

**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:  
AL IND 18/2019

11 September 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 and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18, 41/12 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 suspension of registration of the human rights organisation **Centre for Social Development**, and the surveillance, threats and attacks against its staff and their family members, including a recent attempted shooting of the daughter of the organisation's secretary, which appears to be linked to his work in defence of human rights and his engagement with the UN in the field of human rights.

The **Centre for Social Development** (CSD) is a human rights organization, which promotes the land and resource rights of indigenous peoples in Manipur. CSD is a member of the United NGOs Mission Manipur (UNM-M), a network of organisations defending the rights of indigenous peoples. **Urikhimbam Nobokishore** is a human rights defender who has worked as the secretary of CSD since the establishment of the organisation in 1986. He also serves as a secretary of UNM-M.

The Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights to freedom of peaceful assembly and of association have previously raised their concerns regarding the use of the Foreign Contribution Regulation Act of 2010 to restrict the work of non-governmental organizations as an alleged act of reprisals for their cooperation with the UN in the field of human rights (see OL OTH 27/2017, dated 9 November 2017). Similar concerns with regards to specific NGOs were expressed by Special Procedures mandate holders in joint communications sent to your Excellency's Government on 31 May 2018 (case no. IND 14/2018) and 20 December 2018 (case no. IND 28/2018). We regret that no responses have been received to these communications.

Allegations of reprisals against the CSD, its secretary, Mr. Urikhimbam Nobokishore, and its staff were included in the 2018 and 2019 reports of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/42/30, Annex II, para.57, and A/HRC/39/41, para. 50 and Annex I paras. 63-65).

According to the information received:

Since 2006, the Centre for Social Development has submitted at least nine reports to the United Nations, including to the Working Group on Business and Human Rights and to the Committee on the Elimination of Racial Discrimination, concerning violations of the rights of indigenous peoples in northeast India in relation to large-scale development projects, mining operations, and implementation of the Armed Forces (Special Powers) Act.

In the first months of 2017, the United NGOs Mission-Manipur submitted a joint report to the Office of the High Commissioner for Human Rights on the situation of human rights in India ahead of the country's Universal Periodic Review in April-May 2017. CSD was listed among the contributing NGOs and Mr. Nobokishore was mentioned as the Secretary of UNM-M submitting the report.

Since August 2017, CSD and its staff members have been subjected to surveillance. The offices of the organization were reportedly visited by agents of the Central Reserve Police Force, who questioned the staff about their work and sources of funding.

On 11 August 2017, some six armed individuals visited the offices of CSD and Women Action for Development, an organisation where Mr. Nobokishore's wife works promoting the human rights of women and girls. During the visit, the individuals inquired about Mr. Nobokishore and his wife. The next day, a complaint along with CCTV footage was filed by the organisations' staff members at the Imphal East Police Station. The police refused to register a First Information Report.

On 18 August 2017, a CSD staff member was followed by four individuals on his way back home from CSD's office. The four individuals, including a police officer, attacked him near the Patsoi Police Station, Imphal West District. The CSD staff member resisted the attack and the assailants ran away, leaving him unharmed. He then filed a complaint at the Patsoi Police Station but the officer in charge refused to register a First Information Report.

In October 2017, CSD submitted a report to the United Nations Working Group on Business and Human Rights and to the Committee on the Elimination of Racial Discrimination, including inquiries related to uranium mining and cement factories in Meghalaya.

On 1 January 2018, CSD's registration was suspended for six months under the Foreign Contribution Regulation Act, and its bank account was frozen. According to the order issued by the Ministry of Home Affairs, the organisation used foreign funding for purposes other than intended by the law, including drawing attention

to uranium mining in Meghalaya at “several global platforms.” The Ministry further argued that the organisation’s activities have negatively affected the “sovereignty and integrity of India” and the “security and strategic interests of the State”.

Mr. Nobokishore has been surveyed by military intelligence officials from the State of Manipur as well as those outside of the State at his office premises and at his home in Imphal, Manipur. When he travelled to Shillong, State of Meghalaya in January 2018, the Intelligence Department of Meghalaya contacted the hotel and interrogated its staff about his actions and contacts. The hotel staff was asked to provide detailed information on his activities, including a list of the people he interacted with. These incidents were reportedly brought to the attention of the Superintendent of Police, Imphal East District and Patsoi Police Station, Imphal West District, to no avail.

In April 2019, as the registration suspension was still ongoing, CSD filed a complaint against the Ministry of Home Affairs in the Manipur High Court. In May 2019, the organization received notification from the Ministry of Home Affairs indicating that under the FCRA its bank account was de-frozen and activities could be resumed.

In May 2019, the United NGOs Mission Manipur submitted a parallel report to the UN Human Rights Committee, ahead of the consideration of the list of issues prior to reporting for India during the 126th session of the Committee held in July 2019. In the report, CSD was referred to as an umbrella organisation of the United NGOs Mission Manipur. The report also mentions the surveillance of CSD and the ongoing threats against Mr. Nobokishore linked to his role at the organisation.

