

Mandates of the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: AL
NPL 1/2014:

20 June 2014

Dear Mr. Dhungana,

We have the honour to address you in our capacity as Special Rapporteur on the rights of indigenous peoples and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 24/9 and 17/5.

In this connection, we would like to bring to your attention allegations received concerning the situation of **alleged violent conflicts in Dho village, Dolpo district related to the collection of royalties for the harvesting of “Yarsagumba” (caterpillar fungus)**.

According to the information received:

On 3 June 2014, clashes erupted during a meeting between indigenous residents of Dho village and officials of the Buffer Zone Management Committee, a State entity of the Shey Phoksundo National Park. The Buffer Zone Management Committee was accompanied by members of the Armed Police Force and the Nepal Police, who intervened in the clash. According to the information received, the incident resulted in the death of two people and in the injury of some 50 people.

The incident arose out of disputes concerning the payment of royalties for the harvesting of “Yarsagumba” (caterpillar fungus). Yarsagumba is a fungus that is sold abroad at a high price due to its medicinal properties. The harvesting is a traditional practice of local communities within Dolpo and brings them significant economic benefits, although harvesting activities are also open to outsiders. However, villagers in Dolpo argue that either they should be able to collect royalties from outside Yarsagumba harvesters or these activities in the area should be prohibited altogether, due to the negative effects of the presence of outsiders on in the lands upon which they depend for their sources of livelihood.

Since 2010, local and outside harvesters have paid royalties to both the “Local Committee”, which is made up of community members of seven villages within Dolpo district, and the “Buffer Zone Committee”, a State entity that is part of the

Buffer Zone Management Committee. However, according to the information received, recently the Buffer Zone Management Committee has moved to be the sole beneficiary of payment of royalties for the Yarsagumba harvesting. It had also reportedly threatened to allow outside harvesters into the “Lang” highland winter meadow, which until now has been managed as a “no harvest zone” so that pasture in that area can remain available for yak and horse livestock grazing in the winter months. Further, over the past year, the Buffer Zone Management Committee had raised the royalties collected from local, district and non-district residents significantly, by three times or more. These actions have led to rising tensions between local Dolpo residents and the Buffer Zone Committee.

On 2 June 2014, members of the Buffer Zone Management Committee, accompanied by members of the Armed Police Force and Nepal Force, arrived in Dho village after having trekked to the area over several days. Once there, they allegedly confiscated the Local Committee’s receipt book and royalty payments collected. The following day, on 3 June 2013, angry villagers met to decide how to respond and formulated a petition to the Buffer Zone Management Committee demanding (1) the return of the money and receipt book; (2) that the “Lang” pasture area be reserved as a no harvest area; and (3) that the Local Committee be able to continue to collect royalties for Yarsagumba harvesting. The petition was delivered to the Buffer Zone Committee, but no agreement was reached.

Later that day during a subsequent meeting, tensions erupted in violence. The information received indicates that police fired around 36 rubber bullets during the clash, both in the air and directly at villagers, as well as reportedly beat villagers with sticks. For their part, villagers threw stones at police. Following this incident, police allegedly went door to door, and entered and searched houses; the people within the houses were reportedly dragged out, beaten and then taken into custody. Many of those in custody are teachers and staff from the local school, or staff from the local health clinic.

According to reports, the violence resulted in the injury of some 50 people. In addition, Mr. Dhondup Lama was injured during the incident and airlifted to Kathmandu for medical treatment, where he later died on 9 June 2014. Further, reports indicate that Mr. Tsering Phurwa was critically injured during the clashes and subsequently died from these injuries. However, the exact cause of death of Mr. Tsering Phurwa is not clear as he was found the following day, some two hours from Dho village. However, allegations received reported that villagers taken into custody were forced to sign a paper saying that Mr. Tsering Phurwa died as a result of natural causes or by falling off a cliff, and not police violence. Concern has also been raised regarding alleged death threats against Mr. Phurwa Dhondup, who publicized the events of 3 June 2014 in Dho village.

The following day, on 4 June 2014, a member of the Nepal Constituent Assembly, Mr. Dhan Bahadur Budha travelled from Kathmandu to Dho village to attempt to mediate the situation. Subsequent discussions resulted in an agreement for the release of 12 villagers from police custody, which was done on 5 June 2014. It

was also agreed that the Buffer Zone Management Committee would pay the family of Mr. Thundup Lama some compensation for his death. Residents of Dolpo have made additional demands, which have allegedly not yet been met, including that: (1) an investigation into the acts of violence on 3 June and the sanctioning of those responsible be carried out; (2) the Local Committee continue to be given the right to collect royalties for Yarsagumba harvesting; (3) the Lang winter pasture area be declared a no harvest zone for outsiders; and (4) the Local Committee's receipt book and monies taken by the Buffer Zone Management Committee on 2 June be returned, among other demands.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

Since 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 cooperation and observations to clarify the following elements:

1. Are the facts described in the above cases accurate?
2. Please provide information about any measures undertaken to investigate the situation of violence of 3 June 2014 and the results of those investigations.
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to the death of Mr. Thundup Lama and Mr Tsering Phurwa. Have any penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
4. Please indicate whether compensation will be provided to the victims or their families.
5. Please indicate the protection measures taken to ensure the physical and mental integrity of Mr. Phurwa Dhondup. Please provide details on any measures taken to investigate the death threats against him.
6. Please provide information about any measures that your Government has taken, or intends to take, to address the demands of Dolpo residents regarding (1) the return of the money and receipt books allegedly taken by the Buffer Zone Committee; (2) the reservation of the "Lang" pasture area as a no harvest zone; and (3) the continued allowing of the Local Committee to collect royalties for Yarsagumba harvesting.

We would appreciate a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Dhungana, the assurances of our highest consideration.

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

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, acceded to 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.

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, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), 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.

In addition, we would like to refer your Excellency's Government to paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65, according to which it is incumbent upon States to provide "effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats".

Moreover, we would 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 would also like to bring your attention to International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, to which Nepal is a party, which states in its article 15 that "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources" and that "The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities".