



18 July, 2020

Honourable Attorney General,
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CC:
Mr. Ahmed Shaheed,
Special Rapporteur on freedom of religion or belief
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Urgent Call for the Dropping of All Charges Against Christian Pastor Keshav Raj Acharya

Dear Sir,

We, the undersigned, are a group of individuals and organizations who collectively strive to promote freedom of religion or belief and human rights around the world. We are writing as we are concerned by the Nepali authorities' treatment and arbitrary arrest and detention of Pastor Acharya.

We understand and respect that Nepal - like many countries - is having to deal with the struggle of the spread of the novel Coronavirus. As a result, many countries around the world have had to take several extreme measures. These measures however, should not extend to infringe upon fundamental human rights.

The UN Special Rapporteur on freedom of religion or belief noted that, "The pandemic has caused a flare-up in existing religious intolerance in many countries."¹ The UN High Commissioner Bachelet also recently released a statement expressing alarm at the clampdown of

¹ Office of the High Commissioner on Human Rights, United Nations Special Rapporteur on freedom of religion or belief, *UN expert warns against religious hatred and intolerance during COVID-19 outbreak*, 22 April 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25814&LangID=E> [accessed 24 June 2020].

freedom of expression in Asia during COVID-19 with a disregard in upholding the international principles of “legality, necessity, proportionality” and serving a legitimate public health objective and choosing the “least intrusive” approach required.²

We regret to see this being the case regarding the arbitrary arrest and detention of Pastor Acharya following a statement to his congregation shown on YouTube:

- On 23 March, the Kaski District Police arrested Pastor Keshav Acharya from his home. No arrest warrant was presented to him at the time of arrest until the next day. The arrest warrant accused the pastor of an offence against Public Peace by disseminating false information.
- Pastor Acharya who was held in detention for 16 days, was denied access to meet his family. On April 8 at Kaski District Administration Office, the police accused Pastor Acharya for disseminating false information by making a statement saying “Jesus can cure Corona” and praying for the stop of the Coronavirus in Jesus’ name.³
- On April 8 Pastor Acharya was given bail at 5000 Nepali Rupees. Although, he paid the sum, he was not released.
- A second arrest warrant was handed down to Keshav on 9 April 2020, with a new charge against him for committing an offence relating to religion. The police kept him incarcerated as the case was “under investigation.”
- On 16 April another charge sheet was filed against the Pastor Acharya accusing him of proselytisation by disseminating alleged false information, an offence under Section 158 (1) and (2) of Muluki Criminal Code Act 2074. The Kaski District Court issued an order on 19 April 2020 asking for 500,000 Nepalese rupees in bail. According to a lawyer dealing with the case this amount was, “disproportionate to the penalties”⁴ under both Section 158 (prohibition of proselytization) and Section 156 (outraging religious feeling) of the Criminal code combined.
- Despite paying the exorbitant bail on 13 May 2020, the police rearrested Pastor Acharya from the premises of the Court. A third arrest warrant was handed down to Keshav

² Office of the High Commissioner on Human Rights, UN High Commissioner for Human Rights Michelle Bachelet, Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19 , 3 June 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25920&LangID=E> [accessed 24 June 2020].

³ Keshab Acharya. “Protection in Christ–Keshab Acharya || Nepali Christian Sermon.” Youtube, 22 Feb 2020, available at: <https://www.youtube.com/watch?v=EJucUpdBwRg&t=819s> [accessed 24 June 2020].

⁴ *Keshav Raj Acharya v. Kaski District Court, Kaski District Police Office, Kaski District Attorney Office, Kaski Prison Office, Dolpa District Police Office, Dolpa District Court and Central Police Office Naxal Kathmandu*, Petition of Writ of Habeas Corpus, filed in Supreme Court 2077 Jesh 1 Thursday.

stating that he would be transferred to the Dolpa police station and he was transferred from his hometown in Pokhara to District Police Office in Dolpa for “further investigation.”⁵ On the journey from Pokhara to Dolpa the police had Pastor Acharya transported with his hands behind his back in handcuffs, with limited access to food. He was taken to Dolpa in 26 different vehicles and 10 motorcycles. No reasons were given to Pastor Acharya for the transfer. His wife only found out about his relocation to Dolpa after the fact. Dolpa District is located in a remote part of Nepal which makes both legal access and visits from his family virtually impossible given the nationwide lockdown.

