



## NEPAL

### **On the brink of bloodshed again, after year-long inertia**

#### **1. Introduction**

The Human Rights Situation in Nepal in 2007 was expected to improve on the back of significant political developments at the end of 2006, which included the end of a decade-long internal conflict between the country's armed forces and the Communist Party of Nepal-Maoist (Maoist) forces, formalized by the signing on November 22, 2006 of the Comprehensive Peace Accord (CPA) between the two sides. Many of the gross and widespread human rights violations that have been committed in the country over recent years - including over 13,000 killings and thousands of forced disappearances and other serious abuses - were attributable to the conflict.

However, despite the hopes raised by last year's tumultuous events, it became very clear early on in 2007 that violations of human rights, including killings and torture, were ongoing and that impunity remained for the perpetrators of these acts. Furthermore, political destabilization, in the form of violent uprisings in the country's low-lying plains region, known as the Terai, meant that progress on the political front towards democratisation has been severely hampered, as various political forces within the country have been posturing and undermining each other rather than striving to live up to their commitments under the CPA. This has led to the postponement of planned elections to a Constituent Assembly that was to draft a new constitution for the country to a now-unknown date. Elections had been scheduled for mid-year before being postponed until late-November, but have since been pushed back to an as-yet undefined date. Given that these elections were central to the demands of the popular uprisings in April 2006, the inability of the political parties to hold them represents a significant disappointment. Rather than being a year of progress towards democratic elections and the creation of a climate of security, 2007 has instead been one in which no tangible political advances have been made and where insecurity has in fact grown in several ways.

Although the armed conflict has ended between the armed forces and the Maoists, many new armed groups have emerged and the proliferation of crimes and human rights violations and the degradation of the rule of law have increased during the year. While the number of forced disappearances has plummeted since the establishment of a field office of the Office of the High Commissioner for Human Rights in Nepal and the popular uprisings in 2006, the number of abductions and killings by armed groups has continued to plague the country 2007. The institutions of the rule of law, notably the police, are failing to address the growing number of such acts and violence, corruption and impunity continue to rule in Nepal. As 2007 draws to a close, the unfortunate reality in Nepal is there is a growing risk of a return to overt armed conflict and there is very little at the moment being done to prevent this.

It shall be shown through case-studies in the following report that human rights violations are rarely accompanied by any effective responses from the State; there are few if any credible



investigations, which means that the prosecution and sentencing of the perpetrators of these acts remains impossible. While political turmoil has been ongoing in the country, the development of human rights has been in stasis throughout the year, with the institutions that are supposed to protect and promote them making use of the political uncertainty to attempt to justify their paralysis and abject failure to protect the rights of Nepal's people. Impunity for past and present violations remains iron-clad, as all parties to the political process have failed to live up to their commitments under the CPA. The Asian Human Rights Commission (AHRC) and its sister-organisation, the Asian Legal Resource Centre (ALRC), have repeatedly pointed out since early 2006 that the only way to secure a transition to a durable and robust democratic Nepal is through the painful but necessary establishment of strong institutions of the rule of law and of justice concerning the plethora of rights violations that mar the country's past and present. Without a foundation built on the values that underlie democracy, notably the value of the individual and individual rights, democracy itself cannot be built. By pursuing political change without addressing the fundamental needs for change, notably the people of Nepal's desire for peace, security, development, democracy and justice, as expressed during the 2006 uprisings, Nepal's political actors are destined for failure. It is perhaps not so surprising that the political parties are failing to deliver on the aspirations of the people, as the parties' leadership have not been rejuvenated and continue to act for their self-interest rather than showing the vision to move forwards towards much needed elections, democracy, security and the enjoyment and protections of human rights.

2007 can therefore only be viewed as a year that promised much but that has been wasted; a year of ongoing grave violations and erosion of the rule of law; a year of inertia on the part of the authorities.

## **2. Key Events during 2007**

2006 will be remembered for many key events, including uprisings in April against the so-called Royal Coup in February 2005, which led to the restoration of Parliament, the side-lining of the King, the supervision and management of arms, the establishment of an interim government and the inclusion of the Maoists into the political mainstream, culminating in the end to the country's armed conflict and the signing of the Comprehensive Peace Accord that was expected to set the country on the path to peace and democracy.

2007, however, has from the outset been memorable more for set-backs than for positive developments. These can be attributed to the lack of political will on the part of the parties to the CPA to live up to their commitments and to tackle the issue of human rights as a pre-requisite of progress. In its conclusions in last year's annual report on Nepal, the AHRC wrote that:

*"...from a human rights perspective, much remains to be done. Violations continue to be committed by all sides, and this will remain the case until the culture of impunity that has accompanied the widespread abuses of the past, is removed. In order to ensure that impunity is dismantled, justice cannot be sacrificed on the altar of political expediency. Any and all allegations of human rights abuses committed by all sides need to be effectively investigated and prosecuted in line with Nepal's law and international obligations. Where laws are missing, they*



*must be created. To enable this to be most effective, the institutions of the rule of law must be strengthened to allow them to cope with this sizeable task. Investigations and prosecutions need to be commenced without further delay, as these institutions can develop as they go, through practical experience, as long as there are no undue political restrictions to their actions... The only way to move beyond past grievances is for justice to be done. By sweeping such grievances under the carpet, in order to side-step difficult issues that may threaten ongoing political progress, there may be short-term gains, but ultimately, the door will remain open to a return to violence and insecurity, as those that profited from such a situation will remain protected, and may opt to re-offend in the future."*<sup>1</sup>

Following the signing of the CPA, the AHRC has continued to receive cases of serious human rights abuses perpetrated by all sides, including rapes, torture, disappearances and abductions, extra-judicial killings, and these have all been committed with impunity, as cases have not been effectively investigated. While no progress was being made in terms of human rights, the political scene was shifting rapidly.

On January 15, 2007 the Maoists joined the country's Interim Parliament, and came into the mainstream political fold. All 83 Maoist representatives, along with other members of the 330-strong Parliament, were sworn in and during the Parliament's first sitting the 2007 Interim Constitution was unanimously endorsed, replacing the 1990 Constitution of Nepal.

## **2.1 Unrest in the Terai**

Unfortunately, the hope borne by these developments was short-lived and the return to violence and insecurity was not long in coming. On the following day, January 16, 2007, violent political upheaval was witnessed across the country's plain region, the Terai. Protests began in different parts of the Terai after the adoption of interim constitution. A central instigator of these protests was NGOs Madhesi Janaadhikar Manch (MJM), which called the movement demanding that a federal republic be established in Nepal and for the guaranteed inclusion of the Madhesi people – the people that live in the Terai - in all the sectors of government. They were also of the view that the interim constitution is flawed and does not appropriately address the problems of Madhesis, Janagatis, and other marginalized communities. This was a clear indication that the failure to effectively address the rights of various groups in the political process, along with a range of other rights, would cause it to falter.

The Terai movement turned violent in many districts, as the State started using force to suppress the uprising, while Madhesi rights activists began setting fires and vandalizing public properties. The authorities that had been swept into power only a few months earlier as the result of popular uprisings, were now engaged in suppressing further such movements. A severe breakdown of the rule of law ensued in a large section of Nepal, as the authorities on the one hand failed to address the genuine concerns of the minority groups and also failed to punish those responsible for violent acts from all sides, leading to a situation of increased violence and pervasive impunity.

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<sup>1</sup> AHRC Annual Report, 2006, <http://material.ahrchk.net/hrreport/2006/>



The significance of the unrest in the Terai, both on the political process and the state of human rights in the country cannot be underestimated and persists to the date of publication of this report. On the political front, the uprisings were significant in that they eroded the support that had been enjoyed by the Maoists in the region, which has led to a significant weakening of the Maoists as a political force in the country and has changed the balance of power to the extent that negotiations on critical elements of the CPA have been affected or obstructed by this. As far as the human rights situation is concerned, these uprisings gave rise to severe violations but also created a situation in which numerous armed groups representing different political or minority groups sprang up, and these have continued to perpetrate violence and crime in the region throughout the year, gravely eroding what little rule of law was present there before.

The major groups emerging at present in Nepal are as follows – Janatantrick Terai Mukti Morach – Jwala Group (JTMM- Jwala), Janatantrick Terai Mukti Morach – Goit Group (JTMM- Goit), Limbuwan, Khambuwan, Madhesi Janadhikar Manch (MJM), Magar Mukti Morcha (MMM), Tharuhat Mukti Morcha (TMM), Madhesi Tiger (MT), Madhesi Yakata Kobra (MYK), Kirat Works Party (KWP), Terai Virus (TV), Young Communist League (YCL), and the Madhesi Mukti Morcha (MMM). There are many other small armed groups that add further to the complexity of the increasingly violent situation in the country.

The lack of action by the authorities to quell the unrest, violence and surge in crime in an effective way has led to a deepening of the problem of impunity and lawlessness. This situation is a far cry from the hopes for the country that were present at the end of 2006.

Nepalese human rights NGO INSEC released statistics on November 21, 2007, on year after the signing of the CPA, which underlines this problem. According to INSEC:

“234 persons were killed since 21 November last year of which 28 persons were killed by the government, 23 persons by Maoists and YCL, 18 persons by JTMM-Goit, 27 persons by JTMM-Jwala and the rest were killed by armed groups in Tarai and unknown groups. Maoists and YCL were involved in the abduction of 495 persons while JTMM-Jwala abducted 107 persons and JTMM-Goit abducted 71 persons. It also reported that there were 122 incidents of property capture by the Maoists and YCL, 71 incidents of property capture by JTMM-G and 65 incidents by JTMM-J.”

INSEC also urged to all parties to comply with the CPA, to make the whereabouts of missing persons public, to initiate talks with agitating political groups in the Terai and for the authorities to bring the criminal groups to book. INSEC further demanded the creation of an environment that is conducive to the rehabilitation of displaced persons and for land-mines’ locations to be marked and for them to be defused.

## **2.2 The Gaur Incident**

An example of the upsurge in violence is the Gaur Incident. Violence in Gaur had been predicted, as mass meetings of the rival Maoist-affiliated political group Madhesi Mukti Morcha (MMM) and NGO MJM, were scheduled to take place at the same venue at the same time. The



MJM had scheduled a mass meeting at the Rice Mill Field located in Gaur Municipality ward no. 5, Rautahat district, on March 21, 2007. The meeting was scheduled to last for some ten to twelve days, during which time the MJF chairperson, Mr. Upendra Mahato, was to address the crowd. The MMM, for its part, had also planned a mass meeting at a location in the same field some 100 metres away. The MMM only announced the holding of this gathering two days before it took place, while the MJM had been planning it for several weeks. Local human rights activist and members of Federation of Nepalese Chambers of Commerce and Industry requested both the Maoists and MJF to reach a compromise regarding the dates and venues for the mass meeting, but were ignored. The authorities remained silent and only deployed 14 police personnel under the command of a police Sub-Inspector to control over 10, 000 people.

