



Torture and Extrajudicial Executions
amid widespread violence in the Terai



तराईमा अत्याचार र अत्याचार
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Executive Summary

This report documents the state response to ongoing political and criminal violence in the Terai during the first part of 2009. It describes patterns of alleged extrajudicial executions and torture by the Nepal Police (NP) and Armed Police Force (APF). There is a re-emergence of so-called “encounter” killings and an increase in incidents of torture in eleven districts of the Terai where Advocacy Forum (AF) conducts regular visits to places of detention. It also documents violence by armed political and criminal groups, including widespread rape, and highlights the failure of the police to bring those responsible to justice.

Between February and October 2009, AF recorded 12 incidents of possible extrajudicial executions, mostly by members of the NP, in southern Nepal. Two cases involved members of the APF. A total of 15 people were killed and a further eight were injured in these incidents. The killings occurred in Banke, Dhanusha, Siraha, Saptari and Rupandehi districts. Eight of the incidents concern members of political groups operating in the Madhesi communities in southern Nepal. Each of these killings is presented by the security forces as killings during “encounters” between the police and the alleged members of these groups. However,

in none of the incidents is there any indication that members of the NP or APF were killed or injured. Instead, in several cases, witnesses have confirmed how they saw the victims initially being taken into custody and later saw them being deliberately killed; or that they heard shots soon after they saw the police take away the arrested persons with their hands tied.

An analysis of information provided by 1473 detainees visited by AF in 11 districts (Banke, Bardiya, Dhanusha, Jhapa, Kanchanpur, Kapilvastu, Morang, Siraha, Sunsari, Rupandehi and Udayapur), between January and September 2009 shows that torture is a widespread concern. In particular, detainees in Banke, Dhanusha and Bardiya district reported increasing use of torture. In Dhanusha, more than 30 per cent of detainees claimed they were tortured. There have also been allegations that APF officers have been responsible for rape.

Torture is most common at District Police Offices as well as in APF camps in certain districts such as Jhapa and Dhanusha. Torture of juveniles, some as young as 9, is very common. In Dhanusha, nearly 52 % of juveniles interviewed by AF claimed they had been tortured. Very high incidents of torture of juveniles were also reported in Banke, Bardiya, Jhapa, Rupandehi and Udayapur.

The data analysis shows that people belonging to the Brahmin and Chhetri caste were least likely to be tortured in the Terai; whereas detainees belonging to other groups (including Muslims) and those from the Terai ethnic groups were more likely to be tortured in these 11 districts. This is demonstrated by the fact that members of the Terai ethnic groups represent 32.2% of detainees visited by AF, but they constitute a significantly higher percentage (38.5%) of the total number of detainees who reported they were tortured. In comparison, whereas Brahmin and Chhetri detainees represent 31.2% of all detainees, the percentage among those tortured is 23.6%.

With the introduction of the Special Security Plan (SSP) in July 2009, the government has formally acknowledged the need to address the lack of public security in Nepal, especially in the Terai region. However, AF is concerned about the lack of attention given to human rights in the process.

The Government has a duty to protect the lives and property of the population and to maintain law and order. Law enforcement authorities have the right to use force where necessary and proportionate to accomplish those ends and where other means are insufficient. However, instead, the police and other agencies opt too easily to use lethal force in circumstances that do not appear to warrant it. They also routinely practise torture. Furthermore, police also often fail to act in situations where victims and the general public expect them to. They instead stay inactive under political pressure or out of misplaced loyalty to powerful political and other groupings operating at the local level.

The wider political context within which to situate the human rights violations described in this report is the emergence of regional identities in the aftermath of the armed conflict of 1996 – 2006, and the transition to a new federal constitution. According to an April 2009 report (prepared by the government led by the Unified Communist Party of Nepal-Moist [UCPN-M]), there are 109 armed groups in the country, 20 of which challenge the territorial integrity of the country. Some 60 groups aim to make the Madhes an autonomous state. Within several of the indigenous communities, including the Limbu and the Tharu, there has been an increase in militancy amid frustration at the lack of implementation of the various agreements.

In terms of the proliferation of criminal groups, AF has noted an emerging pattern of young men joining gangs due to the prevailing lack of security in the villages. With high levels of unemployment,

involvement in criminal activities provides a source of income as well as protection to many young men. Some members of armed groups have informed AF that they have a tacit agreement with the political armed groups that they can keep a percentage of money obtained through extortion for them while passing the rest on. Significantly, the relationships of the mainstream political parties (both Madhesi and others) and the police with the armed political and criminal groups add a further dimension to this already complex situation. Members of the cabinet, including the PM and Home Minister have expressed concern about political protection provided to criminals.

The violence and deterioration in public security in the Terai is having a major impact on women and children. Different forms of gender based violence have been reported: rape by members of armed groups, criminal gangs and individual perpetrators, including, by Indian nationals. In one case the victim was raped and killed as retaliation after her husband refused to join the JTMM group. In some cases, members of the UCPN-M were directly implicated in rape during the armed conflict period as well as after the signing of the Comprehensive Peace Agreement (CPA).

Survivors of sexual violence and their families repeatedly claimed during interviews that members of all main political parties had made interventions to get alleged perpetrators released. This practice is causing additional burdens to the victim and survivor as not only is the police often not properly investigating their complaint, they also live in fear that the person they have named as the alleged perpetrator is released and may seek to take revenge.

This lack of accountability for sexual violence extends to individual perpetrators of rape who are not members of criminal or political groups. They too often seek assistance from these groups to exert political pressure for their release and/or to intimidate the victims, human

rights defenders and lawyers. In some places, police personnel have acknowledged that political interference was making their work extremely difficult. However, human rights defenders also allege that police are culpable as they release the alleged criminals after receiving bribes. When asked for reasons for the release, the police say that they don't have sufficient evidence to detain the suspects.

Although women across all castes have been the victims of rape, patterns emerge showing that the most economically and socially marginalized women are more vulnerable to sexual violence in the Eastern Terai, mainly from higher caste men and members of criminal groups operating in the border areas. For instance, in Siraha, information indicates that many Dalit women have become victims of sexual violence by criminal groups and men (often landlords) from higher castes, such as Brahmin and Yadav.

Specifically, women from Dalit and indigenous groups have stated that they did not want to report rape and other forms of violence as they did not expect to get justice. Police either refused to file their cases or conduct proper investigations. Therefore, they feel they have no alternative but to tolerate violence, including rape. AF has received testimonies that police push women to take recourse to traditional informal community justice systems or to strike a deal with the perpetrator. This culture of silence and inaction by the State has resulted in a complete lack of accountability for sexual violence, particularly, in the Eastern Terai.

Impunity for human rights violations committed by the state security forces has been and continues to be the norm in Nepal. Police continue to refuse to accept complaints from relatives and to register First Information Reports (FIRs). In none of the 12 cases of alleged extrajudicial executions have FIRs been registered despite repeated attempts by the relatives.

The medical profession contributes to impunity for both extrajudicial executions and torture. In only one of the 12 cases were the relatives given access to the report of post-mortem examinations. In cases of torture, we see that time and again, doctors fail to document injuries relating to torture, reducing the chances of even obtaining compensation let alone to see justice being done.

Impunity in relation to torture is also exacerbated by the role played by Chief District Officers (CDOs), who have quasi-judicial powers under several laws in Nepal. They have the power to sentence people to up to seven years' imprisonment under the Arms and Ammunition Act, for instance. There are grave concerns that proceedings before CDOs fall far short of international standards of fair trial, not in the least as CDOs often have no legal training and are not independent but rather form part of the executive.

AF's recent experience after submitting a number of complaints about torture to the NP or APF Human Rights Unit is that these units do not act independently and do not undertake thorough investigations. In one case, where strong evidence was available in the form of a video recording of the torture inflicted by police, after an internal investigation the Nepal Police merely issued a formal warning to the inspector, one head constable and two constables involved.

The lack of decisive action by the NHRC in relation to the human rights violations documented in this report is also to be noted. The NHRC is conducting investigations into several of the cases described in this report. However, none of the investigations have been concluded, despite some of the incidents having occurred nearly a year ago.

Impunity perpetuates a lack of adequate public security provisions. The resulting lawlessness is promoting ethnic-based tensions (including in the Terai) and increasing resentment against the Kathmandu-based

state in general. It is important that this is dealt with through inclusive democratic practice and not approached as a security issue. Human rights and human security, not simply order, should underpin any government's strategy.

To this end, AF makes the following recommendations and requests that the international community and national institutions (including the Legislative-Parliament and its relevant Committees and the NHRC) maintain a watching brief on the Government's fulfilment of these obligations:

State Duty to Investigate and Prosecute

1. The government should order immediate independent and impartial investigations into all cases of alleged extrajudicial executions and torture documented in this report. It should ensure full cooperation by the NP and APF with the investigations. Those identified as responsible for grave human rights violations should be brought to justice.
2. Within a maximum of three months of these investigations, prima facie evidence of crimes should be submitted to the AG's office.
3. Within a maximum of two weeks after receiving police reports containing the evidence, the AG will have initiated prosecutions.

State duty to investigate and prosecute gender-based violence

4. Within two months of this report, the Government will set out a clear plan in consultation with civil society regarding reforms required to criminalize all gender-based violence. The plan must also ensure that all incidents of gender-based violence are

investigated, and suspected perpetrators brought to justice; that fully accessible complaint mechanisms are available to women and girls, regardless of whether the abuse occurred at the hands of the state, an armed group or private individual; gender sensitive training is provided for the Nepal Police and APF; and specialised counselling and support services are created and made available for women victims and survivors.

5. The police should properly investigate all cases of gender-based violence and other violence and ensure full protection for victims and witnesses.

State duty to protect juveniles

6. All reports of torture of juveniles need to be independently investigated and those responsible brought to justice.
7. The government as a matter of priority should ensure the separation of juvenile detainees from adults and within one year at the latest implement the judgments of the Supreme Court requiring the creation of Juvenile Correction Homes.

State duty to ensure independence and oversight of the police

8. Interference with police investigations by political or other actors should be made a serious offence.
9. The government should make public the SSP and creates an oversight body to ensure that the implementation of the plan is in accordance with Nepal's obligations under international human rights treaties.

The State's international legal obligations

10. Nepal should criminalize torture.
11. Nepal should immediately sign and ratify the Statute of the International Criminal Court, the Convention for the Protection of All Persons from Enforced Disappearances and the Optional Protocol to the Convention against Torture, putting in place a mechanism for independent monitoring of all places of detention.
12. The Government should bring Nepali laws and practices into compliance with ILO Convention 169.
13. The new Constitution should guarantee the right to life, the right not to be tortured and should ensure that every individual regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is entitled to substantive equality under the law and to substantive equality in the protection and benefit of the law without discrimination.
14. There should be no immunity for past, present or future human rights violations. A prohibition on amnesties should be written into the new Constitution.

Introduction

“Crimes and anarchy prevalent in the society will be controlled by strengthening the law and order situation, and impunity will be eliminated. A code of conduct will be developed and enforced so as to make all State mechanisms including the administration and the security agencies impartial and accountable in order to guarantee safety and security to the people. Arrangements will be made to address the security grievances of the people instantly by launching a campaign ‘Peace and Security: Expectations of the People.”

“All kinds of conflicts and problems that have come up in the Terai-Madhes and some other parts of the country will be resolved through talks and dialogue. However, violent and criminal activities will not be tolerated.”¹

It is no longer possible for the government to deny the deterioration in public security and lack of respect for the rule of law in Nepal. Combined with widespread ongoing impunity, the worsening security situation has now reached such levels that it impacts on millions of people’s daily lives, forcing the government to include the above commitments in its policies and programs presented to parliament in July 2009.

¹ Policies and Programmes of the Government of Nepal for the Fiscal Year 2066–2067 (2009-2010), as presented to parliament on July 9, 2009, unofficial translation, paragraphs 8 and 21 respectively.

The corrosion in public security and the rule of law is nowhere felt more clearly than in the southern part of the country, the Terai. Long known as an area with high levels of organised crime (involving armed criminal groups operating across the open border with India), the region has more recently seen the emergence of violent activities by various political armed groups. These have included groups belonging to the Madhesi community, the Tharu community and the Limbu and Kiran communities.²

Since the end of the armed conflict in 2006, successive governments have been increasingly troubled by the lack of public security in the country, exacerbated by ongoing political uncertainty, a stalled peace process, rising militancy among ethnic groups, continuing politicisation of the security forces and a perturbing lack of respect for the rule of law.

The Council of Ministers of the 22-party alliance under Prime Minister Madhav Kumar Nepal of the Communist Party of Nepal (Unified Marxist Leninist) (CPN-UML) on 26 July 2009 endorsed a new Special Security Policy (SSP). This new policy has not been made public. It was presented in the media as part of the Home Ministry's strategy to improve the law and order situation. It remains to be seen if the policy will be effective in the long term. As demonstrated in this report, similar attempts by previous governments to address the issue have not had the desired effects; and indeed seem to have resulted in an increase in human rights violations.

² For more details on the political issues raised by these communities, see International Crisis Group, "Nepal's Future: In Whose Hands?", Asia Report N°173, 13 August 2009, http://www.crisisgroup.org/library/documents/asia/central_asia/173_nepals_future___in_whose_hands.pdf and Asia Centre for Human Rights, "Madhes: The Challenges and Opportunities for a Stable Nepal", 1 September 2009, <http://www.achrweb.org/briefingpapers/Madhes2009.pdf>

There have been no media reports suggesting that human rights have been incorporated into the SSP. It is unknown, for instance, whether the SSP has considered addressing the prevailing climate of impunity in the country as a critical factor impacting on the deterioration in public security and the rule of law.

This report documents the state response to the rise in violent activities in the Terai. It describes patterns of alleged extrajudicial executions and torture by the Nepal Police (NP) and Armed Police Force (APF) during the first part of 2009. It points to a re-emergence of so-called “encounter” killings and an increase in incidents of torture in eleven districts of the Terai where Advocacy Forum (AF) conducts regular visits to places of detention. Though the pattern is only an emerging one, there are concerns about an apparent recent increase in reports of torture possibly linked to the introduction of the SSP in July 2009. On the other hand, violence by armed political and criminal groups, including widespread rape, is common; its occurrence exacerbated by the failure of the police to bring those responsible to justice.

