

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on minority issues and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

Ref.: AL NPL 4/2024  
(Please use this reference in your reply)

30 October 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on minority issues and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 53/4, 51/8, 54/14, 52/5 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **custodial deaths; overcrowded conditions and lack of access to basic amenities in detention centers; alleged torture, including of juveniles; as well as issues surrounding investigations, which disproportionately affect minority persons belonging to the Dalit Caste. In this respect, we refer to the illustrative case of the alleged secret transfer and death in custody of Mr. Sundar Harijan, a minority individual belonging to the Dalit caste, at the Rolpa Prison on 18 May 2022.**

According to the information received:

*General information*

*Custodial deaths*

According to the police, 22 custodial deaths have been reported in police offices between 2016 and 2021.<sup>1</sup> Of these, the police alleged 17 were suicides and 3 individuals died due to health conditions. One case was unclear. Eight of the 22 individuals were minority persons belonging to the Dalit Caste. This amounts to 36% of the cases, whereas minority persons belonging to the Dalit caste only account for an estimated 20% of the population.<sup>2</sup> The highest number of custodial deaths seem to be cases of minority persons belonging to the Dalit caste.

According to other reports, the number of deaths in all places of deprivation of liberty is far higher, with at least 53 cases reported between 2016 to 2022. Of these, 32 cases were in police offices and 21 in prisons - 19 occurred in Morang Prison alone in a period from 29 August 2021 to 11 November 2021. In total, 41 of the deaths occurred in the Terai region. Of the cases, 12 were Janajati individuals and 28 individuals were minority persons belonging to the

<sup>1</sup> Two cases in 2017, two cases in 2018, six cases in 2019, seven cases in 2020 and four cases in 2021. Information not available for one case.

<sup>2</sup> According to the 2011 census, minority persons belonging to the Dalit caste amount to 13% of the population. However, the number is now estimated to be higher.

Dalit caste.

In many cases where the police recorded deaths as suicide, family members observed injuries on the bodies which may indicate torture. In a survey of just over 1,000 detainees in 2019, 19.8% reported torture or ill-treatment in detention.

Nepali legislation requires the detaining authority to conduct a thorough medical check-up of individuals detained and prior to release. However, in many cases of custodial death, no medical examination was conducted when the individual was detained. In 5 of the 53 cases, individuals reportedly died after not receiving access to timely or sufficient medical care.

#### *Conditions in detention centers*

Prisons in Nepal are overcrowded. For example, Central Jail in Sundhara, Kathmandu has a capacity of 1,500 but as of early 2023 was holding 3,448 individuals. Rolpa prison has a capacity of 40 but as of early 2024 housed 80 individuals. In 2019, the Office of the Attorney General indicated that prisoners are kept in inhumane conditions, with difficulties accessing clean water and food inside crammed, dilapidated structures, struggling for decent living space and timely health care.

According to section 201(1) of the National Penal Code 2017 “no authority who is competent by law to make detention shall detain, or cause to be detained, any person by depriving him or her of such facilities as required to be provided in accordance with law or of such minimum humane facilities as are available in the place of his or her detention”. However, according to section 205 of the same Code, complaints for violation of this provision must be filed within three months of the release of a detainee. No state authority has ever been convicted and the maximum sentence is 1.5 years in prison and a fine of up to 15,000 rupees (around USD 112).

#### *Record keeping and prison transfers*

The Prisons Act 2022 and the Prisons Guidelines require that a record on each detainee is maintained with various details. Following recommendations by an investigative committee constituted in the below case of Sundar Harijan, the Prisoners Guidelines were further amended to require a record of an identity card and photographs of the detainee.

The Prison Act 2022 also introduced a provision for the transfer of detainees between places of detention, which requires the details to be provided to the detainee’s contact person and legal representative.

There is no information on the extent to which these requirements are being complied with in practice.

While the Office of the Attorney General, High Court Judges and the Chief District Officer have the right to inspect detention centers, the frequency of visits is low.

The abovementioned conditions put detainees at a heightened risk of enforced disappearances.

