

NEPAL

# Waiting for Justice

Unpunished Crimes from Nepal's Armed Conflict

HUMAN  
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WATCH





## **Waiting for Justice**

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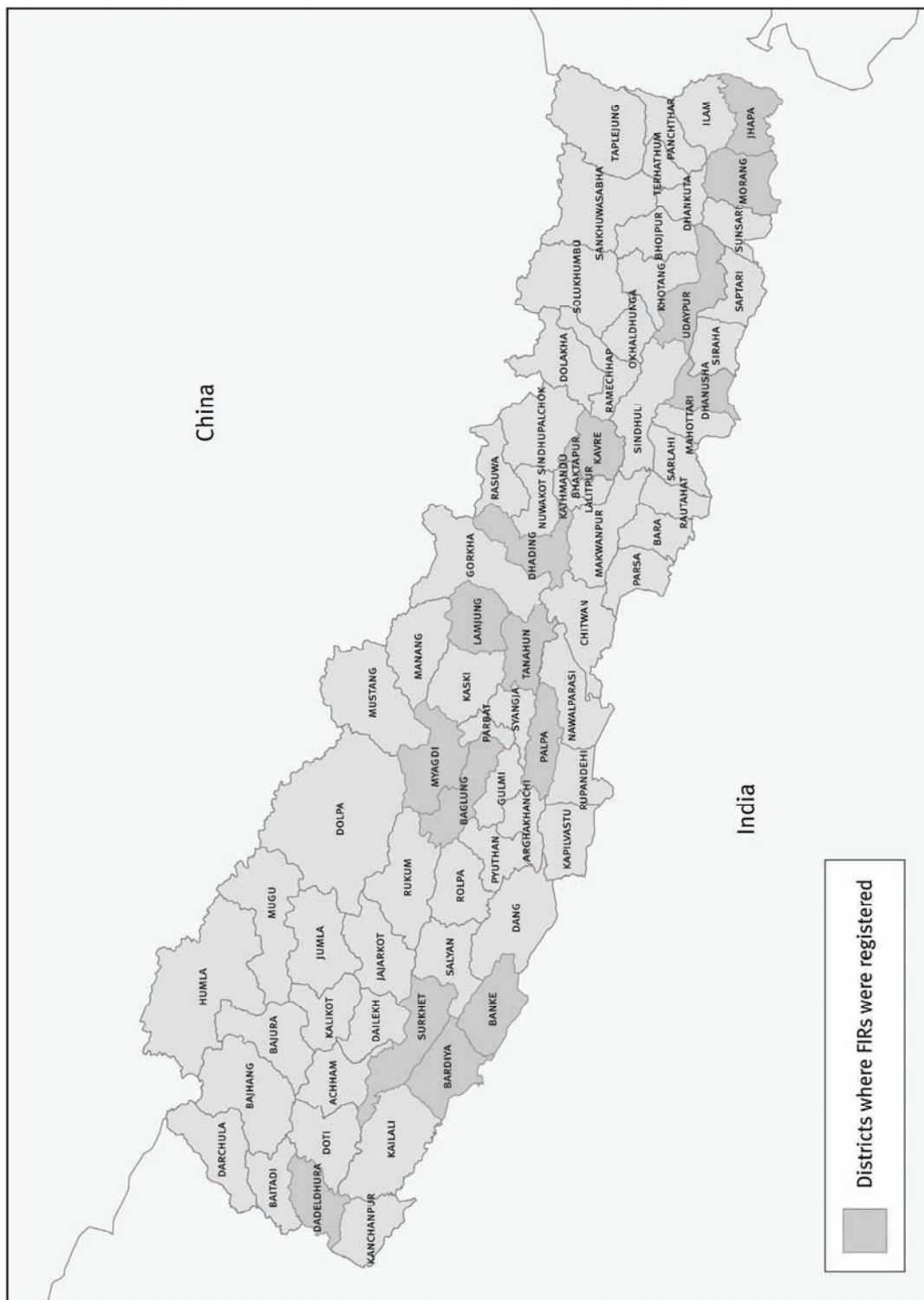
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# Map of Nepal



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## I. Summary

*I looked all over for my son. Both the police and army kept telling me they did not have him. It is clear he was illegally arrested by the police and deliberately shot by the army. But there will be no inquiry. All I want is to see his killers punished.*

—Puspa Prasad Bolakhe, father of Hari Prasad Bolakhe, abducted by police on December 27, 2003, and whose remains were found in June 2006.

*[T]his is a time for all political parties to show that they have the political will to bring to justice those responsible for violations of human rights, and not intervene as they are accustomed to do to protect their own supporters while calling for justice when their supporters are the victims. So I hope that this is a moment when, with a newly elected Constituent Assembly and the reforming of the government, there can be a new commitment to justice and law and order from all political parties. I hope that, but it is a little hard for me to expect that, because it is now more than three years since I came to Nepal and in all those three years there has not been a single case where the perpetrators of a killing in any of these categories has been brought to justice before the civilian courts.”*

—Ian Martin, Special Representative of the UN Secretary-General in Nepal and head of the UN Mission in Nepal, press conference at the Reporter’s Club, Kathmandu, May 27, 2008.

At approximately 11 a.m. on December 27, 2003, Hari Prasad Bolakhe stepped off the bus at the bus station in Banepa town, Kavre District. Eyewitnesses, including Hari’s father, Puspa Prasad Bolakhe, saw a police officer take Hari by force and bundle him into a vehicle. Some of the eyewitnesses recognized the officer as Khadga Bahadur Lama, the head police constable from the Kavre District Police Office (DPO). Hari’s father reported the abduction to the Kavre DPO, but officials there denied arresting his son. For nearly three years Hari remained missing, though there were repeated

sightings of him in the company of army personnel operating in the district. In June 2006, following investigations by the National Human Rights Commission (NHRC) into his “disappearance,” Hari’s body was exhumed from a forest in Ganesthan, Kavre District.

Hari’s family, accompanied by Advocacy Forum lawyers, tried to register a First Information Report (FIR), a formal complaint, at the Kavre DPO on September 20, 2006, but the police initially refused to lodge it, saying that they could not do so because it was against senior army personnel still working in the same district. On November 8, 2006, Hari’s father lodged a petition with the Supreme Court demanding that the Kavre DPO register the complaint. The Supreme Court instructed the Kavre police to “show cause” of why they did not file the FIR, and in response on December 5, 2006 the Kavre DPO informed the Supreme Court that a FIR had been filed on November 7, 2006. On December 8, 2006, the Kavre police wrote to senior police authorities, including Police Headquarters, seeking assistance to contact the army and interview the alleged perpetrators. But the Kavre police received no reply from any of these authorities. More than four years later, in spite of clear evidence that Hari was abducted and killed, investigations have not proceeded.

The case of Hari Prasad Bolakhe highlights the endemic problem of institutionalized impunity for serious human rights violations in Nepal. During the 10-year-long “people’s war” declared by the Communist Party of Nepal (Maoist) (CPN-M), an estimated 13,000 people were killed. The majority were killed by the security forces, but the CPN-M was also responsible for several thousand killings, including hundreds of civilians they suspected of being “enemies of the people” or providing information to the security forces. Both parties were responsible for the indiscriminate killing of civilians during attacks or armed “encounters” between them. To date, none of these killings have been adequately investigated by police and not a single perpetrator has been brought to justice before a civilian court.

Though other authorities such as the NHRC and a number of commissions of inquiry set up to investigate specific incidents have carried out thorough investigations of some cases and made recommendations for the prosecution of those responsible,



the government has not acted on these recommendations. Under pressure, the army has held a few trials of alleged perpetrators in military courts, though the charges have borne little relationship to the gravity of the violations. The failure of Nepali authorities and the Maoists to adequately investigate or address grave human rights abuses by forces under their control is not only a violation of Nepal's obligations under international law, but a serious obstacle to a lasting resolution of the country's political and social disputes. A key challenge for the new Maoist-led government will be to address these failures, and bring the perpetrators of such abuses to justice.

To examine how the Nepali justice system responds to allegations of human rights abuses, in this report Human Rights Watch and Advocacy Forum examined 62 cases documented in 49 FIRs filed with the Nepal Police since June 2006. In all 62 cases, Advocacy Forum lawyers are assisting or have assisted the families in seeking justice for the crimes committed against their loved ones. Forty-six of the FIRs were cases of alleged extrajudicial killings, "disappearances," torture, or rape committed by security forces in the period between 2002 and 2006. The remaining two FIRs were cases of alleged killings by members of the CPN-M. Most of the FIRs name alleged perpetrators identified by eyewitnesses as well as the officers in charge of relevant army units implicated in the human rights violations, both directly and using the doctrine of command responsibility.

These 62 cases are not representative of human rights violations carried out in the conflict. Maoist forces have abducted, tortured, and killed civilians suspected of being "informers" or "enemies of the revolution." They have extorted "donations" from villagers, recruited children as soldiers and in other conflict-related capacities, and abducted students for political indoctrination. In order to achieve the maximum deterrent effect on the population, the Maoists often executed their victims in public, forcing the victim's relatives and other villagers to observe the killing. The executions were often preceded by horrendous torture and involved excruciating methods of killing, such as burning a victim alive or breaking the victim's bones until he or she finally died. The Maoists at times kidnapped individuals for ransom or in order to compel a victim's relative to resign from the security forces. Yet victims of their abuses or their relatives have so far been very reluctant to file complaints against

them. It is a testimony to the fear the Maoists instilled in people that to date only two FIRs have been filed against them with police.

In examining the FIRs, Human Rights Watch and Advocacy Forum found a consistent pattern of *de facto* and *de jure* impunity. One of the largest obstacles to serious investigations is the ongoing powerful role of the two military forces—the Nepal Army and the CPN-M’s People’s Liberation Army when compared to civilian authorities. The Nepal Army has been and continues to be almost entirely unaccountable, despite a new Army Act of 2006 formally putting the army under civilian control. During the armed conflict, the security forces committed serious abuses without fear of punishment or prosecution. Between November 2003 and April 2006, the police operated under the unified command of the army. Subservient to the army, they felt powerless to investigate their superiors. While the law has changed, practices have not. Our interviews show that the police still identify closely with the army and continue to play an active role in ensuring impunity.

Members of the police told Human Rights Watch and Advocacy Forum that they continue to be afraid of reprisals should they initiate investigations against soldiers. As a result, the police invent reasons for not acting. In other cases, police are the alleged perpetrators, and in those cases there is still little chance of a serious police investigation. Existing internal investigative procedures in both the army and police are wholly inadequate.

The main tactic used by the police to avoid investigations of human rights abuses is simply to refuse to file a complaint. As with Hari’s family, many relatives of victims attempted, but were unsuccessful, in filing an FIR at the time of the alleged violation. Since mid-2006, after King Gyanendra was ousted from power by a people’s movement (*Jana Andolan*), some relatives have finally been able to file FIRs with the police. But in most cases the complaints were accepted only after several attempts and with the support of an NGO, or only after relatives petitioned the courts to order the police to investigate.

Even those who overcome this first hurdle face another, as the police routinely fail to gather evidence and prepare cases for prosecution. Police also have refused to provide information to families on the status of investigations.

In cases involving alleged Maoist abuses, many victims or their relatives have been reluctant to file complaints out of fear for reprisals. Local police are reticent to investigate after bearing the brunt of 10 years of Maoist insurgency. During those years, the police were often on the front lines and lost a large number of units and officers to attacks. They continue to fear reprisals by Maoists with little institutional protection from the police force, instead having to negotiate their own protection.

In a few cases, the courts themselves have rejected families' calls for investigations, agreeing with arguments put forward by police that the cases will be investigated by a proposed transitional justice body, so police are not obliged to proceed with investigations. Such spurious arguments by police and courts—the mandate of a truth and reconciliation body has not yet been formulated—demonstrate that state institutions in Nepal are determined to avoid accountability for grave human rights violations.

Other factors hampering investigations are the result of a widely dysfunctional criminal justice system, which does not require serious investigations of crimes committed by state agencies. The responsibilities of the police to investigate are poorly defined, bodies can be disposed of without post-mortem or other forensic tests, the availability and use of forensic expertise is limited, public prosecutors are reluctant to scrutinize ongoing police investigations, politicians exert pressure on both police and public prosecutors, and there is a general lack of political will to implement recommendations for further investigations and prosecutions made by commissions of inquiry and the NHRC.

The application of Nepali law also contributes to impunity. Provisions in laws such as the Army Act, the Police Act, and the Public Security Act grant members of the security forces and civil servants immunity from prosecution for all actions—including egregious human rights violations—that can be said to have been carried out in “good faith” while they were discharging their duties. These laws may be

misused to shield soldiers, police officers and their superiors, who can merely assert “good faith” to escape legal liability.

In addition, there are no legal provisions ensuring independent investigations into allegations of illegal killings by the security forces. Enforced disappearances and torture are not defined as crimes under Nepali law. Many gaps in laws such as the State Cases Act of 1992 and the *Muluki Ain* (National Code) of 1963 allow the police, public prosecutors, and other agencies to leave cases in limbo for months and years on spurious grounds. For instance, while the State Cases Act sets out the procedures to be followed in investigations, it does not set out any procedure for independent inquiry where security forces are implicated in a death. Under the *Muluki Ain*, witnesses can be tried for perjury, but courts have long interpreted these provisions to exclude government officials (including security forces), and therefore government officials and members of security forces are not obliged to tell the truth. Other laws, rules and regulations regarding civil servants also fail to stipulate any sanction for perjury.

The government has occasionally granted compensation to victims or their families. In some cases the security forces have taken administrative action against perpetrators, such as suspension or demotion. In a few cases the army has conducted courts martial, but the convictions bear no relationship to the gravity of the crimes. None of this is a substitute for justice.

The end of the King’s rule and the peace process that followed the *Jana Andolan* in April 2006 has thus far not led to any significant action to establish accountability for human rights violations. As when multi-party democracy was introduced in 1990, little is being done to address the entrenched structures of impunity. Sadly, many of the politicians who came back to power in April 2006 as well as some Maoist politicians have advocated the granting of immunity for past human rights abuses.

This has been clear in discussions between major political actors on a draft law to establish a Truth and Reconciliation Commission (TRC), which would provide amnesty if the perpetrator made an application indicating regret, or if victims and perpetrators agree to a reconciliation process. Discussions about a TRC have become

part of wider high-level political negotiations and have taken place without the widespread consultation of local human rights organizations and families of victims.

## Key Recommendations

The new government of Nepal needs to ensure that perpetrators of grave human rights violations are brought to justice. Human Rights Watch and Advocacy Forum call on the Nepali government to:

- Vigorously investigate and prosecute all persons responsible for abuses, including members of the security forces, in the 49 FIR cases highlighted in this report, as well as other cases of human rights violations.
- Suspend all security forces personnel named in the 49 FIRs, or in other complaints, against whom there is *prima facie* evidence of criminal activity until the investigations and any prosecutions are complete.
- Reform the criminal justice system, including by reviewing the role of the Nepal Police and Attorney General's Office to improve their effectiveness in investigations of serious crimes.
- Criminalize “disappearances” and torture—whether committed by the security forces, Maoists or other actors—and ensure these offenses when committed by the army will be subject to investigation and prosecution by civilian authorities and courts.
- Amend the Police Act, Army Act, and Public Security Act to remove all provisions that grant security forces and government official's immunity from prosecution for criminal acts.
- Establish an independent, external oversight body for the Nepal Police.
- Strengthen the NHRC by giving it the necessary powers to carry out credible investigations, including the power to require the attendance of witnesses and the production of evidence. The government should ensure that all the NHRC recommendations are speedily implemented by the relevant state authorities. The NHRC should be given clear powers to refer cases for prosecution and to seek legal redress against unlawful acts by state authorities.
- Establish a Truth and Reconciliation Commission that does not grant amnesty for serious human rights abuses.

## **Note on Methodology**

This report was jointly produced by Human Rights Watch and Advocacy Forum. Human Rights Watch conducted research in Kathmandu and Kavre District in October 2007, interviewing 10 family members of victims, three victims of torture, four police and military officials, four officials from the Attorney General's Office, six OHCHR representatives, four members of civil society organisations, three political party representatives (from the Nepali Congress, CPN-M, and CPN-UML), and one NHRC official. No one declined to be interviewed. Interviews of victims and families were conducted in English with Nepali translation. These interviews were conducted in private. Following the visit, Human Rights Watch continued to monitor developments closely with assistance from Advocacy Forum.

Additional interviews and research was completed by Advocacy Forum staff between August 2005 and October 2007. Some of the information is from previous Advocacy Forum legal interviews between 2002 and 2004. The 49 FIRs represent nearly all the cases where Advocacy Forum lawyers have assisted victims' families in filing complaints and accessing justice. The cases are from 15 districts (Baglung, Banke, Bardiya, Dadeldhura, Dhading, Dhanusha, Jhapa, Kavre, Lamjung, Morang, Myagdi, Palpa, Surkhet, Tanahun, and Udaypur) in Nepal; Advocacy Forum staff conducted interviews in each of these districts. For each of the FIRs, Advocacy Forum conducted lengthy interviews with the families, witnesses, and other key informants to obtain the facts of the case, and collected first-hand testimonies. All efforts have been made to update information on the status of the cases documented in this report through August 2008.

## II. At War and At Peace

### The Civil War

Until very recently, politics in Nepal was essentially a triangular affair involving political parties represented in Parliament, Maoist forces, and the monarchy, which traditionally has had close connections to the army. In 1996, the Communist Party of Nepal (Maoist) (CPN-M) declared a “people’s war” against the “ruling classes,” which included the monarchy and the political parties. During the first years of the armed conflict, the ill-equipped and poorly trained Nepal Police bore the brunt of responsibility for fighting the CPN-M. As a key target of the CPN-M, hundreds of police officers lost their lives. A total of 1,271 out of 1,971 police posts across the country stopped functioning after they were destroyed during attacks by the CPN-M, or after police personnel were withdrawn for security reasons.<sup>1</sup>

On November 23, 2001, the Maoists withdrew from peace talks and attacked police and army posts in 42 districts, reportedly killing at least 30 army and 50 police personnel.<sup>2</sup> The authorities responded on November 26 by declaring a nationwide state of emergency and deploying the Royal Nepal Army (RNA, now Nepal Army, NA).<sup>3</sup> The government imposed a state of emergency and introduced the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO), granting wide powers to the security forces to arrest people involved in “terrorist” activities. The CPN-M was declared a “terrorist organization” under the Ordinance.<sup>4</sup>

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<sup>1</sup> Human Rights Watch interview with OHCHR official who did not wish to be identified, Kathmandu, October 26, 2007.

<sup>2</sup> Amnesty International, “A spiraling human rights crisis,” April 2002, <http://www.amnesty.org/en/library/asset/ASA31/016/2002/en/dom-ASA310162002en.pdf>.

<sup>3</sup> Historically, the army in Nepal was under the command and control of the King. No substantial changes were made in this respect in the 1990 Constitution. In September 2006, the Interim Legislature-Parliament approved a new Army Act changing the army’s name from Royal Nepal Army to Nepal Army and making the army accountable to the government. Nevertheless, the army has remained immune from effective civilian control. For easy reading, the army is referred to as the NA throughout this report.

<sup>4</sup> The state of emergency lapsed in August 2002. The provisions of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) were adopted into law by the Parliament in 2002. After it lapsed and in the absence of Parliament, it was re-promulgated repeatedly by royal decree from October 2004. It was not renewed after it lapsed in September 2006 and is no longer in force.

The NA's involvement did little to quell the insurgency, but it did make the civil war increasingly lethal for civilians. According to the Nepali human rights group, Informal Sector Service Centre (INSEC), some 13,256 Nepalis were killed in the conflict.<sup>5</sup> Over 8,000 mostly civilian deaths were recorded after November 2001, when the army was deployed. Since the army was not able to maintain positions outside of their barracks, they made regular "sweeps" into areas of Maoist activity, often in response to Maoist attacks, targeting civilians as in most cases the People's Liberation Army (PLA, armed wing of the CPN-M) had left the area by the time the army arrived. The NA's behavior demonstrates that, rather than winning "hearts and minds," its tactics had the effect of terrorizing the local population.

In November 2003, the government put the police and the paramilitary Armed Police Force (APF) under the unified command of the army.<sup>6</sup> Human rights violations escalated dramatically after this. In both 2003 and 2004 Nepal took on the ignominious distinction of having the highest yearly number of new cases of "disappearances" reported to the United Nations (UN) Working Group on Enforced or Involuntary Disappearances (WGEID) in the world.<sup>7</sup> In total, 1,619 "disappearances" (1,234 attributed to the security forces, 331 to the CPN-M and 54 unidentified) were reported to the NHRC.<sup>8</sup> Maoist forces were also responsible for killings, abductions, torture, extortion, and the use of children for military purposes.<sup>9</sup>

On February 1, 2005, King Gyanendra declared a state of emergency and with the army's backing assumed all executive authority, citing the inability of the civilian government to resolve the conflict. He ordered the detention of thousands of political activists, journalists, and human rights monitors, and imposed severe restrictions on civil liberties.

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<sup>5</sup> National Human Rights Commission, Ceasefire Report, December 2006, [http://www.internal-displacement.org/8025708Foo4CE9oB/\(httpDocuments\)/944EoE93E66B48EFC125735Coo513Ao4/\\$file/Ceasefire+report+NHRC+Deco6.pdf](http://www.internal-displacement.org/8025708Foo4CE9oB/(httpDocuments)/944EoE93E66B48EFC125735Coo513Ao4/$file/Ceasefire+report+NHRC+Deco6.pdf) (accessed May 6, 2008).

<sup>6</sup> Members of each of these three forces often went out on joint patrols. In this report, the term "security forces" is meant to refer to forces under unified command.

<sup>7</sup> According to the Working Group on Enforced or Involuntary Disappearances, as of January 2008, 320 cases remained outstanding. For more details, see Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/7/2 of 10 January 2008

<sup>8</sup> Human Rights Watch interview with Gauri Pradhan, member of the NHRC, Kathmandu, October 27, 2007.

<sup>9</sup> Human Rights Watch, *Children in the Ranks – The Maoists' Use of Child Soldiers in Nepal*, February 2007, <http://hrw.org/reports/2007/nepalo207/>.



Amid a further rapid deterioration of the human rights situation, the international community finally acted on longstanding calls from national and international non-governmental organizations to set up a human rights monitoring mission by the UN's Office of the High Commissioner for Human Rights (OHCHR). Under considerable pressure from members of the UN Commission on Human Rights, in April 2005 the government of Nepal signed a Memorandum of Understanding with OHCHR to set up a large field office. This brought about more effective human rights monitoring and reporting in the country. The Maoist leadership allowed OHCHR to travel freely and investigate alleged abuses, and at least in some cases took action in response to concerns raised by the monitors.<sup>10</sup> Complaints of "disappearances" by the NA plummeted, though cooperation from the army remained problematic. For instance, the NA consistently denied the OHCHR full access to its records of courts of inquiry and courts martial.<sup>11</sup>

After the King assumed power in February 2005, the political parties represented in parliament that had established a Seven-Party Alliance (SPA)<sup>12</sup> initiated a dialogue with the CPN-M with the help of India. The CPN-M's unilateral decision to begin a four-month ceasefire from September 3, 2005, was not joined by the royal government. On November 22, 2005, the SPA and the Maoists adopted a 12-point "Letter of Understanding," which included a call for the election of a constituent assembly, and committed the Maoists to multi-party democracy, respect for human rights, and the rule of law. The agreement, strongly criticized by the royal government, was welcomed by the UN Secretary-General.

Following the end of its unilateral ceasefire in January 2006, the CPN-M stepped up its military activities. It called for a blockade of Kathmandu and all district headquarters nationwide from March 14 and announced an indefinite country-wide strike from April 2. Shortly after talks between representatives of the SPA in New Delhi in March, the Maoists decided to join the political parties in a combined show

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<sup>10</sup> "Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her office, including technical cooperation, in Nepal," UN Document: E/CN.4/2006/107, para 16, February 2006.

<sup>11</sup> See various reports by OHCHR-Nepal including "Human Rights in Nepal—One year after the Comprehensive Peace Agreement," December 2007, <http://nepal.ohchr.org/en/index.html>.