On 22 August 2009, the Home Minister said the government will reach out to the Terai armed groups for talks, while emphasizing that those engaging in criminal activities will be dealt with sternly.³ In the past, police officers have repeatedly expressed concern that they are under political pressure to achieve and deliver actual results to the government. As there is increasing concern about the deterioration in the law and order situation, the government in turn is keen to prove

³ Nepalnews, “Special security plan will prevent bandhs and blockades: Home Minister”, 22 August 2009, <http://www.nepalnews.com/main/index.php/news-archive/2-political/1044-special-security-plan-will-prevent-bandhs-and-blockades-home-minister.html>

the SSP is working. These dynamics provide a dangerous mix within which human rights violations, including torture, can increase.

The government has a duty to protect the lives and property of the population and to maintain law and order. Law enforcement authorities have the right to use force where necessary and proportionate to accomplish those ends and where other means are insufficient. However, instead, the police and other agencies opt too easily to use lethal force in circumstances that do not appear to warrant it. They also routinely practise torture. Furthermore, police also often fail to act in situations where victims and the general public expect them to. They instead stay inactive under political pressure or out of misplaced loyalty to powerful political and other groupings operating at the local level. Such an approach is causing great harm to both the security of the people and to ongoing political processes, which are at risk of becoming more militant.

Background

Background to deteriorating public security and rule of law

Public security is an issue of serious concern in many Terai districts, where the population continues to be affected by high levels of criminal activities by a multitude of armed groups. The root causes of the high levels of crime in the region are complex and vary across districts. In those near the border with India, smuggling is a key factor. In Kapilvastu District, an increase in armed group activity is linked by the United Nations to a failure on the part of the authorities to address the root causes and consequences of communal violence in September 2007 in which 14 people were killed and thousands displaced. The armed groups operating in Kapilvastu are believed to include members of a former vigilante group whose members were never disarmed and who were allegedly implicated in the violence.⁴

Violent activity by armed groups is not exclusive to the Terai. Such activities are also reported in some hill districts, including Khotang and

⁴ United Nations Security Council, Report of the Secretary-General on the Request of Nepal for United Nations Assistance in Support of its Peace Process, 13 July 2009, para 42.

Bhojpur, in the Eastern Region, where the Kirant Janabadi Workers Party practice intimidation and extortion activities, targeting primarily village-level government secretaries and schoolteachers.⁵ However, this report focuses primarily on the Terai, not only because levels of violence are higher there, but also because the human rights situation in that part of the country is generally under-reported.

In mid-January 2007, public security and the rule of law in the Terai deteriorated in the context of widespread protests immediately after the promulgation of the Interim Constitution, which had remained silent on federalism and had a proportional representation electoral system seen by Madhesi groups as unfair.⁶ Several groups in the Terai including the Madhesi Janadhikar Forum (MJF) declared *bandhs* (strikes) from 16 January 2007 demanding a federal republic and inclusion of Madhesi people in all the sectors of government. The state response was harsh: police shot dead more than 30 people and wounded 800, though there are disputes about the figures.⁷ The protests in January and February 2007 later became known as the Madhesi Andolan.

The violence continued to spread while the government failed to address the prevailing impunity. Investigation commissions were formed to investigate the violence, including specific incidents such as in Gaur,

⁵ United Nations Security Council, Report of the Secretary-General on the Request of Nepal for United Nations Assistance in Support of its Peace Process, 13 July 2009, para 42.

⁶ There is no agreed definition of “the Madhes” and the geographical area covered by this term, though it is widely used by those who identify themselves as Madhesi. In this report, the term is not used to indicate a precise area of the Terai, but instead refers to a sense of common identity among ethnic groups living in the region, who share common grievances vis-à-vis the Nepali state as dominated by Pahadis - people from the hills – and its longstanding discriminatory practices towards people from the Terai.

⁷ International Crisis Group, “Nepal’s Troubled Terai Region”, Crisis Group Asia Report No. 136, 9 July 2007, page 12, http://www.crisisgroup.org/library/documents/asia/south_asia/136_nepal_s_troubled_tarai_region.pdf

Rautahat District in March 2007.⁸ The reports of the commissions however were not made public. Neither have the authorities acted on the recommendations of the commissions, and no one has been found criminally accountable by the courts to date. As a result, the cycle of violence was perpetuated, encouraging others to feel they can act without being held to account.

The commission of inquiry set up to investigate the killing of 27 Communist Party of Nepal (Maoist) (CPN-M) cadres in Gaur, Rautahat District, in March 2007 presented its report to the government in October 2007, but the findings were not made public. The violence between Maoists and the MJF took place as two mass meetings of the Maoist-affiliated Madhesi Mukti Morcha (MMM) and the MJF were scheduled at the same venue and the same date. To date, no-one has been arrested or charged in relation to the killings. According to the United Nations Office of the High Commissioner for Human Rights (OHCHR), police say that they have the names of 40 suspects in the case but have not been able to arrest them. On 27 November 2007, a First Information Report (FIR) was presented by the CPN-M and finally registered by the NP at the Rautahat District Police Office (DPO). The police had previously refused to register an FIR presented by the CPN-M on the grounds that many of those named in the FIR were not implicated.⁹

⁸ In addition to the commission of inquiry into the killings at Gaur, the government appointed a commission headed by Justice Khilraj Regmi of the Supreme Court to assess the loss of life and property which occurred during the Madhesi Andolan in January-February 2007 and a three-member judicial commission of inquiry headed by Judge Lokendra Mallik of Rajbiraj Appellate Court was asked to establish criminal responsibility for riots in Kapilvastu in September 2007.

⁹ 'Human Rights in Nepal one year after the Comprehensive Peace Agreement, Investigation Report, OHCHR, Nepal, December 2007, http://nepal.ohchr.org/en/resources/Documents/English/reports/HCR/1207CPA_Report_EN.pdf

But even when FIRs are registered, this is no guarantee that police will conduct proper investigations and that those responsible will be brought to justice. In October 2008, the CPN-M-led government recommended the withdrawal of 349 criminal cases (investigations, charges and convictions) of a so-called “political nature”. They included cases of gross human rights abuses (murder, attempted murder and rape), the majority from the conflict period.¹⁰ Most cases were against CPN-M members, some of whom were senior members of the government at the time, raising concerns about ongoing impunity and the *de facto* provision of amnesties.¹¹ In April 2009, the Unified Communist Party of Nepal (Maoist)¹² (UCPN-M) government further decided to withdraw cases against a number of people who were facing charges for alleged involvement in the communal violence in Kapilvastu District in September 2007 (see above), apparently under pressure from Madhesi political parties.¹³

Wider political background

The wider political context within which to situate the human rights violations described in this report is the emergence of regional identities in the aftermath of the armed conflict of 1996 – 2006, and the transition to a new federal constitution. Whatever their differences, the key demands of all the mainstream political Madhesi groups since their

¹⁰ See OHCHR, A/HR/10/53, 3 March 2009.

¹¹ Human Rights Watch, “Letter to Prime Minister Pushpa Kamal Dahal of Nepal,” 9 March 2009.

¹² The former armed group, the Communist Party of Nepal (Maoist) in January 2009 merged with the Communist Party of Nepal-Unity Centre (Masal) and was renamed the Unified Communist Party of Nepal (UCPN-M).

¹³ http://www.myrepublica.com/portal/index.php?action=news_details&news_id=3886

emergence in early 2007 have been for increased representation and meaningful inclusion in national politics.

The political landscape in the Madhes is complex and ever-changing. A myriad of armed political groups emerged towards the end of the armed conflict period. Several of them were led by former members of the CPN-M. Many of these groups resorted to violence as a means to achieve political aims, inspired by the Maoist example and reassured they would not be held to account for their crimes amid the prevailing pervasive climate of impunity in the country.

Since the elections of April 2008, the mainstream Madhesi political parties have held the balance of power between the largest political group in the Constituent Assembly, the UCPN-M, and the other political parties constituting the current 22-party alliance. Despite this, there has been little progress in implementing the various commitments made by successive governments since the end of the armed conflict to bring about a more inclusive society. There is increasing frustration among Madhesi political parties about the lack of implementation of the 22-point Agreement signed between the Government of Nepal and the Madhesi People's Rights Forum on 30 August 2007 and the 8-point Agreement that was reached in February 2008. The latter provided for inclusive proportional representation of Madhesis, indigenous nationalities, women, Dalits, (people from) backward regions and minority communities in all state bodies, including the security sector.¹⁴ A fifth amendment to the Interim Constitution introduced an additional sub-article (4A) to Art. 144: "In order to make the Nepalese Army national in character, the entry of citizens, including Madhesis, indigenous nationalities, Dalits, women and those from marginalized

¹⁴ <http://www.unmin.org.np/downloads/keydocs/2008-02-28-Agreement.SPA.Govt.UDMF.ENG.pdf>

areas, shall be ensured through legal provisions on the principles of equality and inclusiveness". However, it remains largely unimplemented.

Through the third amendment to the Interim Constitution passed in December 2007 and endorsed by the Constituent Assembly in May 2008, Nepal was declared a federal republic. The subsequent appointments in July 2008 of both a President and a Vice-President from the Madhesi community were highly significant. However, both have been caught in controversy since. The President played a key role in events leading up to the resignation of Maoist Prime Minister Pushpa Kumar Dahal (alias Prachanda) in early May 2009 after President Dr Ram Baran Yadav countermanded a decision by the Cabinet to sack the Commander of the Army, General Rookmangrat Katuwal. The Prime Minister had accused General Katuwal of insubordination.¹⁵ The ensuing political as well as constitutional crisis lingers with a lack of clarity about the powers of the president under the Interim Constitution. The Vice-President was caught up in major controversy over the taking of his oath of office in Hindi. As things stand, he continues to ignore a July 2009 order by the Supreme Court to re-take the oath in Nepali. It is one among a series of issues that could spark further tension in the Terai in the months to come.

Previous governments' security policies

In early December 2007, the then interim government under Prime Minister Girija Prasad Koirala mobilized a "Special Task Force", comprising of NP and APF in eight districts of the Terai that include Bara, Parsa, Saptari, Siraha, Dhanusha, Mahotari, Rautahat and

¹⁵ UN Security Council, Report of the Secretary-General on the Request of Nepal for United Nations assistance in support of its peace process, 13 July 2009, para 4.

Sarlahi.¹⁶ Despite the deployment of the Special Task Force, the violence continued in these districts. For instance, on 7 December 2007, an unidentified armed group abducted two businessmen, Ramchandra Sah and Raj Kumar Mahato, in Siraha District. The businessmen, however, managed to escape later. On 15 December 2007, an unidentified gang opened fire and shot dead 18-year-old Basant Kingry, a grade VI student of Janajyothi Multiple Campus of Siraha District.¹⁷

At the time the UCPN-M were in power, Prime Minister (PM) Pushpa Kamal Dahal on 30 January 2009 instructed top security officials to take stern measures to curb violence and lawlessness in the Terai districts. PM Dahal summoned the heads of NP, APF and National Investigation Department (NID) and was learnt to have expressed concern over a tendency of giving every criminal activity in Terai a political color, saying violence and lawlessness was growing in Terai districts “in the guise of political activities”. The meeting came a day after PM Dahal claimed that the “international forces” had been fomenting trouble in Terai districts by playing with the fluid situation there, apparently tacitly referring to India’s role in the Terai.¹⁸

Context to the activities of Madhesi, Limbu and Tharu armed political groups and the criminal groups

This report does not seek to provide a comprehensive overview of the various armed political and criminal groups operating in the

¹⁶ Kantipuronline, “Special Task Force in Siraha District; 1 Abducted”, 2 December 2007, <http://www.kantipuronline.com/kolnews.php?nid=130030> (accessed 23 August 2009).

¹⁷ <http://www.southasiaanalysis.org/notes5/note421.html>

¹⁸ Nepalnews, “PM Dahal orders security heads to beef up Terai security”, 30 January 2009, <http://www.nepalnews.com/archive/2009/jan/jan30/news11.php> (accessed 12 October 2009).

Terai. Research into the armed groups' operations carries an inherent risk and would require an engagement with actors living underground which is beyond the capacity of AF. Furthermore, there are frequent changes in the names of armed groups as well as in their composition and their alliances. There is also a constant flux of cadres between the armed groups and non-violent mainstream political groups. For example, before the elections for the Constituent Assembly, Dhruva Narayan Mishra (who was killed by police in February 2009, see Annex A) was a member of the Madhesi Janadhikar Forum (MJF) in Rupandehi district. During the elections he briefly became a Nepali Congress member before joining the armed political group, the Janatantrik Terai Mukti Morcha (Goit) (JTMM-G).

Rivalry between members of armed groups is often defined by inter-caste squabbles and has led to factional divides in many of the armed groups.¹⁹ As a result of a weak organizational structure, it is also difficult to determine the precise goals of these groups. Although most armed Madhesi groups demand "Madhesi autonomy", their ultimate goals are unclear. There is also little clarity about their relationship with mainstream Madhesi political parties, as they have not agreed a common agenda.²⁰

Furthermore, in AF's experience, intervention on behalf of members of criminal groups in the Terai who have been killed or tortured is often received with hostility by the general public. AF staff members have repeatedly been threatened by villagers when trying to investigate reports of human rights violations or when trying to appear

¹⁹ Prashant Jha, "Madhesi movement splintered by caste and militancy," *Nepali Times*, 21-27 November 2008, <http://www.nepalitimes.com.np/issue/2008/10/20/PainSpeaking/15293>

²⁰ "Nepal: Talks crucial to prevent upsurge in Terai violence – rights groups," *IRIN News*, 21 October 2008, <http://www.irinnews.org/Report.aspx?ReportId=81024>

in court on behalf of criminal suspects. Furthermore, AF staff members have been received with hostility by members of Madhesi armed political groups who consider AF and most other human rights organizations in Nepal to be largely “Pahadi” organizations. In these circumstances, it has not been possible to carry out detailed research.

