

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; 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 43/20, 44/5, 41/12 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Bijay Mahara** and **Sambhu Sada Musahar** from the Dalit community; **Rasikul Alam**, a Muslim man; **Durgesh Yadav** and [REDACTED] who belong to the Madhesi minority community and **Suraj Kumar Pandey**, born in Nepal from Indian parents. They have reportedly been subjected to arbitrary killings, torture, or custodial deaths.

According to the information received:

Between October 2019 and August 2020, there have been six reported cases (detailed below) of human rights violations against minority communities who have been historically discriminated against and experienced high levels of impunity. It is reported that police routinely refuse to accept complaints and to register First Information Reports (FIRs, the initial complaints to police which formally initiate investigations); and when FIRs are registered, police and prosecutors routinely delay in carrying out investigations, even when issued orders and legal rulings are made by the Courts of Appeal and Supreme Court.

Case of Bijay Mahara

Mr. Mahara, a 19-year-old belonging to the Dalit community, and living in Garuda Municipality 8, Rautahat district, was arrested by police on 16 August 2020 with 10 others on suspicion of involvement in a murder which took place the previous day. While in detention at the Area Police Office of Garuda, police did not allow family members and local rights activists to meet him and other detainees despite their repeated requests.

On 19 August 2020, Mr. Mahara was sent to a local hospital and was subsequently referred to the National Medical College in Birgunj, Parsa District, Province, where he was admitted the following day. On 27 August 2020, he died at the National Medical College, while undergoing treatment. His family and relatives were not informed that he was admitted to the hospital, only after his death were they made aware that he was in hospital.

Before his death, Mr. Mahara claimed in a video recording that he was tortured by the police in detention. He stated that, “police tortured me every day demanding that I confess to my involvement in a murder I was never involved in”. He said that police kicked him, beat him with plastic pipes and wooden sticks and gave him electric shocks. In the video from his hospital bed, his condition was fragile, with visible injuries to his face, arms and legs.

For several days after his arrest, the District Police Office (DPO) refused to register a First Information Report (FIR, formal complaint required under Nepali law to initiate an investigation and prosecution). Finally, on 9 September 2020, the FIR was registered with the public prosecutor’s office in Rautahat district. The Public Prosecutor’s Office forwarded the FIR to the DPO of Rautahat on the same day for further investigation. The FIR names six police officers. There are fears that the investigation and prosecution may not be conducted fairly and effectively as senior police officers are among those named in the FIR.

To date, the only action taken by the authorities is the suspension of three police officers for six months and the transfer of the Deputy Superintendent of Police and Superintendent of Police of DPO to Parsa District.

An autopsy was conducted in the Teaching Hospital of Kathmandu by a forensic expert upon the demand of family members and human rights activists, however the report was only given to the police. The family has so far not been able to access it.

Case of Rasikul Alam

Mr. Alam, a 38-year-old resident from Jhapa Rural Municipality, Ward 3, Jhapa District was killed in a police shooting on 26 August 2020, while participating in a demonstration to protest the arrest of two Muslim men who were accused of slaughtering an ox.

The police had arrested the two men on charges of slaughtering an ox at Jhapa Rural Municipality-3, a criminal offence in Nepal. The suspects were being transported to the District Police Office, Chandragadhi, when locals blocked the police vehicle. The crowd became agitated and pelted stones at the police. Law enforcement officials fired rounds to control the situation and disperse the crowd when Mr. Alam was fatally shot as a result. He succumbed to his injuries at B&B hospital at Birtamod.

On 27 August 2020, the local community and district administration representatives held a meeting and reached a seven-point agreement, including for an investigation into the incident to be carried out, ensuring justice and proper compensation to the victim’s family. Of the NPR one million the victims were supposed to receive as compensation, only NPR. 50,000 was disbursed. Prosecution has not started to date.

A three-member committee was formed under the leadership of Assistant Chief District Officer, Mr. Umesh Pandey to probe the incident. The Home Ministry instructed the committee to investigate the incident and submit the report within 15 days, however no further information about its investigation and findings have been made available.

Case of Sambhu Sada Musahar

On 10 June 2020, Mr. Musahar, a 23-year-old from Sabaila Municipality Ward Number 12, Dhanusha district, died in police custody at around 2am. He had been in detention since 26 May 2020, when he had surrendered himself to police after he had hit two persons while driving his tractor. One of the injured, a woman, died on the way to the hospital.

