

# NEPAL

## THE SEARCH FOR JUSTICE

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# SUMMARY

Nepal's failure to punish perpetrators of grave human rights violations and crimes under international law committed during the armed conflict which took place between 1996 and 2006 has created an environment where violations continue to be committed with impunity. Governance and the rule of law have been greatly compromised in Nepal, and the failure of political parties in May 2012 to agree a new Constitution - mandated by the Comprehensive Peace Agreement (CPA) signed six years previously, has only exacerbated the problem. Successive governments' decisions to withdraw criminal cases against individuals with political affiliations, promote alleged perpetrators of human rights violations to senior leadership positions and propose amnesties which could cover serious crimes, send a clear message to all potential perpetrators that there will be no consequences for their crimes. Sexual and domestic violence has yet to be tackled effectively by the justice sector anywhere in Nepal; impunity for violence against women is widespread. Women's human rights defenders complain that police often refuse to register complaints brought by women or even collude with perpetrators to shield them from prosecution. Nowhere are the results of this justice vacuum more apparent than in the Terai region of southern Nepal where the legacy of conflict-era violations and prolonged impunity has allowed a culture of violent lawlessness to take root. Armed political groups and criminal gangs (often difficult to distinguish) operate alongside corrupt police officials, obstructing access to justice, silencing dissent and evading accountability. The departure of the UN Office of the High Commissioner for Human Rights in Nepal following termination of its agreement with the Government of Nepal in December 2011 has left a significant advocacy and protection vacuum, which exacerbates dangers faced by human rights defenders attempting to challenge this climate of impunity.

## BACKGROUND

Armed conflict between government forces and the Unified Communist Party of Nepal (Maoist) (UCPN(M)) killed more than 13,000 people in Nepal between 1996 and 2006; another 1,300 people remain missing, possible victims of enforced disappearances and abductions.<sup>1</sup> The CPA, signed on 21 November 2006 by the Government of Nepal and The Communist Party of Nepal (Maoist), marked the official end of the armed conflict and contained a number of human rights commitments aimed at preventing future violence and accounting for the past, including promises to develop and adopt mechanisms to account for the dead and missing, and punish suspected perpetrators of human rights violations. The parties to the CPA promised they would “not protect impunity” and vowed to safeguard the rights of families of the disappeared. Six years later impunity is rampant. Nepal’s government has made no meaningful progress towards identifying and prosecuting those responsible for human rights violations and crimes under international law committed during the armed conflict. Worse, successive governments have withdrawn criminal cases against them, promoted some to high-ranking positions in the police and military, and proposed amnesties which could cover serious crimes under international law.

The CPA called for the establishment of a Truth and Reconciliation Commission (TRC) and contained a commitment from both parties that within 60 days of signing the agreement in November 2006 they would investigate and reveal the fate of those killed or disappeared during the armed conflict. More than six years later, this has not happened. A Supreme Court ruling on 83 *habeas corpus* petitions on 1 June 2007 ordered Nepal’s government to establish a commission of inquiry on disappearances using the Criteria for Commissions on Enforced Disappearance, developed under the auspices of the UN Office of the High Commission for Human Rights (OHCHR) as guidelines.<sup>2</sup> Draft laws establishing both bodies were still pending before the Parliamentary Statute Committee when the Constituent Assembly was dissolved in May 2012.

The draft laws were criticized by civil society in Nepal for failing to adequately ensure accountability and combat impunity in accordance with international standards, and the Parliamentary Statute Committee had reportedly considered revisions reflecting some of this input, including prohibitions on amnesties for perpetrators of the most serious crimes. Until the end of March 2012 the drafts reportedly incorporated a list of crimes for which amnesty was prohibited (murder in captivity, murder of an unarmed person, rape, torture, enforced disappearance and abduction), but on 31 March 2012, lawmakers agreed to discard these versions in favour of language that would allow for the granting of amnesty when both the victim and the perpetrator agreed to reconcile.<sup>3</sup>

A few months later, in the political vacuum that followed the dissolution of the Constituent Assembly, the normal legislative process was put on hold, and at the end of August, the Council of Ministers presented an executive ordinance to the President, which proposed replacing the two commissions with a single body. The text of the ordinance has not been made public, but human rights defenders have obtained a copy. Under its provisions, the proposed Commission: (i) would be appointed on the basis of political consensus; (ii) would be mandated to recommend the granting of amnesties without any further qualification - which means that such amnesties could cover gross human rights violations and crimes under international law, including torture, enforced disappearance and crimes against humanity, and without consent of the victims or their families;<sup>4</sup>

and (iii) would not be mandated to recommend prosecutions for crimes allegedly committed, meaning that the Ministry of Peace and Reconstruction and Council of Ministers would have to initiate prosecutions, whereas in the earlier draft bills, both the TRC and Disappearances Commission did have the power to recommend prosecutions.

The previous draft laws developed to establish a TRC and Disappearances Commission, whilst apparently flawed, had received substantial input from human rights defenders and the families of victims of the armed conflict in an effort to bring them into alignment with international standards. The Council of Ministers' subsequent proposal to establish a TRC through an executive ordinance in the absence of a legislature-parliament has meant that these efforts have ultimately been ignored, and opportunities to challenge the terms of the proposed TRC have been prevented.

Any provision for amnesty for crimes under international law, including torture, war crimes and crimes against humanity, violates fundamental principles of international law and Nepal's international obligation to investigate, and where sufficient admissible evidence exists, prosecute alleged perpetrators in fair trials in civilian courts. For example, Article 2.3 of the International Covenant on Civil and Political Rights (ICCPR) guaranteeing the right to an effective remedy where rights have been violated, as affirmed by the UN Human Rights Committee General Comment No. 31 of 2004,<sup>5</sup> and Article 24 of the UN Updated Set of Principles for the Promotion and Protection of Human Rights through Action to Combat Impunity, both highlight the prohibition of amnesty for such offences.

To date, amid wider political debates around the use of ordinances by the caretaker government of Prime Minister Baburam Bhattarai, the President has not signed the ordinance into law, though the risk remains that he may do so, depending on how efforts progress to find a solution to many outstanding political issues.

