

A memorandum seeking investigation into incidents of custodial deaths

Honourable Krishna Bhakta Pokharel

Chairperson, Law, Justice and Human Rights Committee

The House of Representatives, Singha Durbar, Kathmandu

Dear Sir,

We, on behalf of the people and organisations working in the field of human rights thank you for forming a sub-committee under the Law, Justice and Human Rights Committee of the House of Representatives led by you to probe into suspected deaths in various police custodies and detention centres.

Several international conventions including the Covenant on Civil and Political Rights, United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that Nepal is party to, and the Constitution of Nepal have guaranteed the right against torture and other degrading treatments. Additionally, the new penal code has criminalized torture and inhuman or degrading treatment.

In a democratic country, it is the state's responsibility to probe custodial deaths and punish those whose negligence lead to the death of a person or who intentionally kills somebody in the custody.

Families of the victims who died in custody recently have accused that their family members were killed due to torture and other degrading treatment or negligence by the security personnel. Since the details of custodial death show that those people died in mysterious circumstances and there were evidence suggesting that they were tortured, we have presented the details of the facts and nature of those incidents, including our recommendations, with a view to bring the attention of the Sub-committee formed to probe custodial deaths.

Terai Human Rights Defenders Alliance and Advocacy Forum have monitored and documented five custodial deaths that took place in police custody between 24 March 2020 and now when the government imposed a lockdown to contain the spread of COVID-19 pandemic. The summary of the five cases (Sambhu Sada in Danusha district; Raj Kumar Chepang in Chitwan; Durgesh Yadav in Lalitpur; Bijay

Ram in Rautahat; Roshan BK in Kailali) referred in the memorandum are inserted in the annex.

Nature of custodial deaths and issues of the investigation

- Although the police claimed that these people died by suicide in custodies or died during treatment for their illness, families of the victims allege that their members died due to torture or negligence in the police custody.
- Even when police claimed that custodial deaths were results of suicide, there were clear signs and evidence of torture on the body of the victims. The police however, did not launch any investigation to ascertain whether the victims died due to torture or somebody killed them, or the victims died due to somebody's negligence. In some cases, the police filed the first information report (FIR) stating that the victims died by suicide and thus the police hardly investigated these cases.
- Police often refused to register the FIR lodged by the victim's family. In some cases, wherein police accepted the FIRs after pressure was exerted on them, they did not move the investigation ahead. Since guilty police personnel get immunity, this tendency only encourages impunity.
- When victims' family members exert pressure, probe committees are often formed in such incidents. But the details about the reports submitted by the committees, and the status of the implementation of their recommendations are hardly made the public.
- In most of such cases, victims are Dalit and marginalized communities and they do not have access to justice and reparation.

We urge the Sub-committee to pay attention to the following factors while making its recommendations:

- Issue directives to the concerned authorities in the cases of custodial death that postmortem should be done mandatorily by experts and the postmortem reports should be given to the families of the victims immediately.

- Issue directives for mandatory investigation into custodial deaths. When the victims' family lodges the FIR claiming that their family members died due to torture, cruel, inhuman treatment, or due to police's negligence or somebody killed him/her in the police custody, the police personnel working in the police units, must be immediately suspended and probe must begin under a separate police officer's command.
- Recommend the Office of Attorney General to delegate power to the Chief Attorneys of all provinces, who are active in all the provinces these days, to launch probe when a detainee is suspected to have died in the police custody due to torture or police's negligence and to file cases against the guilty.
- Issue a directive to file case against the police personnel of Garuda Area Police responsible for the death of Bijay Ram in Rautahat district as there is clear evidence (signs of beatings on the body and he has recorded a video saying he was tortured in the police custody). Necessary security arrangements should be made for the family of Bijay Ram as the family members were facing threats and intimidation.
- Issue warnings and directives to the police and Chief District Officer telling them not to erase evidence and weaken the cases. Police and Chief District Officer of Rautahat attempted to erase evidence in Bijay Ram's case and weaken the case.

Submitted by:

Terai Human Rights Defenders Alliance

Advocacy Forum

Date: September 22, 2020

Annex

Summary of Five Custodial Deaths Monitored by THRDA & Advocacy Forum

Case No. 1

On 10 June 2020, Sambhu Sada Musahar, aged 23, of Sabaila Municipality Ward Number 12, Dhanusha district, died in police custody at around 2am. He had been in the 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 hospital.

The police claimed his death was suicide, but the family members suspect he died due to torture. A FIR was registered to Public Prosecutor's Office on 15 June 2020; however, no progress has been made so far.

Case No. 2

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

On 28 June 2020, police arrested him in Gwarko on suspicion of rape. He was kept in isolation as was yet to be tested for coronavirus. After 3 days, his body was found hanging in the toilet of the police station.