The police claimed his death was a suicide, but the family members suspect he died due to torture. A FIR was registered at the Public Prosecutor's office on 15 June 2020; however, not much progress has been made so far. The Government of Province 2 has provided Rs. 500,000 as compensation to Mr. Musahar's family.

Case of Durgesh Yadav

Mr. Durgesh Yadav, is a 24-year-old from Aurahi Rural Municipality, Siraha District. He had been living in Koteswor, Kathmandu for studies and work. On 1 July 2020, Mr. Durgesh Yadav died in police custody at Lalitpur Metropolitan Police Range.

On 28 June 2020, police arrested him in Gwarko on suspicion of rape. He was kept in isolation as he was yet to be tested for COVID-19. After 3 days, his body was found hanging in the toilet of the police station. Mr. Durgesh Yadav's family members believe that he was in good health when arrested, and that he would not have committed suicide.

While in custody, police had not recorded his statement. They also failed to inform his family of his arrest. They came to learn about the alleged rape only after his death.

Due to the lockdown imposed by the government to prevent the spread of the COVID-19 pandemic, his parents could not come to Kathmandu to retrieve the body. One of his relatives, with lots of difficulty, went to receive the body after police had threatened relatives that the body will be "thrown away" if someone did not come to collect it.

The family members have lodged a complaint with the National Human Rights Commission (NHRC) seeking an investigation and action. But the NHRC is yet to complete the investigation and make the report public. Despite the family's attempts, police have not registered an FIR yet.

Case of [REDACTED]

On 24 May 2020, police shot dead, Mr. [REDACTED] aged 16 in his village, Ramgopalpur Municipality-7, Sahasaula, Mahottari district.

According to the police, the deceased was an alleged drug dealer. Four police personnel in plain cloth had gone to arrest him. The officers claim that they fired after they were attacked by the victim's family and villagers. However, the family allege that police shot Mr. [REDACTED] on the point of arrest without there being any counter-attacks.

Following the incident, police arrested two persons, including Mr. [REDACTED] [REDACTED]'s father. No FIR was filed and despite the complaints made, the NHRC has not investigated the case.

Case of Suraj Kumar Pandey

Mr. Pandey, a 21 year old, was killed at around 11.45 am, on 31 October 2019, when police fired shots indiscriminately during an idol immersion procession in Kapilvastu district. Mr. Pandey was a bystander and was not a participant in the procession.

Mr. Pandey's family migrated to Nepal from India some thirty years ago, and he was born in Nepal. The victim did not hold any citizenship or identity card and was landless. He was the bread winner of his family that included his grandfather, mother and his younger brother. Mr. Pandey earned his living by selling tea. He had set up a tea-stall near the place where he was shot by the police.

On 30 October 2019, locals started to protest the police's failure to solve a dispute over the use of public roads. A local Muslim leader, allegedly obstructed the road and prevented the local Hindu religious group from taking the Laxmi idol through their neighbourhood for immersion in a nearby river. This incident took place in Jhandenagar, around one kilometer away from where the police had shot Mr. Pandey. The obstruction of the road by Muslim religious groups further fueled tensions between the two religious' groups (Hindu and Muslim). People pelted stones at each other in the evening. Police resorted to the use of batons on the protesters to disperse the crowd.

The next morning, the local area police office called both sides together to resolve the dispute in the Office of the District Chamber of Commerce in Krishnanagar. The meeting could not reach any conclusion. The protestors, who wanted legal action taken against the local Muslim leader, failed to have the police agree to their demands, and alleged that he used his influence with police and the local administration. Later that morning, there were more protests outside the police office. The Chief District Officer (CDO) issued a curfew order with immediate effect

As protests continued, a police team led by Inspector Pratap Paudel, opened fire against the protestors. Mr. Pandey was killed and several others were injured. Mr. Pandey who was not among the protestors but working at his tea shop, in violation of the curfew, was shot in the head from close range. The

bullet pierced through his eye. It is reported that police did not issue any prior warning that they would be firing at the crowd nor did they give the protesters enough time to comply with the curfew order. It is alleged that the number of Nepal Police and Armed Police Force (APF) mobilized in the area were greater than the number of protestors. The area was under the tight control of the security forces and any public movement was strictly prohibited.

Since his death, the family of the victim has been under tight scrutiny of the police. It was reported that they received an *ex gratia* payment of NRP. 25,000 from the CDO office to cover funeral costs.