## WITHDRAWAL OF CASES AGAINST PEOPLE WITH POLITICAL CONNECTIONS

In the past four years, successive governments have withdrawn hundreds of criminal cases against individuals accused of serious offences including murder,<sup>6</sup> citing the CPA which called for the withdrawal of cases brought against individuals "due to political reasons."<sup>7</sup> Almost half of the 349 cases slated for withdrawal by the UCPN(M)-led government in 2008 were for murder or attempted murder.<sup>8</sup> A subsequent Communist Party of Nepal (United Marxist Leninist (UML))-led coalition government withdrew cases against another 282 individuals; 200 of them charged with murder and 82 with arson.<sup>9</sup>

In September 2011 a four point agreement signed between the UCPN(M) and the United Democratic Madheshi<sup>10</sup> Front (UDMF) prior to the election of Baburam Bhattarai as Prime Minister, extended case withdrawals to a variety of other political actors: Maoists, members of the Madheshi, Janajati, Tharuhat, Dalit, and Pichadabarga movements.<sup>11</sup> By the end of December 2011, the government of Prime Minister Baburam Bhattarai had reportedly prepared a list of 130 individuals accused of involvement in of serious crimes, including murder, arson and robbery, whose cases it planned to withdraw.<sup>12</sup>

Since then there have been other withdrawals of criminal cases against individuals with political

affiliations. There were media reports that the UCPN(M)-led government decided to withdraw cases against 425 individuals in March 2012. These included cases of murder, attempted murder and abduction.<sup>13</sup>

Nepal's Supreme Court has ruled against case withdrawals. In April 2012 the Court reportedly ordered the government and the Bara District court in Nepal's Terai region not to withdraw serious cases, even if they were of political nature. The court also directed the government to amend provisions in the Working Procedure and Criteria for Withdrawing Criminal Cases 1998 to make sure that cases related to "serious crimes," listed in media reports as including treason, war crimes, crimes against humanity and serious human rights abuses were not withdrawn. The order came in response to a writ filed in July 2010 challenging the withdrawal of a criminal case against a man accused of murdering five people in January 2010 in Bara district.<sup>14</sup>

## BALKRISHNA DHUNGEL

In November 2011, Nepal's Cabinet recommended presidential clemency for UCPN (Maoist) leader Bal Krishna Dhungel, who had been sentenced to life imprisonment by the Supreme Court of Nepal for the murder of Ujjan Shrestha of Okhaldhunga on 24 June 1998. The Cabinet concluded that the case against Bal Krishna Dhungel was politically motivated, although evidence suggests that the motives for the murder were personal, arising out of what has been described as a family feud over a pregnancy and inter-caste marriage.<sup>15</sup>

## SHIELDED FROM PROSECUTION

When Major **Niranjan Basnet**, who was facing an arrest warrant for the murder of 15-year-old Maina Sunuwar (tortured to death by security forces after her arrest in 2004) was returned to Nepal from peacekeeping duties in Chad in December 2009, the Nepal Army (NA) openly defied a court order and refused to hand him over to the police. Six months later in June 2010 the army announced that a military inquiry, which was neither independent nor impartial, and conducted its proceedings in secret, had found him innocent of the charges.

**Agni Sapkota**, former Minister and Constituent Assembly member, currently serves as the UCPN(M) party spokesperson. In 2008 the Supreme Court ordered the police to file a criminal complaint against his alleged involvement in the abduction and killing of school teacher Arjun Lama, in Kavre district in April 2005.<sup>16</sup> The subsequent police investigation has been inadequate, despite the Supreme Court ordering progress reports from the Kavre Police every 15 days.<sup>17</sup> In June 2012, according to a press report, records at the Office of the Attorney General showed that police in Kavre had been filing their reports only once a month and noted little progress in their investigation, stating that police had been unable to locate Sapkota, despite his very public profile.<sup>18</sup> On 27 July 2012, the government ordered the investigation into the killing of Arjun Lama to be suspended. However, on 26 November 2012, the Supreme Court ordered that the investigation should continue subject to its final decision on the suspension.

## PROMOTIONS OF ALLEGED PERPETRATORS

The government of Nepal has also promoted members of the security forces linked to serious violations of human rights without inquiring into the allegations against them. Several of these



promotions have been of officers once affiliated with the Nepal Army's Bhairabnath Battalion.

The UN investigated allegations of human rights violations by the Bhairabnath Battalion at the Maharajgunj barracks in Kathmandu in 2003 after hundreds of people were arrested on suspicion of being linked to the Maoists. A May 2006 report by OHCHR alleged that the Bhairabnath Battalion was implicated in at least 49 cases of enforced disappearances and torture, and urged a full investigation.<sup>19</sup> The National Human Rights Commission (NHRC) of Nepal's submission to the Supreme Court in August 2006 reported similar findings.<sup>20</sup>

## RAJU BASNET

In October 2012, Nepal's cabinet promoted Colonel Raju Basnet, who commanded the Bhairabnath Battalion in 2003 at a time when systematic enforced disappearances and torture were allegedly committed, to the rank of Brigadier General. Investigations by the UN and the National Human Rights Commission of Nepal both implicate Basnet. In June 2007, Nepal's Supreme Court ordered an independent investigation and prosecution of these crimes, including into allegations that Colonel Basnet himself committed acts of torture. Basnet's promotion was initially proposed in July and then cancelled under pressure from domestic and international human rights organizations, including Amnesty International. Members of the youth wing of the UCPN(M) also protested news of the proposed promotion, and the UN OHCHR expressed concern. It was reinstituted three months later. Calls for investigation and prosecution of Colonel Basnet for his alleged involvement in dozens of cases of enforced disappearance and torture during Nepal's 10 year conflict have been likewise ignored.

The June 2007 decision of the Supreme Court on 83 *habeas corpus* petitions, recalled the state's obligations under Nepal's Constitution and international law to investigate and prosecute allegations of enforced disappearances. It named both the Bhairabnath Battalion and individual officers serving in that Battalion, including Colonel Raju Basnet as alleged perpetrators.<sup>21</sup> No effective investigation has so far been carried out; instead the government approved the promotion of Raju Basnet as proposed by the Nepal Army (see box above).<sup>22</sup> The Supreme Court subsequently halted this promotion in a stay order issued on 15 October 2012.

