NEPAL

Adding Insult to Injury

Continued Impunity for Wartime Abuses

HUMAN RIGHTS WATCH

ADVOCACY FORUM

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Continued Impunity for Wartime Abuses

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Human Rights Watch is dedicated to protecting the human rights of people around the world. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all.

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Advocacy Forum (AF) is a leading non-profit, non-governmental organization working to promote the rule of law and uphold international human rights standards in Nepal. Since its establishment in 2001, AF has been at the forefront of human rights advocacy and actively confronting the deeply entrenched culture of impunity in Nepal.

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Nepal: Adding Insult to Injury

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District Map of Nepal

Summary and Recent Developments

> General Gurung, I am hopeful that you will hear the cry of my daughter's skeleton for justice and take seriously my prayer to you to defend our country from the prevailing impunity for my sake and for the sake of all Nepalis! I am sure that this single step from your side will prove a giant leap towards ending impunity in Nepal.
> —Devi Sunuwar, mother of Maina Sunuwar, letter to the Commander of the Army, February 2011

> Nepal indicated that it was fully committed to establishing Constitutional supremacy, ensuring the rule of law, good governance, and human rights, as well as providing a positive conclusion to the peace process by eliminating insecurity and addressing impunity… addressing impunity entails addressing the past and maintaining the rule of law at present. Nepal is fully committed to work on both fronts.
> —Report of the Working Group on the Universal Periodic Review, Human Rights Council, March 8, 2011, para. 51.

Five years since the November 2006 Comprehensive Peace Agreement (CPA) brought a formal end to armed conflict in Nepal, the families of numerous victims of human rights abuses are still waiting for justice. Under the agreement, political parties expressed their commitment to investigate and prosecute human rights violations, and parties guaranteed they would not foster impunity.

However, in spite of national and international campaigning and litigation, all signs are that those responsible for human rights abuses will be allowed to go free. To add insult to injury, in some cases of alleged wartime human rights violations, the alleged perpetrators are being promoted, appointed into senior government positions, or allowed to go on peacekeeping duties without ever facing a genuine and independent investigation.

As documented in our three previous reports, *Waiting for Justice* (2008), *Still Waiting for Justice* (2009), and *Indifference to Duty* (2010), many victims' families have identified alleged perpetrators of extrajudicial killings and enforced disappearances, and provided evidence to the police. But time and again, the police have been derelict in their duties, and failed to conduct investigations, even in the face of Supreme Court orders. Politicians and other actors, including the Nepal Army (known as the Royal Nepal Army before 2006)

and the former armed opposition group, the United Communist Party of Nepal-Maoist (UCPN-M), have colluded to prevent accountability. Consecutive governments have withdrawn cases pending in the courts and tried to grant blanket amnesties, suggesting a lack of independence on the part of the prosecutor and the judiciary.

This report tells the stories of six people who have fought hard to bring to justice those responsible for their relative's killing or disappearance amid these continuing attempts to avoid accountability. Among them are Karna Rasaili, father of Reena Rasaili, a 17-year-old girl who was raped and killed by soldiers in February 2004; Purnimaya Lama, wife of Arjun Lama, who was abducted by Maoists in April 2005; the late Jay Kishor Labh, father of Sanjeev Kumar Karna, a 25-year-old student who disappeared in October 2003; Devi Sunuwar, mother of Maina Sunuwar, a 15-year-old girl who died under torture in army custody in February 2004; and Yashoda Sharma, wife of Surya Prasad Sharma, who disappeared in January 2002.

This report also describes the fight for justice of Abdul Majid Dewan, father of Sahid Ullah Dewan, who was killed by police in October 2009. His story, and those of others like him, demonstrates that the refusal to hold perpetrators accountable for serious human rights violations could spill over from the past into the present, and impunity could become the norm.[1]

Recent Developments

In contrast to the repeated commitments expressed by Nepali authorities, impunity is becoming entrenched in Nepali society. There is a need to forge consensus among the political parties in order to bring the peace and constitution writing process to a satisfactory conclusion. However, this must not be done at the expense of justice and safeguarding the rights of the people of Nepal, or by denying justice to the families of the victims.

The new coalition government of the UCPN-M and regional parties from the southern Terai region came to power in late August 2011. In an alarming development, the coalition

[1] Advocacy Forum, "Torture and Extrajudicial Killings Amid Widespread Violence in Terai", 2010, http://www.advocacyforum.org/downloads/pdf/publications/terai-report-english.pdf, (accessed November 25, 2011); Suhas Chakma, "Made in India", *The Kathmandu Post*, May 6, 2010, http://www.ekantipur.com/the-kathmandu-post/2010/05/06/oped/made-in-india/208007/, (accessed November 25, 2011); "Nepal: Impunity and Political Bickering Holds People at Ransom", Asian Human Rights Commission, statement, December 9, 2010, http://www.humanrights.asia/news/ahrc-news/AHRC-STM-253-2010, (accessed November 25, 2011); "Nepal: Nepal Descending Towards Full-Spectrum Impunity for Human Rights Abuses Committed During the Conflict", Amnesty International, joint open letter, December 10, 2010, http://www.amnesty.org/en/library/info/ASA31/003/2010/en, (accessed November 25, 2011).

formally agreed to withdraw criminal cases against individuals affiliated with the Maoist party, the Madhesi, Janajati, Tharuhat, Dalit, and Pichadabarga movements, and to declare a general amnesty in cases which could include serious crimes and human rights abuses.

A provision to grant amnesties and pardons in the "Maoist Party's Commitments and Proposal to Government, Peace Process and Constitution" of August 25, 2011, raises similar concerns. The document also promises to establish a Truth and Reconciliation Commission (TRC) and Disappearances Commission within one month, a promise made several times before by previous governments, which once again has not been upheld.

Recently appointed Attorney General Mukti Narayan Pradhan, who is meant to be a neutral arbiter of justice, has hinted that he would welcome the withdrawal of criminal cases.[2] Prime Minister Baburam Bhattarai, under increasing criticism, has tried to fudge the issue claiming he would withdraw only "politically motivated" cases. On November 1, Bhattarai negotiated a seven-point agreement with all the major political parties. This agreement contains the following clause: "The legal cases of the conflict era would be looked into as per the letter and spirit of the Comprehensive Peace Agreement (CPA) and the Interim Constitution, 2007." Precisely what this means is unclear, but both the CPA and the Interim Constitution include commitments to uphold the rule of law and guarantee the rights of citizens under Nepal's treaty obligations, as well as under international humanitarian laws and values. Strict adherence to the letter and spirit of those documents would mean that cases amounting to international crimes, including war crimes and torture, cannot be withdrawn. At this writing, the fate of wartime cases remains uncertain.

The Nepal authorities have argued that transitional justice mechanisms (a truth and reconciliation commission and a commission to investigate enforced disappearances, which are provided for in the CPA but not yet established) trump the normal criminal justice system in relation to widespread human rights abuses committed during the conflict period. This is in contradiction to findings by Nepal's courts and provisions in international law.

Under its international obligations, Nepal is obliged to initiate investigations and criminally prosecute those responsible.

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[2] In Nepal, the attorney general is appointed by the president on the recommendation of the prime minister under article 134(1) of the Interim Constitution. He or she is a political appointee whose tenure is dependent on the goodwill of the prime minister, while all the government attorneys are civil servants whose career advancement is regulated by the Judicial Services Commission, a constitutional body consisting of the Chief Justice, the most senior judge of the Supreme Court, the Minister of Justice, the Chairperson of the Public Service Commission and the attorney general.

As early as July 2007, the government led by Girija Prasad Koirala of the Congress Party made an attempt to foreclose prosecutions by proposing an amnesty clause in the draft bill creating the Truth and Reconciliation Commission. Intense lobbying by national and international human rights organizations led the government to amend this draft provision. At this writing, the bill is pending in the Legislative Committee of the Parliament. While it now explicitly prohibits amnesty for international crimes and serious violations of human rights, problematic provisions remain, including the powers given to the TRC to "*cause reconciliation*" for certain crimes, including sexual violence. If this was to involve a process of compulsory mediation by the commission between perpetrators and victims, it could re-traumatize women.[3]

According to the draft bill of the Truth and Reconciliation Commission:

> After carrying out investigations pursuant to this Act, the commission shall submit its report to the Government of Nepal incorporating the following details:
> …
> b. Matters relating to recommendations made for initiating action against such persons who are found to be guilty from the investigations carried out
> …
> f. Matters relating to the recommendation on reparation pursuant to section 22.[4]

The commission does not have authority to conduct criminal investigations, and will not be carrying out criminal investigations into enforced disappearances although it could recommend such action. Its mandate is to establish the truth about events that occurred during the armed conflict. This is an important goal in itself and its importance in establishing lasting peace and democracy in Nepal must not be underestimated. But prosecutions for crimes such as murder, torture, extrajudicial killings, and enforced disappearances are equally important.

On August 15, 2011, the Supreme Court ruled that cases from the conflict period have to be dealt with under existing laws, as the TRC has not been formed yet and its mandate has not been decided.

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[3] Advocacy Forum and ICTJ, "Across the Lines: The Impact of Nepal's Conflict on Women," 2010, http://ictj.org/publication/across-lines-impact-nepals-conflict-women, (accessed November 25, 2011), p. 96.

[4] A Bill Relating to Providing for the Disappearances (November 2009) as sent to the Council of Ministers by the Peace Ministry (unofficial translation).

Collusion to protect alleged war criminals in the name of national security or revolutionary change is damaging to prospects for improved governance, justice and the rule of law, and sustainable peace. Accountability for crimes is a prerequisite if the citizenry is to trust the security forces, law-enforcement agencies, and government authorities, and is essential to establishing an independent and trusted judiciary.

Methodology

This report was jointly prepared by Advocacy Forum and Human Rights Watch.

Advocacy Forum provides legal assistance to the families of the victims highlighted in this report and many others. Much of the information in this report is from Advocacy Forum legal interviews conducted as part of the families' litigation attempts to obtain justice. Some interviews were conducted several years ago; they took place in private with the full consent of those involved. None of the interviewees received financial compensation.

Advocacy Forum remains in direct contact with the families, witnesses and other key informants as these cases progress. Its lawyers have conducted dozens of interviews throughout the last year, in the context of continuing litigation. They regularly travelled to Dhanusha district and consulted with the relatives at the time of the exhumations in September 2010 and February 2011; they interviewed the relatives and witnesses in the case of alleged extrajudicial execution in Rupandehi district in October 2009 and for the filing of a police complaint in January 2010; they appeared in a public interest litigation case filed against the appointment of a named suspect in the Arjun Lama case as a Minister, and consulted closely with Mrs Lama as part of this. They also interviewed Yashoda Sharma on each occasion when the government responded to the Human Rights Committee. All interviewees have agreed for the information to be used.

