



NEPAL

Indifference to Duty

Impunity for Crimes Committed in Nepal

HUMAN
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WATCH





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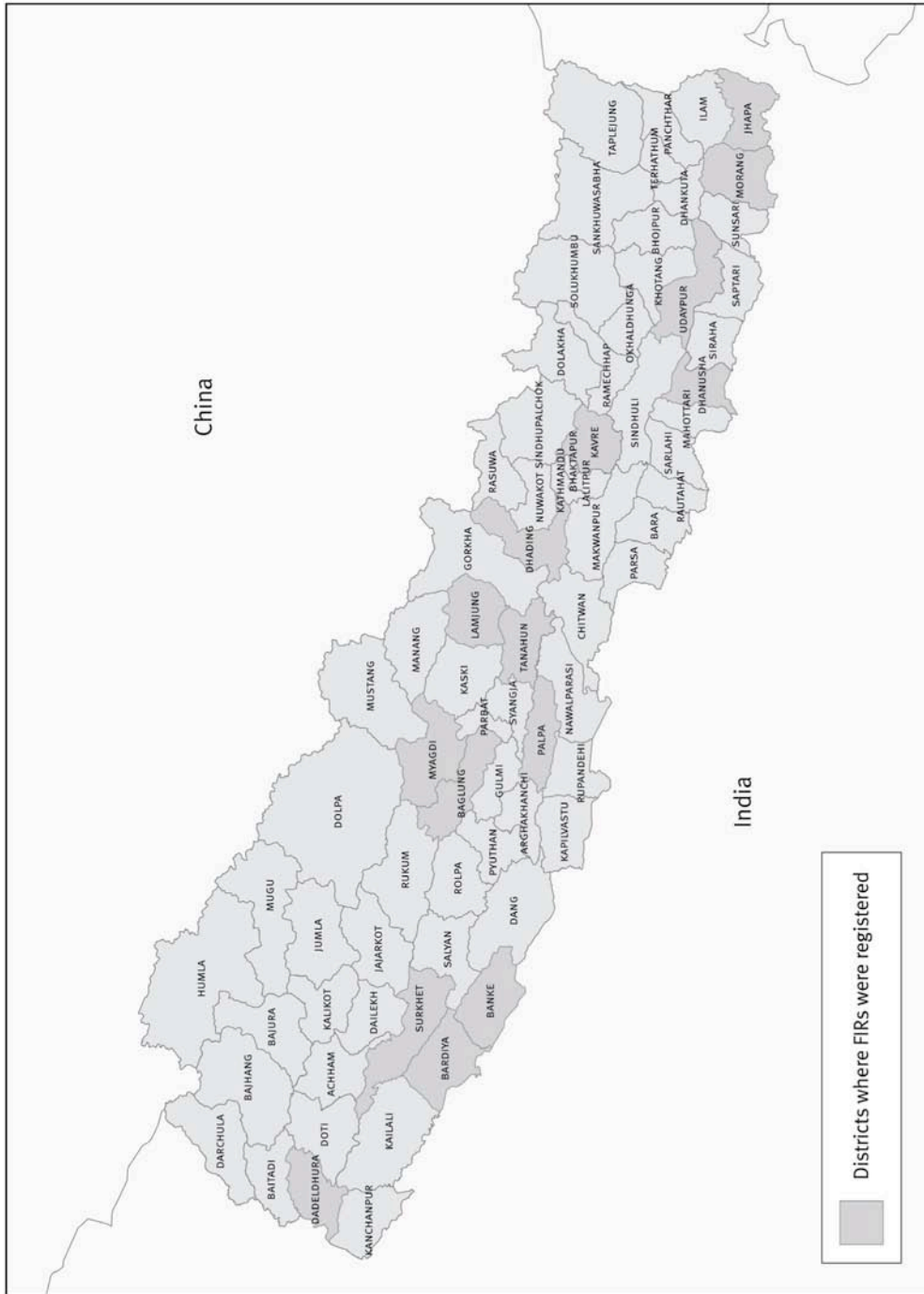


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Map of Nepal



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District Map of Nepal

Summary

It sends the wrong message to the public when authorities involved in a criminal investigation remain indifferent to its progress. It also mortifies common people's desire to see justice done promptly. The delay in investigation becomes advantageous to the criminal because he can find an easy way to conceal the evidence. It can render the whole criminal justice system a failure.

— Supreme Court Chief Justice Anupraj Sharma and Justice Ram Kumar Prasad Shah in their ruling on a writ petition in the Subhadra Chaulagain case, December 14, 2009

Impunity for human rights violations remains the norm in Nepal. This is true of the extrajudicial killings, enforced disappearances, torture, and other abuses committed by both sides during the decade-long war between the Maoists and the security forces that ended in 2006—no one has yet been held accountable for any of those violations in a civilian court. And it is also true of serious violations, including extrajudicial killings and torture, allegedly committed by armed forces and members of the United Communist Party of Nepal-Maoist (UCPN-M) since the conflict ended.

A central driver of impunity is failure on the part of the police to rigorously investigate cases, and in many instances, to investigate at all. Police routinely refuse to accept complaints from relatives of victims and to register First Information Reports (FIRs, the initial complaints to police which formally initiate investigations); even when FIRs are registered, police and prosecutors routinely procrastinate in carrying out investigations, even in the face of orders and legal rulings by the Supreme Court. Such failures are due at least in part to the continued sway of the army and Maoist forces, and to police knowledge that the Nepal Army (NA) and political party officials, including Maoist officials, are unlikely to cooperate with investigations.

In some cases, when there is political pressure or considerable public outcry, the authorities set up investigation committees to defuse the situation. The outcomes of these investigations are invariably flawed, and the authorities fail to act on any meaningful recommendations.

There is an urgent need for Nepal's political leaders—with the support of the United Nations, donors, and influential countries—to develop a coherent and sustainable plan to strengthen the rule of law and the criminal justice system and to end impunity. Ensuring that abusive

officers and soldiers are prosecuted and removed from the ranks of the army and Maoists is crucial, particularly amid fears that the peace process may break down.

This report, a follow-up to our 2008 and 2009 reports, *Waiting for Justice* and *Still Waiting for Justice*, provides updates on 62 cases of grave human rights abuses by the Nepal Army, Armed Police Force, and Nepal Police, as well as the UCPN-M, highlighted in those earlier reports. It also provides information on 30 more recently filed cases, including six arising since the conflict ended, demonstrating that many of the practices that impeded justice in the past continue today. Separate chapters address both ongoing impunity for violations during the conflict period and impunity for violations since the conflict ended.

In the vast majority of cases from the conflict period, the state has failed to initiate meaningful investigations and prosecutions. In 13 of 62 cases we have previously reported on, the police continue to refuse even to register FIRs, despite continuous attempts by family members and sometimes even despite court orders (cases 4, 22-26, 27, 35, 36, 37-38, 40-42, 46, 48-53, and 59 in the appendix to this report). What little progress has been made in those cases has been uneven and made only as a result of sustained pressure from local and international groups. In most cases, police have not yet even questioned suspects, instead pursuing “investigations” by sending letters requesting information to the Nepal Army or police. In several cases, the Supreme Court has ordered relevant authorities to investigate cases, but these orders have largely been ignored.

The government is also ignoring findings of the United Nations Human Rights Committee which in October 2008 called on Nepal to thoroughly investigate an alleged enforced disappearance and to prosecute and punish those responsible. The government argues that this and other cases will be investigated by the yet-to-be established Disappearances Commission and Truth and Reconciliation Commission. While the November 2006 Comprehensive Peace Agreement included a pledge to establish these commissions, the pledge has not been fulfilled; bills to establish them are still pending in Parliament.

There has been some international pressure for justice for crimes committed during Nepal’s conflict, but it has been limited. Australia and the US have denied visas to a Maoist implicated in abuses; and in the well known case of 15-year-old Maina Sunuwar, killed while in custody of the Nepal Army, Maj. Niranjan Basnet, implicated in her murder, was returned from peacekeeping duties in Chad at the request of the UN. Police charged Major Basnet with her murder but did not arrest him on his return. Instead, superficial military proceedings found him innocent despite evidence pending in a civilian court. Other persons against

whom there is strong evidence of involvement in serious crimes continue to serve in the army; some have even been promoted.

Families who have come forward more recently to file FIRs are facing similar problems. Advocacy Forum has helped dozens of families file new cases since *Waiting for Justice* was released in October 2008. Of a further 30 FIRs involving 51 victims—most from the period of the conflict but several more recent ones as well—only 10 have been successfully registered at this writing. On December 10, 2009, Human Rights Day, families of victims and lawyers tried to file 28 FIRs with police authorities in 12 districts. Police refused to register any of the FIRs, stating that they first had to consult with “higher authorities.”

Given Nepal’s ongoing failure to address impunity for past and ongoing abuses, there is a clear need for a comprehensive plan of action, one that includes the immediate establishment of effective transitional justice mechanisms to deal with crimes of the past and comprehensive reform of national laws and institutions to better deal with past, current, and possible future crimes.

In January 2011, Nepal will face scrutiny of its rights record as part of the Universal Periodic Review process at the Human Rights Council in Geneva. These discussions, as well as discussions in the Security Council in mid-January on the termination of the United Nations Mission in Nepal (UNMIN), should lay out steps to address impunity in Nepal, including possible referral of cases to the International Criminal Court should Nepal continue to fail to make progress.¹

In the meantime, China, the European Union, India, Japan, and other influential countries should follow the example set by the United States and Australia in the Agni Sapkota case and deny visas to persons against whom there is credible evidence of having committed serious crimes, whether or not investigations have progressed. If individuals credibly believed to have committed a crime of universal jurisdiction, such as torture, are present in a country with universal jurisdiction laws, they should be investigated and prosecuted in that country accordingly.

