

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL NPL 5/2018

12 November 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the situation of human rights defenders, especially women and children, pursuant to Human Rights Council resolutions 35/15, 34/18, 32/32, 33/9 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest of Mr. **Ram Manohar Yadav** and his subsequent death in custody, and the travel ban against Mr. **Lenin Bista**.

Mr. **Ram Manohar Yadav** was a human rights defender from Bardiya District. He had been part of a peaceful movement to gain more civil and political rights for Madhesi people.

Mr. **Lenin Bista** is a human rights defender and former child combatant who has long been campaigning for justice for thousands of underage guerrilla fighters, who had been involved in Nepal's decade-long civil war.

According to the information received:

Mr. Ram Manohar Yadav

On 23 August 2018, Mr. Yadav was arbitrarily arrested for waving a black flag to signify his opposition to the Deputy Prime Minister and Minister of Health and Population, Mr. Upendra Yadav. The Bardiya District Police arrested him for fear that he might pose questions to the Deputy Prime Minister regarding the Madhes movement, a political movement that strives for equal rights for Madhesis, Tharus, Muslim and Janjati groups in Nepal.

No warrant was presented at the time of his arrest, although he was brought before the court on remand within 24 hours and police charged him with sedition. Mr. Yadav remained incarcerated for two days at the District Police Office, Gulariya

in Bardiya District. His family members and lawyer were not permitted to visit him.

Mr. Yadav suffered from hypertension and was on medication. His family was prevented from providing him with his medication. Mr. Yadav also requested medication from the police, a request that was refused.

At 5am on 30 August 2018, Mr. Yadav was found unconscious in his cell by other detainees, who informed the police. The police first took him to the Gulariya District Hospital. He was given some medicine, but as his condition was serious it was beyond the hospital's capacity to provide him with the necessary treatment.

He was then brought to the Bheri Zonal Hospital in Nepalgunj, Banke District, where doctors determined that Mr. Yadav required admission to the Intensive Care Unit (ICU). The ICU at Bheri Zonal Hospital was full, so a doctor at the hospital called the Medical College and urged the hospital administration to admit Mr. Yadav in its ICU.

However, police did not transfer Mr. Yadav to the Medical Colleges ICU, which was about a 15 minute-drive away. Instead they pressured his family members to sign a document that indicated that the family would be responsible for any change in Mr. Yadav's health condition while being transferred to the ICU.

On 31 August 2018, the police put Mr. Yadav on oxygen support and transported him to a hospital in Kathmandu, more than 12-hours away via ambulance. Mr. Yadav was pronounced dead on arrival at the Tribhuvan University Teaching Hospital.

Police have so far refused to file a First Information Report (FIR) for the death of Mr. Yadav. Family members of Mr. Yadav have gone to the District Police Office of Banke, which refused to file an FIR due to lack of jurisdiction. District Police Office of Bardiya also refused to file an FIR, and told the family members that it could consider registering a report if they did not name the police superintendent of Bardiya District. Efforts to file the FIR with the Police Headquarters in Naxal, Kathmandu were also refused.

A post-mortem examination on Mr. Yadav was carried out without the consent of the family. The report of that examination was not made available. No investigation into his death has been conducted.

Mr. Lenin Bista

On 24 August 2018, Mr. Bista was due to travel from Tribhuvan International Airport (Nepal's International Airport, located near the capital city) to Bangkok to participate in a civil society workshop entitled "Youth in conflict areas: Healing in peace building through social engagement". The workshop was convened by the International Institute of Peace and Development Studies, and hosted young people from around the world who had been affected by conflict. At the

workshop, Mr. Bista would have discussed issues pertaining to the peaceful resolution of conflicts.

Mr. Bista had a valid passport and visa, he had been issued a boarding pass, and had cleared immigration when he was stopped by Nepalese immigration officials. The latter told him that he couldn't travel because he had just been "partially blacklisted" that morning as a result of orders from "higher up". Immigration officers seized his documents and returned them only after the plane had departed for Bangkok.

Mr. Bista subsequently demanded that the immigration officials provide in writing the reasons for not being allowed to travel. He was handed a letter that stated that approval for departure "was not provided as he had not received permission or recommendation from the concerned government authority for his participation in the programme". The letter also claimed that the restriction was in line with Immigration Act 2049 (1993), Immigration Regulation 2051 (1995) and Immigration Procedure 2065 (2008). The Home Minister, Mr. Ram Bahadur Thapa, subsequently cited Clause 3.1 (3) of Immigration Procedures 2065 (2008) in the media, claiming that it allows the Ministry for Home Affairs to prevent anyone involved in suspicious activities from leaving the country.

Mr. Bista filed a complaint against the Home Ministry, the Department of Immigration, and the Immigration Office to Nepal's National Human Rights Commission (NHRC). On 28 August 2018, the NHRC requested that the Home Ministry, the Department of Immigration, and the Immigration Office respond to the complaint and to put forward a legal basis for restricting Mr. Bista's travel.