<sup>12</sup> The SPA members were the Nepali Congress (NC); Nepali Congress (Democratic) (NC(D)); Communist Party of Nepal (Unified Marxist-Leninist) (UML); Janamorchha Nepal; Nepal Workers and Peasants Party (NWPP); United Left Front (ULF); and Nepal Sadbhavana Party (Aanandi Devi) (NSP(AD)). The NC(D) later merged with the Nepali Congress in late September 2007.

of strength. Opposing bans and curfew orders, tens of thousands of people took part in street protests across the country that escalated from April 6. On April 24, the King announced the reinstatement of the House of Representatives. A government under Prime Minister Girija Prasad Koirala, leader of the Nepali Congress Party, was formed. It started negotiations with the CPN-M on a full-fledged peace agreement.<sup>13</sup>

## Comprehensive Peace Agreement

After difficult negotiations, the Comprehensive Peace Agreement (CPA) between Nepal's government and the CPN-M was signed on November 21, 2006. The CPA consolidated a series of commitments to human rights made in previous agreements and included many of Nepal's international obligations to respect, promote, and ensure human rights. In its preamble, the CPA commits all signatories "to create an atmosphere where the Nepali people can enjoy their civil, political, economic, social and cultural rights and...to ensuring that such rights are not violated under any circumstances in the future."<sup>14</sup> These include ending discrimination, arbitrary detention, torture, killings, and "disappearances."

The CPA separately mandates OHCHR and the NHRC to monitor the implementation of the human rights provisions of the CPA. Both sides also agreed to make public within 60 days of signing of the agreement the whereabouts of those "disappeared" or killed during the conflict and to set up a high-level Truth and Reconciliation Commission (TRC).

A United Nations Mission to Nepal (UNMIN) with a limited political mandate and characterized as "a focused mission of limited duration" was established in Nepal in early 2007.<sup>15</sup> UNMIN's mandate is confined to "monitoring arms and armed personnel" of both sides, providing technical support for the planning, preparation, and conduct of elections, and assisting in the monitoring of ceasefire arrangements.

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<sup>13</sup> Peace Secretariat website for text of all agreements reached to date, <http://www.peace.gov.np/eng/programs.asp?info=Resources/Publications&id=6&menu=1> (accessed May 6, 2008).

<sup>14</sup> "Comprehensive Peace Agreement held between Government of Nepal and Communist Party of Nepal," para 7.1.2, November 22, 2007.

<sup>15</sup> Security Council Resolution 1740, January 23, 2007, [http://www.un.org/Docs/sc/unsc\\_resolutionso7.htm](http://www.un.org/Docs/sc/unsc_resolutionso7.htm).

The signing of the CPA raised hopes that the human rights situation would continue to improve, as it had in the aftermath of the ceasefire. In the course of 2007, however, the limited ability of state institutions, including law enforcement agencies, to protect the lives and security of the population became increasingly apparent, especially in the Terai region, where members of the Madheshi community launched a sometimes violent protest movement demanding an end to discrimination.

Demonstrations in the Terai at times turned violent. Between January and October 2007, OHCHR recorded more than 130 killings of civilians, almost all in the central and eastern districts of the Terai. These include killings by members of Madheshi armed opposition groups as well as killings as a result of excessive use of force by Nepal Police and APF during demonstrations.

Elsewhere, mainly in the hill and mountain regions of Nepal, since 2007, members of the Young Communist League (YCL), the youth wing of the CPN-M, took on a public security role. In doing so, they were responsible for various abuses including extortion, threats and intimidation, physical assault, ill-treatment sometimes amounting to torture, forced labor, disruption of rallies and meetings, and destruction of property.<sup>16</sup>

The peace process was seriously undermined by a failure of the governing parties to implement many of the peace accord provisions and to respond adequately to the grievances of marginalized groups.

Amid the continuing power and influence of the NA, security sector reform also has been neglected by the political parties. In September 2007, when the Maoists withdrew from government and elections to a constituent assembly had to be postponed, one of their published 22 preconditions for participation in the elections was security sector reform. Yet neither the CPN-M nor any other party have advocated for the establishment of effective oversight mechanisms or accountability processes. In August 2008, the three main political parties in the new government announced in

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<sup>16</sup> OHCHR-Nepal, "Allegations of human rights abuses by the Young Communist League," June 2007.

a joint document, the Common Minimum Program, that they would appoint a high-level commission to develop a national security policy.

On December 23, 2007, the seven main political parties, including the Maoists, signed a 23-point pact, agreeing to declare Nepal a republic at the first session of the Constituent Assembly, due to be constituted after elections on April 10, 2008. The parties also reiterated their commitment to establish a commission of inquiry on disappearances and a TRC.

The elections were won by the CPN-M with 37 percent of the votes. The Nepali Congress (with 18 percent) and Communist Party of Nepal -UML (with 17 percent) suffered heavy defeats in an apparent demonstration of the people of Nepal's desire for fundamental change. After protracted negotiations, the CPN-M, CPN-UML, and the Madhesi Janadhikar Forum formed a government in late August 2008. Earlier, Dr Ram Bharan Yadav, a member of the Nepali Congress party and member of the Madhesi community, was appointed the country's first president. Pushpa Kamal Dahal, alias Prachanda, the CPN-M leader, was elected prime minister. Both appointments occurred as a result of elections in the Constituent Assembly, as the political parties could not reach a consensus. In a joint document, the Common Minimum Program, announced on August 21, 2008, the three governing parties affirmed their commitment to establish a Truth and Reconciliation Commission and a Commission of Inquiry into Disappearances.

### III. History of Impunity

Abusive behavior by security forces and armed groups spreads when perpetrators are not held accountable for their actions. Rooting out abusive behavior thus requires more than new policies and commitments to reform; it requires that would-be perpetrators know that if they engage in abuses—particularly serious abuses such as torture, “disappearing” suspects, and extrajudicial executions—they will go to prison and their careers will be destroyed. In Nepal, this has not yet happened and impunity, both *de facto* and *de jure*, is still the norm.<sup>17</sup>

*De facto* impunity takes place when the state fails to prosecute those responsible for human rights violations due to lack of capacity or will, often for political reasons. In Nepal, even well-documented cases of serious human rights abuses have not been prosecuted on the basis of existing laws due to a complex interplay of many factors, including political pressure and interference.

*De jure* impunity, in which laws or regulations are either too limited or explicitly provide immunity from prosecution, extends and strengthens the impact of *de facto* impunity, protecting perpetrators of human rights abuses. Nepal has several such provisions in its laws, aimed at shielding its military personnel and civilian officials from legal accountability. Such laws are contrary to the right to a remedy and reparation for gross violations of international human rights law.<sup>18</sup>

In Nepal, both forms of impunity have led to grave human rights violations, and undermined faith in the government and security forces.

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<sup>17</sup> The UN Commission on Human Rights has defined impunity as the “impossibility, de jure or de facto, of bringing the perpetrators of violations to account—whether in criminal, civil, administrative or disciplinary proceedings—since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims.” UN Commission on Human Rights, “Report of the independent expert to update the set of principles to combat impunity,” E/CN.4/2005/102/Add.1, February 8, 2005, p. 6.

<sup>18</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147, part VIII, “Access to Justice,” (December 16, 2005).

Impunity in Nepal also has to be understood in the context of the society, its sources of law, and the criminal justice system. A study by the Asia Foundation<sup>19</sup> cites impunity in Nepal as resulting from lack of judicial independence, the non-functioning of constitutional bodies (such as the Commission for Investigation of Abuse of Authority), corruption in quasi-judicial bodies such as the District Administrative Office, social and cultural factors (including concepts of *chakari* and *afno manche*),<sup>20</sup> and finally, denial of justice for human rights abuses.

Impunity for human rights abuses was widespread during the *Panchayat* era between 1960 and 1990.<sup>21</sup> Prominent among the many cases which went unpunished were six “disappearances” reported in mid-1985 during a civil disobedience campaign against the government and a series of bomb explosions in the capital. The UN Working Group on Enforced or Involuntary Disappearances (WGEID) retains four unresolved cases from that period. In at least two of these cases, credible reports state that detainees had been held at the Maharajgunj Police Training Centre. A commission of inquiry was established but its findings were never acted upon.

The inability of the state to punish perpetrators of human rights abuses during Nepal’s turbulent transition from an absolute monarchy to multi-party democracy in the early 1990s signaled the continuation of *de facto* and *de jure* impunity for human rights abuses. In the aftermath of the 1990 *Jana Andolan* (people’s movement), Prime Minister Krishna Prasad Bhattarai’s interim government established a judicial commission to investigate abuses committed by the *Panchayat* government in suppressing protests. The three-judge commission—named after its lead investigator, Justice Janardan Mallik—submitted its report to the government in December 1990. The report concluded that 45 people had been killed and 23,000 injured during the *Jana Andolan* and named over 100 officials and politicians directly or indirectly responsible for the violations. Bhattarai’s interim government did not take action against any of the perpetrators named in the report, arguing that

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<sup>19</sup> The Asia Foundation, “Impunity in Nepal—An Exploratory Study,” [http://www.asiafoundation.org/pdf/nepal\\_impunity.pdf](http://www.asiafoundation.org/pdf/nepal_impunity.pdf).

<sup>20</sup> *Afno manchhe* is an expression used to designate one’s inner circle of associates—“one’s own people” and refers to those who can be approached when need arises.” *Chakari* means “to wait upon, to serve, to appease, or to seek favor from a god.” Bista, Dor Bahadur, *Fatalism and Development—Nepal’s Struggle for Modernization* (Calcutta: Orient Longman, 1990).

<sup>21</sup> The *Panchayat* was a system of non-party rule established in 1960 by King Mahendra. It centered on the King and was supported by key figures in the army, the police and the administration. Political parties were banned and though elections were held, candidates were standing on an individual basis.

establishing law and order prospectively took priority over punishing those guilty of past offenses. None of the subsequent governments have acted on the report.

The failure of Nepali authorities to prosecute those responsible for human rights abuses committed during the 1990 *Jana Andolan* represented a major missed opportunity. The establishment of more democratic governance structures in 1990 provided a unique opportunity to introduce effective systems ensuring that perpetrators of human rights abuses would be held accountable.

A petition filed in the Supreme Court in January 1999 by 121 law students and lawyers from 38 of Nepal's 75 districts and some relatives of those killed or injured during the 1990 *Jana Andolan*, seeking an order to get the responsible agencies to act on the Mallik Commission report, was summarily dismissed by the registrar of the Supreme Court.<sup>22</sup>

Since 1990, various governments in Nepal have set up commissions of inquiry or investigative committees to investigate human rights abuses, especially following widespread public outcry or expressions of international concern at egregious violations. All such bodies have had inadequate power to secure evidence and the cooperation of security forces, their recommendations have not been acted upon, and they ultimately have had no impact on the prevailing climate of impunity, as noted by several UN experts.

Following a visit to Nepal in February 2000, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions urged the government "to put in place strong, independent and credible mechanisms to investigate and prosecute alleged human rights abuses, including extrajudicial executions and disappearances, attributed to the police and other state agents."<sup>23</sup> She found the objectivity of investigations seriously compromised by the fact that the inquiries were entirely entrusted to the law-enforcement authorities themselves.<sup>24</sup>

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<sup>22</sup> The Asia Foundation, "Impunity in Nepal—An Exploratory Study," [http://www.asiafoundation.org/pdf/nepal\\_impunity.pdf](http://www.asiafoundation.org/pdf/nepal_impunity.pdf).

<sup>23</sup> Project on Extrajudicial Executions, "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions," E/CN.4/2001/9/Add.2, August 9, 2000, <http://www.extrajudicialexecutions.org/reports/> (accessed May 6, 2008).

<sup>24</sup> Ibid.

In 2000, a National Human Rights Commission (NHRC) was established. Its powers are limited to investigating reports of human rights violations and making recommendations to the government. It does not have clear powers to initiate prosecutions itself by referring cases directly to the Attorney General's Office or the courts.<sup>25</sup>

Amid increasing criticism of their actions, all three arms of the security forces (the Nepal Police, the APF, and the NA) have established "Human Rights Cells" as internal bodies to investigate complaints about human rights violations. These appear largely cosmetic, although departmental or disciplinary action has been taken against alleged perpetrators in some cases.<sup>26</sup> To date no independent mechanisms with full powers to investigate and prosecute have been established.

Despite the existence of its Human Rights Cell, the army has failed to cooperate with police investigating allegations of crimes committed by its forces. The NA Human Rights Cell has conducted investigations into only a few cases of abuses committed by troops. On January 31, 2005, the army announced the result of a high-profile court martial related to the execution of 19 suspected Maoist insurgents who had surrendered near the village of Doramba, Ramechhap District. The result was a two-year jail term for one army officer convicted for failure to control his troops. This is the only prison sentence that has been handed down for human rights abuses committed by a senior army officer.

In his report following a visit to Nepal in September 2005, the UN Special Rapporteur on Torture concluded that torture was systematically practiced in Nepal by police, APF, and NA in order to extract confessions and to obtain intelligence. He reported that he had received repeated and disturbingly frank admissions by senior police and military officials that torture was acceptable in some instances, and was indeed systematically practiced. He expressed deep concern, "with the prevailing culture of impunity for torture in Nepal, especially the use of compensation for acts of torture as an alternative to criminal sanctions against the perpetrator." Perpetrators are also sanctioned through "departmental action" such as demotions, suspensions, fines,

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<sup>25</sup> The interim Legislature-Parliament recently made the NHRC into a constitutional body.

<sup>26</sup> Human Rights Watch, *World Report 2006*, <http://www.hrw.org/english/docs/2006/01/18/nepal12256.htm>.



and delayed promotions as provided for under the Police Act and Army Act. According to the Special Rapporteur, departmental action “is so grossly inadequate that any preventive or deterrent effect that may have been envisaged is meaningless in practice.”<sup>27</sup>

In a report published after its visit to Nepal in late 2004, the WGEID made a number of recommendations to the government for the prevention and proper investigation of “disappearances.”<sup>28</sup> Hardly any of these have been implemented, such as a call on the army to release full and complete details, including any written judgments, of all court-martial proceedings undertaken against army personnel.

Under increasing international pressure, Prime Minister Sher Bahadur Deuba on July 1, 2004, established an Investigative Committee on Disappearances to determine the status of reported “disappearances.” Led by a joint secretary from the Home Affairs Ministry, Narayan Gopal Malego, the Committee issued four reports with information about the status of 320 persons in 2004. The work of the Malego Committee barely went beyond consolidating lists of the “disappeared” reported to the authorities. Lack of cooperation by the army meant that it was impossible to establish the fate or whereabouts of the “disappeared.” Furthermore, the Committee lacked the necessary powers to compel the security forces to cooperate with it.

In May 2006, OHCHR released a report documenting the “disappearance,” illegal detention, ill-treatment, and, in many cases, torture, of 49 individuals confirmed by OHCHR to be in the custody of the Bhairabnath Battalion of the NA at Maharajgunj, Kathmandu, as of December 2003, and urged the government to set up an independent commission of inquiry to determine their fate or whereabouts. The government never provided a detailed response to the report. The NA has to date not acknowledged responsibility for any of the documented cases. The NA did not transmit to OHCHR the report of its task force set up to investigate the 49 cases.<sup>29</sup>

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<sup>27</sup> Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Nepal, E/CN.4/2006/6/Add.5, January 9, 2006.

<sup>28</sup> UNHCHR, “Report of the Working Group on Enforced or Involuntary Disappearances on its visit to Nepal,” E/CN.4/2005/65/Add.1.

<sup>29</sup> “Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office, including technical cooperation, in Nepal,” January 2007, UN Document: A/HRC/4/97, para 46.

On June 1, 2006, the government formed a further one-member committee, this time chaired by Baman Prasad Neupane, a joint secretary in the Home Affairs Ministry, to find the whereabouts and status of people “disappeared,” allegedly at the hands of security forces. The Committee faced the same problem of lack of cooperation from the army, but claimed to have established the status of 104 “disappeared” persons. In some cases such clarification was based on scant information provided by the security forces which had not been independently verified.<sup>30</sup>

The government established a full-fledged high-level commission of inquiry under the 1969 Commission of Inquiry Act to investigate killings during the April 2006 *Jana Andolan* demonstrations as well as allegations of abuse of power during the time the King had control of the government. The report recommended that action be taken against 202 officials of the King’s government, including the King himself, and that 31 members of the security forces should be prosecuted. However, the home minister stated that the government had already taken action against those responsible and that “most recommendations” of the report had already been implemented and others had been forwarded to the competent authority for further investigation. The attorney general has taken no action to prosecute as he reportedly believes that the evidence gathered is insufficient.<sup>31</sup>

A Parliamentary Probe Committee set up in 2006 examined two cases of indiscriminate killings committed outside the context of the armed conflict and the *Jana Andolan*. The cases concerned the rape and killing of a woman on April 25, 2006, and the killing of six unarmed demonstrators by the army at Belbari, Morang District, the next day (see Appendix, Cases 48-53). The Committee’s report was finally made public in January 2008. It recommended investigations and criminal prosecutions of three of the security forces personnel allegedly involved in the killings, and investigations and prosecutions under the Army Act against 16 others. The Committee also recommended record amounts of compensation to the victims

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<sup>30</sup> For instance, the Neupane Committee concluded that Keshar Bahadur Basnet (Case 9 in Appendix to this report) had been killed in crossfire and that Data Ram Timsina (Case 37) was killed during a “security operation,” based on information provided by the Human Rights Cell of the NA.

<sup>31</sup> OHCHR, Nepal, “Human Rights in Nepal one year after the Comprehensive Peace Agreement, Investigation Report,” December 2007, [http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/1207CPA\\_Report\\_EN.pdf](http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/1207CPA_Report_EN.pdf).

and their relatives.<sup>32</sup> Whether all the Committee's recommendations will be fully implemented remains to be seen.

To date, despite various inquiries and investigations into killings, "disappearances," and excessive use of force by the security forces, no case has resulted in a prosecution. The doctrine of command responsibility, where officers in command can be held accountable for the actions of those serving under them has not been applied. Furthermore, any recommendations for institutional reform have so far been completely ignored by the government. For example, recommendations on army reform and barrack discipline made by a three-member commission led by former Supreme Court Justice Top Bahadur Singh, which investigated killings by an off-duty soldier at Nagarkot on December 14, 2005, are yet to be implemented by the government.

The work of commissions of inquiry and other investigative bodies set up by the government have failed to hold perpetrators accountable for abuses. More than two years after the ceasefire, there are no signs of any political will to address accountability for serious human rights abuses committed before, during, or after the conflict. On the contrary, repeated initiatives by the government such as draft bills to set up a TRC or a commission to investigate disappearances aim to give amnesty for crimes against humanity. Not one member of the security forces or of the CPN-M has been held criminally accountable and convicted for killings, "disappearances," torture or other abuses by civilian courts.<sup>33</sup>

Commanders or other superior officers are directly liable in law for crimes they order to be committed. But under the internationally-recognized doctrine of command responsibility, they can also be held criminally liable for the actions of subordinates where they knew, or should have known, that subordinates were committing, or about to commit crimes, and failed to take all necessary and reasonable measures to prevent them, or ensure that the persons responsible were investigated and

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<sup>32</sup> "House panel recommends action against 28 people over Belbari massacre," *Nepalnews*, January 12, 2008, <http://www.nepalnews.com/archive/2008/jan/jan12/news11.php> (accessed May 6, 2008).

<sup>33</sup> OHCHR, "Human Rights in Nepal One Year After the Comprehensive Peace Agreement," December 2007, [http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/1207CPA\\_Report\\_EN.pdf](http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/1207CPA_Report_EN.pdf).

prosecuted by the competent authorities.<sup>34</sup> Command responsibility can apply to all levels of political or military leadership where subordinates have committed major crimes. Given that national and international organizations including the NHRC and UN human rights experts repeatedly have raised concerns with Nepal's political and military leadership, up to the highest level, about grave and persistent human rights abuses such as "disappearances," and given that such leaders have failed to prevent or punish these crimes, the concept of command responsibility needs to be understood and applied in the Nepali criminal justice system.

Nepali law is silent on the concept of command responsibility, and the FIRs currently before the police may indeed be the first opportunity to test whether and how Nepali courts will apply the doctrine. That is, if such cases ever make it to court, given the delays and lack of police investigations. Impunity will remain a major problem without reforms to the criminal justice system.

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<sup>34</sup> See, for example, Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, art. 28, entered into force July 1, 2002.

## IV. Complaints Filed, but No Response

*The soldiers forced me to go into the other room. Then I heard the shots and I ran out. My son and his wife, both of them were asking for water. I saw them crying out with pain. I was holding my granddaughter, who was also injured. I saw my son and his wife struggling for the last minute of their life, they were dying in front of my eyes.*

—Bhumisara Thapa, the mother of Dal Bahadur Thapa, who was killed by security forces in 2002.

*I went to the [Chief District Officer] and the District Police Office at least 20 times. Officials in both places took the application from me but did not register a complaint. I met the CPN-M [Communist Party of Nepal -Maoist] leader Prachanda and asked him for the whereabouts of my husband. He asked me to give him two or three days. It's been two years.*

—Purnima Lama, wife of Arjun Lama, abducted by Maoists on April 19, 2005, and still missing.

### Failures to Investigate and Prosecute

Complaints of abuses by the security forces and CPN-M are routinely not investigated or prosecuted, thus perpetuating the cycle of impunity. Human Rights Watch and Advocacy Forum examined the progress of investigations and prosecutions in 62 cases of individual human rights abuses. These relate to 34 separate incidents, and 49 FIRs have been filed in relation to these individuals with the Nepal Police. (“Filing” a case means that a written and signed FIR is officially received and registered by the Nepal Police). The cases are spread over 15 out of 75 districts in all five regions of the country. The alleged crimes occurred between January 2002 and June 2006. The majority, 22, happened in 2004; 11 in 2002; 10 in 2003; 11 in 2005; and eight in 2006.<sup>35</sup>

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<sup>35</sup> See Appendix for details of each of these cases organised per district and therewithin chronologically.

Of the 62 victims, 58 were killed, four remain “disappeared,” many were tortured, and at least three were raped. The vast majority of cases, 56, concern extrajudicial executions by the security forces. In two cases, the killings involve members of the CPN-M (see Cases 33 and 61).

Criminal investigations into these crimes clearly fall within the jurisdiction of the Nepal Police. By law, the Nepal Police, “must register any complaint from any source made by any means,” regarding a crime which has been committed or may be committed.<sup>36</sup> Upon registration, it is the duty of the Nepal Police to initiate a criminal investigation and present the preliminary results of the investigation to the relevant district’s public prosecutor.<sup>37</sup> By law, investigators should visit, take photographs of, and prepare a report about the crime scene, as well as take statements from witnesses.<sup>38</sup>

In most of the 62 cases examined here, police failed to initiate any investigations. In several of the cases, an FIR was filed only after the family appealed to the chief district officer (CDO), the highest official at the district level to whom the police are legally accountable, and the CDO ordered the police to file the FIR. In more than a dozen cases, the families had to appeal to the courts to get the FIR registered and acted upon. In a few cases, the courts rejected the appeals, agreeing with the police’s argument that the cases would be investigated by a TRC or other transitional justice body, when they are eventually established, and therefore the police were not obliged to proceed with investigations.

In cases involving extrajudicial killings, sometimes the victims were killed at their homes or within hours of being arrested from their home or village by members of the army, police, and/or APF. On other occasions, the killings occurred at some distance from the victims’ homes at a remote location where the perpetrators thought there would be no witnesses. The NA subsequently announced on the radio that, “a Maoist suspect had been killed while attempting to escape,” or, “was killed during a security operation,” or during, “an encounter” with members of the CPN-M.

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<sup>36</sup> State Cases Regulations, Rule 3.

<sup>37</sup> State Cases Act, Section 6 and State Cases Regulations, Rule 4.

<sup>38</sup> State Cases Act, Sections 7 and 9; and State Cases Regulation, Rules 4 (5) and (6).

