

Mandates of the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on freedom of religion or belief

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 34/6, 34/35, 34/18 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the National Register of Citizens (NRC), which was due to be updated by 31 May 2018.**

According to the information received:

The National Register of Citizens is the register containing the names of Indian citizens in the northeastern state of Assam. The NRC was originally prepared based on data collected in the 1951 census and has not been updated since. In 2015, the process of updating the NRC was initiated in accordance with the Citizenship Act of 1955 and the Citizenship (Registration of Citizens and Issue of National Identity cards) Rules of 2003 (as amended in 2009 and 2010). The ongoing exercise of updating the NRC is monitored by the Supreme Court. In an order dated 27 March 2018, the Supreme Court directed the Office of the State Coordinator of National Registration to complete the verification process by 31 May 2018 and to publish the complete draft of the updated NRC by 30 June 2018. Following the publication of the complete draft NRC, individuals who are not listed may file a claim requesting their inclusion. The final updated NRC will be published once all claims have been processed. A deadline for the publication of the final NRC has not yet been announced.

There is no official policy outlining the implications for those who will be excluded from the final NRC. It is reported that they will be treated as foreigners and that their citizenship rights may be revoked in the absence of a prior trial. They may subsequently be asked to prove their citizenship before so-called Foreigners' Tribunals. In December 2017, a local government minister in Assam was quoted as stating that "the NRC is being done to identify illegal Bangladeshis residing in Assam" and that "all those whose names do not figure in the NRC will have to be deported."

In this context, the NRC update has generated increased anxiety and concerns among the Bengali Muslim minority in Assam, who have long been discriminated against due to their perceived status as foreigners, despite possessing the necessary documents to prove their citizenship. While it is acknowledged that the updating process is generally committed to retaining Indian citizens on the NRC, concerns have been raised that local authorities in Assam, which are deemed to be particularly hostile towards Muslims and people of Bengali descent, may manipulate the verification system in an attempt to exclude many genuine Indian citizens from the updated NRC.

These concerns have been heightened by the alleged misinterpretation of a High Court judgement of 2 May 2017 (Gauhati High Court, WP(C) 360/2017). In this judgement, the Court directs the Assam Border Police to open inquiries concerning the relatives of persons declared as foreigners and to subsequently refer them to the so-called Foreigners' Tribunals. Based on this judgement, the State Coordinator of the NRC reportedly issued two orders dated 2 May 2018 (memo No. SPMU/NRC/HF-FT/537/2018/15-A) and 25 May 2018 (memo no. SPMU/NRC/HC-FT/537/2018/23). Pursuant to the orders, border police authorities are required to refer family members of "declared foreigners" to the Foreigners' Tribunals. The duty to conduct a prior inquiry is not mentioned in the orders. Once relevant NRC authorities have been informed about the referral of a case, the concerned family member will automatically be excluded from the NRC. Their status will be recorded as "pending" until their citizenship has been determined by a Foreigners' Tribunal.

It is therefore alleged that these orders may lead to the wrongful exclusion of close to two million names from the NRC, without a prior investigation and trial. In addition, it is alleged that the orders contravene a High Court judgement of 3 January 2013 (Guwahati High Court, State of Assam vs. Moslem Mondal and Others), which stipulates that automatic referrals to Foreigners' Tribunals are not permissible as a fair and proper investigation is required prior to the referral of a case. The orders may also contravene section 3 (1) (a) of the Citizenship Act 1955, which grants citizenship at birth to anyone born in India on/after 26 January 1950, but prior to 1 July 1987.

