



संयुक्त राष्ट्र संघका लागि नेपालको स्थायी नियोग
**PERMANENT MISSION OF NEPAL
TO THE UNITED NATIONS
GENEVA**



Note No. OHCHR.SP.2020.3

The Permanent Mission of Nepal to the United Nations Office and other International Organizations in Geneva presents its compliments to the Special Procedures Branch, Office of the High Commissioner for Human Rights (OHCHR), and with reference to AL NPL 3/2019 Joint Communication dated 28 October 2019 sent from the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on minority issues, has the honour to enclose herewith response of the Government of Nepal on the points raised in the Joint Communication.

The Permanent Mission of Nepal to the United Nations Office and other International Organizations avails itself of this opportunity to renew to the Special Procedures Branch, Office of the High Commissioner for Human Rights (OHCHR), the assurances of its highest consideration.

Geneva, 3 January 2020

Special Procedures Branch
Office of the High Commissioner for Human Rights (OHCHR)
Geneva, Switzerland



Response of the Government of Nepal on the joint communication of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on minority issues

1. Regarding the allegations referred to in the Joint Communication AL NPL 3/2019

The Government of Nepal totally refutes the allegations referred to in the Joint Communication of the Special Procedures and reiterates its full-fledged commitments to the protection and promotion of human rights and fundamental freedoms enshrined in the UDHR and ICCPR as well as other human rights instruments to which Nepal is a party. The Government of Nepal is creating an environment where people realize their right to live with dignity, which is ensured by the Constitution of Nepal as the fundamental right. Similarly, death penalty is abolished and the Constitution prohibits making laws with provision for the death penalty. Therefore, it is explicit and obvious that extrajudicial killing in any form and manner is categorically outlawed by Nepal.

Mr. Saroj Narayan Singh died during the act of maintaining peace and security, and controlling mob/crowd. Similarly, Mr. Kumar Poudel and Mr. Dipendra Chaudhary died in different incidents in the cross-fire and during self-defense actions taken by the security personnel.

2. Regarding a detailed account about the circumstances in which the police officers decided to resort to the use of force and firearms

A detailed account about the circumstances related to all three cases is given below:

Detail of circumstance of Mr. Kumar Poudel:

Mr. Kumar Poudel, age of 47, an inhabitant of Ward No. 2 of the Bagmati Municipality, who was Sarlahi District In-charge of Nepal Communist Party Biplav Group, died in the cross fire with security personnel in the forest of Lalbandi Municipality Ward No 1. Six different cases have been registered consisting arsenal-3, explosive-2 and organized crime-1 are under consideration in the competent courts against Mr. Kumar Poudel. This incident occurred in such circumstance that an armed rebellion group, the Biplav Group, which has been banned from 12 March 2019 by the Government of Nepal due to its involvement in the terrorist activities such as; destruction of

government and public property, demolition of physical infrastructures, firing, blasting bombs, collecting donations (extortion), forcing the representatives of the Local Level government for resignation throughout the country; and such activities were also conducted in the Sarlahi District. In such context, the S.T.F. from center and security personnel from province and district level has been mobilized. Mr. Kumar Poudel, who was the most wanted terrorist from the security personnel, a Sarlahi In-charge of Biplav Group, died in an encounter on 20 June 2019. On his way from Lalbandi to Sindhuli while he fired to the patrolling team of police, the security force also cross fired. Mr. Kumar Poudel died on the spot and other persons of the Group ran away towards forest continuing firing. Mr. Kumar Poudel died in cross-fire/encounter between the Security Forces of the Government of Nepal and the Group led by Mr. Kumar Poudel.

Also, it is revealed from the scene of crime documentation that one pistol made in USA with four round bullets, one homemade pistol with two round bullets, dead-cord 3 feet, fuse wire 5 feet were also recovered from Mr. Kumar Poudel.