In other cases there was no public broadcast at the time, but the information was conveyed years later via the International Committee of the Red Cross (ICRC) or the NHRC. In at least eight cases, the families of victims or villagers were forced to sign a statement to this effect drawn up by the security forces. Most of these people were not allowed or able to read what the statement said. Officers sometimes took photographs of the bodies with guns, grenades, or other incriminating “evidence” displayed next to them. In all of these 62 cases, security forces lacked any other corroborating evidence of the alleged armed encounter while multiple witnesses allege the victims were extrajudicially executed. Bhumisara Thapa, the mother of Dal Bahadur, who was killed in 2002, told Advocacy Forum:

The soldiers forced me to go into the other room. Then I heard the shots and I ran out. My son and his wife, both of them were asking for water. I saw them crying out with pain. I was holding my granddaughter, who was also injured. I saw my son and his wife struggling for the last minute of their life, they were dying in front of my eyes.<sup>39</sup>

On September 10, 2002, members of the security forces shot Dal Bahadur and his wife Parbati at their home. Soldiers did not allow the family to take them to hospital, and the couple died as a result. According to witnesses, security personnel then planted bombs in the house, which they collected the next day after an announcement was made on Radio Nepal about the recovery of cash and bombs from “the house of Maoist terrorists” in Banke District.<sup>40</sup>

In many of the 62 cases, people were killed because state officials or agents suspected them to be Maoists or Maoist sympathizers. None of the victims were combatants, but some had sympathies with the CPN-M or a role in the political or other wings of the Maoist party.

Among the 62 victims are five women and seven children, including three girls. In at least three cases, women were reportedly raped before they were killed.

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<sup>39</sup> Advocacy Forum interview with Bhumisara Thapa, Kathmandu, December 25, 2002.

<sup>40</sup> For more information, see Appendix, FIRs of Dal Bahadur Thapa and Parbati Thapa, Cases 5 and 6.

Eight of the killings by the security forces are not directly linked to the armed conflict. They include the killing on April 26, 2006, of six demonstrators in Belbari, Morang District (Cases 48-53), when security force personnel under the command of army captain Prahlad Thapa Magar, deployed to maintain public order, indiscriminately fired live ammunition into a crowd. The demonstration was in response to the army's rape and killing of a local 22-year-old woman, Sapana Gurung, on the previous day (Case 47).<sup>41</sup>

Four of the FIRs concern "disappearances" where there is a likelihood the person has been killed but his or her body have never been located. Authorities in these cases formally acknowledged the victim was killed, months or years later, but failed to provide any evidence or further information about what happened to the remains. In these cases, witnesses testified that the "disappeared" person was arrested, and taken away by uniformed police or army personnel, stating they wished to question the individual. Security forces did not inform families where they were being taken. The families' inquiries with the District Police Office (DPO) or the army barracks were only met with denials.<sup>42</sup>

Tek Bahadur B.K., whose son Raju B.K. (Case 1) "disappeared" following his arrest in March 2002 in Baglung District, told Advocacy Forum:

We visited the barracks several times to see Raju shortly after his arrest, but the army authority repeatedly denied our access with different reasons. Every time, they gave different reasons for denying our visits—Raju is sleeping, we require army major's permission; interrogation is going on, he will be released tomorrow—and so on. We never saw him alive again, and we haven't got justice yet.<sup>43</sup>

The 62 cases analysed in this report show a pattern of torture and ill-treatment of detainees during interrogation at police stations and army barracks. In around one

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<sup>41</sup> For more information, see Appendix, FIRs of Sapana Gurung, Chhatra Bahadur Pariyar, Phurwa Sherpa, Prabhunath Bhattarai, Prasad Gurung, Tanka Lal Chaudhari, and Sunita Risidev, Cases 47 to 53.

<sup>42</sup> Human Rights Watch, *Nepal – Between a Rock and a Hard Place*, October 2004, <http://www.hrw.org/reports/2004/nepal1004/>.

<sup>43</sup> Advocacy Forum interview with Tek Bahadur B.K., Baglung District, February 2, 2003.



third of the cases, victims suffered beatings, assault, and humiliation before they were killed. None of these cases have been investigated by police for allegations of torture. As torture is not a criminal offence in Nepal, no FIRs have been filed for torture even though torture may have caused death. At least three women victims were raped before they were killed. In two of these cases, the charge of rape could not be included in the FIR because the limitation period for making a complaint of rape in Nepal is 35 days.

## **Role of the Nepal Police**

### *Initial Response After the Abuse*

The relatives of two girls killed by army personnel, Reena Rasaili and Subhadra Chaulagain (Cases 29 and 30), left the girls' bodies lying in a field for six days in an attempt to force the police into action but nobody from the Kavre police came to the village to investigate the killings. Similarly the family of Ganga Gauchan, a 32-year-old carpenter from Baglung District, refused to remove his body in an attempt to force the authorities to investigate his killing, but the NA forced them to dispose of the body without a post-mortem (Case 2). Bhan Bahadur Gauchan, brother of Ganga Gauchan, told Advocacy Forum:

The body of my brother was not taken for post-mortem. It was just lying there but the soldiers threatened villagers to dispose of the body if they wanted to stay alive. Then the villagers buried the body of my brother.<sup>44</sup>

In more than half of the cases (36), relatives attempted to file a complaint with police and civilian authorities (the CDO) at the time of the killing. This was invariably refused. Despite having a legal obligation to do so, police have been reluctant to register and initiate investigations into the events alleged in the FIRs, and have only done so years later after the end of the armed conflict and under continuous pressure from families and NGOs. A common reason cited for not filing the case, was that this was a “political issue.”

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<sup>44</sup> Advocacy Forum interview with Bhan Bahadur Gauchan, Kathmandu, November 26, 2006.

Claiming the case was a “political issue” and the police were, “not supposed to look at it,” the Morang police refused to investigate the killing of Jag Prasad Rai alias Narad allegedly by a group of 54 army personnel (Case 41). Jagath Sunuwar, father of Jag Prasad Rai, told Advocacy Forum:

I was told that this case is political and will be dealt by the commission. I do not know which commission that is and what the address is.<sup>45</sup>

The same response was given in the case of Ramadevi (Case 27) who was killed, and possibly raped, by members of the security forces. Her relatives visited the Jhapa DPO and the District Administration Office several times asking them to conduct necessary investigations. However, no action was taken against the perpetrators. The DPO told them that it was a “political” issue and they could not take any action on this case.

Superintendent of Police, Navaraj Silwal, and head of the Human Rights Cell of the Nepal police, told Human Rights Watch, “We have had ministers tell us, ‘don’t take any steps which will become stumbling blocks to the peace process.’ There has to be a commitment by the government to take action against offending officials.”<sup>46</sup>

Until now, no police officer has been held accountable for not registering a complaint or failing to proceed with an investigation.

Beyond a lack of political will, acceptance of impunity runs deep in Nepali society. Historically, victims have seldom received justice; hence they often neither expect nor demand it. Where families of victims did not initially attempt to lodge an FIR with police or local government officials, they feared reprisals by the security forces and were often deeply convinced that no action would be taken to bring the perpetrators to justice. These families only did so after a change in the political environment following the *Jana Andolan* of April 2006 and due to support from local human rights organisations.

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<sup>45</sup> Advocacy Forum interview with Jagath Sunuwar, Kathmandu, September 14, 2007.

<sup>46</sup> Human Rights Watch interview with Navaraj Silwal, Human Rights Cell, Nepal Police, Kathmandu, October 29, 2007.

In at least 46 of the cases, the families or witnesses provided the names of the alleged perpetrators in addition to *prima facie* evidence that a crime had been committed through direct witnesses to the crime, and information on the officers in charge or the unit involved. Despite this evidence, police have failed to gather evidence by taking statements from the suspects or witnesses, visit the scene, or collect material evidence.

The Nepal Police and the Office of the Public Prosecutor are further disempowered by pressure from the two military powers (the NA and the CPN-M), and their links to networks of political elite.

Police filed the FIR soon after the incident in only one of the 62 cases documented here, and in that case, police manipulated the content of the report. Manoj Basnet was killed in the custody of the APF in August 2005. Initially police at the Morang DPO refused to file the FIR. The family sent the FIR via registered post. Still, the police refused to file it. After OHCHR investigated the case and put pressure on the police, the police finally called the family and presented them with an FIR the police had prepared. On August 30, 2005, the father signed this FIR without being allowed to read it. Later, in court, when the family had an opportunity to access the file, they realized police had presented the killing as an accident in the FIR drafted by them.

Manoj's father filed a writ in the Supreme Court asking for the police investigation to be re-opened. Police put pressure on the family to withdraw the writ. Police reportedly offered the widow of Manoj Basnet a job in the police and promised to send her two children to a boarding school. Police also reportedly offered Manoj Basnet's father NRs250,000 [US\$3,900], brought him to Kathmandu, and pressured him to file a petition withdrawing the writ petition stating that he had not intended to do it, but had been coerced by Advocacy Forum. Under pressure, on November 30, 2007, the father applied to the court seeking to withdraw the case. On the same day the Supreme Court decided to put the case on hold. At this writing, the court had not yet ruled on the request to withdraw the case.

Pressure and threats against the families of the victims, witnesses, and villagers is very common. The families of at least six victims in the cases documented here were

threatened by security forces or Maoists after they sought justice for the death of their loved ones. In several cases, Advocacy Forum staff were also threatened, both the NA and the CPN-M issuing repeated threats.

There undoubtedly were various reasons why police failed to file FIRs soon after the killings and other acts of violence documented here, but one important reason is that between November 2001 and April 2006 the police were functioning under the unified command of the army. Police officers were often, under the unified command, part of the unit allegedly responsible for the killings and they claim they were powerless to investigate their superiors.<sup>47</sup>

### *Continued Failure to Act*

In 15 of the 62 cases, the police had still failed to register the FIR as of August 2008, when we last updated our research.

This continuing failure to take action is in part due to lack of resources and weak capacity, but, most significantly, it reflects the continuing institutional weakness of the police, a product of lack of independence and lack of accountability. There is little incentive to investigate and prosecute perpetrators of human rights abuses. Police are more focused on political pressures and institutional patterns of reward and punishment linked more to patronage than meritorious public service. Prakash Kumar, deputy inspector general of police (DIG) and head of the Criminal Investigation Department (CID), told Human Rights Watch:

The police lack scientific tools to investigate; their approach is not evidence-oriented but confession-oriented. Further, there always has been political interference in their day to day work.<sup>48</sup>

In nearly all cases where families of victims succeeded in registering complaints, police have failed to take even the most basic first steps in criminal investigation, such as to visit the scene, interview witnesses, and arrest alleged perpetrators.

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<sup>47</sup> Human Rights Watch interview with Navaraj Silwal, Human Rights Cell, Nepal Police, Kathmandu, October 29, 2007.

<sup>48</sup> Human Rights Watch interview with Prakash Kumar, DIG, CID, Kathmandu, October 27, 2007.

Police too often treat filing the FIRs as a paper exercise and seem to wait for directives from the political leadership.

Police have also failed in their legal responsibility to take action against alleged perpetrators—including against members of the CPN-M—regardless of whether FIRs were filed. On occasion, police have claimed that an FIR must be filed by the victim or on his/her behalf before the police can take any legal action, or that police require authorization from higher police authorities.<sup>49</sup> This violates the State Cases Act which states that police have a duty to investigate if they learn through “any means or medium” that a crime may have been committed.<sup>50</sup>

## **Disposal of Bodies**

In 55 of the 62 cases documented here, the bodies of the victims were recovered. In five cases, police took the bodies to local hospitals where doctors conducted post-mortem examinations—because the killings occurred in close proximity to a hospital or due to the influence of the victim’s family. In six other cases, police claim a post-mortem was carried out but refused to share information with the relatives. In the remaining cases, there was no post-mortem examination.

In nine of the 62 cases, the bodies of victims were disposed of within hours of the killing. Historically there are some cultural and climatic reasons for swift disposal of remains. Bodies are traditionally cremated among members of the majority Hindu community. However, the army has exploited this culture, ordering villagers to dispose of the bodies immediately. A speedy cremation means it is impossible to examine a body at an alleged crime scene, hold a post-mortem examination, or conduct any future exhumation as part of forensic investigations.

In some exceptional cases, relatives were able to obtain the bodies of their loved ones and were not forced to cremate them. For instance, in the case of Ganga Bahadur Nepali and Shyam Sundar Kaini, alias “Bharat,” who were killed in April 2002 in Tanahun District (Case 61 and 62), the army returned the bodies to the

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<sup>49</sup> OHCHR-Nepal, “Allegations of Human Rights Abuses by the Young Communist League,” June 2007, <http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2007/YCL.ENG.pdf>.

<sup>50</sup> State Cases Regulations, Rule 3.

families after the intervention of the leader of the CPN-UML who was visiting the district at the time of their killing.

In the killing of Ramadevi Adhikari (Case 27), the family dropped its insistence upon a post-mortem examination in return for being allowed by the army to conduct the funeral according to proper rites.

Where victims' remains were buried, recovery with a view to forensic examination has proven very difficult. In only one case, that of Maina Sunuwar, police together with OHCHR, investigated and recovered remains from an unmarked grave at the Nepal Army Birendra Peacekeeping Training Centre in March 2007.<sup>51</sup> Fifteen-year-old Maina Sunuwar had "disappeared" after her arrest in February 2004. The Kavre DPO finally allowed the filing of an FIR in November 2005. This was after considerable international pressure from OHCHR, Human Rights Watch, Amnesty International, and others.

Slow action by police in the process of identifying and verifying remains has hampered investigations. In Maina's case, police did not send the DNA sample recovered from the remains in March 2007 to India for analysis until late November. Officially, the police gave no reasons for the delay, though lack of financial resources may have been one reason. On July 22, 2008, Kavre DPO finally received the results of the DNA tests, which confirmed that the body was Maina's. This information was passed on to the public prosecutor and district court, but there have been no further developments since.

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<sup>51</sup> Forensic experts also exhumed several other bodies under the authority of the NHRC, but without police involvement, see below for more details.



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

In three cases, despite families or witnesses providing information to the police about where bodies are buried, police still have not exhumed the sites. In July 2006, villagers alleged five bodies had been buried in a certain location in Janakpur, Dhanusha District, around the time of the “disappearance” of student Sanjeev Kumar Karna, age 24, and several friends (including Cases 15 - 19). They alleged that on October 8, 2003, Sanjeev Kumar Karna was picnicking with friends when he and 10 others were arrested by a group of 25-30 joint security force personnel. Six were subsequently released, but Sanjeev and four friends remained missing. Sanjeev’s father reported the case to the NHRC.

Two years later in March 2006, Sanjeev’s father received correspondence from the NHRC

detailing the findings of their investigation. According to the NHRC letter, the army had denied their involvement in the arrest of Sanjeev and his friends but quoted the NA as having told the NHRC that the five young people had all been killed in “police action” on the day they “disappeared.” However, the police wrote in their letter to the NHRC that they handed over Sanjeev Kumar Karna and his friends to the military after their arrest. Relatives said that the police have not proceeded properly with investigations. The NA informed Amnesty International in late 2006 that an investigation into the five “disappearances” is still ongoing.<sup>52</sup>

Sanjeev’s father and his friends’ relatives filed FIRs with the Janakpur police on July 9, 2006. On the same day, the families also requested police exhume the site where they suspect the bodies were buried based on some items that were recovered from the site. The Dhanusha police demarcated the site of the alleged illegal burial place

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<sup>52</sup> Amnesty International, Nepal: Sanjiv Kumar Karna, Global Letter Writing Campaign 2006, ASA 31/025/2006, December 5, 2006, <http://www.amnesty.org/en/library/info/ASA31/025/2006/en>.

but so far have failed to proceed with organizing the exhumation. Said Sanjeev's father, Jai Kishor Lav:

I am still waiting for answers. If the police killed him then they have to show me evidence that he is dead. If he was killed in army action, then why was his dead body not handed over to the family? I will not believe he is dead till his body is exhumed and identified.<sup>53</sup>

## **Role of the Nepal Army**

As the institution in charge of the unified command, the army had a major role in nearly all 62 cases documented in this report. In only two cases did the families directly approach the army (Cases 5 and 6), a reflection of how much the public fears the army. Under the Army Act 1959, the army was legally accountable to the King as Commander in Chief rather than civilian authorities. On paper this has changed with the introduction of the Army Act 2006; though in practice the army has remained immune from civilian control.

The wider dynamics on security sector reform are shown clearly through the FIRs. The lack of army cooperation with police investigations reflects its refusal to accept the principle of accountability to civilian authorities. As stated above, staging killings to look like "armed encounters," threatening villagers to sign statements, and taking staged photographs were common practices for the army. Officials may have taken such measures to avoid even the remote eventuality of legal action by victims' families.

In exceptional circumstances, when under considerable pressure, the army has held a court of inquiry and a court martial. In relation to Maina Sunuwar's case (Case 31), after initial denials, following intense international and local pressure, the army established a Court of Inquiry which concluded by March 14, 2005.<sup>54</sup> OHCHR

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<sup>53</sup> Human Rights Watch interview with Jai Kishor Lav, Kathmandu, November 1, 2007.

<sup>54</sup> For more information on the case, see: "The torture and death in custody of Maina Sunuwar: Summary of concerns," United Nations Office of the High Commissioner for Human Rights, Nepal, December 2006, [http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006\\_12\\_01\\_HCR%20\\_Maina%20Sunuwar\\_E.pdf](http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006_12_01_HCR%20_Maina%20Sunuwar_E.pdf).



unofficially obtained a copy of the report of the Court of Inquiry which recounts the horrifying details of Maina Sunuwar's torture and death in custody, stating that, "it was indeed as a result of torture inflicted during the course of interrogation that the death of Maina Sunuwar occurred."<sup>55</sup> The inquiry report also concluded that the officers and soldiers involved in Maina's torture attempted to cover up the death.

A court martial in September 2005 ruled that Colonel Bobby Khatri, Captain Sunil Adhikari, and Captain Amit Pun—who all three were alleged to have been involved in the torture resulting in her death—were directly responsible for using improper interrogation techniques and not following proper procedures for the disposal of Sunuwar's body. The three officers received sentences of only six months in jail and temporary suspension of promotion. In fact, they served no term in prison as they were found to have served their sentences by being consigned to the barracks during the investigation. The officers were also ordered to pay fines of between NRs25,000 and 50,000 [US\$390 and 780] to the family.

As of August 2008, Maina's mother Devi Sunuwar had not formally been informed of the outcome of the army's court of inquiry and court martial, though she learned of the outcome via the media.

The army investigation and court martial was a mere formality. They were not even put in jail and in any case being [sentenced to] jail for six months for the torture and killing of a minor is not just punishment.<sup>56</sup>

The army intimidated several witnesses and human rights activists pursuing justice on behalf of Maina, but in November 2005, her family filed an FIR with Kavre District police naming the four army personnel responsible for her death. Though initially reluctant to register the case, the Kavre District Police finally did so but were repeatedly stalled in their investigations by the NA. The NA failed to respond to six written requests by the Kavre police to Army Headquarters and two letters to the Birendra Peacekeeping Training Centre seeking assistance to locate suspects and

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<sup>55</sup> Ibid.

<sup>56</sup> Human Rights Watch interview with Devi Sunuwar, Kathmandu, October 31, 2007.

produce them for questioning. In a clear example of defiance of the police investigation and use of military proceedings to block initiatives before civilian courts, Brigadier General B.A. Kumar Sharma wrote to the DPO in Kavre District on May 22, 2006 saying that since the court martial had rendered its verdict, “It is not lawful to initiate actions against the four officers.”<sup>57</sup> However, the argument of double jeopardy is weak given the officers were said to have been tried in relation to the offence of improper interrogation techniques and illegally disposing of human remains, rather than murder.

After Devi Sunuwar filed the FIR in November 2005, the investigations failed to make significant progress. Binod Silwal, Investigation Officer with the Kavre Police told Human Rights Watch:

We wrote many letters to army headquarters seeking permission to arrest and interrogate the four named officials, but we had no cooperation from the army. We have to go through the chain of command in the army. There is no legal provision for this, but this is the system which has developed between the two departments.<sup>58</sup>

Only after Devi Sunuwar approached the Supreme Court in September 2007 did the investigation progress (see below).

## **Role of Public Prosecutors**

Only three of the 49 FIRs (32, 45, 57-59 and 28 respectively) have made it to court as of August 2008. It is therefore difficult to analyze the role of the Attorney General’s Office in response to the FIRs, whose role it is to submit cases to court following police investigations submitted in reports.

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<sup>57</sup> “The torture and death in custody of Maina Sunuwar: Summary of concerns,” United Nations Office of the High Commissioner for Human Rights, Nepal, December 2006, [http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006\\_12\\_01\\_HCR%20\\_Maina%20Sunuwar\\_E.pdf](http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006_12_01_HCR%20_Maina%20Sunuwar_E.pdf).

<sup>58</sup> Human Rights Watch interview with Binod Silwal, investigating officer, Kavre District police station, October 29, 2007.

In many cases, police fail to send preliminary reports of their investigations to the public prosecutor, contrary to requirements in the State Cases Act.<sup>59</sup> Section 6 states that upon receipt of the report, “the Government Attorney shall give necessary direction to the investigating police officer.” The Act however is silent as to what needs to happen if the police do not provide their preliminary report. Public prosecutors have been very passive in the face of these provisions. To the knowledge of Advocacy Forum and Human Rights Watch, public prosecutors have not actively questioned the police when they do not receive preliminary reports.

By law, if the suspect has not been arrested and an FIR has been filed, a police report must be submitted to the Attorney General’s Office 15 days prior to the expiry of the statute of limitations for the offence concerned.<sup>60</sup> This lengthy time period explains to some extent why police are not submitting reports of their investigations to the public prosecutors. Since these crimes are continuing offences, the reporting obligation should not be linked to the statute of limitations.

In the case of Manoj Basnet, police passed the file to the public prosecutor and the case was brought to court only after considerable pressure from OHCHR. It seems the public prosecutor did not question the results of the police investigations, or tacitly cooperated with the police’s attempts to present the case in court as an accident. The prosecutor did not scrutinise the evidence and the facts that led to the charges presented in court. In the cases of three boys killed by the army in Palpa District (Cases 57-59), on the other hand, the public prosecutor directed the police to proceed with the investigation as a murder case rather than an accident.

If police delay investigations the only recourse for victim’s families is to file a writ to request the court to order the state authorities to act according to the law. In the Maina Sunuwar case, after a writ was filed in the Supreme Court, the Kavre police in January 2008 finally submitted the file of its investigations to the public prosecutor who filed murder charges in the Kavre District Court in early February.

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<sup>59</sup> State Cases Act, Section 6.

<sup>60</sup> State Cases Act, Section 17 (1).

## Role of the Forensic Profession

Despite considerable delays since the alleged offenses occurred, in some cases it may be possible, with the help of ballistic and other forensic evidence, to identify the cause of death and thus increase the likelihood of identifying possible perpetrators.

The forensic profession in Nepal has limited capacity. The only case to date where it is clear that scientists have exhumed the body as part of a criminal investigation by police is in the Maina Sunuwar case (Case 31). Progress in that case, as outlined above, has been very slow and relied on sending samples to be tested abroad.

In two other cases, police exhumed the body without any forensic assistance. In six further cases scientists exhumed bodies under the authority of the NHRC apparently only for humanitarian purposes, such as for the body to be returned to the family. For instance, in the case of Sarala Sapkota, a 15-year-old girl from Dhading District who had “disappeared” after arrest in July 2004 (Case 14), the NHRC exhumed her body in January 2006 on the basis of information they obtained during their investigations. The exhumation was carried out without any police presence. The NHRC is awaiting the results of DNA tests on the body; its investigations are continuing.

Bhakta Bahadur Sapkota, father of Sarala Sapkota, told Advocacy Forum:

I visited many places to knock on the door of state authorities for justice, however I haven't got justice yet. The skeleton of my daughter is still kept in the hospital. I am tired yet still visiting the authorities to get justice in my daughter's case but I am not sure when I will get justice.....<sup>61</sup>

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<sup>61</sup> Advocacy Forum interview with Bhakta Bahadur Sapkota, Kathmandu, January 4, 2007.

## Role of the Courts

In many countries, the involvement of local magistrates in the investigation of cases of suspicious death is common.<sup>62</sup> In Nepal, there is no involvement of district courts or other judicial officers at the time an alleged serious crime is discovered.

The role of the judiciary in relation to human rights abuses has been largely marginal. This is due in part to a lack of specific protection of the right to life in the Nepali Constitution, making it fruitless for relatives to argue in court that alleged extrajudicial executions are violations of their fundamental rights.