Furthermore, as evidenced by the case of Nirajan Basnet, profiled in this report, the UN Department of Peacekeeping Operations should develop better vetting procedures to ensure that persons accused of grave human rights violations do not end up on peacekeeping missions.

¹ However, the ICC is limited to crimes that took place after July 1, 2002.

Methodology

Human Rights Watch conducted the original research into the 62 cases highlighted in this report in October 2007 with the assistance of Advocacy Forum. Advocacy Forum provides legal assistance to the victims in these cases and has continued to monitor cases, visit police stations and courts, review files, and conduct interviews with victims and their families. Lawyers and staff based in the respective districts have met with the victims many times. This report draws on dozens of Advocacy Forum interviews with families in Baglung, Banke, Bardiya, Dhading, Dhanusha, Kanchanpur, Kapilvastu, Kaski, Kavre, Morang, Rupandehi, Tanahun, and Udayapur districts. Interviews were conducted with the full consent of the interviewees and, as far as possible, in private. Interviewees were informed of the purpose of the interviews and provided information on a voluntary basis. At no time did the interviewers offer or promise compensation. In September 2010, Human Rights Watch met with the Human Rights Unit of the Nepal Police.

I. Impunity for Past Human Rights Abuses

Since the publication of *Still Waiting for Justice* in October 2009, lack of progress in the peace process has developed into outright political impasse. Several key provisions of the 2006 Comprehensive Peace Agreement still remain to be implemented, chief among them the adoption of a new Constitution and integration of the Maoist People's Liberation Army (PLA) soldiers into the Nepal Army.

The main goal for the political parties in the immediate future is the adoption of a new constitution, though progress to date has been limited amid the political stalemate and uncertainty about the future of Maoist ex-combatants. The drafting task is further complicated by conflicting expectations on the exact nature of the federal character of the state. In particular, members of communities along Nepal's southern plains, known as the Madheshis, are agitating for considerable autonomy in line with a February 2008 agreement which provided for an autonomous Madheshi province and for proportional representation for Madheshis and other minorities in government. That agreement has remained largely unimplemented.

Against this background, and despite a number of strong court decisions, the Nepal Police and Attorney General's Office are not proceeding with investigations and prosecutions. Relatives of victims are being forced to file motions to argue procedural issues for which there is well established case law precedent. For example, while the Supreme Court has already decided in the Maina Sunuwar case, among others, that civilian courts have jurisdiction over alleged criminal acts committed by the security forces during the armed conflict, police and prosecutors continue to drag their feet. In the Reena Rasaili case (case 29), the Supreme Court in December 2009 stated:

An act declared a crime by the law is a crime ... no matter who the perpetrator is or what the circumstances are. The law does not prevent anyone from investigating an FIR stating that a woman sleeping at night in her home was forcefully arrested ... and shot dead by the army or security personnel. It would be a mockery of the law and of the natural rights of civilians.²

² Supreme Court of Nepal, order of December 14, 2009 in Writ no. 0339/2064 (2007), p. 4.

Lack of consistency in court rulings, especially at the appellate court level, is not helping. Several appellate courts have continued to reject writ petitions, accepting the authorities' arguments that these crimes should not be investigated by them (cases 9, 36, 41, 42, and 43), while others have issued orders to the police and Attorney General's Office to proceed with investigations.

In the cases of Reena Rasaili and Subadhra Chaulagain (cases 29 and 30), the Supreme Court directed that the Kavre police should proceed with investigations and criticized the Nepal Police and Attorney General's Office, respectively, for having failed in their duty to investigate and actively supervise the investigations. In strongly worded decisions in mandamus petitions in both cases, the court stated that written correspondence with army officials:

...[d]oes not comprise an investigative procedure in homicide cases. Correspondence cannot be called investigation. It is undisputed that [the] FIR relating to [Subhadra's] homicide case was lodged long after the incident. But an oral complaint was filed the day following the incident. Afterwards too, the complaint was lodged time and again. But nothing substantial happened.

The court found that the Kavre District Police Office (DPO) had completely overlooked the investigation, thereby failing in its legal duties. It noted that the district attorney had been "passive" in fulfilling his legal duties by failing to give necessary direction to police personnel. The court concluded:

[A] writ of mandamus has been issued against the opponents to conduct prompt investigation as per the FIR. Similarly, a judicial stricture has been issued against Police Headquarters, the Mid-regional Police Office, and the Zonal Police Office, Bagmati, to become serious, proactive, and alert, and to take necessary and appropriate steps as they have continuously shown indifference to fulfilling the duty of investigation.

In some cases, the Supreme Court has gone further and actually ordered prosecutions of the alleged perpetrators. In a June 2007 landmark judgment it found evidence that Chakra Bahadur Katwal had died in army custody as a result of torture even though his body had never been found and ordered the police and prosecutors to initiate criminal prosecutions.³

³ Supreme Court of Nepal, judgment of June 2007 in Writ no. 3775 (1999).

Instead of implementing court orders, the government has sometimes disregarded them. In August 2010, the Prime Minister's Office issued a response to the Supreme Court, stating that "the perpetrators will be punished after an investigation by the to-be-formed commission[er]s."⁴ This ignores an earlier Supreme Court decision rejecting police attempts to justify inaction with claims that the cases will be dealt with by the Truth and Reconciliation Commission.⁵

Nepal authorities also did not act on, and indeed argued against, findings of the UN Human Rights Committee (HRC) in a case brought before it under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). In October 2008, in its first Optional Protocol case from Nepal, the HRC found violations of article 2(3) of the ICCPR (the right to an effective remedy), article 7 (the right not to be tortured), article 9 (the right to liberty and security of person), and article 10 (respect for the inherent dignity of a human person) of the ICCPR.

Referring to the enforced disappearance of Surya Prasad Sharma, the HRC affirmed Nepal's obligation to "not only conduct thorough investigations into alleged violations of human rights, particularly disappearances and acts of torture, but also to prosecute, try and punish those held responsible for such violations."⁶

In subsequent correspondences with the HRC, which Advocacy Forum has been privy to, the government has repeatedly argued that the "disappearance" of Surya Prasad Sharma will be investigated by the yet-to-be-established Disappearances Commission and has thus not acted on the HRC's decision that those responsible should be prosecuted.

In September 2010, the National Human Rights Commission (NHRC), with support from the Office of the High Commissioner for Human Rights in Nepal (OHCHR Nepal), led an exhumation in Dhanusha of the suspected burial site of Sanjeev Kumar Karna and four other students (cases 15-19) who were the alleged victims of enforced disappearance in 2003. The team found the remains of four persons, but the exhumation was then temporarily closed for

⁴ Ananta Raj Luitel, "Supreme Court rap brings government to its senses," *The Himalayan Times*, August 26, 2010, <http://www.thehimalayantimes.com/fullNews.php?headline=Supreme+Court+rap+brings+government+to+its+senses&NewslD=255358>

⁵ Supreme Court of Nepal, judgment of March 10, 2008 in Writ no. 1231 (2007).

⁶ Human Rights Committee, *Yashoda Sharma vs. Nepal*, Communication No. 1469/2006, <http://sim.law.uu.nl/SIM/CaseLaw/fulltextccpr.nsf/16of6e7f0fb318e8c1256d410033e0a1/d9fb23ba0c7f13eac12575430037130e?OpenDocument> (accessed October 19, 2010)

unclear reasons. To date, there has been no exhumation of the remains of the fifth body. How the investigations will proceed from here is not clear and the NHRC has articulated no clear strategy on how to move forward, at least not publicly. Police told Human Rights Watch that they could not proceed with the investigation (including questioning any alleged suspects) until they received DNA results.

In December 2009, Maj. Nirajan Basnet, one of the accused in the February 2004 murder of 15-year-old Maina Sunuwar in army custody (case 31), was repatriated by the Nepal government from peacekeeping duties in Chad at the request of the UN. In February 2008, a police warrant had been executed for his arrest. However, upon his arrival back in Nepal, the army immediately took Major Basnet under its control and he never reported to the police to face the charges levelled against him. The Nepal Army ignored an initial order from the prime minister and appeals from the UN secretary-general and the NHRC for it to comply with the court order.⁷

In July 2010, the army announced that it had concluded its own internal inquiry into the case, found Major Basnet innocent, and determined that his return by the UN was “against all international norms and regulations.”⁸ According to Major General BA Kumar Sharma, chief of the Nepal Army Legal Department, “It is clear that the Army was acting against a common enemy then and functioning under TADA [The Terrorism and Disruptive Activities Act],⁹” and that “therefore there is no case against Basnet.”¹⁰

The Nepal Army continues to maintain this position despite the Supreme Court’s September 2007 ruling on the admissibility of the case in civilian courts and its referral of the case to the Kavre District Court after it had reviewed earlier court martial findings. The Nepal Army is not formally challenging this Supreme Court decision but it is undermining the rule of law by not cooperating with the Kavre District Court. The case remains stalled, and both police and the public prosecutor’s office, in the absence of political support, appear powerless to force the Nepal Army to cooperate.

⁷ “NHRC urges govt to proceed cases of HR violation through civil courts,” *Nepalnews*, December 24, 2009, <http://www.nepalnews.com/main/index.php/news-archive/19-general/3068-nhrc-urges-govt-to-proceedcases-of-hr-violation-through-civil-court.html> (accessed October 5, 2010).