On March 21, 2007, more than 10, 000 MJF supporters gathered at the Rice Mill Field at around 1 pm. At around 2 pm, some 250-300 Maoists also arrived at Rice Mill Field and, it is believed, detonated a bomb in the northern part of the field where the MJF supporters were gathered - fortunately no casualties took place. Some Maoists then reportedly threw a socket bomb at the MJF stage, causing panic. Maoist cadres then started beating MJF supporters with bamboo sticks and stones, causing fights to break out all over the field. Unidentified persons then opened fire from the western part of the field at the remaining people – most of whom were affiliated with the Maoists. MJF supporters then rallied and returned to attack the Maoists with the sticks, stones and bricks. Five persons died as a result and dozens more were injured.

The Maoists claim that the persons that opened fire on them were royalists and professional killers brought in from India by the MJF, but this remains unconfirmed to date as investigations by a probe committee are still ongoing.

Following the incident, at around 4 pm, eight male and three female Maoists were lynched by a mob in front of the Bodhi Mai Temple, some 5 kilometres from Rice Mill Field. They were beaten with bamboo sticks, stones and bricks before being covered in hay and set on fire. Separately, two Maoists were beaten to death at Millan Chowk in Gaur Municipality-1, Rautahat district.

A total of 29 people are reported to have been killed in the Gaur Incident. The Maoists claim that the 28 of the dead were Maoist-affiliated, however there are conflicting reports. Maoist leader Mr. Bijay Kishor Pandit claims that Maoists women had their breasts cut off and that they were raped with sugar cane sticks before being killed, although this has been impossible to confirm to date. Deputy Superintendent of Police Mr. Kuber Kadayat of the Rautahat District Police Office, claims that the women were not raped but did not provide supporting evidence, and medical reports concerning the deceased women have not been made public by health assistant Mr. Promod Raya of Rautahat District Hospital. It is reported that the few policemen at the scene did nothing to avert the bloodshed during the Gaur Incident. The government formed a probe commission on March 23, 2007 under the coordination of a judge of the Patan Appellate Court, Mr. Hari Prasad Ghimire, to investigate the Gaur Incident and report back in 15 days, but the report has yet to be produced. Only 17 of the dead bodies have been identified to date, according to the police.



### 2.3 Kapilvastu Violence: the government's failure to control violence

Kapilvastu district in the southern Terai region was plunged into violence after the murder of the former chairperson of an anti-Maoist Resistance Group, Mr. Mohammad Abdul Mohit Khan. He was shot dead by an unidentified armed group at around 8:30 in the morning on September 16, 2007 while he was on his way to his property in Shivapur VDC-3, Kapilbastu district.

Local villages, including Chandaaurata, Krishnagar, Devipur, Shivapur, Pathhardaiya rapidly transformed into a battlefield when the *Madhesi*<sup>2</sup> and local people of Muslim faith started vandalizing houses, public and private vehicles, especially targeting *Pahade*<sup>3</sup> people. The murder of Mohit Khan soon metamorphosed into widespread ethnic and religious violence, as Mohin Khan was from the Terai and part of the Muslim community.

It is reported that around twenty people died in the violence. About 4000 people have been displaced for months, 55 vehicles were vandalized, 68 vehicles were burnt, and a total of 315 houses were burnt down, and another 100 houses were vandalized. Most of the dead are thought to have resulted from the fires set, but the exact figures of the number of deaths remain unknown as the state agencies have not released this information to date. Starting from September 30, the victims of the violence called the indefinite strike in Kapilvastu district, which has utterly paralysed normal life there.

The police have been inert and done little or nothing to quell the violence. Chandrauta Bazaar, the place from where the violence ensued, is some 200 meters from Area Police Station Chanuta, Kapilvastu district. The Bindhebasानी Armed Police Force in Chandurata is about 500 meters from the incident's site. The police, however, made it to the incident site only an hour later. Some locals claim that the police told them to arrange for their safety themselves and immediately left.

A local resident of Chandaaurata, Kapilvastu district, Mr. Mahadev Pokhrel, said that a group of about 50-60 people from the Muslim community came to the local bazaar at about 8:30 a.m. carrying machine guns and other weapons and had started vandalizing shops and houses. He further stated that the security forces did not arrive at the scene of the incident for about an hour even though they had informed the police in time for immediate intervention.

Violence also erupted in Chandaaurata, Krishnagar, Taulihawa, Devipur, Shivapur, Pathhardaiya, Shivagadhi, Gaguali, Khurariya, Ganeshpur, Bahadurgunj, Birpur, Thuniya, Chanai, Bidhyanagar. Inaction by the police is an undeniable factor in the rapid uncontrolled spreading of the violence.

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<sup>2</sup> People originally from the Terai region of Nepal – the low-lying plain in the southern part of the country.

<sup>3</sup> People originally from the mountainous areas in northern Nepal.





Some people witnessed around 50-60 Young Communist League (YCL) members vandalizing buildings including petrol pumps, and corn mills in Chandrauta, Kapilvastu district. The YCL members were seen leading groups of Pahade people in some villages and were involved in beating Madhesi people and vandalizing their property.

Locals Ms. Tulsari Sunar and Ms. Amrita Sunar said that their husbands were killed in front of them by the mob who beat in their heads with sticks and chopped firewood. Furthermore, Amrita Sunar, was the subject of an attempted rape during the attack. They claimed they had seen 13 people being killed in the area.

#### **Some of the people killed have been identified as:**

1. Shova Ram Sunar, Male, resident of Bishanpur VDC-3, Devipur, Kapilvastu district
2. Dile Sunar, male, resident of Bishanpur VDC-3, Devipur, Kapilvastu district
3. Hari Basnet, male, resident of Bishanpur VDC-3, Devipur, Kapilvastu district
4. Jhabindra Khanal, male, resident of Bishanpur VDC-3, Devipur, Kapilvastu district
5. Mahit Bahadur Magar, male, (resident not known)
6. Dhan Bhahadur Thapa, 50 male, resident of Khurhuria VDC -7, Kapilvastu district
7. Hiramani Kharel, male, resident of Ganeshpur VDC – 4, Manpur, Kapilvastu district
8. Arjun Dater, male,
9. Hasan Puri, a police personnel of Chandrauta Armed Police Forced, Kapilvastu
10. Rameshor Chaudhari, resident of Pathardaiya VDC, Kapilvastu district
11. Narudhin Musalman, resident of Pathardaiya VDC, Kapilvastu district
12. Dudh Nath Teli, resident of Khurhuriya VDC, Parsohia, Kapilvastu district
13. Chandra Bahadur Ghartimagar, resident of Shivapur, Kapilvastu district
14. Bal Bahadur Pun, resident of Bisanpur VDC, Kapilvastu district
15. Mohit Khan, resident of Birpur VDC, Kapilvastu district

#### **2.4 Maoists join the Interim Government**

An Interim Government including the Maoists was formed on 1<sup>st</sup> April, 2007, with Nepali Congress leader Girija Prasad Koirala as the Prime Minister. Five Maoists were sworn in as Cabinet Ministers: Krishna Bahadur Mahara, Dev Gurung, Matrika Yadav, Hisila Yami and Khadga Bahadur Biswokarma. Leaders of the eight political parties, including the Maoists, agreed to hold Constituent Assembly elections on June 20, 2007. The elections have since twice been postponed. Initially until November 22, 2007. They were later postponed a second time, and a date has yet to be officially announced, although they are unlikely to be held before April 2008.

#### **2.5 Maoists quit the Government**

The Maoist decided to leave the government on September 18, 2007 and announced a “nationwide protest movement” stating that the seven-party leaders failed to fulfil their 22 demands. On 20 August, the Maoists had made 22 demands, without which they stated that there



would not be a conducive environment for the holding of Constituent Assembly elections scheduled for 22 November, 2007. The major demands included:

1. The declaration of Nepal as a Republic by the interim parliament before the Constituent Assembly elections took place;
2. The nationalisation of the late-King and his family's property as well as that of present King Gyanendra that was acquired after he ascending to the throne;
3. The immediate punishment of those implicated in the Rayamajhi Commission – the commission formed after the April Uprising in 2006 to investigate of the human rights violations during the repression of the movement by the State - including the enacting of a new law permitting this, if necessary;
4. Form 'Security Council' accordance with interim constitution to democratise Nepal army. Start the process of integrating the People's Liberation Army with Nepal Army by forming a special cabinet committee
5. A round table conference of all sections of the society including Janajathis, Dalits, and the Madhesis to discuss and solve their problems.
6. Form a High Level commission to probe the cases of “disappeared” persons.

All four remaining Maoist ministers at the time submitted their resignation letters to Prime Minister Girija Prasad Koirala after a meeting of the top leaders of the four major political parties - Nepali Congress, the Communist Party Nepal (United, Marxist and Leninist - CPN-UML), CPN-Maoists and Nepali Congress – Democratic (NC-D) - held at Baluwatar failed to address their demands. The Maoist leaders have stated that the nationwide movement would be non-violent and that their People's Liberation Army will remain in cantonments.

Since the Maoists pulled out there have been increasing concerns about whether they will return to activities that will lead to further human rights violations. At the time of writing of this report, there are indications that the Maoists may be in the process of re-establishing their court system in Nepal, which the AHRC and others have in the past criticised for handing out sentences that are in themselves human rights violations as the result of unfair trials. This would signal a return to a parallel justice system in the country and the spreading of injustice and impunity that accompanies it.

The CPN-Maoists withdrew their proposal on the establishment republic and voted in favour of the amendment proposal on the same issue filed by the CPN (UML) as failed political deliberations finally led to a parliamentary vote on November 4, 2007. The House passed the UML's amendment motion on the establishment of a republic and the Maoists' motion for adopting a proportional representation-based voting system, by a simple majority.

The UML amendment motion seeks the announcement of a republic in Nepal from the House and takes steps for the implementation of republican system at the earliest possible time. The two motions were put to vote following an intense debate in the House. However, the discussions are still going on among the political leaders and no progress has been made yet. The Maoists have since put forward new demands saying that the Maoists' People's Liberation Army (PLA) should be integrated into the country's armed forces before constituent assembly elections can take





place. These types of issues have been at the centre of the stalling political reform process and remain to be solved.

## **2.6 The Supreme Court's Decision on disappearances and directives to form a high level commission to investigate such cases**

On June 1, 2007, the Supreme Court of Nepal ordered the Government to immediately investigate all allegations of enforced disappearances, to establish an independent commission to conduct investigations and to enact comprehensive legislation that would criminalize enforced disappearances. However, the Government has failed to adhere to the order of the Supreme Court. Instead, the Government decided to form the commission under the Enquiry Commission Act of Nepal which, according to the Supreme Court, is inconsistent with Nepal's international obligations. Civil society organizations in Nepal, international organisations and the families of disappeared persons rejected the Government's proposed course of action, as it blatantly disregards the decisions of the Supreme Court as well as Nepal's international obligations.