On the early evening of 4 July 2019, the daughter of Mr. Nobokishore was driving with two other relatives to a family house in Imphal, Manipur, when a group of unidentified individuals in a four-wheel drive started closely following her car and honking repeatedly. The group then verbally abused her and overtook her vehicle. They followed her all the way to her destination. After the daughter of the defenders stepped out of her car, one of the unidentified individuals started firing shots at her. The assailants then drove away towards Canchipur. The daughter of the defenders and her companions managed to hide inside the house and did not suffer physical harm as a result of the incident.

On 5 July 2019, the family of the victim filed a complaint at the Singjamei Police Station. On 15 July 2019, following significant pressure by local civil society organisations, a First Information Report was registered by the police.

Mr. Nobokishore had planned to travel to Geneva in July 2019 to represent CSD and UNM-M in discussions concerning India held during the 126th session of the UN Human Rights Committee. As a result of the attack against his daughter, he did not attend the event.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concerns at the suspension of registration of the Centre for Social Development and the alleged surveillance, threats and attacks against its staff and their family members, including an attempted shooting of the daughter of Mr. Nobokishore by unknown individuals. These acts appear to be directly linked to CSD's and Mr. Nobokishore's work in defence of human rights. We raise specific concern that some of the actions detailed above, including the suspension of CSD's registration and the attack against the daughter of the human rights defender, may represent acts of intimidation and reprisals against the organisation following their various submissions to UN human rights mechanisms, including in particular the Special Procedures of the Human Rights Council and the Human Rights Committee. These concerns are further strengthened by the wording of the order issued by the Ministry of Home Affairs, which explicitly links CSD to disseminating information on uranium mining in Meghalaya on international fora. In addition, our concerns are strengthened by the fact that the attack against Mr. Nobokishore's daughter by unknown individuals had de facto prevented Mr. Nobokishore from attending the 126th session of the UN Human Rights Committee and from raising concerns about the human rights situation in India during the event.

We reiterate our concerns that the application of the Foreign Contribution Regulation Act of 2010 to human rights organizations creates a stigmatizing and chilling effect on that type of legitimate work. 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 **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 and facts.
2. Please indicate what measures have been taken to ensure the physical and psychological integrity and security of Mr. Nobokishore, his wife and their daughter, in the context of the attack and threats they have been targeted with.
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to reported allegations of an attempted shooting of the daughter of the human rights defenders as well as past attacks and threats against

Mr. Nobokishore, his wife and CSD staff members. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide information as to the allegations of surveillance and repeated questioning of Mr. Nobokishore and other CSD staff members, and explain how this is in line with international human rights standards.
5. Please provide detailed information on the accusations against the Centre for Social Development of violating the Foreign Contribution Regulation Act of 2010, as well as on the decision to suspend the activities of the organisation and freeze its bank account. Please also explain how this decision complies with India's obligations under international human rights law.
6. 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.
7. 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.
8. Please provide information on the measures which have been put in place to ensure that human rights defenders and civil society organisations are able to cooperate with UN, its representatives and mechanisms in the field of human rights, including by disseminating information on all human rights and fundamental freedoms, without fear of reprisal.
9. Please indicate what measures have been taken to ensure that human rights defenders 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.

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.

In light of the allegations of reprisals against the human rights defenders and the Centre for Social Development for engaging with UN human rights mechanisms, we reserve the right to share this communication – and any response received - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official

appointed by the Secretary general to lead efforts within the United Nations system to address this issue.

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

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.

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. We also want to refer to article 2(1) of the ICCPR that establishes a general duty to ensure the rights recognized by the ICCPR. This article has been interpreted to have established a State duty to take positive measures to protect the right to life. The Human Rights Committee clarified that "States parties have a positive obligation to ensure the protection of individuals against violations of Covenant rights, which may be committed not only by its agents, but also by private persons or entities" in the case of *Peiris v. Sri Lanka* (CCPR /C/103/D/1862/2009).

We would further like to refer to Human Rights Committee General Comment no. 35 which states that the right to personal security obliges States to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. It further notes that States must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury.

With regards to the freedom of association, 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 this right 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 9, paragraph 4, point a) of this Declaration, which provides for the right to unhindered access to and communication with international bodies, as well as article 12, 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.”

We would also like to refer to Human Rights Council Resolution 24/24, which calls on States to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations, its mechanism and representatives in the field of human rights; and to take all appropriate measures to prevent the occurrence of intimidation or reprisals, including, where necessary, by adopting and consequently implementing specific legislation and policies and by issuing appropriate guidance to national authorities in order to effectively protect those who seek to cooperate, cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights from any act of intimidation or reprisal; and to Human Rights Council resolution 22/6, which provides for the right to “unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms”.

We also refer to Human Rights Council resolution 12/2, which condemns all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, and urges Governments to prevent and refrain from all acts of intimidation or reprisal against those who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, or who have provided testimony or information to them. Moreover, the 2015 report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights pursuant to Human Rights Council resolution 12/2 (A/HRC/30/29) reiterates the Secretary-General’s firm position that “any act of intimidation or reprisal against individuals or groups for their engagement with the United Nations, its mechanisms and representatives in the field of human rights is completely unacceptable and must be halted, immediately and unconditionally” (para. 47).

We would finally like to refer to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in meditation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.