

TABLE OF CONTENTS

Introduction 1

Background 2

Amnesty International's work 3

Summary of discussions on Amnesty International's concerns in Nepal 4

The Government of Nepal's international role in promoting human rights 4

The constitutional protection of human rights in Nepal 5

Torture and Ill-treatment in Custody 5

Possible unlawful killings in police firing 10

Impunity 13

Appendix 15

Recommendations for human rights safeguards made by Amnesty International to the Government of Nepal in June 1992, and reproduced from Amnesty International, *Nepal: Human Rights Concerns*, June 1992, AI Index: ASA 31/02/92. 15

Recommendations for the prevention of extrajudicial executions and torture made by Amnesty International to the Government of Nepal in October 1993 and reproduced from Amnesty International *Nepal: Reports of possible extrajudicial executions and torture between 25 June and 20 July 1993*, October 1993, AI Index: ASA 31/08/93. 19

£NEPAL

@Human rights safeguards

Introduction

In November 1993 an Amnesty International delegation visited Nepal to discuss the organization's human rights concerns with government ministers and other officials, and to recommend practical safeguards the government could introduce to protect against future violations of human rights. The discussions focused on steps which could be taken to prevent ill-treatment and torture in police custody, possible illegal killings resulting from police shootings on demonstrators and others, such as happened in June and July 1993, and impunity. The delegates also met members of non-governmental human rights organizations and other individuals concerned with human rights issues, as well as fifteen people who said they had been ill-treated or tortured in police custody during 1992 and 1993.

This report summarizes the discussions Amnesty International held on its main human rights concerns in Nepal with government ministers and other officials, and any relevant developments there may have been since the visit. The Appendix contains a list of the main recommendations for human rights safeguards which Prime Minister Girija Prasad Koirala undertook to study personally and which Amnesty International hopes the government will yet implement. These recommendations had been published in earlier Amnesty International documents on Nepal.

Amnesty International requested meetings with government ministers and other officials in September 1993, and much appreciates the Government of Nepal's acceptance of its proposal to visit to country for this purpose. The ministers and other officials who met the Amnesty International delegation included the Prime Minister, Girija Prasad Koirala; the Minister of Law and Justice, Maheshwor Prasad Singh; the Acting Home Secretary, Bhoj Raj Pokharel; the Inspector General of Police, Moti Lal Bohara and the Chief District Officer for Kathmandu.

Amnesty International much appreciates the opportunities its delegates were given to discuss the organizations's concerns with all those they met, in both governmental and non-governmental circles, and the positive approach to human rights protection which was taken in these discussions. It hopes that these meetings will help to promote the further protection of human rights in Nepal.

All the government officials whom Amnesty International met emphasized the government's commitment to the protection of human rights. Several of those in government in Nepal today spent long periods imprisoned for political reasons under previous governments, and they emphasized their determination to ensure that the rights of the people of Nepal will in the future be properly safeguarded.

Amnesty International welcomed the government's stated position on human rights and stressed the need for the government to continue to ensure that its good intentions are translated into concrete action and specific measures.

Background

AI Index: ASA 31/02/94 Amnesty International June 1994

Nepal: Human rights safeguards

The government of Prime Minister Girija Prasad Koirala took office following multi-party elections held in May 1991, and won by the Nepali Congress Party. Fourteen months earlier the government of Prime Minister Marich Man Singh Shrestha had collapsed, bringing an end to the thirty-year old *panchayat* (assembly) system under which elections were held at local and national level but political parties were banned and hundreds of opponents of the government were detained and tortured.¹

In the interim period, from April 1990 to May 1991, a coalition interim government held power under Prime Minister Krishna Prasad Bhattarai of the Nepali Congress Party. The interim government was mandated to establish a parliamentary democracy in Nepal under a constitutional monarch. It oversaw the drafting and promulgation in November 1990 of a new Constitution which created a constitutional monarchy, and which provided increased constitutional protection for human rights. Under the interim government, Nepal acceded to the main international human rights instruments: the International Covenant on Civil and Political Rights (ICCPR) and its first optional protocol,² the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention). The interim government also established two independent inquiries into alleged human rights abuses under previous governments. The reports of these commissions have not been published, and no action has been taken on their findings.

Amnesty International welcomed these developments and continued to suggest safeguards the government could implement to further strengthen human rights protection.³ It continued to monitor the human rights situation in Nepal and noted an overall improvement after April 1990. However, it expressed concern about continuing reports of torture in police custody as well as about occasional incidents of arbitrary arrest, apparently for political reasons. In addition, it noted an emerging pattern of sometimes lethal shootings by police as they attempted to control crowds of demonstrators, and feared that some of these deaths may have constituted illegal killings, or extrajudicial executions, resulting from a disproportionate use of force.⁴ The apparent illegal killing of refugees from Tibet was also reported in several incidents after police had fired at them.⁵

In October 1992 the government sent Amnesty International a report on the current human rights situation in Nepal, reiterating its full commitment to the promotion and protection of human rights and outlining the steps taken by the interim and present government on human rights protection.