In its June 1<sup>st</sup> judgment on disappearances, the Supreme Court of Nepal ruled that the existing legal arrangements that would govern any probe commission's inquiries into cases of human rights violations, including disappearances, are currently insufficient and that the current criminal legal apparatus lacks the necessary provisions to deal with these issues. The Court held that it is imperative to enact a separate law to deal with cases of forced disappearance. The Court directed the government to form a commission on enforced disappearances only after enacting a comprehensive law to govern it and suggested that the government consult the UN Convention of Enforced Disappearance before drafting and enacting such a law. It is recalled that it is a constitutional obligation for the government to follow orders issued by the Court and that the country's Interim Constitution has preserved a mandatory provision that makes any verdict of the Supreme Court binding on the government.

Despite this, the "High Level Probe Commission on Disappeared Persons" was formed under the chairmanship of former-Supreme Court Justice Narendra Bahadur Neupane to investigate cases of disappearances on June 21, 2007. After strong opposition to this body by civil society, local human rights organisations and the international community, including the OHCHR, the commission has not been working, but has also not been formally dismissed.

## **2.7 Failure to respect provisions of the Comprehensive Peace Accord**

The Government of Nepal and the Communist Party of Nepal (Maoist) signed the Comprehensive Peace Accord (CPA) on 21 November, 2006, ending a decade long armed conflict. However the commitments made within this accord have for the most part not been implemented. The following key commitments are amongst these:

3.4. To adopt a political system that complies with universally accepted fundamental human rights, multiparty competitive democratic system, sovereignty inherited in people, supremacy of the people, constitutional check and balance, rule of law, social justice, equality, independent judiciary, periodic election, monitoring by civil society, complete press freedom, people's right



to information, transparency and accountability in the activities of political parties, people's participation, impartial, competent, and fair concept of bureaucracy.

5.2.6. Both sides pledge to abandon all types of war, attack, counter-attack, violence and counter-violence in the country with a commitment to ensure loktantra, peace and forward-looking change in the Nepali society. It is also agreed that both the sides would assist one another in the establishment of peace and maintaining of law and order.

7. Both sides would not be involved in the acts of torture; kidnapping and forcing the civilians in any work and take necessary action to discourage such acts.

As we shall see below, human rights violations continue to a large extent in Nepal and promises by both sides to reveal the whereabouts of persons disappeared during the country's conflict that was ended by the CPA have also not been kept.

### **3. Human Rights Violations during 2007**

As has been previously stated, serious violations of human rights have continued to be perpetrated with impunity over the last year. Some of the cases that the Asian Human Rights Commission has dealt with through its urgent appeals programme over the last twelve months are presented below, to allow for a greater understanding of the nature of some of the violations being committed. It must be noted that many of the cases cited here and taken up by the AHRC were allegedly perpetrated by the police or military, and in some cases the Maoists. However, it should be added that a great number of killings and abductions are increasingly being perpetrated by a number of new armed groups in Nepal, as stated in the statistics released by INSEC included above. These cases have thus far been difficult to individually document in detail for use in the urgent appeals programme for a variety of reasons, including difficulty of access to victims in remote areas and due to the fear of reprisals in these cases.

In general, the end of the conflict has not resulted in a significant reduction of many of the worst violations of rights, including torture, which remains endemic and is practiced by the police as a method of investigation and punishment in regular cases. While cases of disappearance have been greatly reduced from the world-leading highs of 2003 and 2004, abductions – often for money – by armed criminal groups are significantly on the rise. The whereabouts of many persons that disappeared during the recent conflict remain unknown.

In a statement delivered to the UN Human Rights Council's 4<sup>th</sup> session on March 22, 2007, the ALRC and other Asian NGOs highlighted the problem of impunity concerning past disappearances, stating that: *"In Nepal, while disappearances have decreased significantly since the presence of the OHCHR - which must be extended - the army and the Maoists are refusing to disclose the whereabouts of at least 650 and 181 disappeared persons respectively, and there is*



*little to indicate that human rights and impunity are being addressed in reality rather than rhetorically in the emergent system in the country.”<sup>4</sup>*

Extra-judicial killings are ongoing at alarming rates, as are rapes, and as regional and political tensions increase there is a distinct possibility that these will only continue to increase as the criminal justice system is failing to address violations. This climate of impunity and absence of the rule of law are leading the country to the brink of another internal conflict. Many in the country increasingly believe that violence is the only way to get attention and to solve grievances in the country. While many on the outside seem to be of the opinion that the political developments in Nepal over the last 18 months or so serve as a model that other countries should follow, the reality is that there is very little holding the country back from returning to bloody conflict and gross rights abuses. While there have been positive developments during this time, the political situation remains extremely fragile, and increasing infighting is jeopardising the political parties’ ability to deliver on the peoples’ expectations. Every time a human rights violation is perpetrated and the justice system fails to make those responsible accountable, the country moves a little closer to a return to violent conflict. This time, it risks being more unpredictable and bloody, as the number of armed groups has increased.

Concerning impunity, which remains the main stumbling block concerning human rights and political progress in Nepal, even though the political parties are continuing to avoid the question will all their might, the AHRC released several statements throughout the year. It has been noted that “One of the most perplexing factors is that those who have been deprived of political power are still in positions of power within the military, police and the bureaucracy. Those who have earlier played a significant role in maintaining tyranny are now supposed to play the role of guardians of democracy.”<sup>5</sup>

Impunity is in general guaranteed by a lack of investigations, which then renders any successful prosecution of perpetrators. This is a common theme running throughout the following cases.

### **3.1 Numerous cases of rape, but no resultant justice or redress**

The AHRC is surprised by the large number of rape cases that it has received over the last twelve months. In one case, that took place one day after the historic November 8, 2006 so-called six-point agreement<sup>6</sup> between the seven political party alliance and the Maoists that paved the way for the CPA later the same month, a woman and her daughter were raped by members of the police.<sup>7</sup>

At around 8 pm, two drunken Armed Police Force members, Chakra Bahadur and Padam Bahadur, came to the house of a woman (identity withheld for security reasons) in Kunathari Village Development Committee (VDC), Surkhet district, searching for liquor. They reportedly

<sup>4</sup> See statement at: <http://www.ahrchk.net/statements/mainfile.php/2007statements/972/>

<sup>5</sup> See statement at: <http://www.ahrchk.net/statements/mainfile.php/2007statements/984/>

<sup>6</sup> AHRC 2006 Annual Report, p. 164: <http://material.ahrchk.net/hrreport/2006/AHRC2006HRReport.pdf>

<sup>7</sup> Urgent Appeal - Rape of a mother and daughter: <http://www.ahrchk.net/ua/mainfile.php/2006/2134/>



raped both the woman and her daughter. A First Information Report (FIR) was only recorded on November 16, 2006, and the police authorities initially refused to have the women undergo medical examinations, leading to the loss of crucial evidence. District police officers dealing with the case reportedly said that medical examinations were “not necessary for the investigation of this case.” However, they did finally collect the victims' under-garments and send one of the perpetrators, Chakra Bahadur, to the Surkhet district hospital for a medical examination. The police have since failed to further investigate the case.

Chakra Bahadur was released on the orders of the District Court Surkhet on December 3, 2006, on bail amounting to rupees 5,000. He was released on the condition that he later present himself to the court. Padam Bahadur had appeared before the District Court of Surkhet on May 16, 2007. On the same day, the court decided to release him on rupees 7, 000. bail The court has not given its final verdict yet concerning this case, but there are concerns that the perpetrators will, as is usual in Nepal, get away with minimal or no adequate punishment.

In another, a 12-year-old girl was allegedly raped by a senior Police Constable in the Mohatari district of Nepal.<sup>8</sup>

Mr. Manoj Chaudhary, a 27-year-old senior-ranking Police Constable stationed at the Gausala Security Base Camp in the Mohatari district, raped the girl at her home at around 8:30 pm on November 18, 2006. The victim's parents returned home and spotted the accused quietly leaving the house, but managed to identify him. They immediately went to military camp and reported the incident to Police Inspector Bimal Sharma, Inspector of Armed Police Force Kishor Shrestha and Army Lieutenant Min Bahadur Thapa, who denied that Mr. Chaudhary or any of their personnel had been allowed to leave the camp. On November 19, 2006, the girl underwent a medical examination at Mohatari District Hospital but the District Police Office have declared the examination findings null and void and refused to provide them to the girl's family. Instead, Police Inspector Kishor Shrestha has alleged that the victim was having a romantic affair with the accused, and claimed that he possessed several love letters that were exchanged between them. However, he refused to provide the letters as evidence, and at this stage, there is no evidence whatsoever to prove his allegations.

Mr. Chaudhary was however then taken to the Mohatari District Court on the charges of rape of a minor, and was remanded for further investigation. Under Section 2(2) of Chapter 14 of the Civil Code of Nepal (2020) a person can be imprisoned for up to 7-10 years if found guilty of rape of a minor (between the ages of 10-16, under the current serving definition in domestic Nepali legislation).

Manoj Chaudhary was initially taken sent to Jaleshor Jail, Mohatari district. The District Police Office in Mohatari completed its investigations and forwarded the final investigation report to the Public Prosecutor's office on December 14, 2006. Manoj Chaudhari was however released on May 28, 2007 following a decision of District Court of Mahatori district. The court decision says that the victim and her family made statements to the court stating that the alleged perpetrator

<sup>8</sup> Urgent Appeal - Rape of a 12-year-old girl: <http://www.ahrchk.net/ua/mainfile.php/2006/2110/>



had not raped her and he was not present when the incident took place. This contradicts their earlier statements to the police. It is reported that the alleged perpetrators bribed the victim's family with rupees 80,000 to get them to drop their claims. It is also rumoured that unknown people connected to the perpetrators have been constantly threatening the victim's family to get them to withdraw the case.

In another case, a 40-year-old mentally ill woman was allegedly raped by a member of the military.<sup>9</sup> The woman resides in Ward no. 9, Kavre Village Development Committee (VDC), Kavreplanchowk district, Nepal.

On December 23, 2006, Mr. Bhakta Bahadur Shahi, a member of the Rudradhoj Battalion Dhulikhel, Kavreplanchowk district, punched the victim on the chin and dragged her to a nearby jungle where he raped her. On December 24 and 25, several army personnel came to the victim's house offering money in an attempt to persuade her brother to settle the case. On December 26, the victim's family attempted to lodge an FIR at the Kavrepalanchowk District Police Office (DPO), but the police refused to record the case.

