



Four Cases from “Waiting for Justice”

The report *Waiting for Justice: Unpunished Crimes from Nepal’s Armed Conflict* contains detailed descriptions of 62 cases of killings, enforced disappearances, and torture where criminal complaints are pending. Here are four of those cases:

Case Name: Maina Sunuwar
Date of incident: February 19, 2004
Age: 15
Address: Kharelthok VDC-6,
Kavre District
Nature of crime: Extrajudicial
killing



Devi Sunuwar holding a photograph of her daughter Maina. © 2007 Nick Hogg

Summary of Testimony from FIR: Around 6 a.m. on February 19, 2004, a group of 15 uniformed soldiers arrived at Maina Sunuwar’s house. Security personnel said they were looking for her mother Devi Sunuwar but since Devi was not in the house, they took Maina away in her place. They told Maina’s father, Purna Bahadur, that if he wanted Maina back he should bring her mother, Devi, to Lamidanda Barracks in Kavre District. The following day, a group of around 25 people, including the principal of Maina’s school, Purna Bahadur, and one of Maina’s teachers went to the Lamidanda barracks. When they asked about Maina and demanded her release, security forces in the barracks denied having arrested Maina. The group then went to the army barracks at Panchkhal, where officials again denied any involvement in her arrest. Maina’s mother repeatedly visited the District Administration Office and DPO of Kavre, Lamidanda army camp, and Panchkhal army camp, but they all denied the arrest and threatened her instead. At one point, some security forces at Panchkhal army

barracks told Maina's mother that Maina had not "disappeared," but had been "killed in an anti-terrorist operation."

In April 2004, Maina's mother visited the Nepal Army Headquarters in Kathmandu where she was told that Maina had been killed and that her clothes and other things had been sent to the police.

Under sustained pressure from the international community, including from the UN High Commissioner for Human Rights, Louise Arbour, the army proceeded with an internal inquiry and brought three soldiers allegedly responsible before a court martial on April 21, 2004. According to army records, the accused were only charged with minor offenses of using improper interrogation techniques and not following procedures during the disposal of Maina's body. They were sentenced to six months' imprisonment, effective from March 14, 2005. Since they had already spent that time confined to barracks during the period of investigation, the officers were set free. According to unconfirmed reports, two of them are no longer serving in the army, while a third is now working in army headquarters.

Official Action: Under pressure from OHCHR-Nepal, the police proceeded with investigations that resulted in Maina's body, which had been illegally buried at the Panchkal army camp, being exhumed in March 2007. The results of forensic tests confirming that the remains were indeed Maina's were received from India in July 2008. The DPO Kavre informed the public prosecutor and court accordingly. Since then, the investigations have not made any significant progress.¹

On January 10, 2007, Devi, with legal support from Advocacy Forum, lodged a writ at the Supreme Court, seeking an order for the DPO and public prosecutor in Kavre to complete the investigation. On January 11, 2007, a preliminary hearing before the Supreme Court resulted in a 15-day "show cause" notice issued against the District Public Prosecutor's Office and the DPO in Kavre. This means that the DPO and Prosecutor's Office were required to either complete the investigations or inform the

¹ OHCHR-Nepal: The Torture and Death in Custody of Maina Sunuwar. Summary of Concerns of December 2006, http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006_12_01_HCR%20_Maina%20Sunuwar_E.pdf.

court of the reasons why it was not possible to do so within 15 days. The case was made a priority.

On February 1, 2007, the DPO in Kavre submitted its written reply to the Supreme Court stating that it was investigating the case. On February 14, 2007, the District Public Prosecutor Office contacted the Supreme Court with an update on the case. The Office stated that the police would investigate the case and that it would take appropriate action after the investigation had been submitted.

On May 8, 2007, the Supreme Court ordered that the Nepal Army Headquarters produce the original military file concerning the court martial within seven days. On June 11, 2007, the army headquarters presented documentation regarding the court martial decision to the Supreme Court. Other documents were not provided. Lawyers and the victim's family were denied access to the army documents by the Supreme Court administration. Advocacy Forum challenged this action by lodging an application on June 27, 2007, and on July 6, 2007, the court ordered the army to cooperate fully with the investigation and to produce all documents that related to the court martial.

On September 18, 2007, a Supreme Court decision ordered the DPO in Kavre to complete the investigation within three months. The DPO in Kavre submitted its investigation report to the District Public Prosecutor's Office on January 27, 2008. As a result on February 3, 2008, the Kavre Public Prosecutor filed a charge sheet with the Kavre District Court against army officers Bobi Khatri, Sunil Prasad Adhikari, Amit Pun, and Niranjana Basnet. The charges included the illegal detention, torture, and killing of Maina. The court also issued summons for the arrest of the four accused. However, as of August 2008 they had not been arrested.