All of these concerns, together with Amnesty International's recommendations to strengthen human rights

¹ Under the *panchayat* system, the King of Nepal was head of state with the power to appoint and dismiss ministers, and the palace also controlled the police, the army and the administration at all levels.

² In discussions with Law and Justice Ministry officials, Amnesty International was informed that Nepal was considering ratifying the second optional protocol to the ICCPR.

³ These recommendations were contained in a memorandum to the interim government, *Nepal: Memorandum to the Government*, June 1990, AI Index: 30/10/90, and a report submitted to the government of Prime Minister Girija Prasad Koirala, *Nepal: A summary of human rights concerns*, June 1992, AI Index: 31/02/92.

⁴ See *Nepal: A summary of human rights concerns*, June 1992, AI Index: ASA 31/02/92; *Nepal: Recent reports of torture by the police*, February 1993, AI Index: ASA 31/02/93; and *Nepal: Reports of possible extrajudicial executions and torture between 25 June and 20 July 1993*, October 1993, AI Index: ASA 31/08/93.

⁵ See *Nepal: Amnesty International calls for investigation into police shootings*, July 1993, AI Index: ASA 31/WU 01/93
Amnesty International June 1994 AI Index: ASA 31/02/94

Nepal: Human rights safeguards

safeguards, were submitted to the government again prior to the visit in November 1993 as a basis for discussion.

Amnesty International's work

As an international human rights organization, Amnesty International seeks to promote observance of human rights throughout the world, as set out in the Universal Declaration of Human Rights. It campaigns in particular for the release of prisoners of conscience -that is, people imprisoned because of their beliefs or their ethnic origin, sex, colour or language, who have not used or advocated violence - prompt and fair trials for political prisoners, an end to the death penalty, torture and other cruel treatment or punishment, and a stop to extrajudicial executions and "disappearances".

Amnesty International is independent of all governments and political ideologies and its working methods are designed to protect its independence. Its working rules require it to be financially self-sufficient and to take no money from governments. They also ensure that Amnesty International members around the world do not gather, assess or act upon information about human rights cases in their own country on behalf of the organization. Amnesty International's researchers are based at the International Secretariat in London. They gather and cross-check information from a wide range of sources - but not from the Amnesty International membership within the country concerned - to build up as accurate a picture as possible about Amnesty International's human rights concerns around the world. Their reports are issued by the International Secretariat.

Summary of discussions on Amnesty International's concerns in Nepal

The Government of Nepal's international role in promoting human rights

The Government of Nepal has played an active role in promoting a universalist stance on human rights issues in the international arena, and in supporting the strengthening of international human rights mechanisms. At the World Conference on Human Rights in Vienna, held in June 1993, the Government of Nepal stated that "respect for dignity and the worth of the human person is so fundamental that it transcends all barriers - geographic, cultural and political." It continued: "We have a firm belief in the universality and indivisibility of human rights and fundamental freedoms. We also believe that development and progress will be sustainable and meaningful only when liberty and freedom are ensured."⁶

In their meeting with Prime Minister Girija Prasad Koirala, the Amnesty International delegates expressed their appreciation of the Government of Nepal's role in furthering human rights debate and protection in international human rights fora, including through its contribution to the World Conference and in its support for the creation of the new office of United Nations High Commissioner for Human Rights.

⁶ Statement by the Honourable Sher Bahadur Deuba, Minister of Home Affairs of Nepal, to the Main Committee of the World Conference on Human Rights, Vienna, Austria, 22 June 1993. In debate at the World Conference on 21 June 1993, Prime Minister Girija Prasad Koirala said that Nepal upheld the principles of universality, objectivity and the indivisibility of human rights, and that a balanced approach to human rights was necessary that would discourage the temptation to use them selectively for political expediency.

The constitutional protection of human rights in Nepal

The 1990 Constitution of the Kingdom of Nepal provides increased human rights protection. In particular, it prohibits torture and requires compensation to be paid to victims of torture or of wrongful imprisonment "in the manner determined by law". It also empowers the Supreme Court to issue various order and writs, including *habeas corpus*, for the enforcement of constitutionally guaranteed fundamental rights.

Amnesty International had welcomed the increased human rights protection provided under the 1990 constitution, while also suggesting some areas in which the constitution could be strengthened.⁷ During the visit in November 1993, its delegates expressed concern that the enabling legislation required to enable compensation to be paid to torture victims had yet to be passed, and that the government had yet to strengthen the legal safeguards against torture to fulfil its obligations under the UN Torture Convention.

