

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**Mandates of 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; the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

REFERENCE: UA G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24) Truth (2011)  
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Excellency,

We have the honour to address you in our capacity as 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; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5, 16/23, 16/16, and 18/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **alleged threats made in various media against members of the Accountability Watch Committee (AWC) and an alleged physical attack against another human rights defender.**

The AWC is a forum for human rights defenders working on the issue of impunity in Nepal, including in relation to transitional justice. Its members include Ms. **Mandira Sharma**, who is also the Chairperson of the Advocacy Forum-Nepal, Mr. **Subodh Pyakhurel**, chairperson of the Informal Sector Services Centre (INSEC), Mr. **Kanak Mani Dixit**, journalist and editor of Himal magazine, Mr. **Sushil Pyakhurel**, former member of the National Human Rights Commission (NHRC) and currently Chair of AWC, Mr. **Charan Prasai**, Coordinator of the Joint Forum for Human Rights, and Mr. **Kapil Shrestha**, a former member of the NHRC.

It is reported that the AWC played a leading role in gathering evidence, preparing the case and consequently providing information to the UK authorities about Colonel Kumar Lama of the Nepalese Army, resulting in his arrest in the UK. The charges

brought against Colonel Lama on 4 January 2013 under universal jurisdiction law pertain to alleged acts of torture perpetrated in Nepal in 2005. Reportedly he is to stand trial for them in June 2013. AWC members reportedly also played an important role in the arrest of five Maoist cadres in relation to the killing and torture of a journalist in 2004.

One of the subjects of this communication is Mr. **Yadav Prasad Bastola**, the executive director of the Human Rights Alliance. He is the author of an article published in the newspaper 'Pahichan Daily' on 27 February 2013, calling for the perpetrators of the killing of a secondary schoolteacher on 3 May 2002 to be brought to justice. The teacher is thought to have been killed by Maoist cadres after being accused of spying against them. After the killing took place posters were allegedly put up by Maoist cadres detailing the reasons.

According to the information received:

The weekly magazine Lal Rakshak allegedly published an article containing various allegations against Ms. Sharma, Mr. Subodh Pyakhurel and Mr. Dixit, naming them as hostile to the Maoist political agenda and the peace process, as well as accusing them of crimes including corruption, labour exploitation and sexual violence. The article reportedly also mentioned Messrs. Sushil Pyakhurel, Charan Prasai and Kapil Shrestha.

It is alleged that the Lal Rakshak article also contained a paragraph outlining the result of a survey the magazine had undertaken on what ought to be done about the persons named in the article. Reportedly, this included quotes by representatives stating that legal action against Ms. Sharma, Mr. Subodh Pyakhurel and Mr. Dixit would be fruitless due to their access to foreign funds, and that "people's action" should be taken against them.

"People's action" in this context is understood to refer to punishment through violent attacks. It was allegedly used with this meaning during the violent conflict in Nepal during the 1990s and 2000s.

Similar articles were allegedly printed in a number of local newspapers, including the 21 January 2013 edition of Gandaki Awaj (published in Pokhara), the 22 January 2013 edition of Taja Khabar (published in Rupandehi), and the online news portal Onlinekhabar.

It is also alleged that calls for "people's action" were repeatedly made on FM radio stations across Nepal against the above-mentioned members of AWC.

Sources further inform that in an interview with Krishnasenonline, a Maoist-affiliated news portal, a spokesperson for the Unified Communist Party of Nepal-Maoist (UCPN (Maoist)) mentioned NGOs "who prefer dollars to the nation" and who had "called imperialist Britain to have Colonel Kumar Lama arrested" in exchange for dollars. The spokesperson allegedly made explicit mention of Ms.

Sharma and the Advocacy Forum as having sent information to the British and so gotten Colonel Kumar Lama arrested.

Reports have also been received of alleged harassment of Ms. Sharma and Advocacy Forum-Nepal. It is alleged that on 14 February 2013, Ms. Sharma received a warning from a government official that she should be careful, implying that the army might hinder Advocacy Forum's work. In addition to this, Advocacy Forum reportedly received a letter from the District Administration Office soon after the arrest of Colonel Lama stating that an investigation would be undertaken against the organisation.