Concerns about the implementation of the NRC update have also been heightened by the increasing number of persons declared to be foreigners by Foreigners' Tribunals. Out of a total of 468,934 referrals to the Tribunals between 1985 and 2016, 80,194 people were declared foreigners. This figure increased drastically in 2017, reaching 13,434 in just eleven months. In this context, it is reported that members of Foreigners' Tribunals in Assam experience increasing pressure from State authorities to declare more persons as foreigners. On 21st June 2017, 19 members of the Foreigners' Tribunals in Assam were dismissed on ground of their under-performance over the last two years. More than 15 additional Tribunal members were issued with a strict warning to increase their efficiency. Considering that tribunal members serve on a contractual basis for two years,

which may be extended on a needs and performance basis, these actions were perceived to be a thinly veiled threat to other Tribunal members.

Bengali Muslims continue to be disproportionately affected and targeted by Foreigners' Tribunals as most persons asked to prove their citizenship before Tribunals reportedly lack the necessary means to do so. Even in cases when individuals produce the required documentation to prove their citizenship, many Bengali Muslims appear to be declared as foreigners based on technical reasons. The Tribunals are governed by the Foreigners Act 1946, which places the burden of proof on the accused to demonstrate his or her citizenship status. Officials of these Tribunals are empowered to find persons to be foreigners, on the basis of minor technical discrepancies in their citizenship documents, such as misspelling of names and age inconsistencies. In this regard, it is also alleged that there has been a notable and significant increase in the Tribunals' findings of foreigner status as a result of the new Government coming into power. It is alleged that the Tribunals have been declaring large numbers of Bengali Muslims in Assam as foreigners, resulting in statelessness and risk of detention.

Finally, it is alleged that the potential discriminatory effects of the updated NRC should be seen in light of the history of discrimination and violence faced by Muslims of Bengali origin due to their status as ethnic, religious and linguistic minority and their perceived foreignness. Although the Bengali origin Muslims in Assam descend from peasant workers brought from the former Bengal and East Bengal starting in the 19th century under colonial rule, they have long been portrayed as irregular migrants. As a result of this rhetoric, Bengali Muslims have historically been the target of various human rights violations, including forced displacement, arbitrary expulsions and killings. In addition, since 1997, the Election Commission has arbitrarily identified a large number of Bengali people as so-called 'doubtful or disputed voters', resulting in their further disenfranchisement and the loss of entitlements to social protection as Indian citizens. More recently, the Citizenship (Amendment) Bill 2016 was introduced with the aim of making members of certain minority communities eligible for Indian citizenship, noting that they shall not be treated as illegal immigrants. While the bill applies to six minority communities – namely Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan - Bengali Muslims and other religious minorities are not included. The proposed amendment suggests a broader context of vulnerability of Bengali Muslims to unlawful exclusion from Indian citizenship.

While we do not wish to prejudge the accuracy of these allegations, we would like to express serious concern that members of the Bengali Muslim minority in Assam have experienced discrimination in access to and enjoyment of citizenship status on the basis of their ethnic and religious minority status. We are particularly concerned that this discrimination is predicted to escalate as a result of the NRC. The way this update has been conducted potentially affects a great number of Muslims and persons of Bengali descent who may be wrongfully excluded from the updated NRC because of their historical and continuing treatment as foreigners and illegal immigrants in Assam. If

these allegations are founded, the updated register poses a dire risk to thousands of Indian citizens who may wrongfully be declared as “foreigners” and consequently rendered stateless. We express further alarm and concern at allegations that Foreigners’ Tribunals disproportionately target Bengali Muslims, often resulting in arbitrary deprivation of citizenship, statelessness and the risk of numerous human rights violations, including arbitrary detention and deportations. Finally, we express concern at the continued practice of the Election Commission of identifying a large number of Bengali people as “doubtful or disputed voters”, effectively depriving them of the right to political participation and representation.

