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INDIA: GROWING CONCERNS ON THE MISUSE OF FINANCIAL ACTION TASK FORCE STANDARDS TO TARGET CIVIL SOCIETY

Amnesty International and Front Line Defenders are gravely concerned about the growing instances of misuse of counter-terrorism laws in India to target civil society actors. Ahead of the sixth Financial Action Task Force (FATF) Plenary when the FATF Member States, Secretariat and leadership are meeting to review India's Mutual Evaluation Report (MER), we urge them to consider civil society concerns and remind the Indian government of their commitment to comply with FATF's recommendations without misusing its standards.

On 14 June 2024, Delhi's Lieutenant Governor sanctioned the prosecution of Arundhati Roy, a celebrated writer and winner of the Booker Prize and Sheikh Showkat Hussain, a Kashmiri academic under India's stringent counter-terrorism law – the Unlawful Activities (Prevention) Act (UAPA) for a speech made in 2010.¹ In her speech, Roy had highlighted the growing human rights violations in Kashmir, a region whose special autonomy was unilaterally revoked by the Government of India in August 2019 amidst a communication blackout and detention of activists, students, journalists and members of political opposition groups.² The Government's decision to prosecute Roy and Hussain after 14 years highlights the broader pattern of arbitrarily targeting government critics using draconian laws. Their case is one among many such examples of misuse of UAPA.

The weaponization of the UAPA to target human rights defenders and stifle critical voices in India has exponentially increased in the last 10 years. The draconian provisions under the UAPA such as high thresholds for granting bail, long incarceration without charge, and reversal of the presumption of innocence resulting in a burden of innocence being put on the accused persons, are often invoked to create a chilling effect within the civil society. India's counter-terrorism laws have expanded over time to become increasingly overbroad and have often overturned basic procedural safeguards for defendants.

Last year, ahead of India's MER, civil society groups including Amnesty International submitted reports to the FATF secretariat highlighting the misuse of counter-terrorism laws by Indian authorities to target civil society.³ These reports reinforce for the Indian case what has been well-documented elsewhere – that the legal and regulatory standards FATF sets for countries to fight terrorist financing risks are easily deployed by governments to repressive ends.

To illustrate, in 2012, the Indian government broadened the already overbroad definition of a "terrorist act" under UAPA, strongly relying on FATF's recommendations to make it "more effective in prevention of unlawful activities and dealing with terrorist activities".⁴ It must also be noted that Indian government has been selective in enforcing FATF's recommendations. For instance, in India's 2010 Mutual Evaluation Report, FATF ranked India "Partially Compliant" on Special Recommendation II, which pertains to the criminalisation of anti-money laundering and countering of terrorist financing, highlighting UAPA's deviation from international standards in defining a "terrorist act".⁵ It noted that "the acts listed in Section 15(a) largely refer to common criminal activity that only obtains its terrorist status when carried out with a

¹ Vineet Bhalla, "Why the sanction to prosecute Arundhati Roy under UAPA is legally suspect", *Scroll.In*, 17 June 2024, <https://scroll.in/article/1069417/why-the-sanction-to-prosecute-arundhati-roy-under-uapa-is-legally-suspect>

² Amnesty International, "We are Being Punished By The Law" – Three Years of Abrogation of Article 370 in Jammu & Kashmir, September 2022, <https://www.amnesty.org/en/documents/asa20/5959/2022/en/>

³ Global NPO Coalition on FATF, India: Reports by civil society and UNSRs ahead of the upcoming FATF Mutual Evaluation onsite, 29 October 2023, <https://fatfplatform.org/news/india-reports-by-civil-society-ahead-of-the-upcoming-fatf-mutual-evaluation-onsite/>

⁴ Unlawful Activities (Prevention) Amendment Act, 2012, https://megpolice.gov.in/sites/default/files/Unlawful_Activities_p_Amendment_Act-2012.pdf

⁵ FATF offered membership to India on the conditional basis of India's commitments to be contained in a 'Plan of Action' by India, setting out the steps to be taken and time frame to "improve the Anti-Money Laundering (AML)/ International Convention for the Suppression of the Financing of Terrorism (CFRT) regime in the country", Section 1.1.8 of the Parliamentary Standing Committee on Home Affairs Report on the Unlawful Activities (Prevention) Amendment Bill (2011); Special Recommendation II (Criminalising the financing of terrorism and associated money laundering) states that "each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences."

specific intent. Consequently, the general terminology (... by any other means of whatever nature ...) used in Section 15(a) of the UAPA cannot be considered as corresponding with the Treaties offences.”⁶ Thirteen years later, the overbroad definition continues to exist and applied arbitrarily to human rights defenders in India.

Pertinently, FATF in its “Stocktake of the Unintended Consequences of the FATF standards” emphasized compliance with human rights standards.⁷ It requires countries to implement counter-terrorism measures in a way that respects countries' obligations under the Charter of the United Nations and international human rights law.⁸ The “Stocktake” report acknowledges that many countries continue to incorrectly implement the FATF standards and sometimes intentionally apply restrictive legal measures to Not-for-Profit Organizations in the name of FATF compliance.⁹ We note that countries like India continue to misuse FATF standards for targeting critical voices.

The Mutual Evaluation Process provides an excellent opportunity for the FATF and the member countries to remind India of its commitment to comply with FATF recommendations while preventing misuse of its standards. This will ensure that due process and procedural rights of individuals are followed and protected while counter-terrorism laws are being implemented.

⁶ FATF, Mutual Evaluation of India, June 2010, pg. 53, <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofindia.html>

⁷ FATF, High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards (2021), <https://www.fatf-gafi.org/media/fatf/documents/Unintended-Consequences.pdf>

⁸ FATF, High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards (2021), <https://www.fatf-gafi.org/media/fatf/documents/Unintended-Consequences.pdf>

⁹ FATF, High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards (2021), <https://www.fatf-gafi.org/media/fatf/documents/Unintended-Consequences.pdf>