⁸ Akanshya Shah, “Army gives Basnet clean chit, claims UN violated norms,” July 14, 2010, available on <http://www.southasianrights.org/?p=1233> (accessed October 5, 2010).

⁹ The Terrorism and Disruptive Activities Act (TADA) were adopted into law by Parliament in 2002. Its provisions had earlier been promulgated as an Ordinance in the TADO. It lapsed as a law in the absence of Parliament but was re-promulgated as a royal decree from October 2004. It was not renewed after it lapsed in September 2006 and is no longer in force.

¹⁰ Akanshya Shah, “Army gives Basnet clean chit, claims UN violated norms,” July 14, 2010, available on <http://www.southasianrights.org/?p=1233> (accessed October 5, 2010).

This is just one example of the Nepal Army's at times provocative conduct. The promotion and subsequent appointment of Maj. Gen. Toran Bahadur Singh as acting army chief in October 2009 is another example. As commander of the 10th Brigade, Singh was accused of involvement in cases of enforced disappearances and custodial torture in the notorious Maharajgunj barracks in Kathmandu in 2003 and 2004.¹¹

The other party to the conflict, the United Communist Party of Nepal – Maoist (UCPN-M), has similarly refused to cooperate with the criminal justice system. In the case of Arjun Bahadur Lama (case 32), who disappeared after abduction by Maoists in 2005, there has been little progress, in part because UCPN-M officials have not cooperated with investigations by the police and NHRC and, like the government, have argued that cases such as Arjun Lama's will be dealt with through transitional justice mechanisms yet to be established. A FIR was filed in the case in August 2008 only after the Supreme Court ordered the police to register it. In January 2010, the Kavre police wrote to local police at the location where Lama's body is thought to be buried, asking them to secure the site. The Foksingtar police subsequently cordoned off the area with a rope, but failed to deploy police to protect the site.

Both Australian and US authorities (in February and June 2010, respectively) refused a visa to Agni Sapkota, a Central Committee member of the UCPN-M, on whose orders Lama was allegedly killed.¹² The US embassy in Kathmandu cited concerns over "serious and specific human rights allegations associated with his [Sapkota] conduct during the insurgency" as the reason for denying the visa. The leader of the UCPN-M, Pushpa Kamal Dahal, alias Prachanda, later publicly accused Human Rights Watch and Advocacy Forum of fabricating evidence against Sapkota but did not provide any evidence to contradict the claims against him.

Truth and Reconciliation and Disappearances Commissions

Both sides to the armed conflict agreed to publicly reveal the whereabouts of those "disappeared" during the conflict within 60 days of signing the Comprehensive Peace Agreement (CPA) in 2006. They also agreed to set up a high-level Truth and Reconciliation Commission (TRC) and to "rehabilitate people victimized and displaced by the war." Nearly four years later, these promises remain unfulfilled.

¹¹ These included at least 8 cases documented by Human Rights Watch in the report "Clear Culpability: 'Disappearances' by Security Forces in Nepal," (<http://www.hrw.org/en/reports/2005/02/28/clear-culpability-o>) released in 2005.

¹² "Nepal: Investigate Maoists' Role in Killing," Human Rights Watch news release, July 1, 2010, <http://www.hrw.org/en/news/2010/07/01/nepal-investigate-maoists-role-killing>

The government has drafted and revised two bills to establish a TRC and a commission of inquiry into enforced disappearances. In April 2010, the government proposed both bills in Parliament.

After pressure from national and international actors, a problematic amnesty provision was removed from the TRC Bill, though confusion remains about the powers the commission will have to “bring about” reconciliation. The government has included in the TRC bill a provision that the TRC is to seek assistance from the government in providing security to victims and witnesses. This provision remains in the bill even though justice advocates have argued that separate, more detailed legislation is needed to better address victim and witness protection.

The Disappearances Commission bill would criminalize enforced disappearances but its definition of enforced disappearances is not in line with international standards.¹³ The proposed maximum punishment of seven years provided for in the bill is also insufficient in cases where the offense constitutes a crime against humanity or war crime.

At this writing, these bills have not been debated, and the drafts are before the Legislative Committee, which is considering further proposed amendments to the texts.¹⁴

In the meantime, a number of other initiatives are underway. In cooperation with the UN Development Program, the government has drafted a criminal procedure code and a penal code, though these have not been submitted to Parliament. Articles 200 and 201 of the draft penal code recognize enforced disappearances as a crime and impose a maximum penalty of 15 years. This conflicts with the maximum seven-year punishment provided for in the draft Disappearances Commission bill. The draft penal code recognizes torture as a crime, but does not define it. Torture is to be punishable by a maximum of five years and/or a fine, but there is no minimum punishment set out. It also gives victims only six months within which to file cases.

Role of the International Community and the National Human Rights Commission

Since July 2009, all UN Security Council resolutions extending the mandate of the United Nations Mission to Nepal (UNMIN) have recognized the “need to address impunity and to promote and protect human rights through building the capacity of independent national

¹³ The Bill covers enforced disappearance carried out by a person “having authorisation under the law” to arrest or investigate or implement laws but not “persons or groups of persons acting with the authorization, support or acquiescence of the State” as set out in the definition contained in Article 2 of the UN Convention for the Protection of All Person from Enforced Disappearances.

¹⁴ Rajdhani, “Bills on truth and reconciliation and disappearances gathering dust”, p.2, July 28, 2010.

institutions.” Unfortunately, very little has been done by the Nepal government, relevant national and international institutions (including the UN), and donor countries including Australia, China, the EU, India, Japan, and the US to address the pervasive climate of impunity in Nepal.

In light of increased domestic criticism of UNMIN’s role, and under pressure from Nepal’s political leaders and the Nepal Army, the Security Council in resolution 1939 (2010) of September 15, 2010, announced that UNMIN would leave Nepal, effective January 15, 2011. Human Rights Watch and Advocacy Forum are urging the UN, as part of a wider exit strategy, to develop an action plan to address impunity. Such a strategy should include the establishment of effective transitional justice mechanisms to deal with crimes of the past and comprehensive reform of national laws and institutions to better deal with past, current, and possible future crimes.

The government also significantly weakened the mandate of OHCHR-Nepal in June 2010, resulting in closure of its field offices. The office no longer has the authority to visit places of detention without prior permission. Under its agreement with the government, its role on human rights issues is limited to monitoring the human rights situation in the country “in cooperation with the National Human Rights Commission (NHRC).”¹⁵

Despite being a constitutional body under the interim constitution, the NHRC continues to lack independence and is regularly criticised for failing to secure police and army compliance with its recommendations.¹⁶ According to the NHRC’s own figures, 86 percent of its recommendations have not been implemented and only 2 percent of its 47 recommendations relating to disappearances have been implemented since the commission started its work in 2000.¹⁷

¹⁵ “Agreement between the Government of Nepal and the United Nations High Commissioner for Human Rights concerning the Office of the High Commissioner for Human Rights in Nepal”, June 9, 2010, <http://nepal.ohchr.org/en/index.html> (accessed October 2, 2010)

¹⁶ ACHR, *The Withdrawal of OHCHR in Nepal. Agreeing an Alibi for Violation*, Briefing Papers on Nepal, No. 5, March 4, 2010, <http://www.achrweb.org/briefingpapers/BPNepal-01-10.pdf>

¹⁷ “86 percent of NHRC recommendations have been ignored,” *The Himalayan Times*, July 6, 2010

II. Impunity for Recent Human Rights Abuses

The impunity with which government security forces and Maoist cadres operated during the armed conflict continues today. In July 2010, OHCHR Nepal reported an “alarmingly high number of allegations of deaths in custody, or deaths of individuals during “encounters.”¹⁸ Between January 2008 and June 2010, OHCHR Nepal received reports of 39 incidents, resulting in 57 deaths, which involved credible allegations of the unlawful use of lethal force. Many of these deaths occurred in the context of a more aggressive policing policy in the southern Terai districts where criminal activity by armed groups is a serious problem.¹⁹ OHCHR Nepal stated:

[M]any of the problems underlying the resort to, and lack of accountability for, extra-judicial killings are systemic.... But the main problem – the culture of impunity that pervades the security forces and erodes public confidence in the government – can be addressed by taking prompt action against any individuals *potentially* implicated in unlawful killings until a proper judicial process is undertaken, or until the framework for an independent government body empowered to investigate these allegations can be established.²⁰

According to Advocacy Forum’s own documentation of a further 30 FIRs involving 51 victims—most from the period of the conflict but six FIRs relating to incidents after the conflict—only 10 have been successfully registered at this writing.²¹ On December 10, 2009, Human Rights Day, families of victims and lawyers tried to file 28 FIRs with police authorities in 12 districts. Police refused to register any of the FIRs, stating that they first had to consult with “higher authorities.”

This chapter documents developments in three emblematic recent homicide cases—one implicating the police, one the Nepal Army, one the UCPN-M—that demonstrate that many of the same impediments to justice are still at work. The Attorney General’s Office also does not use its authority to insist that police pursue the cases. Even if FIRs are registered, police

¹⁸ “Investigating Allegations of Extra-Judicial Killings in the Terai. OHCHR-Nepal Summary of Concerns,” OHCHR-Nepal, July 2010, <http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf> (accessed October 1, 2010).

¹⁹ Ibid.

²⁰ Ibid, page 10.

²¹ “List of FIRs filed with the assistance of Advocacy Forum,” Advocacy Forum-Nepal, December 2010, <http://www.advocacyforum.org/>

do not rigorously pursue the cases, particularly when other police officers are implicated in the crimes. As mentioned above, authorities sometimes set up investigative commissions but those continue to produce no results and serve mainly as temporary distractions.