Human Rights Watch conducted original research into wartime abuses by both government forces and the Communist Party of Nepal (Maoist) between 2004 and 2007 and has issued several reports, some jointly with Advocacy Forum. Human Rights Watch interviewed victims and family members of conflict related cases across a wide section of the population. Human Rights Watch has also interviewed government officials, politicians, human rights activists, and members of the international and diplomatic community, in addition to victims and witnesses. In December 2010, Human Rights Watch documented cases of ongoing human rights abuses in the Terai as part of our concern that the lack of accountability for past abuses continued to fuel impunity for current abuses.

Lawyers at Advocacy Forum are in regular contact with the relatives of the victims, and are constantly updating the information on the status of their cases.

Recommendations

Advocacy Forum-Nepal and Human Rights Watch have previously made detailed recommendations to the Nepali government and key international actors on ending impunity in Nepal (link to recommendations section of past report). Below we set forth steps we believe are immediate priorities.

To the Nepali Government:

- Order the Nepal Police and Office of the Attorney General to move forward with investigations and prosecutions in compliance with Supreme Court rulings, and ensure that victims of human rights abuses have access to an effective remedy leading to full reparation, as provided under international law and standards.
- Issue a clear and unambiguous statement that any withdrawals of criminal cases allegedly brought for political reasons will be effective only pursuant to an independent and impartial judicial process conducted in accordance with the rules set down by the Supreme Court, and consistent with Nepal's international obligations. A general amnesty for serious human rights abuses that may constitute crimes under international law would be a clear violation of those obligations.
- Support the establishment of transitional justice institutions as required by the Comprehensive Peace Agreement and Interim Constitution, including a truth and reconciliation commission and a commission to investigate enforced disappearances, but ensure that such institutions are meant to support, rather than displace, the criminal justice system. Amnesties issued by such bodies may not extend to serious human rights abuses, including gross human rights violations and crimes under international law.
- Establish a special investigation unit in the Attorney General's Office comprising senior police officers with relevant experience and members of the NHRC. Non-compliance with court orders should be made a serious offence.
- Sign and ratify the Rome 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 and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Ensure that an effective system of vetting is in place for any members of the security forces who are proposed for promotion, overseas UN peacekeeping duties,

or specialized training abroad. Ensure that anyone under investigation for serious human rights violations is banned from travelling abroad.

To the United Nations and the International Community, Especially Australia, China, the European Union, India, Japan, and the United States:

- Actively follow up on the commitments to address impunity made by Nepal at the UN Human Rights Council's Universal Periodic Review.
- Promote security sector reform, including vetting procedures and effective oversight, and accountability mechanisms for the security forces.
- Improve vetting procedures to ensure that persons suspected of involvement in serious human rights violations are banned from being deployed on peacekeeping missions and training abroad.
- Continue to support the work of OHCHR-Nepal to bring an end to impunity in the country.

I. Continuing Impunity: Six Illustrative Cases

This section documents the experiences of five families who experienced wartime abuses, illustrating the obstacles that scores of families have encountered in their quest for justice.[5] If these cases are atypical, it is only in that they have progressed further than most because the families had the strength and determination to persist in their pursuit of justice. Four of the five cases were originally highlighted in *Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict* and are updated here. A sixth case examines the post-war killing of a youth in the Terai region, examining the knock-on effects of impunity after the conflict period.

The continuing failure to take action reflects the continuing weakness of the police, in part due to lack of resources and training, but in large measure due to lack of institutional independence and accountability. There is little incentive to investigate and prosecute perpetrators of human rights abuses. Police instead seem focused on responding to political pressures and institutional patterns of reward and punishment, linked more to patronage than meritorious public service.

As the 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 has always been political interference in their day to day work."[6]

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 visiting the crime scene, interviewing witnesses, and arresting alleged perpetrators. Police too often treat the filing of First Information Reports (FIRs), the initial complaint filed by victims, as a paper exercise and are hesitant to act in the face of pressure from the political leadership not to do so.[7]

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

[5] The appendix to this report provides an update on 62 wartime cases.

[6] Human Rights Watch interview with Prakash Kumar, DIG, CID, Kathmandu, October 27, 2007.

[7] Human Rights Watch, *Nepal - Waiting for Justice*, September 2008, http://www.hrw.org/es/reports/2008/09/11/waiting-justice, p. 20.

behalf before the police can take any legal action; or that police require authorization from higher police authorities. 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.[8]

Karna Rasaili, Father of Reena Rasaili

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 throughout the night. The family was threatened with dire consequences should they step out and try 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. A few hours later, they found Reena's body close to the house. She had been shot in the head, eye, and chest.

Reena's father, Karna Rasaili, a farmer and a blacksmith from Kavre District, was hopeful for justice when the armed conflict ended in 2006. The family has been determined to get justice from the day Reena died. Karna told Advocacy Forum:

> According to our religion we should have burned the body the same day that Reena died, but we were willing to sacrifice this tradition in the hopes of initiating an investigation. After six days we didn't burn the body but buried it instead because we were so scared of the smoke calling the army's attention and them coming back.
>
> I couldn't sleep after the incident. I couldn't eat anything for a month and my family and I couldn't sleep in our house for three months… because of the bad memories. We were also scared that the army would come back. During this time we stayed with different relatives nearby.

[8] Section 7 of the State Cases Act states that "the Police Personnel not below the rank of Assistant Police Inspector of the office receiving information that a crime listed in Schedule – 1 has been committed or is being committed or is going to be committed shall, as soon as possible, carry out an investigation of such crime and collect evidence".

> I went to the District Police Office two weeks after Reena was killed, with a lawyer from Advocacy Forum, and a journalist, and tried to file a First Information Report (FIR). However the police showed no interest in my case and refused to file an FIR. We then went on to the Chief District Office but there as well they refused to listen to my case.[9]

Finally, on May 25, 2006, Karna, with the help of Advocacy Forum, managed to file a FIR at the Kavre District Police Office. He identified as suspects unnamed members of an army patrol led by second lieutenant, Saroj Basnet, from the army's No.9 Brigade, Bhakundebeshi, Kavre.

But like so many other families who filed a FIR, Karna was deeply frustrated at the lack of response and the outright hostility from the police. He approached the Supreme Court in October 2007 seeking a court order for the police to do their duty. In December 2009 the Supreme Court concluded that the Nepal Police had not properly investigated the case, in part because of inadequate supervision by prosecutors. The court ordered the Attorney General's Office to direct the district public prosecutor of Kavre to take prompt action to ensure that the investigation and prosecution move forward.

As a result, on September 17, 2010, police arrested Kaji Karki, a member of the army patrol who had deserted the army soon after the incident. At the time, he was a low ranking officer of the unit present on the night of Reena's death. Karki was charged with homicide under the National Code (*Muluki Ain*). However, contemporaneous and credible evidence, including the testimony of the family noted above, suggests Reena Rasaili was subjected to sexual violence before she was killed. As of this writing, it appears that the police have not focused on this aspect of the case.

Other soldiers who were present during her interrogation have yet to be arrested, or even questioned. The Kavre District Police Office issued an arrest warrant for then Lieutenant Saroj Basnet in September 2010, but he has not been arrested. On January 26, 2011, Brigadier General Nirendra Prasad Aryal sent a letter to the Kavre District Court claiming that the Nepal Army was not obliged to comply with the arrest warrant. The letter stated that Basnet had been tried by a court martial, and under the principle of double jeopardy, Basnet was under no obligation to comply with the court's order.

[9] Advocacy Forum interview with Karna Rasaili, July 23, 2010, Pokharichauri, Kavre District.

But there was no double jeopardy.[10] The court martial case against Basnet was on disciplinary grounds, not for murder. And, so far, army authorities have submitted no original documents to the court or police despite the fact that the court martial decision (an unofficial copy of which Advocacy Forum has obtained) lists many documents, including a 42-page compilation of statements by the defendants and other concerned individuals. It is crucial that these documents be made available to the police and prosecutors.

Kaji Karki appealed against his continued detention to the Appellate Court in Patan and subsequently to the Supreme Court on January 4, 2011. He also lodged a writ of *habeas corpus* at the Supreme Court on February 24, 2011, seeking to reverse the detention orders of the lower courts. He argued that his case falls under the jurisdiction of the Truth and Reconciliation Commission (TRC) and that existing laws cannot be invoked. He also alleged that he had not fired any rounds that day, and that others in the patrol must have been responsible for the rape and killing of Reena. On August 15, 2011, the Supreme Court ruled that the case has to be dealt with under existing laws, as the TRC has not been formed yet and its mandate has not been decided.

The Attorney General's Office has been remiss in its duty to guide the police in its investigations,[11] including on how to improve on the poor quality of the statement taken from the suspect, that contains several contradictions, and how to remedy a lack of focus in the investigations on the rape allegations. In a letter of June 30, 2011, Advocacy Forum raised serious concerns with the attorney general about these shortcomings but as of this writing, the attorney general has not responded nor are we aware whether he has sent instructions to the Kavre District public prosecutor.[12]

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[10] As a further illustration of the army's intentions, the army refused to cooperate with the courts in this case, and requested on March 15, 2011, that Kaji Karki be transferred to military custody in submissions made to the Supreme Court in the *habeas corpus* case. Karki—according to his own statement before the Supreme Court—was court martialled for defection and sentenced to 46 days' imprisonment and dismissed from the army. If the Nepal Army were committed to charging Karki with Reena's killing, they could have done so at the same time as he was detained for defection, but they did not. The first time the Nepal Army showed real interest in trying Karki for Reena's killing was when it learned he was being prosecuted in a civilian court.

[11] Section 17(3) of the State Cases Act states that If the government attorney "finds it necessary to collect additional evidence or to enquire with any person, after studying the file in the course of making a decision on whether or not the case qualifies for further action ....he/she may give direction to the investigating Police Personnel to collect and provide such evidence or to conduct and provide enquiries with such person; and it shall be the duty of such investigating Police Personnel to abide by such direction."

[12] "AF raises concern to AG over lackluster investigation in Reena murder case," Advocacy Forum, press statement, July 5, 2011, http://www.advocacyforum.org/downloads/pdf/press-statement/letter-to-attorney-general-reena-english.pdf (accessed November 25, 2011).