*Situation of juveniles deprived of their liberty*

Nepali law contains various safeguards in the application of juvenile justice. Additionally, the Supreme Court has found that a juvenile's punishment should be "child sensitive" and in the "best interests of the child". However, it appears that there is a lack of understanding of these provisions among the District Courts and the Supreme Court has reversed District Court decisions on several occasions to allow for alternatives to punishment for juveniles. The district judge is granted discretion to forgo a juvenile bench if it is not feasible to constitute one. This means that juveniles are often tried in regular benches rather than juvenile benches as envisaged in the law. Juveniles are also often incarcerated with adults in police detention.

There are several cases of deaths of persons in child reform homes. This included four cases which reportedly could have been prevented had timely medical care provided. A 2019 study of nearly 270 child detainees found 24.5% reported torture or ill-treatment. While there have been instances of constituting an ad hoc task force to investigate cases of deaths of juveniles deprived of their liberty, Nepali legislation does not require systematic and compulsory investigations in such cases. In 2023 the National Human Rights Commission announced that they would start monitoring juvenile correction homes.

*Lack of compulsory autopsies by professionals*

In the Prison Act 2022 and Prison Guidelines, the "actions to be done in the event of the death of a detainee or prisoner" do not reference post-mortem examinations. They only require the execution of a deed with an inventory of the deceased's property and to inform the Court or competent body and heir of the deceased prisoner. The Prisons Act 2022 does require that a government medical officer provide a declaration confirming the detainee's demise and cause of death. However, it does not stipulate the standards to be applied or followed in this process.

Additionally, section 20(3) of the National Criminal Procedure Code 2017 establishes that "the concerned investigating authority shall, upon examining the corpse [...] send the corpse to a government medical doctor or an expert designated in that behalf by the Government of Nepal or a licensed medical doctor for post-mortem [...]."

The police frequently register custodial deaths as "natural deaths" or "suicides" without conducting an autopsy. Where an autopsy is carried out, the family are frequently not informed of the outcome. In many cases, particularly those outside Kathmandu, autopsies are carried out by medical officers who are not experts and do not have knowledge of relevant standards including the Minnesota Protocol on the investigation of potentially unlawful deaths (2016).

## *Investigations*

Investigations into custodial deaths are triggered either by lodging a FIR or ex officio. Police often refuse to register FIRs, sometimes indicating they have to consult “higher authorities” or register them with incomplete information to protect colleagues.

Where FIRs are eventually registered, the investigations are not effective. The authorities also offer ex gratia payments to families of alleged victims of custodial deaths to avoid formal proceedings.

There is no independent body in Nepal to deal with custodial deaths or deaths committed by the authorities meaning the police investigate cases allegedly committed by the colleagues or members of the security forces. In *Sunil Singh Ranjan et al vs Nepal Government* (Case No. 067/2067), the Supreme Court rendered a decision to set up a special investigation team or conduct investigations through the Central Investigation bureau to investigate cases involving security personnel without further delay. However, this has not been implemented.

Frequently in cases of suspicious deaths allegedly carried out by police, the Government forms committees. Often these committees do not make their report public, or their conclusions and recommendations are not implemented. In some instances, members of these committees have had an institutional or hierarchical connection with the alleged perpetrators. These committees are temporary and are limited in the power to make recommendations to the Government.

The case below is emblematic of many of the above issues.

### *Alleged death in custody of Mr. Sunar Harijan*

Mr. Sundar Harijan, born on 15 May 2002, was a Nepali national and a minority individual belonging to the Dalit caste who was arrested when he was 17 years old by the District Police Office of Banke. The arrest occurred on 5 September 2019 and related to charges of theft and burglary for the alleged crime of breaking into a house and stealing five mobile phones.

On 6 September 2019, Mr. Sundar Harijan was presented before Banke District Court, which authorized his detention along with other suspects while the police investigation proceeded. In the charge sheet prepared by the Nepal Police on 18 September 2019, Mr. Sundar Harijan confessed to entering the house and stealing one mobile phone, which was subsequently sold for 5000 Nepalese rupees (approximately USD 37), with the proceeds distributed between Mr. Sundar Harijan and the seller of the mobile phone. Ultimately, Mr. Sundar Harijan was charged with stealing five mobile phones worth 53,400 Nepalese rupees (approximately USD 400).

Mr. Sundar Harijan’s family was never officially informed about his arrest or provided with any other details by the police or any other Government authority. A family member attempted to visit him whilst he was detained but was not allowed to see him.

