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From: Medical office / South Asia team
Date: 16 April 2002

MEDICAL ACTION

Human rights crisis in Nepal: medical documentation against impunity

Key words extrajudicial executions / torture / post mortems

Summary

In recent months there has been an escalation of human rights abuses in Nepal, committed by law enforcement officials and members of the Communist Party of Nepal (CPN) (Maoist), following the declaration of a state of emergency in November 2001. An ever-increasing number of human rights violations, including killings and torture, are committed with impunity.

Amnesty International is calling on the authorities to publicly condemn torture and unlawful killings and to take steps to bring perpetrators to justice. Doctors can play an important role in helping to secure successful prosecution of perpetrators by providing medical evidence following a medical examination or an autopsy.

Please see the report *Nepal: a spiralling human rights crisis*. April 2002 (ASA 31/016/2002) for further information on the current situation in Nepal and for further case details:

<http://web.amnesty.org/ai.nsf/Index/ASA310162002?OpenDocument&of=COUNTRIES\NEPAL>

Also see the press release at:

<http://web.amnesty.org/web/news.nsf/WebAll/A366EEB569BB9F0980256B81005648A8>

Recommended actions & addresses

Letters regarding unlawful killings and autopsies

Please write letters in English to the authorities below, using professionally-headed paper if you use this in your profession:

- introducing yourself in your professional capacity;
- expressing grave concern at the widespread occurrence of unlawful killings in Nepal by both law enforcement officials and members of the CPN (Maoist);
- expressing appreciation of the difficult law and order situation facing the security forces;
- urging the government to publicly condemn extrajudicial killings;
- calling on the authorities to ensure that high priority is given to the investigation of extrajudicial killings by an independent body and the prosecution of those allegedly responsible;

- calling on the authorities to allow doctors from the Medical Council, as well as government doctors, to conduct autopsies;
- urging the government to provide training for doctors to conduct autopsies;
- calling on the government to increase the number of forensic experts, with the aim of having available at least one doctor qualified in forensic medicine in each of the 11 zonal hospitals.

Letters regarding medical documentation of torture

Please write letters in English to the authorities below, using professionally-headed paper if you use this in your profession:

- introducing yourself in your professional capacity;
- expressing grave concern at the widespread occurrence of torture in Nepal by both law enforcement officials and members of the CPN (Maoist);
- expressing appreciation of the difficult law and order situation facing the security forces;
- urging the government to publicly condemn torture, noting that the Nepali government has ratified the *United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*;
- calling on the authorities to ensure that high priority is given to the investigation of reports of torture by an independent body and the prosecution of those allegedly responsible;
- emphasizing the importance of prompt and competent medical examinations in cases of torture;
- calling on the authorities to ensure that all detainees have prompt access to a doctor after arrest and thereafter daily upon request in accordance with the *Standard Minimum Rules for the Treatment of Prisoners*, article 24, and the Torture Compensation Act (1996);
- urging the authorities to allocate resources for the training of medical officers to ensure that a medical examination and the subsequent drafting of the medical report is carried out in accordance with the guidelines set forward in the *Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment*; at least one person per group should enclose a copy of the Istanbul Protocol's *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment*.

ADDRESSES

Prime Minister

Sher Bahadur Deuba
Office of the Prime Minister
Singha Durbar
Kathmandu
Nepal
Salutation: Dear Prime Minister

Minister of Home Affairs and Local Development

Khum Bahadur Khadka
Ministry of Home Affairs
Singha Durbar
Kathmandu
Nepal
Salutation: Dear Minister

Minister of Law, Justice and Parliamentary Affairs

Narendra Bikram Nemwang
Ministry of Law, Justice and
Parliamentary Affairs
Babar Mahal
Kathmandu
Nepal
Salutation: Dear Minister

Attorney General

Office of the Attorney General
Ram Shah Path
Kathmandu
Nepal
Salutation: Dear Attorney General

Minister of Health

Sharat Singh Bhandari
Ministry of Health
Ram Shah Path
Kathmandu
Nepal
Salutation: Dear Minister

Inspector General of Police

Pradeep Shamsheer J B Rana
Police Headquarters
GPO Box 407
Naxal
Kathmandu
Nepal
Salutation: Dear Inspector-General

General Prajwal Shamsheer Rana JBR

Chief of Army Staff (COAS)
Kathmandu
Nepal
Salutation: Dear Commander-in-Chief

COPIES

Please send copies of your letters to:

Dr. Kalyan Raj Pandey

President Nepal Medical Association
Exhibition Road
PO Box 189
Siddhi Sadan
Kathmandu
Nepal
(For information on the Nepal Medical Association see: www.nma.org.np)

CVICT - Centre For Victims Of Torture, Nepal

PO Box 5839
Bansbari
Kathmandu
Nepal
(For information on CVICT see: www.cvict.org.np)

and to diplomatic representatives of Nepal accredited to your country.

