

Mandates of 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

REFERENCE:
AL NPL 3/2019

28 October 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 35/15, 41/12 and 34/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of excessive use of force and extrajudicial executions by police officers in Terai, including during demonstrations. One victim is said to belong to the Tharu minority and another to the Madhesi minority.**

Allegations of several incidents of extrajudicial executions and excessive use of force by Nepali security officers between 2013 and 2017 were the subject of a previous communication to your Excellency's Government dated 7 June 2017 (NPL 1/2017). We regret that to date, we have not received any response to this communication.

According to the new information received:

Mr. Dipendra Chaudhary

On 23 January 2019 at approximately 4:00 a.m., Mr. Dipendra Chaudhary, a 27-year old resident of Kadarbona, Saptari district, member of the Tharu minority, was killed in Raypur, along Rupani-Rajbiraj road section. Mr. Chaudhary was living in India and working as a driver. He was reportedly arrested by security forces from India, and handed over to the Nepalese police. He was then shot and killed in their custody. The exact location where he was killed is unknown.

Media reports quoted the police alleging that Mr. Chaudhary was a member of a banned Terai-based armed group and was killed in an armed encounter while he attempted to fire at police personnel. Following the incident, police officers took the dead body to Rajbiraj Hospital.

The family has filed an application to the National Human Rights Commission (NHRC), province office Janakpur. No First Information Report (FIR) has been registered in the police on this case.

Mr. Kumar Paudel

On 20 June 2019, Mr. Kumar Paudel, a social activist reportedly in-charge of the Sarlahi district of the Communist Party of Nepal (CPN), was shot dead in Lalbandi-1 Chandranagar Forest, three kilometers to the north of Nawalpur Chowk on the East-West Highway in Sarlahi district. Mr Paudel was reportedly shot in the head and had injury marks on one of his hands. The police claimed that they opened fired in response to shots fired by a group of four persons on two motorcycles, who were heading towards Sindhuli via the forest in Lalbandi.

The officers claimed that a three-foot-long dead wire, which can be used for detonating explosive materials, was found amongst Mr. Paudel's personal effects. A five feet-long wire, one revolver and four bullets for the revolver, one handmade pistol and two bullets for the pistol, 200 pieces of blank identity card with the word "Bhumihin Sukumbasi Sangh" (landless people's association) were also allegedly recovered from Mr. Paudel's bag.

Police allowed media professionals to take pictures of the victims' body only from one side. In the pictures it was visible that the part of the victim's head that was hit with the bullet faced the ground. Blood was seen at the crime scene, which had been covered with soil. Reports claimed that the scene and the physical condition of the body of deceased gives ground for suspicion that the person was killed unlawfully. During the daytime, plainclothes police prevented locals from entering the forest.

On 22 June, persons associated with Mr. Paudel received his body and demanded judicial probe into the incident and compensation be paid to his family. Sarlahi's Superintendent of Police pledged before NHRC representatives that he would take the initiative to meet the family's demands. The family of the deceased also requested that the words 'killed in an encounter' be removed from the legal documents, following which the police replaced the word 'encounter' with 'police action.'

Police officials, including the Superintendent of Police and the Deputy Superintendent of Police, interviewed Mr. Paudel's family members. Likewise, the Home Minister informed the Parliament that a probe committee has been formed to investigate the case. Thus far, no FIR has been registered, but the NHRC has been investigating the case through its provincial and central offices. As stated in its press release of 21 October 2019, the NHRC has concluded that Mr. Paudel was killed after he was taken into custody and that this is a case of extrajudicial killing. It has also recommended action against five police officials involved in the incident, including filing criminal charges against three of them.

Mr. Paudel was a social activist, and he has survived police firing in the past when clashes had taken place between the police and landless people. The government wanted to vacate 11,000 *bigha* of land occupied by landless people in Sarlahi district but could not do so due to the resistance from Mr. Paudel and others.

In addition, arrest of CPN cadres has increased in recent months, following a cabinet decision of 12 March 2019 labelling the CPN as a criminal group, and

banning all of its activities. A record maintained by Nepal police shows the arrest of more than 580 leaders and cadres affiliated with CPN. Among those arrested, 135 were released after interrogation, while 338 were asked to appear in court.