This section of the report relies largely on newspaper sources, including a long article published in *Kantipur* newspaper in August 2009 with what were said to be extracts from a leaked government report entitled “Categorization of armed groups and suggestion on talks” prepared by the Home Ministry and said to contain an analysis of the security situation in the country.

According to the newspaper article, the 200-page report prepared around April 2009 (during the period of the government led by the UCPN-M) lists a total of 109 armed groups. It reports that 20 of them challenge the territorial integrity of the country and vow to form another country. Some 60 groups aim to make the Madhes an autonomous state. The majority of the armed groups are reportedly operating in 22 districts of the Terai and they are expanding their activities to certain Eastern, Mid-Western and Far Western districts.

The security report reportedly categorizes all these groups on the basis of their military strength ranging from one to three thousand and a cadre base ranging from two to seven thousand. After Janatantrik Terai Mukti Morcha (Jwala Singh) (JTMM-J), which is presented as the largest faction, JTMM-G,²¹ JTMM (Pawan), JTMM (Bisfot Singh), Madhesi Mukti Tigers (MMT), Terai Army, Madhesi Virus Killers, Terai Cobra, Terai Jantantrik Bal, Terai Bagi, Madhes Mukti Force, Madhesi Special Force, Ranbir Sena are considered to be “comfortably strong”. JTTM

²¹ Janatantrik Terai Mukti Morcha (Goit) later changed its name to Akhil Terai Mukti Morcha (ATMM).

(Rajan Mukti), (Himmat Singh), (Biswa Singh), (Ranbir Singh), (Prakanda), (Pralhad Giri) groups are also considered strong militarily.

According to the media, the report states that some four dozen armed outfits are equipped with modern artilleries such as AK-47 machine guns, sub-machine guns, light machine guns and self-loading rifles and also possess high explosives. The Home Ministry estimates that the JTMM-J faction has some 2,000 members and possesses some 100 modern arms and modern artilleries.²²

As already indicated above, several of the Madhesi armed groups were set up by former members of the CPN-M. In addition, individual former members of the CPN-M have joined these groups, bringing some weapons with them. For instance, according to newspaper reports, on 3 January 2007, when Hareyram Sah (Amar), Surya Narayan Sah of the Ram Briksha Smriti Brigade of the CPN-M and Shyamdev Yadav (Ajay) of the Sindhuli cantonment of the Maoists' People's Liberation Army (PLA)²³ joined the JTMM-J faction, they had brought dozens of weapons.²⁴

The report has reportedly categorised the armed groups as political, religious, political criminal, religious criminal and purely criminal. Only 12 out of 109 armed groups active in the country are said to be political, while 70 of them are considered purely criminal groups. Their activities are mostly kidnapping for ransom, abduction, killing, and other violent activities rather than political ones. The report has recommended

²² Telegraph Nepal, "Indian leaders aiding Nepal armed outfits. Nepal Govt. Report", 1 August 2009, http://telegraphnepal.com/news_det.php?news_id=5942 (last accessed 15 September 2009).

²³ Armed wing of the CPN-M.

²⁴ Telegraph Nepal, "Indian leaders aiding Nepal armed outfits. Nepal Govt. Report", 1 August 2009, http://telegraphnepal.com/news_det.php?news_id=5942 (last accessed 15 September 2009).

stringent action against such armed groups and suggested the government not to hold talks except with the political groups. The 12 political groups include Akhil Terai Mukti Morcha (Jaya Krishna Goit), Kirant Janbadi Workers Party and Tharuhat Swayatta Rajya Parishad. Four groups including Cobra (Nagraj) and Nepal Defence Army have been put in the “religious criminal” category, while 11 others have been categorized as “political criminal” groups. The nature of eight armed groups could not be established, the report says.

The government has initiated talks with five armed groups on a one-to-one basis and has had preliminary talks with a further seven. In several instances, a 4-point agreement was reached at a first round of talks between the Peace Ministry and the concerned armed political group. For example, in March 2009, at talks between the then Peace and Reconstruction Minister and the MMT, an agreement was reached for the government to provide security to MMT negotiators and take initiative for the release of detained MMT cadres while the MMT committed to stop its armed activities during the talks process in return for which the government agreed to recognize the MMT as a political group.²⁵ However, none of the talks with the armed groups have so far resulted in substantial political agreements.

There are concerns among the armed groups that the government used the talks to gain intelligence about the armed groups’ composition, strength and activities. Indeed, the leader of the MMT in Siraha District, Parsuram Yadav alias “Diwakar”, who participated in talks with the government in July 2009, was allegedly subsequently arrested and killed by police (see below).

A second round of talks between five armed groups and the government in early September 2009 ended inconclusively after an

²⁵ Nepalnews, “Govt, Terai outfit ink 4-pt deal”, 20 March 2009.

agreement could not be reached on releasing detained cadres of the armed groups. At the talks, Peace Minister Rakam Chemjong represented the government; and JP Gupta of the Madhesi Virus Killers, Gajendra Mandal of the Terai Samyukta Jankranti Party and Swamiji of Terai Liberation and Mangal Pandey of the MMT represented the armed groups.²⁶

Successive governments have also come under pressure from indigenous groups urging guarantees of greater representation in the Constituent Assembly, state structures and national politics. Aiming to address some of these concerns, the Eight-Party Alliance government on 7 August 2007 signed a 20-point agreement with two Janajati umbrella groups, the Nepal Ethnic Federation of Indigenous Nationalities (NEFIN) and the Indigenous Nationalities Joint Struggle Committee. Among other pledges, the government committed to ensuring representation for smaller indigenous communities who would otherwise not be represented in the Constituent Assembly, as well as to forming a State Restructuring Commission and a Janajati commission.

As part of the 20-point agreement, Nepal in September 2007 ratified International Labour Organisation (ILO) Convention 169, and articulated new responsibilities for the government towards indigenous peoples. The government has created an ILO 169 Action Plan, which is currently pending in Cabinet, in order to bring Nepali laws and practices into compliance with the Convention.

Within several of the indigenous communities, including the Limbu and the Tharu, there has been an increase in militancy amid frustration

²⁶ Nepalnews, "Only 12 out of 110 armed groups political. Home Ministry", 7 September 2009, <http://www.nepalnews.com/main/index.php/news-archive/1-top-story/1315-only-12-armed-groups-political-report.html> (last accessed 15 September 2009).

at the lack of implementation of the various agreements. Among the Limbu community, the most militant group is the *Sanghiya Limbuwan Rajyaparisad*. It demands that nine districts to the east of the Arun River – Panchthar, Taplejung, Terhathum, Sankhuwasabha, Ilam, Jhapa, Dhankuta, Sunsari and Morang – should be declared the Limbuwan State. Members of the FLSC have sporadically resorted to violence and organized strikes which have caused considerable disruption to hundreds of workers and brought everyday life to a standstill in the districts concerned.²⁷

There are two key Tharu groups at the present. A former Maoist commander, Laxman Chaudhary, has set up the Tharuhat Swayatta Rajya Parishad; which is particularly strong in the districts of Dang, Banke, Bardia, Kailali, and Kanchanpur and has pockets of support in the east.²⁸ The Tharu Kalyankari Sabha, the oldest Tharu group, is a socio-cultural organisation. Both groups came together as a part of a broader alliance backed by the NEFIN in March 2009 in the wake of the Ordinance on Maintaining Inclusiveness in the Public Sector passed by the UCPN-M government. The ordinance provided for the inclusion of the traditionally marginalized groups in government services, including the police and army. Tharus and several other traditionally marginalized groups in the Terai objected to being grouped together with the Madhesis in the legislation. (The Ordinance later lapsed after it failed to be endorsed by Parliament.)

The activities of the criminal groups range from petty smuggling of fertiliser, sugar, detergent, oil and other goods to running regional

²⁷ Nepalnews, "FLSC strike cripples eastern Nepal for 2nd day", 1 December 2008, <http://www.nepalnews.com/archive/2008/dec/dec01/news08.php>

²⁸ Asian Centre for Human Rights, "Madhes: The challenges and opportunities for a stable Nepal", 1 September 2009, <http://www.achrweb.org/briefingpapers/Madhes2009.pdf>

counterfeit currency rings. Criminal gangs are also reported to be involved in smuggling arms, which then are sold to armed political groups.

In terms of the proliferation of criminal groups, AF has noted an emerging pattern of young men joining gangs due to the prevailing lack of security in the villages. For instance, in August 2009, one person arrested by police in Jhapa District explained to AF when he returned to his home town from Kathmandu, he met a friend at a taxi stand and how the friend suggested to him to join a local gang. He joined the gang feeling he had no option. With high levels of unemployment, involvement in criminal activities provides a source of income as well as protection to many young men. Some members of armed groups have informed AF that they have a tacit agreement with the political armed groups that they can keep a percentage of money obtained through extortion for them while passing the rest on.

Significantly, the relationships of the mainstream political parties (both Madhesi and others) and the police with the armed political and criminal groups add a further dimension to this already complex situation. As the CPN-UML and Nepali Congress (NC) are losing their support base in the Terai to the Madhesi political parties, they are trying to sustain their support base through traditional patronage. As will be described in Chapter V and VI, there have been numerous incidents where members of the mainstream political parties intervene with police to get members of armed groups accused of serious crimes, including rape, released from police custody apparently in return for their future loyalty. Similarly, the UCPN-M is in competition with Madhesi political parties and armed groups at the local levels, and involved in providing protection to criminals.

Members of the Cabinet, including the PM and Home Minister have expressed concern about political protection provided to criminals. On 10 July 2009, Home Minister Bhim Rawal, when addressing members

of the CPN-UML, was reported to have stated that “political protection to criminals has created difficulty in maintaining law and order in the country” and to have called on political parties and leaders to “refrain from patronising criminal elements, and [to have] sought help from UML lawmakers in doing so”.²⁹ On 31 July 2009, PM Madhav Kumar Nepal reportedly stated: “Several criminals are still at large due to political patronage. I urge political parties concerned not to shield the criminals.” “The government will be able to end the culture of impunity only if parties agree not to protect criminals regardless of their political affiliation,” the PM added.³⁰

According to an article in the Kathmandu Post of 3 November 2009, however, the practice of seeking political intervention continues.³¹

The new SSP

The new Special Security Policy (SSP) as adopted by the Council of Ministers in July 2009 is being implemented in 15 districts in the east, three in the Kathmandu valley and eight in the Mid- and Far Western regions - 26 in total.³² These districts are formally categorised as “highly sensitive” districts. Five of these districts - Banke, Bardiya, Kailali, Kanchanpur and Dang - have reportedly recently been added on the

²⁹ Nepalnews, “Political protection to criminals creating security woes: Home Minister”, 10 July 2009, <http://www.nepalnews.com/archive/2009/jul/jul10/news07.php>

³⁰ Kathmandu Post, “PM: Political cover promoting impunity”, 31 July 2009.

³¹ Kathmandu Post, “Ministry under pressure to dispose of criminal cases”, 3 November 2009, <http://www.ekantipur.com/the-kathmandu-post/2009/11/03/Nation/Ministry-under-pressure-to-dispose-of-criminal-cases/1632/index.html>

³² The districts have not been made public but are thought to be: Jhapa, Morang, Sunsari, Saptari, Siraha, Dhanusha, Udayapur, Khotang, Bhojpur, Dhankuta, Terhathum, Panchthar, Taplejung, Sankhuwasabha and Ilam in the east; Kathmandu, Lalitpur and Baktapur in the valley; Kanchanpur, Kailali, Bardiya, Banke, Dang, Kapilvastu, Rupandehi and Nawaparasi in the far- and mid-western region.

list, suggesting a concern on the part of the government about rising militancy in the Tharu community in the Mid- and Far Western regions.

According to media reports, the SSP aims to improve the security situation across the country. It also aims to expedite the peace process, ensure smooth traffic movement along the highways and curb criminal activities in the Terai. It proposes to effectively mobilize the three security agencies – NP, APF and NID - under the unified command of the NP. As per the request of the Home Ministry, the Cabinet has decided to create 11,388 new posts in the APF under the SSP. The appointment for the posts would be made in two phases. Approximately 5,700 posts would be filled in the first phase, while appointment for another 6,900 new posts would be made in the second phase. The government has allocated Rs. 2.46 billion for creating new posts and procuring various logistics support and materials for the APF. The government also intends to reinforce the NID and has decided to create 350 new posts in the department. “The government has allocated Rs. 414.6 million to make new appointments, mobilize detectives and procure logistics support and materials for the NID,” read the Cabinet decision.³³

Further details about the SSP were revealed in September 2009. According to these reports, the Cabinet in early September approved approximately Rs. 4 billion as requested by the Ministry of Home Affairs to implement the SSP. As per the Cabinet decision, Rs. 924 million has been approved under the heading of mobilization and operation cost. Of the total operation cost, the NP has been allocated Rs. 144.9 million, while the APF will receive Rs. 706.4 million. The government has also allocated Rs. 27.5 million to the Home Ministry.

Much of the media coverage regarding the SSP has focused on purely security-related information as well as logistical and financial

³³ Republica, “Security Plan costs govt. Rs 4 billion”, 10 September 2009.

aspects. There have been no reports suggesting a human rights component to the SSP. It is unknown, for instance, whether the SSP has considered addressing the prevailing climate of impunity in the country as a critical factor impacting on the deterioration in public security and the rule of law.

Cross-border dimension

The media have focused in detail on the alleged role of Indian politicians and officials in relation to the situation in the Terai. *Kantipur* quotes the internal government report as follows: “The weakened armed outfits operating in the Terai, after the deployment of Special Security Task Force, have been holding meetings in Katihar of the state of Bihar, India, either to unite or to form a working alliance with each other.”

MMT, Madhesi Virus Killers, Terai Samyukta Jantantrik Party, the Terai Samyukta Janakranti Party and JTMM (Rajan Mukti) reportedly formed a working alliance after the announcement of the SSP.³⁴ The formation of the working alliance was declared at a press conference on 30 July 2009.³⁵

The report prepared by the Ministry of Home Affairs reportedly mentions that 80 per cent of the 109 armed outfits operating in the Terai are based in India, trained in India and make their weapons’ deals in India. The report also makes it clear that some high ranking Indian leaders have been supporting the armed groups such as Akhil Terai Mukti Morcha (ATMM)³⁶ JTMM-J and some others. It is mentioned that

³⁴ Kantipur, “Indian leaders aiding Terai armed Outfits: Nepal Govt. Report”, 1 August 2009.

