



NEPAL: TORTURE AND COERCED CONFESSIONS

HUMAN RIGHTS VIOLATIONS OF INDIGENOUS THARUS
AFTER THE AUGUST 2015 POLICE KILLINGS IN KAILALI

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Cover photo: Nepalese police personnel are silhouetted against the headlight of a vehicle as they stand guard along the highway after a brief clash with the Madhesi protesters demonstrating against the new constitution in Birgunj, Nepal November 5, 2015. Nepal has faced an acute fuel crisis for more than a month since protesters in the lowland south, angered that a new constitution fails to reflect their interests, prevented supply trucks from entering from India. Many in Nepal see India's hand in the protests although it denies any role.
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1. EXECUTIVE SUMMARY

“I was asleep in my house when at midnight the door opened and police walked in. They asked me my name and began to beat me and put me in their vehicle. The police stopped their vehicle at a police post and beat me there. Then they stopped at another police post and beat me there with *lathis*, whatever they had, rifle butts.”¹

Tulsiram (pseudonym)

“The police forced me to sign a confession and beat me when I asked to read the document.”²

Bhagiram (pseudonym)

In this briefing, Amnesty International documents how police subjected members of the Indigenous Tharu community in Kailali district in Nepal’s Far-Western Tarai in the southern plains part of the country, to arbitrary arrests, torture and other ill-treatment, and coerced some of them into signing “confessions” in connection with the killings of eight security personnel and a child in Tikapur, Dhangadhi on 24 August 2015.

Interviews with detainees at Dhangadhi jail, who were awaiting trial on charges of murder, attempted murder and robbery related to this incident, reveal consistent accounts of beatings with *lathis* (bamboo sticks), being hit with rifle butts and being slapped and verbally abused while in police custody.

The individual stories of the detainees varied in terms of where and how they had been arrested, the differences in their transfer from one location to another and some of the details of how they were tortured. However, they were consistent in that the torture began as soon as they were arrested and put in security vehicles, beaten at various police posts in the district and especially at the District Police Office (DPO).

Detainees told Amnesty International that they were not informed about the reason of their arrest, were not permitted to consult a lawyer from the time of their arrest and were not informed of the proceedings being

¹ Amnesty International interview with Tulsiram (pseudonym) at Dhangadhi jail, 12 March 2016.

² Amnesty International interview with Bhagiram (pseudonym) at Dhangadhi jail, 12 March 2016.

initiated against them. Their stories highlight how police tortured them to extract “confessions”. One of those reported to have been tortured was a 14-year-old boy.

This specific situation speaks to a broader climate of impunity in which perpetrators of torture, particularly the police, are not held to account for their actions, highlighting Nepal's failure to uphold both domestic and international legal obligations in respect of incidents of torture. These include a duty to effectively investigate allegations of torture, bring perpetrators to justice and provide reparations to the victims.

Nepal must, as a matter of urgency, enact legislation to make torture a crime under domestic law, punishable by appropriate penalties that reflect its gravity, in line with its obligations as a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

METHODOLOGY

Amnesty International conducted interviews in Tikapur and surrounding villages as well as the district capital of Dhangadhi in March 2016. The organisation spoke with 19 detainees held at the Dhangadhi jail in March 2016 and a boy held at a child correction home in Kaski district in May 2016.

Amnesty International also interviewed two human rights practitioners, lawyers and witnesses in Dhangadhi who had first-hand information about the detainees' treatment and a family member of one of the accused.

The detainees interviewed were held in two sections of Dhangadhi jail separated by concrete walls - eight of them in one part of the jail and eleven in the other. Detainees from both sections of the jail were asked by prison guards to assemble near the front bars for visitor access. Individuals were then asked to move forward and speak directly with Amnesty International researchers, and individually narrate their own specific stories of arrest and treatment while in police custody prior to their transfer to Dhangadhi jail. The interviews given by individuals in the two groups held in different parts of the jail allowed Amnesty International to compare and corroborate the testimonies within and across the groups.

All detainees provided consent to have their accounts published. However, to protect individuals who agreed to be interviewed, most are identified by pseudonym as noted in the report. Two detainees gave consent to have their names used.

The 14-year-old boy was interviewed privately in the visitor's hall at the child correction home in Kaski. Due to the young age of the boy, and to ensure his on-going protection and security, he will be referred to in this report through a pseudonym.

Amnesty International also spoke to approximately 30 people including residents of Tikapur and surrounding villages as well as human rights workers, teachers, lawyers, business owners and journalists in those areas and in the district headquarters between 9 and 12 March 2016. It interviewed four government officials: Assistant Chief District Officer (CDO), District Court Registrar, the head of the *Ilaka* (Area) administration and the warden of the Dhangadhi jail.³ In addition, Amnesty International reviewed copies of legal documents, including the charge sheet, the interim court order, and the submission on behalf of the detainees to the Doti appellate court.