Torture and Ill-treatment in Custody

Amnesty International has had long-standing concerns about torture and ill-treatment in custody in Nepal, and prior to its visit had submitted to the government a report which described 4 cases in which 18 people were allegedly tortured by police in 1992. During the visit, Police Headquarters provided Amnesty International with written responses on several of these cases. In all but one case - which had involved the alleged rape of a woman in custody - the police denied that torture had taken place. In addition to the specific cases, the delegates also discussed certain fundamental steps the government could take to improve protection against torture, to ensure that effective remedies were available to victims, and to fulfil the government's obligations under the Torture Convention.

Amnesty International's work against torture is based upon the recognition, enshrined in international human rights law, of the inherent dignity of the human person. The right to be free from torture is an inalienable right: it cannot be suspended at any time, not even during a state of emergency. Torture can never be justified - whoever the victim of torture may be and whatever the crimes he or she is suspected of having committed. Nepal's accession to the Torture Convention in 1991 signified the government's agreement with these basic principles. Again, in 1993, the government reiterated its commitment to the dignity and worth of the human person as the very foundation for human rights at the World Conference on Human Rights in Vienna, as quoted above.

Government ministers and officials without exception expressed their opposition to torture to the Amnesty International delegates, and cited the government's intention to introduce legislation providing compensation for torture victims as evidence of this commitment. Home ministry officials said that the government had instructed the relevant authorities not to use torture by issuing a circular to this effect, but Amnesty International has not seen a copy of this circular. Police officials said that many reports of torture represented attempts to discredit the police by politically interested parties, and that most allegations of torture made against the police were unfounded. They said that the police authorities do not tolerate torture and that the police try to inculcate respect for human rights through their training

⁷ See *Nepal: A summary of human rights concerns*, June 1992, AI Index: ASA 31/02/92.
Amnesty International June 1994 AI Index: ASA 31/02/94

Nepal: Human rights safeguards

programs and through other events such as public seminars.⁸

In the written report which they submitted to Amnesty International, the police expressed the view that: "Every culprit to win the favour of the court always states that police has resorted to torture to sign the confession which I think every where in the world [is the] culprit's alibi.... Nepal Police have long relinquished the crude and primitive method of interrogation as mentioned in the [Amnesty International] report." Home Ministry officials also expressed the view that many allegations of torture were unfounded and made by culprits attempting to evade justice and that in these circumstances it would not be practical to take action in every alleged case.

Amnesty International pointed out that in some cases, at least, there appeared to be strong medical evidence supporting the allegation that torture had been committed.⁹ In such cases, to begin with, it is imperative that the authorities ensure proper investigation of the allegation, and prosecution of the perpetrator if the allegation is substantiated. Such action by the authorities would ensure that a clear message is conveyed that torture is a crime that will never be tolerated, and would demonstrate that nobody can be considered above the law.

The Amnesty International delegates stressed the need for allegations of torture to be properly investigated and for the pattern of impunity to be broken. They pointed out that the UN Torture Convention requires torture to be defined as a crime under the criminal law, with penalties provided which are appropriate to the gravity of the offence. In order for a clear message to be sent out that torture will not be tolerated, people responsible for committing torture should be prosecuted. The draft legislation on torture which the government had prepared - but which at the time of writing had still not been passed - provides only for compensation to be paid to torture victims. While this would be a welcome and necessary development, Amnesty International pointed out that the proposed legislation does not go far enough in that it does not establish torture as a criminal offence subject to appropriate penalties. The Minister of Law and Justice agreed that this issue needed to be examined.

At the Home Ministry, the Prime Minister's office and Police Headquarters, Amnesty International was told that police officers who were found to have committed violations of this kind were dismissed from the police service after an internal investigation. However, only one specific case could be cited in which such action had been taken. Neither Home Ministry nor police officials appeared to think that the prosecution of people who had committed torture was either necessary or desirable. At the Home

⁸ The police held a one day seminar entitled "Human Rights and Nepal Police" on 8 June 1993 in Kathmandu which was attended by police officials, members of various governmental and non-governmental organizations and others. The brochure about the seminar states that police have moved "through various forms of functioning. It has emerged from a stooge of totalitarian form of government to an organisation totally dedicated to safeguard and uphold the human rights reserved in the constitution." Among the objectives of the seminar were: the identification of areas where the police violated human rights and of measures to avoid such violations; analysis of rules, regulations and legal procedures for their impact on human rights; discussion of police training, facilities and professionalism and their role in guaranteeing human rights; promotion of public awareness and understanding on human rights.

