



NEPAL: TIME TO PROSECUTE THE PERPETRATORS

I. Introduction

As Nepal successfully concluded the second Constituent Assembly elections on 19th November 2013, the Supreme Court in a historic judgement on 2 January 2014 held that general amnesty provided in the ‘Commission of Inquiry on Disappeared Persons, Truth and Reconciliation Ordinance’ of March 2013 is unconstitutional. The Court further held that the merger of two separate Commissions, one on truth and one designed to address specific situation of enforced disappearances is illegal as a separate Commission on Disappearances is required. In addition to declaring the provisions that do not meet Nepal’s obligations under international law as null and void, the Court specifically instructed to legislate for the criminalisation of human rights violations not codified in Nepal, reparations to victims and their families, witness and victim protection programme and ensure impartiality of the Truth and Reconciliation Commission.

According to the Special Task Force of the government of Nepal, at least 17,265 persons were killed and 1,302 were disappeared during the conflict.¹ However, the perpetrators of these

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violations have not yet been brought to justice. Bringing perpetrators to justice in post conflict situation is a cumbersome process because of the destruction of evidence and absolute lack of political will in cases where evidence does exist. The fact that the Office of the High Commissioner for Human Rights (OHCHR) in its 235

1. NEPAL: Families of the disappeared in a legal and emotional limbo, Asian Human Rights Commission, 15 February 2012, available at: <http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc19/ALRC-CWS-19-01-2012>

page report, “*The Nepal Conflict Report*”², did not reveal the identity of a single perpetrator of human rights violations indicates the scale of the problems. At the same time, the Rayamajhi Commission established by the Government of Nepal recommended action against 202 persons for violations of human rights against the pro-democracy activists during the People’s Movement of April 2006.

As the Constituent Assembly is all set to start drafting of the Constitution, the lawmakers ought to bear in mind that Nepal’s new constitution must not fall below its obligations under international human rights law. Further, the government of Nepal must start prosecution of the perpetrators of human rights violations in earnest.

II. Identified human rights violators from the security forces

In a number of cases, the perpetrators from both sides were identified. Asian Centre for Human Rights submit the following cases wherein 58 perpetrators, 38 security forces and 20 Maoists, have been identified by the victims’ family members, witnesses, local and international NGOs, and in communications to the UN for serious human rights violations during the conflict.

1. Torture and extrajudicial killing of 15-year-old Maina Sunar by army officers - Bobby Khatri, Amit Pun, Sunil Prasad Adhikari and Niranjana Basnet

On 17 February 2004, Maina Sunar, a 15-year-old school girl of Kharelthok area in Kavre district, was tortured and extrajudicially killed after her arrest by Royal Nepalese Army (RNA) personnel. Four army officers identified as Bobby Khatri, Amit Pun, Sunil Adhikari and Niranjana Basnet were accused of subjecting Maina to prolonged simulated drowning and electrocution, resulting in her death. After her death, the body was secretly buried which was later exhumed at an army barracks where Nepali UN peacekeepers were trained.³

On 8 September 2005, a Martial Court held that three military personnel were guilty of not having observed

the proper procedures and they were awarded minor penalties. The victim’s mother challenged the findings of the martial court in the Supreme Court. In September 2007, the Supreme Court ordered the police to carry out investigations within three months and prosecute the offenders. Subsequently, a case was filed against four military officers Major Niranjana Basnet, Colonel Bobby Khatri, Captain Sunil Prasad Adhikari and Captain Amit Pun in January 2008 and arrest warrants were issued against them. No credible action was taken. Three of the accused were declared as absconders, while the fourth accused Major Niranjana Basnet, who was deputed on UN peacekeeping mission to Chad, was repatriated from peacekeeping duties to face the charges in 2009. However, Major Basnet was taken into the custody of the Nepal Army who refused to hand him over to the police in violation of the court orders. On 14 July 2010, an internal investigation by the army found Major Basnet innocent. As on 17 February 2012, the authorities neither produce Major Basnet before the court nor arrested three other accused.⁴

Case 2: Torture of Ms. Bina Karki C by Renuka K.C. (Hawaladar), Constable Rupa Rai and Gita Kuwar

On 2 September 1998 a joint communication with the Special Rapporteur on the question of torture was sent on behalf of Ms. Bina Karki C, imprisoned in the women’s prison of Kathmandu Central Jail. On 11 June 1998, Ms. Bina Karki C, lodged in the women’s prison of Kathmandu Central Jail, was subjected to torture by three female prison guards. The three female prison guards reportedly accused her of making signals with her eyes at a male prison guard. When she denied the accusations, the guards allegedly beat her up, kicked in the stomach and legs, pulled by her hair and dragged her along the ground. The following day she was taken to Bir hospital complaining of severe abdominal pain, weakness and bleeding from the vagina. These complaints appear to be consistent with the Emergency Department medical report. The doctor on duty also reportedly stated that she may have suffered internal bleeding. She was allegedly treated with painkillers but did not receive any further treatment

2 . Nepal Conflict Report is available at http://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf

3. Amnesty International Nepal, available at: <http://amnestynepal.org/campaigns/ai-nepal-activities/-arrest-maina-case-accused-.html>

4. NEPAL: Government and army share responsibility for impunity of Maina Sunuwar’s murderers, Asian Human Rights Commission, 17 February 2012, available at: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-032-2012>

despite the reported deterioration in her condition. It was alleged that an agreement was reportedly made by the prison authorities to sanction the guards thought to be responsible, namely Renuka K.C. (Hawaldar), Constable Rupa Rai and Gita Kuwar, was not been followed up. The Special Rapporteur expressed her concern and urged the Government to investigate the incident.⁵

Case 3: Torture of Bishnu Kumar Argal by RNA including Captain Ramesh Swar and Major Ajit Thapa

