

£NEPAL

@Recent reports of torture by police

INTRODUCTION

Between October and December 1992 at least 18 people were reportedly tortured during interrogation in police custody. In the first incident, in Sindhuli district at the end of October, six supporters of the main opposition party, who had been arrested for questioning about two murders, were tortured by police after denying any involvement in the murder. The second incident took place in Gorkha district in November: six people arrested for questioning about theft were severely tortured in police custody, and one victim later died. It has not been established whether or not the death occurred as a result of injuries caused during torture. Later in November, in Pokhara, several people were arrested and reportedly beaten by police during or after arrest; and in December a 24-year-old woman was reportedly tortured and raped in police custody in Kathmandu.

BACKGROUND

There were several positive changes in the human rights situation during 1990-91, with the lifting of a thirty-year ban on political activity, the introduction of a new Constitution providing substantial human rights protection (including the prohibition of torture and provision against self-incrimination), and Nepal's accession to several international human rights instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The government of Prime Minister Girija Prasad Koirala, which came to office in May 1991 after the first democratic elections in over 30 years, has repeatedly declared its commitment to human rights protection, and the ruling Nepali Congress party included human rights protection in its election manifesto.

Despite these positive changes, it appears that torture in police custody is still being used, as was the case under previous governments, both as a means to obtain information or "confessions" by force and possibly, on occasions, to punish political prisoners. During the last twelve months, dozens of opposition supporters have been arrested on criminal charges and subsequently tortured, usually in regions where the opposition has strong local support.

No official action is known to have been taken to ensure independent and impartial investigations into these reports of torture, as required by the Convention Against Torture to which Nepal is a party. Nor is any action known to have been taken to bring those responsible for torture to justice or to ensure effective implementation of safeguards against torture.

TORTURE IN SINDHULI DISTRICT

Seven men and one woman were arrested in Bhiman village on suspicion of involvement in the murder of two men on the evening of 26 October 1992, during the festival of Bhai Tika, which celebrates the bond between brothers and sisters. All eight were subsequently charged with murder, and six of them were reportedly tortured by police who allegedly wanted them to sign false statements implicating themselves or others. All those arrested were sympathetic to the Communist Party of Nepal, United Marxist-Leninist (UML), which forms the main opposition to the ruling Nepali Congress party. They believe they were arrested because of their political affiliation, and they deny any involvement in the crimes. Amnesty International believes that they may be political prisoners. No action is known to have been taken to investigate the reports of torture or to bring those responsible to justice.

Contrary to Nepali law, the detainees were arrested without a warrant and were held by police for 20 days without being brought before a court.

Witnesses at the murder scene are said to have identified the perpetrator as Mr S, a local supporter of the UML, which has strong support in the area. Mr S was not among those detained, having apparently fled the scene. According to reports, local political tensions were inflamed by the murders, which were followed by violent attacks on UML supporters by members and supporters of the Nepali Congress party. A group of between 50 and 60 Congress supporters went to the homes of several UML supporters and took them forcibly to the police station, assaulting them on the way. Among those assaulted, on 28 October, was Chaitu Lama, aged 28, reportedly beaten in his home by members of Nepali Congress who then tied him up and dragged him to the police station. On the way he was kicked, beaten and stoned, and was called a murderer. Chaitu Lama has testified that, once in police custody, he was beaten repeatedly for two days on the hands, legs, calves and back, after refusing to sign a confession to murder.

Tul Bahadur Sarki, aged 22, was arrested by police who reportedly allowed him to be attacked by Nepali Congress supporters on his way to the police station. Once there, he was repeatedly beaten with sticks on the arms, calves and joints and soles of the feet, including while suspended upside down, and was allegedly threatened with death when he refused to sign a statement, drawn up by the police, saying he had witnessed Chaitu Lama and another person committing murder. He claims to have been at his sister's house for the Bhai Tika festival at the time of the murders.

All eight detainees were reportedly transferred to Sindhuli prison soon after representatives of a Nepali non-governmental organization visited Sindhuli on 15 November to investigate reports of torture in police detention. A medical examination carried out on 15 November found injuries consistent with the torture described. The detainees appeared in

Sindhuli District Court on 30 November charged with murder, after which two were released on bail. The other six, including Chaitu Lama and Tul Bahadur Sarki, remain in Sindhuli prison awaiting trial. They are not known to have not been tortured since their transfer to prison.

TORTURE IN GORKHA DISTRICT

During the first week of November 1992, six people were reportedly arrested in Thalajung village on suspicion of theft and taken to Gorkha District Police Office (DPO) where they were held incommunicado for between 7 and 24 days. They were detained without charge and without appearing before a court, in contravention of both Nepali and international law. All were reportedly tortured and were subsequently released without charge. One man, Purna Bahadur Bishwokarma, has since died. No official action is known to have been taken to investigate the reports of torture or to bring those responsible to justice.

