

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

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

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

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (33-27)
NPL 1/2011

30 August 2011

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 17/5, 16/4, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning acts of intimidation and death threats against Mr. **Jitman Basnet**. Mr. Basnet is a journalist, human rights lawyer and founder of "Lawyers' Forum for Human Rights"(LAFHUR), a volunteer run legal aid organisation which focuses on addressing impunity cases relating to human rights abuses allegedly carried out during the past conflict in the region of Solokhumbu.

Mr. Basnet has been the subject of previous communications sent by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Representative of the Secretary-General on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the independence of judges and lawyers. These joint communications were dated on 16 February 2004, 26 January 2005, 12 June 2007 and 24 August 2007. We acknowledge receipt of those responses received to communications transmitted by your Excellency's Government.

According to the information received:

On 7 July 2011, Mr. Basnet was followed by two men on a motor bike in New Baneshwor, Kathmandu. They reportedly tried to overtake him a number of times; however the road was too narrow for two vehicles to pass next to each other. According to information received, when Mr. Basnet was forced to slow down due to a traffic jam, one of the perpetrators dismounted from his motorbike and shouted to the other to grab Mr. Basnet. At this point, Mr. Basnet allegedly managed to force his way out of the traffic and to lose the individuals.

It is reported that later that day, Mr. Basnet filed a First Information Report with the police regarding the incident.

On 21 June 2011, Mr. Basnet received a death threat call to his mobile phone from a number which has allegedly been traced to a public telephone in Bhaktapur. According to the information received, Mr. Basnet received a number of calls since that date from unknown numbers which he did not answer.

On 18 June 2011, Mr. Basnet received a threatening phone call to his mobile phone number. The caller allegedly asked him where he was and informed him that the identity of the caller would soon be revealed to him, at which point Mr. Basnet hung up the phone.

On 15 June 2011, Mr. Basnet attended a televised public event called “Forum for Justice and Truth.” At the event, political parties and NGOs discussed Bills concerning reform of the powers of the Truth and Reconciliation Commission and the Disappearances Commission. It is reported that during the forum, Mr. Basnet was outspoken regarding impunity and accused political leaders of negligence. He also reportedly asked embassies to refuse visas to alleged perpetrators as well as to provide shelter to threatened human rights defenders.

Since January 2011, Mr. Basnet has been assisting family members of victims to file First Information Reports concerning cases of extra-judicial killings carried out during the conflict period. According to information received, it is estimated that there are more than 80 similar cases in the Solukhumbu district, that remain unreported due to the remote location of the district and a lack of civil society structure.

In April 2011, Mr. Basnet reportedly attempted to file a report in which he alleged that the perpetrators of the cases of extra-judicial killings were high ranking police and army officials. However, he was unable to file a report due to the action taken by the deputy superintendent of police.

Concern is expressed regarding the physical and psychological integrity of Mr. Jitman Basnet in light of the fact that he has been subjected to acts of intimidation and death threats in the past weeks. Further concern is expressed that these acts of intimidation may be directly related to his human rights work and in particular his decision of assisting family members of victims to file First Information Reports concerning cases of extra-judicial killings which occurred during the period of conflict.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of Mr. Jitman Basnet.

We would like to refer your Excellency's Government to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide "effective protection through judicial or other means ... to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats". We wish to stress that everyone has the fundamental right to life and security of the person as set forth in article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which Nepal acceded to on 14 May 1991.

We urge your Excellency's Government to adopt measures to provide protection to Mr. Jitman Basnet. In this regard, the Human Rights Committee has noted in the case of William Eduardo Delgado Páez v. Colombia, (Communication No. 195/1985) that "Although in the Covenant the only reference to the right of security of person is to be found in article 9, there is no evidence that it was intended to narrow the concept of the right to security only to situations of formal deprivation of liberty. At the same time, States parties have undertaken to guarantee the rights enshrined in the Covenant. It cannot be the case that, as a matter of law, States can ignore known threats to the life of persons under their jurisdiction, just because he or she is not arrested or otherwise detained. States parties are under an obligation to take reasonable and appropriate measures to protect them. An interpretation of article 9 which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction

would render totally ineffective the guarantees of the Covenant". This was reiterated in the case of Luis Asdrúbal Jiménez Vaca v. Colombia, (CCPR/C/74/D/859/1999).

We would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, 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."

In this connection, 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, 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 9, para. 3, point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms; and

- 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.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Jitman Basnet 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.

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 Mr. Jitman Basnet 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 Mr. Basnet?
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 indicate what measures have been taken to ensure that the physical and psychological integrity of Mr. Basnet is guaranteed.

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.

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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders