

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL NPL 4/2018

12 October 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government that we have received allegations of torture and extrajudicial killing by the Nepal Police in August 2018 of two individuals, Mr. Ajay Tamang and Mr. Gopal Tamang, who were accused of the abduction of an eleven-year-old child in Bhaktapur district.

Another case of alleged intentional killing by the Police of Nepal in a "false encounter" concerning Mr. Dinesh Adhikari, who was suspected of involvement in several criminal activities, was brought to the attention of your Excellency's Government in communication NPL 4/2014 on 16 September 2014. We regret that no response has been received to date.

According to the information received:

On 5 August 2018, an eleven-year-old child was abducted from Bhaktapur district and his family received a phone call demanding a ransom. Mr. Ajay Tamang and Mr. Gopal Tamang were both suspected of the child's abduction by the Nepal Police. Around 9 a.m. on 6 August 2018, witness accounts indicate that the Nepal Police arrested Mr. Ajay Tamang and Mr. Gopal Tamang in their rented room, and beat them brutally to extract information related to the abduction for two hours, then took them away in a police van at around 11 a.m. In the afternoon of the 6 August 2018, Police found the body of the missing child buried at a construction site. Police then took Mr. Ajay Tamang and Mr. Gopal Tamang to near the Doleshwor forest and fired nine rounds of ammunition at them. It is not clear whether the individuals were already dead due to the beatings they received or survived the beatings but were then summarily executed by the Police in the forest.

In a public police report, the Nepal Police falsely stated that they had encountered Mr. Ajay Tamang and Mr. Gopal Tamang hiding in the forest and killed the individuals in self-defence when they pointed a gun towards the police.

Persons associated with Mr. Ajay Tamang and Mr. Gopal Tamang filed the case with the National Human Rights Commission (NHRC) of Nepal on 8 August 2018, requesting an investigation into the alleged extrajudicial killings. Reports indicate that the NHRC has formed a five-member committee to conduct the investigation; however, no report has been made public to date.

Police officers involved in the encounter with Mr. Ajay Tamang and Mr. Gopal Tamang were praised for their bravery and service in media as well as social networks. While concerns were raised with the Government regarding the authenticity of the accounts included in the public police report, no additional investigation has been conducted by the Government

Without making a judgment as to the accuracy of the information made available to us, we express our most serious concern about the alleged torture and extrajudicial killing of these two individuals whilst they were in the custody of the Police in violation of the right to life and the right not to be subjected to torture as guaranteed by articles 6 and 7 of the International Covenant for Civil and Political Rights, ratified by Nepal on 14 May 1991.

We would like to remind your Excellency's Government that when the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. We further note that state agents may only use lethal force if it is "strictly unavoidable in order to protect life" and that any loss of life that results from the excessive use of force by law enforcement officials without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. We further highlight that there is an obligation to conduct prompt effective and thorough investigations into all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death.

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. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to these cases including the status of any investigation being conducted by the National Human Rights Commission of Nepal. Have any penal,

disciplinary or administrative sanctions been imposed on the alleged perpetrators?

3. Please indicate whether reparations have been or will be made to the victims' next-of-kin.
4. Please provide information about the directives issued by the Government to law-enforcement personnel concerning the precise circumstances in which the use of lethal force is authorized in Nepal and indicate how these directives comply with the international human rights obligations of Nepal under the ICCPR as well as the requirement of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Please also indicate what measures are taken when law enforcement officers are found to have violated such directives.

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.

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, a international norm of jus cogens that is codified in article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 14 May 1991 and reflected, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

In particular, paragraph 1 of General Assembly Resolution 68/156 "[c]ondemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment"

We wish to draw your Government's attention to articles 3 of the Universal Declaration of Human Rights (UDHR) and 6 (1) of the ICCPR, 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. The Human Rights Committee has said that it considers article 6 (1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces.

With regards to deaths in custody, a large body of international human rights jurisprudence establishes that the burden lies primarily on the State to prove that the death did not result from acts or omissions attributable to it. The Human Rights Committee clarified in *Eshonov v. Uzbekistan, Communication No. 1225/2003*, that "a death in any type of custody should be regarded as prima facie a summary or arbitrary execution" and stressed that "there should be thorough, prompt and impartial investigation to confirm or rebut the presumption, especially when complaints by relatives or other reliable reports suggest unnatural death."

Regarding the use of firearms, we would like to highlight that the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles) provide that firearms may only be used by law enforcement officials in self-defence or defence of others against an imminent threat to death or serious injury. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated.

Furthermore, according to Principle 9 of the Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, there is an obligation to conduct thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death. The Minnesota Protocol on the Investigation of Potentially Unlawful Death which in 2016 updated the original UN Manual on the Effective Prevention of Extra-legal, Arbitrary and Summary Executions of 1991; and the UN Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989), states that an investigation must be a) prompt; b) effective and thorough; c) independent and impartial; and d) transparent.