Further attempts to lodge an FIR were made on December 27, but Rudradhoj Battalion Colonel Sudarshan Silwal and The DPO's Deputy Superintendent of Police (DSP) Mahendra Pokhrel continued to create obstacles. Colonel Sudarshan Silwal even stated that *"It is better to make compromise rather than going for the legal process. I suspended the army man from his job and kept him in army custody yesterday evening after I had learnt that he had done a mistake. We will give time to the family members to think about the incident before registering FIR to the DPO."* Similarly, DSP Mahendra Pokharel also told the family members to think before registering the case and not to listen to whatever the lawyers said. However, the family was ultimately able to registered FIR on December 27, 2006. Colonel Sudarshan Rijal assured the family that the alleged rapist, Bhakta Bahadur, would be transferred to the DOP, in line with the law, by December 28.

The alleged perpetrator, Bhakta Bahadur Shahi, was eventually taken into custody at the DPO. The victim's family members have been threatened by army personnel and have been displaced for some months.

The case was under investigation and the Bhakta Bahadur was detained at District Jail of Kavrepalanchowk district pending trial, but he reportedly escaped from jail on November 15, 2007. He has still not been found by the police. It is reported that guards were involved in his escape from jail.

This case shows how the authorities attempt to block attempts at registering FIRs. If there is no FIR then there is no requirement for the police to investigate a case, and therefore nothing is done. In this way the police are able to nip in the bud any attempts to have cases investigated where members of the police or military are accused of committing abuses. If they are forced

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<sup>9</sup> Urgent Appeal – mentally deficient woman raped <http://www.ahrchk.net/ua/mainfile.php/2007/2154/>



into investigating by certain amounts of pressure concerning the case, then the suspect may eventually evade justice in one of many ways. Escaping from prison is a flagrant way that this may occur. One way or another, impunity prevails.

In yet another case, on June 4 and 5, 2007, a 14-year-old mentally ill girl was raped by three police constables from the Zonal Police Office (ZPO) and one civilian in Mahendranagar, Kanchanpur district.<sup>10</sup> On June 4, 2007, at around 11 am, the girl asked police constable Harendra Chand for directions. He tricked her into following him and took her to the house of another police constable, Rekham Shahi, where the two policemen allegedly took turns raping her one for about two hours. The victim tried to resist but they threatened to kill her if she did not keep quiet.

They then took her to police constable Janak Mahatara house, and left her with Janak's wife, Radhika Mahatara, saying that they would come back later. At about 9pm, Janak Mahatara and his nephew Tirtha Dangi arrived home and when Janak's wife went out they allegedly raped her repeatedly for most of the night, threatening to kill her if she complained.

Since then, Rekham Shahi and Tirtha Dangi were arrested on June 5, but Harendra Chand and Janak Mahatara are still at large. Radhika Mahatara was also remanded for being an accomplice.

The following case shows the cost of being caught between the Maoists and the police or army in Nepal, despite the conflict having been officially brought to an end in November 2006. All sides are ensuring that impunity for violations continues.

A 15-year-old ninth-grade student from Ramghat Village Development Committee (VDC) ward number 8, in Surkhet District, was raped on July 19, 2007, by two men - Ram Narayan Bhattari of the Nepal Army and Yadav Thapamagar.<sup>11</sup> The girl had reportedly been recruited by the Maoists' People's Liberation Army (PLA) at their camp in Gumi, Surkhet district for 5 months, starting on December 9, 2006, having been assured that she would have a permanent job and a good salary. She left on May 8, 2007 with the permission of the commander, and returned to school. The Maoists had since been attempting to have her join their party and work for the Maoist-affiliated Young Communist League (YCL), but she has refused to do so. She is now facing problems from both the Army and the Maoists.

On July 19, 2007, the victim was approached by the two men while waiting for a bus in Pipira Chowk, Latikohili VDC, Surkhet district. They travelled on the bus together and got off near Bheri Bridge. Yadav Thapamagar then reportedly took the girl by the arm and dragged her around 100 metres into the jungle, where he threatened to kill her if she made any noise, before undressing and raping her. Ram Narayan initially kept watch by the road but then came down and also raped the girl. The two men then left her naked in the jungle.

<sup>10</sup> Urgent Appeal – mentally ill girl repeatedly raped:

<http://www.ahrchk.net/ua/mainfile.php/2007/2439/>

<sup>11</sup> Urgent Appeal – 15-year-old girl raped: <http://www.ahrchk.net/ua/mainfile.php/2007/2534/>





Following a medical check-up that shows that she was raped, attempts were made to register an FIR at the Banke district District Police Office (DPO), however the DPO suggested that the victim register the FIR at the DPO in Surkhet. On August 1, 2007, the police questioned her about the incident but stated that they could not register an FIR without having the complete details of the perpetrators – the victim was not able to give them her rapists' home addresses. Registering FIRs with the police is frequently obstructed for such unacceptable reasons in Nepal, especially when victims are complaining of abuses committed by members of the military or other State-actors. On August 3, 2007, the victim was finally able to register an FIR at the Surkhet DPO against the two alleged rapists. Police Inspector Nain Singh, had at first not accepted the FIR and told the victim to remove the name of the member of the Army, but was eventually persuaded to register the FIR. On August 5, 2007, the Surkhet DPO sent a letter to the Midwestern Divisional Army Headquarters in Surkhet district, calling on the Army to hand over Mr. Ram Narayan Bhattari to the police, but to date the Army has not responded. The police have also failed to arrest the other suspect, Mr. Yadav Thapamagar.

On August 23, 2006, the District Court Surkhet ordered Mr. Ram Narayan Bhattari to be sent to the District Jail of Surkhet for the further trial. Ram Narayan, however, went to the Appeal Court, Surkhet to challenge the decision of the District Court. The Appeal Court, Surkhet, gave ordered his release on September 13, 2007.

Women are also subjected to sexual threats and violence as a form of torture by the police during investigations, as is shown by the next case, which again illustrates the terrible damage to lives that the conflict in Nepal has had on individuals. Ms. Kalpana Bhandari was tortured and molested by the police during investigations into a government vehicle having been set on fire in Kathmandu on 17 May 2007.<sup>12</sup> The 30 year-old victim was arbitrarily arrested from the tent in which she lives as a suspect in the arson attack.

The police caught her by the hair and manhandled her, and the police inspector in charge then allegedly ordered a police constable to rape her. She was made to lay down on the ground and was kicked and beaten with sticks on her groin and breasts for around one hour during which they also threatened to kill her. She was then dragged 500 meters to a police van in which she was again made to lay face down and then kicked until she fell unconscious.

Ms. Kalpana Bhandari's husband was a sub police inspector before being killed in a clash between Maoists and the security forces in April 2002 at Bhakundebesi of Kavre district. A week later after his death, the Maoists demanded one hundred thousand rupees from his father. As he was not able to pay, he was then abducted and killed by the Maoists. The victim had been working as a police head constable at the District Police Office in Dhulikhel, Kavre district, but she resigned after receiving repeated death threats from the Maoists. She left home with her son and daughter and came to Kathmandu, where she eventually ended up being tortured by the police, as stated above.

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<sup>12</sup> Urgent Appeal – Woman beaten and molested by the police:  
<http://www.ahrchk.net/ua/mainfile.php/2007/2414/>



The victim filed a case against the alleged perpetrators under the Torture Compensation Act, 1999. However, the Act only allows victim compensation that does not match international standards and does not provide any means of prosecution or punishment of cases of torture.

She has received serious threats from the police since she registered the case with the Kathmandu District Court on June 11, 2007, concerning her arbitrary arrest, torture and sexual molestation by members of the police on May 17, 2007.<sup>13</sup> Police Inspector Hira Bahadur Pandey is reported as having stated to a person he was using to deliver the threat that: "Kalpana has filed a case against us. So, convey to her the message that she must withdraw the case. If she doesn't withdraw the case, I will arrest her under any charge and treat her badly."

Separately, Alisha (name changed to safeguard victim's identity), an 18-year-old woman and permanent resident of Jumla district, was allegedly raped on September 15, 2007, at about 12 noon, by a Maoist health worker commander whose identity has not been found yet. He was working as a health worker at the Health Department of the Sixth Divisional Maoists Main Cantonment based in Dashrathpur, Surkhet district, in the midwestern part of Nepal.

Prajul persuaded Alisha to go along with him to the Satkar Hotel at Birendranagar Municipality-6, Surkhet district, where he raped her.

A First Information Report (FIR) was provided to the District Police Office (DPO), Surkhet, on 21 September 2007, however, the DPO didn't register the FIR. The Deputy Superintendent of Police (DSP), Mr. Bahadur Janga Malla of DPO Surkhet refused to register the FIR. It is thought this is because a local Maoists leader named Basant went to the DPO in Surkhet and interfered in the case. Alisha had been in the Maoists People's Liberation Army (PLA) but had left the PLA in June or July 2006 and joined a training project on sewing clothes with the help of a local NGO in Surkhet district. As the FIR was not registered, Alisha later went to District Police Office, and withdrew the case, reportedly having been forced to do so by the Maoists.

### **3.2 The problem of endemic torture in Nepal**

Torture is widespread and is used by the police as a substitute for proper investigations. They instead rely on forced confessions extracted under torture to close cases. Judges ignore claims by victims in court concerning torture and investigations into allegations of the use of torture are stifled by the police before they get anywhere. Weaknesses in the law compound this problem and engender its recurrence. Impunity reigns for torturers, as we shall see in the following cases.

A case that perhaps best illustrates the brutality of torture in Nepal concerns Mr. Bikash K.C., an 18-year-old school teacher, who was arrested at Bidhayanagar in Kohalpur VDC - 2, Banke District at 2:00 a.m. on September 13, 2007, by a group of policemen from the Area Police

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<sup>13</sup> Urgent Appeal Update – Complainant receives threats:  
<http://www.ahrchk.net/ua/mainfile.php/2007/2472/>



Office (APO), Kohalpur, Banke district.<sup>14</sup> Bikash K.C. was living in Kohalpur-2, Banke District, with his relative, Sub Inspector (SI) Ganeshman Khadka of the Kohalpur police. Earlier that night 3-4 strangers had attacked Ganeshman Khadka in his home, who then blamed Bikash K.C. for the attack and called the police to have him arrested. Bikash K.C. was taken to the Kohalpur Area Police Office, where he was detained illegally for several days, threatened with death and subjected to grave forms of ill-treatment and torture.

The police provided him with very little and poor quality food during detention. Furthermore, he was reportedly given food mixed with shards of glass and was forced to eat an iron nail covered with paper. He was also forced to stand for long periods of time and subjected to sleep deprivation. Most nights, SI Ganeshman and Assistant Sub-Inspector (ASI) Devi Lal Bohara entered his cell and threatened to shoot him. He was subjected to daily beatings with iron rods. He remained handcuffed throughout detention and was not allowed to meet with any visitors, and was moved to different cells when persons, including human rights activists, tried to visit him.

