



# General Assembly

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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Written statement\* submitted by World Organisation Against Torture, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 May 2022]

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\* Issued as received, in the language of submission only. The views expressed in the present document do not necessarily reflect the views of the United Nations or its officials.



## **Harassment of Centre for Promotion of Social Concerns and response of the National Human Rights Commission of India**

On January 8, 2022, at around 10:30am, a team of eight officers from the CBI entered the premises of Centre for Promotion of Social Concerns (CPSC) pursuant to a search warrant related to a First Information Report (FIR) filed on January 6, 2022. The CBI officers inspected CPSC's accounts and other financial documents for the period ranging from 2008 to 2014. During the search, which lasted until 8:30pm, several documents were seized.

CPSC was only informed about the FIR during the search. The FIR, which was filed under Sections 120B ("Criminal conspiracy") and 420 ("Cheating and dishonestly inducing delivery of property") of the Indian Penal Code and Sections 33, 35, 29, read in conjunction with Sections 7, 8, 9 of the Foreign Contributions (Regulations) Act (FCRA), is based on a complaint filed in 2014 by the Ministry of Home Affairs, alleging violations of foreign contribution regulations by CPSC and its program unit, People's Watch, by receiving and utilising foreign funding between 2008 and 2014.

Between 2012 and 2014, CPSC had its FCRA registration suspended on three occasions, for a total period of 18 months, until the Delhi High Court ruled in CPSC's favor in March 2014 following a writ petition by CPSC, which had challenged the suspension of its FCRA registration. CPSC's application for FCRA renewal was however rejected by the Ministry of Home Affairs on January 29, 2016 "on the basis of field reports". When CPSC challenged the application's rejection before the Delhi High Court in October 2016, in its written response, the Ministry of Home Affairs mentioned People's Watch Executive Director Henri Tiphagne's engagement with embassies and United Nations Special Rapporteurs as the reason for denying the renewal of CPSC's registration under the FCRA. At the time of publication of this Urgent Appeal, the case is still pending. The next hearing has been scheduled for January 24, 2022.

In November 2016, the 7th Asian Human Rights Defenders Forum (AHRDF) also filed a petition regarding the non-renewal of CPSC's registration under the FCRA with the National Human Rights Commission of India (NHRC). The NHRC, which initially issued a strong notice to the Ministry of Foreign Affairs, closed the case on January 25, 2021, on the grounds that the matter relating to the constitutionality of the FCRA was being considered before the Supreme Court and High Court of Delhi. Neither CPSC nor AHRDF were informed of NHRC's decision to close the case.

The ongoing judicial harassment of CPSC and People's Watch hinders the organisation's freedom of association and access to funding and seems to be merely aimed at intimidating the organisation's staff and punishing the organisation for its human rights activities.

The search took place in the framework of a wider repression of civil society in India, including through restrictions on funding through the use of the FCRA, which has increasingly been used to obstruct civil society's ability to carry out their legitimate work. Such restrictions are inconsistent with international norms and standards. Since 2016, civil society organisations operating in India, including Indian Social Action Forum, Lawyers Collective, Sabrang Trust, Anhad, Oxfam India, Greenpeace, and Amnesty International India, had their registrations either not renewed, revoked or suspended or their accounts frozen.

Recent amendments to the FCRA in September 2020 have added intrusive and undue governmental oversight, additional regulations and certification processes, and operational requirements, which have adversely affected civil society groups' access to foreign funding and their ability to carry out human rights work.

### **Communications to NHRCI**

Human Rights Defenders Alert – India (HRDA), a forum of human rights defenders, sent a communication to the NHRCI on November 1, 2016, urging it to intervene and act on the case. HRDA called on the NHRCI to investigate the reasons mentioned by authorities to deny the renewal. It also urged the Commission to consider passing an interim order directing

competent authorities to allow CPSC to continue implementing the ongoing projects pending a final decision.

On November 14, 2016, Human Rights Defenders from 24 countries that had gathered in Colombo, Sri Lanka, for the 7th Asian Forum for Human Rights Defenders (AHRDF) appealed to NHRCI to intervene in CPSC's case using its powers under the law and undertake an independent review of the FCRA.[1] The AHRDF also referred to the legal analysis of FCRA 2010 submitted to Government of India by the UN Special Rapporteur on Freedom of Association and Assembly which concluded that FCRA was not in conformity with international law, principles and standards as it was hampering the ability of civil society organisations to access resources as part of right to freedom of association.[2] NHRCI registered this communication as a complaint.

