



Asian Federation Against Involuntary Disappearances (AFAD)

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AFAD STATEMENT ON THE DECISION OF THE KUMAR LAMA CASE

Manila, September 13, 2016 – AFAD expresses its deepest regret over the decision of the Crown Prosecution Service (CPS) of the UK not to initiate re-trial of Colonel Kumar Lama, Nepali Army officer, from the charge of torture.

Colonel Kumar Lama had been arrested more than three years ago and charged for two counts of torture that took place in Nepal in 2004. The UK had exercised its universal jurisdiction to prosecute individuals who have committed torture and other gross human rights violations. Mr. Janak Bahadur Raut and Mr. Karim Hussain had been the subject of torture in Goringhe Barrack and suffered torture in 2004.

The Jury at the Central Criminal Court in London had already issued a decision against Col. Lama in August on the first count, involving the torture of another Nepali, Mr. Karim Husain. In that occasion, the Court decided to acquit Col. Lama, but the Jury was unable to come to the consensus to convict Mr Lama in relation to the case of Janak Raut, which required prosecution to put the case in retrial. However, on September 6, 2016 the Prosecutor decided not to put Lama on retrial, thus acquitting him from the charges.

In the absence of the cooperation from the Nepalese Government in collection of pieces of evidence, the Prosecutor stated, there would not be insufficient evidence to prove Lama's guilt beyond a reasonable doubt.

After the decision was communicated to him, Janak Raut said:

“I was forced to shout for help outside the country because I had no possibility to bring my alleged torturer to justice here in Nepal. I am disappointed with the decision not to re-prosecute Mr Lama. However, since he was arrested in the UK, the Government of Nepal has been advocating that Nepal will prosecute those involved in serious human rights violations in Nepal. I hope the Nepal Government will keep its promise of providing justice for those who suffered during the conflict.”

While AFAD welcomes the use of the clause of the 1988 Criminal Justice Act to prosecute in the UK alleged foreign war criminals as a step forward in the attainment of justice for victims of human rights violations, it also wishes to express its deep disappointment for the decision of the CPS not to retry Lama. AFAD is disappointed in the failure of the CPS to put real effort in making the universal jurisdiction an accessible option for justice so as to fulfil UK's legal obligations under international law, instead of making it a mere illusive concept. The constant threat, intimidation, pressures and smear campaign that the local organizations and victims suffer while trying to seek justice for the heinous crimes committed against them by those in power should have been given due consideration in the decision.

As Mandira Sharma, founder of Advocacy Forum, said:

“The case of Colonel Lama is nothing but a direct consequence of the failure of the Nepali state to prosecute perpetrators of gross human rights violations during the conflict. We were forced to ask the UK prosecuting authorities to exercise universal jurisdiction as all our efforts to find justice in Nepal failed, with the Nepali government continuing to deny justice for the victims tolerating and promoting impunity for serious crimes including torture.”

AFAD urges the government of Nepal to fulfil its international obligations and to enact domestic law in line with international standards. Victims need justice and this can no longer be delayed.

Signed by,

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Chairperson

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Secretary-General