The Police Inspector in charge of the APO, Mr. Janak Bahadur Shahi, took no action to prevent the arbitrary detention and torture, even stating that it was a private family matter. Bikash was eventually remanded to the District Court, Banke District on September 27 and was charged with attempted murder. He was tortured later on the same day by being beaten with iron rods on his buttocks and back, by three policemen, including Mr. Tilak Sharma and Dipendra Khatri, reportedly on the instructions of SI Ganeshman. SI Ganeshman also beat him repeatedly with a baton during this time. When the victim asked for water to drink he was instead forced to drink urine. Bikash was detained at the APO in Kohalpur, Banke district until he was transferred to the Banke District Jail on 31 October, 2007 while awaiting trial. It is hoped that he will be subjected to a fair trial and that, if found responsible, will receive adequate punishment in line with international standards.

### **Torture used as the main method of investigation**

Given that perpetrators of torture are not being brought to justice and that any complaints made concerning torture risk causing further problems for the victims rather than any reparation, the use of torture continues unabated, to the extent that in many circumstances the police resort to this practice as the main means through which they conduct investigations. Individuals, most commonly the poor, are arbitrarily arrested and tortured into admitting to a crime they did not commit, while those responsible for the crime remain free to continue with their criminal activities, reinforcing the cycle of injustice and deterioration of the rule of law in the country.

In the case mentioned in the section on the problem of rape earlier in this report, concerning the molestation and torture of Ms. Kalpana Bhandari, it should be noted that she was not alone in being arbitrarily arrested and tortured as part of the police's investigation into an arson attack

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<sup>14</sup> Urgent Appeal – brutality of torture: <http://www.ahrchk.net/ua/mainfile.php/2007/2607/>



that led to the destruction of a government vehicle. 13 men were also arrested and tortured on May 17, 2007.<sup>15</sup>

Mr. Bhoj Raj Timilsina, the coordinator of Maoists Victims Group of Kathmandu, was arrested from Koteshwor, having been accused of being involved in the arson attack. He was first taken to the Gausala Metropolitan Police Sector, Kathmandu then to the Singhadarbar Metropolitan Police Circle. He was tortured and threatened with death or with being detained for 10 years by the police. He was released on May 25 after the complaint against him was dropped.

In another case, Mr. Kalyan Budhathoki was arrested along with 11 other Maoist friends by the security forces in Tinkune, Kathmandu on May 17, 2007. All of them were allegedly beaten indiscriminately with sticks by the police, having also been accused of the arson attack. They were then taken to the Metropolitan Police Circle, Newbaneshor and then to Gausala Metropolitan Police Circle, Kathmandu for the further investigation. Nine persons were released that day, while the remaining three including Mr. Kalyan Budhathoki were illegally detained for 8 days and released in Singhadarbar Metropolitan Police Circle, Kathmandu on May 25. Despite having tortured many people in this case, none of those persons were found guilty. Torture was used as a means of investigation as well as a means of repression and punishment against Maoists.

There are many other cases in which it is evident that the police resort primarily to torturing persons as part of investigations. For example, Mr. Jonson Gurung and Mr. Raju Rai were both illegally detained and tortured by members of the Hanumandhoka Metro Police Range (MPR), Kathmandu, during theft investigations.<sup>16</sup> Mr. Jonson Gurung was reportedly arrested on March 7, 2007 by some 12-13 traffic police officers in Kathmandu on suspicion of stealing a motorcycle. He was taken to Traffic Police Office, Putalisadak for the further investigation, where a stranger accused him of being involved in stealing gold two years earlier. He was handed over to the MPR on March 8 and tortured into identifying his accomplices and confessing to having stolen gold. He identified Mr. Raju Rai, who was then arrested and tortured into confessing his guilt. On 16 March, 2007, the Metro Police Range (MPR), Hanumandhoka, Kathmandu transferred both of them to Metro Police Circle at Kalimati, Kathmandu. This case illustrates the arbitrary nature of police investigations. Confession obtained under torture cannot be viewed as being reliable as persons will say anything at such times to avoid further pain.

### **Serial torturers operate in Morang District Police Office**

Perhaps the most revealing cases of torture that the AHRC dealt with during 2007 are the series of cases emanating from the Morang District Police Office (DPO). Numerous cases, frequently involving the same police officers and methods, have come to the AHRC's attention and despite repeated urgent appeals and requests for interventions from the UN Special Rapporteur on

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<sup>15</sup> Urgent Appeal – 13 men tortured during police investigation:  
<http://www.ahrchk.net/ua/mainfile.php/2007/2426/>

<sup>16</sup> Urgent Appeal – two persons tortured in theft investigations:  
<http://www.ahrchk.net/ua/mainfile.php/2007/2293/>



Torture, new cases of torture continue to surface. The AHRC has issued urgent appeals in which it has branded the Morang Police of being serial torturers.

**Case 1:** Mr. Kalam Miya, a 27-year-old manual worker from Pakali VDC-3, Sunsari district, Nepal was detained by the police on July 30 and 31, 2007 and tortured, threatened with death and forced to confess to a robbery.<sup>17</sup> At the Morang DPO, he was locked inside the Women Police Cell room and interrogated and beaten with a stick by three police men, including Sub Inspector Balram Yadav. Mr. Kalam Miya refused to confess to the false accusations, at which point he was threatened with being tortured to death unless he did so. He was again tortured on July 31, 2007, from 9 a.m. and finally, in a semi-conscious state after enduring the severe beatings for around an hour, Mr. Kalam Miya agreed to sign any documents the police wished in order to escape further torture. He was then produced before the Morang District Court on July 31 and remanded for five days. He was remanded for ten more days by the court on August 5, 2007, despite having complained of having been subjected to torture to the judge, who ignored his complaint. The victim was released on August 26, 2007 on the order of the Morang District Court, Morang. After he was released, he registered a case under the Torture Compensation Act on 2 September 2007. However, he was repeatedly harassed by the police and has been forced to flee to India. The police's Human Rights Cell has responded to the AHRC concerning this case by claiming that he was not tortured or ill-treated.

**Case 2:** In this case, another person with the same last name was also arrested and tortured as part of the robbery investigation.<sup>18</sup> Mohammed Pappu Miya, 19, was arrested on September 4, 2007, in Panitanki Chowk, Biratnagar, Morang District. After his arrest he was taken to Morang District Police Office (DPO), where he was tortured into confessing involvement in the crime. He was tortured in the DPO's women's cell, which is in a separate building, by Rajendra Mehata, Bal Ram Yadav, Shyam Chaudhary. On September 5, 6, 7, 8 and 9 he was again tortured into confessing to other a large number of other robbery cases. It appears that the police were attempting to solve all of their open cases in one go. He was only allowed to meet members of his family members after seven days of detention, was only provided with arrest and detention letters on September 8, and was only presented before Morang District Court on September 9, 2007, on robbery charges. Under law, arrested persons have to be presented before a court within 24 hours of their arrest. He was transferred to the Area Police Office (APO), in Rani, Morang District on September 22, and was sent to Morang District Jail on 5 October, 2007, having been found guilty by the judge on all counts of robbery. The length of his sentence is at present unclear.

**Case 3:** This case concerns another person with the same last name. Mohammad Rajjabul Hussain Miya, 24, was arrested on September 10, 2007 and then tortured the Pakali APO by the same policemen as above, ASI Balram Yadav, Shyam Choudhary and Rajendra Mehata of the Morang DPO. He was tortured until he made a forced confession and signed a piece of a paper, the content of which he was not allowed to read. He was then transferred to the Morang DPO

<sup>17</sup> Urgent Appeal - Morang's serial torturers, Case 1: <http://www.ahrchk.net/ua/mainfile.php/2007/2537/>

<sup>18</sup> Urgent Appeal - Morang's serial torturers, Cases 2 and 3:

<http://www.ahrchk.net/ua/mainfile.php/2007/2627/>





where he was taken to the women's cell and accused of being a thief and a rapist. ASI Balram Yadav reportedly then threatened to kill and rape his family members. He was tortured again until he gave in and accepted the charges of robbery and rape that the policemen had levelled against him, and signed another such paper. Following this his ordeal was not over. He was shown a list of people's names and interrogated about them. When he said he didn't know them, he was again beaten until he confessed to knowing them all. The policemen then hit him until he lost his consciousness. He was woken up a few minutes later and forced to acknowledge his involvement in a series of robberies. On September 10, Mohammad Rajjabul Hussain Miya was admitted to Koshi Zonal Hospital, Morang, for medical treatment, during which he showed his injuries to a medical officer, but a policeman pulled the victim out of the medical room and warned him not to tell anyone about his injuries. He was transferred to the Rani APO in Morang District on September 22, before being sent to Morang District Jail on 5 October, 2007, having been found guilty and sentenced accordingly. The exact length of the sentence is unknown at present.

**Case 4:** Again, this concerns a man with the same last name. Mohammad Jabbar Miya, 19, was arrested on September 4, 2007, by Morang DPO's Assistant Sub Inspector of Police (ASI) Mr. Balram Yadav and Shyam Chaudhary, on allegations of robbery and rape.<sup>19</sup> He was taken to the DPO's women's cell where he was tortured by as many as 19 policemen, including Balram Yadav, Shyam Chaudhary and Rajendra Mehata. Balram Yadav. The next day, September 5, he was taken to the women's cell, where a woman, the alleged owner of the robbed house, was present, and he was beaten when he stated that he did not recognise her.

Later that day, he was taken to his house, which the police searched to try to find the stolen goods. The police beat and arrested his aunt, 37-year-old Ms. Noorjan Khatun. They were both tortured and threatened with death with guns pointed at their heads. Ms. Noorjan Khatun was finally released on September 10, 2007, following significant pressure on the police from her neighbours. Mohammad Jabbar Miya was beaten regularly during the first five days following his arrest on September 4, 2007. He was transferred to the Rani APO in Morang District on September 22, before being sent to Morang District Jail on October 5, 2007, having been sentenced as the result of his confession extracted under torture.

These cases in Morang DPO that have been committed by the same police officers and show a pattern of grave torture in order to force numerous confessions in order to avoid the need for real investigations are a shocking example of the state of policing in Nepal. To date, no action has been taken against these police officers and the AHRC continues to receive reports indicating that the use of torture is ongoing in the Morang DPO. The authorities need to immediately take action to prevent further abuses in these cases and to bring those responsible to justice. It is also a serious concern that the victims of torture are being tried and convicted based on evidence extracted under torture. Judges should not consider such evidence as being admissible in court and should ascertain whether persons under trial have been tortured during detention and interrogation before passing judgement. It is also imperative for the Nepalese authorities to

<sup>19</sup> Urgent Appeal - Morang's serial torturers, Case 4:  
<http://www.ahrchk.net/ua/mainfile.php/2007/2629/>





immediately take measures to ensure that torture is criminalized in the country, in order to address the problem of impunity concerning this very serious human rights violation, in line with its international obligations.

### **No-one is spared – children are being tortured in Nepal**

The AHRC has also dealt with several cases in which children have been tortured during investigations by the police concerning petty crimes.

In one case, the Kohalpur Area Police Station, Banke district police arrested seven persons, including 5 minors and 2 adults, in relation to a small shop theft. Six of them were arrested on March 11, 2007 from their home in Naubasta Village Development Committee (VDC) - 8 and one was arrested in Bankatwa VDC-4 on March 10.<sup>20</sup> The persons are aged 15, 16, 16, 16, 16, 19, and 26. They were arrested without a warrant and were reportedly subjected to torture under the command of police inspector Mr. Surya K.C. They were initially accused of being involved in a small shop theft, but were arbitrarily charged with stealing a vehicle one month earlier from the Nepalgunj-Surkhet Road, Banke district. The police tortured them to extract forced confessions during which time they had pistols aimed at them and were threatened with death. They were detained by the police until on April 6 they were transferred to Banke District Jail at the court's order for further judicial inquiry. No investigations into the allegations of torture have been launched.

In another case at the Banke District Police Office, 8 young persons, including 6 minors, were arbitrarily arrested on 4 May 2007 in connection with a robbery, and then subjected to torture. The victims' right to receive a medical check-up was denied during their prolonged detention. The denial of access to doctors and prolonged detentions are often intended to conceal physical evidence of torture.<sup>21</sup> All of them were released on May 23, 2007 on the condition that they present themselves in court when required.

### **Complainants being silenced**

When persons that have been tortured try to file complaints against the police, rather than receiving redress and seeing justice done, they may instead face further abuses by the same perpetrators, as they remain free and above the law. The situation of 20-year-old Mr. Puradi Prasad Pandey of Kalikot district is a case in point.<sup>22</sup>

The victim was arrested three times by members of Kalikot District Police Office (DPO), on suspicion of having murdered his neighbour in December 2006. He was initially arrested on December 16, 2006 and tortured before being released the next day. He was re-arrested on

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<sup>20</sup> Urgent Appeal – Children tortured in petty theft case:

<http://www.ahrchk.net/ua/mainfile.php/2007/2336/>

<sup>21</sup> Urgent Appeal – children tortured and denied medical assistance:

<http://www.ahrchk.net/ua/mainfile.php/2007/2416/>

<sup>22</sup> Urgent Appeal – torture complainant threatened: <http://www.ahrchk.net/ua/mainfile.php/2007/2281/>



December 22 and tortured, including being suspended upside down from two iron pipes held between two trees and beaten until he lost consciousness, before being released. He was again interrogated and tortured on December 31 and was released on January 3, 2007. Several others, including Narendra Pandey, Ranga Raj Pandey, Tularaj Pandey, Devi Pandey, Dhanraj Pandey, Nanda Pandey, Saur Pandey and Mahendra Pandey, were reportedly also arrested and tortured by the police as part of this investigation. It is clear concerning this case that the police, perhaps acting on a lead, simply arrested everyone with the same last name and tortured them until they had a confession.

The victim has been receiving death threats in order to force him to withdraw the case he filed against the three allegedly responsible police officers - Sub Inspector Mr. Jagat Bahadur Rawal, Police Inspector Man Bahadur Chaudhary and Assistance Sub Inspector Kamal G.C. - under the Torture Compensation Act. The day after a district court summons on February 25, 2007, Assistance Sub Inspector of Police (ASI) Kamal G.C. threatened Mr. Pandey to withdraw the case or face the consequences. Police Sub Inspector Jagat Bahadur Rawal and Police Inspector Man Bahadur Chaudhary also reportedly repeated threats.

In a strange turn of events, on February 27, 2007, four Maoists came to his house of the victim and also threatened him to get him to withdraw the case. Maoist Bhanu Prasad Pandey, who has the same last name as the victim, reportedly told him: 'You have to withdraw the case against the police if not you will lose your life'. It appears that the murder was actually committed by Maoists and that the police did nothing to investigate this effectively, but instead arbitrarily arrested Mr. Puradi Prasad Pandey and tortured him into making a forced confession. Finally, he withdrew his case. From this case we can also see how impunity is serving to protect anyone who commits human rights abuses, whether a member of the police, army or Maoists.

Threats of reprisals are also used to silence human rights defenders who are seeking to shed light on the many violations of rights in Nepal's recent history. Human rights defender Mr. Jitman Basnet of Solukhumbu District, Nepal, was threatened on May 21, 2007. He has previously released a book on his experiences as a disappeared person who survived.<sup>23</sup> Mr. Basnet was arrested on February 4, 2004 by plain-clothed army personnel from the Bhairabnath Army Battalion, Kathmandu, and then arbitrarily detained incommunicado for 258 days, during which time he was tortured. Mr. Basnet published a book entitled '258 Dark Days' in March 2007, with the help of Advocacy Forum Nepal and the AHRC, which tells of his and other detainees' bitter experiences during his prolonged custody in Bhairabnath Battalion's facilities. On May 21, an unidentified man called Mr. Basnet by phone and threatened him, saying: "you are planning to be hero publishing a book and registering cases in court but you will have to bear the results of that soon...so, think more before doing these activities."

Mr. Basnet has been working in favour of conflict victims for several years. He has lodged a writ petition of mandamus before the Supreme Court in September, 2006, demanding that a High Level Committee be formed to investigate the human rights violations that took place during Nepal's more than a decade-long conflict as well as the 49 cases of disappearances that the Office

<sup>23</sup> Urgent Appeal – threats to human rights defender: <http://www.ahrchk.net/ua/mainfile.php/2007/2408/>



of High Commissioner for Human Rights-Nepal (OHCHR-Nepal) submitted to the government in May 2005 for further investigations and prosecution. Mr. Basnet has also lodged a contempt of court writ petition against King Gyanendra and some army officials for supplying false information to the Supreme Court. In cases of disappearances the security forces would in general falsely deny having arrested and detained persons in written replies to Supreme Court habeas corpus writs. He continued to receive threats in August and September and was finally forced to flee to India to protect himself.

### **Torture on request**

Several cases have also revealed that the rich and powerful can make use of the authorities, notably the police, to do their bidding, including by torturing these persons' enemies. In one such case, teacher Siya Ram Gachaedar was arrested in Kala Banjar Chowk, Banigama VDC-6, Morang district, by police sub inspector (SI) Jiwan Bogati and members of his team.<sup>24</sup> As he was loaded into a police van the victim noted that his school principal, Kagat Lal Chaudhary, with whom he had disagreements, was also there. The police took the victim to the Haraicha APO, where they allegedly started beating and torturing him.

It is suspected that Kagat Lal may be responsible for arranging Siya Ram's arrest, as Siya Ram and other persons had protested against the principal's actions during the recruitment of a teacher on May 31, 2007, during which Siya Ram also had a dispute with SI Bogati. While he was being transported, Siya Ram was threatened with torture and death by SI Bogati, who said: 'we are the persons who fought with the Maoists and I can shoot you dead'. He also told his colleagues: 'we have to hang him to death from the Khorsane Bridge' and when he was told by the driver that they had already passed the bridge, he is reported to have said that: 'he must be killed by using electric shocks.' When they arrived at the police station, he was severely tortured. He later had to pay for all medical expenses himself and was released on the day of his arrest.

On August 25, the DPO in Morang called a meeting that Siya Ram, SI Bogati and some locals attended, during which SI Bogati apologized to Siya Ram for his wrongdoings. The DPO gave assurances that departmental action would be taken against SI Bogati. He is reportedly no longer attached to the APO Haraicha following the incident. According to the Nepal Police Human Rights Cell (HR Cell), SI Jiwan Kumar Bogati has been reprimanded and four other constables have received formal written warning letters. Given the severity of the beatings and the use of torture in this case, this punishment is derisory and in no way complies with Nepal's obligations under the United Nations Convention against Torture. It is surprising to find that the HR-Cell can consider reprimands sufficient punishment concerning torture. This failure to punish the perpetrators of torture points to the pervasive climate of impunity and the critical need for a law criminalizing torture in the country, without which torture will continue to be perpetrated endemically without being punished.

### **3.3 Extra-judicial killings continue despite official end of conflict**

<sup>24</sup> Urgent Appeal – teacher tortured at school principal's request:  
<http://www.ahrchk.net/ua/mainfile.php/2007/2578/>



The problem of extra-judicial killings has continued in Nepal despite the official end of the conflict that began with the signing of the CPA. The problems of torture, forced disappearance and extra-judicial killings are often related – a person may disappear, tortured while being detained in an unknown location and then killed, either during torture or in order to conceal the disappearance and torture to which the person was subjected, by ensuring that that person can no longer complain or identify the perpetrators.

According to the figures quoted from local NGO INSEC at the beginning of this report, “234 persons were killed since 21 November last year of which 28 persons were killed by the government, 23 persons by Maoists and YCL, 18 persons by JTMM-Goit, 27 persons by JTMM-Jwala and the rest were killed by armed groups in Tarai and unknown groups.” The problem clearly remains a significant concern, notably as the perpetrators of these killings typically enjoy total impunity for their actions. Even when armed groups kill persons, the police and other mechanisms of the rule of law have proven incapable of investigating and prosecuting the violators successfully, as political interferences by political or other groups that support or have an interest in the activities of the armed groups, renders them ineffective. Political groups allied with criminal armed groups are creating an environment of increasing lawlessness throughout the country, notably in the Terai region.

Killings also continue to be perpetrated by the armed forces with impunity. An example of this is the case of 12-year old girl Kamala Shah by a member of the Nepalese army on June 23, 2007.<sup>25</sup>

According to an eyewitness, Mr. Krishna Prasad Acharya, Kamala was washing her hands and face at a tap after having eaten, at around 9:45 am when she was shot by Mr. Bhimsen Thapa of the Bajradal Battalion, Magdi district, for no apparent reason. Kamala was hit in the lower left cheek by the bullet, which exited from her right ear.

Members of the army initially failed to come to her assistance while she was lying dying. Around half an hour later, army personnel finally took her into the military barracks, but blocked any of the villagers, including her family members, from entering. According to the battalion’s Colonel Navajeevan Mahara, Kamala died on the way to Kathmandu while she was being transported there by helicopter. A post-mortem examination was carried out at TU Teaching Hospital in Maharajgunj, Kathmandu on June 26, 2006. Following the incident, Kamala's father, Bharat Jung Shah, tried to register a First Information Report (FIR) at the Metropolitan Police Circle, Balaju, Kathmandu, however the police authorities refused to register the FIR, stating that the incident did not take place in their locality. They wrote a letter to the Magdi District Police Office (DPO) ordering them to register the case.