The CDO Gajendra Bahadur Shrestha reported that Mr. Pandey had died when police opened fire on the protesters but the CDO denied that he issued any order to fire shots. Later that day in the evening, police reached a 12-point agreement with the local protestors and made the victim's family member sign an agreement. Based on the agreement, police took the dead body to the hospital for an autopsy, however the family has not received the report yet. The family members demanded a detailed investigation from the CDO and despite requests, both the CDO and police office refused to register a FIR.

While we do not wish to prejudge the accuracy of these allegations, we express our most serious concern at the use of lethal force by security forces, the alleged arbitrary arrests, the ill-treatment and conditions that the detainees were reportedly subjected to, the deaths in custody and the pattern of discrimination in filling FIRs and following up on complaints. Should the facts alleged above be confirmed, they would amount to a violation of the right to life, right to liberty and security, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment and freedom of assembly, non-discrimination, and the protection of the rights of persons belonging to minorities, as codified in articles 6, 7, 9, 21, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR) to which Nepal acceded to on 14 May 1991.

We remind your Excellency's Government as a state party of articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which codifies the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment. As such, "individuals cannot lose their protection against torture and other cruel, inhuman or degrading treatment or punishment under any circumstances whatsoever, including in the context of violent riots or unlawful protests" (A/72/178, para 15). Moreover the right to life under article 6 of the ICCPR entails a duty to take, "all necessary measures intended to prevent arbitrary deprivations of life by law enforcement officials" (CCPR/C/GC/36, para 13). Thus, in order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be an "exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions" with a view, "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions" (A/HRC/8/3, para 4).

We therefore urge your Excellency's Government to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death and allegations of torture and other ill-treatment of the above-mentioned persons.

In this connection, we refer your Excellency's Government to the **Annex on Reference to international human rights law** attached to this letter, which enumerates some of the main international human rights norms and standards that appear to be contravened by the previous 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 the observations of your Excellency's Government 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 additional investigation, and judicial or other inquiries carried out in relation to the death in custody of the above-mentioned persons. If no investigative action has been initiated, please explain how this is compatible with the international human rights obligations of Nepal.
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to reported allegations of torture and/or cruel, inhuman or degrading treatment. In the event that an investigation was concluded, please provide the full details of any penal, disciplinary, or administrative sanction that has been taken against them, and the suspension measures that are applied until the investigation is completed.

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.

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

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 connection with the above allegations and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the allegations described in the above letter.

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, is reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR), articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Article 7 of the International Covenant on Civil and Political Rights (ICCPR). The obligations to investigate, identify those responsible for acts of torture and ill-treatment and bring them to justice arise also under articles 7 and 12 of the CAT. In this respect we note that Human Rights Council Resolution 16/23, paragraph 7(b), urges States to hold responsible not only those who perpetrate torture, but also those "who encourage, order, tolerate or perpetrate such acts [...], to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed".

We would also like to recall article 9 of the ICCPR that guarantees the right to liberty and security of person and the need to carry out arrests in conformity with the prescribed procedure; right to be informed of charges; right to challenge the legality of detention and be presented before a judicial authority. Furthermore, when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and by articles 12, 18-19, 21-22 and 25-27 of the ICCPR, it may be arbitrary falling within category II of the Working Group on Arbitrary Detention. Finally, article 14 of the ICCPR upholds the fair trial guarantees, including the right to legal assistance of defendant's own choosing (article 14.3 (d) and the right not to be compelled to testify against himself or to confess guilt (article 14.3(g)).

We further recall article 6 of the ICCPR guaranteeing the right of every individual to life. We highlight that in the policing of assemblies, the primary duty of law enforcement agencies is to facilitate peaceful assemblies and protect individuals from harm (CCPR/C/GC/AGO/CO/1 para 21). With regards to the excessive use of force, we would also like to draw the attention of your Excellency's Government to Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "(l)aw enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened". While in custodial settings, Principle 16 provides that, "Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a

person in custody or detention [...]” (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). With further note 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. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions (principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions).

We would like to also bring to the attention of your Excellency’s Government the international standards regarding the protection of the rights of persons belonging to minorities, in particular to article 27 of the International Covenant on Civil and Political Rights (ICCPR). Furthermore, article 26 of ICCPR guarantees equality before the law without any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

We further refer to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), adopted by the General Assembly in 1992. In its Article 1, the Declaration on Minorities refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end. Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4 establishes that “States will take 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”.