

**Mandates of the 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; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the situation of human rights defenders**

REFERENCE:  
AL IND 15/2019

15 July 2019

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; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18, 32/32, 33/9 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 **initiation of criminal proceedings against Mr. Anand Grover, Ms. Indira Jaising and the human rights NGO Lawyers Collective.**

Mr. **Anand Grover** is a human rights defender and lawyer. As co-director of Lawyers Collective, he advocates and assists groups in vulnerable or marginalized situation in the realization of their right to health. He advocates against the criminalisation of homosexuality; the rights of persons living with HIV; and access to medicine and healthcare. Mr. Grover was a member of the United Nations AIDS Reference Group on HIV and served as United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health from 2008 to 2014. He has argued several landmark cases in the field of public interest and human rights law, mass eviction, LGBTI rights and patent law for life-saving drugs. With the Lawyers Collective, Mr. Grover led the Naz Foundation's legal case for the repeal of Section 377 of the Indian Penal Code, which criminalized homosexuality in India.

Ms. **Indira Jaising** is a prominent women human rights defender and lawyer. As co-director of Lawyers Collective, she works on the issue of gender discrimination, including women's right to property, sexual harassment at the workplace and domestic violence. She previously worked for the National Commission for Women, organising workshops and publishing reports on women's issues. She assisted in the drafting of the Protection of Women from Domestic Violence Act 2015. Ms. Jaising was also formerly a member of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) Committee. She was the first woman to be designated as a Senior Advocate by the High Court of Bombay and was presented with the Rotary Manav Seva Award in recognition of her services to the nation in fighting corruption and promoting minority rights. She was given the Padma Shree by the President of India in 2005.

Mr. Grover, Ms. Jaising and Lawyers Collective were the subjects of previous communications raised with your Excellency's Government by several Special Rapporteurs on 10 June 2016 (case no. IND 2/2016) and on 21 December 2016 (case no. IND 10/2016). We regret that no responses have been received from your Excellency's Government with regard to these communications.

The Foreign Contribution Regulation Act (FCRA), under whose provisions several of the charges in the present case have been brought, was the subject of previous communications sent by various Special Rapporteurs on 18 June 2015 (case no. IND 7/2015) and on 28 December 2018 (case no. IND 28/2018). We acknowledge receipt of the reply of your Excellency's Government dated 17 August 2015 (NV.52/2015), however, we regret that as of the sending of the present communication no response has been received from your Excellency's Government concerning case no. IND 28/2018.

According to the information received:

On 15 May 2019, the Indian Ministry of Home Affairs wrote to the Indian Central Bureau of Investigation (CBI) requesting further investigation in the context of ongoing judicial proceedings involving Lawyers Collective.

The proceedings in question date back to an inspection of Lawyers Collective by the Ministry of Home Affairs, launched on 12 January 2016, as to its compliance with the Foreign Contribution Regulation Act 2010 (FCRA), and the subsequent suspension of Lawyers Collective's registration under the FCRA for six months on 31 May 2016, the non-renewal of their license on 28 October 2016, and the license's cancellation on 27 November 2016. These actions, based on accusations that the organisation and its directors, Ms Jaising and Mr Grover, had violated FCRA regulations, were thereafter challenged by the Lawyers Collective in the Bombay High Court, with appeals against the cancellation and non-renewal of the FCRA license moved on 25 January 2017 and 31 March 2017, respectively. These appeals remain pending.

On 13 June 2019, in response to the Ministry of Home Affairs' request, the CBI filed a First Information Report (FIR) against Lawyers Collective, Mr. Anand Glover and other unknown accused representatives of the human rights organisation. The FIR was based on information gathered through the inspection of Lawyers Collective by the Ministry of Home Affairs carried out in January 2016. The FIR contains several charges under the Indian Penal Code, including criminal conspiracy (section 120-B), criminal breach of trust (section 406), cheating and dishonestly inducing delivery of property (section 420) and making false statements in declarations (section 199). Further charges are included under the FCRA, referring to making false statements (section 33) and accepting or assisting the acceptance of security or currency from a foreign source in contravention of the Act's provisions (section 35), to be read with sections 37 and 39 concerning penalties and liability. Charges are also brought under the

Prevention of Corruption Act 1988 alleging criminal misconduct of a public servant (section 13(2) with reference to section 13(1)(d)).