To date, 58 people have been charged. Of those as of mid-July 2016 25 have been arrested. Two of the accused are children. The trial is pending before the Kailali district court. At the time of writing, a petition challenging their detention was pending before the Supreme Court.

³ The *Ilaka* (area) administration visited is the area office of Tikapur and surrounding village development committees (VDC).

2. BACKGROUND

The 2006 Comprehensive Peace Agreement signalled the official end of the ten-year internal armed conflict between the Nepali government and the then Communist Party of Nepal (Maoist). The 2007 Interim Constitution included political commitments to restructure the state and address structural discrimination against the historically marginalized, such as women, Dalits, Janajatis (indigenous groups which include Tharus), Madhesis (people living in the Tarai, the southern plains of the country bordering India) and other minorities. After two Constituent Assemblies (CAs) and lengthy delays, the second CA adopted a new constitution on 17 September 2015. The President then formally promulgated the constitution on 20 September 2015.⁴

The political parties negotiating the constitution rushed through the text barely five months after the April and May 2015 earthquakes, in the midst of political protests by historically marginalised groups claiming that the document failed to deliver on earlier political commitments to address longstanding grievances of structural discrimination and marginalisation, both political and economic.⁵

When the second CA passed the constitution, six out of 75 districts (including Kailali) were under curfew as a result of violent political protests.⁶ These districts are all in the southern plains of the country, the Tarai, in which Madhesis and Tharus predominantly reside.

According to the 2011 census, the Tharu population numbers 1.7 million, which is 6.7% of the total population. They are the second largest Janajati population and have historically inhabited the far western plains districts.⁷ However, several factors have led to the steady erosion of local Tharu political influence and Tharu ownership of the land.⁸ This includes the increasing reach of the Nepali state into the area, especially from the later nineteenth century, and migration into the area by people originating from the hill regions, accelerated after the malaria eradication programs in the plains started in the 1950s.⁹

The Tharu community's history since the expansion of the Nepali state into the territory is one of political alienation from a state viewed by Tharus as controlled by high-caste men from the hill regions of the country, and of poverty, landlessness and indebtedness.¹⁰

⁴ See International Crisis Group, *Nepal's Divisive New Constitution: An Existential Crisis*, April 2016, available at <http://www.crisisgroup.org/~media/Files/asia/south-asia/nepal/276-nepal-s-divisive-new-constitution-an-existential-crisis.pdf> (accessed 18 July 2016).

⁵ See International Crisis Group, *Nepal's Divisive New Constitution: An Existential Crisis*, April 2016.

⁶ Situation Report by the DFID-GIZ Risk Management Office, Nepal for 17 September 2015, available at www.rapnepal.com/file/3861/download?token=PkjllhIA (accessed 18 July 2016).

⁷ See Central Bureau of Statistics, *Population Monograph of Nepal vol2 (Social Demography)*, 2014, available at <http://cbs.gov.np/image/data/Population/Population%20Monograph%20of%20Nepal%202014/Population%20Monograph%20V02.pdf> (accessed 18 July 2016).

⁸ Estimating landownership of Tharus before the expansion of the Nepali state is difficult given the limited practice of documenting landownership among Tharus. However, a Tharu historian has estimated that until 100 years ago, Tharus owned 90% of the land in the western Tarai. See J. Nepal and T. S. Tharu, *What Lies at the Heart of the Tharus' Stir*, available at <http://kathmandupost.ekantipur.com/news/2015-08-24/what-lies-at-the-heart-of-tharus-stir.html> (accessed 18 July 2016).

⁹ A. Guneratne, Tharu-State Relations in Nepal and India. *Himalaya, the Journal of the Association for Nepal and Himalayan Studies*: Vol. 29: No. 1, Article 2. Available at <http://digitalcommons.maclester.edu/cgi/viewcontent.cgi?article=1849&context=himalaya> (accessed 18 July 2016).

¹⁰ S. Chaudhary, *The Process of State Modernisation and Marginalisation of Tharu Identity of Tharuwan Province*, 2009, available at http://www.socialinclusion.org.np/new/files/Suresh%20Chaudhary_1365499880dWhc.pdf (accessed 18 July 2016).