- On 21 May 2020, the office of the District Attorney Dolpa submitted a charge at the Dolpa District court in the allegation of distributing books and pamphlets under Section 158(1) and Section 158(2) of Muluki Criminal Code 2074.
- On 22 May 2020, the Registrar of the District Court Dolpa denied bail to Keshav Acharya and sent him to jail for further trial.
- On 28 June 2020, however, the District Court Judge reviewed the Order issued by the Registrar on 22 May 2020 and decided to temporarily release him on bail amounting 300,000 Nepali Rupees until the final hearing of the case.
- On 30 June 2020, Pastor Acharya was released from Dolpa prison after his lawyer deposited the bail amount.

In summary, a total of three charges have been filed against Pastor Keshav. The authorities handling of the case shows a lack of concern for rule of law and an unlawful limitation of freedom of speech and religion guaranteed by the Nepali constitution.

By first denying the bail applications and then subsequently set exorbitant bail amounts set, are a denial of justice and due process and highlight the failure of the rule of law.

The Police have shown discriminatory practice of the laws by arresting Pastor Acharya directly against Article 17(2a) 18(2) and 26 of the Constitution of Nepal. Pastor Acharya was practicing his freedom of religion and expression afforded to him under the Constitution.⁶

⁵ *Keshav Raj Acharaya v. Kaski District Court, Kaski District Police Office, Kaski District Attorney Office, Kaski Prison Office, Dolpa District Police Office, Dolpa District Court and Central Police Office Naxal Kathmandu*, Petition of Writ of Habeas Corpus, filed in Supreme Court 2077 Jesth 1 Thursday.

⁶ Constitution of Nepal 2015, available at <http://www.lawcommission.gov.np/en/archives/981> [accessed 26 June 2020].

Praying for healing is an integral part of the Christian faith for many as Jesus prayed and gave healing. In addition, the alleged statement by the Pastor did not in any way discourage anyone from seeking medical treatment for the coronavirus.

Nepal is also party to the International Covenant on Civil and Political Rights (ICCPR). Article 18 and 19 of the ICCPR reaffirm Pastor Keshav's right to freedom of religion or belief and freedom of expression. While Article 19 allows for certain restrictions, "these shall only be such as are provided by law and are necessary," they can also not be applied discriminatorily.⁷

The Human Rights Committee have concluded that arbitrary arrest of a person can never be compatible with the restrictions cited in Article 19.⁸ In addition the application of Section 158(1) and (2) of Muluki Criminal Code 2074 does not meet the standards of legality as the laws lack clarity according to Article 15 (1) ICCPR. Therefore, according to Section 9(2) of the Treaty Act of Nepal 1990 if there is any contradiction between international treaty and Nepali laws, the international law prevails.

In Pastor Acharya's case, the authorities applied the law even though his speech was directed to his congregation, "intention of making such conversion" is left to the subjective view of the authorities, the authorities also demanded larger bail amounts than the laws warranted.

It is in the spirit of respect and commitment to international obligations that we urge you as the Attorney General of Nepal, to reaffirm Nepal's commitment to upholding freedom of religion or belief and direct that the wrongful charges against Pastor Acharya be dropped completely.

Left unchecked, the arrests and rearrests of Pastor Acharya will set an unhealthy precedent that will further deteriorate the safeguards promulgated under Article 26(1), restricting the freedom of religion and belief of Christians and other religious minorities for simply expressing basic tenets of their belief.

⁷ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34 , available at: <https://www.refworld.org/docid/4ed34b562.html> [accessed 1 July 2020] para. 26.; Office of the High Commissioner, COVID-19 Response, *Emergency Measures and Covid-19 guidance*, 27 April 2020, available at: https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf [accessed 1 July 2020].

⁸ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34 , available at: <https://www.refworld.org/docid/4ed34b562.html> [accessed 1 July 2020], para. 23; Communication No. 1353/2005, *Njaru v. Cameroon*, Views adopted on 19 March 2007.

We look forward to hearing back from you and wish you well in the continuing efforts to uphold human rights and bring lasting peace to Nepal.

Respectfully,

UNDERSIGNED

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Executive Director

Union of Councils for Jews in the Former Soviet Union

Ann Buwalda
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Jubilee Campaign

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INTERNATIONAL RELIGIOUS FREEDOM ROUNDTABLE

ORGANIZATIONS



CESNUR (Center for Studies on New Religions)



Church of Scientology National Affairs Office



Healing For The Nations



The International Multi-Faith Coalition (I.M.F.C.)

Intellectual Muslims Association of Nepal (IMAN)



International Panel of Parliamentarians for Freedom of Religion or Belief (IPPFoRB) - Nepal Chapter, Secretariat



Pokhara Baptist Church

West Papua Human Rights Center