The Supreme Court has played a significant role in relation to cases of illegal detention and “disappearances” by ordering the relevant security agencies to produce prisoners in court in cases of *habeas corpus*. However, the army’s lack of cooperation with the court was and continues to be a major concern. Weak sanctions for perjury and contempt of court exacerbate the problem (see also *De Jure Impunity* chapter). Despite obvious and repeated lies and misinformation from soldiers and army officials in court, none has ever been prosecuted or otherwise disciplined by the courts for perjury.<sup>63</sup> This contributes to the sense among security forces that they are above the law. The court bears considerable responsibility for not setting stricter limits on state behavior during the period of the armed conflict.

Since the end of the armed conflict, the courts have been more active in defending human rights. On June 1, 2007, Nepal’s Supreme Court ruled on 83 *habeas corpus* writs, and ordered the government to immediately set up a commission of inquiry to investigate all allegations of enforced disappearances and to provide interim relief to the relatives of the victims. The court ordered that the commission of inquiry must comply with international human rights standards.

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<sup>62</sup> See, for instance, the coronor’s system in the United Kingdom and the magisterial inquiry system in India, Sri Lanka, and Pakistan.

<sup>63</sup> Amnesty International, “A Deepening Human Rights Crisis,” December 2002, AI Index: ASA 31/072/2002.

More recently, in the absence of any evidence of progress in police investigations, families of 22 victims have sought the assistance of the Supreme Court and Appellate Court in forcing the police to proceed with investigations by way of a writ.<sup>64</sup>

As of August 2008, the Supreme Court had given clear orders for murder charges to be brought in only two of six petitions for such writs filed with the court (those of Maina Sunuwar and Arjun Bahadur Lama). The other four cases remained under consideration. In Maina's case, in September 2007, the Supreme Court ordered the police to provide a report within three months on its investigations into her death, and also ordered the NA to make available the army's records on the case. The NA first submitted a file marking it confidential. Advocacy Forum, using provisions of the Right to Information Act, obtained a court order for the family of Maina Sunuwar to be given access to the army records. To date, only the judgement in the court martial of the four soldiers has been made available, not the full records. As a result of this court order, the police in February 2008 submitted the case to the public prosecutor and charges of murder were filed against the four suspects.

Arjun Bahadur Lama (Case 32), a member of a royalist organization, Rashtriya Ekta Parishad, living in Kavre District, was abducted by members of the CPN-M in April 2005. According to witnesses, the cadre marched him through various villages in Kavre District. In late June 2005, they took him to Buddhakani Village Development Committee (VDC), where he was allegedly killed. The CPN-M claimed that he was killed on the same day he was taken during a clash with security forces but other sources which subsequently saw Lama believe he was killed after the abduction. Both civilian authorities (the CDO) and the Nepal Police refused to register an FIR, and in a written statement police stated the grounds for refusal as insufficient evidence and that the case would fall under the jurisdiction of the TRC. The CPN-M also pressured the family: more than 100 Maoists came to DPO and threatened both the family and the police not to register the case. In response to a writ filed in the Supreme Court by his wife, the court on March 10, 2008, ordered the DPO and District Administration Office in Kavre to file a murder case against Maoist leader

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<sup>64</sup> Relatives of Pramod Narayan Mandal, Sanjeev Kumar Karna, Sarala Sapkota, Subhadra Chaulagain, Maina Sunuwar and Arjun Bahadur Lama sought orders in the Supreme Court against the district police officials and district public prosecutor's office after the police failed to investigate even after registering cases.

Agni Sapkota and five other Maoists.<sup>65</sup> After considerable delay, on August 11, 2008, the Kavre police finally registered the FIR. Human Rights Watch and Advocacy Forum are continuing to closely monitor progress in these cases.

The role of the Appellate Court in Biratnagar has been of serious concern. It has quashed petitions in relation to seven killings (Cases 37, 41-44, and 46-47), accepting police arguments that killings during the armed conflict will be the subject of investigations by the yet to be established TRC, and therefore police have no duty to investigate.

So far, in only one case has a district court passed a verdict. The Morang District Court acquitted Nardip Basnet, the APF officer brought to trial in relation to Manoj Basnet's death. Although the victim's father Govinda Basnet filed a petition with the Supreme Court to quash the investigation and order a re-investigation, the family has been under severe pressure to withdraw the petition, as already noted, and the case has been put on hold as a result.

## NHRC

The NHRC has not been able to play a major role in bringing perpetrators to justice. By law, it has a primarily investigative role, it has been weakened by political and executive pressure, and it lacks independent and guaranteed funding. The NHRC has been most seriously hampered in its work by the persistent and systematic refusal of the army to cooperate. The army has denied the NHRC access to its camps and rarely responded to correspondence. When army officers were summoned by the NHRC, they failed to appear. The army even lied in official correspondence with the Commission.<sup>66</sup> As a result, the NHRC has been unable to conclude many of its investigations.

Gauri Pradhan, a member of the NHRC told Human Rights Watch:

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<sup>65</sup> "File murder case against Agni Sapkota: SC," *Kantipur.com*, March 10, 2008, <http://www.kantipuronline.com/kolnews.php?nid=140395> (accessed May 6, 2008).

<sup>66</sup> Human Rights Watch, *Nepal – Between a Rock and a Hard Place*, October 2004, <http://www.hrw.org/reports/2004/nepal1004/nepal1004.pdf>.

While the NHRC has been upgraded and has powers vested in it by the Constitution, it is institutionally very weak. It lacks resources, training, and coordination.<sup>67</sup>

In all 62 cases documented here, complaints were also filed with the NHRC. In 17 cases, the NHRC completed its investigations and recommended that relevant authorities initiate investigations and prosecutions of alleged perpetrators and provide compensation to the families of the victims (among them Cases 1, 2, 27, 46). In none of the 17 cases did the government implement the NHRC's recommendations to investigate and prosecute, though in five cases the Home Ministry paid compensation. In all other cases, including the two cases involving killings by members of the CPN-M, the NHRC has not completed its investigations.

Bishwanath Parajuli (case 37), was arrested and killed by security forces in September 2004. It was claimed that he was a Maoist. Parajuli's family complained to the DPO and CDO in Morang District repeatedly after the incident, but the police did not register an FIR until September 2006. The NHRC, on May 16, 2005, recommended the government take action against the alleged perpetrators and provide NRs150,000 [US\$2,350] as compensation to the victims' family. To date, these recommendations have not been implemented. Rajendra Parajuli, Parajuli's brother, told Advocacy Forum:

We have been waiting for the day when we can see the perpetrators being punished. I can not even tell you how many times I went to different government bodies including the police. Even the decision of the NHRC is not observed.<sup>68</sup>

## Investigation Bodies

Only in a few cases have authorities established a separate investigation process parallel with the police investigation. Existing practices are for the government to either set up an investigative committee within the Home Ministry, a commission of

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<sup>67</sup> Human Rights Watch interview with Gauri Pradhan, NHRC member, Kathmandu, October 27, 2007.

<sup>68</sup> Advocacy Forum interview with Rajendra Parajuli, Kathmandu, March 29, 2007.



inquiry or a high-level commission of inquiry under the Commission of Inquiry Act. Parliament also has set up parliamentary probe committees under provisions in the Interim Constitution and its rules of procedure. Human Rights Watch and Advocacy Forum have not been able to establish whether there is any legal basis for the establishment of investigative committees within the Home Ministry.

Occasionally, the work of such committees has been helpful to the relatives. The Malego Committee for instance was instrumental in ultimately locating Hari Prasad Bolakhe. On October 12, 2004, the Committee reported that Hari was in police custody. Hari's father filed a complaint with the NHRC, which investigated the case and obtained information from witnesses that Hari had been killed and that his body was buried in a forest at Ganesthan, Kavre District. On July 6, 2006, the NHRC exhumed Hari's body together with the clothes and shoes he wore at the time of his arrest. Forensic experts concluded that Hari had died due to a "gunfire injury to the pelvis." Puspa Prasad Bolakhe, Hari's father, said he wanted justice:

I looked all over for my son. Both the police and army kept telling me they did not have him. It is clear he was illegally arrested by the police and deliberately shot by the army. But there will be no proper inquiry. All I want is to see his killers punished.<sup>69</sup>

In the rape and killing of Sapana Gurung on April 25, 2006, and killings of demonstrators protesting her murder the next day, a parliamentary Probe Committee was set up. The Committee reported in January 2008 and recommended action against 28 people including the CDO, superintendent of police, and the head of the army division deployed at the time, and for record amounts of compensation—up to NRs1 Million (US\$15,500)—to be given to the victims or their relatives.<sup>70</sup> Whether any of the Committee's or other investigative bodies' recommendations will be fully implemented remains to be seen.

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<sup>69</sup> Human Rights Watch interview with Puspa Prasad Bolakhe, Kathmandu, October 30, 2007.

<sup>70</sup> "House panel recommends action against 28 people over Belbari massacre," *Nepalnews*, January 12, 2008, <http://www.nepalnews.com/archive/2008/jan/jan12/news11.php> (accessed May 6, 2008).

## Compensation

Providing monetary compensation to victims of human rights abuses is a strong feature of the state response to grave abuses in Nepal.<sup>71</sup> As noted above, a parliamentary probe committee awarded record amounts of compensation—NRs1 Million (US\$15,500)—to the relatives of Sapana Gurung and the six killed during the subsequent demonstration against her killing. The NHRC has recommended NRs100,000 or NRs150,000 (US\$1,500 or 2,350) in cases where a person's right to life has been violated. The Home Ministry has a tariff and budget for the payment of compensation, but it appears the parliament is not bound to apply the same tariff. There is no overall policy for the granting of compensation, and the existing system is open to political and other manipulations.

Regardless of amounts recommended, actual payment of compensation is slow. For instance, as noted above, in only five out of 17 cases in which the NHRC had recommended compensation has the Home Ministry actually paid out the money to the families.

## Transitional Justice

Most politicians interviewed by Human Rights Watch maintained that achieving justice in relation to past abuses has to be balanced against progress in the peace process. One of them, Khim Lal Devkota, an MP from the CPN-M told Human Rights Watch:

Right now we are in a peace process. We have to be careful not to disrupt this. Any process of accountability has to first target abuses by the old state power based on the security sector.<sup>72</sup>

The Comprehensive Peace Agreement commits the governing parties to the creation of a TRC. The proposed TRC is sometimes cited by police and politicians as a reason not to proceed with investigations. Police did so in the case of Arjun Bahadur Lama

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<sup>71</sup> It is to be noted that while “compensation” is the term used, the more accurate term would be “*ex gratia* payment” as the money is paid as a result of an administrative decision, and not awarded by the courts.

<sup>72</sup> Human Rights Watch interview with Khim Lal Devkota, Kathmandu, October 29, 2007.

discussed above. Both the Chief District Officer and the Nepal Police had refused to register an FIR, and in a written statement police stated the grounds for refusal as insufficient evidence and that the case would fall under the jurisdiction of the TRC. The CPN-M also pressured the family: more than 100 Maoists came to DPO and threatened both the family and the police not to register the case. The district police in Kavre told Human Rights Watch they had not registered the case because it falls within the mandate of a TRC.<sup>73</sup>

The wife of Arjun Lama told Human Rights Watch and Advocacy Forum:

I went to the CDO and the district police office at least 20 times. Officials in both places took the application from me but did not register a complaint. I met the CPN-M leader Prachanda and asked him for the whereabouts of my husband. He asked me to give him two to three days. It's been two years.<sup>74</sup>

As already stated above, the Appellate Court in Biratnagar has endorsed police arguments that cases of killings during the conflict do not need to be investigated by police as they will fall under the jurisdiction of the TRC—without even knowing what the mandate of the TRC will be.

A draft TRC bill circulated in mid-2007 in fact threatens to deny justice to victims and their families since it would grant amnesties even for gross human rights abuses if the acts had a political motivation, the perpetrator makes an application indicating regret, or victims and perpetrators agree to a reconciliation process.

Such a mechanism could mean those named in the 49 FIRs described here could be immune from criminal prosecution for killings, torture, rape, and “disappearances.” As such, the draft bill did not meet international standards on the right to a remedy

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<sup>73</sup> Human Rights Watch interview with Binod Silawal, investigating officer, District Police Office, Kavre District, October 29, 2007.

<sup>74</sup> Human Rights Watch interview with Purnamaya Lama, Kathmandu, October 31, 2007.

and reparations for victims of gross violations of international human rights and humanitarian law.<sup>75</sup>

Following extensive criticism from civil society and the international community, the Peace and Reconstruction Ministry initiated a review of the TRC bill in late 2007. Experience with the draft bill shows that some people in Nepal are using the concept of reconciliation to prevent meaningful investigations into abuses committed both by the Maoists and the security forces during and after the 10-year conflict.

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<sup>75</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights, 2005, are based on international legal obligations, including those set out in many treaties to which Nepal is a party.

## **V. *De jure* Impunity**

*De jure* impunity exists where laws are inadequate, either because they do not criminalize conduct that should be criminalized or because they shield military personnel and civilian officials from prosecution. Both of these are problems in Nepal.

As a fledgling democracy in 1990, Nepal ratified all major international human rights treaties, including the Covenant on Civil and Political Rights and its first Optional Protocol, the Covenant on Economic, Social and Cultural Rights, the Convention against Torture, the Convention on the Rights of the Child, and the Convention for the Elimination of Discrimination against Women. Nepal's parliament also passed the 1990 Treaty Act stipulating that international human rights treaties ratified by Nepal are to be applied in Nepal as national law, and supersede national laws if national laws are inconsistent with them. While this sets a framework within which international human rights standards should be upheld, in practice this has not been the case. Despite the seemingly unambiguous language of the Treaty Act, due to the fact that the crimes listed in the treaties have not been clearly included in the constitution or in the criminal law, it has been impossible to enforce the treaty provisions in practice and prosecutors and courts have continued to treat the two bodies of law differently.

Among the major problems are that many of the human rights abuses detailed in the FIRs are not prohibited in the Interim Constitution, and that Nepali criminal law does not specify some of these abuses as distinct crimes. Such *lacunae* in the law signal that addressing such abuses is not a political priority, and strengthens the general apathy of the authorities when it comes to investigating and prosecuting such crimes.

### **Law Reform: The Need to Criminalize Enforced Disappearances and Torture**

Enforced disappearances are not a crime under Nepali law. The government tabled a bill in May 2007 before the Interim Parliament to create a criminal offence of enforced disappearances and amend the Civil Code. Although a positive initiative,

the bill required significant improvement to comply fully with international human rights standards. As it stood, the law would not apply to “disappearances” committed during the conflict, and the maximum penalty for the crime was to be five year’s imprisonment. In November 2007, Nepal's Interim Legislature-Parliament instructed the government to draft a law on enforced disappearances that is in line with the International Convention for the Protection of all Persons from Enforced Disappearances and a June 2007 Supreme Court judgment (see below). This law had not materialized at this writing.

There is no specific prohibition on enforced disappearances under the Interim Constitution. The Interim Constitution recognises that in the past, enforced disappearances have occurred, and makes it a state duty to “provide relief to affected families of victims on the basis of the report of the Investigation Commission constituted to investigate the cases of those who went missing during the course of the conflict.”

While the 1990 Constitution declared torture to be unconstitutional, it failed to specifically criminalize torture. Despite intense lobbying for many years, no law was ever put in place to make torture a crime. Instead, in 1996, a Torture Compensation Act was passed in Parliament giving victims of torture the right to seek compensation. The Act has numerous shortcomings as it provides victims of torture with a limited civil remedy, and includes a very short 35-day statute of limitation. Under the law, district courts can award nominal amounts of compensation and direct the authorities to take departmental action, but they cannot order authorities to initiate criminal investigations against the perpetrators.<sup>76</sup>

The Interim Constitution has provided that torture will be made a crime. Article 26 states: “(1) No person who is detained during investigation or for enquiry or for trial or for any other reason shall be subjected to physical or mental torture, nor shall be given any cruel, inhuman or degrading treatment. (2) Actions in pursuant to clause (1) shall be punishable by the law and any person so treated shall be compensated in accordance to the decision determined by law.”

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<sup>76</sup> Amnesty International, *Nepal: Make Torture a Crime*, AI Index: ASA 31/002/2001, March 1, 2001; Advocacy Forum, “Torture Continues: A Brief Report on the Practice of Torture in Nepal,” July 2007.

Throughout 2007, the government maintained that it was drafting a bill to criminalize torture but it did not share the draft with civil society actors. At the time of writing, no bill had been introduced to bring the constitutional provision into law.

## Weak Legal Framework for Investigations

### *State Cases Act*

Many *lacunae* in the State Cases Act of 1992 allow the police, public prosecutors, and other agencies to leave cases involving serious crimes in limbo for months and years, often using spurious justifications. The Act was introduced with the stated aim of setting out procedures for the investigation and prosecution of cases where a state authority is a party to a case filed. The Act fails to set out in detail the necessary steps to be taken by state authorities when security forces are implicated in a case of “suspicious” death. This is a pivotal shortcoming that is in part responsible for Nepal’s continuing failure to live up to its international obligations to ensure independent investigations in such cases.<sup>77</sup>

With no effective inquiry procedure under an independent authority, such as a legal or court officer, the bodies of victims can be disposed of quickly without a post-mortem examination. This combined with the other *lacunae* highlighted in our analysis in the preceding chapter of the state’s responses to the 49 FIRs have made the security forces feel they can execute people without any fear of punishment or prosecution. This further entrenches impunity.

In early February 2008, the attorney general called for amendments to the State Cases Act acknowledging there were many shortcomings in the existing criminal justice system.<sup>78</sup>

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<sup>77</sup> Principles 9 to 17 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions adopted by UN Economic and Social Council resolution 1989/65, May 24, 1989, [http://www.extrajudicialexecutions.org/law/transparency\\_in\\_armed\\_conflict\\_2006.html](http://www.extrajudicialexecutions.org/law/transparency_in_armed_conflict_2006.html).

<sup>78</sup> “Attorney General calls for change in procedural law to bring about swift justice,” *Nepalnews*, February 13, 2008, <http://www.nepalnews.com/archive/2008/feb/feb13/news17.php> (accessed May 6, 2008).

### *Local Administration Act*

The Local Administration Act of 1971 is amongst a number of laws<sup>79</sup> that permit police to use lethal force against violent demonstrators without sufficient safeguards.

Under the Local Administration Act, the CDO can direct the police to prevent any gatherings likely to result in a breach of public order.<sup>80</sup> If the police are unable to prevent such a gathering, the CDO or a subordinate officer must immediately go to the site and try to persuade the crowd to stop.<sup>81</sup> If the crowd does not stop, the police may use force, including batons (*lathi*), blank shots, teargas, and water canon, as the situation may require.<sup>82</sup> If peace still cannot be restored, the police may open fire after receiving a written order from the CDO and after warning the crowd that they will be fired upon if they do not disperse.<sup>83</sup>

If time does not permit the issuance of a written order, the CDO may issue an oral order, to be followed by a written order within 24 hours.<sup>84</sup> While there is a provision that the police may only shoot at persons below the knee when opening fire,<sup>85</sup> in reality these provisions are seldom observed. In countless cases, police in Nepal have opened fire on crowds without using the approach set out in international standards and without due warning or heeding provisions to shoot below the knee, as required under the Local Administration Act.<sup>86</sup>

During the April 2006 *Jana Andolan*, OHCHR Nepal documented many incidents where excessive force was used by security forces under the Local Administration Act. In the case of the killing of six demonstrators at Belbari, Morang District (Cases 49-54), the Parliamentary Probe Committee found that, “before opening fire the

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<sup>79</sup> Most notably, the Terrorism and Disruptive Activities Act and the ordinances by the same name which were in force during a large period of the armed conflict also do so.

<sup>80</sup> Section 6(1) (a) of the Local Administration Act.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Section 6 (1) (b) of the Local Administration Act.

<sup>84</sup> Section 6 (1) (d) of the Local Administration Act.

<sup>85</sup> Section 6 (1) (b) of the Local Administration Act.

<sup>86</sup> OHCHR-Nepal, “The April Protests. Democratic Rights and the Excessive Use of Force,” September 2006, [http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006\\_09\\_21\\_OHCHR-Nepal.Report%20on%20The%20April%20Protests.pdf](http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006_09_21_OHCHR-Nepal.Report%20on%20The%20April%20Protests.pdf).



security forces should make an announcement, first take other measures such as batons, tear gas, and firing into the air but in this case they have not used any of these alternatives and have shot the people.”<sup>87</sup> However, the Probe Committee did not recommend amendments to the Local Administration Act or to security forces’ practices on dealing with violent demonstrations.

It is to be noted that around the time the NA was deployed, a state of emergency was in force—between November 2001 and August 2002. Furthermore, the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) was promulgated. Its provisions were later adopted into law by the Parliament in 2002. After it lapsed and in the absence of Parliament, it was re-promulgated by royal decree in October 2004. TADO’s provisions fell far below international standards. It allowed “necessary force or weapon” to be used in a variety of circumstances, including if “any person or group with or without weapon hinder security force(s) while obeying their duty” (Section 5 (j)).

Neither the Local Administration Act, TADO, nor any other law in Nepal sets out limitations on the use of force in contexts other than demonstrations. There are no legal requirements for any investigation of killings during alleged “encounters”—whether real or fake. At a minimum, the normal process of filing FIRs and the police initiating investigations as set out in the State Cases Act should apply, but this is not happening. While there is no actual evidence, many Nepalis believe that at the time the army was first called out to address the insurgency in 2001, the government and army agreed that incidents involving the use of lethal force by the security forces would not be subject to normal criminal investigations—however flawed they tend to be.<sup>88</sup>

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<sup>87</sup> Report of Parliamentary Probe Committee, copy on file at Human Rights Watch (translation commissioned by Human Rights Watch).

<sup>88</sup> Advocacy Forum and other human rights defenders interview with Prime Minister Giriji Prasad Koirala, Kathmandu, March 2007.

In a significant ruling on May 12, 2008, the Supreme Court ordered the government to enact a comprehensive law to address human rights violations resulting from excessive use of force, including adequate compensation provisions.<sup>89</sup>

### *Police Act*

The Police Act of 1955 provides immunity for CDOs or for any police personnel, “for action taken...in good faith while discharging...duties.”<sup>90</sup> This undermines meaningful accountability and instead entrenches impunity.

Chapter 6 of the Police Act contains a long list of crimes for which police personnel may be disciplined. There are no provisions which establish individual criminal liability for extrajudicial executions, “disappearances,” arbitrary detention, torture, or ill-treatment. The only provision that could be construed as introducing responsibility for human rights abuses is section 34(n), which makes a police official liable for up to five years of imprisonment and up to one year suspension of salary if, “he unjustly harasses any person through arrogance or intimidation or causes loss or damage to the property of any person.”<sup>91</sup> This provision lacks specificity, and fails to ensure adequate accountability for law enforcement personnel in the discharge of their duties.

The police department has taken disciplinary action against some policemen against whom complaints of human rights abuses were made, but the punishments imposed have been minimal.<sup>92</sup> The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has indicated that the provisions of the Torture Compensation Act and the Police Act are so grossly inadequate that any preventive or deterrent effect that may have been envisaged is not being realized.<sup>93</sup>

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<sup>89</sup> Kantipuronline, “SC to govt: Enact law against excessive force,” May 12, 2008, <http://www.kantipuronline.com/kolnews.php?&nid=146782>.

<sup>90</sup> *Police Act*, Section 37.

<sup>91</sup> *Police Act* 1955, section 34(n).

<sup>92</sup> Amnesty International, *Nepal: A Spiralling Human Rights Crisis*, April 2002.

<sup>93</sup> Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Nepal, E/CN.4/2006/6/Add.5, January 9, 2006.

## *Army Act*

Provisions in the Army Act of 1959 (in force at the time of all human rights abuses in the 49 FIRs) and the new Army Act which came into force in September 2006 are also inadequate. A history of royal, rather than civilian, control over the army has meant the absence of judicial scrutiny over the Nepal Army, even now.

The 1959 Army Act had a provision requiring a court of inquiry board and a court martial for any violations of the Act.<sup>94</sup> In principle, this should have included making soldiers accountable for human rights abuses. While some cases were tried before military tribunals, these tended to be cases where there was widespread public outcry such as the killings at Doramba, Ramechhap District (see above), and the torture, disappearance, and death in custody of Maina Sunuwar (Case 32). No such cases were brought before regular civilian courts. During those few cases that proceeded before military courts, trials were conducted without participation of the families of the victims.

