

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 situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL
NPL 2/2015:

20 August 2015

Excellency,

We have the honour to address you in our capacities 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 situation of human rights defenders; Special Rapporteur on minority issues; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 25/2, 24/5, 25/18, 25/5, 25/13, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged excessive use of force by the police to disperse a peaceful protest in Kathmandu**, and the serious injuries sustained by several protestors, including Ms. **Kamala Hemchuri**, Ms. **Durga Sob**, and Mr. **Ganesh B.K.**.

Ms. Kamala Hemchuri is the President of the Professional Development Resource Center, a non-governmental organization that seeks to provide better education opportunities for Dalit youth.

Ms. Durga Sob is the Chairperson the Feminist Dalit Organization, a non-governmental organization that seeks to support Dalit women.

Mr. Ganesh B.K. is the Chairperson of the Rastriya Dalit Network which provides trainings for Dalit rights defenders. The Network includes the Dalit Students' Council, Dalit Women's Council, Dalit Representative Forum, Haliya Rights Forum, and Untouchability Assessment Centre.

According to the information received:

On 4 August 2015, approximately 100 Dalit rights defenders reportedly took part in a peaceful demonstration in the Bijuli Bazar area in Kathmandu, at the initiative of the Coalition of Dalit Constituent Assembly Members, Dalit civil society and the Joint Political Dalit Struggle Committee. The demonstrators protested against the current draft of the country's new Constitution that allegedly unduly restricts the political rights of the members of the Dalit community, and called on the law-makers to include the Dalit in the constitution-making process.

The police forces, armed with batons and shields, proceeded to disperse the peaceful crowd, reportedly using excessive force. 26 demonstrators were injured, some suffering head injuries, and were admitted to the Civil Service Hospital in Kathmandu. Ms. Kamala Hemchuri was reportedly seriously wounded at her right leg after being beaten for over a minute. Mr. Ganesh B.K. sustained a two-inch wound on his left arm and was taken to Kathmandu Model Hospital. Ms. Durga Sob also suffered a large contusion on her left shoulder.

On 5 August 2015, the Government announced the establishment of a committee to investigate these allegations of excessive use of force by the police. It is unclear whether this committee will function independently.

While noting the announcement by the Government of the establishment of the aforementioned committee, serious concerns are expressed about the alleged excessive use of force against peaceful demonstrators, in the exercise of their legitimate rights to freedom of opinion and expression and freedom of peaceful assembly. Concerns are also expressed about the situation of Dalit human rights defenders, including women human rights defenders, who are most at risk of attacks and retaliation. We are further concerned that the current draft of the new Nepalese Constitution appears to unduly restrict the political rights of members of the Dalit community and also at the lack of consideration of their views in the constitution-making process.

In connection with the above alleged facts and concerns, please refer to the Reference to International Law Annex attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Has a complaint been lodged by the victims or on their behalf?
3. Please indicate the legal basis of the dispersal of the peaceful protest by the police, and how such measure is compatible with international human rights norms and standards governing freedom of opinion and expression, and freedom of peaceful assembly.

4. In relation to allegations of excessive use of force by the police against peaceful protestors, please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide the full details of any prosecutions which have been pursued in relation to the case. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Please indicate any remedial action to be taken vis-à-vis the victims aforementioned.
7. Please indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.
8. Please indicate what measures have been taken to ensure that the views of members of the Dalit community and other civil society organizations are being duly considered in the constitution-making process in Nepal.
9. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Rita Izsák
Special Rapporteur on minority issues

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Dubravka Šimonović
Special Rapporteur on violence against women, its causes and consequences

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer to the articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR) that Nepal acceded in 1991, which guarantee the right to freedom of opinion and expression and the right to freedom of peaceful assembly respectively. In particular, we would like to remind your Excellency's Government that any restriction to the right to freedom of opinion and expression should be provided by law; may only be imposed for one of the grounds set out in article 19 and subparagraphs (a) and (b) of paragraph 3 and must conform to the strict tests of necessity and proportionality.

In its General Comment No. 34, the Human Rights Committee has held that, under no circumstances, can an attack on a person, because of the exercise of his or freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19 ICCPR. The Committee has urged States to take measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23).

We would also like to refer to paragraph 59 of the report of the previous Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, where he emphasizes the importance that exercising the right to freedom of opinion and expression has for minorities and indigenous peoples, as freedom of opinion and expression is a basic tool for ensuring the specific recognition of the rights demanded by these groups. In paragraph 62, he explicitly states that "in no case should restrictions on the freedom of expression be used to stifle minorities' and indigenous peoples' legitimate claims to their rights (A/HRC/14/23).

Moreover, we would like to draw your Government's attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which "reminds States of their obligation to respect and fully protect the [right] of all individuals to... assemble peacefully, ... including persons espousing minority or dissenting views or beliefs, human rights defenders... 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 [right] to freedom of peaceful assembly... are in accordance with their obligations under international human rights law".

We would also like to draw the attention of your Excellency's Government to resolution 25/38 of the Human Rights Council, in which the Council, inter alia, urges States to pay particular attention to the safety and protection of women and women human rights defenders.

In addition, we would like to refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association that focuses on challenges to the enjoyment of the right to freedom of peaceful assembly by groups most at risks, including members of the Dalit community (A/HRC/26/29).

In addition, we would like to bring to Your Excellency's attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 22 April 1991), whether perpetrated by a State official or a private citizen, in public or private life.

Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Nepal ratified in 1991 as well as article 12 which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 which requires State parties to prosecute suspected perpetrators of torture.

In addition, we would like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."

We also 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.

Finally, given that the information received indicates that it appears that the protest was dispersed due to the advocacy of the individuals concerned regarding the rights of the Dalit, we would like to draw your Excellency's Government attention to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to "protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories" and "totake measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".