³⁵ Nepalnews, “Four Terai armed groups join forces”, 30 July 2009, <http://www.nepalnews.com/main/index.php/news-archive/2-political/686-four-Tarai-armed-groups-join-forces.html>

³⁶ Formerly known as JTMM (Goit), also referred to as “Goit faction”, see footnote 22.

former Railway Minister of India, Mr. Laloo Prasad Yadav, has been providing safe haven to the ATMM.

Indian parliamentarians like Devendra Yadav, Kapil Dev Kamati, Ananda Mohan Singh, and Lal Bihari Yadav have been providing financial as well as arms support to the Nepali armed outfits, the Home Ministry report states. "Bihari Yadav has been supplying weapons through his son Bijaya Yadav to the Goit faction", the report adds. Similarly, Ananda Mohan Singh has been supplying weapons, explosives and has been providing military training to some 25 cadres of the Goit group. This faction has established contact offices in Patna and Darbhanga in India, and in Diman (Saptari District) in Nepal. According to media reports, the JTMM-J has contact offices in Supaul, Birpur and Jogbani in India, and in Sripur and Jabni (Saptari District) in Nepal. The cadres of the Goit faction, JTMM-J, JTMM (Pawan Singh), (Bisfot Singh) and some other dozen outfits are getting military trainings in Motihari, Darbhanga, Arariya, Sitamadhi, Munger Supaul and some other areas of India. Nepali security personnel claim that the Goit faction has established a fully facilitated training center in the Basantapur VDC of Sunsari District in Nepal, adjoining Supaul District in the state of Bihar, India.³⁷

The report recommends tightening up security along the open border with India to avoid criminals sneaking into India with ease after committing a crime in Nepal. The government has earmarked Rs. 641,773,000 to strengthen APF posts in 64 locations along the Nepal-India open border and is also to increase security personnel at 124 bases of the APF.³⁸

³⁷ Telegraph Nepal, "Indian leaders aiding Nepal armed outfits. Nepal Govt. Report", 1 August 2009, http://telegraphnepal.com/news_det.php?news_id=5942 (last accessed 15 September 2009).

³⁸ Telegraph Nepal, "Indian leaders aiding Nepal armed outfits. Nepal Govt. Report", 1 August 2009, http://telegraphnepal.com/news_det.php?news_id=5942 (last accessed 15 September 2009).

Extrajudicial executions

“Anyone who ignores laws of the land will not be spared come what may.”³⁹

Between February and October 2009, Advocacy Forum recorded 12 incidents of possible extrajudicial executions, mostly by members of the NP, in southern Nepal. Two cases involved members of the APF. A total of 15 people were killed and a further eight were injured in these incidents.

The killings occurred in the following five districts: Banke, Dhanusha, Siraha, Saptari and Rupandehi. Eight of the incidents concern members of political groups operating in the Madhesi communities in southern Nepal. Each of these killings is presented by the security forces as killings during “encounters” between the police and the alleged members of these groups. However, in none of the incidents is there any indication that members of the NP or APF were killed or injured. Instead, in several cases, witnesses have confirmed how they saw the victims initially being taken into custody and later saw them being deliberately killed; or that they heard shots soon after they saw the police take away the arrested person with their hands tied.

³⁹ State Minister of Home Affairs, Rizwan Ansari as quoted in The Telegraph, “Indian leaders aiding Terai armed Outfits: Nepal Govt. Report”, 1 August 2009.

Part-I

Three further incidents involving the NP include an alleged “encounter” killings of two people said by police to have been involved in abductions for ransom; a summary execution of a motorbike rider by a police officer who got apparently infuriated because the rider did not immediately stop his motorbike and an individual police officer using his service weapon killing three people and injuring five others in the context of a land dispute involving his father. The final incident concerns members of the APF shooting into a demonstration, killing one person and injuring three others. More details of all 12 individual incidents can be found in Annex A of this report.

The emergence of deliberate killings by police as an alternative to arrest of suspected members of armed political groups is reminiscent of tactics employed by the security forces against members of the CPN-M during the armed conflict.⁴⁰

Among the eight cases where police claimed the victim was killed during an “encounter” or “while trying to escape”, are an 18-year-old young man, Parshuram Kori, who had been forced to “donate or join” by members of the JTMM-J in Banke District and 24-year-old Lalan Kumar Yadav alias Bikram, commander of ATMM in Saptari District. Parshuram Kori was killed by around 20 police personnel from Betahani Police Post and District Police Office of Banke District on 9 April 2009 at Ward No. 4, Betahani VDC, Babagaon, Banke District. During a press conference in the district headquarters of Nepalgunj on 10 April 2009, police claimed that Parshuram was killed in cross-fire between the police and members of the JTMM-J. They also displayed some weapons and bullets reportedly seized in the cross-fire. There was no mention of

⁴⁰ Amnesty International, “Nepal: A spiralling human rights crisis”, April 2002, AI Index: ASA 31/016/2002, <http://www.amnesty.org/en/library/asset/ASA31/016/2002/en/bbd42c5b-d88f-11dd-ad8c-f3d4445c118e/asa310162002en.html>

any police officers being killed or injured during the cross-fire. A group of human rights organizations, including the NHRC, investigated the killing and visited the site on 17 April 2009. They concluded that Parshuram was initially arrested, tortured and then deliberately killed by the police. Lalan Kumar Yadav alias Bikram was arrested by a group of 50 to 60 NP and APF personnel (some in civilian dress) from a house where he had forced the occupants to provide him and others with food. The NP and AFP injured Bikram and arrested his two companions as well as the son of the house owner. They then took Bikram to a nearby stream, after which villagers heard a shot. Later that day, there was a radio announcement that Lalan Kumar Yadav alias Bikram had been killed in an “encounter” with police patrolling the area.⁴¹

The way the NP and APF have acted in the immediate aftermath of these killings is also identical to security forces’ conduct during the conflict. Photographing the victims with weapons and ammunition placed (planted) next to their body, making villagers sign statements confirming the person(s) concerned were killed in “encounters” and putting out press releases or holding press conferences to put on record the official version of events are three ways in which the NP and APF try to pre-empt the truth about the exact circumstances of the killings emerging. A press conference was held in the cases of Parshuram Kori (Case 4) and Udgar Mandal and Ghunan Shah (Cases 8 and 9). Police took photographs in the cases of Parshuram Kori (Case 4) and Sahidullah Dewar (Case 15). Police made villagers and/or relatives sign certain documents which they were not allowed to read in the case of Parshuram Kori (Case 4) and Ram Yadav (Case 14). In the case of

⁴¹ Nepalnews, “Commander of armed Terai outfit killed”, 9 February 2009, <http://www.nepalnews.com/archive/2009/feb/feb09/news02.php>

Part-I

Sahidullaha Dewan (Case 15) who was killed by the Rupandehi police in front of his father and other witnesses, three police officers took photographs of the body after allegedly putting a pistol into his hand.

In addition to the fact that in none of the 12 cases did the security forces claim there had been any NP or APF officers killed or injured, other aspects of the circumstances suggest these were not genuine “encounter” killings:

- In at least five cases, independent witnesses testified as to how they saw the NP or APF arrest the victims, take them away with their hands tied, only to hear shots a few minutes later. (Cases 1, 2, 8, 9 and 12).
- Two of the three killings from Rupandehi District happened in the same location. Dhruva Narayan Mishra was killed by a Nepal Police patrol team deployed from DPO Rupandehi on 10 February 2009 at Rohini Bridge, Hulaki Road, Baikuthapur VDC-2, Panani, Rupandehi District (border of Dhakdhai VDC and Baikuthapur VDC). The police claimed the incident to be crossfire, but the family members believe that he was killed after he was arrested from Barmeli Tole of Shiddharthanagar, Bhairahawa, earlier that day. Ramwali Chauhan (alias Bali) was killed by police at the same place (Rohini Bridge, Hulaki Road, Baikunthapur VDC-2) on 26 February 2009 – 16 days later. It is extremely unlikely that two genuine “encounters” would happen in the same place within such a short period of time.
- In at least three cases, police are said to have closed off roads in the immediate period before the alleged “encounters” took place. Udgar Mandal and Ghuran Shah (alias Santosh Shah) (Cases 8 and 9) were killed at around 10.30am on 24 May 2009 at a field nearby the road linking Janakpur to Kurtha Bazaar in Janakpur Municipality Ward no. 3 of Dhanusha District. According to witnesses,

police had arrested the two men, tied their hands and blindfolded them. Witnesses report they saw the police taking the men down the road in this way. Soon after, the police closed the roads. One witness told local human rights defenders: “After blocking the two roads in the east and the west, they forced the two arrested flat on the ground. The police killed them in a one-sided way. Their hands were tied and their faces covered. They were not in a position of doing any harm at that moment.”⁴²

- During several alleged “encounters”, others in the company of the person killed survived after local people pleaded with the NP and/or APF on their behalf as they were recognized as being from the area. One young man who was arrested at the same time as Parshuram Kori (Case 4) was not killed as he was recognized by a sub-inspector of police with whom he was acquainted and was released into the care of local villagers.
- In one case, police called the person concerned on his mobile phone asking him to come to a certain place only for him to be killed by them when arriving: Sahidullaha Dewan was killed at Parsahawa Chowk in Bogadi VDC-8, Bhaisagahan, Rupandehi District, by three police personnel in civil dress who shot him in broad daylight in front of his father and other witnesses.

Alleged “encounter” killings are difficult to investigate for non-governmental organisations. However, it is clear from the information presented above and in Annex A that there is a need for independent and impartial investigations into these 12 incidents. Such investigations should be set up forthwith and members of the NP and APF should be ordered to fully cooperate with it.

⁴² Interview with locals of Kurtha VDC-5, Dhanusha on 25 May 2009.

Torture

During its regular monitoring visits to 42 places of detention in its 11 working districts in the Terai, AF has noted an increase in incidents of torture in most of the places from around May 2009. The main places of detention from where increasing allegations of torture are reported concern police stations and APF camps. The analysis in this chapter is based on information provided by 1,473 detainees visited by AF in the 11 districts (Banke, Bardiya, Dhanusha, Jhapa, Kanchanpur, Kapilvastu, Morang, Rupandehi, Siraha, Sunsari and Udayapur), between January and September 2009.⁴³

Based on the emerging trends, there are fears that the government's announcement and implementation of the SSP, despite repeated assurances that it is not intended against any particular region, community or political group, may have had a knock-on effect on the levels of torture in the Terai.

⁴³ Visits to places of detention in Siraha and Sunsari only started in June, so the data from those two districts do not include previous months.

Patterns and trends analysis

Part-II Among the 1,473 detainees visited by AF were 1,380 males and 93 females; 262 were juveniles. Of them, 20.6% (304) have claimed that they have been subjected to torture or other ill-treatment. This compares to an average of 20.9% in a total of 18 districts across the country where AF undertakes regular visits to places of detention during the same period. In some Terai districts, however, the figures are substantially higher. Among the 93 female detainees in the 11 Terai districts, 15.1% claimed that they were subjected to torture or other ill-treatment against 21% among the male detainees.

There has been a pattern observed over the last three years showing a slow but steady decline in torture throughout Nepal since the Comprehensive Peace Agreement (CPA) of November 2006.⁴⁴ However, this trend may now be reversing. In some Terai districts the statistics show an increase in torture over the last few months. (*Please see the figure below*)

The districts

In 3 out of the 11 Terai districts where AF conducts regular visits to places of detention, the percentage is significantly higher than the national average of 20.9% and has increased since the beginning of 2009. Reports of torture are common in Dhanusha, Bardiya and Banke districts.

⁴⁴ Advocacy Forum and others, *Criminalize Torture*, (Kathmandu, 2009) and Advocacy Forum, Association for the Prevention of Torture and the REDRESS Trust, *Review of the Implementation of Recommendations Made by the Special Rapporteur on Torture*, Manfred Nowak, after his Mission to Nepal in 2005 (Kathmandu, London and Geneva: August 2009) [hereinafter 'Nowak submission'].

Table 1: Torture in the districts

District	December 2008- March 2009	April 2009- June 2009	July 2009- September 2009
Dhanusha	28.9%	36.0%	31.1%
Bardiya	14.7%	16.0%	30.0%
Banke	22.5%	24.4%	29.9%

These statistics show that despite AF's regular intervention with and awareness raising programs among the actors of criminal justice system, torture has increased in Bardiya and Banke districts. It paints a bleak situation of torture in Bardiya District where the percentage of torture has increased steadily from December 2008 and March 2009; to April 2009 and June 2009; and July 2009 to September 2009 from 14.7% to 16.0% to 30.0% respectively. In Banke District, the torture cases have increased from 22.5% to 24.4% to 29.9% in the same period. In Dhanusha District, there is some hope that sustained interventions by AF are having some impact in reducing torture, though it remains the district with the highest throughout the Terai region.

The perpetrators

The large majority of cases of torture are reported from detention, though there are also reports of torture, including rape, against civilians in their homes or in the field or other public places. The NP is the main perpetrator of torture in the cases reported to AF. There are concerns that members of the APF are also increasingly involved in torture. AF has received three allegations of torture at the Mujelia APF camp in Dhanusha District as well as at APF camps in Jhapa District.

In Jhapa District, the victims include four Bhutanese refugees (including two women) suspected of involvement in a murder. All of them were subjected to beating on the soles of their feet and other

parts of their bodies at both APF camp in Beldangi refugee camp and at the Pathibara Gan APF camp in Padaguji. One of them, Narbir Rai, was burnt by cigarettes on his chest and left hand. All of them were kept in illegal detention for four days by the APF. (See separate box below for more details on the case of Narbir Rai)

There have also been allegations that APF officers have been responsible for rape. In a very recent example, on 1 October 2009, Silton Devi (name changed to safeguard her identify) of Siraha District was raped by two members of the APF, including Naba Raj Khadka and Krishna Raut, while she was heading towards a place called Auni to receive goods sent by her husband from a foreign country. She was raped by the two officers while going through the area of the local APF camp. The villagers caught the alleged perpetrators and handed them over to the Siraha District Police Office. However, they were later released. The victim has since left the district.

