

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

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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (89-15)
NPL 4/2012

14 September 2012

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 situation of human rights defenders; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 16/4, 16/5, 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 alleged intimidation of and threats against women human rights defenders and members of the **Women's Rehabilitation Centre Nepal (WOREC Nepal)** and **Mitini Nepal**, following their support of a victim of domestic violence known as **X**.

Founded in 1991, WOREC Nepal is a leading women's rights organization, which works on issues such as human trafficking, violence against women, the protection and recognition of women human rights defenders, and the economic, social and cultural rights of women and other marginalized groups. Mitini Nepal is an organization working for the rights of sexual minorities including lesbian, gay, bisexual, transsexual and intersex (LGBTI) persons, with a particular focus on the rights and welfare of lesbian women.

Case of X

According to the information received, X, a 30 year old woman, married in February 2001 and was the victim of domestic violence for three years. She left her husband, filed for a divorce on 4 June 2012, and moved in with a friend as her parents did not support her decision. During this time, her husband searched for her whereabouts and threatened those who supported her in her attempt to get a divorce. On 30 June, X sought the assistance of WOREC for shelter for her and her ten-year-old daughter. During the first divorce hearing on 4 July in

Kathmandu District Court, a group of 30 individuals arrived in a minibus and entered the courtroom. After reportedly insulting X and human rights defenders from WOREC, who were assisting her in her case, they forcibly removed X from the courtroom. Sources indicate that in spite of a heavy police presence in the court, the police did not respond to the incident.

Reports state that X's whereabouts remained unknown for four days, during which WOREC sent letters to the National Human Rights Commission, the National Women's Commission, the Office of the Prime Minister and the police to urge them to locate her. On 7 July, in a meeting organized with the Superintendent of Kathmandu District, WOREC was informed that X was in the rehabilitation centre, Tek Bahadur Rayamajhi Arogya Mandir, as she was judged to be mentally unsound as a result of declaring that she was a lesbian.

Reportedly, human rights defenders from the organizations Mitini Nepal, Blue Diamond Society, Nepal Women's Commission, and the National Alliance of Women Human Right Defenders subsequently formed a committee to support X and were eventually allowed to visit her in the rehabilitation centre. During this meeting, X allegedly stated that her family had portrayed her as being mentally ill for declaring that she was a lesbian, and requested the assistance of the human rights defenders. After leaving the rehabilitation centre, X returned to her husband's house. One month later, she contacted members of Mitini Nepal to inform them that she had been threatened by her husband and her family and had been taken to a number of faith healers to cure her alleged mental illness. X reportedly fled her home on 26 August and went to live with her partner, both of whom are reportedly fear for their safety.

Alleged harassment of members of Mitini Nepal and WOREC Nepal

According to the information received, on 28 August 2012 at approximately 4:00 p.m., police surrounded the offices of Mitini Nepal in Lazimpat, Kathmandu. After their withdrawal, several plain-clothes individuals remained outside the offices, to allegedly monitor its activities. Fearing for their safety, staff of the organization sought shelter in the offices of WOREC. President of Mitini Nepal, Ms. **Laxmi Ghalan**, has reportedly received a number of threatening phone calls, warning her that if she continues to support X, her offices will be vandalized and she will be abducted. Reports also indicate that on 28 August, a room rented by Ms. Laxmi Ghalan was searched by police. Sources report that due to the alleged threats and intimidation, the offices of Mitini Nepal are currently closed in order to ensure the safety of staff.

On 30 August 2012 at 7:30 p.m., a group of approximately 40 individuals, claiming to be relatives of X, allegedly forced their way into the offices of WOREC in Balkumari, Lalitpur and carried out a raid. The group were reportedly searching for X and Ms. Laxmi Ghalan, whom they accused of attempting to traffic X, and were accompanied by seven police officers, who did not enter the offices. Following the raid, WOREC informed the police of the incident and

requested security. Sources indicate that police visited the offices of WOREC on 31 August and stated that regular police patrol of the office would be carried out to ensure the protection of staff.

Also on 30 August, four police officers reportedly visited the offices of Mitini Nepal during various times, accompanied by relatives of X, and allegedly accused staff of hiding X. It is further reported that relatives of X have attempted to evict Ms. Laxmi Ghalan from her rented house, by informing her landowner that she had attempted to traffic their daughter.

Concern is expressed that the alleged acts of intimidation and threats against women human rights defenders and staff of Mitini Nepal and WOREC Nepal may be directly related to their legitimate and peaceful human rights activities, in particular their support of victims of domestic violence and their defence of the rights of sexual minorities. Grave concern is expressed for the physical and psychological integrity of the aforementioned individuals, in particular Ms. Laxmi Ghalan, X and X's partner. Concern is further expressed that the alleged acts form part of a context of increasing intimidation and harassment of LGBTI and women's rights defenders in Nepal.

While we do not wish to prejudge the accuracy of these allegations, 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 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- article 9 paragraph 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.

- article 12 paragraphs 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 wish to recall article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should 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.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 22 April 1991) whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

We would also like to bring to your Excellency's Government's attention, article 4 (o & p) of the United Nations Declaration on the Elimination of Violence against Women which notes that States should recognize the important role of the women's

movement and non-governmental organizations worldwide in raising awareness and alleviating the problem of violence against women, and should, moreover, facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels.

We would also 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 (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."

We would further like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in 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".

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 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 clarify the legal basis of the aforementioned acts of police officers on 28, 30 and 31 August 2012 respectively.
6. Please clarify whether protective measures have been put in place to guarantee the physical and psychological security of Ms. Laxmi Ghalan, X and her

partner, as well as staff members of Mitini Nepal and WOREC Nepal. If no protective measures have been put in place, please explain why.

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.

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences

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