

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on minority issues**

REFERENCE: UA  
NPL 1/2016:

21 September 2016

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 and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 25/2 and 25/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the criminalization of expression through the arrest and criminal prosecution of Mr. **Bimal Shahi**, Mr. **Prakash Pradhan**, Mr. **Shakti Pakhrin**, Ms. **Banita Dangol**, Mr. **Balkrishna Rai**, Mr. **Philip Tamang**, Mr. **Kiran Dahal**, and Mr. **Bhimsen Tiwari**.

According to the information received:

Mr. Bimal Shahi is the principal of Modern Nepal School, established in Charikot in 2004, which is attended by 450 children from different religious communities; Mr. Prakash Pradhan is the principal of Mount Valley Academy, established in Charikot 32 years ago and attended by over 400 children. Mr. Shakti Pakhrin is a pastor of the Charikot Christian Church in Dolakha, Charikot; Ms. Banita Dangol, Mr. Balkrishna Rai, Mr. Philip Tamang, Mr. Kiran Dahal and Mr. Bhimsen Tiwari are staff from Teach Nepal, a Kathmandu-based civil society organization. All the above-mentioned individuals are Evangelical Christians, which constitutes a religious minority in the country.

On 8 and 9 June 2016, two trauma counselling sessions organized by Teach Nepal were held in Modern Nepal School and Mount Valley Academy. Mr. Shahi and Mr. Pradhan, in their capacity as principals of both schools respectively, granted permit to Teach Nepal to hold the sessions within their school premises. Mr. Pakhrin was involved as a mediator between the schools and Teach Nepal. The sessions sought to address the psychological needs of children who were affected by the earthquakes that hit Nepal in April 2015.

At Modern Nepal School, approximately 200 children representing diverse religious backgrounds reportedly attended the trauma counselling session. The

session organized at the Mount Valley Academy was reportedly attended by 35 Christian children and approximately 15-25 children from other religious communities.

During the trauma counselling sessions, no religious activity or religious teaching took place. However, at the end of the programme, the organisers distributed a gift pack to the children which included a handkerchief and a comic book. The 23 page comic book, entitled The Great Story, explains the story of Jesus. None of the children were forced to take this gift. According to the teachers, the story related to the school curriculum as well.

On 9 June 2016, Ms. Banita Dangol, Mr. Balkrishna Rai, Mr. Philip Tamang, Mr. Kiran Dahal and Mr. Bhimsen were arrested from the road at Satdobato by Charikot police, while they were returning to Kathmandu. It has been reported that the arrest took place without an arrest warrant, which was issued only the following day. On the same day, Mr Prakash Pradhan was allegedly requested by the Chief District Officer to go to the police station, where he was arrested. Mr. Bimal Shahi was arrested by a plain-clothes policeman at Modern Nepal School. On 14 June 2016, Mr. Sahkti Pakrin was arrested by the district police in Charikot.

The above-mentioned individuals were detained for nine days. During the detention, they were called for interrogation by police on several occasions. It is alleged that during the interrogation sessions, the police accused them of converting children to Christianity. Ms. Banita Dangol was interrogated until the late hours of the night and forced to disclose the login details to her emails and laptop to the police, who read her emails. It is reported that Mr. Tamang was slapped and also beaten with boots and Mr. Krishna was beaten with a rod by the police. It is further alleged that they only got access to their lawyer on the 6th or 7th day of the arrest.

After nine days of detention, Ms. Banita Dangol, Mr. Balkrishna Rai, Mr. Philip Tamang, Mr. Kiran Dahal and Mr. Bhimsen were freed on bail after a payment of 10,000 Nepali Rupees (approximately 94 USD) per person, while Mr. Bimal Shahi, Mr. Prakash Pradhan and Mr. Bhimsen Tiwari were released on unconditional bail.

According to the information received, on 16 June 2016, the district level public prosecutor filed a case against the above-named persons under **Chapter 19 Clause 1** of the Nepalese penal code and **Article 26 (3) of the Constitution of Nepal**, prohibiting the propagation of religion with the intent to convert others. If convicted, they may face up to six years' imprisonment.

On 13 July 2016, the Dolakha District Court began taking witness testimony in this case. Subsequent court hearings were held on 1 and 8 August 2016. The final hearing, initially scheduled for 5 September 2016, was postponed by the prosecutor until 21 September 2016.