Mr. Saroj Narayan Singh

On 29 June 2019, a protest erupted in the East-West Highway, Sarlahi district, Ishwarpur Municipality 13, Banke section, due to the drowning and consequent death of a twelve-year-old boy who fell in a sand pit in Banke River. The sand pit was reportedly formed due to illegal sand mining.

Almost 30 people placed the body of the deceased boy on the road and blocked the traffic at the East-West Highway at around 2.30 pm. Twenty minutes later, almost 100 security officials of the Nepal Police and the Armed Police Force (APF) arrived to the place. The police requested the protesters through microphone not to block the traffic but the latter kept defying their order. Shortly after, police officers undertook to chase the protesters away with their batons. In response, protesters threw stones at the police. As a result, the police reportedly charged at the protesters beating them with batons, launching tear gas canisters and firing indiscriminately into the air and crowd. Mr. Saroj Narayan Singh, a member of the Madhesi minority, was allegedly hit in the head and killed in the shooting. Police officers took him to the primary health centre in Lalbandi where he died while receiving treatment. Two other protesters sustained bullet injuries in their legs and stomach, and one was injured when police sought to disperse protesters with batons. Eleven members of Nepal Police and eight members of the APF were reportedly injured in the clashes, when protesters pelted stones at them.

Police brought the boy's body and that of Mr. Singh to the District Hospital and kept the bodies in the morgue till 6 p.m. The post-mortem report is yet to be provided by the hospital.

An all-party meeting was called on 1 July 2019 under the chairmanship of District Coordination Committee of Sarlahi. Lawmakers representing the district, representatives of political parties and civil society members attended the meeting. The meeting decided that the victims' families would accept the bodies only if their demands were fulfilled. They submitted a memorandum to the Chief District Officer. The issues discussed in the meeting included the necessity of properly compensating families (with jobs and education), launching of a judicial probe, and to take actions against those indulging in the extraction of river materials.

On 3 July 2019, protesters organized a torch rally in Ishwarpur Municipality. Then, an agreement was signed at the Ishwarpur Municipality office by local authorities and Mr. Singh's family. Following the agreement, the family accepted to receive his body in the evening. The 9-point agreement includes that the deceased person should be declared as martyr, there should be a judicial probe into the incident, the family of the deceased person should get appropriate

compensation and the treatment expenses of the injured will be covered by the government.

There has not been any FIR registered in the case so far. A complaint has been made to the NHRC to investigate into the case.

While we do not wish to prejudge the accuracy of the above allegations, we express grave concern at what appears to be a pattern of excessive use of firearms force by Nepalese security forces resulting in the injury and killing of protesters, some of whom belonged to ethnic minorities. Should these allegations be confirmed, they would constitute violations of 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. They may also contravene article 21 of the ICCPR that provides for the right of peaceful assembly and article 27 which guarantees the protection of the rights of person belonging to ethnic, religious and linguistic minorities. Further concern is expressed at the reported lack of accountability for these violations.

We wish to commend the District Coordination Committee of Sarlahi as well as legal representatives of other public agencies of the district, on their efforts to meet with the victims' families on 1 and 3 July 2019 after the incident at the East-West Highway at the end of June.

However, we urge the government to carry out an independent judicial investigation into each of these incidents so as to determine the causes and circumstances which led to the death of the protesters, to associate the National Human Rights Commission to the investigations, to determine responsibilities for these excessive use of fire arms and the deaths and injuries that ensued.

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 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. Please provide a detailed account about the circumstances in which the police officers decided to resort to the firearms, and to use them not only to warn demonstrators or deter them but to turn them against them and open fire, leading to deaths and injuries. Please explain how these acts are compatible with Nepal's international human rights obligations under the conventions it has ratified, in particular the ICCPR.

3. Please provide detailed information about any investigation which may have been carried out concerning the instances of what appears to be alleged excessive use of force by Nepalese security forces as described above, which resulted in the killings and injuries of protesters. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please, indicate whether compensations have 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 right to peaceful assembly is respected and that the physical and psychological integrity of those exercising these rights is guaranteed in the Terai region.
7. Please explain how the 9-point agreement signed at Ishwarpur Municipality has been implemented.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Clement Nyaletsossi Voule

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

Fernand de Varennes

Special Rapporteur on minority issues

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 article 21 of the ICCPR that provides for the right of peaceful assembly and article 27 which guarantees the protection of the rights of person belonging to ethnic, religious and linguistic minorities.

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.

We would also 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.

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).