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This study is the third attempt to document impunity in Nepal after two previous attempts in 1999 and 2005. Widespread disregard for rule of law and concomitant impunity, if left unaddressed, threatens to be the major obstacle to establishing peace and democracy in Nepal.

The report examines incidents of violence during Nepal's decade-long conflict that have become 'emblems' of the country's poor human rights record. It also reports on some of the post-conflict excesses and what little has been done to establish guilt and punish the culprits.



Impunity in Nepal

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This publication has been supported by The Asia Foundation. Views and opinions expressed in this book are of the authors and do not necessarily reflect those of The Asia Foundation.

Impunity in Nepal

A study of excesses during the transition

Binod Bhattarai

with

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CIJ Nepal

This report reviews the state of crime and punishment in Nepal after the peace process began in 2006. It has not sought new evidence but rather brings together existing information to reflect on the state of impunity in the context of the ongoing peace process.

Cover photo: Binod Bhattarai. (The ID and ball pen belonging to journalist Birendra Sah who was murdered by the Maoists on 5 October 2007 were found with his remains on 8 November 2007. The items are in the possession of the Federation of Nepali Journalists.)

First published, 2010 October

© Center for Investigative Journalism (CIJ)

ISBN: 978 9937 2 2741 4

Book design: Chiran Ghimire

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Printed in Nepal

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Foreword

This is the third study in a series on impunity in Nepal supported by The Asia Foundation. A first attempt at fathoming the causes and scale of impunity in Nepal was made in 1999 as the escalating conflict and increased political instability of the late 1990s started giving rise to an environment of impunity.

The second study spanned a period of two years from 2004, with a specific focus on political corruption and violation of human rights in the context of an ascendant monarchy culminating in royal takeover and direct rule in 2005.

This third report attempts to capture the state of impunity in Nepal since 2006, especially surrounding the events prior to and immediately after Jana Andolan II, including the failure to address even the most emblematic of cases and trends from the conflict years. The report is by no means a comprehensive documentation of the impunity that exists in Nepal. It, nonetheless, points to key trends in the exercise of public authority, rule of law, willful violation of human rights, abuse of authority, and crime that have prevailed in these transition years.

Curbing impunity in any country is difficult. In a post-conflict country with weakened public authority, the task is even more challenging. The Asia Foundation and the Center for Investigative Jour-

nalism believe that this report will not only build public awareness on the issue but also emphasize the urgency of response for both governmental and non-governmental agencies.

Rajendra Dahal
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George Varughese, Ph.D
Country Representative, Nepal
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Kathmandu
September 2010

Prologue

The Nepali state has become weak after 2006 owing largely to the compromises made by the major political actors for the sake of peace and the inability also to swiftly conclude the process. The compromises have included ‘immunity’ granted to people guilty of criminal offenses, especially where they happen to be supporters and members of political parties. The government’s inability to prosecute crimes where political parties are involved is read as being ‘OK’ to take the law into their own hands, and this is a message that has spread far and wide.

The Comprehensive Peace Accord was signed in November 2006 but it remained to be fully implemented even by the middle of 2010. Both the government and the former rebels (the Maoists) have failed to fulfill their commitments and this has resulted in political uncertainty and increased lawlessness. The Truth and Reconciliation Commission has still not been established although the Comprehensive Peace Accord (CPA) calls for its setting up within 60 days of the signing. Instead, according to the National Human Rights Commission (NHRC, 2006:5), the government has withdrawn cases without regard for the commitments mentioned in the CPA and, as a result, ‘encouraged a culture of impunity.’ The cases withdrawn include those for murder, rape, abduction and other serious crimes against

innocent people. According to the NHRC, one such case withdrawn was against those accused of murdering a UML candidate in the Constituent Assembly (CA) election. Successive governments have also largely ignored the Interim Constitution's stipulation to form a high-level commission to investigate disappearances committed by the two sides to the conflict.

Erosion of democratic values has been another downside of the Nepali transition. The notion of competing for popular support on the basis of ideas has yet to take root in Nepal because some of the major political parties have openly advocated violence for political expediency. The sudden openness that resulted from a change in regime resulted in the ending of the old order without building public consensus of what ought to follow. The only preconditions were that Nepal was to be a federal republic even without a firm agreement on the immutability of democracy as the organizing principle of state. The inability of Nepal to swiftly establish a new democratic order resulted in an environment that was conducive for further erosion of democratic values and the emergence of the revolutionary stream. The revolutionary changes have largely remained undefined and have at times served as a cover for crime.

This has been reflected in the strong tendencies towards criminalizing politics and politicizing crime, and both have largely gone unpunished. If political parties have gone to great lengths to protect their own accused of crime, criminals have also tended to seek political protection for immunity.

The political arena includes parties that come with different histories and socialization. The Maoists, the largest in the CA, had adopted violence as a means to capture state power, and its switch over to parliamentary democracy has not been complete. Among the other issues, while reporting on human rights three years after the CPA was signed, the NHRC mentions that it even had information that the Maoists had forcefully used a house of a local resident in Harnamadi of Makawanpur District as a detention centre where it was holding 19 captives (2006:35).

The desire of the political parties to attain state power and cling to it remains the main reason why the government has shown scant regard for the rule of law. The coalition governments formed after 2006 have either been compromises, made as part of the peace deal, or those formed by balancing various partisan interests. The ability of the party leading the government to stay on has depended on the extent of compromises it can make. It was likely the same reason that a minister who slapped a government officer on duty went unpunished. Nor was there an inquiry against another who locked up a government official in the toilet for two hours over disagreement on an administrative decision. Not only ministers, even student supporters of political parties committing acts of physical assault have gone largely unpunished.

Impunity in Nepal is also the result of a lack of effective justice delivery owing to political interference and corruption, the inability of constitutional bodies to function independently (owing to political pressure), and corruption in public office. It has manifested itself especially in cases where there has been the need to help one's own relative or acquaintance, party colleague or comrade or voter. Corruption in the courts has been widely reported by the media and also been acknowledged by the Supreme Court. But little has been done to control it. Nepal has also had instances where public office holders have come under the scanner of anti-corruption agencies but none of the investigations have not led to any major convictions and/or have just fizzled out.

Poor public security, the naturalization of violence as a political tool, and the inability of watchdog institutions to monitor effectively and the failure of the government to take legal action have all contributed to growing impunity. Most of the recommendations of the NHRC have not been investigated and followed up, especially those that had resulted in loss of human lives. The need to bring an end to the war gave the government 'reason' to bend the rules in order to accommodate the former rebels. It was why some of the Maoist excesses early in the peace process were resolved 'politically' rather

than through due process. But the bending of rules for political ends has continued, weakening democratic institutions and giving rise to impunity.

The post-2006 political changes has not seen strong and purposeful governments and the burden of keeping unwieldy coalitions intact has led successive prime ministers to overlook excesses and that has resulted in more impunity. The compulsion of Madhav Kumar Nepal, elected prime minister in May 2009, to retain support of political parties in order to remain in office could be the reason why the government did not press charges against the minister who had assaulted a government official on duty. The government was also unable to take action against another minister accused of misusing funds for a donor-supported education project. Past governments, especially of the 1994-1999 period, had used unlawful means to raise finances to prop up unstable coalitions. The resulting excesses are said to be some of the reasons that led to public resentment against government and support for the Maoist insurgency.

This study comes after two previous attempts to document impunity in Nepal – the first in 1999 and the second in 2006. Widespread disregard for rule of law and concomitant impunity, if left unaddressed, threatens to be the major obstacle to establishing peace and democracy in Nepal. This belief or thesis has motivated this study.

The report examines incidents of violence during Nepal's decade-long conflict that have become 'emblems' of the country's poor human rights record. It also reports on some of the post-conflict excesses and what little has been done to establish guilt and punish the culprits. The write-up also examines some of the country's emerging conflicts and their violent nature.

This report does not claim to report all the excesses that have taken place after 2006, a task that is almost impossible for lack of adequate investigation and documentation. Further, since it is based largely on secondary sources, it says almost nothing about the livelihoods of the victims of violence, primarily because the study focused on the incidents rather than the people who are still suffering.

There are two sections of the report that deal with violence in the Tarai and access to justice. The final section contains a discussion of some of the findings suggested by the study but stops short of making recommendations, given the multidimensional nature of impunity and the multi-disciplinary and sectoral approaches required to reverse the trend.

The research and reporting team was made up of journalists Bhuwan K.C., Ganga B.C. and journalist/researcher Tula Narayan Shah. K.C. and B.C. contributed extensively to the introductory chapter and chapters 2 and 3, and assisted in the fact-checking for the other chapters, while Shah did the field research for the chapter dealing with the Tarai.

Three journalists, Pramod Aayam, Yashoda Adhikari and Saroj Dahal, investigated and wrote reports on the three sectoral issues—rape and violence against women; violence against schoolteachers; and the deteriorating business climate. Bimal Kumar Dhakal carried out the research for the law and justice section. Sushil Pyakurel, former member of the National Human Rights Commission, was an advisor for the study. Journalist Shiva Gaunle served as the coordinator of the team and organized the information collected into preliminary drafts, conducted additional research, and put together the Nepali draft of the study based on the first draft prepared in English. Binod Bhattarai led the study and prepared the first draft. Sagar Prasai of The Asia Foundation reviewed and commented on the draft. Deepak Thapa assisted with the copy editing. Chiran Ghimire was responsible for the design and layout. The study was conducted with a grant from The Asia Foundation, Nepal.

Kathmandu
July 2010

Abbreviations

ATLF	All Tarai Liberation Front (Goit) (Akhil Tarai Mukti Morcha)
CA	Constituent Assembly
CDO	Chief District Officer
CBES	Chure Bhawar Ekta Samaj
CIAA	Commission for the Investigation for Abuse of Authority
COAS	Chief of Army Staffs
CPA	Comprehensive Peace Accord
CPN (M)	Communist Party of Nepal (Maoist)
CPN (ML)	Communist Party of Nepal (Marxist-Leninist)
CPN (UML)	Communist Party of Nepal (Unified Marxist-Leninist)
DDC	District Development Committee
DIG	Deputy Inspector General of Police
DSP	Deputy Superintendent of Police
FTTP	First-Past-The-Post
FNJ	Federation of Nepali Journalists
FOHRID	Human Rights and Democratic Forum
HRW	Human Rights Watch
INSEC	Informal Sector Service Center
JTMM	Janatantrik Tarai Mukti Morcha
LDO	Local Development Officer
MMT	Madhesi Mukti Tigers

MJF	Madhesi Janaadhikar Forum
MJF (D)	Madhesi Janaadhikar Forum (Democratic)
NC	Nepali Congress
NHRC	National Human Rights Commission
OHCHR	Office of the High Commissioner for Human Rights
PR	Proportional Representation
SAFMA	South Asia Free Media Association
SPA	Seven Party Alliance
TMLP	Terai Madhes Loktantrik Party
UCPN (M)	Unified Communist Party of Nepal (Maoist)
UNDP	United Nations Development Programme
VDC	Village Development Committee
WOREC	Women's Rehabilitation Centre
YCL	Young Communist League
YF	Youth Force
YAN	Youth Association Nepal

Impunity in ‘New’ Nepal

Political context

The armed insurgency led by the Communist Party of Nepal (Maoist), or CPN (M), escalated rapidly in 2000 after which the government began exploring possibilities of a negotiated settlement. The first attempts to reach out to the Maoists were made the same year, and there were two more formal attempts, in 2001 and 2003, to reach peace through talks. The year 2003 was when Nepal did not have a parliament (it was dissolved in May 2002) and fresh elections had been postponed indefinitely. The prime minister was being appointed by the king and served at his pleasure. In February 2005, however, the king took over and began ruling directly as chair of the Council of Ministers.¹

The 12-point agreement between seven political parties (also known as the Seven Party Alliance, or SPA²) and the CPN (M) that was signed on 22 November 2005 rekindled hopes of peace through

1 King Gyanendra succeeded King Birendra as monarch after the latter was killed in shoot-out in the royal palace on 1 June 2001.

2 The SPA members were Nepali Congress, Communist Party of Nepal (Unified Marxist-Leninist), Nepal Majdoor Kisan Party, Nepal Sadbhavana Party (Anandi Devi), Nepali Congress (Democratic), Jana Morcha Nepal and Samyukta Baam Morcha (a group of minor communist parties).

negotiations.³ Among other issues, the two sides agreed to launch movement jointly to end the monarchy and re-establish democracy,⁴ and to end the ‘armed conflict’ in Nepal and begin ‘a new chapter of peaceful cooperation.’⁵ Their joint action culminated in 24 April 2006 when the king agreed to step down and restore the long-defunct parliament.

The newly formed government of the SPA and the Maoists began negotiating again in May 2006 and on 16 June 2006 the two sides agreed to form a committee to draft an interim constitution. The negotiations led to the signing of the Comprehensive Peace Accord (CPA) on 21 November 2006 and a separate pact to ‘manage arms and armies’ thereafter. The next milestone in the peace process was the adoption of the Interim Constitution on 15 January 2007, and the CPN (M) entered the parliament the same day. Nepal reached yet another milestone in the peace process on 10 April 2008 when the Constituent Assembly (CA) elections were held.⁶

The CPN (M) emerged as the largest party in the CA election (Table 1). On 28 May 2008 the CA voted to abolish Nepal’s 240-year-old monarchy and restructure the country as a federal democratic

3 It was agreed in New Delhi, India and signed in Kathmandu. Even though the SPA leaders and the Maoists did not actually sign one document, both the sides had publicized the understanding. (The SPA leaders signed their document upon return to Kathmandu and the Maoists did it via a press statement.) The SPA press release was signed by Girija Prasad Koirala, Nepali Congress; Madhav Kumar Nepal, UML; Gopalman Shrestha, Nepali Congress (Democratic); Amik Sherchan, Jana Morcha Nepal; Bharat Bimal Yadav, Nepal Sadbhavana Party (Anandi Devi); Krishna Das Shrestha, Samyukta Baam Morcha; and Prem Suwal, Nepal Majdoor Kisan Party. Prachanda had signed the Maoist press statement.

4 In October 2002, the king dismissed the government headed by Sher Bahadur Deuba and began running the country through a cabinet comprising ministers appointed by him. After appointing three such governments the king began ruling directly as chairman of the council of ministers after 1 February 2005. The large political parties in parliament dissolved in 2002 had launched protests demanding the restoration of democracy. The 12-point pact provided a fresh impetus to protests led by the SPA after the Maoists also joined their opposition to direct royal rule.

5 The Maoist insurgency began on 13 February 1996.

6 For a chronology of the peace process see: <http://www.peace.gov.np/eng/programs.asp?info=Peace%20Talk&id=5&menu=1>

republic.⁷ The CPN (M) formed a coalition government on 18 August 2008,⁸ but it stepped down by May 2009, following which a coalition government of 22-parties⁹ led by Madhav Kumar Nepal of the Communist Party of Nepal (Unified Marxist-Leninist), or CPN (UML), was formed on 25 May 2009.¹⁰

In a sense, Nepal's politico-governance structure which had begun unraveling with the royal palace massacre of 1 June 2001 culminated in the abolition of the monarchy. But the process has not been as smooth and straightforward. In terms of absolute numbers, the period after 2001 was marked by an increase in violence and bloodshed that was quite unknown in modern Nepal.¹¹ Unfortunately for Nepal, violence has continued even after 2006, which is also a period that has witnessed major shifts in the political landscape such as the emergence of strong regional players in the Tarai and the erosion in public support of the 'larger' parties.

The political transition that began in 2006 has been rather disorderly. The government has proved unable to deliver change because of unstable politics and it has also failed to manage the emerging demands for an inclusive state, including federal units based on ethnicity, language and regional specificities and with the right to

7 There were 572 members at the meeting and four had opposed the motion.

8 The CPN (M) reorganized as the United Communist Party of Nepal (UCPN), Maoist (M) after merging with the CPN (Unity Centre Mashal) on 12 January 2009. The text uses both CPN (M) and UCPN (M), the latter has been used for events after the merger.

9 The UCPN (M), Communist Party of Nepal (United) and the Nepali Janata Dal did not support the parliamentary vote. Ten parties joined the government later. The Madhesi Janaadhikar Forum split in the process of government formation and one faction decided to stay out of the government. The party split on 5 June 2009; the next day, its leader, Bijaya Gachchedar, was appointed Deputy Prime Minister. Following the split, the number of parties represented in the parliament/CA reached 26.

10 Nepal had lost the CA election from two constituencies from where he had contested. He was appointed a member of the CA by the government. He was elected prime minister on 23 May 2009. On September 10 the Council of Ministers had 44 members from 10 parties. One member from the UML resigned on 10 March 2010. It was the second largest government Nepal has had. Sher Bahadur Deuba had the largest team when he led the government in the mid-1990s.

11 See: Bhattarai and et al. 1999; also see Bhattarai, Ghimire and Mainali, 2005.

Table 1.1: Constituent Assembly election results and composition of the CA

Political party	Seats: FTTP	Seats: PR	Total in the CA	% of seats in the CA
Communist Party of Nepal (M)	120	100	220	36.60
Nepali Congress	37	73	110	18.30
Communist Party of Nepal (UML)	33	70	103	17.13
Madhesi Janadhikar Forum	30	22	52	8.65
Tarai Madhes Loktantrik Party	9	11	20	3.32
Nepal Sadbhawana Party	4	5	9	1.49
Janamorcha Nepal	2	5	7	1.16
Nepal Workers and Peasants Party	2	2	4	0.66
Independent	2			
Rastriya Janamorcha	1	3	4	0.66
Rastriya Prajatantra Party		8		1.33
Communist Party of Nepal (ML)		8		1.33
Communist Party of Nepal (United)		5		0.83
Rastriya Prajatantra Party-Nepal		4		0.66
Rastriya Janshakti Party		3		0.49
Janamukti Party, Nepal		2		0.33
Communist Party of Nepal (Unified)		2		0.33
Nepal Sadhvawana Party (Anandidevi)		2		0.33
Nepali Janata Dal		2		0.33
Federal Democratic National Forum		2		0.33
Dalit Janajati Party		1		0.16
Nepal Pariwar Dal		1		0.16
Nepa: Rastriya Party		1		0.16
Nepal Lokatantrik Samajbadi Dal		1		0.16
Chure Bhawar Rastriya Ekata Party Nepal		1		0.16

Source: Election Commission FTTP: First-Past-The post, PR: Proportional Representation

self-determination. These issues were yet to be decided on by the Constituent Assembly (CA) at the time this report was being written.¹² The constitution-making process was also disrupted by disruptions in the aftermath of President Ram Baran Yadav's asking the Chief of Army Staffs (COAS) to continue in office overriding

12 The CA extended its deadline for constitution-making by a year on 28 May 2010. Until then there had been very little discussion on the mechanics of federalism in terms of delineation, the governance structures at different levels, and costs and time frames of the change. The constitutional body that was to have been given this task had not been formed as of end-June 2010.

the Maoist-led government's dismissal order.¹³

Political protests – often violent and accompanied by general strikes – and a deteriorating law-and-order situation stretched the state's ability to ensure public security. Poor law enforcement has remained a major threat to Nepal's transition to peace and democracy. This was reflected in a newspaper report of 4 February 2010, which said that Nepal had seen 298 strikes and work disruptions (*bandhs*) in 2009.¹⁴ Deteriorating public security (and the inability of successive governments to maintain basic law and order) had by mid-2010 reached a situation where Village Development Committee (VDC) secretaries in different districts had begun handing in their resignations seeking government protection against threats they had been receiving from various groups.¹⁵

The failure of the state to ensure rule of law has resulted in a massive increase in the number of violent groups that continue to challenge the authority of the state in different parts of the country. According to the National Human Rights Commission (NHRC), there were 117 armed groups operating in the country in February 2010.¹⁶ Because most of these groups have largely operated quite freely and since the state has failed to bring anyone associated with these groups to justice, even the so-called 'peaceful protests' organized by

13 Following the dismissal of the COAS, 18 political parties petitioned the president to intervene after which the president asked the COAS to continue in office – overriding the decision of the government. Pushpa Kamal Dahal, prime minister, resigned thereafter accusing the president of infringing the rights of the cabinet. The Maoist party organized a series of demonstrations against the president's decision – and also prevented the Legislative Parliament from doing business for almost five months. Their main demand was restoring 'citizens' supremacy' or the right of an elected government to decide on behalf of the people. A writ challenging the president's decision was filed at the Supreme Court on 17 May 2009. A two judge bench of justices Damodar Prasad Sharma and Rajendra Prasad Koirala were unable to agree on one verdict and the case was referred to the full bench, which had not issued a verdict when this report was written.

14 www.thehimalayantimes.com/fullNews.php?headline=Blackout

15 Such resignations had also been reported during the Maoist conflict (done under Maoist threats) and reappeared in newspapers again in late June 2010.

16 The NHRC attributed this information to Govinda Kusum, secretary of home affairs. The NHRC statement was dated 22 February 2010.

various political parties have tended to turn violent. Most of the acts of vandalism are directed against public property or private vehicles during such protests but these have not been thoroughly investigated and neither have the guilty been punished.

Reporting on the human rights situation of 2009, the Informal Sector Service Center (INSEC), a human rights group, said there had been 5137 instances where non-state actors were responsible for the violations, while government agencies were responsible for 1420.¹⁷ The report named the government responsible for 41 deaths, the UCPN (M) for three, UML (Youth Force) for one, the Tharuhat Struggle Committee for one and the Tarai armed groups for 25. The report said that 373 people had been killed in 2009. Of these, the responsibility for killing 154 lay with 'unidentified' groups, while another category defined as 'others' was responsible for 248 deaths.

The inability of the state to punish those guilty of excesses has increasingly led to a 'naturalization' of violence as a means of making demands. In an example of lawlessness, on 14 March 2010, a group of Maoist cadres attacked court officials trying to enforce a decision, leading to clashes between them and the police in Teku, Kathmandu. A government-owned bank, the Rashtriya Banijya Bank, had auctioned off a building for defaulting on payments and the Maoists were trying to prevent the buyer from accessing and using the property. The Newa Rajya Samiti, Area Number 1, a Maoist organization, had offices in the building and refused to vacate the premises even after police intervention.¹⁸

The law and order situation has been seriously compromised, not just in the restive eastern plains – where most of the 117-armed groups are said to be operating – but also in the capital, Kathmandu. A media entrepreneur and businessman Jamim Shah was shot dead in Lazimpat, in an area believed to be one of the most 'secure' areas of the city in broad daylight on 7 February 2010. Despite as-

17 INSEC, 2010, pp. 3-4.

18 'In June 2010 newspapers reported that the legal owner had demolished the building under police protection', *Annapurna Post*, 15 March 2010, p. 5.

surances from the prime minister the police had not been able to arrest the main suspects in mid-August 2010. The attack came about 17 days after a 10-year-old boy had been killed in a shoot out at Gothatar, another Kathmandu neighborhood. Police arrested some suspects in the shoot out on 22 March 2010 and it took them until 14 July 2010 to arrest Ratna Lama, the main suspect, who is also reported as being an advisor to the UCPN (M) in Kavrepalanchowk District.

Impunity

Impunity is a situation where perpetrators of human rights violations are not brought to account in any form. It flourishes because the suspects are not subject to any investigation—the basis for charges, judicial custody and trials. Typically, the victims end up without reparations and the violators go unpunished while violations continue unabated.¹⁹ Impunity can arise at any stage before, during or after judicial process.²⁰ According to Human Rights Watch (HRW), *de facto* impunity occurs when states fail to prosecute those responsible for human rights violations due to lack of capacity or will, often for political reasons. *De jure* impunity occurs when the laws and regulations are either limited in scope or explicitly provide impunity from prosecution, and extend and strengthen the impact of *de facto* impunity and protect the perpetrators of human rights abuses. In its 2009 report, HRW said that both *de jure* and *de facto* impunity were major problems in Nepal; even well-documented cases had not been prosecuted while there were laws in place that shielded military personnel and civilian officials from legal accountability.²¹

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

20 Amnesty International, 2001, p. 80.

21 Human Rights Watch, 2008, p. 16.

Political pressure and interference were the main reason for many of the documented cases not resulting in legal action, punishment and reparations.

Another definition of impunity formulated by Louis Joinet, UN Special Rapporteur on Impunity, is more comprehensive, terming it ‘the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, convicted, and to reparations being made to their victims.’ The meaning of impunity therefore extends to encompass the, ‘failure of States to meet their obligations to investigate violations, take appropriate measures in respect of the perpetrators, particularly in the area of justice, to ensure that they are prosecuted, tried and duly punished, to provide the victims with effective remedies and reparation for the injuries suffered, and to take steps to prevent any recurrence of such violations.’²²

Impunity flourishes in Nepal because of the lack of effective judicial independence, corruption in the courts, the inability of constitutional bodies to function independently (owing to political pressures), and corruption in quasi-judicial bodies and political offices²³

22 From *Combating Impunity: A Challenge for Lawyers and Human Rights Defenders* Speech by Usman Hamid, Coordinator of KontraS, The Commission for Missing Persons and Victims of Violence, Indonesia. www.seihokyo.jp/13usumangenko.pdf, (Undated). (viewed on April 1, 2010)

23 In 2002, Sher Bahadur Deuba ordered probes into the wealth amassed by politicians. Bhairav Lamsal, a judge at the Supreme Court, headed the three-member commission. Its term of reference was to examine the property of all who had assumed public office after 1990 and determine its legality. The report had largely named politicians of the Nepali Congress party and some from the Rashtriya Prajatantra Party. The Commission for the Investigation of Abuse of Authority (CIAA) made it a basis for its own investigations but there were no major convictions. (see: Suryanath Upadhyay. 2062. *Akthiyar Ma Cha Barsha*. Buddha Academic Publishers and Distributors P. Ltd. Kathmandu, pp 97-107.) After the royal takeover of 2005, King Gyanendra ordered a similar probe – albeit for political expedience – which also questioned many former politicians, and recommended action against some. The Supreme Court quashed all litigations based on the report on 13 February 2006. Governments after 2006 have not commissioned similar inquiries nor have they followed up on the

along with factors such as protecting one's own relative or acquaintance. The issue of corruption in the courts has been discussed not only by media but has also been pointed out by studies carried out by the Nepal Bar Association and even the Supreme Court itself. Nepal has had instances where public office holders have come under the scanner of anti-corruption agencies but the investigations have not led to major convictions and/or have fizzled out pointing to systemic governance problems that remain to be identified and uprooted.²⁴

Nepal became a constitutional monarchy and multi-party democracy in 1990. After a successful popular movement that forced the country's absolute monarch to become a constitutional head of state, the government formed a commission to investigate the actions of the previous government in suppressing the protests. The Mallik Commission Report, so called after its lead investigator Jannardan Mallik, had named 100 officials and politicians responsible for excesses. The interim government led by Krishna Prasad Bhattarai took no action against the accused, arguing that 'establishing law and order prospectively took priority over punishing those guilty of past offenses'²⁵ and that its priority was holding elections. A group of students and lawyers had tried to seek justice for those killed or injured during the movement but the Supreme Court did not entertain the case. Successive governments formed after the May 1991 election did not also bother with further investigations and actions.²⁶

The government formed another commission to investigate excesses by the regime during the April 2006 movement. Its mandate was to investigate excesses during the movement and recommend actions. The commission, headed by Krishna Jung Rayamajhi, a former judge at the Supreme Court, recommended making laws and taking actions against 65, including the chair of the Council of

basic requirement that ministers submit property statements within a certain period of assuming office.

24 See: Bhattarai and et al. 1999, 2005 for examples.

25 HRW, 2008, pp. 17-18.

26 Ibid, pp. 17-19.

Ministers (i.e., King Gyanendra). It also recommended action under existing laws against about 200 others, including heads of different security agencies and those still in government service.

On 17 November 2006 the government headed by Girija Prasad Koirala formed a team headed by K.P. Oli, deputy prime minister, to recommend how to proceed with the commission's report. The Oli team said there was no legal grounds for punishment and recommended against crafting laws for retroactively to punish those who had ordered suppression of the popular movement. It also said it was unlawful to take actions against lower level public employees without adequate investigation, and that was the end of the story.²⁷

Immunity for past crimes remains at the core of the debate on impunity. According to Amnesty International, 'the principle of *nul-lum crimen sine lege* (no crime without a prior law), also known as the principle of legality, is an important principle of substantive criminal law. However, genocide, crimes against humanity, war crimes and torture were considered as crimes under general principles of law recognized by the international community before they were codified.'²⁸ This is an issue especially in countries where making laws and updating them to match the needs of changing times is slow and investigating agencies are still evolving. The government had asked the committee if the report could be used for punishment, but it does not stop further investigations.

'Politicization' of violence and the militarization of politics

One reason why the suspects have not been investigated and/or punished is political protection. The media has reported many cases where suspects are associated with one political party or another or are members of parties' 'brother' organizations (or fronts) represent-

27 Human Rights and Democratic Forum. 2004. Impunity: Concept, Problem and Diagnosis. Kathmandu, pp. 287-318. The decision of the committee is reproduced on p. 316. The members of the committee were ministers Gopal Man Shrestha, Hridayesh Tripathy, Narendra Bikram Nemwang and Krishna Sitaula, all politicians from different parties that were in government.

28 Amnesty International, 2001, p. 119.

ing students, laborers and workers or with militia-like organizations such as the Young Communist League (YCL) and the Youth Force (YF).²⁹ By the end of 2009, at least nine different political parties had youth organizations. Of these, two – the YCL and the YF – have openly used violence for political expediency. Bhim Bahadur Rawal, home minister after May 2009, has said that several parties had opted for violence and that was why internal security had become a major challenge. He added that the involvement of political parties had also encouraged criminal groups and that public security had become very sensitive.³⁰

The inability of the government to ensure justice to the victims has been a serious weakness of the Nepali peace process.³¹ The political protection accorded to those responsible for crimes has encouraged more violence. On 27 March 2009 Prachanda Thaiba, a Youth Force member was shot dead in Butwal. The suspect, Sujit B.K., is a member of the YCL. The UML organized a series of protests demanding the arrest of the suspect, and even disrupted parliamentary proceedings over the matter. However, the UML let go of the issue following talks between the top leadership wherein the Maoist leaders are said to have apologized for the 'mistake'.³² Sujit B.K. was ar-

29 The YCL and YF are associated with the UCPN (M) and the CPN (UML), respectively. Maintaining such youth groups perhaps draws from the core communist principle of having *senā* (army), *morchā* (front) and party. At least one leader of the Nepali Congress (NC), Khum Bahadur Khadka, has been on record saying that the NC also needed to set up a similar force.

