

REFLECTION ON TWO DECADES OF ADVOCACY FORUM'S WORK



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**BALUWATAR, KATHMANDU
NEPAL**

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INTRODUCTION

Advocacy Forum (AF) is publishing this report to mark the 20th anniversary of its founding. The main aim here is not to blow our own trumpet, but to record what we have achieved since we were founded under the most difficult of circumstances in 2001, the lessons that were learned, the impact that was achieved, where opportunities remain, and so on.

It is good to stop and reflect, and we hope it will help us and indeed others to look forward and consider the many human rights challenges that remain, and new ones that are presenting themselves and will need our attention in the years to come.

“I had a strong desire to do something meaningful by working very closely with victims and helping them to get justice and contribute to preventing the atrocities that rob a human being of their life and personal dignity and countries of their prospect to flourish. Although the circumstances were unfavorable, I was successful in bringing on board some friends who supported my idea of giving birth to the Advocacy Forum. There was a need for detailed documentation of cases, which would require recording of all minute details with a great degree of sensitivity. Detainees were subjected to torture every day but we needed to visit the victims proactively, documenting the atrocities against them and listening to their sufferings. We needed to go to the villages to document the stories of those families whose loved ones were killed or disappeared. When we would visit these places, we would often find ourselves surrounded by several victims even though we would have gone to document a specific incident. The confidence of the victims in us would make us more committed. The praise we received for being systematic in our approach and caring for facts was a matter of great excitement. As it was an invigorating experience, we exerted and applied ourselves and used all our expertise, tact and diplomacy in reaching out to more victims, bringing more cases to the courts, and assisting more victims in having their stories heard at both national and international forums.”

Mandira Sharma
AF Co-Founder

ORGANIZATIONAL FOCUS

AF was established in 2001 in the midst of Nepal's armed conflict. It has become a leading not-for-profit non-governmental organization (NGO) aiming to secure the rule of law and upholding international human rights standards in Nepal. AF's goal has been, and continues to be, to provide redress for victims of injustice and to promote accountability for violations of human rights, so that basic human rights are respected and acknowledged.

AF documents and litigates cases of human rights violations, monitors places of detention, and pursues advocacy with domestic and international bodies. It also engages in capacity-building of stakeholders, including by: (1) organizing medico-legal documentation training for medical professionals to document bodily signs of torture based on the Istanbul Protocol; (2) hosting consultation meetings with stakeholders of the criminal justice system so that they can discuss issues of torture, illegal detention, record keeping of detainees, extraction of confessions under coercion, juvenile arrest methods, falsification of age and other challenges; (3) providing spaces for stakeholders of the criminal justice system to learn about the elements of a fair trial; and (4) by organizing workshops and seminars for judges to attend and discuss the role of the judiciary in ensuring fair trials. In addition, AF provides free legal assistance to vulnerable juvenile and adult detainees and other victims of human rights violations. It also provides medical aid to survivors of torture and sexual abuse.

Notably, in the aftermath of the armed conflict, AF has been at the forefront of the promotion of a fair and smooth transitional justice process in Nepal so victims of the armed conflict can receive the reparations, compensation and redress they have a right to. AF organized hundreds of victims' support groups at the local and national levels to empower victims of the conflict period by giving them leadership roles. Thanks to these forums, hundreds of victims are able to raise their voices against the dysfunctional mechanisms of the truth and justice process.

Since its establishment, AF has faced an abundance of obstacles. Law enforcement officials have been periodically unwilling to provide staff access to places of detention, resulting in an inability to provide much-needed legal aid to detainees and creating discrepancies in data collection. Additionally, the security of AF's staff has been repeatedly threatened as they push to document and collect evidence of serious human rights violations involving powerful actors. Finally, with a great deal of resistance from domestic bodies implicated in abuses, it has been difficult for AF to obtain adequate resources to conduct its operations to the fullness of its capacity. Nevertheless, AF continues to actively confront and respond to these challenges as they arise.

As it grew over the first few years after its founding, AF expanded to work with domestic human rights mechanisms (such as the National Human Rights Commission, the Office of the Attorney General, the Human Rights Unit of the Nepal Police, the National Judicial Academy, the Nepal Bar Association and judges, prosecutors and lawyers working in the criminal judicial system) and international mechanisms. The latter included the United Nations (UN), Amnesty International, Human Rights Watch, the Asian Federation Against Enforced Disappearances (AFAD), the International Commission of Jurists (ICJ), the Asian Human Rights Commission (AHRC), the World Organization against Torture (OMCT), the Redress Trust, the Association for the Prevention of Torture (APT), the Asia Alliance against Torture (A3T) and Asia Justice and Rights (AJAR). AF played a pivotal role in ensuring the establishment of the UN Office of the High Commissioner of Human Rights (OHCHR) in Nepal in 2005. Together with these national and international partners, AF has drawn the attention of concerned audiences around the world to Nepal's struggles with and progress towards protecting its citizens' basic human rights.

CHAPTER 1: HISTORICAL BACKGROUND

Though human rights violations were common place in Nepal for many years, they escalated during the decade of internal conflict which began in 1996 when the Communist Party of Nepal–Maoist (CPN-M) declared a “People’s War” against the Government of Nepal (GoN) and the monarchy. This created the challenges that AF was founded to address. As the conflict raged between 1996 and 2006, violations became increasingly commonplace and fighting between the government forces and Maoist insurgents caused widespread and, in some cases, systematic human rights violations.¹

In June 2001, following the massacre of ten members of the royal family including King Birendra, the King’s younger brother, Gyanendra, was announced as his successor. Amid nationwide protests against Gyanendra’s accession, a new government was formed under the leader of the Nepali Congress, Sher Bahadur Deuba. In August 2001, peace talks began between the GoN and the CPN-M. The talks ultimately failed after the Maoists attacked the Army barracks in Dang District and the Royal Nepal Army (RNA, today the Nepal Army), was deployed in response. The GoN declared a state of emergency and labeled the Maoist insurgents as “terrorists.”² While passing this anti-terrorist legislation, the government suspended key human rights, including the right to not be arbitrarily detained or the right to a fair trial.

After the peace talks failed, the human rights situation in Nepal continued to deteriorate. On 4 October 2002, King Gyanendra launched a “soft coup” and dismissed Prime Minister Deuba. A second round of peace talks between the GoN representatives and the CPN-M commenced in January 2003. However, the CPN-M broke off negotiations on 27 August 2003 and the conflict resumed after the RNA took prisoner and executed 19 CPN-M party members in Doramba, Ramechhap District.

On 1 February 2005, King Gyanendra took complete executive power and declared another state of emergency. Nine months later, in November 2005, the main political parties signed an agreement with the CPN-M to start a non-violent democratic movement. It succeeded in April 2006, despite attempts by King Gyanendra and the security forces to quell it. Following the

¹ Advocacy Forum and REDRESS, ‘Held to Account. Making the Law Work to Fight Impunity in Nepal’ (December 2011) < <http://www.advocacyforum.org/downloads/pdf/publications/impunity/held-to-account-nov-30-2011-english-version.pdf> > accessed 10 January 2021.

² Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO) 2001; Terrorist and Disruptive Activities (Prevention and Punishment) Act (TADA) 2058 (2002) Date of Royal Seal and Publication 28 Chaitra 2058 (10 April 2002); See also, Human Rights Watch, ‘Between a Rock and Hard Place: Civilians Struggle to Survive in Nepal’s Civil War’ (Vol 16 No 12(C), October 2004) < <https://www.hrw.org/sites/default/files/reports/nepal1004.pdf> > accessed 10 January 2021.

restoration of democracy in late April 2006, a new government was formed and a Comprehensive Peace Agreement (CPA) was signed between the GoN and the CPN-M in November 2006. Two months later, the Interim Constitution of Nepal (2007) was adopted and the CPN-M party joined the Interim Parliament. After two postponements, the GoN was finally able to hold the much-anticipated Constituent Assembly election in April 2008. At the polls, the CPN-M emerged as the largest political party and formed a coalition government.³

In response to the overwhelming number of human rights violations that occurred during the armed conflict, the Truth and Reconciliation Commission (TRC) and Commission of Inquiry on Enforced Disappearances (CIEDP) were formed. Despite an agreement in the CPA that the whereabouts of the disappeared persons would be made public within 60 days and that the TRC and CIEDP bodies would be immediately created, they were not formed until February 2015, nearly ten years after the end of the conflict. Both the CPA and the election manifesto of the political parties promised redress for conflict victims and to make legal reforms necessary to address deeply rooted issues of corruption and impunity. However, as the years have unfolded, there have been zero resolutions to the over 60,000 complaints filed with the TRC and CIEDP.

AF was to the fore among Nepali human rights organisations which fostered United Nations attention to the acute crisis as the civil war escalated, by filing cases with UN special procedures. It then joined with international NGOs and supportive governments in generating the pressure at the UN Human Rights Council in 2005 which gave birth to a Nepal Office of the High Commissioner for Human Rights. Once we had established one of the largest such UN human rights field presences, that cooperation between Nepali actors (including AF) and international non-governmental and governmental actors was a key factor in getting the largest of the Offices at the time in place, with regional offices. I certainly remember how actively AF worked with the OHCHR staff in regional offices on individual cases at the local level. It was also critical partner in some emblematic cases, and none more so than the Maina Sunuwar case, which became a cause celebre for those fighting impunity for grave violations.

Ian Martin

Representative of the High Commissioner for Human Rights in Nepal (2005-2007) and Head of the UN Mission in Nepal (UNMIN) (2007-2011)

³ A more detailed explanation of the conflict can be found in Barbara Weyermann's, *Close Encounters. Stories from the Frontline of Human Rights Work in Nepal* (Himal Books 2010) < <http://www.advocacyforum.org/close-encounters.php> > accessed 11 January 2021.

This period immediately following the end of the conflict was marked by considerable political instability with the government frequently undergoing changes and new coalitions being formed regularly. Additionally, as in years prior to the conflict, the larger political parties had considerable influence over the security sector and the judiciary. Even now, the GoN fails to comply with court orders on conflict-era cases or with court verdicts on recent human rights cases. This non-compliance is deeply frustrating to the process of healing and justice in Nepal. The power of an independent judiciary to issue binding decisions is the bedrock of all strong and stable democracies. Similarly, an absence of collusion between a nation's security forces and its central government is necessary for a country to thrive. Thus, despite a positive initial outlook, there has been a discouraging lack of reforms to allow for the independence of the judiciary and security sector institutions such as the Nepal Army. Without reform, widespread corruption will remain an ongoing obstacle to justice in Nepal.

CHAPTER 2: HUMAN RIGHTS AND HUMANITARIAN LAW VIOLATIONS DURING THE CONFLICT ERA

During the conflict, both the State security forces (comprised of the Nepal Police, the Armed Police Force and the RNA) and the CPN-M committed atrocities, including rape, torture, disappearance, summary execution, extra-judicial killing and other gross human rights violations. The conflict intensified in 2001, after the declaration of a state of emergency and the introduction of a unified command, bringing all security forces under the command of the RNA.

Since its founding, AF embarked on the systematic documentation of human rights violations. It collected evidence and analyzed data using software enabling it to analyse Research Information Management System (RIMS) and the Statistical Package for Social Science (SPSS) software. These mechanisms allow for a detailed and sophisticated analysis of gathered information. AF reports findings to domestic and international audiences. These reports highlight areas of human rights that Nepal struggles with and suggest methods of reform.

It is reported that at least 13,000 people were killed and between 100,000 to 150,000 people displaced as a result of the conflict.⁴ The TRC has received more than 60,000 and the CIEDP 3,223 complaints.⁵

Both sides of the conflict are guilty of violating women's rights and perpetuating gender-based violence. Frequently women and children were assaulted and abused as collateral damage in order to threaten the opposing party. A famous example is Maina Sunuwar. Maina Sunuwar was 15 years old when she was tortured to death during interrogation in RNA custody. She was detained because her mother was thought to have witnessed the rape and killing of her cousin by the RNA.⁶ The CPN-M forced girls as young as 12 to join their armed battalions where they were exposed to extreme violence. The following testimony describes the fear faced by women during the conflict:

⁴ Office of the High Commissioner for Human Rights (OHCHR), 'Nepal Conflict Report. An Analysis of Conflict Related Violations of International Human Rights Law and International Humanitarian Law between February 1996 and 2 November 2006' (October 2012) < https://www.ohchr.org/sites/default/files/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf > accessed 14 January 2021.

⁵ Binod Ghimire, 'CIEDP for Rs 2m in compensation' *The Kathmandu Post* (24 January 2018) < <https://kathmandupost.com/miscellaneous/2018/01/24/ciedp-for-rs-2m-in-compensation#:~:text=Amid%20criticism%20for%20failing%20to,disappeared%20during%20the%20Maoist%20insurgency> > accessed 17 January 2021.

⁶ Advocacy Forum, 'Maina Sunuwar. Separating Fact from Fiction' (2010) < <http://advocacyforum.org/downloads/pdf/publications/maina-english.pdf> > accessed 17 January 2021; OHCHR, 'The torture and death of Maina Sunuwar. Summary of concerns' (December 2006) < https://nepal.ohchr.org/en/resources/Documents/English/other/Support_Of_Victims_Of_Torture/18.pdf > accessed 14 January 2021.

“A big problem was a fear of death; either the Maoists would take away my husband, there would be fear to be killed by the Maoists. We feared that Maoists would take away our babies. We used to go into the jungle near home, if we went far deep inside the jungle there would always be fear that the army or the Maoists would rape us or kill us. There was fear to walk alone; there was also an extreme fear of unmarried girls being taken.”⁷

The armed conflict further exacerbated already existent human rights violations in Nepal. The police and military arbitrarily detained civilians. Often, innocent victims were detained and falsely accused of crimes they did not commit or simply held in preventive detention for long periods on suspicion of being members or sympathizers of the CPN-M. The long-term mental and physical toll that the armed conflict took on the people of Nepal is difficult to quantify. By documenting and monitoring all these cases, AF was and remains committed to supporting victims who experienced inhumane detention conditions during the conflict.