Despite being a minor, Mr. Sundar Harijan was detained in the District Police Office of Banke with adults. He was apparently not provided with the pre-trial and trial rights that ought to have been guaranteed to him under Nepal's Act Relating to Children 2075 (2018) (Children's Act). For example, he did not have access to socio-psychological counselling services and his identity was not kept confidential in apparent violation of section 25 of the Children's Act.

On 3 February 2020, the Banke District Court sentenced Mr. Sundar Harijan to 15 months' imprisonment and a fine of 60,000 Nepalese rupees (approximately USD 456). Mr. Sundar Harijan was represented by pro bono legal counsel at trial and was not tried before a juvenile bench as he ought to have been under section 30 of the Children's Act.

Mr. Sundar Harijan was also not given the opportunity to benefit from other rights provided for by the Children's Act. In particular, the District Court did not apply the provisions in section 36 of the Children's Act that children convicted of offences aged between 16 and 18 are only liable for a maximum punishment of two thirds of the adult punishment. Contrary to the requirement in section 43 of the Children's Act that minors be incarcerated separately from adults, Mr. Sundar Harijan was jailed along with adults at Banke Prison rather than at a child reform home.

Following his conviction, Mr. Sundar Harijan's family visited him in the Banke Prison around five times. Their communication with him in prison took place primarily through telephone calls as his family were not always allowed to visit in person.

On 23 November 2020, Mr. Sundar Harijan was secretly transferred to Rolpa Prison, situated in a remote area of Nepal approximately 108 kilometres away from Banke.

Mr. Sundar Harijan's family was not informed about his transfer until 18 months after it occurred. The family used to contact Mr. Sundar Harijan by telephone and believed that he was in Banke prison. In one of the conversations with his family, Mr. Sundar Harijan mentioned that he had been transferred to Rolpa. The family was unable to visit Mr. Sundar Harijan in person at Rolpa Prison as the family lacked the means to travel there.

During phone calls with his family after his transfer to Rolpa Prison, Mr. Sundar Harijan referred to himself as 'Bijay Bikram' and did not explain to his family why he was using a different name. When asked, he would usually end the telephone call. When his relatives asked if he was being mistreated in prison, Mr. Sundar Harijan would end the telephone call abruptly. His family believe that he faced pressure or compulsion to falsify his identity when he was transferred to Rolpa Prison.

Based on his conviction for two counts of theft and burglary, Mr. Sundar Harijan should have been released from prison by 24 June 2021 at the latest. This did not occur.

In May 2022, Mr. Sundar Harijan remained incarcerated. On 17 May 2022, at Mr. Sundar Harijan's request, his family sent 6,000 Nepalese rupees to Rolpa Prison. As instructed by Mr. Sundar Harijan, both the sender's and receiver's name were listed as 'Mr. Bijay Bikram'.

On 19 May 2022, Mr. Sundar Harijan's family received a telephone call from Rolpa Prison informing them of the death of a family member. The deceased person was named as Mr. Bijay Bikram and the deceased reportedly died on 18 May 2022 at 6.40 p.m.

Mr. Sundar Harijan's family knew of no relative by the name of Mr. Bijay Bikram, but knowing that Mr. Sundar Harijan had been in custody at Rolpa Prison they made inquiries with prison representatives and attempted to contact Mr. Sundar Harijan by telephone but were unsuccessful. The family was eventually told by prison authorities that Mr. Sundar Harijan had broken out of jail and fled, which the family did not believe was credible.

On 20 May 2022, a representative of Banke Prison visited Mr. Sundar Harijan's family home and showed family members a picture of a hanging body for identification. The quality of the photograph was such that it was difficult to recognize the person depicted, but the clothes on the body led the family to believe that it was Mr. Sundar Harijan.

On 21 May 2022, a family member was taken by a police officer to a hospital 5 kilometres away from Rolpa Prison and identified the body as Mr. Sundar Harijan.

An autopsy was performed, purportedly on "Bijay Bikram". The doctor performing the autopsy asked for the age of the deceased, to which the Rolpa Prison representative who was present replied "29 years". The family member refuted this assessment of Mr. Sundar Harijan's age. The family member also noticed blood on Mr. Sundar Harijan's nose and mouth and black marks on one of his hands. In connection with the autopsy, the family member was asked to sign various papers, despite being illiterate and not understanding what they were being asked to sign. In some instances, the hand of the family member was held by police officers to compel signature of the documents.

