



## Press Release

**17 February 2018**

### **Maina Sunuwar's Case: 14 years of Impunity**

In April 2017, after a 13-year-long legal battle the Kavrepalanchowk (Kavre) District Court convicted three soldiers namely Babi Khatri, Sunil Prasad Adhikari and Amit Pun involved in the murder of Maina Sunuwar.<sup>1</sup> While the Court acquitted a fourth soldier namely Major Niranjan Basnet, who is still serving the army, three were given sentence to 20 years' imprisonment

However, the Nepal army in September 2017 filed the 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 argument that the army has already prosecuted the three convicted officers, (2) that the case comes under the jurisdiction of the Transitional Justice system rather than the criminal justice system, and (3) that as the incident took place under a military operation and 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 Court.

Although all these claims that the army has made in the petition were raised previously to prevent the investigation and prosecution on this case, they were clarified by the Supreme Court.<sup>2</sup> The Supreme Court had already ruled that a murder of a civilian by the army personnel does not come under the jurisdiction of the Military Court.<sup>3</sup> The Transitional Justice is not a separate justice system that replaces existing criminal justice system.

AF believes, the petition has been filed to delay justice, frustrate the victims and weaken the rule of law.

It is also important to note that Maina's mother has filed the separate petition as the Attorney General has refused to petition against the decision of the District Court acquitting Niranjana Basnet. She was not convinced on the ground which he is 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 making appeal at least one stage further and dismissing her petition, raises serious doubts about the independence and professionalism of the office of the public prosecutor in the Country.<sup>4</sup>

Furthermore, AF would also like to alert that dysfunctional TRC has been used once again to deny justice for the conflict era-victims of human rights violations. In February 2015 the Supreme Court of Nepal had found a number of sections of the TRC Act violating 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 the impunity in the Court. Those

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<sup>1</sup> For more information about the case please see: Maina Sunuwar was arrested by the army on 17 February 2004 and tortured to death (for more information see: Maina Sunuwar: separating facts from the fiction)

<sup>2</sup> (reference from the writ filed)

<sup>3</sup> Section 66 of the Army Act prevents the Military Court to have jurisdiction over murder and rape

<sup>4</sup> For details see the link: <http://advocacyforum.org/press-statement/2017/Appeal-from-Devi-Sunuwar-18-May-2017.pdf>



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convicted should be arrested and put in prison until the Court decides otherwise. Once the TRC meets the minimum standards, 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 constitutional and Nepal's international obligation, then only the cases of 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, those already convicted need to be arrested and detained.

## *Summary of the Case:*

In the morning of February 17, 2004 soldiers arrested 15-year-old Maina Sunuwar from her home. When her friends and relatives went to the Lamidanda barracks the following day and demanded her release, the army denied having arrested her. In April 2004, the army told Maina's mother, Devi Sunuwar, that her daughter had been killed. Maina's body was exhumed from inside the Panchkhal Army Barracks in March 2007.

Under continuous pressure, the army prosecuted three of the perpetrators in a military court in September 2005. Although convicted, three military officers were found guilty only of using wrong interrogation techniques and of not following proper proceedings in the disposal of the dead body, they were sentenced to a mere six months in prison, which they did not serve as they were judged to have already served that time while confined to barracks during the investigation.

For case details: <http://advocacyforum.org/downloads/pdf/publications/maina-english.pdf>

**As of mid-February 2018, there are two separate writs sub-judice in court (one in Supreme Court of Nepal-Nepal Army Writ and another in Patan High Court- Devi Sunuwar's Writ against the decision of Attorney General Office not to go for Appeal against the acquittal of Major Nirnanjan Basnet).**

## *Devi Sunuwar writ petition to the Patan High Court*

(August 11, 2017) – Devi Sunuwar with assistance from AF registers a writ at Patan High Court against the Attorney General's decision to dismiss her appeal against the acquittal of Major Nirnanjan Basnet.

(December 13, 2017) – Patan High Court issues an order to receive the original case dossier of the decisions made by the Attorney General's Office on June 27, 2017 not to proceed with Devi Sunuwar's appeal.

(December 14, 2017) - Patan High Court sends a letter to the Attorney General Office but does not receive a response.

(January 19, 2018 - Patan High Court resends their letter requesting the original copy of the case dossier from the Attorney General Office and sets a new date for hearing on February 11, 2018.

(February 11, 2018)- Patan High Court sets a new hearing date for February 21, 2018.



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## *Nepal Army writ petition to the Supreme Court*

(September 1, 2017) – The Nepal Army petitions to the Supreme Court for an interim order to suspend the implementation of the Kavre District Court judgment of 17 April 2017. The petition is based on the three claims: (1) That the principle of double jeopardy was violated, on the argument that the army has already prosecuted the three convicted officers, (2) that the case comes under the jurisdiction of the Transitional Justice system rather than the criminal justice system, and (3) that as the incident took place under a military operation and therefore military rules should be applied. The petition also argued on ground (2) and (3) that investigations and prosecutions into similar cases do not fall under the ambit of the courts.

(December 24, 2017) –The hearing of the Nepal Army's Writ the Supreme Court of Nepal is postponed, and a new general court date scheduled for 9 February 2018. The court is yet to fix the new court date as the court is waiting to obtain the case dossier from the Kavre District Court and Patan High Court.

The case has been repeatedly postponed and, as of mid-February 2018, remains pending in the court.

## *Plea*

Devi Sunuwar's ongoing battle for justice for the torture and murder of her daughter has prolonged her suffering for 14 years. Yet, the conviction of three of the four army officers accused of Maina's murder in April 2017 presented a ray of hope, not only for Devi Sunuwar, but for all conflict era victims in Nepal as Maina's case has become emblematic for Nepal's Transitional Justice process. We therefore urge the new government to ensure the withdrawal of the army's petition before the Supreme Court and ensure the implementation of the court order against Maina's perpetrators, in order to demonstrate to all victims of human rights violations in Nepal its commitment to truth and justice.

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