Human rights violations during the internal armed conflict had a heavy impact on the Tharu community. For example, over 85% of the cases of enforced disappearance documented by the Office of the High Commissioner for Human Rights (OHCHR) in Nepal in Bardiya district (a district bordering Kailali) were from the Tharu community.¹¹ The 2012 OHCHR report on Nepal's conflict makes clear that the district experienced "some of the most prolific unlawful killings and disappearances of anywhere in Nepal" and that "patterns indicate that the [s]ecurity [f]orces targeted both specific individuals and members of groups" such as "members of the Tharu ethnic group."¹²

The above is illustrative of a larger context of historical distrust of state structures and personnel. Tharus, like many Janajati groups, have sought a restructuring of the Nepali state following the end of the internal armed conflict. More specifically, Tharus have asked for an autonomous identity-based province of their own in the Far West – referred to as Tharuhat or Tharuwan.¹³

The nine protracted years of constitution-making saw violence occur in various parts of the country, including the Far West. Notably, in 2012 in Kailali and Kanchanpur, there were violent clashes between supporters of a "United Far West" - largely regarded as a movement by people originally from the hill regions - and Tharu groups. Allegations of excessive use of force by the police against Tharus during the 2012 violence were widespread,¹⁴ including police beating of Tharu activists in the Seti hospital in Dhangadhi.¹⁵ More recently, the National Human Rights Commission (NHRC) issued a report on human rights violations, including excessive use of force by security forces during protests that took place both before and after the promulgation of the 2015 constitution in various parts of the country.¹⁶

TIKAPUR: THE 24 AUGUST 2015 PROTESTS AND THE AFTERMATH

On 24 August 2015, thousands of protestors from the Tharu community marched towards the centre of Tikapur town from surrounding villages. They were protesting against the federal boundaries proposed by the government during the negotiations for a new constitution, and demanding a separate autonomous Tharuhat province. Two individuals, who spoke with Amnesty International about this incident, said that after police fired teargas into the crowds, there were attacks on the police by some of the protestors, which caused the death of Senior Superintendent of Police (SSP) Laxman Neupane and seven other officers from the Nepal Police (NP) and Armed Police Force (APF).¹⁷ A few hours afterwards, the 18-month-old son of Netra Saud, an APF Head Constable, was shot dead by an unknown assailant while he was in the courtyard of the family's house, near the scene where the eight police officers had been killed.¹⁸

In response, shortly after, a curfew was put in place and the government deployed the Nepal Army to deal with the unrest. According to eye-witnesses in the villages, human rights workers and a journalist, teams of mostly Nepal Police, but also the APF and the Nepal Army, entered surrounding villages in the following days to carry out arrests.

¹¹ Available at http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2008_12_19_Bardiya_Report_Final_E.pdf (accessed 18 July 2016).

¹² Available at http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/2008_12_19_Bardiya_Report_Final_E.pdf (accessed on 7 July 2016).

¹³ While the two terms are used inter-changeably, there are political differences linked to the fact that the term Tharuwan province was initially demanded by the then CPN-Maoist party, a party seen by Tharus as led by men from the hill region of the country. For more details see M. Maycock, *The Influence of the Tharuhat Autonomous State Council*, July 2011, available at: http://nepalpolicy.net.com/images/NewAngle/Vol1/6_Maycock_Tharuhat%20autonomous%20state%20council.pdf (accessed 18 July 2016). Kailali is a stronghold of the Tharuhat movement, with one of the key leaders of that movement a former member of the Maoist party during the conflict, Laxman Tharu. He is one of the 25 arrested in connection to the Tikapur killings as of mid-July 2016.

¹⁴ UN Resident & Humanitarian Coordinator's Office Nepal, *Monthly Update*, May 2012, available at http://reliefweb.int/sites/reliefweb.int/files/resources/Nepal_Monthly_Update_2012-May.pdf (accessed 18 July 2016).

¹⁵ See The Carter Center, *Observations on Identity-Based Political Activity and Mobilizations in Nepal*, 13 March 2013, available at <https://www.cartercenter.org/resources/pdfs/news/pr/cartercenter-report-idbasedpoliticalactivity-eng.pdf> (accessed 18 July 2016), p.27.

¹⁶ Available at http://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_Nepal_Madhesh_Terai_Protest_Human_Rights_Monitoring_Report_English.pdf (accessed 18 July 2016).

¹⁷ Amnesty International interviews in Tikapur, 11 March 2016.

¹⁸ For more details on the Tikapur killings, see the Human Rights Watch (HRW) report *"Like we are not Nepalis": Protest and Police crackdown in the Terai*, 2015, available at https://www.hrw.org/sites/default/files/report_pdf/nepal1015_forupload.pdf (accessed on 18 July 2016). (HRW, *"Like we are not Nepalis"*).

As most of the men in villages had fled in fear of being targeted for arrest, it was largely the women who bore the brunt of late-night searches, harassment and threats. For example, one woman interviewed in a village near Tikapur stated that the police came at night asking for the name of the *badghar* (the Tharu village leader) who lived nearby, and threatened her by putting a gun in her face and saying “shall I kill you?”¹⁹

In the 36 hours after the curfew was imposed, there were also several arson attacks on Tharu homes and businesses in Tikapur by mobs roaming through the locality, apparently in retaliation for the killings on 24 August 2015.²⁰ When Amnesty International asked the assistant CDO of Kailali why the security personnel present on the streets during the curfew did not stop the targeted burnings of Tharu houses and establishments, he replied, “It could be because the police lost so much.”²¹

¹⁹ Amnesty International interview with Gita (pseudonym) in Manuwa VDC, 11 March 2016.