Detail of circumstance of Mr. Saroj Narayan Singh:

On 29 June, [REDACTED] was drowned in the Banke River bank and after the information received by the security forces they searched [REDACTED] and found the dead body of [REDACTED] on the river on 30 June 2019. The family and relatives of the deceased started procession or mob against the person responsible who formed sand pit which was illegal. The mob came and stayed at the East-West Highway on 30 June 2019, laying tent and placing the corpus of the person on Highway which blocked the vehicular movements of the lifeline Highway of the nation for a considerable period of time, affecting the lives of general people. The security forces tried to disperse them peacefully but the mob turned into violence. In the course of controlling the mob two persons including Mr. Saroj Narayan Sing, sustained injury and on the way to the primary health center for treatment he died. 17 security personnel also sustained injury during the incident.

Details of circumstance of Mr. Dipendra Chaudhary:

Armed rebellion groups have been active in the Saptari district since some time. As per the special information received by the Nepal Police about the conduct of violent activities by such group, police personnel had been mobilized from various units for identifying and arresting the persons of the group involved. The joint police team from Province Police Office, Janakpur and District

Police Office, Saptari on 23 January 2019 at 4:00 a.m. was conducting the search operation at Ward No. 1 of Rupani Rural Municipality, about 1 km away from Rupani Chowk of Rupani Rajbiraj Road. During a search operation, while the policemen were checking the vehicles including the suspected persons, a motorcycle with unidentified name and number plate, and having two persons travelling from Rupani to Rajbiraj was stopped by the security force. The person who was seating in the back seat of motorcycle opened fire while the police was trying to check the motorcycle. When the police also opened fire in response for self-defense, a person, whose name was unknown, died on the spot. Later, it was known that the person was Dipendra Chaudhary alias Dipesh Jaiswal, age of 31, [REDACTED]

[REDACTED]. The motorcycle rider absconded towards the south direction with motorcycle. The police obtained two pieces of fired cartridge case bullets, a homemade pistol loaded with one round bullet held by the right hand of the deceased, one piece of live bullet and one piece of pamphlet with appeal (of Pragatishil Terai Mukti Morcha Kendriya Samyojan Sijan) in the bag, along with one/one piece of Indian mobile sim card whose number is not known, one piece of mobile of I-phone Company, one piece of mobile of ME company from the place of incident. The incident is not an extrajudicial killing of Dipendra Chaudhary after his arrest in India. He died incidentally in response of fire by police for self-defense after the deceased was firing targeting the police on duty.

In the cases of Kumar Poudel and Dipendra Chaudhary, police personnel had opened fire in self-defense after the deceased persons initiated fire on the police. In these cases, there was imminent threat of death or serious injury to the security personnel from the alleged persons. There was not any option left for the police as the alleged person opened fire against them.

In the incident of Mr. Saroj Narayan Singh, police personnel have used force to control mob and violence in conformity with the due process of law as provided in Section 6 of the Local Administration Act, 1971.

3. *Regarding detailed information about investigation carried out concerning alleged excessive use of force by Nepalese security forces*

In two cases relating to Mr. Kumar Poudel and Mr. Saroj Narayan Singh, two separate inquiry committees were constituted and reports have been received. The reports do not reveal that security forces have resorted to excessive use of force. Therefore, no penal, disciplinary or administrative action was taken against any one.

Mr. Kumar Poudel

In pursuance of the directive by the State Affairs and Good Governance Committee of the House of Representatives to the Ministry of Home Affairs of the Government of Nepal on dated 24 June 2019, the Ministry of Home Affairs formed an inquiry committee and mandated it to submit the report about the incident of Mr. Kumar Poudel, Sarlahi district in-charge of Nepal Communist Party Biplav Group, who died in the cross fire with security personnel on 20 June 2019.

The inquiry Committee comprised of four members led by [REDACTED], under Secretary of Ministry of Home Affairs, with the prescribed terms of reference to submit the report after collecting actual facts and holding impartial inquiry.

Report of the Committee reveals that the Government of Nepal has banned the Biplav Group from 12 March 2019, as this group has been involved in the terrorist activities and conducting various activities, such as destruction of government and public property, demolition of physical infrastructure, firing, blasting bombs, collecting donations, imposing pressure to representatives for resignation from their posts throughout the country and such activities were also conducted in the Sarlahi District. In such context the S.T.F. from center and security personnel from province and district levels had been mobilized. Kumar Poudel, who was the most wanted terrorist in search by the security personnel, a Sarlahi in-charge of Biplav group died in the encounter, while he took fire to the patrolling and search team of police during his journey from Lalbandi to Sindhuli. He died by the cross fire of security force while maintaining peace and tranquility and in response to self - defense. Some people ran away towards the forest with continued firing.

