

25 January 2018

Right Honourable Prime Minister Mr Sher Bahadur Deuba
Office of the Prime Minister and Council of Ministers
Singhadurbar Kathmandu,
P.O. Box: 23312
Nepal

Dear Prime Minister,

We are writing to you in relation to the protests in the Terai region of Nepal in 2015/16 which left 66 people dead, including 10 police officers (we understand that suspects have been arrested in relation to the police deaths).

The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. The BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights.

The protests began in the final weeks of Nepal's protracted constitution drafting process. In the aftermath of the devastating earthquake which struck Nepal in April 2015, four major political parties reached an agreement to complete the Constitution by a "fast track" process. Marginalised groups in the Terai region particularly Madhesis, Tharus and Janajatis objected to this "fast track" process and the constitution which emerged from it. They objected to the new federal boundaries and to other aspects of the new Constitution which they claim abrogate previous commitments made to their communities and create "second-class" citizens. Objections include the unequal distribution of parliamentary constituencies and restrictions on the right of women to pass citizenship to their children. This background to the protests is set out by numerous organisations including in the Report of Human Rights Watch (HRW) "Like We Are Not Nepali" Protest and Police Crackdown in the Terai region of Nepal (2015) as well as the United Nations (UN).

The deaths and violence which occurred during the protests, have been widely reported in the international and national media and by international human rights organisations including the UN. On 7 June 2017, a Joint Communication from four Special Procedures was sent, detailing several incidents of alleged executions and excessive use of force by Nepalese security officers. These reports include accounts of police violence and use of highly lethal firearms, primarily targeting members of ethnic minorities in the Terai region, to clamp down on protestors exercising their legitimate rights to peaceful assembly and freedom of expression. To our knowledge the UN has yet to receive a response to the questions it posed in its Communication.

Whilst the focus of our letter is on the right to life, the related rights of freedom of peaceful assembly and expression should not be ignored. Nepal's international human rights obligations under the International Covenant on Civil and Political Rights (ICCPR) which Nepal ratified in 14 May 1991, include the obligations which flow from the right to life including to conduct an effective investigation into deaths.

Article 6 of the ICCPR guarantees that no person shall be arbitrarily deprived of his or her life and this right to life should be protected by law. As such, under the right to life the Government of Nepal is obligated to have in place a legal and administrative framework to provide effective deterrence against threats to the right to life; this includes punishment as a criminal offence the arbitrary or excessive force by law enforcement officials. The use of firearms may only be used by police in self-defence, only when there is an imminent threat of death or serious injury, and in a proportionate manner. In addition it has an obligation to conduct an effective and proper investigation into all deaths which can lead to the prosecution and punishment of those responsible. In fulfilling these obligations, Nepal should be guided by not only the Treaty provisions and jurisprudence, but also by the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Government of Nepal is therefore under a positive obligation to carry out an effective and proper investigation into all deaths in the Terai region between 2015 and 2016.

On 18 September 2016, a High-level Inquiry Commission was set up by the Government with the mandate to investigate the violence, killings, arson attacks and vandalism that took place during protests organized in Terai by various parties. The Commission was initially a seven member body but another member of the Commission, Khushi Prasad Tharu, resigned from his post effective from 14 January 2017 after he was appointed as a High Court judge. The Commission worked as a six member body from 14 January 2017.

Despite the inadequate resources provided to it by the government, the Commission did a commendable job investigating the 3264 complaints it received and conducting visits to all places of incidents and interacting with almost all the victims and injured persons across the country. The BHRC notes the specific reference to the role civil society played in facilitating their work, in particular that had "THRD Alliance not helped, this commission would have had to face more difficulties in completing its assigned jobs".

On 15 December 2017, the Commission delivered its full report to the Government, on the same day it provided a public summary of its work but not its findings. As far as we are aware, there is no intention for the full report to be made public. The government has also yet to indicate what steps it will be taking based on the report's findings and recommendations.

The BHRC is concerned about the lack of transparency, in particular because it understands that this is not unique to the present Commission report, but that the practice has been to archive Commission

reports which are not public and whose recommendations are rarely acted upon. The findings of the report should be made public unless there are identifiable reasons for all or part of the report to remain private. Both victims and civil society played a key role in facilitating the work of the Commission and it is only fair and just that they are privy to the end result. Transparency leads to accountability by ensuring that those identified in the report as suspects for the crimes committed are further investigated and prosecuted.

The BHRC calls upon you and your government to fulfil your human rights obligations, namely for:

- the Commission's report to be made public;
- the recommendations included in the Commission report to be implemented;
- the government to set out what steps it will take to ensure that redress is provided to the victims, including where appropriate compensation;
- the government to strengthen the mechanism to guarantee the right to peaceful assembly, including where necessary further guidance and training to the police on the use of force and firearms;
- further investigations be made and where appropriate prosecutions to be taken against the perpetrators.

As a new member of the UN Human Rights Council, Nepal needs to take this opportunity to show its commitment to human rights starting with those within its own jurisdiction.

We look forward to your reply and in the meantime we remain at your disposal to provide any assistance or clarification.

Yours sincerely,

Stephen Cragg QC
Executive Committee, BHRC

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Executive Committee, BHRC

CC:

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