In August 2009 the OHCHR representative in Nepal expressed concern that Nepal had promoted two generals who were in positions of command responsibility when human rights violations were allegedly being committed at the Maharajgunj barracks.<sup>23</sup> He called for suspension of promotions, extensions, or nomination for UN service until comprehensive vetting of both army personnel and former Maoist cadres could be carried out, and noted that all individuals suspected of involvement in human rights violations should be suspended from their positions until the allegations could be properly investigated. The Nepal government ignored this advice.

## KUBER SINGH RANA

Additional Inspector General of Police Kuber Singh Rana was promoted to the post of Inspector General of Police (IGP) on 13 September 2012, despite the fact that he was under investigation for alleged involvement in the enforced disappearance and killing of five people near Janakpur in the Terai in 2003.

Five male students (Sanjiv Kumar Karna, Durgesh Kumar Labh, Jitendra Jha, Shailendra Yadav, and Pramod Narayan Mandal) were forcibly disappeared and appear to have been killed in Nepal's Dhanusha

district 2003, subsequently becoming known as the 'Dhanusha Five.' Witnesses say the young men were arrested by a joint army-police operation on 8 October 2003, near Janakpur municipality in Dhanusha District. Kuber Singh Rana was Chief of Police in Dhanusha district at the time of the incident. On January 29, 2008, the NHRC submitted a letter to Nepal's Prime Minister and Council of Ministers outlining the results of its investigation into the case, identifying Kuber Singh Rana and other members of the security forces they believed were responsible for arresting the five victims; noting that the army claimed the victims were killed by the police, while police alleged they were turned over to the army; and calling for prosecution of perpetrators and compensation of victims and their dependents. The NHRC issued a press release summarizing its findings on 30 January 2008.<sup>24</sup>

On 3 February 2009 the Supreme Court ordered police to investigate Kuber Singh Rana and others' involvement in the enforced disappearance. Exhumations carried out by the Nepal Police with NHRC and foreign assistance between September 2010 and February 2011 found five male bodies, blindfolded and shot summarily, buried near a river bank, but the results of DNA tests are unknown. On 12 July 2011 the Supreme Court issued an interim order directing the Prime Minister to provide monthly reports to the Court and NHRC on the progress of the investigations.<sup>25</sup> In August 2012 the Supreme Court directed the Government of Nepal to establish vetting guidelines to prevent people implicated in human rights violations from holding public office. The order was ignored.

# NEPAL'S TERAI: A BREEDING GROUND FOR IMPUNITY

Violent protests erupted in Nepal's southern Terai region, bordering India, in the immediate aftermath of the promulgation of the Interim Constitution in January 2007, which members of the Madheshi communities in the region claimed did not address their demands for greater autonomy.<sup>26</sup> Over the next three years human rights defenders and the Nepal Ministry of Home Affairs estimated that over 100 armed groups had emerged.<sup>27</sup> Some split away from the Maoist movement to seek greater political access and autonomy for the Madheshi people of the Terai, others appeared to operate mainly as criminal gangs. Armed groups in the Terai have engaged in killings, abductions, threats and extortion, often clashing with each other as well as engaging in violent exchanges with supporters of other political entities and the police. As noted previously, the four-point Agreement between the Maoists and the UDMF signed in August 2011 provided for the withdrawal of criminal cases against members of some of these groups.

The Nepal government deployed increasing numbers of Nepal Police and Armed Police Force (APF) personnel in the Terai and announced a Special Security Plan in July 2009 to provide additional policing in "sensitive" districts - 27 districts in the Terai and Eastern Hills, three in the Kathmandu Valley.<sup>28</sup> The plan incorporated a commitment to protect human rights but authorities involved in implementing it have been implicated in many human rights violations.<sup>29</sup>

Between January 2008 and June 2010, OHCHR in Nepal received reports of 39 incidents, involving 57 deaths, which it says "involved credible allegations of the unlawful use of lethal force;" all but two incidents occurred in the Terai. According to OHCHR, most of the victims were Madheshi men, between 20 and 30 years of age; in one case victims included women and children.<sup>30</sup> Between February and October 2009, the Nepal-based NGO Advocacy Forum recorded 12 incidents of apparent extrajudicial executions in the Terai (Banke, Dhanusha, Siraha, Saptari and Rupandehi districts). Most cases documented involved members of the Nepal Police; two involved members of the Armed Police Force (APF). According to Advocacy Forum a total of 15 people were killed and eight injured in these incidents, which were all described by authorities as "encounters" between police and alleged members of armed groups, although no members of the Nepal Police or APF were killed or injured in the alleged exchanges, and witnesses have confirmed that in several cases they saw the victims taken into custody and later killed; or heard shots soon after they saw the police escorting arrested individuals with their hands tied.<sup>31</sup>

Torture in custody was also reported to be widespread in the Terai. Advocacy Forum interviewed over 1,400 detainees in 12 districts between January and September 2009, many of whom described torture in detention. In Dhanusha more than 30 per cent of detainees interviewed claimed they had been tortured.<sup>32</sup> Advocacy Forum found that women belonging to Terai ethnic groups reported unusually high levels of torture including rape and other sexual violence (nearly a quarter of women detainees who reported torture in 2010 were from the Terai although they represented only 7.8% of the women detainee population in Nepal.) Indigenous women had the highest detention rates and nearly a third of them reported having been tortured; Dalit women also

reported disproportionately high rates of torture in custody.<sup>33</sup> These figures demonstrate the way in which women are subjected to multiple forms of discrimination on the basis of their gender, caste or ethnic origin.

Although country-wide, reports of human rights violations by the security forces decreased significantly after the CPA was signed in 2006, there continued to be high numbers of deaths in custody reported, as well as killings of individuals during “encounters,” particularly in the Terai.

Six years on, activities of armed groups in the region are reportedly on the decline, but human rights violations by the Nepal Police and APF continue unchecked.