The powerful role of the Nepal Army and the UCPN-M's People's Liberation Army also continues to impede investigations. Police officers fail to seek court sanctions in part because they know the Nepal Army and Maoists will not cooperate with investigations.

In the meantime, there have been concerns about continued insecurity, especially in the southern Terai region, home to the majority of the Madheshi communities. This area has seen a re-emergence of so-called "encounter" killings and an increase in incidents of torture by the police.²²

On July 26, 2009, the government of Prime Minister Madhav Kumar Nepal endorsed a new Special Security Policy (SSP) but the new policy was not made public. There are no indications human rights have been incorporated into the new policy.

The following homicide cases show the obstacles, many of them rooted in practices dating from the armed conflict period, that continue to impede justice where the alleged perpetrators are police, soldiers, or members of the UCPN-M.

Amrita Sunar, Devisara Sunar, and Chandrakala Sunar

On March 10, 2010, 29-year-old Amrita Sunar, 28-year-old Devisara Sunar, and Devisara's 12-year-old daughter, Chandrakala Sunar, all residents of the Hariharpur Village Development Committee in Surkhet district, were shot dead by soldiers.

The versions of events given by the survivors and by the army differ drastically. The Nepal Army claims that the three victims were killed during an exchange of gunfire with armed poachers. Two survivors claim that the women were part of an unarmed group of villagers collecting *kaulo* (medicinal tree bark) when about 17 army personnel surrounded them and opened fire, resulting in the three deaths.

Two eyewitnesses report having seen army personnel carrying the victims' bodies more than 24 hours after the time of the alleged encounter, and say that the blood appeared fresh. An

²² "Torture and Extrajudicial Executions amid Widespread Violence in the Terai," Advocacy Forum, January 2010, http://www.advocacyforum.org/TeraiReport_English_English.pdf

independent investigation by Advocacy Forum and the Informal Sector Service (INSEC) found no evidence of blood stains at the site of the alleged encounter. The post-mortem reports state that all three victims were shot from behind from a distance. The reports were inconclusive as to whether any of the women had been raped (the women's discarded clothing was found near the site, raising concerns that they might have been sexually assaulted).

On March 12, 2010 the Bardiya police went to the crime scene to investigate. Their efforts were limited, however, in part because, despite repeated requests, the army did not give any details about the personnel involved in the "encounter."

With the help of Advocacy Forum, the husband of one of the women registered a FIR against 17 army personnel and four forestry officials on March 25. According to the families, army personnel threatened them and witnesses, and coerced them into signing an agreement to withdraw the FIR in exchange for Rs25000 (US \$340) payout.²³

The government has ignored local and international calls for investigations and prosecutions into the case. An investigation committee led by an assistant attorney general was set up to look into the incident on March 17, 2010. It submitted its report to the government on April 19, 2010. The government subsequently appointed a minister-level committee to study its findings.²⁴ At this writing, it has not made the findings public or reported on the implementation of any recommendations. So far as we have been able to determine, there has been no further investigation into the case.

Dharmendra Barai

On July 3, 2010, Assistant Sub-Inspector (ASI) Nar Bahadur Khatri and two police officers dressed in civilian clothes arrested 15-year-old Dharmendra Barai in connection with the death of a man in a bicycle accident. Police took Dharmendra to Khajuriya Police Post, Rupandehi District. In the evening, his family and some villagers went to the police station, requesting his release. According to the family, the ASI said that Dharmendra would be released the next day at 8 a.m. While they were at the police station, the family could hear the boy crying out to them saying that the police had aimed rifles at him and threatened to

²³ In law, the State Cases Act and regulations do not provide for an FIR to be withdrawn once it has been filed with the police; the decision regarding proceeding with the case lies with the Attorney General's Office.

²⁴ "Government forms ministerial panel to study report on BNP killings," Nepalnews, April 19, 2010, <http://www.nepalnews.com/main/index.php/news-archive/2-political/5465-govt-forms-ministerial-panel-to-study-report-on-bnp-killings.html>

shoot him. The family left the police station at about 10.30 p.m. At 4.00 a.m. on July 4, the ASI called the family and told them that Dharmendra was ill, and had been taken to Bhim Hospital in Bhairahawa for treatment. When the family members reached the hospital, they found that the boy was already dead.



Dharmendra Barai who died in police custody in July 2010. Photograph taken at the hospital morgue. (c) Advocacy Forum

Eyewitnesses present at the hospital reported visible signs of ill treatment and torture on Dharmendra's body, including marks of what might have been electric shocks on his shoulders and temple. The hospital record reads "Brought dead." The post-mortem report says the cause of death is not known and lists visible injuries as blue marks on the sole of his right foot, a 2-inch by 3-inch wound on his right arm, and multiple scratches on his left palm.

Another suspect detained in the same cell as Dharmendra told Advocacy Forum that he himself was tortured by the police with electric shock treatment that night. He could not say for certain that Dharmendra faced the same treatment, but he said that when police eventually released them from their cell, Dharmendra fell to the ground and started emitting froth from his mouth. The other detainee says he has suffered serious mental problems since his detention.

Amid outcry and persistent calls for justice by civil society organizations, both the national and local government set up investigations. On July 18, 2010, the Home Ministry formed a three-member investigation team, including a senior Home Ministry official, a senior police officer, and a member of the National Investigation Department. The team visited the incident site and investigated the case. However, as of late November 2010, they had not published a report.

On August 3, 2010, the investigation team set up by the district administration made its report public. The report concluded that the cause of death was unknown and that there was

insufficient evidence to prove that torture was the cause of death. It said police had failed in their duty to take Dharmendra for a medical check-up on his arrest and to notify higher authorities of his arrest. It also noted that detention facilities at the police office were inadequate and badly ventilated. The report recommended that the government provide the family with adequate compensation, and that departmental action be taken against the police officers of the concerned police station. The government has not provided the family with compensation, apart from Rs. 20,000 to cover funeral costs provided by the District Administration Office in Rupandehi. The case is pending in court, and no disciplinary action has been taken.

On August 22, 2010, the victim's father, Hariram Barai, tried to file an FIR against the police allegedly involved in Dharmendra's death, but Superintendent of Police Sher Bahadur Basnet refused to register the FIR, stating that the police had already registered an FIR and that the case was being investigated. According to Hariram, the police also offered to recruit his older brother into the police force if he dropped the FIR.

On the same day, Hariram and his relatives also tried to submit a FIR to Deputy CDO Pitamber Ghimire, who is also the chairman of an investigation team formed by the Rupandehi District Administration Office (DAO), and asked him to order the Rupandehi District Police Office (DPO) to register the FIR. This FIR too was denied on grounds that the FIR was addressed to the Rupandehi DPO and had to be filed there. Hariram then mailed the FIR to both the DPO and DAO.

When Hariram did not receive any information for 15 days, he filed a mandamus petition at the Butwal Appellate Court, Rupandehi district, on September 9, 2010, seeking a court order to force the DPO to file the FIR. In a quick response, on September 12, 2010, the court issued a "show cause" order to the DPO asking for an explanation as to why the FIR was not registered. The DPO replied that it was under internal discussion. At the time of this writing, the relatives await a court ruling.

Ram Hari Shrestha

Businessman Ram Hari Shrestha was abducted on April 27, 2008 and later died at the People's Liberation Army (PLA) cantonment site in Chitwan District. According to investigations by OHCHR, there are credible allegations he died due to severe ill-treatment at the site.

Five UCPN-M cadres have been formally charged in connection with the incident. Police arrested one of them and put him in pre-trial detention, but the other four are at large. According to the Nepal Police, the PLA has failed to respond to letters sent to them by the

police on May 23 and June 1, 2008, requesting an interview with the PLA Third Division commander. The Nepal Police maintains that they need the cooperation of the UCPN-M and PLA to carry out Chitwan District Court orders to arrest the suspects. OHCHR has requested the UCPN-M chairperson to instruct the party members involved to surrender to the Nepal Police and to cooperate fully with the investigations.²⁵ However, the UCPN-M and PLA have so far not cooperated and the case before the Chitwan District Court has not progressed.²⁶

²⁵ OHCHR letter to Pushba Kamal Dahal, chairperson, UCPN-M, July 24, 2009, http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202009/September2009/2009_09_OHCHR_Letter_to_Prachanda.pdf

²⁶ *ibid.*

III. Recommendations

To the Government of Nepal

- Order immediate independent and impartial investigations into the alleged extrajudicial executions, enforced disappearances, and other grave human rights abuses documented here and in the previous *Waiting for Justice* reports. Ensure full cooperation by the Nepal Army, Nepal Police, and Armed Police Force with the investigations.
- Promptly establish a TRC and commission of inquiry into disappearances, ensuring that their mandates are fully in line with international standards and best practices.
- Amend pending bills on torture and enforced disappearances to bring them in line with international standards; incorporate the doctrine of command responsibility into law.
- Revise vetting procedures for members of the security forces proposed for promotion, overseas UN peacekeeping duties, or specialized training abroad to ensure that human rights violators are identified. Any individual under criminal investigation for grave human rights violations should be banned from traveling abroad.
- Ratify the Rome Statute of the International Criminal Court, the Convention against Enforced Disappearances, and the Optional Protocol to the Convention against Torture.

