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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 rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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) Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9) G/SO 214 (89-15)
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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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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, 15/21, 15/22, 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 **alleged undue delays in the re-registration of the Blue Diamond Society, forcing the organization to shut down a number of activities, including essential support services extended to individuals suffering from HIV or AIDS who rely solely on these services, and alleged instances of arbitrary arrest, intimidation and harassment of lesbian, gay, bisexual, transgender and intersex (LGBT) persons, including by members of the police force.**

The Blue Diamond Society (BDS) is a non-governmental organisation working to promote respect for the rights of LGBT persons in Nepal, as well as a provider of community support services, including to individuals suffering from HIV or AIDS.

According to the information received:

Efforts by the BDS to gain approval for the renewal of its registration from the Kathmandu District Administrative Office, in particular the Chief District Officer, have been met with delays and continuous refusal over a protracted period

It is reported that the Chief District Officer has so far raised two grounds on which to base his refusal to renew the organisation's registration, namely:

- a claim that the organisation's Director, Mr. Sunil Babu Pant, had received a double salary, both as Director of the BDS and as a member of the Nepal Constituent Assembly. Reportedly, however, Mr. Pant has already returned the salary he received as a member of the Constituent Assembly;

- a claim that a property belonging to the organisation had been registered in Mr. Pant's name. Sources inform, however, that this was motivated by frequent difficulties experienced when registering properties in the name of organisations and that Mr. Pant had already signed an agreement with the BDS waiving any claims on the property. It is further reported that he is currently in the process of transferring ownership of the property in the organisation's name.

Although all documents needed to renew registration, including financial reports and progress reports, have been reportedly duly submitted by the BDS, no progress has been made on renewal of the registration. This has reportedly prompted the BDS to file a case in an appellate court.

It is reported that as a consequence of the delays in renewing the registration, the organisation has been forced to start closing down all its operations, including the provision of essential care, support and treatment to individuals suffering from HIV.

Sources further inform that transgender persons, including members of the BDS, have reportedly been subject to a high number of arbitrary arrests, harassment and intimidation by the police. The following cases have been reported:

- On 28 January 2013, Ms. **Shirju Thapa** was allegedly arrested by 7-8 policemen around 18:00 near Ratnapark while on her way back from a health check at Bir hospital. It is alleged that despite carrying medication she had received at the hospital, she was arrested by the policemen on suspicions of intended prostitution and taken to Kingsway police station. She was allegedly taken to Hanuman Dhoka Police Office around 21:00 where she was compelled to sign a detention order accusing her of involvement in prostitution without being given the opportunity to read through the document, or to have it read to her. She was reportedly released on bail later.

- Ms. **Kopila Khadka** was allegedly arrested together with Ms. Thapa and released on bail 11 days after her arrest. It is alleged that she was beaten with a baton when failing to perform morning chores at the detention centre, and that she was regularly subject to unwanted physical attention by male police officers and suffered humiliating treatment in the form of her long hair being forcibly cut to 'make her look male'.

Sources inform that over a six month period up to March 2013, over fifty LGBT individuals were arrested either once or several times and were imposed a bail sum substantially higher than for non-LGBT persons arrested on similar charges. It is alleged that the bail sums recorded for LGBT persons typically range between 19,000 and 26,000 rupees, compared to a typical sum of 5,000 rupees for other detainees.

It is further alleged that transgender persons are being intimidated or physically threatened when they speak out in public in support of the BDS or its staff. Ms. **Anjali Thapa Magar** was allegedly forcibly taken from her home in Chitwan on 3 December 2012 by unidentified individuals and beaten up for speaking out in favour of the BDS and its Director. It is alleged that a detailed report was filed with local police regarding the incident, yet that no action has been taken.

Reportedly, the BDS filed an application with the National Human Rights Commission in February 2013 detailing at least three recorded incidents where 3 or 4 masked persons intimidated transgender persons when the latter spoke out in favour of the BDS.

Grave concern is expressed at reportedly undue delays in the procedure to renew the registration of the Blue Diamond Society, forcing the organisation to close down its operations. Further concern is expressed at the allegations that transgender and other LGBT individuals may be the subject of arbitrary arrests, intimidation and bail sums set at significantly higher amounts than for non-LGBT individuals detained under similar charges, particularly in the light of the often precarious financial circumstances many LGBT individuals find themselves in. Concern is further expressed at allegations that individuals are intimidated and physically threatened for speaking out in favour of the Blue Diamond Society or its staff.

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 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 12 paras 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.

With regard to article 7 of the Declaration on human rights defenders, the Special Rapporteur on the situation of human rights defenders has stated that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture. In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

We would also like to remind your Excellency's Government of 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."

Similarly, we would like to refer to 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 this connection, we would also like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

We would also like to bring to your Excellency's attention Article 7 (c) of the International Convention on the Elimination of All Forms of Discrimination against Women, which requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

We would, moreover, like to bring to your Excellency'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 recall article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by Nepal on 14 May 1991– which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all States parties to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially the most vulnerable or marginalized sections of the population, without discrimination.

In that connection, the Committee on Economic, Social and Cultural Rights in its General Comment No. 14 provides that the right to health contains both freedoms and entitlements and holds that States are required to respect, protect and fulfil the right to health. In particular, the obligation of the State to *respect* the right to health requires it to refrain from interfering directly or indirectly with the enjoyment of the right to health and to refrain from enforcing discriminatory practices, denying or limiting equal access for all persons to preventative, curative and palliative health services (para.34). The Committee further reiterates the Covenant's prohibition of any discrimination in the realization of the right to health on the grounds of sexual orientation, health status, and civil, political, social or other status (para.18). The principle of non-discrimination applies to all aspects of the right to health and constitutes an immediate obligation (para.30).

We would also like to refer your Excellency's Government to article 12 (c) of the International Covenant of Economic, Social and Cultural Rights, which obliges States Parties to, inter alia, take the steps necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases. As HIV/AIDS has reached epidemic proportions worldwide, States are to implement programs to effectively control the spread of this disease, and treat those who have contracted the virus. In its 2006 Political Declaration on HIV/AIDS, the General Assembly of the United Nations reaffirmed that prevention of HIV infection must be the mainstay of national, regional and international responses to the pandemic (A/RES/60/262, para. 22).

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, 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 cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above 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 explain the legal grounds on the basis of which the Blue Diamond Society's requests to renew its registration have so far not been honoured.

6. Please provide details on measures taken to ensure that human rights defenders, including those working on issues related to sexual orientation and gender identity, are able to carry out their legitimate and peaceful activities freely and without fear of judicial harassment or other restrictions.

7. Please provide information on the measures taken to ensure the enjoyment of the right to the highest attainable standard of health for all persons in Nepal, including people living with HIV.

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.

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opinion and expression

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