*The increase in police brutality in the [Terai] in recent months ironically comes at a time when the overall security situation has actually improved, and Madheshi militancy has waned. The blue-and-grey camouflage fatigues of the APF, however, have become synonymous with harassment, corruption, and physical attacks.*

*In the immediate aftermath of the Madhesh movement in 2007, the eastern [Terai] was wracked with violence by militant groups as well as the security forces. The armed groups killed and extorted, and the state responded by deploying the APF. Now the threat from criminalized gangs has gone down and replaced by high-handedness and violence by the generally non-Madheshi armed police.<sup>34</sup>*

Anurag Acharya, journalist

Rather than making credible attempts to counter the flourishing culture of impunity in the Terai, the government in September 2012 promoted Kuber Singh Rana to become Nepal’s Inspector General of Police. As noted above, Rana was then under police investigation for his alleged involvement in the enforced disappearance and killing of five young men in Terai’s Dhanusha district in 2003. The message this promotion sends in the Terai is clear – allegations of extrajudicial executions and other violent excesses will not be taken seriously.

The following cases, documented by human rights defenders in the Terai illustrate not only the kinds of abuses that have taken place in the region, but also the difficulty victims and their families often experience in attempting to seek justice.

#### IJHAR PAMARIYA

On 8 September 2012, a 50-year-old farmer, Ijhar Pamariya, of Laxmipur in Sarlahi district was reportedly beaten to death by the APF. Pamariya was returning home after working in his fields and had just passed a road block erected on the Nawalpur-Malangwa highway by locals who were protesting the delay in the installation of electric transformers when he was attacked. According to the Terai Human Rights Defenders Alliance (THRD) and local media,<sup>35</sup> six APF members beat him with lathis (batons) and kicked him with their boots. Another villager who tried to intervene on his behalf was also beaten, as was 40-year-old Jailam Khatun who was sitting inside her home when the APF ransacked it and beat her up too. In all, 12 villagers in the area were injured during a lathi charge by the APF aimed at breaking up the demonstration, and in house-to-house searches by the APF looking for protestors; one man was reportedly hospitalized with a bullet wound.<sup>36</sup>

According to THRD, the Chief District Officer (CDO) informally agreed to provide compensation to the victims’ families, and the CDO wrote to the Home Ministry requesting compensation, but the

cabinet has not communicated a decision to the CDO. An internal inquiry was allegedly opened into the case but, no disciplinary action was taken against the errant officers.

#### CHANDRA KUMAR YADAV

According to a local human rights defender affiliated with THRD, at 3am on 28 June 2012, a police team arrived at the home of Chandra Kumar Yadav and arrested him as a suspect in a murder case. According to THRD, Chandra's father, Santabir Yadav, said that police failed to show an arrest warrant even after Santabir Yadav explicitly asked to see one. "When I asked for the arrest warrant, they pushed me aside and said, 'We are the arrest warrant!'" he told a local researcher.<sup>37</sup>

Chandra was put in a police van and taken to Siraha District Police Office (DPO) where, according to THRD, he was seen on the evening of 28 June by both his father and Nepal's Information Minister Rajkishor Yadav, who had served as Constituent Assembly member for the area and was contacted by the family for assistance. But just a few hours later (at around 1am on 29 June) Rajkishor Yadav informed Santabir Yadav that his son would be brought to a hospital in Janakpur since he was not well. On 30 June, Santabir Yadav was informed by his other son that Chandra Kumar Yadav was dead. The police alleged that Chandra died in the hospital, but a local defender was told in confidence that a false post-mortem report had been drawn up under duress from the police.<sup>38</sup> Santabir Yadav maintains that his son died in police custody; he told a researcher with THRD that "My son was murdered. He was killed on the way to Janakpur"<sup>39</sup> Because no detention warrant was issued and the arrest was not recorded by police, Chandra's father was unable to prove that his son had been taken into custody and so believed there was no point in filing a case against the police.<sup>40</sup>

#### DEV LAL MUKHIYA AND RAM BIRAJI DEVI MUKHIYA

According to the Asian Human Rights Commission (AHRC) and World Organisation Against Torture (OMCT), drawing on information provided by the Advocacy Forum in Nepal,<sup>41</sup> husband and wife, Dev Lal Mukhiya and Ram Biraji Devi Mukhiya, of Dhanusha district received death threats after filing a torture compensation case against a local police officer. On 8 March 2012, Ram Biraji Devi Mukhiya was reportedly arrested by an Assistant Sub-Inspector of the Nepal Police and two other police officers who had been looking for her brother-in-law. The police, who the reports say did not have an arrest warrant, were accompanied by a man who was allegedly involved in a land dispute with her brother-in-law. When Ram Biraji Devi Mukhiya denied knowing her brother-in-law's whereabouts, police took her to the police station where she was reportedly punched in the head and slapped repeatedly. She was later released when her husband came to the police station. He took her to the Janakpur Zonal Hospital for medical treatment.<sup>42</sup> On 22 March 2012, she filed a torture compensation claim against Assistant Sub-Inspector before the Dhanusha District Court.<sup>43</sup>

On 16 June 2012 Dev Lal Mukhiya, according to AHRC, was reportedly lured to an area near Kathmandu with a promise of work and beaten by unidentified assailants who asked why he had filed a torture compensation case against their friend and told him he had a week to withdraw the case. On 2 July 2012, Ram Biraji Devi Mukhiya received four phone calls threatening to kill her family members if she did not withdraw the case.<sup>44</sup>

#### MANGARE MURAU

THRD reported in July that MAHURI-Home, a Kapilvastu-based member of the THRD network had investigated the killing on 7 April 2012 of Mangare Murau, a rickshaw puller from Kapilvastu. The case was also covered by local media.<sup>45</sup> Murau was reportedly headed towards Krishnanagar in Kapilvastu district on his rickshaw carrying alcohol from across the Indian border. He was caught by

Armed Police-Border Security Force constable from a nearby APF base camp and a Nepal Police officer, who asked him for a bribe. When Murau refused to pay, the officers beat him and kicked him in the head and chest with their boots leaving him severely injured. Murau fell into a coma the following day. He was brought to the local hospital and then because his condition was so serious, he was transferred several times until he finally arrived at the Tribhuvan University Teaching Hospital in Kathmandu where he died on the night of 9 April 2012. According to THRD, protests organized by the victim's family erupted after the killings and the perpetrators eventually confessed their crime.<sup>46</sup> To quell the protests, a private agreement was reached and the victim's family was promised 1 million rupees in compensation. But Murau's mother received just half of the compensation she was promised and the perpetrators remain at large.<sup>47</sup>

# VIOLENCE AGAINST WOMEN AND GIRLS

Citing a news conference on 15 October a local newspaper reported that Nepal's National Women's Commission had recorded 682 incidents of violence against women reported to the agency between mid-2011 and mid-2012. These included 126 reported incidents of sexual violence, 110 murders, 98 cases related to human trafficking, 62 domestic violence cases, 56 incidents of exploitation in foreign employment, and 43 incidents related to accusations of witchcraft, polygamy and child marriage.<sup>48</sup> These statistics provide only a glimpse into the kinds of incidents occurring regularly in Nepal. Nepal has a female population of over 11 million and according to research, the vast majority have witnessed or experienced violence against women and girls.<sup>49</sup> According to women's human rights defenders the majority of cases of violence against women go unreported. The Women's Rehabilitation Centre (WOREC) estimates that only 25 percent of women victims of violence seek medical care and fewer (about 20 percent) seek legal remedies;<sup>50</sup> only a fraction of cases presumably reached the NWC.

Impunity for perpetrators of gender-based violence is the norm in Nepal. Women rarely file complaints regarding domestic violence or sexual violence – fear of stigma, lack of resources or legal literacy, lack of safe shelter alternatives and other support services, dependence on male relatives to access the legal system, and fear of repercussions, including further abuse, are all strong disincentives,<sup>51</sup> but when they do try to take legal action, their efforts are often obstructed. Women's human rights activists in Dhanusha district in the Terai said in October that police were intentionally creating obstacles for women seeking justice, siding with perpetrators rather than assisting women who sought to file complaints, and sometimes seeking large bribes from the victims in exchange for action on cases.<sup>52</sup>

In neighbouring Mahottari district human rights defenders described similar experiences trying to bring domestic violence cases to court and told Amnesty International in July 2012 that rather than investigating them the police sometimes recorded murders as suicides or recorded violence against women, such as physical assault and rape, as the work of armed groups, when in fact they were perpetrated by relatives.<sup>53</sup> In 2010, according to International Alert, Mahottari police reportedly recorded 2-3 cases of gender-based violence per week at the district headquarters (rape and domestic violence complaints, including dowry-related violence), and approximately one suicide of a woman each week.<sup>54</sup>

Again, it is likely that the incidents recorded by police are a fraction of the total. A study by researcher Reena Ghimire in 2008 found that of 105 married Dalit women she interviewed in Mahottari district, 97 percent reported that their husbands exhibited violent behaviour against them, and 77 percent reported physical violence, including slapping, beating and marital rape; 70 percent said they had not sought medical help after the incident because of fear and societal stigma.<sup>55</sup> Effective investigation of all reported cases of violence against women by authorities without influence by powerful community members is critically important, particularly given allegations that some incidents were being mis-recorded in order to shield perpetrators.

Police in other parts of Nepal have also sided with families against women complaining of domestic

violence or other abuse; and human rights defenders trying to assist them have faced retaliation, including by local police on behalf of aggrieved relatives.

In July 2012, as a victim of gender-based violence<sup>56</sup> entered the court premises for her first divorce hearing in Kathmandu, she was surrounded by a mob of around 30 people (allegedly relatives) who forced her into a minibus as police stood by.<sup>57</sup> The woman, who had formed a new relationship with a female partner, was then detained in a rehabilitation centre by police and family members who claimed she was mentally ill; she was then forced to return to her husband's home where family members reportedly attempted to "cure" her using faith healers.<sup>58</sup> According to information WOREC provided to the Asian Human Rights Commission, the woman fled again in August to join her partner and sought assistance from WOREC and Mitini Nepal, an LGBTI rights organization. In August, the office of Mitini Nepal and the houses of its staff were visited repeatedly and searched by the police and relatives of the victim, and their director received threatening phone calls. The victim's relatives also forced their way into WOREC's office, accompanied by police personnel.<sup>59</sup>

According to NGO and media reports, in September the National Women's Commission arranged to have her admitted again to a state-run rehabilitation centre for "counselling" and later transferred to a rehabilitation centre run by a local NGO. Counselling provided reportedly included efforts to change her sexual orientation, and her partner was barred from seeing her. On 5 November, ruling on a *habeas corpus* petition filed by the woman's partner on 30 October complaining that she was being held against her will and was not allowed to have visitors; the Supreme Court ordered the woman released and ruled that she should be allowed to live as she chose. She and her partner reportedly went into hiding after her release.<sup>60</sup>



# CONCLUSION

Impunity is a longstanding problem in Nepal where lack of political will to account for past and present actions of the politically well-connected is compounded by other obstacles to justice, especially for those who lack financial resources or social influence. To date, not one alleged perpetrator of serious human rights violations and crimes under international law during the conflict has been brought to justice in a civilian court. Victims and their families face risks of retaliation when attempting to bring cases against alleged perpetrators, particularly those with links to political actors, or who are otherwise able to influence the police.

This climate of impunity also poses dangers for Nepal's human rights defenders. Lawyers trying to bring human rights cases before the courts, journalists writing to expose abuse, activists providing support for victims of human rights violations have faced threats and violence. The departure of UN OHCHR has left a significant advocacy and protection vacuum where Nepal's human rights defenders are concerned. Many activists were emboldened by the UN's active presence and support of their efforts throughout the country. They now feel dangerously exposed.

There are high level policy changes that would increase accountability – such as ending case withdrawals against political actors accused of criminal offences, proceeding with pending police investigations and trials into cases such as the killings of Maina Sunuwar, Arjun Lama, and the 'Dhanusha Five' students, among others. Furthermore, there are ground level safeguards that could help ordinary Nepalis gain better access to existing justice mechanisms, such as establishing an effective system of witness protection, ensuring consistent training and disciplinary action and criminal prosecutions against alleged perpetrators, and guaranteeing due process when victims attempt to bring complaints against their abusers.

Addressing Nepal's impunity problem is a significant challenge, but it is essential to securing lasting peace and stability.

