



General Assembly

Distr.: General
8 June 2022

English only

Human Rights Council

Fiftieth session

13 June–8 July 2022

Agenda item 2

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Joint written statement* submitted by CIVICUS - World Alliance for Citizen Participation, a non-governmental organization in general consultative status, World Organisation Against Torture, Asian Forum for Human Rights and Development, Front Line, The International Foundation for the Protection of Human Rights Defenders, International Federation for Human Rights Leagues, International Service for Human Rights, non-governmental organizations 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]

* 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.



India: Harassment of human rights defenders and restrictions on freedom of association and expression, including on access to funding for civil society organisations

Judicial harassment of HRDs

HRDs in India have increasingly been labelled as terrorists or seditious, criminalized, and incarcerated in retaliation for their work. Laws used by the authorities to target and persecute HRDs include the Foreign Contribution Regulations Act (FCRA), the Indian Penal Code (IPC), the Unlawful Activities (Prevention) Act (UAPA), the National Security Act (NSA), the Jammu & Kashmir Public Safety Act (PSA), and the Armed Forces Special Powers Act (AFSPA).

The 2019 amendments to the 1967 UAPA drastically increased its reach,[1] primarily by allowing the government to designate individuals, in addition to organizations, as terrorists, enabling the government to use this law to arbitrarily detain HRDs and silence critics. As of May 2022, there were at least 25 HRDs incarcerated under the UAPA across India, including some under the amended Sections of the law.

Since June 2018, 16 HRDs have been detained under the UAPA in the Bhima Koregaon case.[2] They have been repeatedly denied bail despite their age and the risks posed by COVID-19.[3] Reports by a digital forensics consulting company revealed that the Pegasus spyware was used to plant evidence on the computers of at least two of the accused: Rona Wilson and Surendra Gandling.[4] As of May 2022, with the exception of Varavara Rao and Sudha Bharadwaj, all accused remained in jail. Stan Swamy, 84, died in custody on 5 July 2021, due to the lack of effective and timely treatment in jail. The conditional bail on medical ground granted to Varavara Rao has not been extended by the Bombay High Court in April 2022.

The UAPA has also been used against HRDs who peacefully protested against the Citizenship Amendment Act (CAA). The CAA provides for a “fast-track” citizenship process for Hindu, Sikh, Buddhist, Jain, Parsi, and Christian immigrants from Afghanistan, Pakistan, and Bangladesh, specifically excluding Muslims. As of May 2022, 6 of the defenders arrested on spurious charges under the UAPA in 2020,[5] all from the Muslim community, were still in jail and denied bail.

On 22 November 2021, officials of the National Investigation Agency (NIA), India’s federal counter-terrorism agency, raided the home and office of Kashmiri human rights defender Khurram Parvez in Srinagar, Indian Administered Jammu and Kashmir Union Territory. NIA officials seized several electronic devices and documents, and arrested him under the UAPA on allegations of funding terrorism, being a member of a terrorist organization, criminal conspiracy, and waging war against the state. On 25 March 2022, his judicial custody was extended for another 50 days by the NIA court in Delhi, and, on 27 March 2022, his home in Srinagar was raided by NIA officers and local police. On 13 May, NIA filed a chargesheet against Khurram and several others including charges under the IPC and UAPA.

Journalists all across India continue to be targeted by legal and extra legal including threats, beatings and harassment due to their work, and particularly in retaliation for reporting on issues related to human rights and to violations committed by the authorities, as in the instance of Siddique Kappan[6] and Kanishk Tiwari.[7]

Journalists in Indian Administered Jammu and Kashmir are particularly at risk. At least 25 attacks on journalists and media organizations occurred in 2021 in Indian Administered Jammu and Kashmir.[8] In many instances, cases were filed under the PSA, which allows authorities to hold individuals in detention without trial for up to two years. In several cases, individuals were charged under the PSA after being granted bail in relation to charges under other laws, indicating that authorities are essentially using the PSA to overturn decisions to award bail made by the courts, such as in the cases of Fahad Shah and Sajad Gul. Other instances of journalists targeted in retaliation for their work include the cases of Qazi Shibli, Masrat Zahra, and Peerzada Asquiq.[9]

On 14 June 2018, unknown assailants shot and killed journalist and editor-in-chief of Srinagar-based newspaper Rising Kashmir, Shujaat Bukhari.[10]

Labor rights, youth, and indigenous defenders who campaign on issues related to land rights, environmental rights, and systemic violations against Dalit and Adivasi communities have also been targeted with legal action, including arbitrary detention. Adivasi rights defender Hidme Markam was arrested from an international women's day event in March 2020 and remains in jail to date, with charges including under the UAPA. Labor rights defender Annapoorna has been in jail since December 2020, also under UAPA.

Since the implementation of the Right to Information Act in 2005, at least 469 attacks against right to information activists have been reported.[11]

The National Human Rights Commission (NHRC) of India has failed to take action on these cases and has similarly failed to take a position on the various repressive laws under which HRDs are targeted.

