

## Nepal Crisis Alert Action: Student Activists

### Case Sheet

#### Gagan Thapa and Thakur Gaire: Prisoners of Conscience

*“I strongly believe that I belong to a generation that knows no compromise with their dignity, a generation that loves to live in a free and just world, a generation which believes in a peaceful movement, and I’m extremely proud to be a part of this generation...”*<sup>1</sup>

Gagan Kumar Thapa, 23 February 2005

#### Case information



Gagan Thapa, ©Radio Free Nepal

**Gagan Kumar Thapa**, the former General Secretary of the Nepal Student Union (NSU), which is affiliated with the Nepali Congress Party, was detained on 26 April 2005. He is being held at the Nepal Electricity Authority Training Centre (NEATC) in Bhaktapur, where he has been served with a 90-day detention order under the Public Security Act (PSA). Amnesty International considers him to be a prisoner of conscience, as he has been detained purely for his peaceful and legitimate activities in support of democracy and human rights, and is calling for his immediate and unconditional release.

Gagan Thapa, together with two other NSU activists, Subodh Acharya and Sandesh Adhikari, was detained from the home of Sandesh Adhikari in the Lainchaur area of Kathmandu at around 3.30 am on 26 April 2005. According to reports, over 20 plain-clothed police officers surrounded the house before entering and detaining the men. They were then taken to Sorakhutte Police Station in Kathmandu. Gagan Thapa was later transferred to Hanuman Dhoka Police Station in Kathmandu, while Subodh Acharya and Sandesh Adhikari were transferred to the NEATC in Bhaktapur, approximately 14 kilometres east of Kathmandu.

On 27 April 2005, relatives of the three men filed a habeas corpus petition on their behalf. The Supreme Court ruled on 5 May 2005, that their detention was illegal, and that they should be immediately released. All three men were released the same evening. However, Gagan Thapa was immediately re-arrested. Although police reportedly did not have an arrest warrant at the time of Gagan Thapa’s arrest, he was taken to the NEATC, where he was served with a 90-day detention order. There are reports that conditions in the NEATC are poor, and that several prisoners are suffering from ill health.

In a letter written from detention on 8 May 2005, Gagan Thapa notes that his re-arrest in violation of the Supreme Court order has wider implications for the rule of law in Nepal. “This is not a personal issue alone,” he writes. “It is an issue of serious concern because the Government has trampled over the principle of the independence of judiciary. The Government has defamed the court”<sup>2</sup>.

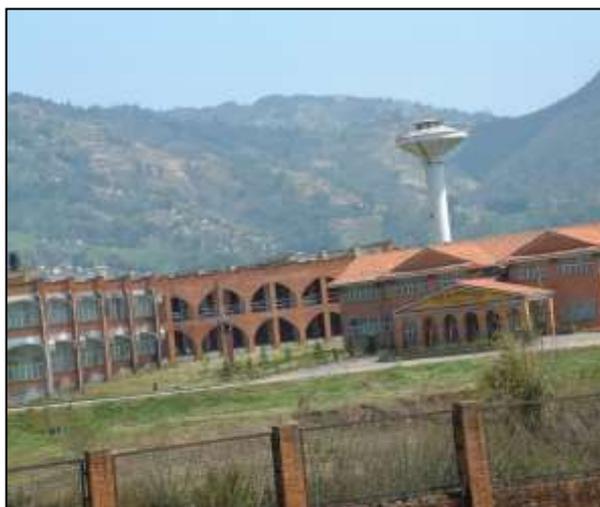
He ends the letter, “I, through this release, request [the] Nepal Bar Association, international community, human rights activists to step up [the] campaign against the defamation of the court by this government. I would also like to draw attention of all the related parties to the callous negligence of the government towards the seriously sick prisoners and the blockade for providing the minimum facilities to the prisoners [*sic*]”.

<sup>1</sup> “Appeal from Gagan Kumar Thapa, Radio Free Nepal, <http://freenepal.blogspot.com/2005/02/appeal-from-gagan-kumar-thapa.html>

<sup>2</sup> Gagan Thapa’s Letter from Custody, 8 May 2005, <http://insn.org/?p=104>

## Case information

**Thakur Gaire**, the General Secretary of the All Nepal National Free Student Union (ANNFSU), which is affiliated with the Communist Party of Nepal-United Marxist Leninist (CPN-UML), was detained on 4 March 2005. He is being held at Lalitpur District Police Station, where he has been served with a 90-day detention order under the Public Security Act (PSA). Amnesty International considers him to be a prisoner of conscience, detained purely for his peaceful and legitimate activities, and is calling for his immediate and unconditional release.



Nepal Electricity Authority Training Centre, Bhaktapur © Amnesty International 2005

Thakur Gaire, along with around ten other activists, was arrested during a protest rally in Kathmandu on 4 March 2005. During the rally, protesters shouted slogans against the King's takeover of power, and urged that democracy be restored. Others detained during the rally included ANNFSU Central Committee member Janak Raj Avasthi, and NSU activists Saroj Kafle and Pradip Humagain.