To the Nepal Police Authorities and the Attorney General's Office

- Immediately register FIRs and credibly investigate and prosecute all cases of alleged extrajudicial execution, enforced disappearance, or other grave human rights crime, including by questioning suspects who are members of the army, police, or UCPN-M. Take disciplinary action against police who refuse to file FIRs and against police or prosecutors who fail to follow court orders and credibly investigate cases.
- Send clear instructions to all DPOs and public prosecutors that FIRs relating to the conflict period should be registered and promptly investigated and a report sent to the court within three months, as per Supreme Court rulings.

To the Judiciary

- Take initiative to hold members of the Nepal Police, Attorney General's Office, and Nepal Army in contempt of court in those cases where the court orders have not been adhered to within a reasonable time.

- Make every effort to ensure consistency in jurisprudence on holding officials accountable for abuse by considering a more effective system of sharing judgments and rulings.

To the National Human Rights Commission

- Conduct more rigorous investigations of human rights violations, including by drawing up a protocol for exhumations.
- Make public a list of perpetrators known to the commission, against whom it has recommended that the government initiate investigations and prosecutions and press the government and security forces not to promote them unless and until the allegations are cleared.

To the International Community, especially Australia, China, the European Union, India, Japan, and the US

- During scheduled UN Human Rights Council discussions in January 2011 on Nepal's human rights record, and during discussions that same month at the UN Security Council on termination of the UN Mission in Nepal, set out a comprehensive plan to address impunity in Nepal.
- Deny visas to persons against whom there is credible evidence of having committed serious crimes.
- Ensure suspected perpetrators of crimes in Nepal found in your countries are prosecuted for international crimes under universal jurisdiction laws.

To the United Nations

- Improve vetting procedures so that persons accused of grave human rights violations do not end up on peacekeeping missions.
- Make donor funds to the NHRC contingent on more effective investigations of grave human rights violations.

For a more complete set of recommendations addressed to the government of Nepal, the Constituent Assembly, the Nepal Army, Nepal Police, the UCPN-M, and influential international actors, please refer to *Waiting for Justice*, pages 52-55.

Acknowledgements

This is the third in a series of reports documenting the ongoing impunity for crimes committed during Nepal's armed civil conflict. This report was preceded by two joint reports, *Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict*, released in September 2008 and *Still Waiting for Justice: No End to Impunity in Nepal*, released in October 2009, both by Advocacy Forum and Human Rights Watch.

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Appendix: Updates on 62 Cases of Grave Human Rights Violations from *Waiting for Justice*.

Case No. and Abuse	Name	District	Case Summary	FIR Submitted	FIR Registered	Developments in 2008 - 2009	Recent Developments (since October 2009)
1: Extrajudicial Killing	Raju B.K	Baglung	On March 1, 2002, Raju B.K was arrested by a group of then RNA soldiers. On March 4, his family was informed that he had been killed while trying to escape. The family was pressured to cremate the body immediately; soldiers were also present at the funeral.	March 18, 2007	Yes	There was no investigation even after registering the FIR. A writ petition was filed on June 18, 2009.	On November 11, 2009, the Baglung Appellate Court issued an order to police to initiate an investigation into the case without delay. Despite the order, in our interviews with victims, prosecutors, and police, and in examining police files in the case, we found no indication of an ongoing investigation.
2 and 3: Extrajudicial killings	Ganga Gauchan and Pahalbir BK (alias Pahar Singh)	Baglung	On July 11, 2004, four soldiers from Khadgaal barracks beat Ganga Gauchan and Pahalbir BK. According to several witnesses, the soldiers then shot and killed them. Families of the two victims were threatened by members of the army and forced to dispose of the bodies immediately.	February 15, 2007	Yes	There was no investigation even after registering the FIR. On June 18, 2009, the families filed separate petitions of mandamus at the Baglung Appellate Court.	On November 11, 2009, the Baglung Appellate Court issued identical orders for police to initiate investigations without delay. Despite the order, in our interviews with victims, prosecutors, and police, and in examining police files in the case, we found no indication of an ongoing investigation.
4: Torture and Extrajudicial Killing	Dilli Prasad Sapkota	Baglung	A large group of security personnel arrested Dilli Prasad Sapkota on February 8, 2005. According to eyewitnesses, Dilli was tied to a tree, severely tortured, and finally shot dead.	February 2008	No	Dilli's family tried to register a FIR at the Baglung DPO, but instead of registering the complaint, police officers threatened to kill the family.	The family has stated that they have lost hope and are no longer pursuing the case.
5 and 6: Extrajudicial killings	Dal Bahadur Thapa and Parbati Thapa	Banke	On the night of September 10, 2002, Dal Bahadur's family was woken up by the sound of the gunshots fired by a large	July 15, 2007	Yes	Investigations started in May 2008. On June 18, 2009, Dal's	On February 24, 2010, the Nepalgunj Appellate Court ordered the authorities to proceed with the

				group of security force personnel. The security forces surrounded their house and fired guns persistently at the house for 15 minutes, suspecting that the Maoists were hidden inside. Dal and his wife, Parbati Thapa, were shot to death. Their dead bodies were carried away and, at the time of writing, have not been returned.				mother filed a petition of mandamus at the Nepalgunj Appellate Court.	investigations. Advocacy Forum has repeatedly urged the authorities to implement the court order. In response, the police and public prosecutor maintain that the army does not respond to their letters.
7 and 8: Extrajudicial killings	Dhaniram Chaudhari and Jorilal Chaudhari	Banke	On September 29, 2004, during an Armed Police force operation in Premnagar village of Khaskusma VDC ward no. 4, security personnel detained brothers Dhaniram and Jorilal Chaudhari, and then allegedly shot them while in custody. When the victims' wives tried to recover the bodies, security personnel threatened them.	October 29, 2007	Yes	There was no investigation even after registering the FIR. On June 18, 2009, the family filed a writ petition at the Nepalgunj Appellate Court.	On January 13, 2010, the Nepalgunj Appellate Court ordered the authorities to proceed with the investigations. Advocacy Forum has repeatedly urged the authorities to implement the court order. In response, the police and public prosecutor maintain that the army does not respond to their letters.		
9: Enforced disappearance	Keshar Bahadur Basnet	Bardiya	On March 11, 2002, Keshar Bahadur Basnet was beaten by soldiers at his office and then arrested and allegedly taken to the Thakurdhara Army Barracks, yet his family was refused access to him. Another detainee told his relatives that he saw Keshar being driven away after over a month in illegal detention on April 16, 2002. He remains disappeared.	February 14, 2007	Yes	There was no investigation even after registering the FIR. On June 18, 2009, the victim's family filed a writ petition at the Nepalgunj Appellate Court.	On November 18, 2009, the Nepalgunj Appellate Court issued a mandamus order to police and other authorities to promptly proceed with the investigation. But there has been no progress. Informally, police officers have informed the relatives that the police headquarter has told them that this and other similar cases had not proceeded as they would come under the purview of the Truth and Reconciliation Commission.		

							<p>After the date to appeal by the respondent expired, the plaintiff had applied to the Bardiya DPO on June 26, 2010, requesting to proceed with the investigation in view of the court order. A copy of the order was attached with the application. However, there has been no progress in the investigation into the case.</p> <p>On October 5, 2010, Police Inspector Basudev Khatiwada, the investigating officer at Bardiya DPO said that the army does not respond to their letters and that police are consulting the district attorney in the case. There has been no progress at this writing.</p>
10: Extrajudicial killing	Bhauna Tharu (Bhauna Chaudhary)	Bardiya	On May 30, 2002, two soldiers shot Bhauna Tharu dead at his home on the charge of being a Maoist.	July 24, 2006	Yes	<p>There has been no investigation even after registering the FIR.</p> <p>On June 18, 2009, a petition of mandamus was filed at the Nepalgunj Appellate Court by the victim's family.</p>	<p>On November 18, 2009, the Nepalgunj Appellate Court issued a mandamus order against the respondents to promptly proceed with the investigations.</p> <p>Advocacy Forum has repeatedly urged the authorities to implement the court order. In response, they maintain that the army does not respond to their letters.</p>
11 and 12: Extrajudicial killings	Nar Bahadur Budhanagar and Ratan Bahadur Budhanagar	Dadeldhura	On August 17, 2004, soldiers picked up two brothers, Nar Bahadur and Ratan Bahadur, from their house, and, allegedly later shot them	June 18, 2007	Yes	<p>There has been no investigation even after registering the FIR.</p> <p>On June 5, 2008, the relatives of the victims</p>	<p>On August 18, 2009, a case was filed at the Supreme Court, challenging the decision of the Mahendranagar Appellate</p>

						dead not far from their home. Two of the soldiers took Ratan's wife to a nearby cowshed and raped her repeatedly. They also detained another brother, Man Bahadur Budhamagar, keeping him in illegal custody and torturing him for 17 days until he signed a statement saying that the soldiers did not rape his sister-in-law.				filed a second mandamus, as well as a contempt of court petition, to force the authorities to proceed with the investigations. On February 8, 2009, the contempt of court petition was quashed after the police informed the court that a preliminary report had been forwarded to the public prosecutor's office.	Court to quash the contempt of court petition. The case is <i>sub judice</i> in the Supreme Court.
13: Extrajudicial killing	Jaya Lal Dhami	Dadeldhura		September 10, 2007	Yes	On February 12, 2005, security forces killed Jaya Lal Dhami. Villagers later reported that soldiers marched Jaya Lal and three others to the scene and executed them. Jaya Lal's uncle contacted the Bhagatpur army barracks, who told him that Jaya Lal had been "accidentally" killed in a confrontation with alleged terrorists.			There has been no investigation even after registering the FIR. On June 18, 2009, the family filed a petition of mandamus at the Mahendranagar Appellate Court. On August 23, 2009, the court quashed the petition of mandamus stating that the FIR has already been filed and the investigation is ongoing.	On January 19, 2010, a case was filed in the Supreme Court, challenging the decision of the Mahendranagar Appellate Court to quash the mandamus petition on the basis of a response from the police that investigations were ongoing. A hearing has been scheduled for December 23, 2010.	
14: Extrajudicial killing	Sarala Sapkota	Dhading		June 28, 2006	Yes	Soldiers arrested 15-year-old Sarala Sapkota on July 15, 2004, from her grandfather's house. However, when her relatives went to Baireni Barracks and the Dhading DPO, the officers denied that the arrest had taken place. On January 11, 2006, an NHRC team exhumed her remains near her village.			In June 2006, Sarala's father filed an FIR at the Dhading DPO. There has been no investigation even after registering the FIR. In November 2007, her father filed a mandamus petition at the Supreme Court.	On May 31, 2010, the Supreme Court issued an order of mandamus to the Dhading DPO to promptly proceed with the investigation into the case. Despite this order, in our interviews with victims, prosecutors, and police, and in examining	