Purnimaya Lama, Wife of Arjun Bahadur Lama

Arjun Bahadur Lama was celebrating his election as president of a local school in April 2005 when he was abducted by members of the Maoist party from the village of Chhatrebanjh. Witnesses say he was paraded through villages by his captors and he has not been seen again. His wife, Purnimaya, still does not know the truth about what happened.

Several witnesses have informed Purnimaya that her husband was produced before Agni Sapkota, a Central Committee Member of the UCPN-M, at a Maoist training center at Budakhani VDC. In December 2005 the CPN-M district secretary, Suryaman Dong, stated at a press conference that Arjun 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 the Bashusmritit 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 Nepal Army (NA) launched an aerial attack during which Arjun was killed. There are credible allegations that Sapkota ordered Maoist party members to kill Lama and bury his body at Foksingtar.

Arjun Lama's wife, Purnimaya, has been relentless in pressing the police to conduct a thorough investigation and to bring those responsible for Lama's disappearance and presumed murder to justice. A writ filed to the Supreme Court in March 2008 led to an order to the police to register the case and proceed with investigations. Three years later, all of the accused remain free. This includes Agni Sapkota, a member of the Constituent Assembly, who was a cabinet minister from May to August 2011.

A group of human rights defenders filed a writ in the Supreme Court on May 27, 2011, challenging the decision to appoint Agni Sapkota as a minister, in light of the allegations against him. The minister was represented by the attorney general, who would otherwise be the state agent responsible for prosecuting him, creating a clear conflict of interest.

On June 22, 2011, the Supreme Court responded to the writ petition but refrained from issuing an interim order. The court ordered the police and prosecutors to investigate the case against Sapkota expeditiously, and to provide progress reports to the court every 15 days. The court questioned the moral correctness of Sapkota serving on the cabinet, but left it to his judgment to decide whether to resign or not. A final hearing in the case is scheduled for late November 2011.

Since the Supreme Court ruling, the District Police Office in Kavre has asked the Foksingtar Area Police Office to protect the site where Lama is believed to be buried. Advocacy Forum

and Human Rights Watch are not aware of any other action by the police. As of November 2011 the Attorney General's Office had not provided any updates to the Supreme Court.

The potential conflict in the role of the Attorney General's Office is further demonstrated by the order of the court for the police and attorney general to report regularly to the court about the progress in the criminal investigations.

Advocacy Forum and Human Rights Watch will monitor the regular 15-day reporting from the Attorney General's Office as directed by the Supreme Court. The court can and should use its inherent contempt powers if the police and the Attorney General's Office do not comply with the order in a reasonable time period.

Jay Kishor Labh, Father of Sanjeev Kumar Karna

Between 12:10 p.m. and 2 p.m. on October 8, 2003, security forces arrested 11 persons without arrest warrants, including Sanjeev Kumar Karna. After the arrest, they were taken to the Regional Police Office in Janakpur, Dhanusha district. Jay Kishor Labh, the father of Sanjeev, stated that he witnessed the young men being lined up in the compound of the regional police office in Dhanusha.[13] The police denied that the 11 persons had been arrested. On October 9 the 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 four friends had been killed in a police operation in the Janakpur area on October 8, 2003. The letter did not state how they were killed and where the remains were. 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.

After the disappearance, Jay Kishor subsequently repeatedly visited all army barracks and police stations in Dhanusha and neighboring districts. On all visits, he was told that the students had not been and were not being held by the army or the police. He phoned the NHRC more than 100 times. He wrote thousands of letters to different national and international human rights organizations, as well as to political parties and national bodies, such as the Nepal Bar Association. He also wrote personal letters to the then king, prime

[13] According to the complaint filed with police by the relatives, the five students were interrogated by Dr. Chuda Bahadur Shrestha in the presence of Rewati Raj Kafle, Kuber Singh Rana, and Major Anup Adhikari.

minister, and Home Ministry. In July 2006 he gave evidence before the United Nations Working Group on Enforced or Involuntary Disappearances in Geneva, Switzerland.[14]

As with other families, the relatives of those arrested had some hope for justice when the conflict ended. They attempted to file a FIR. According to the State Cases Act, such complaints have to be filed "as soon as possible" at the "nearest police office."[15] In this case, this meant that they had to complain at the Janakpur District Police Office, the subordinate police office of the regional police where Jay Kishor last saw his son and the other students. The families feared that the police personnel might be sympathetic to some of the people involved in the arrest and disappearances, but they had no choice but to file there. They went to the police station on July 9, 2006, in the company of Advocacy Forum lawyers and representatives of the United Nations Office of the High Commissioner for Human Rights in Nepal (OHCHR).

On the same day, the families showed the police the site where, according to villagers, the bodies of the five students had been buried. Some villagers had reportedly seen some clothes and rubber slippers around the site in the days immediately after they were buried. The police marked off the site with barbed wire, but did not take any action to start the exhumation process. Despite repeated inquiries police have not reported on any progress in the investigations.

On January 28, 2007, Jay Kishor filed a writ petition in the Supreme Court with the assistance of Advocacy Forum seeking an order for the Dhanusha police to inform the court of the progress in the investigations. The Dhanusha District Police Office argued that it had not registered the FIRs in Diary No. 10[16] as required by law and therefore they had not taken any action regarding the FIR. On February 3, 2009, the Supreme Court issued an order to the District Police Office to immediately register the FIR and to promptly proceed with investigations. The FIR was finally registered in February 2009. In its judgment, the Supreme Court also noted the conflicting versions of events provided by the army and the police: on the one hand, an internal police investigation report stated that the students were handed over to the Bhiman Barracks; on the other, the army had informed the court that the police were responsible for the disappearances and killings. Neither the Nepal

[14] Asian Federation Against Involuntary Disappearances, "Bitter Truth: The Disappearance of Five Students in Nepal, Where is Justice?" May 2008, http://www.afad-online.org/voice/may_08/nf_bitter.htm, (accessed November 25, 2011).

[15] State Cases Act, 1955, sec. 3(1)

[16] Several police forces in the country have used this argument to suggest that somehow this would absolve the police of its responsibilities to conduct criminal investigations under the State Cases Act. Advocacy Forum and Human Rights Watch maintains that the use of specific registers is an administrative police matter, and does not in any way negate obligations set out in law.

Police nor the Nepal Army submitted the reports of their internal investigations resulting in these conclusions to the court and the Supreme Court did not request them to do so.

Jay Kishor devoted the seven last years of his life in the search for his son; he died of a heart attack in April 2010 without any answers.

Five months after Jay Kishor's death, in September 2010 amid a continuing lack of action by the police, the NHRC began exhuming the bodies at the demarcated site, albeit without properly involving the families of the victims in identifying personal effects and physical remains.[17] Four bodies were recovered in September 2010, and a fifth one in February 2011.

Shortly after the NHRC started the exhumations, a confidential source at the NHRC informed Advocacy Forum that the government told them to stop the investigation, stating that "as per the Interim Constitution, only the proposed commission on disappearances could handle conflict-related cases." The Home Ministry reportedly argued that it was beyond the jurisdiction of the existing judiciary to deal with "wartime crimes." However, the NHRC ignored the government call and continued investigating, stating that justice cannot be denied to the victims and that the transitional justice mechanisms had not been set up yet.[18]

Very little has happened since the exhumations. The process of identifying the five exhumed bodies is reportedly underway at the Teaching Hospital in Kathmandu, while advance forensic tests are being carried out at the University of Helsinki. In both September 2010 and February 2011, relatives of the victims were not formally asked to identify any of the items recovered during the exhumation, such as slippers and jewelry. Nor have the police to date requested them to come to the District Police Office to identify the remains. As of October 2011, the families are not clear when or even whether the remains are likely to be returned to them to allow them to perform the last rituals.

In June 2011, police officer Kuber Singh Rana, one of the suspects identified by NHRC as among those responsible for the disappearances, was promoted to become assistant inspector general of police.

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[17] The expert team consisted of national forensic experts assisted by two forensic experts from Finland, staff at the National Forensic Science Laboratory, the Forensics Medicine Department of the Institute of Medicine, the Department of Archaeology, and the forensic laboratory of the Nepal Police.

[18] "Dhanusha killings: Five youths died at hands of government forces," Kantipuronline, August 12, 2011, http://www.ekantipur.com/2011/08/12/top-story/dhanusha-killings-five-youths-died-at-hands-of-govt-forces/339007.html (accessed November 25, 2011).

In an interim ruling on July 13, 2011, the Supreme Court held that a recommendation by the NHRC that Rana be prosecuted is not a sufficient basis to suspend his promotion pending the outcome of the investigations.

The court ordered the state to appoint an officer with powers equivalent to that of a deputy superintendent of police (DSP) to take the investigations forward pursuant to rule 4(1) of the State Cases Rules, 1998. The court also directed the government to ensure that Kuber Singh Rana does not intervene and influence the investigation.[19] The court ordered the prime minister's office, home minister, and police headquarters to send a monthly progress report to the court and to the NHRC.[20] It remains to be seen whether this will result in tangible progress in the investigations, and how Kuber Singh Rana will cooperate with an investigation led by an officer junior to him.

Devi Sunuwar, Mother of Maina Sunuwar

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 to Lamidanda Barracks in Kavre. The following day, a group of around 25 people, including the principal of Maina's school, her father and one of Maina's teachers went to the barracks. When they asked about Maina and demanded her release, security forces in the barracks denied having arrested her. The group then went to the army barracks in 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 the Panchkhal army camp, but they all denied the arrest and threatened her instead. At one point, some security forces at Panchkahl 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 Nepal Army Headquarters in Kathmandu where she was told that Maina had been killed, and that her clothes and other things had been sent to the police. Under sustained pressure from the international community, including from 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

[19] As in the public interest litigation case against Agni Sapkota's appointment as a minister, the attorney general appeared, in this case on behalf of Kuber Singh Rana, further demonstrating the need to review the Attorney General's Office role.

[20] Supreme Court of Nepal Decision of July 13, 2011 in Writ No. 067/2010, Sunil Rajan Singh and others v. Prime Minister and Council of Ministers and others; see http://www.advocacyforum.org/downloads/sc-decision-in-kuber-rana-case.pdf

April 21, 2004. According to army records, the accused were only charged with the minor offences of using improper interrogation techniques and not following procedures during the disposal of Maina's body. They were sentenced to six months' imprisonment, but since they had already spent that time confined to barracks during the period of investigation, the officers were set free.