Thakur Gaire was detained at the Nepal Electricity Authority Training Centre (NEATC) in Bhaktapur from 4 March until 19 April 2005. In early April 2005, Thakur Gaire and two other prisoners reportedly wrote to the authorities expressing concern about conditions in the centre, including poor sanitation. They also asked to be given access to books, newspapers, television, and textbooks for the students. Nepal's National Human Rights Commission (NHRC) also raised concern about conditions in the NEATC and other detention centres in a statement on 22 April 2005. These concerns included poor sanitation, lack of clean drinking water and restrictions on access to news.<sup>3</sup>

Following his detention, the Nepal Bar Association and relatives of Thakur Gaire filed a habeas corpus petition on his behalf, requesting him to be brought before a court or judge. On 19 April 2005, the Supreme Court found that Thakur Gaire's detention was illegal, and ordered his immediate release. He was released, but was re-arrested the same evening, and served with a 90-day detention order under the PSA. He is currently being held at Lalitpur District Police Station. Janak Raj Avasthi was released on 1 April 2005. Saroj Kafle and Pradip Humagain reportedly also remained in detention at the time of writing.

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<sup>3</sup> "16 More protesters arrested", 22 April 2005, South Asian Media Net, <http://www.southasianmedia.net/cnn.cfm?id=201146&category=Politics&Country=NEPAL>

## **Background information**

Student activists have been at the forefront of the movement to restore democracy and fundamental human rights in Nepal. As a result, they have faced arrest, harassment and intimidation. Hundreds of students have been detained since King Gyanendra seized power on 1 February 2005. Others have been forced to go into hiding, and some have left the country fearing for their safety. There also have been several alarming incidents in which the security forces have used excessive force against student activists, including cases in which students have been shot and injured.

On 1 February 2005, King Gyanendra dismissed the government, assumed direct power, and declared a nation-wide state of emergency. In an apparent attempt to silence any opposition, a number of fundamental rights—including the right to privacy and freedom of expression, press, assembly, movement and association—were suspended. Although the State of Emergency was lifted on 29 April 2005, fundamental rights, including the right to freedom of expression and assembly, remain restricted and hundreds of political prisoners and prisoners of conscience remain in jail.

Many of the hundreds of students detained since 1 February 2005 have been arrested during demonstrations, which have been largely peaceful. In addition, student leaders in politically affiliated unions including the ANNFSU (CPN-UML) and NSU (NC) have been specifically targeted, and have been detained from their offices, homes, or from university campuses. Amnesty International believes that the majority of the students who are being held are prisoners of conscience, who have been detained purely for the peaceful exercise of their right to freedom of expression and assembly.

Many of the detained students are being held under the Public Security Act (PSA) which allows the authorities to detain a person who allegedly threatens the “sovereignty, integrity or public tranquillity” of Nepal for up to 90 days without charge or trial. The PSA does not meet international human rights standards. In a few cases, students have been released after habeas corpus appeals have been filed on their behalf. However, with security forces demonstrating disregard for the courts, including by re-arresting those released on court order, the effectiveness of the *habeas corpus* remedy in Nepal is increasingly being called into question.

In addition, surveillance of students has been pervasive, with plain-clothed and uniformed police and military officers present on university campuses. In some cases members of the security forces have entered the offices of student unions. For example, on 31 March 2005, two armed police officers reportedly entered the offices of the ANNFSU (CPN-UML) and demanded that the union vacate their office by the following day. No subsequent action was taken to follow up on this demand at the time, but on 11 May 2005, the office was reportedly taken over by members of the Armed Police Force.

In a few cases, members of the security forces have shot at students as they have attempted to break up protests or meetings. On 29 April 2005, the security forces shot and injured three members of the ANNFSU (CPN-UML) at Jana Jyoti Campus in Mahendranagar, Kanchanpur District. The Royal Nepal Army has said that it will investigate the incident. On 1 February 2005, one student was shot in the leg, and another strafed by a bullet, when security forces attempted to break up a demonstration at Prithvi Narayan University in Pokhara. Fifty-eight students were reportedly arrested during the incident and held overnight. They were reportedly beaten with fists and rifle butts and threatened that they would be killed and thrown into a river.

**Amnesty International is calling on the Nepali government to:**

- Immediate and unconditionally release Gagan Kumar Thapa and Thakur Gaire, whom Amnesty International consider to be Prisoners of Conscience as they have been detained purely for their peaceful and legitimate activities in support of democracy and human rights.
- Release all student activists and other human rights defenders who have been arrested for the peaceful exercise of their fundamental rights--including freedom of opinion, expression, assembly and association.
- Make public commitments that there will be no further arrests of human rights defenders or other individuals purely for engaging in the peaceful exercise of their right to freedom of opinion, expression, assembly and association.
- Ensure that student activists are able to carry out their peaceful and legitimate work without fear of arrest or harassment.
- Restore immediately all fundamental rights, in conformity with Nepal's constitution and the International Covenant on Civil and Political Rights, to which Nepal is a state party.
- Repeal or amend repressive legislation used to imprison human rights defenders including the Public Security Act (PSA) and the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO).
- Abide by the terms of the resolution adopted by the United Nations Commission on Human Rights on 20 April 2005, which calls on the Government of Nepal "to immediately release all detained political leaders and activists, human rights defenders" and urges the Government "to take appropriate measures to ensure the protection of civil and political rights of political leaders and activists, human rights defenders, journalists and others."
- Issue standing invitations for United Nations Mechanisms to visit Nepal. Priority should be given to the Special Rapporteur on freedom of expression, the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on Human Rights Defenders.
- Urging the authorities to abide by their obligations under the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) to protect human rights defenders so that they can carry out their legitimate and peaceful work without fear of being subjected to human rights violations.