²⁰ For more details see HRW, “*Like we are not Nepalis*”, p.19-20.

²¹ Amnesty International interview with Uday Bahadur Singh at Dhangadhi CDO office, 10 March 2016.

3. TORTURE IN CUSTODY

“They beat me with whatever came to their hand. They did not behave as men.”²²

Dili (pseudonym)

With the exception of a senior Tharu politician, all 19 detainees interviewed in the Dhangadhi jail alleged that they had been tortured while held by police. The victims included a political party cadre aged 46, a teacher aged 33, a farmer aged 33, and a *badghar* aged 46. They provided consistent accounts of beatings with *lathis*, being hit with rifle butts and being slapped and verbally abused.

One of the detainees told Amnesty International that he was beaten from the very moment the police took him into custody in their vehicle. He was detained for seven days at the district police office (DPO), during which time one or two police officers regularly beat him. On one occasion the policemen beat him until he fell unconscious. He was then revived with water.²³

Another man said that while he was in custody more than one police officer beat him for two hours with *lathis*, kicked him with boots, punched him with their hands, and hit him with plastic pipes. The police, he claims, were intoxicated at the time, with their breath and demeanour betraying signs of heavy alcohol consumption. One of the policemen chewed tobacco and spat it in his face.²⁴

A third detainee attested that he had been picked up and put into a truck of approximately 40-45 security personnel who were drinking and singing. While they beat him in the truck, he said, they continued singing. He said that he had been beaten on his chest, which was still painful five months later.²⁵ A fourth detainee said that police blindfolded him while he was in detention, and then told him to run and threatened to shoot him dead.²⁶

A fifth detainee said that he was beaten while being arrested in the middle of the night. He said that when his three young children (aged five, seven and 12) started to cry, the police beat them as well.²⁷ Another said that four police officers had kicked and punched him resulting in loss of hearing in one ear.²⁸ Another said that he was asked who was at the protest, and when he said he didn't know, a police officer said, “Take him to the jungle and kill him.”²⁹ Another detainee said that he had blood in his right eye for about a month because of the beatings, and that the eye was tearing up in bright sunlight.³⁰

²² Amnesty International interview with Dili (pseudonym) at Dhangadhi jail, 12 March 2016.

²³ Amnesty International interview with Ram Prasad Chaudhary at Dhangadhi jail, 12 March 2016.

²⁴ Amnesty International interview with Dili (pseudonym) at Dhangadhi jail, 12 March 2016.

²⁵ Amnesty International interview with Ganga (pseudonym) at Dhangadhi jail, 12 March 2016.

²⁶ Amnesty International interview with Kushiram (pseudonym) at Dhangadhi jail, 12 March 2016.

²⁷ Amnesty International interview with Bhagiram (pseudonym) at Dhangadhi jail, 12 March 2016.

²⁸ Amnesty International interview with Dhaniram (pseudonym) at Dhangadhi jail, 12 March 2016.

²⁹ Amnesty International interview with Tulsiram (pseudonym) at Dhangadhi jail, 12 March 2016.

³⁰ Amnesty International interview with Prem (pseudonym) at Dhangadhi jail, 12 March 2016.

One of the detainees, Bishram Chaudhary, a disabled man with a state-issued disability certificate, explained how the police beat him severely even though he had shown them his documents. A hunchback with a deformity in one hand, he told Amnesty International that because he was a person with disabilities there “physically was no way [he] could go to the protests in the first place.”³¹

The separate stories of the men varied in terms of where and how these individuals had been arrested, the differences in their transfer from one location to another before they were transferred to the DPO, and some of the details of how they were tortured. However, they were consistent in that the torture began as soon as they were arrested, whether in security vehicles, various police posts in the district (Joshipur and Thapapur were regularly cited) and especially the DPO.³² One detainee said that because of the beatings he received at the DPO, he had “almost died there.”³³ Further, four out of the 19 detainees reported psychological torture and threats.

