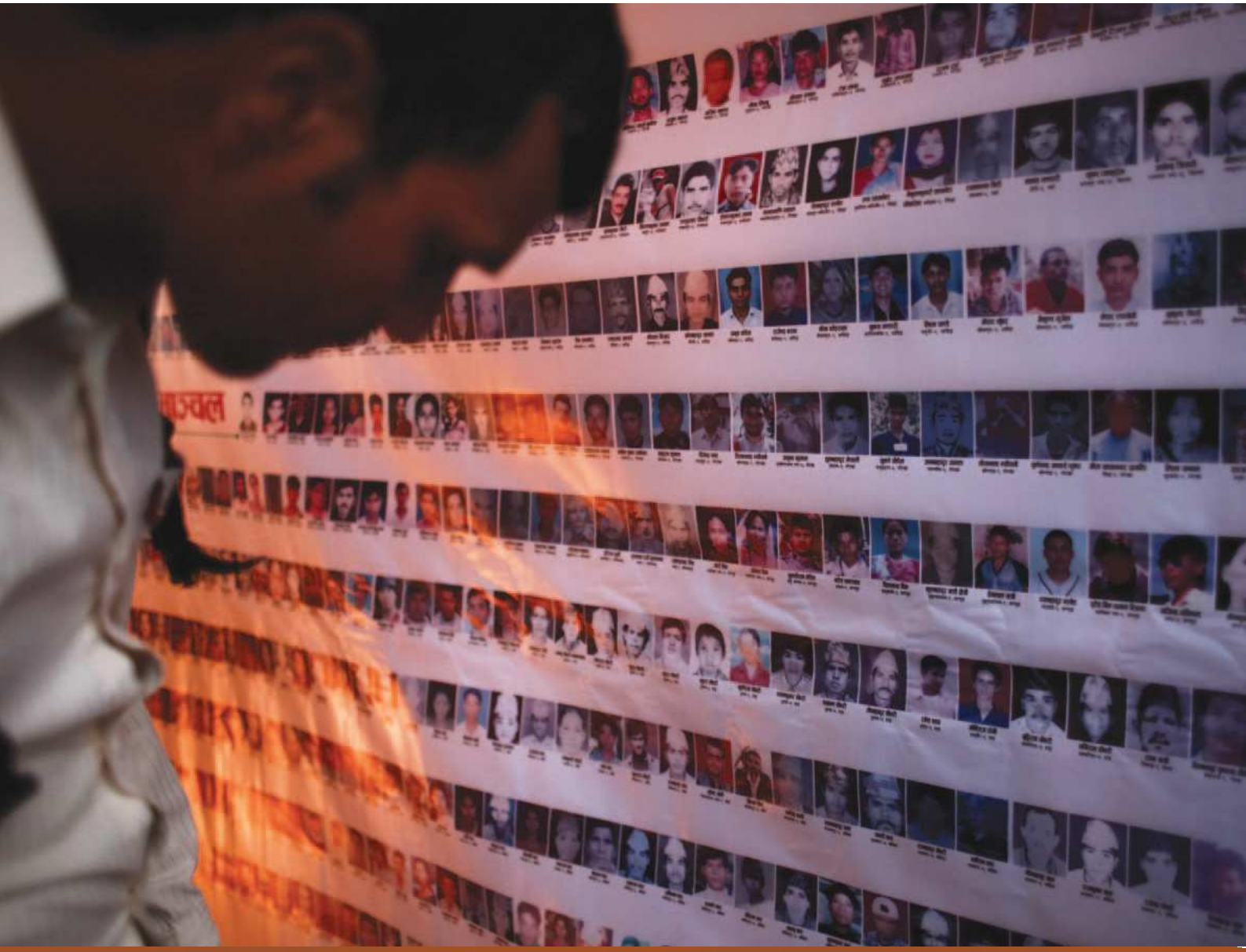

NO LAW, NO JUSTICE, NO STATE FOR VICTIMS

The Culture of Impunity in Post-Conflict Nepal

HUMAN RIGHTS WATCH

ADVOCACY FORUM

No Law, No Justice, No State for Victims

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Advocacy Forum is a leading nonprofit, nongovernmental organization working to promote the rule of law and uphold international human rights standards in Nepal. Since it was established in 2001, Advocacy Forum has been at the forefront of human rights advocacy and actively confronting the deeply entrenched culture of impunity in Nepal.

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The Culture of Impunity in Post-Conflict Nepal

Summary

It has been 14 years since the armed conflict between Maoist insurgents and government forces ended in Nepal. Tens of thousands became victims of enforced disappearances, torture, rape, and unlawful killings in the decade of fighting between 1996 and 2006. They are still waiting for truth and justice.

There have been hardly any successful prosecutions since the end of the conflict for severe violations. Courts have ordered investigations, but the security forces, Maoists, and others have mostly failed to comply with directives. Nor have the Truth and Reconciliation Commission (TRC) or the Commission of Investigation on Enforced Disappeared Persons (CIEDP), which were ostensibly established in 2015 to expedite the legal system to deliver justice, been able to uphold that responsibility. This failure of justice has caused despair among victims and their families. The *Kathmandu Post* in a January 2020 editorial mourned, "For far too long, Nepal's transitional justice process has been held hostage due to political machinations and insincerity."

Resistance to address past abuses has entrenched impunity in the present and, combined with a failure to ensure security sector reform, has led to repeated lack of punishment in cases of serious human rights violations which still occur in Nepal. In a mounting number of alleged extrajudicial killings by the police, custodial deaths allegedly resulting from torture, and shootings of unarmed protesters in recent years, the authorities refused to take action despite strong evidence.

After the fighting between government forces and the Communist Party of Nepal (Maoist) ended with a 2006 peace agreement, several complaints were filed with the police against all parties to the conflict. For four consecutive years, Human Rights Watch and Advocacy Forum-Nepal examined progress on 62 cases documented in 49 police complaints known as First Information Reports (FIRs) which had been filed in different parts of the country. Our first joint report, *Waiting for Justice*, was published in 2008. We updated our findings in 2009 in our report *Still Waiting for Justice*, and in 2010 and 2011 in our reports *Indifference to Duty* and *Adding Insult to Injury*. In those reports, we flagged the continuing refusal of the Nepali justice system to respond to allegations of human rights abuses.

This report revisits those cases a decade later, and documents several much more recent cases of alleged human rights violation by security forces. Since then, while there was progress with the government bringing new transition justice mechanisms, we find that those are severely flawed. Meanwhile, the Nepali criminal justice system has not just failed to protect the rights of victims, but—caving under political pressure—has deliberately impeded accountability.

On October 15, 2020, Nepal's National Human Rights Commission (NHRC), in a major report on government responses to its recommendations over the last two decades, said that out of 286 individuals the commission said should face legal action, only 30 had been held accountable. The list includes 16 civil servants, 98 policemen, 85 Nepal Army personnel, and 65 Maoists. Of 1,195 recommendations made by the commission over the last 20 years, the government failed to act on half, and only 163 recommendations were fully implemented. The NHRC's list includes several alleged perpetrators of the 62 cases tracked in this report.

We conclude that failure to provide justice for past crimes creates direct and tangible harms in the present: families who lost loved ones years ago continue to seek justice and are forced to live without closure. And as new cases of abuse by the police show, impunity for past crimes means that unaccountable and abusive individuals and institutions continue to claim new victims in post-conflict Nepal.

Ongoing Violations

The engrained failure of accountability for serious violations, including extrajudicial killings and torture, has continued in the 14 years since the conflict ended in 2006, and has been matched by a lack of security sector reforms.

In October 2020, the NHRC said that a police team on August 6, 2018, summarily executed two men, Gopal Tamang, 23, of Sindhupalchowk and Ajay Tamang, 24, from Nuwakot. Police had claimed that the two men, suspected of abducting a child, had been killed in a gunfight. However, following an investigation, the commission recommended that authorities file criminal charges against five police officers for the killings.

In October 2019, three United Nations special rapporteurs wrote to the government requesting details of investigations, actions taken, and compensation provided to the victims or victims' families in three cases. In its January 2020 response, the government denied the allegations, claiming that "it is explicit and obvious that extrajudicial killing in any form and manner is categorically outlawed by Nepal."

In all three cases, the authorities had failed act properly. Dipendra Chaudhary, 27, a member of the marginalized Tharu community, was allegedly shot and killed in police custody on January 23, 2019. Saroj Narayan Singh, an unarmed protester from the marginalized Madhesi community, was shot in the head and killed by police who were responding to a protest against illegal sand mining in Sarlahi district on June 29, 2019. In both cases the police refused to register complaints.

Police also said that Kumar Poudel, a member of a violent Maoist group who was killed on June 20, 2019, at Lakhandehi forest near Lalbandi, had died in an armed exchange, but, as detailed later in this report, there is compelling evidence that he was taken into custody, tortured, and then shot dead. An NHRC investigation in October 2019 found Poudel's death to be an "extrajudicial killing," and recommended prosecution of the police officials involved in the incident. The authorities promised an inquiry but failed to take action. Instead, in a blatant attempt to sabotage the independence of NHRC, the government asked the commission to change its recommendations relating to the incident. A spokesman for the commission said, "The Home Ministry is asking the NHRC to rethink the recommendation of the commission but actually we have clear evidence…. The NHRC has investigated and concluded it was an extrajudicial killing."

The government has not implemented the recommendations of a judicial commission led by Girish Chandra Lal, a retired Supreme Court justice, into the abuses that occurred during the 2015 Terai protests against a new constitution. About 65 people, including 10 policemen, were killed. The commission report was submitted to the government in December 2017 but has not been made public despite pledges to do so.

Update on Cases

Over the last decade, families of conflict-era victims have repeatedly approached the authorities through the courts or the police. In some of these cases, the courts ordered the

police to register FIRs and carry out investigations. In others, there were interventions by the NHRC.

But, with successive governments displaying what can only be described as a more robust commitment to impunity than to accountability, there has been hardly any progress toward prosecution since 2011 in any of the 62 cases tracked here. When Advocacy Forum lawyers reached out to the police seeking information on investigations of these complaints, they were repeatedly told that conflict-era cases were no longer being pursued because they will now be processed by the two transitional justice mechanisms, the CIEDP and TRC, set up in 2015. However, the existence of a transitional justice process does not remove the government's obligation to prosecute serious human rights violations.

The commissions, operating under a law that limits their power, have failed to make progress. Mohna Ansari, a member of the NHRC until October 2020, said that repeated attempts to follow up on the NHRC's directives have failed:

> The [transitional justice] commissions do not have the authority to prosecute and I have not seen any progress by the government to address accountability. We have been saying that victim demands should be at the center. But nobody is listening to the victims.

In May 2020, a police officer told Advocacy Forum that police received official instructions in 2010 to stop proceedings and keep conflict-related cases pending until further orders. In Baglung district, police said they had not followed up on any of the cases filed by victims with the support of Advocacy Forum because the cases would be dealt by the transitional justice mechanisms. The Baglung public prosecutor's office said it had not investigated the cases.

In Bardiya district, the current public prosecutor said that he could not even locate records of any of the cases where mandamus orders were issued by the courts directing police to pursue investigations. Nor have the police forwarded any new investigations into conflict-era cases for prosecution since he took office in 2019. "I have not received any files regarding these cases from the police since I am here in the office," he told Advocacy Forum in June 2020.

In acquiescing to government orders, the police have even ignored court directives. In several cases, the Supreme Court has ordered a prompt investigation into killings. The fact that the police are choosing to obey executive orders over rulings by the judiciary exposes deeply rooted problems of the rule of law and political patronage in the police.

The Supreme Court has raised serious concerns over police failure to respect court orders. For example, in the case related to the murder of two brothers, Nar Bahadur Budhamagar and Ratan Bahadur Budhamagar, the Supreme Court issued an order in April 2017 noting that the "constitutional guarantee of human rights remains illusionary if police fails to investigate such a serious crime for such a long period of time." It further said that "such an indifference to the duty to investigate and prosecute severely undermines the public's confidence in the rule of law." The Supreme Court ordered the Home Ministry to coordinate with the Office of the Attorney General to conclude the case. However, when Advocacy Forum checked three years later, police said the investigation had not yet begun.

The government has also ignored the UN Human Rights Committee (HRC) when it called on Nepal to thoroughly investigate alleged enforced disappearances, rape, torture, and other human rights violations, and to prosecute and punish those responsible for crimes identified in individual complaints against Nepal brought to the HRC under the Optional Protocol to the International Covenant on Civil and Political Rights. The government argued that complainants had not exhausted domestic remedies and that the cases would be investigated by transitional justice mechanisms.

In eight cases submitted to the HRC by Advocacy Forum, representing 16 victims, the committee decided that violations had occurred and recommended that the government initiate criminal investigations, bring those responsible to justice, enact legislation criminalizing all gross violations, and remove statutory limitations. The committee also rejected the government's argument that local remedies had not yet been exhausted, reminding it that the proceedings of non-judicial bodies such as Nepal's TRC do not replace a state's duty to prosecute and punish gross violations of human rights.

In some of the cases brought to the HRC, the government has offered interim monetary relief, but has ignored the recommendations to investigate and prosecute.

Flawed Transitional Justice

When the conflict ended in 2006, the Comprehensive Peace Agreement (CPA) between the Maoists and an alliance of seven political parties pledged a transitional justice process to "investigate [the] truth about people seriously violating human rights and involved in crimes against humanity."

There were lengthy, intentional delays from the start. The government initially tried to enact a new law to establish a truth and reconciliation commission in 2010. However, it was not passed by parliament, as the political parties could not reach consensus over its amnesty provisions. In 2013, under new political leadership, the government issued an Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission which contained amnesty provisions. Responding to a petition from victims and human rights lawyers, the Supreme Court struck down the ordinance, ruling that it failed to uphold international standards.

Nepal's Constituent Assembly ignored the Supreme Court ruling, only slightly modifying the ordinance, and passed it as the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2014 (TRC Act). It came into force on May 11, 2014. The Commission of Investigation on Enforced Disappeared Persons and the Truth and Reconciliation Commission were established in February 2015 but without amendments to the law; both commissions have proved to be ineffective.

The TRC Act was challenged in the Supreme Court by 234 victims, with the support of domestic human rights organizations. In February 2015, the Supreme Court found that several sections violated Nepal's constitution and its international human rights obligations, especially rejecting provisions that could give amnesties to those responsible for the most serious abuses. The government filed a petition seeking to overturn the judgment. The Supreme Court, on April 26, 2020, rejected the government's petition.

The UN and international rights groups have provided detailed descriptions of the ways in which the legislation fails to meet basic international human rights standards.

In 2018, the government led by Prime Minister Khadga Prasad Sharma Oli—the first elected under the new 2015 constitution—indicated that one of its priorities was to amend the law

to ensure genuine accountability. It drafted amendments in June 2018 and held consultations with stakeholders, including international human rights groups.

However, those amendments, while representing an improvement to the existing TRC Act, still failed to meet international standards. The focus was on reconciliation and providing reduced and alternative sentences in serious crimes. The amendments suggested that an accused's contrition, reconciliation with the victims, and promises not to repeat the offense should influence decisions on whether to prosecute. After criticism, the government halted its efforts to bring those amendments through parliament. To date, Nepal has failed to amend the TRC Act to accord with the Supreme Court decision.

The TRC and CIEDP fall short of international standards, both in constitution and operation. The current legal framework has been condemned by victims' groups as amounting to "forced reconciliation." In a petition to the Supreme Court on proposed mediation, victim groups argued that this policy also fails to consider the inequalities between vulnerable and marginalized victim communities and the perpetrators, who have the backing of powerful institutions and leaders. Victim families say that the authorities are trying to use "reconciliation" to subvert justice, by granting amnesties and effective impunity for gross human rights violations, amounting to grave crimes under international law.

The non-consultative, uncoordinated, and opaque approach to the commissions' work has created distrust among all major stakeholders, including conflict victims and members of civil society. As of February 2018, which was set as a deadline for submitting cases, the TRC had received 60,298 complaints and the CIEDP had received 3,093 complaints but neither had made much progress toward justice. In a February 2020 report, as the extended term of the commissioners ended, Advocacy Forum found that the TRC had completed preliminary investigations in less than 10 percent of the complaints and the CIEDP had commenced preliminary investigation in 75 percent of complaints. Neither had resolved even one case out of the more than 63,000 complaints lodged by victims.

Suman Adhikari, whose father was killed by the Maoists in 2002, said that victims and their families are still searching for truth, justice, and reparation. "It is really frustrating to the victims waiting for justice," he said. "The government is only providing lip service at international forums. The puppet commissioners say nothing. The situation is very

difficult." During an Advocacy Forum consultation with victim groups in October 2019, one person said:

> These commissions are established just to show they exist. They have not done any investigation. I have filed the complaint about the disappearance of my husband. Since I filed the complaint, no one has come to me with any updates. No investigation is done. Why do all institutions fail to give us justice?

Universal Jurisdiction

National judicial officials around the world could also investigate and prosecute those implicated in serious international crimes, under the principle of "universal jurisdiction." This principle allows authorities in a third country to pursue individuals believed to be responsible for certain grave international crimes even though they were committed elsewhere and neither the accused nor the victims are nationals of that country.

Over the past two decades, the national courts of an increasing number of countries have pursued cases involving grave international crimes such as war crimes, crimes against humanity, genocide, torture, enforced disappearances, and extrajudicial executions committed abroad. In particular, groundbreaking investigations and prosecutions are underway in some European countries, including Germany, Sweden, and France, against people accused of serious crimes in Syria and Iraq. These cases are made possible by the arrival in Europe of victims, witnesses, and other previously unavailable evidence.

Such cases are an increasingly important part of international efforts to hold perpetrators of atrocities accountable, provide justice to victims who have nowhere else to turn, deter future crimes, and help ensure that countries do not become safe havens for human rights abusers. National experiences in various countries show that the fair and effective exercise of universal jurisdiction is achievable where there is the right combination of appropriate laws, adequate resources, institutional commitments, and political will.

The case of Col. Kumar Lama, prosecuted in the United Kingdom by the Crown Prosecution Service, is one such example. Lama was charged with crimes of torture which allegedly occurred during the conflict. Nepal refused cooperation with the UK police investigation.

Although Lama was acquitted of the charges against him, with the jury failing to reach a verdict on one count, the UK proceedings had an impact in Nepal, giving fresh impetus to victims' demands for justice and making clear to the authorities that international justice is a realistic prospect. Further, the case provided valuable lessons to the UK authorities in conducting such challenging prosecutions.

Nepal is striving to build a democratic and prosperous society. A new constitution, promulgated in 2015, espouses these principles. But an open and rights respecting society, built on the rule of law, cannot be rooted in a system which provides entrenched impunity for the worst human rights violations. By refusing to allow accountability for the crimes of the past and the present, Nepal's rulers are thwarting the principles on which a better future can be built.

Methodology

To examine how the Nepali justice system responds to allegations of human rights abuses, Human Rights Watch and Advocacy Forum have recorded progress on 62 cases documented in 49 FIRs filed with the police since June 2006. Of these, 46 relate to cases of alleged extrajudicial killings, enforced disappearances, torture, or rape committed by security forces in the period between 2002 and 2006.[1] The remaining FIRs relate to cases of alleged killings by members of the Communist Party of Nepal-Maoist (CPN-M).[2]

Our first joint report, *Waiting for Justice*, was published in 2008. We updated our findings in 2009 in our report *Still Waiting for Justice*, in 2010 in our report *Indifference to Duty*, and in 2011 in *Adding Insult to Injury.*[3] This report is a follow-up of these cases a decade later, documenting the continued failure of justice. Advocacy Forum lawyers assisted and continue to assist the families in seeking justice in all these cases.

In May and June 2020, Advocacy Forum contacted district police offices, offices of the district public prosecutors, courts, and families of victims to update the information with any progress in investigations and prosecutions related to these cases. Because of Covid-19 restrictions, staff could not visit all the offices of the police and prosecutors in the districts, but contacted relevant officials over the telephone in the districts of Baglung, Banke, Dhanusha, Kanchanpur, Kaski, Morang, Rupandehi, Kavre, Dhading, Udaypur, Kapilvastu, and Ramechhap.

Families of all victims in the report consented for their cases to be included. No payments were made for information included in this report.

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[1] Since enforced disappearances and torture were not criminalized under Nepali law at the time, which thus provide no remedies for victims, cases where families have reason to believe that their disappeared relatives were tortured and killed were also supported by Advocacy Forum. The statute of limitations for rape was 35 days, making it difficult to file an FIR several years after the crime had occurred. Advocacy Forum, in one case, attempted to circumvent the statutory limitation but failed, so it only assisted cases where rape was followed by murder.

[2] We have referred to the Communist Party of Nepal-Maoist (CPN-M) as Maoists in this report.

[3] Human Rights Watch and Advocacy Forum, *Waiting for Justice*, September 2008, https://www.hrw.org/reports/nepal0908web.pdf; *Still Waiting for Justice*, October 2009, https://www.hrw.org/sites/default/files/reports/nepal1009webwcover.pdf; *Indifference to Duty*, December 2010, https://www.hrw.org/report/2010/12/14/indifference-duty/impunity-crimes-committed-nepal; *Adding Insult to Injury,* December 2011, https://www.hrw.org/report/2011/12/01/adding-insult-injury/continued-impunity-wartime-abuses-nepal.

Human Rights Watch and Advocacy Forum wrote to the government of Nepal asking for their response to the issues raised in this report but received no reply.

I. Unending Rights Violations

Over 13,000 Nepalis were killed and over 1,300 were subjected to enforced disappearance during a 10-year internal armed conflict which lasted from 1996 to 2006.[4] The Comprehensive Peace Agreement, with which the conflict ended in 2006, contained a commitment to transitional justice. Pledges to ensure accountability and reparations for conflict-era abuses have been repeated over the years since then.[5] Yet, 14 years later, there has been no meaningful progress. Instead, without accountability and security sector reform, abuses have continued, and a culture of impunity has become entrenched.

