



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

Ref no.- GE/OHCHR/SP/2021/324

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 the joint communication from the Special Rapporteur on minority issues; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance dated 26 July 2021 requesting the response of the Government relating to the case of group of young men belonging to the Dalit minority has the honour to enclose herewith the response of the Government of Nepal on the matters 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 the Special Procedures Branch, Office of the High Commissioner for Human Rights (OHCHR), the assurances of its highest consideration.

Geneva, 10 December 2021



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



Response of the Government of Nepal to the Joint Communication from the Special Rapporteur on minority issues; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

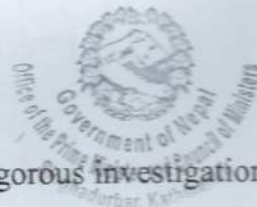
1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

The charge-sheet with sentence up-to imprisonment for the whole of his/her natural life according to the criminal liabilities has been filed based on the First Information Report, opinion of the investigators, *post mortem* report, medical report, material evidences, statement of witness, etc. Also, claims have been made for compensation to the victims and victims' families.

Two Different Charge-Sheets have been filed before the Rukum District Court and Rukum District Court, Juvenile Bench, based on the involvement of minors in the case. As Section 30(6) of the Act Relating to Children, 2018 provides that if an adult person is involved, along with the child, in any offense, the matter shall be proceeded, tried, and settled by the Juvenile Court (Bench) in the case of the child, and the matter shall be proceeded, tried and settled pursuant to the prevailing laws in the case of the adult person by establishing a separate case file.

The cases are currently *sub judice* before the Rukum District Court and Rukum District Court, Juvenile Bench. The Rukum District Court and Rukum District Court, Juvenile Bench had undertaken Bail Hearing and rendered its Bail Hearing Order respectively on June 24, 2020, and June 15, 2020.

2. Please provide the details of the police investigation and the *post mortem* report, as well as the safeguards to ensure that they are carried out impartially and in accordance with international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016). Please explain how these results are compatible with the findings of other inquiries or investigations which were carried out in relation to the above-mentioned allegations, namely the five-member high-level Investigation Committee and the Parliamentary Committee established to investigate the details of the case and the police response thereto.
  - An incident of caste based discrimination that occurred in Rukum-West killing Nabaraj BK and his friends during the pandemic of COVID-19 was strongly condemned by the GoN. The GoN formed a five- member probe team led by Joint Secretary of the Ministry of Home Affairs and the team submitted their report to Former Honorable Home Minister Mr. Ram Bahadur Thapa (Badal) on 12 June



2020, recommending prompt and rigorous investigation of the incident.

As per the report of the team and detail investigation completed by the police, case was filed at the Rukum District Court with charge of homicide, attempted homicide, caste-based discrimination and untouchability in response to the FIR filed by six persons including Munlal Nepali against 34 more respondents including [REDACTED] for their involvement in the incident that occurred on May 23, 2020 in Soti of Chaurjahari Municipality, Rukum (West). The investigation was carried out impartially in compliance with the international standards. The findings and results of inquiries and investigations are convergence with each other.

The *post-mortem* reports of the deceased including Nawaraj B.K. [REDACTED]

[REDACTED] provide following details.

1. Deceased [REDACTED]: There are injuries over frontal area (contusion) of head on scalp, left leg and right leg (abrasion an exposed part) cause by blunt force impact, Probable cause of death: Drowning
  2. Deceased [REDACTED] There are few lacerations over scalp and eyebrow which could be due to fall into river, cause of death; Drowning.
  3. Deceased [REDACTED] There are three external injuries on the body abrasion over right forearm, left elbow and contusion on scalp caused by blunt force impacts, probable cause of death; Drowning.
  4. Deceased [REDACTED] There are multiple blunt force injuries over head and face, neck and both lower extremities, cause of death; Drowning.
  5. Deceased [REDACTED] There are blunt force injuries (abrasions) over extension surfaces of upper extremities, knees and toes which are likely due to fall on the ground and not sufficient to lead death, cause of death; Drowning.
  6. Deceased [REDACTED] There are three external injuries of the body ; abrasion like lesion over right thigh, left knee and left ankle probable cause of death; Drowning.
3. Please provide information with regard to the prosecution of those responsible of the above mentioned allegations, as well as the steps taken to ensure that victims and their family members have an enforceable right to fair and adequate compensation. Also, please explain what victim and witness protection mechanisms have been put in place to ensure that the victims and witnesses are secured?
- In this case, 23 persons were sent to judicial custody, 11 persons were released on bail following the order of the court. At present, the case is *sub-judice* in the