Case Name: Arjun Bahadur Lama
Date of Incident: April 19, 2005
Age: 48
Address: Chhatrebanjh VDC-5,
Dapcha, Kavre District
Nature of Crime: Abduction and
extrajudicial killing



Punamaya Lama holds a photo of her husband Arjun Bahadur Lama. © 2007 Charu Lata Hogg/Human Rights Watch

Summary of Testimony from FIR: On the afternoon of April 19, 2005, Arjun Bahadur Lama was celebrating his election as president of the Shree Krishna Secondary School at the school’s premises in Chhatrebanjh VDC. During the felicitation ceremony, Maoist cadre Yadav Poudel, alias “Rakki,” Bhola Aryal, and Karnakhar Gautam, alias “Shyam,” stormed into the ceremony and abducted Arjun, claiming that they had some business with him. According to those who witnessed subsequent events, Maoists marched him through various villages in Kavre District. Arjun’s wife filed a complaint with the NHRC on May 3, 2005. In late June 2005, several witnesses told the family how Maoist cadres took Arjun to Buddhakani VDC, where they killed him. Arjun’s wife made several requests to the CPN-M for information about her husband.

Finally, on December 17, 2005, Suryaman Dong, the CPN-M district secretary, stated at a press conference that Arjun Bahadur Lama was forcibly taken away by Norbu Moktan (a central committee member of the Tamang Liberation Front, which was affiliated with the CPN-M), and a platoon commander of Bashusmriti Brigade (who was present at the killing, but according to Maoist sources not involved in the killing). Suryaman stated that when they were in Ghartichhap, the NA launched an aerial attack during which Arjun was killed. After hearing Suryaman at the press conference, Arjun’s wife made another application to the NHRC asking them to recover Arjun’s body.

The NHRC conducted a scene inspection, and concluded that Arjun had not been killed during an army attack, but that he had been detained and killed. His body has not yet been recovered.

Official Action: Advocacy Forum supported the family in filing a FIR on June 28, 2007, but the police in Kavre refused to register it fearing reprisals from the Maoists. Advocacy Forum approached the CDO but he also refused to register the case. As a result, a writ was filed in the Supreme Court on July 16, 2007, requesting a court order for the police to register the FIR, start impartial investigations, and seek prosecution. On March 10, 2008, the Supreme Court ordered the Kavre police to register a murder case against the five Maoist members and Maoist Central Committee member, Agni Sapkota. As a result, on August 11, 2008, the Kavre police finally registered an FIR.

Case Names: Sanjeev Kumar Karna, Durgesh Kumar Labh, Jitendra Jha, Shailendra Yadav and Pramod Narayan Mandal

Date of Incident: October 8, 2003

Age: 24, 23, 19, 22, and 24, respectively

Address: Janakpur Municipality-10, Dhanusha District

Nature of Crime: Enforced disappearances

Summary of Testimony from FIR: Between 12:10 p.m. and 2 p.m. on October 8, 2003, security forces arrested 11 persons without arrest warrants, including Sanjeev, Durgesh, Jitendra, Shailendra, and Pramod, from the Kataiyachauri area of Janakpur Municipality-4. After the arrest, all were taken to the Regional Police Office in Janakpur, where they were reportedly interrogated by Dr. Chuda Bahadur Shrestha in the presence of Rewati Raj Kafle, Kuber Singh Rana, and Major Anup Adhikari. Jay Kishor Lav, whose son was one of



Jai Kishore Lal holds a photo of his 24-year-old son, Sanjeev Kumar Kama, who was allegedly arrested and killed by joint security forces in Dhanusha District, Nepal, in October 2003. © 2007 Nick Hogg

the 11 arrested, states he witnessed the young men being lined up in the compound of the regional police office in Dhanusha. The police denied the 11 persons had been arrested. On October 9, their families complained to the NHRC which initiated an investigation.

On January 23, 2006, the NHRC received a letter from the Human Rights Cell of the Nepal Army, which stated that Sanjeev and his four friends had been killed in a police operation in Janakpur area on October 8, 2003. The letter did not state how they were killed and where the remains were or if the bodies had been disposed. Following the correspondence from the NA, the NHRC wrote to the inspector general of police. In a response dated February 24, 2006, Nepal Police Headquarters stated that a police task force, coordinated by a deputy inspector general, was investigating the case. As of August 2008, the report of this investigation had not been made available to the NHRC.

Official Action: The police filed two FIRs on July 9, 2006. The arrest and “disappearances” of Sanjeev, Jitendra, Durgesh, and Shailendra were registered in a single FIR, and the FIR regarding Pramod Narayan’s “disappearance” was filed separately. The police have not carried out a serious investigation. Advocacy Forum made a follow-up visit to the Dhanusha DPO on November 20, 2006, in relation to the formation of the task force. The police stated that they had written to the NHRC on October 30, 2006; to the Gorakh Box Battalion of Nepali Army in Mahottari on November 12, 2006, with a copy to Nepal Army Headquarters in Kathmandu; and to Nepal Police Headquarters and its Human Rights Cell in Kathmandu on October 25, 2006, requesting all of them to provide any information related to the case. The DPO stated it had received no responses from any of the concerned agencies.