A 10-Year Armed Conflict

In 1996, the Communist Party of Nepal-Maoist (CPN-M)[6] declared a "people's war" against the "ruling classes," which included the monarchy and mainstream political parties.[7] During the first years of the armed conflict, the ill-equipped and poorly trained Nepal police was entrusted by the government with fighting the Maoists.

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4 Office of the UN High Commissioner for Human Rights, Nepal Conflict Report, 2012, https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf (accessed July 4, 2020). In 2003 and 2004, Nepal took on the ignominious distinction of having the highest yearly number of new cases of "disappearances" reported to the UN Working Group on Enforced or Involuntary Disappearances (WGEID) in the world.

5 Meenakshi Ganguly, "Nepal: torture vs democracy," Open Democracy, February 18, 2010, https://www.opendemocracy.net/en/nepal-torture-vs-democracy/ (accessed August 18, 2020).

6 In that period, Nepal had a number of distinct political parties that operated under the name of Communist Party of Nepal, including the CPN-M, but also mainstream parties such as the Communist Party of Nepal Unified Marxist-Leninist (CPN-UML). Although these parties shared the "Communist Party of Nepal" name, they often had antagonistic relationships, and several non-Maoist communist parties in Nepal rejected the Maoist's resort to armed rebellion against the government. The Maoists entered mainstream politics after a peace agreement in 2006 and entered government following the 2008 election. The CPN-UML remained a major mainstream political force in Nepal and also formed governments in the post-conflict period. On May 17, 2018, the CPN-UML and Communist Party of Nepal (Maoist Centre) (which was essentially the old CPN-M under a slightly changed name, following earlier splits and reunifications in the post-conflict years) announced a merger. The resulting Communist Party of Nepal (CPN) forms the current government of Nepal, although tensions remain within the CPN, partly along the lines of the two parties from which it was formed. See Tika R Pradhan, "Two years after merger, differences remain in Nepal Communist Party over 'people's war,'" *Kathmandu Post*, February 16, 2020, https://kathmandupost.com/politics/2020/02/16/two-years-after-merger-differences-remain-in-nepal-communist-party-over-people-s-war (accessed July 4, 2020); Biswas Baral, "Nepal Left Parties Merger: How the Political Behemoth Came to Life," *The Wire*, May 18, 2018, https://thewire.in/south-asia/nepal-left-parties-merger (accessed July 4, 2020).

7 International Crisis Group, "Nepal's Maoists: Their Aims, Structure and Strategy," October 27, 2005, https://www.crisisgroup.org/asia/south-asia/nepal/nepals-maoists-their-aims-structure-and-strategy (accessed August 18, 2020).

The Maoists attacked members of mainstream parties and landowning families. As a key target of the Maoists, hundreds of police officers lost their lives. Ultimately, a total of 1,271 out of 1,971 police posts across the country stopped functioning after they were destroyed in attacks by the Maoists, or after police personnel were withdrawn for security reasons.[8] By mid-2001, the Maoists had established effective control in 22 of Nepal's 75 districts, exercising authority over development projects, schools, and health facilities; imposing taxes; running "people's courts"; and attempting to assume the functions of a state.

Peace talks between the government and the Maoists, which began on August 30, 2001, broke down on November 23, 2001, after the Maoists unilaterally withdrew and attacked police and army posts in 42 districts, killing as many as 80 members of the security forces.[9] The authorities responded on November 26 by declaring a nationwide state of emergency and deploying the Royal Nepal Army (RNA, now Nepal Army, NA).[10]

The army's involvement did little to quell the insurgency, but did make it increasingly lethal for civilians. Over 8,000 mostly civilian deaths were recorded after November 2001. Security forces were accused of extrajudicial executions, enforced disappearances, torture, and arbitrary arrests. The Maoists abducted and executed "class enemies," practiced widespread extortion, and forcibly recruited children into combat.[11] Both sides stand accused of rape.[12]

In May 2002, parliament was dissolved, and later that year King Gyanendra fired the prime minister, Sher Bahadur Deuba. Over the following years, a series of prime ministers were

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[8] Human Rights Watch and Advocacy Forum, *Waiting for Justice*, September 2008, https://www.hrw.org/reports/nepal0908web.pdf.

[9] Amnesty International, "A spiraling human rights crisis," April 2002, https://www.amnesty.org/en/documents/asa31/016/2002/en/ (accessed July 4, 2020); "Nepal raiders 'kill dozens of police,'" CNN, November 24, 2001, https://edition.cnn.com/2001/WORLD/asiapcf/south/11/23/nepal.truceends/ (accessed July 4, 2020).

[10] Historically, the army in Nepal was under the command and control of the king and was called the Royal Nepal Army. In September 2006, the Interim Legislature-Parliament approved a new Army Act changing the army's name from Royal Nepal Army to Nepal Army, declaring an end to constitutional monarchy, and making the army accountable to an elected government. Nevertheless, the army has remained immune from effective civilian control. For easy reading, the army is referred to as the NA throughout this report except in the appendix.

[11] Human Rights Watch, *Between a Rock and a Hard Place*, October 2004, https://www.hrw.org/sites/default/files/reports/nepal1004.pdf; *Children in the Ranks*, February 2007, http://hrw.org/reports/2007/nepal0207/.

[12] Human Rights Watch, *Silenced and Forgotten*, September 2014, https://www.hrw.org/report/2014/09/23/silenced-and-forgotten/survivors-nepals-conflict-era-sexual-violence.

appointed and dismissed by the king, while parliamentary parties protested the palace's role in politics. Also in 2002, the government introduced the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO), granting wide powers to the security forces to arrest people involved in "terrorist" activities, and declared the CPN-M a "terrorist organization."[13]

There was a second failed round of peace talks in 2003, which broke down after the army massacred 17 Maoists and two civilians in custody at Doramba, in Ramechhap district, in August that year.[14] In November 2003, the government put the police and the paramilitary Armed Police Force (APF) under the unified command of the army.[15] While the Maoists had established control over much of the countryside, the security forces operated from heavily fortified bases in the district headquarters, launching search operations and crackdowns.

The international community finally acted on longstanding calls from national and international human rights groups to set up a monitoring mission of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in April 2005.[16] The Maoists allowed OHCHR to investigate alleged abuses, and at least in some cases took action in response to concerns raised by the monitors.[17] Complaints of enforced disappearances by the security forces reduced, although there was only limited cooperation from the military, which refused OHCHR full access to its records of courts of inquiry and courts martial.[18]

On February 1, 2005, King Gyanendra declared a state of emergency, and with the army's backing assumed direct executive authority, citing the inability of the civilian government to resolve the conflict.[19] He ordered the detention of activists, journalists, and human

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[13] The provisions of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) were adopted into law by parliament in 2002. After it lapsed, and in the absence of parliament, it was re-promulgated repeatedly by royal decree from October 2004. It was not renewed after it lapsed in September 2006 and is no longer in force.

[14] National Human Rights Commission, "On the Spot Inspection and Report of the Investigation Committee: Doramba, Ramechhap Incident," 2003, http://nhrcnepal.org/nhrc_new/doc/newsletter/Reprot_Doramba_R.pdf (accessed July 22, 2020).

[15] Members of each of these three forces often went out on joint patrols. In this report, the term "security forces" is meant to refer to forces under unified command of the army.

[16] Office of the UN High Commissioner for Human Rights, OHCHR in Nepal (2006-2007), https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/NPSummary.aspx (accessed July 4, 2020).

[17] "Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her office, including technical cooperation, in Nepal," E/CN.4/2006/107, February 2006, para. 16.

[18] See various reports by OHCHR-Nepal including "Human Rights in Nepal—One year after the Comprehensive Peace Agreement," December 2007, https://www.refworld.org/docid/477e3fodo.html (accessed November 4, 2020).

[19] The earlier state of emergency declared in November 2001 had lapsed in August 2002.

rights defenders, and imposed severe restrictions on civil liberties.[20] Protests broke out, backed by the major mainstream political parties and the Maoists.

The Maoists' unilateral decision to begin a four-month ceasefire, from September 3, 2005, was not joined by the royal government. The political parties represented in parliament established a Seven-Party Alliance (SPA) and entered a dialogue with the Maoists, facilitated by the government of India.[21] On November 22, 2005, the SPA and the Maoists adopted a 12-point "Letter of Understanding," which included a call for the election of a constituent assembly and committed the Maoists to multi-party democracy, respect for human rights, and the rule of law. The agreement, strongly criticized by the royal government, was welcomed by the UN Secretary-General.[22]

Following the end of their unilateral ceasefire in January 2006, the Maoists called for a blockade of Kathmandu and all district headquarters nationwide, starting from March 14, and announced an indefinite countrywide strike from April 2. Following talks with representatives of the SPA in New Delhi in March, the Maoists joined the political parties in a combined show of strength. Tens of thousands of people took part in massive demonstrations across the country in defiance of curfew orders.

On April 24, the king announced the reinstatement of parliament.[23] A government under Prime Minister Girija Prasad Koirala, leader of the Nepali Congress party, was formed. It started negotiations with the Maoists on a full-fledged peace agreement.

The Comprehensive Peace Agreement

The Comprehensive Peace Agreement (CPA) between Nepal's government and the CPN-M was signed on November 21, 2006. It consolidated a series of commitments to human

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[20] Randeep Ramesh, "King of Nepal seizes power," *Guardian*, February 2, 2005, https://www.theguardian.com/world/2005/feb/02/nepal (accessed July 4, 2020).

[21] The SPA members were the Nepali Congress (NC); Nepali Congress (Democratic) (NC(D)); Communist Party of Nepal-Unified Marxist-Leninist (CPN-UML); Janamorcha Nepal; Nepal Workers and Peasants Party (NWPP); United Left Front (ULF); and Nepal Sadbhavana Party (Aanandi Devi) (NSP(AD)). The NC(D) later re-merged with the Nepali Congress in late September 2007.

[22] P.G. Rajamohan, "Crisis in Nepal," Institute of Peace and Conflict Studies, May 2006, https://www.files.ethz.ch/isn/95784/IPCS-Special-Report-22.pdf (accessed August 18, 2020).

[23] "Nepal's king restores parliament," *Guardian*, April 24, 2006, https://www.theguardian.com/world/2006/apr/24/nepal (accessed July 4, 2020).

rights including an end to discrimination, arbitrary detention, torture, killings, and enforced disappearances.[24] The CPA also contained a commitment to "investigate [the] truth about people seriously violating human rights and involved in crimes against humanity, and to create an environment of reconciliations in the society."[25]

A United Nations Mission to Nepal (UNMIN), characterized as "a focused mission of limited duration," was established in early 2007.[26] UNMIN's mandate was confined to "monitoring arms and armed personnel" of both sides, providing technical support for the planning, preparation, and conduct of elections, and assisting in the monitoring of ceasefire arrangements.

The ceasefire endured, but years of political instability followed due to disagreements within and between the political parties. None of the parties took meaningful steps toward keeping their pledge to ensure accountability for serious human rights violations, although the issue frequently became embroiled in political negotiations.[27]

A New Constitution

A central plank of the peace agreement was the election of a Constituent Assembly to draft a new democratic constitution. This process was repeatedly delayed because of political disagreements.[28] The first Constituent Assembly was elected in 2008. After it failed to

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[24] "Comprehensive Peace Accord Signed between Nepal Government And the Communist Party of Nepal (Maoist)," November 22, 2006, https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_061122_Comprehensive%20Peace%20Agreement%20between%20the%20Government%20and%20the%20CPN%20%28Maoist%29.pdf (accessed July 4, 2020).

[25] Ibid.

[26] Security Council Resolution 1740, January 23, 2007. UNMIN mandate ended in January 2011. See UN Security Council, "On Eve of Closure of United Nations Mission in Nepal, Security Council Reaffirms Support for Peace Process, Urges Stepped Up Efforts to Fulfil Prior Agreements," January 14, 2011, https://www.un.org/press/en/2011/sc10152.doc.htm (accessed July 4, 2020).

[27] Human Rights Watch and Advocacy Forum, *Waiting for Justice*, September 2008, https://www.hrw.org/reports/nepal0908web.pdf; *Still Waiting for Justice*, October 2009, https://www.hrw.org/sites/default/files/reports/nepal1009webwcover.pdf; *Indifference to Duty*, December 14, 2010, https://www.hrw.org/report/2010/12/14/indifference-duty/impunity-crimes-committed-nepal.

[28] Asia Human Rights Commission, "The State of Human Rights in Nepal in 2011," https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NPL/INT_CCPR_NGO_NPL_14604_E.pdf (accessed August 18, 2020); *Nepali Times*, "The 2072 Constitution," April 17-13, 2015, https://archive.nepalitimes.com/article/editorial/2072-constitution,2173 (accessed July 4, 2020); Meenakshi Ganguly, "Nepal: Wrong Track, Right Trail," *Open Democracy*, September 20, 2011, https://www.opendemocracy.net/en/nepal-wrong-trail-right-track/ (accessed August 18, 2020).

complete the charter before its term expired in 2012, a second Constituent Assembly was elected in 2013.

Following the massive earthquakes of April and May 2015, four major parties signed an agreement on June 8 to complete the constitution by a "fast track" process without proper consultations.[29] A new draft was passed by the second Constituent Assembly on September 16, 2015.[30]

The 2015 constitution declares Nepal to be a federal republic and contains measures to address diversity in a country of multiple languages, caste, and ethnic identities. The country was restructured into seven provinces which have some legislative and policing powers and the authority to levy taxes and disburse income from natural resources at the provincial level. Establishing provincial boundaries had been complex and controversial, and was the main reason for repeated delays in completing the constitution.[31]

Protests broke out in 2015 in the final weeks of the constitution drafting process. Marginalized groups in the Terai—the lowland region that stretches across southern Nepal between the Indian border and the foothills of the Himalaya—objected to the "fast track" process and the constitution which emerged from it.

The protests against the new constitution involved two relatively large ethnic or social groups: Madhesis, concentrated in the eastern and central Terai, and Tharus, concentrated in the far western Terai, who argued that the new constitution abrogated previous commitments made to their communities. They particularly objected to the new provincial boundaries, and also opposed the unequal distribution of parliamentary constituencies and restrictions on the right of women to pass citizenship to their children.

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[29] Manjushree Thapa, "Nepal's Slippery Fast-Track," *The Wire*, June 13, 2015, https://thewire.in/south-asia/nepals-slippery-fast-track (accessed July 4, 2020).

[30] Hari Phuyal, "Nepal's New Constitution: 65 Years in the Making," *The Diplomat*, September 18, 2015, https://thediplomat.com/2015/09/nepals-new-constitution-65-years-in-the-making/ (accessed July 4, 2020).

[31] Charles Haviland, "Why is Nepal's new constitution controversial?" *BBC*, September 19, 2015, https://www.bbc.com/news/world-asia-34280015 (accessed July 4, 2020).

Ongoing Violations

Impunity for human rights violations was the norm before the start of the armed conflict in Nepal and, according to widely held analysis, was a factor that led people to support the Maoists.[32] The engrained failure of accountability for serious violations, including extrajudicial killings and torture, has continued in the 14 years since the conflict ended in 2006, and has been matched by a lack of security sector reforms.

Research by Advocacy Forum over several years has found that torture is widespread in police custody, and that members of the Dalit—formerly so-called untouchable—community, as well as other marginalized communities including Tharus and Madhesis, are more likely to be tortured than members of so called upper castes.[33] There have been no convictions for the crime or torture since it was recognized in Nepali law in 2018.[34]

Activists say police often refuse to register FIRs, the initial complaints to police which formally initiate investigations, from victims of serious rights violations. When FIRs are registered, police and prosecutors procrastinate in carrying out investigations, even in the face of orders and legal rulings by district courts, courts of appeal, or the Supreme Court.[35]

When there is political pressure or considerable public outcry, the authorities set up investigation committees, or even high-level commissions, to defuse the situation.[36] The outcomes of these investigations are invariably flawed, and the authorities fail to act on any meaningful recommendations. The reports of high level commissions of inquiry, such as the Malik Commission, which investigated the lethal suppression of the 1990 People's Movement; the Rayamajhi Commission, which investigated the lethal suppression of the

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[32] Frederick Rawski and Mandira Sharma, "A Comprehensive Peace? Lessons from Human Rights Monitoring in Nepal," in Sebastian von Einsiedel, David M. Malone, and Suman Pradhan (eds.), *Nepal in Transition: From People's War to Fragile Peace* (Cambridge University Press, 2012); Deepak Thapa and Bandita Sijapati (eds.), *Understanding the Maoist Movement of Nepal* (Kathmandu: Martin Chautari, 2003).

[33] Advocacy Forum, *The Rise of Torture in 2018, Challenges Old and New Facing Nepal*, June 26, 2019, http://www.advocacyforum.org/downloads/pdf/publications/torture/june-2019-report.pdf (accessed October 27, 2020). For Advocacy Forum reports tracking torture over several years, see: http://advocacyforum.org/publications/torture.php.

[34] International Commission of Jurists, "Nepal: ICJ Submission to the UN Universal Periodic Review (UPR)," July 10, 2020, https://www.icj.org/nepal-icj-submission-to-the-un-universal-periodic-review-upr/ (accessed September 15, 2020).

[35] Advocacy Forum, "Torture in Nepal in 2019: The Need for New Policies and Legal Reform," June 26, 2020. http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf (accessed October 27, 2020).

[36] International Commission of Jurists, "Commissions of Inquiry in Nepal: Denying Remedies, Entrenching Impunity," June 2012, https://www.icj.org/wp-content/uploads/2012/06/Nepal-Commissions-of-Inquiry-thematic-report-2012.pdf (accessed July 2, 2020).

2006 People's Movement; or the Lal Commission, which investigated the lethal suppression of protests in the Terai in 2015, remain unpublished, despite public commitments to do so.

Recent Killings and Deaths in Custody

This denial of justice is undermining the rule of law in Nepal today, helping to sustain an ongoing pattern of abuses.[37] On October 28, 2019, three UN special rapporteurs wrote to the government requesting details of investigations, actions taken, and compensation provided to the victim or victim's family in three such cases.[38]

According to the special rapporteurs, Dipendra Chaudhary, 27, a Nepali citizen and member of the marginalized Tharu community, who had been arrested in India and handed over to the Nepal police, was allegedly shot and killed in police custody on January 23, 2019. Saroj Narayan Singh, an unarmed protester from the marginalized Madhesi community, was shot in the head and killed by police who were responding to a protest against illegal sand mining in Sarlahi district on June 29, 2019. In both cases, the rapporteurs noted, police refused to register FIRs.[39]

In a third case which was addressed by the special rapporteurs, Kumar Poudel, a member of a violent Maoist group, was killed by police on June 20, 2019, at Lakhandehi forest near Lalbandi.[40] The police said Poudel had been killed in an armed exchange, but there is compelling evidence that he was taken into custody, tortured, and then shot dead. Photographs of his body and the post-mortem report showed that the victim had gun shots to the back of his head, and there were injuries to other parts of the body including a broken hand.[41]

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[37] Terai Human Rights Defenders Alliance, "Extrajudicial killings on rise: Bring those responsible to justice," July 4, 2019, https://www.thrda.org/situation-update/extrajudicial-killings-on-rise-bring-those-responsible-to-justice/ (accessed August 18, 2020).

[38] Joint Communication of the UN special rapporteur on extrajudicial, summary or arbitrary executions, the UN special rapporteur on the rights to freedom of peaceful assembly and of association, and the UN special rapporteur on minority issues, AL NPL 3/2019, October 28, 2019, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24902 (accessed August 21, 2020).

[39] Ibid.

[40] Tanka Chhetri, "Chand-led party's Sarlahi in-charge shot dead," *MyRepublica*, June 21, 2019, https://myrepublica.nagariknetwork.com/news/chand-led-party-s-sarlahi-in-charge-shot-dead/ (accessed August 18, 2020).

[41] Human Rights Watch interview with Bed Bhattarai, secretary of the National Human Rights Commission, August 27, 2020.

Responding to the joint communication from the UN rapporteurs in January 2020, the government denied the allegations, claiming that "it is explicit and obvious that extrajudicial killing in any form and manner is categorically outlawed by Nepal."[42] The government said that Poudel was a "wanted terrorist" belonging to a banned armed group, that he had been involved in crime and extortion, and that he had died in crossfire during an armed exchange with police while his other companions fled the scene.[43]

However, by that time a National Human Rights Commission investigation had already concluded that Poudel's death was an "extrajudicial killing."[44] On October 21, 2019, the NHRC recommended investigation and prosecution of the police officials involved in the incident.[45] The authorities promised an inquiry.[46] However, the government has since failed to take action.[47] Hari Krishna Poudel, Kumar's brother, said the family has received threats and warnings. "How can we expect justice when the state itself protects the perpetrators?" he said.[48]

In a blatant attempt to sabotage the independence of NHRC, the police, through the Ministry of Home Affairs, asked the commission to change its recommendations relating to the incident.[49] A spokesman for the commission said, "The Home Ministry is asking the NHRC to rethink the recommendation of the commission but actually we have clear evidence.… The NHRC has investigated and concluded it was an extrajudicial killing."[50]

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[42] Permanent Mission of Nepal to the United Nations, Geneva, "Response of the Government of Nepal on the joint communication of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on minority issues," January 3, 2020, https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=35087 (accessed August 2, 2020).

[43] Ibid.

[44] Binod Ghimire, "Killing of Chand party cadre Kumar Paudel was extrajudicial, human rights commission says," *Kathmandu Post*, October 22, 2019, https://kathmandupost.com/2/2019/10/22/killing-of-chand-party-cadre-kumar-paudel-was-extrajudicial-human-rights-commission-says (accessed August 18, 2020).

[45] National Human Rights Commission, "Appeal in the Case of Killing of Kumar Poudel, October 22, 2019, https://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC_P~1.PDF (accessed August 21, 2020).

[46] Ujjwal Satyal, "Cops involved in killing CPN leader to face action," *Himalayan Times*, February 4, 2020, https://thehimalayantimes.com/nepal/cops-involved-in-killing-cpn-leader-to-face-action/ (accessed August 18, 2020).