In April 2001, Bishnu Kumar Argal, aged 38, of Rajana VDC, Banke district was picked up from his home by security personnel. He was immediately blindfolded and beaten with rifle butts on the street. They asked him the whereabouts of the Maoist leaders and threatened to kill him. He was taken to the Chisapani barracks where he was shifted to a special room for torture. He was beaten unconscious with rifle butts, and a tapered truncheon-like stick, referred to as “Kali” by the perpetrators. He was beaten on the soles of his feet while he was lying on the floor, or lying on his back with his feet up in the air. For almost two months he was tortured continuously and thereafter he was tortured once or twice a week. However, he was hooded for his entire seven months detention. The hood was taken off for 5-10 minutes a day when he was eating or going to the toilet, but his eyes were always kept covered. His hands were tied with a very tight rope, and unbound for about 15 minutes a day. His feet were also bound for 15-20 days. Apart from the physical torture, he was subjected to ill treatment. Sometimes he was locked in the latrine with no ventilation and forced to eat there. He had to sleep on the cement floor without a blanket. He slept on his stomach, with his hands tied behind his back. Upon his release he was warned not to tell anybody about the torture, otherwise they would “chop him to death with an axe”. He identified two of the perpetrators as Captain Ramesh Swar and Major Ajit Thapa. During the entire seven months in detention he had had no contact with his family, although his wife

knew that he was held in Chisapani because she had witnessed the arrest. While the RNA kept returning to his house afterwards. His family begged them to release him or to hand over his body if he was dead. The army did not give his family any information about his whereabouts. For a whole year he had to report back to the barracks and was not allowed to leave his village. He did not lodge a complaint because he was afraid of reprisals. According to the medical examination, he had a dislocated tooth, scars on his left thigh and behind his left knee, and had difficulty sitting upright. He complained of generalized pain, weakness in his legs, headaches, visual disturbances, impaired memory and loss of self-worth. The Government reported to the UN that no information could be found in connection with the case.⁶

Case 4: Extrajudicial killing of Bhauna Tharu by RNA soldier Parasu Kumal

On 30 May 2002, Bhauna Tharu (Bhauna Chaudhary in the citizenship card), 21 years, son of Purna Bahadur Chaudhary of Sujapur village, Neulapur VDC-4, Bardiya district, was killed by the RNA soldiers from Thakurdwara army barracks at his house. He was having lunch with his family when two army soldiers entered the house and shot him dead. The soldiers returned to their barracks after killing him. The body was cremated the next day. The family identified the soldier who shot their son as Parasu Kumal, an army personnel from Thakurdwara Army Barracks in Bardiya District, whose family lived in the same village.⁷

Case 5: Custodial death of Kunwar Yadav by Inspector Kedar Rajaure and SI Suman Bikram Rana

On 12 November 2002, Kunwar Yadav, aged 50, of Karchowa PDC-9, was beaten to death by the police in the custody of Simraungadh Area Police Office. The deceased's son was also injured. The perpetrators were identified as Inspector Kedar Rajaure and Sub Inspector Suman Bikram Rana.⁸

5. Report of the UN Special Rapporteur on Torture to the UN Commission on Human Rights (E/CN.4/1999/68/Add.1 dated 11 January 1999)

6. Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on “MISSION TO NEPAL”, E/CN.4/2006/6/Add.5, 9 January 2006

7. <http://www.advocacyforum.org/emblematic-cases/2011/01/bhauna-tharu.php>

8. Nepal Human Rights Year Book 2003, page no. 128 Informal Sector Service Centre, Nepal

Case 6: Extrajudicial killing of Hari Prasad Bolakhe by Major Krishna Dhoj Thapa, Major Baburam Thapa and Head Constable Khadga Bahadur Lama

On 27 December 2003, Hari Prasad Bolakhe, 35 years, a resident of Phulbari VDC-8, Kavre district, was picked up when he got off from a bus to meet his father. According to the witnesses, Hari Prasad was approached by constable, Khadga Bahadur Lama from the Kavre DPO who told that the Police Superintendent wanted to see him and he was forced into a vehicle and taken away. His father went to Kavre police station but they denied his arrest. Hari Prasad remained missing and reportedly killed by the security personnel. Later, Hari Prasad's father filed a complaint with the NHRC which upon investigating found that Hari was killed. An NHRC team and a forensic pathologist, located and exhumed Hari's body on 5 July 2006. During the exhumation, his body, ID card, visiting cards, citizenship certificate, a wrist watch, and the clothes he was wearing at the time of the killing were recovered. The forensic report confirmed the body was that of Hari's. In its report, the NHRC stated that a "gunfire injury to the pelvis" was the cause of death. On 8 November 2006, Hari's father lodged a petition before the Supreme Court to order the DPO in Kavre to register the FIR. Advocacy Forum had identified three perpetrators i.e. Major Krishna Dhoj Thapa of the Satrumardan Battalion stationed at Dhulikhel, Major Baburam Thapa of the Satrumardan Battalion stationed at Panauti and Head Constable Khadga Bahadur Lama of DPO, Kavre District.⁹

Case 7: Extrajudicial killing of six Maoists by Suman Karki and Rajendra Raut of the Chowbar Battalion

On 6 September 2004, Gautam (member of the Maoist Central Committee), Sherman Kuber (Leader, Central Communist Party Maoist), Mohanchandra Gautam (Kumar Poudel, Shishir) and other party workers, Ramchandra Karki (Umesh), Devendra Singh (Mukesh), and Shailendra Yadav (Tarkeshwor), all residents of Sindhuli district Mahadevsthan VDC 6, were killed by security personnel at Dhanchabar village. The operation was undertaken under the command of Suman Karki

and Rajendra Raut of the Chowbar Battalion. They first surrounded the village, before entering the house where they were having dinner. Sherman Kuber and Mohanchandra Gautam were arrested and handcuffed while the others got away. The two leaders were taken around the village, and later to Purni Pokhari, a location at about 500 meters south of the village where they were shot at. Gautam, Ramchandra Karki, Devendra Singh and Sailendra Yadav were later found by the security personnel and received the same treatment. Authorities claimed the incident happened during an encounter. However, it was alleged that the victims were unarmed. A post mortem was performed on the bodies of Sherman Kuber and Mohanchandra Gautam, while the remaining four were buried. The Government of Nepal failed to submit any report to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions.¹⁰