The disappearance and death of 15-year-old Maina Sunuwar in army custody as a result of torture in February 2004, is probably the most well-known case of human rights violations during the conflict in Nepal. This is in a large part due to the unrelenting and brave campaigning by her mother, Devi Sunuwar.

Devi is one of the few relatives of victims who managed to file a FIR during the conflict. Not satisfied with the outcome of the court martial, she filed an FIR at the Kavre District Police Office in November 2005, with the help of Advocacy Forum and OHCHR. Police failed to initiate investigations. After a Supreme Court directive in September 2007, the Kavre police in January 2008 finally brought murder charges in the Kavre District Court against the four army officers named in the FIR by Devi Sunuwar. In spite of court summons for the arrest of the four accused, they all remain free.

On September 13, 2009, the District Court ordered Nepal Army Headquarters to immediately proceed with the automatic suspension of Major Niranjan Basnet (the only one of the four accused still serving, who had since been promoted from captain to major) and for Army Headquarters to submit all the files containing the statements of the people interviewed by the Court of Inquiry. The Nepal Army, holding fast to its habit of ignoring court orders, sent Niranjan Basnet abroad on coveted United Nations (UN) peacekeeping duties.

Although the UN repatriated Basnet in December 2009 after it became publically known that he was on a UN mission, the Nepal Army immediately took him under its control upon his arrival in the country and has not handed him over to the police, despite orders from the then prime minister to do so. On January 13, 2010, UN Secretary-General Ban Ki-moon urged the Nepal Army to comply urgently with the September 2009 court order and suspend Major Basnet. The NHRC also urged the Nepal Army to hand over Major Basnet.[21] To date, Basnet remains in army protection.

[21] "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-proceed-cases-of-hr-violation-through-civil-court.html (accessed November 25, 2011).

The Nepal Army's most recent known position on the case was articulated by Major General B A Kumar Sharma, chief of the Legal Department, who stated in July 2010: "It is clear that the army was acting against a common enemy then and functioning under TADA [The Terrorism and Disruptive Activities Act][22]" and that "therefore there is no case against Basnet."[23] 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. Through its complete refusal to cooperate with court orders, the Nepal Army undermines the rule of law and puts itself above the authority of the Supreme Court.

The case remains stalled, and both the police and the district public prosecutor's office, in the absence of political support, are powerless to force the Nepal Army to cooperate. The Nepal legal system is not robust enough to force cooperation, so unless there is a strong political will, the case will remain pending and the courts are unlikely to bring contempt of court proceedings against those not incompliance with the prior rulings.[24]

In the meantime, Devi Sunuwar lost her husband in October 2009. Purna Sunuwar was found dead in a forest at Dandagaun VDC Ward No.1, a village in the vicinity of his residence at Kharelthok VDC, Kavre. On October 9, 2009, the police found his body lying supine on the gravel road that passes through the forest. There were traces of poison in his blood, suggesting foul play or a possible suicide. According to neighbors and friends interviewed by Advocacy Forum, Purna Sunuwar had been deeply frustrated by the failure of the state to provide justice for his daughter, despite their relentless attempts.

Yashoda Sharma, Wife of Surya Prasad Sharma

Yashoda Sharma was Surya Prasad Sharma's second wife. His first wife had died at a young age. Yashoda and Surya Prasad's marriage was a love marriage that broke traditional caste rules. They had very little money. Surya Prasad was a Maoist supporter and went underground after the "people's war" was declared in 1996. This made life difficult for Yashoda, as she had to bring up their three young children on her own.

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[22] The Terrorism and Disruptive Activities Act (TADA) was 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 Parliamentary action 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.

[23] Akanshya Shah, "Army Gives Basnet Clean Chit, Claims UN Violated Norms," South Asians for Human Rights, July 14, 2010, http://www.southasianrights.org/?p=1233 (accessed October 5, 2010).

[24] For a detailed analysis of de jure impunity in Nepal, see *Waiting for Justice*, pp. 43-51, and *Held to Account. Making the Law Work to Fight Impunity in Nepal,* Advocacy Forum and the REDRESS Trust, December 2011, http://www.advocacyforum.org/publications/impunity-reports.php.

Surya Prasad Sharma was arrested by the army in January 2002, during the state of emergency, when he was visiting his family. Yashoda saw him being led into the nearby army camp from her window. A few days later, a soldier had come to the home and asked for Surya Prasad's favorite tobacco. Around two weeks later, she met with Major Chandra Bahadur Pun, commander of the Kalidal Gulma (battalion) stationed at the village. He informed her that troops had taken her husband on patrol during which time he escaped from custody. She questioned this statement regarding her husband's alleged escape from custody and asked for her husband's body, thinking he might have been killed by the armed forces. The major denied that any murder had occurred, refused to disclose any further information, and asked her to leave.

Yashoda was already to a great part ostracised by her community because of her inter-caste marriage. But in the aftermath of Surya's arrest things got even worse. As she did not believe he was dead, she refused to dress as a widow and continued to wear a red tika, glass beads, and a red sari, all traditional symbols signifying marriage. This caused a lot of talk in the village. After her husband's disappearance, during the important religious festivals of Tihar and Dashain, Yashoda felt unable to enjoy the celebrations and pretended to be menstruating to avoid having to participate.[25]

Determined to find out what had happened to her husband, Yashoda made a complaint to the NHRC and filed a *habeas corpus* petition in the Supreme Court. There were considerable discrepancies in the responses to the court from the various authorities. The Home Ministry, the Defence Ministry, the Police Headquarters, and the Army Headquarters denied his arrest and detention. The CDO, on the contrary, responded that its records showed that Sharma had been arrested by the security forces, had escaped while being taken out of the camp by a patrol and jumped into a river from which he did not emerge.[26]

Yashoda is the first Nepali citizen to use the individual complaints procedures set out in the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).[27] By pursuing justice and exhausting all possible avenues at the national level she was able to access the UN Committee on Human Rights. The committee adopted its decision (formally referred to as "Views") on October 28, 2008. The committee found that there were violations of article 2(3) (the right to an effective remedy), article 7 (the right not to be tortured), article 9 (the right to liberty and security of the person), and article 10

[25] In much of Nepal, women are considered impure during menstruation and are forbidden from participating in religious ceremonies or even in cooking for the duration of the cycle.

[26] See Communication No.1469/2006, November 6, 2008, CCPR/C/94/D/1469/2006, paras. 2.7-2.8.

[27] Nepal ratified the ICCPR and the Optional Protocol in 1991.

(respect for the inherent dignity of a human person). It also found that the disappearance of Surya Prasad Sharma was a violation of Yashoda's rights under article 7 (the right to not be tortured). The committee noted:

> The anguish and stress that the disappearance of the author's husband since 12 January 2002 caused to the author. It therefore is of the opinion that the facts before it reveal a violation of article 7 of the Covenant with regard to the author herself.[28]

The committee held that:

> [In] accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's husband, his immediate release if he is still alive and her family for the violations suffered by the author's husband and by themselves. While the Covenant does not give individuals the right to demand of a State the criminal prosecution of another person, the Committee nevertheless considers the State party duty-bound not only to conduct thorough investigations into alleged violations of human rights, particularly enforced disappearances and acts of torture, but also to prosecute, try and punish those held responsible for such violations in the future."[29]

Since this decision was issued, Yashoda Sharma has repeatedly tried to get the government to fulfill its obligations. At this writing, Yashoda Sharma has received no answers as to what happened to her husband. She has received NRs 200,000 (US$ 2,500) as "immediate relief" from the government.[30] The government has stated that full compensation will be paid once the amount has been determined only after a full investigation of the case by the yet-to-be-established transitional justice mechanism. No criminal investigation has been initiated.

Yashoda Sharma is grateful for the interim relief she has received and is aware that other families who have received "relief" only received half this amount, but the amount is wholly inadequate in comparison to the suffering she and her family have been put though.

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[28] See Communication No.1469/2006, November 6, 2008, CCPR/C/94/D/1469/2006, para. 7.9.

[29] Ibid., para. 7. 10.

[30] Letter of April 27, 2009, from the government of Nepal to the Human Rights Committee.

It is her contention that she and other victims of disappearances and their families should receive compensation and reparation that reflect the gravity of the crime committed, as set out in the decision by the UN Human Rights Committee.

As to implementation of the committee's call for an independent investigation, the government stated in 2009 that:

> For investigation, the case of alleged disappearance of Surya Prasad Sharma will be referred to the Independent Disappearance[s] Commission to be constituted by the government of Nepal shortly. A bill relating to the Commission has already been submitted to the ongoing session of parliament of Nepal. Following the enactment of the legislation, the Commission is being constituted as a matter of priority.[31]

However the commission has not yet been established. Surya Prasad Sharma disappeared nearly 10 years ago. The obligation is not only to conduct a "full investigation"; it is also to be "prompt." The government's continuing reliance on an investigation to be carried out by a yet-to-be-established commission illustrates its failure to take its obligations seriously. In a letter dated August 4, 2011, the government once again stated its commitment to this process, referring to the fact that the bills had been submitted to the legislative parliament as evidence of this commitment.

Even if a disappearances commission were established, there would be no need for prosecutors to await a decision by the commission before proceeding in this case. The UN Human Rights Committee has already concluded that there is state responsibility to investigate and prosecute the disappearance of Suray Prasad Sharma and authorities can and should immediately initiate a full criminal investigation.

Abdul Majid Dewan, Father of Sahid Ullah Dewan

On October 26, 2009, eyewitnesses saw three policemen kill Sahid Ullah Dewan, age 29 in broad daylight at 11.30 a.m. in Rupandehi District. The killing occurred in the context of police crackdowns in response to criminal activities by armed groups in the Terai. It is not known whether Sahid Ullah was a member of any armed gangs, but he was unarmed at the time of his arrest. Abdul Majid, his father, described what happened to Advocacy Forum:

[31] Letter from the Permanent Mission of Nepal to the United Nations, Geneva, to the secretary, Human Rights Committee, April 27, 2009, annex 7.