⁹ One such case, which Amnesty International had documented in June 1992 was the torture of the so-called Baglung detainees. On 15 January 1992 over 500 people were arrested in Baglung District following the murder of a policeman. Most were released, but about 10 were kept in police custody for up to 55 days without being able to see anybody and, contrary to Article 14.6 of the Constitution, without being brought before a court. They allege they were tortured by police in attempts to make them sign false statements, and in two cases the government prosecutor was said to be present during the torture. The forms of torture used included severe beatings on the soles of the feet while being tied up and suspended from a pole; being burned with a torch; being forced to lie on beds containing pins. The suspects were examined by a doctor who found wounds on the feet of three of the detainees consistent with their allegations that their feet had been beaten and burned.

Nepal: Human rights safeguards

Ministry concerns were expressed about possible effects on police morale if officers started to be prosecuted for such offences, and about the possibility that the incidence of crime might rise as a result. Police officials said that they thought internal investigation and the threat of dismissal provided sufficient deterrence against torture, as a person dismissed from the police would never again be employed in government service. They also said that the prospect of legislation requiring compensation to be paid to victims provided an additional incentive for the police authorities to ensure that no police officer carried out torture because the police service itself would have to pay the compensation.

The police denied that torture had been committed in all but one of the cases on which they provided responses. The one exception - the reported rape of Manikala Rai at a Kathmandu police station in December 1992 - had resulted in one police sub-inspector being dismissed from the police force in January 1993. Police officials said that he had not been prosecuted because there had not been conclusive medical evidence of rape. Four further police officers had reportedly been involved in the rape, and no action was taken against them. According to the police this was because they had been falsely implicated by an angry crowd which had gathered outside the police station. At the Home Ministry, however, it was said that no action had been taken against them because they had not been the main instigators of the crime.

The police informed Amnesty International that cells were being set up in all the regional police headquarters to investigate reports of human rights violations by the police. Amnesty International does not have any information on the precise working methods of these cells, nor of the number or kinds of cases they may now have investigated.

Nepal's obligations under the UN Torture Convention

Under the terms of the Convention, the Government of Nepal is obliged to take effective legislative, administrative, judicial or other measures to prevent torture (Article 2). It is required to ensure that acts of torture are considered criminal offences under the criminal law, and that they are "punishable by appropriate penalties which take into account their grave nature" (Article 4). It must ensure that law enforcement personnel and other relevant officials are fully trained in the prohibition of torture (Article 10); it must systematically review interrogation practices and rules as well as arrangements for keeping prisoners in custody (Article 11); it must ensure that prompt and impartial investigations are held by competent authorities into credible reports of torture (Article 12), and that victims of torture have means for redress and an enforceable right to fair and adequate compensation and rehabilitation (Articles 13 and 14). It must ensure that statements made as a result of torture cannot be invoked as evidence in legal proceedings, except against a person accused of torture as evidence that the statement was made (Article 15).

Many of these requirements under the Convention have yet to be implemented by the Government of Nepal.

In April 1994, the Government of Nepal submitted its first report to the UN Committee Against Torture, as required under the Torture Convention. Having considered the government's report, the Committee expressed concern that although several cases of police mistreatment of prisoners and asylum-seekers had been reported, there was no evidence that any officers responsible had been prosecuted. The Committee also recommended that the government should submit a supplementary report within 12 months, as the

Nepal: Human rights safeguards

present report was not sufficiently detailed and did not follow the Committee's guidelines, and urged the government to adopt legislation which incorporates the definition of torture as set out in the Torture Convention.¹⁰ It also called for a more vigorous training program for Nepal's border guards and police to ensure that they are aware of their obligations.

A summary of Amnesty International's findings on torture during its visit

During the visit, the Amnesty International delegates interviewed fifteen people who said they had been ill-treated or tortured in police custody in 1992 and 1993, and learned of several further cases from secondary sources.

Some of those interviewed were street children who had been periodically picked up by the police, held for short periods, and sometimes beaten. There appeared to be a cycle of violence between the police and street children: such children are said often to go to the front of opposition demonstrations, from where they throw stones at the police. They may then be taken into custody and beaten, only to return to stone-throwing with greater vengeance. Some cases which Amnesty International learned of were in Rolpa and Rukum Districts, where there have been complaints of harassment by the police of opposition party supporters because in these areas the main opposition party controls the local administration. There were complaints of people being arrested by police because of their involvement in political activities and tortured in custody. The methods of torture described by people Amnesty International interviewed included being kicked, beaten with canes or polythene piping on the soles of their feet and elsewhere on their bodies, having pins inserted under their fingernails, having electric shocks applied to the wrists, being threatened with rape.