The interviewees independently said that the worst treatment was meted out to a detainee named Ram Prasad Chaudhary. According to Ram Prasad, the police seized his mobile as key evidence of his alleged guilt. He told Amnesty International that, after his arrest, he was constantly moved from one location to another, leaving him disorientated. On one occasion while he was being transported the police beat him to the point that he fell unconscious while in the vehicle. At each location, he was beaten with batons, rifle butts, and slapped. He claimed police beat him while he was blindfolded so he “did not know where the beatings came from [or] from what.” Through the jail bars, Chaudhary showed Amnesty International scars on his arm from his injuries.³⁴

TORTURE OF A 14-YEAR-OLD BOY

There are also strong indications that a 14-year-old boy was amongst those tortured. In his interview with Amnesty International on 3 May 2016 in the child correction home in Kaski district, the boy said that he had given police the names of 145 other people involved in the Tikapur incident. He insisted that he knew all of the 145. However, he gave no answer as to how it was he knew them, especially as he acknowledged that they were not his neighbours or relatives nor did all of them live in his ward.³⁵ In a separate interview with a lawyer familiar with the case, the lawyer stated that the boy in his court testimony gave the names of 11 of the detainees as involved in the killings.³⁶ According to a child rights worker who had previously spoken with the boy while in Dhangadhi, the police officer in charge had gently cajoled him into “revealing” the names to the police.³⁷ When Amnesty International asked the boy if the police coerced him to provide names of people involved in attacks, he said that no-one pressured him or forced his testimony and that he was not beaten.³⁸

However, independently, the boy’s uncle said that he had accompanied the boy’s grandfather to visit him when he was still being held in Dhangadhi.³⁹ According to the uncle, when the boy saw his grandfather, he said to him several times in a low voice so others would not hear, “they beat me” and pointed to various parts of his body and legs.

The detainees Amnesty International interviewed in Dhangadhi jail also described how the boy had been tortured and used by the police to identify them as responsible for the killings. They said that police brought the boy to stand in front of those who had been arrested and that police officers then asked him to “identify the killers” of the policemen on 24 August. They claimed police asked him to point at each one of the detainees and call out their names. According to the detainees, the boy was clearly in pain. In the words of

³¹ Amnesty International interview with Bishram Chaudhary at Dhangadhi jail, 12 March 2016.

³² The descriptions provided by detainees match the trends and patterns of torture documented in Nepal by NGOs – including that “[t]orture was often inflicted at the point of arrest, in transit to police offices, at local police offices and in district or metropolitan police offices,” Advocacy Forum, *Continuing Torture during 2015*, June 2016, available at <http://advocacyforum.org/publications/June26Report.pdf> (accessed 18 July 2016), p. 11.

³³ Amnesty International interview with Bal Krishna (pseudonym) at Dhangadhi jail, 12 March 2016.

³⁴ Amnesty International interview with Ram Prasad Chaudhary at Dhangadhi jail, 12 March 2016.

³⁵ Amnesty International interview with Birbal (pseudonym) in Kaski, 3 May 2016.

³⁶ Amnesty International interview with Hira (pseudonym) in Kathmandu, 18 July 2016.

³⁷ Amnesty International phone interview with child rights worker, 7 April 2016.

³⁸ Amnesty International interview with Birbal (pseudonym) in Kaski, 3 May 2016.

³⁹ Amnesty International phone interview with Shiva (pseudonym), 10 June 2016.

one prisoner, “he was not able to sit properly when he was with us; that is how much he was beaten.” The detainees believe that the boy had been beaten and instructed to memorise their names beforehand.⁴⁰

Monitoring of places of detention across Nepal by Advocacy Forum has shown consistently high rates of torture and other ill-treatment. It stood at an average of 17.2% of all detainees in 2015. Importantly, the monitoring has also shown that more juveniles suffer torture or other ill-treatment - 21.7% of juvenile detainees (up to the age of 18) in comparison to adults (15.9% of adult detainees).⁴¹

⁴⁰ Amnesty International interview at Dhangadhi jail, 12 March 2016.

⁴¹ Advocacy Forum, *Continuing Torture during 2015*, June 2016, available at <http://advocacyforum.org/publications/June26Report.pdf> (accessed 18 July 2016).

4. COERCED “CONFESSIONS”

Detainees at the Dhangadhi jail have been charged with murder, attempted murder and robbery in connection with the violence that took place during the Tikapur protests. All claim that police coerced them to sign “confessions”.

Ram Prasad Chaudhary told Amnesty International that after the police beat him, they forced him to sign a document without allowing him to see it. When he inquired about the content of the document, he was beaten again. Ram Prasad Chaudhary said that, like the other detainees, his hand was forcibly held as he was compelled to sign the document.⁴²

All of the interviewed detainees, with the exception of the senior politician who did not allege he was tortured, said that they were forced to sign statements that had been prepared beforehand and that they were not allowed to read them. When they asked to see what they were made to sign, they said they were beaten even more. One detainee said that police beat and near-strangled him and made him sign a document (the content of which he did not know), with the police forcibly holding his hand to sign.⁴³ Bishram Chaudhary also said that the police gave him a “huge beating” to force him to sign his “confession.”⁴⁴ One man said that four police officers forced him to finger-print (and thereby sign) the “confession.”⁴⁵ Another said that he had been forced to sign a document and when he asked the police what he had signed, one officer told him, “you’ll know when you get there” (i.e. when he went to court).⁴⁶ All of those who had been tortured and forced to sign a statement only knew they had been charged with murder, attempted murder and robbery when they arrived in court and heard the prosecutor read out the charges.