Case 8: Extrajudicial killing of Bishwonath Parajuli, Tom Nath Poudel and Dhan Bahadur Tamang by Colonel Pradeep Pratap Bom Malla, DIG Krishna Basnet, DIG Sanat Kumar Basnet and Dolakh Bahadur Gurung, CDO

On 28 September 2004, three persons identified as Bishwonath Parajuli, Tom Nath Poudel and Dhan Bahadur Tamang, aged 29, 29 and 30 years respectively, of Hasandaha VDC, Morang were shot dead by the security personnel. The security personnel arrested them on the grounds of being Maoists. Some other villagers who were also detained at the same time alleged that around 4:45 am they heard the sound of gunshots. Bishwanath had gunshot injuries in the chest and chin. Tom Nath had gunshot wounds in his chest and left hand, while Dhan Bahadur had been shot twice. The families of the three deceased lodged an application to register a FIR with the DAO on 1 November 2004, but the authorities did not act on it. They also informed the NHRC and the Ministry of Home Affairs. The NHRC investigated the case and found that the victims' right to life had been violated. On 16 June 2005, the NHRC recommended that the government take action against those responsible and provide NRs150,000 as compensation to the victims' families. The police and public prosecutor did not act on the recommendation to investigate and prosecute.

9. <http://www.advocacyforum.org/emblematic-cases/2011/01/hari-prasad-bolakhe.php>

10. Report of the UN Special Rapporteur on the question of torture, E/CN.4/2005/7/Add.1

The families did not receive any compensation. Later, the families approached the court. Advocacy Forum had identified some of the perpetrators namely Colonel Pradeep Pratap Bom Malla, Divisional Commander of Eastern Divisional, Army Headquarters, Itahari, Sunsari; DIG Krishna Basnet, Regional Police Chief of Eastern Region Police Training Center, Biratnagar; DIG Sanat Kumar Basnet, Chief of the APF, Eastern Regional Office, Pakali, Sunsari; and Dolakh Bahadur Gurung, CDO of Morang District Administration Office.¹¹

Case 9: Torture of Satya Narayan Sahah by Assistant Sub-Inspector of Police Govind Bardewa

On 2 November 2004, Satya Narayan Sahah of Kamalpur VDC-3 was arrested and brutally assaulted by Assistant Sub-inspector of Police, Govind Bardewa of Fatehpur Police Station on charge of providing information to journalists.¹²

Case 10: Killing of Chitra Bahadur Rauniyar by policemen Navraj Pun, Madhu Shrestha and Divya Jung Shah

On 27 December 2004, Chitra Bahadur Rauniyar of Uttarganga VDC-4, an artist by profession, was killed by police personnel identified as Navraj Pun, Madhu Shrestha and Divya Jung Shah of Regional Police office. He was accused of being a Maoist.¹³

Case 11: Extrajudicial killing of Chanda Bahadur Basnet by Inspector Narodeep Basnet

On the night of 24 August 2005, security personnel arrested Chanda Bahadur Basnet @ Manoj (29), and Santosh Chamlagain of Sijuwa VDC-5 from a lodge near Bus Park in Biratnagar. Manoj was shot dead while Santosh was detained in jail. Police did not register the FIR filed by Manoj's father, which charged the security commander Inspector Narodeep Basnet of murder. Later, a Superintendent of Police was appointed to probe the case but the report was not released. Family of the deceased received NR 20,000/-

as funeral expenses and NR 20,000/- for the lost gold chain and wrist watch belonging to the deceased.¹⁴

Case 12: Torture of Bal Bahadur Rokkya by Mr. Katanada, Police officer

On 22 July 2005, Bal Bahadur Rokkya (18) of Badki VDC, Jumla district was arrested by the police and taken to the political crimes office of the District Police Office, Nepalgunj. A police officer identified as Mr. Katanada along with three others including Deputy Sub-Inspector, the Assistant Sub-Inspector accused him of getting involved in Maoist activities and beat him to obtain a confession. His hands and feet were bound and a pole was inserted behind his knees and above his arm, and he was suspended upside-down, beaten with a stick and drenched with water for 10 to 15 minute sessions. This treatment was repeated over a period of three days, after which he confessed. On 31 August 2005, he was taken to court and a case was filed against him. After approximately 37 days at the police station he was remanded in pretrial custody in the Central Prison. According to the medical examination, he exhibited abrasion scars on his back, behind his knees and on his left shin. The injuries were produced by heavy blows with elongated objects, and were consistent with the account and time alleged. However, the Government informed that he was not tortured or ill-treated, mentally or physically, during his detention in police custody. There was no sign of any injuries or wounds on his body.¹⁵

Case 13: Torture of Badal Bogati by police officers including Mr. Kule Pathak and Ms. Laxmi

On 15 August 2005, Badal Bogati, aged 24, was arrested by police officers including Mr. Kule Pathak and Ms. Laxmi from a street and took him to Patan Police Office. Badal Bogati was subjected to interrogation from 11 am to 8 pm. He was blindfolded, handcuffed, held by the throat, beaten with bamboo sticks on the soles of his feet, kicked in the back with boots, suspended by a bamboo pole fastened behind his knees, as well as beaten with electrical cables and an iron rod and

11. <http://www.advocacyforum.org/emblematic-cases/2011/01/bishwanath-parajuli-tom-nath-poudel-and-dhan-bahadur-tamang.php>