Purna Bahadur Bishwokarma, aged 61, was arrested and taken to Gorkha DPO on 1 November. He had been receiving long-term medication for psychotic depression. Witnesses to his arrest state that the police forced him into the Daraudi river during arrest and that he appeared to be unconscious on arrival at the DPO. According to detainees held with him, he did not receive his usual medication and was beaten regularly with sticks and with sismu (a plant which causes painful swellings on the skin). Police allegedly forced him to incriminate four others, including his wife Sanumaya Bishwokarma, who were later arrested. Purna Bahadur Bishwokarma was released, apparently without charge, on 19 November, when he was unable to walk. Several people saw him crawling in the streets, and he died six days later. The cause of death is apparently not known: according to a doctor, the post-mortem report indicated some bruising but did not mention the cause of death.

Bhim Bahadur Gurung, aged 36, was also arrested on 1 November and taken to Gorkha DPO. He has testified that on the third day after his arrest he was boxed on the ears, pulled by the hair and kicked and punched in the face and abdomen. On the 13th day after his arrest, he was forced to sit in the kukhura (chicken) position, when the victim's hands are loosely tied behind the back with a rope, then brought forward under the thighs, with the legs bent at the knee and with the head then being pushed forward between the legs and under the rope tying the hands. After being forced into this position, he was beaten on the soles of the feet, back and arms for about half an hour. On the afternoon of 18th November, he was further kicked on the legs and back, resulting in bleeding. He was released 24 days after arrest, without charge and without having appeared before a court, having been held incommunicado throughout his detention. A medical examination carried out at the end of November found injuries consistent with the torture described, including multiple healing lesions on the legs and tenderness of all muscles in the lower limbs.

Surya Bahadur Rana, a 23-year-old watch-repairer, was arrested from his place of work on 3 November and kept incommunicado at the DPO for 22 days. He was reportedly taken to the police inspector's office, forced into the kukhura position and beaten on the soles of the feet, ankles, thighs and arms on several occasions during his detention. He was also forced to jump up and down when his feet were painfully raw from beatings. He fell over several times and each time he was again forced to stand and jump. He became unable to stand; the beatings continued while he lay on the ground. On one occasion, after his hands had been beaten with a baton, he was made to place his hands on the ground. The police then placed a strong stick across them and trod heavily on the stick, as a result of which his hands became swollen and stiff. A medical examination carried out after his release indicated injuries consistent with the alleged torture, including swelling, redness and tenderness on the back of the left hand, with restricted finger movement; swelling and tenderness of the ankles; and tenderness in the right calf. An X-ray of the left hand showed a fracture in the second metacarpal bone.

Pratap Bishwokarma, aged 23, was arrested on 9 November on the basis of allegations made under torture by Purna Bishwokarma. After arrest he was taken to the Gorkha DPO office. He has testified that on the fourth day after arrest he was punched, kicked and beaten by a police inspector and four other policemen. He was then beaten on the ankles with sticks, forced into the kukhura position and beaten on the soles of the feet for about half an hour, after which he was made to jump up and down on his wounded feet. He has also testified that the police used their knees to hit him very hard in the thighs. At the end of the fourth day after his arrest the soles of his feet were raw, with the left one bleeding; and his thighs, ankles and soles were swollen, blue in colour and painful. On the seventh day the procedure was repeated and a large wound formed on his leg and started to bleed. He was beaten while lying on the ground and unable to stand and his requests for water were ignored. In the evening of the seventh day he says that he was subjected to a form of karate attack, as a result of which he required medical treatment which was carried out by an assistant at the police station. He says that at the time of his release, after 17 days in incommunicado detention, the police threatened to rearrest him if he disclosed that he had been tortured. A medical examination carried out after his release indicated injuries consistent with the torture described, including a large, infected ulcer on the sole of the left foot.

Dewan Singh Gurung, aged 21, was arrested on 6 November. According to his account, on the third day after arrest he was forced into the kukhura position and beaten on the soles of the feet with a rough stick. Thereafter he was beaten all over the body; and on the sixth day, he was stripped naked and beaten for 10 minutes with sisnu dipped in water. The policemen then hit him on the thighs with their knees. The kukhura method of torture was repeated on the eighth day. He was also punched in the abdomen, and made to jump up and down until he was unable to stand. When he asked for a drink of water he was again

beaten. He was released after 13 days in incommunicado detention. When examined by a doctor after release both his feet were swollen and tender, with bruising on the soles, consistent with the torture described.

Sanu Maya Bishwokarma, aged 57, was incriminated by evidence given under torture by her husband Purna Bishwokarma. She was arrested on 15 November and was held incommunicado for one week. She was reportedly beaten during and after arrest, both with sticks and sisnu, and was held by the hair and lifted into the air.