There are no provisions in the 1959 Act or any other law that stipulate the situations in which the army is obliged to release full and complete details of court-martial proceedings and any judgments, including if a FIR was filed and if police commenced criminal investigations. The army has manipulated provisions calling for army inquiries and courts martial in order to avoid accountability before civilian courts. It has obstructed police investigations into alleged extrajudicial executions and other abuses. In Maina Sunuwar's case, the army's refusal to share results of the court martial with the police and her family, despite a court directive, only strengthened the impression that the NA is above the law.

The December 2004 Working Group on Enforced or Involuntary Disappearances (WGEID) report on its visit to Nepal called for amendments to the Army Act to provide that security forces personnel accused of the "disappearance," murder, or rape of civilians be tried only in civilian courts.<sup>95</sup> Rather than implementing this recommendation, the new Army Act of 2006 has put many perpetrators of torture and

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<sup>94</sup> Army Act, 1959, Sections 97, 98 and 107.

<sup>95</sup> Report of the Working Group on Enforced or Involuntary Disappearances on its visit to Nepal, E/CN.4/2005/65/Add.1.

enforced disappearances outside the ambit of any punishment. While section 62 of the 2006 Army Act provides that a special committee will be formed to investigate cases of corruption, theft, torture, and “disappearances” and that any prosecution will take place before a Special Court Martial (consisting of a Court of Appeal judge, the Secretary of the Ministry of Defence and the Judge Advocate-General of the NA), section 22 provides that such actions shall not be considered an offence when committed “in good faith in the course of discharging duties.” The punishment for committing these offences is not specified in the 2006 Army Act.

### *Public Security Act*

The Public Security Act of 1989 used to hold thousands of suspected members and sympathizers of the CPN-M and members of mainstream political parties in preventive detention in the lead-up to the *Jana Andolan* of April 2006. Section 22 of the Act (like the same section in the Army Act) provides immunity for any acts committed by state officials in good faith during the course of duty.

The Act does have a provision which allows people who were detained illegally to claim compensation through the courts. However, this provision has rarely been used.

### *Commission of Inquiry Act*

The November 2006 Comprehensive Peace Agreement (CPA) made a commitment to prepare and publicize, within 60 days, details of the cases of “disappeared” persons or those killed in the conflict and inform the family members concerned. Though it was not specified clearly, it seemed likely that this investigation of past abuses such as “disappearances” would be done through the establishment of a high-level commission of inquiry under the Commission of Inquiry Act of 1969.

While this Act provides the most appropriate framework for such investigations, it nevertheless has many shortcomings and in several important respects fails to meet internationally established criteria for such commissions of inquiry.<sup>96</sup> For example,

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<sup>96</sup> OHCHR-Nepal, “Comments and Recommendations on Draft Truth and Reconciliation Bill,” August 2007, [http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/AUG2007/Comments%20on%20draft%20Truth%20and%20Reconciliation%20Bill\\_03\\_09\\_07.doc.pdf](http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/AUG2007/Comments%20on%20draft%20Truth%20and%20Reconciliation%20Bill_03_09_07.doc.pdf).

the Act does not set out any requirements for the competence (in terms of human rights expertise), independence, or impartiality of the members of the commissions of inquiry, and it does not make special provision for the protection of victims and witnesses.

In its landmark judgement of June 2007 (see above), the Supreme Court ordered that a commission of inquiry to investigate all disappearances should be established and that its terms of reference must comply with international human rights standards. The court also ordered the government to provide interim relief to the families of the victims of the “disappeared,” and enact legislation that would criminalise enforced disappearances and take into account the new International Convention for the Protection of all Persons from Enforced Disappearance.<sup>97</sup> The decision was a significant step forward in recognizing the rights of victims of “disappearances” and their families to truth, justice, and reparations but has not been implemented by the government so far except for the disbursement of interim relief to the relatives.

The Supreme Court order of June 1, 2007 states that the existing legal framework related to commissions of inquiry is inadequate to address the cases of “disappearances” that have been systematically practiced during the armed conflict in Nepal. The order instructs the government to introduce new legislation to ensure the establishment of a, “credible, competent, impartial and fully independent commission.”<sup>98</sup> However, rather than amend the Commission of Inquiry Act, the government proceeded swiftly and appointed the members of the Disappearances Commission under the existing deficient Act. Amid widespread protest from civil society, the commissioners did not start their work. Later in the year, the government abandoned the commission and initiated another process to redraft the Commission of Inquiry Act.

As of mid-January 2008, when the Interim Legislature-Parliament was disbanded, no new law had materialized. This was despite a further commitment in the 23-point

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<sup>97</sup> Human Rights Watch, *Nepal – Supreme Court Orders Action on “Disappearances,” Government Should Take Immediate Steps to End Impunity*, June 15, 2007, <http://hrw.org/english/docs/2007/06/15/nepal16194.htm>.

<sup>98</sup> International Commission of Jurists, ‘*Nepal: ICJ urges Government to ensure “High level Commission of Inquiry on Disappeared Citizens” meets international standards and complies with Supreme Court order*,’ July 16, 2007, [http://www.icj.org/news.php3?id\\_article=4194&lang=en](http://www.icj.org/news.php3?id_article=4194&lang=en) (accessed May 6, 2008).

agreement of December 23, 2007, to set up a commission within one month—without specifying again whether this would be under the old Commission of Inquiry Act or after the Act was amended.

### *Muluki Ain (National Code)*

An additional deficiency in existing law is that judges lack sufficient power to ensure that security forces and other state organs cooperate fully with the courts. A central difficulty that repeatedly has manifested itself during *habeas corpus* cases is that the Nepalese law on perjury and contempt of court is defective. Although “witnesses” can be liable for perjury under Section 169 of the Muluki Ain, government officials when giving evidence are not obliged to provide the information obtained in their official capacity as per Section 44 of Evidence Act, 1974. Courts have long interpreted these provisions to exclude government officials from provisions applicable to witnesses.

The lack of access to courts for people in remote areas is another factor which has contributed to the climate of impunity. In particular, the requirement that habeas corpus petitions can only be filed at Appellate Court or Supreme Court level has meant that relatives have to often travel for days before they can lodge a petition. This is particularly relevant in cases of “disappearances” and a change in these provisions to allow district courts to hear habeas corpus writs would increase levels of accountability of the security forces.

## VI. Recommendations

### To the Government of Nepal

- Vigorously investigate and prosecute all members of the security forces implicated in the 49 FIRs highlighted in this report and any other cases of grave human rights violations, and issue clear instructions to the Nepal Police to proceed immediately with investigations.
- Send a strong message to the security forces that the perpetrators of grave human rights violations will be held to account and that all members of the security forces must fully cooperate with investigations. Those who fail to do so should face appropriate sanctions such as suspension or dismissal.
- Suspend all security forces personnel named in the 49 FIRs, or in other cases, against whom there is *prima facie* evidence of criminal activity until the investigations and any prosecutions are complete.
- Reform the criminal justice system, including by reviewing the role of the Nepal Police and Attorney General's Office to improve their effectiveness in investigations of serious crimes.
- Enact legislation specifically criminalizing enforced disappearances and torture.
- Amend the Army Act to ensure that security forces personnel accused of enforced disappearances and torture of civilians can be tried in civilian courts.
- Amend the Local Administration Act and the State Cases Act to ensure, respectively, the prevention and proper investigation of alleged extrajudicial executions.
- Amend the Police Act, Army Act, and Public Security Act to remove all provisions that grant security forces or government official's immunity from prosecution for criminal acts.
- Establish an independent, external oversight body for the Nepal Police.
- Strengthen the NHRC by giving it the necessary powers to carry out credible investigations, including the power to require the attendance of witnesses and the production of evidence. The government should ensure that all NHRC recommendations are speedily implemented by relevant state authorities.

The NHRC should be given clear powers to refer cases for prosecution and to seek legal redress against unlawful acts by state authorities.

- Make public all reports of previous commissions of inquiry and implement their recommendations fully.
- Immediately sign and ratify the Statute of the International Criminal Court, the Convention for the Protection of All Persons from Enforced Disappearances, and the Optional Protocol to the Convention against Torture.
- Invite the Special Rapporteur on extrajudicial, summary, and arbitrary executions and the Working Group on Enforced or Involuntary Disappearances to visit Nepal.
- Set up a TRC and commission of inquiry into disappearances which are fully in accordance with the standards used by international TRCs and commissions of inquiry. This is in line with the June 2007 Supreme Court judgment ordering the government to set up a commission of inquiry into disappearances in line with international standards. This should happen with full and adequate consultation with all stakeholders, including civil society and victims and relatives of victims. No amnesty should be granted for serious international crimes, including crimes against humanity, war crimes and torture.
- Amend section 169 of the Muluki Ain (national code) to ensure state officials, including members of the security forces, can be charged for perjury and contempt of court.
- Ensure that habeas corpus petitions can be heard before district courts.
- Legislate for, or otherwise set up, an effective witness and victim protection scheme and ensure commensurate penalties for anyone who intimidates witnesses and victims.
- Review existing compensation schemes for victims of crime and human rights violations and develop a fair and equitable scheme applicable across the board.
- Ensure an effective system of vetting is in place for any members of the Nepali security forces who are proposed for promotion and/or for overseas UN peacekeeping duties, or specialized training abroad, to ensure that anyone under investigation for grave human rights violations is banned from travelling abroad.



## **To the Constituent Assembly**

In drafting the new constitution, the Constituent Assembly should:

- Include a clear guarantee against violations of the right to life.
- Ensure that acts of enforced disappearances and torture are prohibited and punishable by law with appropriate penalties.

## **To the Army**

- Fully cooperate with the police in its investigations into past human rights violations, including by complying with all police requests for access to suspects and relevant documentation.
- All reports of the courts of inquiry and courts martial should be made available to police and victims' families.

## **To the Police**

- Sanction officers who do not proceed with investigations.
- Set up a special unit of senior level investigators, under the oversight of the Attorney General's Office, to investigate all cases against the NA, in addition to the creation of an independent, oversight body.

## **To the CPN-M**

- Fully cooperate with the police in its investigations into past human rights abuses and violations of international humanitarian law, including by complying with police requests for access to suspects and relevant documentation.
- Make accountability for crimes committed during the conflict a priority in the new government.

## **To India, China, USA, United Kingdom, European Union, Japan and Other Influential International Actors**

- Continue to support the work of OHCHR-Nepal and provide adequate funding to ensure the Office can support the government's work to bring an end to impunity and reform the criminal justice system.

- Promote security sector reform, including the establishment of effective oversight and accountability mechanisms for the security forces and vetting procedures.
- Fund a workable witness protection scheme.
- Fund the strengthening of forensic expertise in the Nepal police by increasing police capacity to investigate crime scenes, collect and analyze DNA samples, and ballistics examination.
- Make donor funds contingent on transitional justice being provided and no amnesties for past crimes being granted.
- Ensure an effective system of vetting is in place for any members of the Nepali security forces proposed for overseas UN peacekeeping duties, or specialized training abroad, to ensure that anyone under investigation for grave human rights violations is banned from traveling abroad.

## **VII. Acknowledgements**

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## Appendix: 62 Pending Cases of Human Rights Violations by District

This appendix lists 62 cases of individuals who have suffered grave human rights violations, in relation to which 49 First Information Reports (FIRs) are pending. They are organized according to district in alphabetical order. Under each district, the cases are listed in chronological order.

In each case, the “persons to be questioned” names persons known who were in positions of command at the relevant police station or army camp, and therefore who should be interviewed as part of any investigation into the serious violations that are alleged to have taken place. In some cases, witnesses named additional persons they saw who they believe played a role in the incident. The position of security force personnel, e.g., commander, refers to the position held at the time of the incident. This list is not exclusive.

### Baglung District

#### *Case 1:*

**Name:** Raju B.K.  
**Date of Incident:** March 1, 2002  
**Age:** 29  
**Address:** Baglung Municipality-10, Baglung District  
**Nature of Crime:** Extrajudicial killing

#### **Persons to be Questioned:**

1. Kalidal Battalion, Baglung barracks;
2. Major Chandra Bahadur Pun, commander of Kalidal Battalion, Baglung barracks;
3. Other soldiers of Kalidal Battalion deployed on the spot.

**Summary of Testimony from FIR:** On March 1, 2002, a group of eight or nine armed and uniformed soldiers arrested Raju B.K. at his father's house in Baglung Municipality-11. They did not produce an arrest warrant but stated they were

arresting him on suspicion of being a leader of the Maoists. Following his arrest, Raju's family repeatedly visited the Baglung barracks, the only barracks in the area, asking if Raju was there. Family members were denied access to the commander of the military facility. On their visit to the barracks on March 2, army personnel at the entrance told them that Raju was not there. They threatened Raju's younger brother Arjun, and told him not to visit the barracks again. When the family, including Raju's mother, visited the barracks on March 3, the army personnel at the gate told them that Raju was detained there, that an investigation was in progress, and that he was safe.

At around 7:30 a.m. on March 4, an unidentified soldier dressed in uniform visited Raju's house, and asked the family to go to the District Police Office (DPO) in Baglung to see Raju. When the family visited the DPO that day, police told them that soldiers had killed Raju when he had tried to escape. Raju's father was asked to sign a document, the content of which he was not allowed to read. A police officer escorted the father to Baglung hospital where Raju's dead body was being kept. Raju had been shot twice on the left side of his chest and had sustained injuries on his neck and forehead; blood had clotted around his mouth. The family collected the body from the hospital and performed the last rituals under heavy army and police presence.

The army pressured the family to cremate the body as quickly as possible. Raju's father complained about the incident, and sought compensation. He went to the DPO and the Chief District Officer (CDO) in Baglung, the Office of the Prime Minister, and the king at various dates immediately following the incident. However, there was no investigation or inquiry into the event. The family also reported the case to the NHRC in mid-March 2007 immediately after registering the complaint with the police. As of August 2008, the NHRC investigations had not been completed.

**Official Action:** An FIR was filed at the Baglung DPO on March 18, 2007. As of August 2008, the police had failed to make any progress in the case. Advocacy Forum was informed that a post-mortem had been carried out in Baglung Hospital but despite repeated requests, the family was denied access to the report.

*Case 2 and 3:*

**Names:** Ganga Gauchan and Pahalbir BK alias “Pahal Singh”  
**Date of Incident:** July 11, 2004  
**Age:** 32 and 29, respectively  
**Address:** Tara VDC-9, Baglung District  
**Nature of Crime:** Extrajudicial killing

**Persons to be Questioned:**

1. Khadgadal Battalion, Baglung;
2. Major Angshi Bista, commander of Khadgadal Battalion.

**Summary of Testimony from FIR:** On July 11, 2004, Ganga, who was a carpenter by profession, had gone to visit his friend, Pahal Singh, at Tara VDC-5 in Sagukot. According to his family, Ganga was planning to go to Dubai for work and had visited Pahal to borrow money. According to detailed statements from four eyewitnesses, a group of soldiers from Khadgadal Barracks arrived at a shop where Ganga and Pahal were chatting. According to statements from local residents, the soldiers were under the command of Major Angshi Bista. The soldiers asked them for information concerning Maoists. When the two men denied having any information, the soldiers accused them of hiding Maoists and started beating them. After some time, the soldiers dragged both the men 25 meters away from the shop and shot them. Witnesses said that the men were killed at around 3:30 p.m.

Gauchan’s relatives refused to remove the body, and they demanded that the government start an investigation. However, the security forces threatened the families and forced them to dispose of the bodies immediately. Neither man had any known political affiliations.

On August 28, 2004, a delegation of local human rights organizations, including a representative of Advocacy Forum, interviewed witnesses and inspected the scene of the incident and concluded that the army had been involved. On August 31, 2004, family members of both men complained to the District Administration Office. They also made a complaint to the police about the incident, and demanded that an investigation be initiated. Neither of these institutions started an investigation. On

September 13, 2004, 40-50 villagers dug up Ganga and Pahal's bodies and took them 400 meters away from the scene of the incident and gave them a burial according to local rites.

**Official Action:** Two FIRs were filed on February 15, 2007. As of August 2008 the authorities, including the CDO, had not taken any further action.

*Case 4:*

**Name:** Dilli Prasad Sapkota  
**Date of Incident:** February 8, 2005  
**Age:** 35  
**Address:** Baglung Municipality-2, Hadepakha, Baglung District  
**Nature of Crime:** Extrajudicial killing (after torture)

**Persons to be Questioned:**

1. Major Shiva Poudel, commander of Khadgadal Battalion, Baglung Barracks;
2. Police inspector Binod Ghimire of DPO, Baglung;
3. Around 25 - 30 other soldiers from Khadgadal Battalion, Baglung Barracks.

**Summary of Testimony from FIR:** On the morning of February 8, 2005, a group of 50-60 security personnel arrested Dilli Prasad Sapkota at Danbisaula, Pala VDC-9 in Baglung District. The security personnel were under the command of Major Shiva Poudel of Khadgadal Battalion, and police inspector Binod Ghimire from the DPO in Baglung. Dilli Prasad was the head of the Maoist-affiliated Baglung Municipality "People's Government" and also held various district-level portfolios in the CPN-M. According to three eye-witnesses, after Dilli Prasad's arrest, the men tied him to a tree, tortured him severely, and then shot him dead at around 3 p.m. the same day. His body was taken for a post-mortem examination at Baglung District Hospital the next day. The body was then handed over to the family who held his funeral later that day.

Dilli Prasad's family members made several complaints to the DPO in Baglung and to the Khadgadal Barracks, demanding action against the suspects. Instead of registering their complaint, the security forces threatened to kill the family if they

persisted with their demands. On August 15, 2005, Dilli Prasad's wife registered an application with the NHRC. On June 11, 2006, the family received information from the NHRC that an investigation was underway. The NHRC has yet to decide on the case.

**Official Action:** The family visited the DPO in Baglung to register a FIR on July 21, 2006. While police officers at the DPO gave assurances that they would register the case, as of August 2008, the FIR had not been registered.

## **Banke District**

### *Case 5 and 6:*

**Names:** Dal Bahadur Thapa and  
Parbati Thapa  
**Date of Incident:** September 10, 2002  
**Age:** Both aged 33  
**Address:** Rajhena VDC-2,  
Madanchowk,  
Banke District  
**Nature of Crime:** Extrajudicial killing



Bhumisara Thapa, mother of Dal Bahadur Thapa. © 2007 Nick Hogg

### **Persons to be Questioned:**

1. Major Ajit Kumar Thapa of Bhimkali Company, Chisapani Barracks, Banke;
2. Captain Ramesh Swar of Bhimkali Company, Chisapani Barracks, Banke;
3. Commander of Bageshwori Battalion of APF, Samshergunj, Banke;
4. Commander of Bhimkali Battalion.

**Summary of Testimony from FIR:** At around 8:40 p.m. on September 10, 2002, Dal Bahadur's family was woken by the sound of gunshots. The firing on their house lasted 15 minutes and wounded Dal, his wife Parbati, and their 10-month-old daughter Deepa. As Dal's mother prepared to take the wounded family members to the hospital, they saw 50-60 security forces approaching the house with flashlights.



The security personnel forced the uninjured members of the family out of the house, and slapped and punched the victim's younger sister. According to Dal's mother, the men went into the house and stole a camera, some jewellery, and NRs11,000 in cash from one of the cupboards. They also planted bombs in the house. Dal's family members allege that the security forces got perturbed at the sight of the wounded bodies and allege that one security official, speaking on his walkie-talkie, claimed that, "We had a clash with terrorists in Nauwasta. No casualties from our side, but two of them were killed."

At 8 a.m. the following day, 12-13 armed security men arrived at Dal's house. According to the family, they collected the bombs that they had planted in the house the previous day. Following this incident the family heard an announcement on Radio Nepal that claimed two terrorists had been killed in a shooting in Nauwasta area, and that some home-made bombs, a video camera, and NRs11,000 had been seized. Dal's mother claimed that security personnel threatened her when she went to the Bhimkali Battalion and Armed Police Office at Samshergunj to submit a complaint. Staff at the District Administration Office and DPO in Banke made similar threats to her. Dal's mother finally gave a verbal complaint since the officials refused to register a written complaint.

**Official Action:** The police initially refused to file a FIR when the family visited the Banke DPO on April 30, 2007. The victim's mother sought a writ in court to order the DPO to register the complaint. On July 5, 2007, the Appeal Court of Banke ordered DPO Banke to register the FIR. The FIR was finally registered on July 15, 2007, at Kohalpur Area Police Office, Banke District. After considerable pressure from Advocacy Forum and OHCHR, the Kohalpur Area Police Office took statements from two witnesses in May 2008. On May 5, 2008, the Kohalpur Area Police Office wrote to the Bageshwori Battalion of APF, Samshergunj, Banke District, and Bhimkali Company, Banke District, to identify and produce suspects to the police. A similar letter was written again on August 13, 2007. However, as of August 2008, these authorities had not responded.

*Case 7 and 8:*

**Name:** Dhaniram Chaudhari and Jorilal Chaudhari  
**Date of Incident:** September 29, 2004  
**Age:** 33 and 30, respectively  
**Address:** Baijapur Village Development Committee-2, Belapur, Banke District  
**Nature of Crime:** Extrajudicial killing

**Persons to be Questioned:**

1. Head of the security base camp, Kusum, Banke;
2. Police Inspector Arjun Dharel, deployed at the Camp;
3. Head of Bageshwari Battalion of APF, Shamshergunj, Banke;
4. Security personnel involved in the firing whose family name is “Sardar”;
5. Commander of the security squad.

**Summary of Testimony from FIR:** On September 29, 2004, at around 12:50 p.m., some 200 security personnel of the APF (deployed from Bageshwori Gan and APF Base Camp of Kusum, Banke) surrounded the Premnagar village of Khaskusma VDC ward no. 4, and started firing indiscriminately in the village for half an hour. The security personnel were following Maoists in the locality, and started searching and arresting local people. They produced no arrest warrant for any of the arrests made. During the search, around 1 p.m., they arrested two brothers, Dhaniram Tharu and Jorilal Tharu, who were working in the field of their landlord Dilaram Dangi. The security personnel started questioning the two men, and then shot them dead. According to an eye-witness, when the security forces were shooting, one of the security personnel called out to his colleague by the name of “Sardar.” According to eye-witnesses, at the end of the search the security personnel carried five corpses, including those of Dhaniram and Jorilal Chaudhari, to a shed located about 500 meters from the village along the Nepalgunj-Butwal highway, where the base camp is located.

When the wives of the two men, along with some other villagers, went to collect their husband’s bodies from the army base camp at Kusum, security personnel threatened them and sent them away. The women said they saw at the camp seven corpses

including those of their husbands and three women. Soldiers refused to hand over the dead bodies to the families. On various dates after the incident, the wives visited the security base camp at Kusum and the APF Battalion at Bageshwari to complain about the incident. Security personnel threatened them and told them to stop visiting. The two women also visited the Banke DPO and CDO on various dates to complain about the incident, but staff ignored them. The NHRC is investigating into the case on its own initiative. As of August 2008, the NHRC's investigations had not concluded.

**Official Action:** On October 5, 2007, the victims' families, accompanied by Advocacy Forum lawyers and OHCHR-Nepal representatives, approached the Banke DPO to register an FIR. The police superintendent, Uttam Karki, refused to register the FIR stating that such an incident would be investigated by the TRC, not by the police. After several visits by the families, the superintendent claimed that he needed to discuss the incident with other government agencies. On October 29, 2007, the Kohalpur Area Police Office in Banke finally registered the FIR.

On May 5, 2008, after considerable pressure from Advocacy Forum and OHCHR, the Kohalpur Area police office wrote to both Kusum camp officials and Bageshwari APF Battalion asking them to identify and produce the witnesses to the incident to assist the investigation. As of August 2008, these authorities had not responded.

## **Bardiya District**

### *Case 9:*

**Name:** Keshar Bahadur Basnet  
**Date of Incident:** March 11, 2002  
**Age:** 29  
**Address:** Neulapur VDC-4, Bardiya District  
**Nature of Crime:** Enforced disappearance and extrajudicial killing

### **Persons to be Questioned:**

1. Major Lawa Rayamajhi, commander of Barakhadal Battalion of Thakurdhwara Army Barracks;
2. NA soldiers and security personnel deployed on the spot.

