

PUBLIC

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22 September 2005

UA 247/05 Fear for safety / Fear of torture or ill-treatment / Legal concern

NEPAL 11 men (named below)

On 19 September, 11 detainees were rearrested immediately after being released before the Kanchanpur District Court in the town of Mahendranagar, in western Nepal. This was the third time security forces have rearrested the group, despite repeated court orders for their release. Their whereabouts are unconfirmed and they may be at risk of torture or ill-treatment.

The 11 men - Prem Bahadur Oli, Tek Bahadur Khatri, Man Bahadur Bista, Padam Sarki, Birman Sarki, Tapta Bahadur Giri, Bir Bahadur Karki, Padam Bahadur Budha, Gagan Singh Kunwar, Dhawal Singh Bohara and Ujal Singh Dhimi - were first taken into custody on 17 August 2004, while attending a mass meeting held by the Communist Party of Nepal (CPN) (Maoist) in Kanchanpur district. The security forces broke up the meeting, arresting any participants who did not flee. The detainees, all from Jogbudha Village Development Committee in neighbouring Dadeldhura district, claim they were forced by the CPN (Maoist) to attend the meeting, and did not flee as they were not guilty of any crime.

The 11 men were initially held in incommunicado detention at the Surya Dal army barracks in Bhagatpur, Kanchanpur district, and transferred to Kanchanpur prison in November 2004. In May 2005, representatives of Amnesty International (AI) visited several of the detainees at Kanchanpur prison. AI found that Birman Sarki had severe mental disabilities, apparently as a result of torture and ill treatment during his earlier detention at the Surya Dal army barracks. He was hardly able to speak, and the scar of a serious head wound was visible. The other detainees told AI that Birman Sarki had been savagely beaten by soldiers at the barracks after expressing concerns about the safety of his wife and young children.

The Kanchanpur Appeal Court twice ordered the release of the detainees on the grounds that the government had not provided sufficient evidence to justify their preventive detention, even under the broad terms of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO).

Following the first Appeal Court ruling, on 12 May, the detainees were taken back to Kanchanpur prison, where the security forces ordered them to sign papers stating that they had been released. However, instead of freeing the men, the security forces transferred them to the Kanchanpur Regional Police Office and subsequently obtained authorization from the Chief District Officer to again hold them in preventive detention under the provisions of TADO.

On 15 June, the Appeal Court again ruled that their detention was illegal and that they should be released immediately. However, in an apparent show of force, some 70 security forces personnel in plain clothes waited outside the court and stood by as police took the men back to Kanchanpur prison. Fearing that the men would be re-arrested, their lawyers followed them to the prison, accompanied by journalists and other human rights defenders. Despite lawyers' protests, the detainees were made to sign release papers and loaded into a vehicle parked outside. After security forces ordered the lawyers to leave the premises, the detainees were driven to the Kanchanpur Regional Police Office and later transferred back to the district jail.

Lawyers from the Nepal-based rights group Advocacy Forum then brought the case before the Supreme Court. On 16 September, the Supreme Court ruled that the group's detention was illegal and ordered their release in the presence of the Kanchanpur District Court. On 19 September, police brought the detainees to the court house in three vehicles escorted by about 35 security forces personnel, waited while their release

was recorded by the district court registrar, and then ordered the group to get back into the vehicles. The detainees were driven in the direction of the Kanchanpur Regional Police Office, where it is thought that they may be detained.

BACKGROUND INFORMATION

In the course of the nine-year-long internal armed conflict, Amnesty International has documented thousands of cases of arbitrary arrests, unacknowledged detentions, torture and "disappearances" at the hands of the security forces. The human rights crisis deteriorated further following the king's seizure of power on 1 February 2005, with the security forces exercising virtually unchecked power. The practice of re-arresting those who have been freed on court order constitutes arbitrary detention, undermines the authority of the courts, and displays open contempt for the rule of law.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in Nepali or English or your own language:

- expressing concern for the safety of Prem Bahadur Oli, Tek Bahadur Khatri, Man Bahadur Bista, Padam Sarki, Birman Sarki, Tapta Bahadur Giri, Bir Bahadur Karki, Padam Bahadur Budha, Gagan Singh Kunwar, Dhawal Singh Bohara and Ujal Singh Dhami, who were re-arrested by security forces in Mahendranagar, Kanchanpur district, and may be at risk of torture or ill-treatment;
- calling on the authorities to reveal their whereabouts immediately, and urging that they be treated humanely while in custody and not tortured or ill-treated;
- calling for them to be freed immediately and unconditionally, in compliance with the repeated orders for their release issued by the Appeal Court in Kanchanpur and by the Supreme Court;
- calling on the authorities to grant them immediate access to their relatives, lawyers, and any medical attention they may need;
- calling on the government to instruct relevant law enforcement agencies to halt immediately the practice of re-arresting those who have been released on the order of a judge.

APPEALS TO:

Minister Dan Bahadur Shahi
Ministry of Home Affairs
Singha Durbar, Kathmandu, Nepal
Fax: + 977 1 4211 232
Salutation: Dear Minister

Minister Niranjan Thapa
Ministry of Law, Justice and Parliamentary Affairs
Singha Durbar, Kathmandu, Nepal
Fax: + 977 1 4220 684
Salutation: Dear Minister

Shyam Bhakta Thapa
Inspector General of Police, Police Headquarters
GPO Box 407, Naxal, Kathmandu, Nepal
Fax: + 977 1 4415 593
Salutation: Dear Inspector General

Puskar Karki
Deputy Superintendent of Police
Head, Human Rights Cell
Police Headquarters, GPO Box 407, Naxal, Kathmandu, Nepal
Fax: + 977 1 4415 593
Salutation: Dear Deputy Superintendent

COPIES TO: diplomatic representatives of Nepal accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 3 November 2005.