

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; and the Special Rapporteur on minority issues

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 26/12, 25/2, 32/32, and 25/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **several incidents of alleged extrajudicial executions and excessive use of force by Nepalese security officers between 2013 and 2017, including during demonstrations held by ethnic minority groups, which resulted in over 40 persons killed and several others injured, in Terai region, Nepal.**

According to the information received:

1) Excessive use of force and extrajudicial executions during protests

In 2006, the Communist Party of Nepal – Maoist and the State's armed forces signed a Peace Agreement, which put an end to a decade-long civil war in Nepal. A Constituent Assembly was subsequently elected in 2008 but failed to draft Nepal's new Constitution. A second Constituent Assembly was elected in 2013 but also remained in deadlock until the devastating earthquake of 25 April 2015.

In the aftermath of the earthquake, Nepal's four major political parties decided to reach an agreement on the Constitution through a "fast track" process. However, some groups – more particularly Madhesi communities in the southern region of the Terai – voiced strong opposition to the suggested delineation of federal provinces. They claimed it would betray prior governmental commitments, divide their communities, and further marginalise them. They also objected to the distribution of parliamentary constituencies and restrictions on the right of women to pass citizenship on to their children.

In the final weeks of Nepal's new constitution drafting process, in which the public was given very little time for consultations, and following its promulgation on 20 September 2015, sustained protests, sometimes involving violence, erupted

in ethnic minority areas primarily in the far west and the southern plains of the country. The Madhesi people and the Tharu people launched protests to object to the Nepal Constitution, which they consider discriminatory and failing to address the rights and demands of Madhesi, Tharus and other indigenous groups. Protests mainly took place in Tikapur (Kailali), Birgunj (Parsa), Janakpur (Dhanusha), Jaleshwar (Mahottari), Rajbiraj, Bhardaha (Saptari) and Rangel and Dainiya (Morang) districts. The Terai protests were divided into two phases, the first beginning on 16 August 2015 and the second taking place between 23 September 2015 and 5 February 2016.

At least 49 people were killed during the protests, including 32 protesters and nine security forces. The rest remain unaccounted for. The violence reportedly included the use of arbitrary and disproportionate force and extrajudicial killings by the police against protesters and bystanders, including children, as well as the killing of police officers.

Regarding the use of excessive force against protestors and bystanders, reports indicate that 41 per cent of the victims were targeted, while 56 per cent of the fatalities were the result of indiscriminate shooting into crowds in market places and houses. 3 per cent of the fatalities were reportedly caused by beating. Six of the fatal victims were children. According to civil society reports, the evidence shows that none of the victims were posing a threat at the time when they were killed.

Reports documented the killing of nine police officers during the protests, including an incident on 24 August 2015 in Tikapur when an isolated group of protesters, armed with batons and bamboo sticks, brutally killed eight police officers. The police have reportedly investigated these killings and have filed criminal cases against the suspects.

More recently, on 6 March 2017, supporters of the Samyukta Loktrantrik Madhesi Morcha (SLMM) gathered to protest against an election rally of the Unified Marxist-Leninist (CPN-UML) party, in Maleth of Saptari district in south-eastern Nepal. The SLMM, an alliance of Madhes based parties, were boycotting the election as no changes have been made to the Constitution. During violent clashes between political party cadres and law enforcement forces policing the rally, the latter used batons against individuals, fired tear gas and opened fire on a crowd killing five people and injuring dozens.

On 7 March 2017, the United Nations in Nepal expressed its concerns about the escalation of tensions and violence in the lead-up to the local elections announced for May 2017.

2) Lack of accountability

To date, the police have investigated the killings of security personnel in Tikapur on 24 August 2015 and have filed cases against the suspects. However, no investigation has allegedly been opened with regards to the killing of dozens of civilians, despite the publication of a report by the National Human Rights Commission recommending that the Nepalese authorities investigate the killings.

