



## Nepal: Seventh Anniversary of the Killing of Maina Sunuwar

### End Obstruction of Justice and Respect Victim's Rights

(Kathmandu, February 16, 2011)-- Seven years after the arrest and killing of Maina Sunuwar, the Government of Nepal should take immediate steps, with the full cooperation of the Nepal Army, to ensure that criminal proceedings move forward, Advocacy Forum (AF), Amnesty International (AI), Human Rights Watch (HRW) and the International Commission of Jurists (ICJ) said today. The four organizations express their solidarity with Maina's family, and call on the Nepali authorities to immediately transfer Major Niranjana Basnet to the Kavre District Court where he has been charged with murder, and arrest Babi Khatri, Sunil Prasad Adhikari and Amit Pun who have all been implicated in her death. That Maina's family is still waiting for justice for her killing, as in so many cases of crimes during the armed conflict, suggests that the realization of victims' right to a judicial remedy for serious crimes remains a distant dream in Nepal.

“Seven years on, after her family's tireless pursuit of justice at great risk to themselves, and after clear decisions from civilian authorities, not a single arrest has been made,” said Elaine Pearson, Deputy Asia Director at Human Rights Watch. “Maina's case is emblematic: if justice cannot be found for her, then there is little hope for justice for all the other victims who suffered at the hands of all sides of the conflict.”

Maina's killing took place during the decade-long conflict that ended in 2006 between the Maoists and government forces. She was 15 years old when government forces detained, interrogated and tortured her. A court martial found Maina died in army custody. Despite repeated orders, the perpetrators have never appeared before civilian courts. The UN returned Major Niranjana Basnet, who was charged with her murder by the Kavre District Court, from his peacekeeping duties in Chad to answer these charges. He has yet to be turned over to the police by the army, and has failed to appear in court when summonsed to do so.

This pattern of obstruction and non-compliance by the military and other groups is not limited to the case of Maina Sunuwar. It is sadly familiar to most victims of conflict-related human rights violations. The Maoists also continue to defy court orders in cases involving their cadres, such as those implicated in the killings of Arjun Lama, Ram Hari Shrestha, and most recently, the conviction - upheld by the Supreme Court - of Bal

Krishna Dhungel. This willful obstruction of justice by state security forces and Maoists constitutes a serious threat to the rule of law and undermines the credibility and independence of the judiciary.

“We have consistently pointed out that the failure to hold perpetrators accountable on both sides of the conflict drives the continuing culture of abuses,” said Mandira Sharma, Executive Director, Advocacy Forum. “There is a direct link between past impunity and continuing impunity, and there will be no movement forward as long as all sides continue to benefit from ignoring victim and justice issues.”

“These are suspects in criminal trials in the context of serious human rights violations, and they are being shielded by the army and the Maoists. It is time for the Nepal Government to make hard the commitment to address impunity expressed at the recent United Nations Human Rights Council Universal Periodic Review” said Madhu Malhotra, Deputy Director of the Asia Pacific Programme of Amnesty International. “This means acting on the multiple recommendations it accepted that voiced the need for prompt investigations and prosecutions in civilian courts, as well as the implementation of court orders.”

Recently, various political actors and government officials have invoked the possible establishment of a Truth and Reconciliation Commission (TRC) as a justification for non-compliance with court orders and non-cooperation with police investigations. In fact, such institutions cannot and will not substitute for criminal courts in determining individual guilt for crimes. Current drafts of legislation governing Nepal’s proposed TRC and Commission of Inquiry on Disappearances, make it clear that the commissions will neither make individual determinations of guilt, nor have the capacity to protect the due process and fair trial rights of the accused. This is a power invested solely in civilian courts.

“While there is a role for transitional justice institutions to play in Nepal, it is imperative that they not be used as a pretext by the powerful to avoid accountability,” said Frederick Rawski, ICJ Country Representative for Nepal.

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