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PUBLIC STATEMENT

Japan

*Persecution of a Nepali man by prosecutors -
though acquitted of murder, Govinda Prasad Mainali is still in detention
and at risk of death sentence*

Govinda Prasad Mainali, who was charged with murder in March 1997 and has since been in detention, had his acquittal on 14 April 2000 by the Tokyo District Court overturned by the Tokyo High Court. On 8 May 2000, the High Court accepted the prosecution's appeal against an acquittal, extending Mainali's detention under threat of execution. Amnesty International is concerned at the protracted length of detention, despite acquittal, of Govinda Prasad Mainali and calls for his immediate release. His detention following his acquittal is in violation of his right to freedom, in contravention of his rights under Japanese law (Article 345 of the Code of Criminal Procedure) and international human rights law (Article 14 (7) of the International Covenant of Civil and Political Rights).

Amnesty International had (in a public document dated August 1997) expressed concern at the many illegalities during police investigation of this case. Mainali, a Nepali migrant worker, had initially been arrested on 22 March 1997 for overstaying his visa, but was later charged with the murder of a Japanese woman in 1997. On 20 May 1997 he was given a suspended sentence for overstaying and he should have then been deported but was then formally charged with murder and robbery. This was done even though it is illegal in Japan for the police to investigate a suspect for crimes unrelated to the original charge under which he/she is held.

Amnesty International had also called for an independent investigation into Govinda Prasad Mainali's ill-treatment by Japanese police and into reports that several key witnesses in this case were also beaten and intimidated into making false confessions. The police interrogation continued for several days running from early morning to late evening, without translation into and from his own language. Mainali later told his lawyers that during interrogation he was pulled by the shirt, shaken, pushed, beaten, kicked and pinned against the wall behind a table. Three other Nepali men who lived with Mainali were called to the police station for questioning about the murder. They were allegedly threatened and beaten and signed statements in Japanese which they did not fully understand. The three men were forced by the police to move to separate addresses in an apparent attempt to prevent convenient access to them by Mainali's lawyers.

The court accepted that Govinda Prasad Mainali's lawyers had been denied access to their client. On 22 April 1997 one of his lawyers was twice denied access to his client by the police. On 23 March 1999, the Tokyo District Court ordered the state to pay 350,000 ¥en in damages to his lawyer after ruling that public prosecutors had illegally obstructed him from meeting Mainali.

In acquitting Govinda Prasad Mainali of murder, the presiding judge of the Tokyo District Court, Obuchi Toshikazu, said that the court saw no evidence that directly linked the murder to the defendant and that the prosecutors had failed to eliminate reasonable doubt that Mainali had committed the murder and robbery. Following the ruling Mainali was released from custody and immediately detained by the immigration authorities for deportation back to Nepal.

While deportation procedures were underway, the Tokyo District Public Prosecutors' Office filed an appeal against acquittal on 18 April with the Tokyo High Court, and asked the district court to detain Mainali on grounds that deportation would make further trial proceedings difficult. This request was rejected by the district court on 19 April and by the High Court on 20 April. Judge Kitani Akira of the Tokyo High Court was reported to have criticized the prosecutors for repeatedly exercising their authority in asking for Mainali to be detained and that "Prosecutors should have done their best in the trial at the District Court as they could have easily expected difficulties in appealing the case because the defendant was facing deportation." The High Court stated also that technicalities prevented it from detaining Mainali as it would not receive the necessary documents from the lower court until end April. The High Court's decision on 8 May to detain him came after it had received the official report from the Tokyo District Court on 1 May. Mainali has been detained in Tokyo Immigration Detention Center following his acquittal. He has access to his lawyers but there is concern about his physical and mental well-being, as he is now losing weight and showing signs of mental strain.

The practice by the prosecution of appealing to the High Court against acquittals by the lower courts, particularly in capital punishment cases, has resulted in continued detention for some years, and on a number of occasions the High Court has imposed the death sentence. The prosecution can and has pursued people through the courts for decades. On 7 April 1974, a nursery school teacher was arrested on suspicion of murdering two children; on 28 April she was released pending a decision on whether to indict her - the case was dropped by the prosecution on 23 September 1975; on October 1976 a committee for the inquest of prosecution ruled the decision of the prosecutors to drop the case was wrong. From her first arrest on 7 April 1974 and her rearrest on 27 February 1978 the nursery school teacher, and two witnesses who

testified on her behalf and who were accused of perjury, were acquitted on three separate occasions, the last being in September and October 1999, when the prosecution finally dropped the case.

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