[47] Advocacy Forum, "Obstruction of Justice on Kumar Poudel Case-One Year of Impunity," June 20, 2020, http://www.advocacyforum.org/downloads/pdf/press-statement/2020/obstruction-of-justice-on-kumar-poudel-case-one-year-of-impunity-english-version.pdf (accessed August 21, 2020).

[48] Advocacy Forum interview with Hari Krishna Poudel, August 19, 2020.

[49] Binod Ghimire, "Another case spotlights apathy towards rights body," *Kathmandu Post*, August 14, 2020, https://kathmandupost.com/national/2020/08/14/another-case-spotlights-apathy-towards-rights-body?fbclid=IwAR04DiYf_feBIWoBuPDEdAcP70EKgAj5jCwV7dxn5p2nbHhZJ1mP_sYmD (accessed August 21, 2020).

[50] Human Rights Watch interview with Bed Bhattarai, August 27, 2020.

Shambhu Sada, 23, a member of the Dalit community, was reportedly found dead inside his police cell in Dhanusha District on June 10, 2020.[51] He had surrendered two weeks earlier, after a vehicle he was driving was involved in a fatal road accident. The police claimed Sada's death was a suicide, but his relatives alleged that he was tortured to death. The police initially refused to register an FIR, amid protests alleging police brutality. The NHRC said it was a case of caste-based violence.[52]

Raj Kumar Chepang, 24, a member of the Chepang indigenous community, died on July 22, 2020, six days after he and a group of friends were detained and allegedly tortured by soldiers after entering Chitwan Park, reportedly to collect snails.[53] The army initially denied causing his death and the NHRC opened an investigation.[54] Although Raj Kumar Chepang's family submitted a FIR at the Chitwan District Police Office on July 23, 2020, the police only registered it a day later after sustained pressure.[55] Subsequently, a Nepal Army soldier, Kiran Kumar Budha, was arrested on charges of murder. On October 13, 2020, the Chitwan district court ordered him to be detained pending the outcome of his trial. According to the judicial order, he will remain in army custody while awaiting trial.[56]

On August 26, 2020, Bijay Mahara (also known as Bijay Ram Chamar), 19, a member of the Dalit community, died in police custody. Police initially claimed that he had died of kidney failure, but Mahara recorded a video in hospital before he died alleging that he had been

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[51] Peter Gill and Abha Lal, "Nepal's Police Custodial Deaths: Patterns of Negligence, Alleged Abuse and Impunity," *The Wire*, June 22, 2020, https://thewire.in/south-asia/deaths-in-custody-impunity-nepal-police (accessed September 15, 2020); "Dhanusha: Body of man who died in custody awaits postmortem," *Onlinekhabar*, June 13, 2020, https://english.onlinekhabar.com/dhanusha-body-of-man-who-died-in-custody-awaits-postmortem.html (accessed September 15, 2020); Brij Kumar Yadav, "Kins continue protest demanding fair investigation of Musahar youth's death in Dhanusha," *Himalayan Times,* June 15, 2020, https://thehimalayantimes.com/nepal/kins-continue-protest-demanding-fair-investigation-of-alleged-suicide-of-musahar-youth-in-dhanusha/ (accessed September 15, 2020).

[52] See National Human Rights Commission report, August 26, 2020, https://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC%20Nepal%20Press%20Release-2077-5-12.pdf (accessed September 21, 2020).

[53] Meenakshi Ganguly, "Nepal Park Guards Accused of Persecuting Indigenous People," Human Rights Watch, July 28, 2020, https://www.hrw.org/news/2020/07/28/nepal-park-guards-accused-persecuting-indigenous-people.

[54] National Human Rights Commission, July 16, 2020, https://www.nhrcnepal.org/nhrc_new/doc/newsletter/NepalNHRC_Press_Release_2077-4-9.pdf (accessed September 22, 2010).

[55] Dewan Rai, "Bailed out by blood money," *The Record*, August 5, 2020, https://www.recordnepal.com/wire/features/bailed-out-by-blood-money/ (accessed October 27, 2020).

[56] "Court sends Nepal Army soldier accused of killing Chitwan man to custody," *Onlinekhabar*, October 14, 2020, https://english.onlinekhabar.com/court-sends-nepal-army-soldier-accused-of-killing-chitwan-man-to-custody.html (accessed October 27, 2020).

severely abused in detention.[57] Mahara's family say he was in good health at the time of his arrest on August 16. Doctors found injuries on his hands and back. The NHRC opened an investigation.[58]

In yet another case, in October 2020, the NHRC concluded that a police team, on August 6, 2018, had summarily executed two men, Gopal Tamang, 23, of Sindhupalchok and Ajay Tamang, 24, from Nuwakot. Police had claimed that the two men, suspected of abducting a child, had been killed in a gunfight. The NHRC, however, after its investigations, recommended that the government file criminal charges against five police officers for their involvement in the killing.[59]

2015 Terai Violence

Among the most egregious abuses of the post-conflict period occurred during the 2015 Terai protests against the new constitution.[60] About 65 people, including 10 policemen, were killed.[61]

The government ordered an independent investigation led by Girish Chandra Lal, a retired Supreme Court justice. The commission report was submitted to the government in December 2017.[62] However, the government has refused to keep its pledge to make the Lal Commission's findings public and is yet to comply with Supreme Court orders to release the report.[63]

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[57] Human Rights Watch, "Nepal: Punish Rights Abusers; Protect Independent NHRC," September 2, 2020, https://www.hrw.org/news/2020/09/02/nepal-punish-rights-abusers-protect-independent-nhrc.

[58] National Human Rights Commission, July 16, 2020, https://www.nhrcnepal.org/nhrc_new/doc/newsletter/NHRC%20Nepal%20Press%20Release-2077-5-12.pdf (accessed September 21, 2020).

[59] Binod Ghimire, "National Human Rights Commission's probe finds yet another case of extrajudicial killing," *Kathmandu Post*, October 17, 2020, https://kathmandupost.com/national/2020/10/17/national-human-rights-commission-s-probe-finds-yet-another-case-of-extrajudicial-killing (accessed October 27, 2020).

[60] Human Rights Watch, *"Like We Are Not Nepali,"* October 2015, https://www.hrw.org/report/2015/10/16/we-are-not-nepali/protest-and-police-crackdown-terai-region-nepal.

[61] "Lal commission submits report," *Himalayan Times*, December 16, 2017, https://thehimalayantimes.com/kathmandu/girish-chandra-lal-led-probe-commission-submits-report/ (accessed July 4, 2020).

[62] Ibid.

[63] "Nepal SC directs Govt to make public Lal Commission Report," *ANI*, October 18, 2019, https://www.aninews.in/news/world/asia/nepal-sc-directs-govt-to-make-public-lal-commission-report20191017234938/ (accessed July 4, 2020).

According to portions of the report leaked to the media, the commission found that the police "did not fulfil their important duty" to protect members of the indigenous Tharu community from mob attacks. The commission said that the killing of bystanders and protesters involved excessive use of police force and concluded that the use of lethal force against protesters in the eastern Terai region could not have occurred "without the direction and orders from the local administration."[64] The report includes detailed recommendations on police reform.[65]

The Case of Dharmendra Barai

Dharmendra Barai, 14, was tortured and killed in July 2010 in police custody in Rupandehi district.[66] On August 3, 2010, the police refused to let Barai's father register an FIR to investigate the killing.

With the support of Advocacy Forum-Nepal, the victim's family filed a writ of mandamus at the High Court which, on January 26, 2011, ordered the District Police Office, Rupandehi, to register the FIR and investigate the incident. However, instead of implementing court directives, the police filed an appeal in the Supreme Court. The Supreme Court upheld the decision of the High Court, but no action had been taken on the incident at time of writing.

In our 2010 report, Human Rights Watch and Advocacy Forum wrote that despite two inquiries by national and local government, no reports had been made public.[67] Instead, according to the victim's lawyers, the victim's family was offered 150,000 Nepali rupees (US$1,250) to drop all legal actions.

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[64] Human Rights Watch, "Nepal: Release Report on 2015 Protest Violence," October 1, 2019, https://www.hrw.org/news/2019/10/01/nepal-release-report-2015-protest-violence.

[65] Human Rights Watch, "Nepal Events of 2019, World Report 2020, https://www.hrw.org/world-report/2020/country-chapters/nepal.

[66] Advocacy Forum, "Dharmendra Barai," 2011, http://www.advocacyforum.org/fir/2011/10/dharmendra-barai.php (accessed July 4, 2020).

[67] Human Rights Watch and Advocacy Forum, *Indifference to Duty*, December 2010, https://www.hrw.org/report/2010/12/14/indifference-duty/impunity-crimes-committed-nepal.

Restrictions on Freedom of Expression and Association

Human rights activists, lawyers, and civil society groups have played a key role in pursuing justice for conflict-era violations, and in seeking reform. However, they have come under increasing pressure to end any criticism.

The current government of Prime Minister K.P. Sharma Oli is even proposing new laws that threaten to undermine the right to freedom of expression, including the Media Council Bill, Information Technology Bill, and the Mass Communications Bill, which contain numerous loosely defined but potentially draconian measures. These include offenses such as harming the nation's "self-pride" or damaging an individual's "image or prestige." Provisions to control online and social media activity are especially sweeping. Many of the new offenses carry fines and lengthy prison sentences.[68] The Special Service Bill contains provisions that would give Nepal's intelligence agency unlimited search and surveillance powers.[69] The government has also proposed amendments to weaken the NHRC.[70] These bills are currently before parliament.

National Human Rights Commission

NHRC investigations seldom lead to action. On October 15, 2020, the commission published 20 years of data, naming 286 people, including 98 police officers, 85 soldiers, and 65 former Maoist rebels, where its investigators concluded there is evidence warranting investigation and prosecutions of abuses including torture, enforced disappearance, and extrajudicial killing.[71] The report presents and analyzes the commission's findings and recommendations spanning two decades since it was established in 2000. In total, it has registered 12,825 complaints, reached conclusions in 6,617 cases, and made 1,195 recommendations to the government. The commission's recommendations have been fully implemented only in 13 percent of cases, partially

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[68] Human Rights Watch, "Nepal: Amend Laws Undermining Free Expression," September 3, 2019, https://www.hrw.org/news/2019/09/03/nepal-amend-laws-undermining-free-expression.

[69] Human Rights Watch, "Nepal: Amend Intrusive Intelligence Bill", May 29, 2020, https://www.hrw.org/news/2020/05/29/nepal-amend-intrusive-intelligence-bill-0.

[70] Meenakshi Ganguly, "Nepal Should Not Backslide on Human Rights," *Kathmandu Post*, May 7, 2019, https://kathmandupost.com/opinion/2019/05/07/nepal-should-not-backslide-on-human-rights (accessed July 4, 2020).

[71] National Human Rights Commission, *Twenty Years of the Commission's Recommendations and the State of Implementation*, October 15, 2020, https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Inner_20_Years_Book_2077_Final_CTP_NHRC.pdf (accessed October 27, 2020).

implemented in 37 percent of cases, and not implemented at all in in nearly 50 percent of cases. The government has often implemented recommendations involving the payment of compensation, but very rarely in relation to investigating and prosecuting abuses.

II. Stalling Transitional Justice

The Nepali criminal justice system has not only failed to protect the rights of victims, but caving to political pressure, has deliberately blocked accountability. Over the last decade, victims' families have repeatedly approached the authorities through the courts or the police. In some of these cases, the courts intervened and ordered investigations. In others, there were interventions by the NHRC. But the justice process has been stalled by the government, which insists that these cases will be handled by a transitional justice mechanism, which itself remains seriously flawed.

The Legal Framework for Transitional Justice

The government drafted and revised two bills to establish a truth and reconciliation commission and a commission of inquiry into enforced disappearances. In February 2010, it presented both bills in Parliament. These bills ruled out amnesty for murder, enforced disappearances, torture, and rape. However, they did not enter into law.

In 2013, the Nepal government issued the Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission, based on the earlier bills but removing the provisions that prevented the commissions from recommending amnesty for those four categories of violations, and incorporating mediation irrespective of the nature of violations.[72]

The ordinance was successfully challenged in the Supreme Court, which rejected the Truth and Reconciliation Ordinance in January 2014, ruling that any mechanism for transitional justice must conform to international legal standards, lead to accountability for serious human rights violations, and guarantee victims their right to remedy and reparation.[73] The Supreme Court also said that the government should enact laws that criminalize gross human rights violations, including enforced disappearances, torture, crimes against humanity, and war crimes, saying that even if there is political will to prosecute these

[72] Commission on Investigation of Disappeared Persons, Truth and Reconciliation Ordinance 2069 (2012), http://www.simonrobins.com/missing/wp-content/uploads/2013/02/Nepal-TRC-Ordinance.pdf (accessed July 4, 2020).

[73] *Madhav Kumar Basnet v. the Government of Nepal* and *Ram Kumar Bhandari and Others v. Government of Nepal*, decisions of January 2, 2014.

offenses, in the absence of a distinct criminal law, these human rights abuses will not be fully justiciable.[74]

On May 11, 2014, Nepal's Constituent Assembly ignored the Supreme Court ruling and enacted the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2014 (TRC Act), which only slightly modified the ordinance.[75] The act retained the provision of amnesty and mediation, irrespective of the nature of violations. It provided for the creation of two commissions, the Commission of Investigation on Enforced Disappeared Persons (CIEDP) and the Truth and Reconciliation Commission (TRC), which were established in 2015.[76]

The UN provided a detailed analysis of the ways in which Nepal's transitional justice legislation fails to meet basic international human rights standards, pointing particularly at the problematic "amnesty" provision and provision for "reconciliation" to be imposed against the wishes of victims.[77]

Following an appeal against the TRC Act, in February 2015, the Supreme Court ruled that it was unacceptable, especially provisions that give impunity to those responsible for the most serious abuses, such as crimes against humanity and war crimes.[78] The government filed a petition seeking to overturn the judgment.

In June 2018, the attorney general, Agni Kharel, invited national and international human rights organizations to discuss a proposed bill amending the 2014 law. While some of the draft amendments were a welcome step forward, to comply with international standards

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74 International Commission of Jurists, "Justice Denied: the 2014 Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act," May 2014, https://www.icj.org/wp-content/uploads/2014/05/Nepal-TRC-Act-Briefing-Paper.pdf (accessed July 4, 2020).

75 Human Rights Watch, "Nepal: Fix Flawed Truth, Reconciliation Act," July 8, 2014, https://www.hrw.org/news/2014/07/08/nepal-fix-flawed-truth-reconciliation-act.

76 See Truth and Reconciliation Commission (TRC), Nepal, http://trc.gov.np/ (accessed July 4, 2020); Commission of Investigation on Enforced Disappeared Persons (CIEDP), Nepal, https://ciedp.gov.np/content.php?id=15 (accessed July 4, 2020).

77 Office of the UN High Commissioner for Human Rights, "OHCHR Technical Note The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) – as Gazetted 21 May 2014," https://www.ohchr.org/Documents/Countries/NP/OHCHRTechnical_Note_Nepal_CIDP_TRC_Act2014.pdf (accessed July 4, 2020).

78 Ross Adkin, "Nepal Supreme Court rejects amnesty for war crimes," Reuters, February 27, 2015, https://www.reuters.com/article/us-nepal-rights/nepal-supreme-court-rejects-amnesty-for-war-crimes-idUSKBNoLVoCG20150227 (accessed July 4, 2020).

the law needed further strengthening. In a letter to the attorney general, Human Rights Watch set out international standards including on universal jurisdiction, saying:

> The current draft law fails to address the many gaps in Nepali law that make it difficult to prosecute, especially at senior levels, for international crimes such as torture and crimes against humanity. As you are aware, the existing law falls far short of international standards, as has been reflected both in Supreme Court rulings and in a technical note provided by Office of the United Nations High Commissioner for Human Rights. The amendments should take those concerns into account.[79]

A group of national human rights organizations also provided their preliminary observations on the proposed bill, recommending several changes including informed consultations and the transparent appointment of commissioners.[80] They called upon the government to publish an operational plan including a clear timeline for establishing all components of the transitional justice process, such as the setting up of the special court, amendments to the Penal Code and other relevant laws, and structures for paying reparations.[81]

However, the government shelved the proposed amendments to await a Supreme Court ruling on its appeal against the February 26, 2015 verdict which had struck down the amnesty provisions. On April 26, 2020, the government's petition against the Supreme Court's 2015 verdict was rejected.[82] An OHCHR spokesperson said that the Nepal government should treat the Supreme Court ruling as "an opportunity to change course and pursue a truly fair and transparent transitional process that will win the trust of key stakeholders." He said:

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[79] Human Rights Watch, Letter to the Attorney General of Nepal, August 28, 2018, https://www.hrw.org/news/2018/08/29/letter-attorney-general-nepal.

[80] UN Human Rights Council, Advocacy Forum-Nepal and coalition joint submission to the Universal Periodic Review of Nepal, July 2020, http://advocacyforum.org/downloads/pdf/publications/upr-submission-tj-and-impunity-in-nepal-af-and-coalition-9-luly-2020.pdf (accessed August 19, 2020).

[81] Advocacy Forum, Preliminary review and recommendations by civil society organizations on the draft bill on Transitional Justice, http://advocacyforum.org./downloads/pdf/press-statement/2018/preliminary-review-and-recommendations-civil-society-20-July.pdf (accessed August 19, 2020).

[82] Human Rights Watch, Amnesty International, International Commission of Jurists, and TRIAL International, "Nepal: Supreme Court's Decision Reaffirms the Need to Amend Transitional Justice Law," May 1, 2020, https://www.hrw.org/news/2020/05/01/nepal-supreme-courts-decision-reaffirms-need-amend-transitional-justice-law .

> The Supreme Court's decision reconfirms that the only way for the Government to credibly proceed with the transitional justice process is to abide by the key human rights and transitional justice principles reflected in the Supreme Court's 2015 ruling, including the centrality of victims and the importance of accountability for serious violations. Victims' advocacy groups and civil society members have welcomed the court's decision, and so do we.[83]

At time of writing, victims were still awaiting the government's proposed amendments to the 2014 Transitional Justice Act.

The Commission of Investigation on Enforced Disappeared Persons (CIEDP) and the Truth and Reconciliation Commission (TRC)

In response to several pending *habeas corpus* writ petitions, the Supreme Court in June 2006 directed the government to establish a separate commission of inquiry on enforced disappearances.[84] The Comprehensive Peace Agreement (CPA), signed in November that year, provided for a Truth and Reconciliation Commission.[85] When they signed the CPA, the Nepal government and the Maoists agreed to publicly reveal the whereabouts of those "disappeared" during the conflict within 60 days. Nearly 14 years later, the transitional justice bodies have completed no investigations, and the fate of over 1,300 "disappeared" people remains undisclosed.

The Commission of Investigation on Enforced Disappeared Persons (CIEDP) and the Truth and Reconciliation Commission (TRC) were established on February 10, 2015, under the contentious Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act,

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[83] Office of the UN High Commissioner for Human Rights, "Press briefing note on Nepal," May 1, 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25855&LangID=E (accessed August 20, 2020).

[84] In *Rajendra Prasad Dhakal v. Government of Nepal* (2007), the Supreme Court directed the government to criminalize enforced disappearance in accordance with the UN International Convention for the Protection of All Persons from Enforced Disappearance, take action against officials found guilty of perpetrating enforced disappearances, and ensure that amnesties and pardons were not available to those suspected or found guilty of the crime. See TRIAL International, "Enforced Disappearance of Rajendra Prasad Dhakal in January 1999," April 10, 2017, https://trialinternational.org/latest-post/enforced-disappearance-of-rajendra-prasad-dhakal-in-january-1999/ (accessed July 27, 2020).

[85] Comprehensive Peace Accord, article 5.2.5, 8.4 (2006); Interim Constitution of Nepal (2007), article 33(s); Interim Constitution of Nepal (2007), art. 33(q).

2014. Recognizing the urgency of creating a justice mechanism, both national and international civil society organizations had made a series of recommendations for setting up independent commissions but were ignored.[86]

The TRC and CIEDP fall short of international standards. Commissioners were selected through a flawed process led by political parties and without the involvement of victims' groups. The current legal framework gives the commissions powers to promote "reconciliation" among victims and perpetrators.[87] Victims' groups fear that because perpetrators have the backing of powerful institutions, victims will end up being pressured and face "forced reconciliation."[88]

In their initial two-year term, the commissions could barely begin work as they struggled to set up operations, lacked sufficient human and financial resources, fell prey to in-fighting among members, and were hampered by political interference.[89] After the two-year mandates of the TRC and CIEDP expired on February 9, 2017, the government extended their mandates for one year, although several commissioners expressed concern that an extension without the necessary legal amendments would render any future work meaningless and would not lead to justice for victims.[90]

On January 20, 2018, the president approved an ordinance to extend the mandate of the two commissions by another year, without the recommended reforms.[91] The National

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[86] Human Rights Watch and others, "Nepal: Joint Letter Regarding Formation of the Truth and Reconciliation Commission and the Commission on Enforced Disappearances," December 18, 2014, https://www.hrw.org/news/2014/12/18/nepal-joint-letter-regarding-formation-truth-and-reconciliation-commission-and (accessed July 5, 2020); Conflict Victims Common Platform (CVCP), Preliminary Comments of Conflict Victims' Common Platform (CVCP) on proposed TJ draft bill to amend Commission of Inquiry on Enforced Disappearances, Truth and Reconciliation Act, 2014, July 17, 2018, http://advocacyforum.org./downloads/pdf/press-statement/2018/preliminary-comments-of-CVCP-on-tj-bill-english.pdf (accessed August 19, 2020).

[87] Accountability Watch Committee, Position of Accountability Watch Committee's Regarding the Appointment of the Members of Truth and Reconciliation Commission and the Commission of Investigation on Enforced Disappeared Persons, January 19, 2020, http://advocacyforum.org./downloads/pdf/press-statement/2020/awc-press-statement-on-recommendatio-of-officials-19-January-2020-english-version.pdf (accessed August 19, 2020).