> I was waiting for my son outside while he was in the barber shop. Meanwhile, he received a phone call from an unknown person and he rushed off. I followed him. There was only 20 meters between us. Suddenly three people, who had covered their faces with handkerchiefs, attacked him. I could identify a person named Sambhunath Upadhayaya, in charge of Bethari Police Post, who had been known to him before. When I tried to go towards my son, the other policemen who I later came to know were Awadesh Yadav and Prem Dhawal threw me down on the ground.
>
> Sambhunath Upadhayaya shot my son in the chest, forehead and several other parts of his body. He was flailing about (chhatpataunu) in pain, and he died on the spot. After that Sambhunath Upadhayaya tried to take a photograph putting a pistol in my deceased son's hands. I tried to stop him doing that; however, they beat me and took the photograph.
>
> Then, a police van arrived and the police personnel immediately encircled the location where the incident took place, and did not allow others to come near. They took the dead body of my son without even preparing a field enquiry report of the incident. Other policemen threatened the villagers with dire consequences if they tried to intervene.

Other villagers confirmed this account of the killing, including the identity of the three police officers and the planting of the gun. When interviewed by Advocacy Forum, Prakash Aryal, Inspector at District Police Office Rupandehi, stated: "A person fired on a group of police from Bogadi VDC of Majhgawa Area Police Office, a man was killed when police fired on him to oppose his attack. Bullet and pistol were also recovered from the deceased. The statement of the family and the villagers is false."[32]

When Abdul Majid tried to file an FIR at the District Police Office Rupandehi, the police refused to register the complaint maintaining that the victim was killed during crossfire. The victim's father filed a writ petition in the Appellate Court, which issued an order on January 5, 2010, for police to file the complaint and step up investigations. The public prosecutor in Rupandehi District nevertheless failed to file court proceedings in the case. When the decision was communicated to the Public Prosecutor's Office at the Appellate Court as required, they directed the district office to file court proceedings and move the case forward. In direct defiance of the order, the district prosecutor directly

[32] Advocacy Forum interview with Prakash Aryal, October 2009.

corresponded with the Attorney General's Office seeking approval not to initiate proceedings. Finally, on October 18, 2011, the district prosecutor confirmed that he had been directed to proceed with investigations, and had requested the Rupandehi District Police Office to proceed accordingly.

II. Government Strategies to Evade the Obligation to Prosecute Serious Wartime Abuses

Nepali authorities have developed various strategies to protect security forces and rebel forces from accountability for human rights abuses. Chief among these are the mass withdrawal of cases pending before the courts, pardons, and general amnesties.

Withdrawal of Cases

Successive governments have so far withdrawn more than 600 wartime criminal cases (including murder and rape), citing authority from the Comprehensive Peace Agreement (CPA), section 29 of the State Cases Act, 1992, and the August 1998, Procedures and Norms to be Adopted While Withdrawing Government Cases.[33]

In a memo to the Ministry of Law, Justice, and Parliamentary Affairs, Chief Secretary Bhojraj Ghimire of the Maoist-led government explained the Cabinet's decision to sanction the withdrawal of 349 cases on October 27, 2008, stating, "it is expedient to retract them as exceptions to steer the peace process forward and to implement the clause 5.2.7 of the Comprehensive Peace Agreement."

The government led by the UML's Madhav Kumar Nepal retracted 282 cases on November 17, 2009. These cases cover a wide range of crimes, including murder and arson implicating security forces and Maoists.[34]

The Supreme Court initially made some strong rulings against such mass withdrawal of cases. Most notably, it issued an interim order on January 1, 2009, preventing the implementation of the decision to withdraw 349 cases.[35] However, this position was later reversed in February 23, 2011, when the Division Bench ruled the withdrawal was lawful on the basis of the 1998 standards and clause 5.2.7 of the CPA. The Supreme Court, in this latter ruling, articulated a broad definition of "political crime," stating that all cases pertaining to crimes committed during the conflict will, *prima facie*, be deemed political and therefore come under clause 5.2.7 of the CPA. Despite this disappointing ruling, the

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33 For more details on the precise legal basis for the withdrawal of cases, see "Evading Accountability by Hook or By Crook. The Issue of Amnesties in Post-Conflict Nepal," Occasional Brief, year 2,vol. 1, Advocacy Forum, June 2011, http://www.advocacyforum.org/downloads/pdf/publications/evading-accountability-by-hook-or-by-crook.pdf.

34 Ibid.

35 *Madhav Kumar Basnet, Advocate v Honorable Prime Minister Puspa Kamal Dahal and Others*, Writ No 03557/ 2065, Supreme Court, January 1, 2009.

Supreme Court emphasized in its judgment that the District Court must be careful and act in good faith in determining whether a case is politically motivated or not. It remains to be seen what position the district courts will take on individual withdrawal applications.[36]

Pardons

On September 8, 2010, the Supreme Court upheld a murder conviction against UCPN-Maoist Constituent Assembly member Balkrishna Dhungel for the murder of Ujjan Kumar Shrestha in Okhaldhunga on June 24, 1998. The killing was committed during the conflict period, but related to personal disputes between the families of the victim and Balkrishna Dhungel.[37] The Okhaldhunga District Court initially convicted Dhungel and sentenced him to life imprisonment. The Appellate Court of Rajbiraj overturned the verdict, stating that this was a case that was appropriate for transitional justice mechanisms rather than the courts. The public prosecutor then appealed to the Supreme Court, which, on September 8, 2010, upheld the original murder conviction. The UCPN-M coalition government on November 8, 2011, submitted a request to the president to pardon Dhungel under the clemency clause (article 151) of the Interim Constitution. This was stalled by an interim order of the Supreme Court on November 13, 2011. As of this writing, the cabinet had forwarded a request for Dhungel's pardon to the President of Nepal, who had not yet ruled on the matter. Dhungel continues to be an active member of the Constituent Assembly and is yet to be arrested.[38]

In another non-conflict related case, the Supreme Court in an November 16, 2010, interim ruling held that "the power to pardon can only be exercised in the rarest of rare cases"; and that article 151 could not be used routinely after this ruling.[39] This case involved Mukeshwor Das Kathwania, who was convicted by the Supreme Court in 1997 of murdering one Mahendra Jha in 1985 but had remained free. Mr Jha's son had petitioned the Supreme Court seeking the court's intervention to nullify the cabinet's decision to ask the president to pardon Mukeshwor Das Kathwania in January 2010. Final Supreme Court decisions in both the Dhungel and Katwania case are pending.

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[36] Raju Prasad Chapagai, "Withdrawal of Criminal Charges and Other Forms of Amnesty in Nepal: Reflections on the Relevant National and International Legal Framework," National Judicial Academy Law Journal, 2010, p. 186.

[37] Advocacy Forum, "Ujjan Kumar Shrestha," First Information Report, October 2011, http://www.advocacyforum.org/fir/2011/10/ujjan-kumar-shrestha.php (accessed November 25, 2011).

[38] "Plea to Ban Dhungel from Entering CA Hall," *Kathmandu Post*, November 4, 2010 http://www.ekantipur.com/the-kathmandu-post/2010/11/04/nation/plea-to-ban-dhungel-from-entering-ca-hall/214532/ (accessed May 26, 2011).

[39] "Suprme Court Summons Government to Attend Nov 9 Hearing", Himalayan Times, October 31, 2010, http://www.thehimalayantimes.com/fullNews.php?headline=Supreme+Court+summons+government+to+attend+Nov+9+hearing&NewsID=263927 (accessed November 22, 2011).

Amnesty

Despite the CPA's commitment to accountability, all major political parties have tried to put in place amnesties for past human rights abuses. As early as July 2007, the government led by Girija Prasad Koirala of the Congress Party made an attempt to foreclose prosecutions by proposing an amnesty clause in the draft bill creating the Truth and Reconciliation Commission (TRC). Intense lobbying by various national and international human rights organizations led the government to amend this provision in the bill. At this writing, the bill is pending in the Legislative Committee of the Parliament. While it now explicitly prohibits amnesty for international crimes and serious violations of human rights, some problematic provisions remain, including the powers given to the TRC to "*cause reconciliation*" for certain crimes, including sexual violence. As noted above, if this was to involve mandatory mediation by the commission between perpetrators and victims this could re-traumatise women.[40]

In a meeting with human rights defenders on September 2, 2011, Prime Minister Baburam Bhattarai promised that clear criteria for the withdrawal of cases would be developed.

The proposed withdrawals and amnesties are prohibited under international law and standards if the amnesties concern crimes under international law such as war crimes, crimes against humanity, enforced disappearances, torture, and ill-treatment. This prohibition is contained in article 24 of the UN Updated Set of Principles for the Promotion and Protection of Human Rights through Action to Combat Impunity. Such amnesties are also incompatible with Nepal's obligations under the International Covenant on Civil and Political Rights, as affirmed by the UN Human Rights Committee. Critically, the Supreme Court of Nepal has affirmed this position in several cases, including in *Rajendra Dhakal v. Ministry of Home Affairs (June 1, 2006)*, *Kajee Karke v. Kavre District Court (August 15, 2011),* and *Devi Sunuwar v. Kavre District Police Office (September 18, 2007)*. The agreement between UCPN-M and UDMF, if applied, would contravene Nepal's obligations under international law and would violate Supreme Court directives, given its broad nature and application to serious crimes, including international crimes.

[40] Advocacy Forum and ICTJ, "Across the Lines: The Impact of Nepal's Conflict on Women," 2010, http://ictj.org/publication/across-lines-impact-nepals-conflict-women, (accessed November 25, 2011), p. 96.

Acknowledgements

This is the fourth in a series of reports documenting the ongoing impunity for crimes committed during Nepal's armed civil conflict. This report was preceded by three joint reports, *Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict,* released in September 2008, *Still Waiting for Justice: No End to Impunity in Nepal*, released in October 2009, and *Indifference to Duty: Impunity for War Crimes Committed in Nepal,* released in December 2010, all by Advocacy Forum and Human Rights Watch.

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Appendix: Updates on 62 Cases of Grave Human Rights Violations

CASE NO.	1
NAME	Raju B.K
DISTRICT	Baglung
CASE SUMMARY	Extrajudicial killing. Raju B.K was arrested on March 1, 2002, by a group of the 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, and soldiers were also present at the funeral.
FIR SUBMITTED	March 18, 2007
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	There was no investigation even after registering the FIR. A writ petition was filed on June 18, 2009.
RECENT DEVELOPMENTS	On November 11, 2009, the Baglung Appellate Court issued an order to police to initiate investigation into the case without delay. Despite this order, Advocacy Forum lawyers have not been able to find any evidence of progress in police files. We are aware of no developments in the case in 2011.