12. Nepal Human Rights Year Book 2005, page no. 171, Informal Sector Service Centre, Nepal

13. Nepal Human Rights Year Book 2005, page no. 282, Informal Sector Service Centre, Nepal

14. Nepal Human Rights Year Book 2006, page no. 145, Informal Sector Service Centre, Nepal

15. Report of the Special Rapporteur on the question of torture, E/CN.4/2006/6/Add.5, 9 January 2006

drenched with water. His eyesight was examined at the Patan Hospital but he was unable to pay for the prescribed medication, and he complained to the Special Rapporteur on Torture of an inability to concentrate. Nearly one month after his arrest he has not had access to his family, and they had not been notified of his arrest.¹⁶

Case 14: Torture of Nanda Bahadur Karki by security personnel including Sub-Inspector Prem Khadka

On 1 September 2005 at about 7.15 pm, Nanda Bahadur Karki, aged 19, a tenth grade student and journalist, Kotandanda VDC, Mugu district was stopped near Kohalpur to Surkhet Road and questioned by several police and RNA personnel. The police found copies of the pro-Maoist weekly, Janadesh after a search. He was slapped on the face and beaten six times on the back with a stick until it broke. No arrest warrant was shown. He was blindfolded, his hands were bound with rope, and he was taken to Kohalpur barracks, where he was kept overnight in an outdoor shelter. Then he was taken to the RNA Midwestern Division Headquarters (Pritna) and was held in one of three steel-plated boxes (converted from observation posts), within a barbed wire compound. He was kicked in the legs with spiked boots, shoved back and forth between soldiers in the rain, and questioned about Maoist activities. He was held at the Pritna barracks for seven days. Thereafter, he was taken every day from his cell and beaten in an open area, as well as subjected to mock executions. He was then transferred to the District Police Office, Nepalgunj, where he was detained for a day, accused of terrorist activities and threatened. Out of fear of further torture, he signed a confession. A case was filed against him, and he was remanded in pretrial detention in the Central Prison. Until the Special Rapporteur on Torture visited him, he had had no family visits. According to the medical examination, he was limping, exhibited swelling on his thigh and on the top of his head, and he sustained contusions on the left side of his chest, upper right arm, left knee, shin and ankle. The injuries and scars were produced by heavy blows, consistent with the alleged time and account. The

Special Rapporteur during his visit to Nepal followed up the information he received with a visit to the District Police Office and met the Superintendent of Police, Mr. Lamichane. Upon inspection of the detention registry, it appeared that the records relating to Mr. Karki upon his transfer from Pritna barracks had been entered retroactively and did not contain information relating to his injuries, that any medical examination had been carried out, or any complaint. The Special Rapporteur was informed by Inspector J.N. Khanal, the officer who registered Mr. Karki that he observed that the prisoner was not feeling well and was injured on his right arm. As the prisoner did not feel like speaking, he was not questioned further about what had happened to him.¹⁷

Case 15: Rape and extrajudicial killing of Sapana Gurung by security personnel under the command of Captain Prahlad Magar

On 25 April 2006, Sapana Gurung (22) was picked up by 15 security personnel under the command of army Captain Prahlad Thapa Magar from her house at Belbari, Morang District in the eastern part of Nepal. The woman was taken to a nearby Nepal Telecommunications Office and raped. About an hour later, 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 was registered but there was no further progress. In May 2010, the police claimed that the file submitted to Parliamentary Probe Committee has not been returned yet. There have been no further developments in the case.¹⁸

Case 16: Torture and enforced disappearance of Maoist suspects by Colonel Raju Basnet

Colonel Raju Basnet has been implicated in serious human rights violations during the conflict. Then Lieutenant Colonel, Raju Basnet's was involved in torture and disappearance of several people arrested and detained as Maoist suspects at Bhairabnath Battalion in

16. Report of the Special Rapporteur on the question of torture, E/CN.4/2006/6/Add.5, 9 January 2006

17. Report of the Special Rapporteur on the question of torture, E/CN.4/2006/6/Add.5, 9 January 2006

18. Advocacy Forum-Nepal, available at: <http://www.advocacyforum.org/fir/2011/01/sapana-gurung.php>

Kathmandu. Basnet led from the front in committing serious human rights violations as a commanding officer of the Battalion from 2003 to 2005. The Supreme Court also corroborated the allegation against Basnet by ordering the government for carrying out independent investigation into and prosecution of the case.¹⁹ However, the army in July 2012 recommended promotion of Colonel Raju Basnet to the rank of brigadier general. The cabinet approved the promotion in October 2012.²⁰

Case 17: Enforced disappearance and killing of five students by IGP Kuber Singh Rana

In October 2003, five students namely Sanjeev Karna, Durgesh Labh, Jitendra Jha, Shailendra Yadav and Pramod Mandal were extrajudicially killed by then Chief of Police in Dhanusha district and others. According to witnesses, they were arrested during a joint army-police operation on 8 October 2003 near Janakpur municipality in Dhanusha District. On 29 January 2008, the NHRC concluded its investigation, implicating Kuber Rana and others in the disappearance and killing of the five students. On 3 February 2009, the Supreme Court in its order directed the police to investigate Rana and the other accused. An interim order by the Supreme Court on 13 July 2011 directed the Prime Minister to furnish monthly reports to both the Court and NHRC on the progress of the investigations. On 13 September 2012, the Government of Nepal promoted Kuber Singh Rana to the rank of Inspector General of Police from Assistant Inspector General.²¹

Case 18: Enforced disappearance and killing of Chot Nath Ghimire and Shekhar Nath Ghimire by the army including Major Khagda Bahadur Ranabhat and Jamdar (warrant officer) Rabindra Chemjong

In February 2002, Chot Nath Ghimire, (58), a resident of Ishaneshor VDC-4, Ratamate Majhpokhari of Lamjung district, and Shekhar Nath Ghimire (45), a resident of