[88] The Transitional Justice Advocacy Group, "Truth without justice will not be acceptable," November 28, 2011, http://advocacyforum.org./downloads/pdf/press-statement/truth-without-justice-will-not-be-acceptable.pdf (accessed August 20, 2020).

[89] Om Astha Rai, "The real truth about the Truth Commission," *Nepali Times*, 24 Feb-2 March, 2017, https://archive.nepalitimes.com/article/nation/truth-about-truth-commission,3565 (accessed July 5, 2020).

[90] Human Rights Watch, "Nepal: Key Moment for Justice," February 3, 2017, https://www.hrw.org/news/2017/02/03/nepal-key-moment-justice.

[91] Kosh Raj Koirala, "New ordinance to extend term of TRC, CIEDP by a year," *MyRepublica*, January 4, 2018, https://myrepublica.nagariknetwork.com/news/33741/?categoryId=81 (accessed July 5, 2020); Amnesty International,

Human Rights Commission of Nepal (NHRC) made a series of recommendations to improve the functioning of the commissions, but was ignored.[92] Mohna Ansari, a member of the NHRC from 2014 to 2020, said that the government had failed to show real commitment to justice: "I have not seen any progress by the government to address accountability. Where is the law amendment? We have been saying that victim demands should be at the center. But nobody is listening to the victims."[93]

As of February 2018, when there was a deadline for filing cases, the TRC had received 60,298 complaints of human rights violations, and the CIEDP had received 3,093 complaints of enforced disappearance.[94] The commissions made little progress, however, in investigating these complaints.[95] Suman Adhikari, whose father was killed by the Maoists, told Human Rights Watch that victims' groups were disappointed. "The TRC Act is faulty, the process is faulty. We don't trust the commission, but we have filed petitions to test it. What choice do we have?"[96] "These commissions are established just to show they exist," one woman whose husband is among those "disappeared" said during an

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International Commission of Jurists, and Human Rights Watch, "Nepal: Transitional Justice Proving Elusive," February 13, 2018, https://www.hrw.org/news/2018/02/13/nepal-transitional-justice-proving-elusive.

92 National Human Rights Commission Nepal, Press Note, February 5, 2018, http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Press%20Release%20Commissions%20view%20on%20Transitional%20Justice%2010-22.pdf (accessed July 5, 2020). Based on consultations with victims, human rights activists, political parties, and rulings by the Supreme Court, the commission recommended: "(a) No amnesty, pardon or withdrawal of cases for gross human rights violations such as enforced disappearance, extra-judicial killing, kidnappings, torture, rape and other acts of sexual violence; (b) To bring under the criminal justice system for serious offences, including enforced disappearance; (c) To conduct judicial hearing immediately to the cases recommended by the Truth and Reconciliation Commission (TRC) and the Commission of Inquiry into Enforced Disappearance of Persons (CIEDP); (d) To criminalize torture and enforced disappearance through the enactment of special laws; (e) To provide the dignified and respectable reparation for conflict era victims; (f) To reconciliation only with the consent of victims and only in the issues that are not restricted by the recognized principles of law; (g) To amend the acts of two Commissions Truth and Reconciliation Commission and Commission on Investigation of Enforced Disappeared Persons – 2071, in the line with the Supreme Court verdicts and the International Standards; (h) To punish the perpetrators of war crime and crime against humanity legally without time limitation; (i) To ensure protection and security of victim, witness and evidence; (j) To avoid a situation wherein victims might opt for alternative ways to seek justice; (k) To give top priority to conflict victims and provide them employment and involve them in rehabilitation programs by the all provincial and local bodies of the bodies. Similarly, the Commission supposes the support from all the concerned persons for the documentation of the facts, receiving justice, ensuring the use of right to reparation."

93 Human Rights Watch phone interview with Mohna Ansari, July 22, 2020.

94 Some additional complaints have also been accepted since the deadline to register cases passed in 2018.

95 Amnesty International, the International Commission of Jurists, and Human Rights Watch, "Nepal: Transitional Justice Proving Elusive," February 13, 2018, https://www.hrw.org/news/2018/02/13/nepal-transitional-justice-proving-elusive.

96 Meenakshi Ganguly, "End the Wait," *Nepali Times*, June 9-15, 2017, https://archive.nepalitimes.com/regular-columns/Comment/end-the-wait-for-conflict,933 (accessed July 5, 2020). Most of the victims' families involved in the 62 cases filed or tracked by Advocacy Forum were among those that approached the commissions.

Advocacy Forum consultation with victim groups in October 2019. "They have not done any investigation."[97]

On March 25, 2019, the government appointed a committee chaired by a former chief justice, Om Prakash Mishra, to recommend new commissioners, as the terms of the existing team would expire in April.[98] According to Advocacy Forum, at the time their tenure expired in 2019, the commissions were still in the preliminary phase of their work:

> The TRC had completed preliminary investigations in less than 10 percent of the complaints and the CIEDP had commenced preliminary investigation in 75 percent of complaints at the time of the expiry of their tenure. Neither had resolved even one case out of the more than 60,000 complaints lodged by victims.[99]

Pointing out that the process to appoint new commissioners provided an opportunity for the government to bring the transitional justice process on track, a number of national and international civil society organizations recommended that the government initiate consultations on the amendments that had previously been presented in June 2018.

Advocacy Forum and national rights groups helped victims' associations hold consultations in 20 districts to solicit preliminary recommendations.[100] They demanded that the government proceed systematically by first holding wider consultations with victims and civil society, then amending the transitional justice law incorporating directives of the Supreme Court and Nepal's international human rights obligations, and finally appointing new commissioners after the act had been amended.[101]

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[97] Advocacy Forum consultation, Nepalgunj, October 24, 2019.

[98] Office of the UN High Commissioner for Human Rights, "Joint Communication from Special Procedures," April 12, 2019, https://www.ohchr.org/Documents/Issues/Truth/OL_NPL_1_2019.pdf (accessed August 20, 2020).

[99] Advocacy Forum, "Fake Transitional Justice Consultations: How Long Can the Government Fool Victims?" February 2020 http://advocacyforum.org/downloads/pdf/publications/tj/briefing-paper-on-tj-consultation-february-2020.pdf (accessed July 5, 2020).

[100] See "Preliminary review and recommendations by civil society organizations on the draft bill on Transitional Justice," http://advocacyforum.org./downloads/pdf/press-statement/2018/preliminary-review-and-recommendations-civil-society-20-July.pdf (accessed August 20, 2020).

[101] "Rights groups and CSOs demand a credible transitional justice process in Nepal," February 6, 2019, http://advocacyforum.org./downloads/pdf/press-statement/2019/cso-position-on-tj-english-6-feb-2019.pdf (accessed August 20, 2020).

However, in November 2019, the recommendation committee published a list of candidates.[102] Victims and civil society groups raised concerns that the government would make political appointments, staffing the commissions with people who are not adequately impartial and independent.[103] On January 18, 2020, the committee submitted its nominations of new commissioners, ignoring demands by victims' groups and civil society.[104] Instead, the government held rushed consultations on January 13, 2020, in all seven provincial headquarters at only three-days' notice, a process that "victims and civil society perceived as window dressing."[105] The appointments were made without amending the legal framework.[106] The new commissioners took their oath of office on January 23, 2020.[107]

On March 16, 2020, five UN special procedures wrote to the government raising concerns about the failure to hold proper consultations with victims, the lack of independence and transparency in the process to appoint new commissioners, and flaws in the process of amending the transitional justice law.[108] The government responded on June 12, 2020,

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[102] Amnesty International, International Commission of Jurists, Human Rights Watch, and TRIAL International, "Nepal: 13 Years On, No Justice for Conflict Victims," November 25, 2019, https://www.hrw.org/news/2019/11/26/nepal-13-years-no-justice-conflict-victims.

[103] Binod Ghimire, "After deal between parties, selection panel publishes list of probable candidates for transitional justice bodies," *Kathmandu Post,* November 19, 2019, https://kathmandupost.com/2/2019/11/19/after-deal-between-parties-selection-panel-publishes-list-of-probable-candidates-for-transitional-justice-bodies; Roshan S. Nepal, "Victims decry selection of candidates for TJ bodies," *Himalayan Times*, November 18, 2019, https://thehimalayantimes.com/nepal/victims-decry-selection-of-candidates-for-tj-bodies/ (accessed July 5, 2020).

[104] Binod Ghimire, "Ganesh Datta Bhatta to lead truth commission, Yubraj Subedi picked as disappearance commission chair," *Kathmandu Post*, January 18, 2020, https://kathmandupost.com/national/2020/01/18/ganesh-datta-bhatta-to-lead-truth-commission-yubraj-subedi-picked-as-disappearance-commission-chair (accessed July 5, 2020); Advocacy Forum, "Fake Transitional Justice Consultations: How Long Can the Government Fool Victims?" February 2020, http://advocacyforum.org/downloads/pdf/publications/tj/briefing-paper-on-tj-consultation-february-2020.pdf (accessed July 11, 2020).

[105] Advocacy Forum, "Fake Transitional Justice Consultations: How Long Can the Government Fool Victims?" February 2020, http://advocacyforum.org/downloads/pdf/publications/tj/briefing-paper-on-tj-consultation-february-2020.pdf (accessed July 5, 2020); Sewa Bharti, "Victims unhappy as Nepal revives transitional justice process," January 13, 2020, https://www.aljazeera.com/news/2020/01/victims-unhappy-nepal-revives-transitional-justice-process-200113082330798.html (accessed July 5, 2020).

[106] Human Rights Watch, International Commission of Jurists, Amnesty International, and TRIAL International, "Nepal: Recent Steps Undermine Transitional Justice," January 25, 2020, https://www.hrw.org/news/2020/01/25/nepal-recent-steps-undermine-transitional-justice.

[107] "TRC and CIEDP officers administered oath of office and secrecy," *MyRepublica*, January 23, 2020, https://myrepublica.nagariknetwork.com/news/trc-and-ciedp-officers-administered-oath-of-office-and-secrecy/ (accessed July 5, 2020).

[108] Mandates of the special rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Working Group on Enforced or Involuntary Disappearances; the special rapporteur on extrajudicial, summary or arbitrary executions; the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the special rapporteur on violence against women, its causes and consequences, AL NPL 1/2020, March 16, 2020,

stating that it was working on the amendments taking into account the demands submitted by the victims' representative organizations and suggestions and feedback from the international community, including the relevant UN bodies. Consultations at the higher political level were also underway. However, the government said, the Covid-19 pandemic had affected the process.[109]

https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25109 (accessed August 21, 2020).

[109] Response of Government of Nepal to the Joint Communication by Special Procedures, https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=35339&fbclid=IwAR2lCF-J4hUEL20KzYTZO0EgrC73bjMRLYuEKzq--0aw_J31O6MHibjEDIw (accessed August 21, 2020).

III. Failure of Justice and Universal Jurisdiction

Nepal's political leaders—despite repeated recommendations from the United Nations, donors, and influential countries—have failed to develop a coherent and sustainable plan to ensure that abuses committed by Maoist fighters and by security forces are properly prosecuted. Instead, the authorities have consistently ignored court orders for investigations, prosecutions, and convictions for conflict-era violations. None of the parties to the conflict—whether political parties including the Maoists, or security forces including the military—respond properly to police complaints or court orders.[110]

On May 5, 2016, the then-coalition partners in the government of Prime Minister K.P. Sharma Oli—the Communist Party of Nepal-Maoist Centre (CPN-M) and the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML)—agreed to a 9-point deal containing provisions to shield perpetrators of abuses.[111] The agreement entrenched impunity for those who planned and carried out serious violations, directing authorities to withdraw all conflict-era cases and to provide amnesty to alleged perpetrators.[112] The two parties later merged in February 2018.[113]

Even in cases where courts have ordered arrests or convicted people, the accused have refused to submit themselves. The political leadership has said that wartime cases should be handled under the TRC Act instead, which to this day specifically recommends amnesty in contravention of international practice and Supreme Court rulings.[114]

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[110] Meenakshi Ganguly, "End the Wait," *Nepali Times*, June 9-15, 2017, https://archive.nepalitimes.com/regular-columns/Comment/end-the-wait-for-conflict,933 (accessed July 5, 2020).

[111] Human Rights Watch, International Commission of Jurists, and Amnesty International, "Nepal: 9-Point Deal Undermines Transitional Justice," May 12, 2016, https://www.hrw.org/news/2016/05/12/nepal-9-point-deal-undermines-transitional-justice .

[112] "Victims outraged at 9-point deal," *Kathmandu Post*, May 12,2016, https://kathmandupost.com/valley/2016/05/12/victims-outraged-at-9-point-deal (accessed July 5, 2020).

[113] "Nepal's CPN-UML And CPN-Maoist Merge, Form New Powerful Bloc," *Press Trust of India*, February 21, 2018, https://www.ndtv.com/world-news/nepals-cpn-uml-and-cpn-maoist-merge-form-new-powerful-bloc-1815138 (accessed July 5, 2020).

[114] Human Rights Watch, Amnesty International, International Commission of Jurists, and TRIAL International, "Nepal: Supreme Court's Decision Reaffirms the Need to Amend Transitional Justice Law," May 1, 2020, https://www.hrw.org/news/2020/05/01/nepal-supreme-courts-decision-reaffirms-need-amend-transitional-justice-law.

Shielding Perpetrators

Nepali authorities have not only prevented police investigations and ignored court orders, they have, in the few cases where a prosecution proceeded, actively attempted to protect perpetrators. The emblematic cases discussed below show how the authorities are actively impeding accountability.

The Case of Maoist leader Bal Krishna Dhungel

In some cases, those convicted have attempted to evade arrest through political protection. In April 2017, the Supreme Court ordered the inspector general of police to arrest Maoist leader Bal Krishna Dhungel, who was sentenced to 12 years in prison by a district court in 2004 for a 1998 murder, of which he had served almost 8 years when the Court of Appeal overruled the district court verdict on the basis that the case would be dealt with through the transitional justice bodies.[115] Although the district court ruling was later confirmed by the Supreme Court in 2010, Dhungel, a member of parliament, initially evaded arrest, despite the fact that in ordering his detention, the Supreme Court found he had made "objectionable threats of physical attacks on justices and the Chief Justice."[116]

Dhungel remained free until October 2017 when a contempt of court petition was filed against the police chief for failing to act, and he was arrested and taken to serve his sentence. Dhungel's party staged protests calling for his release.[117] Seven months later, on the government's recommendation, he was released for "good behavior."[118]

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[115] "Dhungel to stay in jail for 12.5 yeats," *Himalayan Times*, October 31, 2017, https://thehimalayantimes.com/kathmandu/dhungel-to-stay-in-jail-for-12-5-years-sent-to-dillibazaar-prison/ (accessed October 27, 2020).

[116] "Court to govt: Arrest murder convict Bal Krishna Dhungel," *Kathmandu Post*, April 14, 2017, https://kathmandupost.com/national/2017/04/14/court-to-govt-arrest-murder-convict-bal-krishna-dhungel (accessed July 5, 2020); "Supreme Court tells police to nab Bal Krishna Dhungel in a week," *Himalayan Times*, April 13, 2017, https://thehimalayantimes.com/nepal/supreme-court-tells-police-nab-bal-krishna-dhungel-week/ (accessed October 27, 2020).

[117] "Murder convict leader Bal Krishna Dhungel arrested, sent to Dillibazaar prison," *Kathmandu Post*, November 1, 2017, https://kathmandupost.com/valley/2017/10/31/maoist-leader-bal-krishna-dhungel-arrested (accessed July 5, 2020).

[118] "Murder-convict Dhungel gets presidential pardon," *Kathmandu Post*, May 29, 2018, https://kathmandupost.com/valley/2018/05/29/murder-convict-dhungel-gets-presidential-pardon (accessed August 21, 2020).

The Case of Army Officers Bobi Khatri, Amit Pun, Sunil Adhikari, and Niranjan Basnet

The military routinely ignores the courts, refusing to produce suspects before judges or to ensure that those convicted are arrested. On April 16, 2017, the Kavre district court sentenced three officers to life imprisonment for the murder of Maina Sunuwar, a 15-year-old girl who was tortured to death in army custody in February 2004. The trial took place in the absence of any of the four accused, despite repeated court summons. An arrest warrant issued in 2008 was never enforced, with the police telling the court they were unable to trace the accused despite the fact that some of them were still serving in the army.[119]

Bobi Khatri, Amit Pun, and Sunil Adhikari, the three officers who were convicted and sentenced by the Kavre district court for Maina Sunuwar's murder, are no longer in the army. The one remaining serving officer, Maj. Niranjan Basnet, was acquitted.[120] Despite their convictions the other three accused have not been arrested.

The public prosecutor decided not to appeal Basnet's acquittal, even though it is standard procedure in serious crimes, such as murder, to appeal. Devi Sunuwar, Maina's mother, filed applications before the attorney general, seeking his intervention to file an appeal. However, the Office of the Attorney General, which approved the decision against an appeal, failed to respond to Devi Sunuwar's requests and refused to inform her of the grounds on which they made the decision.

On September 1, 2017, the Office of the Judge Advocate General of the Nepal Army filed a writ of certiorari in the Supreme Court seeking annulment of the convictions ordered by the district court. The army claimed that the incident cannot come under the jurisdiction of the regular court because it happened during a military operation, and therefore military rules should apply.[121] The NA also said that the officers concerned had already been tried by

[119] Amnesty International, Human Rights Watch, and International Commission of Jurists, "Nepal: Need Effective Steps to Enforce Court Verdicts," April 20, 2017, https://www.amnesty.org/en/latest/news/2017/04/nepal-need-effective-steps-to-enforce-court-verdicts/ (accessed July 5, 2020).

[120] Ibid.

[121] Legal Briefing on the Nepal Army's Petition to Overturn Convictions for Maina Sunuwar Killing, November 2018, https://www.icj.org/wp-content/uploads/2018/11/Nepal-Petition-to-overturn-convictions-for-Maina-Sunuwar-killing-Advocacy-Analysis-brief-2018-ENG.pdf (accessed August 24, 2020).

court martial, and were therefore placed in double jeopardy, and that the case should thus be handled by the TRC.[122]

The court martial proceedings did not meet international standards. Ignoring allegations of the torture and custodial death of a child, the court martial, on September 27, 2005, merely found three officers guilty of negligence. After OHCHR sought details of the prosecution and punishment in October 2005, the army, in December, responded that the officers had been found guilty of "not following the standard procedures and orders," and had been sentenced to six months of imprisonment, as well as a fine, for failing to follow proper procedures when disposing of Maina Sunuwar's body.[123]

The army's petition remains pending before the Supreme Court, which has postponed its hearing more than eight times.[124]

Devi Sunuwar, Maina's mother, said she still wanted to see her daughter's killers in prison.

> Is prison only for the poor, the Dalit, like us? Otherwise why are these men not arrested despite being convicted by the court? Are we to believe that the entire police cannot find them? I appeal to the national and international community to ask the government why the perpetrators are not arrested and sent to prison.[125]

The Case of Maoist Leader Agni Sapkota

In a further instance of impunity, the government, in January 2020, appointed Agni Sapkota as the speaker of parliament. Sapkota was a Maoist leader during the conflict. In

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[122] On September 1, 2017, the Office of Prad Vivak of Nepal Army filed a writ of certiorari along with prohibition in the Supreme Court. Rule 2(c) of Court Martial Rules, 2064 (2008) defines the Office of Prad Viwak as the "office of military headquarters where the Chief of the Prad Viwak has been based, and the term shall also indicate the battalion Prad Viwak branch and Brigade Prad Viwak branch."

[123] Office of the UN High Commissioner of Human Rights in Nepal, "The torture and death in custody of Maina Sunuwar," December 2006, https://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006_12_01_HCR%20_Maina%20Sunuwar_E.pdf (accessed July 5, 2020).

[124] Advocacy Forum and Coalition, Joint Submission To The Universal Periodic Review Of Nepal, July 2020, http://advocacyforum.org./downloads/pdf/publications/upr-submission-tj-and-impunity-in-nepal-af-and-coalition-9-luly-2020.pdf (accessed August 18, 2020).

[125] Advocacy Forum interview with Devi Sunuwar, August 19, 2020.

2010, the United States denied him a visa due to "serious and specific human rights allegations associated with his conduct during the insurgency."[126]

He is accused in the abduction and killing of Arjun Lama in Kavre district in 2005. In 2012 the Supreme Court ordered the police and government to proceed with a criminal investigation, and to provide updates to the court every 15 days. The case remains the subject of proceedings.[127] Purnimaya Lama, widow of Arjun Lama, lamented Sapkota's appointment.

> I felt like dying when I heard of Agni Sapkota being appointed as speaker of the house of representatives. There is no law, no justice, no state for victims, it is only for perpetrators. I know it is difficult to get justice now as they are in power. However, our struggle for truth and justice will be continued by my sons and daughters. I urge the international community to put pressure on the Nepali government and ensure justice.[128]

The Case of Army Officers Kaji Bahadur Karki and Saroj Basnet

Reena Rasaili was raped and killed during a security operation in Kavre on February 12, 2004.

On September 9, 2010, the police arrested the accused, Kaji Bahadur Karki, a junior non-commissioned officer, who had left the army after the incident. Saroj Basnet, who was a lieutenant at the time of the incident, was also charged with murder in absentia, and the Kavre district court issued an arrest warrant against him on October 28, 2010. Basnet has not yet been arrested. He is still in the army, and Advocacy Forum has learned that he has received promotions.[129]

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[126] Human Rights Watch, "Nepal: Investigate Maoists' Role in Killing," July 1, 2010, https://www.hrw.org/news/2010/07/01/nepal-investigate-maoists-role-killing.

[127] Human Rights Watch, International Commission of Jurists, Amnesty International, and TRIAL International, "Nepal: Recent Steps Undermine Transitional Justice," January 25, 2020, https://www.hrw.org/news/2020/01/25/nepal-recent-steps-undermine-transitional-justice.

[128] Advocacy Forum interview with Purnimaya Lama, August 19, 2020.

[129] Advocacy Forum, Letter to Attorney General, July 5, 2011, http://advocacyforum.org/downloads/pdf/press-statement/letter-to-attorney-general-reena-english.pdf (accessed July 23, 2020).