From the outset, AF differentiated themselves by separating themselves from the political affiliations; an issue many in civil society struggled with. Their work in the field was so often not just textbook but in so many cases that I witnessed carried out with compassion for the victims. AF led on so many issues that have changed CSO work in Nepal forever and for the good.

Ben Schonveld

British embassy, Kathmandu (2002-2006)

Lawyers and human rights defenders too were the victims of unlawful arrest, detention and torture. Below is a testimony about a lawyer’s encounter with the Nepal Police and political leaders during and after his arrest:

“I pleaded that I was not a Maoist supporter. That was the only thing I could do. ‘I am not guilty. You can investigate what I’ve done. If I’m proven guilty, you can kill

⁷ Story from the Focus Group Discussion in Makwanpur. Advocacy Forum and International Center for Transitional Justice, ‘Across the Lines: The Impact of Nepal’s Conflict on Women’ (December 2010) 37-38 < <https://www.ictj.org/sites/default/files/ICTJ-Nepal-Across-Lines-2010-English.pdf> > accessed 14 January 2021.

me. I handled this case in the capacity of a lawyer. If that, too, is not permitted, I won't do it,' I said.

I was burning with rage. I was shaking with anger. But I kept it under control. While I was explaining that my views were different from that of the Maoists, the CDO cut me off and said, 'Now, you will die.' My heart began to beat faster when I heard this. I thought my days were numbered. I thought perhaps they were going to kill me.

I kept wondering who else might be detained like me since there was no proper bedding, I could not sleep on the cold floor even if I tried. I would cover myself with the blanket and stay awake all night. Adding to the discomfort were the mosquitoes, fleas, and bedbugs. In the morning, I would be taken to a toilet outside while it was still dark so that no one could see that I was there. There was no question of getting to brush my teeth or take a shower. I could not do anything but sit quietly.

The jail was suffocating. There was no fresh air as it was surrounded by walls. There was no clean drinking water. Every single day I had to eat rotten rice and dal, so I had constant diarrhea. There was no provision for medical treatment when one fell ill.

Some of the political leaders had told my wife that they would try to obtain my release if I agreed to quit the legal profession. She informed me of this when she came to visit me. I sent back the reply that I would not surrender myself by giving up my work as a lawyer.

Even after I was free, there was the danger that the security forces might give me trouble and arrest me again as I went about my professional life. Due to this fear, I could not be at peace. I felt uneasy for several days following my release. I would wake up to nightmares in which monstrous-looking soldiers and policemen would take me away and kill me.”⁸

Those who spent time in military barracks during those days were routinely tortured and report the severe effects that this experience had on them. AF documented countless detainee testimonies to this effect. In addition to direct experiences with assault and torture, listening to the stories of victims has a traumatic effect on the lawyers and human rights defenders working on the cases. AF has struggled to address the effect of the work on staff members:

⁸ Story of Nanda Bahadur Bhandari. Barbara Weyermann, *Close Encounters. Stories from the Frontline of Human Rights Work in Nepal* (Himal Books 2010) 51-57.

“At that time, I would fidget with fear throughout the night, and I dreamt of torture. Whenever I went to the district police office, and every time I saw a police van or met police personnel I became terrified. I couldn’t eat... I would lose my mental balance for some time. The pace of my work slackened; I felt very low and suffered bouts of insomnia. I experienced a sudden change in my daily activities, feeling humiliated and insecure... I became angry whenever I remembered the incident.”

“Suddenly, we heard the sound of approaching footsteps and voices talking all at once. That did not seem right to me. Within minutes we were surrounded by people yelling, ‘Shoot! Shoot!’ Suddenly, we heard a gunshot. I was so frightened and startled that I happened to grab the little girl from the woman’s lap. I saw that my friends had their hands up. Fortunately, the bullet missed me and went past me into the fields. I realized I had begun screaming and crying. I was so shaken that even after we arrived in Nepalgunj I could not speak to my colleagues. I could not get out of bed all of the next day. I had lost my appetite and skipped two or three meals. I just could not get the incident out of my mind. It still haunts me. I still remember the incident sometimes and feel scared all over again.”⁹

“The police officer knows me, He has seen my house. He may either come himself or send someone else to get me. The Police obviously don’t like me fighting this case. We are in a state of emergency. In May 2005, we filed a habeas corpus petition through AF for the release of twelve people in prison. Nineteen of us lawyers were involved in this particular case.

‘You file cases like this just to give us trouble. Which lawyers are in on this? The court’s in session today and there are so many of your black coats around.’ He [the police officer] insisted that I tell him their names but I did not.

There were countless such challenges we grappled with. We kept working in the face of fear and intimidation. We felt that the security forces could kill us at any time and on any pretext. It was terrifying just thinking of the ways in which they had killed people.”¹⁰

⁹ Quotes from human rights defenders, including testimony of Kopila Adhikari concerning an incident occurring in December 2002. Recorded March 2010.

¹⁰ *ibid.*

CHAPTER 3: TRANSITIONAL JUSTICE

AF'S ROLE IN TRANSITIONAL JUSTICE

In the aftermath of the armed conflict, AF has continually engaged with all stakeholders of the transitional justice (TJ) process to (1) strengthen victims' movements; and (2) conduct advocacy with relevant authorities, nationally and internationally to ensure the delivery of truth, justice, reparations, and guarantees of non-recurrence.

In Nepal, the term TJ was unheard of and the concept and its particularities were unknown at the time. In 2007 AF requested the International Centre for Transitional Justice (ICTJ) to come to Nepal to share global experiences on TJ. Partnering with ICTJ and the OHCHR, AF organized a series of discussions and forums inviting different stakeholders to speak on all aspects of a TJ process.

I had the privilege of working with AF when I headed the ICTJ Nepal Office. At the time, AF was ICTJ's main national partner, an arrangement that was required under INGO registration regulations, but in the case of ICTJ's partnership with AF, it was much more than a formality. In many ways, AF was the key non-governmental player on transitional justice. It already had a long history of documenting crimes under international law and other serious human rights violations that occurred during the armed conflict, of supporting victims and their families to seek justice, and pressuring the government to establish credible processes to deliver truth, accountability and reparations.

By 2012, when I arrived in the country, many people, including senior government and political party representatives, were looking to "move-on" and "draw a line" under the events of 1996-2006. AF was, and still is, instrumental in ensuring that this is not an option, and that the plight of the tens of thousands of victims of unlawful killing, forced disappearance, arbitrary detention, torture and other violations cannot be swept under the carpet. Its tireless documenting and reporting, advocacy, accompaniment of victims, strategic litigation and other work continues to keep the flame of justice alive. Personally, AF served both as a guide and as an inspiration for my work during the two years I spent in Nepal and since..

Lucia Withers
ICTJ Nepal (2012-2013)

The qualitative study AF conducted in partnership with ICTJ is the most comprehensive study to date. It helped AF and other organizations to shape their programs on TJ in a more strategic way.