If you receive no reply from the government or other recipients within two months of dispatch of your letter, please send a follow up letter seeking a response, referring to your previous letter(s). Please check with the medical team if you are sending appeals after 15 June 2002, and send copies of any replies you do receive to the International Secretariat (att: medical team).

Monitoring of action

If you have access to e-mail you can help our attempt to monitor letter-writing actions. If you write one, two, three or more letters, please send us an e-mail and let us know. Please write in the subject line of your e-mail the index number of the action and the number of letters you write
e.g. ASA 31/027/2002 - 4 Please send your message to medical@amnesty.org Thank you.

Date: 16 April 2002

Human rights crisis in Nepal: medical documentation against impunity

Introduction

In recent months there has been an escalation of human rights abuses in Nepal, committed by law enforcement officials and members of the Communist Party of Nepal (CPN) (Maoist), following the declaration of a state of emergency in November 2001. An ever-increasing number of human rights violations, including killings and torture, are committed with impunity.

Amnesty International is calling on the authorities to publicly condemn torture and unlawful killings and to take steps to bring perpetrators to justice. Doctors can play an important role in helping to secure successful prosecution of perpetrators by providing medical evidence following a medical examination or an autopsy.

Background information

Nepal moved from a non-party system to a parliamentary democracy in 1990. Many people, however, felt there was no equal access to power and felt excluded on the basis of caste or regional origin. Furthermore, the majority of the population lived in poverty and did not see any substantial improvement in their situation in the following years.

In 1996 the CPN (Maoist) declared the “people’s war” which aims to establish “a New Democracy” and constitutes a “historical revolt against feudalism, imperialism and so-called reformists”.¹ The Maoists found support among those dissatisfied with the climate of corruption and the lack of development under the parliamentary democracy. In areas where they were strongest, the Maoists set up parallel political systems to the state’s.

Between February 1996 and 26 July 2001, according to official figures, 1,060 members or sympathizers of the CPN (Maoist) were killed by police. Peace talks, aimed at ending the “people’s war”, and an accompanying cease-fire broke down in November 2001. The government declared a state of emergency, leading to more than 5,000 arrests by early February 2002. Those arrested included for example, lawyers, teachers and a doctor arrested on suspicion of providing medical treatment to Maoist suspects.

Unlawful killings

¹Bulletin No. 1, May 1996, published by the Central Publicity Division of the CPN (Maoist).

Since the government imposed the state of emergency in November 2001, the number of alleged unlawful killings increased dramatically. CPN (Maoist) members have killed a number of police staff taken captive and civilians suspected of supporting the government. Police and army officers reportedly carried out reprisals and killed civilians: CPN (Maoist) members are reported to have been killed in circumstances where they could have been or had already been taken into custody.

Killings by law enforcement officials

One of these incidents, reported on 6 January 2002, involved a 14-year-old mentally disabled boy, Dalle Nepali, from Myagdi district. Dalle Nepali was killed by security forces who claimed he was a CPN (Maoist) member, who had been killed while trying to escape from a search operation. His relatives said he had gone to attend a health clinic to get treatment for a cleft lip. According to witnesses, the boy had run away when he saw the army and soldiers had shot him.

There is complete lack of accountability in relation to alleged unlawful killings. Very few autopsies have been carried out in these cases. Often the bodies of those killed are disposed of on the spot by the police or army, by burial or burning. This is contrary to existing national and international legal provisions. National legal provisions say that the body of anyone who has died in suspicious circumstances has to be brought to the nearest hospital for an autopsy. In addition, Principle 12 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions requires that in all suspected cases of extra-legal, arbitrary and summary executions, "(t)he body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician...". Police and army also allow insufficient time for proper identification before bodies are cremated or buried, making allegations of extrajudicial executions by them extremely hard to investigate and verify. This lack of accountability has contributed to a prevailing sense of impunity.