In December 2013, the Kavre court acquitted Karki on grounds that if he had acted in violation of the military command structure, he would have faced a court martial, and that there had been no such army action. The court also found that none of the prosecution witnesses had seen Karki shoot Rasaili, and therefore his guilt could not be established beyond reasonable doubt. Gita Rasaili, a sister of Reena Rasaili, who has been active fighting for justice to her sister, said the family was devasted by the ruling. She said:

> We were happy to see some progress in the case when Kaji Bahadur Karki was arrested for his crime. We believed that others involved in Reena's death would also be arrested. However, our hope was shattered when Karki was acquitted. Truth and justice have become a distant matter when the main alleged perpetrator is still serving in the Nepal Army and enjoying impunity. Thousands of victims like me are struggling for truth and justice in Nepal.[130]

The NHRC's publication of previous investigations in October 2020 revealed that a court martial had found that Reena Rasaili died as a result of "excessive use of force." Lt. Saroj Basnet served four months imprisonment and was barred from promotion for three years, while the promotion of a major was suspended for one year.[131]

Update on Other Cases

An analysis of developments over the past decade in the 62 cases filed with the help of Advocacy Forum shows continuing obfuscation and failure by state authorities to initiate meaningful investigations and prosecutions relating to past grave violations. All 62 cases are, or were, the subject of formal complaints lodged with police in 49 different FIRs.[132] In

[130] Advocacy Forum interview with Gita Rasaili, August 19, 2020.

[131] National Human Rights Commission, *Twenty Years of the Commission's Recommendations and the State of Implementation*, October 15, 2020, https://www.nhrcnepal.org/nhrc_new/doc/newsletter/Inner_20_Years_Book_2077_Final_CTP_NHRC.pdf (accessed October 27, 2020).

[132] Human Rights Watch and Advocacy Forum, *Waiting for Justice*, September 2008, https://www.hrw.org/reports/nepal0908web.pdf; *Still Waiting for Justice*, October 2009, https://www.hrw.org/sites/default/files/reports/nepal1009webwcover.pdf; *Indifference to Duty*, December 14, 2010, https://www.hrw.org/report/2010/12/14/indifference-duty/impunity-crimes-committed-nepal.

almost all these cases, families said they have subsequently also approached the transitional justice commissions, but at time of writing, have received no response.[133]

In two cases, the families said they no longer wished to pursue justice. The family of Man Bahadur Karki, who was killed in September 2006 by Maoist fighters, said that they had withdrawn their complaint because they were told that they would otherwise not qualify for interim relief. The family of Maoist cadre Chandra Bahadur Basnet ("Manoj Basnet"), who was allegedly killed by members of the Armed Police Force in August 2005, have also said they no longer wish to pursue their case, after they were promised financial compensation and a job for Basnet's widow.

When Advocacy Forum reached out to police seeking updates on the remaining cases, they were repeatedly told that conflict-era cases were no longer being pursued because the transitional justice commissions will now process them. Furthermore, the police said that the Home Ministry had sent notices announcing that the government was withdrawing conflict-era cases that had been filed under terrorism-related laws.[134] These cases had usually been lodged against Maoist fighters and alleged supporters. Since joining mainstream politics, the Maoists had been campaigning to have such cases dropped. The Maoist-led government, in October 2008, had announced a blanket withdrawal of 349 cases. On November 17, 2009, the Madhav Kumar Nepal-led government retracted 282 cases.

According to information collected by Advocacy Forum, the cases approved to be withdrawn in October 2008 covered a wide range of crimes, whereas those approved to be withdrawn in November 2009 were murder and arson cases.[135]

In cases involving the security forces, the police are ignoring court directives, including Supreme Court issued mandamus orders. In a number of these cases, the Supreme Court has raised serious concerns over the police's failure to respect court orders. For example, in the case related to the security forces killing of two brothers, Nar Bahadur Budhamagar

[133] See appendix.

[134] Copy of order on file with Advocacy Forum.

[135] Advocacy Forum, Occasional Brief, yr. 2, vol. 1, "Evading Accountability by Hook or by Crook," June 2011, http://advocacyforum.org/downloads/pdf/publications/evading-accountability-by-hook-or-by-crook.pdf (accessed July 11, 2020).

and Ratan Bahadur Budhamagar, the Supreme Court issued a directive order in April 2017 stating that "such an indifference to duty to investigate and prosecute severely undermines [the] public's confidence in [the] rule of law."[136] Despite the order, there is no progress.

The government has also ignored the United Nations Human Rights Committee (HRC) when it repeatedly called on Nepal to thoroughly investigate alleged enforced disappearances, rape, torture, and other human rights violations, and to prosecute and punish those responsible in more than 20 cases brought to the Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.[137]

The government routinely argues that complainants have not exhausted domestic remedies to pursue justice and that these cases will be investigated by the CIEDP and TRC. In all eight cases where Advocacy Forum has assisted victims, the HRC has rejected the argument of the government that local remedies have not yet been exhausted, emphasizing that pending commission investigations and proceedings are not sufficient and cannot substitute for criminal prosecution for the most serious abuses.[138]

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[136] *Nandakali Budhamagar et al. v. Madhav Prasad Ojha, Chief District Officer, Kanchanpur et al.*, 066-CR-0058, April 23, 2017.

[137] For details of all cases, see OHCHR Database at https://juris.ohchr.org/search/results/1?typeOfDecisionFilter=0&countryFilter=0&treatyFilter=0. This includes two cases where AF had earlier assisted families to file FIRs, and were among the 62 cases highlighted in previous reports. They are Hari Prasad Bolakhe (see *Hari Prasad Bolakhe v Nepal*, UN Communication No. 2658/2015, CCPR/C/123/D/2658/2015, https://juris.ohchr.org/Search/Details/2530) and Subhadra Chaulagain (see *Subhadra Chaulagain v Nepal,* UN Communication No. 2018/2010, CCPR/C/112/D/2018/2010, https://juris.ohchr.org/Search/Details/1899).

[138] See, for instance, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2556/2015, CCPR/C/125/D/2556/2015, *Fulmati Nyaya v Nepal*, June 11, 2019. The Committee said: "The Committee notes the State party's claim that domestic remedies have not been exhausted because, on the one hand, the author's writ of mandamus is still pending before the Supreme Court of Nepal and, on the other hand, she still has the possibility to file a complaint before the Truth and Reconciliation Commission. The Committee notes, however, that the author: (a) filed two first information reports concerning the crime of rape and other inhumane and degrading acts with the District Police Office, which were rejected on the basis of the 35-day statute of limitations for the crime of rape; (b) filed a claim for compensation, pursuant to the torture compensation act of 1996, which was also rejected; and (c) filed a writ of mandamus before the Supreme Court of Nepal requesting the non-application of the 35-day statute of limitations for conflict-related individual claims, and that it is still pending. The Committee notes the author's uncontested allegations that she was unable to file a first information report within the legally established 35-day period, given that, during that time, she was still being arbitrarily detained with no access to legal assistance. The author has also argued that, even after her release, she was precluded from seeking support in her community and family due to the social stigma attached to victims of sexual violence. The Committee considers that the proceedings before the Supreme Court regarding the author's writ of mandamus filed in April 2014 are unduly prolonged, particularly considering the gravity of the crimes alleged. It further notes the author's statement that such proceedings are unlikely to bring relief given the long-standing jurisprudence of the Supreme Court on this issue. Therefore, in view of the legal and practical limitations on filing a complaint for rape in the State party, and the unduly prolonged proceedings before the Supreme Court and the unlikelihood of a successful outcome, the Committee considers that the remedies in the criminal justice system were both ineffective and unavailable to the author. With regard to

In all eight cases submitted by Advocacy Forum, the committee determined that violations had occurred, and recommended that the government initiate criminal investigations, bring those responsible to justice, enact legislation criminalizing all gross violations, and remove statutory limitations.[139] In response to the government's assertion that the transitional justice commissions will investigate the cases, the committee reminded Nepal that the proceedings of such non-judicial bodies do not replace a state's duty to investigate, prosecute, and punish gross violations of human rights.[140]

The government has ignored the recommendations of the committee to investigate and prosecute the cases. In some cases, the government has offered monetary relief, but has done so in an arbitrary way. For instance, survivors of rape and torture have in many cases been excluded from receiving interim relief, although these policies have been applied inconsistently.[141]

Universal Jurisdiction

The prevailing impunity in Nepal is due at least in part to the continued sway of the army and former Maoist forces, and to the acceptance by the police that the Nepal Army and political party officials, including Maoist officials, are unlikely to cooperate with investigations. Political leaders of all parties seldom conceal their interference in the justice process. Girija Prasad Koirala, who was prime minister when the CPA was signed in

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the transitional justice system, the Committee notes the author's argument that the registration of her case before the Truth and Reconciliation Commission is not an effective remedy, considering the Commission's non-judicial nature. In this vein, the Committee recalls its jurisprudence that it is not necessary to exhaust avenues before non-judicial bodies to fulfil the requirements of article 5 (2) (b) of the Optional Protocol, and that transitional justice mechanisms cannot serve to dispense with the criminal prosecution of serious human rights violations. The Committee therefore considers that resorting to the Truth and Reconciliation Commission would not constitute an effective remedy for the author."

[139] *Giri v Nepal*, UN Communication No. 1761/2008, CCPR/C/101/D/1761/2008 (2008); *Sharma v Nepal,* UN Communication 1469/2006, CCPR/C/94/D/1469/2006 (2008); *Dev Bahadur Maharjan v Nepal*, UN Communication No. 1863/2009, CCPR/C/105/D/1863/2009 https://juris.ohchr.org/Search/Details/1238 (accessed July 25, 2020).

[140] *Purnamaya v Nepal,* UN Communication No. 2245/2013, CCPR/C/119/D/2245/2013, https://juris.ohchr.org/Search/Details/2238 (accessed July 25, 2020).

[141] *Purnamaya v Nepal,* UN Communication No. 2245/2013, CCPR/C/119/D/2245/2013, https://juris.ohchr.org/Search/Details/2238; *Fulmati Nyaya v Nepal*, UN Communication No. 2556/2015, CCPR/C/125/D/2556/2015, https://juris.ohchr.org/Search/Details/2568 (accessed July 27, 2020). See also, for instance, *Himal Sharma v Nepal,* UN Communication No. 2265/2013, CCPR/C/122/D/2265/2013. Himal Sharma received 100,000 rupees interim relief under the category "wounded/injured" of the government's interim relief scheme, but has not been compensated for suffering torture and enforced disappearance, despite the Human Rights Committee finding in his favor in 2013. His sister, Sarita Sharma (UN Communication No. 2364/2014, CCPR/C/122/D/2364/2014), on the other hand, received 25,000 rupees interim relief for her disappearance, and another 50,000 rupees under the category "wounded/injured."

2006, admitted a year later to a group of human rights activists that there was a tacit agreement among the political parties "to forget the past and condone impunity."[142]

Several party leaders have backed apparent impunity, such as Sher Bahadur Deuba, who led the government three times during the conflict and has denied responsibility for enforced disappearances.[143] When he was once again prime minister from 2017 to 2018, he stated that security forces should not be prosecuted for counterinsurgency operations.[144] Maoist leader Pushpa Kamal Dahal, who used the nom-de-guerre "Prachanda" when he was commander of Maoist fighters, wants all conflict-era cases against his forces to be dropped. In 2016, he said that he had found that he personally was named in 37 cases.[145]

In January 2020, Dahal complained that the Maoists were unfairly blamed for the deaths of all 17,000 people that he said were killed during the conflict. He said he could only take responsibility for 5,000. "Many things have been aired pin-pointing me. It is not true that I came here after killing 17,000 people," he said. "What is true is that the state forces killed 12,000 people. I take responsibility for only 5,000 deaths and the 'kings' of yesterday should take that for 12,000 others. To say that even those killed by the state were killed by me would not be fair. I will not take responsibility for what I did not do."[146]

However, Dahal, Nepal Army commanders, and others are aware that international crimes cannot be brushed away, and that if justice is denied in Nepal, victims may be forced to

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[142] Mandira Sharma, "Transitional justice in Nepal: Low Priority, Partial Peace," in Deepak Thapa (ed.) and Alexander Ramsbotham, *Two steps forward, one step back: The Nepal peace process*, (Conciliation Resources, 2017), https://www.politicalsettlements.org/wp-content/uploads/2018/09/2017_CRAccord_Nepal.pdf (accessed August 21, 2020).

[143] Deuba was in office from 1995 to 1997, from 2001 to 2002, and from 2004 to 2005. Addressing a meeting organized by the NHRC to mark International Human Rights Day on December 10, 2004, then-Prime Minister Sher Bahadur Deuba heatedly refuted allegations of security force responsibility for "disappearances," saying: "You know, [the Maoists] are not known by their real names.… So, a Maoist gets arrested in one name and may be released with a different name. Some may have died during the battle. Some may have even crossed over to India across the open border. Then, how can the government be blamed for this?" Human Rights Watch, *Clear Culpability; "Disappearances" by Security Forces in Nepal,* 2005, https://www.hrw.org/reports/2005/nepal0205/nepal0205.pdf.

[144] Ram Kumar Bhandari, "Nepal: Transitional uncertainty," June 19, 2017, https://www.justiceinfo.net/en/justiceinfo-comment-and-debate/opinion/33628-nepal-transitional-uncertainty.html (accessed July 6, 2020).

[145] 'War-era related 37 cases in courts against Prachanda," *Rising Nepal*, May 13, 2016, http://therisingnepal.org.np/news/11288 (accessed July 6, 2020).

[146] Shirish B. Pradhan, "Nepal's Prachanda says he can be blamed for only 5,000 deaths during civil war," *Press Trust of India*, January 15, 2020, https://www.outlookindia.com/newsscroll/nepals-prachanda-says-he-can-be-blamed-for-only-5000-deaths-during-civil-war/1709296 (accessed July 6, 2020).

take their cases to courts abroad.[147] National judicial officials around the world could also investigate and prosecute those implicated in serious international crimes, under the principle of "universal jurisdiction." This principle allows authorities in a third country to pursue individuals believed to be responsible for certain grave international crimes even though they were committed elsewhere and neither the accused nor the victims are nationals of that country.[148]

Over the past two decades, the national courts of an increasing number of countries have pursued cases involving grave international crimes such as war crimes, crimes against humanity, genocide, torture, enforced disappearances, and extrajudicial executions committed abroad. In particular, groundbreaking investigations and prosecutions are underway in some European countries, including Germany, Sweden, and France, against people accused of serious crimes in Syria and Iraq. These cases are made possible by the arrival in Europe of victims, witnesses, and other previously unavailable evidence.

Such cases are an increasingly important part of international efforts to hold perpetrators of atrocities accountable, provide justice to victims who have nowhere else to turn, deter future crimes, and help ensure that countries do not become safe havens for human rights abusers. National experiences in various countries show that the fair and effective exercise of universal jurisdiction is achievable where there is the right combination of appropriate laws, adequate resources, institutional commitments, and political will.

The impact of this principle in addressing impunity in Nepali was made clear in 2013, when UK authorities arrested Col. Kumar Lama. He was charged on two counts of torture, including in respect of Janak Raut.[149] After a long trial, in August 2016, he was acquitted on one count (the torture of Karam Hussain), while the jury could not reach a verdict on the

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147 For instance, in June 2016, Dahal (Prachanda) canceled his visit to Australia, apparently due to fears he may be arrested for war crimes. "Fearing arrest, Prachanda cancels Australia visit," *IANS*, June 24, 2016, https://www.business-standard.com/article/news-ians/fearing-arrest-prachanda-cancels-australia-visit-116062400344_1.html (accessed July 6, 2020).

148 Clive Baldwin, "Catch them or else," *Kathmandu Post*, September 10, 2018, https://kathmandupost.com/opinion/2018/09/10/catch-them-or-else (accessed July 6, 2020).

149 Kumar Lama was accused under section 134 of the UK Criminal Justice Act which provides universal jurisdiction for torture. The UK also has the Geneva Convention Act 1957 allowing universal jurisdiction for war crimes, and the International Criminal Court Act 2001 providing universal jurisdiction for war crimes, genocide, and crimes against humanity (section 51). See Ingrid Massagé and Mandira Sharma, "*Regina v. Lama*: Lessons Learned in Preparing a Universal Jurisdiction Case," Journal of Human Rights Practice, vol. 10, no. 2 (2018): pp. 327-345, https://doi.org/10.1093/jhuman/huy020 (accessed July 6, 2020).

second count in respect of Janak Raut.[150] The Crown Prosecution Service, in early September 2016, informed the court that it would not seek a retrial of this second count.[151]

Despite Lama's eventual acquittal, his case shows that those accused of the most serious crimes risk arrest and prosecution in other countries, and that victims will continue to pursue justice throughout the world if they do not see any prospect in their home countries.[152] It also shows that prosecutors can bring cases concerning events far away—and many years ago—when the allegations amount to international crimes such as torture. The case attracted intense political and media attention in Nepal, where victims' groups and activists were inspired by the example of an alleged Nepali perpetrator on trial for serious conflict era abuses, and the authorities were reminded that international justice will remain a threat to perpetrators even—or especially—if justice is denied in Nepal.[153]

[150] Owen Bowcott, "Nepalese officer cleared of torturing suspected Maoist detainees," September 6, 2016, https://www.theguardian.com/law/2016/sep/06/nepalese-officer-col-kumar-lama-cleared-torturing-maoist-detainees (accessed July 6, 2020).

[151] Ingrid Massagé and Mandira Sharma, "*Regina v. Lama*: Lessons Learned in Preparing a Universal Jurisdiction Case," Journal of Human Rights Practice, vol. 10, no. 2 (2018): pp. 327-345, https://doi.org/10.1093/jhuman/huy020 (accessed July 6, 2020).

[152] Human Rights Watch, "Letter to the Attorney General of Nepal; Universal Jurisdiction and Nepal's Draft Law on Transitional Justice," April 29, 2018, https://www.hrw.org/news/2018/08/29/letter-attorney-general-nepal.

[153] See, for example, Sneha Shrestha, "The Curious Case of Colonel Kumar Lama: Its Origins and Impact in Nepal and the United Kingdom, and Its Contribution to the Discourse on Universal Jurisdiction," TLI Think! Paper 2/2018, February 6, 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3105720 (accessed October 27, 2020).

Recommendations

To the Government of Nepal

On the Transitional Justice Law and Enforcement

- Amend the transitional justice law to implement the rulings of the Supreme Court and United Nations recommendations to ensure that there is no amnesty for gross violations of human rights and international crimes.
- Publicly and explicitly lift all restrictions on police and prosecutors which prevent them from pursuing conflict-era human rights cases.
- Ensure that the transitional justice law provides a legal basis for all aspects of transitional justice, including definitions of crimes and a sentencing regime. If this is not the case, all penalty and sentencing provisions should be removed from the transitional justice law and the Penal Code should be applied instead, after relevant provisions of the Penal Code have been amended to ensure that prosecution of serious crimes committed during the conflict, including war crimes and crimes against humanity, are not barred by time limits and that prosecutors can pursue superior officers under the doctrine of command responsibility.
- Ensure that any punishment is commensurate with the offense. The law should require Nepali courts to take into account international standards for punishment of the offenses and clarify that prison sentences are the standard punishment for international crimes and gross violations of human rights.
- Enact a law to set out the principle of command responsibility in criminal law according to international standards. This is particularly important because victims are often unable to identify individual perpetrators, and in those cases investigating authorities should locate officers commanding the units responsible for the violations.
- Ensure that the transitional justice and criminal justice mechanisms are independent by removing any role of ministers or ministries in deciding on prosecutions, ending or withdrawing prosecutions, or having any other role in influencing cases.
- Make public an operational plan that includes both a clear timeline setting out how the commissions will take the process forward, including consultations, and a detailed framework for ensuring that all components of transitional justice function

effectively. The latter should include a detailed legal framework to ensure prosecutions meet international standards, including appropriate reparations and sentencing guidelines.

- Ratify the Rome Statute as soon as possible and extend the jurisdiction of the International Criminal Court back to 2002, the earliest date possible under the Rome Statute.

On the Commission of Investigation on Enforced Disappeared Persons (CIEDP) and the Truth and Reconciliation Commission (TRC)

- Ensure the operations and jurisprudential standards of the TRC and CIEDP apply best practices from existing international TRCs and commissions of inquiry, and that both commissions comply with Supreme Court directives.
- Ensure a public and transparent appointment process for commissioners. This should happen with full and adequate consultation with all stakeholders, including civil society, victims, and relatives of victims.
- Ensure that issues of contrition, reconciliation, and risk of repeat offenses, though relevant to punishment after conviction, are not taken into account in decisions to prosecute.
- Organize consultations with victims and civil society organizations, allowing them opportunities to have pre-consultations so that they can have informed participation in formal consultations.
- Ensure that the TRC or any other independent commission is specifically tasked with investigating allegations of conflict-related rape and other forms of sexual violence. Such a commission should have adequate powers and resources at its disposal to adopt gender-sensitive procedures that respect the privacy and dignity of survivors; engage counselors, interpreters, or special educators to minimize re-traumatization and to ensure that all procedures are accessible to people with disabilities; and refer survivors and their families to psychosocial counseling and other support.
- Ensure that the whole sentencing regime is properly explained to civil society and victims, and ensure it is made proportionate to the gravity of the crimes.

