

June 23, 2016

Answers by Minister Koenders (Foreign Affairs) to

Parliamentary questions by member Voordewind (ChristianUnion) to the Minister of Foreign Affairs about the restriction of freedom of expression in India [submitted June 10, 2016, no. 2016Z11756]

Question 1

Do you know the Human Rights Watch report *Stifling Dissent – The Criminalization of Peaceful Expression in India* and the legal analysis of UN Rapporteur Maina Kiai on the Indian law that regulates foreign donations to Indian organizations?⁽¹⁾

Answer

Yes.

Question 2

Do you share the analysis of the report by Human Rights Watch that Indian authorities routinely use vaguely worded, too broad laws as political weapons to silence and intimidate critics, and the analysis of the UN Rapporteur that the law does not comply with international law and with international guidelines and standards, and that the law gives the government wide discretionary powers that can be applied in an arbitrary and unpredictable manner?

Answer

The government is not of the opinion that Indian authorities routinely use vaguely worded laws to silence critics. Freedom of expression is enshrined in the Indian Constitution and India has a democratically elected parliament, a democratically elected government and an independent judiciary. In addition, there is a vibrant civil society. Moreover various national media in India play an important role in public debates and in exposing abuses.

Legislation may nevertheless possibly be restricting the freedom of expression, such as the law that restricts freedom of expression on the Internet (Information Technology Act). Also the Indian law that regulates foreign donations to Indian organizations, can be constraining with respect to funding civil society. The Dutch government shares the concerns of UN rapporteur Maina Kiai about the law regarding foreign donations as described in "*Analysis on International Law, Standards and Principles applicable to the Foreign Contributions Regulation Act 2010 and Foreign Contributions Regulation Rules 2011*". Such legislation can be assessed by the Indian courts against the Constitution. For example, the Supreme Court in India has intervened in March 2015 because it considered section 66A of the Information Technology Act to be incompatible with the right to freedom of expression as enshrined in the Constitution.

Question 3

Are you prepared to discuss these very worrying developments with the Indian Government? Are you prepared to inform the parliament about this?

Answer

The Dutch government is looking for permanent dialogue with India on human rights and the role of non-governmental organizations, either bilaterally or in EU and multilateral context. The Netherlands emphasizes the importance of a broad and vocal civil society for a well-functioning democracy. A critical civil society that is free to give its opinion, will contribute to the public debate about current developments and the functioning of government. Most recently the Netherlands has raised this issue during the official high level bilateral consultations on June 1st In Delhi.

Question 4

Are you prepared to address this issue in the framework of the Dutch Presidency at EU level with the objective that the EU will discuss this developments incisively with the Indian government?

Answer

The Netherlands will, where possible, exert itself to raise these issues at EU level as part of wider discussions. At the EU-India Summit on March 30 this year, chaired by EU High Representative for Foreign Affairs and Security Policy, Federica Mogherini, the promotion and compliance with human rights was also discussed.

Question 5

Are you willing - partly in view of one of the recommendations in the HRW report - to address the strong lack of freedom of expression in India during India's Universal Periodic Review in 2017 and encourage India to invite the UN Special Rapporteur on the promotion and protection of freedom of expression for a fact-finding mission?

Answer

The government is indeed prepared to draw attention to the importance of freedom of expression in the dialogue to be held with India in the framework of the *Universal Periodic Review*.

Question 6

What do you think of the conclusion in the HRW report that laws against terrorism are used disproportionately against religious minorities and marginalized groups such as Dalits? Are you willing to include this specifically in your discussions with the Indian Government?

Answer

The government has no information indicating that laws to combat terrorism in India are disproportionately used against minorities. Obviously, the government will continue to monitor the developments in India.

(1) <https://www.hrw.org/news/2016/05/24/india-stop-treating-critics-criminals>