



Press Release

17 February 2019

15 years of impunity: Victims' family still awaits justice

Around two years after the verdict of the Kavre Court, Maina Sunuwar's family are still demanding and waiting for the implementation of the court's judgment. The court's decision had offered a ray of hope, not only for her mother, Devi Sunuwar, but for all conflict victims in Nepal. Despite the verdict of Kavre Court in 2017, the three convicted army officers namely Babi Khatri, Sunil Prasad Adhikari and Amit Pun, are yet to be arrested. To date, no real effort has been made by the Police authority to arrest the convicted army officers.

On 17 April 2017, after a 13 years unrelenting legal battle the Kavrepalanchowk (Kavre) District Court convicted three army officers involved in the murder of Maina Sunuwar.¹ While the Court had acquitted a fourth army officer, Major Niranjan Basnet, who is still serving the army, the three were given a sentence of 20 years' imprisonment.

It is also important to note that Maina's mother, Devi Sunuwar had filed a separate petition as the then Attorney General refused to petition against the decision of the District Court acquitting Niranjan Basnet. She was not convinced on the grounds on which he had been acquitted. The speed, in which the office of the public prosecutor worked to make the decision not to appeal on this case, ignoring the standard practice of appealing at least one stage higher and instead dismissing Devi's petition, raises serious doubts about the independence and professionalism of the office of the public prosecutor in the country.² The International Commission of Jurists (ICJ) and Amnesty International (AI) called on the AG to review the decision and pursue the appeal against the Kavre District Court judgment, as requested by Devi Sunuwar, with no avail.³

On contrary, the Nepal army on 1 September 2017 filed a writ petition in the Supreme Court to vacate the decision of the District Court. The army has claimed: (1) that the principle of double jeopardy was violated, on the basis that the army has already prosecuted the three convicted officers, (2) that the case comes under the purview of the Transitional Justice mechanisms rather than the criminal justice system, and (3) that as the incident took place under a military operation, therefore military rules should be applied. The petition also argues that all other conflict era cases should not be placed under the jurisdiction of the civilian courts.⁴

Although all these claims that the army has made in the petition were raised previously to prevent the investigation and prosecution in this case, they were clarified by the Supreme Court. The Supreme

¹ <http://www.advocacyforum.org/press-statement/2017/MainaPressRelease-ENG1.pdf?m=1514801423>

² For details, see: <http://advocacyforum.org/press-statement/2017/Appeal-from-Devi-Sunuwar-18-May-2017.pdf>

³ <https://www.icj.org/wp-content/uploads/2017/05/Nepal-AG-letter-Maina-Sunuwar-Advocacy-Open-letters-2017-ENG.pdf>

⁴ Reference from unofficial translation of the writ filed by the Nepal Army before Supreme Court on 1 September 2017.

Court had already ruled that a murder of a civilian by army personnel does not come under the jurisdiction of the Military Court⁵ and that Transitional Justice is not a separate justice system that replaces the existing criminal justice system. The UN human rights committee has also come to this conclusion in relation to other conflict-era cases.

We firmly believe that the petition has been filed to delay justice, frustrate the victims and weaken the rule of law.

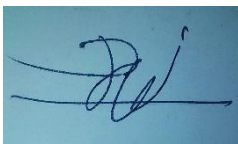
The pending writ in the Supreme Court is probably the first case in Nepal's legal history where a state institution (the Nepal Army) who is responsible to uphold human rights and rule of law is against a court's order and is trying to obstruct a victim's' right to justice.

The case has been repeatedly postponed and, as of mid-February 2019, remains pending in the court.

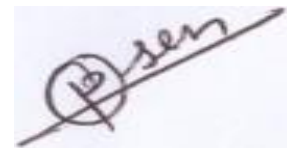
Furthermore, we would like to stress that the dysfunctional TRC has been used once again to deny justice for conflict era-victims. In February 2015, the Supreme Court had ruled that a number of sections of the TRC Act violated Nepal's international treaty obligation and the Constitution and ordered the Government to amend that Act. However, neither the Act has been amended nor any other measures have been put in place to address impunity. Those convicted in Maina's case should be arrested and put in prison until the Court decides otherwise. Once the TRC meets the minimum standards, a TJ Special Court is established as per the Act to try those from conflict-era cases and the process is found to be consistent with the constitution and Nepal's international obligation, then only the cases of the conflict era could be dealt by the TJ mechanisms. Until that happens, the victims of conflict like Maina's family should have unhindered access to justice and those already convicted need to be arrested and detained.

Hence, we strongly urge the government to respect the court's order and immediately arrest the convicted former army officers and ensure the withdrawal of the army's petition before the Supreme Court. We also demand the Government to demonstrate its commitment to human rights and rule of law by respecting court orders and correcting the flawed TJ process in Nepal.

On this occasion, along Maina, we also pay our tribute to Reena Rasaili (gang-raped and killed) and Subhadra Chaulagain (shot dead) arbitrarily killed by the then RNA connected with Maina's case and many other innocent victims of armed conflict who have been waiting for justice far too long in pain and anguish.



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⁵ Section 66 of the Army Act prevents the Military Court to have jurisdiction over murder and rape