The internal regulation for Armed Police Force (APF) officers appears to be one of the elements severely limiting accountability as no case can be filed against members of the APF without the consent of the Government. Reports indicate that the families of many of the victims have been denied the right to file a first information report (FIR), which is the first step to investigate an incident in the Nepalese criminal justice system. Due to this constraint, in many cases the relatives of victims filed *writ of mandamus* demanding the relevant courts to order the district police to file the FIRs. In at least four cases, court rulings have requested that the authorities register the FIRs, carry out investigation and prosecute the alleged perpetrators based on evidence collected and established. However, the police have not complied with the rulings.

A high-level Inquiry Commission has been created in October 2016 with the mandate to investigate the incidents occurred in the Terai between 2015 and 2016. Its six-month mandate ended in April 2017 and it was renewed for three months.

In March 2017, the Government appointed a three-member Committee to investigate the killings in Saptari within fifteen days and decided to provide NRs. 1 million to each of the victims' families.

Ahead of the second phase of elections scheduled for June 2017, the Government is reportedly considering accepting the Tharuhat and Madhes protests as political movements and withdrawing all the cases filed against persons allegedly involved in the killing of police officers, vandalism and arson occurred during the Tikapur incident. This is particularly worrying, especially after the Supreme Court released in February 2017 the full text of its January 2016 judgement quashing the Government's decision to withdraw criminal cases on political grounds.

3) Enhanced powers granted to the Armed Police Force on 7 July 2015

The Armed Police Force is a paramilitary force created in 2001 to act as a catalyst in maintaining law and order, contain insurgency and curb terrorist activities. The APF can be mobilized in various policing roles, including in situations of riot and public unrest. On 7 July 2015, the Government of Nepal granted the AFP enhanced powers to use force with reduced accountability.

According to article 58(3) of the Armed Police Force regulation (Government of Nepal, 7 July 2015): “[i]f an APF personnel is obstructed from discharging his duties or is physically attacked, he may use necessary or final force in order to defend himself, maintain law and order, and to arrest the attacker”. Article 58(4)

further states that “in the course of using force while discharging his duties, if a person is injured or killed, no case will be filed against the APF personnel without the consent of Government of Nepal.”

4) Individual cases of alleged extrajudicial killings occurred between 2013 and 2015

Case of Mr. Ramshewak Dhobi

Mr. Ramsewak Dhobi, aged 28, was resident of Asuraina VDC, ward no. 6 of Rupandehi district of Western Region. On 12 August 2013, Mr. Dhobi was arrested by a policewoman and a policeman for allegedly mistreating local women and was taken to the Marchwar Area Police Station. On the same day, Mr. Dhobi's dead body was found in a field located around 500 meters away from the police station. Many bruises and welts were found on Mr. Dhobi's head, hands, ears, neck and eyebrows. Blood was coming out of his mouth and nostrils. Pieces of plastic bag that were reportedly used to block the nostrils, had dried bloodstains in them. The evidence suggests that Mr. Dhobi was beaten to death and subjected to severe torture while in the custody of the police.

The police reportedly spread the rumor that Mr. Dhobi was drinking alcohol and that his death was caused by accidental drowning.

Case of Mr. Madho Tajpuriya

Mr. Madho Tajpuriya, aged 57, was resident of Sijuwa VDC-Ward -3, Morang district. On 24 October 2014, around 4.00 p.m., Mr. Tajpuriya, who was observing Gobardhan Puja (third day tihar - festival of light) with his family, left his house and was arrested, without a warrant, by police personnel of Sijuwa Area Police Office, in Morang District, Eastern Development Region, who were reportedly under the influence of alcohol. He was beaten and taken to the Area Police Office.

A group of villagers, who went to the station to urge the police not to harass Mr. Tajpuriya, were warned by the police that they would meet the same fate unless they leave. The police also reportedly beat Mr. Tajpuriya's wife when she urged the police not to beat her husband. In the evening of the same day, the police told Mr. Tajpuriya to wash their dishes and when he refused to do so, the police beat him up with sticks and boots. He died at around 7.00 p.m. in police custody.

