

Mandates of the Special Rapporteur on freedom of religion or belief; the Working Group on Arbitrary Detention and the Special Rapporteur on minority issues

Ref.: AL NPL 5/2022
(Please use this reference in your reply)

7 October 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; Working Group on Arbitrary Detention and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 49/5, 42/22 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest, detention and prosecution of **Pastor Keshav Raj Acharya**, a member of the Christian religious minority in Nepal, which appears to be related to the legitimate exercise of his right to freedom of religion or belief.

According to the information received:

Mr. Keshav Raj Acharya is a 33-year-old pastor in the Abundance Harvest church of Pokhara district and a member of the Christian religious minority in Nepal.

On 23 March 2020, the Kaski District Police in plain clothes went to Pastor Acharya's home in Pokhara, Gandaki Pradesh Province. They presented a summons and brought the pastor to the police station for investigation. While in custody, the police interrogated him about his religious beliefs and practice, asking questions such as "Why are you preaching? Why are you Christian? Are people healed in Jesus' name? How many dollars do you get for preaching the gospel?". The police kept the pastor under custody until the next day, on 24 March 2020, with an arrest warrant issued by a court accusing him of disseminating false information on Covid-19. The accusation is reportedly based on a YouTube video, where the Pastor prayed to Jesus for the stop of Coronavirus and stated that "Jesus can cure Corona". Mr. Acharya was kept in detention for sixteen days, without the possibility of seeing his family or a lawyer. The conditions of detention were poor: the pastor was held in a common cell with several other detainees, including some accused of serious crimes, sharing space, and sleeping on the floor.

On 8 April 2020, Pastor Acharya was due to be released on bail by Kaski District Administration Office, after having paid 5,000 Nepali rupees (NRP). Nonetheless, he was re-arrested on the same day at the District Administration Office because of new charges filed against him. The second arrest warrant issued on 9 April 2020, indicated that the pastor was accused of "outraging religious feelings" and "proselytizing" under art. 156 and art. 158 of the Nepali Criminal Code. According to Art. 156 "No person shall outrage the religious feelings of any caste, race, community or class by words, either spoken or written, by visible representation or signs or otherwise". Art. 158 states that "1. No person shall convert any one from one religion to another or

make attempt to or abet such conversion. 2. No person shall do any act or conduct which undermines the religion, opinion or faith of any caste, race, community or convert anyone into another religion, whether by inducement or not, in a manner to so undermine or propagate such religion or opinion with the intention of making such conversion.”. These articles were introduced into the Nepali criminal law by the National Penal Code Act of 2017, which entered into force on 17 August 2018.

On 19 April 2020, the Kaski District Court fixed the amount of the bail at 500,000 rupees, a sum that largely exceeded the combined fines envisaged under art. 156 and 158 of the Penal Code. The bail was settled by his wife on 13 May 2020.

On 13 May 2020, after being released, civilian-clothed police waiting at the Court’s premises arrested the Pastor for the third time. The police firstly brought him to the local police station to show him an arrest warrant issued in Dolpa, accusing him of violating the prohibition of proselytizing established in art. 158 of the Penal Code by attempting to convert individuals through the distribution of religious books and tracts. He was then transferred to the Dolpa District Police Office. The District Police Office in Dolpa is located in a remote location in the west of Nepal (around 250 miles and a three-day trip from Pokhara) with limited transportation connections, making legal access and family visits virtually impossible, especially during the Covid-19 lockdown. During the transfer to Dolpa, Mr. Acharya was transported from one police station to another in 32 different vehicles, including 10 motorcycles, sometimes waiting hours to be picked up and brought to the next stop. For the most part of the trip, he had his hands handcuffed behind his back and only received food he could pay for.

On 30 June 2020, Mr. Acharya was released after his lawyer deposited a bail amounting to 300,000 NPR. Following his release, he was required to present himself before the Courts in Pokhara and Dolpa three times per month, once for each case, to sign official documents.

On 22 November 2021, Pastor Acharya presented himself to a hearing before the Dolpa District Court. The Court indicated that he appeared guilty of violating the prohibition of proselytizing under Section 158 (1) and (2) of the Penal Code. The police immediately arrested and placed him in detention before the final Court’s decision was issued. On 30 November 2021, the Dolpa District Court sentenced him to two years of prison and a fine of 20,000 NPR. He was the first person convicted for proselytism under the anti-conversion provisions of art. 158 of the Penal Code introduced in 2017. On 24 December 2021, he was released on bail, pending appeal.