The autopsy report does not mention any injuries, including those observed by the family member, except for the one on the neck created by a scarf that was used in hanging. The report reads "Brownish black parchmented ligature mark, with length of 28 cm and width of 2-3 cm, is present around the neck, above thyroid cartilage, going backwards and upwards with knot situated posteriorly. Ligature material not available." It is not possible to conclusively determine the circumstances that led to Mr. Sundar Harijan's death from the autopsy report.

Following the completion of the autopsy, the family member took Mr. Sundar Harijan's body back to Banke in an ambulance accompanied by the police. The police officers gave the family some possessions that were said to belong to Mr. Sundar Harijan, but the family did not recognise them. The possessions included a collection of papers that bore Mr. Bijay Bikram's name.

In Rolpa Prison's records, Mr. Sundar Harijan's identity was recorded as Mr. Bijay Bikram Shahi, a repeat offender aged in his late twenties convicted of organized crime and sentenced to five years' imprisonment and a fine of 15,000 Nepalese rupees (approximately USD 380). According to the Rolpa Prison authorities, they only discovered the true identity of Mr. Sundar Harijan after his death and subsequent attempts to contact his family.

It transpires that during Mr. Sundar Harijan's transfer from Banke Prison to Rolpa Prison, his identity was swapped with that of Mr. Bijay Bikram. On 7 January 2021, Mr. Bijay Bikram paid a fine of 15,000 Nepalese rupees (approximately US 113), claiming to be Mr. Sundar Harijan, and was released from prison. Mr. Sundar Harijan remained detained in prison under Mr. Bijay Bikram's name. On 18 May 2022 when a dead body was found in Rolpa Prison, the prison authorities initially called Mr. Bijay Bikram's family, but they informed the prison authorities that Mr. Bijay Bikram had left the country for India six months previously.

Mr. Sundar Harijan's family is concerned that his transfer to Rolpa Prison before his death, and the release of Mr. Bijay Bikram in place of Mr. Sundar Harijan in January 2021, were carried out with the complicity of prison authorities with malicious intent to enable the premature release of Mr. Bijay Bikram. Mr. Sundar Harijan's family is further concerned that his death was a result of mistreatment.

*Alleged lack of conclusive, independent investigation into Mr. Sundar Harijan's death*

In May 2022, Mr. Sundar Harijan's family made several efforts to investigate the circumstances of his death including visiting the District Administration Office of Banke to raise the issue. A representative informed them that if an investigation took place, his family might be prosecuted for bringing the body home under someone else's name.

In late May 2022, the family attended the National Human Rights Commission of Nepal in Banke to fill out a complaint form and were verbally told that Mr. Sundar Harijan's death would be investigated, but they have never been provided with any updates or further details.

Also in May 2022, Mr. Sundar Harijan's family contacted the District Police Office of Banke to raise their concerns. The police accused Mr. Sundar Harijan's family of having been involved in the swap of identities between Mr. Sundar Harijan and Mr. Bijay Bikram Shahi in exchange for money. This accusation was an additional source of suffering for the family.

On 25 May 2022, Mr. Sundar Harijan's family tried to lodge a First Information Report (FIR) with the Nepal Police with the assistance of a lawyer. However, the Police refused to register the FIR without providing reasons.

Eventually, faced with no progress in their investigations as to his death and under pressure from the storage facility where the body was being preserved, Mr. Sundar Harijan's family performed the final rituals, burning his body and

the belongings of Mr. Bijay Bikram Shahi that had been delivered with the corpse.

Reportedly, an investigative committee was established on 28 May 2022 by the Ministry of Home Affairs under the leadership of the director of the Department of Prison Management. Another committee was established on 31 May 2022 under the leadership of the Joint Secretary of the Ministry of Home Affairs.

The committee led by the director of the Department of Prison Management submitted its report on 30 May 2022. The report made some noteworthy, general recommendations, including maintaining clarity on the identity of detainees during transfer and informing the family and the relevant local government authority when a detainee is released. However, there are reasons to doubt the independence and impartiality of this committee. The leader of this committee is the director of the Department of Prison Management, who was responsible for prisons at the time of Mr. Sundar Harijan's death.

In this regard, we note with concern the following aspects of the report:

The report indicates that Mr. Sundar Harijan and Mr. Bijay Bikram, who were both imprisoned in Banke, requested and were granted a transfer from Banke to Rolpa Prison to facilitate meetings with family members because their families live near Rolpa. However, for Mr. Sundar Harijan that was not the case as his family live near Banke. It appears this discrepancy was never investigated.