We express serious concern at the criminalization of expression through the arrest, detention and criminal prosecution brought against Mr. Prakash Pradhan, Mr. Bimal Shahi, Ms. Banita Dangol, Mr. Balkrishna Rai, Mr. Philip Tamang, Mr. Kiran Dahal, Mr. Bhimsen Tiwari and Mr. Shakti Pakhrin. While a government may limit expression in order to protect a legitimate objective, under international human rights law it must demonstrate that the tools chosen to achieve the objective are necessary and proportionate. We express concern that the restrictions in this case are disproportionate and therefore in violation of international human rights law, as established under Article 19 (3) of the International Covenant of Civil and Political Rights (ICCPR), acceded by Nepal on 14 May 2011. We express further concern that the provisions upon which the charges are brought do not meet Nepal's obligations under international human rights law, in particular with respect to the prohibition against discrimination and the right to freedom of expression. We express concern that these provisions may furthermore have a negative impact on the right to freedom of expression as exercised by minority groups. In this regard, we reiterate our concerns raised in our previous communication sent on 24 July 2015 (A/HRC/31/79, case no. NPL 1/2015).

While we do not wish to prejudge the accuracy of these allegations, they appear to be in contravention of the right to freedom of opinion and expression as set forth in article 19 of the ICCPR. This right cannot be restricted unless the high thresholds established by Article 19(3) are met. Article 19(3) requires the State to demonstrate that the tools chosen to achieve a legitimate objective are necessary and proportionate to protect the right or reputations of others or national security, public order, or public health or morals. As interpreted by the Human Rights Committee, the restriction must be "the least intrusive instruments amongst those which might achieve the desired result" (General Comment no.34).

In this respect, we would like to underline the principle enunciated in Human Rights Council 12/16, calling on States to refrain from imposing restrictions which are not consistent with Article 19(3), including on expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups. In this regard, the Resolution highlights that the right to freedom of thought, conscience or religion is intrinsically linked to the right to freedom of opinion and expression, and calls on States to take all necessary measures to put an end to violations of these rights and to create conditions to prevent their recurrence.

The Human Rights Committee in its paragraph 3 of General Comment no. 22 on freedom of thought, conscience and religion states that "article 18 does not permit any

limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one's choice;" while paragraph 4 stresses that "The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. [...] In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications." Paragraph 5 moreover states that "the freedom to have or to adopt a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief."

General Assembly resolution 36/55 of 1981 on the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief provides that the right to freedom of thought, conscience, religion or belief, in article 6 (d) includes the freedom, "To write, issue and disseminate relevant publications in these areas;" and "To teach a religion or belief in places suitable for these purposes" in article 6 (e).

Recognizing that some individuals affected are members of religious minorities in Nepal, we would like to bring to your Excellency's Government attention the international standards regarding the protection of the rights of persons belonging to religious minorities, in particular to article 27 of the ICCPR, that guarantees minorities, inter alia, the right to profess and practice their own religion. Moreover, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities establishes the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end (article 1), recognizes that persons belonging to religious minorities have the right to profess and practise their own religion without discrimination (article 2) and requires States to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1). Furthermore, we would like to refer to the Recommendations of the sixth session of the Forum on Minority Issues on "Guaranteeing the rights of religious minorities" (2013).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) /can be provided upon request.

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. Prakash Pradhan, Mr. Bimal Shahi, Ms. Banita Dangol, Mr. Balkrishna Rai, Mr. Philip Tamang, Mr. Kiran Dahal, Mr. Bhimsen Tiwari and Mr. Shakti Pakhrin in compliance with the above international instruments and standards.

Moreover, as 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. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest, detention and charges against Mr. Prakash Pradhan, Mr. Bimal Shahi, Ms. Banita Dangol, Mr. Balkrishna Rai, Mr. Philip Tamang, Mr. Kiran Dahal, Mr. Bhimsen Tiwari and Mr. Shakti Pakhrin and how these are considered proportionate in line with Nepal's obligations under international human rights law.
3. Please provide details, and where available, the results, of any investigation and inquiry carried out in relation to the allegations of use of force by the police against Mr. Tamang and Mr. Krishna.
4. Please provide information about the legal basis for denying the above-mentioned persons access to a lawyer at the time of their arrest and detention, and how this is compatible with international human rights law.
5. Please provide information about the legal basis for requiring Ms. Dangol to disclose her passwords to her e-mail and laptop. Please explain how this is compatible with Nepal's obligations under international human rights law, in particular Article 17 and Article 19(3) of the ICCPR.
6. Please provide information about measures taken to bring Article 26(3) of the Constitution and Chapter 19 clause 1 of the Penal Code into line with Nepal's obligations under international human rights law, in particular with respect to Articles 2 and 19 of the ICCPR.
7. Please indicate what measures have been taken to ensure that persons belonging to religious minorities, including Evangelical Christians, can exercise freely and without discrimination their right to freedom of religion and belief in Nepal.

While awaiting your reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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

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

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

Rita Izsák-Ndiaye  
Special Rapporteur on minority issues