On 23 June 2022, the Pokhara District Court in Kaski dropped all charges against the Pastor for which he was arrested in March 2020. On 13 July 2022, the Jumla High Court reviewed the District Court of Dolpa’s previous decision of November 2021 and confirmed the conviction of Pastor Acharya for proselytism, however, reducing the punishment to one year of imprisonment.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concern regarding the multiple arrests, detentions and

prosecutions of Mr. Acharya, which indicate a deliberate pattern of judicial harassment against him for the legitimate and peaceful exercise of his right to freedom of thought, conscience and religion, in particular, the right to manifest one's religion or belief in public or private, and for his activities and manifestations of his religious beliefs as a member of a religious minority. These rights are protected by Article 18 and 27 of the International Covenant on Civil and Political Rights (ICCPR). The Convention was ratified by the Republic of Nepal on 14 May 1991 and is binding on the state.

We are further seriously concerned that Pastor Acharya is being prosecuted on the grounds of allegations that he outraged religious feelings of other communities by peacefully practising and preaching his religion. In this respect, we wish to remind that the arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR is arbitrary. Should these allegations be confirmed, they would amount to a violation of Mr. Acharya's right to freedom of opinion and expression, protected in Articles 19 and 27 of the ICCPR, and contravene Articles 3 (non-discrimination), 9 (right to liberty and security of person), 14 (fair trial), 26 (equality before the law) and 27 (rights of minorities) of the same Convention.

We wish to recall that Special Procedures human rights experts previously expressed their concern repeatedly about the draft provisions aimed at introducing into the Nepali Constitution and penal code broad anti-conversion clauses or vaguely criminalising acts that would disturb or insult the religion of other people (see communication NPL 2/2011, NPL 1/2015 and OL NPL 5/2017 addressed to the Government of Nepal). To our regret, to date, no response has been received from your Excellency's Government to these communications.

In this regard, we are reiterating our concern that Art 156 of the penal code on the "Prohibition of outraging religious feelings" is similar to blasphemy law provisions that exist in other countries. The language of Art. 156 is too vague to adequately define what action, behaviour or type of expressions could be considered as "outraging the religious feeling of any caste, race, community or class". The Prohibition of Proselytism contained in Art. 158 of the penal code could be invoked against a wide range of expressions of religious faith and opinions, including the charitable activities of religious groups, or peacefully talking about one's faith, that could be portrayed as attempts to convert others. Since the choice of religion or belief is part of the forum internum, which allows for no limitations, a general prohibition of conversion by a State necessarily enters into conflict with applicable international standards. A law prohibiting conversion would constitute a State policy aiming at influencing individual's desire to have or adopt a religion or belief and is therefore not acceptable under human rights law. A State also has the positive obligation of ensuring the freedom of religion or belief of the persons on its territory and under its jurisdiction.

We are all the most concerned that Mr. Acharya appears to be the first individual sentenced under these news provisions introduced in Nepali criminal law in 2017. The conviction of Mr. Acharya set up a negative precedent for further convictions that would severely undermine the right to freedom of religion or belief as well as the right to freedom of expression in Nepal.

Finally, taking into consideration that Pasto Acharya is a member of the Christian minority in Nepal, we would like to bring to the attention of your

Excellency's Government the international standards regarding the protection of rights of persons belonging to minorities, in particular Article 27 of the ICCPR that guarantees minorities, inter alia, the right to practice and profess their own religion , jointly with the Article 2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

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.

We are issuing this appeal in order to safeguard the rights of abovementioned individual from irreparable harm and without prejudicing any eventual legal determination.

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 information and comment you may have on the above-mentioned allegations.
2. Please provide information of the factual and legal grounds for the repeated arrests, detentions and prosecutions of Mr. Acharya.
3. Please provide detailed information about the evidence the charges against Mr. Acharya are based upon; and about the evidence adduced during the trial to substantiate them;
4. Please provide precise information about measures taken by your Excellency's Government to ensure that the rights of Mr. Acharya to freedom of religion and as a member of a religious minority are respected and protected in accordance with the Republic of Nepal's international human rights obligations.
5. Please explain how Art. 26(3) of the Constitution and Art. 156 and Art. 158 of the penal code are compatible with international human rights regarding non-discrimination and the right to freedom of religion or belief as well as the right to freedom of opinion and expression, as provided for in the UDHR and the ICCPR, which the Republic of Nepal has formally acceded to.
6. Please explain why Mr. Acharya was initially detained for 16 days without contact with his family and lawyer from 23 March to 8 April 2020, and how what appears to be a situation of of incommunicado is compatible with the State of Nepal's obligation under the ICCPR?
7. Please explain why Mr. Acharya taken in detention on 23 March 2020, and released on bail on 8 April 2020; re-arrested on the similar charges the following day, on 9 April; released on bail on 13 May 2020 but immediately arrested again on charged filed by a court in a remote province (Dolpa district); released on bail on 30 June 2020; arrested

again on 22 November 2021 in Dolpa district, sentenced to two years on prison on 30 November; released on bail a third time on 24 December 2021, pending appeal; had his charges dropped by Dolpa court on 23 June 2022, and his sentenced reduced to two years on appeal on 13 July 2022. These allegations depict what appear to be a deliberate and sustained practice of judicial harassment.