**Summary of Testimony from FIR:** Around 4 p.m. on March 11, 2002, NA soldiers arrested Keshar Bahadur Basnet, an accountant at a local health center, at his office located in Bhurigaun, Banke District. According to Keshar's elder brother, Dip Bahadur Basnet, and others who witnessed his arrest, Keshar was taken to the Thakurdhwara Army Barracks in an army vehicle. These witnesses told Advocacy Forum that Keshar soldiers beat Keshar, including on his nose, mouth, and legs with pieces of wood at the time of his arrest. The next day, several army personnel, including Major Lawa Rayamajhi, came to the health center where Dip also worked and assured him that his brother would be released soon. Keshar's family went to the Thakurdhwara Barracks several times after the incident. Security officials acknowledged that Keshar had been detained there, but the family was not allowed to see him.

A detainee who was imprisoned in Gulariya Barracks reported to Keshar's family that Keshar and another person were brought to the barracks from Thakurdwara Army Barracks on April 7, 2002. At around 8 a.m. on April 16, 2002, a group of seven or eight army personnel came to the barracks, loaded Keshar into a vehicle, and took him away. Keshar has not been seen since.

The Neupane Committee in the Home Ministry reported that, "Keshar was killed in a clash between security forces and the Maoists which occurred in a garden nursery area of Manau VDC on April 11, 2002." The government has not provided the family with any further information regarding Keshar's body.

**Official Action:** On February 14, 2007, the family presented a FIR to the Bardiya CDO in the presence of Advocacy Forum lawyers and OHCHR-Nepal representatives. Earlier that day, the DPO had refused to file the FIR. Following an order by the CDO to register the FIR, the DPO did so. On March 7, 2007, the DPO wrote to the Thakurdwara Barracks requesting that they identify the suspects, and produce them before the DPO. The Thakurdwara Barracks responded on March 24, 2007, stating that the Barakhdal Battalion has been transferred to Kailali district. On August 5, 2007, the DPO wrote to Barakhdal Battalion asking whether soldiers deployed from Barakhdal had arrested Keshar Bahadur Basnet. Responding to the DPO, Barakhdal Battalion stated on November 9, 2007 that the battalion has no record of the arrest

of Keshar Basnet as documents relating to Maoist activity during the conflict are no longer in the battalion's possession and because Lav Rayamajhi, the head of the battalion is out of country. The DPO has not taken any further steps since.

*Case 10:*

**Name:** Bhauna Tharu (Bhauna Chaudhary, according to citizenship card)

**Date of Incident:** May 30, 2002

**Age:** 21

**Address:** Neulapur Village Development Committee-2, Sujanpur, Bardiya District.

**Nature of Crime:** Extrajudicial killing



Purna Bahadur Chaudhary holds a photo of his son, Bhauna Chaudhary. © 2007 Nick Hogg

**Person to be Questioned:**

Parasu Kumal, Nepal Army, who was deployed at the Ranaser Battalion, Thakurdwara Army Barracks, Bardiya District.

**Summary of Testimony from FIR:** At 1:15 p.m. on May 30, 2002, Bhauna Tharu was killed at his house in Sujanpur village, Neulapur VDC-4 in the Bardiya District. A group of soldiers had arrived in the locality at around 1 p.m, after chasing a suspected Maoist. According to witnesses, who were mostly Bhauna's family members, two of the soldiers entered Bhauna's house and shot him dead. The family was able to identify the suspects as being army personnel from Thakurdwara Army Barracks in Bardiya District. They recognized one of them as Parasu Kumal, whose family lived in the village. They were not able to obtain the other soldier's name. The family cremated Bhauna's body the following day at a nearby river. When Bhauna's father went to the District Administration Office to lodge a complaint on June 13, 2002, the CDO rejected it claiming that Bhauna "would not have been killed by the soldiers had he not been a Maoist." The family claims that Bhauna was not a Maoist.

A month after the incident, two men, dressed in civilian clothes, approached the victim's father and asked him to sign documents confirming that his son was a Maoist. In return they offered him NRs10,000. Bhauna's father refused the money but did not lodge a complaint with the Takurdwara Army Barracks due to fear of reprisals from the army. Bhauna's father registered a complaint with the NHRC's regional office and with the ICRC's regional office in Nepalgunj, Banke District, on October 24, 2005.

**Official Action:** On July 24, 2006, the DPO registered a FIR in the presence of Advocacy Forum lawyers and OHCHR-Nepal representatives. Earlier that day, the DPO had refused to register the complaint. After a meeting with the CDO and district public prosecutor, the CDO ordered the DPO to register it. The DPO wrote two letters to the Thakurdwara Barracks, requesting officials to identify the suspects. The barracks responded but without providing the details requested by DPO. The DPO, Bardiya, on November 19, 2006, wrote once again to Thakurdwara Barracks asking for details of the suspects. As of August 2008, the barracks had not responded to the DPO.

## **Dadeldhura District**

### *Cases 11 and 12:*

**Names:** Nar Bahadur Budhamagar and Ratan Bahadur Budhamagar  
**Date of Incident:** August 17, 2004  
**Age:** 40 and 32, respectively  
**Address:** Jogmudha VDC-4, Gajalidanda, Dadeldhura District  
**Nature of Crime:** Extrajudicial killing

### **Persons to be Questioned:**

1. Members of the Suryadal battalion, Bhagatpur Army Barracks, Mahendranagar, Kanchanpur;
2. Battalion Commander of the Suryadal battalion;
3. Army personnel deployed on the spot.

**Summary of Testimony from FIR:** Around 6 a.m. on August 17, 2004, approximately 150 soldiers from the Suryadal Battalion surrounded the house of Nar Bahadur and his younger brother, Ratan Bahadur, and arrested them. Two soldiers took Ratan Bahadur's wife, Madhudevi, to a cowshed near the house and raped her repeatedly until she lost consciousness. Witnesses claim that soldiers marched Nar and Ratan around the village before taking them to Suda VDC-6 in Kanchanpur District. Here, according to witnesses, the brothers were shot dead at around 4 p.m.

Local villagers, including Tikaram Giri and Pirima Devi Nath heard the shots, arrived at the scene, and reported that Ratan had been shot in the chest and leg, and that Nar had been shot in the neck. They later accompanied the victims' family to the scene of the incident. The family buried the bodies at the scene due to fear of reprisals from the perpetrators.

The soldiers also arrested Man Bahadur Budhamagar, a younger brother of Ratan and Nar Bahadur, on the same day and took him to Suryadal Battalion in Bhagatpur. He was released after 17 days through an order from the CDO. He claims that he was severely tortured while held in the barracks. Before his release Man Bahadur Budhamagar was forced to sign a document that stated the soldiers had not raped his sister-in-law.

After approximately one year, family members went to the DPO in Kanchanpur to report the killings and rape. The DPO refused to register their complaint. Relatives of the victims also complained to the NHRC in mid-2005 when a NHRC team came to the village and documented the case. They were told that the NHRC had registered the case and would start investigations. As of August 2008, the NHRC had not made any decision on the case. It had informed the family that the investigation was ongoing.

**Official Action:** The family visited the DPO to file two FIRs on February 11, 2007, related to the killings. They did not file a FIR in relation to the rape as the statute of limitations in relation to rape is 35 days, and this time limit had long since expired. The DPO refused to register the FIRs. The family appealed to the CDO to order the registration of the FIR, but the CDO refused and suggested that they return on

February 13. On their second attempt the CDO again refused. Both the DPO and CDO harassed Advocacy Forum's lawyer and the family members for bringing the case to their attention. Since all the agencies had refused to register the FIR, a writ of *mandamus* was filed in the Mahendranagar Appellate Court, Kanchanpur, on February 22 seeking an order to register the FIRs. The court issued an order for the police to register the FIRs on April 9, 2007. However, the police did not register the FIRs claiming it was a “political issue that needs to be solved politically.” Advocacy Forum then called the DPO in Kanchanpur to ask why the police were refusing to register the FIRs and threatened to move for contempt of court. On June 18, 2007, the police finally registered the FIRs. As of August 2008, no further progress had been reported.

On June 5, 2008, Advocacy Forum filed a writ petition for contempt of court and mandamus at the Appeal Court, Kanchanpur, as the police did not start any investigation. The case was pending in court at this writing, with the next hearing date scheduled for September 9, 2008.

#### *Case 13:*

**Name:** Jaya Lal Dhami  
**Date of Incident:** February 12, 2005  
**Age:** 33  
**Address:** Jogbudha VDC-4, Pipalbot, Dadeldhura District  
**Nature of Crime:** Extrajudicial killing

#### **Persons to be Questioned:**

1. Members of the Suryadal battalion, Bhagatpur Army Barracks, Mahendranagar, Kanchanpur District;
2. Major Rajiv Shah commander of the Suryadal battalion;
3. Unified command deployed at the scene of the killing.

**Summary of Testimony from FIR:** In the early morning on February 12, 2005, Jaya Lal Dhami left his home to go to Mahendranagar. He stayed at a relative's house for some hours and then left to return home. He never made it back. On the same night a radio broadcast claimed that security forces had killed “terrorists” in an encounter



at Putalibazaar. The next day, Jaya Lal's uncle, Dhoj Dhami, visited the area where the alleged shooting of terrorists took place. The uncle was shown the place where the bodies of four alleged terrorists had been buried. Villagers claimed that after security personnel killed the four people, they had asked the villagers to dig a pit to bury the bodies. The villagers reported that three of the victims had been arrested by the army earlier that afternoon as they were hanging posters with Maoist slogans. The villagers reported that the three victims were brought to the scene of the incident and shot. They claim that the "encounter" had been faked.

Since the uncle could not trace Jaya Lal, he suspected he could have been the fourth victim. He visited the Bhagatpur army barracks, and requested that Major Rajiv Shah of the Suryadal battalion make inquiries into the killing. Major Rajiv Shah acknowledged to the uncle that an innocent citizen, namely Jaya Lal, had "also been killed in the shooting." No further details were provided. On February 14, 2005, Jaya's family went to the DPO to register the case, but the police refused to cooperate. The family then went to the CDO Dhruba Raj Wagle, who did not order the registration of the case.

**Official Action:** The police filed a FIR on September 10, 2007. As of August 2008 no further action on the FIR had been taken.

## Dhading District

### *Case 14:*

**Name:** Sarala Sapkota  
**Date of Incident:** July 15, 2004  
**Age:** 15  
**Address:** Jivanpur VDC-1,  
Chhapagaun,  
Dhading District  
**Nature of Crime:** Extrajudicial killing



Bhakta Bahadur Sapkota, father of Sarala Sapkota. © 2007 Nick Hogg

**Person to be Questioned:**

An NA patrol led by a major from Shree Number 6 Brigade Headquarters Office, Baireni barracks, Dhading District

**Summary of Testimony from FIR:** Around 11 p.m. on July 15, 2004, a group of 12 armed soldiers arrested Sarala Sapkota at her grandfather's house. The family, who witnessed the arrest, stated that soldiers gave Sarala no reason for her arrest. After her arrest, Sarala's family went to Baireni barracks and the DPO in Dhading, but all the officials denied her arrest and detention. Sarala's father then filed an application with the NHRC on July 26, 2004 asking them to investigate the "disappearance." The family received no information about Sarala for over 16 months. On January 11, 2006, an NHRC team, including forensic experts, exhumed Sarala's body from a place near her village. Sarala's father confirmed the clothes and slippers found belonged to his daughter. NHRC investigations are continuing, and the NHRC states it is awaiting the results of DNA tests on the remains.

**Official Action:** The police filed a FIR on June 28, 2006, but have not carried out a serious investigation. On November 2, 2007, Bhakta Bahadur Sapkota, Sarala's father, made an application to the Supreme Court seeking an order against the DPO and the district public prosecutor office in Dhading requiring them to carry out an investigation. As of August 2008, the case was pending in the Supreme Court.

### **Dhanusha District**

*Case 15, 16, 17, 18, and 19:*

<b>Names:</b>	Sanjeev Kumar Karna, Durgesh Kumar Labh, Jitendra Jha, Shailendra Yadav and Pramod Narayan Mandal
<b>Date of Incident:</b>	October 8, 2003
<b>Age:</b>	24, 23, 19, 22, and 24, respectively
<b>Address:</b>	Janakpur Municipality-10, Dhanusha District
<b>Nature of Crime:</b>	Enforced disappearances

**Persons to be Questioned:**

1. Dr. Chuda Bahadur Shrestha, Senior Superintendent of Police, Regional Police Office, Janakpur;
2. Rewati Raj Kafle, Chief District Officer, Dhanusha District;
3. Kuber Singh Rana, District Police Chief, superintendent of police, Dhanusha District;
4. Major Anup Adhikari, Shree Number 9 Battalion of Army Barrack, Dhanusha District.

**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 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 NA, 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 of. 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 20 and 21:*

<b>Name:</b>	Ram Chandra Lal Karna and Manoj Kumar Dutta
<b>Date of Incident:</b>	October 12, 2003
<b>Age:</b>	35 and 39, respectively
<b>Address:</b>	Nagarain VDC-1 and Janakpur Municipality-8, respectively, Dhanusha District
<b>Nature of Crime:</b>	Enforced disappearances and extrajudicial killings

**Persons to be Questioned:**

1. Dr. Chuda Bahadur Shrestha, Senior Superintendent of Police, Regional Police Office, Janakpur District;
2. Rewoti Raj Kafle, Chief District Administration Officer, Dhanusha District;
3. Kuber Singh Rana, district police chief, superintendent of police, Dhanusha District;
4. Major Anup Adhikari, Shree Number 9 Battalion of Army Barrack, Dhanusha District;
5. Security officers and security persons deployed on the spot.

**Summary of Testimony from FIR:** At around 10:15 a.m. on October 12, 2003, a group of 25-30 security forces, dressed in civilian clothes, arrested Ram Chandra Lal Karna and his friend Manoj Kumar Dutta, from Manoj Kumar's home in Janakpur, Municipality 8. The security forces did not produce any arrest warrant. According to Manoj's parents and his wife, who witnessed the arrest, Manoj was forced to lie down on the floor with his hands tied behind his back. He was then beaten with sticks and stones, and kicked until he started bleeding profusely. According to three witnesses and Manoj Dutta's family members, following their arrest, Manoj and Ram Chandra were taken to the DPO in Dhanusha. However, when family members visited the DPO on October 13, 2003, officials denied their arrest and detention.

The families visited different police stations and lodged complaints with different organizations such as the NHRC, ICRC, and OHCHR, but did not receive any response from the government. On June 7, 2005, the families received a letter from the NHRC that quoted information received from the Human Rights Cell of the NA on April 11, 2005. It stated that Ram Chandra and Manoj had been killed in an encounter that had taken place in the Janakpur area on October 12, 2003. Neither family received any information regarding what happened to the victim's bodies.

**Official Action:** The police filed two FIRs on October 19, 2006. The DPO in Dhanusha on October 20, 2006, communicated with police headquarters in Kathmandu about the registration of the FIR and requested clarification. Recently, the DPO in Dhanusha told Advocacy Forum lawyers that they had collected all the FIRs registered in connection with the armed conflict including that of Ram Chandra and had kept them

aside and not acted on them. As of August 2008, the DPO had not initiated any further investigation.

*Case 22-26:*

**Name:** Laptan Yadav, Ram Nath Yadav, Shatrughan Yadav, Rajgir Yadav and Ram Pukar Yadav  
**Date of Incident:** October 1, 2004  
**Age:** 26, 43, 31, 36, and 57, respectively  
**Address:** Chorakoyalpul VDC-2, Dhanusha District  
**Nature of Crime:** Extrajudicial killing

**Persons to be Questioned:**

1. Dr. Chuda Bahadur Shrestha, Senior Superintendent of Police of Regional Police Office, Janakpur District;
2. The CDO of District Administration Office (DAO), Dhanusha District;
3. Tapendradhoj Hamal, superintendent of police, DPO Dhanusha District;
4. Lieutenant Aditya Pratap Singh, second commander of Unified Command situated at Yadukuha VDC, Dhanusha District;
5. Police Head Constable Shrawan Shah of Mahottari District, Bardibas VDC of DPO, Dhanusha District;
6. Security officers and security personnel deployed on the spot;
7. Budhan Shah, Satya Narayan Shah aka Bijuli, Shatrughan Yadav aka Pujan, Jaisi Yadav, and Jagdish Prasad Shah aka Chhotka from Balawakhar VDC-2, Dhanusha District;
8. Ramyatan Yadav aka Manajer and Rambabu Yadav from Chorakoyalpul VDC-5, Dhanusha District.

**Summary of Testimony from FIR:** Between 1 a.m. and 2 a.m. on October 1, 2004, a group of security personnel entered the homes of Laptan Yadav, Ram Nath Yadav, Rajgir Yadav, and Ram Pukar Yadav, and arrested them. Shatrughan Yadav was arrested from the home of Ram Nath. At Laptan's home, security personnel entered the courtyard of the house and, on seeing Laptan, pointed a pistol at him and arrested him. Upon his arrest, about 10-15 security personnel, including Shrawan Shah, came into Laptan's house and started to search the house.

Security personnel told the families that the senior superintendent of police, superintendent of police, and chief district officer ordered them to arrest the five men. Security personnel took the five arrested men around 100 meters from the village where 40-50 additional security officers were already stationed. According to the two eyewitnesses who were arrested at the same time but released the next morning, the five men were severely beaten for an hour. Security forces then took the men away.

Security officers threatened the family members and ordered them not to follow where the men were being taken. The families later learned from those who were released that all five had been taken to Chaurikhet, located to the south of Keutani village of Chorakoyalpur VDC, in Dhanusha District. According to the eyewitnesses, they were shot at 5 a.m. the next morning.

Individuals dressed in civilian clothes, who claimed to be members of the joint security forces, told the family of Ram Nath and Shatrughan that the two men had been arrested and killed on the basis of false allegations. According to the families of the victims, some local members of an anti-Maoist vigilante-style group, which included Budhan Shah, Atya Narayan Shah, Jagadish Shah, Ramyatan Yadav, Shatrudhan Yadav, alias “Pujan,” and Jaisi Yadav, had allegedly told the security forces that Ramnath and Shatrughan were Maoists.

On October 1, 2004, security personnel took the five bodies to the SSP office at Janakpur. Villagers visited the SSP office in Janakpur the day after the incident seeking information on the bodies. The police told them that they had carried out post-mortem examinations. The police then forced local villagers to cremate the bodies that same day. The police failed to provide a post-mortem report to the families. Relatives visited the DPO and DAO and verbally made applications for compensation.

On May 13, 2005, the NHRC, on its own initiative, started an investigation, and recommended that the government provide the families with NRs150,000 each as compensation. The victim's families have yet to receive the money.

**Official Action:** The police filed five FIRs on October 11, 2007. In March 2008, police at the DPO in Dhanusha told Advocacy Forum staff that they had collated all the FIRs registered in connection with the armed conflict, including these five FIRs, and were not acting on them.

## **Jhapa District**

### *Case 27:*

**Name:** Ramadevi Adhikari  
**Date of Incident:** July 3, 2005  
**Age:** 38  
**Address:** Taghandubba VDC-7, Kalimati, Jhapa District  
**Nature of Crime:** Extrajudicial killing

### **Persons to be Questioned:**

1. Captain Yogeshchandra Mahato of Shree Jabarjung NA Battalion of Charali, Jhapa District;
2. Dev Narayan Yadav of APF, stationed at joint security forces camp run by Shree Jabarjung Battalion of Charali, Jhapa District;
3. Three unknown security forces who were deployed on the orders of Suresh Kumar Karki, the commander of the Jabarjung battalion.

**Summary of Testimony from FIR:** At around 5 a.m. on July 3, 2005, a group of five joint security forces, dressed in civilian clothes, came and woke Ramadevi Adhikari and her husband, Devi Prasad. Both husband and wife were arrested. The husband was taken outside, and the wife was taken to the back of the house. The husband heard his wife crying out. Ramadevi was then shot dead near the passage of her house. A little while later, around 50 army personnel came and tried to bury the body at the back of the house. By then, villagers had also gathered and objected to burying her. Security personnel threatened the villagers, saying they should not take the body for a post-mortem examination. A compromise was reached whereby the security forces allowed family members to conduct the funeral as per their rituals, and the family agreed not to take the body for a post-mortem examination. Devi Prasad heard security personnel accusing his wife of providing food to Maoists just



before she was shot. Ramadevi's family members subsequently visited the DPO and the DAO, several times asking them to conduct the necessary investigations. No action was taken against the suspects. The DPO told them that it was a political issue, and they could not take any action on this case.

#### **Official Action:**

On November 9, 2006 the victim's family members accompanied by Advocacy Forum lawyers approached DPO, Jhapa. The authority accepted the FIR and said that they would proceed with the case after consulting the higher authorities. However, the FIR was not registered. As of August 2008 no further action had been taken.

### **Kavre District**

#### *Case 28:*

**Name:** Hari Prasad  
Bolakhe  
**Date of Incident:** December 27,  
2003  
**Age:** 35  
**Address:** Phulbhari  
VDC-8, Kavre  
District  
**Nature of Crime:** Extrajudicial  
killing



Puspa Prasad Bolakhe, father, and Leela Kumari Bolakhe, mother, holding a picture of their son, Hari Prasad Bolakhe. © 2007 Charu Lata Hogg/ Human Rights Watch

#### **Persons to be Questioned:**

1. Major Krishna Dhoj Thapa of the Satrumardan Battalion stationed at Dhulikhel;
2. Security forces of Satrumardan Battalion, Dhulikhel, deployed on the spot;
3. Major Baburam Thapa of the Satrumardan Battalion stationed at Panauti;
4. Security forces of Satrumardan Battalion, Panauti branch, deployed on the spot;
5. Police head constable Khadga Bahadur Lama of DPO, Kavre District;
6. Other security officers and security men deployed on the spot.

**Summary of Testimony from FIR:** On the morning of December 27, 2003, Hari Prasad Bolakhe had arranged to meet his father, Puspa Prasad, at the Banepa bus park. Around 11 a.m., Hari got off a bus but before he could speak to his father the head police constable, Khadga Bahadur Lama from the Kavre DPO approached him. According to witnesses, Lama told Hari that the deputy superintendent of police wanted to see him, forced Hari into a vehicle, and took him away. Puspa Prasad immediately went to the Kavre DPO to complain about his son's arrest but officials at the police station denied arresting his son. For months Puspa Prasad was unable to locate his son.

Hari Prasad's name was featured in the third report of the Malegu Committee published by the Home Ministry on October 11, 2004, stating that he was in police custody. On October 12, 2004, Puspa Prasad visited various prisons and army barracks in Bhaktapur and Lalitpur, including the detention centre at Sundarijal, but he could not locate Hari. Hari's father then filed a complaint with the NHRC, which investigated the case and received information that Hari had been killed. An NHRC team, led by members of the NHRC and a forensic pathologist, located and exhumed Hari's body on July 5, 2006. During the exhumation, his body, ID card, visiting cards, citizenship certificate, a wrist watch, and the clothes he was wearing at the time of the killing were recovered. The remains were tested at the forensic laboratory at Tribhuvan University Teaching Hospital in Kathmandu. The forensic report confirmed the body was Hari's. In its report, the NHRC wrote that a "gunfire injury to the pelvis" was the cause of death. As of August 2008 the NHRC had not made any recommendations in the case.

**Official Action:** The victim's family approached the DPO in Kavre accompanied by Advocacy Forum lawyers to register the FIR on October 18, 2006. Police refused, and the CDO was subsequently approached and asked for a few days to study the case. On October 18, 2006, the CDO accepted the case and that same day forwarded it to the DPO with an order to register the FIR and initiate necessary investigations. On November 1, 2006, the victim's family and Advocacy Forum lawyers visited the DPO to follow up. The police claimed that they were unable to register the case since the complaint was against army personnel senior to them, and they were still working in the same district.

On November 8, 2006, Hari's father lodged a petition before the Supreme Court to order the DPO in Kavre to register the FIR. The Supreme Court ordered the DPO to register the FIR. The DPO then informed the Supreme Court that the FIR had already been registered on November 7, 2006. On December 8, 2006, the DPO wrote a letter to Police Headquarters and the Bagmati Zonal Police Office, seeking their assistance to identify and bring the alleged perpetrators to the DPO. At this writing, however, the DPO had not received any reply from those authorities.