In the evening of 21 April 2009, around 9pm, while 20-year-old Bhutanese refugee, Narbir Rai, was listening to a radio program with his brothers, he heard the news that an unidentified gang had killed Shanti Ram Nepal in one of the Bhutanese refugee camps of the area. Around 9.30pm, a group of APF personnel from Beldangi-1 Camp came to his home and arrested him along with his brothers on suspicion of involvement in the murder. They were kept for five minutes at APF Camp, Beldangi-1, before they were moved to APF Camp, Beldangi-2.

According to the victim, this is what happened: "They took us to the APF Camp, Beldangi-2, where they blindfolded me at around 10.30pm and took me into the compound of the camp premise. As I was blindfolded I can't say exactly how many APF men were there. They forced me to lie on the ground. I lay down on my stomach but they ordered me to lie on my back. Then two APF men stamped on my knees with their boots. One of them asked, "Who killed Shanti Ram Nepal? Can you recognize the murderer?" and so on. I pleaded my innocence. Then an APF man beat me with a plastic pipe demanding to tell the truth. He said, "Why don't you know the murderer. We heard that you were involved in the murder case." I begged them that I didn't know anything about the murder case. They verbally abused me and stubbed out

cigarettes on my body. They tortured me in the similar manner for almost 15 minutes. Then they made me jump up and down for five minutes and locked me in a room.

Then an APF officer came and started to ask me different questions again. I swore on the holy book "Geeta" and pleaded my innocence. Then they kicked and beat me randomly on my head, neck, mouth and other parts of my body. I fell down but they pulled me upright again. They tore my string of beads and verbally abused me. One of them said, "You bloody bastard. You are the shooter. If you don't tell us the truth, we will take you to Bhaudi and shoot you." They beat me on my head. They tortured me there for almost 15 minutes. Then they forced me to sit in a Buddha posture for two hours without any movement. The next morning (22 April 2009) at around 4am they took me to the Area Police Post, Damak with a blindfold over my eyes. From there, at around 10am, they took me to the APF Camp, Padaguji. They again blindfolded me and took me to a separate place. There, Inspector Kamal Thapa along with other APF men asked me who killed Shanti Ram Nepal. I replied him that I didn't know anything about the murder. He said, "You killed him. If not then who killed him?" He gave some names of my neighbours and asked me whether I recognized them. I replied positively. Then he asked me about Bhutanese party's name. I gave two names. After that they didn't inflict torture on me. They brought me back to the Area Police Post, Damak where no torture was inflicted on me."

Narbir Rai was taken to Amda Hospital in Damak for a health check-up. In the hospital he was only asked whether he consumed alcohol. The doctors, however, did not listen to his complaints about torture.

The following injuries were observed on his body:

- Abrasion by cigarette stubs on his left hand
- Abrasion by cigarette stubs on his chest

He also suffers from pain in his nose due to the kicks and pain in his knees and the soles of his feet.

Caste and Ethnic Background

AF has begun to analyze torture on the basis of caste and ethnic groupings. An analysis for this period shows that people belonging to the Brahmin and Chhetri caste were least likely to be tortured in the Terai; whereas detainees belonging to other groups (including Muslims) and those from the Terai ethnic groups were more likely to be tortured in the 11 districts. This is demonstrated by the fact that members of the Terai ethnic groups represent 32.2% of detainees visited by AF, but

they constitute a significantly higher percentage (38.5%) of the total number of detainees who reported they were tortured. In comparison, whereas Brahmin and Chhetri detainees represent 31.2% of all detainees, the percentage among those tortured is 23.6%.

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Table 2: Torture in relation to caste group

Caste/ethnicity	Percentage among detainees	Percentage among detainees tortured
Brahmin /Chhetri Group	31.2	23.6
Dalit Group	8.9	9.2
Indigenous Group	16.0	13.2
Newar Group	3.3	3.3
Other Group	8.4	12.2
Terai Ethnic Group	32.2	38.5

Juveniles

A very worrying trend is the continuing high number of reports of torture of juveniles. Between January and September 2009, AF visited a total of 262 juveniles in the 11 districts concerned. Of them, 83 (31.7%) complained that they were subjected to torture or other ill-treatment – a percentage which is significantly higher than the average for all detainees in the Terai (20.6%) and also higher than the national average for juveniles in the same period (27.7%).

AF noted the following percentages of torture allegations made by juveniles between the ages of 8 to 17 per district in the period between January and September 2009:

Table 3: Juveniles Claiming Torture

District	Percentage
Dhanusha	51.9%
Bardiya	46.2%
Jhapa	32.7%
Rupandehi	31.4%
Banke	30.8%
Udayapur	28.6%

Of the total number of juveniles, 143 (54.5%) were aged up to 16 years, with a minimum age recorded as 8 years. The remaining 119 (45.5%) juveniles were 16 or 17 years. In Dhanusha District, AF interviewed 5 juvenile detainees between the ages of 11 and 13, of which 4 were tortured. In Rupandehi District, six out of 12 juvenile detainees aged 15 claimed they had been subjected to torture.

Nine-year-old Rajesh Chai and his 14-year-old brother, Binod, from Gouri VDC-1, Kapilvastu district were among about 15 boys arrested by police on 16 May 2009 at around 11 am on suspicion of theft of telephone wire.

Police arrested them from their home. They detained them illegally in a guard room. All others boys apart from Rajesh and Binod were released the following day. All of them were slapped. In the morning of 17 May 2009, a policeman took Rajesh to the "Criminal Investigation Room" where 5 or 6 other policemen were present. Then a plainclothes policeman beat him with a bamboo stick on his hands and on his chest four or five times each telling him to tell the truth about the theft of the telephone wires and who was involved. He denied that he was involved and told them that he heard that some village boys had stolen the telephone wire. The police threatened him that he would be tied up and detained there until he tells the truth saying they can do anything to him.

After a while, he was taken to downstairs where another plainclothes policeman slapped him for four or five times on his chest asking about the theft case and who was involved.

Both Rajesh and Binod were illegally detained for three days. On 19 May 2009 the police finally released them, but told them to report again to the station on 23 May 2009. They presented themselves in the Police Office on that date. Their father

accompanied them. They were again kept in detention and finally released on 25 May 2009 into the care of their guardians.

Due to the beatings, Rajesh had sustained wounds on his left hand and abrasions on his chest.

During regular visits of DPO, Kapilvastu, AF representatives had not seen the boys. Their names were not enlisted in the detainees' register. During the night, they were kept in the guard room and during the day in the office premise or outside the guard room. After AF representatives informally came to know that two juveniles were kept illegally in the DPO, Kapilvastu, they asked a police inspector to confirm but he avoided to give a clear answer.

Despite sustained lobbying by local and international organizations, the government has not taken any meaningful steps to prevent torture of juveniles. The detention of juveniles in police custody is against the law and in violation of two orders of the Supreme Court.⁴⁵ Section 42 (a) and (b) of the Children's Act, 1992, provides that juveniles detained or imprisoned will be held in Child Correction Homes. The fact that 262 juveniles were visited by AF in regular detention centers between January and September 2009 clearly demonstrates that this provision has not been implemented. Similarly, the Juvenile Justice (Procedural) Regulations, 2006 remain to be fully implemented.

Sushan Limbu and Bhakta Rai

Sushan Limbu (23) was detained at the Urlabari Area Police Post in Morang District on 12 July 2009 for failing to pay his bill at a local hotel. His friend Bhakta Rai, aged 24, went to the police station the next day to inquire about him. Police officers took both men into a cell and beat them. Around 9am on 13 July, they took them out into the street, stripped them to their underwear and continued to beat them in public. According to people who were present, they were beaten with iron rods, kicked and punched. Sushan Limbu and Bhakta Rai were forced to strip to their underwear and crawl on their knees and elbows over stony ground for one hour.

⁴⁵ Ghimire and Dahal v. Nepal, Supreme Court judgment, 17 December 2007 and Bablu Godia v His Majesty's Government, Supreme Court judgment, March 2009.

One of the members of the public took a 15-minute-long video clip of this torture. The police took both men to the hospital that evening. However, they were not examined by a doctor. Instead, the police forced the doctor to sign a medical report that stated the victims had “no external injuries.” Roshan Limbu was not allowed to see his family until 15 July 2009.

The detainees were only granted access to lawyers and provided with medical care after appearing in court on 28 July. The police officers involved in the torture were not suspended. After considerable pressure, including through appeals from Amnesty International and the World Organisation against Torture, the Human Rights Unit of the Nepal Police conducted an investigation. On 27 October 2009, the Nepal Police informed Advocacy Forum that an investigation committee headed by Deputy Superintendent of Police (DSP) Majhi from Morang DPO had summoned the Officer-in-Charge of Urlabari Police Post and other police officers allegedly involved. They found they were “responsible” though it is unclear of what exactly. The Human Rights Unit recommended that disciplinary action be taken. As a result the Legal Section of the Police Headquarters took departmental action in the form of a “warning” to the police inspector (Officer-in-Charge), one head constable and two constables. During a meeting with DSP Majhi on 9 November 2009, the DSP confirmed that there was independent corroboration of the allegations of torture, more specifically through the video recording, but claimed that no witnesses were prepared to come forward against the police. He also claimed that due to the security situation in the Urlabari area, it was not possible for the police from Morang DPO to go there.

Both men were brought before the Chief District Officer (CDO) on 28 July. Bhakti Rai was charged under the Public Offences Act, 1970 and released on bail. Sushan Limbu was remanded into prison custody awaiting trial under the Arms and Ammunition Act, 1962. The CDO also ordered for medical treatment to be provided to Sushan Limbu. On August 5, Sushan Limbu had an operation on his damaged fingers at Koshi Zonal Hospital. However, ostensibly due to security concerns, police authorities tied one of his hands and both legs to his hospital bed.

Bhakta Rai filed a case under the Torture Compensation Act, 1966 on 3 August. Sushan Limbu's sister tried to do the same on 17 September. However, the registrar at the Morang District Court refused to accept the application claiming the 35-day limitation period set out in the Act had expired. As of early December 2009, Sushan Limbu remains in detention.

Methods of torture

An analysis of the methods of torture reported by detainees shows that the following methods were most common:

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- Beating while the suspect is tied to a stick by his hands and legs and the stick is suspended between two tables
- Beatings on various body parts with sticks (cane/bamboo), plastic pipes or rifle butts, including on thighs, hips, shoulder, back, head
- Beatings on feet (*falanga*)
- Kicking and punching on various parts of the body, including on back, chest, abdomen and face
- Hard slapping on the face
- Ear-boxing (slapping on the ears) for a couple of times
- Uttering death threats (one officer aiming revolver at temple, another ordering to shoot)
- Pulling hair hard till it is uprooted
- Handcuffing and blindfolding before beating
- Jumping and kicking on body
- Sitting on the suspect, by holding him flat on the ground, and then hitting on the soles of his feet with sticks (cane/bamboo) and plastic pipes
- Tying both hands and legs with a rope, and tightening a rope around the neck
- Handcuffing and making the suspect sit on a chair throughout the night
- Pouring water into the nose by holding the suspect down on the ground (similar to water-boarding)

Grounds for arrest

An analysis of the grounds for arrest provides some interesting data. The categories of detainees with the largest percentage of people claiming they were tortured were those later charged with grievous bodily harm (under the *Muluki Ain*,⁴⁶ 1963, Chap. 9, Art. 6) (50%) (i.e. one in two people charged under this provision claimed s/he was tortured), under the Arms and Ammunition Act (48.1%) and those arrested on suspicion of robbery (35%) and theft (34.8%). The fifth largest percentage involves people charged with attempted murder (30.6%). Torture to detainees against whom no charges were subsequently brought stands at 17.1% in the Terai.

For those charged under the Arms and Ammunition Act (as well as other laws such as the Public Offences Act), the role of Chief District Officers (CDOs) in the criminal justice system is a critical issue to consider. Under these laws, CDOs have wide-ranging quasi-judicial powers. They can sentence people up to seven years in prison under the Arms and Ammunition Act, for instance. Given that CDOs are political appointees, they are subject to the pressure of the Home Ministry, one of the most powerful ministries of the Council of Ministers, and also the ministry responsible for policing. This makes it even more unlikely that any allegations by the accused that a confession was extracted under torture would be taken seriously. Furthermore, many of those tried before CDOs do not have access to a lawyer and do not get time to prepare their defence. This is a violation of the right to a fair trial, and more specifically the right to be tried before a competent, independent and impartial tribunal.

⁴⁶ Nepali Civil Code

Criminal activities by non-state actors and their impact on women and children

Violent activities by non-state actors acting with a political motive constitute abuses of international humanitarian law when the situation qualifies as a non-international armed conflict under the Geneva Conventions.⁴⁷ For a situation to be declared as such certain conditions have to be met. These include that the violence has to have reached a certain level and the armed groups involved have to have a certain level of organisation. These factors are assessed by, among other things, the frequency of acts of violence and military operations, the numbers of victims, the nature of the weapons used and the strength of the armed groups' command structure. In AF's assessment, the current situation in the Terai does not amount to a situation of armed conflict and none of the various armed groups can thus be held to account under international humanitarian law. Therefore, the acts described in this Chapter are first and foremost criminal acts which the state has a responsibility to investigate, regardless of whether the situation qualifies

⁴⁷ Sylvain Vite, "Typology of armed conflicts in international humanitarian law: legal concepts and actual situations", in *International Review of the Red Cross*, Volume 91, Number 873, March 2009.

as an internal armed conflict. As described in more detail in Chapter VI (Impunity), the state has failed in this duty in relation to human rights violations by state agents, more specifically the NP and APF. Below is described this failure in relation to criminal activities, in particular rape of women.