30 See: nepalnews.com and *Gorkhapatra*, 10 July 2009 (<http://www.nepalnews.com/main/index.php/news-archive/2-political/389-political-protection-to-criminals-creating-security-woes-home-minister.html> and http://gorkhapatra.org.np/rising_detail.php?article_id=21072&cat_id=4)

31 Pradip Gyawali, a member of the CA (UML). Paper entitled *Bhavi Sambidhanma Gambhir Aparadhko Sambodhan* (Addressing serious crime in the forthcoming constitution) presented at a workshop on addressing serious crimes in the new constitution. The South Asian Free Media Association (SAFMA) Nepal and Human Rights and Democratic Forum (FOHRID) had organized the meeting held on 19 November 2009.)

32 Information provided by a member of the 39-member UML politburo. Name withheld upon request. Interestingly, Bam Dev Gautam of the UML was heading the home ministry when the killing took place.

rested in Kathmandu on 26 August 2010 and was sent to Rupandehi District Police Office for further action.

Apart from providing political protection to suspects and criminals, political parties have also been 'directly involved' in 'killings, beatings and calling of *bandhs* (strikes) and resorting to violence.'³³ INSEC added that the UCPN (M) was involved in the deaths of three persons, beating of 652 and the abduction of 55. Likewise, the UML's Youth Force was involved in the death of one individual and the beating of 104 others.

The notion of competing on the basis of ideas, the cornerstone of democracy, has yet to take root in Nepal. The political arena has parties that come with different histories and socializations. The currently largest party in the CA had adopted violence as a means to capture state power and its switch over to parliamentary democracy has not been complete.

On 15 February 2007 security guards of two CPN (M) members in the Interim Parliament had tried to enter the parliament complex with weapons.³⁴ The UCPN (M), the largest party in the CA, still commands an army of 19,577 combatants³⁵ because of the delays in demobilization, integration and rehabilitation. Unlike other political parties, its leaders also have armed personal security personnel – in addition to security provided by the government – whose weapons are registered by the United Nations.

The Maoist militia-like force, the YCL, has been in place since 3 February 2008³⁶ even though some say it has been around since

33 INSEC, 2010, p. 6.

34 'The pistols were confiscated by the police and were later returned', *Kantipur*, 16 February 2007.

35 As verified by the United Nations Mission in Nepal. In total, 4,008 individuals registered during the UN-led verification process were formally discharged from the Maoist army, including those who were under the age of 18 on 25 May 2006, the day of the cease-fire, or recruited thereafter.

36 See: Harald Olav Skar, 'The Red Guard of Nepal', 2008. *Himal Southasia*, www.himalmag.com/The-Red-Guard-of-Nepal_nw1934.html. Accordingly, the group claims a membership of 500,000, some 450,000 ordinary members and 50,000 active members, including 6000-7000 'whole-timers'. Further, in 2007 a breakaway faction

2006. The organization is led by former commanders and commissars of the Maoist's People's Liberation Army. The formation of the YCL contradicts the Maoist commitment to join the democratic political process, and perhaps is more in line with statements they have made on the exact nature of the political system they want to see in Nepal. The Maoist documents in the CA suggest that the party has its own understanding of the term democracy – they accept 'multiparty competition but not pluralism',³⁷ a notion that has not been clarified by them.

The other major parties have also been violent in the past, especially during elections, but have largely practiced peaceful politics. However, taking cue from the Maoists the UML announced the formation of a YCL-type group called the Youth Force on 5 June 2008. After December 29 2008, the YF has been made a part of Yuba Sangh Nepal, the UML's youth organization formed after the merger of Prajatantrik Rashtriya Yuba Sangh.³⁸ The other large party, the Nepali Congress (NC) has not set up a similar force but some party leaders have discussed the possibility. Khum Bahadur Khadka, a central committee member of the party and former minister, has advocated the need for a Tarun Dasta as a mechanism to protect

of the NSP led by Rajendra Mahato had unveiled its own youth wing the Madhes Rakhya Bahini (Madhes Security Brigade) claiming a membership of 23,000. Also see: *Himal Khabarpatrika*, 15-30 June 2007. It said 15 of the regional committees of YCL were headed by former military commanders or commissars and it has units at the ward, VDC, constituency and district levels. Its 17-member central secretariat is headed by Ganeshman Pun (Rashmi), former commissar of the Parivartan Memorial Ninth Brigade.

37 Article 6 (1) of the proposal for the new constitution bars amending certain principles such as sovereignty, federalism, rule of law, independent judiciary, fundamental rights, human rights, press freedom, pluralism, multiparty competition, universal franchise and periodic elections. The Maoist proposal for change suggests that to bar the people's wish for change is undemocratic and adds that every thing other than national sovereignty and independence could be changed. It also says that having accepted multiparty competition it is 'unscientific' to keep pluralism as something that cannot be changed. This position on pluralism has caused other parties to suspect that the Maoists want to establish a system of competition among only 'approved' political parties.

38 It was formed on 15 May 1990.

party workers from the excesses of the YCL.³⁹ Other parties have not articulated similar aspirations but have had volunteers armed with sticks at political gatherings, which indicates their understanding of the need to have a force ready for confrontation. The militarization of politics could be a sign of things to come, especially if no attempt is made to reverse the trend.⁴⁰

The incidents of reported clashes between the YCL and the YF given below indicate the kind of outcome when political parties maintain private strike forces. (See: Box)

The militarization of politics and the use of violence for political ends is the main driver of impunity in Nepal. Political leaders have condoned and defended the high handedness of groups they approve and this has obstructed law enforcement and the rule of law. As a result, when two groups clash, it has not been the state's law and order machinery that has intervened but the leaders. Following a clash of the YCL and the YF on 29 January 2010 in Sindhuli, the 'High-Level Mechanism' (a body of top leaders from the main parties) formed a committee with members from the three major parties, the NC, UML and the UCPN (M), to 'investigate' the incident rather than let law take its course.

Disregard for rule of law by public institutions has been another obstacle towards ending impunity. The inability of the state to prosecute suspects in the now well-known case of the murder of 15-year-old Maina Sunar in a civilian court is one example. Sunar was murdered during torture at an army barrack on 17 February 2004. The family filed a case at the Kavre District Court following which the Court ordered the police to produce the accused before the bench. The army has maintained that the accused were tried and

39 Khum Bahadur Khadka on a talk show on Nepal 1 TV, 24 February 2010.

40 Some names of such groups that have appeared in the media are:

Madhesi Youth Forum (MJF), Limbuwan Liberation Volunteers (Pallo Kirat Limbuwan Rashtriya Limbuwan Liberation Army (Limbuwan Rajya Parishad), Chure Bhavar Shanti Sena (Chure Bhavar Ekta Samaj), Rakchya Bahini (Rajendra Mahato) B.C. Regiment (Pichada Bargha Mahasangh), Tarai-Madesh Sewa Surakchya Sangh (TMLP) [http: www.himalkhabar.com/hkp/news.php?id=2080](http://www.himalkhabar.com/hkp/news.php?id=2080)

Clashes between the YCL and YF

August 2008:	YCL and YF clash in Madanchowk, Dhankuta, after YCL began collecting 'donations'. Curfew imposed. Groups clash again after curfew. Issue resolved after the UML and UCPN agree to end hostilities.
October 2008:	Clashes in Dhading District over allegations by the YF that the YCL was involved in the abduction and murder of Puskar Panta and Nirmal Dangol.
October 2008:	Clashes in Aruchauante-3 of Gorkha District, six injured.
November 2008:	Clashes in Bharatpur, Chitwan.
January 2009:	YCL cadres sever limb of UML member in Sisdol, Newakot.
February 2009:	YCL and YF clash in Butwal. Sujit BK (YCL) is accused of killing Prachanda Thaiba (YF).
December 2009:	Clash between YCL and YF at Prithvi Narayan Campus, Pokhara
January 2010:	Clash of YCL and Youth Association Nepal (new name of Youth Force) in Sindhuli. YCL accuses YAN of possession of weapons. YCL submit a pistol and iron rod to police. YAN denies ownership of weapons.

acquitted by a military court and cannot be tried twice for the same offence. On 12 December 2009, the army prevented the arrest of Major Niranjan Basnet who had been sent back from a UN peace-keeping mission. Issuing a press statement on 17 February 2010, the UN Office of the High Commissioner for Human Rights in Nepal (OHCHR) said, 'The Army's non-cooperation with a court order threatens to undermine the independence of the judiciary and sets a negative precedent for all human rights cases, including those involving other groups such as the Unified Communist Party of Nepal (Maoist) where, in other much publicized cases, the orders of legal authorities are being defied.'⁴¹

Many other cases involving excesses during the conflict have also largely been ignored. The murder of Arjun Bahadur Lama, a resident of Chhtrebanjyang of Kavre District, is one example. Lama

41 On 13 July 2010 a newspaper report said that an army investigation had given Basnet a clean chit based on the Military Act 1959 and the Terrorist and Disruptive Activities (Control and Prevention) Act 2002. Reporting the verdict, *Republica* newspaper (14 July) quoted Major General B.A. Kumar Sharma saying, 'there is no case against Basnet.'

was abducted and killed by members of the CPN (M) in December 2005. Members of the party threatened the police and his relatives when they tried to file a complaint; the police registered the case on 11 August 2008 but only after a Supreme Court order. The apex court had ordered the police to register a murder case against five CPN (M) members, including Agni Sapkota, a member of the party's central committee.⁴² The case remains un-investigated apparently because 'police have not been able to locate' the accused, including Sapkota, who was elected to the Constituent Assembly in April 2008. It is the high handedness of the Royal Nepal Army while fighting the Maoists that has overshadowed many instances of Maoists excesses during the 'people's war'.

The erosion of democratic values and the desire of political parties to attain state power and cling to office make for a lethal mix and is one reason why the government has shown little regard for the rule of law. The coalition governments formed after 2006 have either been compromises, formed as part of the peace deal or to balance various partisan interests. The ability of the party leading the government to stay on has depended on further compromises, which have often been detrimental to the rule of law. On 17 June 2008 Matrika Yadav, minister of forests, locked up a government officer in a toilet for two hours over differences over a departmental decision taken by the officer. No action was taken against Yadav.⁴³

A more recent example of the government's helplessness in up-

42 Human Rights Watch. Letter to Prime Minister Pushpa Kamal Dahal of Nepal. March 9, 2009. <http://www.hrw.org/en/news/2009/03/09/letter-prime-minister-pushpa-kumar-dahal-nepal>. For details see complaint filed by Purnimaya Lama, wife of deceased, at the police office. It says seven Maoist party members, including central committee member, Agni Sapkota, were involved in the killing. The police had not followed up on the investigations. On 5 July 2010, the International Commission of Jurists (ICJ) issued a statement asking the Maoists not to intimidate human rights activists who had assisted the family of Lama in lodging a complaint with the police. The 2005 incident came back into limelight after the US Embassy cancelled a proposed trip by Agni Sapkota to the United States on 26 June (See: *The Kathmandu Post*, *The Himalayan Times*, 6 July 2010).

43 *Himal Khabarpatrika*, 30 June-15 July 2008.

holding the law was played out under the glare of the media in late 2009. On 10 November 2009, different television stations reported that Karima Begum Minister of State, Agriculture and Cooperatives had assaulted Durga Prasad Bhandari, Chief District Officer (CDO), the government's chief administrator in the district, for sending a vehicle that the minister did not approve of for pick-up at the airport. There were conflicting reports on why the minister reacted thus but what was undisputed was that the minister had used physical force against a government official on duty. The minister was not punished despite a formal complaint at the district police office. The 'Some Public Crime and Punishment Act 2027⁴⁴ (1970)' empowers the CDO to levy a fine of up to Rs 10,000 for such a crime and can even detain suspects for investigations for up to 35 days; the CDO can also file a case at an appeals court seeking two years' imprisonment. The government would be the plaintiff in such a case. These legal options were not explored.

Politics and not the due process of law saw an end to the case whereby Begum did eventually apologize but only after protests by government employees who had shut down government offices in protest in various districts.⁴⁵ The government had promised to form a commission to investigate the issue. Begum's party, the Madhesi Janaadhikar Forum (Democratic), or MJF (D),⁴⁶ was also reported as having sought an explanation from the minister. The outcomes of these initiatives were not publicized.

On 10 November 2009, the home ministry issued a statement deploring the incident. But instead of initiating action against the minister, the government transferred both the CDO and the chief of the district police to Kathmandu. Three days later, Begum told Kantipur Television that she had beaten the CDO because he had insulted her.⁴⁷ *The Himalayan Times* had Begum saying that the

44 *Kehi Sarbajanik (Aparadhra Sajhaya) Ain*, 2027.

45 'Government offices in the district reopened five days after the incident', *Rajdhani*, 16 November 2009.

46 The party was formed on 5 June 2009 after a split from the parent MJF.

47 On 15 November 2009, the minister told the TV station that she had slapped the

home minister had told her: 'you should have got hold of a few henchmen to beat the CDO. You shouldn't have done it on your own. This has created problems for me.' The home minister never refuted this report.⁴⁸

Again, on 16 November 2009, *Kantipur* reported that the prime minister himself had asked the home minister not to initiate any action against Begum. The report, which cited unnamed sources, said the prime minister had told Rawal that any action could affect the relationship between the parties and eventually the coalition government. Instead, on 10 December 2009, Begum filed a case against the alleged misbehavior by the CDO at the Parsa District Court.

Begum issued two statements during the entire episode. The first, on 17 November 2009, said the incident was 'sad' and that it was the culmination of a series of irresponsible (behavior) by the CDO towards political leaders. The second was conciliatory and she said the situation that had caused her to 'raise hands' was 'unexpected, sad and wrong.' That was the last time anyone heard of the Karima Begum story.

Violence found its way into politics during the Maoist insurgency. The government declared the Maoists 'terrorists' and sent in the military to 'disarm' them. The conflict dragged on for a decade and after it reached a no-win situation for both sides, the Maoists began building alliances with political parties that were opposing direct royal rule. The protests culminated in 2006, leading to a change in the regime. The new government began peace negotiations with the Maoists and ended with the CPA in November 2006. A clause in the CPA (Clause 5.2.7) has provisions for withdrawing politically motivated accusations, claims, complaints and cases under consideration,⁴⁹ based on which the government has withdrawn

CDO four times because he had misbehaved with her.

48 *The Himalayan Times*, 14 November 2009. The same story in *Kantipur* (14 November 2009) said the home minister had told her, 'you have made it difficult for me because you beat him, you should not have done that'.

49 'Both sides guarantee to withdraw accusations, claims, complaints and cases under consideration alleged against various individuals due to political reasons and to

over 330 cases after 2006. The cases withdrawn include even those for rape. Responding to the indiscriminate government requests, the Supreme Court even issued directives to instruct courts on what type of cases can be withdrawn and which cannot (see: Chapter on law). But the court's decision has had little effect on the politicians.

One of the most extreme manifestations of political violence was the 21 March 2007 killing of 27 Maoist supporters by supporters of the Madhesi Janaadhikar Forum at Gaur of Rautahat District. However, none of those responsible for the murders have been booked.

Lawlessness in Nepal during the transition, the naturalization of violence as a political tool, and the general failure of institutions such as the NHRC have all contributed to impunity. The need to end the war with the Maoists and establish peace was one factor that gave the government an excuse to bend the rules to accommodate the former rebels and resolve some of the Maoist excesses early during the peace process 'politically' rather than through due process.

When criminal acts were condoned in the name of compromise for the sake of peace, it sent out the message that it was all right to break laws so long as you had the political strength to negotiate amnesty. Soon, it was not just political parties and their 'brother' organizations that were using mob power to get what they wanted. When patients at hospitals died owing to the alleged negligence of doctors or hospitals, family members and onlookers stormed hospitals and attacked the medics rather than let the law take its course. The compromises made in law enforcement are possibly among the major 'incentives' that led to the proliferation of armed groups in Nepal after 2006.

Instability resulting from a partisan interpretation of the CPA, and even the democratic process itself, has been a factor that has affected the ability of government to establish rule of law. The Maoists, who headed a coalition government after August 2008, quit in May 2009 over a disputed decision to dismiss the Chief of Army

make immediately public the state of those who are in detention and to release them immediately.' CPA, p. 13.

Staffs (COAS) for 'insubordination' following which other political parties rallied the president to intervene and annul the decision. The president complied and ordered the COAS to stay on in office. The prime minister resigned in protest but the decision also resulted in a constitutional quagmire for lack of clarity about the powers of the president and the government. The Supreme Court had not yet given a final verdict on a writ challenging the president's order when this report was written.

A 10 April 2010 decision of a two-judge bench decided to refer the case to the full bench. The statements made by the government and the president's office suggest that the head of state had repeatedly advised the prime minister that firing the COAS could be against the Army Act 2063 that had not been amended following the 4th and 5th amendments of the later in Constitution. The statement also said that the government that had taken the decision had lost the support of other political parties and that a 'majority' of them had asked the president to intervene against the government order.⁵⁰

The government's decision to sack the COAS and the subsequent presidential intervention were interpreted differently by the political parties. The UCPN (M), the largest party in the CA, has maintained that it was a transgression by the president on the rights of the government and the 'supremacy of citizens'.⁵¹ However, other political parties, including those represented in the cabinet, took the government decision as a UCPN (M) move to place a compliant COAS in office in order to use the army for political ends.⁵²

50 Decision dated 13 April 2010 on Writ No. 2065-WD-0709. The two judges were Damodar Prasad Sharma and Rajendra Prasad Koirala.

51 While some have argued that the president avoided a major political crisis that the government decision could have led to, others said the president had no executive authority to order the COAS to stay on and that he should have written back to the prime minister.

52 Newspapers said the cabinet was divided over the decision and only Maoist members in the coalition government were present when it was taken. The crisis deepened on 5 May 2009 when a TV station broadcast a leaked a video recording of a speech that the Maoist chairman had made in January 2008 at a cantonment site in Chitwan. In the speech he said the party had inflated the number of combatants presented for

The Maoist-led government was replaced by a coalition led by Madhav Kumar Nepal of the CPN (UML). Nepal, a former general secretary of the party, had lost the election from the two constituencies he had contested from and had been nominated by the UML as a member of the CA. Madhav Kumar Nepal was appointed as prime minister on 23 May 2009, enjoying the support of 22 parties, including a faction of the MJF.⁵³

The political change did not result in a strong government and keeping the unwieldy coalition intact forced the prime minister to overlook excesses by his cabinet as well as party colleagues. The need to maintain the support of political parties to remain in office was one reason why the government did not deem it necessary to press charges against Karima Begum after she beat up the CDO. Similarly, it was also unable to take action against a minister accused of misusing funds from a donor-supported education project. The minister, Ram Chandra Kushwa, eventually resigned on 21 February 2010 but only after the donors stopped their assistance. But no legal action was initiated against him.

Similar structural problems have caused democracy to be weakened while impunity has gained strength. Past governments, especially those that came to power between 1994 and 1999, had also used illegal means to raise finances to prop up unstable coalitions. The resulting excesses were among the reasons that led to public resentment against the government and support to the then budding Maoist insurgency.⁵⁴

Various groups have not hesitated to resort to violent means to press their demands. In the aftermath of the Madhes Movement

registration and verification by the UN. He also said that some money allocated for the cantonments would be used to 'prepare for a revolt.'

53 The new group calls itself the MJF (Democratic).

54 Nepal had a period of coalition and minority governments after the November 1994 election. It was a period marked by high political corruption, mainly for keeping the coalitions intact. How the parties raised money went un-investigated. (Khum Bahadur Khadka, a former home minister, admitted to 'buying' the support of 20 MPs with cash ranging from Rs. 2.5 million to Rs. 7 million in a talk show on Nepal 1 TV 24 February 2010.)

Healing with faith

Widespread impunity and disregard for the rule of law has spawned some local initiatives to ensure law and order in their communities. One such group is the inter-religious group in Nepalgunj formed in November 2007. But in mid-2010 even this group had started feeling threatened.

At an interaction held on 1 June 2010, its members said that it was becoming more difficult to hold out against groups (often supported by politicians) that thrive on chaos and lawlessness.

Its leader Chandranath Yogi, priest at the Bageshwori Temple said he had begun feeling insecure especially after a group of 30/40 locals mistreated him a day before the former king visited the temple (23 May 2010). Yogi chairs the inter-religious and social harmony group, which has in the past helped prevent what could have been major misunderstandings between different religious groups. 'The extremists who want to stir religious sentiments do not like what we do, that is why I was mistreated,' Yogi said. 'I kept the issue (attack) a secret because if I had not, there could have been retaliations.'

The inter-religious group believes in legal action against all criminals, irrespective of their faith. 'We don't believe in making accusations against others just because they follow a certain faith. This is what has made our unity possible,' Yogi said.

Another member of the group, Maulana Abdul Jabbar Manjari, chair of the Central Haz Committee, has had his son abducted, taken to Rupadiya, India, and interrogated. One question the abductors had asked his son was where the money for building mosques came. This has led the Maulana Abdul to suspect involvement of security agencies from across the border. He said the political parties have tacitly supported the violent acts, and some have backed groups that have placed explosives at places of worship. He added that a suspect in the abduction of his son had been released from police detention under pressure from a local Nepali Congress leader.

The inability of the police to act promptly has at times encouraged crime as well. Maulana Abdul said Nepalgunj had become tense following the elopement of a Hindu

(January 2007), people who had migrated to the plains from the hills were attacked or threatened, causing many of them to be displaced. One of the outcomes has been the Bhagauda Basti ('settlement of those who fled') in Hetauda.

The activities of organized criminal gangs which have been most active in the eastern and central plains and of groups with political demands as well have added to the feeling of insecurity. Insecurity and fear prevails in the eastern hill districts as well where advocates for a Limbuwan State have resorted to violence, including extortion, kidnapping for ransom, beatings and murder. Furthermore, most

girl and a Muslim boy, and some Muslim youth were trying to incite violence. He had asked the Chief District Officer to arrest the main instigator but it was not done. 'Such acts give more confidence to those seeking to incite violence,' he said.

Surjeet Singh represents Sikhs in the inter-religious group. 'All religions advocate punishment and repentance for criminals who are present in all societies,' he said. 'They must be punished, otherwise how can they reform?'

All the religious leaders at the interaction were unanimous on the view that a major reason for violence was the support political parties provided to criminals.

Benjamin Bahadur Shrestha, who represents Christians in the group, blamed the police for the state of affairs. Two years ago there was a blast at the Nepalgunj church. 'All religious groups were concerned but not the police. We waited for hours at the District Police Office but were not even allowed to meet the officers and report the incident,' He said. 'We cannot trust the security agencies. We are worried about who will protect us.'

Local citizen groups and advocates also blame ineffective law enforcement for the increase in violent crime. 'The situation is so bad that the moment we inform the police about demands made by different groups, the information is leaked and those demanding donations threaten those who had informed the police,' said Satish Chandra Agarwal, a member of the citizens' committee for peace and harmony.

There were also fears that those encouraging crime and lawlessness could attack religious leaders. Other discussants at the meeting said that Nepalgunj was a tinderbox and a simple dispute could escalate unless it was managed on time. No one involved in instigating communal clashes in the city in the past has been punished and even suspects detained for violent acts have routinely been released without thorough investigations – invariably under political pressure. (Other participants at the focus group discussion on which this write-up is based were Jaya Bahadur Lama, a Buddhist leader, and Bhola Mahat, regional coordinator for INSEC, a human rights organization.)

political movements in Nepal after 2006 have involved some militancy and have differed only in severity.

Criminal acts that have not been adequately investigated have invariably involved political parties or those under their protection. In January 2010 a group of supporters of federalism in Nepal attacked and severed the nose of one Surya Bahadur Nepali, who was backing his own party's opposition to a federal state. The incident took place on 6 January 2010 in Maitidevi, Kathmandu, when Rashtriya Janamorcha had organized a strike to protest against federalism. Nepali was hospitalized and may be able to get a nose back only

after reconstructive surgery.⁵⁵ The government did not deem it necessary to pursue the case – perhaps – because the Rashtriya Janamorchha was protesting against federalism (and the attackers were its supporters), which was against the commitment of the larger parties. The notion of justice for the victim was inconsequential. This was one incident that caught the attention of the press and therefore it became well known. Many incidents, especially those involving atrocities against ordinary people, are seldom reported, and it is unlikely that those involved are ever punished. (See: Chapter III: The Ordeal of Abduction.)

Among the reasons why impunity has continued to flourish is the non-implementation of the commitments of the CPA, especially the clauses on the cease-fire.⁵⁶ Provisions that relate to ending impunity are contained in Clause 5.1.1 and its sub-clauses which commit both parties to stop the use of arms, directly or indirectly, hurt or exert mental pressure on anyone, murder and violent activities, kidnapping, arrest, detention, disappearance, travel with illegal arms and be present with arms or combat uniforms in civil gatherings, political meetings and public programs. Similarly, Clause 5.2 and its sub-clauses deal with measures for the ‘normalization of the situation’ and prohibit both sides from collecting cash and levying illegal taxes, make public the names of those disappeared by both sides and those killed within 60 days. It also enjoins the two sides to constitute a National Peace and Rehabilitation Commission and a High-level Truth and Reconciliation Commission to investigate serious human rights violations against those involved in violent crimes against humanity during the conflict, withdraw accusations, claims, complaints and cases under consideration against individuals for political reasons, and allow those displaced during the conflict to return home, among others. Almost all of these commitments remain only partially addressed or just ignored.

55 *Himal Khabarpatrika*, 16-29 January 2010.

56 CPA concluded between the Government of Nepal and the Communist Party of Nepal (Maoist), 21 November 2006, CPA, pp. 10-14.

All political parties have flouted the provisions of the CPA, some more, some less. But because there was no mechanism to fix responsibility or monitor compliance, it is difficult to quantify the extent to which it has been breached. However, circumstantial evidence (discussed in this report and elsewhere) suggests that the Maoist side has disregarded many of the specific commitments concerning violence against individuals, while successive governments have failed on the responsibility of assuring justice to victims and ending impunity as a matter of policy. Change could have begun with the formation of a high level monitoring committee as agreed in the CPA, which however, had not materialized in early 2010.

The National Human Rights Commission (NHRC) has recorded instances where commitments made in the CPA were not implemented. These include the commitment to return property seized during the conflict and rehabilitation of the displaced, removal of land mines, and publicizing the names of those arrested/detained and disappeared during the conflict.⁵⁷ The NHRC noted that land mines had killed people well after the CPA was signed. On arrests/detentions and disappearances the NHRC said the whereabouts of 939 people disappeared during the conflict remained unknown as of 13 April 2009. The government's security forces had not made the whereabouts of 663 public while the Maoists had not done the same with 276 they had disappeared. NHRC added that the failure to establish the Truth and Reconciliation Commission had condoned impunity.

Political parties and their leaders as well as those with access to political influence have largely ignored due process. Many actions of armed groups, especially in the restive central and eastern plains, have not been adequately investigated owing to poor law enforcement and political protection or both. The failure of the police to arrest Karima Begum after the slapping incident in Birgunj is also telling of how politics can influence prevent implementation of law.

57 NHRC, 2066, 'Report on the status of its recommendations', p. 17.

Yet another instance where an apology was enough for a politician to get away after attacking a police official played out in Rupandehi District in January 2010. It was a case where Om Prakash Yadav (Guljari), a member of parliament with the MJF, had kicked and manhandled a police constable for not saluting him.⁵⁸

Justice has not been forthcoming even in cases where suspects have been identified. In some cases mobs have usually created situations that have blocked proper investigation. Even in cases where political parties were not directly involved, local elites have prevented the law from taking its course. This became evident in the case of Ramshikhar Jhala of Kailali district on 7 November 2009, when, according to the victim, a local youth beat her up on the charge that she had killed his father using witchcraft. She was forced to walk around the village naked. She tried to report the incident to the police but the villagers stopped her from doing that saying: 'It is a local issue and we should settle it in the village.'⁵⁹

58 *The Kathmandu Post*, 26 January 2010. A 15 April 2008 report in nepalnews.com had said that the MP had won an election even though he faced a murder charge at the district court.

59 Testimonies of women accused of witchcraft at a public hearing organized by Sancharika Samuha, Dalit Mahila Sangh and Care in Kathmandu in December 2009. The statement appears on page 3 of the booklet.

Lest we forget ...

The armed conflict in Nepal (1996-2006) caused the deaths of over 13,000 people. Each of these deaths needs to be thoroughly investigated to bring those responsible to justice. Only this, combined with reparations for the families of victims, can lead towards reconciliation and peace. Only a handful of the 13,347 deaths (8377 by the state and 4970 by the Maoists)¹ have been thoroughly investigated but no one responsible for killing civilians, extra-judicial killings, abductions and torture have been punished. This chapter summarizes some of the ‘emblematic’ cases involving serious violations of both national laws as well as international humanitarian and human rights instruments as investigations into them have made clear.

Birendra Sah: Murder rewarded

Birendra Sah was abducted from Pipara of Umjan VDC, Bara district, on 5 October 2007. His body was found on 8 November 2007 in the forest near Tagiya Basti in Ward No. 7 of Dumarbana Village Development Committee (VDC). The 34-year-old journalist worked as a stringer/correspondent for *Dristi* weekly, Avenues Television and Nepal FM in Bara district. He was also a central committee

¹ Informal Sector Service Center (INSEC). (The deaths took place between 1996 and 2006)

member of Press Chautari, a journalist group close to the Communist Party of Nepal (Unified Marxist-Leninist), or CPN (UML).

According to Ramdev Das,² who was abducted along with Sah, he and the deceased had purchased timber from the Sahajnath Sajhedari Ban Byabasthapan Samiti (Forest Management Committee) and were at a teashop run by Jiyalal in Pipara Bazaar from where they were abducted. Kundan Faujdar and Ram Ekbal Sahani arrived and said: 'We have captured illegal timber you should write about it.' Sah said that he had not brought a camera and therefore he would not go. Faujdar then put a gun on his back (while Sahani did the same with Ramdev) and took the two away. The abductors asked the journalists to drive the bike and they rode pillion.

After a 'certain distance', another person, Hareram Patel, asked Das to ride with him and took him to Sakhuwa village, where Lal Bahadur Chaudhary was waiting. There, Chaudhary is said to have said, 'Ramdevji we have abducted Birendraji. Birendraji is in our party's Red Book. Because there are orders to kill him, I have to submit him to the party.'

He also instructed Das to tell the others that an 'unidentified group' had abducted Sah and not the Maoists. Thereafter, he said, he was struck with the butt of the pistol on the head and stomach after which he fell to the ground. A member of the forest conservation committee from whom the two had purchased the timber took him to the police office at Ganj Bhawanipur.³

One of the accused, Sahani, was later arrested but he has denied his involvement.⁴ He said he was in Chandigarh of India at the time of the incident and was not involved in the abduction and murder. He added that he did not know Birendra Shah and had come back

2 The statement was made at the District Police Office, Bara.

3 Two forest committee members had heard about the abduction and arrived at a scene on another motorcycle.

4 His statement in the court and other documents obtained during this research do not specify the date of arrest. However, the statement indicates that it was made 'five months' after he had returned from India. Assuming he was presented in court within 24 hours of arrest, he could have been arrested the day before.

home 'after spending about one and a half years in India'.⁵ Sahani has been in judicial custody since 5 January 2009.