Ishaneshor VDC ward no. 4, Lamjung District were allegedly arrested by the security forces for questioning in connection with the death of one Kedar Ghimire who was killed by the Maoists. Chot Nath Ghimire was called at the Joint Security Camp at Bhorlatar VDC, Lamjung district. While Shekhar Nath Ghimire had gone to Garundal Gulm security base camp at Bhorlatar VDC of Lamjung District for reporting. The army had denied their arrest. However, several former detainees from Bhorlatar army camp informed the families that they had seen Chot Nath and Shekhar Nath Ghimire at the Bhorlatar army camp. In November 2006, the bodies of Chot Nath Ghimire and Shekhar Nath Ghimire were exhumed from a jungle. The DPO in Kaski registered a FIR on 19 November 2006, however, no action was initiated. On 18 June 2009, Chot Nath's and Shekhar Nath's families filed separate petitions of mandamus at the Kaski Appellate Court seeking orders for the Kaski DPO and Public Prosecutor's Office to promptly investigate the FIR. According to Advocacy Forum-Nepal, some of the perpetrators were identified as Major Khagda Bahadur Ranabhat of Unified Command Base Camp situated at Bhorlatar VDC-6, Lamjung District; and Jamdar (warrant officer) Rabindra Chemjong of the same Camp.²²

Case 19: Rape and extrajudicial killing of Reena Rasaili by soldiers including Kaji Karki

On 12 February 2004, armed soldiers raped and killed 18-year-old Reena Rasaili at her home. The family heard three gunshots and found her body lying near the house with bullet injuries in the head, eye, and chest. On 25 May 2006, FIR was filed but no investigation initiated. On 14 December 2009, the Supreme Court issued an order to the DPO, Kavre and the public prosecutor to proceed with investigations. On 4 June 2010, DPO, Kavre sent a letter to Police Station Dhorpatan, Kaski to locate and arrest former soldier (who deserted) Kaji Karki and hand him over to the Kavre police if he is found.²³

19. Advocacy Forum-Nepal, <http://www.advocacyforum.org/news/2012/07/human-rights-activists-request-government-for-desisting-from-basnet-promotion.phpl>

20. See World Report 2013, Nepal Chapter, Human Rights Watch, available at: <http://www.hrw.org/world-report/2013/country-chapters/nepal>

21. See <http://www.hrw.org/news/2012/09/18/nepal-suspend-promotion-new-police-chief>

22. See Advocacy Forum-Nepal, available at: <http://www.advocacyforum.org/emblematic-cases/2011/01/chot-nath-ghimire-and-shekhar-nath-ghimire.php>

23. See Advocacy Forum-Nepal, available at: <http://www.advocacyforum.org/fir/2011/01/reena-rasaili.php>

III. Identified violators from the Maoists

The Maoists too committed serious violations of international humanitarian law including extrajudicial executions. In a few cases, victims and their relatives dared to file cases with police as given below.

Case 1: Killing of Arjun Bahadur Lama by the Maoists including by Agni Sapkota and Surya Man Dong

In June 2005, Arjun Bahadur Lama, a school teacher, was abducted and killed by the Maoists in Kavre district. The police repeatedly refused to register the complaint of the victim's wife. The police finally registered the complaint and filed the first information report after the Supreme Court issued an order to the police to register the case in 2008. However, the police investigation has been limited and insufficient at the end of February 2012. Agni Sapkota, one of the main accused in the murder, was promoted within the Maoist party. He became a member of the Constituent Assembly and appointed as Minister for Information and Communication. The Supreme Court refused to issue an interim order after a Public Interest Litigation was filed seeking his immediate suspension for his involvement in a murder case. However, the Supreme Court expressed concern about the tardy police investigation and directed the police to report every 15 days to the court through the Attorney General's Office.²⁴

On 24 July 2001, Agni Sapkota was recalled from his post after a reshuffle of Maoist ministers to produce a more inclusive government. However, he continued to be free as of date. Moreover, there has been no progress in the investigation with the police failing to submit its progress report every 15 days to the AG Office in violation of the Supreme Court order. Surprisingly, another Maoist cadre

Surya Man Dong, allegedly involved in the case, was sworn in as State Minister of Energy in November 2011.²⁵

Case 2: Killing of Ujjan Kumar Shrestha by Balkrishna Dhungel of UPCN and others

On 24 June 1998, Ujjan Kumar Shrestha left his home to go to Ramechhap in order to buy some goods. While he was walking through Khahare Dobhar at Tarkerabari Ward No. 7, Okhaldhunga, when seven people, namely Balkrishna Dhungel, Pushkar Gautam, Thal Bahadur Poudel, Dor Bahadur Poudel, Ram Bahadur Shrestha, Thir Bahadur Khatri and Parbat Raj Bhattarai stopped and encircled him. They took him to a watercourse nearby. Balkrishna Dhungel was reported to have shot him dead and dragged his corpse to the Likhu River and threw it in with the help of Pushkar Gautam.²⁶ One of the brothers of Ujjan Shrestha, Ganesh Kumar Shrestha filed a First Information Report (FIR) on 30 June 1998 accusing Bal Krishna Dhungel and others of their involvement in the murder.²⁷ On 10 May 2004, the Okhaldhunga District Court convicted Bal Krishna Dhungel and awarded him life sentence with seizure of his property. Ram Bahadur Shrestha and Thir Bahadur Khatri were sentenced to three years of imprisonment for aiding and abetting the murder.²⁸ Dhungel appealed against the District Court order. On 25 June 2006, the Appellate Court at Rajbiraj quashed the District Court verdict. He was therefore released from jail after seven years, six months and eight days of imprisonment.²⁹ The government moved the Supreme Court against the verdict of the Appellate Court. The Supreme Court in its decision on 3 January 2010 set aside the Appellate Court judgement and upheld the murder conviction.³⁰ By the time Supreme Court delivered its judgement on 3 January 2010, Bal Krishna Dhungel had been elected a UCPN member of the Constituent Assembly. Despite

