the accountability of public authorities or the promotion of participatory decision-making processes, are practically unattainable without adequate access to information (A/68/362).

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).

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 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).

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 service.

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 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 recommendations 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).

Finally, 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)).