

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

REFERENCE:
AL NPL 2/2018

25 July 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 the human rights situation of Ms. **Gangamaya Adhikari**, who has engaged in numerous hunger strikes to advocate for justice and accountability for the murder of her son, Mr. Krishna Prasad Adhikari, in 2004. As of 14 July 2018, she has suspended her hunger strike for 10 days to give the government time to begin taking steps to implement their written commitment to prosecute the perpetrators of her son's murder.

Ms. Gangamaya Adhikari is a Nepalese human rights defender who, together with her late husband, Mr. Nanda Prasad Adhikari, has been on hunger strike to bring about justice for their son, who was killed during the Nepali internal conflict in 2004. Mr. Krishna Prasad Adhikari was killed by Maoist soldiers in 2004, when he was seventeen years old, after being accused of being a spy and taken away and executed.

According to the information received:

Ms. Adhikari and her late husband, Mr. Nanda Prasad Adhikari, began their first hunger strike in January 2013 to urge the government to arrest, investigate and prosecute those who allegedly killed their son, who are identified as Mr. Chabilal Poudel, Mr. Parshuram Paudel, Mr. Bhimsen Paudel, Mr. Ram Prasad Adhikari, and Mr. Januka Paudel.

In 2013, one of the accused, Mr. Ram Prasad Adhikari, was arrested, which allowed Ms. and Mr. Adhikari to end their hunger strike after 47 days, and after receiving a commitment to hold an effective investigation from the concerned authorities. However, records show that Mr. Ram Prasad Adhikari was released on 30 September 2013, without a thorough investigation, prompting Ms. and Mr. Adhikari to recommence their hunger strike.

On 22 September 2014, Mr. Adhikari died on the 334th day of his hunger strike.

On 19 October 2014, Ms. Adhikari suspended her hunger strike on the 359th day, after receiving the commitment from the government that they would prosecute the perpetrators. Records show that a single bench district judge had earlier issued an arrest warrant against 13 accused, which has not yet been implemented. Mr. Rudra Acharya, who is one of the main alleged perpetrators, has fled to the United

Kingdom, and while the government is reportedly working with the Interpol Chief Secretariat to arrest and bring the Mr. Acharya to Nepal, without an Extradition Treaty between the United Kingdom and Nepal, no progress has been reported since 2015.

On 21 December 2015, the Supreme Court issued an order instructing Nepalese police to take Mr. Chabilal Poudel into judicial custody. He had previously been released on bail, pursuant to the decision by the Chitwan District Court on 17 April 2014, which was affirmed by the Hetauda Appellate Court. However, the Supreme Court order was not implemented by either the government nor the police. Mr. Poudel was only arrested after he turned himself into the Supreme Court on 8 July 2018.

At the end of May 2018, Ms. Adhikari recommenced her hunger strike, vowing to continue until the government began fulfilling its agreement to prosecute the perpetrators. Ms. Adhikari's health became critical to the point that she was admitted to Bir Hospital's Intensive Care Unit in Kathmandu.

After 46 days of hunger strike, Ms. Adhikari suspended her strike in mid-July after having received a written commitment from the government to prosecute the perpetrators. However, she has stated that the suspension of her strike is conditional on whether the government begins taking meaningful steps to implement its commitment. She has suspended her hunger strike for ten days to give the government the time to initiate due process.

She is seeking an effective, prompt, impartial and independent investigation process on her son's killing; the implementation of the court order and arrest of perpetrators living in Nepal; access to basic services including health services, livelihood support and security for her; issuance of Red Notice to arrest Mr. Rudra Acharya who is reported to be in the United Kingdom; and provision of security and protection for her eldest son, Mr. Noor Prasad Adhikari.

I express concern for Ms. Adhikari's health, which has been severely affected by her hunger strikes, which she has committed to recommencing if meaningful steps are not taken by the government to ensure justice for Mr. Krishna Prasad Adhikari. Serious concern is also expressed for the independence of the judiciary, given that the Supreme Court order to arrest Mr. Poudel was not implemented until he turned himself in on 8 July 2018.

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 **Reference to International Law Annex** 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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the steps taken by your Excellency's Government to conduct thorough, prompt and impartial investigations and prosecution for the death of Mr. Krishna Prasad Adhikari, as well as to provide effective remedies to his family.
3. Please indicate what measures have been taken by your Excellency's Government to ensure that the alleged perpetrators will be subject to an independent and impartial tribunal established by law, in accordance with article 14 of International Covenant on Civil and Political Rights.

While awaiting a reply, I urge that all necessary measures be taken to pursue accountability for the death of Ms. Adhikari's son.

I may publicly express my concerns in the near future as, in my view, the information upon which a press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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 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 would like to draw your attention to article 2.3 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Nepal on 14 May 1991, which states that any person whose rights or freedoms are violated shall have an effective remedy, that any person claiming such a remedy shall have their right thereto determined by a competent authority provided for by the legal system of the State to develop the possibilities of judicial remedy, and to ensure that the authorities shall enforce such remedies when granted. I would also like to bring your attention to article 14 of the ICCPR, which stipulates that in the determination of any criminal charge, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

I would also like to inform your Excellency's Government that the above mentioned allegations appear to be in contravention with Article 8 of the Universal Declaration of Human Rights, which states that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by law.

Furthermore, I wish to refer your Excellency's Government to General Comment No. 31 pertaining to "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant," which requires that all necessary measures to guarantee effective remedy for human rights violations, as well as to fulfil State Party's obligation to exercise due diligence to prevent, punish, investigate and redress.

Furthermore, I would like to draw attention to paragraph 4 of Basic Principles of Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which prescribe the duty of the State to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations, and, if found guilty, the duty to punish her or him.

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 article 9, which states 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.