On 11 July 2019, at approximately 5am, simultaneous searches of the New Delhi and Mumbai offices of Lawyers Collective and the home of Mr. Grover and Ms. Jaising in New Delhi were carried out by CBI agents in relation to the pending proceedings before the Bombay High Court concerning the alleged violation of the FCRA by Lawyers Collective.

Serious concern is expressed at the initiation of criminal legal proceedings against Lawyers Collective, Mr Grover and the as yet unnamed other representatives of the human rights organisation, which may relate to the legitimate human rights work of the organisation and its representatives, including Mr Grover and Ms Jaising in their roles as co-directors of the organisation, right to health advocates and human rights lawyers.

We reiterate our position as outlined in previous communications sent to your Excellency's Government concerning the incompatibility of FCRA with international human rights standards, in particular articles 19 and 22 of the ICCPR. We also reaffirm our concerns as to restrictions placed on civil society organisations in India by the FCRA through the limitations and overly burdensome administrative requirements it imposes on and attaches to access to foreign funding.

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.

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 any comment(s) you may have on the above-mentioned allegations
2. Please provide detailed information about the legal basis of the charges against Mr. Grover, as well as how the legal proceedings comply with international human rights norms and standards.
3. Please provide information as to the compatibility of the FCRA with international human rights standards, in particular with articles 19 and 22 of the ICCPR.
4. Please provide information as to the legal grounds for the search carried out by the CBI on the offices of Lawyers Collective and the home of Mr. Grover and Ms. Jaising on 11 July 2019, and for the seizure of any materials made therein.

5. Please indicate what measures have been taken by your Government to respect, protect, facilitate and promote the work of advocates who assist groups in vulnerable or marginalized situation in the realization of their right to health, including with respect to HIV/AIDS, sexual and reproductive health rights and domestic violence.
6. Please indicate what measures have been taken to ensure that all human rights defenders in India, and human rights lawyers in particular, 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.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

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

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

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 refer your Excellency's Government to 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 be necessary and proportionate to the aim pursued.

We would also like to refer your Excellency's Government to the fundamental principles 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.

Further to this, we wish bring to the attention of your Excellency's Government several further provisions of the UN Declaration on Human Rights Defenders. In particular, we would like to refer to article 5(b), which provides for the right to form, join and participate in non-governmental organisations, associations or groups; article 9(c), which provides for the right to offer and provide professionally qualified legal assistance in defending human rights and fundamental freedoms; and article 13, which provides for 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 would also like to refer to Human Rights Council resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (paras. 10-13).

We would like to recall that 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 provisions 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, and in the context of the activities of NGOs, the Special Rapporteur has 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)).

In this context, we would like to further refer to the information note<sup>1</sup> issued by the Special Rapporteur on the rights to freedom of peaceful assembly and of association on 20 April 2016 on the compatibility of the 2010 FCRA with international human rights norms and standards. In this note, the Special Rapporteur concluded that “the Foreign Contribution Regulation Act and Regulations appear to contravene the Union of India’s obligations under the ICCPR to ensure the rights of all under its jurisdiction to free association because it imposes a total ban on associations’ access to foreign funding on vaguely defined grounds for a broad purpose not included in the ICCPR’s enumerated list of legitimate aims” (para. 36).

We would like to finally refer to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) acceded to by India in April 1979, which enshrines the right to health. The Committee on Economic, Social and Cultural Rights in its General Comment No. 14 (E/C.12/2000/4) has stressed that the right to health is an inclusive right extending not only to timely and appropriate health care but also to other important aspects: it is closely related to and dependant upon the realization of other human rights, including non-discrimination, equality, and the freedoms of association, assembly and movement, which address integral components of the right to health (para 3). An important aspect of the right to health is the participation of the population in all health-related decision-making at the community, national and international levels (para 11). The effective provision of health services can only be assured if people’s participation is secured by States (para 54).

As part of their obligations under ICESCR article 12, States should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting groups in vulnerable or marginalized situation in the

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<sup>1</sup> Information note available here:

<http://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteIndia.pdf>

realization of their right to health. (para 62). Violations of the right to health may arise from those State actions, policies or laws that contravene the standards set out in ICESCR article 12 including the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health (para 50), including the promotion of health related work and campaigns with respect to HIV/AIDS, sexual and reproductive health rights, domestic violence, and the abuse of drugs and other harmful substances (para 36).