

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the human rights of migrants

REFERENCE: AL
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2 October 2014

Excellency,

We have the honour to address you in our capacity as Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the human rights of migrants pursuant to Human Rights Council resolutions 26/22, 24/5, 25/18, and 26/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged temporary disappearance, followed by the detention and the refusal of allowing Messrs. **Krishna Upadhyaya** and **Ghimire Gundev to leave Qatar and the subsequent confiscation of their belongings.**

Messrs. Krishna Upadhyaya and Ghimire Gundev are nationals of the United Kingdom who work for the Global Network for Rights and Development (GNRD), an international NGO which promotes human rights and development. They have been investigating the conditions of migrant workers constructing facilities in view of the 2022 World Cup in Qatar.

According to the information received:

On 27 August 2014, Messrs. Krishna Upadhyaya and Ghimire Gundev travelled to Doha, Qatar in order to investigate the working and living conditions of Nepalese migrants working in the construction sector in Qatar.

Reportedly, the men were under surveillance of several plain-clothed policemen at their hotel.

On 31 August 2014, Messrs. Krishna Upadhyaya and Ghimire Gundev allegedly checked out of their hotel as they were scheduled to leave Qatar. However, they

did not board their flights and their fates and whereabouts were unknown for one week.

According to sources, on 6 September 2014, the Ministry of Foreign Affairs of Qatar confirmed that both men had been arrested and detained by the State Security forces. They were reportedly accused of “having violated the provisions of the laws of the State of Qatar”. However, which specific laws the two men have allegedly violated remains unclear.

On 9 September 2014, the two men were released from detention. . However, they were denied permission to leave the country.

On 19 September, the charges against Messrs. Upadhyaya and Gundev were dropped and they were allowed to leave Qatar. However, their belongings, including camcorders, cameras, iphones, laptops, microphones and sans disk SD cards, which were confiscated during their arrest, have not been returned to them.

Grave concern is expressed at the temporary disappearance, followed by the arbitrary detention and the subsequent denial of Messrs. Krishna Upadhyaya and Ghimire Gundev to leave Qatar. Further concerns are expressed that this might be connected to their peaceful and legitimate work in documenting the working and living conditions of migrant workers in Qatar.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 comment you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for the arrest, detention and the subsequent denial of Messrs. Krishna Upadhyaya and Ghimire Gundev to leave Qatar, and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights.
3. Please provide information regarding the reason for confiscating Mr. Krishna Upadhyaya and Mr. Ghimire Gundev’s belongings, including camcorders, cameras, iphones, laptops, microphones and sans disk SD cards.
3. Please indicate what measures have been taken to ensure that the legitimate right to seek and receive information is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

4. Please kindly indicate what measures have been taken to ensure that human rights defenders, including members of associations, in Qatar are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

5. Please explain what the Government is doing to protect the rights of Nepalese migrants, and those from other countries, who are working in the construction sector in Qatar.

We would appreciate a response within 60 days.

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

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Michael Addo

Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Maina Kiai

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

François Crépeau

Special Rapporteur on the human rights of migrants

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular Articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

We would further like to recall that the right to liberty and security of person is also enshrined in the Arab Charter on Human Rights, which was ratified by the State of Qatar in 2009 and in particular in Article 14 of the Charter.

We would also like to refer your Excellency's Government to Article 10 of the UDHR which states: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." Article 11 (1) of the UDHR further states that: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

Moreover the right to a fair trial and due process is also recognized in the Arab Charter on Human Rights, in particular, in Articles 13 (1) and 16.

Regarding the necessity to receive information in a language that they understand, we would also like to refer to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988. Principle 14 states that a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands, information concerning the reason for the arrest, as well as information on and an explanation of his rights and how to avail himself of such rights, and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

The right to be assisted by a lawyer is also set forth in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular in principles 1, 5, 7 and 8.

We would like to call on your Excellency's Government to Article 20 of the UDHR which provides that "[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association." Moreover, the right to freely form associations with others the right to freedom of association and peaceful assembly are also recognized in the Arab Charter on Human Rights, in particular, in Articles 5 and 6.

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

Finally, the Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in 2011, elaborate on the State duty to protect human rights against adverse impacts by business enterprises. This duty derives directly from States' existing obligations under international human rights law and includes the need for States to create an environment that enables human rights defenders to carry out their work. For example, the commentary to Guiding Principle 26 says that the State should ensure that "the legitimate and peaceful activities of human rights defenders are not obstructed."