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India: Authorities must respect the rights to freedom of expression and of peaceful assembly

Authorities in India should respect the rights to freedom of expression and of peaceful assembly, said Amnesty International. The police should not require planned peaceful demonstrations to obtain official permission before they can go ahead, nor should they impose prior conditions in a manner which amounts to requiring permission.

Anna Hazare, a social activist, and a number of his supporters were arrested in New Delhi on 16 August 2011 and detained because the police claimed they were likely to “breach the peace”, by proceeding with a planned fast and protest without undertaking in advance to comply with the conditions imposed by the Delhi Police. They were released shortly thereafter but Hazare refused to leave the prison unless the police allowed the fast and protest to proceed without any conditions. An agreement has now been arrived at and the fast and protest will go ahead, with an undertaking reportedly signed by Hazare and other organisers.

The rights to freedom of expression and of peaceful assembly are recognized in Articles 19 and 21 of the International Covenant on Civil and Political Rights – to which India is a state party, as well as in Article 19 of the Constitution of India. Under international human rights law, any restrictions on the exercise of these rights are permissible only if they are demonstrably necessary and proportionate for the protection of certain public interests or for protection of the rights and freedoms of others, and must not jeopardize the right itself.

While the authorities may require prior notification of a planned public protest, and may notify the organizers of certain restrictions which may apply to it, any such restrictions should comply with international human rights law and standards. If the organizers wish to contest any of the restrictions they should be able to appeal to the courts prior to the planned protest.

In a letter to the organizers of the protest on 13 August 2011, the Delhi Police stated that they would be “permitted to hold a fast” for only three days and only if they undertook in advance to comply with 22 listed “terms and conditions”. No reasons were given to indicate how such conditions would comply with the restrictions permitted under international law, and there was no possibility to appeal to an independent body.

Some of the conditions which the organizers were required to accept in order to get permission for the protest to go ahead were vague, undefined and imprecise: e.g. “no participant shall make provocative speeches or use language calculated or likely to inflame passions of the crowd”. In the case of other conditions, it is unclear how they would fall under the type of restrictions permitted under international human rights law e.g. “participants are channelized and seated in an organized manner.” Others were clearly unreasonable, notably the requirement that organizers accept in advance criminal liability for actions which may be committed by others: “We shall be responsible to keep the followers under control, failing which ... organizers and protestors may be prosecuted under the law.”

Anna Hazare and other organizers have signed the undertaking with changes in the venue, number of days and some other terms, and the fast and protest are going ahead. However in a

press release on 16 August, the Delhi Police has also indicated that the “terms and conditions” in the undertaking are “normally impose[d]” on all protests and demonstrations.

The government of India and state governments must ensure that laws and rules applicable to the rights to freedom of expression and of peaceful assembly are fully consistent with international human rights law and standards. In particular no permission or undertaking to accept prior conditions should be required for planned protests to take place. Any restrictions should only be as such as are demonstrably necessary and proportionate for a legitimate purpose, as set out in international human rights law and standards.