8. Please explain why Mr. Acharya was re-arrested each time after he was bailed out after payment of 5,000 rupees (8 April 2020), then 500,000 rupees (13 May 2020) and then 300,000 rupees (30 June 2020). Were these amounts of money returned to him after he was re-arrested? Please explained why he was charged again after having been repeatedly released by a court in a remote, far away district, that made it difficult for him to pursue his legal defence and receive family support and visits?

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

In the absence of a prompt and detailed response to this communication, we may consider expressing publicly our concerns in this regard, as the information in our possession indicates a matter of public interest that warrants serious attention on the part of Your Excellency's Government, and casts a worrying shadow on the peaceful exercise of freedom of expression and religious beliefs in Nepal. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Nazila Ghanea
Special Rapporteur on freedom of religion or belief

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Fernand de Varennes
Special Rapporteur on minority issues

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 refer to the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Nepal on 14 May 1991, and, in particular to article 18 of the ICCPR stresses that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." Article 18, paragraph 3 of the ICCPR also emphasises the "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

The Human Rights Committee in its paragraph 3 of general comment no. 22 on freedom of thought, conscience and religion states that "article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one's choice". In paragraph 5, the Human Rights Committee observes that the "freedom to have or to adopt a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views".

The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) states in its Article 2 (1): "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief." In Article 4 (1), the General Assembly further states that: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]" Furthermore, we would like to refer your Government to Article 4(2) according to which: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter".

Article 6 (d) of the 1981 Declaration states that the practice of the freedom of religion includes the freedom, "to write, issue and disseminate relevant publications." Similarly, in resolution 2005/40, the Commission on Human Rights urged States "[t]o ensure, in particular, [...] the right of all persons to write, issue and disseminate relevant publications." In its general comment No. 22 (1993) the Human Rights Committee holds that "the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, [...] and] the freedom to prepare and distribute religious texts or publications" (para. 4).

The Special rapporteur on freedom of religion or belief noted that freedom of religion or belief is not confined to the dimension of a person's forum internum but also includes the freedom to manifest one's religion or belief in external acts, such as "worship, observance, practice and teaching". Such forum externum manifestation

can be undertaken either individually or in community with others and in public or private. It cannot be denied that this covers non-coercive attempts to persuade others, sometimes also called “missionary work”. Communicative outreach activities aimed at persuading others, including religious discourse, can be further based on article 19 (2) of the ICCPR, which provides that the right to freedom of expression shall include “freedom to seek receive and impart information and ideas of all kinds, regardless of frontiers either orally, in writing or in print, in the form of art, or through any other media of his choice”¹.

Article 19 of the ICCPR protects the right to freedom of opinion and expression. Whereas the right to freedom of opinion in article 19(1) is absolute, the right to freedom of expression in 19(2) is subject to certain restrictions based on the requirements in article 19 (3), which are narrowly tailored and have narrow application. The scope of art. 19 (2) is broad. It protects the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others. The scope of paragraph 2 embraces even expression that may be regarded as offensive (CCPR/C/GC/34 para. 11). It protects all forms of expression and the means of their dissemination, including “spoken, written and sign language and such non-verbal expression as images and objects of art. [...] They include all forms of audio-visual as well as electronic and internet-based modes of expression.”² Any restrictions on the right to freedom of expression must be compatible with the requirements of article 19(3). The State must demonstrate that any restrictions with article 19 (2) is compatible with the requirements of article 19 (3), as well as the principles of non-discrimination in article 26.³ All restrictions must therefore serve one of the legitimate aims exhaustively enumerated in the provision, be provided by law, and be necessary and proportionate.

We also want to remind your Excellency’s government of ICCPR articles 6 and 9 enshrining the right to life and the right to liberty and security of person and establishing in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law as well as the right to legal assistance from the moment of detention. Article 9 (4) also entitles everyone detained to challenge the legality of such detention before a judicial authority. United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court state that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation. Furthermore, in its General Comment No 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of peaceful assembly (art. 21), freedom of association (art. 22) and freedom of religion (art. 18). This has also been established in consistent jurisprudence of the Working Group on Arbitrary Detention. It has also stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is also in principle arbitrary. Furthermore, article 14 upholds the right to a fair trial and equality of all persons before the courts and tribunals, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, as well as the right to legal assistance.

¹ A/67/303, paragraph 26.

² [CCPR/C/GC/34](#), paragraph 12.

³ [CCPR/C/GC/34](#), paragraphs 27 and 35.

Furthermore, Article 27 of the ICCPR provides that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities establishes the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end (article 1), recognizes that persons belonging to religious minorities have the right to profess and practice their own religion without discrimination (article 2) and requires States to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1).

Furthermore, we wish to refer to Human Rights Council Resolution 49/31 on Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief, which calls on States to adopt measures to criminalize incitement to imminent violence on the basis of religion or belief (Art. 7f) and to foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion and to contribute openly and on an equal footing to society (Art. 8b).