



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

No.OHCHR.SP.2021.34

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 JAL NPL 4/2020 Joint Communication dated 18 November 2020 sent by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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 in Geneva avails itself of this opportunity to renew to Special Procedures Branch, Office of the High Commissioner for Human Rights (OHCHR), the assurances of its highest consideration.

Geneva, 10 February 2021

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



Response of the Government of Nepal

on

Joint Communication of Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Special Rapporteur on Extra-judicial, Summary or Arbitrary Execution, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association and Special Rapporteur on Minority Issues

The Government of Nepal (GoN) has taken different approaches to address the issues related to right against discrimination and to ensure right to equality. These include, preventive and punitive measures. The Constitution ensures equality before law and equal protection of law (including positive discrimination), right to life, right against untouchability and discrimination, right against exploitation, rights of women, rights of Dalits, right against torture and rights relating to justice and fair trial.

Article 20 of the Constitution guarantees the rights relating to Justice as a fundamental right. Any person who is arrested shall be produced before the adjudicating authority within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to such authority; and any such person shall not be detained in custody except on the order of such authority. Any person who is arrested shall have the right to consult a legal practitioner of his or her choice from the time of such arrest and to be defended by such legal practitioner. Any indigent party has the right to free legal aid. Any consultation made by such person with, and advice given by, his or her legal practitioner shall be confidential.

The Criminal Procedure Code, 2017 has specific provisions against refusal of registering the first information report (FIR). Section 5 of the Code has provisions related to appeal against refusal of registering the FIR. If the concerned police office refuses to register a FIR made or information given pursuant to subsection (1) of Section 4 of the Code, the person making or giving such FIR or information may make a complaint setting out such matter, accompanied by the FIR or information, to the concerned District Government Attorney Office or the Police Office higher in level than the Police Office required to register such first information report or information. If a complaint is received, the concerned District Government Attorney Office or Police Office shall maintain records thereof and forward such FIR or information to the concerned police office for necessary action. The concerned police office shall, in accordance with sub-section (3) of Section 4, register and take action on the FIR or information received.

Thus, the Constitution, Codes and other relevant laws fully protect the life and rights of individual in the custody. However, some exceptional incidents have been found to have been occurred and proper investigation have been carried out of such cases. The additional information regarding the concerned person is described below:

a) Case of Bijay Mahara (Rautahat, 15 August 2020/2077-4-31)

On 15 August 2020, Bijay Mahara and 6 others were arrested on charge of intentional murder of Niranjan Ram. While in detention, Bijay Mahara got ill and was taken to the hospital. Later he was found to be tortured and injured by three police personnel, namely, Inspector Nabin Kumar Singh, Police Constables Munna Singh and Hiroj Miya. Investigation Committee found them guilty and issued an arrest warrant against them. All three accused are absconding and at large.

b) Case of Shambhu Sada Musahar (Dhanusa, 10 June 2020/2077-02-28)

Shambu Sada Musahar, accused for accident and murder, was found hanging and dead inside the toilet while in police custody at Sabaila Police Station. The report of the Investigation Committee concluded that there were no signs of attempt of murder and the deceased has committed suicide. The Committee has taken an internal disciplinary action against Sub-Inspector Manoj Kumar Yadav, Head Constable Mandip Kumar Patel and Police Constable Shiva Shanker Kumar Yadav for their negligence and not performing the duty responsibly.

c) Case of Rafikul Alam (Jhapa, 26 August 2020/2077-05-10)

During a combined patrol of Nepal Police and Armed Police Force on 26 August 2020, Tajamul Hak and Abdul Hak were arrested on accusation of cow slaughter. They were taken to the Area Police Office at Kumarkhod for the investigation. To create pressure for their release, an agitated mob started to attack people and property within the Police perimeter by stones and domestic weapons. As the violence escalated, Armed Police Force fired warning shots in the air to control the situation. Unfortunately, Rafikul Alam, aged 38 got injured by the bullet and later declared dead. An investigation committee formed under leadership of Assistant Chief District Officer concluded that both Nepal Police and Armed Police Force have taken actions to control the situation while protecting the people and police property from the agitating mob. Rafikul Alam died in the incident while two police personnel got injured.

d) Case of Durgesh Yadav (Lalitpur, 28 June 2020/2077-03-14)

Durgesh Yadav, aged 24, was arrested for raping a 17-year-old girl and kept in the custody of District Police Office, Lalitpur for the further investigation. On 1 July 2020, while in custody, the accused Durgesh Yadav was found hanging inside the toilet (closed from inside). He was hurriedly taken to hospital for treatment but later declared dead. Based on the investigation and evidences obtained from the CCTV footages, the Investigation Committee concluded that the incident was a suicide. Internal disciplinary action has been taken against Assistant Sub-Inspector Ram Kumar Mahato, Head Constable Dipak Jung Thakuri and Police Constable Dipak Thapa for not giving proper attention in their respective line of duty.

e) Case of [REDACTED]

[REDACTED] and [REDACTED] were caught on buying and selling of illegal narcotics. While preparing the crime scene report, the accused, [REDACTED], fled from the custody. He brought around 15-20 men to manhandle the police team with stones. They also snatched back the drug substance from police, previously obtained from them.

The three police personnel got injured in the incident. For self-defense, police opened fire and [REDACTED] got injured. He was taken to the hospital for the treatment and later declared dead. District Police Office of Mahottari has concluded that the death of [REDACTED] was found to be unintentional, occurred during police's response in self-defense. This report was approved and sent to the office of high public prosecutors for implementation.

f) Case of Suraj Kumar Pandey (Kapilvastu District)

While celebrating the Laxmi Puja, the idols of god and goddesses were being taken to the river by the route through the Muslim majority neighborhood. As the Muslims people were objecting

to continue the route, Nepal Police and Armed Police Force tried to handle the situation. In the meantime, few people started to attack the vehicles and mass of people taking the idols to the river were attacked with stones and bricks. Curfew was thus imposed. Ignoring the curfew, the mobs escalated the riot and burned the check post of traffic police of Krishnanagar. To stop further escalation of riot and violence, police fired warning shots in the air. Unfortunately, Suraj Kumar Pandey got injured in the incident by the gunshot and later died. The case is under investigation.

