

# NEPAL

## @A Summary of Amnesty International's concerns on torture and ill-treatment

### ***Patterns of torture and ill-treatment***

Since Nepal acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) in 1991, Amnesty International has received reports that torture in police custody is still being used, both as a means to obtain information or "confessions" and possibly, on occasions, to punish political prisoners. Victims are often arrested without warrant and held without charge for long periods of time before being brought before a court, in contravention of both Nepali and international law. Nepali law stipulates that detainees must be brought before a court and charged within 24 hours. Reports indicate that detainees are sometimes held in incommunicado detention in police custody for periods sometimes in excess of 20 days, which clearly facilitates and encourages torture.

Since 1991, Amnesty International has received reports of torture taking place in Sindhuli, Gorkha, Kaski, Kathmandu, Lalitpur, Bhaktapur, Ilam, Morang, Rolpa, Lamjung and Rukum Districts. Reports of the type of torture inflicted include beatings with sticks, *falanga* (beating on the soles of the feet), beatings with *sisnu* (a plant which causes painful swellings on the skin), punching, kicking, having pins inserted under finger nails and being forced to sit in the *kukhura* (chicken) position.

Under Article 88.2 of the Constitution of Nepal, 1990, the Supreme Court is empowered to issue writs of *habeas corpus* and to enforce constitutionally guaranteed fundamental rights in the absence of other existing laws of enforcement. A recent example of a case of torture, where a *habeas corpus* writ was filed in the Supreme Court, is that of a 26-year-old businesswoman, Tezlu Ghale, who runs a small carpet factory in Baluwatar, Kathmandu. She was arrested on 22 September 1993 and taken to the office of the Deputy Superintendent of Police at the Hanuman Dhoka police station in Kathmandu, where police reportedly attempted to extort money from her, beat her, applied electric current to her wrists and attempted to rape her. A police constable who took pity on her allowed her to telephone her mother without the knowledge of his superiors. Tezlu Ghale's mother, who visited the Hanuman Dhoka police station on two occasions, was refused permission to see her daughter. On 26 September Tezlu Ghale's mother filed a *habeas corpus* petition in the Supreme Court which then issued orders to the police to give a written reply to the court within 24 hours. On 30 September the police responded to the Supreme Court order by denying that they had arrested Tezlu Ghale. The police then reportedly transferred her to Bhaktapur police station, (a neighbouring town about 14km from Kathmandu) where according to her testimony, she was further abused and denied food for two days. On 3 October the Supreme Court ordered the Central Regional Police Office to produce Tezlu Ghale within 48 hours. On 5 October police produced Tezlu Ghale before the Supreme Court stating that she had been charged before the District court with selling one gram of heroin, and that they had only arrested her on the day she was charged. The Supreme Court ordered an investigation and concluded that Tezlu Ghale had been arrested in September on the date she had given. Contempt of court proceedings against the police have been initiated, but not concluded, and it appears

that so far no action has been taken to investigate the allegations of torture and prosecute those responsible.

### *Prohibition of torture in Nepali law*

Nepal's Constitution, promulgated in 1990, prohibits torture and states that any person so treated shall be compensated in the manner determined by the law. However, under Nepali law at present, torture is not defined as a specific criminal offence. Although the Nepali Government informed Amnesty International in a letter of October 1992 that it was considering introducing a law against torture, in line with provisions of international human rights standards, it has not done so, to date. Amnesty International believes that such a law would be one important step towards ending the current impunity enjoyed by members of security forces who commit torture or other ill-treatment.

An Amnesty International delegation visited Kathmandu in November 1993, and met with the Minister of Law and Justice and an official from the International Law and Treaty Division in the Ministry of Law and Justice. The delegation was told that since in Nepal international law prevails over national law, incorporating the prohibition of torture into current national Nepali law was unnecessary. However, without enabling legislation specifying torture to be a crime in national law, it is not possible to prosecute and convict perpetrators for the full range of acts which amount to torture as defined in Article 1 of the Convention against Torture.

### *Investigation and complaints procedure*

Amnesty International is not aware of any independent, impartial investigations being conducted into recent allegations of torture, nor of any cases in which criminal proceedings have been initiated either by the government or by an individual against alleged torturers.

The office of the Inspector General of Police responded to two cases of reported torture in police custody documented in *Nepal: Recent reports of torture by police* (ASA 31/02/93) of February 1993, which Amnesty said had not been subject to proper investigations, and had not resulted in action being taken against the alleged perpetrators. In the case of the six people who were reportedly tortured in police custody in Sindhuli District after being arrested on suspicion of involvement in the murder of two men in October 1992, the police said that they had carried out an independent investigation and maintained that the detainees were allowed to meet their families, doctors and lawyers. The police report said that local police had acted to save the six people from being attacked by an angry mob, and that allegations of confessions extracted under torture were made in order to discredit the police. In the case of Purna Bahadur Biswakarma, from Gorkha District, who died after being released from police custody where he had reportedly been beaten and denied medication for depression, the police denied that he had been tortured and stated that the post mortem report had not indicated any traces of physical torture. They also denied that the six other people arrested at the same time had been tortured "in the way mentioned in the [AI] report." On the case of Manikala Rai, who was reportedly beaten and raped in police custody at Buddhanilkantha, Kathmandu, in December 1992, the police report stated that the act of rape could not be established because of the lack of sufficient evidence, but that the Sub-Inspector involved had been dismissed from his job.

It appears that none of the cases of torture mentioned in the AI report, although investigated by the police, have been the subject of an investigation by an independent and impartial body. Although in one case a senior officer has been dismissed from post, none of the perpetrators have been brought to justice.

The office of the Inspector General of Police in its report also stated that cells had been set up in all the regional police headquarters to investigate and handle reports of human rights violations. Amnesty International has not been informed of the mandate and terms of reference of the cells referred to.

Amnesty International believes that the Government of Nepal should give urgent consideration to the setting up of an independent complaints mechanism and a procedure for the independent, impartial and prompt investigation of human rights abuses, including torture and other ill-treatment.

### *Compensation for torture or ill-treatment*

A draft bill, called the Torture Compensation Act 2050, was discussed in Parliament (Lower House) in August 1993 and referred to a special committee of parliamentarians for further discussion and amendment before being voted on in the House of Representatives (Upper House). In the draft bill, torture is defined as follows:

"any action causing physical injury that is knowingly undertaken against a detained person in order to gain any information or to force an admission of any matter, and this word also refers to cruel, inhuman or degrading treatment given for the same ends."

The law would enable victims to obtain up to 50,000 rupees compensation for acts of torture, providing that the victim makes a complaint to the district court (where he or she was detained) within 15 days of the date on which the torture was inflicted. Since reports received indicate that some victims are held incommunicado, and in some cases for well over 15 days, such a provision is seriously flawed. For many torture victims it is impossible to contact a lawyer and/or talk freely about torture as long as they are held in police custody. Amnesty International is also concerned that the definition of torture is too narrow, as it excludes psychological injury as well as torture not inflicted for the purpose of extracting information or admissions. Provision for torture victims to receive rehabilitation and medical treatment should also be incorporated into the draft bill.