

# **Nepal School Moots on Human Rights**

## **Supreme Court of Eastores**

Welfare for all

Vs.

Office of Prime Minister et. al.

2021

**Subject: Mandamus and other related order in the case  
concerning KVIN-33**

**Organizer:**

**Kathmandu School of Law**

1. Easteros is a federal democratic republic country with a parliamentary system of governance. It has a population of 25 million. It is currently classified as a least developed country. The Easteros Labour Party and the National Party of Easteros are the most popular political parties of Easteros. The country adopted a new Constitution in 2015. A national election was held in January 2017, in accordance with the Constitution of Easteros. The Easteros Labour Party obtained a landslide majority in the House of Representatives by securing 195 seats. The chairperson of the Easteros Labour Party, Ms. Lila Pradhan, was elected as the Prime Minister. The functions and terms of the government are as specified in the Constitution of Easteros.
2. The Easteros Labour Party was constituted in 2010, under the guiding principle of socialism. The party won the popular vote in a relatively short span of time because of its appealing manifesto and an effective political campaign, through which the party promised to transform Easteros into an actual welfare state. It had expressed commitments to develop the education, health and employment sectors of Easteros, and to decrease corruption and increase government transparency.
3. In the following years, there were mixed public opinions about the government's performance, especially the delivery of its election commitments. News media and non-governmental organizations reported absence of remarkable statistical change in the overall indicators of quality of life in the span of around two years. In December 2018, the Prime Minister stated that her government was entrusted with a complex responsibility to bring about massive institutional reforms within the government, whose fruits will ripen soon. In January 2019, it was reported that Easteros climbed 11 spots up in the Global Corruption Index.
4. On 7 January 2019, WHO announced the outbreak of a coronavirus within the Republic of Dorme. As verified by WHO, the virus is clinically similar to SARS, including in respiratory transmission. However, it is more contagious than SARS. The virus is more harmful to those who have a weak immune system. It is characterized by symptoms such as fever, nausea and shortness of breath. In extreme cases, the oxygen level decreases significantly in the body, causing brain damage and death of a person.

5. By the end of January 2019, related cases were reported in many countries around the world. In 30 January 2019, WHO declared the virus as a Public Health Emergency of International Concern. The government of Easteros declared that it was performing targeted tracing and testing. No case was detected in Easteros. On 11 February 2019, the coronavirus was named KVIN-33. WHO recognized KVIN-33 as a pandemic on 11 March 2019. It released several pandemic preparedness and response guidelines. It recommended all public to take proper safety measures such as cleaning hands frequently, wearing masks and limiting social gathering, and recommended all countries to disseminate and enforce such safety measures. It also recommended countries to impose quarantine, isolation, and travel restrictions if required, and to do everything feasible to thoroughly and effectively implement the WHO International Health Regulations.
6. On 12 March 2019, the government of Easteros announced that it had started implementing WHO's recommendations, and that international and domestic travel would not be restricted at that moment. The first 20 cases of KVIN-33 in Easteros were traced in June 2019 in the country's capital, Riverland. The source patients were traced back to a return flight from Doha, Qatar. The government immediately suspended all international and domestic flights. A nationwide lockdown, exceptt for essential service providers and workers, was imposed till 5 October 2019. The government announced that strict action would be taken against large social gathering of more than 10 people, except those residing together. While at public places, masks were made compulsory and physical distance of at least 6 feet from another individual, whenever feasible, was recommended.
7. In the following months, many countries around the world abandoned blanket quarantine and adopted case-specific quarantine, as blanket quarantine seemed to negatively affect the livelihood of the people and the country's economy. Countries started conducting rapid tests of KVIN-33 within their territories to determine where quarantine should be imposed. Easteros lagged behind in such measures. The national lockdown was extended repeatedly. Non-governmental organizations and media reported that the country's employment sector had shrunk by almost 40% within four months of lockdown. In a considerable number, youths of Easteros initiated country-wide protest demanding the government to provide more and

better KVIN-33 tests. After 4 days of protests, Prime Minister Lila Pradhan declared that her government would import testing kits from the neighbouring country, Republic of Neeren, but condemned the protest, calling them illegal.

8. On 18 October 2019, Government of Easteros imported 100,000 testing kits from Republic of Neeren, a developed country neighbouring Easteros, worth \$800,000. The kits were distributed to the local authorities, who promptly initiated the tests in their communities. The federal government provided health experts and professionals to the local governments at their request. As a direct result, the number of KVIN-33 cases in Easteros declined sharply by 30 December 2019.
9. The government partially lifted off the lockdown by allowing schools, religious services and home delivery service to resume operation, while continued to restrict large social gatherings, movie theatres, clubs, sports events, and international and domestic travel, among other non-essential services. There were extensive civil and political discussion about the efficiency and transparency of the government's decisions surrounding the testing kits. In an interview on 3 January 2020, the chairperson of the National Party of Easteros, Mr. Dal Bahadur Bishwakarma claimed that \$800,000 was an excessive cost for the quantity of test kits imported from Neeren. He claimed that the Prime Minister was dishing out baseless numbers in order to trick the public into paying more for the test kits. He stated that the government should be more transparent about domestic financial matters. The interview had a bifurcating effect on the public. Some considered it the opposition party's propaganda to weaken the government which was efficiently responding to KVIN 33, while others speculated that the government had committed massive corruption at the cost of public health security. However, the public seemed to generally agree that (around) \$50 was an unreasonably high price for one test.
10. An NGO named Welfare for All was particularly triggered by the media reports about corruption. It launched social media and physical protests against the government's KVIN-33 response. It claimed that the government was not properly ensuring the fundamental right to health of the people of Easteros. From twitter trolls to non-governmental organizations, various forms of public demand emerged asking the government to disclose the exact

