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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24) G/SO 214 (89-15)
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13 June 2013

Excellency,

We have the honour to address you in our capacity as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 15/23, 16/4, 15/21, 16/5, 16/23, and 16/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **violent dispersal by law enforcement authorities of peaceful demonstrations organized by Kamlari activists, with a view to ensuring accountability for the killing of a 12-year old Kamlari girl in Dang in March 2013, and protesting more generally against the Kamaiya traditional system of bonded labour in place in several parts of Nepal.**

According to the information received:

From 31 May to 2 June 2013, around 60 freed Kamlaris were reportedly holding a peaceful sit-in protest in front of the southern gate of the Singh Durbar, the Chief Administrative Center in Kathmandu, when they were violently dispersed by the police. According to reports, police officers beat the protestors with batons, punched and kicked them, causing serious injuries to their heads, arms, and shoulders. 10 protestors reportedly fell unconscious, and 8 sustained minor injuries who were treated in different hospitals. It is further reported that 8 female protestors were sexually assaulted by police forces who beat them on their breasts

and genitals. 42 protestors were arrested in the course of the police operation, and released after five hours. It is also reported that some police officers stole money and jewelries from the protestors.

On 3 June 2013, police forces brutally dispersed a peaceful protest by Kamlari activists in Dang. Four activists lost consciousness, and others were severely injured.

On 4 June 2013, three and six Kamlari protestors were reportedly injured by the police in Kailai and Kanchanpur respectively when the police dispersed peaceful demonstrations in which they were taking part. 50 protestors were arrested in Kanchanpur, and subsequently released in the evening.

Grave concerns are expressed that the excessive use of force against, and the arrest and detention of, peaceful Kamlari protestors may be linked to their legitimate human rights activities, in the exercise of their rights to freedom of peaceful assembly and of opinion and expression. Further concerns are expressed for the physical and psychological integrity of Kamlari activists, in particular women defenders, who continue protesting throughout the country.

While we do not wish to prejudge the accuracy of these allegations, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We would also like to draw the attention of your Excellency's Government to principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment" (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

We would also like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Right (ICCPR), which provides that "[e]veryone shall have the right to freedom of expression; this right 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.”

Similarly, we would like to refer your Excellency's Government to article 21 of the ICCPR, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

In addition, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In this context, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration and in particular to article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In addition, we would like to refer to the 2006 report to the General Assembly of the Special Representative of the Secretary-General on the situation of human rights defenders (A/61/312) and in particular to paragraph 98 which states that “in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials”.

Furthermore, we would like to draw the attention of your Excellency's Government to article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women. We would also like to recall article 4 (c) and (d) which notes the responsibility of states to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, states should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

Furthermore, we would like to draw the attention of your Excellency's Government to the Agreed Conclusions of the Commission on the Status of Women adopted in March 2013, whose paragraph 23, expresses deep concern about violence against women and girls in public spaces, including sexual harassment, especially when it is being used to intimidate women and girls who are exercising any of their human rights and fundamental freedoms. The Commission urges governments to, inter alia: (x) Prevent, investigate and punish acts of violence against women and girls that are perpetrated by people in positions of authority, such as teachers, religious leaders, political leaders and law enforcement officials, in order to end impunity for these crimes; ... (z) Support and protect those who are committed to eliminating violence against women, including women human rights defenders in this regard, who face particular risks of violence.

We would also like to recall that the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which Nepal ratified on 22 April 1991, obligates the State to take all necessary measures to combat discrimination on grounds of sex and to respect, protect and fulfill women's human rights. We would like to draw your attention to General Recommendation 19 of the CEDAW Committee which has indicated

that “Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. ... The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence. 7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. ... 8. The Convention applies to violence perpetrated by public authorities.

Furthermore, we would like to draw the attention of the Government to Article 22(2) of the UN Declaration on the Rights of Indigenous Peoples which stipulates that States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination. In addition, the Commission on Human Rights Resolution 2005/41 on the Elimination on Violence against Women calls on States to address the specific circumstances facing indigenous women and girls in relation to gender-based violence, especially sexual violence, arising from multiple, intersecting and aggravated forms of discrimination, including racism, paying particular attention to the structural causes of violence. In this respect the Special Rapporteur recalls Article 21(2) of the UN Declaration on the Rights of Indigenous Peoples, which recognizes that States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of the economic and social conditions of indigenous peoples, and that particular attention shall be paid to the rights and special needs of women, youth and children, among others.

We deem it appropriate to make reference to Article 32 of the International Convention on the Rights of the Child which provides that States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

Moreover, since 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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?

2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the victims or the family of the victims.
6. Have measures been taken to make sure that training and education of members of the police forces include clear directives on their legal obligations to respect and protect the rights of human rights defenders, in particular women defenders, to freedom of expression and peaceful assembly, and to ensure that women in general and indigenous women and girls in particular enjoy full protection and guarantees against all forms of violence and discrimination.

We undertake to ensure that your Excellency's Government's response is reflected in the report we will submit to the Human Rights Council for its consideration.

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

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against women in law and in practice

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