The 14-year-old child said that he had signed seven or eight pieces of paper since his arrest, but he did not know what was written in them, the content of the papers was not read out to him, and police did not allow him to read them.⁴⁷ He did not know what charges police had brought against him.

It is clear that the treatment which these detainees described violates the presumption of innocence – the right of everyone charged with a criminal offence to be presumed innocent until and unless proved guilty according to law after a fair trial. Under international and Nepali law, in accordance with the presumption of innocence, no one charged with a criminal offence may be compelled to confess guilt or testify against themselves. This means that statements elicited as a result of torture and other ill-treatment or other forms of coercion must be excluded from evidence in all proceedings. Moreover, torture and other ill-treatment are absolutely prohibited under international law, including under treaties which Nepal has ratified.

⁴² Amnesty International interview at Dhangadhi jail, 12 March 2016.

⁴³ Amnesty International interview with Ganga (pseudonym) at Dhangadhi jail, 12 March 2016.

⁴⁴ Amnesty International interview at Dhangadhi jail, 12 March 2016.

⁴⁵ Amnesty International interview with Sitaram (pseudonym) at Dhangadhi jail, 12 March 2016.

⁴⁶ Amnesty International interview with Padam (pseudonym) at Dhangadhi jail, 12 March 2016.

⁴⁷ Amnesty International interview with Birbal (pseudonym) in Kaski, 3 May 2016.

5. MEDICAL ATTENTION DENIED

Under Nepali law, detainees must be given health checks when they are brought into, and released from, custody.⁴⁸ A recent NGO report has shown that, in those districts of Nepal where the NGO conducts regular visits to places of detention, almost 98% of detainees received health checks at the time of their detention, although it also found that some of these check-ups are perfunctory and often conducted in the presence of a police officer.

The report also identified the need for such check-ups to be carried out in private, as well as for medical examinations and treatment to be made available to detainees on request at any point in their detention.⁴⁹ Another NGO report, focusing specifically on the Tarai, found that only about half of the detainees interviewed had received health checks in detention.⁵⁰ According to a lawyer with knowledge of the case, police took most detainees in the Tikapur case for a health check but the doctors performed only perfunctory check-ups.⁵¹

Ram Prasad Chaudhary was the only detainee who told Amnesty International that he had been given a medical examination ordered by the district court when he complained that he had been tortured. He told Amnesty International that his shoulder had been broken, that he had bruises on his body and that the medical examination concluded that he had suffered torture. He also said that the police refused to supply him with his medication for typhoid, which he had developed four days before his arrest, and that he had not been given medication until a full month after he was arrested.⁵²

Apart from Ram Prasad Chaudhary, no one else stated that they had received an official medical examination or any effective medical assistance, even though some of them told Amnesty International that they had made written requests to the police. Bishram Chaudhary said that the police had given him some painkillers but only when his pain was “very serious.”⁵³ Another man asked the police for medicine and was asked by the police “if [he] had any money,” suggesting that he needed to buy his own medicine.⁵⁴

Under international law and standards, detainees should be offered an independent medical examination as soon as possible after being brought into custody. They should be able to seek and obtain a confidential medical examination and treatment at any time; officers should not screen requests. Whenever a detainee or

⁴⁸ The Compensation Relating to Torture Act 1996 (CRT) requires that “In detaining and releasing any person, the concerned official shall get such person examined physically by a medical practitioner engaged in the governmental service as far as possible and him/herself examine such person in cases where no such medical practitioner is available, and maintain records thereof.” Section 3(2) of The Compensation Relating to Torture Act 1996, available at <http://www.lawcommission.gov.np/en/documents/2015/08/compensation-relating-to-torture-act-2053-1996.pdf> (accessed 18 July 2016).

⁴⁹ Advocacy Forum, *Continuing Torture during 2015*, June 2016, available at <http://advocacyforum.org/publications/June26Report.pdf> (accessed 18 July 2016).

⁵⁰ See the THRD Alliance publication, *Torture in the Terai*, June 2016, available at http://thrda.org/wp-content/uploads/2016/06/English_Final-Torture-in-the-Terai.pdf (accessed 18 July 2016).

⁵¹ Amnesty International interview with Hira (pseudonym) in Kathmandu, 18 July 2016.

⁵² Amnesty International interview with Ram Prasad Chaudhary at Dhangadhi jail, 12 March 2016.

⁵³ Amnesty International interview with Bishram Chaudhary at Dhangadhi jail, 12 March 2016.

⁵⁴ Amnesty International interview with Ganga (pseudonym) at Dhangadhi jail, 12 March 2016.

prisoner makes allegations of torture or other ill-treatment, or there is reason to believe that they have been tortured or otherwise ill-treated, they should be immediately examined by an independent doctor without interference from the authorities.