The three others named by Das, Faujdar, Patel and Chaudhary, have not been arrested. But a fifth person Manejar Giri has also been in judicial custody since 3 November 2008. Giri had pleaded innocence in court but it ordered him into custody, saying that the accused was a member of the Maoist party and had accompanied Lal Bahadur Chaudhary (who, the court said, was the main suspect, based on the evidence available) at all times, and also because the prosecution's witnesses had said they believed he was involved in the incident.⁶

Giri told the court that he had been told by Chaudhary that the latter had also 'heard' that Sah had been abducted from Pipara Bazaar. He also said that both he and Chaudhary had filed a dacoity and arson case against Sah's elder brother, which was under consideration by the court. (He was not named by Ramdev Das).⁷

The Federation of Nepali Journalists (FNJ) had dispatched a fact-finding team to Bara soon after the incident. The team publicized its findings on 10 October 2007, in which the Communist Party of Nepal (Maoist) was named as the group to have abducted Sah and also that he could have been killed.⁸

According to the FNJ report, Sah and Ramdev Das had visited the Pipara Sahajnath Sajhedari Forest of Umjan VDC on 5 October to purchase timber for the house he was building. According to Bhuwaneshwor Chaudhary, the two had eaten at Janga Bahadur's place after the logs had been sent for sawing. About that time Kundan Faujdar and Ram Ekbal, two district leaders of the CPN (M), arrived and told the journalists that they had information about tim-

5 Statement made in the presence of a judge at the Bara District Court on 5 January 2009.

6 Based on the Bara District Court's order dated 3 November 2008.

7 Statement in court, 2 November 2008.

8 FNJ central committee member Ramesh Bista had coordinated the investigation team. Other members were Gagan Bista, general secretary of Press Chautari and Junarbabu Basnet of Press Union.

ber smuggling and asked the two to ride with them. Sah had driven the black motorcycle and Faujdar was on the pillion. The other two were on the second motorcycle. The two journalists were then taken to Pasauna, a nearby village, where the locals had seen the abductors. Accordingly, Faujdar had a black cloth covering his face and the locals had also seen weapons. After the two were taken some distance from the village, the locals also saw Lal Bahadur Chaudhary, a local CPN (M) leader.⁹ Chaudhary was the 'in charge' of Ilaka No. 4¹⁰ and Faujdar was a party worker.

Anil, the district in-charge of the CPN (M), had told the FNJ mission that he had heard that Kundan was involved in the abduction but that the party had already taken action against him and expelled him. (He was supposedly expelled for setting up booby traps against his own party colleagues before the incident.) But Faujdar was still the district chairman of the party's Tharuwan Mukti Morcha at the time of the abduction. Anil had also told the FNJ team that he had heard that personal issues were also involved in the case and that he would try to find out what had happened. He also confirmed that Lal Bahadur Chaudhary was a responsible member of the party. The FNJ team was unable to meet Chaudhary.

According to the FNJ report, Chaudhary was a neighbor of Sah's and the two families did not get along well. Amarbati, Sah's wife, told the FNJ team that the Maoists, and particularly Chaudhary, had threatened Sah several times. The FNJ had concluded that the CPN (M) had carried out the abduction and because there had been no information of Sah's whereabouts, it had doubts whether he was alive.

Following protests by journalists, leaders of different political parties – the Nepali Congress, UML and Jana Morcha Nepal – took up the issue in parliament. Thereafter Krishna Prasad Sitaula, home

9 Surendra Chaudhary, as told to the FNJ fact-finding team.

10 The Maoist party is organized as follows: Central Committee, State Committee, District Committee, Village and Ilaka or Town Committee, Ward Committee and Party Cell. Except for the central committee, all other committees have an official representative from the committee above it who is called the 'in-charge'.

minister, and Krishna Bahadur Mahara, information minister, promised action against the guilty. The NHRC also issued a statement demanding legal action against those involved and named Faujdar, Sahani, Chaudhary and Patel as suspects.¹¹ According to *Kantipur*, on 2 November 2007, Faujdar had admitted to being involved in the abduction, saying it was done in accordance with the directives of the party. In an interview on Gadimai FM he said he had handed over Sah to Chaudhary after the abduction and said he was unaware of what happened thereafter.¹²

On 16 October 2007 the parliament formed a committee to study the abduction. It was led by Urmila Aryal (UML) and had Tilak Pairyar, CPN (M), Kamala Pant (NC) and Lila Naichai (Nepal Workers and Peasants Party) as members. The parliamentary committee also concluded that Chaudhary, Faujdar, Sahani and Patel were involved in the abduction and called on the government to take action against them.

About a month had passed after the abduction when the police found a body in the forests of Amlekhgunj Ward No. 9 which it suspected as belonging to Sah. The relatives of Sah could not recognize the remains after which it was sent for forensic tests in India.

On 5 November 2007, the CPN (M) admitted that Sah was shot and killed by its activists the same evening of the abduction. Hari Bhakta Kandel, the coordinator of an investigation team formed by the party, organized a press conference to announce the involvement of party workers in the abduction and murder. He said that Chaudhary, Sahani and Faujdar were 'involved' in the abduction and murder, and that Hareram Patel was innocent. It also confirmed that Chaudhary was a district committee member and an area in-charge and that Patel was the area secretary. It said the other two suspects were party workers.¹³

According to the Maoist party version in *Kantipur* daily, Faujdar

11 *Kantipur*, 4 November 2007.

12 *Ibid.*

13 *Kantipur*, 6 November 2007.

and Sahani had taken Sah to a clearing two km. north of Sakhuwa (between Juguwa of Sapahi and Kakari VDCs). Then Sahani had shot Sah in his temple and chest¹⁴ and had buried him as instructed by Chaudhary. The Maoist report said its findings were based on a telephone conversation with Chaudhary. Kandel told the media that the party had a policy of not using force against journalists and blamed 'indiscipline' as the reason for the involvement of the local party workers. He added that the party was willing to support the government if asked for assistance.¹⁵

Police found Birendra Sah's buried remains in the forest near Tagiya Basti of Dumarbaan of Bara District on 8 November 2007. Upon exhumation the police found a pen, glasses, Sah's press ID card and citizenship certificate. Sah was cremated on 9 November 2007.

On 5 October 2007, FNJ Bara filed a complaint against the five at the police office. A case was filed against the accused on 13 October 2008. (Two of the accused Ram Ekbal Sahani and Manejar Giri were being held at the jail in Birgunj).¹⁶ The police have made no further arrests.

Among the two other suspects, Kundan Faujdar is the chairperson of the Gambhirbajra Kishor Madhyamik Vidhyalaya (high school) management committee and Hareram Patel is a member of the management committee of the Ram Janaki Primary School. Lal Bahadur Chaudhary has not appeared in public after the incident. However, there have been reports that he still holds a responsible position within the party.

According to a report in *Nagarik* daily, a meeting of the Maoists held at the Teachers' Training Centre at Kaliya, Bara district on 9 October 2009 had named Lal Bahadur Chaudhary and Kundan Faujdar as members of the party's district secretariat. The unnamed source told the newspaper that Chaudhary's name appears at num-

14 The postmortem reports of the body found confirmed the location of the gunshots. It said 'head injury due to bullet' had caused the death.

15 *Kantipur*, 6 November 2007.

16 <http://www.thehimalayantimes.com>, 3 December, 2009.

ber 54 on the list and that of Faujdar at 56 in the 57-member party committee.¹⁷

The abduction and murder of Birendra Sah is one case that just cannot be forgotten because those implicated in the crime are still at large. The police seemed to have given up on the investigation after the body was discovered and the political leadership seems content with the situation as it is. Journalist associations have continued to demand justice for the family of Sah.

Prakash Thakuri: ‘Wrong’ politics – No Justice

Prakash Thakuri, editor and publisher of *Ajako Samachar Dainik*, was abducted from his rented apartment at Bhasi of Mahendranagar municipality on 5 July 2007. He was also a member of the Nepal Rashtriya Patrakar Mahasangh (Nepal National Journalists Federation), a pro-king group formed after the royal takeover of February 2005.

Thakuri’s wife said he was abducted at around 10.30 in the morning by a group of 5/6 Young Communist League (YCL) cadres, including Pom Lal Sharma Bhandari and a pro-Maoist student by the name of Chandrakanta.¹⁸ INSEC said Sharma was the secretary of the Maoist-affiliated People’s Health Workers’ Association.¹⁹

On 7 July 2007, the district committee of the CPN (M) organized a press conference and denied the involvement of the YCL. Tekendra Bhatta, the joint in-charge of the party’s district organization, and a CA member from Kanchanpur Constituency No. 3, told the media that they ‘would know reality of Thakuri by night.’²⁰ He also denied that the accused was a member of the party. (On 13 July 2007 the

17 nagariknews.com, 3 December 2009.

18 A complaint lodged by Janaki Thakuri at the District Kanchanpur Office. (Date: illegible)

19 INSEC, 2009. *Manavadhikar Barshapustak 2008* (Nepali edition), p. 526 (At the time the police had not been able to arrest Jagat Chhetri, the municipal coordinator of the YCL in Kalikot, and Chandra Kanta Bhatta, who were also accused of involvement in the abduction).

20 arghakhanchi.com (viewed 10 December 2009).

government appointed Sharma as member of the Mahendranagar Town Development Committee. Hisila Yami from the Maoist party headed the Ministry of Physical Planning at the time of the appointment. He remained in office until 1 January 2008.)

There was no further news that day. However, the next day, 8 July, an organization calling itself the National Republican Army (NRA) issued a statement saying that Thakuri was killed in ‘action’ while he was being taken for ‘people’s action’.²¹ The statement did not say when Thakuri was abducted or when he was killed. It was also the first time anyone had heard about the NRA.

Thakuri’s abduction did not receive the immediate attention of either human rights activists or the FNJ, the union of journalists.²² The first human rights groups reached Kanchanpur to ‘investigate’ the abduction only on 13 November 2007²³ – five months after the abduction. A report by the group said that even though the Maoists denied their complicity in the abduction it had reason to believe that they were involved. Its conclusion was based on the statement made by Pom Lal Sharma under custody to the police and to the media, and the accounts of Thakuri’s family members.²⁴

The police had formed a committee coordinated by Rajendra Khadka, Deputy Superintendent of Police (DSP) of Kanchanpur, to investigate the abduction on 16 November 2007. The police detained Sharma the same day.

21 The statement signed by one Krantideep, spokesperson, said, ‘Prakash Singh Thakuri who openly publicized the king and threatened of war had been on its watch list for sometime.’ It added that the ‘action’ against Thakuri marked the beginning of its revolution. (translated by authors).

22 This could have been due to political reasons because Thakuri was a member of the journalist federation that supported the royal takeover of February 2005, while the human rights groups as well as FNJ supported the political parties opposing royal rule.

23 The team members comprised Gopal Krishna Shivakoti and Abhaya Raj Joshi from Inhured International, Khadgaraj Joshi, of INSEC, Far-western Region; Chitra Paneru, of Institute of Human Rights Communication (IHIRICON), and Bir Bahadur Bista of Advocacy Forum, Far-western Region. Also see: <http://www.state.gov/g/drl/rls/hrrpt/2007/100618.htm>

24 *Paschim Nepal Dainik*, 18 November 2007, p. 3.

The FNJ published its report on 21 November 2007, concluding that the YCL had been involved in the abduction, that the NRA statement indicated that Thakuri had been killed, and that the Maoists were trying to make the incident 'mysterious' by denying the involvement of their cadre. It also concluded that the police had not taken up the matter seriously because the Maoists were involved. The basis for this conclusion was the inability of the police to detain even those who had been identified as being involved in the abduction.²⁵

Thakuri's wife had filed a complaint at the District Police Office accusing Pom Lal Sharma, Jagat Chhetri, Chandra Kanta Bhatta and four others identified only by their first names, Prem, Bipin, Sishir and Nikhil, of being involved in the abduction.²⁶ Pom Lal Sharma admitted that he had identified Thakuri in a statement made at the district attorney general's office on 23 November 2007. He said that Thakuri was abducted at the instructions of Prem, the YCL in-charge of Kanchanpur, by Jagat Chhetri, the YCL town in-charge, Chandrakanta Bhatta, Dilip Shahi, Bipin Shahi, Nikhil and Sishir.²⁷

In an attempt to quell fears that the Maoists, who were now in the government, would obstruct justice, Krishna Bahadur Mahara, minister of information and communication, promised not to 'interfere politically in the legal process.'²⁸ He made the commitment to members of the visiting International Media Mission for Press Freedom and Freedom of Expression in Kathmandu.

The district court of Kanchanpur released Pom Lal Sharma on a bail of Rs. 27,000 on 11 December 2007. However, on 27 October 2007 the Government of Nepal had decided to recommend withdrawal of cases that were of a 'political nature' (politically mo-

25 Based on a report prepared by a committee headed by D.R. Pant, vice president of FNJ. Its members were Purna Basnet and Ramesh Bista.

26 The complaint filed at the District Police Office.

27 The charge sheet presented by the District Police Office at the Kanchanpur District Court, p. 3. The court that released him on bail also noted that Sharma was involved in identifying Thakuri.

28 www.cpj.org/2009/02/attacks-on-the-press-in-2008-nepal.php (viewed 9 December 2009).

tivated) and filed between February 2006 and 21 November 2006. One of those cases the government sought to reverse was that of the murder of Thakuri. The Kanchanpur District Court gave the government approval to withdraw the charges on 18 December 2008.

The Government of Nepal provided some compensation to Thakuri's family five months after the incident,²⁹ but only as a response to demands by human rights and journalists' organizations. On 18 March 2009 Janaki Thakuri filed a petition at the Supreme Court seeking annulment of the lower court order.³⁰ In the petition, she asked why the case against her husband's murderers had been withdrawn.³¹ The Supreme Court had not decided on the matter till end-April 2010.

Maina Sunar³²: Justice denied

Soldiers of the Royal Nepalese Army (RNA)³³ 'arrested' 15-year-old Maina Sunar from her home at Kharelthok VDC 6, Kavrepalanchowk District, at around 6 am on 17 February 2004. She was a student of Grade 9 at the Bhagawati High School. Her father, Purna Bahadur Sunar, had asked the soldiers not to arrest a 'minor' to which they are said to have replied, 'If you want to free your daughter send her mother Devi Sunar to the Lamidanda Barracks.'³⁴

A group of about 25, villagers including Maina's parents and teachers, visited the barracks but were told that she had not been arrested. Thereafter, the villagers had gone to the Birendra Peace Operations Training Centre at Paanchkhal, where soldiers are trained

29 INSEC, 2009.

30 Advocacy Forum and the FNJ had supported her in filing the petition.

31 This case was filed after the cut-off date in the government's order to withdraw cases of a 'political nature.'

32 Some documents, including that of the UN OHCHR, use the surname Sunuwar. (See: OHCHR, 2007).

33 The army was renamed Nepal Army after the parliamentary declaration of May 18, 2006.

34 The first information report (FIR) filed by Devi Sunar at the Kavre District Court on 13 November 2006.

before being sent on UN peacekeeping missions, and were given the same response.

It took three years to get information on what had actually happened to Maina after her arrest. According to a report published by the UN OHCHR in December 2006, she was taken to the military training centre at Paanchkhal where she was ‘subject to torture in the presence of seven NA officers and soldiers, including two captains who had ordered that Maina’s head be submerged in water for six or seven times at the orders of Babi Khatri’, then a Lieutenant Colonel.³⁵ Using a copy of the Court of Inquiry conducted by the NA as source, OHCHR says, ‘the soldiers then administered electric shocks to her wet hands and feet four or five times; the torture continued for one and a half hours, after which she was detained..., where she was left blindfolded and handcuffed; she later began vomiting and foaming at the mouth and died before medical assistance could arrive.’

The Court of Inquiry concluded that ‘It was indeed as a result of torture inflicted during the course of interrogation that the death of Maina Sunar occurred’ and that ‘the tortuous treatment, done in an inexperienced and unskilled manner was inhumane.’³⁶ (A direct translation of the Court Martial decision dated 8 September 2005 reads as follows: ‘Maina Sunar did not die or was not killed when she was knowingly being tortured instead she died within two hours owing to the wrong methods and techniques applied due to carelessness, recklessness, lack of common sense and due to her own bodily weaknesses.’)³⁷ The army’s court also concluded that the officers involved in the torture tried to cover up the death: ‘The body was shot in the back and buried inside the Training Centre.’³⁸ It was reported

35 UN OHCHR, December 2006. ‘The torture and death in custody of Maina Sunuwar’, Summary of concerns, p. 18.

36 Ibid, pp. 18-19.

37 Translated by authors. The full Nepali text of the Court of Inquiry Board is available at <http://justiceformainasunuwar.files.wordpress.com./2010/02/coib-nepali.pdf> (viewed 11 September 2010). The document uses Sunar as surname.

38 OHCHR, 2006, p. 19.

that she was shot as she was trying to flee. The Court of Inquiry Board ordered action against Colonel Babi Khatri, Captain Sunil Prasad Adhikari and Captain Amrit Pun.

The NA began its investigations on April 15 2005.³⁹ It decided that Colonel Khatri had used the wrong interrogation methods, asked the body to be buried without following necessary procedures, and failed to abide by human rights and humanitarian laws. The court ordered six months' imprisonment and a bar on promotions for two years. Similar sentences were handed down to the two captains. It also fined Colonel Khatri Rs. 50,000 and Rs. 25,000 each from the two captains. The money was to be given to the family of the deceased. The judgment does not mention Captain Niranjan Basnet⁴⁰ who had been involved in 'arresting' Maina. Human rights groups want Basnet tried at a civilian court, which the NA has refused. A letter written by B.A. Kumar Sharma, head of the army's legal department, says Captain Basnet was cleared of the charges because 'it was seen that he had arrested Maina from her home and handed her over to the barracks.'⁴¹

It is unclear what happened to the officials found guilty. According to a report in *Himal Khabarpatrika*⁴² both the junior officers have gone abroad after resigning from military service.⁴³ The magazine report also said that since the Court of Inquiry and Court Martial proceedings stretched for over six months, neither of the captains faced imprisonment for even a day since they had been confined to the barracks.⁴⁴ In the case of Khatri, he was promoted while the proceedings were underway, and has since retired from the army.

Unsatisfied with the army court's decision, on 13 November

39 It was headed by Major General Kiran Sumsher Thapa.

40 He was later promoted to Major.

41 Letter dated 22 November 2006, which Sharma wrote to the District Police Office Kavre explaining 'why the army could not make Major Basnet present at the court.'

42 *Himal Khabarpatrika*. 1-15, July 2009.

43 *Naya Patrika*, 19 December 2009 reported that Captain Pun resigned 28 April 2006 and Captain Adhikari resigned on 18 October 2006.

44 Also see Human Rights Watch: <http://www.hrw.org/en/news/2010/02/23/nepal-torture-vs-democracy>.

2005, Devi Sunar, Maina's mother, filed a first information report (FIR) against the four NA officers. Thereafter, the Kavre Police Office has written to police offices in Kathmandu, Rupandehi and Dolakha, and to the accused and sent a letter seeking the cooperation of the army's legal department. The investigations could not proceed owing largely to non-cooperation by the army because police were refused access to the four officers mentioned in the FIR. The army's refusal was largely based on the premise that it would be a case of 'double jeopardy.'⁴⁵ On 22 May 2006, the Brigadier General Sharma wrote to the Kavre Police Office saying, 'Since the Court Martial has rendered a verdict, it is not lawful to initiate actions.'⁴⁶

The letter attempted to blame Maina Sunar for her own death, recounting the language in the wording of the military verdict discussed above. The army also refused to hand over to the police a copy of the decision of the Court Martial. Following increased pressure by human rights organizations led by the Advocacy Forum and the OHCHR, the police, accompanied by the OHCHR personnel, were allowed access the training centre and mark the burial site only on 26 June 2006. The police and the NHRC exhumed a skeleton from the suspected burial site on 23 March 2007. The remains were then sent for further forensic tests where they remain.⁴⁷

The delay in the investigation by the police led Devi Sunar to file a petition with the Supreme Court requesting the court to order the police and the District Attorney General to immediately proceed with the investigation. On 18 September 2007, the court ordered the that investigations be complete and decide whether or not prosecution was possible under the Government Cases Act on 2049.⁴⁸ A case on

45 The issue was whether they could be tried in a civilian court because they had already been tried once by the court martial; communication to this effect between the Kavre District Government Attorney and the Appealate Government Attorney in Lalitpur took place between July and September 2006.

46 OHCHR, 2006, p. 20.

47 According to the case filed by the Kavre District Attorney in January 2008, the office had not yet received a copy of the DNA tests.

48 The decision was taken by justices Min Bahadur Rayamajhi and Ram Prasad Shrestha.

the murder of Maina Sunar was finally registered at the Kavre District Court on 31 January 2008, with the four above-mentioned officers as defendants. The petition states that Basnet was also involved in the torture during the investigations that led to the death and that he be punished in accordance with the Murder Related Section of the Country Code 13 (3).⁴⁹

Major Basnet had been ordered to 'arrest' Devi Sunar and had instead brought the 15-year-old to the military training centre. He is the only person still serving in the army. Major Basnet was assigned to serve the UN Peacekeeping Force in Chad, Sudan and was sent home on 10 December 2010. He had been in Chad since August 2009, which, according to human rights groups, was also the time the Kavre District Court had ordered his suspension from the NA.⁵⁰ He has been in military custody but has not been produced at the civilian court for trial, despite an order by the prime minister to the defense minister that the law take its course.⁵¹ On 13 December 2009, the police informed the army about the Kavre District Court order demanding that the defendants be presented in court.⁵² Thereafter, newspapers have reported that the army formed another Court of Inquiry to look into the case.⁵³

Doramba: Army excesses

The RNA killed 18 Maoists and two civilians at Doramba Village Development Committee of Ramechhap District on 17 August 2003. NHRC has established that the Maoists were killed after they had been subdued and taken under control and had recommended

49 Court documents. The case also argues that the Army Act 2016 clearly says that the law would not apply to cases involving death of a civilian. It also argues that since there was no military action in the area after Maina was arrested and brought to the Training Centre, it was a case of torture and murder.

50 <http://www.hrw.org/en/news/2010/02/23/nepal-torture-vs-democracy>.

51 *Kantipur* reported that the prime minister Madhav Kumar Nepal had asked Defense Minister Bidhya Bhandari to let the law take its course. 13 December 2009.

52 *Naya Patrika*, 19 December 2009.

53 *Kantipur*, 22 December 2009.

further investigation and action.⁵⁴ An NHRC team had visited the site where the Maoists had been killed, interviewed eyewitnesses, and exhumed the dead bodies from where they had been buried (by the villagers after the soldiers had left).

The village was one with considerable Maoist activity and one where the Maoists had declared their 'Village People's Government'⁵⁵. The army used to come to the village occasionally to search and detain suspects. On 16 August 2003 CPN (M) supporters had gathered at the house of Yuba Raj Moktan, a primary school teacher. They had stayed there overnight and were joined by the others the next day, when about 80 soldiers arrived in the village. The soldiers split into four groups and two headed towards Moktan's house, seemingly knowing that the Maoists were there.⁵⁶ The first gunshot was heard at around 10.30 and it killed Tek Bahadur Thapa Magar, or 'Bibek', who was coming towards the house. Thereafter, the soldiers began shooting at the Maoists in the house and overpowered them, while some managed to flee. The soldiers 'arrested' 19 persons including the house owner, Yuba Raj Moktan, and his son Leela. All the detainees had their hands tied behind their backs and were marched in the direction of the village health post and eventually towards the north of the small market at Doramba. The soldiers marched their captives to Deurali from where they headed towards Dandakateri. It was here that the soldiers lined up and executed the captives and dumped the bodies in a ditch on the mountainside.⁵⁷

The NHRC team exhumed the bodies with the consent of the

54 The investigation team was formed on 26 August 2003 and its members were Krishna Jung Rayamajhi, Prem Bahadur Bista, Kanak Mani Dixit, Dr. Harihar Osti, and Hari Phuyal (NHRC). The NHRC report said the whereabouts of one person, Usha, was not known.

55 The narrative is based on the 'On-the-spot Inspection and Report of the Investigation Committee', NHRC, Doramba Incident, Ramechhap. 2060 (2003).

56 They had inquired where the wedding of Ram Kumar, a Maoist cadre, and Sangeeta, a local girl, was taking place.

57 The NHRC report on the incident said that the locals had buried the bodies in the presence of Maoists three days after the shooting.

families. Among the dead were 8 women and 15 of the 18 had head injuries – four of the 15 had skulls missing. Two bodies had multiple bullet wounds. The investigators concluded that the shots had been fired from close range while their hands were still tied at their backs. They found the soldiers to be in violation of international humanitarian laws, especially Common Article 3 of the Geneva Conventions, and also the Constitution and the army, police and armed police acts of Nepal. They also called for further investigation of the incident and punishment for those found guilty.

The RNA conducted its own inquiry into the incident in February 2004 but its report was not made public.⁵⁸ Major Ram Mani Pokhrel and Prabin KC, a police inspector, commanded the soldiers. According to a report by the Manav Adhikar Pragyaik Samuha, the RNA formed two Courts of Inquiry to investigate the incident, and an army court later found Pokhrel guilty of ordering soldiers to ‘take necessary actions’ and sentenced him to two years’ imprisonment and termination of service. Pokhrel was not sent to a civilian prison. It also recommended departmental action against KC.

On 1 September 2003, the Maoists killed three villagers—a health worker and two local businessmen—on the charge of being informants to the killing. But no attempt has been made to identify and punish the guilty.

Researchers who reached Doramba in 2009 had interviewed nine of those who had lost family members in the incident and concluded that the families of five Maoists who had been killed faced difficulties making ends meet.⁵⁹ The government provided some compensation to the villagers killed in Doramba but the recipients were not satisfied. The report also says that the Maoists had been supporting the education of a child from the family of one of their members in Kathmandu and a non-government organization was providing similar support to the child of another Maoist who was killed.

58 *Manav Adhikar Pragyaik Samuha*, 2066, p. 16. The team had visited Doramba in April 2009.

59 *Ibid.*, p. 18.

In April 2009, the families of the victims still wanted to see the murderers of their kin brought to justice. Even though the directive principles of the Interim Constitution assure ‘positive discrimination’ for victims of the conflict,⁶⁰ such support had not reached the families of the victims in Doramba.

Madi: Justice not done

On 6 June 2005, the Maoists blew up a passenger bus at Badarmude of Kalyanpur VDC in Chitwan District, killing 39 and injuring 72. Among the dead were 38 civilians and three soldiers.⁶¹

A report in the magazine *Himal Khabarpatrika* said that the Maoists were seeking to attack 12 servicemen headed to Narayanghat from Madi.⁶² The attack was premeditated with the explosive placed in the path of the bus and the charge triggered from a distance of about 200 meters. The bus was carrying around 150 passengers. The soldiers were in civilian attire and, according to the OHCHR, some were carrying concealed weapons even though the army told the OHCHR that they were off-duty.

A report submitted by the CPN (M) to the OHCHR after the incident said a ‘bucket bomb’ was used and detonated from a site with clear view of the vehicle. In other words, those setting off the explosive could have seen that the vehicle carried a large number of civilians. The Maoists claimed responsibility for the attack through two public statements. According to the OHCHR, in a report to the UN body, the Maoists said they had identified ‘the names and specific military, political and logistical responsibility of each person involved in ordering, planning and implementing the attack.’⁶³

According to the OHCHR report, the CPN (M) had warned and

60 Article 35 (14).

61 OHCHR, 2005. Attacks against public transportation in Chitwan and Kavrepalanchowk districts, paragraph 23 at http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2005/2005_08_18_HCR_Chitwan%20Bus%20Attack_E.pdf

62 *Madi Narasamhar*, 30 June 2005 at www.nepalihimal.com.

63 OHCHR, 2005, paragraph 26.

threatened bus companies, owners and drivers not to allow RNA personnel to board public buses. Representatives of the bus companies reportedly held a meeting with the Chitwan CDO and with senior RNA officers but the soldiers did not discontinue using the buses, despite an oral agreement not to do so. The report added that the CPN (M) had also told locals in the Madi valley not to ride buses in which RNA personnel were traveling and to exit the buses when soldiers came on board.⁶⁴

Following the attack the NHRC recommended to the government to immediately stop the use of public vehicles by both armed and unarmed security personnel, even if they were out of uniform. It also ordered action against those officers who had permitted the soldiers to use public vehicles and made a general recommendation to the Maoists to stop attacking military installations, and end attacks that harmed ordinary people and destroyed public property.

A group of lawyers and human rights activists visited Madi in 2009. According to their report, the Maoists had said that bombing was carried out by a group of five under the local area commander and that the five had been detained and sent to 'labor camp'. The Maoist chief, Prachanda, had also made a public apology. However, almost four years after the incident, the Manav Adhikar Pragyik Samuha was unable to get information on what action had been taken against whom and where those individuals were.⁶⁵

Himal Khabarpatrika had a follow-up story on the Madi carnage in its 17 July 2010 issue where it reported that a Maoist leader, Devendra Poudel, had named the main culprits as 'Sujan' and 'Sahas', who, he said, had fled after the incident. He also named two others who were 'less responsible', 'Kisan' and 'Harka'. The magazine also suggested what their real identities are as well as their present positions within the Maoist party. The report also said that the CPN (M) had helped the main suspects to flee, and only Harka had been temporarily suspended. In mid-2009, all of those allegedly involved

64 OHCHR, 2005, paragraphs 32-33.

65 *Manav Adhikar Pragyik Samuha*, 2000, p. 23.

in the carnage were back in responsible positions in the party. The report added that Ghananath Dahal (Avinash), the Maoist in-charge of Chitwan District, and Yam Bahadur Pariyar (Indrajit), secretary at the time of the incident, were secretary and joint secretary of the party's district committee in July 2009.⁶⁶ (On 10 June 2005, the Maoists attacked another passenger vehicle which was also carrying RNA soldiers; two civilians and four soldiers died.) In the Madi case, The OHCHR concluded that the Maoists were 'responsible for the killing of civilians and to have been in violation of its international humanitarian law obligations.' It also found the RNA in 'breach of its international humanitarian responsibilities' and added, '...there was insufficient evidence to support CPN (M) claims that the RNA was deliberately using civilians traveling in the buses as human shields.'⁶⁷

None of the military officials responsible for allowing soldiers to use civilian public transport has been punished under the principle of 'command responsibility'.⁶⁸ The government provided Rs 250,000 to the families of the victims as relief and compensation. There is still a strong local demand for bringing those responsible to justice. In the words of a victim who lost her mother in the blast, 'No legal action has been taken against those who killed ordinary people in this manner. Therefore, they must be killed in the same manner and the victims have to be supported as much as possible.'⁶⁹

The district police had filed a case against Prachanda at the Chitwan District Court under the Terrorism and Destructive Acts (Prevention and Control) Act (TADA), 2002. The case was withdrawn following a 12 June 2006 decision of the government to withdraw all

66 Paragraph 44 of the OHCHR report says that the Maoists had admitted that it was a 'grave mistake' and that a joint meeting of the district party and the Special Task Force battalion had recommended suspending the five persons regarded as responsible for the incident. It adds that CPN (M) sources told OHCHR that the five persons had been detained and sent to a 'labor camp'.

