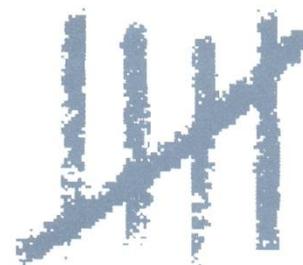


Prime Minister Jhala Nath Khanal
Office of the Prime Minister
Singh Durbar
Kathmandu
Nepal



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

SENT BY FAX AND POST

London, 31 May 2011

Dear Prime Minister,

RE: Arjun Bahadur Lama

I am writing on behalf of the Bar Human Rights Committee of England and Wales (BHRC). The BHRC is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. The Committee is also concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial.

The BHRC is contacting you regarding the prolonged lack of arrest and prosecution of the responsible individuals in the case of Arjun Bahadur Lama as well as related concerns over the prevailing climate of impunity in relation to human rights violations committed during the recent conflict.

Identification of Mr Arjun Bahadur Lama

Mr Arjun Bahadur Lama, 48 years of age, was a permanent resident of Chhatebras Village Development Committee 5, Dapcha in Kavre district. He was a social worker by profession. Since 2002, he stayed in Kalimati, Kathmandu.

Facts of Mr Lama's abduction and murder

Mr Lama was abducted by Yadav Paudel, Bhola Aryal and Karnakhar Gautam, cadres of the UCPN(M), from a parents' day function at Sri Krishna Secondary School on 29 April 2005 at which he was elected to become president of the school board. Allegedly, he was taken to a Maoist military training centre in the vicinity of Budakhani VDC by Norbu Moktan, a local Maoist activist, and produced before Agni Sapkota, a Central Committee Member of the Communist Party of Nepal (Maoist), around June 2005. It is alleged that Sapkota authorised Mr Lama's killing and that this decision was announced at a public gathering. It is suspected that Mr Lama was shortly thereafter killed by Maoist cadres and buried in Ratmate of Budhakhani. His body is yet to be recovered.

To date, no one has been held to account for the alleged abduction and murder of Mr Lama under the pretext that human rights violations committed during the recent conflict ought to be dealt with by the Truth and Reconciliation Commission (TRC) and the Disappearances Commission (DC) as laid out in the 2006 Comprehensive Peace Agreement.

In the case of Mr Lama, police only registered a First Information Report of the case after being served a *mandamus writ* to investigate and file murder charges from the Supreme Court. Up to now, investigation into the case by Nepal Police has consisted of letter-writing between police posts regarding the whereabouts of the suspects. This inactivity is of particular concern as it concurs with a trend of non-implementation of court orders in Nepal.

This is especially relevant as one of the alleged perpetrators is a member of the Constituent Assembly and was appointed as Minister of Information and Communication for the Government of Nepal on 03 May 2011. There is concern that this could severely affect the impartiality of the implementation of the Supreme Court's orders to investigate.

Alleged violations

The BHRC respectfully draws to the attention of the Government of Nepal Articles 1 and 2 of the International Covenant on Civil and Political Rights which Nepal acceded to in 1991 as well as Article 8 of the Universal Declaration of Human Rights, all of which enshrine a right to a remedy for victims of violations of international human rights law. This right is enshrined in numerous other treaties¹ and reinforced by resolutions of the UN General Assembly, including the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of International Human Rights Law ('Basic Principles on the Right to Remedy') and Serious Violations of International Humanitarian Law and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

The Basic Principles on the Right to Remedy states that

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law.

[...]

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

The rights of victims to remedy specifically includes 'satisfaction', which itself contains judicial and administrative sanctions against persons liable for the violations and 'an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim' according to Principle 22(d) of the Basic Principles on the Right to Remedy.

¹ See, for example, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 39 of the Convention on the Rights of the Child.

Purpose of this communication

The BHRC is expressly concerned about the climate of impunity arising from the gap between setting up the TRC and DC and pursuing human rights violations through the criminal justice system and urges the Government of Nepal to comply with its international obligations on the right to a remedy for victims of violations of international human rights law. The BHRC respectfully requests the Government of Nepal to take immediate steps to ensure that court orders are respected in their entirety and promptly implemented, so that criminal proceedings advance. The BHRC would like to emphasise that such progress should not be contingent on there being a TRC or DC in place.

The BHRC also calls on the authorities to ensure the internationally protected right to remedy of all the victims of conflict-related human rights violations is fulfilled in order to preserve the rule of law and administration of justice in Nepal.

Of further concern is the security of the legal organisation and individual lawyers working on this case. The BHRC would like to respectfully remind the Government of Nepal of its obligation to protect human rights defenders (HRDs) under the 1998 UN Declaration on HRDs as well as their role to ensure that lawyers *'are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference'* in accordance with the UN Basic Principles on the Role of Lawyers.

Finally, the BHRC requests you to clarify your position with regards to Mr Sapkota's ministerial position in line with the Supreme Court Order to that effect issued on 30 May 2011 to ensure that perpetrators of human rights violations are held accountable to counter concerns over a culture of impunity.

Yours sincerely,



Mark Muller QC
Chair Bar Human Rights Committee of England and Wales

CC:

- Ramesh Chand (Thakuri), Inspector General of Police
- Professor Yubaraj Sangroula, Attorney General
- Kedar Nath Uppadhya, Chairman of the National Human Rights Commission
- Dr. Suresh Chandra Chalise, Ambassador of Nepal to the UK
- John Anthony Tucknott MBE, UK Ambassador to Nepal