Building on its work with victims of human rights violations since 2001, AF initiated victims' forums, where victims who suffered violence on both sides of the conflict could come together and share their experiences. In a context where victims of different sides could not sit together and talk because they suspected each other of being spies, this foundational work of AF was a key building block not only for the future of the victims' movement but also for reconciliation in society at large. Since 2004, hundreds of such community-level meetings and forums have been organized. The victims' groups have appreciated AF's work which has enabled them to raise their voices in a more organized and powerful way.

We, the victims' community, are indebted to AF which helped us to get organized, and empowered us to raise our voice and work collectively. It is the organization that stood firmly with victims in the most difficult time of conflict.

Chandra Kala Upreti

Wife of Bhupendra Raj Upreti, Victim of Enforced Disappearance, Banke

Considering the roles that the judiciary play in the context of TJ, AF also partnered with among others the National Judicial Academy to conduct training for judges, lawyers, prosecutors, police, doctors, victims' groups, civil society organizations and media professionals focusing on different themes of TJ.

Highlighting the marginalization of voices of sexual violence victims from the conflict period, AF conducted a study in partnership with the UNICEF and the UN Population Fund (UNFPA). Not only did this study map out the extent of these violations but also provided guidance for the future course of programmatic interventions by multiple organizations. To raise the voices of women who suffered from sexual violence, AF started informal groups of survivors and advocated for their rights through private and public advocacy. It also worked with women's rights organizations such as WOREC to broaden their documentation capacity so the cases of gender-based violence (GBV) during and after the conflict period could be properly recorded. Partnering with HRW, AF has also scaled up its international advocacy on the issue.¹¹

¹¹ Human Rights Watch, 'Silenced and Forgotten. Survivors of Nepal's Conflict-Era Sexual Violence' (September 2014) <https://reliefweb.int/sites/reliefweb.int/files/resources/nepal0914_ForUpload_0.pdf> accessed 16 February 2021.

AF has been instrumental in ensuring that survivors from conflict-related sexual violence are recognized as victims of the conflict, a highly sensitive topic in Nepal. When I arrived in Nepal after the end of the conflict to work with the UN, there was hardly any information on the sexual violence during the conflict which left the impression that this had not been a problem. However, working together with AF and using new ways of reaching survivors in remote places, we were able to document several new cases.

Annette Lyth

Former Human Rights Officer with OHCHR Nepal

In the interest of creating a TJ process that is both credible and victim-centric, AF over the years advocated for government consultations with victims and civil society where the legal framework setting out the mandates and powers of the TJ mechanisms could be discussed and commented on. AF pushed for reforms to the Commission of Inquiry on Enforced Disappearance, Truth and Reconciliation Act (TRC Act) passed in 2014. The Act created two separate commissions in February 2015 - the Truth and Reconciliation Commission (TRC) and the Commission for Investigation of Enforced Disappeared Persons (CIEDP). It also provided for the possibility of amnesty and mediation between victims and perpetrators of gross human rights violations even though they are in violation of international human rights standards Nepal has adopted.¹²

Although the larger human rights community, including the UNOHCHR publicly expressed their inability to engage and work with these Commissions until these aspects of the mandates of these commissions were amended as per the Supreme Court (SC), victims' groups at large wanted to give the benefit of the doubt to these Commissions and registered their complaints. The commissions registered over 65,000 complaints but, more than seven years after their formation, they have failed to settle a single case. Instead, the Commissions have squandered millions of rupees which otherwise could have been used to address the extremely harrowing socio-economic, psycho-social and medical difficulties of conflict era victims and their families. The victims have lost faith in the GoN and the TJ process.

Commissions have also been used to prevent victims from accessing the regular justice system as police and prosecutors have refused to register and investigate any conflict era cases of human rights violations stating that they will be dealt with by the TJ mechanisms, i.e. the TRC or CIEDP. AF has been working to bring these issues to the attention of domestic and international

¹² Advocacy Forum, 'The State of Transitional Justice in Nepal' (February 2019) 4 < <http://www.advocacyforum.org/downloads/pdf/publications/tj/af-briefing-paper-february-2019-english.pdf> > accessed 16 February 2021.

communities through regular briefing papers and submissions.¹³ Victims' groups and human rights organizations, including AF, continue to demand that the TRC Act be amended and new commissioners appointed so the process can move forward in a substantive way.

In addition to failures with the law itself, the state has repeatedly defies SC orders on matters of TJ. AF has drawn attention to these and attempted to put pressure on the GoN to follow the decisions of the highest domestic court of Nepal. Its failure to do so has caused a decline in public faith in the judicial system and the GoN. Many believe the GoN lacks political commitment to TJ and would rather delay, deny and derail the process. By fostering a culture of impunity and indifference among the political leadership, the GoN faces increasing public dissatisfaction and distrust. This situation also has had an impact on various stakeholders in Nepal who lack concerted coordination and collaboration, which in turn results in a generally weakened human rights agenda.

No proper monitoring has been done and most of the SC's decisions on TJ and victims' rights remain unimplemented. The same is true with the NHRC as only 13.64% of the recommendations of the NHRC are fully implemented.¹⁴ In most cases, its recommendations were partially implemented (e.g., compensation for some categories of survivors) while the implementation of other recommendations, such as the prosecution of alleged perpetrators of human rights violations, remains non-existent but for one or two exceptions.

AF has been closely following the process of truth and justice for more than a decade now. So far, successive Governments have attempted to use the TJ mechanisms as an excuse to prevent victims' access to the regular criminal justice system. A number of mandamus orders requesting investigation and prosecution are pending. The Nepal Army has also filed a petition in the SC arguing that those responsible for the torture and killing of Maina Sunuwar during the conflict should not have been dealt with by the regular courts but rather by the TRC. The SC has been sitting on these cases lately and has failed to make decisions. It has been 15 years since the signing of the CPA brought a formal end to the armed conflict, and victims are forced to wait still longer. The long delay in justice is infuriating to victims and their families.¹⁵

¹³ See also, Advocacy Forum, Publications - Transitional Justice < <http://www.advocacyforum.org/publications/transitional-justice.php> > accessed 16 February 2021.

¹⁴ National Human Rights Commission of Nepal, 'A Precise Report on the Recommendations and State of Implementation in the 20 Years NHRCN (May 2000 - June 2020)' (September 2020) < <https://nepalindata.com/resource/A-PRECISE-REPORT-ON-THE-RECOMMENDATIONS-AND-STATE-OF-IMPLEMENTATION-IN-THE-20-YEARS-NHRCN-2020-AD/> > accessed 18 February 2021.

¹⁵ *Captain Saroj Regmi v Office of the Prime Minister and Council of Ministers and Others* SC Writ No 074-WO-0143.

A few attempts of the Government to amend the TRC Act have failed to result in any outcome. In response to the call of victims and civil society to have consultations on the law amendment process, the Government also organized consultations in 7 provinces. However, they were not properly planned and were seen as the Government's attempt to legitimize its decision to appoint new commissioners to the TRC and CIEDP via the TRC Act's controversial appointment committee. AF has unpacked some of these issues in briefing papers, seeking to alert stakeholders about the harm the controversial appointments and delay in justice may cause to the victims' rights to truth, justice, and reparation. The briefing papers also encourage actors, primarily in the international community, not to fall for the false narrative trap the GoN and political parties were trying to create that the Commissions are established and functioning.¹⁶

In the future, AF will continue to engage via advocacy and lobbying to correct outstanding issues with the TJ system. Considering the uncoordinated and *ad-hoc* interventions by victims, civil society, and the international community, AF will be prioritizing a coordinated approach to address the issues.

¹⁶ Advocacy Forum, 'Fake Transitional Justice Consultations. How Long Can The Government Fool Victims?' (February 2020) < <http://advocacyforum.org/downloads/pdf/publications/tj/briefing-paper-on-tj-consultation-february-2020.pdf> > accessed 18 January 2021.

CHAPTER 4: PUTTING IMPUNITY ON THE AGENDA

After the initial euphoria of the end of the conflict and the signing of the CPA, AF realized very quickly that the new governments that took office were not committed to bringing perpetrators of gross human rights violations to justice. Therefore, AF designed a strategy to expose the extent of impunity in the country by using the legal system and updating the public about how the state is unable and unwilling to address impunity. Although many of the grave violations such as enforced disappearance and torture that were common during the conflict were not criminalized at the time, AF assisted victims and their relatives in filing First Information Reports (FIRs) with the local police, providing detailed documentation of the crimes and naming alleged perpetrators. The perpetrators named were members of both the security forces and CPN-M. Invariably, the police failed to investigate, claiming the TJ process would take care of such cases.

In 2003/4 I was the senior HR advisor to the UN country team in Nepal. It was a period of great political instability and escalating human rights violations. As ever, the issue of human rights became an arena of struggle between the belligerents and their supporters. Over the period, I gained great confidence in the professionalism and political neutrality of AF which contrasted with many other sources of HR information.

John Bevan

UN Human Rights Advisor to the UN Resident Coordinator (2003-4) and Head of Civil Affairs, UNMIN (2007-2008)

Challenging the police's failure to register the FIRs and investigate allegations, AF started to use the extraordinary jurisdiction of the SC through writs of mandamus in a more systematic way. As no TJ mechanisms had yet been established, working with victims' groups and the media, AF started to bring the plight of victims to the attention of the Court and the wider public. The filing of the FIRs created a strong foundation for establishing the TJ mechanisms in the country.

Through sustained advocacy at the SC, bringing international jurisprudence on victims' right to effective remedies, and organizing training for judges and prosecutors through a partnership with the National Judicial Academy, AF also played an invaluable role in improving the judiciary's understanding of international standards on the right to truth and justice. In response to the Government's attempt to deny victim's access to justice in the pretext of TJ mechanisms handling

conflict era cases, the SC firmly articulated those remedies cannot be denied to victims on the pretext that they could be provided by the not yet created truth and justice mechanisms.¹⁷

On 18 September 2007, the SC ordered the District Police Office (DPO) in Kavre to complete the investigation into the killing of Maina Sunuwar within three months. The DPO in Kavre submitted its investigation report to the District Public Prosecutor's Office on 27 January 2008. As a result, on 3 February 2008, the Kavre Public Prosecutor filed a charge sheet with the Kavre District Court against army officers Bobi Khatri, Sunil Prasad Adhikari, Amit Pun, and Niranjana Basnet. The charges included the illegal detention, torture, and killing of Maina.¹⁸

Likewise, responding to a writ filed on 12 December 2012 seeking the order of mandamus for a prompt investigation into Dekendra Raj Thapa's murder case, the Appellate Court of Surkhet on 13 December issued a show-cause notice against DPO, Dailekh and District Public Prosecutor's Office, Dailekh.¹⁹ The work AF did in bringing these complaints created a strong foundation for the TJ process.

Despite the Court's orders, with the exception of a few cases, complaints were not investigated or prosecuted. To sustain pressure for the investigation on the case, AF together with Human Rights Watch (HRW) in 2008, published a report, "*Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict*" which documented the 62 FIR cases and the obstacles complainants faced.²⁰ Since then, both organizations have regularly published updates on these cases in follow-up reports, most recently in November 2020.²¹ Through these reports, AF aims not only to record progress but also to engage national and international stakeholders on the issue of impunity in Nepal. AF continues to engage by following advocacy tactics.

¹⁷ *Devi Sunuwar v District Police Office, Kavrepalanchowk* (2007) Writ No. 0641 of Year 2007; *Nepal Government on behalf of Laxmi Thapa v Bam Bahadur Khadka et al* Case Number 076-C1-00186.

¹⁸ Advocacy Forum, 'Maina Sunuwar. Separating Fact from Fiction' (2010) < <http://advocacyforum.org/downloads/pdf/publications/maina-english.pdf> > accessed 17 January 2021.

¹⁹ Advocacy Forum, 'Court Issues Show Cause Notice in Dekendra Case' (14 December 2012) < <http://advocacyforum.org/news/2012/12/court-issues-show-cause-order-in-dekendra-case.php> > accessed 20 February 2021.

²⁰ Advocacy Forum and Human Rights Watch, 'Waiting for Justice. Unpunished Crimes from Nepal's Armed Conflict' (September 2008) < <http://advocacyforum.org/downloads/pdf/publications/waiting-for-justice-sep-10.pdf> > accessed 20 February 2021.

²¹ See Advocacy Forum, Publications - Impunity Reports < <http://advocacyforum.org/publications/impunity-reports.php> > accessed 25 March 2021.

FILING FIRST INFORMATION REPORTS

As stated above, a key part of AF's strategy to fight against impunity has been the filing of First Information Reports (FIRs). FIRs are necessary to launch police investigations. Yet, often in the middle of a conflict of interest, the Nepal police tend to vehemently refuse to register cases against their own colleagues. Most will only do so if a mandamus order is issued by the court. Without a court order, complaints have no hope of proceeding.

AF has been involved in many aspects of these cases (both from the conflict period in the immediate aftermath of the end of the conflict and in cases of torture and other human rights violations since), including by drafting FIRs, accompanying complainants to the police station, following up with local authorities, filing court petitions if police fail to act, attending court hearings, pleading the case, and general support victims and families.

VETTING

AF included a call for vetting in its strategy to counter impunity. It worked with a number of organizations to ensure effective vetting during the recruitment, promotion and transfer of government officials, including those from the security services and those applying for UN peacekeeping roles.

There were several high-profile cases where the then UN Department of Peacekeeping Operations (DPKO) ordered the return of Nepali peacekeepers after it became known that there was prima facie evidence of their involvement in serious human rights violations in Nepal.

Two of the most emblematic cases were that of NA then Captain Niranjan Basnet, accused in September 2009 of the murder of Maina Sunuwar, and then Deputy Superintendent of Police (DSP) Basanta Bahadur Kunwar.²² Despite the fact that the case was pending before the Kavre District Court, Captain Basnet was sent on a peacekeeping mission to Chad in 2009. Similarly, DSP Kunwar had a case pending against him under the 1996 Compensation Relating to Torture Act 2053 (CRT) in the Kathmandu District Court when he was sent on a peacekeeping mission to Liberia in August 2011.²³ Both were repatriated once this information came to light.²⁴

²² Advocacy Forum, 'Maina Sunuwar. Separating Fact from Fiction' (2010) < <http://advocacyforum.org/downloads/pdf/publications/maina-english.pdf> > accessed 17 January 2021.