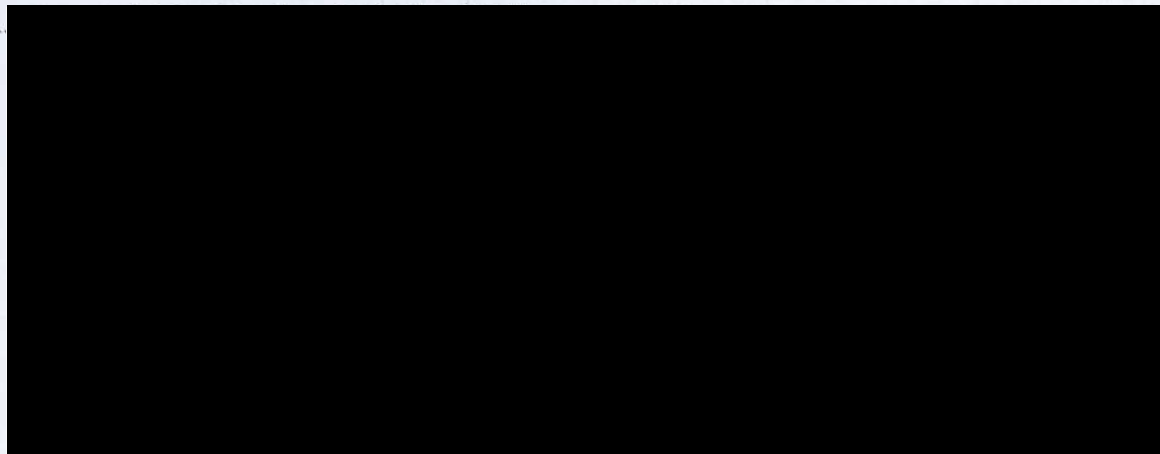
district court after completing all the process required to be carried out as per the laws.

The demand has been made for compensations to the victims and a maximum sentence to the accused on the crimes committed under the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 and Homicide, attempted homicide related laws.

Details on the charge sheet is mentioned below;

**Charges before the Rukum District Court:**

A



have been accused of committing crime against Section 177(1), 183(1) and 41 (a) (c) of National Penal Code, 2017 and Section 3(1) and 4(5) of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, and therefore, the charge-sheet has been filed praying the following:

1. Punishment according to Section 177(2), 183(2) and 41 of National Penal Code, 2017 and Section 7(1)(a) of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011
2. Compensation according to Section 186 of National Penal Code, 2017 and Section 9 of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011
3. Defendant Mr. Dambar Bahadur Malla was given additional punishment according to 7(2) of Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011

B. Similarly, Pseudonym " 54 Rukum Pachim 39" has been accused of committing a crime against Section 177(1), 183(1) and 41 (a) (c) of National Penal Code, 2017 and Section 3(1) and 4(5) of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, and therefore, the charge-sheet has been



filed praying the following:

1. Punishment according to Section 177(2), 183(2) and 41 of National Penal Code, 2017 and Section 7(1)(a) of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011
2. Compensation according to Section 186 of National Penal Code, 2017 and Section 9 of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011.

C. Mr. [REDACTED] has been accused of committing crime against Section 36(1) of National Penal Code, 2017, and therefore, the charge-sheet has been filed praying the following:

1. Punishment according to Section 36 (3) (b) of National Penal Code, 2017.

**Charges before the Rukum District Court, Juvenile Bench:**

A. Pseudonym " 54 Rukum Pachim 39" has been accused of committing a crime against Section 177(1), 183(1) and 41 (a) (c) of National Penal Code, 2017 and Section 3(1) and 4(5) of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, and therefore, the charge-sheet has been filed praying the following:

1. Punishment according to Section 177(2), 183(2) and 41 of National Penal Code, 2017 and Section 7(1)(a) of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011.
2. Compensation according to Section 186 of National Penal Code, 2017 and Section 9 of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011.

B. Pseudonym " 54 Rukum Pachim 36" has been accused of committing a crime against Section 177(1), 41 (a) (c), and 33 of the National Penal Code, 2017 and Section 3(1) and 4(5) of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, and therefore, the charge-sheet has been filed praying the following:

1. Punishment according to Section 177(2), and 41 (a) (c), 33 (3) (a), of National Penal Code, 2017 and Section 7(1)(a) of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011
2. Compensation according to Section 186 of National Penal Code, 2017 and Section 9 of the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 respectively.