CASE NO.	2 and 3
NAME	Ganga Gauchan and Pahalbir BK (alias Pahal Singh)
DISTRICT	Baglung
CASE SUMMARY	Extrajudicial killings On July 11, 2004, four soldiers from Khadgadal 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.
FIR SUBMITTED	February 15, 2007
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	There was no investigation even after registering the FIR. On June 18, 2009 the families filed separate petitions of mandamus at the Appellate Court, Baglung.
RECENT DEVELOPMENTS	On November 11, 2009, the Appellate Court, Baglung issued identical orders for police to initiate investigations without delay. Despite this order, Advocacy Forum lawyers have not been able to find any evidence of progress in police files. After inquiries, we found no evidence of any development of the case in 2011.

CASE NO.	4
NAME	Dilli Prasad Sapkota
DISTRICT	Baglung
CASE SUMMARY	Extrajudicial killing (after torture) 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.
FIR SUBMITTED	February 2008
FIR REGISTERED	No
DEVELOPMENTS IN 2008	His family tried to register a FIR at the Baglung DPO, but instead of registering the complaint, police officers threatened to kill the family.
RECENT DEVELOPMENTS	The family has stated that they have lost hope, are no longer pursuing the case, and feel that talking about it will only re-victimize them.

CASE NO.	5 and 6
NAME	Dal Bahadur Thapa and Parbati Thapa
DISTRICT	Banke
CASE SUMMARY	Extrajudicial killings On September 10, 2002, at around 8:40 pm, Dal Bahadur's family was woken up by the sound of the gunshots fired by a large group of security force. The security forces surrounded their house and fired guns persistently for 15 minutes, suspecting that the Maoists were hidden inside the house. Dal and his wife Parbati Thapa were shot to death by the gunshots. Then, the dead bodies were carried away by them and have not been returned till the date.
FIR SUBMITTED	July 15, 2007
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	Investigations started from May 2008. On June 18, 2009, Dal's mother filed a petition of mandamus at the Appellate Court Nepalgunj.
RECENT DEVELOPMENTS	On February 24, 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. The District Public Prosecutor's Office on August 29, 2010, directed the Area Police Office, Kohalpur, Banke, to proceed with the investigation within the time specified by law. On November 14, 2010, the Area Police Office, Kohalpur, wrote to Shree Khadka Dal Battalion, Chisapani, to produce the suspects at APO Kohalpur for further inquiry. However, as of October 2011, the army had not done so. There is no correspondence from the Nepal Army in response to the November 2010 letter.

CASE NO.	7 and 8
NAME	Dhaniram Chaudhari and Jorilal Chaudhari
DISTRICT	Banke
CASE SUMMARY	Extrajudicial killings. On September 29, 2004, during Armed Police Force operations 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.
FIR SUBMITTED	October 29, 2007
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	There was no investigation even after registering the FIR. On June 18, 2009, the family filed a writ petition at the Appellate Court, Nepalgunj.
RECENT DEVELOPMENTS	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. We are aware of no developments in the case in 2011.

CASE NO.	9
NAME	Keshar Bahadur Basnet
DISTRICT	Bardiya
CASE SUMMARY	Enforced disappearance and extrajudicial killing On March 11, 2002, Keshar Bahadur Basnet was beaten by soldiers at his office and then arrested and allegedly taken to the Thakurdhwara Army Barracks, but 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.
FIR SUBMITTED	February 14, 2007
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	There was no investigation even after registering the FIR. On June 18, 2009, the victim's family filed a writ petition at the Appellate Court, Nepalgunj.
RECENT DEVELOPMENTS	On November 18, 2009, the Appellate Court Nepalgunj 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 TRC. After the date to appeal by the respondent expired, the plaintiff had applied to the DPO, Bardiya 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. On October 5, 2010, Police Inspector Basudev Khatiwada, the investigating officer at DPO Bardiya, 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.

CASE NO.	10
NAME	Bhauna Tharu (Bhauna Chaudhary)
DISTRICT	Bardiya
CASE SUMMARY	Extrajudicial killing On May 30, 2002, two soldiers shot Bhauna Tharu dead at his home on the charge of being a Maoist.
FIR SUBMITTED	July 24, 2006
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	There has been no investigation even after registering the FIR. On June 18, 2009, a petition of mandamus was filed at the Appellate Court Nepalgunj by the victim's family.
RECENT DEVELOPMENTS	On November 18, 2009, the Appellate Court, Nepalgunj issued a mandamus order against the respondents to promptly proceed with the investigations. 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. After inquiries, we found no evidence of any development of the case in 2011.

CASE NO.	11 and 12
NAME	Nar Bahadur Budha-magar and Ratan Bahadur Budha-magar
DISTRICT	Dadel-dhura
CASE SUMMARY	Extrajudicial killings. On August 17, 2004, soldiers picked up two brothers, Nar Bahadur and Ratan Bahadur, from their house, and allegedly later shot them 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.
FIR SUBMITTED	June 18, 2007
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	There has been no investigation even after registering the FIR. On June 5, 2008, the relatives of the victims 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.
RECENT DEVELOPMENTS	On August 18, 2009, a case was filed at the Supreme Court, challenging the decision of the Appellate Court Mahendranagar to quash the contempt of court petition. The case is *sub judice* in the Supreme Court. A hearing has been scheduled for December 1, 2011.

CASE NO.	13
NAME	Jaya Lal Dhami
DISTRICT	Dadel-dhura
CASE SUMMARY	Extrajudicial killing 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.
FIR SUBMITTED	September 10, 2007
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	There has been no investigation even after registering the FIR. On June 18, 2009, the family filed a petition of mandamus at the Appellate Court Mahendranagar. On August 23, 2009, the court quashed the petition of mandamus on the basis of police information that the FIR has already been filed and the investigation is ongoing.
RECENT DEVELOPMENTS	On January 19, 2010, a case was filed in the Supreme Court, challenging the decision of the Appellate Court Mahendranagar 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. The court called both parties to court on March 24, 2011, and heard arguments in the case. A further hearing was scheduled for September 22, 2011. The hearing scheduled for September 22, 2011 could not take place because the defendant's lawyer was unavailable; the hearing is rescheduled for January 5, 2012.

CASE NO.	14
NAME	Sarala Sapkota
DISTRICT	Dhading
CASE SUMMARY	Extrajudicial execution 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.
FIR SUBMITTED	June 28, 2006
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	In June 2006, her father filed an FIR at the DPO, Dhading.There has been no investigation even after registering the FIR. In November 2007 her father filed a mandamus petition at the Supreme Court.
RECENT DEVELOPMENTS	On May 31, 2010 the Supreme Court issued an order of mandamus to the DPO to promptly proceed with the investigation into the case.Despite this, Advocacy Forum has not been able to find any evidence of progress in police files. On July 14, 2008, NHRC recommended that the government provide NRs 300,000 to the victim's family. As of November 2010 the government has not acted on the recommendation. As of October 2011 the family has not received the compensation recommended by the NHRC. After inquiries, we found no evidence of any developments of the case in 2011.

CASE NO.	15 to 19
NAME	Sanjeev Kumar Karna, Durgesh Kumar Labh, Jitendra Jha, Shailendra Yadav, and Pramod Narayan Mandal
DISTRICT	Dhanusha
CASE SUMMARY	Enforced disappearances 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."
FIR SUBMITTED	February 2009
FIR REGISTERED	Yes (after order by Supreme Court)
DEVELOPMENTS IN 2008	In July 2006 the families showed police the site where the bodies of the five men were believed to be buried. The Supreme Court in February 2009 issued an order for police to proceed with investigations.
RECENT DEVELOPMENTS	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. Remains of 4 victims were exhumed in mid-September 14, 2010. On February 15, 2011, the team exhumed the fifth body. The process of identification of the five exhumed bodies is reportedly underway at the Teaching Hospital while advance forensic tests are being carried out at the University of Helsinki, Finland. On June 23, 2011, Kuber Singh Rana was promoted to the post of assistant inspector general. A group of human rights defenders challenged the appointment in a public interest litigation (PIL) petition. In an interim ruling on July 13, 2011, the Supreme Court held that a recommendation by the NHRC for him to be prosecuted is not a sufficient basis to suspend his promotion pending the outcome of criminal investigations. The court ordered the state to appoint an officer with powers equivalent to that of a DSP to take the investigations forward in pursuant to rule 4(1) of the State Cases Rules, 1998. Moreover, the court directed that the government should see to it that Kuber Singh Rana does not intervene and influence the investigation. The court also ordered the Prime Minister's Office, home minister, and Police Headquarters to send a monthly progress report to the court and to the NHRC. Regarding the Supreme Court Order, there has been no follow up. The NHRC has not submitted a progress report on this case. The DSP-level officer charged with taking the investigation forward has not yet been appointed.

CASE NO.	20 and 21
NAME	Ram Chandra Lal Karna and Manoj Kumar Dutta
DISTRICT	Dhanu sha
CASE SUMMARY	Enforced disappearances and extrajudicial killings 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.
FIR SUBMITTED	October 19, 2006
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	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 Appellate Court, Janakpur.
RECENT DEVELOPMENTS	On December 1, 2009, the Janakpur Appellate Court issued an order for the DPO, Dhanusha 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. The DPO Dhanusha reportedly registered the FIR under diary no. 10. However, we do not know the exact date of registration. We are aware of no developments in the case in 2011.

CASE NO.	22 to 26
NAME	Lapten Yadav, Ram Nath Yadav, Shatru-ghan, Yadav, Rajgir Yadav, and Ram Pukar Yadav
DISTRICT	Dhanu sha
CASE SUMMARY	Extrajudicial killings On October 1, 2004, security personnel arrested these five men from their homes. According to eyewitnesses, they were first beaten and later, around 5 a.m., security forces shot and killed them. 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.
FIR SUBMITTED	October 2007
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	The family tried to register a FIR but police refused.
RECENT DEVELOPMENTS	Relatives are intending to file a writ petition at the Janakpur Appellate Court to obtain an order for police to register the FIR. On December, 31, 2010, the families of the victims filed a writ of mandamus at the Appellate Court, Janakpur, seeking to have the court order the DPO Dhanusha to initiate prompt and effective investigations. On May 10, 2011, the court ordered the DPO Dhanusha to do so. However, there has been no progress.

CASE NO.	27
NAME	Ramadevi Adhikari
DISTRICT	Jhapa
CASE SUMMARY	Extrajudicial killing 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.
FIR SUBMITTED	November 9, 2006
FIR REGISTERED	No
DEVELOPMENTS IN 2008	The family tried to register a FIR but police refused.
RECENT DEVELOPMENTS	On October 12, 2009, the Ilam 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. The Supreme Court summoned both parties on March 24, 2011, and heard arguments in the case. The Court then scheduled a hearing for September 22, 2011. The hearing scheduled for September 22, 2011, could not take place because the defendant's lawyer was unavailable; the hearing was rescheduled for November 6, 2011.