Another case which Amnesty International learned of during its visit was the illegal arrest, detention and torture of Teelu Ghale, a 26-year-old owner of a carpet factory. Although her case has been before the courts since September, when her mother filed a *habeas corpus* petition, and despite the fact that the case received considerable publicity in the Nepali press, there has been no investigation to Amnesty International's knowledge of the specific allegations of torture that she made. Teelu Ghale said she was arrested in Kathmandu on 22 September 1993 and taken to Hanuman Dhoka police station in Kathmandu. There, police officers reportedly attempted to extort money from her, beat her, applied electric current to her wrists and attempted to rape her. She was able to telephone her mother, but when her mother twice visited the police station she was not permitted to see her daughter. On 26 September her mother filed a *habeas corpus* petition in the Supreme Court, which on 28 September ordered the police to give a written response to the court within 24 hours. The police denied that they had arrested her - and on 30 September they transferred her to Bhaktapur police station, some 14 kilometres from Kathmandu. There, she was further abused and denied food for two days. On 3 October the Supreme Court ordered the police to produce Teelu Ghale before it within 24 hours, wherever she might be held. On 5 October she was produced before the court by the police, who said that she had been charged before the District court with selling one gram of heroin, and that she had only been arrested on the day on which she had been charged. Teelu Ghale gave a full written account of her experiences in police custody to the court, which referred her to judicial custody and ordered an investigation. While in jail, she was reportedly visited by a senior Home Ministry official, who tried to intimidate her into withdrawing the *habeas corpus* case. In early

¹⁰ The Constitution does protect against torture, but the current definition of torture in Nepal is more limited than the definition contained in the Convention.

Nepal: Human rights safeguards

November the court concluded that she had been arrested in September on the date she had given and not on the later date the police had claimed. It ordered that she be released, pending the hearing of the heroin case. Contempt of court proceedings were initiated against the police for providing false information to the court, but had not concluded at the time of writing. No known action has been taken to investigate her allegations of torture and ill-treatment at Hanuman Dhoka and Bhaktapur police stations, and no known criminal or disciplinary action has been taken against the officers responsible.

Possible unlawful killings in police firing

Amnesty International had submitted its concerns to the government on reports that at least 24 people had died in possible unlawful killings by the police. They included at least 21 people who were reportedly killed when police opened fire on opposition strikers and demonstrators in June and July 1993 in circumstances that did not appear to justify the use of lethal force. The government had acknowledged 16 of these deaths and granted compensation to the relatives of the deceased, but no independent inquiry was held into these shootings to establish whether or not the police officers responsible had acted within the law when they had opened fire. Two other people were killed in August when police opened fire on a crowd gathered outside Barahathawa police station in Sarlahi District, protesting against the arrest and torture of three youths. The crowd had reportedly thrown stones at the police station before the firing started. And in June 1993 one Tibetan - Jemyang Kelsand - was shot in the head by police and died after he had crossed into Nepal on his way to India with a group of some 60 others. A government spokesman said that the Tibetans had attacked the police first, but other reports suggested that the police had opened fire after two children had thrown stones at them.¹¹

In discussing these incidents with Amnesty International, Home Ministry officials said that the ministry had investigated the deaths in Sarlahi District and the killing of the Tibetan, but they did not reveal the findings, and nor were they made public. They said internal investigations had also been held into allegations of torture at Sindhuli and Gorkha,¹² but again provided no information on the findings. Amnesty International requested copies of the investigator's reports and findings, which the Home Ministry said would be sent to the International Secretariat, but they had not been received by June 1994.

No independent inquiry had been held into the shootings by police in June and July 1993 to establish whether the police had opened fire lawfully, after following the required procedures, and had only resorted to use of lethal force when absolutely necessary. Home ministry officials said that they thought the list of those who had died which Amnesty International published was incorrect, as it listed more than the 16 people who the government acknowledged had been killed, and because it contained some different names to those of victims the government was aware of. They said they feared that Amnesty International's sources may have supplied incorrect information for politically-motivated reasons. The Amnesty International delegates stressed that whichever list was correct, it was clear that at least 16 and possibly more people had been killed, and that in circumstances where basic facts such as these might be contested, and discussion of human rights issues had become politically polarized, it was all the more essential for the government to ensure the full, independent and impartial investigation of, and fully public reports on, killings of this kind in order that public confidence could be restored, and to ensure that proper procedures are followed in the police service.

¹¹ See *Nepal: Amnesty International calls for investigation into police shootings*, 15 July 1993, AI Index: ASA 31/WU 01/93

¹² See Amnesty International, *Nepal: Recent reports of torture by police*, February 1993, AI Index: ASA 31/02/93.
Amnesty International June 1994 AI Index: ASA 31/02/94

Various government officials also emphasized that in Nepal the police do not interfere in peaceful political demonstrations, but that when demonstrations turn violent they have no choice but to take the measures necessary to safeguard property and restore law and order. The Amnesty International delegates assured the officials that they fully recognised the right and duty of the government to enforce the law, but expressed concern at the fact that several instances had been reported in recent years of police shooting demonstrators dead in circumstances that may not have justified the use of lethal force, none of which had been subject to independent inquiry to establish the lawfulness or otherwise of the killings. Without such follow-up action, the organization fears that police may too readily open fire without proper justification, and without taking measures to avoid fatalities, knowing that there will be no repercussions.