Saroj Narayan Singh

An Inquiry Committee was formed by the Ministry of Home Affairs on 30 June 2019 consisting of four members with under Secretary of Ministry of Home Affairs, [REDACTED] as the co-ordinator and with terms of reference to submit the report within seven working days after searching true facts and collecting factual descriptions.

The Inquiry Committee submitted its report which reveals that the mob/crowd of the relatives and family of the deceased, around 350 persons, blocked the highway (lifeline of the nation) putting tent and corpus of the deceased on the highway without allowing the police to send to hospital for post mortem of the deceased. In order to clear the highway and continue the traffic of the highway, a joint security force consisting of Nepal Police and Armed Police Force was mobilized. The security force pursuant to Section 6 of the Local Administration Act, 1971, first requested the mob or crowd by mike (or using loud speaker) to stay at the side of the highway and clear the road for continuation of road traffic. The mob or crowd stayed in the highway for a considerable time, when the police tried to remove the tent, the mob/crowd started to throw and hit the security force by stones. Again, the security force requested to stop throwing stones to the security force otherwise they would discharge. The mob/crowd became more excited and continued hitting stones towards the security force and many personnel of the security force got injured. The police discharged batons/lathi as well as tear gas but the mob did not stop throwing the stones. Finally, the police discharged rubber bullets and fired in the air. In this course, two persons were injured among them Mr. Saroj Narayan Singh died while on the way to primary health center for treatment.

4. *Regarding compensations to the victims and their families*

The Council of Ministers has decided to provide [REDACTED] to the family of deceased Saroj Narayan Singh on 14 July 2019 and to release the money or grants for certified bill of treatment of the injured person who have received treatment from government hospital. Pursuant to the decision, the Ministry of Home Affairs has released [REDACTED]/- in order to provide to the family of deceased Saroj Narayan Singh. The deceased family is reported to be in the process of receiving money in the District Administration Office, Sarlahi.

5. *Regarding the rules governing the use of force by law enforcement officials in Nepal, including Armed Police Force regulation of 7 July 2015, and how these regulations comply with international standards on the use of force*

Section 9 of the Criminal Procedure Code, 2074 provides about the use of force by police as an investigating officer that if it required arrest to a person pursuant to an order of the competent judicial authority, the person shall be given an order to surrender voluntarily explaining the cause

of the need for such arrest. If such person does not surrender and tries to escape or avoid the arrest, then the Police personnel may use force to arrest such person.

Similarly, Section 6 of the Local Administration Act, 1971 authorizes the Chief District Officer to perform the following functions for preventing any activity if there is any likelihood of occurrence mob or violence or riot:

- (a) If it deems that an assembly, procession or mob (crowd) may take violent or destructive tendency and there is a possibility of disorder from such activities, he/she shall cause to control it through the police and if it goes beyond the control of the police, he/she shall attend him/herself or depute subordinate officer in the concerned place and persuade to maintain peace and if peace could not be maintained, he/she may cause to use baton (Lathi charge), teargas, water sprinkle (Phohora), blank fire in the air as per necessity based on the situation, to maintain peace and order,
- (b) If it is not possible to maintain peace pursuant to clause (a) and it deems necessary to open fire to issue warning to the crowd with all clarity before opening the fire; if the mob is not dispersed after such warning and if it becomes necessary to give order in writing to open fire below the knee,
- (c) To provide written order to the police to maintain peace and security in the district if it is possible and if not so possible to provide verbal order as per necessity and if the order is verbal it shall be confirmed in writing within twenty four hours,

For maintaining peace and security in the district, the District Police Office shall perform its functions on the direct supervision and direction of the Chief District Officer.