On the Criminal Justice System and Security Sector Reform

- Ensure that victims can pursue justice through the regular court system and are not barred from doing so by the operations of the TRC and CIEDP. Credibly investigate and prosecute all cases of alleged extrajudicial execution, enforced disappearance, or other grave human rights crime, including by questioning suspects who are members of the army, police, or Maoist forces.
- Adopt and enforce laws that make international crimes—including war crimes, crimes against humanity, and gross violations of human rights such as torture, enforced disappearance, rape and sexual violence, and summary and extrajudicial killing—offenses under domestic law matching the international definitions of these crimes; remove statutory limitations on victims' ability to file complaints; and ensure that any violations of the Convention against Torture occurring after May 14, 1991, the date of Nepal's accession to the treaty, can be prosecuted as such.
- Prevent any interference with the independence of the judiciary, prosecutors, or the attorney general; this includes inappropriate attempts to influence the prosecution of specific cases, to affect judicial decision-making in specific cases, to shield individuals from justice, or to withhold or destroy evidence.
- Ensure that the attorney general and courts can open and pursue investigations and prosecutions for international crimes independently of referrals from TRC and CIEDP.
- Ensure that every individual and institution in Nepal complies with rulings by civilian courts and make it an offense not to comply.
- Amend laws against torture and enforced disappearances to bring them in line with international standards, incorporating the doctrine of command responsibility into law.
- Revise vetting procedures for members of the security forces proposed for promotion, overseas UN peacekeeping duties, or specialized training abroad to ensure that human rights violators are identified. Any individual credibly accused of grave human rights violations, including through NHRC inquiries, should be placed on leave and banned from traveling abroad pending investigation.
- Ratify the Convention against Enforced Disappearances, and the Optional Protocol to the Convention against Torture.

- Send clear instructions to all police and public prosecutors that FIRs relating to the conflict period should be registered and promptly investigated, respecting court orders. Take disciplinary action against police who refuse to file FIRs, and against police or prosecutors who fail to follow court orders or credibly investigate cases.
- Hold members of the Nepal police, Nepal Army, and the Maoist party to account whenever they fail to adhere to court orders.
- Strengthen the National Human Rights Commission and ensure that all its recommendations are speedily implemented by relevant state authorities.
- Make public all reports of previous commissions of inquiry, including the Lal Commission report on the 2015 Terai violence and the Rayamajhi Commission report on the suppression of the 2006 People's Movement, and implement their recommendations in full.

To the United Nations, Donors, and Foreign Governments

- Recognize that impunity for gross human rights violations is entrenched in Nepal, which also prevents successful outcomes in development and governance programs and projects. Addressing serious allegations of criminal wrongdoing by powerful individuals through a credible justice process is a necessary step toward supporting the practice of accountable government in the public interest.
- Publicly call for a credible and victim-centric transitional justice process and regular criminal justice process, which are consistent with international standards of justice for international crimes and with the rulings of Nepal's Supreme Court.
- Ensure that interventions by diplomatic missions in Kathmandu aimed at brokering a "solution" to transitional justice meet international standards as set out by OHCHR and the jurisprudence of Nepal's Supreme Court.
- Incorporate a call for accountability and transitional justice in all public and private meetings with the Nepali government, senior politicians, police officers, and army leadership.
- Ensure that any programs to strengthen policing and rule of law publicly support concrete action to end impunity for abuses committed during the conflict period and subsequently, including ongoing abuses.
- Call for an end to politically expedient approaches to transitional justice without adequate accountability components or support from victims.

- Call for the Lal Commission report to be published and for measurable progress toward the implementation of its recommendations, including holding individuals accountable for serious rights violations.
- Recognize that Nepal has failed to implement recommendations that it had accepted during its Universal Periodic Review. Member states should raise concerns about this failure during Nepal's forthcoming review.
- Consider applying universal jurisdiction in national courts to bring cases against individuals implicated in the most serious conflict-era crimes.
- Insist that the Nepal Army comply with all court orders and with the transitional justice process as a condition of continued participation in UN peacekeeping operations.
- Call for rigorous vetting procedures to identify alleged perpetrators and exclude them from participation in UN peacekeeping missions.
- Consult NHRC data when vetting Nepali security forces participating in UN missions and assess whether Nepal may have cleared individuals to participate in peacekeeping missions despite the fact that they face human rights allegations, as it is known to have done in the past.

To the United Kingdom

- Require clear standards on human rights protections and security sector reform under the UK's existing agreement to provide ongoing funding to the Nepal police. Systematically vet all members of the Nepal Army receiving UK military training.
- Call for the Lal Commission report to be published and for measurable progress toward the implementation of its recommendations, including holding individuals accountable for serious rights violations committed by the police during the period in which it has been receiving funding from the UK.
- Consider individual sanctions, including asset freezes against individuals who face credible allegations of interference in justice or ongoing human rights violations such as complicity in extrajudicial killings or enforced disappearances.

To the United States

- Continue to restrict military engagement, training, and assistance, making future aid conditional on progress on accountability for conflict-era violations and ongoing abuses.
- Order the State Department and Treasury Department to consider targeted sanctions under the Global Magnitsky Act and other applicable US laws, including travel bans, asset freezes, and other financial sanctions, for all Nepali officials credibly implicated in gross human rights violations or in efforts to impede accountability for them.
- Consult with local civil society and human rights groups to identify units and persons implicated in gross human rights abuses to ensure that they are considered for sanctions noted above and made ineligible for military assistance under the US Leahy Law.

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Appendix: Case Update and Follow-Up

Case No.	Name	District	Case Summary	FIR Sub-mitted	FIR Reg-istered	Developments in 2008 - 2009	Progress as of 2020	NHRC's Findings
1	Raju Bishwakarma	Baglung	Extrajudicial killing. Raju Bishwakarma was arrested on March 1, 2002 by a group of the RNA soldiers.[154] 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.	March 18, 2007	Yes	There was no investigation, even after registering the FIR. A writ petition was filed on June 18, 2009.	On November 11, 2009, the Baglung Appellate Court issued an order to police to initiate an investigation into the case without delay. Despite this order, Advocacy Forum lawyers have not been able to find any evidence of progress in police files. Update: As of May 2020, there has been no progress on the case. The family has also lodged the case at the TRC, but there is no progress recorded at the TRC	The NHRC concluded that Raju Bishwakarma was the victim of an extra-judicial killing. It recommended that the government identify the commander and security personnel involved in the incident, and take legal action against them under the prevailing law. It also, recommended that the government provide compensation of 300,000 Nepali rupees [USD 2,500] to the victim's family, and arrange a free education for the victim's children. Implementation Status of the Recommendations: Partial. The relief and rehabilitation unit stated that the family had been provided with the recommended compensation.
2, 3	Ganga Gauchan and Pahalbir Bishwakarma (alias	Baglung	Extrajudicial killings. On July 11, 2004, four soldiers from	Feb. 15, 2007	Yes	There was no investigation, even after registering the FIR. On June 18, 2009 the families filed	On November 11, 2009, the Appellate Court, Baglung issued identical orders to the police to initiate investigations without delay.	The NHRC recommended that the government identify the security personnel involved in the incident, and take legal action against them. It also, recommended

[154] The name of the Royal Nepal Army (RNA) was later changed to Nepal Army (NA) after the end of constitutional monarchy.

	Pahal Singh)		Khadgadal Barracks beat Ganga Gauchan and Pahalbir Bishwakarma. 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.			separate petitions of mandamus at the Appellate Court, Baglung.	Update: Despite this order, Advocacy Forum lawyers have not been able to find any evidence of progress on the case as of May 2020. A general circular was issued by the Home Ministry on June 12, 2006 stating that the government has decided to withdraw all cases that were filed under the Terrorist and Disruptive Activities Ordinance (TADO) and the Terrorist and the Disruptive Activities (Control and Punishment) Act, 2002 (TADA).[155] Although these two cases are not under TADO or TADA, the Baglung District Police Office appears to have interpreted this order as a political decision not to investigate and prosecute any cases from the conflict period.[156]	that the government provide compensation of 300,000 Nepali rupees [USD 2,500] to the victims' families and arrange free education for Pahalbir Bishwakarma's children. Implementation Status of the Recommendations: Partial. The relief and rehabilitation unit stated that the family had been provided with the recommended compensation.
4	Dilli Prasad Sapkota	Baglung	Extrajudicial killing (after torture). A large group of security personnel arrested Dili Prasad Sapkota on February 8, 2005. According to eyewitnesses, Dilli was tied to a tree, severely tortured, and finally shot dead.	Feb. 2008	No	The victim's family tried to register an FIR at the Baglung District Police Office, but instead of registering the complaint police officers threatened to kill the family.	The family has stated that they have lost hope and are no longer pursuing the case. Update: The family said that they do not want to be re-victimized as a consequence of filing any petitions, which they fear will not bring any result.	The NHRC concluded that Sapkota had been the victim of an extra-judicial killing. It recommended that the government identify the security personnel involved in the incident, and take legal action against them under the prevailing law. It also, recommended that the government provide compensation of 300,000 Nepali rupees [USD 2,500] to the victim's family, and arrange free education for the victim's children. Implementation Status of the Recommendations: Partial. The relief and rehabilitation unit stated that the family had been provided with the

[155] Copy on file with Advocacy Forum.

[156] This pattern appears in several cases below.

								recommended compensation.
5, 6	Dal Bahadur Thapa and Parbati Thapa	Banke	Extrajudicial killings. On September 10, 2002, at around 8:40 pm, Dal Bahadur's family was woken by the sound of gunshots fired by a large group of security forces who had surrounded their house. The security forces fired persistently for 15 minutes, apparently suspecting that Maoists were hidden inside the building. Dal Bahadur and his wife Parbati Thapa were shot dead. The dead bodies were removed by the security forces and have not been returned to the family.	July 15, 2007	Yes	An investigation began in May 2008. On June 18, 2009, Dal's mother filed a petition of mandamus at the Nepalgunj Appellate Court.	On February 24, 2010, the Nepalgunj Appellate Court issued a writ of mandamus requiring authorities to proceed with the investigation. 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. Update: The District Public Prosecutor's Office, on August 29, 2010, directed the Kohalpur Area Police Office and Banke District Police Office to proceed with the investigation within the time specified by law. On November 14, 2010, the Kohalpur Area Police Office wrote to the Shree Khadka Dal Battalion, Chisapani, to produce the suspects at the Kohalpur Area Police Office for further inquiry, but received no response. The police prepared an incident report, but no proper investigation has been carried out. The case was registered at Kohalpur Area Police Office. Some statements regarding details of the incident have been taken. Apart from that, no progress appears to have been made and the investigation remains "pending." On May 15, 2020, Advocacy Forum contacted DSP Kuldeep Chand of Kohalpur Area Police Office to collect information about the investigation. He said he had no information about the case. However, Assistant Sub-Inspector (ASI) Randhir Singh of the same office said that in the year 2010 police received an order from "the centre" (i.e. Police Headquarters) that investigations of these kinds of cases should "remain pending." Kohalpur Area Police Office	The NHRC recommended that the government identify the security personnel involved in the incident, and press criminal charges against them. It also, recommended the government provide compensation of 200,000 Nepali rupees [USD 1,700] to victims' family, as well as arrange free education for a minor (aged 9) injured in the incident. Implementation Status of the Recommendations: Partial. The Office of the Prime Minister and the Council of Ministers stated that the Ministry of Home Affairs directed action against the security personnel involved in the incident, agreed to provide compensation to the family, and requested the Ministry of Education to arrange free education for the injured minor.

							transferred the case to Kohlapur District Police Office following this order. On May 15, 2020 sub-attorney general Nirajan Sharma of the Banke District Attorney's Office said there is no record of this case in his office. The family has also lodged the case at the TRC, but there is no progress recorded at the TRC .	
7, 8	Dhaniram Chaudhari and Jorilal Chaudhari	Banke	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.	Oct. 29, 2007	Yes	There was no investigation, even after registering the FIR. On June 18, 2009 the family filed a writ petition at the Nepalgunj Appellate Court.	On January 13, 2010, the Nepalgunj Appellate Court ordered the authorities to proceed with the investigation. Advocacy Forum has repeatedly urged the authorities to implement the court order. Update: A case was registered at Kohlapur Area Police Office. Apart from filing a report with details of incident, no effective investigation has been carried out. As stated above, on May 15, 2020, ASI Randhir Singh of the same office said that in 2010 police received an order from Police Headquarters that investigations of these cases "remain pending." The case was transferred to the District Police Office. On May 15, 2020, sub-attorney General Nirajan Sharma of the Banke District Attorney's Office told Advocacy Forum that there is no record of this case in his office. The families have also lodged the case at the TRC, but there is no progress recorded at the TRC.	The NHRC report uses Tharu for the victims' last name. It states that the two victims were killed while working in a field. The NHRC concluded that Dhaniram Tharu and Jorilal Tharu were victims of extra-judicial killing by the Armed Police Force deployed at Bageshwori Armed Police Basecamp, Kusum, Banke. It recommended that the government identify the security personnel involved in the incident, and take legal action against them. Implementation Status of the Recommendations in both cases: Under Consideration. The Office of the Prime Minister and the Council of Ministers communicated to the Ministry of Home Affairs and the Ministry of Defence concerning the implementation of the recommendations.
9	Keshar Bahadur Basnet	Bardiya	Enforced disappearance and extrajudicial killing.[157]	Feb. 14, 2007	Yes	There was no investigation, even after registering the FIR.	On November 18, 2009, the Nepalgunj Appellate Court issued a mandamus order to the police and other authorities to promptly proceed with the investigation.	The NHRC recommended that the government identify the commander and security personnel involved in the incident, and take legal

[157] Although presumed dead, the remains have not been handed over to the family.

			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. His family was refused access to him. Another detainee told Basnet's relatives that he saw Basnet being driven away after over a month in illegal detention on April 16, 2002. He remains disappeared and is presumed dead.			On June 18, 2009, the victim's family filed a writ petition at the Nepalgunj Appellate Court.	However, there has been no progress. Police officers have informed the relatives informally that Police Headquarters has ordered that this and other similar cases would come under the purview of the TRC, and they have therefore put these cases on hold. Update: After the date for the respondent to appeal the appellate court order expired, the plaintiff petitioned the Bardiya District Police Office on June 26, 2010, requesting them to proceed with the investigation in view of the court order. A copy of the order was attached with the application. However, we are aware of no progress in the investigation into the case. The army did not respond to an Advocacy Forum letter requesting information on the case. Though the FIR was registered at Bardia District Police Office , no further investigation has been carried out. In an informal conversation senior police officers at the office told Advocacy Forum that these kinds of conflict related cases are linked with political issues and it is hard to investigate at present. On May 15, 2020, the public prosecutor in Bardiya told Advocacy Forum that his office has not yet received any files from the police. The family has also lodged the case at the TRC, but there is no progress recorded at the TRC. .	action against them under the prevailing law. It also recommended that the government provide compensation of 300,000 Nepali rupees [USD 2,500] to the victim's family. Implementation Status of the Recommendations: Partial. The relief and rehabilitation unit stated that the family had been provided with the recommended compensation.
10	Bhauna Tharu (Bhauna Chaudhary)	Bardiya	Extrajudicial killing. On May 30, 2002, two soldiers shot Bhauna Tharu dead at his home, accusing him of being a Maoist.	July 24, 2006	Yes	There has been no investigation, even after registering the FIR. On June 18, 2009, a petition of mandamus was filed at the Nepalgunj Appellate Court by the victim's family.	On November 18, 2009, the Nepalgunj Appellate Court issued a mandamus order to the police to promptly proceed with the investigations. Update: Though the FIR was registered at Bardiya District Police Office, we are not aware of any further investigation having been carried out. As stated above, senior police officers in Bardiya told Advocacy Forum that cases	The NHRC recommended that the government identify the commander leading the patrol on that day from Wardal Company, and the security personnel who gave orders to shoot, and to take legal action against them. It also recommended the government provide compensation of 300,000 Nepali rupees [USD 2,500] to the victim's family.

							considered "political" will come under the jurisdiction of the TRC. The Bardiya district public prosecutor told Advocacy Forum in May 2020 that his office has not yet received any files from the police. The family has also lodged the case at the TRC, but there is no progress recorded at the TRC.	Implementation Status of the Recommendations: Partial. The Office of the Prime Minister and the Council of Ministers communicated to the Ministry of Home Affairs and the Ministry of Peace and Reconstruction concerning the implementation of the recommendations. The communications received from the OPMCM stated that a decision was taken by the Ministry of Home Affairs to provide compensation of the recommended amount to the victim's family.
11	Jaya Lal Dhami	Dadel-dhura	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, which told him that Jaya Lal had been "accidentally" killed in a confrontation with alleged terrorists.	Sept. 10, 2007	Yes	There has been no investigation, even after registering the FIR. On June 18, 2009, the family filed a petition of mandamus at the Mahendranagar Appellate Court, seeking an order to the police to conduct an investigation. On August 23, 2009, the court rejected the petition on the basis of police information that the FIR had already been filed and the investigation was ongoing.	On January 19, 2010 a case was filed in the Supreme Court, challenging the decision of the Mahendranagar Appellate Court on the grounds that, despite police claims, there was in fact no investigation of the case. Update: After hearing all parties, in February 2015 the Supreme Court ordered the Kanchanpur District Police Office to carry out an investigation. Although an FIR was then registered, we are aware of no evidence of subsequent progress in the case. The victim's wife lodged the case before the TRC as well, but no progress has been recorded.	Not Available

12, 13	Nar Bahadur Budhamagar and Ratan Bahadur Budhamagar	Dadeldhura	Extrajudicial killings. On August 17, 2004, soldiers picked up two brothers, Nar Bahadur and Ratan Bahadur Budhamagar, from their house, and later allegedly 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.	June 18, 2007	Yes	There has been no investigation, even after an FIR was registered following a successful mandamus petition. On June 5, 2008, the relatives of the victims filed a second mandamus petition, 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 rejected after the police informed the court that a preliminary report had been forwarded to the public prosecutor's office.	On August 18, 2009, a case was filed at the Supreme Court, challenging the decision of the Mahendranagar Appellate Court to reject the contempt of court petition. Update: After hearing both sides on April 23, 2017, the Supreme Court issued a directive order to expedite the investigation with due diligence. It highlighted the importance of prompt investigation to restore faith in rule of law. In December 2019, Advocacy Forum sought information on the case from the Kanchanpur District Police Office. Sub-Inspector Narendra Bhandari said there were around 26 conflict-related FIRs, and these FIRs have a time limitation of 20 years. He further stated that investigation of these FIRs has not yet started, and that by 2027 when the time limit expires some sort of investigation will begin. The District Attorney's Office said that until the police send the file to the prosecutor the case remains under the control of the police. His office has not received any such cases from the police. The family has also lodged the case at the TRC, but there is no progress recorded at the TRC.	Not Available
14	Sarala Sapkota	Dhading	Extrajudicial execution Soldiers arrested 15-year-old	June 28, 2006	Yes	In June 2006, Sarala's father filed an FIR at the Dhading District Police Office.	On May 31, 2010 the Supreme Court issued an order of mandamus to the District Police Office to promptly proceed with the investigation of the case. Despite this, no investigation has been done. On	The NHRC recommended that the government order the Dhading District Police Office to advance the legal proceedings on the FIR registered there. It said the

			Sarala Sapkota on July 15, 2004 from her grandfather's house. However, when her relatives went to Baireni Barracks and the Dhading District Police Office, the officers denied that the arrest had taken place. On January 11, 2006, an NHRC team exhumed her remains near her village.			There has been no investigation, even after registering the FIR. In November 2007, her father filed a mandamus petition at the Supreme Court.	July 14, 2008, the NHRC had recommended that the government provides Rs 300,000 to the victim's family. The NHRC received a letter from the Prime Minister's Office on October 27, 2009, stating that they have paid the recommended compensation following a decision by the Home Ministry on September 11, 2008. Update: In May 2020, Advocacy Forum contacted Police Inspector Saroj Rai of Dhading District Police Office to get an update on the case. The police said that there was no progress in the investigation. The family has also lodged the case at the TRC, but there is no progress recorded at the TRC.	forensic medicine department at Tribhuwan University Teaching Hospital, Maharajgunj, may allow the police access to the remains of Sapkota for investigation within 15 days of seeking such permission. It said that if the police didn't seek permission within the given period then the department may handover Sapkota's body to her family. It also recommended the government provide compensation of 300,000 Nepali rupees [USD 2,500] to the victim's family. Implementation Status of the Recommendations: Partial. The Office of the Prime Minister and the Council of Ministers stated that the Ministry of Home Affairs has decided to provide the recommended compensation.
15, 16, 17, 18, 19	Sanjeev Kumar Karna, Durgesh Kumar Labh, Jitendra Jha, Shailendra Yadav, and Pramod Narayan Mandal	Dhanusha	Enforced disappearances and Extrajudicial Killings 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	Feb. 2009	Yes (following an order by Supreme Court)	In July 2006, the families showed police the site where the bodies of the five men were believed to be buried. The Supreme Court, in February 2009 issued an order to the police to proceed with investigations.	Responding to pressure from both national and international organisations, the NHRC took the lead in the exhumation of the victims' bodies. Update: Bodies of four victims were exhumed in mid-September 2010, and the fifth body in February 2011. The process of identification of the five exhumed bodies was concluded at the Teaching Hospital in Kathmandu, while advanced forensic tests were carried out at the University of Helsinki, Finland. Despite the recommendation of the NHRC to prosecute Kuber Singh Rana in connection with the killings, Rana was promoted to the post of assistant inspector general of police on June 23, 2011. On 27 June 27, 2011, a group of human rights defenders challenged Rana's appointment by filing a public	The NHRC, in its investigation report, identified several people implicated in the case and recommended that the government conduct the necessary investigation and take legal action against them, and that the government provide compensation of 300,000 Nepali rupees [USD 2,500] to each victims' family. Implementation Status of the Recommendations: Partial. The relief and rehabilitation unit stated that the decision has been made to provide each family with the recommended compensation.