15 to 19: Enforced disappearances	Sanjeev Kumar Karna, Durgesh Kumar Labh, Jitendra Jha, Shailendra Yadav, and Pramod Narayan Mandal	Dhanusha	These five students were among 11 people arrested by the security forces on October 8, 2003. They were taken to the regional police office in Janakpur. The next day, their families complained to the NHRC, which initiated an investigation. Two years later, the NHRC received a letter from the Nepal Army human rights cell stating that the five men had been killed in a "police operation."	February 2009	Yes (after order by Supreme Court)	In July 2006, the families showed police the site where the bodies of the five men were believed to be buried. In February 2009, the Supreme Court issued an order for police to proceed with investigations.	<p>police files in the case, we found no indication of an ongoing investigation.</p> <p>On July 14, 2008, the NHRC recommended that the government provide Rs 300,000 to the victim's family. As of November 2010, the government has not acted on the recommendation.</p> <p>After considerable delay, the NHRC, with national and international forensic experts, took the lead in conducting the exhumations in September 2010. There were concerns that the relatives, their legal representative, and human rights organizations were not provided sufficient information about the process.</p> <p>Remains of 4 victims were exhumed on September 14, 2010. On September 19, 2010, the NHRC suspended the exhumation process for some time, reportedly on the basis that two of the experts had fallen ill.</p> <p>At the time of this writing, no date had been set to resume the exhumations.</p>
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20 to 21: Enforced disappearances and extrajudicial killings	Ram Chandra Lal Karna and Manoj Kumar Dutta	Dhanusha	Security forces arrested Ram Chandra Lal Karna and Manoj Kumar Dutta on October 12, 2003, and beat Manoj severely. Both were taken to the Dhanusha DPO. Relatives went to several police stations and organizations but did not receive responses to their complaints. On June 7, 2005, the human rights cell of the Nepal Army informed the NHRC that the two men had been killed in an "armed encounter." In January 2008, the Dhanusha DPO informed Advocacy Forum that it would not act on any conflict-related FIRs.	October 19, 2006	Yes	There has been no investigation even after registering the FIRs. On June 18, 2009, the relatives of the victims filed separate writ petitions at the Janakpur Appellate Court.	On December 1, 2009, the Janakpur Appellate Court issued an order for the Dhanusha DPO to register the FIR by filing the case under diary no. 10, as it had not been registered correctly. The court also ordered the DPO to promptly proceed with the investigations. Despite this order, in our interviews with victims, prosecutors, and police, and in examining police files in the case, we found no indication of an ongoing investigation.
22 to 26: Extrajudicial killings	Lapten Yadav, Ram Nath Yadav, Shatrughan Yadav, Rajgir Yadav, and Ram Pukar Yadav	Dhanusha	On October 1, 2004, security personnel arrested these five men at their homes. According to eyewitnesses, they were first beaten and later, around 5 a.m., shot and killed by security personnel. People dressed in civilian clothing but claiming to be security forces later informed the families that the men had been killed because of false information identifying them as Maoists.	October 2007	No	The family tried to register a FIR but police refused.	Relatives are intending to file a writ petition at the Janakpur Appellate Court to obtain an order for police to register the FIR.
27: Extrajudicial killing	Ramadevi Adhikari	Jhapa	On July 3, 2005, security forces arrested Ramadevi Adhikari and her husband at their home. Later, Ramadevi was shot and killed. The security forces did not allow the body to be sent for an autopsy.	November 9, 2006	No	The family tried to register a FIR but police refused.	On October 12, 2009, the Jhapa Appellate Court quashed the mandamus petition seeking an order to file the FIR on the grounds that there was no post-mortem report and that the relatives had attempted to file the FIR a long time after

							the incident occurred. On February 10, 2010, a case was filed in the Supreme Court, challenging this decision. A hearing has been scheduled for December 23, 2010.
28: Extrajudicial killing	Hari Prasad Bolakhe	Kavre	On December 27, 2003, police arrested Hari Prasad at a bus stop. When his father went to the Kavre DPO to complain, the police denied having arrested him. After searching for months, his father complained to the NHRC. According to the NHRC's findings, Hari Prasad had been killed. The investigation led to the exhumation of Hari Prasad's body, and a post-mortem report revealed the cause of death to be "gunfire injury to the pelvis."	November 7, 2006	Yes (after Supreme Court order)	The family filed a writ petition in the Supreme Court seeking a court order for police to register the FIR.	The Supreme Court quashed the petition on the grounds that the Kavre DPO provided a written reply to the Court that it had already registered the FIR.
29: Rape and extrajudicial killing	Reena Rasaili	Kavre	On February 12, 2004, armed soldiers raped and killed 18-year-old Reena Rasaili at her family's home. The family heard three gunshots and found her body lying near the house with bullet injuries in the head, eye, and chest.	May 25, 2006	Yes	There was no investigation after registering the FIR.	On December 14, 2009, the Supreme Court issued an order to the Kavre DPO and the public prosecutor to proceed with investigations. The Supreme Court also formally criticized police headquarters, the mid-regional police office, and the Bagmati zonal police office, calling on them to become serious, proactive, and alert, and to take necessary and appropriate steps as they had continuously shown indifference to fulfilling their duty to investigate.

						<p>Likewise, it formally criticized the Attorney General's Office, calling on it to direct the district attorney to take prompt, appropriate, and substantial steps. The court also ruled that the district attorney should be directed to play a coordinating role with police personnel.</p> <p>Statements of the complainant and four other witnesses were recorded by the Kavre DPO on April 21, 2010. On June 4, 2010, the Kavre DPO sent a letter to the police station at Dhorpatan, Kaski to locate and arrest former soldier (who deserted), Kaji Karki, and hand him over to the Kavre police if he is found.</p> <p>On June 13, 2010, the Kaski DPO sent a similar letter to the police station in Dhorpatan.</p> <p>On September 13, 2010, at the Kavre DPO, three witnesses provided statements about the incident. This was done in the presence of Karna Bahadur Rasaili (Reena's father) and Devi Suniwar.</p>
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30: Extrajudicial killing	Subhadra Chaulagain	Kavre	On February 13, 2004, soldiers shot and killed 17-year-old Subhadra Chaulagain at her house, accusing her of being a Maoist. They beat her father severely.	June 6, 2006	Yes	<p>There was no investigation even after registering the FIR.</p> <p>In October 2007, the family filed a case in the Supreme Court seeking an order for the authorities in Kavre to proceed with the investigations.</p>	<p>On December 14, 2009, the Supreme Court issued an order for the police and public prosecutor to promptly proceed with the investigation into the case.</p> <p>The court formally criticized police headquarters, the mid-regional police office, and the Bagmati zonal police office, calling on them to take necessary and appropriate steps to remedy their indifference, and to proceed with the investigation.</p> <p>Likewise, it formally criticized the Attorney General's Office, calling on it to direct the district attorney to take prompt, appropriate steps to investigate.</p> <p>The district attorney was also ordered to play a direct and coordinating role with the police personnel. It was found that the district attorney was "passive" in fulfilling his legal duties. On April 21, 2010, three witnesses provided their statements at the Kavre DPO.</p> <p>On September 30, 2010, a witness, Putali Chaulagain, provided a statement at the Kavre DPO in the presence of Kedamath Chaulagain (complainant).</p>
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31: Extrajudicial killing	Maina Sunuwar	Kavre	<p>In the morning of February 17, 2004, soldiers picked up 15-year-old Maina Sunuwar from her home. When her friends and relatives went to the Lamidanda barracks the following day and demanded her release, the army denied having arrested her. In April 2004, the army told Maina's mother Devi that her daughter had been killed. Maina's body was exhumed from inside the Panchkal Army Barracks in March 2007.</p> <p>Under pressure, the army prosecuted three of the perpetrators in a military court. Although convicted, they were sentenced to only six months in prison which they did not serve as they were judged to have already spent that time while confined to barracks during the investigation.</p> <p>On January 10, 2007, the family lodged a writ at the Supreme Court to force the police to proceed with the investigations. On September 18, 2007, the Supreme Court ordered the Kavre DPO to complete the investigations within three months.</p> <p>On February 3, 2008, murder charges were filed in the Kavre District Court, and summons for the arrest of the four accused were issued.</p>	November 13, 2005	Yes (after a Supreme Court order)	<p>Between March and July 2008, subpoenas were served on the defendants' addresses, requiring them to appear in court. In February 2009, the court re-issued the subpoena to Maj. Niranjana Basnet which was duly served on April 27, 2009.</p> <p>On September 13, 2009, the district court ordered the army authorities to immediately proceed with the automatic suspension of Maj. Niranjana Basnet and for all the files containing the statements of the people interviewed by the Military Court of Inquiry to be produced.</p>	<p>The army provided the Kavre District Court with copies of the judgment and the court martial statements of the four accused. None of the other 34 documents listed in the court martial judgement have been provided.</p> <p>On November 17, 2009, examination of 7 witnesses took place at the Kavre District Court. All of them, including Devi Sunuwar (Maina's mother), testified to what was written in their statements.</p> <p>One of the accused, Maj. Niranjana Basnet, was repatriated from UN peacekeeping duties in Chad. The Prime Minister, on December 13, 2009, directed the army to produce Major Basnet in court, but the army did not follow this order. The military police picked up Basnet from the airport and took him to army headquarters.</p> <p>On August 20, 2010, the Kavre District Court sent an order letter to Dolakha District Court to seize the property of Niranjana Basnet.</p> <p>In response to a similar letter relating to the property of Amit Pun, the Kavre District Court received a letter from the Rupandehi District Court saying that</p>
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32: Abduction and extrajudicial killing (by UCPN-M)	Arjun Bahadur Lama	Kavre	Maoists abducted Arjun Bahadur, a secondary school management committee president, on April 19, 2005, from his school. According to witnesses, the men reportedly marched Arjun Bahadur through several villages before killing him. Following protests by his wife, the UCPN-M claimed that Arjun was killed during a Nepal Army aerial strike. The family first tried to file an FIR in June 2007, but the police refused. After a	August 11, 2008	Yes	On February 4, 2009, Kavre police told Advocacy Forum they had corresponded with the Sindhupalchowk DPO on June 19, 2008, to search and arrest the defendants from that district. The police said that they received a letter from Sindhupalchowk DPO on July 25 stating that Agni Sapkota had not been found in their district. Agni Sapkota was elected as a member of	<p>there is no person called Amit Pun and there is no property in the name of a person by that name at Anandban VDC-9, Rupandehi district.</p> <p>The Kavre District Court sent a letter to the Nepal Army Court Martial Department asking it to send photocopies of the statements of Bobby Khatri, Nirajan Basnet, Amit Pun, and Sunil Prasad Adhikari to the General Military Court within 7 days.</p> <p>The Kavre District Court sent a letter to the Kathmandu District Court on July 29, 2010, asking the latter to seize the property of Bobby Khatri and Sunil Prasad Adhikari and send information regarding it.</p> <p>There have been no substantive investigations into the FIR except for some correspondence between various police offices.</p> <p>On January 22, 2010, Kavre DPO sent a letter to the Foksingtar APO to carry out an investigation, if necessary, and to protect the site where Arjun Bahadur Lama is thought to have been illegally buried.</p> <p>On April 28, 2010, the</p>

			<p>Supreme Court order to do so, the FIR was finally registered in August 2008.</p> <p>An NHRC investigation concluded Arjun had been detained and deliberately killed.</p>				<p>Constituent Assembly in April 2008.</p> <p>On April 28, 2009, Kavre police told Advocacy Forum, OHCHR-Nepal, and a member of the victim's family that they had taken no further action, but after two hours of dialogue they agreed to write a letter to NHRC requesting help to locate the exact place of burial of Arjun Lama and try to identify witnesses, with technical support from OHCHR if required.</p> <p>The police questioned some witnesses in May, 2009. On May 4, 2009, the Kavre DPO wrote to the local police post at Foksingtar asking them to prepare a report about the incident.</p>	<p>complainant produced a statement at Kavre DPO disclosing the address of the respondents.</p> <p>On July 15, 2010, DPO Kavre sent a progress report about the case to the NHRC. AF lawyers are unaware of any further action by the NHRC.</p>
33 and 34: Extrajudicial killing	Chot Nath Ghimire and Shekhar Nath Ghimire	Lamjung	<p>Soldiers detained Chot Nath Ghimire, on February 2, 2002, at Bhorletar Unified command base camp. His cousin, Shekhar Nath, was summoned to the camp on February 7, 2002, and also detained. Acting on information from other detainees, Chota Nath's family found out that he had been detained at Bhorletar army camp. In November 2006, the NHRC exhumed both bodies.</p>	November 19, 2006	Yes	<p>There was no investigation even after registering the FIR.</p> <p>On June 18, 2009, the families filed separate petitions of mandamus at the Kaski Appellate Court seeking orders for the DPO and Public Prosecutor's Office to promptly investigate the FIR.</p>	<p>The petition was quashed on October 28, 2009, on the grounds of the DPO's written reply that the investigation was ongoing. On March 9, 2010, an appeal was filed in the Supreme Court challenging the decision of the appellate court. The hearing of the case has been scheduled for December 23, 2010.</p>	

35: Extrajudicial killing	Prem Bahadur Susling Magar	Morang	Security forces arrested Prem Bahadur Susling Magar, an affiliate of the UCPN-M, on June 29, 2002, and allegedly killed him the next day. His family found out about his death via radio reports and located his decomposing body on the streets after a few days.	July 6, 2007	No	According to officials in the DAO, the copy of the FIR submitted to the CDO has gone missing.	The victim's family is considering filing a petition of mandamus.
36: Extrajudicial killing	Data Ram Timisina	Morang	On September 28, 2003, officers of the Eastern Regional Army Headquarters in Itahari and security personnel from the Morang DPO arrested schoolteacher Data Ram Timisina. An eyewitness saw him being beaten and removed from the headquarters, and heard that he was to be killed. The human rights cell of the Nepal Army later confirmed that Data Ram was "killed in a security operation at Kerabari VDC-5, in Morang District, on October 14, 2003."	June 7, 2007	No	After both the Morang DPO and CDO refused to register the FIR, the family, in August 2007, appealed to the Biratnagar Appellate Court. The court quashed the petition, accepting arguments by the DPO and other authorities that incidents such as the killing of Data Ram will be addressed by the Truth and Reconciliation Commission. The family subsequently filed an appeal to the Supreme Court against the Biratnagar Appellate Court decision.	A hearing of the case was scheduled on June 24, 2010, but the Supreme Court ran out of time. On October 28, 2010, the Supreme Court issued an order for the Morang DPO to register the FIR and to promptly proceed with the investigations.
37 to 39: Torture and extrajudicial killings	Bishwanath Parajuli, Tom Nath Poudel, and Dhan Bahadur Tamang	Morang	A group of 50 security personnel arrested Tom Nath Poudel, Bishwanath Parajuli, and Dhan Bahadur Tamang at Bhategauda, on September 27, 2004. They detained them overnight at a nearby school. Other individuals detained at the school later reported hearing gunshots at around	November 1, 2004	No (2) Yes (1)	On October 15, 2008, all the victims' families attempted to file FIRs but only the FIR relating to the killing of Dhan Bahadur Tamang was accepted and filed the same day. On June 18, 2009, his family filed a petition of	The relatives of Bishwanath Parajuli and Tom Nath Poudel are considering filing a mandamus petition to get a court order to register the FIRs. In relation to Dhan Bahadur Tamang, on October 26, 2009, the Biratnagar

				4:45 a.m. that night. The victims' families visited the school and found that the men had been shot and killed. An NHRC investigation found they had been extrajudicially executed.				mandamus at the Biratnagar Appellate Court seeking an order for the police to promptly start an investigation into the FIR.	Appellate Court issued a mandamus order for the Morang DPO to start an investigation into the FIR promptly, reminding it of its duties in law. Advocacy Forum lawyers have been unable to find any evidence of progress in the police investigations.
40 to 43: Extrajudicial killings	Jag Prasad Rai, Dhananjaya Giri, Madhuram Gautam, and Ratna Bahadur Karki	Morang	According to witnesses, on December 18, 2004, security forces arrested and killed these four men in four separate incidents in Morang District. The area police office in Urlabari notified the victims' families of the deaths. Relatives found evidence of beatings and torture on the bodies. Their belongings were missing.	June 5, 2007	No (3) Yes (1) (after court order)	All the relatives appealed to the Biratnagar Appellate Court, but the court only ordered the police to register the FIR in the case of Madhuram Gautam's. The writ petitions filed by the relatives of the other three men were quashed on the basis that these cases will be investigated by the Truth and Reconciliation Commission. The FIR relating to Madhuram Gautam was accepted in October 2008 on the basis of a court order. In June 2009, his family filed another petition to get a court order for the police to proceed with investigations. The family of Dhananjaya Giri appealed to the Supreme Court against the decision of the appellate court.	In Madhuram Gautam's case, the Biratnagar Appellate Court, on November 9, 2009, issued a mandamus order directing the Morang DPO to start an investigation promptly, reminding it of its duties as directed by the law. In Dhananjaya Giri's case, the Supreme Court issued an order of mandamus on April 22, 2010. However, as of November 2010, the FIR had not been registered, apparently on the basis that the order of the Supreme Court has not been received. The families of Jag Prasad Rai and Ratna Bahadur Karki are considering filing a mandamus petition to get a court order to register the FIRs.		