expenditure on the import of test kits, and the rationale behind making the people pay \$50 per test kit. The protests by Welfare for All gained momentum.

11. On 4 February 2020, Prime Minister Lila Pradhan issued a public statement that her government had no reservation about disclosing the test kit import expenditure, and iterated that her party has focused on government transparency since its inception, and would continue to do so. Additionally, she condemned Mr. Dal Bahadur Bishwakarma's interview, warning if the opposition continued to give out such inflammatory baseless allegations, her government would have no choice but to file a case of defamation against the party leaders.
12. On 5 February 2020, Welfare for All sent their officer, Muhammad Waqar, to the National Information Commission to obtain information regarding the test kit import expenditure. There was no response from the Commission. On the second instance of inquiry, the Commission replied that it was unable to provide any information at that moment. The content of the Right to Information Act, 2007 and Right to Information Rules, 2008 of Easteros and Nepal are identical. These laws require the respective Information Commission to release information of public concern, when requested by the public.
13. By September 2020, a KVIN-33 vaccine developed by a globally reputed company registered in the Republic of Neeren had already been approved for mass use and even export. Easteros signed an agreement to import its first 50,000 vaccine kits with the same company through which it imported the test kits. Lockdown was terminated in Easteros with hygiene and physical distancing measures still in force. Restrictions in international travel were curtailed.
14. The vaccine kits were transported via road. Trained medical professionals from Neeren visited Easteros upon the latter's invitation to explain the process of storing and administering the KVIN-33 vaccine.
15. WHO has verified the Neeren KVIN-33 vaccine as safe and effective. One independent scientific study which found a single dose of the Neeren KVIN-33 vaccine to be 85% effective

called its finding inconclusive. Other independent scientific studies have clarified that a vaccinated person can develop mild and temporary allergic reaction to any variety of KVIN-33 vaccine, and instances of severe allergic reaction among healthy individuals are rare. However, they warn that the probability of a severe allergic reaction is significant if a vaccine is stored or administered incorrectly.

16. Varieties of KVIN-33 vaccines around the world have different storage and administration instructions. Similarly, the manufacturers of the Neeren KVIN-33 vaccine have provided a detailed Direction for Use, including the following extracts:

- a. *The vaccine should be stored at 2-8 C °, otherwise it may be useless, and/or may pose additional health risks to the vaccine patient.*
- b. *A vaccine patient should be advised not to consume alcoholic substance 24 hours before and after the administration of the vaccine.*
- c. *Allergic reactions such as mild headache and nausea within the first 48 hours of the administration of the vaccine are normal. If the symptoms persist or exacerbate, one should seek medical care immediately.*

17. The directions led to a general sense of apprehension towards the vaccine among the public of Easteros. Journalists, medical and health experts and scholars, and NGOs including Welfare for All urged the government of Easteros, through various platforms, to ensure a high level of precaution in the storage and administration of the vaccine, and not to initiate the process without sufficient preparation. The National Party of Easteros issued a statement asking the government to show restraint and caution, but expressed scepticism towards the government's level of competence regarding the same.

18. On 2 October 2020, the government of Easteros decided to begin the first phase of vaccine administration from 15 October 2020. Health professionals of Easteros were provided a week-long orientation by health professionals from Neeren. Following that, every leading national television channel disseminated government sanctioned information regarding the vaccine, its side effects, cost and vaccination procedure. Government run national television channel broadcasted the information twice a day before the 8 am and 8 pm daily news for 2 consecutive days.

19. On 15 October 2020, vaccine administration was initiated in all the 6 districts of Easteros, Riverland, Crownland, Vale, Sindhu, Lakha and Kotwanu. Riverland, Crownland, Vale and Kotwanu each have significantly developed infrastructures and services from a national perspective, including health care, transportation, electricity, communication and internet, whereas those in Sindhu and Lakha are relatively less developed. Both have one hospital each in a proper sense, and experience frequent power cuts and slow internet.
20. 5000 persons around the country were vaccinated on 15 October 2020. Almost all of them were health care providers, frontline workers and the frailest of the elderly. 100 persons vaccinated in Sindhu and Lakha reported severe headache, nausea or rashes in the body within 2 days of vaccination. In the following 2 days, the number rose to 200. In Riverland, Crownland, Vale and Kotwanu, 20 cases of mild allergic reactions were recorded, which disappeared by the 3<sup>rd</sup> day of vaccination. However, cases in Sindhu and Lakha became serious by the day. On 18 October 2020, 20 of those vaccinated in Sindhu and Lakha had to be hospitalized.
21. This development caused uproar among the people in Easteros. The government withheld the second phase of vaccination scheduled to begin on 27 October 2020, and stated that it was investigating the reasons and factors behinds serious allergic reactions among vaccinated persons. Leaders of the National Party of Easteros called the investigation a deception, publicly demanded for its particulars, and launched a scathing campaign against the government that transgressed claims of insufficient preparation and negligent behaviour, and ventured into trolling Prime Minister Lila Pradhan on a personal level.
22. Members of Welfare for All and other NGOs visited the vaccine patients admitted in ICU, and provided their family a nominal amount for the patients' medical expenses. Welfare for All conducted its own informal investigation regarding the vaccine administration in Sindhu and Lakha, including interview of several vaccinated persons. It found the following:

- a. More than 50% of the elderly interviewees had not accessed the vaccine administration related information disseminated by the government due to varying factors such as power cuts and lack of access to television or internet.
  - b. The vaccine kits used in Sindhu and Lakha were stored and delivered in a single vehicle. The refrigerator inside the vehicle in which the vaccine kits were stored was malfunctioning continuously during the delivery. The person who travelled in the vehicle to monitor the delivery was not a professional trained about the storage safety measures, rather was a local security guard at the Office of the Prime Minister.
23. Further, the Chief District Officers of Sindhu and Lakha also released a joint statement admitting that they had the willingness to adopt a high standard safety measures in the administration of the vaccine, but were constrained by insufficient resources and challenges in coordination of an unprecedented circumstance difficult to manage and control.
24. Welfare for All sent a letter of concern to the Office of the Prime Minister encapsulating the findings of its investigation. It expressed a belief that its findings would aid the government investigation, implored to make the government investigation findings as expeditious as possible and transparent, to provide appropriate compensation to the victims, and to implement a safer vaccination strategy in the future.
25. On 1 November 2020, Prime Minister Lila Pradhan announced that the government had completed its investigation which also included consultations with the manufacturer of Neeren KVIN-33 and the distributor of the same to Easteros. She assured that all necessary adjustments had been made on the basis of the investigation findings, and that the government would safely begin the second phase of vaccine administration from 15 November 2020. The Office of the Prime Minister's released a follow up statement assuring that better information dissemination plan had been implemented, including local level awareness drives and a more detailed on spot medical counselling before vaccination. It also assured that concerned local authorities, health professions and delivery personnel had been briefed about implementing

revised safety measures, but did not release the information in public domain. The government stayed firm on its decisions despite public apprehension and political opposition.

26. Meanwhile, 2 vaccine patients being treated in ICU died on 5 November 2020, one of whom was a doctor at the hospital in Sindhu. The public was enraged. Sporadic protests broke out in different parts of Riverland, mostly including people who were outspoken and active about KVIN-33 related issues in social media.

27. On 7 November 2020, Welfare for All filed a writ petition in the Supreme Court of Easteros against the Office of the Prime Minister, Ministry of Health and Population and National Information Commission, pursuant to articles 46 and 133(2) of the Constitution of Easteros, invoking certain fundamental rights guaranteed by the Constitution of Easteros and the Public Health Service Act (2018) of Eastores, which is identical in content to the Public Health Service Act (2018) of Nepal. The Supreme Court constituted a full bench of 3 judges to adjudge the matter. The respondents submitted their written responses on 17 November 2020, including a challenge to the writ jurisdiction by National Information Commission pursuant to article 133(2) regarding the first claim of the petitioner.

**28. The claims of the petitioner are:**

- a. The respondents have violated the fundamental right to information guaranteed by article 27 of the Constitution, and that the government should be directed to fully disclose information of public interest pertaining to its KVIN-33 response actions.
- b. The respondents have violated the fundamental rights to health guaranteed by article 35 of the Constitution, the fundamental right to dignified life guaranteed by article 16 of the Constitution, and the fundamental right to a clean and healthy environment guaranteed by article 30 of the Constitution.
- c. The government is liable to pay compensation to the victims, including to the family of deceased patients.

**29. The claims of the respondents are:**

- a. The petitioner has not exhausted an available legal remedy in obtaining information from the National Information Commission, hence the Supreme Court cannot exercise its writ jurisdiction in this issue. In other issues, the respondents have not violated the fundamental right to information guaranteed by article 27.
  - b. The respondents have not violated the fundamental rights to health guaranteed by article 35 of the Constitution, the fundamental right to dignified life guaranteed by article 16 of the Constitution, and the fundamental right to a clean and healthy environment guaranteed by article 30 of the Constitution.
  - c. The government is not liable to pay compensation to the vaccinated people who encountered serious allergic reaction to Neeren KVIN-33 vaccine, or the family of the deceased vaccine patients.
30. Eastores is a state party to the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and all other core human rights treaties ratified by Nepal. It is also a state party to the Vienna Convention on Laws of Treaties, 1969. Its judicial and legal system functions in a manner similar to those of Nepal. The Constitution of Easteros is identical to the Constitution of Nepal.

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