*Case 29:*

**Name:** Reena Rasaili  
**Date of Incident:** February 12, 2004  
**Age:** 18  
**Address:** Pokharichauri VDC-4,  
Kavre District  
**Nature of Crime:** Extrajudicial killing  
(after rape)

**Person to be Questioned:**

A patrol of NA soldiers led by second lieutenant Saroj Basnet.



Karna Bahadur Rasaili, father of Reena Rasaili. © 2007 Nick Hogg

**Summary of Testimony from FIR:** At around 11:45

p.m. on February 12, 2004, Reena and her family were woken up by a knock at their door. Ten fully armed men dressed in civilian clothes broke the door down and entered the house claiming to be soldiers from Bhakundebesi. The soldiers beat up Reena's parents and dragged Reena out of bed, accusing her of being a Maoist. According to her parents, the soldiers dragged Reena to the cowshed and raped her through the night. The family was threatened with dire consequences if they stepped out and tried to help her. At around 5 a.m., Reena came back to the house and asked for a sweater. Her hands were tied behind her back. A group of soldiers then proceeded to take Reena away. The family heard three gunshots at around 5:15 a.m., but did not dare investigate. After a few hours, they went out to look for Reena and found her body lying close to the house. She had been shot in the head, eye, and chest.

Reena's family went to complain to the DPO and the CDO on February 14, 2004, but neither of them agreed to register the complaint. The family left Reena's body lying in the same spot for six days hoping for an investigation, but no police officers came to investigate the killing. On March 9, 2004, Reena's father filed an application with the NHRC appealing for an investigation. The NHRC conducted the investigation and concluded that Reena was illegally killed after the soldiers apprehended her. On June 13, 2005, the NHRC recommended that those responsible be identified and action be taken against them, and that NRs150,000 be paid as compensation. Reena's family was informed about the NHRC decision on June 14, 2005. To the family's knowledge, the authorities have not taken any action to implement the NHRC's recommendations.

**Official Action:** A FIR was registered on May 25, 2006, in the presence of Advocacy Forum lawyers. The police have not carried out a serious investigation. In a letter to the army brigade, dated June 4, 2006, the DPO demanded that the perpetrators be identified and brought before the Office. Replying to the DPO letter on June 28, 2006, the brigade stated that the squad had been under the command of second lieutenant Saroj Basnet. It is not known whether any action was taken against Basnet by the NA. On October 8, 2007, Karna Bahadur Rasaili, Reena's father, applied to the Supreme Court for an order against the DPO and the District Public Prosecutor Office in Kavre. The case remains pending in the Supreme Court.

*Case 30:*

**Name:** Subhadra Chaulagain  
**Date of Incident:** February 13, 2004  
**Age:** 17  
**Address:** Pokharichauri VDC-3,  
Kavre District  
**Nature of Crime:** Extrajudicial killing



Putali Chaulagain, mother of Subhadra Chaulagain, holds a photo of her daughter.  
© 2007 Nick Hogg

**Persons to be Questioned:**

A team of Nepalese Army personnel, led by a lieutenant from Number 9 Brigade Office, Bhakundebesi, Kavre District.

**Summary of Testimony from FIR:** At around 3:45 a.m. on February 13, 2004, Subhadra Chaulagain and her family were woken up by the sound of someone knocking urgently on the door of their house. As soon as Subhadra's mother opened the door, four fully armed soldiers rushed in. One of them punched Subhadra's father, Kedar Chaulagain, and ordered him to lie on the floor, two others pulled Subhadra by her hair and threw her down on the floor. According to the family, Subhadra pleaded with the soldiers saying that she was not a Maoist. The soldiers ignored her protests and forcibly dragged her outside the house. Subhadra was dragged to her uncle's house, which was close by, and then again out onto the road where she was asked to stand still. According to the family, one uniformed soldier fired a gun at her, which did not work. He then took a pistol from another soldier and shot at her. Another four or five soldiers started firing at her. The force of the bullets blew Subhadra's body into a nearby field. The soldiers then turned to Kedar, Subhadra's father, who had witnessed these events, and started attacking him. The soldiers beat Kedar until he lost consciousness. When he regained consciousness, he found Subhadra's body in the field.

The following day, and for many days after the incident, Kedar went to the DPO in Kavrepalanchowk to appeal for investigations and demand punishment for the perpetrators. Officials at the DPO first ignored him, and then threatened to take "further action" against him. Kedar then went to the Chief District Office to complain, but the CDO also did not take any action. Subhadra's family left her body in the field for 5 days hoping an investigation would begin. On February 29, 2004, Kedar filed an application with the NHRC requesting them to conduct investigations. The NHRC carried out an investigation, and on June 14, 2005 informed Kedar that the case was an extrajudicial execution, and recommended the government identify the suspects, take action against them, and pay NRs150,000 as compensation. To date, the authorities have not acted on the NHRC's recommendations.

**Official Action:** A FIR was registered on June 6, 2006. However, the police have not carried out any effective investigation. On October 8, 2007, Kedar Chaulagain, Subhadra's father, approached the Supreme Court and sought an order against the DPO and the District Public Prosecutor office in Kavre. The case is pending in the Supreme Court.

*Case 31:*

**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

**Persons to be Questioned:**

1. Colonel Bobi Khatri of NA Camp, Panchkhal;
2. Captain Amit Pun of NA Camp, Panchkhal;
3. Captain Sunil Adhikari of NA Camp, Panchkhal;
4. Captain Niranjan Basnet of NA Camp, Panchkhal.

**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. 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 NA 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.<sup>99</sup>

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

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<sup>99</sup> 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](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 7 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 32:

**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

### Persons to be Questioned:

1. Maoist member Yadav Poudel alias “Rakki,” from Puranagaun VDC-8, Kavre District;
2. Maoist member Bhola Aryal, from Mathurapati VDC-3, Phulbarai, Kavre District;
3. Maoist cadre Karnakhar Gautam alias “Shyam,” from Pokharichauri VDC-8, Kavre District;
4. Maoist Central Committee Member Agni Sapkota, from Sindhupalchowk, CPN-M Central Office, Buddhanagar, Kathmandu;
5. Suryaman Dong alias “Laldhoj,” the CPN-Maoist district secretary, Kavre District;
6. Maoist member Norbu Moktan, from Mechhe VDC-9, Kavre District.

**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.

## **Lamjung District**

### *Case 33 and 34:*

<b>Name:</b>	Chot Nath Ghimire and Shekhar Nath Ghimire
<b>Date of Incident:</b>	February 2, 2002, and February 7, 2002, respectively
<b>Age:</b>	58 and 45, respectively
<b>Address:</b>	Ishaneshwor VDC-4, Ratmate Majhpokhari, Lamjung District
<b>Nature of Crime:</b>	Extrajudicial killing

**Persons to be Questioned:**

1. Major Khagda Bahadur Ranabhat of Unified Command Base Camp situated at Bhorletar VDC-6, Lamjung District;
2. Jamdar (warrant officer) Rabindra Chemjong of the same Camp.

**Summary of Testimony from FIR:** Between 2000 and 2002, Chot Nath Ghimire was arrested and released by the security forces on a number of occasions under suspicion of being a Maoist supporter. On January 26, 2002, the head of the Bhorletar Unified Command Base Camp asked Chot Nath to present himself at the camp. Chot Nath dutifully went to the camp the same day. He was subsequently asked to report to the camp on a daily basis. He was last known to have gone to the camp on February 2, 2002, but he did not return. Chot Nath's family members went to the camp seeking to confirm his whereabouts, but the army personnel denied his arrest and detention.

On the morning of February 7, 2002, authorities from the Unified Command Base Camp summoned Shekhar Nath, cousin of Chot Nath, to meet them at the army camp in Bhorletar. Shekhar left for the camp and his family members did not hear from him again. In late 2002, Shekhar's elder brother-in-law filed a *habeas corpus* writ petition at the Appellate Court in Pokhara, but the police denied his arrest. A report released by the Disappearance Committee, led by Baman Prasad Neupane, published on July 25, 2006, mentioned that Shekhar Nath's whereabouts remained unknown.

On September 20, 2006, the same Disappearance Committee, mentioned in its report that "the Committee has received information from the NA Human Rights Cell, in a letter dated April 18, 2006, that Chot Nath was making daily visits to the Bhorletar barracks of the Nepali Army." Chot Nath's family intensified their search for him after they received this information. On October 15, 2006, his family filed a *habeas corpus* writ petition at the Supreme Court.

Several former detainees from Bhorletar army camp also informed the families that they had seen Chot Nath and Shekhar Nath Ghimire at the Bhorletar army camp. On November 3, 2006, after a period of intense searching that had been inspired by a tip from local villagers, the family discovered Chot Nath's clothes in the jungle at

Saura, situated at Hansapur VDC-9. After the recovery of his clothes, Chot Nath's body was exhumed from the jungle by personnel from the DPO in Kaski on November 4, 2006, in the presence of NHRC officials. No forensic experts were involved. Chot Nath's body was found approximately 20 meters from the place where another body, that of Shekhar Nath Ghimire, was found. Chot Nath's family identified his body on the basis of the clothes, a wristwatch, and an artificial tooth recovered from the exhumation. The time of his death could not be established. Shekhar's family received no information on why, when, or how he was killed.

**Official Action:** The DPO in Kaski registered a FIR on November 19, 2006. Immediately after the exhumation was carried out, the DPO in Kaski sent the remains to the forensic laboratory of Nepal Police in Kathmandu. As of August 2008 no further development in the case had been reported.

### **Morang District**

#### *Case 35:*

**Name:** Prem Bahadur Susling Magar  
**Date of Incident:** June 29, 2002  
**Age:** 28  
**Address:** Shanishchare Village Development Committee- 7, Morang District  
**Nature of Crime:** Extrajudicial killing

#### **Persons to be Questioned:**

About 50-55 unidentified security personnel of the joint security forces under the command of Nepal Army's Eastern Divisional Headquarters, Itahari, Sunsari.

**Summary of Testimony from FIR:** Prem Bahadur Susling Magar had been affiliated with the CPN-M since 1998, and he used to leave home frequently to work with the party. On May 2, 2002, he left his home early in the morning to attend party activities in the Tandi VDC and Ramitekhola areas of Morang District. Joint security personnel from Aaitabare VDC, Morang District took Prem into custody on June 29, 2002, and killed him on June 30, 2002. No arrest warrant was served. Prem's family members heard about his killing through Radio Nepal and other FM channels on July 2, 2002.

They reached the spot a few days after the incident. Security personnel threatened the locals not to touch the corpse. On the fourth day, as the body started decaying, villagers moved it to a nearby ditch. Prem's relatives approached the Morang DAO on a number of occasions to complain and seek action against the suspects. The CDO informed them that the office would contact them at a later date. The family was never contacted.

**Official Action:** On July 6, 2007, the victim's wife, along with lawyers from Advocacy Forum, approached the Morang DPO with a FIR. The police superintendent, Gopal Prasad Bhandari, refused to register the report and also refused to confirm the denial in writing. On July 29, 2007, Prem's wife and Advocacy Forum lawyers visited the CDO with the FIR. The CDO accepted the complaint and informed the victim's wife that the office would be in contact. As of August 2008 Prem's wife had not heard back from the CDO and the FIR had not been registered.

*Case 36:*

**Name:** Data Ram Timsina  
**Date of Incident:** September 28, 2003  
**Age:** 28  
**Address:** Sanischare VDC-9, Morang District  
**Nature of Crime:** Extrajudicial killing

**Persons to be Questioned:**

1. Major Suman Gurung, army officer at Eastern Division Headquarters, Itahari, Sunsari District;
2. Major Birendra Katuwal, operational commander at Eastern Division Headquarters, Itahari, Sunsari District;
3. Unidentified army personnel deployed at Biratnagar Airport from Eastern Division Headquarters, Itahari, Sunsari District;
4. 10-15 police personnel from Morang DPO.

**Summary of Testimony from FIR:** Data Ram Timsina was a school teacher at Shinga Bahini Secondary School, and had been undergoing psychiatric treatment. According to witnesses, on September 28, 2003, officers from the Eastern Regional Army

Headquarters in Itahari (deployed under unified command at Biratnagar Airport) and security personnel deployed from DPO Morang arrested Data Ram. Data Ram's relatives visited the DPO in Morang and inquired about his whereabouts with the superintendent of police Chopka Sherpa. Sherpa informed them that Data Ram had been taken to the Eastern Regional Army Headquarters in Itahari on September 29, 2003.

Hari Dungal, a resident of Indrapur VDC in Morang District, later reported meeting Data Ram at the Eastern Pritna Army Headquarters. According to Hari, the two men were together on September 27, 2003, and Data Ram had already suffered severe injuries due to beatings and being dragged along the ground. According to Hari, on October 8, 2003, an army officer ordered that Data Ram along with other detainees be transferred. When Data Ram asked for his clothes, the army official apparently told him that he did not require clothes as he was going to be killed.

The Neupane Committee included Data Ram's name in a list of 174 people published in mid-2006 as a "disappeared" person whose whereabouts were established. On August 10, 2006, the ICRC in Kathmandu sent a letter to Data Ram's parents stating that the Nepalese Army's Human Rights Cell had informed the ICRC that Data Ram had been "killed in a security operation at Kerabari VDC-5 in Morang District on October 14, 2003." No further information was provided. To date, the family has received no information regarding what happened to Data Ram's body.

**Official Action:** On June 7, 2007, the victim's family, accompanied by Advocacy Forum lawyers and representatives of the NHRC and OHCHR-Nepal, visited the Morang DPO to register a FIR. The police superintendent, Gopal Prasad Bhandari, refused to register the complaint on the grounds that Data Ram was killed in a cross-fire incident and no further legal action could be taken. On June 8, 2007, Police Superintendent Bhandari called Advocacy Forum to arrange a visit in connection with the registration of the FIR. When Advocacy Forum lawyers visited the DPO that same day, Bhandari asked them to visit at a later date. When Advocacy Forum lawyers visited on that later date, they were told that police were still waiting for a response from headquarters.

On June 17, 2007, Advocacy Forum lawyers and the victim's family visited the DAO. Officials there also refused to register the FIR on the grounds that they were “not authorized” to look at the case. Advocacy Forum assisted the victim's family to file a writ in the Biratnagar Appellate Court to order the DPO and the CDO to register the FIR on August 1, 2007. On October 1, 2007, the court quashed the petition claiming that incidents such as the killing of Data Ram would be addressed by the Truth and Reconciliation Commission or other mechanisms as envisaged in the CPA of November 2006. On March 18, 2008, the victim’s family filed a petition of mandamus at the Supreme Court against the appeal court decision. At this writing, the case was pending in the court. The FIR had yet to be registered.

*Cases 37, 38 and 39:*

**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



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

**Persons to be Questioned:**

1. Colonel Pradeep Pratap Bom Malla,  
Divisional Commander of Eastern Division  
Military Headquarters, Itahari, Sunsari;
2. DIG Krishna Basnet, Regional Police Chief of Eastern Region Police Training  
Center, Biratnagar;
3. DIG Sanat Kumar Basnet, Chief of the APF, Eastern Regional Office, Pakali,  
Sunsari;
4. Dolakh Bahadur Gurung, CDO of Morang District Administration Office, also  
coordinator of the District Security Committee;

5. Some 56 security forces (Unified Command) deployed under the command of Eastern Divisional Military Headquarters, whose names and ranks are not known.

**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.

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, Gopal Prasad Bhandari, 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.

*Case 40, 41, 42 and 43:*

**Name:** Jag Prasad Rai alias "Narad," Dhananjaya Giri, Madhura  
Gautam alias "Manoj," and Ratna Bahadur Karki

**Date of Incident:** December 18, 2004

**Age:** 34, 41, 34, and 34, respectively

**Address:** Pathari VDC-4, Pathari VDC-3, Sanischare VDC-7 and Sanischare VDC-1, Morang District, respectively

**Nature of Crime:** Extrajudicial killing

**Persons to be Questioned:**

54 unidentified soldiers under the command of Captain Yuvaraj Karki of Bhawani Dal Battalion deployed from Eastern Division Headquarters, Itahari, Sunsari District.

**Summary of Testimony from FIR:** A group of security forces personnel, some of whom posed as Maoists, arrested and killed all four men in separate incidents on the same morning.

On the morning of December 18, 2004, an unidentified man arrived at the house of Narad's in-laws and asked Narad to go with him. Narad left with the unidentified man. According to witnesses, at around 10:45 a.m., 54 security personnel patrolling the area detained Narad at Mayalu Chowk on the border between Ward Number 3 and 4 of Pathari VDC, and instantly shot him dead.

That same day, Dhananjaya left his house at around 6 a.m. to visit his neighbors. At around 10:30 a.m. on his way back home, unidentified persons claiming to be Maoists being chased by an army squad stopped him and were seen talking to Dhananjaya. After that, they let him go. Later in the afternoon, that same group of unidentified persons was seen joining an army team advancing to Dhananjaya's locality from the southern direction. After about half an hour, a team of security personnel from Pathari reached Dhananjaya's home, arrested him and then killed him.

Also on December 18, 2004, Madhuras left home in the morning along with Prakash Timishina, a resident of Pathari VDC. According to witnesses, later that morning, while Madhuras was walking near Mayalu Chowk, army personnel deployed from Eastern Division Headquarters in Itahari seized him and shot him dead on the spot.

Ratna Bahadur Karki had returned home after finishing work in Malaysia in October 2004. Around 8 a.m. on December 18, 2004, he left his house to do some grinding

work at a local rice mill. Around 10 a.m. on his way back home, some unidentified persons stopped him on the way and claimed they were Maoists. The individuals told Ratna that an army squad was following them. They had a brief conversation during which the unidentified persons reportedly asked Ratna to help them find the homes of local Maoist activists so that they could seek shelter with them. Later, the unidentified persons joined an army team advancing towards the locality from the southern direction. Another team of security personnel reached the area 30 minutes later, took Ratna under control, and killed him on the spot. The security personnel forced villagers to sign documents which said that Dhananjaya, Ratna Bahadur Karki, Madhura Gautam, and Narad Rai, were killed when they tried to escape from army custody.

On December 19, 2004, the families received notice about the four bodies through the Area Police Office in Urlabari, Morang District. Narad's body showed signs of being beaten, and he had been shot in the right temple, right hip, and back. Dhananjaya had been beaten, and shot six times in various parts of his body. A golden ring worth NRs9,600, which Dhananjaya was wearing, was missing. Madhura's showed signs of being beaten and he had been shot five times in various parts of his body, including twice in the head. No autopsy was done on his body. Prior to the killing, security forces had also searched Madhura's house, taking NRs22,000 and Madhura's citizenship documents. Ratna's Seiko wrist-watch, some Malaysian currency and NRs5,000, and his bicycle were missing.

The relatives of all four men made verbal complaints at the Morang DAO several times but their complaints were not accepted. Police refused to register their complaint claiming the case was a "political issue." The families also visited the CDO time and again, complaining about the case. No action was taken by the CDO. They also complained to the NHRC. At this writing the NHRC was investigating the cases.

**Official Action:** On June 5, 2007, the victims' families, accompanied by Advocacy Forum lawyers and representatives of NHRC and OHCHR-Nepal, visited the Morang DPO to register the FIR. The police superintendent, Gopal Prasad Bhandari, refused to register the complaint, arguing that the killings happened 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, the victims' families visited the CDO. He refused to order the registration of the case on the grounds that civilian authorities were not entitled to investigate such incidents and that these incidents would be investigated by the TRC.

On August 5, 2007, Advocacy Forum assisted the victims' families to seek a writ from the Biratnagar Appellate Court ordering the DPO and CDO to register the FIR. Except in the case of Madhuram Gautam, on October 1, 2007, the court quashed the writ petitions agreeing with the police's argument that such killings would be addressed by the TRC. Advocacy Forum filed a writ petition of mandamus before the Supreme Court on behalf of Dhananjaya Giri on March 31, 2008, challenging the appellate court decision.

On September 1, 2008, Madhuram's family accompanied by Advocacy Forum visited the DPO, Morang to file a FIR as per the order of the Appellate Court. However the superintendent of police, Yogendra Katuwal, refused to file the FIR despite court order.

#### *Case 44:*

<b>Name:</b>	Chandra Bahadur Basnet alias "Manoj Basnet"
<b>Date of Incident:</b>	August 24, 2005
<b>Age:</b>	28
<b>Address:</b>	Sijuwa VDC-4, Morang District
<b>Nature of Crime:</b>	Extrajudicial killing

#### **Persons to be Questioned:**

Armed Police Force Inspector Nardip Basnet and 12 other unidentified police personnel under his command deployed from the APF unit stationed at the prison at Biratnagar, Sub-Metropolis-11, Morang District.

**Summary of Testimony from FIR:** Manoj was a *peon* (petty clerk) working with Sijuwa VDC office in Morang District. On August 24, 2005, he left home to travel to the Morang District Development Committee office in Biratnagar to finish some work for

the VDC. According to witnesses, a group of armed police arrested Manoj and some friends at the Dhankute Hotel and Lodge near the Biratnagar bus park. According to witnesses, the others were immediately released, but police took Manoj in a vehicle (registration KO 1 CHA 4544), blindfolded him, and drove away.

The following morning, Manoj's neighbors received a phone call from Morang DPO stating that he had been killed in Biratnagar "while he was trying to run away from a security cordon." That day Manoj's family and neighbors received his body in Biratnagar. Manoj was wearing a golden ring and a chain, and was carrying NRs2,300 when he left home, all of which were missing. A post-mortem investigation conducted at Koshi Zonal Hospital in Biratnagar revealed that Manoj had been killed as a result of two gunshot wounds to the chest and neck.

The NHRC investigated the killing, and on February 17, 2006, recommended that the government provide NRs100,000 to Manoj's family and conduct further investigations to identify and bring the perpetrators to justice. The NHRC wrote to the Office of the Prime Minister on March 23, 2006, requesting implementation of its recommendations. The APF also claimed to have initiated disciplinary action against Nardip Basnet who was the commander of the APF unit allegedly involved in the incident but it has not been possible to confirm what exactly this action consisted of beyond a transfer out of the area.

**Official Action:** A few days after the killing, Manoj's family went to the DPO with lawyers from Advocacy Forum to register a FIR, but the police officers did not file the report. The family then sent the complaint by post to the DPO. Police registered the FIR on August 30, 2005, on behalf of the victim's father, Govinda Bahadur Basnet, at DPO in Morang against Police Inspector Nardip Basnet and 12 other police personnel who were allegedly involved in the killing of Manoj. Initially, the police did not start any investigations. Due to the intervention of OHCHR-Nepal, police reluctantly took statements from some witnesses, interviewed the suspects, and referred the case to the public prosecutor on September 20, 2006. The police asked the father to sign a new FIR but did not allow him to read it. Later in court, when the family had an opportunity to access the file, they realized police had in the new FIR presented the killing as an accident, something the father did not believe.

On September 22, 2006, the Morang District Court delivered its verdict in the case stating that the accused was innocent as the victim had been killed by APF fire while he tried to escape from the security forces. The court decision refers to the killing as accidental.

On May 10, 2007, Govinda Basnet appealed to the Supreme Court against the decision of the Morang District Court by filing a petition to quash the investigation and order the police to re-investigate the case and prosecute Nardip Basnet on charges of homicide. After that, a number of local politicians repeatedly suggested that Govinda withdraw the case. Police reportedly offered Manoj's widow a job in the police, and to send her two children to a boarding school in return for dropping the case. Police also reportedly offered Govinda NRs250,000, brought him to Kathmandu, and pressured him to file a petition withdrawing the writ petition stating that he had not intended it and had been coerced by Advocacy Forum. Under this pressure, on November 30, 2007, Govinda asked the court to withdraw the case. On the same day the Supreme Court decided to put the case on hold. As of August 2008, the court had not yet ruled on the actual request to withdraw the case.

*Case 45 and 46:*

<b>Name:</b>	Purna Shrestha and Bidur Bhattarai
<b>Date of Incident:</b>	October 15, 2005
<b>Age:</b>	33 and 27, respectively
<b>Address:</b>	Indrapur VDC-6 and Pathari VDC-5, Morang District, respectively
<b>Nature of Crime:</b>	Torture and Extrajudicial killing

**Persons to be Questioned:**

About 56 unidentified security forces personnel under the command of Major Sunil Shrestha at the Nepal Army's Eastern Divisional Headquarters, Itahari, Sunsari District.