On 29 August 2018, the Immigration Office said in its written statement that Mr. Bista's departure permit was cancelled under Clause 3.1(3) because the departure stamp was provided while the departure desk was crowded, the permission of the concerned authority was missing, and that his visit to Bangkok appeared suspicious. On 30 August, the Home Ministry again referred to Immigration Act 2049 (1993), Immigration Regulation 2051 (1995) and Immigration Procedure 2065 (2008) in their written statement, noted that Mr. Bista had not been blacklisted, and cited the sensitive nature of the seminar he was due to attend. They also referred to an alleged complaint that they had received against Mr. Bista signed by fifteen individuals, who requested that the government take action against Mr. Bista. The Department of Immigration's reply on 31 August, mentioned the very same points as the Home Ministry.

On 30 August 2018, Mr. Bista lodged a writ petition to the Supreme Court in relation to his having been denied departure. On 2 September, the Supreme Court requested eight individuals, among them Home Minister Mr. Ram Bahadur Thapa, two officials from the Home Ministry, one official from the Department of Immigration, and four immigration officers, to respond in writing to the writ petition for the Supreme Court to decide whether to accept Mr. Bista's petition.

On 23 September 2018, the NHRC wrote to Police Headquarters requesting that the necessary security arrangements be made for Mr. Bista, claiming that he was a risk to national security.

By 4 October 2018, the eight officials had all responded and unanimously requested that the Supreme Court dismiss Mr. Bista's petition. In their responses to the Supreme Court they highlighted that the refusal to grant Mr. Bista's right to leave the country was permissible under Immigration Act 2049 (1993), Immigration Regulation 2051 (1995) and Immigration Procedure 2065 (2008). They also referred to Government (Work Division) Regulation 2074 (2017), stating that the subject of the Bangkok seminar came under the jurisdiction of the Home Ministry, because topics related to armed conflict, post conflict peace, reparation and peace building would have been discussed. A Supreme Court hearing on the case is scheduled to take place on the 20 December 2018.

Since the travel restriction was placed on Mr. Bista, the Nepali government has reportedly drafted a guideline that, if enforced, would require all Nepali citizens to obtain a recommendation letter from the local government authority before they are permitted to travel abroad. The guideline, which the government says is aimed at preventing human trafficking and goods smuggling, also proposes that Nepalis should have at least U.S. \$1,500 in their bank accounts when travelling abroad on tourist visas.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concerns that (a) Mr. Yadav appears to have been arrested arbitrarily in connection to the peaceful exercise of his right to freedom of expression; (b) that he was accused of sedition charges, which amount to criminalising the exercise of fundamental rights and liberties; (c) and that he died in custody, apparently as the result of (i) the denial by the police of the medical treatment that his chronic condition (hypertension) required on a continuous basis, and (ii) the delayed of specialized treatment when his health condition deteriorated.

We also express serious alarm about the travel prohibition imposed on 24 August 2018, seemingly arbitrarily, on Mr. Bista particularly, which appears to target his peaceful work in defence of human rights, and about the response of the relevant authorities to his effort to seek a reasonable explanation for the decision made to prevent him from freely travelling to Bangkok.

With regard to Mr. Yadav's alleged death in police custody we wish to remind your Excellency's Government of its obligations under international human rights law, by virtue of the human rights conventions the state of Nepal has ratified. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. Law enforcement officials must ensure the full protection of the integrity of persons in their custody and, in particular, due diligence shall be taken to secure continuity of medical treatment and prompt access to medical attention in urgent cases. Furthermore there is an obligation on the part of the State to conduct a prompt, effective and thorough investigation into any death occurring in Government's custody in full independence, impartiality and transparency. If true, the allegations outlined above

would constitute a violation of articles 6 and 10 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Nepal in 1991.

In relation to the travel restriction on Mr. Bista, we express concern that the public discussion in an opened workshop of the rights of child soldiers is being considered a “suspicious activity” by the Nepali Ministry for Home Affairs. We are concerned that the draft immigration guideline, if adopted, would violate the right of everyone to leave one’s country and which has the potential to silencing civil society, to obstructing the free sharing of information across borders, and to unduly restrict the work of human rights defenders in Nepal. The draft immigration guideline could be used as a further means to arbitrarily target human rights defenders and to prevent them from participating in other such international fora aimed at furthering human rights awareness and compliance. If the allegations outlined above prove to be true, they would constitute a violation of articles 12, 19, 21 and 22 of ICCPR.