FCRA used as a tool to silence criticism

The FCRA fails to comply with India's international legal obligations and constitutional provisions to respect and protect the rights to freedom of expression, association, and peaceful assembly and effectively restricts access to foreign funding, particularly for small non-governmental organizations.[12]

According to data from the Ministry of Home Affairs, 20,679 NGOs and associations had their FCRA licenses canceled for violations of various provisions of the FCRA between 2011 and 2022.[13] Between 2016 and 2020, foreign funding licenses of 8,353 NGOs were not renewed, while 263 NGOs or associations had their FCRA license suspended.[14] From 2019 to February 2022, 2,877 applications were rejected.[15]

Among the organizations that had their licenses revoked, suspended, or not renewed are People's Watch, Indian Social Action Forum, Lawyers Collective,[16] Sabrang Trust, Navsarjan Trust, Anhad, Oxfam India, Greenpeace, the Commonwealth Human Rights Initiative (CHRI). Groups working on rights of India's most vulnerable populations such as Dalits, religious minorities, and Adivasis, are particularly vulnerable.

On 30 September 2020, Amnesty International India was forced to halt its operations after the Enforcement Directorate froze its bank accounts without notice. On 6 April 2022, Board chair Aakar Patel was prevented from leaving the country by immigration authorities on the basis of a "Look Out Circular" issued by the CBI. On 16 April, the Delhi Court upheld an order directing the CBI to withdraw the lookout circular.[17]

On 14 February 2022, the Delhi High Court declined to overturn an order by the government to suspend the FCRA license of CHRI. CHRI's FCRA license was initially suspended on 7 June 2021 by the Ministry of Home Affairs for 180 days for allegedly having failed to disclose information in the organization's annual returns. In December 2021, the suspension was extended by another 180 days.[18] On 19 April 2022, CHRI was informed by the Ministry of Home Affairs that its registration certificate had been canceled.[19]

On 8 January 2022, the CBI searched the offices of the NGO Centre for Promotion of Social Concerns (CPSC), and its program unit People's Watch in Madurai, Tamil Nadu State. Officers from the CBI entered the group's premises and seized several documents. The CBI officers informed CPSC that they were investigating allegations of fraud and financial irregularities under the FCRA[20] and the Indian Penal Code. The government also alleged financial irregularities even though the Delhi High Court had previously cleared the group of those charges in 2014. Between 2012 and 2014, CPSC had its FCRA registration suspended on three occasions.

Recommendations

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

1. Immediately release all detained HRDs on bail, drop all charges against them, and ensure that they are able to carry out their legitimate activities without any hindrance and fear of reprisals in all circumstances.
2. Immediately end all acts of legal harassment of HRDs and civil society organizations.
3. Ensure the physical integrity and psychological well-being of HRDs in custody, including by upholding the absolute prohibition of torture and cruel and inhuman degrading treatment.
4. Invite UN Special Procedures, including the UN Special Rapporteurs on the situation of HRDs, freedom of Peaceful Assembly and of Association and Torture to conduct country visits.
5. Ratify the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment. Irrespectively, adopt an anti-torture legislation compliant with international standards.
6. 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.
7. End the use of laws that are inconsistent with India's human rights obligations, including the FCRA, the UAPA, the National Security Act and the PSA and; amend them to bring them into line with international human rights law.
8. Take urgent steps to strengthen the independence and effectiveness of the NHRCI to monitor and investigate cases of threats, intimidation and judicial harassment against HRDs.

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- [1] <https://www.mha.gov.in/sites/default/files/A1967-37.pdf>;
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- [2] <https://www.amnesty.org/en/latest/research/2020/06/india-human-rights-defenders-targeted-by-a-coordinated-spyware-operation/>
- [3] <https://www.humanrightsinitiative.org/content/stateut-wise-prisons-response-to-covid-19-pandemic-in-india>
- [4] See <https://internetfreedom.in/the-arsenal-reports-bhima-koregaon-arrests/>
- [5] See <https://www.frontlinedefenders.org/en/statement-report/ongoing-targeting-18-hrds-under-anti-terror-laws-reprisal-their-protest-against>
- [6] https://www.fidh.org/IMG/pdf/india_upr-submission_hrds_final.pdf
- [7] <https://www.omct.org/en/resources/urgent-interventions/india>
- [8] <https://www.thehindu.com/news/national/jk-uttar-pradesh-madhya-pradesh-tripura-topped-in-attacks-on-journalists-in-2021/article38363793.ece>
- [9] https://www.fidh.org/IMG/pdf/india_upr-submission_hrds_final.pdf, para 23-27
- [10] <https://thewire.in/media/shujaat-bukhari-rising-kashmir-shot>
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- [16] <https://www.fidh.org/en/issues/human-rights-defenders/india-criminal-case-filed-against-lawyers-collective-and-its;>
- [17] https://www.business-standard.com/article/current-affairs/court-upholds-order-directing-cbi-to-withdraw-loc-against-aakar-patel-122041600539_1.html
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[19] <https://www.humanrightsinitiative.org/press-releases/cancellation-of-our-registration-under-the-foreign-contribution-regulation-act-2010>

[20] <https://www.hindustantimes.com/india-news/cbi-files-case-against-tamil-nadu-rights-group-for-fcra-rules-violation-101641754944006.html>