CASE NO.	28
NAME	Hari Prasad Bolakhe
DISTRICT	Kavre
CASE SUMMARY	Extrajudicial killing On December 27, 2003, police arrested Hari Prasad at a bus stop. When his father went to the 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 revealed the cause of death to be "gunfire injury to the pelvis."
FIR SUBMITTED	November 7, 2006
FIR REGISTERED	Yes (after Supreme Court order)
DEVELOPMENTS IN 2008	The family filed a writ petition in the Supreme Court seeking a court order for police to register the FIR.
RECENT DEVELOPMENTS	The Supreme Court quashed the petition on the grounds that the DPO, Kavre provided a written reply to the Court that it had already registered the FIR. The District Police Office Kavre on July 21, 2011, wrote to the Shyampati Police Post, Kavre, to produce the complainant. On September 11, 2011, the DPO Kavre wrote to the District Administration Office, Kavre, asking whether the complainant had been provided "interim relief." We are aware of no developments in the case in 2011.

CASE NO.	29
NAME	Reena Rasaili
DISTRICT	Kavre
CASE SUMMARY	Extrajudicial killing (after rape) 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.
FIR SUBMITTED	May 25, 2006
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	There was no investigation after registering the FIR.
RECENT DEVELOPMENTS	On December 14, 2009, the Supreme Court issued an order to the DPO Kavre 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. 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. Statements of the complainant and four other witnesses were recorded by the DPO Kavre on April 21. On June 13, 2010, DPO Kaski sent a similar letter to police station Dhorpatan. On September 13, 2010, at DPO, Kavre, three witnesses provided statements about the incident. This was done in the presence of Karna Bahadur Rasaili (Reena's father) and Devi Sunuwar. On September 9, 2010, former junior army staff member Kaji Bahadur Karki, one of the alleged perpetrators, was arrested by the DPO Kaski and handed over to the DPO Kavre. On September 17, 2010, charges of murder were filed against him at the Kavre District Court. On September 19, 2010, the court ordered his detention until the trial. Then Lieutenant Saroj Basnet was also charged with murder *in absentia* and the Kavre District Court issued an arrest warrant for him on October 28, 2010, but he has not yet been arrested.

CASE NO.	30
NAME	Subhadra Chaulagain
DISTRICT	Kavre
CASE SUMMARY	Extrajudicial killing 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.
FIR SUBMITTED	June 6, 2006
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	There was no investigation even after registering the FIR. 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.
RECENT DEVELOPMENTS	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. 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. Likewise, it formally criticized the Attorney General's Office of Nepal, calling on it to direct the district attorney to take prompt, appropriate steps to investigate. 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 DPO, Kavre. On September 30, 2010, a witness, Putali Chaulagain, provided a statement at DPO, Kavre in the presence of Kedarnath Chaulagain (complainant). The DPO Kavre has written several letters, but otherwise there is no sign of activity in the case file. On July 18, 2011, it wrote to the DPO Mahottari asking for details on the defendant. On the same date, it sent a copy of the FIR to Police Headquarters, Naxal. On July 21, 2011, it wrote to DAO Kavre asking whether the complainant had received "interim relief." On July 22, 2011, the DPO Kavre wrote to Janakpur Zonal Police Office asking for details of another defendant. Similarly on July 27, it wrote to Bagmati Zonal Police Office asking for details on a third defendant.

CASE NO.	31
NAME	Maina Sunuwar
DISTRICT	Kavre
CASE SUMMARY	Extrajudicial killing 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. 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. 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.
FIR SUBMITTED	November 13, 2005
FIR REGISTERED	Yes (after a Supreme Court order)
DEVELOPMENTS IN 2008	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 Niranjan Basnet which was duly served on April 27, 2009. On September 13, 2009, the District Court ordered the NA Headquarters to immediately proceed with the automatic suspension of Major Niranjan Basnet and for all the files containing the statements of the people interviewed by the Military Court of Inquiry to be produced.
RECENT DEVELOPMENTS	The army provided the Kavre District Court with copies of the judgement and the court-martial statements of the four accused. None of the other 34 documents listed in the Court Martial judgement have been provided. 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. One of the accused, Captain Niranjan Basnet, was repatriated from UN peacekeeping duties in Chad. The Prime Minister on December 13, 2009, directed the NA to produce Major Basnet in the court but the NA did not follow this order. The military police picked up Basnet from the airport and took him to army headquarters. On August 20, 2010, the Kavre District Court sent an order letter to Dolakha District Court to seize the property of Niranjan Basnet. 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 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. 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, Niranjan Basnet, Amit Pun, and Sunil Prasad Adhikari to the General Military Court within 7 days.

	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. On December 19, 2010, the Kavre District Court received a letter from the Nepal Army Headquarters providing copies of the statements of 13 army personnel before the court martial in 2005 as earlier requested by the Kavre District Court. Between late 2010 and early 2011, the Kavre District Court wrote to other courts (including Dolakha, Rupandehi and Kathmandu) ordering the confiscation of the property of the army officers charged with murder pending the outcome of the trial. The property has not been confiscated yet.

CASE NO.	32
NAME	Arjun Bahadur Lama
DISTRICT	Kavre
CASE SUMMARY	Abduction and extrajudicial killing (by CPN-M) 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 CPN-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 Supreme Court order to do so, the FIR was finally registered in August 2008. An NHRC investigation concluded Arjun had been detained and deliberately killed.
FIR SUBMITTED	August 11, 2008
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	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 Constituent Assembly in April 2008. 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. The police questioned some witnesses in May 2009. On May 4, 2009, the DPO, Kavre wrote to the local police post at Foksingtar asking them to prepare a report about the incident.
RECENT DEVELOPMENTS	There have been no substantive investigations into the FIR except for some correspondence between various police offices. On January 22, 2010, DPO, Kavre sent a letter to the APO, Foksingtar to carry out an investigation, if necessary, and to protect the site where Arjun Bahadur Lama is thought to have been illegally buried. On April 28, 2010, the complainant produced a statement at DPO, Kavre disclosing the address of the respondents.

	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. On May 20, 2010, the Kavre DPO sent letters to the Police Post, Shyampati, Deupur, and the DPO Sindhupalchowk asking them to arrest the defendants. On October 3, 2010, the DPO Kavre sent a letter to Police Headquarters summarizing developments in the case. On October 7, 2010, the DAO Kavre asked the DPO Kavre about developments in the case. The same day the DPO sent a letter to the DAO with an update about the case. In response to a request about the exhumation of the body, a police officer in the cases division told Advocacy Forum lawyers that the subject needed to be discussed with the DSP and the public prosecutor. On May 4, 2011, Agni Sapkota was appointed as Minister of Information and Communication. On May 27, 2011, a group of human rights defenders filed a public interest litigation (PIL) petition in the Supreme Court challenging this appointment. On June 15 the DPO Kavre submitted the documents of the FIR at the Supreme Court as per the court's request. On June 23 the documents were returned. On June 24, 2011, the DPO Kavre wrote to the DPO Sindhupalchowk asking it to search for the defendants. Then on June 27 the DPO Kavre wrote to DAO Kavre asking whether the complainant had received "interim relief." Responding to the PIL, the Supreme Court (SC) on July 13, 2011, denied a request for an interim order suspending Agni Sapkota's appointment as a minister, as had been sought by the applicants. The ruling clearly stated that the transitional justice mechanisms do not supersede the normal criminal justice system. The Court further expressed its disappointment at the delay by the police in investigating the case. It directed the DPO Kavre to re-energize itself in the investigation and to report every 15 days to the court via the Attorney General's Office. The court also questioned the morality of Mr. Sapkota continuing as minister, seeking his cooperation in the murder investigation, but leaving it to Sapkota to take a personal decision to resign from office. On July 14, 2011, the DPO Kavre received the order from the Supreme Court to report on the progress of the case every 15 days. On August 25, 2011, the district public prosecutor in Kavre asked the DPO Kavre to send a progress report. On August 16, 2011, the DPO Kavre received a letter from Police Headquarters instructing it to obey the interim order of the Supreme Court. Responding to a letter sent by DPO Kavre, the DPO Sindhupalchowk stated that the defendants were not in the district but were residing in Kathmandu. A final hearing has been scheduled for November 24, 2011. Purnimaya, the wife of Arjun Lama, asked the NHRC and Advocacy Forum to exhume the dead body of her husband once she heard that her husband was killed and buried at Foksingtar. She submitted the written request letter to Advocacy Forum. Regarding the Supreme Court Order, there has been no follow up by the DPO Kavre and PP Office Kavre. The final hearing in this case is scheduled for November 23, 2011.

CASE NO.	33 and 34
NAME	Chot Nath Ghimire and Shekhar Nath Ghimire
DISTRICT	Lamjung
CASE SUMMARY	Extrajudicial killing 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.
FIR SUBMITTED	November 19, 2006
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	There was no investigation even after registering the FIR. On June 18, 2009, the families filed separate petitions of mandamus at the Appellate Court Kaski seeking orders for the DPO and Public Prosecutor's Office to promptly investigate the FIR.
RECENT DEVELOPMENTS	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. A final hearing has been scheduled for December 15, 2011.

CASE NO.	35
NAME	Prem Bahadur Susling Magar
DISTRICT	Morang
CASE SUMMARY	Extrajudicial killing Security forces arrested Prem Bahadur Susling Magar, an affiliate of the CPN-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.
FIR SUBMITTED	July 6, 2007
FIR REGISTERED	No
DEVELOPMENTS IN 2008	According to officials in the DAO, the copy of the FIR submitted to the CDO has gone missing.
RECENT DEVELOPMENTS	The victim's family is considering filing a petition of mandamus. We are aware of no developments in the case in 2011.

CASE NO.	36
NAME	Data Ram Timsina
DISTRICT	Morang
CASE SUMMARY	Extrajudicial killing On September 28, 2003, officers of the Eastern Regional Army Headquarters in Itahari, and security personnel from Morang DPO arrested schoolteacher Data Ram Timsina. 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 NA later confirmed that Data Ram was "killed in a security operation at Kerabari VDC-5, in Morang District, on October 14, 2003."
FIR SUBMITTED	June 7, 2007
FIR REGISTERED	No
DEVELOPMENTS IN 2008	After both the 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 TRC. The family subsequently filed an appeal to the Supreme Court against the Biratnagar Appellate Court decision.
RECENT DEVELOPMENTS	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. We are aware of no developments in the case in 2011.