The increase in violence and deterioration in public security in the Terai is having a major impact on women and children. In view of the deteriorating law-and-order situation in the region, the Nepal-based Working Group on Children Affected by Conflict conducted an assessment of protection concerns of children in nine Terai districts, which was completed in August 2009. It concluded that the ongoing violence and lawlessness in the Terai had had a negative effect on children's education and contributed to an increased dropout rate in schools. Some children were also found to be involved with Terai armed groups as messengers as well as implicated in cross-border smuggling. Threats and economic necessity were two key factors that contributed to children's involvement in armed groups.⁴⁸

According to family members, 18-year-old rickshaw puller, Parshuram Kori, was abducted along with some other villagers by JTMM-J cadres in April 2009. The JTMM-J members had asked him to either pay a donation of Rs. 50,000 or to join them. Parshuram Kori agreed to go with them due to his inability to pay the huge sum of money because of his poor economic condition. He was later killed by police in an alleged "encounter" (Case 4 in Annex A).

AF has collected several other statements from young people and adults testifying that they also were abducted by members of armed

⁴⁸ UN Security Council, Report of the Secretary-General on the Request of Nepal for United Nations Assistance in Support of its Peace Process, 26 October 2009, para 30.

groups and then released after they paid the amount demanded. One person recruited around the same time as Parshuram Kori stated:

“While I was at home, at around 9pm on 7 April 2009, five persons including Parshuram Kori arrived. They said I was called for a meeting and took me with them. At a garden in Dadunwa Nala, they introduced me to a JTMM-J group member named Pappu. Saying their weapon was missing, Pappu asked me if I had taken it. Then, they tied me up and beat me asking to reveal where it was. They also beat [two other people]. They told me either to give them Rs. 50,000] or to join them in their party. I promised them that we would collect the money and give it to them within a week. They released us on that condition. Parshuram opted to go with them saying he did not have that much money.”⁴⁹

A number of human rights defenders report that due to the operation of criminal groups, an open border with India and pervasive gender discrimination, women in the Terai have always been vulnerable to sexual violence.⁵⁰ However, they emphasized that in the present context, due to a growing insecurity stemming from the activities of armed groups, mainly in the Eastern Terai, and pervasive impunity for human rights abuses, women have become extremely vulnerable to sexual violence.

Different forms of gender-based violence have been reported: rape by members of political armed groups, criminal gangs and

⁴⁹ Interview of resident of Bankatti-5 in April 2009.

⁵⁰ The information in this chapter about gender-based violence, including rape, was collected as part of a wider AF study (Promoting Women’s Voices and Experiences in the Transitional Justice Process in Nepal) which aims to understand women’s experiences of the conflict in Nepal, particularly in terms of analysing the prevalence and nature of sexual violence endured and clarifying the wider impact of the conflict on the realisation of women’s economic, social and cultural rights.

individual perpetrators, including Indian nationals. Numerous cases of domestic violence have also been reported, including rape, as well as dowry deaths and battering by intimate partners.⁵¹ A few cases of killing after rape by the members of JTMM factions have been reported, especially in Saptari District. In one such case the victim was raped and killed as retaliation after her husband refused to join the JTMM group. In some cases, members of the CPN-M were directly implicated in rape during the armed conflict period as well as after signing of the Comprehensive Peace Agreement (CPA).

In addition, AF has documented several accounts of perpetrators of rape seeking assistance from armed groups to intimidate victims, their families, lawyers and human rights defenders when the latter try to obtain justice. This has further increased insecurity for people to speak out about sexual violence.⁵²

⁵¹ The study did not specifically look into the issue of domestic violence and further research on this area is necessary to determine the prevalence and nature of such violence. However, the number of reference to incidents of domestic violence against women, including rape and battering related to dowry were reported to the study team in Terai districts, indicating that domestic violence might be very common in these areas. This was further highlighted by reports of a post-conflict survey conducted by the United Nations Population Fund (UNFPA) which reportedly found that at least 80 percent of women surveyed in Surkhet and Dang districts have experienced some form of domestic violence, while 74 percent said they were forced to participate in non-consensual sex multiple times. See Kathmandu Post, "Most women victims of domestic violence: study", 11 August 2009.

⁵² An Amnesty International mission in November 2008 concluded that women activists in Eastern Terai are vulnerable to gender-based violence, including threats of rape and murder for raising issues such as dowry deaths (confusing phrasing), domestic violence and rape by landlords and members of armed groups. See Amnesty International, Nepal's Government fails to protect women human rights defenders, 10 April 2009, <http://www.amnesty.org/en/news-and-updates/news/nepal-government-fails-protect-women-human-rights-activists-20090410> (accessed on 1 October 2009).

Main trends

Gang rape by masked armed men

Based on interviews conducted with victims, human rights defenders and communities, a disturbing pattern of gang rape, particularly in Saptari and Siraha districts, by masked armed men in groups of 3 to 12 was found.⁵³ Some victims have testified how perpetrators held knives to their neck and raped them in turn. Many such gang rapes were committed in the evenings or during the night, often in private houses, which perpetrators broke into. In some cases, women were raped in front of their family members. When interviewed by AF on 21 April 2009, the CDO in Saptari confirmed this trend and said that “many rape cases are taking place in the district as men with arms easily enter into a village, threaten people and rape women.” Yet, the CDO did not mention any specific efforts by the administration to address this trend.

Political protection for perpetrators

The police are there for people’s security but they say that they release the criminal when a phone call comes. How can people believe the police in this condition?

– Human rights defender from Siraha, April 2009

Strikingly, victims and human rights activists consistently reported interference by political parties to release detainees, particularly members of criminal groups and political armed groups, such as the

⁵³ Due to research limitations in terms of its scope, methodology and information collected, it was not possible to investigate into the history of the pattern of gang rape by armed men in Terai districts; however, as the research clearly indicates that such pattern exists, further research or investigation is necessary to understand this type of violence and its context.

ATMM and the JTMM-J faction as “a regular practice”, resulting in a complete lack of accountability for violent acts committed by these groups. For instance, in Saptari, a group of armed men were reportedly involved in several rape cases. They were set free due to pressure from one or more of the political parties to which family members of the alleged perpetrators were thought to have been affiliated. Finally, they were arrested in a case involving gang-rape of a Dalit woman in August 2008. However, the victim of this incident reported that she was facing repeated threats from the families of the perpetrators to retract her statement and withdraw the complaint she had filed with the police. She fears that the police will release the perpetrators and that she might be targeted by them once again.

Survivors of sexual violence and their families repeatedly claimed during interviews that members of all main political parties, including the NC, CPN-UML, MJF and UCPN-M, had made interventions to get alleged perpetrators released. This practice is causing additional burdens to the victims as not only is the police often not properly investigating their complaint, but they also live in fear that the person they have named as the alleged perpetrator is released and may seek to take revenge.

This lack of accountability for sexual violence extends to individual perpetrators of rape who are not members of criminal or political armed groups. They often seek assistance from these groups to exert political pressure for their release and/or to intimidate the victims, human rights defenders and lawyers. There have been cases where AF came to know that in return, these individuals joined one of the armed groups after their release.

In some places, police personnel have acknowledged that political interference was making their work extremely difficult. However, human rights defenders allege that police are culpable too, as they accept

bribes from both political parties and armed groups in exchange for releasing criminals. When asked for reasons for the release, the police say that they don't have sufficient evidence to detain the suspects.

The most vulnerable are often targeted

Although women across all castes have been victims of rape, patterns emerge showing that the most economically and socially marginalized women are more vulnerable to sexual violence in the Eastern Terai, mainly from higher caste men and members of criminal groups operating in the border areas. For instance, in Siraha, information indicates that many Dalit women have become victims of sexual violence by criminal groups and men (often landlords) from higher castes, such as Brahmin and Yadav. In addition to mere caste-based discrimination, other factors contribute to this phenomenon: women from such communities are economically weak, they lack networks, awareness on law and judicial procedures, as well as support from their community (reportedly, people from higher caste enjoy community support and can afford to bribe police). Economically and socially marginalized women, such as Dalit women, consequently face many challenges to access justice.

Culture of silence and inaction by the State

Although rape survivors are increasingly coming forward to seek assistance, many still do not speak about rape. A comment by the CDO in Saptari is revealing. He mentioned that "many rape cases are taking place in the district; however, no woman or family has ever come forward with a complaint of rape."⁵⁴ Thus, despite many incidents of

⁵⁴ Interview with Saptari CDO, 21 April 2009.

rape, there is very little reporting and public awareness of such incidents. Research indicates a general culture of silence surrounding rape in Terai districts compared to other places, due to pervasive cultural stigma regarding rape, lack of legal awareness and of other forms of support (such as safe houses or counseling), as well as due to a feeling of insecurity, notably resulting from threats by perpetrators. Discrimination against rape victims by community members is also prevalent in districts such as Saptari and Siraha. Furthermore, community and family members often exert pressure on victims to settle the case within the traditional community justice systems. This type of settlements generally involves reaching a deal with the rapist to pay compensation in return for the woman's forgiveness.

A disturbing feature is the pattern of threats from the perpetrators against the victims and their families not to report the incident. Research also shows that many rape cases go unreported not only due such threats and concerns about social stigma, but also because victims fear that a lack of effective investigations and serious attempts by the authorities to prosecute the perpetrators might result in their release or acquittal and subsequent reprisals. In those cases where women reported rape to the police, police have indeed repeatedly failed to conduct proper investigations.

Specifically, women from Dalit and indigenous groups have stated that they did not want to report rape and other forms of violence as they did not expect to get justice. A few women who did attempt to file complaints with police stated that police either refused to file their cases or conduct proper investigations. Therefore, they feel they have no alternative but to tolerate violence, including rape. AF has received testimonies that police push women to take recourse to traditional

informal community justice systems or to strike a deal with the perpetrator.⁵⁵ This culture of silence and inaction by the state has resulted in a complete lack of accountability for sexual violence, particularly in the Eastern Terai.

Lack of support for survivors of rape

Legal, medical and psychosocial support for rape survivors is extremely limited in Central and Eastern Terai. There is little interest or awareness on sexual violence among health professionals, police and the local administration. Health care professionals interviewed by AF feel that it is inappropriate for them to report rape cases to the police unless the victim clearly requests them to do so. There is also a lack of a clear functioning referral procedure in health institutions. Due to the absence of women lawyers, for instance, in Siraha District, women activists feel that it is difficult to file rape cases in the district court as many male lawyers perceive that rape cases should be handled by women lawyers.

⁵⁵ This finding is in line with an Amnesty International report which states: "Instead of investigating incidents, women are pushed by police, family and community to accept traditional informal community justice where payment of bribes, discrimination and the lack of importance of the crime committed often prevent real justice," Amnesty International, Nepal's Government fails to protect women human rights defenders, 10 April 2009, <http://www.amnesty.org/en/news-and-updates/news/nepal-government-fails-protect-women-human-rights-activists-20090410> (accessed on 01 October 2009).

Impunity

Impunity for human rights violations has always been the norm in Nepal. The lack of accountability for any crimes committed by agents of the state was particularly pervasive during the armed conflict of 1996 – 2006.⁵⁶ However, its origins far predate the armed conflict and are grounded in a feudal state structure rife with discriminatory practices. What is clear from the way the authorities have handled the recent violations documented in this report is that impunity remains the norm.

First and foremost, police continue to refuse to accept complaints from relatives and to register FIRs. In none of the 12 cases of alleged extrajudicial executions have FIRs been registered despite several attempts by the relatives, at least in some cases. For example, in the killing of Surendra Mahato Koiri (Case 10), the Superintendent of Police of Mahotari District repeatedly refused to file a FIR saying the incident was “an internal matter”. The family was later informed that a Special

⁵⁶ Human Rights Watch and Advocacy Forum, “Nepal: Waiting for Justice. Unpunished Crimes from Nepal’s Armed Conflict” of September 2008; and Human Rights Watch and Advocacy Forum, “Still Waiting for Justice. No End to Impunity in Nepal” of October 2009, <http://www.hrw.org/en/asia/nepal>

Court set up under the Police Act, 1995 had found the sergeant who killed Surendra responsible of abuse of arms and sentenced him to a fine equivalent to 11 months' salary. To date, however, his widow has not received any compensation and it seems the sergeant will escape having to account for what was clearly a murder before any civilian court.

Part-IV

Torture has not been defined as a crime in Nepal, and it is therefore impossible to file FIRs in relation to torture by state agents. In theory, it is possible to file complaints in relation to torture by both state and non-state actors under the assault and serious bodily harm provisions of the *Muluki Ain*. Under the *Muluki Ain*, serious bodily harm is punishable by a maximum of eight years in prison and a fine. In practice, this provision is rarely used by victims of torture, as there is no impartial mechanism for receiving such complaints. Instead, it is the police (in many cases the torturers themselves) to whom a complaint must be made. Under these circumstances, charges lodged against public officials are rarely investigated seriously. In any event, prosecution for assault and serious bodily harm as defined in the *Muluki Ain*⁵⁷ would not provide adequate redress to the victims, as this definition does not account for the unique nature of torture, including the psychological impact of this offence.

⁵⁷ No.1: **Definition of Assault**

It is an assault if one causes bodily pain or harm or leaves a cut or injuries, or bloodies a person, or maims someone with weapons or in any other manner.

No.2: **Maiming**

The following assaults are deemed to be the offense of maiming:

1. Damaging a person's eyes so that he is deprived of sight.
 2. Damaging his nose so that he cannot smell.
 3. Damaging his ear so that he cannot hear.
 4. Damaging his tongue so that he cannot speak.
 5. Damaging the breast of a woman.
 6. Making the person impotent.
- Breaking joints and ribs of the body.

The medical profession contributes to impunity for both extrajudicial executions and torture. In only one of the 12 cases (Case 6) where post-mortem examinations were conducted, were the relatives given access to the report. In cases of torture, it has been seen that time and again, doctors fail to document injuries relating to torture, jeopardizing the victims' chances of obtaining compensation, let alone of seeing justice being done. Without strong medical evidence, it has proven difficult for victims of torture to obtain compensation under the Torture Compensation Act, 1996 (TCA), a civil remedy available to them at this stage when torture is not defined as a crime.

