

NEPAL

@Open letter to political parties

Amnesty International's Secretary General, Pierre Sané, has written to the political parties contesting parliamentary elections scheduled for mid-November 1994, asking them to make clear their specific commitments to human rights protection. The text of the letter is reproduced below.

Amnesty International is writing to each of the political parties contesting parliamentary elections in Nepal to urge you to consider, and make known, your party's position on human rights and the specific commitments your party is making to strengthen human rights protection in Nepal.

Amnesty International is a worldwide human rights organization which seeks to promote adherence to international human rights standards and which campaigns on certain specific concerns. It campaigns for the immediate and unconditional release of prisoners of conscience - that is, people detained for the expression of their conscientiously held beliefs or on grounds of their ethnic origin, sex, colour or language; for the prompt and fair trial of political prisoners; against torture and other forms of cruel, inhuman or degrading treatment or punishment in all cases; and against the death penalty, extrajudicial executions and "disappearances".

Nepal has in recent years acceded to some of the main international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture). Nepal earlier acceded in 1964 to the four Geneva Conventions of 1949. These instruments will remain binding on future governments of Nepal. It is therefore important for all parties to consider how they intend to implement the provisions contained within these instruments, regardless of whether they come to power or remain in opposition, in order to assist in developing a climate within which the rights of all people in Nepal will be respected and protected. Genuine initiatives to strengthen human rights protection will be more effectively pursued if they are not treated as party-political issues, and if they can be considered in a constructive light, whether they originate from within the ruling party, opposition parties or other sources.

Nepal would strengthen its commitment to human rights protection by making additional declarations under Articles 21 and 22 of the UN Convention against Torture in which it would recognize the competence of the Committee against Torture (set up under the Convention) to receive communications from another state party or from individuals under their jurisdiction who wish to complain about a violation of the UN Convention against Torture. Amnesty International also urges the government that is elected to ratify the 1951 UN Convention relating to the Status of Refugees, and its Protocol relating to the Status of Refugees of 1967 as well as the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, which binds parties not to carry out executions.

The 1990 Constitution of the Kingdom of Nepal provides a significant increase in human rights protection over the previous Constitution. In particular, Article 14(4) recognizes the right not to be tortured as a non-derogable right, (although the definition used is more limited than the definition contained in the UN Convention against Torture), and requires compensation to be paid to victims of torture or of wrongful imprisonment "in the manner determined by the law". It also empowers the Supreme Court to issue writs, including *habeas corpus*, for the enforcement of constitutionally guaranteed fundamental rights. It does not, at present, provide the full range of human rights protection required by international human rights instruments, such as the right to life, and permits derogation of some non-derogable rights during states of emergency, such as the right to freedom of thought.

The death penalty, although prohibited under the 1990 Constitution, remains in law under the 1961 Treason (Crime and Punishment) Act and the 1959 Army Act. Amnesty International hopes the new government will repeal all remaining legal provisions relating to the death penalty.

Amnesty International has expressed concern at the failure of the authorities to conduct full and independent investigations into all reports and complaints of torture and the failure to bring those responsible to justice, resulting in a sense of impunity among law enforcement officials. The UN Convention against Torture requires torture to be defined as a crime under criminal law, with penalties provided which are appropriate to the gravity of the offence. Amnesty International has suggested certain fundamental steps which should be taken to improve protection against torture, including defining torture in criminal law as a specific criminal offence and enacting legislation making effective remedies, including adequate compensation, available to victims. In order to break the sense of impunity among law enforcement officials, reports and complaints of torture need to be promptly and impartially investigated, and the perpetrators brought to justice.

Another focus of concern to Amnesty International in recent years has been reports of possible unlawful killings by police using lethal force during demonstrations that have

turned violent. This suggests that the government should take effective steps to implement the requirements of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Amnesty International has expressed concern that not all cases of such killings were the subject of an independent inquiry. It is essential that the authorities conduct thorough, prompt, independent and impartial investigations of such killings in a manner which is consistent with the strict international standards set forth in the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Such investigations are essential to ensure that proper procedures have been followed and to maintain public confidence in the role of law enforcement officials. The establishment of an independent National Human Rights Commission which meets international standards for such commissions and which would carry out thorough and fair investigations of human rights violations, would contribute to the strengthening of human rights protection in Nepal.¹

Amnesty International very much hopes that in the run-up to the forthcoming elections, all political parties will give full consideration to the way in which they will contribute to the future protection of human rights in Nepal, whether or not they come to power, and that they will make their positions known publicly.

Attached is a list of specific recommendations for further human rights safeguards reproduced from earlier Amnesty International publications.

Yours sincerely,

Pierre Sané
Secretary General

¹Amnesty International's document, published in January 1993, Proposed Standards for National Human Rights Commissions (AI Index: IOR 40/01/93) sets out standards which the organization believes are essential elements for consideration in the establishment and functioning of national human rights commissions. An English version of this document is enclosed for reference.

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.

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 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.

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.