²³ Advocacy Forum, 'Arjun Gurung' < <http://www.advocacyforum.org/torture-compensation/2011/10/arjun-gurung.php> > accessed 19 March 2021.

²⁴ Investigations into serious violations of UN rules are conducted by members of the UN Office of Internal Oversight Services. The final decision to repatriate individuals is made by the New York Headquarters of the Department of Peacekeeping Operations. The cost of repatriations is born by the contributing nation. Nina Shen Rastogi, 'Peacekeepers on Trial. How U.N. blue-helmets get disciplined' (SLATE, 28 May 2008) < <https://slate.com/>

Joining several other civil society organizations in major troop-contributing countries, AF pushed for a UN policy on vetting potential peacekeepers.²⁵ This resulted in the UN Screening Policy, adopted in 2012, which requires countries contributing troops to have a more systematic approach to vetting personnel before sending them on UN peacekeeping missions.²⁶ Countries aspiring to have citizens serve in UN peacekeeping missions need to improve their human rights records by instigating thorough vetting procedures.

AF continues to highlight the need for vetting procedures domestically as perpetrators of human rights violations continue to be promoted. The UN Formed Police Units (FPU) Selection policy was revised and introduced by the NP headquarters on 18 August 2012.²⁷ On 23 January 2013, the GoN announced new Army Service Regulations (ASRs).²⁸ However, several alleged perpetrators of crimes committed during the armed conflict were nevertheless appointed into senior positions. Among them is Kuber Singh Rana. He is accused of involvement in the disappearance and extrajudicial killing of five students in the Dhanusha district. Kuber Singh Rana was promoted to Inspector General of Police. Others remain in senior positions today.²⁹

The promotion of Kuber Singh Rana was challenged in the SC. The Court ruled the vetting of alleged criminals prior to promotion must be completed and is vital to achieving truth and justice³⁰ Unfortunately, in the absence of any functional vetting policies, AF has to keep exposing the glaringly poor compliance of relevant bodies with the Court's repeated rulings on the matter. Members of the security forces who perpetrated gross human rights violations during the conflict remain in power and continue to enjoy promotions.

news-and-politics/2008/05/who-disciplines-u-n-peacekeepers.html > accessed 19 March 2021; See also, Column Lynch, 'Is Nepal sending accused criminals to serve in U.N. peacekeeping missions?' (Foreign Policy, 11 November 2011) < <https://foreignpolicy.com/2011/11/11/is-nepal-sending-accused-criminals-to-serve-in-u-n-peacekeeping-missions/> > accessed 19 March 2021.

²⁵ Advocacy Forum, 'Vetting in Nepal: Challenges and Issues' (2014) < <http://advocacyforum.org/downloads/pdf/publications/impunity/vetting-report-july-2014.pdf?m=1514801632> > accessed 20 March 2021.

²⁶ United Nations, 'Uniformed Personnel to Face Vetting for Previous Allegations of Misconduct While Serving United Nations, Secretary-General Tells Security Council' (Press Release, 10 March 2016) < <https://www.un.org/press/en/2016/sgsm17586.doc.htm> > accessed 22 March 2021.

²⁷ Advocacy Forum, 'Vetting in Nepal: Challenges and Issues' (2014) 59 < <http://advocacyforum.org/downloads/pdf/publications/impunity/vetting-report-july-2014.pdf?m=1514801632> > accessed 20 March 2021.

²⁸ Advocacy Forum, 'Vetting in Nepal: Challenges and Issues' (2014) 59 < <http://advocacyforum.org/downloads/pdf/publications/impunity/vetting-report-july-2014.pdf?m=1514801632> > accessed 20 March 2021; Army Service Regulation 2013 < <http://www.mod.gov.np/legaltexts/regulation-view/3> > accessed 22 March 2021.

²⁹ Advocacy Forum, 'SC Issues Interim Order against AIG Rana' (5 July 2011) < <http://advocacyforum.org/news/2011/07/sc-issues-interim-order-against-aig-rana.php> > accessed 22 March 2021.

³⁰ Advocacy Forum, 'SC Issues Interim Order against AIG Rana' (5 July 2011) < <http://advocacyforum.org/news/2011/07/sc-issues-interim-order-against-aig-rana.php> > accessed 22 March 2021; For text of SC decision in Nepali see, *Sunil Ranjan Singh v Nepal Government, Office of Prime Minister and Council of Ministers et al* (2020) SC Writ No 067-WO-1043 < https://supremecourt.gov.np/cp/assets/downloads/supreme_97154.pdf > accessed 22 May 2021.

On 6 January 2020, adjudicating a writ petition filed in a case of extrajudicial killing, the SC ordered to establish an impartial and independent mechanism to investigate cases of extrajudicial killings in consultation with relevant stakeholders; and directed the Central Bureau of Investigation under the Nepal Police to promptly investigate the case until the formation of an independent mechanism; and to implement the recommendations forwarded by the NHRC, among others.³¹ Stating that the NHRC has not implemented the legal provision of blacklisting human rights violators, the SC asked the rights body to blacklist human rights violators immediately.³² In September 2020, the NHRC published a report including names of 286 people, mostly police officials, army personnel, and former Maoist insurgents, as suspects in serious crimes where its investigators concluded there is evidence warranting investigation and prosecution for abuses including torture, enforced disappearance, and extrajudicial killing.³³

AF also campaigned against the appointment of CPN-M leaders against whom cases were pending in the courts. Among those appointed is Agni Sapkota who allegedly ordered the abduction and murder of Arjun Lama of Kavre District.³⁴ Sapkota was appointed as the Minister for Information and Communication, by the Maoist Government in 2011. This was challenged by a number of human rights defenders. In the absence of any functional law or policy on vetting, the Court stated it was not able to decide on whether he should be removed from his post. However, the Court ordered the Attorney General to report on the progress made in the investigation in the Arjun Lama case, including any influence on or interference with the investigation and prosecution.³⁵ These updates are required every 15 days. Despite the Court's order, the prosecutor has submitted only 15 updates since the order on 21 June 2011; the last one in 8 July 2015. The case is still sub-judice before the Court.

In January 2020, Sapkota was elected as the Speaker of the House of Representatives. The entire victim community in Nepal felt dishonored and betrayed as Sapkota's appointment came before the completion of the criminal investigation into his involvement in Arjun Lama's death.³⁶

³¹ *Sunil Ranjan Singh v Nepal Government, Office of Prime Minister and Council of Ministers et al* (2020) SC Writ No 067-WO-1043, para 60. SC

³² 'Form 'new body' to probe extrajudicial killings. SC' *The Himalayan Times* (12 December 2020) < <https://thehimalayantimes.com/nepal/form-new-body-to-probe-extra-judicial-killings-supreme-court> > accessed 22 May 2021.