In any event, the TCA has proven to be an ineffective law and there are strong calls for the government to pass a new law criminalizing torture and to put in place more effective measures for its prevention and investigation.⁵⁸ One major problem is the 35-day limitation for victims of torture to file complaints⁵⁹ (see above, Sushan Limbu and Bhakta Rai case). This provision is the single most significant factor contributing to the denial of compensation to thousands of victims of torture in Nepal. In effect, the 35-day limitation period means that perpetrators of torture need only ensure the silence of their victims for 35 days after the torture is inflicted or the victim is released. Unfortunately, this is most effectively done through intimidation, violence, or re-arrest.

Impunity in relation to torture is also exacerbated by the role played by CDOs, who have quasi-judicial powers under several laws in Nepal. Unsurprisingly, CDOs are not known to ask detainees brought before

⁵⁸ Coalition against Torture, "Criminalize Torture," 26 June 2009, <http://www.advocacyforum.org/downloads/publications/criminalize-torture-june26-report-english-final.pdf>

⁵⁹ Pursuant to Art. 5(1) or the TCA, the complaint has to be filed within 35 days after the victim has been tortured or released from detention.

them how they were treated by the police or to order independent medical examinations. Rather, normal practice is for CDOs to actually sign detention orders without the detainee being present. This is of even greater concern given that CDOs may get involved in writing orders in serious cases such as under the Arms and Ammunition Act.

Part-IV

In a recent case (see above), a CDO, in response to a *habeas corpus* petition, informed the Appellate Court that a detainee had been produced before him whereas the detainee denied this was the case.⁶⁰ Given that the CDO is the administrative head at the district level and that the police are accountable to him (or her), the impartiality of this authority is questionable. There is, therefore, an urgent need to review the laws granting judicial powers to CDOs in criminal cases.

Despite the existence of Human Rights Units within the NP and APF, AF's recent experience after submitting a number of complaints about torture to these units is that they do not act independently and do not undertake thorough investigations. Instead, they forward the complaint to the relevant police station or APF camp and seek the opinion of the officers there. For instance, in response to 34 complaints of torture lodged with the NP Human Rights Unit between August 2007 and September 2008, AF is aware that in 12 cases a communication was sent the DPO where in fact the torture had allegedly taken place, creating a clear risk that the victim would be subject to further torture or other ill-treatment. AF is aware of at least six cases where there were reprisals against victims.

⁶⁰ OMCT, "Serious concerns for the safety of Mr. Sushan Limbu and Mr. Bhakta Rai at risk of further torture and other ill-treatment", Ref: NPL 230709, 23 July 2009, <http://omct.org/index.php?id=APP&lang=eng&actualPageNumber=1&articleSet=Appeal&articleId=8696>

While cases of state authorities involved in torture or extrajudicial executions being prosecuted before civilian courts are unknown to AF (or rare?), officers sometimes face internal sanctions. This type of sanctions is obviously inappropriate given the gravity of these crimes. An example of inadequate disciplinary action taken by the NP relates to the case of Sushan Limbu and Bhakta Rai (see above), who were tortured at the Urlabari Area Police Post in front of dozens of villagers in July 2009, one of whom recorded the torture on video. As a result of an investigation, the NP issued a formal warning to the inspector, one head constable and two constables. The officer in charge of the investigation argued that no witnesses were prepared to come forward and give evidence against the police and that it was not possible for his team to visit the area due to the security situation prevailing there.

The Attorney General's Office has also failed in its duty to investigate police excesses, as provided for under the Interim Constitution. AF started reporting complaints to the Attorney General's Office in June 2009 and in the next few months registered 14 complaints. As of late August 2009, AF had not received any feedback regarding these recent complaints. However, in two cases submitted in 2008, the Attorney General's Office informed the Asian Human Rights Commission in October 2008 that, upon investigation, it had been found that the allegations of torture had not been substantiated.

The lack of decisive action by the National Human Rights Commission (NHRC) in relation to the human rights violations documented in this report is also to be noted. After the NHRC and OHCHR signed guidelines for cooperation in February 2009, the NHRC has priority to investigate these recent incidents of extrajudicial executions and torture than OHCHR-Nepal. However, there are concerns that the NHRC lacks the capacity to carry out effective investigations. The NHRC is conducting investigations into several of the cases described in this report. However,

none of the investigations have been concluded, despite some of the incidents having occurred more than eight months ago.

Impunity perpetuates a lack of adequate public security provisions. The resulting lawlessness is promoting ethnic-based tensions (including in the Terai) and increasing resentment against the Kathmandu-based state in general. It is important that this is dealt with through inclusive democratic practice and not approached as a security issue. Human rights and human security, not simply order, should underpin any government's strategy.

Conclusion and recommendations

The state's behavior has been striking for its insensitivity and refusal to recognize the depth of the political and human rights crisis brewing in the Terai. People in the Madhes understandably have the impression of political negotiations with successive governments as a string of broken promises and never implemented agreements.

As the Constituent Assembly prepares to adopt a new federal Constitution, Nepal is reaching a critical point where political and other grievances of the various communities in the Terai can be addressed. Putting in place a constitutional framework that is right for Nepal and right for all communities in Nepal is a phenomenal challenge. At the same time, it presents an opportunity that should not be missed, if the country is to avoid ongoing and increasing violence, unrest and possibly even a return to armed conflict.

It is too early to assess the effectiveness of the latest initiative in the form of the SSP as a policy aimed at strengthening public security in the Terai. Advocacy Forum is urging the government to fully integrate human rights into its strategies and policies. Not doing so will not only

put further lives at risk but will also be counter-productive from a political and security perspective.

Advocacy Forum asks the Government to take the following steps, and requests that the international community and national institutions (including the Legislative-Parliament and its relevant Committees and the NHRC) maintain a watching brief on the government's fulfilment of these obligations:

Part-V

State duty to investigate and prosecute

1. The government should order immediate independent and impartial investigations into all cases of alleged extrajudicial executions and torture documented in this report. It should ensure full cooperation by the NP and APF with the investigations. Those identified as responsible for grave human rights violations should be brought to justice.
2. Within a maximum of three months of these investigations, *prima facie* evidence of crimes should be submitted to the AG's office.
3. Within a maximum of two weeks after receiving police reports containing the evidence, the AG should have initiated prosecutions.

State duty to investigate and prosecute gender-based violence

4. Within two months of this report, the government should set out a clear plan in consultation with civil society regarding reforms required to criminalize all gender-based violence. The plan must also ensure that all incidents of gender-based violence are investigated, and suspected perpetrators brought to justice; that fully accessible complaint mechanisms are available to women and

girls, regardless of whether the abuse occurred at the hands of the state, an armed group or private individual; gender-sensitive training is provided for the NP and APF; and specialised counselling and support services are created and made available for women victims and survivors.

5. The police should properly investigate all cases of gender-based violence and other violence and ensure full protection for victims and witnesses.

Part-V

State duty to protect juveniles

6. All reports of torture of juveniles need to be independently investigated and those responsible brought to justice.
7. The government as a matter of priority should ensure the separation of juvenile detainees from adults and within one year at the latest implement the judgments of the Supreme Court requiring the creation of Juvenile Correction Homes.

State duty to ensure independence and oversight of the police

8. Interference with police investigations by political or other actors should be made a serious offence.
9. The government should make public the SSP and creates an oversight body to ensure that the implementation of the plan is in accordance with Nepal's obligations under international human rights treaties.

The state's international legal obligations

10. Nepal should criminalize torture.
11. Nepal should immediately sign and ratify the Statute of the International Criminal Court, the Convention for the Protection of All Persons from Enforced Disappearances and the Optional Protocol to the Convention against Torture, putting in place a mechanism for independent monitoring of all places of detention.
12. The government should bring Nepali laws and practices into compliance with ILO Convention 169.
13. The new Constitution should guarantee the right to life, the right not to be tortured and should ensure that every individual regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is entitled to substantive equality under the law and to substantive equality in the protection and benefit of the law without discrimination.

There should be no immunity for past, present or future human rights violations. A prohibition on amnesties should be written into the new Constitution.

Annex A: List of alleged extrajudicial executions (in chronological order)

Case I: Lalan Kumar Yadav (alias Bikrant)
Age: 24
Address: *Bakdhuwa VDC-2, Bhimar, Saptari District*

Annex

Police shot dead the Eastern “area commander” of the ATMM, identified as Lalan Kumar Yadav alias Bikrant, in Saptari District on 8 February 2009. Police said they also arrested three other ATMM cadres seized some pistols and bullets. Bikrant had claimed responsibility for killing a worker with Surya Nepal Private Limited in June 2008.⁶¹

According to witnesses, a joint patrol of around 10 NP personnel in civil dress and 50 APF personnel in uniform from Area Police Office (APO) Kanchanpur, APO Phattepur, DPO Saptari and APF Dantakali Battalion Barmajhiya surrounded the home of Ram Chaltir Yadav around 11am on 8 February 2009 while Bikrant and other members of the ATMM were having lunch there. Lalan Kumar Yadav was injured in the shooting, and two of his companions, together with one of the occupants of the house, were arrested. A witness alleges that police took Lalan Kumar Yadav in the direction of the Bhapurni river while he was still alive, and that they then heard a gunshot. Later, there was an announcement on the radio that a person named Lalan Kumar Yadav had been killed.

⁶¹ South Asia Terrorism Portal, Janatantrik Terai Mukti Morcha, Jaya Krishna Goit, <http://www.satp.org/satporgtp/countries/nepal/terroristoutfits/jtmmg.html>

A post-mortem examination was conducted at Sagarmatha Zonal Hospital, Rajbiraj, Saptari District. The dead body was subsequently handed over to the family members. The family has so far not received any compensation. To AF's knowledge, the NHRC has not initiated any investigation into this killing.

Annex

Case 2: Dhruba Narayan Mishra
Age: 36
Address: *Hatibangai VDC-1, Rupandehi District*

A NP patrol team deployed from DPO Rupandehi killed Dhruba Narayan Mishra at around 11.30pm on 10 February 2009 at Rohini Bridge, Hulaki Road, Baikuthapur VDC-2, Panani, Rupandehi District (border of Dhakdhai VDC and Baikuthapur VDC).

Police claimed he was killed in cross-fire, but family members believe that he was killed after he was arrested. They claim to have information that he was arrested at Barmeli Tole of Shiddharthanagar, Bhairahawa, earlier that day. A person living in the vicinity of the Rohini Bridge reported that he saw the police taking Dhruba Narayan Mishra off a bus soon before he heard shots.

No post-mortem examination was conducted. The family collected the body from the Bhim Hospital in Bhairahawa. The family was made to sign a document, but it is not clear what it stated. According to the relatives, the body had a bullet hole in the forehead, two in the chest, one at the side of the abdomen and one in the calf.

Case 3: Ramwali Chauhan (alias Bali)
Age: 28
Address: Kamhariya VDC-6, Rupandehi District

Ramwali Chauhan was a member of the Samyukta JTMM (Pawan Group). Earlier he was a Maoist cadre. He was killed on 26 February 2009 at around midday.

According to SP Prakash Aryal of Rupandehi DPO, the Nawalparasi Police had received information that Ramwali Chauhan and another person identified as Ambar Dhawal who were suspected of involvement in a number of cases of extortion had come towards Rupandehi on a bike to collect donations. SP Aryal stated: "A police team from Rupandehi DPO was sent towards Dhakdhai VDC. At the same time Nawalparasi Police personnel were also following the two. While the two were on the Rohini Bridge of Hulaki Road, they suddenly fired at the police. The police personnel fired at them in defense. In the crossfire, Ramwali died on the spot."⁶² No police officers were killed or injured.

According to local people who want their names to be kept confidential, the police had stopped people from crossing the Rohini Bridge and had started firing from both sides at Ramwali Chauhan and Ambar Dhawal as they crossed the bridge. It is unclear whether Ramwali Chauhan and Ambar Dhawal were armed and whether they returned the police fire.

Leaders of the Samyukta JTMM (Pawan Group) maintain that as the group was in negotiations with the government at the time of the killing, there had not been any activities such as extortion taking place. They claim that the police deliberately killed Ramwali Chauhan.

⁶² Interview with SP Aryal and DSP Khinu Prasad Acharya, DPO Rupandehi, 12 February 2009.

A post-mortem examination was conducted at the Bhim Hospital, Bhairahawa, Rupandehi District. However, relatives were not able to obtain a copy of the report. The dead body was returned to the family and was cremated. It is unclear whether any investigations are being conducted by police or NHRC. No compensation has been paid.

Annex

Case 4: Parshuram Kori

Age: 18

Address: *Bankatti VDC-5, Bankatwa, Banke District*

Occupation: *Rickshaw puller*

A team of around 20 to 22 police personnel from Betahani Police Post and District Police Office of Banke District shot dead Parshuram Kori (“Parshuram”) at around 10pm on 9 April 2009 at Ward No. 4, Betahani VDC, Babagaon, Banke District. During a press conference in the district headquarters at Nepalgunj on 10 April 2009, police claimed that Parshuram was killed in cross-fire between the police and members of the JTMM-J. They also displayed some weapons and bullets reportedly seized in the cross-fire. There was no mention of any police officers being killed or injured during the cross-fire.

A group of human rights organizations, including the NHRC, investigated the killing and visited the site on 17 April 2009. They concluded that Parshuram was initially arrested, tortured and then deliberately killed by the police. According to Parshuram’s father, Parshuram had gone missing on 7 April 2009. Another person interviewed by the group confirmed that Parshuram had joined the

JTMM-J group that day, after members of the group had forced him to pay Rs. 50,000 or join. As Parshuram did not have the money, he decided to join.

According to people living in the vicinity, the killing took place at a field near Shivapuri School. They said they heard gunfire and that around ten villagers had gone to investigate what was happening. Some villagers reported that they had heard the victim scream, beg the police not to beat him, while he was dragged to the school. After the killing, Inspector Pradeep D C came to the scene, prepared a field inquiry report stating a cross-fire had taken place, during which Parshuram was killed. He asked five villagers to attest that report. The villagers were also asked to confirm the identity of another person arrested at the time. They recognized him as an acquaintance of a police officer of Betahani Police Post and stated so. Villagers think that as a result this person was released.