Moreover, we are concerned at the dubious application of legislation to prevent Mr. Bista from leaving Nepal. While the Immigration Act (1993) prohibits departure from Nepal in case of producing a fake passport and visa, it does not prohibit departure of a Nepali citizen from travelling abroad due to the lack of government pre-authorization. Rule 14(b) of the Immigration Regulation 2051 (1994) provides authority to the Department or Immigration Office to prohibit departure of a person from Nepal if information is received from the competent authority prohibiting its departure from Nepal. Finally, Clause 3(1)(3) of Immigration Procedure 2065 (2008) allows for the prohibition of departure based on suspicious visa, passport, or other travel documents, but this was not relevant to Mr. Bista’s case.

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 to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the factual and legal bases for the arrest of Mr. Ram Manohar Yadav and explain how such actions are compatible with Nepal’s international human rights obligations under the conventions it has ratified, in particular the ICCPR. Please provide information about how his actions were deemed to amount to “sedition”.
3. Please provide detailed information about any medical examinations carried out by qualified health-care professionals during Mr. Yadav’s detention in the District Police Office, Gulariya and the reasons for the Police’s refusal to provide him with the necessary medication for the continuation of his treatment.

4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the circumstances of the death of Mr. Ram Manohar Yadav while in Police custody, and the responsibilities, direct and supervisory, for his demise. If no inquiries have taken place or if they have been inconclusive, please explain why, and how this is compatible with Nepal's international's human rights obligations. Please include details and results of the post-mortem examination and the circumstances under which it was carried out. We would welcome a copy of the autopsy report.
5. Please explain why the police did not transfer Mr. Yadav to the Medical Colleges ICU located a 15 minute-drive away and instead took him to a hospital in Kathmandu, more than 12-hours away.
6. Please provide information on the regulations and policies in place to provide adequate health care for persons in detention, as well as how such regulations and policies are implemented, including in this case, and whether their implementation is monitored.
7. Please provide detailed information on the factual and legal bases for the decision to prevent Mr. Bista from travelling to Bangkok for the civil society seminar as a individual member of civil society, and explain how this decision complies with Nepal's obligations under international human rights law.
8. Please provide detailed information about the draft immigration guideline, aimed at tackling human trafficking and good smuggling, is in compliance with international human rights law, particularly article 12 of ICCPR.
9. Please indicate what measures have been taken to ensure that human rights defenders in Nepal are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the UN Special Procedures communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent the re-occurrence of the alleged violations and, in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dainius Pûras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 6, 9, 10, 12, 19,21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Nepal on 14 May 1991, guaranteeing the inherent right to life of all and that no one should be arbitrarily deprived of his or her life; the rights of all to liberty and security of person; the right of all persons deprived of their liberty to be treated with humanity and respect; the right of everyone to leave any country, including their own; the right to freedom of expression; and the right to peaceful assembly.

The Human Rights Committee in its General Comments no. 6 and 31 confirmed that the protection of the right to life under the Covenant requires that the States adopt positive measures to protect individuals from violations by its own agents as well as non-state actors.

With regards to deaths in custody, a large body of international human rights jurisprudence establishes that the burden lies primarily on the State to prove that the death did not result from acts or omissions attributable to it. The Human Rights Committee clarified in *Eshonov v. Uzbekistan, Communication No. 1225/2003*, that “a death in any type of custody should be regarded as prima facie a summary or arbitrary execution” and stressed that “there should be thorough, prompt and impartial investigation to confirm or rebut the presumption, especially when complaints by relatives or other reliable reports suggest unnatural death.”

According to Principle 9 of the Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by Economic and Social Council resolution 1989/65, there is an obligation to conduct thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death. The Minnesota Protocol on the Investigation of Potentially Unlawful Death which in 2016 updated the original UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions of 1991; and the UN Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989), states that an investigation must be a) prompt; b) effective and thorough; c) independent and impartial; and d) transparent. The Minnesota Protocol further states that the State must enable all close relatives to participate effectively in the investigation and to the extent possible, family members should also be consulted prior to an autopsy and should be entitled to have a representative present during the autopsy.

In addition, article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Nepal ratified on 14 May 1991, establishes the obligation of States to respect the right to physical and mental health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative, and palliative health services. This right is further

elaborated in the General Comment No. 14 of the Committee on Economic, Social and Cultural Rights.

The revised UN Standard Minimum Rules for the Treatment of Prisoners, usually referred to as the Nelson Mandela Rules (rules 24-35), further establish States' responsibility to provide healthcare for prisoners. According to the Mandela Rules, the provision of health care is the responsibility of the state authorities and prisoners should enjoy the same standards of health care that are available in the community (Rule 24(1)). In addition, prisoners should be provided with health care services that ensure continuity of treatment and care (Rule 24 (2)). Rule 27(1) furthermore provides that all prisons shall ensure prompt access to medical attention in urgent cases.

Furthermore, we would like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Right Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

In particular, we wish to note that articles 5 and 6 reiterate the rights to meet or assemble peacefully; to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights. We would also like to refer to provisions in the Declaration as article 12, which provides that State must take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Finally, article 9 of the Declaration provides that, in the exercise of human rights and fundamental freedoms, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of those rights.