**Summary of Testimony from FIR:** In the early morning of October 15, 2005, the NA killed Durga Raj Rai of Limbu Chowk, Belbari VDC. Army personnel seized Durga's mobile phone and found Purna Shrestha's and Bidur Bhattarai's mobile numbers from the phone. According to witnesses, soldiers called Purna and Bidur pretended

to be Durga Raj and asked them to come to Belbari immediately. Purna Shrestha and Bidhur Bhattarai immediately left for Belbari with Mohan Khanal. Upon their arrival, security forces arrested all three men. Army personnel tortured them and then shot all three of them at around 9:30 a.m. on October 15, 2005.

The army personnel took the dead bodies to the area police office in Belbari. Family members were informed that they had been killed during an army operation. The families then went to Belbari area police office on October 16, 2005, to claim the dead bodies.

Post-mortem examinations of the two bodies were held at B.P. Koirala Institute of Health Science in Dharan. Purna Shrestha's body had injuries in the mid upper abdomen, chest, forehead, and back of the head. According to the family and other villagers who saw the corpse, the wounds looked like they were due to beatings with gun butts, not bullets. It is not known what Purna's post-mortem examination concluded.

Bidur's post-mortem report said that he had sustained single bullet wounds to his mid-upper abdomen and flanks and three to his chest, that both his eyes were pierced and damaged with a sharp weapon, and that there were large wounds on his forehead.

After the post-mortem, family members received a letter from the area police office in Belbari stating that the two men were killed in crossfire by the NA. The dead bodies were cremated by the family members.

On July 19, 2007, the NHRC wrote to the government recommending a sum of NRs150,000 to be provided to the families of Purna and Bidur as compensation. The Commission also recommended further investigations to identify and bring the perpetrators involved to justice. The NHRC recommendation had not yet been implemented at this writing.

**Official Action:** On June 5, 2007, the victims' families, accompanied by Advocacy Forum lawyers and representatives of NHRC and OHCHR-Nepal, visited the Morang

DPO to register the FIR. Superintendent Gopal Prasad Bhandari refused to register the complaint on the grounds that the victims were killed in a cross-fire and no further legal action could be taken. On July 6, 2007, the DPO returned the complaint to Advocacy Forum. On July 12, 2007, the victims' families and Advocacy Forum lawyers visited the CDO. He also refused to order the registration of the FIR on the ground that the civil authorities were not empowered to look at the cases. On August 1, 2007, Advocacy Forum assisted the family members to lodge a writ with the Biratnagar Appellate Court to order the DPO and CDO to register the FIR.

On October 1, 2007, the court quashed Bidur's petition on the basis that incidents like this would be investigated by a mechanism to be established under the Comprehensive Peace Agreement of November 2006. Advocacy Forum filed a writ petition of mandamus at the Supreme Court on behalf of Bidur Bhattarai on March 31, 2008 challenging the Appellate Court decision. As of August 2008, the case is pending in the court. The Appellate Court, however, upheld Purna Shrestha's petition and Purna's family once again approached DPO Morang on September 1, 2008 to file a FIR. Despite the Appellate Court's order, superintendent of police Yogendra Katuwal refused to file the FIR.

*Case 47:*

<b>Name:</b>	Sapana Gurung
<b>Date of Incident:</b>	April 25, 2006
<b>Age:</b>	22
<b>Address:</b>	Belbari VDC-3, Morang District
<b>Nature of Crime:</b>	Rape and murder

**Persons to be Questioned:**

15 unidentified security personnel under the command of army Captain Prahlad Thapa Magar deployed from the security base camp at the area police office, Belbari VDC-3, Morang District.

**Summary of Testimony from FIR:** Around 8:30 p.m. on April 25, 2006, 15 security personnel under the command of army captain Prahlad Thapa Magar went to the home of Sapana Gurung. Three security men entered Sapana's room and dragged



her out, covering her mouth with their hands. The security personnel then took her to the nearby Nepal Telecommunications Office and raped her. There were no witnesses to the rape. At around 9:25 p.m., villagers heard a gunshot and Sapana was later found dead. According to villagers, Sapana's body was taken to the army camp after she was killed. The medical report from B.P. Koirala Memorial Institute of Health Science in Dharan said that she had been shot dead after being raped. Sapana's rape and killing caused a furor in the village and when a public disturbance broke out against the incident the security forces opened fire, killing six people and injuring dozens (see below).

**Official Action:** Police registered a FIR on May 15, 2006, but police argued that they could not initiate criminal investigations until a Parliamentary Probe Committee had issued its report and they received authorization from the government. The Parliamentary Probe Committee concluded its investigations and reported to the Parliament on January 12, 2008. The Committee recommended that Prahlad Thapa Magar and two soldiers named Bir Bahadur Mahara and Nirmal Kumar Panta should be taken into custody, and a criminal investigation be initiated into the rape and killing. The Committee also recommended "departmental action" according to the Army Act, and that NRs1 million be paid as compensation to Sapana's family. Prior to the Parliamentary Probe Committee's report, the government had already provided NRs300,000 compensation to the family. As of August 2008 these soldiers had not been arrested.

*Cases 48, 49, 50, 51, 52 and 53:*

<b>Name:</b>	Chhatra Bahadur Pariyar, Phurwa Sherpa, Prabhunath Bhattarai, Prasad Gurung alias "Prasant," Tanka Lal Chaudhari, and Sunita Risidev
<b>Date of Incident:</b>	April 26, 2006
<b>Age:</b>	35, 18, 34, 18, 32, and 17, respectively
<b>Address:</b>	Indrapur VDC-2 and VDC-3; Mrigauliya VDC-8 and Belbari VDC-3, Morang District
<b>Nature of Crime:</b>	Extrajudicial killing

**Persons to be Questioned:**

1. Captain Prahlad Thapa Magar of Unified Command situated at Area Police Office, Belbari, Belbari VDC-3, Morang District;
2. Unknown security forces deployed on the spot.

**Summary of Testimony from FIR:** Around 2:30 p.m. on April 26, 2006, a joint command of security forces, led by Captain Prahlad Thapa, opened fire indiscriminately on demonstrators. The incident took place in front of the area police office in Belbari during a spontaneous demonstration by villagers, who were demanding compensation for the family of Sapana Gurung, and legal action against those responsible for raping and killing her (see Case 48). According to a Parliamentary Probe Committee's findings, 21 security personnel opened fire, and a total of 131 shots were fired. More than a hundred security officials were deployed in the area, and the firing resulted in the death of six persons. Chhatra Bahadur Pariyar, Phurwa Sherpa, Prabhunath Bhattarai, Prasad Gurung, Tanka Lal Chaudhuri, and Sunita Risidev all died on the spot. Army personnel claimed that Maoists had infiltrated the demonstration, and started shooting at the security forces, but no evidence was found by the Committee to substantiate that claim.

**Official Action:** Family members approached the DPO Morang on May 28, 2006 to register an FIR demanding an investigation into the case and to provide justice. The police refused to register the cases and suggested the families go to the area police office in Belbari to register the complaints.

The Belbari area police office filed six separate FIRs on May 31, 2006. As in Sapana's case, police argued that they could not initiate criminal investigations until the Parliamentary Probe Committee had issued its report and they had received authorization from the government. When it concluded its investigations and reported to the Parliament on January 12, 2008, the Committee recommended action against 28 security personnel and against the CDO (under the Civil Service Act, 1992). The Committee also recommended departmental action against the brigadier general commanding in the district and the superintendent of police of the district for failing to protect lives and properties of the local people. Those named include Brig Gen Om Bahadur Pun, head of Dhankuta Brigade; Pawan Bahadur Pandey, head

of Bishnu battalion; Raju Tamang, chief of Belbari Police Post and Captain Pralhad Thapa Magar. The committee also recommended that the government provide NRs1 million each to the families of those killed, NRs600,000 each to victims who are physically impaired, NRs75,000 for those who sustained bullet injuries, and NRs25,000 for those sustaining minor injuries. Prior to the Parliamentary Probe Committee's report, the government had already provided NRs 300,000 to the families of those who were killed, NRs150,000 to those who were seriously injured and disabled, and NRs 25,000 and NRs10,000 to those who sustained serious injuries and minor injuries.

### **Myagdi District**

#### *Case 54:*

**Name:** Khagendra Buddhathoki  
**Date of Incident:** January 6, 2002  
**Age:** 31  
**Address:** Aman VDC-6, Pok (Satghare), Myagdi District  
**Nature of Crime:** Extrajudicial killing

#### **Persons to be Questioned:**

1. Lieutenant Colonel Raju Nepali, commander of Kaliprasad battalion, Beni barracks;
2. Soldiers of Kaliprasad battalion who had gone to the temporary camp of Darwang Dukhu.

**Summary of Testimony from FIR:** On January 6, 2002, a team of patrolling soldiers arrested Khagendra Buddhathoki on the Tatopani Jalkuni Bridge. Villagers saw the soldiers take Khagendra to a temporary army camp at Darwang Dukhu at Alkachaur. According to locals and family members, at that camp around 9 a.m. the following day Khagendra was shot dead. On January 8, 2002, Radio Nepal announced that a Maoist terrorist named Khagendra Buddhathoki had been killed in a security operation on January 7, 2002. Family members visited the DPO demanding an investigation of the killing. No action was taken by police.

On January 25, 2002 after the battalion moved from its temporary camp, Khangendra's family, with the help of other villagers, started digging at the location of the temporary camp and found the body of Khagendra Buddhatoki buried in the compound. The family briefly observed a religious ceremony. The same day, Khagendra's father submitted a FIR at both the DPO on January 25, 2002, and at the DAO on January 26, 2002 demanding action against those responsible and compensation for the family. Police told the family that they would investigate the case, bring the perpetrators to justice and provide compensation. At this writing nothing had been done on any of these points. The NHRC, on a *suo moto* basis (i.e., without having received a complaint), was considering the case. It requested the authorities for a copy of the post-mortem report. As of August 2008, the NHRC had not yet reached a conclusion.

**Official Action:** Police filed a FIR on April 12, 2007. No further action was reported on the FIR through early August 2008.

*Case 55:*

**Name:** Chandra Bahadur B.K.  
**Date of Incident:** January 8, 2003  
**Age:** 17  
**Address:** Kasebagar, Arman VDC-6, Myagdi District  
**Nature of Crime:** Possible torture and Extrajudicial killing

**Persons to be Questioned:**

1. Lt. Colonel Raju Nepali, commander of the Kaliprasad battalion, Beni Barracks;
2. NA personnel of Kaliprasad battalion.

**Summary of Testimony from FIR:** On the morning of January 8, 2003, a group of armed NA soldiers from the Kaliprasad Battalion arrested Chandra Bahadur B.K. at his home on suspicion of being a Maoist. No arrest warrant was served at the time of the arrest. The soldiers were staying in a temporary camp set up at Kasebegar of Arman VDC-6. Following his arrest, soldiers beat Chandra Bahadur with gun butts and punched and kicked him before taking him to the temporary camp. Chandra's

father, Karna Bahadur B.K. and his mother, Shasikala, witnessed the beating. Chandra's mother followed the army personnel to the barracks seeking her son's release, but her requests were turned down.

The family went to the DPO and DAO in Myagdi the day after Chandra was arrested, but both refused to register their complaints regarding his illegal arrest and detention. On January 11, 2003, the state-owned Radio Nepal broadcasted information that Chandra was a Maoist, and security forces killed him in an encounter in Pairokhoriya of Baranja VDC-6, Baglung District.

On hearing the announcement of his death on radio, the family went back to the police and asked for the killing to be investigated. Family members visited the DPO and CDO on January 12, 2003, to complain about the incident and ensure they could collect his body from the army camp. Then CDO assured them that he would initiate necessary action and asked them to cremate the body. Following his assurance, they briefly observed the last religious rituals for the body. Chandra was buried within the camp premises. His body has not been exhumed. The CDO's assurance did not lead to action, and the family heard nothing further about the investigation.

The NHRC has recently initiated an investigation into this case.

**Official Action:** Baglung DPO filed a FIR filed on April 12, 2007, with the support of NGOs. At this writing, police had not yet initiated an investigation.

## **Palpa District**

### *Case 56, 57 and 58:*

<b>Name:</b>	Dal Bahadur Darlami, Narayan Prasad Kanauje, and Tek Bahadur Gaha
<b>Date of Incident:</b>	March 22, 2005
<b>Age:</b>	15, 16, and 15, respectively
<b>Address:</b>	Khannichap VDC-8, Mahachhap, Palpa District
<b>Nature of Crime:</b>	Extrajudicial killing

**Persons to be Questioned:**

1. Major Rabindra K.C., commander of Ranbum Company, Tansen, Palpa District;
2. Soldiers who were deployed on the spot.

**Summary of Testimony from FIR:** Around 8:30 p.m. on March 22, 2005, three army vehicles coming from the direction of Aryabhanjayang in Palpa stopped at a place called Dhaireni of Chidipani VDC-1. Along the highway, some school children were stopping vehicles to collect money for Holi festival celebrations the following day. According to eye-witnesses, 25-30 soldiers got out of their vehicles at Dhaireni and, without conducting any inquiries, started firing indiscriminately. Three school children, namely Dal Bahadur, Narayan Prasad, and Tek Bahadur Gaha, died on the spot.

The next morning a police squad from the DPO Palpa took the dead bodies to Palpa District Hospital, Tansen, for a post-mortem examination. On March 24, 2005, the DPO handed the bodies back to their respective families who conducted the last religious ceremonies. The DPO failed to provide the post-mortem report to the families. Members from the three families tried to file FIRs at the DPO in Palpa, but the police did not register their case. Instead, it later transpired that police *suo moto* filed a case presenting the killings as accidental. The District Security Committee (DSC) in Palpa gave each family NRs100,000 as assistance to observe the final religious ceremonies. The DSC obtained the families' signatures on letters reportedly acknowledging that the soldiers had acted irresponsibly and had killed the children, but no copies of the letters were provided to the families.

**Official Action:** On November 30, 2006, the families, Advocacy Forum lawyers, and representatives of Peace Brigade International approached the DPO Palpa to register three FIRs demanding a criminal investigation. The police office refused to register the FIR on the grounds that it was a political case and civil authorities were not entitled to deal with it. The same team visited the CDO the same day. At first, the CDO was reluctant to order the registration of the FIRs, but he forwarded the FIRs to the DPO on the same day. After a heated debate lasting several hours, the police agreed to register the FIRs.

On December 24, 2006, Advocacy Forum lawyers visited the DPO to follow up the complaints. Deputy Superintendent of police, Bhim Prasad Dhakal, stated that, contrary to previous information, the police had not registered the families' FIRs but that it was continuing investigations based on a separate FIR filed by the police itself. On March 22, 2007, assistant police inspector, Bom Bahadur Kumal, working at Palpa DPO, produced a report before the District Public Prosecutor's Office stating that the boys were killed in an accident. In another visit by Advocacy Forum on March 23, 2007, the DPO confirmed that police had finally formally registered the families' FIRs on December 31, 2006, and that a preliminary report based on the families' FIRs was sent to the district public prosecutor on January 1, 2007.

On January 8, 2007, the District Public Prosecutor's Office directed the DPO to proceed with investigations as a murder case. The DPO verbally informed Advocacy Forum that they had asked the Palpa District Hospital for copies of the post-mortem reports. No other progress had been reported as of August 2008.

## **Surkhet District**

### *Case 59:*

**Name:** Man Bahadur Karki  
**Date of Incident:** June 10, 2006  
**Age:** 35  
**Address:** Lekhgaun VDC-4, Surkhet District  
**Nature of Crime:** Torture and extrajudicial killing

### **Persons to be Questioned:**

1. Kul Bahadur Sijali, resident of Lekhgaun VDC-4, Surkhet District;
2. Jit Bahadur Sijali, resident of Lekhgaun VDC-4, Surkhet District;
3. Ratan Bahadur Gautam, resident of Lekhgaun VDC-4, Surkhet District;
4. Meghraj Gautam, resident of Lekhgaun VDC-4, Surkhet District;
5. Yam Bahadur Gharti, resident of Lekhgaun VDC-4, Surkhet District;
6. Maoist member Lal Bahadur Ramjali alias "Lokesh," resident of Lagam, Betan, Surkhet District;
7. Maoist member Dilip, resident of Kunathari VDC-3 or 4, Surkhet District.

**Summary of testimony from FIR:** According to witnesses, around 5 a.m. on June 10, 2006, two Maoists, named Dilip and Lokesh, abducted Man Bahadur from his house. The following day, Man's body was found hanging outside the house of another local, Ratan Bahadur Gautam, at Lekhagaun VDC-4 in Dhanigandh. A local Maoist told Man's family that he had committed suicide. The family refused to take possession of the body as they were not convinced that Man had committed suicide. They claimed that Man had been killed after he was abducted and that the case needed further investigation.

Maoist member Bipin, who was a resident of Bidhyapur VDC in the district, forced Man's family to take the body and conduct his funeral on June 12, 2006. Reports in the local media and information from two witnesses suggested that Kul Bahadur had conspired to abduct and kill Man since he had a long-standing feud with Man and his father about a piece of land. According to a local villager, this feud provoked the perpetrators to kill Man. According to family members, four local villagers named Kul Bahadur Sijali, Ratan Bahadur Gautam, Meghraj Gautam, and Yam Bahadur Gharti were involved in beating and killing Man. After beating him to death, the perpetrators hung his body in an attempt to give the impression that he had committed suicide. There were wounds on different parts of his body, including on his testicles.

**Official Action:** Man's relatives approached the DPO to register a FIR on September 11, 2006 but the DPO refused to register it. The NHRC was also informed about this incident, but had not yet concluded its investigations at this writing. Maoists also threatened the family not to file a case. As of August 2008, the FIR had not been registered and no further action had been taken by police.

## **Tanahun District**

### *Case 60 and 61:*

<b>Name:</b>	Ganga Bahadur Nepali and Shyam Sundar Kaini alias "Bharat"
<b>Date of incident:</b>	April 29, 2002
<b>Age:</b>	Both 39
<b>Address:</b>	Ghansikuwa VDC-3 and Byas Municipality-3, Tanahun District
<b>Nature of crime:</b>	Extrajudicial killing



**Persons to be questioned:**

1. Major Baburam Shrestha employed by No. 3 Battalion of the NA situated at Chapaghat, Byas Municipality, Tanahun District;
2. Jamdar Damodar Adhikari working at the army installation at Chapaghat, Byas Municipality, Tanahun District.

**Summary of testimony from FIR:** On April 29, 2002, Ganga Bahadur Nepali, a village level political activist affiliated with the CPN-UML, was arrested from his home and taken to army barracks. Army personnel took Ganga away as soon as he arrived home from hospital with his sick son. His wife was told that he would be safe and sent back home soon.

That same day around 10 p.m., army personnel abducted Bharat from his home. Bharat's wife witnessed his abduction and tried to resist but soldiers manhandled her and told her that he would return home safely.

According to members of both families, security personnel killed the two victims early in the morning the next day. News broadcast on the state-owned Radio Nepal the next morning reported that security forces had killed Ganga Bahadur Nepali and Shyam Sundar Kaini (Bharat) as they were planning to ambush security forces at Ghasikuwa VDC-8, Bangesimal, Tanahun District.

The day after the men were killed, the families and Pratap Lal Shrestha, CPN-UML secretary of Tanahun District Committee, requested Army Major Baburam Shrestha to hand over the bodies to the families. However, Major Shrestha stated he could not hand over the bodies of "terrorists." Major Shrestha handed over the bodies to the families only after he received a phone call from Madhav Kumar Nepal, the CPN-UML general secretary, who had come to Damauli to address a mass meeting. Pratap Lal Shrestha confirmed in a written statement that he received information from army personnel at the barracks that soldiers under the command of Jamdar Damodar Prasad Adhikari had arrested the two men and shot them dead.

**Official action:** The police registered two FIRs on April 6, 2007. Police had not initiated an investigation at this writing. When Advocacy Forum contacted DPO,

Tanahun, on June 29, 2008, one of the police officers said that police had taken statements from some of the witnesses named in the FIR, and had also contacted the concerned authorities regarding the post-mortem report. No further developments have been reported since.

## **Udayapur District**

### *Case 62:*

**Name:** Dhan Kumari Tumbahamphe  
**Date of Incident:** April 24, 2005  
**Age:** 24  
**Address:** Barahchhetra VDC-1, Sunsari District  
**Nature of Crime:** Rape and Extrajudicial killing

### **Persons to be Questioned:**

Approximately 250 unidentified security personnel deployed from:

1. No. 18 Division of NA, Bhulke, Udayapur District;
2. Ranabhim Battalion security base camp, Phattepur, Saptari District;
3. Dantakali Battalion of APF at Barmajhiya, Saptari District, under the command of NA Eastern Divisional Headquarters, Itahari, Sunsari District.

**Summary of testimony from FIR:** On April 24, 2005, Dhan Kumari and her friend Roman Rai were staying in Mainamaini village, Udayapur District. They heard that soldiers had cordoned off the village, and according to witnesses, both of them tried to run away from the village. Dhan Kumari could not escape, and was arrested around 5 p.m. at Sombare Chowk. The soldiers also seized some CPN-M party documents from her bag. The soldiers then marched her around Mainamaini VDC and later kept her at a local house in Mainamaini VDC-9 of the district. According to witnesses, at around 1 a.m. the following morning, soldiers marched her out of the house towards a hill and raped and killed her.

The soldiers buried the body at the same hill where they raped and killed her. Local villagers informed Dhan's family. The family exhumed the body and performed a religious ceremony. When her body was recovered, there were signs of bullet injuries

on her temple and neck, and her left breast had been cut off. There were also signs on the body suggesting she may have been raped. No medical examination was conducted to establish rape.

Dhan's brother-in-law, Chakra Bahadur Tumbahamphey, tried to file a FIR on April 26, 2005, but the DPO in Udayapur refused to register the case. On May 30, 2005, Chakra Bahadur submitted a file containing information about the incident to the NHRC. The case is still under investigation by the NHRC.

**Official Action:** On September 22, 2006, Advocacy Forum approached DPO Udayapur to register the FIR. However Deputy police superintendent Mohan Bahadur Khadka said he wanted to consult higher police authorities before filing the FIR. In September 24, 2006, the DPO informed the families that the case was registered in the 'General Diary'. The victim's family visited the District Administration Office in October 2007 requesting registration in Diary No. 10, the normal register for FIRs of this nature. However, the district authorities refused to register the FIR properly. The family then moved the Appeal Court, Rajbiraj, on January 15, 2008 seeking an order to register the FIR. The Appeal Court ordered the DPO, Udayapur, to register the FIR on August 18, 2008. As of late August 2008, the FIR had not yet been registered.



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H U M A N  
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W A T C H

# Waiting for Justice

## Unpunished Crimes from Nepal's Armed Conflict

During the decade-long armed conflict between the Communist Party of Nepal (Maoist) and the Nepali government, an estimated 13,000 people were killed, the majority of whom were civilians. Both security forces and Maoists were responsible for indiscriminate killings of civilians, torture, disappearances, and other abuses. Following the signing of a peace agreement in November 2006, some brave families of those victims have come forward seeking justice.

*Waiting for Justice* examines 49 complaints that families have filed with police concerning allegations of killings, torture, rape, and enforced disappearances. Most of the abuses described in these complaints were committed by security forces in the period between 2002 and 2006, and a couple of cases allege killings by Maoists.

The Nepali justice system has failed miserably to respond to these complaints. Not a single perpetrator has been brought to justice before a civilian court. The police are fearful of the army and the Maoists, and have failed to interview suspects and witnesses, and conduct even the most rudimentary investigation of cases. In some cases, the courts have rejected families' calls for investigations, saying they will be dealt with by a proposed transitional justice body. Nepali law also contributes to the ongoing impunity by failing to provide a clear framework to ensure independent investigation and effective prosecution of killings, enforced disappearances, and torture by security forces.

The new government of Nepal should make it a priority to investigate and prosecute the most serious crimes committed during the conflict and send a strong message to security forces and armed groups that gross abuses of human rights will no longer be tolerated. There are grave fears that amnesties may be granted for such abuses, in violation of international standards. As past experience in Nepal and in many other countries has shown, allowing perpetrators of serious human rights crimes off the hook would make future abuses more likely. It would also be an affront to the families of victims still waiting for justice.

*Putali Chaulagain holds a photo of her daughter, 17-year-old Subhadra Chaulagain, who was killed by soldiers on February 13, 2004.*

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