

Mandate of the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL IND 15/2017

3 January 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolution 34/5.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning allegations of issuance of a Look Out Circular, arbitrary detention, imposition of entry ban and subsequent deportation of human rights defender Mr. **Mukunda Raj Kattel**, at Tiruchirapalli International Airport in Tamil Nadu, India.

Mr. **Mukunda Raj Kattel** is a Nepalese citizen. He is the Director of The Asian Forum for Human Rights and Development (Forum-Asia), a regional human rights organisation based in Bangkok, and has been involved with several human rights initiatives over the last 20 years. He is one of the two Directors of Forum-Asia and is based at the Organisation's secretariat in Bangkok, Thailand.

According to the information received:

On 19 December 2017 Mr. Mukunda Raj Kattel was detained by the immigration department, upon his arrival at Tiruchirapalli International Airport in Tamil Nadu, India. He was informed that there was a Look out Circular issued against him and he was banned from entering India.

On 20 December 2017 Mr. Kattel was deported to Bangkok, Thailand at around 22h30, after having been arbitrarily detained inside the airport for nearly 18 hours.

While in detention, he was allegedly not allowed to communicate with his family and friends, and was denied access to a lawyer. Despite his multiple requests, he was not provided with any explanations regarding the reasons for his detention and denial to enter India.

Mr. Raj Kattel was traveling to India for personal reasons. He was going to meet with Mr. Henri Tiphagne, Director of People's Watch and former Director of Forum-Asia, who is a friend of his.

Look Out Circulars are opened in circumstances where a case has been registered against an individual by a police authority, in order to verify whether a travelling person is wanted by the police. They apparently aim to prevent and monitor the entry or exit of persons who may be required by law enforcement agencies.

Serious concern is expressed at the alleged detention, entry ban and subsequent deportation of Mr. Kattel. It is my understanding that as a Nepalese citizen Mr. Kattel does not need a visa to enter the territory of India. The Treaty of Peace and Friendship between the two countries enables Nepali and Indian citizens to move freely across the border without a passport or visa, and to live and work in either country. Hence his detention and subsequent deportation could be considered as acts of retaliation for his legitimate human rights activities. I have grounds to believe that the Look Out Circular issued against him may have the aim of monitoring his human rights activities in the region by the Indian authorities.

While I do not wish to prejudge the accuracy of these allegations, I 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.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore 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 information concerning the legal basis for the detention of Mr. Kattel at the airport, in view of India's international human rights obligations, in particular, under article 9 of the ICCPR. Please provide details on any investigations over the circumstances under which Mr. Kattel was detained for 18 hours and denied entry into India.
3. Please confirm the legal basis for the Look Out Circular issued against Mr. Kattel. Please also explain the procedure by which a Look Out Circular may be challenged or a request for its removal be made.
4. Please indicate what measures have been taken to ensure that human rights defenders in India are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation directed against them or their family members and harassment of any sort.

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I 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(s) responsible for the alleged violations.

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

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, I wish to draw the attention of your Excellency's Government to article 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by India on 10 April 1979, which guarantee the right to freedom of opinion and expression, including the right to seek, receive and impart information, as well as the right of peaceful assembly.

Furthermore, I would like to draw attention to article 9 of the ICCPR, which states that everyone has the right to liberty and security of the person and that no one shall be subject to arbitrary arrest or detention, except on grounds established by law and following legal procedures. Paragraph 4 of the same article states that anyone deprived of his liberty is entitled to bring proceedings quickly before a court, for it to determine the legality of such detention or to order the release of the person concerned without delay.

I would further 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, also known as the UN Declaration on Human Rights Defenders. In particular, I 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.

Furthermore, I would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 point c), which provides for the right to communicate with non-governmental or intergovernmental organizations;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for 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;
- article 12, paragraphs 2 and 3, which provides that the State shall 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.