The authorities have argued that bodies are disposed of without an autopsy because it is impossible to transport them from remote areas to the district headquarters where facilities for autopsies are normally available. However, to Amnesty International's knowledge, most if not all bodies of police and army officers killed have been recovered (often by helicopter) and returned to their families.

Killings by CPN (Maoist)

Maoists have reportedly deliberately targeted and killed civilians considered to be "enemies of the revolution". Bishnu Prasad Jamar Kattel, treasurer of the Nepali Congress Party in Tanahun district, worked on a government-sponsored program aimed at eradicating poverty. He was travelling on a bus on 10 April 2001 when a group of about seven Maoists boarded and dragged him off. They beat him severely and then shot him in the chest, arms and thighs. He died in hospital.

Since declaring the "people's war", members of the CPN (Maoist) have killed scores of members of political parties. There have also been execution-style killings of police officers who were wounded, had been taken prisoner or who had surrendered. Furthermore, many teachers have been targeted. Twenty-eight teachers belonging to the Nepal Teachers' Association have been killed by Maoists.

Need for medical documentation of torture

Both government forces and Maoists have reportedly been involved in torture.

Torture by law enforcement officials

Bidur Khadka was arrested by police in Kavre district on 30 December 2001, and was reportedly severely tortured at Banepa area police station. His 13-year-old nephew Santosh Karki was arrested on 19 January 2002 and police reportedly threatened him to make him implicate his uncle in a bombing allegedly carried out by members of the CPN (Maoist). Bidur Khadka was reportedly so severely tortured during interrogation that he was unable to walk. Some of the bones in his hands were reportedly broken. Police took him to the Sheer Memorial Hospital in Kavre district for medical treatment five days after his arrest. The hospital asked the police to bring him back for follow-up treatment after seven days, but reportedly police did not do so. A relative of Bidur Khadka's was permitted to see him on around 14

January, but was not allowed to speak to him. The police reportedly gave him some of Bidur Khadka's clothes, which were covered in blood and pus. On 11 February 2002 Bidhur Khadka and Santosh Karki were produced in the Special Court in Kathmandu and remanded into custody for 10 days. Santosh Karki was reported to have a swollen face suspected to be a result of torture. At the time of writing, they had not received any further medical attention.

There are many factors that have contributed to the continuation of torture. One is that Nepal has a tradition of torture and humiliation of criminals by police and local authorities.² Other factors include a lack of training among police personnel, a lack of effective investigative mechanisms and the general climate of impunity in relation to human rights violations. In relation to political detainees, a key factor is the wide powers given to the police to detain suspects under the Public Security Act and Terrorism and Disruptive Activities Act. In relation to common criminal suspects and people taken into custody in a non-political context, the main contributing factor to the persistence of torture is the police's lack of investigative skills.

A practice that contributes to the impunity enjoyed by torturers is that police frequently refuse to allow injured detainees to see a doctor or delay doing so. A senior doctor told Amnesty International that in his experience the average delay for victims of torture to be brought to hospital was seven or eight days, by which time signs of torture are more difficult to ascertain, particularly bruising. The doctor also described several cases where victims had been threatened by police not to complain to the doctor about ill-treatment or torture. In addition, he reported that police often remain present during the prisoner's examination. Some doctors send them away but others are reluctant to do so.³

Such practices violate Nepal's obligations under the International Covenant on Civil and Political Rights (ICCPR), to which the country is a party. The Human Rights Committee in its General Comment 20 on Article 7 of the ICCPR has stated that the protection of detainees requires that each person detained be afforded prompt and regular access to doctors.

Victims of torture or their relatives can make claims for compensation under Nepal's Torture Compensation Act (TCA), 1996. To date, an estimated 35 victims have filed claims, but to Amnesty International's knowledge so far only very few have been awarded compensation which suggests there is a problem with the law and its application.⁴

Torture by CPN (Maoist)

Many people taken captive by the Maoists have been tortured. A teacher from Kalikot district, a supporter of the CPN (UML), was abducted three times by Maoists. On one occasion, in September 2000, he was beaten with sticks on his back, legs, thighs and chest and hit in the face. The beatings lasted for more than an hour until he fainted. He was receiving medical treatment for more than two months suffering from pain in his chest, back and thighs. He subsequently reportedly sold his land and "donated" money to the Maoists.