Annex

According to the villagers and others who saw the body of Parshuram, there were signs of beatings on his hands and legs, suggesting that he was arrested, tortured and subsequently killed. A post-mortem was carried out at the Bheri Zonal Hospital in Nepalgunj on 10 April 2009. The family was not given a copy of the report. They signed a receipt for the body which they collected later that day, but are not sure of the content.

It is reported that the family is afraid to file a FIR fearing reprisals from the police. So far, no FIR has been filed and no internal police investigations have been initiated. No compensation has been paid to the family of the victim. The NHRC continues to investigate the incident.

Cases 5-7: Sakal Dev Mandal, Ramesh Mandal, Ranjit Yadav

Name and age: Sakal Dev Mandal (50)

Address: Pakari VDC-1, Sonara, Saptari District

Name and age: Ramesh Mandal (35)

Address: Pakari VDC-1, Sonara, Saptari District

Name and age: Ranjit Yadav (14)

Address: Pakari VDC-2, Sonara, Saptari District

Annex

Bindu Yadav, a police constable serving at DPO Siraha and member of a Covert Team at the DPO Siraha opened fire at a gathering of villagers discussing a land dispute between his father and his neighbour Thithar Mandal at around 7pm on 8 May 2009. In the firing, three people were killed and five others injured.

According to one of the villagers present at the time of the shooting, Bindu Yadav had arrived about 15 minutes before the meeting started.

According to SP Ramesh Khanal of the Siraha DPO, as Bindu Yadav was a member of a covert team, he was allowed to carry his weapon with him at all times. He had taken leave on the day concerned. Bindu Yadav is now in hiding. Police are looking for him and have suspended him from duty.

As of early December 2009, the police have not arrested the alleged perpetrator Bindu Yadav. His father, however, is in detention for his role in the incident, and the case is pending in court. The relatives of two victims (Sakal Dev Mandal and Ramesh Mandal) have stated that on several occasions, Bindu Yadav has made threats against them over the phone to deter them from continuing with the legal proceedings.

A post-mortem examination was carried out at Sagarmatha Zonal Hospital, Rajbiraj, Saptari District on the day after the killing. The bodies were subsequently handed over to the family members. No compensation has been provided to the victims' families. To AF's knowledge, the NHRC has not initiated any investigation into the incident.

Cases 8 and 9: Udgar Mandal and Ghuran Shah

Annex

Name and age: Udgar Mandal (24)

Address: Dhanushadham VDC-4, Bhawandihawa, Dhanusha District

Name and age: Ghuran Shah alias Santosh Shah (25)

Address: Dhanushadham VDC-4, Bhawandihawa, Dhanusha District

A team of five NP personnel deployed from DPO Dhanusha and travelling on a motorbike and bicycle on 24 May 2009 arrested, and later (at around 10.30am) shot dead Udgar Mandal and Ghuran Shah alias Santosh Shah at a field near the road linking Janakpur to Kurtha Bazaar in Janakpur Municipality, Ward No. 3, Dhanusha District.

The police claimed the victims were killed in cross-fire. They said the two were involved in the abduction of Ram Bilas Yadav, a brick kiln owner. Superintendent of Police (SP) Yadav Raj Khanal in a press conference later that day claimed that they were killed while the police tried to free the brick kiln owner from a house in Mahadaiya Tapanpur VDC-7, Mahottari District. The SP also reported that 19 rounds of bullets had been fired by the police, and that the police had seized weapons, bullets and citizenship cards.

Several residents of Mahadaiya Tapanpur VDC-7, however, have stated that they saw the police taking Udgar Mandal and Ghuran Shah out of a local house with their hands tied with a towel and their faces covered with cloths. Residents also confirmed that the police fired shots in the air when the crowd following them got bigger. They were taken in the direction of Janakpur on foot. Police beat them randomly.

The residents of Kurtha Bazaar (which lies between Mahadaiya Tapanpur VDC-7 and is where the killings took place) confirmed that the police marched the two arrested through the bazaar area, and the bazaar residents followed them to a local temple at Bishahara. The police then closed the road near the temple, preventing the villagers from walking along. They also closed another road that links Janakpur to Kurtha in front of a bangle mill near the railway line. Soon after police had blocked the two roads, several gunshots were heard. According to the Field Enquiry Report of the Dhanusha police the two victims each were hit by two bullets. Both were hit in a similar manner: one bullet in the chest and the other in the back.

The two bodies were taken to the hospital where post-mortem examinations were conducted at Janakpur Zonal Hospital in Dhanusha District. The families have not been able to obtain copies of the post-mortem reports. The bodies were returned to the family after they signed a receipt, the content of which was not clear to them. No FIR has been filed. No compensation has been provided to the families. No police investigations are taking place. The NHRC is investigating the incident.

Case 10: Surendra Mahato Koiri

Name: Surendra Mahato Koiri (30)

Address: Bharatpur VDC-9, Mahotari District

Surendra Mahato Koiri ("Surendra") was shot dead while returning home on his motorbike (in the company of a friend) at about 5.30pm on 7 June 2009 on the road in front of the Temporary Police Post, Hariharpur, Dhanusha District, by police constable Ramsingh Bhat. The constable is normally posted at DPO Dhanusha but was temporarily serving at the temporary police post.

When Surendra passed by the temporary police post, constable Ramsingh shouted suddenly, "Stop". According to a witness, Surendra stopped the bike, but as the bike was speeding, it stopped 8 to 10m away. Constable Ramsingh talked to Surendra using offensive language and slapped him once for stopping the bike at a distance. A witness stated that he heard the following exchange of words:

"Why did you not stop at the place I said?" said the constable.

"If you have to do checking, you may, please," answered Surendra.

"What is there inside the bag?" asked the constable.

"Nothing," said Surendra. "You may check it." "If nothing is there, have you not been able to stop right at the place I said?" said the constable getting furious.

Then, the constable gave Surendra a kick. Annoyed at being assaulted and abused for no reason, Surendra said, "Behave yourself.

Know the person before you talk with him like that.” The constable got more furious and saying “Are you challenging me?” aimed his gun at Surendra’s temple, the gun touching his skin. Then, he fired the gun. The bullet went through Surendra’s left cheek and came out from the right. He died on the spot.

The victim’s wife, Rekha Kumari Yadav, approached DPO Dhanusha along with AF lawyers. SP Yadav Raj Khanal refused to register the FIR stating it was an internal matter so he needed to ask higher authorities before doing so. On several subsequent visits, SP Khanal continued to refuse to file the FIR, saying he was still reviewing the case. Police constable Ramsingh Bhat was reportedly transferred from the Hairharpur Temporary Police Post, and suspended. The district administration has promised to provide compensation to the family, though no money had been received as of late October 2009. Both NHRC and OHCHR are conducting investigations into the killing.

On 12 October 2009, a Special Police Court set up under Article 36 of the Police Act found police constable Ramsingh Bhat guilty of abusing his weapon and fined him to a payment equaling 11 months of his salary. However, this money is paid to the government, not to the victim or his family. To date, Surendra’s family has not received any compensation.

Case 11: Akhilendra Yadav

Age: 24

Address: *Itahari VDC-4, Bishnupur, Saptari District*

APF personnel shot dead Akhilendra Yadav and injured three other people when opening fire on a demonstration at Itahari VDC-4, Bishnupur, Saptari District at around 9am on 17 July 2009. The APF claimed they opened fire after the demonstrators had tried to snatch their weapons. This is disputed by the demonstrators and eye-witnesses.

The demonstration took place after the APF had confiscated fertilizer which they claimed had been smuggled into Nepal from India. Irrate villagers blocked the road, and organized a demonstration.

A post-mortem examination was conducted at Sagarmatha Zonal Hospital, Rajbiraj, Saptari District. The dead body was subsequently handed over to the family. The family was provided with compensation of Rs. 1 million. The NHRC is continuing its investigation.

Case 12: Ram Narayan Mahato (alias Sandesh)

Age: 40

Address: *Kasaha VDC-4, Ayodhyanagar, Siraha District*

Ram Narayan Mahato (alias Sandesh) is a member of the Madhes Rastriya Samyukta Jantantrik Party (Revolutionary). According to the police, Ram Narayan Mahato was killed in an exchange of fire with

the police at Hakpara, Siraha District on 19 July 2009. However, his relatives and members of the group claim that he had been arrested in India and handed over to the NP on 18 July. They had made calls to local media and human rights activists asking them to ensure his safety in detention.

According to media reports, Mahato was handed over to the NP at around 8 pm on 18 July by Indian Police after his arrest from Laxmipur Tole, Jayanagar, India. Other reports suggest that the NP had taken him away sitting in the front seat of a van with his face covered with a handkerchief. When contacted after receiving the information, the police had denied Mahato's arrest and the handover.

The body was handed over to his relatives after a post-mortem examination conducted at Siraha District Hospital. The Madhes Rastriya Samyukta Jantantrik Party (Revolutionary) issued a statement claiming the killing was deliberate. The family issued a statement demanding an investigation and for those responsible to be brought to justice.

No compensation has been paid yet. The NHRC is conducting an investigation.

Case 13: Parsuram Yadav (alias Diwakar)

Age: 35

Address: Lalpur VDC-5, Siraha District

Madhesi Mukti Tigers Siraha District In-Charge, Parsuram Yadav alias "Diwakar", was killed on the bank of Kamala River at a place called Bandipur in Siraha District on 20 July 2009. Police inspector

Krishna Prasai of Litigation Section of DPO, Siraha, informed AF on 23 July 2009 that Parsuram was arrested in Kathmandu, and, while being transferred to Siraha District, tried to escape pretending to need to go to toilet. As he ran away, the security personnel fired at him, and he was killed.

Relatives, villagers and members of the Madhesi Mukti Tigers believe that Parsuram Yadav was deliberately killed while in police custody and that the police version of events is a fabrication. However, they are reluctant to speak out.

No post-mortem examination was conducted. The body was handed over to the family members and they conducted a funeral ceremony. The NHRC is conducting an investigation.

The victim's family visited Siraha DPO on 10 December 2009. However police refused to register a FIR. On 24 December, the victim's family filed a petition of mandamus seeking a court order for the police to register the FIR.

Case 14: Ram Yadav (alias Akash Tyagi)

Age: 25

Address: Bagewa VDC-4, Laxmipur, Dhanusha District

Ram Yadav alias Akash Tyagi, Bureau Military Commander of Terai Rastriya Mukti Sena and an erstwhile member of JTMM (Rajan Mukti), was killed by police personnel deployed from DPO Dhanusha at a grassy open space to the north of Bhamarpura Chowk to Baspitti Road, about ten minutes' walk from Bhamarpura Chowk in Janakpur Municipality-7, Dhanusha District at around 4.30am on 22 July 2009.

Deputy Superintendent of Police (DSP) Uma Chaturbedi, when interviewed by AF on 22 July 2009 stated, “When our police team was patrolling the area where the incident occurred, a group of three or four persons began firing at the patrol team. When the patrol team responded with retaliatory firing, Ram Yadav aka Akash Tyagi was killed. Some letter pads of Terai Rastriya Mukti Sena, a pistol, and a “sutali” (home-made) bomb was recovered from the victim. The victim was hit by five bullets.” There were no allegations of any police personnel injured in the alleged exchange of fire.

Annex

Several witnesses confirmed that Ram Yadav had attended the funeral of Abinash Mukti of JTMM (Rajan Mukti) on the previous day, 21 July 2009. It is alleged that the police arrested Ram Yadav on his way back from the funeral and later killed him. When human rights activists visited the site of the killing, they did not find any evidence of an exchange of fire. They found seven shells of fired bullets and two rounds of unused bullets. The shells of fired bullets were of three types - one bullet of a rifle, two of a pistol and the others (including the unused ones) were thought to be bullets of a Mouser pistol. The following is the no. of the bullets found in the place of incident: F.V.01M80.07.62/8.5/ K.F.380REV-2/8.5-4/86.311=9. DSP Uma Chaturbedi and other NP officials accepted that the bullets came from police weapons when they were handed over to them by AF-Dhanusha representative.

The body reportedly showed signs of cuts, including a 2-inch one to the forehead, a 1-inch wide cut at the place where hair starts growing; a cut at the upper part of the right thumb, and two cuts in the centre of the left hand.

A post-mortem examination was conducted at the Janakpur Zonal Hospital on the same day. The outcome was not shared with the family. When collecting the body from the hospital, the relatives of the victim were asked to sign a document prepared by the police stating that

Ram Yadav was killed in cross-fire. No FIR has been filed. The NHRC has stated that it is conducting an investigation. No compensation has been paid.

Case 15: Sahidullaha Dewan

Age: 29

Address: *Betkuiya VDC-7, Bhaisagahan, Rupandehi District*

Annex

Sahidullaha Dewan is a member of the JTMM-J. On 26 October 2009, he received a phone call asking him to come to a garden 500 meters east of Parsahawa Chowk, Bogadi VDC-8, Bhaisagahan, Rupandehi District. He went there together with his father. When he reached the garden, according to his father, he was suddenly fired at by three police officers. They fired six or seven shots and Sahidullaha died on the spot.

Other witnesses have stated that the three police officers were Sub-Inspector Sambhunath Upadhyaya, in charge of the local police post, and two others named Awadhesh Yadav and Prem Dawan. They had recognized them as they reached the spot on a motorbike.

The police do not deny the killing. According to Prakash Aryal, Inspector at the DPO in Rupandehi, "a person fired on a group of police officers from Bogadi VDC of Majhgawa Area Police Office. The man was killed when police returned fire. Bullets and a pistol were recovered from the deceased." Sahidullahaha's father however claims that he was unarmed. This is confirmed by a number of people who were present in the vicinity at the time of the shooting. These people

claim that they saw how the three police officers arrived there, covered their faces and shot at Sahidullahaha when he arrived. One of them stated also how he saw the police beat the father who tried to come to his son's rescue; and how they put a pistol into the hand of the body and took a photograph.

Police claim that a post-mortem examination was done, but have not shared the results with the family. The victim's relatives approached the DPO on 29 October 2009 but the police refused to register a FIR. The relatives then approached the CDO but he refused to order the police to register the FIR, claiming an internal investigation was being conducted. The relatives sent the FIR via registered mail to the DAO and DPO Rupandehi on 4 November 2009.

Annex