³³ National Human Rights Commission of Nepal, 'A Precise Report on the Recommendations and State of Implementation in the 20 Years NHRCN (May 2000 - June 2020)' (September 2020) < <https://nepalindata.com/resource/A-PRECISE-REPORT-ON-THE-RECOMMENDATIONS-AND-STATE-OF-IMPLEMENTATION-IN-THE-20-YEARS-NHRCN-2020-AD/> > accessed 18 February 2021.

³⁴ Advocacy Forum, 'Arjun Bahadur Lama' < <http://advocacyforum.org/emblematic-cases/2011/01/arjun-bahadur-lama.php> > accessed 18 February 2021.

³⁵ *Sushil Pyakurel et al v Office of the Prime Minister and Council of Ministers* SC Writ No 067-WO-1094

³⁶ Anil Giri and Tika R Pradhan, 'Conflict victims and human rights activists cry foul over Agni Sapkota for Speaker' *The Kathmandu Post* (19 January 2020) < <https://kathmandupost.com/national/2020/01/19/conflict-victims-and-human-rights-activists-cry-foul-over-agni-sapkota-for-speaker> > accessed 19 August 2021 ; 'Activists protesting speaker appointment arrested' *my Republica* (28 January 2020) < <https://myrepublica.nagariknetwork.com> >

On 23 January 2020, senior advocate Dinesh Tripathi filed a writ petition against this decision in the SC demanding the immediate arrest of Agni Sapkota. In the petition, he argued that Agni Sapkota is not eligible to become a speaker of the House of Representatives as he is a suspect in a murder investigation. On 28 January 2020, a single bench of Justice Sapana Pradhan Malla issued a show-cause order to the defendants but refused to issue a stay order on his appointment. The court asked the government to provide the details of the investigation into the murder of Arjun Bahadur Lama within 30 days. As of March 2022, this court order remains unimplemented.

LITIGATION INCLUDING UNIVERSAL JURISDICTION

As discussed previously, litigation constitutes another block in AF's efforts to challenge impunity. Building on the experience and expertise that AF gained, it does not only litigate at national level but also at international level. For example, it took up the issue of impunity in Nepal at the international level by exploring cases falling under universal jurisdiction (UJ). Its partnership with a law firm in the United Kingdom (UK) resulted in the arrest of a serving Nepali Army Colonel in the UK under UJ. In early 2013, Colonel Kumar Lama, who was serving as an expert on a UN mission in South Sudan was arrested during a visit to the UK. He was charged with two counts of torture during the armed conflict period.³⁷

This case exposed Nepali actors to the potential reach of the long arm of international justice if the State fails to address accountability domestically. Although there was an acquittal on one count and a hung jury on another and the prosecutor decided not to retry him, the case provided hope for future work and important lessons not only for political actors but also for lawyers, HRDs and victims of human rights violations in the country.

COMMUNICATION BEFORE THE HUMAN RIGHTS COMMITTEE (HRC)

As part of its strategy to counter impunity, AF has also embarked on accessing the UN Human Rights Committee through the individual complaint mechanism under the Optional Protocol to the ICCPR. Among the first to use this international mechanisms, nearly two decades after Nepal ratified the ICCPR and its Optional Protocol, AF started to represent victims of enforced

com/news/activists-protesting-speaker-appointment-arrested/ > accessed 19 August 2021 ; Amnesty International 'Amnesty International staff detained in Nepal' (27 January 2020) < <https://www.amnesty.org/en/latest/news/2020/01/nepal-release-human-rights-activists-immediately/> > accessed 19 August 2021 ; Accountability Watch Committee, 'Appeal to Immediately and Unconditionally release Arrested HRDs and Conflict Victims' (Press Statement, 27 January 2020) < <http://www.advocacyforum.org/downloads/pdf/press-statement/2020/awc-statement-demanding-release-to-arrested-hrds-and-conflict-victims.pdf> > accessed 19 August 2021.

³⁷ International Commission of Jurists, 'Authority Without Accountability. The Struggle for Justice in Nepal' (May 2013) < <https://www.refworld.org/pdfid/530f04ce4.pdf> > accessed 18 February 2021.

disappearances, torture, extrajudicial execution and sexual violence before the Human Rights Committee.

Out of the 10 cases represented by AF, 8 have been decided. In these cases, the Committee found clear violations and required the State of Nepal to initiate a criminal investigation, provide compensation to victims and take measures for the non-repetition of such violations. The Committee also made it clear that, under Nepal’s international obligations under the ICCPR, it has to provide effective remedies, which entails investigating gross violations of human rights and addressing impunity.³⁸ It stated that these ends cannot necessarily be achieved through non-judicial mechanisms, like the TRC. The Committee also recalls its jurisprudence, stating it is not necessary to exhaust avenues before non-judicial bodies to fulfil the requirements of Article 5 (2) (b) of the Optional Protocol.²³ The Committee considers that the Commissions established under the TRC Act would not constitute an effective remedy.³⁹ However, except providing some monetary relief, the GoN has done nothing to implement these recommendations. The failure to provide victims with access to justice is a problem AF is committed to reversing. It continues to build its general TJ advocacy strategies by using the recommendations and views issued by the Committee.

S.N.	Case Name	Incident	Recommendation
1.	Surya Prasad Sharma	Enforced Disappearance during the armed conflict by the army	<p>State party is under an obligation to provide Yasoda Sharma (wife of Surya Prasad Sharma) with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the Sharma’s husband, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the family for the violations suffered by the Sharma’s husband and by themselves.</p> <p>State party duty-bound not only to conduct thorough investigations into alleged violations of human rights, particularly enforced disappearances and acts of torture, but also to prosecute, try and punish those held responsible for such violations.</p> <p>State’s party’s obligation to take measures to prevent similar violations in the future.</p>

³⁸ See Real Rights Now <<https://realrightsnow.org/en/>> accessed 18 February 2021.

³⁹ *Maya v Nepal* Communication No 2245/2013, UN Doc CCPR/C/119/D/2245/2013 (Human Rights Committee, 17 March 2017) para 11.4.

2.	Hari Prasad Bolakhe	Disappearance and extrajudicial execution pastor during conflict by army	<p>State party is under an obligation an effective remedy. Provide effective reparation, including compensation and appropriate measures of satisfaction, to the author and her children and parents-in-law for the violations suffered.</p> <p>Conduct a thorough and effective investigation.</p> <p>Prosecute, try and punish those responsible for the violations committed and make the results of such measures public.</p> <p>Ensure that any necessary and adequate psychological rehabilitation and medical treatment.</p> <p>Criminalize torture and enforced disappearance and provide for appropriate sanctions and remedies commensurate with the gravity of the crimes.</p> <p>Guarantee that such cases give rise to a prompt, impartial and effective investigation.</p> <p>Allow for criminal prosecution of those responsible for such crimes.</p>
3.	Yubraj Giri	Incommunicado detention and torture of by the army during conflict	<p>State party is under an obligation to provide an effective remedy, by ensuring a thorough and diligent investigation into the torture and ill-treatment, the prosecution and punishment of those responsible, and provide the family with adequate compensation for the violations suffered.</p> <p>The author and his family are protected from acts of reprisals or intimidation.</p> <p>Obligation to prevent similar violations in the future.</p> <p>Establishment of appropriate judicial and administrative mechanisms for addressing alleged violations of rights, even during a state of emergency.</p>