The police brought Mr. Tajpuriya's dead body to the Koshi Zonal Hospital and reportedly attempted to cover up their crime by compelling the doctors to fill details of the post mortem report that would suit the police's account of the facts. The police also bribed Mr. Tajpuriya's family members to sign documents promising a family member would be given a job in the Nepal police.

Incidents in Birgunj of 1 September 2015: Cases of Messrs. Dharma Raj Singh, Dinanath Sah Kalwar, Jay Prakash Sah, Hifazat Miya Ansari, and Sohan Ji Sah Kalwar

Four civilians were killed during four separate clashes in Birgunj on 1 September 2015. Mr. Dharma Raj was going to Birgunj, in Parsa district to participate in a protest with a group of persons from nearby villages. Seven police officers from the Shripur Police Post were deployed in the vicinity of Ramraj Bridge to prevent the crowd from advancing further. While protestors were chanting and marching, one of them was shot in the leg. Mr. Singh carried the injured man toward the bridge. Less than five minutes later, Mr Singh was shot and died on the spot.

As protesters gathered in Birgunj began chanting slogans against the police, the latter started beating the crowd with batons and firing teargas. When the police began to fire live ammunition in the air and at protesters, civilians started fleeing. At around 2.00 p.m., Mr. Dinanath Sah Kalwar and Mr. Jay Prakash Sah were riding on a bicycle to Birgunj. When they reached Pratima Chowk, the streets were empty, except for armed forces in riot gear. As the young men got off their bicycle to inquire about what had happened, a police officer shouted "shoot them, shoot them." The two men immediately tried to ran back to their bicycle. While doing so, Mr. Dinanath Sah Kalwar was shot in the left shoulder and Mr. Jay Mr. Prakash Sah in the chest. Severely injured, both victims fell to the ground but the police failed to transport them to the hospital. The victims were declared dead upon arrival at the hospital.

At around the same time, over 50,000 protesters arriving from multiple districts, including Kalaiya and Bara, became angry after seeing their leaders beaten by the police. A group of police officers chased protesters with stones and fired live ammunition indiscriminately, shooting Mr. Hifazat Miya Ansari in the arm. Eye-witnesses reported that when Mr. Ansari fell to the ground, a group of police officers surrounded him and shot him in the chest, killing him instantly.

In another incident, over 4,000 protesters arriving from Musaharwa village to Birgunj were stopped by a group of approximately 100 police officers. Clashes ensued, with protesters throwing stones at armed forces, and the latter firing teargas. Almost all protesters began to disperse after a bullet hit a protester in the shoulder. Some protesters were hiding behind the walls of a nearby hotel waiting for the situation to calm down. As Mr. Sohan Ji Sah Kalwar raised his head to check if police officers were still around, armed forces members shot him in the eye, killing him instantly.

Case of Mr. Ram Krishna Raut

On 9 September 2015, Mr. Ram Krishna Raut left his house at 11.30 a.m. As the victim joined a group of four people chatting, a clash between protesters and armed forces started in the vicinity. Fearing that they might be targeted by the

police, Mr. Ram Krishna Raut and the four men fled towards a house. As Mr. Raut was entering the house, a member of the APF shot him in the back.

Case of Mr. Ram Bibek Yadav

Mr. Ram Bibek Yadav, aged 22, was resident of Mahottari Village Development Committee (VDC), ward no. 5 of Mahottari district in Central Development region. He was the district President of the Student Union, Mahottari, and was also a teacher at a local English medium school.

On 9 September 2015, Mr. Yadav went to observe a protest called by the United Democratic Madhesi Front. He was watching the protest from a location close to the District Police Office in Jaleswor, the district headquarters. At around 3.30 p.m., the police started firing tear gas canisters in order to disperse the protesters. As everyone started fleeing, Mr. Yadav tripped over a stone and fell on the ground. The police opened fire and he was hit by two bullets below his arm pit. He was brought to the Jaleswor District Hospital, but was declared dead in the hospital.