67 OHCHR, 2005, paragraph 60.

68 *Manav Adhikar Pragyik Samuha*, 2000, p. 22.

69 *Ibid*, pp. 22-23.

charges under TADA and to stop all investigations under that Act.⁷⁰

On 29 July 2009, the OHCHR issued a public appeal on outstanding cases of human rights violations, and the Madi incident was highlighted as one where justice had not been done. It said the Maoists had not made public the real name of one Devendra nor punished others who had been identified as Anak Bahadur Magar 'Kisan'; Chandika Poudel 'Sahash'; Ram Bahadur Kumar 'Sujan'; and 'Harka'. It called those responsible for killing civilians to be held accountable for their actions and that none of the cadres had been subjected to criminal investigation or even detained. The Nepal Police was reluctant to look into the cases without UCPN (M) support.⁷¹ On 6 June 2010 a newspaper said the village has begun to observe the day of the bombing as 'Black Day' to remember those who were killed.⁷²

Bhairavnath battalion: And, those who have 'disappeared'

Disappearances remain one of the most neglected areas as Nepal struggles to establish lasting peace. In early April 2009, the NHRC had records of 663 individuals who had disappeared after being detained/arrested by the security forces. The number of the disappeared after abduction by the Maoists was 276, taking the total to 939.⁷³ A 2006 study conducted by INSEC suggested 888 that disappeared: 783 at the hands of the state and 105 by the CPN (M).⁷⁴ A 2009 publication of the NHRC puts the number of those who disappeared during the conflict at 3347. According to the report, government forces had caused 2258 disappearances and the status of 616 remained unknown. Similarly, in the case of the Maoists, the total disappearances were 1089 and the status of 870 was known and that

70 Ibid, p. 19.

71 Remarks made by Richard Bennett, representative of OHCHR-Nepal, at the Reporters Club. http://nepal.ohchr.org/en/resources/Documents/English/statements/HCR/Year2009/Jul_09/2009_07_29_Reporter's_Club_Accountability_E.pdf

72 www.myrepublica.com/portal/index.php?action=news_details&news_id=19564.

73 NHRC. 2066, p. 16.

74 INSEC, 2006, p. 4.

Table 2.1: Alleged disappearances caused by the state and the Maoists

Region	Disappearances by state			Disappearances by Maoists		
	Status known	Status unknown	Total	Status known	Status Unknown	Total
Eastern region	153	77	230	282	68	361
Central region	1051	205	1256	308	42	350
Western region	131	53	184	35	31	66
Mid-Western region	241	245	486	160	48	208
Far-Western region	66	36	102	75	29	104
TOTAL	1642	616	2258	870	219	1089

Source: NHRC 2009

of 219 remained unknown.⁷⁵ (Table 2.1)

Justice to the families of those who disappeared during the conflict is a vital component of transitional justice. A more recent estimate of disappearances puts the number at 1027. Even though the CPA required both the government and the Maoists to address the issue of the disappeared by 21 January 2007, to date, no individual on either side of the conflict has been held accountable for their roles in the gross violations of human rights.⁷⁶

Most of the disappearances have remained largely unaccounted for but there is some documentation on those believed to have disappeared after detention at the Bhairavnath and the Yuddha Bhairav battalions in Maharajgunj between September and December 2003.⁷⁷ But the status of 49 believed to have disappeared after detention at the Bhairavnath and Yuddha Bhairav battalions remained unknown until late 2009.⁷⁸

The OHCHR report claimed to have established the identity of 49 individuals⁷⁹ detained at the aforesaid barracks but the government has denied knowledge of their fate or their whereabouts. The

75 NHRC, 2009, pp. 6-7.

76 UNDP, 2010.

77 The two battalions along with the Mahabir battalion form part of the army's 10 Brigade headquartered in Balaju, Kathmandu.

78 OHCHR, 2006, p. 43.

79 The UN report has a list of the 49 with dates when they were allegedly arrested, including some for which the dates were 'unconfirmed' at the time.

Bhairavnath battalion acknowledged the detention of 137 people during the conflict and told the UN body that it had either released or transferred them after short periods. The OHCHR had asked the army to 'clarify' 19 cases of disappearances as early as August 2005 but it had not received any information till the time its report was published in May 2006. The report said that the only official documentation available regarding any of these detentions was prepared when some of the detainees were eventually transferred to civilian custody after *habeas corpus* proceedings in 2005.

One case involves three brothers who were reportedly arrested by individuals in plainclothes between August and December 2003. Among the three the RNA acknowledged the detention of Birendra Basnet after 19 months in June 2005 and he was released following a Supreme Court order in December 2005. But the whereabouts of his two brothers, Pushpa and Dhirendra, remained unknown in 2006.⁸⁰ The OHCHR confirmed that all three brothers were arrested or detained by the Bhairavnath or Yuddha Bhairav battalions.

It is not that there were no efforts to find out the status of detainees at the army barracks before the OHCHR came into the scene. The NHRC had secured a notice from the Supreme Court asking the army to allow it to investigate the disappearance of students close to the Maoists, including Krishna KC, but was denied entry to the barracks on 31 May 2004. The NHRC officials eventually identified and interviewed the three detainees on 1 July 2004.

The OHCHR has extensively documented cases of torture during interrogation at the Bhairavnath battalion, from where the 49 are believed to have disappeared. Those who disappeared have never been seen after December 2003.⁸¹ There were also three among the 49 who the UN agency believes to have died in custody as a result of torture and ill treatment.

Lt Col Raju Basnet commanded the Bhairavnath battalion during

80 OHCHR, 2006, p. 45.

81 The report says that some detainees remembered the date to be 5 December 2003 as many who had been taken away that night did not return.

the period covered by the OHCHR report, but it said that the Chief of Army Staff, Director-General of Military Operations, the Director of Military Intelligence and the Commander of the 10th Brigade knew or ought to have known about actions of the battalions under the command of the 10th Brigade. The OHCHR report recommended the establishment of a 'credible, competent, impartial and fully independent investigation into the arrest, detention and torture, and ultimate fate or whereabouts of the people held by the 10th Brigade and who are reported as disappeared.'⁸² It also called for the suspension of those potentially implicated directly or through command responsibility and eventually trying in a civilian court those against whom there was evidence of criminal responsibility.

In 21 December 2007 the NHRC carried out investigations at the Shivapuri forest near Kathmandu where it suspected that some of those disappeared from the barracks could have been buried. The investigation carried out by the investigators from the forensic medicine department of Tribhuvan University, University of Helsinki and University of Turku concluded that the remains were of a human body but whose identity could not be established.⁸³ But there was no evidence that it was a mass burial site.

The OHCHR has also documented disappearances in Bardia district, where it had investigated the cases of 156 individuals of the 200 reported missing after detention by security forces between December 2001 and December 2003. It has also documented 14 cases of enforced disappearance after abduction by the CPN (M) between November 2002 and October 2004, of which the Maoists has acknowledged 12.

The investigations related to disappearances by the security forces covers the period from December 2001 to January 2003, when there were three RNA units in Bardia district. The report says that the three units under the 4th Brigade of the Western Division of the RNA were primarily responsible for arbitrary arrests, unacknowl-

82 OHCHR, 2006, p. 64.

83 NHRC, 2006, p. 27; also see NHRC, 2009, p. 28.

edged detention and enforced disappearances. The UN agency says it 'documented the consistent refusal by the RNA to acknowledge arrests, the systematic use of torture in at least one place of detention and secret killings in custody.' In the case of Bardia, it found that the leadership of the Western Division of RNA failed to prevent and restrain the violations and 'must bear considerable responsibility, as must individual commanders'. It also recommended investigations to establish 'broader chain of command responsibilities within the hierarchy of the security forces and the Government of the time.'⁸⁴

The Maoists took 'actions' against those they considered to be exploiters, feudals and informants that consisted of public executions, abductions, torture and assaults. The OHCHR said most of the decisions related to such actions were taken by the district committee of the party and carried out by small groups of combatants known as 'squad teams'. Maoist actions during the early years of the insurgency were approved on a case-by-case basis but this changed and became more decentralized after the conflict escalated.⁸⁵ Among those abducted and disappeared were 13 men and one woman aged between 20 and 65 years of age, including three who were aligned to the Maoists and three members of the security forces. According to the report, in July 2008, the CPN (M) acknowledged that it had killed 12 of the 14, but many of the families had not been informed. The CPN (M) representative also agreed to make efforts to identify those responsible to help locate the remains of the victims.⁸⁶

Those who disappeared in Bardia were mainly civilians. Among the 156 individuals disappeared by the security forces, 138 were male and 18 were women and a huge majority of them (135) were Tharus. Those abducted and disappeared by the Maoists, included Tharus, Chhetris, Bahuns and Dalits, and people of Madhesi origin.

In June 2007, the Supreme Court ordered the government to establish (a) a commission of inquiry on conflict-related disappear-

84 OHCHR, 2008, p. 5.

85 Interview with Sushil Pyakurel, a former member of the NHRC, 24 July 2010.

86 *Ibid.*, p. 8.

ances in compliance with international standards, (b) enact a law to criminalise enforced disappearances, (c) prosecute those responsible for disappearances, and (d) provide compensation to the victims. The government drafted such a law in mid-November 2008,⁸⁷ but it had not been adopted till the end of 2009.

Enforced disappearance has been recognized by the UN General Assembly as a 'grave and flagrant' violation of human rights.⁸⁸ It represents a violation of the International Covenant on Civil and Political Rights (ICCPR), to which Nepal has been a party since 1991. Disappearances also lead to violations such as torture and killings. In 2006, the UN adopted a specialized human rights treaty, the International Convention on the Protection of All Persons from Enforced Disappearance; Nepal has not ratified the convention, and neither had it come into force internationally by the end of 2009.

Disappearance is high on the international human rights agenda but has remained largely neglected by successive governments in Nepal. During the visit to Nepal in January 2007, Louise Arbour, the then UN High Commissioner for Human Rights, said that 'the parties to the peace accord must act without delay to clarify the whereabouts or fate of all those who disappeared, and to provide justice and redress for the families.'⁸⁹ Disappearance was a major issue during the peace negotiations, and Clause 5.2.3 of the CPA, signed on 21 November 2006, categorically commits both the government and the Maoists 'to make public the information about the real name, surname and address of the people who were disappeared by both sides and who were killed during the war and to inform also the family about it within 60 days from the date on which this Accord has been signed.'⁹⁰

87 OHCHR, 2008, p. 79.

88 Declaration on the Protection of all Persons from Enforced Disappearance, adopted 18 December 1992.

89 OHCHR, 2008, p. 4.

90 The English translation is taken from UNDP 2008. The Interim Constitution of Nepal, 2063 (2007), p. 278.

Law and Disorder

The change in the political situation in April 2006 led to a decline in killings compared to the years of conflict (1996-2006) but did not end it altogether. A total of 13,347 people were killed during the conflict years.¹ According to INSEC, 2,134 people lost their lives between 2006 and 2009.² This is an average of around 500 deaths every year, and is higher than the deaths recorded annually during the conflict before 2000.

If the number of deaths is taken as an indicator, the security environment after 2006 can be said to be worse than it was in the early years of the insurgency.³ Reviews of the executive summaries of the INSEC Human Rights Yearbooks published between 2007 and 2010 also show that most of the violations have taken place at the hands of non-state actors. In 2006, INSEC recorded 313 killings by the state and 256 by the CPN (M)—10 were killed by the state while the Maoists killed seven persons after the political changes of April 2006. Nineteen individuals were killed between 6 and 24 April 2006

1 INSEC, 2008.

2 INSEC, 2010.

3 See: INSEC, 2007, *Human Rights Yearbook*, for historical data on conflict-period deaths.

as the government tried to suppress the popular protests.⁴

In 2010, INSEC reported 6557 human rights violations and non-state actors were responsible for over 78 percent of the excesses. This included 473 killings in which the state was responsible for 41 while political parties, their ‘brother’ organizations and unidentified groups accounted for the rest.⁵ The brother organizations of the UCPN (M) were responsible for beating up 652 people and abducting 55 and UML-affiliated organizations were responsible for killing one person and beating 104.

This section brings into focus some of the gross human rights violations and impunity thereof as a reminder of the path the country has taken after the peace process began.

Ramhari Shrestha: Lies, lies and more lies

Ramhari Shrestha, a house owner from Koteshwor, Kathmandu, was abducted on 27 April 2008. Govinda Bahadur Batala, or ‘Jibit,’⁶ a Brigade Commander of the Maoist People’s Liberation Army (PLA) had told him that he was being taken for ‘questioning’. Thereafter his whereabouts remained unknown until 15 May 2008 when Kali Bahadur Kham, Division Commander of the PLA, announced that he had died ‘in the course of beatings during the investigations.’⁷ It took two more weeks to locate the body of Shrestha at Jugedi, on the banks of the Trishuli River in Chitwan District.

According to the statement given to the NHRC by Ramila, the wife of Ramhari, Batala had told Ramhari that he would be taken to Chitwan. The next morning she had a phone conversation with Keshav Adhikari (Raghu) and Gangaram Thapa (Atom) of the PLA in Chitwan and the two had told her that her husband would return in

4 INSEC, 2007, p. 3. The government later published a list of 25 martyrs of the movement.

5 INSEC, 2010, p. 4.

6 Most Maoist cadres have *nom de guerre* that they still use along with their real names.

7 The translation tries to capture what was said in Nepali, which could also be translated as he died ‘in the course of the beatings during interrogation.’

4-5 days.⁸ Ramila filed a first information report (FIR) at the police office at Tinkune and lodged a petition at the office of the CPN (M) on 13 May 2008. Later, she met Pushpa Kamal Dahal (Prachanda), CPN (M) Chairman, seeking release of her husband. At the meeting, Prachanda was reported to have said: 'I am very serious about this incident, I have also had a meal at your house (in the past).'

But since the whereabouts of her husband remained unknown, Ramila resorted to a sit-in in front of the Maoist leader's residence and ended the protest only after Prachanda, and another Maoist leader Jhaku Prasad Subedi, assured her of her husband's safe return.⁹ But all the assurances proved meaningless on 15 May when Kham announced Ramhari's death. The PLA Commander said the deceased had been held at the Third Division at Jutevani, where he had succumbed to beating injuries on 10 May 2008.¹⁰ The same day, the Division handed over Batala, a brigade commander, to the police office in Chitwan for alleged involvement in the murder. The statement by Kham said Batala was involved in disposing of the body, which the latter also admitted in his statement. Accordingly, the body was flung from the suspension bridge at Chandibhanjyang Bhaludhunga into the Trishuli River on 15 May 2008.

As the story behind the abduction goes, Kham had 'lost' Rs. 1.7 million and a pistol verified by the United Nations from his rented room in Koteshwor on 27 March 2008. The abduction, apparently related to the robbery, took place almost a month later. Ramhari Shrestha owned the building rented by the Maoists. According to the NHRC, Batala had told the police that all three suspects of the robbery Ramhari, Raghu and Atom were held in the same room after interrogation at the Jutevani camp, where Raghu and Atom are accused of having beaten Ramhari. He added that the Ramhari was

8 She had also spoken to Bividh (Kham) the same day. And he had told her that the process could be long but there was nothing to worry. She had threatened to file a petition and at that Bividh had said it was not needed and that he himself would bring back Ramhari in two or three days. NHRC internal report, 2008, p. 2.

9 *Kantipur*, 17 May 2008.

10 *Himal Khabarpatrika*, 19 May-13 June 2008.

being taken to Kathmandu after his condition deteriorated and that he died at Dahakhani. He added that Raghu and Atom disposed of the body at Bhaludhunga (the two have since been absconding). Batala and Arjun, the driver of the vehicle belonging to the Division, had then returned to Chitwan.¹¹

According to *Kantipur*, on 18 May 2008, Ramila Shrestha met Girija Prasad Koirala, the then prime minister, and asked the government to take action against Kham, Keshav Adhikari and Gangaram Thapa. Prachanda issued a statement the same day saying that his party was saddened by the death. He also praised Shrestha as one who had been supportive of the party during the conflict and that he was saddened by the ‘fact that conspiracy of selfish individuals in the party had led to his death.’¹²

In the meantime, there was conflicting evidence suggesting that Shrestha did not die while he was being brought to Kathmandu (as Batala claimed) but at the Intensive Care Unit (ICU) of the College of Medical Science at Chitwan on 8 May 2008, at 11 am. Bhojraj Adhikari, a doctor, made the disclosure at the hospital on 20 May 2008.¹³ According to the NHRC report: ‘Ramhari Shrestha was brought to the hospital in a critical situation and was immediately transferred to the ICU, which is a basis of concluding that he was tortured at the camp. The person who took charge of the body after death is known by the name of Ishwar, but it does not have an address. Therefore, it can be said that all three Maoists commanders were involved in the incident.’¹⁴

According to *Himal Khabarpatrika*, using unnamed sources, Ramhari was in bed number 5 and was breathing for about two hours. He was declared dead by Dr. Subash Gurung on 8 May 2008, at 10.15 am.¹⁵ The NHRC said that hospital records show that Ramhari was

11 NHRC, 2008, p. 3.

12 *Kantipur*, 19 May 2008.

13 Ibid, 21 May 2008.

14 NHRC, 2008, p. 4.

15 *Himal Khabarpatrika*, 19 May-13 June 2008.

admitted the day before and that he died of multiple-organ failure. The body was supposedly handed over to his brother Ishwar, whose whereabouts were not known at the time of writing.

Shrestha's body was found on the banks of the Trishuli River at Jugedi on 25 May. A postmortem carried out by the Forensic Department of the Tribhuvan University Teaching Hospital concluded that he had died due to 'blunt force head injuries'. He was cremated on 27 May 2008.

The conflicting information in the case is enough reason for further investigating the abduction and murder and for holding those responsible accountable. To date there has also been no explanation about how the body of a person declared dead at a hospital was found on the banks of the Trishuli River. According to Kham's 15 May statement, Ramhari, who had been injured by the beatings inside the cantonment, died on 10 May while he was being taken to Kathmandu for treatment. Two others involved in the beating had supposedly disposed the body in the Trishuli River.¹⁶ However, this information does not match that provided by the hospital and the NHRC report.

Eventually, Prachanda and Ramila Shrestha were said to have reached a settlement: Shrestha's family would receive Rs 2 million, the family would be taken care of and the guilty would be punished. This was announced in a statement made by Hitman Shakya, a Maoist member in the CA.¹⁷

There was little public discussion of the murder thereafter. On 7 November 2008, the media reported a meeting between Kham, whose whereabouts were not known till then, and the then defense minister Ram Bahadur Thapa (Badal) in Chitwan. The main opposition, the Nepali Congress, demanded that the defense minister should clarify the matter in parliament, but Thapa denied having had the meeting. Journalists who had reported the meeting stood by their story but the matter was not followed up. Accordingly, there

16 Ibid.

17 *Kantipur*, 27 May 2008.

was a press conference at the District Administration Office that day and Kham was brought there under police escort. He returned after a short while.¹⁸

The Maoists set up their own investigation body on the murder on 22 May 2008. The findings of the commission, comprising Post Bahadur Bogati, Hitraj Pandey and Ekraj Bhandari has not been made public. On 24 May, however, Janardan Sharma, a deputy commander of the Maoist PLA, announced that Kham had been 'suspended'.

Amid all the confusion, on 22 May 2008, the government also formed its own investigation commission headed by former justice Rajendra Kumar Bhandari. The members were Amar Singh Shah, a senior police officer, and Sarad Raj Gautam, deputy attorney general. It submitted its report to the prime minister on 16 June 2008 and recommended legal action against nine, including Kham, Batala, Adhikari and Thapa¹⁹. It also recommended compensation to the family of the deceased.²⁰

On 24 July 2009, Richard Bennett, the OHCHR representative in Nepal, wrote a letter to Pushpa Kamal Dahal, chairperson, UCPN (M) seeking his support in tackling impunity, and one of the cases highlighted was the murder of Ramhari Shrestha.²¹ The police had told OHCHR that it needed the cooperation of the UCPN and the PLA to carry out the Chitwan District Court's order that Kham be arrested. OHCHR requested the Chairperson of UCPN (M) to direct Kham to surrender, 'even though he considers that Kham was not directly responsible,' and to provide full cooperation to the investigation.

On 10 November 2008, Bam Dev Gautam, home minister, informed parliament that efforts were underway arrest Kham and the others accused of involvement in the crime. No arrest had been

18 Journalists claimed to have seen Kham said they could not take pictures because the meeting took place in the evening and the light was poor.

19 The punishment for murder is life in prison and confiscation of all property.

20 *The Rising Nepal*, 16 July 2008.

21 Others were that on the killing of Birendra Sah, the bombing in Madi, Chitwan and that related to the murder of Arjun Lama, Kavrepalanchowk.

made as of May 2010. Dahal, as prime minister, had also responded to questions in parliament on the murder, saying that ‘no one was above law’, and that the government would take legal action against those involved in the Ramhari Shrestha case, adding that the government was not going to protect anyone found guilty. The prime minister stayed on in office for another six months after the announcement but there was no progress on his commitment.²²

Instead, on 27 December 2008, the UCPN promoted Kham to the central committee. And on 23 January 2009, Kham told a newspaper interviewer that he was confident that no action would be taken against him because the party’s investigation had absolved him of any involvement.²³ In the interview, Kham narrated a version of the incident which matched the statement made by Batala to the police, and which fully discounts the death in the hospital reported by the NHRC. The whereabouts of the remaining two suspects remain unknown.

Gaur: Political violence and poor law enforcement

A clash between supporters of the CPN (M) and the Madhesi Janaadhikar Forum (MJF) in Gaur of Rautahat on 21 March 2007 resulted in the brutal killing of 27 people, mainly Maoist supporters and cadres.²⁴ The clash took place at the site where both the Maoist-affiliated Madhesi Rashtriya Mukti Morcha (MRMM) and the MJF were scheduled to hold their respective mass meetings. The incident took place in the wake of the uprising in the Tarai that followed the 19 January killing by a CPN(M) cadre of a Madhesi protester in Lahan, triggering a number of encounters between the supporters of

22 *Gorkhapatra*, 11 November 2008.

23 http://www.myrepublica.com/portal/index.php?action=news_details&news_id=1365; published on 2009-01-23.

24 Among the dead, 26 were linked to the CPN (M) and one was unidentified. Advocacy Forum. 2010. Torture and Extra judicial Executions amid widespread violence in the Tarai. Also see OHCHR, 2007. Findings of OHCHR-Nepal’s Investigations into the 21 March Killings in Gaur and Surrounding Villages <http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2007/Gaur.pdf>

the MJF and the CPN (M) in different parts of the country.

Both the MJF and CPN (M) had planned public rallies and a mass meeting at the said field in Gaur. The MJF had announced its rally at least a week prior to the event²⁵ while the Maoists made their announcement later, and hence tensions were high as the event drew closer. The local administration tried to discourage both sides from going ahead with their program at the same venue on the same day, but without success, as noted in the NHRC report.

According to the OHCHR investigation into the incident, even the police were expecting a clash. MJF supporters had reportedly armed themselves with *bhatas* (long bamboo sticks) and the Maoists arrived with at least one socket bomb (and detonators) as well as guns apart from sticks and *bhatas*. Both groups had built stages on different sides of the same field.

The clash began when about 15 ‘unidentified’²⁶ men attacked the CPN (M) stage, following which CPN (M) supporters attacked the dais prepared by the MJF. The OHCHR said, ‘During the charge, some shots were also fired and a small number of explosions were heard. It has not been possible to establish who fired the first shots or who was responsible for the explosions. However, a CPN (M) cadre fired at least one shot in the air during the initial charge. At the same time, it has been alleged that individuals linked to the (MJF), criminal or other elements in the crowd were also armed and may also have been responsible for firing shots, which subsequently subsided. Police also told OHCHR that they fired numerous shots, which contributed to the confusion.’

The MJF cadres returned after the initial confusion and began attacking the Maoist supporters, leading to the death of 27, including four women and a 17-year-old girl. Many others were injured,²⁷

25 NHRC, 2007, p. 1. The report said the MJF had publicized its rally at least 10/12 days before the event.

26 OHCHR, 2007. NHRC said the group had emerged from a MJF rally that had arrived at the venue.

27 The NHRC put the number of injured at 42, issuing a press statement a day after the clash the Maoists said 28 members, local cadre and supporters had been brutally

mainly with head injuries.²⁸ Six were killed in the field itself and among those killed elsewhere one was killed in front of the APF headquarters. The report said 15 CPN (M) cadres were killed in the surrounding villages. Eleven (including two women and the 17-year-old girl) were 'brutally executed' after about 30 minutes in captivity. Based on forensic reports on the 25 victims, 'fatal blows on the head with an instrument consistent with the weight and contours of *bhata-s*' were the cause of the death of 24.²⁹ One had multiple shrapnel injuries in the face and head.

The government formed a commission to investigate the killings in March 2007 and it submitted its report in October the same year. The report has not yet been made public.

The NHRC report found the MJF supporters responsible for the violation of the right to life. It also found them responsible for murder after taking the victims captives, a punishable offense.³⁰ It also found that the security forces had failed in their duty and the Chief District Officer, who was not reachable throughout the day, responsible for the outcome. The OHCHR added the local administration had failed in its responsibility to protect citizens by failing to take even the minimum action required such as deploying enough policemen to prevent the clash.

The OHCHR report added that the District Security Committee did not meet on the day of the clash and only 14 police personnel out of a possible 158 available had been deployed near the field, and no one was deployed at the venue itself. When the police did react it was too late. The UN office concluded that most of the killings could have been prevented and the inability to do so was largely due

killed. The Maoists statement had accused 'reactionary royalists, Indian extremist-Hindu expansionists and foreign elements opposed to peace' for the clash and said security agencies had remained as bystanders and let the clash continue.

28 OHCHR, 2007, p. 5.

29 The OHCHR report says that police in Gaur had refused to provide post-mortem reports, and misled the office into believing that the police had not received them from the hospital despite seven requests.

30 NHRC, 2007, pp. 19-20.

to the weakness of the law enforcement agencies. The MJF had not publicly accepted any 'legal or moral responsibility' for the actions that happened in connection with its protests, when the OHCHR report was written. Media reports said police had arrested at least six suspects on 24 March 2007 but it was not clear if they were taken to court.

Some Nepali human rights organizations had also investigated the incident and among them one had even reported rape or sexual mutilation. Neither the NHRC nor the OHCHR found any evidence to support the claim. OHCHR was concerned that 'public diffusion of such allegations without proper verification' had only served to heighten the anguish of the relatives of the victims.

Girija Prasad Koirala was prime minister when the clash occurred. He was succeeded by Pushpa Kamal Dahal of the UCPN (M) and then by Madhav Kumar Nepal of the UML. But none of them has considered it necessary to identify and punish those responsible for the killings. The matter was allowed to rest after the government declared the dead to be martyrs and provided Rs 1 million each to the families of the victims.

Saptari: The ordeal of abduction³¹

Saptari District in Nepal's eastern region has been a hotbed of violence, especially since 2006. One characteristic that separates Saptari from many other plains districts is the predominance of the rural. It lags behind other districts in terms of many development indicators. The only major urban centre in the district is Rajbiraj. Two rivers, the Koshi and the Balan, border the district in the east and the west.

Discussed here are the experiences of Kapil (not real name) of a village located about 18 kilometers east of Rajbiraj and which remains isolated for most of the rainy season for lack of a bridge over a seasonal river. Its inaccessibility also keeps it out of reach of the security forces and is therefore a place where armed groups flourish.

31 This write-up is based on a conversation with the victim in Jan/Feb 2010. All references that could disclose the identity of the victim have been changed.

The village is close to Trikaul, the birthplace of Jaya Krishna Goit, who launched the first armed movement in the Tarai, the Janatant-rik Tarai Mukti Morcha (JTMM), in 2004. In 2010, there were over three dozen armed groups with similar-sounding names operating in the plains; the settlements around Trikaul are said to be the home of leaders of about half a dozen such groups.³²

Kapil owns a little over 10 hectares of land and also runs some businesses, including informal money lending. Though among the better off in the village he is not the richest and neither does he have any clear political affiliations, and the latter perhaps made him an easy target. He survived two abductions within a year and is now living a life under constant fear. 'I think I am targeted because there will be no political opposition when I am harmed,' he said.

Kapil's ordeal offers a window into the lives of many people in the plains who have had to suffer at the hands of different armed groups. He was abducted twice. In mid-2008, he managed to escape when his abductors ran into a police patrol. He was less lucky the second time but was eventually able to escape from captivity after 25 days.

In the second instance, in October/November 2009, he was picked up from the paddy fields he had been watering and was forced to march for three days and nights, stopping only for food en route to the hideout. He was gagged and blindfolded for most of the time.

When after all the marching the blindfolds were removed, he found himself amidst tall grasses from where he could see cattle grazing at a distance. It looked like an island on the Koshi River or a stretch of uninhabited riverbank. He was held there the entire day and taken to a house in the evening where he was offered food. There, he overheard abductors speaking on the phone and asking someone to find the telephone number of his relatives. The same evening he was asked to speak to his children and instruct his son to

32 For example, three leaders of some of the more active groups Jaya Krishna Goit (Akhil Tarai Mukti Morcha or All Tarai Liberation Front), Amrendra Goit (Madhesi Virus Killers), Praffula Yadav (Madhesi Mukti Tigers) come from the same region.

come with money to free him. He was also beaten that night. The next day, he was asked to call his son and instruct him to come with Rs 500,000. He was held inside the house in the evenings and taken to the island during the day, gagged and blindfolded all the time.

After 5 or 6 days the abductors transferred him to another location that involved two river crossings. He was beaten again and also asked to instruct his children to bring the ransom. He was kept at this location for 17 or 18 days, of which he spent 7-8 days with a family of three while the abductors seemed to have gone away. He was spared the beatings until the abductors returned.

One day, the abductors, who seemed drunk and angry, returned and that was when he began fearing for his life. Over dinner the lady of the house told him about their plan. 'Baba, they are talking about killing you today. So, try your best to run away.'

He managed to free his hands and run away the same night.

'I ran east for about 15-20 minutes through grass and stopped to think which way I should go, then I saw a line of lights in the north and figured it could be the Koshi Barrage,' he said. It was then that he realized that he was being held on an island on the Indian side of the border.