			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."				interest litigation suit (PIL) in the Supreme Court. In an interim ruling of July 13, 2011, the Supreme Court held that a recommendation by the NHRC is not a sufficient basis to suspend Rana's promotion pending the outcome of criminal investigations. However, the court ordered the state to appoint an officer with powers equivalent to that of a deputy-superintendent (DSP) to take the investigation forward pursuant to Rule 4(1) of the State Cases Rules, 1998. The court directed that the government must ensure 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 containing updates of progress on the case. A police officer with the rank of deputy superintendent of police was appointed to lead the investigation. However, the officer has not reported progress to the court, as required. The forensic tests identified the bodies. The remains were transferred to the victims' relatives on July 23, 2014. The bodies were cremated on July 24, 2014, in Janakpur following an event organized by the families of all five victims. On July 24, 2015, the NHRC issued a press statement asking the authorities to take prompt action against the perpetrators, and warned that their names would be made public, affecting possible future appointments to public posts.[158]	

[158] Section 7 of the NHRC ACT 2012 To Make Names Public and Keep their Record: "(1) The Commission may make public names of officials, persons or agencies that do not knowingly implement or observe the recommendations or orders or directives made by the Commission with regard to violations of human rights as Human Rights Violators; (2) Prior to making

							However, the Supreme Court has not received any updates on the case. The NHRC publicized the names of the accused in its report of October 2020. The victims' families have jointly registered their complaints at TRC. However, they alleged that the police investigation was side-lined after the formation of TRC. The police have refused to continue the investigation, saying it would be dealt with by the TRC.	
20, 21	Ram Chandra Lal Karna and Manoj Kumar Dutta	Dhanusha	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 District Police Office. Relatives went to several police	Oct. 19, 2006	Yes	There has been no investigation even after registering the FIRs. On June 18, 2009, the relatives of the victims filed separate writ petitions at the Appellate Court, Janakpur. In January 2008, the Dhanusha District Police Office informed Advocacy Forum that it would not act on any conflict-related FIRs	On December 1, 2009, the Janakpur Appellate Court issued an order to the Dhanusha District Police Office to register the FIR. The court also ordered the District Police Office to promptly proceed with the investigation. Update: The Dhanusha District Police Office registered the FIR. However, to our knowledge no progress has been made in the investigation. A complaint has been registered at the TRC, but no progress has been reported.	Not Available

public the names pursuant to Sub-section (1), the Commission shall have to write to officials, persons or agencies stating that they did not observe or implement the Commission's recommendations, orders or directives, giving a Fifteen-days timeline to such officials, persons or agencies to submit clarifications; (3) In case such officials, persons or agencies do not submit clarifications within the stipulated timeline after receiving in writing pursuant to Sub-section (2) or in case the clarifications do not seem to be reasonable, the Commission may make public the names of such officials, persons or agencies as referred to in Subsection (1); (4) The Commission shall keep the records of the names of such officials, persons or agencies whose names have been made public pursuant to Sub-section (1); (5) While recommending a person whose name has been made public pursuant to Sub-section (1) for appointment, promotion and career development in any public post, the concerned agency may take the records maintained pursuant to Sub-section (4) as a basis; (6) While assigning new responsibility to an official whose name has been made public pursuant to Sub-section (1), the concerned agency may take the records maintained pursuant to Subsection (4) as a basis in relation to his/her capability (competence)."

			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."					
22, 23, 24, 25, 26	Lapten Yadav, Ram Nath Yadav, Shatrughan Yadav, Rajgir Yadav, and Ram Pukar Yadav	Dhanusha	Extrajudicial killings. On October 1, 2004, security personnel arrested these five men from their homes. According to eyewitnesses they were first beaten, and then 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	Oct. 2007	Yes	The family tried to register an FIR but police refused.	In December 2010, the families of the victims filed a writ of mandamus at the Janakpur Appellate Court, requesting an order to the Dhanusha District Police Office to initiate a prompt and effective investigation. Update: On May 10, 2011, the Court ordered the Dhanusha District Police Office to carry out a prompt and effective investigation. The FIR was registered but it has not yielded any success in initiating a prosecution. On May 3, 2020, Advocacy Forum met with police officer Ramesh Basnet of Dhanusha District Police Office and inquired about any progress in the case. He said that he had been appointed to the position five months earlier. He said that he is not aware of anything being done on these cases. He also said that unless national policies are made to deal with conflict-cases, nothing can be done. A complaint has been registered at the TRC but no progress has been reported.	The NHRC report uses the name Wiltu Yadav whereas it doesn't speak of Lapten Yadav. The NHRC recommended that the government prosecute the security personnel involved in the incident under the prevailing law. It also recommended the government provide compensation of 150,000 Nepali rupees [USD 1,260] to each victim's family. Implementation Status of the Recommendations: Partial. The NHRC received a communication stating NRs 100,000 Nepali rupees [USD 840] was released for each victims' family. However, the names of Wiltu Yadav and Blrenjee Yadav were not included in the communication related to compensation.

			false information identifying them as Maoists.					
27	Ramadevi Adhikari	Jhapa	Extrajudicial killing. On July 3, 2005, security forces arrested Ramadevi Adhikari and her husband from their home. Later, Ramadevi was shot and killed. The security forces did not allow the body to be sent for an autopsy.	Nov. 9, 2006	No	The family tried to register a FIR but police refused.	On October 12, 2009, the Ilam Appellate Court rejected a mandamus petition seeking an order to file an FIR, on the grounds that there was no post-mortem report and that relatives did not report the case immediately after the incident On February 10, 2010 a writ of mandamus was filed in the Supreme Court, challenging the decision of the Appellate Court. Update: The Supreme Court issued a mandamus order on June 16, 2014, saying that the police should register an FIR and promptly investigate the case. However, no progress has been made in the case. The victim's husband registered a complaint at the TRC in June 2016. He named alleged perpetrators, which makes him fearful. He has said that if there is a genuine investigation and perpetrators are held to account, he will be threatened.	The NHRC recommended that the government identify and prosecute the security personnel involved in the incident under the prevailing law. It also recommended the government provide compensation of 100,000 Nepali rupees [USD 840] to the victim's family. Implementation Status of the Recommendations: Partial. A communication from the Nepal Army *junggi adda*[159] stated that a second lieutenant was found to have exercised excessive use of force. Hence, he would face three months of imprisonment, freezing of promotion up to one year, and the victim's family would receive compensation of 25,000 Nepali rupees [USD 210]. The NHRC also received a communication stating 100,000 Nepali rupees [USD 840] had been released for the victim's family.
28	Hari Prasad Bolakhe	Kavre	Extrajudicial killing. On December 27, 2003, police arrested Hari Prasad at a bus stop. When his father went to the District police Office to complain	Nov. 7, 2006	Yes (following a Supreme Court order)	The family filed a writ petition in the Supreme Court seeking a court order to the police to register an FIR.	The Supreme Court rejected the petition on November 15, 2009, on the grounds that the Kavre District Police Office provided a written reply to the Court that it had already registered the FIR and an investigation was ongoing. Update: On July 21, 2011, Kavre District Police Office wrote to the Shyampati Police Post, Kavre, asking them to produce the complainant.	The NHRC concluded that Bolakhe was the victim of an extra-judicial killing. It recommended that the government prosecute three security forces members whom it named, as well as others involved in the incident. It also, recommended the government provide compensation to the victim's family; the amount to be similar to that provided by

[159] Junggi adda can mean either "army headquarters" or "court martial."

			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 a "gunfire injury."				On September 11, 2011, the Kavre District Police Office wrote to the Kavre District Administration Office asking whether the complainant had been provided interim relief. Since then, although there has been some correspondence between criminal justice authorities in relation to the case, no real investigation has been carried out. On November 14, 2014, Gyan Devi Bolakhe submitted a communication on their case to the United Nations Human Rights Committee. On May 2, 2016, the government of Nepal submitted its observations on the admissibility and merits of the communication, contending that the author had not exhausted all domestic remedies and that the case was still under investigation. It also argued that the allegations made by the author fall under the jurisdiction of the TRC and that it had already provided the sum of Rs. 500,000 to the family as "interim relief." On August 25, 2016, Gyan Devi Bolakhe submitted her responses to the observations made by the government of Nepal. On September 4, 2018, the UN committee adopted and published its views on the communication, finding a number of violations under the ICCPR and recommending effective investigation and prosecution of those responsible. However, as of May 2020, no progress that we are aware of had been made in the case. The family has submitted the case to the TRC but has received no updates from the TRC.	the government to the families of the victims of other human rights violations. Implementation Status of the Recommendations: Partial. The Office of the Prime Minister and the Council of Ministers stated that the Ministry of Home Affairs decided to provide compensation of 100,000 Nepali rupees [USD 840] to the family.
29	Reena Rasaili	Kavre	Rape and extrajudicial killing. On February 12, 2004, armed	May 25, 2006	Yes	There is progress in investigation after registering the FIR.	In response to a writ of mandamus, on December 14, 2009, the Supreme Court issued an order to the Kavre District Police Office and the public prosecutor to proceed with the investigation.	The NHRC recommended that the government prosecute the security personnel involved in the incident under the prevailing law. It also recommended the Government to provide

			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.				The Supreme Court also criticized police and prosecutors for not taking necessary and appropriate steps, and continuously showing indifference to fulfilling their duty to investigate and prosecute. Following to this order, statements of the complainant and four other witnesses were recorded by the Kavre District Police Office on April 21, 2010. The District Police Office also corresponded with other police offices to locate and arrest a former soldier (who deserted) Kaji Karki, and to hand him over to the Kavre police if he is found. Update: On September 9, 2010, former Junior Army Staff, Kaji Bahadur Karki, was arrested by the Kaski District Police Office and handed over to the Kavre police. On September 17, 2010, a charge of murder was filed against Karki at the Kavre District Court,. On September 19, 2010, the District Court Kavre ordered his detention awaiting trial. Then Lieutenant Saroj Basnet was also charged with murder in absentia, and the Kavre District Court issued an arrest warrant against him on October 28, 2010. He has not been arrested yet, despite the fact that he was still working for the army. Advocacy Forum received anecdotal information that he was promoted following the incident. In October 2010, Kaji Bahadur Karki filed an application before the Patan Appellate Court challenging the order of Kavre District Court. In December 2010 the appellate court upheld the decision of the district court to hold him in remand while awaiting trial. In January 2011, Karki filed an appeal in the Supreme Court against the decision of the Appellate Court. He also filed a petition of habeas corpus at the Supreme Court in February 2011, challenging his detention, claiming	compensation of 150,000 Nepali rupees [USD 1,260] to the victim's family. Implementation Status of the Recommendations: Partial. The Nepal Army determined that the victim died due to the "excessive use of force." Two officers were court martialled and imprisoned for four months. One of them, a major, also had promotion suspended for a year, and the other, a lieutenant, had promotion suspended for three years. The Office of the Prime Minister and the Council of Ministers stated that the compensation of 100,000 Nepali rupees [USD 840] was sent to the district for the victim's family.

							his case fell under the jurisdiction of the TRC. In August 2011, the Supreme Court rejected the petitions. Kavre District Court recorded the statements of witnesses in the case, including the accused. No evidence was provided by any other Army personnel. Court martial documents were not made available to the Court. In December 2013, the court acquitted the defendant on the grounds that no subordinate would shoot unless he had been given an order to do so, and if he had done this the Army would have tried him by court martial. The court found (wrongly) that there was no mention of a court martial. The judgement also found that, as none of the prosecution witnesses could say that they had seen Kaji Karki shooting Reena, his guilt could not be established beyond reasonable doubt. Although the prosecution appealed the acquittal, the appeal court upheld the decision of the district court. The family submitted the case to the Human Rights Committee on December 10, 2015. In July 2017, the government of Nepal submitted its observations to the committee, arguing that conflict-era cases will be dealt by transitional justice mechanisms established under the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act, 2014. As of May 2020, the HRC had not published its views on the communication. Family members have filed the case before the TRC, but no progress has been made so far.	
30	Subhadra Chaulagain	Kavre	Extrajudicial killing. On February 13, 2004, soldiers shot and killed 17-	June 6, 2006	Yes	There was no investigation, even after registering the FIR. In October 2007, the family filed a	On December 14, 2009, the Supreme Court issued an order to the police and public prosecutor to promptly proceed with investigation of the case. It criticised the police and prosecutor for not taking appropriate and effective steps to	The NHRC recommended that the government prosecute the security personnel involved in the incident under the prevailing law. It also recommended the government provide

			year-old Subhadra Chaulagain at her house, accusing her of being a Maoist. They beat her father severely.			case in the Supreme Court seeking an order for the authorities in Kavre to proceed with the investigation.	investigate. It also instructed the district attorney to play an active role in guiding the investigation of the case. In April 2010, the statements of three witnesses were recorded at the Kavre District Police Office. In September 2010, police also recorded the statement of Putali Chaulagain, Subhadra's mother. Although the police dossier contains many letters submitted to different agencies, no other progress in the investigation was noted. Update: After nearly a year, in July 2011, the Kavre District Police Office wrote to the Mahottari District Police Office asking for details of the defendant. It sent the FIR to Police Headquarters, Naxal, seeking their advice on the case. It also wrote to Bagmati Zonal Police office asking for details of a third defendant. But there is no written reply from the Mahottari District Police Office or the Zonal Police Office. On December 7, 2010, Kedar Chaulagain submitted a communication to the HRC. On March 5, 2011, the government of Nepal submitted its observations, arguing that domestic remedies were not exhausted. After analysing the submissions made on different dates both by the complainant (represented by Advocacy Forum) and the government, the committee on December 15, 2014 adopted its views on the case. It recommended the government provide an effective remedy, including a complete investigation, prosecution and punishment of those responsible, eparations, and "appropriate measures of satisfaction." However, despite these efforts, no we are not aware of any steps that	compensation of 150,000 Nepali rupees [USD 1,260] to the victim's family. Implementation Status of the Recommendations: Partial. The Nepal Army found that the victim died due to the "excessive use of force." Security personnel were court martialled and imprisoned for four months. One of them, a major, had promotion suspended for a year, and the other, a lieutenant, had promotions suspended for 3 years. The Office of the Prime Minister and the Council of Ministers stated that compensation of 100,000 Nepali rupees [USD 840] was sent to the district for the victim's family.

							have been taken towards prosecution of those involved in the case. The case has been registered at the TRC, but no progress is recorded.	
31	Maina Sunuwar	Kavre	Extrajudicial killing. On 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 Sunwar, that her daughter had been killed. Maina's body was exhumed from inside the Panchkal Army Barracks in March 2007. Under pressure, the army	Nov. 13, 2005	Yes (following a Supreme Court order)	Between March and July 2008, subpoenas were served at 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 Nepal Army Headquarters to immediately proceed with the automatic suspension of Major Niranjan Basnet, and for all the files containing the statements of people interviewed by the Military Court of Inquiry to be produced.	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. In November 2009, the statements of prosecution witnesses were recorded in the Kavre District Court. In December 2009 one of the accused, Captain Niranjan Basnet, was repatriated from UN peacekeeping duties in Chad. The Prime Minister directed the NA to produce Major Basnet at the court, but the NA did not respect the order. Instead, the military police collected Basnet from the airport and took him to army headquarters. In August 2010, the Kavre District Court sent an order letter to Dolakha District Court to prevent any sale or transfer of the property of Niranjan Basnet. Similar letters were sent in relation to the other accused. Update: Between 2010 and early 2011, the Kavre District Court wrote to different authorities and the Dolakha court seeking information, documents, and the order to prevent the sale of their property. Statements of 13 army personnel taken by the court martial were submitted to the Kavre District Court. In September 2013 the Kavre District Court decided to put the case on hold, as no accused could be arrested. On January 12, 2016, Devi Sunuwar filed an application at the Kavre District Court requesting an order to revive the case for legal	The NHRC learned that three security personnel were convicted at a court martial of "not following the due course of procedure during investigation," and "not handing over the body as per the rules.", As a result the major's promotion was halted for two years, along with six months' imprisonment and a 50,000 Nepali rupees [USD 420] fine. The promotion of two Captains was halted for a year, with six months' imprisonment and a fine of 25,000 Nepali rupees [USD 210] for each. The NHRC recommended that the government provide compensation of 300,000 Nepali rupees [USD 2,500] to the victim's family. The NHRC requested the government to implement its previous recommendations on arresting those accused of serious human rights violations and taking legal action against them in an ordinary court of law, including advancing proceedings in cases of serious human rights violations where that had already been ordered by the Supreme Court. Although the Kavre District Court has released a warrant on Maina Sunuwar's extra-judicial killing, the NHRC was informed that a 'court of inquiry' has been constituted to look over the

			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 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 investigation . On September 18, 2007, the Supreme Court ordered the Kavre District Police Office to complete the investigation within three months. On February 3, 2008, murder charges were				proceedings. The court granted the order the same day. However, hearings were postponed several times. On October 21, 2016, Judge Lekhanath Dhakal issued an order to submit the original case file of the court martial. On December 3, 2016, the office of the Judge Advocate General replied to the court that it would present a copy of the court martial's decision, along with the original case file, on the next hearing date. On April 16, 2017, Kavre District Court convicted three army officers, namely Babi Khatri, Sunil Prasad Adhikari, and Amit Pun, of the murder of Maina Sunuwar. Although the court's original decision as posted on its webpage stated all four accused were convicted, this was altered later in the day,. Niranjan Basnet, the only officer still serving in the Nepal Army, was acquitted. According to information received by Advocacy Forum, the judges and the court officers held an "emergency meeting" after the decision convicting all four officers was made. The decision of the court made public in writing later that day gave the three defendants a sentence of 20 years in prison, but the judge used his discretionary power under the section 188 of Muluki Ain, 1964 to reduce their sentences to five years, on the grounds that the incident took place in the context of conflict. On April 30, 2017, Kavre District Court issued a notice to the Kavre district public prosecutors' office to file an appeal at the Patan High Court, within 70 days, if it was not satisfied with the judgment. On May 8, 2017, the Kavre district public prosecutor's office decided not to move forward with an appeal in the case, on the grounds that	accused Major Nirajan Basnet's matter. The NHRC deemed that the concerned authority should bring the accused before an ordinary court, respecting the decision of the Supreme Court, Kavre District Court and the NHRC's recommendations. Implementation Status of the Recommendations: The Office of the Prime Minister and the Council of Ministers stated that the Ministry of Home Affairs decided to provide compensation of 300,000 Nepali rupees [USD 2,500] to the victim's family.

			filed in the Kavre District Court, and summons for the arrest of the four accused were issued.				even if the appeal were made, there was no chance of success, and referred the decision to the appellate level prosecutor's office in Patan. On May 17, 2017, the appellate level prosecutor's office decided not to move forward with the appeal and referred the decision to the Office of the Attorney General. Witnessing a rapid move to prevent an appeal against the acquittal of Niranjan Basnet, Devi Sunuwar filed a petition on May 18, 2017, to the district office of the public prosecutors seeking a copy of the decision of the district prosecutor. However, the prosecutor's office denied her a copy of the decision. On May 18, 2017, Devi Sunuwar was told that the prosecutor at the appeal level had also decided not to appeal. However, Devi was denied a copy of the decision there too. On May 18, 2017, Devi Sunuwar submitted an application to the Office of the Attorney General, arguing that the decisions of the district and appeal level prosecutors not to appeal against Basnet's acquittal were erroneous. The Office of the Attorney General did not respond. Again on May 24, 2017, Devi submitted another application demanding immediate action. She did not receive any response. However, she came to know on June 28, 2017, that the Attorney General had also decided against an appeal. On August 11, 2017, Devi filed a writ application of certiorari/mandamus to nullify the decision of the prosecutor and to oblige them to appeal the case. Meanwhile, on September 1, 2017, the Office of the Judge Advocate General of the Nepal Army filed a writ of certiorari along with prohibition at the Supreme Court, seeking annulment of the decision	

							of the District Court convicting the three officers. It argued (1) that the principle of double jeopardy was violated, on the basis that the army had already prosecuted the three convicted officers, (2) that the case came under the purview of the transitional justice mechanisms rather than the criminal justice system, and (3) that as the incident took place during a military operation, military rules should be applied. The petition also argued that no other conflict era cases should be placed under the jurisdiction of the civilian courts. After repeated postponement, the case is still pending before the Supreme Court. No one has been arrested despite the convictions. On April 3, 2018, the Patan High Court rejected the writ application of certiorari/ mandamus filed by Devi Sunuwar, stating that it is the prerogative of the prosecutor and Attorney General's Office to take decisions on whether to appeal or not.	
32	Arjun Bahadur Lama	Kavre	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 abductors reportedly marched	August 11, 2008	Yes	The family first tried to file an FIR in June 2007, but the police refused. Following a Supreme Court order, the FIR was finally registered in August 2008. An NHRC investigation concluded Arjun had been detained and deliberately killed. On February 4, 2009, Kavre police told Advocacy Forum they had corresponded with the Sindhupalchowk	There has been no substantive investigation into the FIR, except for some correspondence between various police offices. On January 22, 2010, Kavre District Police Office sent a letter to the Foksingtar Area Police Office with orders 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's statement was recorded at Kavre District Police Office. In May 2010, the Kavre District Police Office sent letters to Shyampati Deupur police post, and Sindhupalchowk District Police Office, asking them to arrest the defendants. Update: On May 4, 2011, Agni Sapkota was appointed Information	The NHRC concluded that the killing was a violation of Article 3 of the Geneva Convention, 1949. It recommended that the government identify and initiate criminal proceedings against the perpetrator/s and inform the NHRC about the outcome. It also recommended compensation to the victim's family equal to the amount provided by the government to the families of the victims of other human rights violations. Implementation Status of the Recommendations: Partial. The Ministry of Home Affairs stated that Purnimaya Lama had been provided with the

			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.			District Police Office on June 19, 2008, to search for and arrest the defendants from that district. The police said that they received a letter from Sindhupalchowk District Police Office on July 25 stating that one of the suspects, 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 the 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 witnesses in May, 2009. On May 4, 2009, the Kavre	and Communication minister. On May 27, 2011, a group of human rights defenders filed a public interest litigation (PIL) at the Supreme Court challenging the appointment, and seeking an interim order to suspend him from the post. Responding to the PIL, in July 2011, the Supreme Court refrained from issuing an interim order for the suspension of Agni Sapkota's appointment as a minister. However, the Court ordered the police and prosecutors to conduct an impartial investigation into the murder and submit a progress report every 15 days via the Attorney General's Office. The Court stated there is no law to remove Sapkota, and it is a matter for his conscience whether to remain in office or leave while allegations against him are pending. The Council of Ministers decided on July 27, 2012, to cancel the FIR filed against Agni Sapkota and another Maoist member of parliament, Suryaman Dong. On November 22, 2012, Purnimaya Lama, the wife of the victim. filed a writ at the Supreme Court asking that the government decision be overturned, as it would effectively stop all investigations into the case. On November 26, 2012, the Supreme Court issued a stay order on the execution of the government's decision to cancel the FIR. Since then, the case has been postponed more than a dozen times. On April 4, 2016, the Court decided that the case would be adjudicated by a constitutional bench. However, the hearing has been repeatedly postponed. On January 27, 2020, Agni Sapkota was elected speaker of parliament. On January 28, 2020, the Supreme	recommended compensation.