24. NEPAL: Council action required to prevent blanket impunity for conflict-era violations, Asian Legal Resource Centre, 27 February 2012, available at: <http://www.alrc.net/doc/mainfile.php/hrc19/706/>

25. NEPAL: Council action required to prevent blanket impunity for conflict-era violations, Asian Legal Resource Centre, 27 February 2012, available at: <http://www.alrc.net/doc/mainfile.php/hrc19/706/>

26. Nepal Human Rights Yearbook 1999, Nepali Edition pg. 218 and NEPAL: Support to protests against impunity: the murderers of Ujjan Kumar Shrestha must be brought to book, ASIAN HUMAN RIGHTS COMMISSION, 13 January 2013 available at <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-005-2013>

27. Inputs from Informal Sector Service Nepal

28. NEPAL: Support to protests against impunity: the murderers of Ujjan Kumar Shrestha must be brought to book, ASIAN HUMAN RIGHTS COMMISSION, 13 January 2013 available at <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-005-2013>

29. Ibid

30. Inputs from Informal Sector Service Nepal

the conviction for murder no action was taken against Dhungel. On June 14, 2011, a writ petition was filed before the Supreme Court demanding the implementation of the Supreme Court's earlier verdict to incarcerate Dhungel. On 26 June 2011, the Supreme Court (Chief Justice Khilraj Regmi and Justice Kamalnarayan Das) reiterated that there was no reason not to implement the sentence.³¹ The UCPN claimed that the judgement of the Supreme Court should be annulled as per the spirit of the point 5.4.2 of the Comprehensive Peace Accord in which the government agreed to withdraw the court cases of political nature. Dhungel maintains that Ujjan Shrestha was murdered as he was a spy who connived against the Maoist Party.³² In November 2011, the government of Nepal headed by Dr Baburam Bhattarai of the UCPN-M recommended to President Ram Baran Yadav to grant amnesty to Dhungel. The process was stalled after the Supreme Court stayed the amnesty in November 2011.³³

Balkrishna Dhungel remains a senior UCPN leader and the police have made no attempt to arrest and incarcerate him.³⁴

Case 3: Murder of Krishna Prasad Adhikari by 11 Maoists identified as 11 Maoists as perpetrators - Chhabilal Poudel, Fujel; Januka Poudel; Meghnath Poudel; Bishnu Tiwari; Subhadra Tiwari; Sita Adhikary; Kali Prasad Adhikary; Himlal Adhikary; Ram Prasad Adhikari; Bhimsen Poudel; and Parshuram Poudel

On 6 June 2004, Krishna Prasad Adhikari (18), a resident of Fujel village of Gorkha District, was abducted and killed by Maoist cadres in Chitwan District. The Maoists tied him to a tree trunk and shot him thrice on the charge of spying on their activities. The family of Krishna Prasad stated that he was killed in connection with a land dispute case in Fujel. The family filed a

complaint with the Chitwan District Police Office, but no investigation was started. Then the family approached various authorities including the NHRC. On 5 April 2009, the NHRC recommended to the Government of Nepal to provide the family with Rs. 300,000 as compensation, to rehabilitate them to their home and ensure their security and conduct criminal investigation on the case. However, the successive governments failed to take action on the recommendations. The parents of the deceased staged fast-unto-death protest demanding justice for their son. On 12 August 2013, the NHRC again asked the government to investigate the case and implement its recommendations to book the guilty at the earliest. In August 2013, Chitwan district police office resumed investigation into the case. On 3 September 2013, the Supreme Court issued an order to force-feed the Adhikari couple and also to make public the latest details of the investigation into the case. On 6 September 2013, police arrested Ram Prasad Adhikari, one of the alleged perpetrators mentioned in the FIR and later he was sent to judicial custody. Subsequently, the Chitwan District Police Office submitted its report on the case to the District Attorney's Office, recommending jail sentence for Ram Prasad Adhikari and 10 other suspects who were at large. However, Ram Prasad Adhikari, the prime accused in the murder, was released on 30 September 2013. In December 2013, Chitwan Police arrested Parashuram Poudel, another alleged perpetrators pinpointed in the FIR and the Chitwan District Court remanded him to police custody for 12 days, which was extended by 13 more days. However, on 30 December 2013, Parashuram Poudel was released due to lack of adequate evidence. Advocacy Forum-Nepal has named 11 Maoists as perpetrators - Chhabilal Poudel, Fujel; Januka Poudel; Meghnath Poudel; Bishnu Tiwari; Subhadra Tiwari; Sita Adhikary; Kali Prasad Adhikary; Himlal Adhikary; Ram Prasad Adhikari; Bhimsen Poudel; and Parshuram Poudel.³⁵

31. NO LEGAL OBSTACLE TO PUT MAOIST CA MEMBER BEHIND THE BAR: SC, 26 June 2011 available at <http://www.advocacyforum.org/news/2011/07/no-legal-obstacle-to-put-maoist-ca-member-behind-the-bar.php>

32. Press Release: Prachanda should be asked to ensure violence free-elections and accountability for past abuses, Asian Centre for Human Rights, 29 April 2013 available at <http://www.achrweb.org/press/2013/IND15-2013.html>

33. Apex court issues stay orders on government's amnesty bid for Dhungel, 13 November 2011 available at: http://www.nepal24hours.com/index.php?option=com_content&view=article&id=9800:apex-court-issues-stay-orders-on-governments-amnesty-bid-for-dhungel&catid=74:top-story

34. Murder convict Dhungel openly seeking votes, The Himalayan Times, 18 September 2013, available at: <http://www.thehimalayantimes.com/full-News.php?headline=Murder+convict+Dhungel+openly+seeking+votes+&NewsID=391291>

35. Advocacy Forum-Nepal, <http://www.advocacyforum.org/emblematic-cases/2013/09/krishna-adhikari.php>

IV. Human rights violators identified by the Rayamajhi Commission of Inquiry

After King Gyanendra was overthrown, on 5 May 2006, a five-member high-level judicial commission headed by former Justice of the Supreme Court of Nepal, Krishna Jung Rayamajhi was formed to probe the human rights violations committed against the pro-democracy activists during the People's Movement of April 2006 to restore democracy in Nepal. The Rayamajhi Commission was empowered to investigate, recommend, advice or suggest the government to take actions or punish anyone found responsible for the killings and suppression of the pro-democracy activists, involved in abuse of power or misappropriation of State funds since the royal takeover on 1 February 2005. At least 25 persons were killed and thousands injured during the 19-day long pro-democracy movement in April 2006.