CASE NO.	37 to 39
NAME	Bishwanath Parajuli, Tom Nath Poudel, and Dhan Bahadur Tamang
DISTRICT	Morang
CASE SUMMARY	Torture and extrajudicial killings 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 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.
FIR SUBMITTED	November 1, 2004
FIR REGISTERED	No (2); Yes (1)
DEVELOPMENTS IN 2008	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 mandamus at the Biratnagar Appellate Court seeking an order for the police to promptly start an investigation into the FIR.
RECENT DEVELOPMENTS	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 Appellate Court, Biratnagar 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. After inquiries, we found no evidence of any developments of the case in 2011.

CASE NO.	40 to 43
NAME	Jag Prasad Rai, Dhanan,Jaya Giri, Madhuram Gautam, and Ratna Bahadur Karki
DISTRICT	Morang
CASE SUMMARY	Extrajudicial killings 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.
FIR SUBMITTED	June 5, 2007
FIR REGISTERED	No (3); Yes (1) (after court order)
DEVELOPMENTS IN 2008	All the relatives appealed to the Biratnagar Appellate Court but only in Madhuram Gautam's case did the court order the police to register the FIR. 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 TRC. The FIR relating to Madhuram Gautam was accepted in October 2008 on the basis of a court order. His family in June 2009 filed another petition to get a court order for the police to proceed with investigations. The family of Dhanan-jaya Giri appealed to the Supreme Court against the decision of the appellate court.
RECENT DEVELOPMENTS	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. In Dhananjaya Giri's case, there has been no progress, apparently on the basis that the order of the Supreme Court has not been received by the DPO. In Jag Prasad Rai and Madhuram Gautam's cases, there has been no progress since then. In Ratna Bahadur Karki's case, the victim's family, with the assistance of Advocacy Forum, filed a mandamus petition on January 18, 2011. The court on April 12, 2011, issued an order for DPO Morang to register the FIR promptly. The FIR in Ratna Bahadur Karki's case has not been registered because the full text of the decision has not been received by the DPO Morang.

CASE NO.	44
NAME	Chandra Bahadur Basnet (“Manoj Basnet”)
DISTRICT	Morang
CASE SUMMARY	Extrajudicial killing 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 valuables removed, was handed over to his family the next day. A post-mortem revealed that he had been shot in the chest and neck.
FIR SUBMITTED	August 30, 2005
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	The Supreme Court quashed Advocacy Forum’s petition not to allow the withdrawal of the case in the public interest on May 4, 2009.
RECENT DEVELOPMENTS	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. OHCHR has closed its file after meeting with the family. After inquiries, we found no evidence of any developments of the case in 2011.

CASE NO.	45 and 46
NAME	Purna Shrestha and Bidur Bhattarai
DISTRICT	Morang
CASE SUMMARY	Torture and extrajudicial killing 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
FIR SUBMITTED	June and July 2007
FIR REGISTERED	Yes (1) (after court order); No (1)
DEVELOPMENTS IN 2008	On October 15, 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 Appellate Court.
RECENT DEVELOPMENTS	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. In Bidur Bhattarai's case, the final hearing has been scheduled for October 17, 2011, but could not take place due to the unavailability of the defendant’s lawyer. The hearing was rescheduled for November 7, 2011. In Purna Shrestha's case, there has been no progress since then.

CASE NO.	47
NAME	Sapana Gurung
DISTRICT	Morang
CASE SUMMARY	Rape and murder Fifteen security personnel under the command of army Captain Prahlad Thapa Magar arrested 22 year-old Sapana Gurung at her 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. 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.
FIR SUBMITTED	May 15, 2006
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	
RECENT DEVELOPMENTS	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. We are aware of no further developments in the case in 2011.

CASE NO.	48 to 53
NAME	Chhatra Bahadur Pariyar, Phurwa Sherpa, Prabhu-nath Bhattarai, Prasad Gurung, Tanka Lal Chaudhari and Sunita Risidev
DISTRICT	Morang
CASE SUMMARY	Extrajudicial killings 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. 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.
FIR SUBMITTED	
FIR REGISTERED	No
DEVELOPMENTS IN 2008	
RECENT DEVELOPMENTS	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. We are aware of no developments in the case in 2011.

CASE NO.	54
NAME	Khagendra Buddhathoki
DISTRICT	Myagdi
CASE SUMMARY	Extrajudicial killing A team of patrolling soldiers arrested Khagendra Buddhathoki on the Tatopani Jalkuni Bridge on January 6, 2002. According to villagers, 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.
FIR SUBMITTED	April 12, 2007
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	Police told Advocacy Forum that they had corresponded with the Ministry of Defence regarding the deployment of Raju Nepali, who was in charge of 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 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.
RECENT DEVELOPMENTS	On November 11, 2009, the Baglung Appellate Court issued an order of mandamus for police to promptly investigate the FIR. Even after the order of the court, no effective investigation has been undertaken. We are aware of no further developments in the case in 2011.

CASE NO.	55
NAME	Chandra Bahadur B.K
DISTRICT	Myagdi
CASE SUMMARY	Possible torture and extrajudicial killing 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.
FIR SUBMITTED	April 12, 2007
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	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.
RECENT DEVELOPMENTS	On November 11, 2009, the Baglung Appellate Court issued an order of mandamus to promptly investigate into the FIR. Even after the order of the court, no effective investigation has been undertaken. After inquiries, we found no evidence of any developments of the case in 2011.

CASE NO.	56 to 58
NAME	Dal Bahadur
DISTRICT	Palpa
CASE SUMMARY	Extrajudicial killings According to eye-witnesses, soldiers indiscriminately fired upon and killed the three boys, aged 15, 16, and 15 (respectively). After the DPO had repeatedly refused to register a FIR suggesting the killings had been an accident, the public prosecutor in late 2006 ordered the DPO to proceed with a murder investigation.
FIR SUBMITTED	December 31, 2006
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	The relatives filed a writ petition in June 2009 seeking a court order for police to proceed with the investigations.
RECENT DEVELOPMENTS	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. After inquiries, we found no evidence of any developments of the case in 2011.

CASE NO.	59
NAME	Man Bahadur Karki
DISTRICT	Surkhet
CASE SUMMARY	Abduction, torture and extrajudicial killing (by CPN-M) Two Maoists named Lal Bahadur Ramjali and Dilip abducted Man Bahadur from his house, on June 10, 2006. The next day, Man's body was found hanging outside another villager's house, Ratan Bahadur Gautam. The Maoists claimed that he had committed suicide. Reports in the media and information from two witnesses suggested that Kul Bahadur Sijali, another local resident, had a feud with Man and had participated in his beating and killing. Witnesses stated that Man had actually been beaten to death by Kul Bahadur, Ratan Bahadur, Meghraj Gautam, and Yam Bahadur Gharti.
FIR SUBMITTED	September 2006
FIR REGISTERED	No
DEVELOPMENTS IN 2008	
RECENT DEVELOPMENTS	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.

CASE NO.	60 and 61
NAME	Ganga Bahadur Nepali and Shyam Sundar Kaini
DISTRICT	Tanahun
CASE SUMMARY	Extrajudicial killings Army personnel arrested Ganga Bahadur Nepali and Shyam Sundar Kaini from their homes on April 29, 2002. 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 Major Baburam Shrestha refused to hand over the bodies initially, only doing so after being pressured by the CPN-UML general secretary. 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.
FIR SUBMITTED	April 6, 2007
FIR REGISTERED	Yes
DEVELOPMENTS IN 2008	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.
RECENT DEVELOPMENTS	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 was scheduled for November 25, 2010, but did not take place. On April 21, 2011, two judges of the Supreme Court took a different position regarding the prioritization of the case. Justice Awadhesh Kumar Yadav was in a favor of concluding the case within three months. Justice Krishna Prasad Upadhyaya stated that the court should not fix a date for its final hearing. As a result, the case has been forwarded to the full bench to reach a decision. The full bench hearing date has not yet been fixed.

CASE NO.	62
NAME	Dhan Kumari Tumbahamphe
DISTRICT	Udayapur
CASE SUMMARY	Rape and extrajudicial killing Soldiers arrested Dhan Kumari Tumbahamphe after she attempted to escape an army cordon on April 24, 2005. The soldiers found some CPN-M documents in her bag. According to witnesses, the following morning, a group of soldiers marched her out to a hill, possibly raped her, mutilated her, and killed her. The family tried to file an FIR in April 2005.
FIR SUBMITTED	August 27, 2009
FIR REGISTERED	Yes (after a court order)
DEVELOPMENTS IN 2008	Though police conducted some investigation, they refused for years to register an FIR.
RECENT DEVELOPMENTS	The police registered the FIR on August 27, 2009, following an order issued by the Appellate Court, Rajbiraj 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. After inquiries, we found no evidence of any developments of the case in 2011.

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HUMAN RIGHTS WATCH

Adding Insult to Injury

Continued Impunity for Wartime Abuses

Five years since the November 2006 Comprehensive Peace Agreement (CPA) brought a formal end to armed conflict in Nepal, the families of numerous victims of human rights abuses are still waiting for justice. Both security forces and Maoist forces were responsible for extrajudicial killings of civilians, torture, enforced disappearances, and other abuses during the decade-long armed conflict between the United Communist Party of Nepal (Maoist) and the Nepali government. For several years, Human Rights Watch and Advocacy Forum have documented the lack of progress in criminal complaints filed by the families of victims and the failure of the Nepali justice system to respond.

In *Adding Insult to Injury*, Human Rights Watch and Advocacy Forum highlight the impact of impunity on six victim's families and update 62 cases from the 2010 Report, Indifference to Duty. This report focuses on the fact that the failure of accountability for wartime cases could lead to ongoing abuses. In spite of national and international campaigning and litigation, all signs are that those responsible for past and present human rights abuses will be allowed to go free. Furthermore, some of the alleged perpetrators are being promoted, appointed into senior government positions, or allowed to go on peacekeeping duties. Successive governments have indicated time and again that they would favor withdrawing conflict related cases and granting amnesties for perpetrators.

As Nepal moves forward towards the drafting of a new constitution and the establishment of transitional justice mechanisms, it is important that redress for past violations not be set aside for the sake of political expediency.

24-year-old Sanjeev Kumar was arrested in a police raid with four other friends from Kataiyachuri. A few days later, he was shot dead by police forces.

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