# RECOMMENDATIONS TO THE GOVERNMENT OF NEPAL

- Ensure effective witness protection;
- Ensure that the police provide a safe and confidential environment for victims, in particular women and girls, to report incidents of violence, including sexual violence, and that all such complaints are recorded and promptly, impartially and effectively investigated;
- Take disciplinary action against police who fail to record cases or investigate allegations of human rights violations, including violence against women;
- Respect and protect the right of human rights defenders, especially women human rights defenders, to conduct their work without hindrance, intimidation or harassment in line with the UN Declaration on Human Rights Defenders;
- Conduct independent, impartial and effective investigations into all allegations of crimes under international law or human rights violations committed in Nepal before, during and after the conflict and, where there is sufficient admissible evidence, prosecute those suspected of criminal responsibility and, if found guilty in a fair trial, punish them by appropriate penalties which take into account the grave nature of the crimes involved;
- Temporarily remove or suspend from any position any member of the security forces or other government agency suspected of criminal responsibility for crimes under international law or human rights violations, pending completion of an independent inquiry into allegations against them;
- Respect court orders calling on the police to investigate human rights violations and crimes under international law and, if there is sufficient admissible evidence, prosecute those suspected of criminal responsibility in trials that meet international due process standards;
- Investigate enforced disappearances, and extra-judicial and other unlawful killings that occurred during the armed conflict without further delay in accordance with international law and standards and the CPA;
- Do not grant amnesty or any other similar measure which may prevent the emergence of truth to any person suspected of criminal responsibility for a human rights violation or crimes under international law, irrespective of his or her official capacity, including anyone in a position of command responsibility;
- Ensure that any transitional justice mechanisms established to address conflict era violations do not replace judicial proceedings and are in accordance with international law and standards and do not have the power to grant or recommend the granting of amnesties for crimes under international law;
- Implement vetting procedures to ensure that no member of the security forces against whom there are reasons to believe may be criminally responsible for human rights violations or crimes under international law is promoted or nominated for UN Peacekeeping duties. Ensure that all such allegations are effectively and independently investigated and, prosecuted in ordinary civilian courts in accordance with international law and standards;

- Define torture as an autonomous crime under Nepali law, in accordance with the definition contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – to which Nepal has been a state party since 1991;
- Sign and ratify, without making any reservation or declaration amounting to a reservation, the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Define enforced disappearances as an autonomous crime under Nepali law in line with the International Convention on the Protection of all Persons from Enforced Disappearances;
- Accede to the Rome Statute of the International Criminal Court without making any declaration amounting to a reservation and implement it into national law, as recommended in Amnesty International's document: 'International Criminal Court: Updated checklist for effective implementation' (IOR 53/009/2010);
  - Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance, without making any reservation or declaration amounting to a reservation and recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims and other states parties. In addition, Nepal should implement the Convention effectively into national law, as recommended in Amnesty International's paper: 'No impunity for enforced disappearances: checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (IOR 51/006/2011).

# ENDNOTES

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<sup>1</sup> "In 2009, the Ministry of Peace and Reconstruction updated the records, putting the total of deaths at 16,278. On March 29, 2011, citing figures compiled by an official taskforce responsible for ascertaining the loss of life and property during the armed conflict, the government said the conflict has left 17,265 people dead. In March 2011 the Ministry of Peace and Reconstruction said the conflict had left 1,302 people missing in the country. The International Committee of the Red Cross (ICRC) estimated in April 2011 that there were more than 1,300 people missing in Nepal due to conflict-related causes. Some local NGOs or family groups put the number of missing much higher. For example, the Society of the Families of the Disappeared (SOFD) has said that there are about 5,700 cases of conflict-related disappearances in Nepal." "Recording Nepal Conflict: Victims in Numbers," *Nepal Monitor*, July 2011, [http://www.nepalmonitor.com/2011/07/recording\\_nepal\\_conf.html](http://www.nepalmonitor.com/2011/07/recording_nepal_conf.html), accessed 24 December 2012.

<sup>2</sup> Rajendra Dhakal et al v. Government of Nepal Ministry of Home Affairs et al, 1 June 2007.

<sup>3</sup> "NEPAL: Loopholes in transitional justice bills will put the victims at risk," Asian Human Rights Commission, 3 April 2012, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-077-2012>, accessed 24 December 2012.

<sup>4</sup> Mandira Sharma, "Letting them off the hook," *Kathmandu Post*, 18 September 2012, <http://www.ekantipur.com/the-kathmandu-post/2012/09/18/oped/letting-them-off-the-hook/239810.html>, accessed 24 December 2012.

<sup>5</sup> General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, Para 18, see also CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) 10 March 1992.

<sup>6</sup> See, "Remedies and Rights Revoked; Case Withdrawals for Serious Crimes in Nepal, Legal Opinion," National Human Rights Commission of Nepal and UN Office of the High Commissioner for Human Rights, June 2011, [http://nepal.ohchr.org/en/resources/publications/2011/2011\\_06\\_23\\_Case-Withdrawals-for-Serious-Crimes-in-Nepal-E.pdf](http://nepal.ohchr.org/en/resources/publications/2011/2011_06_23_Case-Withdrawals-for-Serious-Crimes-in-Nepal-E.pdf), accessed 24 December 2012. (Hereafter 'Remedies and Rights Revoked')

<sup>7</sup> Comprehensive Peace Agreement Concluded between the Government of Nepal and The Communist Party of Nepal (Maoist), dated 21 November 2006 ("Comprehensive Peace Agreement" or "CPA"), Clause 5.2.7.

<sup>8</sup> Remedies and Rights Revoked.

<sup>9</sup> *Nepal descending towards full-spectrum impunity for human rights abuses committed during the conflict: Open Letter to the Government and political leaders of Nepal on the occasion of International Human Rights Day 2010*, Advocacy Forum (AF), Amnesty International (AI), Human Rights and Democratic Forum (FOHRID), Human Rights and Peace Society (HURPES), Informal Sector Service Centre (INSEC) and the International Commission of Jurist (ICJ), 10 December 2010, (Index: ASA 31/003/2010) <http://www.amnesty.org/en/library/asset/ASA31/003/2010/en/0c1d3d55-f2fb-4828-b9d3-a15da585c0a7/asa310032010en.pdf>

<sup>10</sup> Madhesh is another term for the Terai region of Nepal.