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

Due to lockdown imposed by the government to prevent the spread of COVID-19 pandemic, his parents could not come to Kathmandu to receive the dead body. One of his relatives, with lots of difficulty, went to receive the body when police threatened him that the body will be "thrown away" if someone did not come to collect it. Durgesh's family members believe that he was in a good condition, and he could not have committed a suicide.

Investigation

The family members have lodged a complaint with the National Human Rights Commission (NHRC) seeking an impartial 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 No. 3

On 22 July 2020, Raj Kumar Chepang (24 years old), a resident of Rapti Municipality, Ward-2, Chitwan District, died due to torture inflicted by Nepal Army for entering in the Chitwan National Park illegally.

Raj Kumar Chepang belongs to the Chepang indigenous community. Earlier, on 16 July 2020, Raj Kumar and six of his colleagues including two women had entered into the Chitwan National Park to collect *ghongi* (a species of snails eaten as a delicacy) in the river inside the Park. An army personnel detained and tortured them. They were released the same day. According to the family members, he was ill since he returned from the park.

Santosh Chepang, one of the torture survivors said:

“We were collecting snails in a rivulet in the park when a Nepal Army personnel found us. First, he asked us few questions. We said sorry for entering. He told one of us to ‘go there’, asked him to lay down in the water and he started kicking him with his knee-high boots. Then, the Army personnel asked me to go there. He did the same thing to me. He beat me up very badly. For 20-25 minutes, he beat all of us except the two women. When the women asked the soldier not to beat us, he verbally abused the women. Then, we were asked to carry wooden logs until we reached the park administration. We were beaten up again on the way. When we tried to speak, the soldier did not let us speak. The park administration took our photos and registered our names. In the beginning, the officials asked us to pay NPR 1,000 per person but we pleaded before them as we did not have much money. We agreed to pay NPR 500 per person. While returning home, Raj Kumar was not able to walk properly. We supported him. His condition was worse, and that led to his death.”

Investigation

Although Raj Kumar’s family submitted a First Information Report (FIR) at the district police office on 23 July 2020, the FIR was registered only on 26 July 2020. In the FIR, Raj Kumar’s father claimed that his son was tortured by the army leading to his death. The post mortem of his body was carried out at the Tribhuvan University Teaching Hospital in Maharajgunj, Kathmandu. The post mortem report will be given to police and the family has no access to it.

Nearly two months have elapsed but there is no significant progress in the police investigation.

Case No. 4

On 27 August 2020, Bijay Mahara, a 19-year-old detainee died at the National Medical College in Birgunj while undergoing treatment. Bijay belongs to the Dalit community and lived in Garuda Municipality 8, Rautahat district.

Before his death, Bijay claimed in a video recording that he was tortured by the police in police custody. “Police tortured me every day demanding that I confess to my involvement in a murder I was never involved in. Police kicked him, gave him electric shock, and beat him

with plastic pipes and wooden sticks. In the video from his hospital bed, his condition is fragile, with injuries visibly to his face, arms and legs.

He was arrested on 16 August 2020 by Nepal police with 10 others, on suspicion of involvement in a murder the previous day. While in detention at the Area Police Office, Garuda, police did not allow family members and local rights activists to meet him and other detainees despite their repeated requests. Bijay's family and relatives were not informed that he was admitted to the hospital. They learned about it only after his death.

For several days, 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, the FIR was registered with the public prosecutor's office in Rautahat district on 9 September 2020. The public prosecutor office has forwarded the FIR to the DPO of Rautahat on the same day for further investigation. It names six police officers of Rautahat. THRDA fears that the investigation and prosecution may not be conducted fairly and effectively as senior police officers are among those named in the FIR.

So far, 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.

The post mortem investigation has been done in Teaching Hospital of Kathmandu by a forensic expert upon the demand of family members and human rights activists, however the report has been given to the police and the family has so far not been able to access it.

Case No. 5

On 11 September 2020, Roshan BK, 19-year-old resident of Dhangadhi Sub-Metropolitan City Ward 5, died in police custody. On 7 September, he was arrested on the charge of stealing a mobile phone and he has been in custody since then.

Roshan was found hanging from the ventilation outlet in the bathroom. The witnesses to the incident are 14 other detainees, who were in the same detention center.

The family of the deceased allege that the police had tortured him while in the custody while the police claim the incident as a suicide. The family and Dalit activists are staging demonstrations with a demand for justice for the death in police custody.

Investigation:

In this case, no FIR has been filed yet. Although the post-mortem has been carried out at Seti Provincial Hospital, the victim's family do not have access to it.

Meanwhile, on 11 September 2020, the Sudurpaschim State Police formed a probe committee led by Superintendent of Police Rajib Basnet to investigate the incident. The committee is yet to complete the task and submit the report.