6. ARBITRARY ARRESTS

Many of the people interviewed by Amnesty International said they were innocent of the charges brought against them. Moreover, while some of the detainees acknowledged they were present at the protest, others claimed they were in various other places, including other districts, at that time. One man said that he had been in a police post in the district at the time of the Tikapur attacks on the police, arguing with a neighbour over farming issues in the presence of a policeman.⁵⁵

Some of the people interviewed by Amnesty International said that they were detained for no other reason other than they were from the local Tharu community. One man said he had been arrested because he was a *badghar* who police suspected encouraged Tharus to attend the demonstrations.⁵⁶ Another man told Amnesty International that he had gone to the hospital to look after one of those injured in the protest when he was arrested.⁵⁷ Bishram Chaudhary said that he was targeted because he was Tharu and that when he was arrested, the police had said “Bastard, you Tharus want Tharuhat?”⁵⁸

Contrary to the Nepal’s obligations under international law, as well as the 2007 Interim Constitution (Article 24, 1) and the 2015 Constitution (Article 20(1)), none of the detainees were informed of the reasons for their arrest at the time of their arrest.

⁵⁵ Amnesty International interview with Pradip (pseudonym) at Dhangadhi jail, 12 March 2016.

⁵⁶ Amnesty International interview with Dili (pseudonym) at Dhangadhi jail, 12 March 2016; Amnesty International interviews in Tikapur and surrounding villages revealed that the police targeted local leaders, including *badghars*, for arrest; and Amnesty International interviews with journalist in Tikapur, 10 March 2016 and villagers in Manuwa VDC, 11 March 2016.

⁵⁷ Amnesty International interview with Padam (pseudonym) at Dhangadhi jail, 12 March 2016.

⁵⁸ Amnesty International interview with Bishram Chaudhary at Dhangadhi jail, 12 March 2016.

7. NEPAL'S INTERNATIONAL AND NATIONAL LEGAL OBLIGATIONS

ON TORTURE AND OTHER ILL-TREATMENT

The prohibition on torture and other ill-treatment or punishment is absolute. It is a norm of customary international law that applies to all states in all circumstances. The prohibition is also expressly set out in treaties to which Nepal is a state party: the UN Convention against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC).⁵⁹ The Convention against Torture expressly places an obligation on states parties to ensure that all acts of torture are offences under its criminal law and punishable by appropriate penalties which take into account their grave nature, and to ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. The ICCPR likewise places an obligation on states parties to ensure the right to an effective remedy for violations.

Article 22 of Nepal's Constitution provides that "(1) No person who is arrested or detained shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment" and that "(2) Any act mentioned in clause (1) shall be punishable by law, and any person who is the victim of such treatment shall have the right to obtain compensation in accordance with law."⁶⁰

Article 39 (7) of the Constitution also provides that "No child shall be subjected to physical, mental, or any other forms of torture at home, in school, or in any other places or situations."

Additionally, the Evidence Act 1994 includes the provision that facts obtained by coercion; torture or the threat of torture may not be taken as evidence.⁶¹

⁵⁹ Nepal acceded to the International Covenant on Civil and Political Rights (ICCPR) and its first optional protocol on 14 May 1991 without any reservation or additional declaration. It acceded to the second optional protocol without any reservation or additional declaration on 4 March 1998. Nepal ratified the Convention on the Rights of the Child (CRC) on 14 September 1990 without any reservation. Nepal acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 14 May 1991 but has yet to ratify its Optional Protocol. For details of the status of ratification of other treaties, see http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=122&Lang=EN (accessed 18 July 2016).

⁶⁰ Constitution of Nepal (2015), Art. 22.

⁶¹ Evidence Act (1974), Section 9 (2)(a)(2), available at <http://www.lawcommission.gov.np/en/documents/2015/08/evidence-act-2031-1974.pdf> (accessed 18 July 2016).

The Compensation Relating to Torture Act 1996 (CRT), which is the only legal recourse for torture victims in Nepal, addresses restitution and punishment for torture. However, it falls short of criminalising torture, contrary to Nepal's international obligations. In the CRT, torture is punished as a disciplinary matter by the concerned institution on the order of the District Court hearing the case, with punishment to be decided by the security force to which the offender belongs.⁶²

ON ARBITRARY ARREST

ICCPR Article 9 provides that no one shall be subjected to arbitrary arrest or detention and that anyone who is arrested must be informed at the outset of the reasons for the arrest, and must be promptly informed of the charges brought against them. Article 14 provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Nepal's constitution enshrines "rights relating to justice"⁶³ which include the right to be informed of the reasons for arrest, the right of access to legal counsel from the time of arrest and the right to be produced before an adjudicating authority within a period of twenty-four hours of the arrest, excluding the time necessary for the journey from the place of arrest to such authority. It also provides that every person shall have the right to be informed of any proceedings taken against him or her and shall be presumed innocent until proven guilty.