Several officers and others whom Amnesty International met suggested reasons why police officers might resort to firing on demonstrators too quickly. The memory of the treatment police received from the crowd in the immediate aftermath of the 1990 pro-democracy movement was the main factor identified. Shortly before the interim government took power, a series of violent incidents took place, believed by many to be acts committed by police and pro-*panchayat* forces. Soon after the interim government took power there was a surge of violence and intimidation against people closely associated with the old *panchayat* system, including against the police, who had attempted to suppress opposition to the former government with violence, killing demonstrators and torturing prisoners. Some police officers were captured by the crowd, abused and then publicly paraded, injured and in some cases dead. Although there had been no repetition of such serious attacks on police since, the memory of those days remains strong and when stones start to be thrown at police by demonstrators, as happened in June and July 1993, some officers may react quickly. Police officials mentioned that it had taken considerable effort to restore police morale after these events.

Amnesty International stressed that it did not condone violent attacks on the police, on other people or on property. It believes that crowd-control methods should be reviewed to ensure that all preliminary steps to contain public disorder are taken as required under Nepali law¹³, and that no police officer can open fire without the required authorization. It believes that resort to possibly lethal methods of control which are disproportionate to the situation, may in itself exacerbate violence.

Impunity

In discussions on all of Amnesty International's concerns in Nepal, the issue impunity repeatedly arose. As outlined above, Amnesty International believes it is essential for alleged human rights violations to be fully investigated by an independent and impartial body, and for the perpetrators to be brought to justice if human rights violations are found to have been committed. In this connection, the delegates discussed

¹³Under the Local Administration Act, the Chief District Officer (CDO) is responsible for directing the police to prevent public disturbances and violence and the police are required to act under the CDO's direct control. Should there be a breach of order, the CDO is required restore peace through persuasion, where possible, and then may require force to be used "as the situation may require", such as "lathi-charge, blank fire, tear gas charge and water hoses" (Article 6(1)(a)). If these methods are insufficient to maintain peace, the crowd must be warned clearly in advance that the police will open fire if it fails to disperse. If firing then becomes necessary, the CDO must issue a written, signed order (Article 6(1)(b)). However, if there is no time for him to issue a written order, he can issue a verbal order, which must be confirmed in writing as soon as possible, and anyway within 24 hours (Article 6(1)(d)).

Nepal: Human rights safeguards

with government officials the possibility of an independent Human Rights Commission being created. The unanimous response from officials was that Nepal did not need such a commission because it already had a parliamentary Foreign Affairs and Human Rights Committee which investigated human rights issues, and because several non-governmental human rights organizations are active in Nepal and monitor the situation. Amnesty International asked for information about the specific findings of the parliamentary Foreign Affairs and Human Rights Committee so far, which by June 1994 had not been provided. It pointed out that a committee comprising politicians, even though they are drawn from different parties, would be unlikely to be able to fulfil the functions of a fully independent Human Rights Commission.¹⁴

Some officials questioned whether in the current political climate in Nepal it would be possible for an independent commission to function effectively, questioning whether the political opposition would accept findings on certain issues which ran contrary to their desires. Amnesty International believes, however, that once a track-record is established of the thorough and fair investigation of reported human rights violations, the results of which are made public, and once the government has demonstrated a consistent commitment to act upon the findings of such a body, public confidence will grow and such obstacles will diminish.

Past abuses

The interim government established two commissions to investigate past abuses: one, known as the Mallick Commission (after the name of its chairman, regional court judge Janarchan Lal Mallik) investigated "loss of life and property" during the movement for the restoration of democracy (February to April 1990; the other was empowered to investigate "disappearances" which took place under previous governments. The Mallick Commission submitted its report to the government at the end of 1990, and it has since been put before parliament. The commission investigating "disappearances" inquired into "disappearances" during the previous thirty years, and submitted its report to the government in April 1991. Neither report has been published, and no known action has been taken on the basis of the findings in either case. In the case of the Mallick Commission report, the Attorney General is said to have advised that no charges should be brought because it was not possible from the evidence presented to identify individual perpetrators of the killings.

¹⁴ See Amnesty International, *Proposed Standards for National Human Rights Commissions*, January 1993, AI Index: IOR 40/01/93

Amnesty International June 1994 AI Index: ASA 31/02/94

Appendix

Recommendations for human rights safeguards made by Amnesty International to the Government of Nepal in June 1992, and reproduced from Amnesty International, *Nepal: Human Rights Concerns*, June 1992, AI Index: ASA 31/02/92.