At around dawn he reached a settlement where an old man overrode the general practice of secluding women with newborns for seven days from males and hid him in the room where the mother and a newborn were kept. His abductors had searched the entire village of 10-12 houses but had spared that particular room because they did not expect a male in there. From there, the villagers were able to send a message to the police who came and took him to a police station in India. He was handed over to the Nepali police the next day.

Kapil shivered while narrating his story. Police had detained a person (name withheld) for questioning after the abduction, but he was freed under political pressure. A local armed group calling itself the Madhesi Mukti Tigers (MMT) had claimed responsibility for the abduction. (In the earlier instance, in mid-2008, MMT had sent him

a letter demanding a donation of Rs 100,000 within 20 days. He was abducted the day after the letter had been delivered.)

Before his abduction in 2009, Kumar (not real name), a local leader of the MMT, had barred him from harvesting paddy. 'There was no way I could seek the support of the police because no one dared to go against its order,' said Kapil. Eventually, he gave Rs 80,000 as 'donation' for the 'harvesting permit'.

Similarly, in July 2008, a group calling itself the Tarai Virus Killers had barred him from planting paddy unless he donated Rs 50,000. He had tried negotiating through different channels and eventually gave 10 bags of fertilizers to the leader of the group as fee for lifting the ban. The conversation with Kapil began at around 3 pm and ended at 9 pm. His concluding words were, 'Now, I will eat and go to some neighbor's house to spend the night.'

He did not dare sleeping in his own house fearing that another group could come to try to take him away.

Violence and impunity across sectors

Violence against women

Despite the movement towards inclusive democracy, Nepal remains a patriarchal society where women have to face different kind of abuses, many of which go unreported. In late 2009, the government responded to demands by women activists to declare the year a Violence-Free Year for Women. It also included the setting up a dedicated unit at the Prime Minister's Office to monitor the situation and formulate regulations for implementing the law to end all forms of violence against women. Nepal has also adopted the Domestic Violence (Crime and Punishment) Act 2009. An investigative report commissioned as part of this study looked at rape, one of the worst forms of violence against women.

The number of reported cases of rape has been on the rise. The Women and Children Service Centre of the Nepal Police recorded 133 complaints of rape in 2005/06. The number quadrupled to 466

in 2008/09. According to Bigyan Raj Sharma, spokesperson of the Nepal Police, that was because there were fewer cases reported in the past. Similarly, there were no cases of rape registered at the Kathmandu District Court between 2003 and 2005. The following year saw only one; it increased to five in 2007 and 27 in 2008. In 2009, 29 cases were heard by the court. The increase in the number of reports both at the police offices and the courts either suggests that more women are reporting rape owing to growing awareness about their rights or it could simply mean that the crime has increased.

Rape is very difficult to prove, especially in a situation where investigation is not done on time. The perpetrators get away because of loopholes in the law and the investigative process and also by using political influence. According to Basanta Kunwar, Deputy Superintendent of Police, the victims often enter into settlements out of court and withdraw charges. Even in cases that reach the courts, it is difficult to produce evidence of rape. 'Even in Kathmandu only a few women come for medical check-up immediately and even among them only 5 percent can be medically proven,' said Lata Bajracharya, at the Prashuti Griha Maternity Hospital. Therefore, even in Kathmandu, it is very difficult for rape victims to get justice. (See: Annex-1 for an in-depth story on rape)

Teaching in a climate of fear

Nepal has about 200,000 teachers spread across the length and breadth of the country. This is one profession that has been very active in partisan politics and the divisions run very deep. Teachers across Nepal were targeted by the Maoists as a source of extortion during their insurgency and still remain a target of various interest groups, including armed gangs. According to the Nepal Teachers' Union, the state and Maoist forces were responsible for the death of 191 teachers between 13 February 1996 and 20 November 2006. INSEC reported the death of 165 teachers in the same period and also said that 29 had disappeared after detention by the state security

forces. It adds that 12,328 teachers suffered in one way or another during the conflict.

But attacks on teachers did not end with the signing of the CPA. INSEC reported 20 deaths and 107 abductions of teachers after 20 February 2006. It also reported that 155 teachers had been beaten up while 159 others had been threatened. Teachers in the plains districts said they live in a state of constant fear. Different armed groups there have tried using them for different purposes and have also made them targets for forced donations. Because law enforcement remains weak, the teachers have little option but to yield to the demands.

The involvement of teachers in politics is one of the major reasons for the attacks against them. Because they subscribe to different political ideologies, many have 'enemies' even within their own profession. According to Baburam Adhikari, Chair of Nepal National Teachers' Association, in many hill districts teachers have been beaten just because they support a different political party. Teachers were attacked when they opposed the Maoists during the insurgency and this trend has continued even after the signing of the CPA. Gunaraj Lohani, Chair of All Nepal Teachers' Association, said that teachers belonging to other associations have attacked 27 of his group members after the CPA was signed. (See: Annex-2 for an in-depth story on how the security environment has affected the teaching profession.)

It's not business as usual

The poor security environment in the country has affected the business community deeply. According to INSEC, 104 businesspersons have been killed between 21 November 2007 and 31 December 2009 and a further 212 abducted. CPN (M) workers were responsible for 29 abductions and one death. According to Binod Chaudhary, Chair of the Confederation of Nepalese Industries, abductions, murders and forced donations have continued. This has caused industrialists to worry more about how to prevent the collapse of the sector rather than day-to-day production.

The inability of the government to maintain law and order is the main reason for the poor business environment. According to an entrepreneur, 'Earlier they used to ask us for donations and we delivered, now they abduct first and seek ransom.' Even the requests for donations have become more frequent. Earlier, it was enough to pay once a year; now some business people say they have had to pay several times each year. Further, earlier, there were fewer political leaders seeking donations. With the entry of the Maoists and other new formations in the political sphere, the number of those seeking donations has also increased. (See: Annex-2 for an in-depth story on how the business sector has fared during the transition).

Violence and impunity in the plains

The week starting 28 February 2010 mirrored the situation of crime and lawlessness that has been a reality in the Tarai since 2007. Arun Singhaniya, a media entrepreneur, was shot and killed in Janakpur on 1 March 2010. Four groups claimed responsibility for his murder¹ but no was arrested till the end of March 2010. The murder took place about three weeks after gunmen killed Jamim Shah, a prominent owner of a media house, in Kathmandu.

Two other murders in the plains after Singhaniya's death did not receive as much attention. An unidentified group had abducted Shambhu Prasad Gupta of Gada VDC of Siraha about a week earlier and had demanded a ransom of Rs 1.5 million. He was killed on 1 March 2010.² Similarly, the same week saw the killing of 20-year-old Devendra Sahani of Kherwa VDC of Sarlahi. According to the report in *Kantipur*, the case involved an inter-caste love affair, and police suspected that the family of the girl could have been involved.³

These murders came on the heels of an armed group shooting and killing four—Ram Prakash Yadav, Kanaihiya Yadav, Dara Ya-

1 Conversation with Dharmendra Jha, president of the Federation of Nepali Journalists (FNJ). Some said three had claimed responsibility for the murder.

2 *Kantipur*, 2 March 2010.

3 It was not known if they were detained and charged.

dav and Ambika Mahato—at Ganj Bhawanipur of Bara district on 4 January, 2010. All of them were members of the UCPN (M)⁴ and the motive seems to have been revenge and political rivalry.⁵ The regional leader of the group who admitted to the killing said they would search and kill those responsible for atrocities in the past. According to another report in *Himal Khabarpatrika*, in Rautahat district, the police had begun providing special security to Maoist MPs, especially when they visited the villages.⁶

The examples above indicate how the law and order situation has deteriorated in the Tarai,⁷ the thin strip of flatlands in Nepal's southern plains. Even though successive governments have tried implementing special security measures—the Special Security Plan (SSP) in 2009 being one—lawlessness and violence have continued.⁸ The region is said to have over a hundred armed groups, of which a majority have no political goals or demands. In other words, these are groups that have sprung up to take the advantage of the lax security environment. Human rights groups have also noted the re-emergence of 'encounter' killings by the police and increase in incidents of torture after the SSP was launched.⁹

The plains of Nepal have witnessed some of the most brutal crimes committed in recent history. In early 2009, an armed group

4 *Nagarik*, 5 March 2010.

5 Sunil Jaiswal (Agni) of JTMM (Goit) group mentioned this to *Himal Khabarpatrika*, 28 February – 13 March 2010, pp. 51-54. The article is about Maoist cadre seeking police protection fearing attacks from the armed groups.

6 See: *Himal Khabarpatrika*, 28 February- 13 March 2010.

7 The 20 districts in the plains are: Jhapa, Morang, Sunsari, Saptari, Siraha, Dhanusha, Mahottari, Sarlahi, Rautahat, Bara, Parsa, Nawalparasi, Rupandehi, Kapilvastu, Banke, Bardia, Kailali and Kanchanpur. (Chitwan and Dang are also counted as Tarai districts)

8 The government formed in May 2009 endorsed the SSP on 26 July 2009. (See: Advocacy Forum, 2010 for details). In December 2007 the government formed after April 2006 had mobilized a Special Task Force of the Nepal Police and the Armed Police Force in eight central Tarai districts; the media also reported that the government formed after the CA elections had also asked the security agencies to beef up security in the Tarai in January 2009. (See: Advocacy Forum, 2008)

9 Advocacy Forum, 2010, p. 3.

brutally killed journalist Uma Singh at her residence in Janakpur. Police concluded that the murder was related to a property dispute and made some arrests. The Federation of Nepali Journalists (FNJ) believed the murder was related to her work as a journalist because she had been very critical of the Maoists, who had abducted her father and brother and whose whereabouts are still unknown.

Even the OHCHR, which has a branch office in Janakpur, agreed more or less with the police story. Three people were arrested in connection to the murder—Sarvan Yadav, Lalita Devi (Uma's sister-in-law) and Nemlal Paswan. The police accused Paswan as being the killer, and others as accomplices. After the news of the murder spread, Swami Yadav, leader of the Tarai Ekta Parishad, an armed group, had claimed responsibility for the killing.¹⁰ Singh's mother, Sushila, had filed an FIR accusing seven individuals of the murder (three were Indian nationals). The police later tracked down Paswan and identified him as the killer.

Another journalist, Birendra Sah, was killed in Bara District in 2007 and some of those suspected of involvement in his murder were still at large in early 2010. (See: Chapter II). Still another example of the post-2006 brutality—and impunity—was the clash between MJF and CPN (M) workers, which resulted in the deaths of 27 Maoist supporters and one unidentified individual but no one was charged in the case.

The lawlessness and violence has more or less been concentrated in the plains east of Bara, Parsa and Rautahat all the way up to the Koshi River.¹¹ The intensity of violence and lawlessness has varied.

10 The claim was made on 12 January 2009. The groups said she was killed 'by mistake'.

11 The hill districts in the eastern region also have armed groups that have carried out violent attacks to reinforce their political demands. But public insecurity there has not been as serious as that in the Tarai. Some of these groups that have been active in the eastern hills are, Pallo Kirat Limbuwan Rashtriya Manch, Khumbuwan Rashtriya Morcha, Khumbuwan Democracy Manch, Sanghiya Limbuwan Rajya Parishad (Two groups by same name), <http://www.mysansar.com/archives/2009/07/id/6280>. This chapter tries to get an idea of the situation in the Tarai districts, where the government had been implementing the SSP after 2007.

For the purpose of the present analysis, the districts have been categorized into three sub-groups: those east of the Koshi River, those between the Koshi and the Bagmati rivers and the regions west of the Bagmati River.

Generally, data compiled by INSEC suggest that there has been a decline in violence in the plains. This is true compared to the number of abductions and killings in 2006 or earlier. Further, the number of people killed before 2006 is much higher than the post-2006 deaths. However, the deaths and abductions after 2006 have been much higher in the plains compared to the hills.

Violence and Lawlessness

The Tarai/Madhes region was regarded as a relatively less-affected region during the early years of the Maoist insurgency. The insurgency raged in the hills while in 2004 the Maoist organization in the plains split with the rebel group by Jaya Krishna Goit and known as the Janatantrik Tarai Mukti Morcha (JTMM) carrying out occasional attacks on 'political enemies and the feudals', while the larger Maoist movement remained concentrated in the hills.¹² The JTMM's main demand is that the Tarai be declared a separate country. In 2006, the group itself split with the faction headed by Jwala Singh advocating an autonomous Tarai.¹³

The violence in the plains rose sharply after the early 2007 Madhesi uprising¹⁴ and the deterioration in the law and order situation thereafter. Reporting on data up to October 2007, OHCHR said that there had been 130 killings of civilians since the beginning of the year and almost all of them had taken place in the central and eastern plains. Criminal acts by armed groups led to the death of

12 Goit renamed JTMM All Tarai Liberation Front, on 16 March 2008. Most of the early Maoist attacks were carried out in the hills, targeting mainly security installations.

13 The language used in their statements has not been consistent; in some instances the group has also demanded an independent Tarai state.

14 The plains have had two major protests after 2006. The first is referred to the Madhesi Movement. The second round of protests took place in early 2008.

60 people after May 2007; 14 were killed in the violence in Kapilvastu District in September, CPN (M) cadres were implicated in five killings and 24 were killed during the Madhes uprising early in the year. It said 19 were killed in the Madhes movement and another 10 were killed in police action. The Maoists also suffered high casualties. OHCHR records showed that 45 Maoist cadres had been killed, including 10 by armed groups and 27 in the clash between CPN (M) and MJF supporters in Gaur, in Rautahat District.¹⁵ (See: Chapter 3)

Some of the violence in 2007 was communal in nature as some groups tried to use inflammatory language to stir clashes between the Madhesi and Pahadi (of hill origin) residents. At the time of the OHCHR report, both the JTMMs had issued statements ordering Pahadis, especially government employees, to leave the plains. The Madhesi-Pahadi polarization then led to the formation of the Pahadi-dominated Chure Bhawar Ekta Samaj (CBES), whose actions also contributed to unrest and the rising communal tension. According to the OHCHR, there were times when even the media was involved in spreading information that was 'divisive, partial and politicized.' Its report on the implementation of the CPA recounts an instance in August 2007, when 'radio stations had broadcast unfounded rumors that pilgrims had been raped by CBES supporters/Pahadi demonstrators, thereby inflaming Madhesi responses.'¹⁶

The violence in Kapilvastu had also taken a Madhesi vs. Pahadi flavor. The September 2007 clashes began with the murder of a local Muslim landowner and ended in 14 deaths, the displacement of several thousand people, and looting and destruction of property. OHCHR reported that 'the minimal presence of security forces, and the slow and inadequate response of police, local and national authorities *yet again* [emphasis added] contributed extensively to creating conditions for lawless and fatal violence.'¹⁷

15 UN OHCHR, 2007, p. 1.

16 Ibid, p. 6.

17 Ibid.

Public security

Ten districts in the middle and eastern plains—from Parsa in the west to Morang in the east—have been a hotbed for localized conflicts, crime, and violence since 2007. According to INSEC, there were 188 killings in the ten districts in 2009, which is much lower compared to 2007 (291) but is still quite high. Groups with declared political demands, unidentified groups, criminal gangs and even organizations affiliated with political parties were responsible for many of the deaths. In 2009, most of the killings (39) took place in Dhanusha district. There were 1402 abductions in 2006, a figure that had come down to 138 in 2009. (See: Annex-4)

Most of the killings resulted from revenge attacks, long-standing land disputes, conflicts between armed groups and the antagonisms between the Pahadi and Madhesi communities.¹⁸ According to a May 2009 issue of the magazine *Nepal*, sometimes these factors overlap since there are many examples where individuals have joined a political party or armed groups with the motive of revenge.

There also have been examples where members of the Pahadi community working for the government have been killed. The Jwala Singh group claimed responsibility of the murder of Raj Kumar Joshi on 8 July 2007, a period when it had also attacked other Pahadis (from the Newar community) in Parsa and Saptari. A journalist from Janakpur thought that the attacks were possibly aimed at inciting the Newars in Kathmandu to retaliate as that would then provide a ‘reason’ for mobilizing Madhesis to attack Pahadis in the plains.¹⁹ The period immediately after the 2007 Madhes movement saw an increase in communal violence along the East-West Highway as well, aided as it was by the lack of an effective public security mechanism.

Likewise, there are also a number of examples where people have been abducted or killed over personal or local disputes. Many of these murders and abductions have been written off as attacks by

18 See: Tula Narayan Shah, *Nepal*, 24 May 2009.

19 Ibid, p. 14.

armed groups without proper investigations. For example, the Maoists abducted and killed Ram Prasad Yadav of Saptari District on 4 July 2006 for his alleged role as a police informer which, the Maoists held, led to the deaths of two of their cadres during the conflict period. One armed group or the other has taken responsibility for most of the killings and abductions in the plains, a fact that has also provided public officials a reason to avoid thorough investigations.

Even though the Tarai has a more or less uniform geography, the region is diverse in terms of population mix and social and cultural practices. Some districts have large populations of Madhesis and indigenous groups such as the Tharus, while in others there are large populations of Pahadi origin. Many of the early settlers from the hills have lived there for several generations. Madhesi society—not unlike the Nepali society—also has its own caste and class hierarchies. The diversity and the social organization, intertwined with politics and identity, makes for a complex mix that also underlies the violence and insecurity. Other factors that add to this are the increasing population and the fragmentation of land holdings and the resulting livelihood problems. In 2009, the Chief District Officer of Saptari had suggested that even college-going students were involved with the armed groups because of the pressure of emerging consumerism, which is fueled partly by remittances from migrant workers.²⁰ (See: Annex-4.1 for a summary of socioeconomic data). This chapter reports violence and impunity for the plains districts in the following order:

1. The districts east of the Koshi River – Morang and Sunsari.
2. The region lying between Koshi and the Bagmati rivers – Saptari, Siraha, Dhanusha, Mahottari and Sarlahi, i.e., the Maithili-speaking belt.
3. The region west of the Bagmati River – Rautahat, Bara and Parsa.

20 See: *Nepal*, 24 May 2009.

Morang and Sunsari

Morang and Sunsari districts are better developed in terms of political representation, economic progress and public services. The population has a roughly equal mix of Pahadi and Madhesi people. Compared to districts with a Madhesi majority, the two districts have higher literacy rates and lower unemployment. Bhishma Prasai, Deputy Inspector General of Police (Eastern Region), said the region had 29 cases of murder and 268 abductions in 2008/09.²¹ The region had not seen a single murder in the first four months of the fiscal year 2009/10 while the number of abductions was down to 11. Prasai said it was the result of the SSP being implemented by the government since mid-2009. The plan was approved by the political committee of the cabinet on 26 July 2009 and discussed in parliament on 30 July. Prasai said the security situation had improved but was not comparable across regions because of the different nature of violence in the hill and the Tarai districts. He added that public security in Morang and Sunsari was better compared to Siraha and Saptari, two districts west of the Koshi River.

Table 4.1.1: Murders and abductions in the central plains (2006-2009)

District	Murders	Abductions
Morang	118	194
Sunsari	50	48

Source: INSEC, *Human Rights Yearbook (2007-2010)*.

The Koshi-Bagmati region (Saptari, Siraha, Dhanusha, Mahottari, Sarlahi)

This region is home to almost 90 percent of the Madhesi population. Agriculture is the major economic activity and the region lags behind in terms of both education and industrialization compared to Morang and Sunsari districts. The lawlessness and violence in the region has been appalling. In four years (2006-2009), this region has seen 517 murders and 965 abductions.

21 The Nepali fiscal year begins in mid-July and so the Gregorian equivalent would be 2008/09.

Table 4.1.2: Murders and abductions in the central plains (2006-2009)

District	Murders	Abductions
Saptari	115	384
Siraha	106	190
Dhanusha	126	116
Mahottari	55	124
Sarlahi	115	151
Total	517	965

Source: INSEC, *Human Rights Yearbook (2007-2010)*.

Two cases of murder that were widely covered by the media were that of Uma Singh in early 2009 and of Arun Singhaniya in March 2010, both of which occurred in Janakpur. Many other cases, especially those taking place in the rural parts, either go unreported or end up as one-time news stories announcing the abduction or murder as the case may be. Most of the abductions after 2007 have taken place in Saptari, which is a district with a large rural population. Interviews with key informants in the district suggested that economic disputes (especially over land) and the possibility of making easy money were the major reasons for the abductions and murders; others were prior conflicts related to social organization, including caste and communal intolerance.

Rautahat, Bara and Parsa

These districts have high populations of Madhesis. The region is also one of Nepal's major industrial hubs and a centre for trade with India and other countries. The border is also said to be a major point for smuggling manufactured goods into Nepal from India and primary products from Nepal to India. Most of the conflicts in the region are related to these activities. The region has witnessed a number of attacks by armed groups, and many of the abductions and killings have no clear political motive. For instance, the abductions in Parsa district outnumber those in other districts almost one to eight. It is possibly explained by the fact that the district is a hub for industry and commerce and therefore remains a target for criminals trying to abduct businessmen for ransom.

Table 4.1.3: Murders and abductions in Rautahat, Bara and Parsa districts (2006-2009)

District	Murders	Abductions
Rautahat	111	141
Bara	88	94
Parsa	63	864
Total	292	1109

Source: INSEC, *Human Rights Yearbook (2007-2010)*.

While Rautahat has had a higher number of killings, abductions have emerged as a major public security issue in Parsa. Parsa and the neighboring Bara district are also emerging as centers for marijuana cultivation and smuggling.

The dynamic of public security and crime is also changing as more and more farmers are shifting to poppy cultivation. According to *Himal Khabarpatrika*, police estimate that poppy is being cultivated in about 1700 hectares of land in Bara and Parsa districts, and the yield was estimated at around 30,000 metric tons of opium—enough to produce three metric tons of heroin. The magazine estimated the value of the business at around Rs. 2.88 billion.²²

Poppy cultivation has emerged as an attractive vocation for farmers and is fuelled by poor public security and the political protection provided. The *Himal Khabarpatrika* report said farmers could choose to sell their produce for Rs 65,000 per kg in Nepal or Rs 90,000 per kg across the border. The report added that buyers in India provide the inputs needed for cultivation, including seeds and technical support. According to a police officer not named in the report, Nepali politicians have also chosen to ignore the problem because ‘just too many people are involved, if they are to stop them there will be no place for them to do their politics.’²³

Reasons for violence and impunity

Political uncertainty, low government presence and poor public security are reasons why lawlessness flourished in Nepal both during

22 Rameshwor Bohara, *Himal Khabarpatrika*, 14-28 March 2010, pp. 46-49.

23 Ibid, p. 49.

the conflict years and after. Therefore, the violence in the plains (and also the eastern hills, for that matter) cannot be separated from the social, political and economic interrelationships that have existed for decades. The domination by the Pahadi elite remains an underlying factor for anti-Pahadi sentiments and this will not disappear overnight. This is a political issue that has sometimes turned violent. Further, local disputes over property, social relationships – especially in terms of caste and class – and the largely unregulated Nepal-India border and illegal activities that have flourished in an environment of poor security have all contributed to violence and impunity. These factors are real but cannot serve as excuses for impunity. This is all the more so because the lawlessness can but grow and make Nepal's transition to peace and democracy more complex than it already is.

Besides, the interviews in the field suggest there are other reasons for violence as well. One that was pointed out by those interviewed was the transfer of schools to community management, including control over the schools resources and the right to appoint teachers. The conflict in this respect related to getting teaching jobs. The use of violence to influence appointments and 'donations' needed to secure these positions has been identified as one of the reasons for violence.²⁴ According to *Shikshak* magazine, the appointment of a new teacher was the reason for the murder of Megh Bahadur Bamjan (58), a teacher at Hariharpur National Primary School in Dhanusha district. Similar cases were reported in other districts as well. That said, it is not the idea of handing schools over to community management that is the problem; rather the issue is poor implementation and monitoring, and political influence, which can be corrected provided there is political will.

According to Sushil Kumar Yadav, president of the Nepal Teachers' Union, Mahottari District, the process of forming school management committees and providing the power to management committees to hire teachers has been a major reason for the violence

24 *Shikshak*, August 2009. Also see Annex 2.

in the district. There is widespread unemployment in villages and the demand for jobs is very high. According to Yadav, the management committees think their role is to 'rule over' teachers and hire individuals as they please. Similar sentiments were echoed by Kedar Tiwari, the District Education Officer at Saptari, who said that there are 12-13 types of positions in the schools for distribution and everyone wants them, which is where the conflict begins. Politics has come into play in the election of school management committees after the CA elections.

Sharing of benefits from development programs implemented locally is another reason for conflicts, and most of these are related to the procurement of goods and services. On 30 January, 2010, Assistant Minister for Physical Planning, Kalawati Paswan, tried to reverse a decision by the Local Development Officer (LDO) and other officials at the District Development Committee (DDC) office in Kalaiya, Bara District. She was reacting to the DDC decision to write off Rs.10.4 million in a contract with one Yadav Traders, an exporter of construction aggregate. This decision had the agreement of local representatives of 13 political parties, including the UCPN, Rashtriya Prajatantra Party, and the Tarai Madhes Loktantrik Party; the MJF, MJF (Democratic), the UML, Rashtriya Janamorcha and the Nepali Congress were against.

Yadav Traders had obtained the contract agreeing to pay Rs 59.3 million annually as royalty but had petitioned the DDC seeking a reduction for the 102 days when work had allegedly been disrupted by strikes. Even though the case was pending in court, the LDO and the political party representatives agreed to the request.²⁵ When the minister questioned it she was reportedly threatened by ATLF (Goit) for trying to stop the deal.

Further, according to information published in *Nepal*²⁶ land disputes remain at the core of the violence and killings. There were 3588 disputes related to land at the Land Reforms Office in Saptari,

25 *Nagarik*, 1 February 2010.

26 *Nepal*, 24 May 2009.

some dating back to the late 1980s. Of these, about 2,000 were related to the division of land among family members. A total of 2263 such cases had been registered at the court between August 2009 and April 2010, 1730 civil and 533 criminal. According to Ashok Chaudhary, a lawyer, 'Most of the murders in the district have a political outer surface but if you dig deeper you will find that most of them are related to the division of land and property.'

Violence in other districts such as Sarlahi, Bara, Parsa and Rautahat is more likely linked with illegal trade than with disputes over land and property. According to a resident of Birgunj, more and more land in Bara and Parsa districts has been used to grow marijuana, and, more recently, poppy, both of which are smuggled across the border.²⁷ Bhuwaneshwor Prasad Shah, police inspector in Parsa, confirmed that the largest number of cases in the district was related to drugs. Between 2007 and late 2009 the police had made 196 drugs-related arrests in Parsa and 56 in Bara.²⁸

Illegal trade in timber is fuelling many of the killings in the districts of Bara and Rautahat. Journalist Shiva Puri said that it was the major reason for social conflict, crime and impunity. On 4 March 2010, *Kantipur* reported a story on clashes between the police and students demanding the release of a teacher from Om College in Santapur. According to the report, the teacher had been arrested two days earlier while hauling illegal timber along with two accomplices.

The Tarai region has a very strong informal economy, where loans are sought and given for interest rates that range from 36-60 percent. Typically, the poor are required to submit collateral (land, property) to moneylenders and lose them when they cannot pay back. The inability to pay back, especially by the poor, could mean they lose everything, making them vulnerable to exploitation by both moneylenders and armed groups.

The criminalization of politics and the politicization of crime are almost indistinguishable in the plains. The threat of violence and

27 Interview with Binod Gupta, 4 December 2009.

28 Data collected from the District Police Office during the study.

the inability of the government to assure security to the public have caused different groups to organize to resist the excesses of different groups. Another reason for violence is the clashes between people belonging to different identity groups, especially the Pahadi and Madhesi, which was exacerbated by armed Madhesi groups declaring their intention to chase people of hill origin from the Tarai. The mainstream Madhesi political parties as well as other national parties have also used violence for their own interests.

Much of the violence after 2006 has been associated with the rise of armed groups. According to *Annapurna Post*²⁹ the number of armed groups had reached 141. The story, based on a report of the Ministry of Home Affairs, said that among these 141 groups 29 were very active and a majority of them operated in the Tarai. Among the more active ones were the Akhil Tarai Mukti Morcha (Goit),³⁰ Janatantrik Tarai Mukti Morcha (Jwala Singh), Madhesi Mukti Tigers (Rajan) and the Madhesi Virus Killers.³¹ These groups have adopted violence to fulfill their political demands (and also to raise finances) while there are others that have resorted to violence for financial gains alone.

According to *Himal Khabarpatrika*, local youth had joined Madhesi violent groups to take revenge for atrocities committed by groups affiliated with the Maoists.³² The members of the Madhesi parties have also not lagged behind in taking the law into their own hands or in inciting violence. A number of people belonging to the TMLP had beaten up an accountant and a junior staff at the District Development Committee, Mahottari, on 14 July 2009, for not responding to their needs promptly. None of those involved in the beatings was punished.³³

29 *Annapurna Post*, 2 July 2009.

30 Originally JTMM (Goit).

31 There also are militant groups in the eastern hills, and there is also one Tharu group, which operates mainly in the mid- and far-western regions.

32 Rameshwor Bohara, 'Surakchya Deu', *Himal Khabarpatrika*, 28 February-12 March 2010.

33 INSEC, 2010, p. 10. The report names those involved in the beating.

Another form of violence against citizens in the plains is the 'seizure' of land of individuals by political parties and their supporters. The Communist Party of Nepal (Maoist) headed by Matrika Prasad Yadav had captured about 100 hectares of land and 'distributed' it to the landless.³⁴ Similarly, the Maoists have also not returned the property seized during the conflict even though the major national parties have been consistently asking them to return land to the rightful owners.³⁵

The relationships between political parties and local criminal groups make any attempt to understand and deal with the ongoing multiple conflicts almost impossible. It also remains a major impediment to establishing the rule of law. One such incident was reported in the *Annapurna Post* of 8 March 2010. According to the paper, the police had arrested four members of an ATLF (Goit) after which the UML members of the district marched to the police office demanding their release. The four were suspects in the murder of police constable Ananta Khadka.

Some sources interviewed in the Tarai attributed the violence and the associated impunity to the links between criminal groups, political parties and the security forces. It is not surprising for criminal groups to break the law. What is worrying is the intermingling of crime with politics and the influence politicians use to force law enforcers to look the other way. It is difficult to find evidence of the relationship between these three groups but it is also almost impossible to de link crime, violence and public insecurity from politics. This is something that even the top political leaders have acknowledged. Towards the end of July 2009, Prime Minister Madhav Kumar Nepal said: 'Several criminals are still at large due to political patronage. I urge political parties concerned not to shield criminals... The government will be able to end the culture of impu-

34 Declared at a press conference on 12 October 2009, also reported by INSEC. In such land grabs and distribution, the 'landless' identified by the parties that capture the land are usually are their supporters.