Further, the Civil Rights Act 1955 requires that anyone arrested must be provided with a "reasoned notice of arrest as soon as possible;"⁶⁴ access to a lawyer, brought before a judicial authority within 24 hours, and must not be detained further without order of that authority.⁶⁵

⁶² Available at <http://www.lawcommission.gov.np/en/documents/2015/08/compensation-relating-to-torture-act-2053-1996.pdf> (accessed 18 July 2016).

⁶³ Constitution of Nepal (2015), Art. 20.

⁶⁴ Civil Rights Act, Section 15, available at <http://www.lawcommission.gov.np/en/documents/2015/08/civil-rights-act-2012-1955.pdf> (accessed 18 July 2016).

⁶⁵ Civil Rights Act, Section 15.

8. RECOMMENDATIONS

Amnesty International calls on the Nepali authorities to take forward the following:

HOME MINISTRY

- Establish a prompt, independent, impartial and effective investigation into the allegations of torture and other ill-treatment, coerced “confessions” and arbitrary arrests and detention as documented in this briefing. Officials suspected of responsibility for torture and other ill-treatment must be suspended pending the outcome of the investigation and those found responsible should be prosecuted and brought to trial in proceedings which comply with international law and standards on fair trial.
- Provide an effective remedy and reparation to the victims of torture and other ill-treatment, as required by international law. This includes an acknowledgment of the harm done to them, rehabilitation, adequate compensation and guarantees of non-repetition.

LAW ENFORCEMENT OFFICIALS

- Ensure that those facing possible criminal charges are able to exercise their right to the assistance of a lawyer to protect their rights and to help in their defence. This includes having access to a lawyer from the outset of their detention, including during questioning, and being given adequate time and facilities to communicate with them in private.
- Detainees should be offered an independent medical examination as soon as possible after being brought into custody and should be able to seek and obtain a confidential medical examination and treatment at any time; officers should not screen such requests and should not be present during the examinations. Whenever a detainee makes allegations of torture or other ill-treatment, or there is reason to believe that they have been tortured or otherwise ill-treated, they should be immediately examined by an independent doctor without interference from the authorities; doctors should be enabled to confidentially inform a judge if torture or other ill-treatment is suspected.

JUDICIARY

- Ensure that no statements, material or information obtained as a result of torture or other ill-treatment or other forms of coercion are used in any proceedings, except as evidence of abuse against an alleged perpetrator of torture or other ill-treatment.
- When detainees are brought before a judge, members of the judiciary and officials should be attentive to any indications that detainees have been subjected to torture or other ill-treatment, and

ensure that prompt, thorough and impartial investigations are ordered if signs of torture or other ill-treatment are observed.

PARLIAMENT

- Pass the proposed Torture or Cruel, Inhuman or Degrading Treatment (Offence and Punishment) Bill tabled in Parliament in August 2014 without undue delay, addressing key shortcomings in the current Bill. This includes the short time limits outlined for filing a complaint, addressing the penalties for those convicted of torture, in addition to ensuring the level of compensation for those who have experienced torture and ill-treatment is commensurate to the gravity of the violation, removing protection from prosecution for officials acting in “good faith” and addressing the penalties for those deemed to have filed false complaints.
- Nepal should put in place effective preventive measures against torture and other ill-treatment, including by acceding to the Optional Protocol to the Convention against Torture (OPCAT), establishing a framework of regular visits by independent international and national bodies to places of detention.

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TO ONE PERSON, IT
MATTERS TO US ALL.**

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NEPAL: TORTURE AND COERCED CONFESSIONS

HUMAN RIGHTS VIOLATIONS OF INDIGENOUS THARUS AFTER THE AUGUST 2015 POLICE KILLINGS IN KAILALI

On 24 August 2015, thousands of protestors from the Indigenous Tharu community in Kailali district in Nepal's Far-Western Tarai in the southern plains, marched towards the centre of Tikapur town. They were protesting against the federal boundaries proposed by the government during the negotiations for a new constitution, and demanding a separate, autonomous province. After police fired tear gas into the crowds, some of the protestors attacked the police. Eight security personnel, and a child, were killed. The police killings triggered a wave of reprisal attacks against the Tharus, with police subjecting Tharu community members to arbitrary arrests, torture and other ill-treatment, and coerced some of them into signing "confessions" in connection with the killings.

This situation speaks to the broader climate of impunity in which perpetrators of torture, particularly the police, are not held to account for their actions, highlighting Nepal's failure to uphold both domestic and international legal obligations in respect of incidents of torture.

Nepal must enact legislation to make torture a crime under domestic law, punishable by appropriate penalties which reflect its gravity, in line with its obligations as a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.