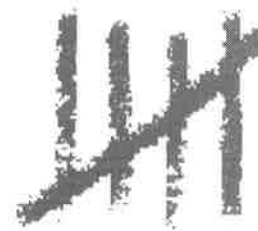


Chair: Mark Muller QC | Vice-Chairs: Kirsty Brimelow QC and Sudhanshu Swaroop

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



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

SENT BY EMAIL AND POST

London, 25 July 2011

Dear Prime Minister,

Re: Sanjeev Kumar Karna and Durgesh Kumar Labh, Pramod Narayan Mandal, Shailendra Yadav, and Jitendra Jha.

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 lack of arrest and prosecution of the responsible individuals in the cases of Sanjeev Kumar Karna, Durgesh Kumar Labh, Pramod Narayan Mandal, Shailendra Yadav, and Jitendra Jha ('the Dhanusha five'). Moreover, I am writing to express concern over the prevailing climate of impunity in relation to human rights violations committed during the recent armed conflict.

Background

On 8 October 2003, members of joint security forces comprising of the Royal Nepal Army ('RNA'), the Nepal Armed Police and the Nepal Police arrested 11 persons, including the Dhanusha five, at a student picnic in Kataiya Chowri area of Dhanusha district. The students were reportedly blindfolded, beaten up with rifle butts and taken to the then Regional Police Office (now the Zonal Police Office) of Janakpur from where they were disappeared.

On 9 July 2006, two First Incident Reports ('FIR') were filed covering all five students' disappearances. The arrest, disappearances and deaths of Sanjeev Kumar Karna, Jitendra Jha, Durgesh Kumar Labh, and Shailendra Yadav were registered in a single FIR, and the FIR regarding Pramod Narayan's disappearance was filed separately. The suspected burial site was mentioned within the reports. To date, there has been no effective investigation carried out by the police into the deaths of the five students.

As a result of the lack of an effective police investigation in the case and the absence of measures to protect the suspected burial site, Jay Kishor Lav, Sanjeev's father, filed a writ in the Supreme Court against the District Police Office ('DPO') in Dhanusha on 28 January 2007. On 21 August 2007, the Supreme Court ordered the Headquarters of Nepal Police to

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provide a detailed report in respect of the investigations carried out into the disappearance of the five students. The Supreme Court in the same decision ordered the DPO of Dhanusha to provide details of the police investigation into the case of the five students.

Following interventions from national and international human rights bodies, the Nepal Police began exhumations of the suspected burial site of the Dhanusha students in September 2010. This was done with the support of the National Human Rights Commission ('NHRC'), and the UN Office of the High Commissioner for Human Rights in Nepal ('OHCHR Nepal'). Bodies of four of the students were initially discovered at the site. On 15 February 2011, the team led by the NHRC resumed the exhumation and found the remaining fifth body. Irrespectively, to date, suspected individuals have not been charged, arrested or prosecuted.

On 2 June 2011, Kuber Singh Rana - who is one of the officials named as suspect in the cases of the Dhanusha five in the FIRs - was appointed as Additional Inspector General of Police ('AIG'). On 27 June 2011, a writ petition was filed at the Supreme Court on Monday by Advocates Sunil Ranjan Singh and Dipendra Jha demanding the suspension of Kuber Singh Rana from the post of AIG and the implementation of measures to investigate the FIRs filed against him relating to the cases of the Dhanusha five. Initially, the Supreme Court ordered Mr Rana's suspension, but did not maintain this order on 13 July 2011.

Nepal's obligations under international law

Nepal has clear obligations under international law to conduct effective investigations into human rights abuses. Despite persistent attempts by the families of the victims and several international human rights bodies, the cases of the Dhanusha five have still has not been adequately investigated.

International Covenant on Civil and Political Rights

The BHRC respectfully draws to the attention of the Government of Nepal to Article 2(3) (right to an effective remedy), Article 7 (right to freedom from torture), Article 9 (right to liberty and security of person) and Article 10 (respect for the inherent dignity of a human person) of the International Covenant on Civil and Political Rights ('ICCPR'). In accordance with Article 2(3) of the ICCPR, the State party is under an obligation to provide the author [meaning the complainant, i.e. the families of the victims] an effective remedy, including a thorough and effective investigation into the disappearance and adequate information resulting from its investigation.

Rights to an effective remedy

Furthermore, Article 8 of the Universal Declaration of Human Rights states that

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

This right is 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 and Serious Violations of International Humanitarian Law ('Basic Principles on the Right to Remedy') and the Declaration of Basic Principles of Justice

for Victims of Crime and Abuse of Power.¹ The right of victims to remedy specifically includes judicial and administrative sanctions against persons liable for the violations according to Principle 22(d) of the Basic Principles on the Right to Remedy.

Investigations into extra-judicial killings

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials outline the international human rights principles which law enforcement officials must apply, as far as possible, non violent means before resorting to the use of force.² The responsibility for extra-judicial killings extends to those in positions of command responsibility.³ Where lethal use of force by law enforcement officials occurs, international human rights law requires this to be thoroughly investigated and that those responsible for unlawful actions be prosecuted. International law requires that investigations are '*effective, comprehensive and independent, as well as prompt and transparent*'.⁴

The purpose of this communication

The BHRC respectfully draws attention of the Government of Nepal to the legal opinion of the OHCHR Nepal and the NHRC published in June 2011. The document states that a large number of withdrawals of pending criminal cases in Nepal amounts to a breach of Nepal's obligations under international law, including the ICCPR. The opinion also considers the Comprehensive Peace Agreement, which records the Government's obligation to eliminate impunity by upholding the rule of law and ensuring impartial investigations into alleged enforced disappearances.⁵

The BHRC calls on the Government of Nepal to

- Ensure prompt and adequate investigation into the cases of all individual implicated in the deaths of the Dhanusha five and guarantee that state security agencies comply with court orders fully and promptly.
- Instruct the police to promptly, effectively and impartially investigate all conflict related cases involving unlawful killings, torture and ill-treatment, enforced disappearances and other crimes under international law, including by interviewing key witnesses and suspects, gathering forensic evidence, and where appropriate making arrests and presenting cases for fair trials in accordance with international standards.
- Promptly establish the Commission of Inquiry into Disappearances and the Truth and Reconciliation Commission as laid out in the 2006 Comprehensive Peace Agreement, and in accordance with international standards to investigate alleged enforced disappearance, and prosecute and punish those responsible through the criminal justice system.
- Comply with 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.

¹ Paragraph 19, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

³ Principle 4, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

³ Principle 19, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

⁴ Paragraph 18, Report of Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions, May 2010, A/HRC/14/24/Add.8

⁵ Paragraph 7.1.3 of the Comprehensive Peace Agreement

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- Suspend Kuber Singh Rana from duty and block his promotion to AIG pending the conclusion of investigations in this case.
- Halt immediately the withdrawal of cases where serious human rights abuses have taken place, especially where they constitute crimes under international law.

Finally, the BHRC respectfully urges the Government of Nepal to send a strong signal to the people of Nepal and the international community that the human rights violations committed during the armed conflict will no longer remain subject to impunity by ratifying the Rome Statute of the International Criminal Court, the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture.

Yours sincerely,



Rebekah Wilson

Executive Committee member

Bar Human Rights Committee of England and Wales

CC:

- Rabindra Prasad Shah, 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