So far as the Regulation of Armed Police Force is concerned, pursuant to Rule 58 of the Armed Police Force Regulation of 7 July 2015, the Armed Police Force personnel deployed to carry out its duties, pursuant to Section 6 of the Armed Police Force Nepal Act, 2000, must comply the procedures laid down in the Local Administration Act, 1971. Rule 58 of the Regulation provides that as the last resort the Armed Police Force personnel may use necessary force in carrying out its duties. In case the personnel have acted in bad faith or with gross negligence he may be prosecuted and punished. Such prosecution is carried out with prior permission of the Government of Nepal. This provision does not give blanket amnesty to the personnel who defy the procedures

laid down in above mentioned Act or acts with malafide intention or gross negligence. Therefore, this provision is in conformity with the international norms and standards.

6. *Regarding measures taken to ensure that the legitimate right to peaceful assembly is respected and that the physical and psychological integrity of those exercising these rights is guaranteed in the Terai region*

Nepalese laws and practice are in compliance with the relevant international norms and standards. Article 17 of the Constitution ensures freedom of opinion and expression, freedom to assemble peaceably and without arms, freedom to form political parties, freedom to form unions and associations, freedom to move and reside in any part of Nepal, freedom to practice any profession, carry on any occupation, and establish and operate any industry, trade and business in any part of Nepal. Provided that nothing mentioned above shall be deemed to prevent the making of an Act to impose reasonable restrictions on any act which may undermine the sovereignty, territorial integrity, nationality and independence of Nepal or the harmonious relations between the Federal Units or public peace and order (ordre public). The Local Administration Act, 1971, Penal Code, and other relevant legislations serve these purposes. These are Federal legislations applicable throughout the country equally. There is no discrimination in the application of general laws on grounds of origin, religion, race, caste, tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology or on similar other grounds. This legislation does not prohibit or hinder to exercise the fundamental right to freedom to assemble peaceably and without arms.

In case of violation of this fundamental right, the right to remedy is also ensured by the Constitution. Article 46 of the Constitution provides that 'there shall be a right to obtain constitutional remedies in the manner set forth in Article 133 or 144 for the enforcement of the rights conferred by the Chapter of the Fundamental Rights and Duties of the Constitution.'

Article 133 of the Constitution provides for jurisdiction of the Supreme Court. Any citizen of Nepal may file a petition in the Supreme Court to have any law or any part thereof declared void on the ground of inconsistency with this Constitution because it imposes an unreasonable restriction on the enjoyment of any fundamental right conferred by this Constitution or on any other ground, or to have any law or any part thereof made by a State Assembly declared void

because it is inconsistent with any law made by the Federal Parliament or to have any law or any part thereof made by a Municipal Assembly or Village Assembly declared void because it is inconsistent with a law made by the Federal Parliament or the State Assembly, and the Supreme Court shall have an extra-ordinary power to declare that law to be void either ab initio or from the date of its decision if the law appears to be so inconsistent.

In addition, The Supreme Court, for the enforcement of the fundamental rights conferred by this Constitution or of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern, has the extraordinary power to issue necessary and appropriate orders, provide appropriate remedies, enforce such right or settle such dispute.

Under the extra-ordinary jurisdiction under clause (2), the Supreme Court may issue appropriate orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto.

Similarly, Article 144 of the Constitution provides for jurisdiction of the High Court. The High Court has the power to issue necessary and appropriate orders, for the enforcement of the fundamental rights conferred by this Constitution or for the enforcement of any other legal right for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective or for the settlement of any legal question involved in any dispute of public interest or concern for the purposes, the High Court may issue appropriate orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto.

7. *Regarding implementation of the 9-point agreement signed at Ishwarpur Municipality*

The Government has conducted inquiry of the incident. The following persons have obtained following amount of money from the Chairperson of the Iswarpur Municipality, [REDACTED]

[REDACTED]

S. No.	Name of the deceased/injured	Amount given (In Rs.)	Name/Relationship who received amount	Date of receipt of amount	Remarks
1.	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
2.	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
3.	Saroj Narayan Singh (Deceased)	[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED]
4.	[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

The GoN assures that there would not be any arbitrary or abusive use of force and firearms by law enforcement officials. If such abusive use of force is found, the GoN will punish those involved, under the prevailing law of Nepal.