The report attributes blame for the authorities' lack of awareness of the swap in identity between Mr. Sundar Harijan and Mr. Bijay Shah solely on the two detainees and does not comment on the prison authorities' failure to perform due diligence controls during the transfer.

The report also attributes blame for Mr. Sundar Harijan's death to his family, commenting on their failure to advocate for his release from prison despite him serving longer than his maximum sentence.

The report does not incorporate the testimonies of jailors at Rolpa Prison. Instead, it relies on statements from lower-ranking officials of the prison who claim that they released Mr. Bijay Bikram Shahi under the name of Mr. Sundar Harijan because he responded when they called out the name 'Sundar Harijan' during the release process.

With respect to the second committee led by the Joint Secretary of the Ministry of Home Affairs, there are concerns that the committee was constituted by personnel from the Nepal Police and other Government departments. The committee was due to submit its report by 7 June 2022. On 14 June 2022, the committee delivered the report to the Minister for Home Affairs. However, the report has not been shared with Mr. Sundar Harijan's family nor have its contents been made public.

The result is that no independent, impartial, thorough, transparent and effective investigation has been conducted into the death in custody of

Mr. Sundar Harijan.

*Alleged lack of provision of remedies to Mr. Sundar Harijan's family*

The lack of resolution over the fate of Mr. Sundar Harijan has been profoundly distressing for his family. The death of Mr. Sundar Harijan has also impacted his family financially, with the loss of a family member with income earning potential keenly felt.

Mr. Sundar Harijan's family has attempted to seek redress through Nepal's justice system. On 10 July 2023, a writ of mandamus was filed before the Supreme Court of Nepal. In the writ, the family asked for an investigation into the death of Mr. Sundar Harijan, and compensation for the harm suffered by the family. On 16 July 2023, the Supreme Court conducted its first hearing and called for the defendants to submit written replies.

In those replies, the District Prison Office of Banke disclaims responsibility on the basis that Mr. Sundar was not a minor at the time of his imprisonment because his stated age was 18. The District Police Office of Rolpa disclaims responsibility on the basis that Mr. Sundar Harijan and Mr. Bijay Bikram Shahi arrived at Rolpa Prison with switched identities. Rolpa Prison claims that Mr. Sundar Harijan was not mistreated in prison but does not provide any detailed information on the circumstances leading to his death.

The replies to the Court also indicate that the District Police Office of Rolpa is conducting ongoing investigations and is searching for the real Mr. Bijay Bikram Shahi. The replies further indicate that the Kathmandu Prison Department has made inquiries and has dismissed the driver, and an office assistant, connected with the transfer of Mr. Sundar Harijan and Mr. Bijay Bikram Shahi from Banke to Rolpa. Another administrative officer involved in the transfer has retired from office. The results of these inquiries have not been made public and specific details as to the role of the dismissed persons in Mr. Sundar Harijan's death and the reasons for their dismissal have not been communicated to Mr. Sundar Harijan's family.

Mr. Sundar Harijan's family have not received any financial compensation or *ex gratia* payment, nor any form of social support from the Government following his death.

Without prejudging the accuracy of these allegations, **we express our serious concern over the alleged lack of prompt, effective, thorough, independent, impartial and transparent investigations into as well as lack of accountability for Mr. Sundar Harijan's secret transfer and death in custody and the reported failure to date of Nepalese authorities to engage in a transparent manner with the victim's family and provide them with access to remedies.** We are concerned that this case might be emblematic of a broader problem related to custodial deaths including the lack of investigation in line with international standards. We further express concern about alleged poor conditions in detention including for juveniles.

If the above allegations prove to be true, they would constitute a violation of article 6 on the right to life and article 7 on the right to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment of the International Covenant on

Civil and Political Rights (ICCPR), which Nepal acceded to on 14 May 1991 as well as various articles of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded to by Nepal on 14 May 1991.

We remind your Excellency's Government that States have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State given that by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their lives and bodily integrity. Loss of life occurring in custody creates a presumption of arbitrary deprivation of life by the State authorities, which can only be rebutted on the basis of a proper investigation that establishes the State's compliance with its obligations under article 6 of the ICCPR (general comment No. 36).

