

**Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of  
opinion and expression**

REFERENCE: AL  
NPL 5/2014:

2 October 2014

Dear Mr. Dhungana,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolution 25/2.

In this connection, I would like to bring to the attention of your Government information I have received concerning alleged threats and intimidation against three journalists of Nepal's largest newspaper, Kantipur.

According to the information received:

On 26 August, the Supreme Court allegedly ordered the publishers of Kantipur daily (**Kailash** and **Swastika Siroiha**), its editor (**Sudheer Sharma**) and one of its reporters (**Ghanshyam Khadka**) to appear before court within seven days to record their statements on why they should not be convicted on contempt of court charges. This order was in response to two writ petitions.

The first petition was allegedly filed by advocate Anjani Kumar Pokhrel in May 2013, after Kantipur published critical news reports and opinion pieces about a Kantipur journalist who had been refused permission to enter a court chamber on the ground that he was wearing "inappropriate" clothing. It is reported that the writ petition argues that these articles constituted contempt of court.

The second petition was reportedly filed by advocate Ratna Kumari Shrestha. It concerns two articles published in Kantipur on 14 and 18 June 2014, which were critical of a Supreme Court judgment that released two people accused of smuggling gold on ordinary bail. Shrestha too alleged that these articles were in contempt of court.

Soon after receiving these petitions, a bench of the Court allegedly ordered that both contempt petitions be heard simultaneously, and asked the court administration to submit a report on all news articles, editorials and commentaries relating to the Supreme Court published in Kantipur between 22 April and 25 June.

Reportedly, these contempt cases against Kantipur journalists coincide with a period of deteriorating relations between the judiciary and Kantipur daily. In May 2014, Kantipur and other media outlets expressed criticism of six out of eight individuals nominated by the political parties as Supreme Court Justices.

Allegedly, Kantipur reported, for example, that a Supreme Court bench in 2012 had recommended action against Justice Cholendra Rana for violating procedure in his acquittal of the politician Jaya Prakash Gupta on corruption charges. Similarly, the newspaper reported that another nominee, Gopal Parajuli, had tampered with already issued verdicts and used his influence to release a number of criminals from jail. Justice Parajuli was also on the bench that bailed the two prime accused in the case of gold smuggling.

Despite the criticism, the Parliamentary Hearing Special Committee allegedly endorsed all the nominees, who were sworn in on 27 May 2014. According to reports, at a meeting held that day, the justices expressed their grievances towards their critics, and proposed that contempt of court charges be filed against Kantipur. Reportedly, the Chief Justice, Damodar Sharma, assigned Justice Gopal Parajuli and Justice Cholendra Rana, whose nomination as a Supreme Court justice was criticised by Kantipur in May 2014, to hear the case against Kantipur. The principle of conflict of interest seems to have been ignored in the present case.

The Supreme Court's summons order of 26 August 2014, which is allegedly 11-pages long, catalogues and analyses the news articles published in Kantipur relating to the Supreme Court. It is further reported that the order concluded that Kantipur had been engaged in a deliberate and systematic campaign meant to create mistrust towards the court among the population. According to information received, summons notices are usually no longer than a page. The summons notice to Kantipur seems to many to have already deemed the newspaper guilty of 'contempt of court'.

Allegedly, the Supreme Court has generally taken a prudent approach in contempt of court cases. In the present case, however, judges instructed the court administration to file the contempt petition as a criminal case. It is feared that the judges might wish to pronounce an 'exemplary' judgment on Kantipur, the most widely circulated and vocal newspaper in Nepal, so as to silence criticism from the media in the future. According to some journalists, the Court might have summoned the publishers, editor and reporter from Kantipur to announce a guilty verdict in their presence and order their detention.

The Supreme Court scheduled the hearing on the contempt of case against Kantipur on 18 September 2014, a few days after Kantipur furnished its written replies. Allegedly, it normally takes a few months for the Court to schedule hearings on a case. In the present case, it appears that the Court may pass a verdict on the case very soon.

In addition to the above allegations regarding the Kantipur journalists, the information received alleged that in June 2014, Law Minister Narahari Acharya introduced a Contempt of Court Bill in the parliament-legislature. Article 4 of the Contempt of Court Bill allegedly defines various actions that constitute “contempt of court,” which create a chilling effect on the freedom of speech. Examples of actions found to be contemptuous of court are any act that “could undermine people’s faith towards the court” or that “casts aspersions on the judge for his/her verdict or other acts.” The scope of the acts found to be in contempt of court is allegedly overly broad. Additionally, some of the definitions within Article 4 allegedly lack specificity. The overly-broad scope of the Contempt of Court Bill and the unspecific definitions have the potential to lead to arbitrary interpretations and misuse of such terms to level charges against journalists and citizens who may have legitimate criticisms against judges and their decisions.

In connection to the above alleged facts and concerns, please refer to the Reference to international law provisions, annexed to this letter, which contains a non-exhaustive list of international human rights instruments and standards relevant to these allegations.

Since it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Are the facts referred to above true and accurate?
2. Please provide detailed information on the legal framework that Nepal has adopted to protect freedom of expression and opinion and freedom of press. In particular, please provide information on possible limitations to the freedom of press, including any legislation on contempt of court. Is contempt of court considered to be a crime under Nepalese criminal law?
3. Please provide detailed information regarding any pending legislation regarding contempt of court. In particular, please provide information on the scope and included definitions of any pending legislation, along with limitations to the freedom of press and penalties for violating those limitations incorporated in any pending “contempt of court” legislation. Please provide a copy of the text of such pending legislation.

4. Please provide information on whether a judge who has a conflict of interest with one of the parties to legal proceedings has an obligation to recuse himself/herself or, alternatively, can be recused upon request of the parties concerned.

5. Please provide information on the possible sanctions that could be imposed against the defendants if found guilty of contempt of court?

I would appreciate receiving a response within 60 days.

Given the seriousness and urgency of the allegations, I would like to inform your Government that I am considering issuing a press release on the issues contained herein. The press release would indicate that we have been in contact with your Government to clarify the issues in question.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Dhungana, the assurances of my highest consideration.

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, I would like to refer your Government to article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, which recognise that everyone has the right to freedom of expression and that this right includes “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”.

I would also like to bring to the attention of your Government attention General Comment No. 34 (2011) of the Human Rights Committee, which analyses the normative content of article 19 and the legal obligations that it imposes on States parties to the Covenant.

In this General Comment, the Human Rights Committee stated that a free, uncensored and unhindered press or other media constitutes one of the cornerstones of a democratic society and is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. With regard to the press, article 19 embraces a right “whereby the media may receive information on the basis of which it can carry out its function”.

The Committee considers that free communication of information and ideas about public and political issues is essential, and this implies “a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion”. The public also has a corresponding right to receive media output.

I would also like to refer to paragraph 3 of article 19, which lays down specific conditions under which the right to freedom of expression may legitimately be restricted. These restrictions may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (*ordre public*) or of public health or morals.

The Human Rights Committee observed in its General Comment No. 34 that paragraph 3 “lays down specific conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be ‘provided by law’; they may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality”. The Human Rights Committee considers that it is for the State party to demonstrate the legal basis for any restrictions imposed on freedom of expression.