On 20 November 2006, the Rayamajhi Commission submitted its 1,184-page report to Prime Minister Girija Prasad Koirala. The Rayamajhi Commission

recommended action against 202 persons, including King Gayendra Bir Bikram Shah Dev and the Council of Ministers for misuse of authority; Kamal Thapa, former Home Minister, Shrishya Shumshere Rana, former Minister of State for Information and Communications, Tanka Dhakal, former Minister for Local Development, and Pyar Jung Thapa, Chief of Nepali Army for misappropriation of State fund during the royal regime, and recommended action against 15 security personnel, including Senior Superintendent of Armed Police Force (APF) Durja Kumar Rai, Major Rabi KC, Major Anish Rijal and APF Sub Inspector Ram Kumar Khatri for murder charges. The Commission recommended that the government formulates necessary laws to take action against the King and the Council of Ministers.

However, no action has been taken on the findings and recommendations of the Rayamajhi Commission. In fact, the then government decided to grant state honours to two senior police personnel, Kuber Singh Rana and Durja Kumar Rai, who were found guilty of human rights violations the pro-democracy movement by the Rayamajhi Commission.³⁶

Annex-I: List of 202 persons found guilty by the Rayamajhi Commission

Those Who Suppressed Nepal Democracy Movement

(<http://blog.com.np/2006/11/23/those-who-suppressed-nepal-democracy-movement/>)

Members of the then Council of Ministers:

1. Chairman King Gyanendra
2. Vice-Chairman Dr. Tulsi Giri
3. Vice-Chairman Kirtinidhi Bista
4. Minister Kamal Thapa
5. Minister Badri Prasad Mandal
6. Minister Niranjana Thapa
7. Minister Salim Miya Ansari
8. Minister Dan Bahadur Shahi
9. Minister Ramesh Nath Pandey
10. Minister Radha Krishna Mainali
11. Minister Tanka Dhakal
12. Minister Khadga Bahadur GC
13. Minister Prakash Koirala
14. Minister Keshar Bahadur Bista
15. Minister Buddhi Raj Bajracharya
16. Minister Buddhiman Tamang
17. Minister Narayan Singh Pun
18. Minister Madhukar Shumsher Rana
19. Minister Krishna Lal Thakali
20. Minister Durga Shrestha
21. Minister Ram Narayan Singh
22. State Minister Shirsh Shumsher Rana
23. State Minister Rup Jyoti
24. State Minister Mani Lama
25. State Minister Dr. Durga Pokhrel
26. State Minister Rabindra Khanal
27. State Minister Brijesh Kumar Gupta
28. State Minister Yankila Sherpa
29. Assistant Minister Roshan Karki
30. Assistant Minister Rajesh Kaji Shrestha
31. Assistant Minister Bhuwan Pathak
32. Assistant Minister Sone Lal Yadav

36. See 'Prez distributes state honours', The Himalayan Times, 22 May 2012, available at: <http://www.thehimalayantimes.com/fullNews.php?headline=Prez+distributes+state+honours&NewsID=333114>

33. Assistant Minister Senate Shrestha
34. Assistant Minister Jagat Gauchan
35. Assistant Minister Nikshya Shumshere Rana

Then regional administrators

36. Jagadish Khadka
37. Rabindra Chakravarti
38. Chhetra Bikram Shah
39. Mrigendra Kumar Singh Yadav
40. Ganesh Serchan

Then zonal administrators

41. Shyam Kishore Singh
42. Rana Bahadur Chand
43. Ram Kumar Subba
44. Janak Jangali
45. Prajapati Koirala
46. Dr. Shekhar Gurung
47. Kumar Bahadur Karki
48. Ramji Bista
49. Ram Krishna Panta
50. Lalit Bahadur Thapa Magar
51. Min Bahadur Pal
52. Karna Bahadur Dhimal
53. Mahendra Man Byathit

Then govt officials

54. Governor Bijayanath Bhattarai
 55. Chief secretary Lok Man Singh Karki
 56. Secretary Kumar Poudel
 57. Secretary Bal Krishna Prasain
 58. Secretary Bishnu Dutta Upreti
 59. CDO Narayan Gopal Malego
 60. CDO Sushil Ghimire
 61. CDO Ganga Dutta Awasti
 62. CDO Binod Kumar Adhikari
 63. CDO Niranjana Baral
 64. CDO Shanta Raj Subedi
 65. CDO Ram Prasad Sharma
 66. CDO Narendra Raj Sharma
 67. CDO Bholu Prasad Siwakoti
 68. CDO Madhav Prasad Regmi
 69. CDO Hum Prasad Adhikari
 70. CDO Bimal Dhakal
 71. CDO Shambhu Koirala
 72. CDO Pratap Kumar Pathak
 73. CDO Kailash Nath Kharel
 74. CDO Dil Bahadur Ghimire
 75. Asst. CDO Bashanta Raj Bhattarai
- Nepal Army (formerly Royal Nepal Army)
76. Then Chief of Army Staff Pyar Jung Thapa
 77. Second-in-command Rukmangat Katuwal (present CoAS)