An FIR was then registered at the District Police in Magdi. The Human Rights Directorate (HRD) of Nepal Army in Kathmandu, in its response states that soldier Bhim Bahadur Thapa was suspended and handed over to the DPO, Magdi district, on 19 July, 2007, in line with the

<sup>25</sup> Urgent Appeal – killing of 12-year-old girl by the army:  
<http://www.ahrchk.net/ua/mainfile.php/2007/2490/>



New Military Act-2063. Bhim Bahadur is currently being detained at the District Jail of Magdi for the further trial on the charge of murder.

Another case that shows the extent to which the perpetrators of killings committed during the country's recent conflict are continuing to enjoy impunity concerns the killing in September 2002 of Mr. Dal Bahadur Thapa and his wife Parbati Thapa.<sup>26</sup> The District Police Office (DPO) and the District Administration Office (DAO) in Banke district initially refused to register a First Information Report (FIR) lodged in April 2007 concerning these extra-judicial killings in September 2002 of Mr. Dal Bahadur Thapa and his wife Parbati Thapa. Mr. Dal Bahadur Thapa's 60-year-old mother, Ms. Bhumisara Thapa, has lodged an appeal before the Appellate Court, Nepalgunj. The two victims were allegedly shot dead by members of the then-Royal Nepal Army's Bhim Kali Battalion, Chisapani, Banke district, on September 10, 2002, at around 8.30 pm, while they were sleeping at home. The main reason for the police's failure to register the FIR is because it is against the army, to which the police remain subservient, making the army above the law in reality. The DPO refused to register the case on April 25, 2007.

On April 29, 2007, the DAO's Chief District Officer, Mr. Narendra Raj Sharma, refused to register the FIR, stating that: *"The FIR should be registered at the DPO. You need to prove that the police denied registering it but you don't have any such evidence. There are options to appeal against the DPO within the police administration, try that first before visiting here."* This is a typical hurdle used to render the act of registering FIR frustrating, which leads to many such attempts being abandoned after several attempts have proven fruitless.

Ms. Bhumisara was left with no option but to lodge a petition of Mandamus before the Appellate Court, Nepalgunj, Banke district on April 30, 2007, asking for the court to issue an order demanding that the police observe their legal obligations arising under the State Cases Act 1992 and register the FIR. The FIR concerning the extra-judicial killings in question was against army Major Ajit Kumar Thapa and Captain Mr. Ramesh Swar of the Bhim Kali Battalion, Chisapani, Banke district, who are allegedly responsible for the killings. This is not an isolated case; the refusal to register FIRs is a major barrier to justice in many cases in Nepal and is a key factor that enables impunity for perpetrators. The case was finally registered at the Banke District Police Office on the order of the Banke Appeal Court. On August 7, 2007, a 4-member police team under the command of police inspector Mr. Janak Bahadur Shahi was formed. The team wrote letter to the concerned barracks, however the military hasn't replied yet.

### **3.4 Forced disappearances remain unresolved**

Despite promises to reveal the whereabouts of hundreds of disappeared persons by the signatories to the CPA in November 2006, the fates of these persons remain unknown and nothing credible or effective is being done to address this.

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<sup>26</sup> Urgent Appeal – impunity accompanies killing of couple by the army:  
<http://www.ahrchk.net/ua/mainfile.php/2007/2365/>



For example, the Supreme Court directed a committee to investigate the cases of disappearances of four individuals and later a Supreme Court Divisional Bench directed investigations into the alleged disappearance of 49 persons from Bahairabnath Barrack.<sup>27</sup> In the process of investigation the committee found records and other evidence relating to a much larger number of disappearances sealed at the district police office of Katmandu. After this discovery a Supreme Court Divisional Bench decided to suspend the investigations relating to the cases at Bahairabnath Barrack. The committee has however, stated that they need more time to investigate the Bahairabnath Barrack cases and that irreparable damage may be done to the discovered documents and other evidence if these are handed back to the police. The Supreme Court has not yet made any order to ensure the protection of the large amount of documents that have been discovered by the committee who was initially commissioned by the Supreme Court itself.

It appears that there is a clear lack of direction from the authorities including the Supreme Court on the investigations into gross abuses of human rights in the past. Lawyers and activists say that overwhelming evidence exists to point out gross abuses of human rights such as disappearances, extra-judicial killings and torture and that there is a possibility of the destruction of such evidence with the view to protecting the perpetrators. The lack of political will to deal with this issue is one of the major causes for the doubts and misgivings about the direction that the country is taking at present.

A flagrant case of ineffective action being taken concerning forced disappearance concerns that of Maina Sunawar.<sup>28</sup> In its 2006 annual report on the human rights situations in Asia, the AHRC devoted a section of its Nepal report to the infamous case of Maina, a 15-year-old girl who was allegedly disappeared, tortured, killed and buried by members of the army. For a detailed description of this case please see AHRC's annual report for 2006 (<http://material.ahrchk.net/hrreport/2006/>). Her remains were exhumed on the 23rd March, 2007 at the compound of the Birendra Peace Operation Training Centre, Panchkal Kavre, a well secured military compound. She was arrested in February 2004 by the army and brought to the Birendra Peace Operation Training Centre where it is alleged that she was tortured to death. Her family and human rights activists complained about the arrest to the army and other authorities but they all denied her arrest. Later they admitted the arrest but denied her detention at the Birendra compound. Much later the army admitted the detention but denied the killing. But on the 23rd March, 2007 the remains of what is thought to be her body were discovered at a place which an informer identified as the site where she had been buried. National forensic experts exhumed the remains with technical support from the Office of the High Commissioner for Human Rights, (OHCHR). The exhumation of the body the first step towards a possible prosecution in what could and should be a landmark case. However, these remains have been sent to forensic laboratories outside the country to India for DNA testing and other examinations, but the results of these tests have been held up.

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<sup>27</sup> AHRC Statement - action plan needed to end impunity:  
<http://www.ahrchk.net/statements/mainfile.php/2007statements/984/>

<sup>28</sup> AHRC Statement – case of Maina Sunawar:  
<http://www.ahrchk.net/statements/mainfile.php/2007statements/984/>





On September 18, 2007, the Supreme Court (Judges Min Bahadur Rayamajhi and Ram Prasad Shrestha) made a landmark decision in the case of Maina Sunawar. The court ordered the Kavre District Police Office and the District Public Prosecutor's Office to complete all their investigations within three months. The court also ordered the army to provide a copy of the decision made by the Army Board of Inquiry, under the provision of Right to Information Act 2007. This, for the first time, established that the people have the right to access such a document. However, the alleged perpetrators remain free to date.

### 3.5 Unpunished violations by the Maoists ongoing

The Maoists have also continued to commit killings during 2007, despite their pledges under the CPA, and justice regarding such acts remains as illusive as it was during the conflict. Even attempts to register FIRs concerning such killings are being blocked by the authorities, who are therefore acting in collusion with their erstwhile enemies to guarantee impunity across the board. The attempts to seek redress made by Purnamaya Lama, whose husband was abducted by Maoists on April 29, 2005 and later killed, is testimony to this problem.<sup>29</sup>

On 28 June 2007, Purnamaya went to the District Police Office (DPO), Kavrepalanchowk district, to register a First Information Report (FIR) on behalf of her deceased husband, but this was refused. On 5 July 2007, the FIR registration was again refused. Purnamaya then attempted to register the FIR with the District Administration Office. Finally, on July 8, 2007, the FIR was endorsed but a letter given by the District Administration Office reads: "*...the details of the incident do not have any proof and such cases can be investigated under the Article 33 (s) of the Interim Constitution of Nepal 2007.*" Article 33(s) states that the State shall have the responsibility "to constitute a high-level Truth and Reconciliation Commission to investigate the facts regarding grave violations of human rights and crimes against humanity committed during the course of conflict, and create an atmosphere of reconciliation in society." However, as yet, no such high-level Truth and Reconciliation Commission has been set up to investigate such cases.

This means that the police have been shirking their responsibility to carry out investigations and claim that such investigations should be handled by others. This is typical of the inertia and new obstacles that have arisen during 2007, as all parties use perceived political uncertainty to attempt to explain the lack of positive steps concerning the investigation and prosecution of human rights violations. No Truth and Reconciliation Commission can replace the functions of the police, and the lack of such a body should not be accepted as an excuse capable of explaining the failure to investigate by the police.

There is nothing in the Interim Constitution of Nepal 2007 to suggest that the right to seek redress from a Truth and Reconciliation Commission negates the right to call on police intervention into a crime. Purnamaya's husband's case concerned abduction and murder, which falls under crime in the general law of Nepal, and hence is under the responsibility of the police.

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<sup>29</sup> Urgent Appeal – authorities collude with Maoists to guarantee impunity:  
<http://www.ahrchk.net/ua/mainfile.php/2007/2487/>



The Maoists continue to use torture, threats and extortion as the following case shows.<sup>30</sup> 21-year-old Bir Bahadur (name changed to safeguard the victim's identity) from Baglung district, joined the Peoples' Liberation Army (PLA) on June 1, 2005 but left the PLA on November 26, 2006 along with a female cadre. Despite suffering from ill-health that would make it impossible for him to serve, since this time he has been threatened with death and tortured in order to force him to return. In the evening of March 30, 2007, he was captured and taken to local Maoists central leader Dinanath Sharma's home. His hands were tied behind his back and he was severely beaten for nearly one and half hours on the chest, back and legs, until he lost consciousness. When he regained his sense, he was again brutally assaulted. He was accused of deserting the Maoists in Nawalparasi district. He was threatened with death if he spoke of this beating.

Many persons continue to live in fear of the Maoists, and the reports that they may be in the process of re-establishing their court system will add to these worries, as it is a sign that the Maoists are again planning to subject persons to their rule and systems of injustice.

As was the case during the conflict, the Maoists continued to abduct and disappear persons in 2007 and are failing to take credible action against persons alleged to have committed such serious rights abuses. As INSEC's statistics for 2007 show, "Maoists and YCL were involved in the abduction of 495 persons while JTMM-Jwala abducted 107 persons and JTMM-Goit abducted 71 persons." Mr. Birendra Shah, 34, a local journalist from the Bara district and correspondent of Nepal FM, Avenues Television and Dristi weekly, was abducted by Maoists in the evening of October 5, 2007 from Pipara Bazaar, in Kalaiya, the district headquarters of Bara district in central Nepal.<sup>31</sup> It has been alleged that Mr. Birendra Shah was abducted by local Maoists named Kundan Faujdar, Ram Iekwal Sahani and Lal Bahadur Chaudhary along with several other unidentified Maoists. It is thought that Birendra Shah was abducted for writing and reporting news related to the Maoists. Mr. Ram Dev Das, the editor of the magazine Terai Khabar Patrika, was also kidnapped at the same time as Birendra Shah, but was released a few hours later after being beaten up. He stated that Birendra Shah was also beaten up severely and received death threats.