						District Police Office wrote to the police post at Foksingtar asking them to prepare a report about the incident.	Court refused to issue a stay order in a writ petition brought by senior lawyer Dinesh Tripathi against Sapkota's appointment as speaker. Nevertheless, the court asked the government to provide details regarding the investigation within 30 days. On March 13, 2020, the hearing was postponed. The next hearing date was fixed for April 17, 2020, but was again postponed due to the Covid-19 lockdown.	
33, 34	Chot Nath Ghimire and Shekhar Nath Ghimire	Lamjung	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 discovered that he had been detained at Bhorletar army camp. In November 2006 the NHRC exhumed the	Nov. 19, 2006	Yes	There was no investigation, even after registering the FIR.	On June 18, 2009, the families filed separate petitions of mandamus at the Kaski Appellate Court, seeking orders to the District Police Office and Public Prosecutor's Office to promptly investigate the FIR. The writ petition was rejected in October 2009 on the grounds that the District Police Office had responded to the court stating that the investigation was ongoing in the case. As there was no progress on investigation, on March 9, 2010 an appeal was filed in the Supreme Court, challenging the decision of the Appellate Court and seeking order against the police and prosecutor. Update: On December 15, 2011 the Supreme Court issued the mandamus order as requested by the applicant, and directed the Lamjung District Police Office to promptly initiate the investigation. In January 2020, when Advocacy Forum contacted DSP Basanta Bahadur Rana Magar, the officer in charge of the Lamjung District Police Office, about the case, he said that he could not find any record of it, let alone facts about subsequent developments. According to him, the investigation had not proceeded any further as the District Police Office was told to	The NHRC recommended that the government initiate criminal proceedings against named senior army officers. It also recommended compensation of 300,000 Nepali rupees [USD 2,500] to the families of the victims, and free education for their children Implementation Status of the Recommendations: Partial. The relief and rehabilitation unit stated that the families had been provided with the recommended compensation.

			bodies of both men.				stall the case by the district attorney's office. In the meantime, on July 15, 2011, the NHRC issued a decision finding a violation of the right to life and recommending prosecution and compensation of 300,000 Nepali rupees [USD 2,500] to the victims' families, as well as free education for their children. The family has submitted the case at the TRC but no progress has been reported.	
35	Prem Bahadur Susling Magar	Morang	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 learned of his death via radio reports and located his decomposing body on the streets after a few days.	July 6, 2007	No	According to officials in the district administration office, the copy of the FIR which was submitted to the Chief District Officer has gone missing.	Update: The victim's son has filed a complaint at TRC. However, the family has not received any information. Advocacy Forum contacted the district public prosecutor in May 2020, who reported having no knowledge about the case.	Not Available
36	Data Ram Timsina	Morang	Extrajudicial killing. On September 28, 2003, officers of the Eastern Regional Army Headquarters in Itahari, and security	June 7, 2007	No	After both the District Police Office and Chief District Officer refused to register the FIR, in August 2007 the family appealed to the Biratnagar Appellate Court. The court rejected the petition, accepting	On October 28, 2010, the Supreme Court issued an order to the Morang District Police Office to register the FIR and to promptly proceed with the investigation. Update: Despite the court order, no investigation has been conducted. For a long period of time police officers at the District Police Office claimed that they had not yet received the decision of the Supreme Court. Later, they argued	Not Available

			personnel from Morang District Police Office, arrested school teacher 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 Nepal Army later confirmed that Data Ram was "killed in a security operation at Kerabari VDC-5, in Morang District, on October 14, 2003." However, the family has not received his body for last rituals.			arguments by the District Police Office 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 decision of Biratnagar Appellate Court.	that the TRC would look into the case. The victim's family has filed a complaint at the TRC via a Local Peace Committee. However, they have not received any updates from the TRC so far. The family has lost hope of getting justice. In February 2010, they conducted the last rituals on the assumption that the victim is dead, so that his soul can rest in peace. In May 2020, when Advocacy Forum asked the District Public Prosecutor about progress in the investigation, he said he had no knowledge about the case.	
37, 38, 39	Bishwanath Parajuli, Tom Nath Poudel, and Dhan Bahadur Tamang	Morang	Torture and extrajudicial killing. A group of 50 security personnel arrested Tom Nath Poudel, Bishwanath Parajuli, and Dhan Bahadur	Nov. 1, 2004	No (2) Yes (1)	On October 15, 2008, all of the victims' families attempted to file FIRs but only the FIR relating to the killing of Dhan Bahadur Tamang was accepted and filed that day. On June 18, 2009, his family filed a petition of	On October 26, 2009, the Biratnagar Appellate Court issued a mandamus order in relation to Dhan Bahadur Tamang. It ordered the Morang District Police Office to start an investigation into the FIR promptly. The court reminded the police of its duties under the law. However, as far as we are aware no progress has since been made. Update: The families of Bishwa Nath Parajuli and Tom Nath Poudel	In the NHRC report Bishwanath Parajuli appears as Nagendra Parajuli. The NHRC recommended that the government take legal action against the security personnel involved in the incident. It also recommended compensation of 150,000 Nepali rupees [USD 1,250] to each of the victims' families.

			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.			mandamus at the Biratnagar Appellate Court seeking an order to the police to promptly start an investigation into the FIR.	also attempted to file an FIR, but police refused to do so, saying that the TRC will look into these cases. Relatives of the victims, and conflict victims' organisations, had a number of meetings with the District Police Office, seeking information on the progress of the investigation, but to no avail. Relatives have registered the case at the TRC. However, they have not received any updates.	Implementation Status of the Recommendations: Partial. The Office of the Prime Minister and Council of Ministers stated that the families have been provided with the recommended compensation, and that it has also given directions to take legal action against the accused security personnel.
40, 41, 42, 43	Jag Prasad Rai, Dhananjaya Giri, Madhuram Gautam, and Ratna Bahadur Karki	Morang	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	June 5, 2007	No (2) Yes (2) (following a court order)	The relatives of all four victims appealed to the Biratnagar Appellate Court, but only in Madhuram Gautam's case did the court order the police to register an FIR. The writ petitions filed by the relatives of the other three men were rejected on the basis that	In November 2009, In Madhuram Gautam's case, the Biratnagar Appellate Court issued a mandamus order directing the Morang District Police Office to start an investigation. Update: In Dhananjaya Giri's case, the Supreme Court issued an order of mandamus in April 2010. Until 2016, the police reported that they had not received the Supreme Court's order. After that, they argued the case would be investigated by the TRC.	Not Available

			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.			these cases will be investigated by the TRC. The FIR relating to Madhuram Gautam was accepted in October 2008 following the court's order. In June 2009, his family filed another petition to obtain an order for the police to proceed with the investigation. The family of Dhanan-jaya Giri appealed to the Supreme Court against the decision of the appellate court.	The family of Jag Prasad Rai is considering filing a mandamus petition to obtain a court order to register an FIR, but have not done so to date, dissuaded in part by other cases where FIRs were not registered even after families obtained a mandamus order. In Ratna Bahadur Karki's case, the victim's family filed a mandamus petition at the Biratnagar Appellate Court on January 18, 2011. On April 12, 2011, the court issued an order to the Morang District Police Office to register an FIR. The FIR was registered by the Morang DPO on July 10, 2012. However, as far as we are aware there has been no progress in the investigation of the case so far. All family members have registered cases at the TRC, but they have not received any updates.	
44	Chandra Bahadur Basnet ("Manoj Basnet")	Morang	Extrajudicial killing. On August 24, 2005, a group of Armed Police Force personnel arrested Chandra Bahadur Basnet at Dhankute Hotel. The next day, the Morang District Police Office informed Manoj's family that he had been killed while trying to run away from a	August 30, 2005	Yes	The Supreme Court rejected Advocacy Forum's petition not to allow the withdrawal of the case in the public interest on May 4, 2009.	There has been no progress in the case after the Supreme Court rejected Advocacy Forum's petition. The family no longer wants to pursue the case. The OHCHR has closed its file after meeting with the family. Update: Goma Basnet, the victim's wife, has filed a complaint at TRC via her Local Peace Committee. However, she has not been informed of any progress.	The NHRC recommended that the government identify and take legal action against the perpetrators. It also recommended compensation of 100,000 Nepali rupees [USD 840] to the family of the victim. Implementation Status of the Recommendations: Partial. The Ministry of Home Affairs stated that the family has been provided the recommended compensation.

			"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.					
45, 46	Purna Shrestha and Bidur Bhattarai	Morang	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	June and July 2007	Yes (following a court order)	In mid-2007, the Biratnagar Appellate Court ordered the District Police Office to register a FIR in the case of Shrestha, but refused a petition on behalf of Bhattarai. However, the police initially refused to register the FIR even in Shrestha's case. On October 15, 2008, the victims' families once again attempted to file FIRs. The police only accepted the FIR relating to Shrestha. On June 18, 2009, Shrestha's family filed a petition of mandamus at the Biratnagar Appellate Court, seeking an order to the police to promptly start an investigation into the FIR.	In Shrestha's case, the Biratnagar Appellate Court issued a mandamus order in November 2009 requiring the District to promptly start an investigation into the FIR. Update: As far as we are aware, no investigation has been initiated by the police. The victims' family and Advocacy Forum lawyers have made an inquiry about the progress made in the case, but no updates have been received. In Bidur Bhattarai's case, the Supreme Court overturned the decision of the Biratnagar Appellate Court on December 18 2012, and directed the Morang District Police Office to promptly register the FIR and to carry out investigation into the case. Update: As of November 2016 the District Police Office claimed it had not received the order from the Court. In May 2020, when Advocacy Forum inquired about progress in the case, the district public prosecutor reported having no knowledge about the matter. The police had not submitted the case to the prosecutor's office. Both families have registered their cases at the TRC, but have not received any updates.	The NHRC recommended that the government identify and take legal action against the security personnel involved in the incident. It also recommended compensation of 150,000 Nepali rupees [USD 1,250] to the family of each victim. Implementation Status of the Recommendations: Partial. The Office of the Prime Minister and Council of Ministers stated that the families have been provided with the recommended compensation.

			wounds on the bodies, but they were not able to obtain copies of the post-mortem reports.			The family of Bidur Bhattarai has appealed to the Supreme Court against the decision of the Appellate Court.		
47	Sapana Gurung	Morang	Rape and murder. Fifteen security personnel under the command of army Captain Prahlad Thapa Magar arrested 22-year-old Sapana Gurung at her home on April 25, 2006. The men took her to a nearby Nepal Telecommunications Office and raped her. About an hour after the arrest, villagers heard a gunshot. Sapana was later found dead. A medical report stated that she had been raped and killed. The case was investigated by a Parliamentary Probe	May 15, 2006	Yes		There has been no further progress on the case. In May 2010, the police claimed that the file submitted to Parliamentary Probe Committee has not yet been returned. Update: Sapana Gurung's mother told Advocacy Forum that she had received 1,000,000 Nepali rupees [USD 8,400] as interim relief. She reported her case to the Local Peace Committee, hoping that it would reach to the TRC. However, the family had received no information on the progress of the case from any authority as of May 2020.	The NHRC recommended that the government identify and take legal action against the security personnel involved in the incident. The NHRC was aware that the legislative committee of the Interim legislature-parliament had already recommended compensation of 1,000,000 Nepali rupees [USD 8,400] to the victim's family, so it made no further recommendation of compensation. Implementation Status of the Recommendations: Under Consideration. The Office of the Prime Minister and Council of Ministers stated that the family have been provided with the recommended compensation.

			Committee which recommended that criminal investigations be initiated. It also awarded 1,000,000 Nepali rupees [USD8,400] compensation to her family.					
48, 49, 50, 51, 52, 53	Chhatra Bahadur Pariyar, Phurwa Sherpa, Prabhunath Bhattarai, Prasad Gurung, Tanka Lal Chaudhari and Sunita Risidev	Morang	Extrajudicial killings. On April 26, 2006, a group of security personnel at Belbari in Morang district 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	May 2006	Yes		There has been no further progress in the case. In May 2010, the police claimed that the file submitted to the Parliamentary Probe Committee has not yet been returned. Update: Surjalal Musahar, brother of Sunita Risidev, told Advocacy Forum that the families had filed a complaint at the Local Peace Committee, Morang, to be sent to the TRC or any other relevant mechanisms. He said that all the victims of the Belbari incident have registered their complaints. They were neither approached for further information or evidence, nor provided with any updates on progress made in the investigation. They have received 1,000,000 Nepali rupees [USD 8,400] as the interim relief, and 60,000 Nepali rupees [USD 500] to conduct the last rituals.	The NHRC report uses the name Dhana Bahadur Pariyar while he appears as Chhatra Bahadur Pariyar in Advocacy Forum's documentation. The NHRC recommended that the government identify the perpetrator(s) and initiate criminal proceedings. It also recommended compensation of 300,000 Nepali rupees [USD 2,500] to the families of the victims. Implementation Status of the Recommendations: Partial. The Office of Prime Minister and Council of Ministers stated that the families been provided with compensation of 100,000 Nepali rupees [USD 840] and that the procedure to provide the remaining amount was ongoing.

			Gurung) which recommended action against 28 security forces personnel and the Chief District Officer. It also awarded 1,000,000 Nepali rupees [USD 8,400]) compensation to each family.					
54	Khagendra Buddhathoki	Myagdi	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 District Police Office they refused	April 12, 2007	Yes	Police told Advocacy Forum that they had corresponded with the Ministry of Defence regarding the deployment of Raju Nepali, who was apparently 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 District Police Office 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	On November 11, 2009 the Baglung Appellate Court issued an order of mandamus to the police to promptly investigate the FIR. Even after the order of the court, no effective investigation has been undertaken. Update: As of May 2020, there has been no known progress. The family has registered the case at the TRC, but no progress has been reported so far.	The NHRC recommended that the government identify the commander and security personnel involved in the incident, and prosecute them under the prevailing law. It also recommended compensation of 300,000 Nepali rupees [USD 2,500] to the family of the victim. Implementation Status of the Recommendations: Partial. The Ministry of Defence stated that the Human Rights Cell of Nepal Army confirmed that the victim's wife was provided with the recommended compensation.

			to investigate. Once the battalion moved from the temporary camp, Khagendra's family tried to excavate the area where they thought the dead body was buried. The police stopped them from doing so. The corpse is yet to be exhumed.			from the conflict period.		
55	Chandra Bahadur Bishwakarma	Myagdi	Possible torture and extrajudicial killing. Soldiers arrested 17-year-old Chandra Bahadur Bishwakarma 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	April 12, 2007	Yes	The family filed a writ petition on June 18, 2009. The District Police Office provided the same response as in Case 54 above, claiming that the case was improperly filed and asserting that the civilian court lacked jurisdiction.	On November 11, 2009, the Baglung Appellate Court issued an order of mandamus to promptly investigate the FIR. Even after the order of the court, no effective investigation has been undertaken. Update: As of May 2020, there has been no known progress. The family has registered the case at the TRC, but no progress had been reported.	The NHRC recommended that the government take legal action against the commander and soldiers deployed from the then Kaliprasad Engineering Unit. It also recommended compensation of 300,000 Nepali rupees [USD 2,500] to the victim's family. Implementation Status of the Recommendations: Partial. The relief and rehabilitation unit stated that the victim's family has been provided with the recommended compensation.

			compelled to bury him almost immediately.					
56, 57, 58	Dal Bahadur Darlami, Narayan Prasad Kanuje, and Tek Bahadur Gaha	Palpa	Extrajudicial killings. According to eye-witnesses, on February 20, 2005, soldiers indiscriminately fired upon and killed the three boys, aged 15, 16, and 15, respectively.	Dec. 31, 2006	Yes	After the District Police Office had repeatedly refused to register an FIR, suggesting the killings had been an accident, in late 2006 the public prosecutor ordered the District Police Office to proceed with a murder investigation. On February 7, 2009, Butwal Appellate Court reminded Palpa District Police Office, Palpa District Administration Office, and the District Office of the Government Attorney to complete the investigation within one month, and decide whether to prosecute or not. The relatives filed a writ petition in June 2009 seeking a court order for police to proceed with the investigations.	On October 7, 2009, the Butwal Appellate Court issued an order of mandamus to investigate the FIR within three months. Despite court order, no effective investigation was undertaken. Update: Advocacy Forum found that while an FIR had been registered, no investigation has been carried out so far. Families have registered the case at the TRC, but no progress had been reported.	Not Available
59	Man Bahadur Karki	Surkhet	Abduction, torture and extrajudicial killing (by CPN-M). Two Maoists, named Lal Bahadur Ramjali and Dilip,	Sept. 2006	No	Investigations started from May 2008.	The victim's family no longer wants to pursue the case. The suspects named in the FIR have been working as local level leaders in the Maoist party and the family feels intimidated. Update: After the family agreed not to pursue the case, the Local Peace Committee recommended their name for interim relief.	Not Available

			abducted Karki from his house, on June 10, 2006. The next day, his body was found hanging outside the house of another villager, 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 Karki and had participated in his beating and killing. Witnesses stated that Karki had actually been beaten to death by Kul Bahadur, Ratan Bahadur, Meghraj Gautam, and					

			Yam Bahadur Gharti.					
60, 61	Ganga Bahadur Nepali and Shyam Sundar Kaini	Tanahun	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 initially refused to hand over the bodies, only doing so after being pressured by the CPN-UML general secretary. The general	April 6, 2007	Yes	There was no investigation, even after registering the FIR. On June 18, 2009, both families lodged writ petitions to seek an order for the District Police Office and Public Prosecutor's Office to investigate the killings.	On December 23, 2009, the Kaski Appellate Court rejected the petitions on the basis of a written reply by the District Police Office that the investigation was underway. On March 28, 2010, an appeal was filed at the Supreme Court challenging this decision, as there was no progress in the investigation despite registering the FIR. Update: The Supreme Court issued a writ of mandamus in 2011 directing the Tanahun District Police Office to complete the investigation into the case within three months and to register the charge sheet at the district court. On June 1, 2013, the District Police Office sent a progress report to the Attorney General's Office in Kathmandu, stating that a board had been formed to carry out the investigation. However, as far as we are aware no progress has been made on the case since then. On December 27, 2019, Advocacy Forum contacted the district attorney of Tanahun regarding the progress of the case. He said the investigation is ongoing, but also said it is not clear yet as to how the authorities will deal with cases from the conflict. Advocacy Forum also contacted Inspector Shiva Raj Chhetri of Tanahun District Police Office on December 27, 2019, who stated that an investigation officer for the case was appointed on February 21, 2016. He also confirmed that no further progress has been made and police will take action only if the District Police Office receives an order from the government to initiate an investigation. On January 19, 2020, the NHRC reported that it had sent	The NHRC recommended that the government present a named soldier to the commission to record a statement, because the team deployed from Damauli Barrack which was involved in the incident was under his command. It also recommended compensation of 300,000 Nepali rupees [USD 2,500] to the victims' families. Implementation Status of the Recommendations: Partial. The Office of Prime Minister and Council of Ministers stated that each victims' family has been provided with compensation of 100,000 Nepali rupees [USD 840].

			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.				recommendations to the government after completing its investigation. It has not received any information from the government regarding the decision. As of May 2020, there had been no progress in the investigation or any prosecution. Families have registered the case at the TRC, but no progress has been reported so far.	
62	Dhan Kumari Tumba-hamphe	Udaya-pur	Rape and extrajudicial killing. Soldiers arrested Dhan Kumari Tumbahamphe after she attempted to escape an army cordon on April 24, 2005. The soldiers found 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.	August 27, 2009	Yes (after a court order)	The family tried to file an FIR in April 2005. Though police conducted some investigation, they refused to register an FIR until 2009.	The police registered the FIR on August 27, 2009, following an order issued by the Rajbiraj Appellate Court in August 2009. The statements of seven witnesses were taken. Since then no significant progress has been made. Update: The husband of the victim, Dambar Bahadur Tumbahamphe, has registered a complaint at the TRC via the Local Peace Committee. He has not received any update from the TRC.	Not Available

NO LAW, NO JUSTICE, NO STATE FOR VICTIMS

The Culture of Impunity in Post-Conflict Nepal

Fourteen years since Nepal's conflict ended, justice is being denied to the victims of human rights abuses committed by both sides, creating a legacy of impunity which blights post-conflict Nepal. The lack of accountability for torture, rape, and extra-judicial killing is undermining the rule of law, as the police continue to face frequent allegations of serious human rights violations, in which investigations are routinely blocked and no one is held to account.

During the 10- year armed conflict between 1996-2006, thousands of people became victims of enforced disappearances, torture, rape, and unlawful killings. Since the conflict ended, security forces and former Maoist rebels, who are now in government, have found a common interest in blocking criminal investigations and thwarting the flawed transitional justice process.

No Law, No Justice, No State for Victims tracks 62 cases of enforced disappearances and extrajudicial killing where police complaints, known as First Information Reports (FIRs), have been filed. More than a decade later, there has been hardly any progress toward prosecution, with police and prosecutors stating in numerous instances that they are under instructions from the government not to act, despite court orders requiring investigations to proceed.

The Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP), which were established in 2015 ostensibly to expedite the legal system to deliver justice, have received over 60,000 complaints but have failed to complete any investigations, while the law governing them has not been amended since parts of it were struck down by the Supreme Court in 2015. Even if the two commissions were functional, a transitional justice process does not remove the obligation upon Nepal to prosecute serious rights violations.

A Nepali man looks at photographs of disappeared persons displayed by human rights activists at an event to mark the International Day of the Disappeared in Kathmandu, Nepal, August 30, 2017.

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