Reportedly, a physical attack against Mr. Yadav Prasad Bastola took place on 28 February 2013, around 19:30, as he was walking back from Birendranagar to Vidhyapur Village Development Committee (VDC)-04, in Surkhet district, where he resides.

Sources inform that as Mr. Bastola was walking through the jungle along this route, he noticed four unidentified persons following him, with covered faces. Two of the persons then reportedly blocked his way and proceeded to ask him whether he had written an article for the local newspaper 'Pahichen Daily', consequently accusing him of "trying to send the Maoists to jail".

It is alleged that the four persons were then joined by two other unidentified persons. They allegedly grabbed Mr. Bastola's hand and neck and proceeded to beat his back with iron rods multiple times. Mr. Bastola reportedly fell to the ground while the beating with the iron rods continued and the assailants started to kick him with their boots. It is reported the assailants fled when two motorcycles approached the scene, allowing Mr. Bastola to escape.

Sources inform that Mr. Bastola was helped by villagers and police in a nearby village and was consequently taken in a police van to the local hospital and later to Deuti Nursing Home for treatment. He was reportedly discharged the next day. It is reported that Mr. Bastola filed a First Information Report of the event on 1 March 2013 at the District Police Office in Surkhet. It is reported the police is still conducting an investigation.

Deep concern is expressed at the allegations that human rights defenders, including those working on transitional justice issues, are being targeted with threats, assaults and stigmatising remarks undermining their legitimacy, and that they may find themselves at risk of harm to their physical and psychological integrity for their legitimate and peaceful efforts to combat impunity, particularly in the light of allegations that the threats mentioned above appear to be linked to a political party in government. Further concern is expressed at reports that Ms. Sharma and the Advocacy Forum are the subject of harassment on the part of local officials in the light of reports that non-governmental organisations in Nepal whose projects depend on foreign funding are subject to annual renewals of their registration at District Administration Office level.

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. 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 (CAT).

In this connection, we would like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished.

We would also like to draw your Excellency's Government's attention to paragraph 8 (a) of Resolution 16/23 of the Human Rights Council, which states that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture".

We would further like to refer your Excellency's Government to article 19 of the ICCPR, which provides that "Everyone 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 also like to remind your Excellency's Government of article 22 of the ICCPR, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

Moreover, 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."

Furthermore, we wish to draw your Excellency's Government attention to the

2005 Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity. Principle 2 stipulates that “[e]very people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations”.

In this sense, transitional justice measures aimed at redressing past human rights violations cannot strive in a climate which discourages human rights defenders, alongside victims, to speak out and seek the truth. On the contrary, such a climate may be akin to one of impunity, and therefore not conducive to strengthening the rule of law, contributing to non-recurrence of past violations and to potential reconciliation.

In connection to the allegations indicating that the threats made in various media against members of the Accountability Watch Committee (AWC) and an alleged physical attack against Mr. Bastola are linked to their human rights work, 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:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- 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.
- article 13 which stipulates that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means, in accordance with article 3 of the declaration.

We would also like to recall that in the Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, it is stated that States must take steps to ensure that persons involved in investigations [of cases of disappearance], including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal. It also stated that States must take steps to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

Further, we would like to recall that in its resolution 21/4, adopted without a vote, the Human Rights Council urged States to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation, persecution, reprisals or ill-treatment to which they might be subjected, paying special attention to women as relatives of disappeared persons in the context of their struggle to resolve the disappearance of members of their families.

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, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for

your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above 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, 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 explain what measures have been taken to ensure the safety and physical and psychological integrity of all human rights defenders mentioned above, in the light of the attacks against Mr. Bastola and the public threats against the members of the AWC understood to constitute incitement to violence against them.
6. Please explain what measures have been taken to ensure that human rights defenders in Nepal are free to carry out their legitimate and peaceful activities in defence of the human rights of others in a conducive environment without fear of violence or other restrictions.

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

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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opinion and expression

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