1 Recommendations relating to the enforcement of safeguards against human rights violations

1. The government should ensure the independent and impartial investigation of all allegations of serious human rights violations, including those which took place under previous governments. The findings of all such investigations should be made public in full.
2. The government should take action to bring to justice anyone against whom there is reasonable evidence of involvement in serious human rights violations such as torture, "disappearance" and extrajudicial execution. The definition of those responsible should include those who may have given orders as well as those who carried out the actions.
3. The government should consider the establishment of an accessible complaints procedure and an independent and impartial mechanism to enable prompt and effective investigation of any future allegations of serious human rights violations such as torture and extrajudicial killing. Specific criteria should be established for the composition, terms of reference and procedure of commissions of inquiry.
4. The government should ensure that all victims of human rights violations have the right to effective judicial remedy.
5. The government should insist on the non-interference of any of its officials or other agents in the judicial process, in order to ensure complete independence of the judiciary.
6. The government should ensure the effective application of existing legal and procedural safeguards in all circumstances. Instructions should be issued that failure to implement legal safeguards will lead to criminal prosecution.
7. The government should ensure that those fundamental human rights which are deemed non-derogable in international law are fully protected in Nepali law. To this end, the government should consider introducing a constitutional amendment to remove Article 23 of the Constitution from the list of clauses which may be suspended during a state of emergency.
8. The government should ensure that the security forces are fully aware of the human rights of citizens, through the establishment of a regular training in international human rights standards and in related Nepali law.

Nepal: Human rights safeguards

2 Recommendations on the prevention of torture

9.As required by the Convention against Torture (Articles 4 and 14) the government should enact legislation which makes torture a criminal offence and gives victims or their families the enforceable right to fair and adequate compensation and rehabilitation.

10.As required by the Convention against Torture (Article 12) the government should ensure impartial investigation whenever there is reasonable ground to believe that an act of torture or cruel, inhuman or degrading treatment or punishment has been committed. To this end, the government should give consideration to establishing a complaints mechanism and a formal investigation procedure.

11.The government should ensure the creation of an accessible system of legal aid for victims of torture and other human rights violations, to enable them to sue for compensation in the civil courts.

12.The government should issue immediate instructions that there must be an end to the use of torture and, as required by the Convention against Torture (Article 10), the government should ensure that all personnel involved in the arrest, detention and interrogation of suspects are fully aware of the prohibition of torture and ill-treatment in both Nepali and international law.

13.The government should make it clear that, as stated in Article 2(3) of the Convention against Torture, orders from a superior are no defence or justification for torture. It is important to establish the right to refuse to obey orders without the fear of punishment or dismissal, where those orders involve a violation of human rights. This right to refuse should be specifically incorporated in training programs for all personnel involved in the care of detainees.

14.The government should end the practice of incommunicado detention by ensuring the drawing up of clear and precise regulations to ensure detainees' right of prompt and regular access to independent doctors and lawyers and the right to be visited by their relatives.

15.The government should ensure that doctors and other medical personnel working for the police are regularly informed of international ethical and medical standards relating to medical police work, and of their rights and obligations under these standards. The United Nations' Principles of Medical Ethics provide useful guidelines.

16.As required by the Convention against Torture (Article 11) the government should keep under systematic review practices related to detention and interrogation, with a view to preventing any cases of torture.

17.Confessions allegedly extracted under torture should not be admissible evidence in the courts.

3 Recommendations on protection of the right to life

18.The government should consider introducing a constitutional amendment guaranteeing the non-derogable right to life.

19.The government should clarify the constitutional position relating to the death penalty: any remaining legislation which provides for the death penalty should be amended or repealed to exclude the death penalty.

20.The government should give urgent consideration to ratification by Nepal of the Second Optional Protocol to the International Covenant on Civil and Political Rights.

4 Recommendations on the prevention of extrajudicial killings

21.The government should ensure that independent and impartial inquiries are carried out into all reports of extrajudicial execution or unlawful killing, and that action is taken to bring to justice anyone involved in these crimes.

22.The government should review and amend existing legislation, particularly the Local Administration Act and the Police Act, to ensure that there are strict legal limitations on the use of force and firearms by their security forces, in accordance with international standards.

23.The government should ensure that there is a clear chain of command for the use of force in crowd control situations, and that all persons are aware of their right and duty to defy orders to carry out extrajudicial or unlawful killings (Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions, Articles 2 and 3.)

24.The government should issue immediate instructions to the police that the use of lethal force will not be tolerated except in specified exceptional circumstances.

25.The government should ensure the regular training for all security personnel in both national and international laws and procedures designed to prevent extrajudicial and unlawful killings.

26.The government should order a review of *post mortem* procedures in cases of suspicious death; ensure that *post mortem* examinations are carried out independently of anyone implicated in the death; and allow the presence during examination of a medical or other representative of

Nepal: Human rights safeguards

the family of the deceased.

5 Recommendations on the prevention of arbitrary arrest and detention

27. The government should ensure that arrest and detention are subject to effective judicial control and that arrested persons are informed immediately of the charges against them and of their legal rights.