<sup>11</sup> "Nepal: Plan to withdraw criminal cases is a serious blow to the rule of law," Asian Human Rights Commission, 14 September 2011, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-119-2011>, accessed 24 December 2012.

<sup>12</sup> "Govt prepares to withdraw court cases against 130," *Ekantipur.com*, 24 December 2011, <http://www.ekantipur.com/2011/12/24/top-story/govt-prepares-to-withdraw-court-cases-against-130/346051.html>, accessed 24 December 2012.

<sup>13</sup> "Parties in agreement on criminal case withdrawals," *Republica*, 6 March 2012, [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=32530](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=32530), accessed 19 December 2012.

<sup>14</sup> "SC to govt: Don't withdraw serious criminal cases," *Kathmandu Post*, 17 April 2012, <http://www.ekantipur.com/the-kathmandu-post/2012/04/17/top-story/sc-to-govt-dont-withdraw-serious-criminal-cases/233872.html>, accessed 24 December 2012.

<sup>15</sup> "Ujjan Kumar Shrestha Case Description," Advocacy Forum, <http://www.advocacyforum.org/fir/2011/10/ujjan-kumar-shrestha.php>

<sup>16</sup> Amnesty International, International Commission of Jurists, Human Rights Watch, *Open Letter to prime Minister of Nepal, Regarding Persistent Impunity in Nepal*, 24 May 2011 (Index: ASA 31/003/2011) <http://www.amnesty.org/en/library/asset/ASA31/003/2011/en/gd07cfbd-ae24-4ae0-a219-911b031bf465/asa310032011en.pdf>; See also, Purnimaya Lama Vs. DAO Kavre et al, Supreme Court, 10 March 2008.

<sup>17</sup> Supreme Court, Division Bench, Hon. Justice Mr Ramkumar Prasad Sah, Hon Justice Mr Prakash Osti, Order, Writ No 1094 of the year 2068; See also, Bimal Gautam, "SC asks Minister Sapkota to assist police in murder charge probe," *Republica*, 22 June 2011, [http://archives.myrepublica.com/2012/portal/index.php?action=news\\_details&news\\_id=32617m](http://archives.myrepublica.com/2012/portal/index.php?action=news_details&news_id=32617m), accessed 28 November 2012.

<sup>18</sup> "Murder slur on Sapkota: Police probe makes no headway," *Ekantipur.com*, 25 June 2012, <http://www.ekantipur.com/2012/06/25/top-story/murder-slur-on-sapkota-police-probe-makes-no-headway/356118.html>, accessed 24 December 2012.

<sup>19</sup> OHCHR, "Report of investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu, in 2003–2004," [http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/Pages%20from%202006\\_05\\_26\\_OHCHR-Nepal.Report%20on%20Disappearances%20linked%20to%20Maharajgunj%20Barracks\\_Eng.pdf](http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/Pages%20from%202006_05_26_OHCHR-Nepal.Report%20on%20Disappearances%20linked%20to%20Maharajgunj%20Barracks_Eng.pdf), accessed 12 December 2012.

<sup>20</sup> "The situation of human rights during the six month ceasefire (period April 26 to October 30 2006)," National Human Rights Commission, [http://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/Ceasefire%20report%20final.pdf](http://www.nhrcnepal.org/nhrc_new/doc/newsletter/Ceasefire%20report%20final.pdf), page 12.

<sup>21</sup> Rajendra Dhakal et al v. Government of Nepal Ministry of Home Affairs et al, 1 June 2007.

<sup>22</sup> Amnesty International, International Commission of Jurists, Human Rights Watch, Nepal:

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<sup>23</sup> "OHCHR calls for comprehensive human rights vetting as part of peace process," Press release, United Nations Office of the UN High Commissioner for Human Rights in Nepal, 28 August 2009, [http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202009/August2009/2009\\_08\\_28\\_PR\\_Meeting\\_withCoAS\\_E.pdf](http://nepal.ohchr.org/en/resources/Documents/English/pressreleases/Year%202009/August2009/2009_08_28_PR_Meeting_withCoAS_E.pdf), accessed 9 October 2012.

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<sup>25</sup> Supreme Court Joint Bench, Honourable Justice Mr. Tahir Ali Ansari, Honourable Justice Dr. Bharat Bahadur Karki, Order, Writ no. 067 (2010), W 1198, 13 July 2011, <http://www.advocacyforum.org/downloads/sc-decision-in-kuber-rana-case.pdf>

<sup>26</sup> "Nepal's Troubled Terai Region: Asia Report N°136 – 9 July 2007," International Crisis Group, [http://un.org.np/sites/default/files/report/tid\\_105/2007-07-14-nepal\\_s\\_troubled\\_terai\\_region.pdf](http://un.org.np/sites/default/files/report/tid_105/2007-07-14-nepal_s_troubled_terai_region.pdf)

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<sup>29</sup> "Investigating Allegations of Extra-Judicial Killings in the Terai: OHCHR-Nepal Summary of Concerns," July 2010, <http://nepal.ohchr.org/en/index.html>, accessed 12 December 2012.

<sup>30</sup> "Investigating Allegations of Extra-Judicial Killings in the Terai: OHCHR-Nepal Summary of Concerns."

<sup>31</sup> "Torture and Extrajudicial Executions amid widespread violence in the Terai," Advocacy Forum, Nepal, 2010, <http://www.advocacyforum.org/downloads/pdf/terai-report-english.pdf>, accessed 29 November 2012.

<sup>32</sup> "Torture and Extrajudicial Executions amid widespread violence in the Terai," Advocacy Forum.

<sup>33</sup> "Torture of Women; Nepal's Duplicity Continues," Advocacy Forum, Nepal, 26 June 2012, <http://www.advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf>, accessed, 29 November 2012.