35 It is also a commitment made in the CPA.

nity only if parties agree not to protect criminals regardless of their political affiliation.³⁶

The reasons that stand out to account for violence and impunity are revenge, corruption at local public offices, and the complex self-serving relationships between criminal elements and the security forces, often in complicity with local politicians and their parties. The complicity of politicians and the police with those involved in illegal trade has been fairly well known and is said to have flourished in the border districts even before 2006, with the scale being higher in districts that are comparatively more prosperous – Bara, Parsa, Rautahat, Siraha and Morang.

36 'PM: Political cover promoting impunity', *The Kathmandu Post*, 31 July 2009. In Advocacy Forum, 2010.

Access to justice

The notion of justice is rooted in the Universal Declaration of Human Rights,¹ which declares, ‘All human beings are born free and equal in dignity and rights.’ Equal access to justice and ‘fair and effective justice systems are the best way to reduce the risks associated with violent conflict.’² Ending impunity can deter people from committing further injustices, or from taking justice into their own hands as they help to redress harm, for instance, through restitution or compensation.³

National and customary laws guarantee remedies, and the process, in democracies, involves a court of law. But how justice is granted can vary from country to country and where it is not assured, it can lead to the gradual erosion of the rule of law. ‘Impunity can arise at any stage before, during or after judicial process.’⁴ In many cases, the judicial system may fail to prosecute despite credible evidence of wrongdoing. The most obvious example is the incident involving Karima Begum, Minister of State for Agriculture in the government

1 United Nations, 1948, General Assembly Resolution 217A (III) of 10 December, Article 1, New York.

2 UNDP, 2005, Programming for Justice: Access for All, p. 2.

3 Ibid, p. 4.

4 Amnesty International, 2001, *End Impunity: Justice for the Victims of Torture*, the Alden Press, UK, p. 80.

formed after May 2009. In other cases, the state may withdraw prosecution for political expediency, of which there are many examples in Nepal. The end result is that the victims of crimes suffer, while those that are guilty are let off without punishment and these in turn could engage in other activities that could harm others – because they know they will not be punished.

Justice is the building block of good governance and democracy. In the words of Jawaharlal Nehru, the first prime minister of India: ‘If 30 percent of the population loses faith in the justice of their society and the government, then there is a negative social critical mass which unleashes a cynicism that understands only the power of destruction not construction.’⁵

Statutory and legal guarantees

Article 33 (c) of the Interim Constitution of Nepal 2063 (2007) makes the Nepali state responsible for eliminating corruption and impunity for good governance and for attaining many other stated objectives. Clause (c) says that ending corruption and impunity is required ‘to adopt a political system which fully abides by the universally accepted concepts of fundamental human rights, multiparty competitive democratic system, sovereign authority inherent in the people and the supremacy of the people, constitutional checks and balances, rule of law, social justice and equality, independence of judiciary, periodic elections, monitoring by civil society, full independence of the press, right to information of the people, transparency and accountability in the activities of political parties, people’s participation, neutral, competent and clean administration and to maintain good governance by eliminating corruption and impunity.’⁶

Likewise, Article 24 (2) provides citizens with the fundamental right to justice, a fair trial and the right to be defended by a legal

5 Sugatha Srinivasaraju, ‘Emotions to Bald Economics’, *Outlook*, 1 February 2010, India, p. 35.

6 UNDP, *The Interim Constitution of Nepal, 2063 (As amended by the First, Second and Third Amendments)*, p. 78.

practitioner. Access to justice has been guaranteed and it underscores the notion that ending injustice and impunity can serve to deter people from committing further offenses, and or taking law into their own hands.

Access to justice depends on a number of actors, including an effective judiciary, police and human rights activists and organizations. Article 100 of the Interim Constitution makes the court the custodian of justice. Nepal has a three-tier court system: a Supreme Court, 16 appellate courts and 75 district courts. However, the courts have not provided sufficient or quality service to those seeking justice.⁷

According to a study by the Supreme Court Bar Association, Nepal's judiciary is not rated highly in public perceptions. The 2008 report based on a survey of 31 districts concluded on the very pessimistic note that there are no signs that the courts will ever be free of corruption.

Article 113 of the constitution provides for a council to appoint judges to serve as a mechanism to separate the judiciary from the executive. The Judicial Council is also responsible for taking 'disciplinary action against, and dismissal of judges...' However, there has been only one instance since 1990 when the Council has taken actions against a judge for corruption.⁸ The Supreme Court Bar Association lists other challenges in the judiciary, some of which are as follows:

- Inability of the Judicial Council to be active. There have been no instances where judges who have misinterpreted laws and gone against evidence have been punished. Instead its image has been one where both nepotism and the 'sharing of spoils' flourish.
- There are questions about the capacity of judges to take decisions for ensuring impartial justice delivery.

7 Supreme Court of Nepal 2009, p. 61.

8 Supreme Court Bar Association, 2008, p. 100.

- Moral and ethical conduct of judges. The report says there have been occasions where judges have met the parties in litigation at their residences, advised them and even helped them in the selection of legal practitioners. Other unethical forms of behavior listed include attending parties of litigating sides, accepting financial favors and jobs for relatives, etc.
- Unpredictability of the outcome of litigation (because of different interpretations by judges). There have been instances where judges in the same court have issued different verdicts on similar cases.
- Corruption in the courts. The report says people feel they have to pay at every step of litigation after a case reaches the court. Employees involved in different stages of litigation seek a 'fee' for services.⁹

Office of the Attorney General

Part 16 of the Interim Constitution of Nepal provides for an Attorney General who is appointed by the Prime Minister¹⁰ and functions as the government's chief legal advisor. The Attorney General reports annually to the Prime Minister.

The Government Cases Act 2049 provides the government's legal counsel the right to persecute while the investigative authority is the domain of the police, working under the guidance of the attorney general's office. The police send a preliminary report of a crime to the concerned government attorney before launching a full-scale investigation. The government attorney, who has the authority to prosecute, can advise and guide the police on investigations.¹¹ Nepal has 16 offices of the government attorney at the appeals level, 75 district attorney offices and a central office in Kathmandu.

In 2007/08, the attorney general's office had 18,228 cases at the three levels: 7098 at the centre, 6545 at the appeals level, and 6545

9 Ibid, pp. 99-105. (summarized by authors)

10 UNDP, 2008. p. 198.

11 Section 6, of the Government Cases Act 2049.

in the districts. The government prosecutor won 73.1 percent of the cases in the districts, 49.14 percent in the appeals courts and 34.62 percent in the centre.¹² The prosecution's success rate varied across the type of crime: in murder/dacoity it was about 31 percent; attempt to murder 46 percent; trafficking 41 percent; rape 45 percent; attempt to rape 20 percent; narcotics 29 percent; dacoity (armed robbery) 19 percent; fraud 65 percent; and corruption 14 percent. The success rate in cases related to arms and ammunition was nil. Cases filed on behalf of the Commission for the Investigation of Abuse of Authority (CIAA) notched up an impressive 60 percent.¹³ However, most of these cases were related to fraud or petty corruption since there has been no instance of any 'big fish' being netted.

The low success rates in cases other than fraud point to a major lapse in the justice system and/or the ineffective prosecution and investigation, or both. It could have resulted from capacity, but could also be a result of external influences, especially politics and corruption because how cases are filed and defended can determine whether the suspects are punished or not. The prosecution rates for rape and attempted rape are also low. The failure in obtaining convictions in the cases related to arms and ammunition is a different story.

Withdrawal of cases

Once a prosecution is launched, its course cannot be halted except on sound considerations germane to public justice.¹⁴ The Government Cases Act 2049 (1992)¹⁵ allows the government to withdraw cases at its discretion and successive governments have invoked the law for partisan ends. Section 29 of the law allows the government to withdraw cases or seek reconciliation in the following circumstanc-

12 'Office of the Attorney General', 2066, *Yearly Report 2064/65*, pp. 8-9.

13 *Ibid*, p. 22.

14 *Subash Chandar v. State (Chandigarh Administration)* (1980) 2 SCC 155. Cited from R.V. Kelkar's *Criminal Procedure*, 2001. Revised by Dr. K.N. Chandrashekharan Pillai, fourth edition, Eastern Book Company, Lucknow, p. 435.

15 Law Books Management Committee, 'Khanda ka', *Nepal Ain Sangraha Purak Khand 2049*, p. 209.

es: where the government is a plaintiff or has filed a case or where the government is a defendant. In cases where the court agrees to the withdrawal, the defendant is absolved of the criminal charge.

The law was necessitated to ensure justice to those who had been jailed under politically motivated charges before the political changes of 1990.¹⁶ Governments formed after 1990 invoked the clause to withdraw charges against their party workers, some of whom had been falsely charged. But also withdrawn were cases that were suspect.¹⁷ Cases withdrawn in the years since relate to a range of charges, including that for corruption and rape. According to human rights groups, among the cases proposed for withdrawal were some individuals suspected of being involved in killings during the Kapilvastu riots, under pressure of a political party that was not even formed at the time the event took place.¹⁸

The government withdrew over 330 of cases after the People's Movement II. One reason was the peace process, which required bringing the Maoist leaders who had been labeled as 'terrorists' and had been charged for a number of crimes under an anti-terrorism law¹⁹ into the political mainstream. A basis for this decision was the Comprehensive Peace Accord (CPA) (clause 5.2.7) that required, 'Both sides guarantee to withdraw accusations, claims, complaints, and cases under consideration alleged against various individuals due to political reasons and to make immediately public the state of those who are in detention and to release them immediately.'²⁰ The cases the government asked the court to withdraw after the peace process began date back to 1995 and included many Maoist leaders

16 Before April 1990 Nepal was ruled directly by the king under the Panchayat System. The Panchayat System had banned political parties and political organizations. Following the People's Movement of 1990 the king agreed to be a constitutional monarch and re-establish multiparty democracy.

17 Reviewing individual cases was beyond the scope of this report. For some examples, see: Bhattarai and et al. 1999, 2005.

18 Interview with Sushil Pyakurel former member of NHRC, 24 July 2010.

19 Terrorism and Disruptive Activities (Prevention and Control) Act. 2002.

20 UNDP, The Interim Constitution of Nepal, 2063. (As amended by the First, Second and Third Amendments), p. 278.

Table 5.1: Cases withdrawn and release of detainees under TADA after 2006

Year	Cases withdrawn	People charged under TADA who were freed
2005/06	237	336
2006/07	28	1
2007/08	89	NA

Source: Annual Report of the Attorney General, 2007/08.

as defendants. However, at least one case the government wanted withdrawn involved rape.

The withdrawal of cases remains a grey area of Nepali governance. According to the constitution, the Attorney General is the final authority to decide prosecution on behalf of the government. The Interim Constitution provides that ‘... The Attorney General shall have the right to make the final decision to initiate proceedings in any case on behalf of the Government of Nepal in any court or judicial authority.’²¹ The general understanding as to why the government withdraws cases is that they were ‘politically motivated’ or ‘false’ but there have been no studies analyzing whether the cases were actually false or not. (Were it the case, it would then point to the inefficiencies of the Attorney General’s office in fulfilling its responsibility.)

There is the mandatory provision in the law requiring the consent of the court before withdrawing cases. In a recent case, where the government had recommended withdrawal of charges, the Supreme Court issued a verdict that argued extensively and decided why the said charge should not be withdrawn. What follows is an unofficial translation of the decision by justices Min Bahadur Rayamajhi and Kalyan Shrestha refusing the government permission to withdraw the case against Gagan Raya Yadav. The decision was dated 13 February 2008. Some of the phrases used in the judgment such as ‘to withdraw any kind of case’ and ‘anytime’ also suggest the court’s frustration with the frequency with which such requests have been made.²² Excerpts from the judgment:

21 Interim Constitution 2063, Article 135 (2).

22 In the case of Government of Nepal vs Gagan Raya Yadav et.al. dated 13 January 2009.

- While (the withdrawal request) said that the defendant were prosecuted as political reprisal in the course of the Maoist People's War, it was not evident in the charges in the FIR, investigations and even in statements made by the defendant.
- The intention of the law and the constitution is not that any case may be withdrawn, nor is encouraging impunity the objective of the government.
- Even in serious cases where humanitarian laws have been violated, if without assessing the seriousness of subject matter, the government continues withdrawing cases and if the court does not also examine the rationale, there could be a lapse on the part of the government in view of its responsibility and accountability to protect the life and property of citizens and can raise questions about the existence of the rule of law and affect the relationship between the government and the people about which the government must be aware.
- Just because the political system and government have changed, it does not allow compromising or influencing the fundamental right to life of the people. If such a situation arises, the courts must not hold back in protecting the rights of the people in accordance with the constitution and the laws.
- On the issue of withdrawal of cases, a matter that requires approval of the court, if it is viewed only procedurally and if the court does not give attention to the rationale for the withdrawal of cases of a serious nature or those that could affect society for a long time, then such crimes could increase and, rather than result in crime control, lead to the likelihood of chaos and insecurity.
- Therefore, it is inherent in the law that the right of the government to withdraw cases has to be used with good intention, it cannot be said to be absolute. The approval of the court is also not only a procedural formality it is a substantive legal provision.
- The legal right of the government to withdraw cases is a very

important right. The decision of the government to prosecute someone for violating the law is also an important decision. It is not possible to prepare a guideline on what type of cases can be withdrawn. It has to be decided case-by-case based on the rationale.

- Where cases have to be withdrawn for serious reasons but without affecting justice, the court will not have the policy of intervening when there is a request for withdrawal.
- The court has to be more sensitive (in cases) where human and humanitarian laws have been violated, and those that have raised serious questions about social security and morale. Just because of the (government's) right to withdraw cases, it would not be fitting for the court (in the context of its legal rights) to allow withdrawal of any type of case to be withdrawn anytime. The courts have to become the protectors of justice. Only the protection of rights of victims of crime, mainly the weak or those who are unable to defend themselves, can ensure justice in society, which is why such questions have to be considered sensitively.²³

In the context of the peace process, the basis for withdrawing cases are provided in the CPA, the Interim Constitution and the provisions in the Government Cases Act (1992). However, since the list of cases that the government wanted to withdraw also included one on rape, whose political rationale is difficult to comprehend, there is a need to seriously examine and discuss the individual cases in the public sphere. But that has seldom been done.

India also has provisions to withdraw cases but it is the Indian Supreme Court that makes the final call. The decisions of the court say that when common crimes are motivated by political ambitions or considerations, or committed during or are followed by mass agitations, communal frenzies, regional disputes, industrial conflicts,

23 Judgment dated 13 February 2008. Supreme Court Division bench of justices Min Bahadur Rayamajhi and Kalyan Shrestha. (Translated by authors)

student unrest or like situations involving emotive issues that give rise to an atmosphere surcharged with violence, the broader cause of public justice, public order and peace outweigh the public interest of administering criminal justice in a particular litigation and withdrawal from the prosecution of that litigation becomes necessary, a certainty of conviction notwithstanding, and persistence in prosecution in the name of vindicating the law may prove counter-productive.²⁴

Withdrawal of cases denies justice to the victims. Allowing the government to withdraw a case can deny justice for the victim and therefore there is a need for impartial mediation by the courts. In other words, in case of a conflict between two types of public interests, the desire of the government to withdraw cases and that of the victim to get justice, the narrower public interest should yield to the broader public one.²⁵ Therefore, the state should not go beyond the primary duty of protecting the life and property of citizens while recommending such withdrawals.

Nepal's Supreme Court is the apex court and its orders and decisions are binding. Article 116 of the Interim Constitution states '(1) All shall abide by the orders and decisions made in the course of hearing of a suit by courts. (2) Any interpretation given to a law or any legal principle laid down by the Supreme Court in the course of the hearing of a suit shall be binding on the government of Nepal and all offices and courts.' The aforesaid decision on withdrawal of cases therefore is equivalent to law and needs full compliance by the attorney general's office, the government as well as the lower courts.

However, the Supreme Court verdict does not seem to have had an effect on the government. On 14 July 2010, the court stayed a government decision to withdraw 20 cases related with murder in Bara District. Among those cases the government wanted to withdraw were those against individuals accused of killing four Maoist party members in January 2010. The decision to withdraw

24 *Supra* note 14, p. 442.

25 *Ibid.*

cases was taken by the caretaker government headed by Madhav Kumar Nepal.

Corruption

If political influence and the inability of the attorney general to prosecute effectively are some of the reasons for rising impunity, the other factor is corruption at different levels of the judicial system. Corruption by nature is not obvious but its impact is insidious and can have a lasting impact on society in terms of weakened institutions. A number of studies in Asia have found that over two thirds of the people consider the court system to be corrupt, and admit that they themselves, guilty or innocent, will consider paying bribes.²⁶ Public perceptions of corruption in the Nepali courts are not different. When Kalyan Shrestha, a judge at the Supreme Court of Nepal says, 'Every sector and segment of the society is being affected by corruption and nepotism, when the whole environment under which we act is so badly polluted, how much assurances can one find from the dealings of the Court as to its impartiality and fairness?'²⁷ Much of the responsibility for reducing corruption in the judiciary lies with the judges and lawyers, acting individually and through associations or professional bodies.²⁸

The Interim Constitution has provisions aimed at controlling corruption; in the case of the judiciary the Judicial Council is the body to take action against erring judges. But the law does not mention the word corruption. Article 113 (1) empowers the Council '...to make recommendations and give advice...concerning the appointment of, transfer of, disciplinary action against, and dismissal of Judges, and other matters relating to judicial administration.' However, there has been only one instance since 1990 when the Council has taken action against a judge for corruption. Birendra Kumar Karna, judge of the Pyuthan District Court, was removed from office on charges of

26 UNDP Regional Centre Colombo, 2008, p. 4.

27 Shrestha, 2003, p. 362.

28 UNDP Regional Centre Colombo, 2008, p. 4.

corruption but the decision was annulled by the Tulsipur Appellate Court on 13 April 2008. An appeal has been filed at the Supreme Court.²⁹ Since no judge has been convicted of corruption since 1990, when the Judicial Council was first introduced, this has raised questions about its effectiveness as a regulator of the judiciary.

The aforesaid sentiment was echoed by Bishwonath Upadhyay, the chair of the drafting committee of the 1990 constitution. 'Judicial Council is my part of innovation. I pleaded for it when the constitution of the Kingdom of Nepal was being drafted. But the Council has not worked according to my scheme of things. It turned out to be an institution to checkmate the Chief Justice of the Supreme Court. It created a power centre in the judiciary. The power centre became permanent. Tendencies to promote incompetent persons loomed large... The structure of the Council became its own handicap. The lack of transparency of its operation prevented or protected those who tainted the image from being exposed.'³⁰

There is no effective mechanism for controlling corruption in the judiciary. As Prakash Osti³¹ said, the existing anti-corruption laws do not cover corruption by judges and that the commission instituted by the Supreme Court has advised enacting a separate law to cope with financial irregularities and corruption in the judiciary.³² Because judicial independence is a must in democracy, there is also

29 Supreme Court Nepal 2009, Yearly Report of the Supreme Court 2008/09, p. 69. In a more recent case, on 15 July 2010 the Judicial Council suspended a district court judge (then in the appeals court) on charges of corruption. Tej Bahadur Karki was accused of accepting bribes to free suspects on abduction and kidnapping charges after receiving (Rs.165,000). See: *Kantipur*, 16 July 2010.

30 The former chief Justice of the Supreme Court of Nepal and the Convener of the Constitution Drafting Committee of the Constitution of Kingdom of Nepal 1990. The council was introduced in this constitution. Nepal Law Society, 'Frequent Dissolution Creates Distortions', published on *Essays on Constitutional Law*, 1999, Volume 29, p. 5.

31 Justice Prakash Osti was a member of the panel constituted by the Chief Justice Anup Raj Sharma to study the anomalies in the judiciary and recommend measures for change.

32 Supreme Court, 2066 (2009/10), p. 87.

a tendency not to question its powers, which can be a source of potential corruption, even as it protects its independence,³³ and especially in countries where the oversight organization, such as the Judicial Council, has not been very effective.

The issue of corruption in the courts has recurred in the media, and even leaders of the judiciary have acknowledged its existence. The Nepal Bar Association has also consistently called for ending corruption in the benches. In mid-July 2008, an editorial in *The Kathmandu Post* had asked, 'What could be more shameful than a situation where institutions that are entrusted with dispensing justice are themselves dishonest? The heads of the institutions acknowledge the prevalence of bribery, but do nothing to stop it. Despite the revelation, the Judicial Council is keeping mum.'³⁴ Corruption existed even during the best of times or when Nepal had comparatively more political stability and the Nepal Bar Association believed that it had increased after 2006.³⁵ Corruption in the courts is also no secret at the highest levels of government.³⁶ Media reports also suggest that the problem is not limited to the benches and that lawyers are also involved in corrupt practices.³⁷

The Supreme Court Bar Association constituted a committee to study public faith in the judiciary in March 2007. Two members of the committee, Prakash Osti and Bharat Raj Uprety, were appointed justices at the Supreme Court in January 2009. The study, based on a survey of 31 districts, said that 81.5 percent industrialists and 68.4 percent 'ordinary people' believed that the courts were corrupt. Among the respondents were individuals involved in justice delivery and in this group 40 percent said they believed there was corruption in the courts. The report concluded that there were no signs that the courts will be corruption free. Corruption was the major reason why

33 UNDP Regional Centre Colombo, 2008, p. 49.

34 *The Kathmandu Post*, 8 July 2008.

35 *Ibid*, 15 August 2008.

36 Dev Gurung, then minister of law and justice, had discussed the problem and promised to tackle it. *The Kathmandu Post*, 19 September 2008.

37 *The Himalayan Times*, 25 September 2008.

a majority of respondents (64 percent) said their faith in the courts had eroded.

After he assumed office in December 2009, Anup Raj Sharma, the Chief Justice at the Supreme Court, constituted a high-level panel to study anomalies in the judiciary. The panel submitted a 156-page report on 5 March 2010, which acknowledges that judges were involved in corruption and other irregularities.³⁸ It also said that the judges (60 percent) were responsible for the ills of the judiciary and identified 24 internal and 16 external reasons for the delay in justice delivery. The report also said that 60 percent of the problems facing the judiciary can be corrected by the Chief Justice and heads of the appellate and district courts.³⁹ Further, it noted that no action was taken against the corrupt and confirmed the Bar Association's findings that the people perceived that they could not get justice without extra expenses. The report detailed the number of actions taken against judges by the Judicial Council: six were removed from their positions; five were removed (through resignations) during inquiry (two from the Supreme Court and two from district courts). The Council had until then warned six district judges and removed one on charges of corruption.

The first five-year strategy of the Supreme Court (2004-2008) had acknowledged that there was corruption in the judiciary, saying that it was struggling against irregularities, corruption and delay as reported by the media and the judiciary itself.⁴⁰ The mid-term report of the plan said that stakeholders said that the situation had not changed much. Its second strategic plan has identified a cluster of 10 factors affecting justice delivery, one of which is controlling irregularities and corruption.⁴¹ But the plan says very little or nothing on how corruption would be controlled. Further, the plan also acknowledged that the courts had failed in winning public trust and in

38 Supreme Court, 2066, p. 83.

39 Ibid, pp.73-75.

40 The Strategic Plan of The Nepalese Judiciary (2004-2008), p. 41.

41 Supreme Court of Nepal, 2008, p. 29.

ensuring easy access to justice.⁴² The planned strategic interventions include a code of conduct for judges and other judicial employees, strengthening mechanisms for hearing complaints on irregularities, and maintaining financial discipline and transparency, among others.⁴³ The document does not discuss the need to amend laws to curb corruption nor does it mention approaches to revitalize the Judicial Council or the need thereof.

Article 109 (5) of the Interim Constitution implies that sitting judges must not be involved in corruption and expects them to have good morals. They come under the ambit of general laws only after they retire. The situation can change only by having appropriate laws and an effective internal mechanism for monitoring and prompt action against wrongdoers.

Lawyers, too, can contribute to change, especially through the bar associations. One important role of a national bar association is to defend the independence of judges and lobby governments to provide the support necessary to ensure their effectiveness. Bar associations can also impose sanctions on members who engage in corruption and bring the profession into disrepute.⁴⁴

National Human Rights Commission

Article 131 of the Interim Constitution of Nepal upgraded the National Human Rights Commission (NHRC) to a constitutional body and Article 132 makes it responsible for ensuring ‘respect, protection and promotion of human rights and their effective implementation.’ The NHRC has investigative authority and can exercise equal power as the courts in requiring any person to appear before it ‘for recording their statement and information or examining them, receiving and examining evidence, and production of any physical proof’, among others. Further, it also has the powers to ‘publicize the names of any official, person or bodies not following or implementing the

42 The Strategic Plan of the Nepalese Judiciary (2009/10-2013/14), p. 64.

43 Ibid, p. 76.

44 UNDP, 2008, India, p. 51.

recommendations and directions' and also record non-compliers as 'human rights violators'. Prior to this, the commission functioned under the Human Rights Commission Act, 1997. The commission became operational in 2002 and now has regional offices in all the five regions.

The NHRC has made 303 recommendations on cases involving human rights violations since its inception.⁴⁵ Among them are recommendations to government to pay compensation to victims of different political conflicts including those that were killed in the Madhes movement of 2007. The case of the Madhes movement victims is a rare one where the government has complied with the recommendations – it paid Rs. 1 million each to the families of the people killed.⁴⁶ Of the remaining recommendations, the government 'fully' implemented the NHRC's suggestion on 34 cases, 'partially' implemented 73 recommendations while 196 have not been addressed. On decisions not implemented, the NHRC said 66 were in the process of implementation and that there had been no response on 124 cases. With six cases, the government acted on the recommendations. The NHRC does not explain what partial implementation means – apparently it includes instances where the recommended compensation was not paid fully or the recommended action was not undertaken as suggested.⁴⁷ The details of the recommendations of NHRC to the government are given in Table 2.

The NHRC, however, has not been able to ensure that its recommendations are implemented, which also means that people to whom those decisions matter have not received justice. Further,

45 Data for the period ending 15 December 2009.

46 National Human Rights Commission, 2009, p. 82.

47 A commemorative 10-year publication of NHRC reports a total of 386 recommendations. It says, of these 34 were fully implemented, 138 partially implemented and 214 were not implemented. The recommendations were not implemented in 18 out of 239 cases of extra-judicial killings. It had made recommendations in 47 cases of disappearances of which only one recommendation was implemented. Overall, 55.2 percent of the recommendations were not implemented, 36 percent partially implemented and only 8.8 percent were fully implemented. (See: NHRC, 2067 (2010), *Ayogko Ek Dasak: Ujuriupar Ayogka Sifarishharu*, Lalitpur.

Table 5.2: Implementation of NHRC recommendations

Violations	Full	Partial	Not implemented	Total
Killing	21	103	75	199
Disappearance	2	20	23	45
Abduction	0	1	2	3
Torture	1	3	11	15
Women rights	13	0	3	16
Child rights	0	1	12	13
IDPs	0	1	25	26
ESCR	0	0	4	4
Illegal detention	1	0	0	1
Prisoners' rights	0	0	2	2
Others	0	0	1	1
Total	38	129	158	325

Source: National Human Rights Commission (As of 13 March 2010)

the commission has remained more or less helpless in getting its recommendations implemented despite its elevation to a constitutional body. The NHRC has the power only to recommend and it is the government that must follow up on its recommendations. The NHRC, however, has the power to list and publicize the names of human rights violators, an authority it has not used thus far. Further, to date, not a single perpetrator of major human rights violations or abuses committed during the conflict has been convicted and most its recommendations have not been followed up by the government.⁴⁸ The commission has reached the conclusion that the 'culture of the impunity' is responsible for the non-implementation of its recommendation.⁴⁹

Legal aid

Legal Aid Act 2054 (1997) seeks to enable people unable to access justice owing to financial and social reasons in accordance with the principle of providing equal justice to all.⁵⁰ Section 2a of the act

48 OHCHR report in *The Kathmandu Post*, 2 March 2010, p. 1.

49 National Human Rights Commission, 2066 (2009), 'The Scenario of the execution of the recommendation of the NHRC', p. 23.

50 Preamble of Legal Aid Act 2054 (1997).

defines legal aid as supporting, counseling and providing a range of legal services to 'indigent' persons. It also provides for legal aid committees at the central and district levels and makes provisions for a legal aid fund. The Ministry of Law and Justice has been implementing the legal aid program together with the Nepal Bar Association. The program has been underway in all of Nepal's 75 districts since September 2009.

The judiciary has a plan for implementing legal aid that proposes a number of activities such as institutionalization of legal aid services for the poor and disadvantaged groups, introducing attractive emoluments and benefits for court-appointed lawyers, expansion of services of lawyers to draft complaints, defenses and appeals and for undertaking all other activities during the execution of decisions.⁵¹ The plan is in different stages of execution⁵² but the legal process still remains complicated and generally inaccessible to a large number of people.

Commissions of inquiry

The Inquiry Commissions Act 2026 (1969) has given government the power to constitute commissions as required. Section 3(2) of the act has given it the power to constitute a commission on matters of public importance. As per sub-section 3 of section two, the notice of the formation of a commission is published in the *Nepal Gazette*. The terms of reference is stipulated in the notice under the section 4(1).

The Government Cases Act 2049 has given authority to the police to investigate in criminal offences. In the course of the investigation the police have the right to search, control the area, arrest suspects and control evidence relating to crime.⁵³ Therefore, the police have the legally mandated investigative authority while the Inquiry Commission Act 2026 also allows the government to form two types of

51 Supreme Court, 2009, p. 40.

52 Among others, the conditions of services and appointment process of court appointed lawyers have been included by incorporating Rule 111(b) of Supreme Court Regulation 2049 (1990) and Rule 95 (a) of District Court Regulation, 2052 (1995).

53 Preamble of the Police Act 2012 (1955).

An unfair trial

As in all democracies, Article 84 of Nepal's 1990 constitution granted the courts and judicial institutions the right to exercise power relating to justice in accordance with basic law and the recognized 'principle of justice.' [1] Likewise, Article 86(1) made the Supreme Court the highest court of appeal and the custodian of the constitution. The Interim Constitution retained these provisions.

The Judicial Council had appointed 51 district court judges on 15 September 2006, which was challenged by other candidates who thought the decision was unfair. By the time the litigation was over, they ended up being treated more unfairly by the very institution entrusted with providing justice and upholding rule of law. [2] The opponents were all members of the Judicial Council, including Dilip Kumar Paudel, Chief Justice at the Supreme Court at the time.

The contentions in the petition were that the appointment was against Clause 2(1) of the declaration of the House of Representatives, which said that the Council of Ministers has the executive authority to appoint district court judges and not the Chief Justice of the Supreme Court. It also challenged the powers of the Judicial Council to appoint judges, without parliamentary hearings. The petitioners demanded that the court annul the decision and asked for a court order (mandamus) against the opponent to proceed as per sections 4(1) and 4(3) of the Judicial Council Act, 1990. In the meantime, the Interim Constitution of Nepal 2063 was promulgated on 15 January 2007.