Case of Mr. [REDACTED]

On 11 September 2015, over 10,000 people gathered in Janakpur, in Dhanusha District, to join the protests called by the Madhesi parties, despite an ongoing curfew. As protesters threw stones at the police, the latter began firing live ammunition indiscriminately and without any prior warning. Mr. [REDACTED], a 16 year-old boy, ran away and hid in the bushes. After police officers found the victim, they started beating him and eventually shot him in the head, killing him instantly.

Case of Mr. [REDACTED]

Mr. [REDACTED], aged 4, from Gonaha VDC of Rupandehi district, resided with his parents in Parsa district. On 15 September 2015, a police team was deployed to respond to a protest held by 40 individuals in Bethari chowk, Gonaha VDC-6, Rupandehi. The protest reportedly turned violent following police intervention to escort the protesters out. In response to the violence, the police threw 14 or 15 teargas canisters dispersing protesters in different directions. Some protesters fled to Chhapiya, North of Bethari and others towards Betheri village. Around 5.00 p.m., 150 Armed Police Force arrived to the place and together with the Nepal Police started firing indiscriminately from the Tinau bridge towards the Bethari Market, where they suspected that some of the protesters had fled. Mr. [REDACTED] was at the market with his mother when he was hit by a bullet on the left side of the head and rushed to the Universal Medical College in Bhairahawa. He was pronounced dead upon arrival to the hospital.

Case of Mr. Dilip Sah

On 22 November 2015, a large number of protesters began to gather on the street. As Mr. Dilip Sah tried to prevent his eleven-year-old daughter from rushing to the veranda of their house to see what was happening outside, gun pellets hit his forehead. When relatives of the victim ran downstairs to call an ambulance, police officers stopped them and threatened to shoot them if they tried to leave the house. Mr. Sah was later transferred to BP Koirala Institute of Medical Science, where he was declared dead upon arrival.

Case of Mr. [REDACTED]

Mr. [REDACTED], aged 16, a resident of Tejapakad VDC Ward Number 8, was a 10th grade student at Gaur based Juddha Higher Secondary School. On 20 December 2015, Mr. [REDACTED] was taking part in a peaceful demonstration at BP Chowk when he was shot and beaten to death by a team of the Nepal Police. At around 3.00 p.m., some protesters started pelting stones at police who threw stones at the protesters in retaliation. Mr. [REDACTED], who was standing 150 feet from the District Police Office, was trying to convince fellow students not to throw stones at the police. At that point, a bullet fired by the police hit him in the right side of his abdomen. His fellow students carried Mr. [REDACTED] towards the hospital but were stopped by a group of nine police personnel who beat the students with their sticks and gun butts and chased them away. The police then proceeded to beat Mr. [REDACTED] for 20 minutes with their hands, legs and gun butts. He was eventually taken to District Hospital where he was pronounced dead.

Incident in Saptari of 6 March 2017: Cases of Messrs. Sanjan Mehata, Pitamber Mandal, Anand Sah and Birendra Mahat

On 6 March 2017, more than 5,000 security forces (Nepal Police and Armed Police Force) surrounded the Industrial Area of Maleth, Saptari, as the CPN-UML was organizing a mass meeting in the Industrial Area compound, which gathered 2,000 party cadres. Violent clashes erupted when the police attempted to stop the protesters. The police resorted to baton charging which resulted in injuries to more than two dozen protestors and bystanders. The police also reportedly fired more than one hundred rounds of tear gas and subsequently opened fire on the protesters. The first bullet injured Mr. Anand Sah. The law enforcement forces then run towards the Jolhari Chowk area randomly firing bullets for around 10-15 minutes, injuring more than nine people. Mr. Sanjan Mehata was reportedly shot in the head by a policeman after he was taken under police control and died on the spot. Messrs. Pitamber Mandal, Anand Sah, Birendra Mahato and another person were also wounded and later died.

Post mortem reports indicate the use of jacketed bullets which are highly lethal. Out of the 43 people injured, nine had bullet injuries above the waist.