<sup>34</sup> Anurag Acharya, "Preyed by the state: The hopelessness of Madhesi youth combined with state repression is a dangerous mix," *Nepali Times*. 14 September 2012, [http://www.nepalitimes.com/issue/2012/09/14/ByTheWay/19635#.UG3boU3R5\\_c](http://www.nepalitimes.com/issue/2012/09/14/ByTheWay/19635#.UG3boU3R5_c), accessed 24 December 2012.

<sup>35</sup> Anurag Acharya, "Preyed by the state."

<sup>36</sup> Anurag Acharya, "Preyed by the state," with updates via email correspondence from Terai

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Human Rights Defenders Alliance, 12 October 2012.

<sup>37</sup> Email correspondence with Terai Human Rights Defenders Alliance, 12 October 2012.

<sup>38</sup> Email correspondence with Terai Human Rights Defenders Alliance, 12 October 2012.

<sup>39</sup> "The Trend of Illegal Arrest and Torture in Madhesh: Monthly Human Rights Monitoring Report-July 2012," Terai Human Rights Defenders Alliance.

<sup>40</sup> "Final Report on Illegal Arrest," Kathmandu, Terai Human Rights Defenders Alliance, July 2012, supplemented by email correspondence.

<sup>41</sup> "Nepal: Death threats after filing a torture compensation case," OMCT, 5 July 2012, <http://www.omct.org/urgent-campaigns/urgent-interventions/nepal/2012/07/d21912/>

<sup>42</sup> "NEPAL: Torture victim receives death threat for filing a complaint," Asian Human Rights Commission, 6 July 2012, Urgent Appeal Update: AHRC-UAC-123-2012, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-123-2012>, accessed 29 November 2012; see also above "Nepal: Death threats after filing a torture compensation case," OMCT.

<sup>43</sup> "Torture Briefing, Prevention of Torture in Nepal: January to June 2012," Advocacy Forum-Nepal, page 37 <http://www.advocacyforum.org/downloads/pdf/publications/torture/torture-briefing-january-to-june-2012.pdf>, accessed 29 November 2012.

<sup>44</sup> See above at footnote 38, "NEPAL: Torture victim receives death threat for filing a complaint," Asian Human Rights Commission; see also above "Nepal: Death threats after filing a torture compensation case," OMCT.

<sup>45</sup> Monthly Human Rights Monitoring Report-July 2012," Terai Human Rights Defenders Alliance; see also Anurag Acharya, "Preyed by the state."

<sup>46</sup> Monthly Human Rights Monitoring Report-July 2012," Terai Human Rights Defenders Alliance.

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<sup>48</sup> "NWC'S request to police headquarters," *The Himalayan Times*, 9 October 2012, <http://www.thehimalayantimes.com/fullNews.php?headline=NWC'S+request+to+police+headquarters&NewsID=350318>, accessed 5 November 2012.

<sup>49</sup> A 1997 study by the organization Saathi, widely cited in subsequent UN documents and scholarly reports, surveyed 1,250 respondents in five Nepal districts, half of them women. The study found that 95 percent of women reported firsthand knowledge of violent incidents against women or girls, including physical, sexual, psychological and emotional violence and abuse. 88 percent reported occasional domestic violence; 64 percent reported monthly incidents, 58 percent reported daily incidents and 55 per cent weekly incidents. See, "A Situational Analysis of Violence Against Women and Girls in Nepal," Saathi, 1997, [http://www.saathi.org.np/images/stories/ResearchPDF/vaw\\_and\\_girls\\_nepal.pdf](http://www.saathi.org.np/images/stories/ResearchPDF/vaw_and_girls_nepal.pdf)

<sup>50</sup> "Facts on Violence Against Women in Nepal," WOREC Nepal, 2012, <http://www.worecnepal.org/sites/default/files/VAW-Fact-Sheet-2012-WOREC.pdf>

<sup>51</sup> "Snapshot series 1, Security and justice from a district perspective, Mahottari, Nepal," International Alert, November 2010, <http://www.international-alert.org/sites/default/files/publications/201011SecurityJusticeMahottari.pdf>, accessed 5 November

2012; See also "Joint UNCT Input on Nepal for the Report of the Secretary General to the Security Council on the Implementation of SCR 1820 on Women, Peace and Security," UNCT-Nepal, April 2009, para 50.

<sup>52</sup> "Women rights activists complain of non-cooperation from police," *The Himalayan Times*, Added At: 8 October 2012, <http://www.thehimalayantimes.com/fullNews.php?headline=Women+rights+activists+complain+of+non-cooperation+from+police&NewsID=350209>, accessed 5 November 2012.

<sup>53</sup> Confidential interview, Mahottari, July 2012.

<sup>54</sup> "Snapshot series 1, Security and justice from a district perspective, Mahottari, Nepal," International Alert.

<sup>55</sup> Reena Ghimire, "Domestic violence Against Dalit Women in Mahottari District, Social Inclusion Research Fund (SIRF), SNV/ Nepal," September 2008, [www.socialinclusion.org.np](http://www.socialinclusion.org.np), accessed 20 December 2012.

<sup>56</sup> Her husband reportedly beat her regularly and family members used physical violence in an effort to change her sexual orientation.

<sup>57</sup> "Press release: Where is women secured if they are not secured in the premises of judiciary court?," WOREC Nepal, July 2012, <http://www.worecnepal.org/press-release/where-women-secured-if-they-are-not-secured-premises-judiciary-court>

<sup>58</sup> "NEPAL: Women human rights defenders are facing threats and harassment for protecting a victim of domestic violence," Asian Human Rights Commission, 3 September 2012, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-161-2012>

<sup>59</sup> "NEPAL: Women human rights defenders are facing threats and harassment for protecting a victim of domestic violence," Asian Human Rights Commission.

<sup>60</sup> "Gay mom sent for counselling, kin want her 'back'," *Republica*, 8 September 2012, [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=41318](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=41318); "SC orders lesbian freed," *Kathmandu Post*, 6 November 2012, <http://www.ekantipur.com/the-kathmandu-post/2012/11/05/nation/sc-orders-lesbian-freed/241432.html>; "SC allows live-in lesbian relationship," *Himalayan Times*, 5 November 2012, <http://www.thehimalayantimes.com/fullNews.php?headline=SC+allows+live-in+lesbian+relationship&NewsID=353395>.