We are also concerned by the injuries that were observed on Mr. Sundar Harijan's body and the broader reports of torture and ill-treatment of detainees. Pursuant to article 12 of the CAT, States are duty-bound to investigate wherever there are reasonable grounds to believe that torture has been committed.

Investigations into death or torture in custody must meet international standards. Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with the Revised United Nations Manual on the Effective Prevention of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol), and the ones on all acts of torture or other cruel, inhuman or degrading treatment or punishment are recommended to be carried out in line with the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Istanbul Protocol" revised 2022 edition). Investigations must be aimed at ensuring that those responsible are brought to justice, and at promoting accountability and preventing immunity. Investigations should always be independent, impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including adequate measures of compensation, rehabilitation and satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future.

The participation of the family members or other close relatives of a deceased person is an important element of an effective investigation. We note the establishment of two investigative committees to investigate the circumstances that led to Mr. Sundar Harijan's death in Rolpa Prison. However, we express our concern that the report of the committee led by the Joint Secretary of the Ministry of Home Affairs has apparently not been shared with the victim's family nor made public, calling into question the transparency of this investigation. We further express our concern about the competency of the committees to independently and impartially assess the role of the Banke and Rolpa prison authorities for Mr. Sundar Harijan's death given that their composition reportedly includes persons who were responsible for prison management at the relevant time and given the findings of the committee led by the director of the Department of Prison Management that the victim's family somehow bear some responsibility for his death while in the care of the State. We additionally note that such ad hoc commissions cannot replace a properly functioning system to systematically carry out investigations into all cases of deaths in custody in line with international standards.

In this connection, we recall that your Excellency's Government supported relevant recommendations made in Nepal's Universal Periodic Review Third Cycle in 2021 to ensure prompt, impartial, independent and effective investigations into all cases of unlawful killings (A/HRC/47/10).

We further express our concern that Mr. Sundar Harijan's death in custody appears to have gone unremedied. We recall the duty to provide an effective remedy to victims of human rights violations and their relatives, which is articulated in article 2, paragraph 3 of the Covenant, when read in conjunction with article 6, paragraph 1 (general comment 36) and requires that full reparation be provided, including, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation and satisfaction (general comment 36). We remind your Excellency's Government that family members of victims of unlawful death have the right to equal and effective access to justice; to adequate, effective and prompt reparation (the Minnesota Protocol, para 10). Appropriate measures should be taken to ensure the safety, physical and psychological well-being of family members (the Minnesota Protocol, para 36). We are concerned that Mr. Sundar Harijan's family has thus far not received any financial, social or psychological assistance in connection with his death in custody.

We underscore the critical importance of taking urgent measures to address the aforementioned concerns. We stand ready to support your Excellency's Government with any efforts undertaken in this regard.

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 any official statistics available for deaths in custody in all places of detention since 2016.
3. Please provide information on any steps in place, or future efforts envisaged to ensure that all deaths in custody, including in the case of juveniles, are investigated in line with international standards including the Minnesota Protocol.
4. Please provide information on any steps envisaged to improve conditions in detention.
5. Please provide information on any and all investigations that have been conducted into the secret transfer and death of Mr. Sundar Harijan and the results of those investigations and how they comply with international standards including the Minnesota Protocol.

6. Please provide information on all measures and efforts taken or planned to be taken to investigate allegations of acts of torture and other ill-treatment in a prompt, impartial and effective manner, and to ensure that any public officials involved in such acts are prosecuted in line with obligations under international human rights law.
7. Please provide information on measures and safeguards that are aimed at preventing, in the future, occurrences of torture and other ill-treatment pursuant to articles 2 and 16 of the CAT.
8. Please provide information concerning any administrative or disciplinary action taken against any current or former State personnel or governmental authorities in connection with the death of Mr. Sundar Harijan.
9. Please explain why the report commissioned by the Ministry of Home Affairs under the leadership of the Joint Secretary has reportedly not been provided to Mr. Sundar Harijan's family or publicly released.
10. Please explain what measures your Excellency's Government has taken to provide reparation to Mr. Sundar Harijan's family.
11. Please provide information on the measures taken to ensure that all persons belonging to Minority groups, in particular members of the Dalit Caste, are protected from disproportionately custodial deaths, and lack of access to basic amenities in places of detention.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the 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 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.

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.