ILL-TREATMENT IN KASKI DISTRICT

On 23 November 1992 five people were ill-treated during arrest by police in the town of Pokhara, in the context of a long-running dispute with political overtones about management and staffing of a local school. A demonstration had been held earlier that day, by supporters of the opposition UML party, to protest against the dismissal of the school's headmaster. The demonstration was broken up by the police, who later went to the homes of five people and arrested them. Two of the five say they had not been involved in the demonstration or in the school dispute. Witnesses have testified that all five were beaten and ill-treated by the police during arrest. They were held incommunicado for four days and released after 13 days. They have been charged under the 1970 Public Offenses and Penalties Act (POA) which deals with offenses such as "obstruction to any public servant... through violence or hooliganism". The POA has been used on several occasions during the last two years to detain political prisoners (see, for example, ASA 31/02/91, Nepal: Detained trade unionists). The POA provides for administrative detention for one month pending investigation, after which a detainee can be sentenced to up to five months in prison.

Among those arrested was Dharma Raj Pahari, a 16-year-old student, who was severely beaten and kicked all over the body during arrest. Ganga Baral, a 23-year-old school "guardian", was also arrested. According to reports, the police pulled her hair, beat her with a stick, and trampled her underfoot. Two of those arrested were local labourers who say they had nothing at all to do with the demonstration or the school dispute. One was reportedly beaten after arrest on the back, head and arms by policemen using bamboo sticks and rifle butts; the other was beaten during arrest on the back and head.

No investigation is known to have been held into the reported ill-treatment in Pokhara; nor is any action known to have been taken to bring to justice those responsible. However, a newspaper report on 14 January 1993 quoted the Home Ministry as saying that the Chief of Kaski District Police Office has been removed from his post "for indulging in undisciplined activity". It is not known whether this "undisciplined activity" refers to the incidents described above.

TORTURE IN KATHMANDU

A woman was reportedly beaten and raped in police custody at Buddhanilkantha, Kathmandu. Manikala Rai, aged 24, was arrested by police on 13 December 1992 and detained overnight. She was released without charge the next day when, according to witnesses, she was crying, had torn clothes and complained that she had been raped by the police. She appeared exhausted and unable to stand. In addition to being raped, she was allegedly kicked and beaten until she became unconscious. A medical examination carried out after her release reportedly indicated injuries consistent with rape, including severe bruised on the chest, thighs, arms, face and head. After receiving hospital treatment, she was apparently taken away by the police who have said that "she has been taken to her relatives in Dharan" (in eastern Nepal).

Several people who protested against the rape were arrested, including lawyer Rajesh Khadka and photographer Dev Man Gurung who took photographs of Manikala after her release. It is not known whether they have been charged with an offence and/or released. Before his arrest Dev Man Gurung was allegedly telephoned by a policeman who threatened him with death.

Five policemen, including a sub-inspector, are alleged to have been responsible for the assault and rape. According to reports, the sub-inspector has now been dismissed from the police force for having beaten and raped Manikala Rai, but it is not known whether a full and impartial investigation has been held into the incident in which four other policemen were allegedly involved, or whether action is being taken to bring those responsible to justice.

SAFEGUARDS AGAINST TORTURE

The Constitution of Nepal states, in Article 14.4:

"No person who is detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture nor shall he be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in the manner determined by law".

The Constitution further states, in Article 14.3:

"No person accused of any offence shall be compelled to be a witness against himself".

However, despite these important legal safeguards, torture of detainees continues to take place and those responsible are not being brought to justice.

Amnesty International believes that the perpetrators of human rights violations should be held fully accountable, and that the phenomenon of impunity can be a key factor in contributing to continuing human rights violations. The organization knows of no case in Nepal where those responsible for torture have been brought to justice.

The government has told Amnesty International that it is considering introducing a law against torture, as required by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Nepal is a party. Amnesty International welcomes this proposal and believes that the proposed law should also include provision for compensation to victims. At present, torture is not a specific criminal offence and there are no means by which victims of human rights violations, including torture, can obtain compensation through the courts. The government has on occasions given *ex gratia* compensation to torture victims, but none of the victims described in this paper is known to have been compensated.

Amnesty International further believes that, in addition to providing for judicial remedy, the government should undertake to ensure that independent and impartial investigations are carried out into all reports of torture and other serious human rights violations, and to establish an independent complaints mechanism. At present there appears to be no effective procedure by which victims of human rights violations can make their complaints known to the authorities with a view to further investigation.

Finally, Amnesty International believes that the government should make a public statement of its continuing commitment to stop torture such as that which has occurred recently, and should take immediate action to ensure that all police and other personnel in charge of detainees are made aware that torture will not be tolerated. The government has told Amnesty International that it intends to incorporate an element of human rights education in the training given to the police force. Amnesty International would welcome any such step and would hope that all police personnel will be made aware of the human rights of detainees as defined and protected both in Nepali law and in international human rights standards to which Nepal is a party.