78. Ex-captain and chief of Kathmandu valley Army Division
Dipak Bikram Rana
79. Captain Kiran Shumshere Rana
80. Captain and assistant coordinator of National Security
Council Kul Bahadur Khadka
81. Colonel Suresh Kumar Karki
82. Colonel Sharad Dhakal
83. Colonel Niraj Poudel
84. Colonel Sagar Bahadur KC
85. Colonel Nayan Raj Dahal
86. Colonel Sudarshan Silwal
87. Major Kisan Singh Bhandari
88. Major Umesh Karki
89. Major Mukti Pathak
90. Major Narendra Chand
91. Major Ram Chandra KC
92. Captain (Tandi, Chitwan) Roshan Karki
93. Captain Suresh Kafle
94. Captain Sunil Khadka
95. Captain Rabi KC
96. Captain Anish Rijal
97. Jamdar Gokarna Karki
98. Lance corporal Niwash Shahi
99. Sipahi Chandra Rai
100. Pyuth Rabi Raj Budhathoki

Nepal Police

101. IGP Shyam Bhakta Thapa
102. AIG Krishna Basnet
103. AIG Rup Sagar Basnet
104. AIG Rajendra Bahadur Singh
105. SSP Arjun Jung Shahi
106. SSP Narendra Kumar Khaling
107. SSP Bir Sharan Thapa
108. SSP Lok Bahadur Karki
109. SSP Rajendra Singh Bhandari
110. Gyanu Raja Kunwar
111. SSP Prawal Shumshere Rana
112. SSP Parashuram Khatri
113. SP Ghananda Bhatta
114. SP Shiva Lamichhane
115. SP Ramesh Shekhar Bajracharya
116. SP Ram Kumar Khanal
117. SP Rabi Raj Shrestha
118. SP Keshari Raj Ghimire
119. DSP Bashanta Lama
120. DSP Sanjay Singh Basnet
121. DSP Manoj Neupane
122. DSP Thule Rai
123. DSP Rohabar Basnet
124. DSP Bishnu Hari Gautam
125. DSP Madhav Bahadur Basnet
126. DSP Shyam Basnet

127. DSP Krishna Prasad Mainali
128. DSP Bashanta Panta
129. DSP Tek Bahadur Gurung
130. Inspector Pradip Tamang
131. Inspector Ramesh Gautam
132. Inspector Harka Bahadur Thapa
133. Inspector Ramesh Basnet
134. Inspector Bhupendra Khatri
135. Inspector Som Bahadur Thapa
136. Inspector Ram Prasad Gharti Magar
137. Inspector Pratap Gurung
138. Inspector Thaman Bahadur Basnet
139. Inspector Bed Raj Khanal
140. Inspector Rajendra Prasad Dhamala
141. Inspector Narendra Chand
142. Inspector Dipak Adhikari
143. Inspector Keshav Raj Basnet
144. Inspector Soviet Bahadur Gurung
145. Inspector Dambar Bahadur Chand
146. Inspector Dip Shumshere Rana
147. Inspector (Sarlahi) Raj Kumar Silwal
148. Inspector Sharada Prasad Chaudhari
149. Inspector Nayan Singh Karki
150. Inspector Ranjit Singh Rathour
151. Inspector Khadga Bahadur Khatri
152. Inspector Rabindra Khadka
153. Inspector Govinda Jha
154. Inspector Kamlesh Kumar Bhatta
155. Inspector Dinesh Kumar Acharya
156. Inspector Dambar Kumar Tamang
157. ASI Shiva Narayan Singh
158. ASI Tika Ram Rai
159. ASI Bikash Jung Rana
160. ASI Govinda Raj KC
161. Assistant Sub-Inspector Mohammad Rafiq Jolaha
162. Assistant Sub-Inspector Vijay Kumar Chaudhary
163. Assistant Sub-Inspector Nakum Bahadur Chhetri
164. Assistant Sub-Inspector Chet Bahadur Thapa
165. Assistant Lal Singh Rawal
166. Head Constable Khagraj Poudel
167. Constable Bikash Kumar Singh
168. Constable Naryan Karki
169. Constable Dinesh Tamang
170. Constable Shanker Poudel

Armed Police Force

171. The then APF Inspector General Police Sahabir Thapa
172. APF IGP Basudev Oli
173. APF Additional IGP Rabiraj Thapa
174. APF Deputy IGP Dilip Kumar Shrestha
175. APF SSP Madhav Kumar Thapa
176. APF SSP Durja Kumar Rai
177. APF SSP Mahendra Kumar Bhattachan
178. APF SP Chiranjivi Kunwar
179. APF SP Ranjan Koirala
180. APF SP Arbinda Dhital
181. APF DSP Balram Pokhrel
182. APF DSP Ram Kumar Singh
183. APF DSP Ramadhar Yadav
184. APF DSP Mahesh Shrestha
185. APF DSP Ratna Pokhrel
186. APF Inspector Damodar Dhodari
187. APF Inspector Rajesh Lamichhane
188. APF Inspector Subhash Khadka
189. APF Inspector Gobinda Giri
190. APF Inspector Dik Bahadur Shrestha

National Investigation Department

191. The then Chief Executive Devi Ram Sharma

Other officials

192. The then Chairman of the Raj Parishad Standing Committee (now dissolved), Parashu Narayan Chaudhary
193. The then member, Raj Parishad Standing Committee (now dissolved), Sacchit Shumshre Rana
194. Chairman, Bishwa Hindu Mahasangha, Bharat Keshar Singh
195. CEO, Nepal Tourism Board, Tek Bahadur Dangi
196. The then Chief Election Commissioner, Keshav Raj Rajbhandari
197. Chairman Bikram Bahadur Thapa
198. Then Mayor, Kathmandu Metropolitan City, Raja Ram Shrestha
199. Mayor Dhruba Maharjan
200. Deputy Mayor Bachhuram Shrestha
201. Mayor Sushil Chaulagain
202. Mayor Prem Lal Maharjan

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