

Mandates of the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on minority issues

REFERENCE:
AL IND 17/2021

28 October 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 40/10, 43/4, 43/16 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the judicial harassment and intimidation suffered by Ms. **Rana Ayyub**, an Indian journalist and woman human rights defender working and reporting on human rights issues, including with regard to the situation of members belonging to the Muslim minority in the country and the impact of the pandemic on the lives of vulnerable people in India.

According to information received:

On 15 June 2021, Ms. Rana Ayyub shared via her social media account a video showing a violent attack against an elderly Muslim man in Uttar Pradesh's Ghaziabad. The video had already been widely disseminated through mainstream and social media platforms. In her social media post, Ms. Ayyub commented on the video by speaking against the perpetrated hate crime against this individual.

For this public online condemnation of the violent incident, on 16 June 2021, the Uttar Pradesh police opened a case against her and against other Muslim journalists for allegedly inciting communal tensions and for provoking communal sentiments.

On 21 June 2021, the Bombay High Court granted her a transit anticipatory bail, which expired on July 2021.

On 2 July 2021, she was summoned and interrogated by the Uttar Pradesh police and intimidated for writing and reporting on human rights violations.

Ms. Ayyub has also been among those reporters who have publicly criticized the Government of India and the Prime Minister, Mr. Narendra Modi, for the unsatisfactory national response to the pandemic and in May 2021 she had published a cover story in TIME magazine entitled "How Modi Failed Us".

Following the publication of that article, Ms. Ayyub became the target of libel and harassment by right-wing intellectuals who accused her of causing harm to India's reputation globally and of receiving foreign funds to share information on the pandemic's devastating effects in the country.

During the same period, Mr. Ayyub received summons by the Income Tax Department and the Enforcement Directorate with the purpose of investigating her income, including the finances of the relief campaign she had initiated in April 2020 to provide humanitarian assistance to thousands of migrant workers whose lives were seriously affected by the COVID-19 outbreak. On 1 July and later on 8 July, she endured a ten-hour questioning and forced to hand over to the officials confidential information and emails, including communications with media editors. During the questioning, she was not granted access to her lawyer or to her chartered accountant.

On 7 August, despite having furnished all information, her bank accounts and the accounts of her ailing father were frozen, without the authorities following any formal judicial procedure. On 6 September, the Income Tax Department partially un-froze her account asking her to withdraw her right to appeal against it.

For more than four years, she has been receiving anonymous death and rape threats on her social media accounts. The latest First Information Report (FIR) against her was filed on 7 September 2021 by an organisation called the Hindu IT Cell, a cyber-group vowed to combat any “anti-Hindu” expressions and actions, accusing Ms. Ayyub of money laundering and dishonest misappropriation of property, under Sections 66D and 403 of the Indian Penal Code. This case was registered and Ms. Ayyub was booked by the UP Police with no communication from the said police station until now.

On 27 September, Ms. Ayyub filed an appeal against the Income Tax Department, and her case is pending. On the 29 September, she appeared at the Enforcement Directorate where she was asked to produce all her contracts with international publications, emails and her source of income from International platforms. All the cases against her are ongoing and she continues to be made to appear for questioning and interrogation by the said agencies, perceived as a form of harassment against her.

While we do not wish to prejudge the accuracy of the alleged facts mentioned above, we wish to express our serious concerns regarding what appears to be a deliberate and sustained campaign of harassment and intimidation of Ms. Rana Ayyub, by governmental and non-governmental actors in India, which have been intensified as a result of Ms. Ayyub’s public criticism of the Government’s handling of the pandemic and of her advocacy work for the human rights situation of the Muslim minority in India. We are deeply concerned by the numerous threats against her life and physical integrity and at the coordinated attempts by governmental agencies to suppress her human rights, journalistic and humanitarian activities, by launching investigations on her financial income and fundraising activities. The intimidation and harassment of Ms. Ayyub is particularly concerning, as it appears to be in direct retaliation for her exercising of her right to freedom of opinion and expression online, and through her, an attack against freedom of the press, constituting a violation of international human rights law and standards.