44: Extrajudicial killing	Chandra Bahadur Basnet ("Manoj Basnet")	Morang	On August 24, 2005, a group of APF personnel arrested Chandra Bahadur Basnet at Dhankute Hotel. The next day, the Morang DPO informed Manoj's family that he had been killed while trying to run away from a "security cordon." His body, with all his valuables removed, was handed over to his family the next day. A post-mortem report revealed that he had been shot in the chest and neck.	August 30, 2005	Yes	The Supreme Court quashed Advocacy Forum's petition not to allow the withdrawal of the case in the public interest on May 4, 2009.	There has been no progress in the case after the Supreme Court quashed Advocacy Forum's petition. The family no longer wants to pursue the case. The OHCHR has closed its file after meeting with the family.
45 and 46: Torture and extrajudicial killing	Purna Shrestha and Bidur Bhattarai	Morang	On October 15, 2005, army personnel tricked Purna Shrestha and Bidur Bhattarai into meeting with them and arrested them. They then tortured them, and shot them dead at around 9:30 am. The army then informed family members that the men had been killed during an army operation. The families and other villagers found torture-related wounds on the bodies although they were not able to obtain copies of the post-mortem reports. In mid-2007, the Biratnagar Appellate Court refused the petition on behalf of Bidur but ordered the DPO to register a FIR in the case of Purna. Still the SP refused to register the FIR.	June and July 2007	Yes (1) (after court order) No (1)	On 15 October, 2008, the victims' families once again attempted to file FIRs. Police only accepted the FIR relating to Purna Shrestha. On June 18, 2009, Purna Shrestha's family filed a petition of mandamus at the Biratnagar Appellate Court seeking an order for the police to promptly start an investigation into the FIR. The family of Bidur Bhattarai has appealed to the Supreme Court against the decision of the Biratnagar Appellate Court to refuse to accept a mandamus petition took place on October 28, 2010. The court ordered the DPO and public prosecutor to come before it to explain why the FIR has not been registered.	In Purna Shrestha's case, on November 9, 2009, the Biratnagar Appellate Court issued a mandamus order for the DPO to promptly start an investigation into the FIR, reminding it of its duties in law. In Bidur Bhattarai's case, a hearing of an appeal to the Supreme Court against the decision of the Biratnagar Appellate Court to refuse to accept a mandamus petition took place on October 28, 2010. The court ordered the DPO and public prosecutor to come before it to explain why the FIR has not been registered.
47: Rape and extrajudicial killing	Sapana Gurung	Morang	Fifteen security personnel under the command of army Capt. Prahlad Thapa Magar	May 15, 2006	Yes		There has been no further progress. In May 2010, the police claimed that the file

			<p>arrested 22-year-old Sapana Gurung at her home on April 25, 2006. The men took her to a nearby Nepal telecommunications office and raped her. About an hour after the arrest, villagers heard a gunshot, and Sapana was later found dead. A medical report stated that she had been raped and killed.</p> <p>The case was investigated by a Parliamentary Probe Committee which recommended that criminal investigations be initiated. It also awarded Rs 1 million (US\$13,070) compensation.</p>					<p>submitted to Parliamentary Probe Committee has not been returned yet. There have been no further developments in the case.</p>
48 to 53: Extrajudicial killings	<p>Chhatra Bahadur Pariyar, Phunwa Sherpa, Prabhunath Bhattacharai, Prasad Gurung, Tanka Lal Chaudhari and Sunita Risidev</p>	<p>Morang</p>	<p>On April 26, 2006, a group of security personnel opened fire on people demonstrating against the killing of Sapana Gurung (described above). These six people were killed, and dozens were injured.</p> <p>These killings were also investigated by the Parliamentary Probe Committee (see above, Sapana Gurung) which recommended action against 28 security forces personnel and the CDO. It also awarded Rs 1 million (US\$13,070) compensation to each family.</p>	<p>No</p>			<p>There has been no further progress. In May 2010, the police claimed that the file submitted to Parliamentary Probe Committee has not been returned yet.</p> <p>There have been no further developments in the case.</p>	
54: Extrajudicial killing	<p>Khagendra Buddhathoki</p>	<p>Myagdi</p>	<p>A team of patrolling soldiers arrested Khagendra Buddhathoki on the Tatopani Jalkuni bridge, on January 6, 2002. According to villagers,</p>	<p>April 12, 2007</p>	<p>Yes</p>	<p>Police told Advocacy Forum that they had corresponded with the Ministry of Defence regarding the deployment</p>	<p>On November 11, 2009, the Baglung Appellate Court issued an order of mandamus for police to promptly investigate the FIR.</p>	

			they took him to a temporary army camp at Alkachaur and shot him dead the following day. When family members approached the Myagdi DPO, they refused to investigate. Once the battalion moved from the temporary camp, Khagendra's family tried to dig the area where they thought the dead body was buried. The police stopped them from doing so. The corpse is yet to be exhumed.			of Raju Nepali who led the brigade which had been stationed in Myagdi at the time. The ministry has reportedly confirmed his deployment. The family filed a writ petition on June 18, 2009. In its response, the Myagdi DPO argued that it was not bound to investigate as the FIR had not been properly filed. It also argued that the civilian court had no jurisdiction over such killings from the conflict period.	Even after the order of the court, no effective investigation has been undertaken.
55: Possible torture and extrajudicial killing	Chandra Bahadur B.K	Myagdi	Soldiers arrested 17-year-old Chandra Bahadur B.K. at his home, on January 8, 2003. Three days later, Radio Nepal reported that Chandra had been killed in an "encounter." His family was allowed to recover his body from within the army base, but they were compelled to bury him almost immediately.	April 12, 2007	Yes	The family filed a writ petition on June 18, 2009. The DPO provided the same response, as in Case 54 above, claiming that the case was improperly filed and asserting that the civilian court lacked jurisdiction.	On November 11, 2009, the Baglung Appellate Court issued an order of mandamus to promptly investigate into the FIR. Despite this order, in our interviews with victims, prosecutors, and police, and in examining police files in the case, we found no indication of an ongoing investigation.
56 to 58: Extrajudicial killings	Dal Bahadur Darlami, Narayan Prasad Kanuje, and Tek Bahadur Gaha	Palpa	According to eyewitnesses, soldiers indiscriminately fired upon and killed the three boys, aged 15, 16, and 15, respectively. After the Palpa DPO had repeatedly refused to register a FIR suggesting the killings had been an accident, the	December 31, 2006	Yes	The relatives filed a writ petition in June 2009 seeking a court order for police to proceed with the investigations.	On October 7, 2009, the Butwal Appellate Court issued an order of mandamus to promptly investigate into the FIR within three months. At the end of the three months, no effective investigation had been undertaken.

59: Abduction, torture and extrajudicial killing (by UCPN-M)	Man Bahadur Karki	Surkhet	public prosecutor, in late 2006, ordered the DPO to proceed with a murder investigation.	September 2006	No			The victim's family no longer wants to file an FIR. The suspects named in the FIR have been working as top leaders in the Maoist party at the local level.
60 and 61: Extrajudicial killings	Ganga Bahadur Nepali and Shyam Sundar Kaini	Tanahun	<p>Army personnel arrested Ganga Bahadur Nepali and Shyam Sundar Kaini from their homes on April 29, 2002.</p> <p>The next morning, Radio Nepal reported that the two men were terrorists who had been planning to ambush security forces and had been killed as they were attempting to execute this plan. Army Maj. Baburam Shrestha refused to hand over the</p>	April 6, 2007	Yes	There was no investigation even after registering the FIR. On June 18, 2009, both families lodged writ petitions to seek an order for the DPO and Public Prosecutor's Office to investigate the killings.	On December 23, 2009, the Kaski Appellate Court quashed the petitions on the basis of a written reply by the DPO that the investigation was underway. On March 28, 2010, an appeal was filed at the Supreme Court challenging this decision. A hearing has been scheduled for November 25, 2010.	

62: Rape and extrajudicial killing	Dhan Kumari Tumbahamphe	Udayapur	<p>bodies initially, only doing so after being pressured by the CPN-UML general secretary.</p> <p>The general secretary released a statement indicating that he had heard testimony from soldiers at the barracks to the effect that the two men were arrested and executed.</p>	August 27, 2009	Yes (after a court order)	Though police conducted some investigation, they refused for years to register an FIR.	<p>The police registered the FIR on August 27, 2009, following an order issued by the Rajbiraj Appellate Court on August 18, 2009. The statements of seven witnesses were taken. We are aware of no further investigation into the allegations contained in the FIR.</p>
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**H U M A N
R I G H T S
W A T C H**

Indifference to Duty

Impunity for Crimes Committed in Nepal

Impunity for human rights abuses remains the norm in Nepal. All parties to the decade-long war between the Maoists and the security forces committed extrajudicial killings, enforced disappearances, torture, and other abuses. So far no one has been held accountable for such abuses in a civilian court.

This report, a follow-up to our 2008 and 2009 reports, *Waiting for Justice* and *Still Waiting for Justice*, provides updates on the 62 cases highlighted there. In the vast majority of cases, the state has failed to initiate meaningful investigations and prosecutions. What little progress has been made in those cases has been uneven and unsatisfactory, and has been made largely as a result of sustained pressure from local and international groups. Impunity is having a knock-on effect for current violations; this report contains three new emblematic cases.

The Nepal government argues that cases from the conflict period will be investigated by the yet-to-be established Disappearances Commission and Truth and Reconciliation Commission. The November 2006 Comprehensive Peace Agreement had pledged to establish these transitional justice bodies, but four years later, they are still not operational; bills to establish them have been pending in Parliament since April 2010.

Until Nepal puts in place a comprehensive action plan to tackle the culture of impunity, justice will continue to be denied to victims of past and future abuses alike.

Kedar Chaulagain, father of 17-year-old Subhadra, showing the bed from which soldiers dragged her before killing her in February 2004.

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