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 clarification regarding all cases brought to our attention, we would appreciate your responses to the above allegations, and to the following requests:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned concerns and allegations.
2. Please provide detailed information on any steps your Excellency’s Government may have taken to ensure that the substance and implementation of the NRC update complies with India’s obligations under international human rights law and standards. In particular, please provide details on steps taken to ensure that the NRC update does not result in statelessness or human rights violations, including arbitrary deprivation of citizenship, mass expulsions, and arbitrary detention.
3. Please provide details on safeguards ensuring that members of ethnic, religious and linguistic minorities are not discriminated against in the framework of the NRC update and the determination of their citizenship status. In this context, please provide disaggregated data on the race, ethnicity and religion of individuals who have been excluded from the draft NRC as well as individuals who have been declared as foreigners by Foreigners’ Tribunals. If unavailable, please explain why.
4. Please provide detailed information on the implications for those individuals who will be excluded from the final NRC. In particular, please elaborate whether they will face detention or deportation.
5. Please provide details on measures taken to ensure access to effective remedies for individuals excluded from the NRC.
6. Please provide information on the current status of the Citizenship (Amendment) Bill 2016. In this connection, please explain why the Bill does not include Bengali Muslims.

7. Please provide information on measures undertaken to eliminate any discriminatory treatment of minorities, including the Bengali Muslim minority, with regard to the right to nationality and to ensure that no person belonging to ethnic, religious or linguistic minority is arbitrarily deprived of her or his nationality.
8. Please provide information on steps taken to ensure adequate training of members of Foreigners' Tribunals, police and NRC authorities on relevant human rights norms and standards, particularly those relating to non-discrimination and to persons belonging to ethnic, religious and linguistic minorities.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We would like to kindly request your Excellency's Government to share the content of this communication with the relevant judicial authorities in charge of overseeing the process of updating the NRC.

While awaiting your response, we would like to call on your Government to take all steps necessary to conduct a comprehensive review of the NRC update, ensuring that its implementation process is compliant with relevant international human rights standards.

In addition, we would like to inform your Excellency's Government that this communication, and any reply received to it, will be made available to the public and posted on the website page of the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance at <http://www.ohchr.org/EN/Issues/Racism/SRRacism/Pages/IndexSRRacism.aspx>.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on minority issues

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Annex
Reference to international human rights law

In connection with the alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights norms and standards:

With regards to the potential discriminatory impact of the NRC update, we would like to remind your Excellency's Government of its obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by India on 3 Dec 1968. Article 1 (1) defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". The Committee on the Elimination of Racial Discrimination has frequently reiterated that discrimination based on religious grounds is covered by ICERD in cases where it intersects with other forms of discrimination prohibited under article 1(1).

We recall that Article 2 (1) of ICERD obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups. To this end, States must ensure that public authorities and institutions on the national and local level act in compliance with this obligation. In accordance with article 6, States Parties must not only ensure the effective protection against racial discrimination of everyone within their jurisdiction, but also provide access to remedies and adequate reparation to victims of racial discrimination.

We would also like to draw the attention of your Excellency's Government to the right to nationality as enshrined in various international legal instruments ratified by India. The right to nationality entails the right of each individual to acquire, change and retain a nationality. Article 5 (d) (iii) of ICERD is particularly relevant as it explicitly obliges States parties to guarantee the right of everyone to equality before the law, including in the enjoyment of the right to nationality, without discrimination on any prohibited grounds. In this connection, the Committee on the Elimination of Racial Discrimination has reiterated that the deprivation of citizenship on the basis of race, colour, descent or national or ethnic origin violates States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality (see e.g. General Recommendations No. 30, para. 14).

With respect to the potential disenfranchisement of those excluded from the updated NRC, we would like to reiterate that Article 5(c) of ICERD requires States to ensure non-discrimination and equality before the law in the enjoyment of political rights. This includes the right to participate in elections, to take part in Government and public affairs, and to have equal access to public services.

We equally wish to refer to UN General Assembly's Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion and Belief of 1981, its articles 2(1), 3 and 4(1), which notably states "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life."

Finally, we would like to bring to the attention of your Excellency's Government the international standards regarding the protection of the rights of persons belonging to minorities, in particular to article 27 of the International Covenant on Civil and Political Rights, ratified by India on 10 April 1979, and the United Nations 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4.1 establishes that "States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".