We express grave concern at what appears to be a pattern of extrajudicial killings and excessive use of force by Nepalese security forces against civilians in Terai region, which has resulted in over 40 persons killed and dozens injured. We are further concerned that the alleged use of firearms and excessive force by Nepalese enforcement personnel appears to target primarily members of ethnic minorities in the Terai region, and is deployed to clamp down on protesters and on the legitimate exercise of the rights to peaceful assembly and freedom of expression on an issue of high public and political interest, where opinions should be freely expressed and debated by all, including by minority groups. Further concern is expressed at the reported lack of accountability for the aforementioned violations.

While we do not wish to prejudge the accuracy of these allegations, they indicate a prima facie violation of the right of every individual to life and security and not to be arbitrarily deprived of his or her life, as well as the rights to freedom of opinion, expression and peaceful assembly, as set forth in articles 6 (1), 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR). They also appear to contravene articles 1, 2 and 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** 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 therefore be grateful for your observations on the following matters:

1. Are the facts alleged in the summary of the cases accurate? Please provide any additional information and any comment you may have on the allegations described in this letter.
2. Please provide the full details of any investigations which have been undertaken concerning the cases described above of excessive use of force by Nepalese security forces, and in particular with regard to the aforementioned killings. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
3. Please provide details about progress of the investigation conducted by the High Level Inquiry Commission on the incidents occurred in the Terai between 2015 and 2015 as well as the Committee appointed to look into the Saptari incident. Please inform about the support provided by the Government to those two bodies through resources and capacity. Please inform whether the findings will be made public.
4. Please, indicate whether compensation has been provided to the victims and their families.

5. Please indicate the rules governing the use of force by law enforcement officials in Nepal, including Armed Police Force regulation of 7 July 2015, and how do these regulations comply with international standards on the use of force.
6. Please indicate what measures have been taken to ensure that the legitimate rights to freedom of expression and peaceful assembly are respected and that the physical and psychological integrity of those exercising these rights is guaranteed in the Terai region.
7. Please inform about the legal and policy measures adopted by the Government of Nepal to ensure that law enforcement personnel operating in Terai region exercise their duties in full respect of the rights of members of ethnic minorities and in compliance with the principles of equality and non-discrimination; and how the implementation of these measures are effectively monitored and controlled and their breaches sanctioned.

We would appreciate receiving a response within 60 days.

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.

This letter and your Excellency's Government's response will be made public in a report to be presented to the Human Rights Council for its consideration.

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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye

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Annex
Reference to international human rights law

In this connection, we wish to draw your Excellency's Government's attention to articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR) acceded by Nepal on 14 May 1991 which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life. Moreover, we would like to refer to articles 19 and 21 of the ICCPR that provides for the right to freedom of opinion and expression and the right to peaceful assembly.

Under international law, police may not use firearms except in defence against an imminent threat of death or serious injury, and only when there is no other less extreme means to achieve this. Firearms must never be used as a tactical tool for the management of demonstrations or other public assemblies, and are not an appropriate tool to contain widespread violence. Arbitrary or abusive use of force and firearms by law enforcement officials must be punished as a criminal offence.

Furthermore, we would like to draw your attention to relevant international principles and norms governing the use of force by law enforcement authorities. Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. Moreover, the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. According to these instruments, law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means. Force used must be proportionate to the legitimate objective to be achieved.

Moreover, we would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Excellency's Government in line with the Prevention and Investigation Principles, in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

In paragraph 23 of its general comment no. 34, the Human Rights Committee urges States parties to protect against attacks aimed at silencing those exercising their right to freedom of expression. The Committee has stated that, under no circumstances can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19 (CCPR/C/GC/34).

We also wish to draw attention of your Excellency's Government to operative paragraph 2 of Human Rights Council resolution 24/5 which "reminds States of their

obligation to respect and fully protect the rights of all individuals to assemble peacefully [...] and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We would also like to draw your Excellency’s Government attention to international standards relevant to the protection and promotion of the rights of persons belonging to minorities, in particular to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 1 of the Declaration establishes the obligation of States to protect the existence and identity of minorities within their respective territories, and article 2 states the rights of persons belonging to minorities to participate effectively in cultural, religious, social, economic and public life. Furthermore, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1).