A young man from Salyan district who had applied for a job in the police force was tortured by 15 members of the CPN (Maoist) in November 2000. They repeatedly asked him why he wanted to join the police instead of their party. They beat and kicked him in a cowshed near his home for about two hours. He was also subjected to beatings on the soles of his feet and was cut with a knife on his hand and arm. His elbow was pierced with the point of the blade. He fled his village and sought medical treatment in a nearby town. When interviewed by Amnesty International delegates approximately three weeks later, he had no sensation or movement in his fingers and right arm, and remained in fear for his life.

²Centre for Victims of Torture. *Indelible Scars: A study of torture in Nepal* (Kathmandu 1994).

³These are only a few examples of the obstacles put in the way of a doctor by the police. For further details see: *Nepal: Make Torture a Crime* (1 March 2001, ASA 31/002/2001).

⁴See: *Nepal: Make Torture a Crime* (1 March 2001, ASA 31/002/2001).

Medical documentation of torture

Comprehensive medical reports can be an important tool in bringing perpetrators of torture to justice and can be used to fight impunity. Resources need to be made available to provide medical officers with training on reporting of torture. The central focus of the training should be the *Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment*. The Istanbul Protocol describes in detail how to obtain and report on both physical and psychological evidence of torture. The principles underlying the application of the Istanbul Protocol are the *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment*. These principles include guidelines for medical experts on the minimum requirements for an accurate report (see appendix). (The *Istanbul Protocol* is available in PDF format at the web-site of the UN High Commissioner for Human Rights: <http://www.unhchr.ch/pdf/8istprot.pdf>)

Centre for Victims of Torture

Several organizations have cooperated with the government to improve the human rights situation. The Centre for Victims of Torture (CVICT) in Kathmandu has visited prisons regularly since 1995. It has provided medical treatment to prisoners with the agreement of the Ministry of Home Affairs. By request of the Prison Management Department, it has developed projects for women, children, juveniles and the mentally ill among the prison population.

CVICT was established in 1990 to rehabilitate torture survivors and advocate against torture. Its objectives furthermore include increasing awareness among the public and professional groups about the right not to be tortured and right to justice, and to promote penal reforms. For further information about CVICT's objectives and activities, please visit: <http://www.cvict.org.np/>

Recommendations

Amnesty International is calling on the authorities to publicly condemn torture and unlawful killings and to take steps to bring perpetrators to justice. Medical reports can be used to aid prosecution of perpetrators and can be used to fight impunity. Amnesty International is urging the authorities to allocate resources for the training of medical officers to ensure that a medical examination and the subsequent drafting of a medical report is carried out in accordance with the guidelines set forward in the *Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment*.

Amnesty has also made a number of recommendations to improve the effectiveness of the Torture Compensation Act, 1996, including:

- bringing the definition of torture contained in the TCA in line with the definition in the Convention against Torture⁵.
- enact legislation which makes the act of torture a punishable offence under criminal law;
- amend the TCA to make the investigation and prosecution of alleged perpetrators of human rights violations and reparation for victims more effective.

⁵See footnote 4

Appendix I

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1]

The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter referred to as torture or other ill-treatment) include the following: clarification of the facts and establishment and acknowledgment of individual and State responsibility for victims and their families, identification of measures needed to prevent recurrence and facilitation of prosecution or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation. [1]

States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission, investigations by impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.

The investigative authority shall have the power and obligation to obtainable the information necessary to the inquiry.[2] Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence. Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation and shall be entitled to present other evidence. In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure.

Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles. [3]

A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation, and, as appropriate, indicate steps to be taken in response. Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is

undertaken. The examination must follow established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

The medical expert should promptly prepare an accurate written report. This report should include at least the following:

- (a) The name of the subject and the name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house); and the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner) and any other relevant factors;
- (b) A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
- (c) A record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;
- (d) An interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and further examination should be given;
- (e) The report should clearly identify those carrying out the examination and should be signed.

The report should be confidential and communicated to the subject or a nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such transfer.

[1] The Commission on Human Rights, in its resolution 2000/43, and the General Assembly, in its resolution 55/89, drew the attention of Governments to the Principles and strongly encouraged Governments to reflect upon the Principles as a useful tool in efforts to combat torture.

[2] Under certain circumstances professional ethics may require information to be kept confidential. These requirements should be respected.

[3] See footnote above.

[Note: The footnotes above are numbered 132-134 in the published version of the Istanbul Protocol.]