The Maoist Bara district authorities have reportedly refused to take responsibility for the abductions. They have, however, claimed that two of those thought to be responsible, Kundan Faujdar and Lal Bahadur Chaudhary, had been dismissed from the party before the incident took place, but have made no comment about Mr. Ram Lekwal Sahani.

According to article 7.1.4 of the Comprehensive Peace Agreement between the government of Nepal and the Maoists, "both sides would not be involved in the acts of torture; kidnapping; and forcing the civilians in any work and take necessary action to discourage such acts". According to article 5.2.6 of the agreement, "both sides pledge to abandon all types of war, attack, counter-attack, violence and counter-violence in the country with a commitment to ensure loktantra, peace and forward-looking change in the Nepali society."

<sup>30</sup> Urgent Appeal – Maoists torture, threaten and extort: <http://www.ahrchk.net/ua/mainfile.php/2007/2348/>

<sup>31</sup> Urgent Appeal – Maoists disappear journalist: <http://www.ahrchk.net/ua/mainfile.php/2007/2617/>



As stated above, members of the Young Communist League (YCL), which is affiliated to the Maoists, have been particularly brutal in 2007, committing a large number of human rights violations. The proliferation of splinter or new groups that are committing widespread violations has become one of the most serious threats to human rights and the country's future stability during the year. The situation has become increasingly unruly, to the point that it is now feared that internal armed conflict is again a very real and imminent risk.

In one case, which shows the ongoing climate of lawlessness and retribution in the country, at around 11 am on July 5, 2007, Mr. Prakash Thakuri, 43, a resident of Mahendranagar Municipality ward No. 1 in the Kanchanpur District was abducted by members of the Maoist-affiliated YCL.<sup>32</sup> According to Mrs. Janaki Thakuri, Mr. Thakuri's wife, approximately 10 members of YCL entered their home, asking for the whereabouts of her husband. The YCL members eventually found him in Shiv Raj Rana's house in Suda Village Development Committee ward No. 1 in the same district. They allegedly tied his hands behind his back, slapped him and abducted him using a motorbike.

Mr. Thakuri was a supporter of the King of Nepal and was very active following the so-called the Royal Coup on February 1, 2005. He is also a central committee member of the Federation of Nepalese Journalists (FNJ). Maoist leaders have denied the abduction. On 8 July, his family informed the District Police Office in the Kanchanpur District about the incident, and the police arrested YCL member Mr. Pom Lal Sharma for investigation later on the same day. Mr. Sharma is still under investigation. However, Mrs. Janaki Thakuri, has been denied any information and Mr. Thakuri's whereabouts remains still unknown. In response to the AHRC's intervention in this case, the Human Rights Cell of the Nepal Police on July 16, 2007 responded that the YCL had abducted the victim. The police have since taken no action in this case.

In another case, which again shows acts of revenge between groups of foes during the conflict, on July 8, 2007, Mr. Ram Prasad Rana, a resident of Daiji Village Deveopment Committee-6, Jadepani, Kanchanpur District, was abducted by members of the YCL.<sup>33</sup> He was allegedly taken to the YCL office located in Sisiya, Kanchanpur, where his hands and legs were tied and he was severely beaten with sticks from 10 am to 3 pm on July 9, 2007. He was rescued by a team of police from the District Police Office in Kanchanpur at around 11 am on July 10, 2007. Mr. Ram Prasad Rana used to work for the Royal Nepal Army before moving in 2004 to India, where he worked at a private production company. Mr. Uddhat Singh Bista, a Kanchanpur local and core member of the YCL also worked in the area. Mr. Bista allegedly threatened to kill Mr. Ram Prasad, who later returned Nepal in 2005. Mr. Bista made a complaint to the YCL against Mr. Ram Prasad, as a result of which Mr. Laptan Rana and other members of YCL tortured him. No investigation has been conducted into this case at present and the YCL has threatened to beat Mr. Ram Prasad's younger brother, who is currently working for the Nepal Army. Nobody has been arrested and no actions have been taken to investigate those though to be responsible for the violations in this case.

<sup>32</sup> Urgent Appeal – YCL members commit torture and disappearances:  
<http://www.ahrchk.net/ua/mainfile.php/2007/2484/>

<sup>33</sup> Urgent Appeal – YCL members commit torture and disappearances:  
<http://www.ahrchk.net/ua/mainfile.php/2007/2484/>



In Nepal, a myriad of armed groups engaged in political vengeance and organised crime, are effectively continuing to settle scores related to the conflict. This is a direct result of the lack of effective action by all parties to address past grievances, notably the plethora of grave human rights abuses that took place in the country. This absence of justice has led to any groups taking the law into their own hands and this risks spiralling further out of control unless credible action to improve the rule of law are taken without delay.

### **3.6 Human Rights NGOs facing obstacles**

It must be said that the working environment for human rights defenders has improved in 2007, as compared with the situations of immense fear and possible attacks, closures and arrests that were faced in previous years, notably during the crack-down during the Royal Coup in February 2005 until the King was forced to back down in April 2006. However, NGOs continue to face real threats from various armed groups if they attempt to work on violations being committed by them.

The blocking of NGOs access to persons in detention and the lack of cooperation by the authorities has also ensured that advances to the human rights situation in the country have not been easy to secure.

Advocacy Forum, one of the leading human rights organizations in Nepal providing legal aid services to detainees, has had its work obstructed and on several occasions been refused access to prisoners. For example, the organisation was accused of meddling with police matters for demanding that their clients be granted access to food at the Kanchanpur detention centre, and their access to these clients was blocked from February 7, 2007.<sup>34</sup> Advocacy Forum had been investigating an alleged murder/rape case involving state security forces and believes that they were denied access to prisoners as punishment for pursuing the case.

Advocacy Forum had been providing legal assistance to two victim's family who were killed by security forces on 17 August 2004. Early that morning, security forces allegedly cordoned off the house of two brothers named Nar Bahadur Budamagar (aged 40) and Ratan Bahadur Budamagar (aged 32). It is alleged that the officers beat them and when the two men's wives came to their aid, one was kicked in the chest and pushed inside the house, while the other was taken to a nearby cowshed and raped. The two brothers were then allegedly marched around the village for three hours and finally shot dead in the nearby jungle at Paltekhani of Satya Chautari at around 2:30 p.m. The father and youngest brother of the deceased were also tortured, and the security forces looted 90,000 rupees (USD 1,335) from the mother's house. No investigation was being conducted into the case, so the family members requested the help of Advocacy Forum to have the case registered and investigated.

On February 22, Advocacy Forum's lawyers went to the Appellate Court asking for a court order demanding that the police observe their legal obligations. At the time, Advocacy Forum lawyers

<sup>34</sup> Urgent Appeal – NGO access blocked: <http://www.ahrchk.net/ua/mainfile.php/2007/2248/>



were told by several sources that 'you have to be careful' implying that the lawyers security was at risk for their support for the victims and for challenging the states security forces. On February 25, the Appellate Court issued a show cause order to the District Police Office and District Administration Office of Kanchanpur regarding the case, which led to access finally being granted to Advocacy Forum again on April 11, 2007.<sup>35</sup> While pursuing similar activities elsewhere, Advocacy Forum has again encountered similar obstacles. For example the organisation has been refused by District Police Office (DPO), Banke detention centre subsequent to May 29, 2007, soon after the organisation had filed an application in court for a medical check-up on behalf of torture victim Mr. Bablu Rai.<sup>36</sup> Access was allowed again following June 10 as the result of campaigns and pressure including an intervention by the AHRC.

#### **4. Conclusions and recommendations**

The regrettable conclusions that can be made concerning 2007 is that the many promises that seemed available at the beginning of the year have not led to concrete improvements in terms of the development of a political system and institutions of the rule of law that are better able to promoted and respect human rights, prevent violations and combat impunity. Instead political gamesmanship and a lack of progressive leadership has meant that human rights have been sacrificed while political developments have not been seen either. Impunity continues, bot for old and new violations by all actors in the country. The number of new armed groups is alarming, as is the degradation of the security situation and the upsurge of violent crime.

Many believe that Nepal may be sliding back towards an armed conflict. The AHRC sincerely hopes that this can be avoided, and reiterates that the only way that this can happen is if human rights problems are addressed in a serious way. While impunity remains, there will be no deterrent for further abuses and political uncertainty will result from this. Many of the recommendations made in last year's annual report remain salient today.

The AHRC once again urges all political parties to:

- Refrain from supporting or forming any armed groups and dismantle those currently in place in the country;
- Ensure that all aspects of the Comprehensive Peace Accord are implemented without hindrance and in a timely manner;
- In particular, guarantee the rights of minorities, such as Dalits and women, both in terms of protection from abuse and of participation in the ongoing political developments;
- Publicly condemn the practices of torture and forced disappearances and ensure that such practices are immediately halted and that the whereabouts of all disappeared persons are identified without delay;
- Adopt legislation criminalizing torture and forced disappearances, and amend the Torture Compensation Act to bring them in line with international laws and standards;
- Ensure that weapons remain under lock and key and avoid any return to armed conflict;

<sup>35</sup> Urgent Appeal – Access granted again: <http://www.ahrchk.net/ua/mainfile.php/2007/2329/>

<sup>36</sup> Urgent Appeal – Access denied again: <http://www.ahrchk.net/ua/mainfile.php/2007/2418/>



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- Ensure that the Maoist People's Courts are not re-established;
  - Ensure the swift holding of free and fair elections to a Constituent Assembly;
  - Create independent, competent bodies for investigating all allegations of arbitrary arrest, illegal and/or incommunicado detention, torture, custodial sexual violence or death, forced disappearance and summary or extra-judicial killings, and ensure that all sides cooperate fully with such investigations. Such investigations should not be limited to recent events, but should cover all allegations spanning back to the beginning of the Maoist uprisings over a decade ago;
  - Ensure that all findings by all investigations are immediately made public, and that all necessary actions are taken against persons found to be responsible for abuses, regardless of their rank or status;
  - Take legislative and administrative measures in order to ensure that witness protection is provided to all persons involved in the investigation and prosecution of human rights cases;
  - Issue orders to the police, armed forces and Maoists to comply immediately and without exception to court orders;
  - Ensure that all detainees have access to family members, legal representation, and access to medical examinations (in the latter case, particularly at the time of arrest and release);
  - Ensure that accessible and accurate lists are kept of all arrests and persons in detention;
  - Ensure that all allegations of violations of civilians' human rights committed by the armed forces and Maoists are tried by independent, impartial and competent civilian courts;
  - Ensure that punishments for acts of torture and disappearance are commensurate with the gravity of the offence and in line with international standards;
  - Ensure that adequate compensation is awarded to victims or their families, and in a timely manner;
  - Ensure that all recommendations made by UN Treaty Monitoring bodies, Special Procedures and the OHCHR's field office in the country are fully implemented, and that access is guaranteed to all international and regional human rights institutions and organisations.