28. The government should ensure that the constitutional provision for detainees to be brought before a judicial authority within 24 hours of arrest is strictly complied with in all circumstances and that there is an end to the practice of keeping people in pre-trial detention for long periods.

29. The government should ensure that every detainee has the effective right to a judicial review of the reasons for their arrest and detention.

30. There should be a legal obligation on the authorities to inform the family of the detainee promptly after arrest of the whereabouts and legal status of the detainee, and thereafter of any transfers. Under no circumstances should detainees be held in secret, unknown to their families.

31. The government should ensure that detaining authorities in police stations and prisons at all times keep an up-to-date register of all those detained on the premises, including details of transfer or release. Such registers should be regularly inspected by government officials and should be open to public inspection.

32. There should be no use of unofficial places of detention, such as warehouses or non-custodial police premises. All places of detention should be registered as such and should be open to regular inspection by independent authorities, including local human rights groups. Where, in exceptional circumstances, it may become necessary to use unofficial places of detention, the names and whereabouts of these places should immediately be made publicly known, and they should be open to inspection.

33. The government, in cooperation with the legal profession, should review all laws which have in the past permitted arbitrary arrest and detention on broadly defined grounds, notably the Public Security Act, the Public Offences Act and the State Offences Act. Such legislation should be amended, and guidelines issued to detaining authorities, with the aim of ensuring that prisoners of conscience cannot be legally detained.

The review should also cover the past functioning of *habeas corpus* and consider ways in which its effective functioning could be strengthened, in order to ensure that all citizens are treated in accordance with the law.

34. The government should ensure that all detainees have prompt access to a lawyer of their choice and receive a prompt and fair trial according to international standards.

6 Recommendations on freedom of religion

35. The government should consider amending Article 19.1 of the Constitution to ensure that people cannot be imprisoned for the peaceful exercise of their right to freedom of religion. In the short term, the government should give urgent attention to clarifying the circumstances (for example, bribery or intimidation) under which religious conversion might be considered a crime. There should be no restriction on freedom of religion.

Nepal: Human rights safeguards

Recommendations for the prevention of extrajudicial executions and torture made by Amnesty International to the Government of Nepal in October 1993 and reproduced from Amnesty International *Nepal: Reports of possible extrajudicial executions and torture between 25 June and 20 July 1993*, October 1993, AI Index: ASA 31/08/93.

1. The government should ensure the independent and impartial investigation of all allegations of serious human rights violations such as torture and extrajudicial execution or unlawful killing. The findings of all such investigations should be made public; the government should take action to bring to justice anyone against whom there is reasonable evidence of involvement in serious human rights violations;
2. The government should review and amend existing legislation, particularly the Local Administration Act and the Police Act, to ensure that there are strict legal limits on the use of force and firearms by their security forces, in accordance with international standards such as the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
3. The government should order a review of post mortem procedures in cases of suspicious death; ensure that post mortem examinations are carried out independently of anyone implicated in the death; and allow the presence during examination of a medical or other representative of the family of the deceased;
4. As required by the Convention against Torture (Articles 4 and 14) the government should enact legislation which makes torture a criminal offence and give victims or their families the enforceable right to fair and adequate compensation and rehabilitation;
5. As required by the Convention against Torture (Article 12) the government should ensure impartial investigation whenever there is reasonable grounds to believe that an act of torture or cruel, inhuman or degrading treatment or punishment has been committed. To this end, the government should give consideration to establishing a complaints mechanism and a formal investigation procedure;
6. The government should issue immediate instructions that there must be an end to the use of torture and, as required by the Convention against Torture (Article 10) the government should ensure that all personnel involved in the arrest, detention and interrogation of suspects are fully aware of the prohibition of torture and ill-treatment in both Nepali and international law;
7. The government should ensure that arrest and detention are subject to effective judicial control and that arrested persons are informed immediately of the charges against them and of their legal rights;
8. The government should ensure that the constitutional provision for detainees to be brought before a judicial authority within 24 hours of arrest is strictly complied with in all circumstances;
9. There should be a legal obligation on the authorities to inform the family of the detainee promptly after arrest of the whereabouts and legal status of the detainee and thereafter of any transfers;
10. The government should end the practice of incommunicado detention by ensuring the drawing up of clear and precise regulations to ensure detainees' right of prompt and regular access to independent doctors and lawyers and the right to be visited by their relatives;
11. The government should ensure that detaining authorities in police stations and prisoners at all times keep an up-to-date register of all those detained on the premises, including details of transfer or release. Such registers should be regularly inspected by government official and should be open to public inspection;
12. The government should continue to implement training programs for security forces in order that they are made fully aware of the human rights of citizens through knowledge of international human rights instruments and related Nepali law.