We would like to further convey our concern regarding the targeting of the relatives of journalists, for it represents a systematised approach to silencing their efforts to express dissent and criticise the Government and carry out their professional

activities.

Furthermore, we are seriously concerned at the reported absence of due process during the investigation, which is substantiated by the fact that Ms. Ayyub did not have access to her lawyer during her questioning by the Income Tax Department and that her bank accounts and those of her father were frozen, without explanation, and in what appears to be an arbitrary decision.

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 explain the factual and legal grounds for the investigation by the Income Tax Department on Ms. Ayyub's financial income and fundraising activities dedicated to her human rights and humanitarian work.
3. Please provide information as to the factual and legal basis for the freezing of the bank accounts of Ms. Ayyub, as well as the bank account of her father.
4. Please provide information on the measures undertaken to investigate the allegations of threats against Ms. Ayyub's life and physical integrity and to identify and prosecute those responsible. If such inquiry or investigation has not taken place or if it has been inconclusive, please explain the reasons why.
5. Please provide information on the measures undertaken to combat hate speech and incitement to hatred, particularly against journalists and human rights defenders carrying out their peaceful and legitimate activities, including those who report on the Government's response to the pandemic as well as those who advocate for the rights of persons belonging to minorities in India.

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.

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes
Special Rapporteur on minority issues

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the fundamental rights in accordance with the principles as set forth in articles 2, 18, 19, 26, and 27 of the International Covenant on Civil and Political Rights (ICCPR) to which your Excellency's Government is state party since 10 April 1979, providing for the principle of non-discrimination, equality before the law, the right to freedom of thought conscience, religion and belief, freedom of opinion and expression, and the protection of the rights of persons belonging to minorities.

Article 18 of the ICCPR guarantees the right of freedom of thought, conscience, religion or belief, while article 19 of the ICCPR guarantees the right to freedom of opinion. Article 19 protects the right to hold opinions of any kind, and the Human Rights Committee has affirmed that "no person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions ... It is incompatible with paragraph 1 to criminalize the holding of an opinion" (General Comment no. 34 para. 9).

We recall that article 19 also guarantees that everyone shall have the right to freedom of expression; which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 19 (3) of the ICCPR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. In her report on the subject of gender justice and the freedom of expression to the General Assembly, the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, highlighted the disproportionate risks faced by female journalists, and their subjection to sexual and gender based violence, both online and offline (A/76/258). The Rapporteur outlined that attacks on female journalists violate not only their freedom of expression, but also society's right to information from diverse media, and represent a gendered attack on media freedom (A/76/258, para. 46). The report also emphasises that the prohibition against sexual and gender-based violence is well established in international law, and the right to be safe from threats and violence applies equally online and offline (Ibid. para. 62). In her recommendations to States on the subject, the Special Rapporteur called for the adoption of specific legislation to prohibit, investigate and prosecute online gender-based violence, and that the legislation should be grounded in international women's human rights instruments and international standards on freedom of expression, and that the prohibitions should be drafted restrictively and take into account specific digital traits, such as amplification by perpetrators (A/76/258, para. 107).

Article 26 of the ICCPR stresses that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion or other status [...].

We would further like to bring to your Excellency's Government attention the international standards regarding the protection of the rights of persons belonging to religious minorities, in particular to article 27 of the ICCPR that guarantees minorities, inter alia, the right to profess and practice their own religion. Moreover, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities establishes 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 (article 1), recognizes that persons belonging to religious minorities have the right to profess and practice their own religion without discrimination (article 2) and requires States 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 would like to remind you that the legitimate role of human rights defenders is recognised by international law and referred to 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 articles 1 and 2 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, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 11 which provides that everyone has the right, individually or in association with others, to the lawful exercise of their profession;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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 Declaration;

We would like to draw your attention to General Assembly resolution 68/181 as well as Human Rights Council resolution 31/32, in which States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women

defenders. Such policies and programmes should be developed with the participation of women defenders themselves.