4. Please indicate what measures have been taken to guarantee that minority victims of caste-based violence have access to justice and ensure they are able to lodge

complaints in a safe and enabling environment without fear of intimidation, harassment or threats.



- The Constitution protects the rights of victim of crime. Moreover, the Victims of Crime Protection Act, 2018 provides safeguard against attack, damage, fears, intimidation or threat by the suspect, accuse, offender or person related to him or her or the witness of the accused against the victim or close relative and person dependent on the victim. The National Criminal Procedure Code provides that the incidence may be reported verbally or through electronic means in the nearest police office. In case the police office denies to register the report, the complaint along with the report may be made to the office of the district attorney or higher police office. The court may issue necessary order to the concerned authority to protect the witness or the victim. The Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special Types of Cases, 2007 provide for maintaining confidentiality including code names of victims and in-camera hearing of the cases involving women such as rape, abortion, sexual abuse, trafficking in human beings, incest and violence against women. The guidelines also requires similar precaution in the criminal cases involving children as a party and tried by a juvenile bench;

In Rukum incident, the Government of Nepal had committed to undertake investigation, bring the perpetrator before justice, and ensure protection and safety of the victim from the very beginning.

Family members and witness were provided protection. As the case is *sub judice* in the court, necessary security arrangement has been continued for protection of victims from any sort of undue influence and fear from the perpetrator.

5. Please indicate what actions have been taken to effectively address discrimination and violence against caste minorities and to ensure effective implementation of the existing national legislative framework protecting them against human rights violations, as well as preventing recurrence of such violations.
- Article 18 of the Constitution of Nepal ensures equality before law and equal protection of law to its citizens. Discrimination on any ground including that of origin, religion, race, caste, tribe, sex, physical condition, disability, condition of health, marital status, pregnancy, economic condition, language or region or ideology is prohibited. The Constitution also provides rights against untouchability and discrimination.

Similarly, Article 24 of the Constitution ensures right against untouchability and discrimination. Pursuant to this Article, no person is subjected to any form of untouchability or discrimination in any private and public



places on grounds of his or her origin, caste, tribe, community, profession, occupation or physical condition. In producing or distributing any goods, services or facilities, no person belonging to any particular caste or tribe is prevented from purchasing or acquiring such goods, services or facilities nor is such goods, services or facilities be sold, distributed or provided only to the persons belonging to any particular caste or tribe. Likewise, no act purporting to demonstrate any person or community as superior or inferior on grounds of origin, caste, tribe or physical condition or justifying social discrimination on grounds of caste, tribe or untouchability or propagating ideology based on untouchability and caste based superiority or hatred or encouraging caste-based discrimination in any manner whatsoever is allowed and no discrimination in any form is allowed at a workplace with or without making untouchability on the ground of caste. If any act of untouchability and discrimination in any form is committed, such act is punishable by law as a severe social offence, and the victim of such act have the right to obtain compensation in accordance with law.

Article 40 of the Constitution ensures special provision on Rights of Dalit, according to which, Dalits have the right to participate in all bodies of the State on the basis of the principle of proportional inclusion. This has been ensured in public services and other sectors of employment as well. Moreover, free education with scholarship, from primary to higher education, in technical and vocational education has been ensured for Dalit. The Dalit community have the right to use, protect and develop their traditional occupation, knowledge, skill and technology.

The Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011 has been enacted for the criminalization of the offence of caste-based discrimination and untouchability. Section 3 of the Act prohibits anyone to commit or cause to commit untouchability and discrimination and instigate or provoke anyone to commit such act that cause untouchability or discrimination or abet anyone to commit such act or knowingly participate in such act. Any person who commits the offence against this Act is liable to the punishment of imprisonment and a fine. A person who aids, abets or instigates anyone to commit the offence or attempts to do such act is liable to half the punishment prescribed to the principal offender. If a person holding public post commits the offence, such person is liable for an additional fifty percent punishment.

The National Penal Code of Nepal also criminalizes and penalize the caste based discrimination and untouchability.

As a institutional mechanisms there are National Human Right Commission, National Women Commission, National *Dalit* Commission, to ensure protection and promotion of rights of *Dalits*.



As far, the information concerning on extrajudicial, summary or arbitrary execution in the case of Nawaraj BK, section 99 of the National Penal Code, 2017 has made a provision to punish the prosecutors who carry the investigation or prosecution maliciously with intent to have an innocent person bear liability or to save the real offender. A person who commits such offence is liable to a sentence of imprisonment for a term not exceeding six months or a fine not exceeding five thousand rupees or both the sentences. Moreover, the victim is entitle to compensation.