On January 28, 2007, Jay Kishor Lav, Sanjeev’s father, filed a writ in the Supreme Court against the DPO in Dhanusha. On August 21, 2007, the Supreme Court ordered the Nepal Police Headquarters to provide a report on the investigations carried out by its internal investigating committee. As of January 2008, the report had not been provided to the court.

On July 9, 2006, the police had been taken to the alleged site where, according to witnesses, the bodies of Sanjeev Kumar Karna and the other students are believed to have been buried. The police marked the site, but as of August 2008, no further action had been taken to exhume the bodies. The families claim that the police are not adequately securing the sites. When Advocacy Forum lawyers visited the DPO on January 17, 2008, the Deputy Superintendent of Police informed them that the police had collated all the FIRs registered in connection with the armed conflict, including the two FIRs relating to this incident, and had kept them aside without acting upon them.

Case Name: Bishwanath Parajuli, Tom Nath
Poudel and Dhan Bahadur
Tamang

Date of Incident: September 27, 2004

Age: 29, 29, and 30, respectively

Address: Hasandaha VDC-7 and VDC-8,
Morang District

Nature of Crime: Torture and extrajudicial
killing

Summary of Testimony from FIR: Tom Nath Poudel ran a bicycle and radio repair shop from his home. On September 27, 2004, he accompanied his neighbor, Bishwanath Parajuli, to a traditional healer in a neighboring village. On their way back, they met their neighbors Mithu Paswan, Raju Paswan, Tukindra Acharya, and Ramesh Neupane, and all of them walked back together. Eyewitnesses said that around 7:30 p.m. the group came across around 50 armed security personnel on patrol near the Ram Janaki Primary School, at Bhategauda of Hasandaha VDC-8 in Morang District. Earlier that evening, Maoists had forced some local villagers to attend their meeting at Pathari Bazaar of Pathari VDC-1. The armed patrol questioned Tom Nath and his friends, and asked if they were returning from the Maoist program. When Tom Nath denied attending the program, the security personnel arrested him and his friends on the grounds of being Maoists.



Ganesh Prasad Poudel holds a photocopy of the passport of his son, Tom Nath Poudel. © 2007 Nick Hogg

Some other villagers were arrested at the same time. All of them were detained overnight in the compound of the school. Bishwanath was beaten up in the compound. Others who were also detained reported that around 4:45 a.m. they heard the sound of gunshots.

Bishwanath's elder brother, Khyam Raj Parajuli, visited the scene of the incident the next morning and saw that his brother had been shot in the chest and chin. With help from local villagers the brother quickly buried the corpse on the bank of a stream nearby. The father of Tom Nath, Ganesh Prasad Poudel, also visited the scene of the incident the next morning. He saw that his son had gunshot wounds to his chest and left hand. Dhan Bahadur's relatives found his body later that morning. He had been shot twice. The security personnel forced villagers who had gathered outside of the compound to sign documents. The villagers were not allowed to read the papers. Four others who had been detained at the school were taken to the Eastern Division Military Headquarters the next day. Family members visited the DPO and the DAO repeatedly after the incident demanding a thorough investigation of the case and prosecution of the offenders.

The three families lodged an application to register a FIR with the DAO on November 1, 2004, but the authorities did not act on it. They also informed the NHRC and the Ministry of Home Affairs. The NHRC investigated the case and found that the victims' right to life had been violated. On June 16, 2005, the NHRC recommended that the government take action against those responsible and provide NRs150,000 as compensation to the victims' families. The police and public prosecutor did not act on the recommendation to investigate and prosecute. The families did not receive any compensation.

Official Action: The families, accompanied by Advocacy Forum lawyers, and representatives of other NGOs, NHRC, and OHCHR-Nepal visited the Morang DPO to register three FIRs on June 5, 2007. The police superintendent refused to register the complaint on the grounds that these killings occurred in crossfire and that no further legal action could be taken. On July 6, 2007, the DPO returned the complaint to Advocacy Forum. On July 12, 2007, Advocacy Forum and the victims' families visited

the CDO, but the official also refused to order the registration of the FIR on the grounds that the civil administration was not entitled to look into the case.

Advocacy Forum assisted the family of Dhan Bahadur Tamang to approach to the Biratnagar Appellate Court with a writ seeking an order for the DPO and CDO to register the FIRs on August 5, 2007. On October 10, 2007, the court upheld the writ petition and ordered the DPO and CDO to register the FIR. On September 1, 2008, Dhan Bahadur's family, accompanied by Advocacy Forum, visited the DPO, Morang to register the FIR as per the Appellate Court Order. However, the police superintendent refused to file the FIR despite the court order. As of September 1, 2008, none of the FIRs have been registered.