The Supreme Court Regulation 2049 (1992) was the basis under which the case was heard by the bench [3]. This procedural law is binding on all judges and court officials under both Articles 88(2) of the 1990 constitution and 107(2) of the Interim Constitution. The court rules (Rule 40 sub-rule 4) give the bench two options after the preliminary hearing – issue a show cause notice or quash the writ. Further, the court is required to set the date for the preliminary hearing at the time the petition is registered, which is normally the next working day.

In the case of Badri Prasad Oli and others vs. the Judicial Council the petition was registered on 22 August 2006 and the hearing took place on 15 October 2006. Justice

(Sources: [1] The Constitution of the Kingdom of Nepal 2047, Law Books Management Committee, *Ministry of Law, Justice and Parliamentary Management*, HMG/N. [2] See judgment of the Supreme Court of Nepal dated 2 July 2007 on the case of Badri Prasad Oli and others vs. the Judicial Council,

commissions – a judicial commission, chaired by a judge and an administrative commission chaired by anybody appointed by the government.⁵⁴ A sample of 12 inquiry commissions formed between May 2006 and February 2009 under the Inquiry Commission Act was put together, based on reports published in the *Gazette*, for a case study. (See: Annex 5)

54 Section 3 Sub-section 1 of the Inquiry Commission Act 1969.

Tap Bahadur Magar chaired the hearing and he did not quash the writ or issue a show cause notice and instead ordered the decision of the Judicial Council be attached to the case file. (The Judicial Council's office is located within the compound of the Supreme Court but the case did not move.) Thereafter, the apex court issued one hearing date after another and the case was heard by a record number of benches of justices Anup Raj Sharma (later appointed Chief Justice), Gauri Dhakal, Tahir Ali Ansari, Khil Raj Regmi, Balram K.C., Ram Prasad Shrestha (Chief Justice in June 2010), Rajendra Kumar Bhandari and Tap Bahadur Magar. After 29 such hearings,[4] Justice Tahir Ali Ansari eventually quashed the petition on 2 July 2007.

Fairness is the basic canon of a fair trial and if there is unfairness in the case hearing process itself it is against the principle of justice. Only just institutions can ensure justice and that is vital for restoring the faith of the people in the law.[5] The case discussed above is a breach of impartiality and rule of law, and underlying it was the reluctance of the apex court to assess the legality of the decision of the Judicial Council, of which the Chief Justice is also a member. It was also perhaps a case of conflict of interest because there is no valid legal ground to justify why the case was not quashed after the preliminary hearing or why a show cause notice was not issued. The Supreme Court was therefore clearly in violation of Rule 40(4) of its own regulations [6], failure to issue a show cause notice after reviewing the required documents, involving more judges in the hearing than required and the involvement of the Chief Justice himself during the hearing (which is against natural law, as one cannot fairly decide a case where one has been made a defendant). By prolonging the hearings for over 10 months, the court also misused both time and resources of the court.

The case is also an example of how frustrating litigation can be when the principle of fairness is violated. And this was a case involving judges and those who wanted to be judges who felt they were treated unfairly. It is also telling of how frustrating it could be for ordinary people if the judges take sides or are themselves involved in the litigation – directly or indirectly.

p. 4. [3] Supreme Court Regulation 2049, Supreme Court, Nepal. [4] *Tarekh Bhardpai* (hearing receipts) of the Supreme Court. [5] Amartya Sen, 2009, *The idea of justice*, Penguin Books, India, pp. x-xi. [6] Supreme Court of Nepal, Supreme Court Bulletin Shrawan 2066, p. 20.)

As per the Articles 110 and 106 of the Interim Constitution, judges of the Supreme Court and the appellate and district courts cannot be deputed for anything other than the commissions constituted under the section 3(1) of the Inquiry Commission Act 1969. Among the 12 commissions mentioned above, one was chaired by a sitting Supreme Court Justice and three were headed by judges from the appellate courts. Section 3(1) of the same inquiry commission act says that judges can be appointed only twice to judicial

commissions but with permission from the Judicial Council.

Information obtained from the Ministry of Home Affairs shows that there have been at least 53 inquiry commissions/task forces⁵⁵ formed to investigate cases that had resulted in about 100 deaths, including those killed during the April 2006 protests and those killed at Gaur and during the Madhes movement of 2007. Typically, such commissions do not have the authority to prosecute and, not surprisingly, no one has been found criminally accountable and convicted by the courts. In most cases commission reports are not made public. In fact, the purpose of one such commission in the Home Ministry list was to study how to make the reports of such committees/commissions public.⁵⁶

The Commission of Inquiry Act does not have all the necessary safeguards needed to meet internationally established criteria for commissions mandated to investigate human rights violations. For example, the law does not set out any competence requirement (say, in terms of human rights expertise) and the independence or impartiality of the members. It does not also have special provisions for protecting victims and witnesses. The commissions are required to produce reports, but there are many broadly worded exceptions permitting non-disclosure, including instances where the content is deemed to have an adverse effect on Nepal's sovereignty or national integrity, matters of military importance, public peace and order, amicable relations among various castes, creeds or communities, or relations with friendly nations.

On the 53 such commissions/committees or task forces formed, of which 19 were specifically to probe incidents that involved deaths or murders.⁵⁷ Some of these are commissions formed to investigate the 'Tarai incident', the 'Nepalgunj incident' and the 'Rautahat incident', and therefore it is difficult to track down the commissions

55 Data obtained from the Ministry of Home Affairs.

56 The name of this commission/committee or task force is *Jaanchbujh Aayogka Prati-bedhan Sarbajanik Garne*.

57 Based on a list of commissions made available to the researchers.

based on the specific purpose on the list made available by the Home Ministry, and more so to follow up on the recommendations.

The commission of inquiry set up to investigate the killing of 27 CPN (M) cadres in Gaur presented its report to the government, but its findings have not been made public. According to the OHCHR police were said to have had the names of 40 suspects but they had not been able to arrest them.⁵⁸ Initially, the police had even refused to register a FIR on the incident, which shows that in such cases even the Maoists face difficulties in trying to seek justice.

In August 2007, after intense public pressure, the government finally publicized the report of the commission formed to investigate the deaths during the 2006 movement. The cabinet had formed a committee to study the report and recommend action. The report had recommended action against people who, it said, had overstepped their authority, including 31 members⁵⁹ of the security forces. According to the OHCHR, the government said it had implemented most of the recommendations of the report and that 'some of the recommendations have been forwarded to the competent authority for further investigation.' The Attorney General had taken no action to prosecute, because he believed that the evidence gathered was insufficient.⁶⁰

By law police are obliged to investigate each of the 18 deaths that took place during April 2006. But, according to the OHCHR, it was not done even in the seven cases where FIRs had been filed. The government also told the UN body that it had taken internal disciplinary action but even the OHCHR was unable to obtain details of the sanctions. OHCHR said that one person facing disciplinary action challenged the basis of action in court but gave no details. Because the government did not act, the Maoists announced actions to 'expose' those named in the report.⁶¹

58 OHCHR, 2007.

59 UN Secretary General, 18 October 2007, paragraph 75.

60 OHCHR, 2007, p. 26, at <http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/CPA%20Report.pdf>

61 *Ibid*, p. 27.

The UN had noted one such attack by the YCL on the office of the Muskan Sena Party in Sindhupalchowk District in the name of exposing the suspects. As in many cases, such acts – though illegal – result from the failure of the state to investigate further and prosecute cases of abuses.

The road ahead

Since 2006 there have been very few examples of violent crimes being properly investigated. There are fewer or no examples where there has been prosecution, and especially so in cases involving members of political parties or their ‘brother’ organizations. The government has continued to withdraw cases against people who have committed grave human rights violations, alongside those where individuals were charged of ‘politically-influenced’ accusations. All of these actions have contributed to growing impunity, which remains a major obstacle to establishing peace and re-establishing democracy in Nepal.

In December 2007, OHCHR reported on the ‘deeply entrenched impunity’ while reviewing the implementation of the CPA.¹ It said, ‘More than 18 months after the cease-fire, there are almost no signs of any political will to address accountability for serious human rights violations and abuses committed either during or after the conflict. Not one member of the security forces or of the CPN (M) has been held criminally accountable and convicted of killings, disappearances, torture or other abuses by the civilian courts.’²

The failure by Nepal to create a Truth and Reconciliation Com-

1 UN OHCHR, 2007, pp. 22-27.

2 Ibid, p. 22.

mission and a commission of inquiry into disappearances, as provided in the Interim Constitution are among the reasons why those responsible for the violations have gone unpunished. Cases that have yet to be investigated include disappearances after arrest by security forces and abduction by the Maoists. OHCHR had also noted the inability of the victims, even with the support of NGOs, to even register cases against excesses by both the security forces and the Maoists. According to its 2007 report, not one member of the security forces or the CPN (M) had been prosecuted and convicted as a result of a FIR.

Other cases not thoroughly followed up include the killing by the army of 18 CPN (M) supporters and two civilians in Doramba of Ramechhap district in August 2003 and the murder in 2005 of 36 people in a bombing by the Maoists of a bus at Madi of Chitwan District. The CPN (M) acknowledged responsibility for the bus bombing but no one has been held accountable for the action. The UN body also said, 'The CPN-M's cooperation so far has been limited to accepting that individual cadres were responsible, but not assisting in bringing them to justice.' On 6 June 2010 newspapers reported that the victims of the bus bombing were still waiting for justice.³

There has been a reduction in the number of violent incidents in the Tarai after the government began implementing the SSP in mid 2009 but there have also been issues of 'encounter' killings, many of which remain to be thoroughly investigated. In the villages, the people seemed supportive of the greater visibility of security forces because government presence had been minimal since the 2007 Madhes movement. Some Madhesi politicians also feared that the government could use the SSP to suppress future protests. Across the plains, there were also fears that the CPN (Maoist) led by Matrika Yadav could emerge as another destabilizing force because its methods are similar to that of the former rebels. 'Before the SSP

3 http://www.myrepublica.com/portal/index.php?action=news_details&news_id=19564

was enforced, there were 15-16 abductions per month, nowadays the number has come down to two per month,' said Bhupal Kumar Bhandari, Superintendent of Police of Saptari. However, there also are issues related to 'encounters' which have not even been investigated by the NHRC. Among the 'encounters' studied by Advocacy Forum is one where documentary evidence of torture was made available but the concerned police officials were let off after departmental action.

The nexus between smugglers, criminal gangs, police and politicians are also very entrenched. The links are obvious, and even though they may not bear directly on the general public they do affect overall law enforcement and the state's revenue collection. Locals suspect similar relationships between the armed groups and local and even national-level politicians. 'One special characteristic of the Madhesi armed groups is that they are dependent on ransom and forced donations and to date, while we don't think that they collaborate with smugglers, we sometimes feel that they have a relationship with politicians,' said Bijay Jhunjhunwala, a Janakpur resident.

In Sarlahi and Mahottari districts, the locals suspected that there was collusion between the armed groups and the police. This view was supported by Bajarang Nepali, a NC leader; Ishwari Poudel, journalist and Ram Vinod Sah, a resident of Malangawa, Sarlahi.⁴ Many explained how this relationship works: 'Most of the national and local Madhesi leaders usually manipulate the local budget by fixing the documents. At the same time they also use their supporters and members of armed groups to threaten government officials to fulfill their interests.'

Residents of Birgunj in Parsa district reported a general improvement in the security situation in February 2010. 'The security situation in the city has improved in recent months after the police deployment and checks on vehicles increased,' said Biswa Raj Gautam. However, Binod Gupta, a local resident, was worried by the shift

4 Interviews were done in November 2009.

from marijuana to poppy farming and its trade. A flourishing drug business in a country with little or no public security is something that could attract the interest of various groups seeking to peddle 'protection' in return for a share of the proceeds.

Add cross-border crime and links between criminal groups to all this and the result is a deadly mix. This was pointed out in Birgunj, a city that has had many businessmen abducted and held for ransom by groups from across the border. A police officer in Birgunj suspected that many politicians even have 'good relations' with those involved in illegal trade because whenever someone is detained they are the first to call the police with inquiries.

Some of the Madhesi armed groups have purely financial motives. 'Many of them are doing nothing but running criminal gangs through income from ransom and forced donations,' said Raiju Sah of Birgunj. He added that Birgunj, which has been targeted by Indian criminals for a long time, now faces extortionists in the form of armed groups and with one political cover or another. A peaceful and prosperous Madhes/Tarai is in the interest of everyone, Madhesi and Pahadi, but reaching that state may not be possible unless public security is assured and there is an end to impunity.

The high handedness of political parties is more pronounced in the districts. One extreme example was cited by OHCHR to illustrate the severity of the problem. On 2 November 2006, CPN (M) cadres abducted two court officials in Rukum who were trying to enforce a court verdict on several cases related to the party. The court employees were released later but only after being subjected to humiliation in a mass gathering where their faces were smeared and they were forced to carry stones. OHCHR said it was informed that there was a subsequent five-point agreement with the CDO, the district court judge and the CPN (M) on how to deal with existing legal cases against the CPN (M) and its members in the district, including the withdrawal of all conflict-related cases against the latter.

Political pressure and interference have remained major obstacles to ending impunity and establishing rule of law. It has manifested

in various forms: (i) preventing police from carrying out investigations, (ii) intimidating the police and the administration to force the release of suspects and preventing investigations, (iii) obstruction of justice using mobs to intimidate the police and law enforcement officials, and (iv) withdrawing criminal cases against those eventually charged and prosecuted. There have been instances where those guilty of excesses have often gotten away with an apology and a promise not to repeat the 'mistakes', while the victims have been provided some form of compensation. While such acts have helped in diffusing disputes at the local level, it has also sent a message that crime can go unpunished provided one has the right political connections. Therefore, similar acts have recurred while justice for victims has been delayed and/or denied.

There is no one place to begin to tackle impunity in Nepal. There are hundreds of cases where there has been injustice and where the culprits have gone unpunished. The purpose of this report was not to list what has happened, which has been extensively documented by the NHRC, other human rights organizations and also the OHCHR, but to look back at some of the more blatant violations of human rights as a means to build public support for tackling impunity. It is said, when the core of the stem is rotten, the leaves, flowers and fruits cannot remain on a tree. A similar analogy can be made about impunity: it may not be possible to build a peaceful society if those responsible for crimes and human rights violations are rewarded rather than being made accountable for their actions. Justice and rule of law comprise the core of a civilized society, and when the two do not exist, peace also cannot.

Annexes

Annex 1

Violence against Women – Rape

Yashoda Adhikari

There has been a marked increase in the number of women reporting rape, however, most of the accused go scot free largely because of the inability of investigators to produce the evidence needed for punishing them.

The Metropolitan Police Office at Baudha filed a complaint on 8 April 2009. It said that Manoj Ghimire, an engineer, had repeatedly raped a nine-year-old domestic help for a year. The complaint said that the girl's vagina had injuries and that she suffered from continuous discharge of both stool and urine. The father and cousins of the nine-year-old had filed the complaint.

The police filed formal charges against Ghimire based on the complaint, a medical report confirming the rupture of the hymen and the statement made by the girl at the police station. The court ordered that the accused be detained for prosecution.

The case then took a sudden turn. On 2 May 2009 the father went to the police and made a second statement saying “my daughter had been taken away by her cousins in the first week of Magh (January) and that Ghimire had not raped her and that his earlier complaint was false (all references to the names of the family members of the girl have been removed). The final court verdict on 9 October 2009 absolved the accused saying that the victim, her father and cousins and government witnesses said that there had been no rape. Ghimire was released thereafter.

Advocate Kamal Guragain, who had been following the case closely, suspects that finances could be involved in the sudden turnaround.

Had that not been the case, how could those who went to the police to complain of the rape of a daughter reverse the statement so easily? He asks. (We had tried to meet both the accused as well as those making the complaint but they could not be contacted).

Police records show another complaint where Sriram Tripathy, a priest at the Shiva Temple at Balaju, was accused of sedating his daughter with medicines and raping her. The girl was a grade 9 student. The mother of the girl filed the complaint at the police office in Balaju on 4 October 2009. The case reached the Kathmandu District Court and on 11 October judge Balendra Rupakheti ordered that the accused be detained during the trial. Tripathy filed an appeal at the Lalitpur District Court, which upheld the lower court's order. On 20 January 2010 the Kathmandu District Court ordered imprisonment of Tripathy for 18 years. He is now serving time at the Dillibazar Jail.

However, Tripathy has been threatening to "get even" with the mother and daughter after serving his term. On 7 March 2010, the mother said, "In front of the judge he said 'I will give you Rs.1.2 million withdraw the case' but we did not agree." She added, "Now he calls us almost every day and says, "I will stay in jail not on the charge of raping the daughter but on the charge of murdering both mother and daughter."

The daughter had told this reporter about her father's ways on 3 March 2010. "He said the medicines would make me strong and used to do it. Later he did that for up to eight times during the day and night. After it became unbearable I told a cousin (the wife of mother's brother)." She had been hiding her ordeal because she had been threatened that she would not be allowed to continue study if she told anyone. She now suffers from severe depression. According to her mother, "She does not desire to study and mutters that 'daddy will kill me' even in her sleep."

It is not only minors who have been raped. On 9 May 2009 Hamro Sansar, an Internet site, had a story about the rape of an elderly woman in Baireni 7, Belkhu of Dhading District. Two suspects Ram

Bahadur Damai and Kumbha Bahadur Sunuwar were arrested. According to information provided by Ghanashyam Aryal, Deputy Superintendent of Police, both were in detention on 22 March 2010 and a case had been filed in court.

The incidents described above tell three things about rape. First, it is difficult to establish rape and punish those guilty. Second, even those serving time for rape in jail can be influential and can continue to threaten the victims. And, third, women of any age could be victimized.

Data at the Women and Children Service Centre at the Nepal Police suggest that there has been an increase in the reporting of rape. In 2005/06 police had recorded 133 complaints, which rose to 466 in 2008/09. This is almost five times the numbers reported five years ago. “Until some years ago we did not get as many complaints, now the numbers have grown exponentially,” said Bigyan Raj Sharma, spokesman, Nepal Police. (Table-1)

Table 1: **Reported case of Rape**

Fiscal year	Reported cases
2062/63	133
2063/64	387
2064/65	382
2065/66	466

Source: Women and Children’s Service Centre, Nepal Police

Another basis that shows an increase in the reporting is the cases filed at the Kathmandu District Court. According to court records, there was no case on rape between 2002 and 2005. There was one case in 2006, five in 2007 and 27 in 2008. The number of cases registered in 2009 up to December was 29. The ease at filing complaints at the police office, the increased awareness of women about their rights and their confidence and belief that they should not hide their sufferings are among reasons for the increased reporting. According to Dr. Renu Rajbhandari, chair, Women’s Rehabilitation Centre (WOREC), “It is not that there is more rape now, they are now coming out in the open (or being reported).”

Investigation, prosecution and punishment

All cases on rape are state cases, where it is the responsibility of the government to investigate and prosecute. Therefore, the government attorney pleads on behalf of the victim. Some blame the inability of the government to fulfill this responsibility effectively as reason for the low convictions. Sources interviewed for this article also blamed weak investigation for the low conviction.

“There are many examples where there has been collusion between the investigating and prosecuting agencies and court officials and therefore cases are weak at the outset and the suspect is either absolved or gets away with less severe punishment,” said an attorney at law. One example he cited was the attempted rape of four students by Chandra Prasad Pant, a teacher at the Bal Bikas Prathmik Vidhyalaya, Baneshwor on 17 March 2008. The government attorney filed a case for “intention to rape” rather than rape (*aasaya karani* and not *jabarjasti karaniko uddhyog*). The intent was to ensure that the suspect got away with less severe punishment, the lawyer said.

The government’s lawyers blame weak investigation and said the charges – for attempted rape, intention to rape and rape – depend on the evidence. They added that some cases are complex in nature and therefore are difficult for the victims to win the court battle. Said one lawyer; there are also instances where consensual sex has later been reported as rape. According to Narayan Rimal, of the Attorney General’s office in Kathmandu, “We have a recent case where consensual sex at the Balaju Guest House was reported as rape after something went wrong between the parties. This is one case where the accused could be absolved.”

In rape cases, generally, the accused are also likely to influence or even threaten the victims. One way to avoid litigation is the promise of compensation. According to Basanta Kunwar, DSP, Balaju, “We have no idea how they reach settlements but when we call them in for making statements they deny rape.” He adds, “How can we press charges when the victims themselves deny (that there has been rape)?”

There are examples where even those in custody have threatened

Punishment for rape

10-15 years imprisonment for raping a girl under 10 years of age.
 7-10 years imprisonment for raping a girl aged 10-16 years of age.
 5-7 years imprisonment for raping a girl above 16 years of age.
 Additional punishment for "rape of a serious nature"
 Group rape, additional 5 years imprisonment
 Rape of a pregnant woman additional 5 years imprisonment
 Rape of a disabled woman, additional 5 years imprisonment
 Rape in custody, additional 1-year imprisonment and departmental action
 Rape within family, imprisonment up to life, depending on relationship.

Source: Country Code, *Jabarjasti karaniko mahal ko 14 number*.

victims. Such threats and compensation are reasons why victims change their statements. Another reason for not reporting is the fear about the matter going public.

Further, even cases that do reach the courts are often weak, as one example at the Kathmandu District Court shows. There was a complaint against police that one Sanjay Shahi of Dailekh had repeatedly raped a 13-year-old domestic help from Bardia for a year. Kamal Guragain who was representing the victim was caught off guard when he heard that the accused had settled the case promising to give some land to the victim's mother. Thereafter, the mother has been denying rape. The case had reached the court on 14 January 2010 but the victims had not appeared there in March.

There is another recent example where the police were accused of rape and also of destroying evidence. This was the case related to the rape of Suntali Dhami, constable, at the Accham District Police Office. (The victim's name has been disclosed here because it has been an issue raised in parliament, the home ministry as well as the media). Six of her male colleagues were accused of raping her on 27 September 2009. Three of the suspects Birendra Bam, Jagadish Pandey and Karbir Thalal are in detention while three others Dansingh Bhandari, Biradutta Badu and Narivan Mahatara have not been charged. Dr. Rajbhandari of WOREC accused that the three were not charged at the instruction of the home minister himself. (This could not be confirmed independently.)

“Recently they had visited my father and offered money for reconciliation,” said Suntali Dhama, who was hospitalized at the Maharajgunj Police Hospital after the incident, and was still there in February 2010 when his reporter had met her. “They have also been threatening to kill me after they come out of jail.”

Parvati Thapa, the Deputy Inspector General of Police (DIG) at the Far-Western Regional Police Office, was transferred after the incident allegedly for not “complying to the minister’s wishes.” On 26 February 2010, Thapa told this reporter, “The investigations show that Suntali Dhama was raped. I am confident, the court will reach a verdict in her favor.”

Evidence remains a major obstacle

Many are unaware that rape has to be reported immediately after the incident. Further, even if women know, they may not be able to report it immediately, for a number of reasons. The delay in reporting can make it difficult to gather the evidence needed in court. Many are still unaware that the medical tests also need to be done immediately after the incident. Sometimes the availability of testing facilities can be an issue. It was true in the case of Suntali Dhama.

The National Human Rights Commission said that Suntali Dhama had taken a bath (after the incident) and her medical tests were carried out four days after the incident. According to the report, no sperm was discovered in the vaginal channel but “there were scratch marks on the victims right cheek, nose, around the eyes, between her breasts, right arm and scratch sores on her back and thighs, and blue marks on the body.” The defendants’ lawyers could use this evidence to argue that there is evidence to prove an attempt to rape but not rape itself, which could then reduce the punishment.

According to Parvati Thapa, since rape is reported to the police only after some time has elapsed, it is difficult to prove it medically. In Kathmandu, police take those reporting rape for a health check at the Prashuti Griha Maternity Hospital, Thapathali.

According to Dr. Lata Bajracharya, the number of those coming for

a medical checks after rape is very small and, even for these cases, rape can be proven medically for only about five percent. Inadequate medical evidence is one factor that can prevent many of the victims in the districts from getting justice.

Further, because rape is a sensitive subject, not all victims can provide accounts of the experience, as this can be embarrassing for the victim. It is more difficult for minors to recount basic facts like date, time and, say, the clothes worn by the assailant. These are types of questions lawyers representing the defendants ask. The inquiries by male court employees can also be intimidating for the victims.

There is also the emotional battle that the victim and her family would have to fight during the litigation process. "If there was a system of ensuring submission of a verified statement by the victim in court within 24 hours after rape has been reported to police, they would not have to face embarrassment and victimization," says Manju Marasini, a lawyer. Making this possible would require changing laws and court regulations.

Nepal's investigative process is also not women-friendly. An example of this is the letter written by the investigating officer requesting a medical examination to the doctor. It asks the doctor to check if the hymen of the victim has been "torn", whether there are sperms in the vaginal canal and if there are other bodily injuries. The evidence required, among others, is sperm in the vaginal canal, which can get washed away with time. Therefore the time that elapses between rape and the medical check can result in loss of key evidence making it difficult to make the charges stand. Further, there is no mechanism to prove rape if a woman has been raped under threat (without visible injuries) and if she is unable to get a medical check immediately after the incident.

The requirement in law that rape has to be reported within 35 days of its occurrence is also impractical -- because, after the time elapses, there is no room for filing a complaint even if rape had occurred. According to Dr. Rajbhandari, women who have been raped are under stress, they fear what family and neighbors will say and therefore they

are in a state where they cannot take a decision to report rape on their own. This is also a period when the assailant would be threatening the victim to prevent her from reporting.

Further, if the victim is a minor, it may take some time for the guardians to become aware of what has happened. She adds there should be no limitation for filing complaints, which is an anomaly in law that can provide immunity to the suspects. Passing judgment on a litigation on the reporting time, on 11 July 2008 the Supreme Court ordered the government to consider changing the provision. There was no word of if the government was considering a change when this report was written.

Hemanta Rawal, a Deputy Registrar, at the Supreme Court said that the government has created a situation that can allow suspects of severe crime to go scot-free. Other than providing free legal support, the government does not have special provisions for supporting victims of rape. Meera Dhungana, a lawyer, adds, rape cannot be eliminated or reduced unless the state provides safe shelter, empowerment and rehabilitation.

Government efforts to change the situation have not been very promising. On 25 November 2009 Madhav Kumar Nepal, prime minister, declared 2010 as a year of violence against women. Thereafter, the government set up a toll free number (1660010152) where victims could report violence. (But the number was always busy when this reporter had tried calling in. Later when this reporter went to the office, she discovered that it was off its hook.) Sumana Aryal, a section officer there, said the phone was out of order. When asked about reports on rape she said, "There's been no complaint so far."

The mother of the girl whose daughter was raped by her husband said she had tried reporting the case at the number for almost four months – and failed. The toll free number was still 'out of order' in March 2010. (Translated from Nepali)

(A short version of this story was published in *Himal Khabarpatrika* in its 30 June -16 July 2010 issue).

Annex 2

Violence against Teachers

Pramod Ayam

Teaching is of late turning into one of the most risky professions in Nepal. Teachers have been attacked not only while they were traveling alone or in small groups but also when they were inside their classrooms. Very few of the suspects in the killings were apprehended and fewer punished. Both government forces and the Maoists targeted teachers during the decade long conflict (1996-2006). The attacks have continued after 2006, mainly in the restive plains or Madhes/Terai districts.

On 30 April 2009 members of a group calling itself Janatantrik Madhesi Mukti Tigers shot Pradip Timilsina a teacher at the Nepal Rashtriya Madhyamik Vidhyalaya at Feta Village Development Committee (VDC), Bara District. One Jalim Singh (real name Ram Narayan Sahani) called up local journalists the same day and told them he had killed Timilsina for not making a donation. The police spent a year searching for Singh without success. On 17 January 2010 a head constable at the district police office said, “We have information that the suspect has been hiding in Adhapur and Haudadanu areas of India, we are looking for him.”

Another teacher, Menuka Sah, at the Nera Primary School, Tribeni in the same district was killed about three weeks after Timilsina’s death. She was abducted at around midnight on 27 May 2009 and shot at the bank of the Bangari River. She was apparently murdered over having an affair with a local youth and the murder was allegedly instigated by her brother Santosh Sah and reportedly carried out by Ramesh Yadav and others affiliated with the Janatantrik Terai Mukti

Morcha (Prithvi Group). Ramesh Yadav was in detention in early 2010 but the elder brother Santosh and other suspects – Brijlal Yadav and one Lalbihari – were still absconding in April 2010.

In nearby Dhanusha District, two assailants shot and killed Bindeshwor Mahato head teacher at the Rashtriya Prathmik Vidhyalaya while he was on his way to school on 17 June 2008. (The same assailants beat up Kapildev Sah, a teacher at the same school and looted his mobile phone and motorcycle.) Following a complaint filed by Miraklaldevi, wife of Bindeshwor, police arrested Dhaniklal Mahato and Ram Kumar Mahato on murder charges.

Megh Bahadur Banjan was given the responsibilities of acting head teacher after Mahato's death. However, he too was killed about nine months later on 4 April 2009. He had gone to fetch sand with two students from the Jalad River at Puspabalpur-9. All three, including the students Ram Bihari Mahato and Sakun Mahato, were killed. Their bodies had been tied to the tractor (taken there to fetch sand) and hacked. A group calling itself Madhesi Silent Killers claimed responsibility for the murder.

According to Bhuwaneshwor Tiwari, Inspector at the District Police Office, Dhanusha, Sunil Sah who led the Silent Killers was later killed by his own group members. His successor Ajaya Mandal was later killed in police action in the Dhanushadham area. Another group member Ramekbal Raut is in police detention. According to the police, Raut had given them names of three more persons involved in the murder, who they were now looking for.

The list of teachers who have been killed after 2006 is long. On 9 October 2007 an unidentified group abducted Nagendra Prasad Yadav, a teacher at the Khutta Pipradi High School and killed him at Rathaule, Rahamanpur in Mahottari District. The father of the victim filed charges against 13 suspects but the police were able to arrest only three when this reporter had met them. In April 2008 police arrested Naresh Yadav (Ananda) of the Janatantrik Terai Mukti Morcha (Jwala Singh). According to Manoj Kumar Yadav, Assistant Sub-Inspector, he is their main suspect. Two other detainees were Surendra Kumar

Yadav and Hamid Kabadi while nine others were absconding.

Likewise, Arun Kumar Shrestha, head teacher at the Tulasiram Satyabhama Dotel High School in Siraha District was abducted and killed on 10 September 2007. The JTMM (Jwala Singh) group claimed responsibility for the attack but the police were unable to arrest anyone when this reporter had visited Lahan in early 2010.