In addition, a joint communication by the Special Rapporteur on the rights to Freedom of Peaceful Assembly and Association and the Special Rapporteur on the Situation of Human Rights Defenders was sent to the Chairperson of NHRCI urging the NHRCI to intervene in the legal proceedings initiated by CPSC in Delhi High Court. Communications were also sent by several international organisations to NHRCI urging the Commission to take necessary action on the matter.[3]

## Response by NHRCI

NHRCI has remained silent on most communications made by international bodies in this regard. The above-mentioned complaints by HRDA and AHRDF were tagged together by the Commission.[4]

Initially, the NHRCI, taking a suo-motto cognizance of non-renewal of FCRA registration of CPSC, issued a notice to the Ministry of Home Affairs (MHA) seeking information on the complaint.[5] After receiving the response from the MHA on December 16, 2016, NHRCI sent yet another notice stating that the response that was received by the NHRCI was not satisfactory and sought another detailed response within four weeks. It is pertinent to point out that at this time, NHRC's review before the Sub Committee on Accreditation (SCA) of GANHRI was pending and eventually deferred for a year for the very first time.[6]

On June 19, 2017, while hearing the case, the NHRCI mentioned that a public interest litigation was pending before the Supreme Court regarding foreign funds and that a case filed by CPSC was pending before Delhi High Court regarding the non-renewal of its FCRA registration. Hence, the Commission decided to await the decisions of the Supreme Court and High Court of Delhi. Since then, the case was adjourned four times citing the two cases pending before courts. Besides not taking any action, the NHRCI did not intervene in the court proceedings despite having the power to do so.

As per the latest information, the NHRCI closed the complaint regarding the non-renewal of CPSC's FCRA registration mentioning the case pending before the Supreme Court of India which in fact is not related to CPSC's case. No opportunity for the complainant to respond has been provided.

## Recommendations

We urge the Human Rights Council to call on the NHRCI, which is accredited with 'A' grade by the Global Alliance of National Human Rights Institutions (GANHRI):

- To use its powers to "intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court" pursuant to the Protection of Human Rights Act (1993).
- To abide by all the mandates of Special Procedures and Treaty Bodies of the United Nations and GANHRI as well as GANHRI's Marrakech Declaration 2018.[7]
- To consider the constitution of a credible team of independent experts to review the provisions of FCRA that are prone to be misused by the government in the light of

standards established by the UN SR on FoAA, which have already been referred to by the NHRCI.

We urge the Human Rights Council to call on the NHRCI to call on the government of India to:

- Uphold its voluntary pledge[8] made during the UN Security Council elections that India will maintain the independence, autonomy and genuine powers of investigation of national human rights bodies, including its National Human Rights Commission.
- Take urgent steps to strengthen the independence and effectiveness of the National Human Rights Commission of India to monitor and investigate cases of threats, intimidation and judicial harassment against HRDs.
- End the use of the FCRA to silence civil society organisations and amend it to bring them into line with international human rights law.
- Take all necessary measures to protect the right to freedom of association of civil society organizations in India, including by ensuring access to foreign funding.

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[1] <https://www.forum-asia.org/?p=21850>

[2] See <https://www.ohchr.org/sites/default/files/Documents/Issues/FAssociation/InfoNoteIndia.pdf>

[3] Refer to points 6 – 8, <http://cpsec-fcra.blogspot.com/p/action-by-cpsc-after-refusal-by-mha-dt.html>

[4] The case was registered as Case No. 6259/30/0/2016 and can be accessed online at <https://nhrc.nic.in/lodge-complaint-track-status>

[5] <https://onedrive.live.com/?authkey=%21ANzG%5F0jT1dD7w1k&cid=E1D0838E49CAB56A&id=E1D0838E49CAB56A%21415311&parId=E1D0838E49CAB56A%21410737&o=OneUp>

[6] All orders in Case No. 6259/30/0/2016 can be accessed online at <https://nhrc.nic.in/lodge-complaint-track-status>: <https://ganhri.org/wp-content/uploads/2019/11/Marrakech->

[7] Declaration\_ENG\_-12102018-FINAL.pdf

[8] [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/306/97/PDF/N1830697.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/N18/306/97/PDF/N1830697.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/306/97/PDF/N1830697.pdf?OpenElement)