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

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Special Rapporteur on extrajudicial, summary or arbitrary executions

Ganna Yudkivska  
Vice-Chair on Communications of the Working Group on Arbitrary Detention

Gabriella Citroni  
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Nicolas Levrat  
Special Rapporteur on minority issues

Alice Jill Edwards  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

## 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.

#### *Torture or inhuman or degrading treatment or punishment*

The prohibition on torture and cruel, inhuman or degrading treatment or punishment is absolute and non-derogable (UDHR art. 5; ICCPR arts. 7 and 2(3); Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment arts. 1, 2, 15 and 16).<sup>3</sup> State parties to the CAT must exercise jurisdiction over said offences (art. 5), receive complaints and examine them promptly and impartially (art. 12). At no time shall torture be used to extract information or a confession (art. 1). Victims have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (art. 14).

State parties to CAT have overarching obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment via effective legislative, administrative, judicial and other measures (articles 2 and 16), to educate and train relevant personnel on the prohibition (art. 10) and to keep all rules, instructions, methods and practices relating to interrogation, custody and treatment under systematic review (art. 11).

Attached to the peremptory and absolute prohibition of torture are obligations to investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to protect victims from reprisals and intimidation, and to provide remedies to victims. We refer your Excellency's Government to the comprehensive report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, on all aspects including good practices of States, relating to the investigation and prosecution of acts of torture and related ill-treatment (A/HRC/52/30). Such investigations are recommended to be carried out in line with the United Nations Manual on the Effective Investigations and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Istanbul Protocol" revised 2022 edition).

The standards of conditions and treatment of persons deprived of their liberty are contained in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). All prisoners shall be treated with the respect due to their inherent dignity and value as human beings and the safety and security of prisoners shall be ensured at all times (rule 1). Procedures must be in place to ensure a secure audit trail of files pertaining to prisoners (rule 6) and young prisoners must be kept separate from adults (rule 11).

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<sup>3</sup> See also A/77/502; A/HRC/52/30.

### *Unexplained death in custody*

We refer your Excellency's Government to article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of persons". We also refer to articles 6 and 9 of the ICCPR which establish respectively the right to life and the right to security. We refer in particular to the UN Human Rights Committee general comment No. 36 on article 6, which provides that individuals are entitled "to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity." The right to security of person refers to protection against physical or psychological injury, or physical and moral integrity.

In relation to the protection of the right to life, we underscore the importance of conducting investigations into all suspected unlawful killings in line with international standards, particularly the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)). In this sense, States have an obligation to investigate and punish serious human rights violations, including summary or arbitrary killings (CCPR/C/21/Rev.1/Add.13, para 18). Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties.

Further underscoring the importance of effective investigation, we reiterate that, when the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. Therefore, when an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions (principle 9 of the Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions).

The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriate regular monitoring of their health, shielding them from inter-prisoner violence, preventing suicides and providing reasonable accommodation for persons with disabilities (UN Human Rights Committee general comment No. 36). A heightened duty to protect the right to life also applies to juvenile institutions.

### *Record keeping and prisoner transfers*

We refer your Excellency's Government to article 10 of the Declaration on the Protection of all Persons from Enforced Disappearance, which establishes that: 1) any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention; 2) accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned, and 3) an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State

shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

### *Remedies*

In relation to the right to a remedy, the Minnesota Protocol states that “family members of victims of unlawful death have the right to equal and effective access to justice; to adequate, effective and prompt reparation; to recognition of their status before the law; and to have access to relevant information concerning the violations and relevant accountability mechanisms.

Full reparation includes restitution, compensation, rehabilitation, guarantees of non-repetition, and satisfaction. Satisfaction includes government verification of the facts and public disclosure of the truth, an accurate accounting for of the legal violations, sanctions against those responsible for the violations, and the search for the disappeared and for the bodies of those killed. Family members have the right to seek and obtain information on the causes of a killing and to learn the truth about the circumstances, events and causes that led to it. In cases of potentially unlawful death, families have the right, at a minimum, to information about the circumstances, location and condition of the remains and, insofar as it has been determined, the cause and manner of death.”

### *Minorities*

We would also like to note the international standards regarding the protection of the rights of persons belonging to minorities, in particular article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refer to the obligation to protect the existence and the identity of minorities within their territories and to adopt the measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (article 4).