Teachers have also been attacked in the Hills. Govinda Bahadur Majakoti a teacher at the Sovhamandir Primary School at Sundhare, Lamjung “disappeared” on 8 November 2007. His body was recovered from the nearby forest on 17 November. The neck was partly severed and the corpse bore marks of beatings. Prakash Adhikari, Deputy Inspector of Police (DSP), at the District Police Office said, “He could have been killed over personal feuds, we are investigating.”

Similarly, the police have not been able to arrest the suspects in the killing of Manoj Patel a teacher in Rautahat. He was killed on 14 December 2009. The police had questioned his tenant Ramashreya Prasad Kushwa, who had denied involvement. Later the father of the deceased filed a complaint against Kushwa but he had fled before the police could arrest him.

In yet another incident, Sunil Prasad Yadav a teacher at the Prempur Gonahi High School in Rautahat was killed while he was teaching a class on 23 October 2008. A group of unidentified men had shot him at around 4 p.m. Later Sunil’s father pressed charges against five at the Ilaka Police Office in Garuda. Police arrested three – Ramji Mahato Koiri, Baikuntha Thakur and Ramananda Raut. Thereafter, according an employee at the district’s government attorney’s office, one of the petitioners made a statement saying, “I don’t believe they are the suspects” after which the court ordered their release.

Little has changed

The Nepal Teachers’ Union has a list of 191 teachers who it says were killed during Nepal’s violent conflict (13 February 1996-21 November 2006). Data maintained by the Informal Sector Service Centre (INSEC) lists 170 teachers who were killed, and another 29 who had

disappeared after arrest by the state and whose whereabouts remained unknown. INSEC adds that another 12, 328 teachers were affected in one way or other during the conflict. (See: Table 1)

Table 1: Violence against teachers

Incident type	Total	
	February 1996 - November 2006	21 November 2006 - 31 December 2009
Murder	170	20
Abduction	10,625	107
Detention and torture	734	10
Beating	362	155
Disappearance	29	-
Injured	53	17
Threats	355	159
Total	12,328	468

Source: INSEC

Muktinath Adhikari was the head teacher of the Pandini Sanskrit High School at Duradanda of Lamjung District and also a member of Amnesty International in Nepal. The Maoists killed him in 16 January 2002. The assailants had hanged him by a rope on a tree with his hands tied behind and stabbed and shot him near the school. One Rahul who was in charge of the Maoists foreign department had written to Amnesty International saying that Adhikari was sentenced to death for being an informant.

On the same day of Adhikari's murder another group close to the Maoists – the Kirat Mukti Morcha – killed Harka Bahadur Rai, head teacher at the Chisapani Higher Secondary School, in Khotang District. Rai, a member of the Nepal Teacher's Association (affiliated with the Nepali Congress party), was accused of being an informant and of teaching Sanskrit. The Royal Nepalese Army had killed Hari Prasad Bhattarai, another teacher at the same school, on 7 December 2003 while he was in bed. He was accused of supporting the Maoists.

Many more teachers were killed by government forces during the insurgency. These include Prakash Bikram G.C. a teacher at a primary school in Dharampokhara, Surkhet on 28 February 2002. Harinarayan

A state of fear

After Arun Kumar Shrestha was killed his son Ashok, who also taught in the same school, was threatened and eventually displaced. He now works as a temporary transfer teacher at the Ratnarajya School in Baneshwor, Kathmandu. Ashok used to receive phone calls saying, 'If you do not donate, you will face the same consequences like your father'. He has not found peace even in Kathmandu. He said, he still receives calls asking for donations. "How can I go to the village in such a situation?" he asked?

After four teachers were killed in nine months both teachers and students at the Rashtriya Prathmik Vidhyalaya in Dhanusha live in constant fear. According to Nabal Kishor Yadav, a central member of the Nepal Teachers Association, the number of students has been declining and two teacher positions remain vacant. Kapildev Sah who had been beaten and had his mobile phone and motorcycle looted after the murder of Bindeshwor Mahato, continued teaching for some months. He did not continue after the acting head teacher Bamjan was also killed. He has obtained a temporary transfer at the Bhanaha Primary School at Banimiya. A teacher at the school at Sah's new school said he was still traumatized by the incidents of the past, he is still scared to talk to strangers and rarely answers his mobile phone. Usually he calls his family – not the other way around.

Nirmala Devi Thasineku, head teacher of the Pannadevi Kanya Madhyamik Vidhyalaya, Kaliya was injured by a shot fired by members of the Terai Janatantrik Kobra group on 25 December 2008. She was the only female head teacher in Bara District. She has been living in Kathmandu after the treatment.

According to the Education Directorate (central region) and the District Education office, 12 teachers from different plains districts have sought temporary transfers to Kathmandu. All of them are Pahadis (of Hill origin) and nine of the 12 are women. The inter-district transfers are made on the recommendations of the security committee headed by the Chief District Officer. According to Hari Pokhrel, section officer at the central Education Directorate, during the Maoist insurgency teachers from the Hill districts sought temporary transfers, after 2006 there have been more requests from teachers in the plains.

Thakur of the Macheri primary school in Jajarkot had been taken from the classroom where he was teaching and killed 16 June 1998. According to Lal Bahadur B.C., general secretary, All Nepal Teachers' Organization, "Security forces killed many teachers during the conflict on charges of giving donations, and providing food and shelter to the Maoists."

Many had expected the situation to change after the Comprehensive Peace Accord was signed in November 2006. However, INSEC data up to April 2010 show that 20 teachers were killed and another 107

were abducted. Another 155 teachers were beaten, 17 injured and 159 were threatened during the same period.

Different armed groups that have emerged in the plains districts after 2006 have been the main threats to teachers there. These groups ask for donations and threaten, or even kill those who do not comply. Said Prem Prasad Sah, a teacher at Nepal Rashtriya Primary School, Mathillo Simalchaur, "I am afraid to step out of the house. I am scared until I reach school after leaving home and till the time I reach home after school."

Threats against teachers are also not uncommon in the Mountain and Hill regions. A group led by Prakash Limbu a worker of the Limbuwan Rajya Parishad (A self-declared State Council of Limbus, an ethnic group) beat up Dilli Bahadur Karki, head teacher of the Pan-chakanya High School in Tehrathum District on 10 September 2009. The group wanted to take students to a mass meeting the group was

Government withdraws cases

An armed group had abducted Suryanarayan Yadav a teacher at the Laxminarayan Kaushlya Janata Madhyamik Vidhyalaya at Naharrigol of Siraha on 9 June 2007. Yadav was taken to Gamriya Tole where he was shot with his arms tied behind his back. According to a case report prepared by the police, he had been abducted by a group of 10-12 including Rajlal Yadav, a leader of the Madhesi Janaadhikar Forum, Nepal.

Yadav's wife Kusum Devi had filed a complaint against Rajlal Yadav and 11 others at the Ward Police Office, Lahan. Thereafter, the police filed murder charges against him and Bhagawat Yadav at the Siraha District Court. The court had released them on bail of Rs.15,000 and Rs.10,000, respectively.

Rajlal Yadav emerged victorious in the Constituent Assembly election of 2008 from Siraha Constituency-2. And the government decided to withdraw all charges in the case related to the murder of Suryanarayan Yadav on 27 October 2008 – using a law that has been misused by all political parties to protect their own. The Siraha District Court granted the government permission to withdraw the case on 17 November 2008.

According to the police, the remaining 10 suspects were still absconding when interviews for this report were carried out (March 2010). The district attorney was of the opinion that because the case against the main suspects had been withdrawn it was unlikely that there would be a case against the others. "The court has ordered erasing the records of the case, in such situations it is unlikely that there can be future investigations and litigation."

organizing in Dharan three days later. Karki had refused permission because the mid-term exams were imminent. Karki had to be taken to Siliguri, India for treatment.

Police arrested Prakash Limbu later after which the group threatened Karki saying he would be killed if he did not resign from his position. Thereafter, Karki obtained a temporary transfer to another school in Myanglung, the district's headquarters.

In another incident, on 19 January 2010, supporters of the Nepali Congress party beat Ram Bahadur Magar a teacher at the Tiwaribhanjyang Proposed High School in Bhojpur District. Police had arrested NC workers Bholakaji Gurung, Nikesh Rai, Ramkumar Rai and Bishal Rai for alleged involvement in the beating. However, under pressure from the leaders of the party, police released the suspects saying that both sides had reached a settlement. According to INSEC's Human Rights Report 2010, members of the Nepal Tarun Dal (a NC-affiliate) had attacked and injured Hansa Bahadur Shahi on 2 October 2009. The incident was not investigated.

Similarly, on 3 September 2009, members of the Unified Communist Party of Nepal (Maoist) attacked and injured Gangaram Khadka a teacher at the Tembe Proposed High School in Taplejung District. Thereafter the UCPN members threatened to kill both Gangaram and his brother Khagendra Kumar (also a teacher at the school). No action was taken against those making the threats. Instead in 8 October 2009 both the teachers were temporarily transferred to the Bhanu Higher Secondary School at the district headquarters.

Crime and politics

One explanation to the attacks on teachers has been their involvement in partisan politics, since most of the teachers are affiliated with one political party or another. Different political ideologies that they subscribe to, has made them "enemies" of groups not subscribing to the same line. According to Baburam Adhikari, president of the Nepal National Teachers Organization, "In the Hills teachers have been beaten for just having different (political) views. Even now, as in

the conflict years, teachers are being attacked for opposing the wrong activities of the Maoists.”

Gunaraj Lohani, president of the pro-Maoist All Nepal Teachers’ Organization, feels that members belonging to his group have faced the most attacks. He said, “27 teachers affiliated to our organization have been attacked after the peace process began.”

Extortion remains a main reason for attacks against teachers in the central Terai region. “Here almost every day we hear about threats by armed groups saying if you don’t donate we will kill you,” said Binda Sahani, a teacher in Rautahat.

The working environment for teachers is any thing but safe but it is difficult to come across reliable data on the number of teachers murdered, beaten, abducted or threatened and the identities of the assailants. The Ministry of Education does not have data on the teachers who have been killed. The representative union of teachers, the Nepal Teachers’ Union, has a database of 191 of teachers who were murdered but it does not say who was responsible. The Maoist-affiliated teachers’ organization claims that 351 teachers were killed during the conflict. (INSEC data shows that a total of 170 teachers were killed).

Conflicting data on the killing of teachers has made it difficult for the families to obtain support and compensation. According to the Teachers Union, many of the teachers killed during the conflict have not received relief and compensation, including the Rs.100,000 provided by the Ministry of Peace and Reconstruction to families whose members were killed. Because of lack of data to verify the deaths, many of the families have not even been able to obtain their provident funds and other service period allowances.

In an agreement with different teachers’ organizations on 28 October 2009, the government agreed to form a nine-member district verification committee to recommend relief and compensation. However, the committee had not been formed in April 2010. As for teachers killed after the CPA in the plains, the government has declared them martyrs and provided their families one million rupees as compensation. The families of Pradip Timilsina (Bara), Sunil Prasad

Yadav (Rautahat), Nagendra Prasad Yadav (Mahottari), Arun Kumar Shrestha (Siraha) and Surya Narayan Yadav (Siraha) have received the money. The family of Govinda Majakoti (Lamjung) did not receive similar support.

The Department of Education database shows that there are 162,000 teachers at the community schools across the country. Another 60,000 teach at the private schools. This makes teaching a profession that involves perhaps the largest workforce in any profession. Even though teachers are entrusted in inculcating values and nurturing future generations, the profession remains under a pall of fear. Especially, because there have been few examples of cases where those attacking teachers have been made accountable for their acts. (Translated from Nepali)

A shorter version of the story, *Nishanama Guruharu* (Teachers targeted) was published in *Nepal* on 18 April 2010.

Impunity and the business environment

Saroj Dahal

On 30 April 2010 all stores at New Road, Kathmandu's major shopping district, shut down abruptly – without any prior notice. The shutdown was triggered by a group of supporters of the Unified Communist Party of Nepal (Maoist) or UCPN (M) that had arrived in the locality to seek “donations” – a term that has become something to fear about.

Sometime in February 2010 business people and industrialists had begun receiving phone calls from unidentified callers asking for donations and threatening to abduct them if they did not comply. It was when a team led by Binod Chaudhary, an MP as well as chair of the Chaudhary Group of Industries and the Confederation of Nepali Industries (CNI) had gone to meet the chief of police at the latter's office in Naxal. However, before the team had left the fortified complex a member received a phone call. The caller said, “You've met the police, that's fine. But even the police chief cannot protect you.” Thereafter, the business people had no option but to comply with the demands of those making the calls.

The business community had reason to fear. On 14 June 2007 Rohit Tikdewala, son of Pashupati Tikdewala who has a furniture business, was abducted. The abductors had asked for a “huge sum” (not disclosed by source) for the release. Rohit's cousin Rajendra Khetan, an MP, had intervened to get the police to act. Rohit was later released. Later, according to Khetan, a police official is said to have told him “we made so much efforts to free your cousin but you did not do anything for us (a way of saying ‘what is there for us?’)

It is not the first time people in business have faced the wrath of armed groups and petty criminals. Mohan Khatri who ran the Horseshoe Mountain Resort near Mude, Sindhupalchowk District, was attacked and killed by the Maoists on 5 July 2002. He was an entrepreneur who the villagers had hoped would bring in tourists and positive changes in their incomes. He was killed for not donating Rs.5 million (see: Box).

According to the Informal Sector Service Centre (INSEC) 104 business people and industrialists have been killed in three years (21 November 2006 to 31 December 2009). Another 212 were abducted. The Maoists had killed one and abducted 29.

The police do not have updated information on such attacks. "Attacks and threats against business people has continued," says Binod Chaudhary, president of the Confederation of Nepali Industries (CNI). "The situation is so bad that now businesspeople are worrying about just protecting their infrastructures (and not doing business)," he adds.

Money for safety

Most of the industrialists/ business people consulted for this study were willing to narrate their ordeals only on the condition that their identities were not disclosed. "First they used to call us, ask money and instruct us where to make the payment," said one industrialist. "We paid and that was the only way to be secure." For added security, many business people have begun driving their own vehicles, even though they have drivers.

There have been instances where drivers were involved in abduction and for collecting the donations, says Rajendra Khetan. "We have to be aware because criminals can influence and use anyone," he adds.

The genesis of extortion goes back to the violent politics adopted by the Maoists in 1996. According to businessmen, they gave the donations the first time thinking it would be the last but later realized that it would be a routine affair. "These days we have to donate once every year. The donation amount varies from Rs.100,000 to Rs.10 million,"

said one. Some others said now those they have to donate to has increased, especially after the Maoists joined open politics. Says Khetan, “The phone calls requesting donations have increased in proportion to the new Maoist leaders I was introduced to.”

The change in regime in 2006 brought new freedoms but it has also been a period of protracted lawlessness. After 2006 even groups that were not known before have resorted to extortions using violence as threat. “First they used to call us and an unidentified person would come and collect what we gave,” said a businessman. “Now they specify how much and come to our residences to collect the money. When leaders of the parties themselves come for it, we have no option but to pay,” he added. After 2006 industrialists said they have been giving donations to at least four different groups affiliated with the Maoist party – the labor union, Young Communist League, local “people’s governments” and the party headquarters.

Now others have also adopted the Maoist ways. An industrialist said, after the Maoists began using the party name for seeking donations, different criminal groups and individuals have adopted the same modus operandi (from a group with political demands and extort). While it is difficult to get information on the actual amounts that change hands, one industrialist said a business group had given Rs 7 million as donation to the Maoist party during the CA election. Likewise, the highest amount of ransom that industrialists have so far paid is Rs 2 million. However, these numbers are difficult to confirm independently.

The source who spoke about the numbers above said, now the armed groups think that if the Maoists can get away with extortion why can’t we? He added that their methods of collection differ – the Maoists come to their offices to collect donations while the business people have had to travel far to deliver the ransom to the lesser-known groups.

There was some relief for industrialists after the CA election. More so, after the Maoists emerged as the largest party in parliament. While the Maoists were in power the Federation of Nepalese Chambers

Murder of an entrepreneur

The Dasai festival had just ended.

“I was on my way home from the temple and Mohan said, ‘Buba I have come to seek your blessings.’ It was the last time I would hear him.” It was how 92-year-old Tej Bahadur Kharti remembered his youngest son. He choked thrice while talking to this reporter.

On 7 October 2002 Mohan and his wife Krishnakamal were dining at the Horseshoe Resort when five Maoists had arrived and said they had “some work” with him. He stepped out after which Krishnakamal heard him scream. The two sides had tried to overpower each other after which he was hacked with a khukuri (knife) and killed about 1.5 kms away from the resort.

The Maoists had accused him of spying on them and informing the security forces. About two months before the incident, the army had surrounded a meeting of the Maoists at Katakuti, Dolakha and killed some Maoists. Khatri was accused of having assisted the army in the raid.

Ram Kumar Shrestha, a Constituent Assembly member after 2008, who was a platoon commander in the region at the time of the murder, has a different story. He said, “Khatri had attacked the Maoists who had gone to arrest him and that he was killed in self-defence.”

However, this statement does not confirm with a note the Maoists had left at the resort before Khatri was killed. A group led by Shankar Lama, the then head of the Maoist “people’s government” in the district, had asked Khatri Rs. 5 million as donation. He had refused saying that he could not pay such a sum. This information is sourced in an application filed by Krishnakamal at the Kathmandu District Administration office six years after the murder. She made the application to request the Rs100,000 the government has offered to family of those killed in the conflict.

Khatri’s case was one that did not get as much attention compared to some of the “emblematic” cases, such as that of Maina Sunar in neighbouring Kavre district. The 45-year-old was a major in the army before he had retired five years before he was killed. After retirement he had helped rebuild four schools and was also providing scholarships to 35 students.

of Commerce and Industries (FNCCI) was able to fix the minimum wages for workers, an issue that had remained pending for a long time. However, some in the business community began to feel that some in the FNCCI leadership were perhaps “too close” to the Maoists and that translated into problems for other who were not. According to a businessman, some industrialists began to build their own relationships with government leaders rather than strongly advocate for actions against those involved in crimes against businesses and for

ending impunity. Therefore attacks against businesses did not end.

The insecurity has continued. On 7 February 2010 a media entrepreneur Jamim Shah was shot and killed in Lazimpat. Within a month of that another media entrepreneur Arun Singhaniya was shot and killed in Janakpur. A day later a gunman shot at Nagendra Singh Pampati, a board member of the Bharatpur College of Medical Science. Pampati survived the attack. (The assailant was arrested on 29 August 2009.)

The attacks on business have not been restricted to the capital. But many of the incidents in the districts are seldom reported and more often than not, the people are left to fend for themselves. For example, an unidentified group had abducted 12-year-old Suvash Kumar Sah on 3 April 2010. His father has a small hotel in Lahan Municipality Ward No. 1. The police were unable to do anything about the abduction and the family paid the ransom. Suvash was released after 11 days.

A 2009 survey of the Business Climate in Nepal commissioned by a donor agency reported that about 29 percent of the 1080 respondents in Kaski, Morang, Rupandehi and Banke districts had experienced some losses owing to crime. They were answering to the question: "Did your establishment experience losses during F.Y. (fiscal year) 2065/66 due to extortion, theft, robbery, vandalism, or arson?" The highest losses were experienced in Kaski (40%) and Morang (33%); that for Rupandehi was 24 percent and that for Banke 20 percent.

The survey had asked if the respondents had paid protection money to different groups – political parties, local gangs and criminals and the police. Among the respondents five percent said they had paid political parties, two percent the local gangs and criminals, and one percent the police. The same survey had asked if they were optimistic that the business climate would improve. Respondents in Kaski (53%), Morang (36%) and Rupandehi (32%) said they expected the economic situation to worsen, while residents of Banke were more optimistic – 43 percent said they expected the economy to improve.

‘Don’t tell the police’

Business people – perhaps more than ordinary citizens – are largely disorganized and often competing among themselves and can only come together rarely to raise their voice against extortion and even abduction. Often they are forced to make all possible compromises for protecting their investments. Because they do not report their problems, the police do not need to act. According to a businessperson, “If we tell the police we also have to satisfy them, even our lives could be threatened.” He added, “this is why there are few reports and therefore no one knows about our problem.”

More recently, there have been instances that give reason to also suspect of links between criminal groups and the police. After learning that an assistant inspector had lent his weapon and assisted abductors in 2005, Binod Singh, Deputy Inspector General of Police, said this could be happening even today. The police did not disclose the name of the erring police official.

There are also examples where the police have arrested suspects in abduction cases. This was during the period when Nabaraj Silwal, Senior Superintendent of Police (SSP) and Ramesh Kharel, Superintendent of Police (SP), were in charge of the Kathmandu police office. Silwal and his team were able to arrest 14 suspects and take some to court. Among them were Sagun Shrestha and Suren Lama who had abducted Kedar Thapa of Kathmandu-34 and demanded a ransom of Rs. 10 million. Silwal who is now the head of the Janakpur zonal police office said, “It was easier to arrest the suspects after the businesspeople began reporting threats and demands for donation.”

After Ramesh Kharel was transferred to Kathmandu from Pokhara in May 2010, he arrested Lalit Gurung, who was wanted for murder and abduction in Pokhara from a Soyambhu locality. He said, crime could be easily controlled if it was possible for them to honestly apply the skills they learn during training. He did not explain why it was not possible to do what they are trained to do. (Translated from Nepali)

(A shorter version of this story appeared in *Himal Khabarpatrika* on (17-31 August 2010).

Annex 4

Tables for Chapter 4

Table 4.1: Killings in the mid- and eastern plains districts (2009)

Year	2004		2005		2006		2007		2008		2009	
	Abduction	Killings	Abduction	Killings	Abduction	Killings	Abduction	Killings	Abduction	Killings	Abduction	Killings
Morang	79	100	96	56	153	44	9	29	26	32	6	13
Sunsari	13	28	7	21	34	9	31	12	9	17	8	12
Saptari	23	38	43	29	100	24	136	33	110	37	37	21
Siraha	25	50	12	63	46	20	78	28	53	36	13	22
Dhanusha	38	111	11	54	20	20	33	23	45	44	18	39
Mahottari	41	36	11	17	33	11	30	13	48	15	13	16
Sarlahi	62	57	19	38	92	47	15	30	15	23	29	15
Rautahat	181	56	322	50	42	18	91	54	14	23	4	18
Bara	13	46	7	28	49	12	38	46	12	24	5	16
Parsa	20	53	30	22	833	7	18	23	8	16	5	16
Total	495	575	558	378	1402	212	479	291	340	267	138	188

Source: INSEC, *Human Rights Yearbook (2007-2010)*.

Table 4.2a: Socio-Economic Indicators of Morang and Sunsari Districts

Name of Districts	Majority Caste (%)	% of Dalits	Population (Approx)	Pop. Density/ Sq. Km (pro-08)	Literacy (Pro-08)	Educational Institute	Economically Active & Inactive Population	Agriculture land holding pattern	No. of Industries
Jhapa	HB (23.00)	Tarai-0.66%	Hill-69.03%	428	67%	1801	Active-286,201 Inactive-207,699	Land Owner-25,690 Tenant-34,711	70
	Chhetri (14.00) Rajbansi(9.00)	Hill-5.05%	Madheshi-30.97%						
Morang (29)	CB (25.20)	Tarai-6.04%	Hill-50.99%	455	66%	1428	Active-474,998 Inactive-274,854	Land Owner-42,496 Tenant-20,836	169
	Tharu (7.55) Limbu(4.38) Rajbansi(4.14)	Hill-3.50%	Madheshi-49.01%						
Sunsari (23)	CB(17.12)	Tarai-8.75%	Hill-41.48%	498	70%	848	Active-323,507 Inactive-248,491	Land Owner-22,765 Tenant-18,172	83
	Tharu(14.00) Muslim (10.95) Newar(4.43)	Hill-3.24%	Madheshi-58.52%						

Source: VDCs Profile of Nepal; a Socio-economic Development Database of Nepal; Published by ISRC, 2008 and Infused Ethnicities: Interlaced and Invisibile Social Mosaic, published by ISET-Nepal & Action Aid-Nepal, 2007.

(Pro = Projected)

Table 4.2b: Socio-Economic Indicators of Saptari, Siraha and Udaypur Districts

Name of Districts/ Rank (DI)	Majority Caste (%)	% of Dalits	Population (Approx)	Pop. Density / Sq. Km (pro-08)	Literacy (Pro-08)	Educational Institute	Economically Active & Inactive Population	Agriculture land holding pattern	No. of Industries
Saptari (46)	Yadav (15.75) Tharu (12.82) Muslim (8.23) Teli(7.24)	Tarai-26.77% Hill-0.82%	Hill-11.33% Madheshi-88.67%	418	57%	461	Active-263,885 Inactive-211,253	Land Owner-41,876 Tenant-11,876	9
Siraha (64)	Yadav (24.15) Muslim (7.28) Teli (4.95) Tharu(4.78)	Tarai-21.32% Hill-1.06%	Hill-6.20% Madheshi-93.8%	482	47%	573	Active-259,909 Inactive-214,230	Land Owner-75,431 Tenant-49,916	7
Udaypur	B. Chhetri-29.22 Rai-(16.38) Tharu-NA	Tarai- Hill-9.70	Hill- Madheshi-%	139	53.31%	782	Active-136335 Inactive-72086	Land Owner-4455 Tenant-172	2

Source: VDCs Profile of Nepal; a Socio-economic Development Database of Nepal; Published by ISRC, 2008 and Infused Ethnicities: Interlaced and Indivisible Social Mosaic, published by ISET-Nepal & Action Aid-Nepal, 2007.

Table 4.2c: Socio-Economic Indicators for Rautahat, Bara and Parsa Districts

Name of Districts/ Rank (DI)	Majority Caste (%)	% of Dalits	Population (Approx)	Pop. Density/ Sq. Km (pro-08)	Literacy (Pro-08)	Educational Institute	Economically Active & Inactive Population	Agriculture land holding pattern	No. of Industries
Rautahat (53)	Muslim (19.47) Yadav (12.49) CB (6.24) Telji (5.68)	Tarai-11.82% Hill-0.78%	Hill-19.95% Madheshi-80.05%	484	39%	441	Active-290,913 Inactive-175,535	Land Owner-70,016 Tenant-14,609	Not available
Bara (49)	Muslim (13.43) Tharu (11.31) Yadav (10.43) CB (9.07)	Tarai-13.04% Hill-0.81	Hill-18.08% Madheshi-81.92%	470	52%	540	Active-239,267 Inactive-246,997	Land Owner-52,951 Tenant-17,651	152
Parsa (39)	Muslim (15.40) Kurmi (8.28) CB (7.31) Yadav (6.37)	Tarai-12.16% Hill-0.72%	Hill-14.39% Madheshi-85.61%	367	52%	478	Active-261,749 Inactive-172,054	Land Owner-44,739 Tenant-42,122	109

Sources-VDCs Profile of Nepal; a Socio-economic Development Database of Nepal; Source: VDCs Profile of Nepal; a Socio-economic Development Database of Nepal; Published by ISRC, 2008 and Infused Ethnicities: Interlaced and Indivisible Social Mosaic, published by IBET-Nepal & Action Aid-Nepal, 2007.

Table 4.2d: Socio-Economic Indicators for Nawalparasi, Rupandehi and Kapilbastu Districts

Name of Districts/ Rank (DI)	Majority Caste (%)	% of Dalits	Population (Approx)	Pop. Density/ Sq. Km (pro-08)	Literacy (Pro-08)	Educational Institute	Economically Active & Inactive Population	Agriculture land holding pattern	No. of Industries
Nawalparasi	Muslim (22%), Magar (17%), H Bahun(16%), Tharu (16%)	Tarai-5.60% Hill-6.26%	Hill-57.21% Madheshi-43.79%	260	52.99%	1454	Active-292581 Inactive-121603	Land Owner-19987 Tenant-743	60
Rupandehi	Hill Bahun (15%), Tharu (10%), Muslim (9%), Magar (9%)	Tarai-6.93% Hill-3.62%	Hill-42.16% Madheshi-57.84%	521	65.95%	1474	Active-267691 Inactive-254040	Land Owner-40029 Tenant-62035	118
Kapilbastu	Muslim (19%), Tharu (13%), Magar (13%)	Tarai-10.37% Hill-2.19%	Hill-20% Madheshi-80%	277	41.46%	875	Active-221673 Inactive-123293	Land Owner-36536 Tenant-7364	17

Source: VDCs Profile of Nepal; a Socio-economic Development Database of Nepal; Published by ISRC, 2008 and Infused Ethnicities: Interlaced and Indivisible Social Mosaic, published by ISET-Nepal & Action Aid-Nepal, 2007.

Annex 5

A sample of commissions of inquiry formed from May 2006 to February 2009

Notice date	TOR of commission	Term
5 May 2006	To inquire and recommend action on the loss of the life, misuse of authority and financial resources and human rights violations while suppressing the 2006 Movement. Chair, Krishna Jung Rayamajhi.	Two months
20 Nov. 2006	To inquire into the activities of the commission formed by the king in 2005. Chair, Madhav P Ojha,	45 days
26 Dec. 2006	To inquire about arson and looting in Nepalganj and adjoining areas. Chair, Purushottam Parajuli.	15 days
23 Jan. 2007	To inquire the losses resulting from the killing of Ramesh Kumar Mahato in Lahan. Chair, Janardan Bahadur Khadka	15 days
25 May 2007	To inquire vandalism and loss of government and private property, human lives, and arson during the movement called by Madheshi Janadhikar Forum. Chair, Khil Raj Regmi	Two months
20 Sept. 2007	To inquire about the riots, vandalism of private and public property and human loss in the Kapilbastu and Rupandehi districts. Chair, Lokendra Mallik.	One Month
30 Dec. 2007	To inquire about the accident following the collapse of the suspension bridge over the Bheri River in Mehalkuna of Surkhet District. Chair, Drona Raj Regmi.	15 days
4 May 2008	To inquire about the death of Rishi Prasad Sharma, a CPN (UML) candidate by a bullet on 8 April 2008. Chair, Purushottam Parajuli.	One Month
4 May 2008	To inquire the incident at Chaulahi VDC Lamahi of Dang District Constituency No. 1 on 8 April 2008 during the run-up to the CA election. Chair, Govinda Bahadur Shrestha.	One Month
4 May 2008	To inquire about the incidents and loss of human life during the CA election in Kapilbastu and Sarlahi districts. Chair, Pushpa Raj Koirala.	45 days
22 May 2008	To inquire about the killing of Ramhari Shrestha after abduction, transfer to the Maoist cantonment at Shaktikhor, Chitwan District. Chair, Rajendra Kumar Bhandari.	15 days
17 Feb 2009	To inquire about the kidnapping of Jitendra Shaha, President of the Madheshi Yuba Forum, Kathmandu. Chair, Govinda P. Parajuli.	45 days

Source: Various issues of the Nepal Gazette.

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