4.	Dev Bahadur Maharjan	Torture or enforced disappearance	<p>Ensure a thorough and diligent investigation into the torture and ill-treatment.</p> <p>Prosecution and punishment of those responsible.</p> <p>Amend the legislation so as to bring it into conformity with the Covenant, including the amendment and extension of the 35-day statutory limitation from the event of torture or the date of release for bringing claims under the Compensation relating to Torture Act.</p> <p>Enactment of legislation defining and criminalizing torture; and the repealing of all laws granting impunity to alleged perpetrators of acts of torture and enforced disappearance.</p> <p>Provide the author and his family with adequate compensation for all the violations suffered.</p>
5.	Mukunda Sedhai	Disappearance by the army during conflict	<p>Conducting a thorough and effective investigation into Mr. Sedhai's disappearance.</p> <p>Providing the author and the family with detailed information about the results of its investigation.</p> <p>Releasing Sedhai immediately if he is still being detained incommunicado.</p> <p>In the event that Mr. Sedhai is deceased, handing over his remains to his family.</p> <p>Prosecuting, trying and punishing those responsible for the violations committed.</p> <p>Providing adequate compensation.</p> <p>Obligation to take steps to prevent similar violations in the future.</p>
6.	Subhadra Chaulagain	Extrajudicial execution and torture of teenage girl, and torture of father, by the army	<p>Provide effective remedy.</p> <p>effective and complete investigation of the facts, the prosecution and punishment of the perpetrators, full reparation and appropriate measures of satisfaction.</p> <p>Obligation to take steps to prevent similar violations in the future</p>

7.	Manau (Tharu Et Al.)	Disappearance of eight young people from a village by army	State party should ensure that its legislation allows for the criminal prosecution of those responsible for serious human rights violations such as torture, extrajudicial execution and enforced disappearance.
8.	Purna Maya	Rape by a number of army personnel during conflict.	<p>Provide adequate compensation and appropriate measures of satisfaction to the author for the violations suffered, including reimbursement for medical expenses incurred to treat the injuries sustained as a result of torture.</p> <p>Abolish the 35-day statute of limitation for filing complaints of rape.</p> <p>Remove obstacles that hinder the filing of complaints and effective access to justice for victims of rape, including by ensuring the confidentiality and protection of victims during the filing of a complaint, the investigation and the proceedings, increasing the number of female police officers and prosecutors, establishing policies for the confidential storage of medical records of victims of sexual violence in hospitals, and providing interim relief to victims of sexual violence that occurred during the conflict.</p> <p>Criminalize torture and remove legal provisions allowing for impunity for this crime.</p> <p>Facilitate a national dialogue on sexual violence against women to increase the visibility of the issue and the status of victims in Nepalese society.</p> <p>Provide training and conduct awareness-raising campaigns on violence against women and provide adequate protection to victims.</p>

9.	Reena Rasaili	Extrajudicial execution and torture (potentially including rape) of teenage girl by army during conflict. (Note this happened on same night in same village as Chaulagain execution.)	<p>Conduct a thorough and effective investigation into the rape and other forms of torture inflicted on R.R., her arbitrary detention and her extrajudicial execution.</p> <p>Provide adequate compensation and appropriate measures of satisfaction to the authors for the violations suffered, including an official apology and a memorial in R.R.'s name.</p> <p>Obligation to take steps to prevent the occurrence of similar violations from occurring in the future, including by amending the legislation and statutes of limitations in accordance with international standards and by prescribing sanctions and remedies for the offence of torture commensurate with the gravity of such crimes.</p>
10.	Krishna Prasad Adhikari	Extrajudicial killing of Krishna Prasad Adhikari in Bakular Chowk of Chitwan district by Maoists cadres	Submitted in 2021, views pending.

CHAPTER 5: TORTURE

Torture of detainees was well known but unstudied and unaddressed before AF began its work in this area. Its founding members had worked in a rehabilitation centre for torture survivors for several years and had the realization that although it was important to work on rehabilitation of survivors, it was often too late to repair the damage caused by torture on the victims, their families and society. Thus, to prevent torture was part of the mission when starting AF in 2001.

The first initiative of AF was to visit places of detention, not only to interview detainees, document cases but also observe the situation in detention and develop approaches and strategies to prevent torture taking place. Prior to the mobilization of the army in November 2001, police detention facilities were the main places where detainees would complain of torture. Thus, AF's focus was on police detention facilities.

In the context of conflict, where no one would have allowed NGOs to detention, AF developed a strategy using the constitutional rights of detainees to secure access to detention. AF offered free legal assistance to detainees to ensure the rights of detainees and garnered support from the police to allow lawyers offering free legal assistance to visit places of detention. Offering its information and analysis to key actors in the criminal justice system, including judges, police, public prosecutors, defense lawyers, through regular dialogues (consultation meetings), AF secured their support for its work. Starting with 3 detention places in three districts (Kathmandu, Banke and Morang) it expanded its work to 20 districts visiting up to 57 detention facilities, reaching out to thousands of detainees in police custody every year.⁴⁰

AF encountered detainees in police detentions, subjected to severe torture in military barracks. When the Nepal Army (then Royal Nepal Army) was mobilized in 2001 to counter the insurgency, there was no law, not even the newly adopted anti-terrorist legislation under which the army was mobilized, that allowed the military to detain civilians in their barracks. Nevertheless, hundreds, if not thousands, of suspected 'terrorists' were illegally detained in military barracks. No one was allowed access to military barracks, including the NHRC. Although AF had no access to military barracks, AF's lawyers interviewed many detainees in police detention centers, who were subjected to severe torture in military barracks. AF developed its strategies to interview detainees from military barracks to understand patterns of torture by reaching out to those released or transferred from military barracks to police detention or prison.

⁴⁰ Advocacy Forum, 'Recent Trends And Patterns of Torture In Nepal' (Briefing. July - December 2010) < <http://www.advocacyforum.org/downloads/pdf/publications/Briefing-July-to-Dec-2010-final.pdf> > accessed 18 April 2021.

Of the 371 military detainees interviewed by AF, 100% claimed they had been tortured, alarming AF lawyers.⁴¹ However, it was not possible to make these reports public considering the situation at that time. AF used its information strategically to inform not only the justice sector actors but also the international community without jeopardizing its work in detention. After the political change in the country in 2006, AF published its first Annual Report on Torture (Sharing Experiences of Torture Survivors 2006) collating stories of some survivors of torture both in police and military custodies. Since 2007, as the political situation started to improve, AF started to publish regular reports also analyzing patterns of torture, providing a more detailed analysis. For example, AF's report published in 2007 that included information from April 2006 to April 2007, revealed an average of 40% of detainees complaining about torture in police detention.

Since then, it publishes a report every year analyzing patterns of torture, advocating for new laws or policy changes to protect victims of torture and ensure they receive reparations to help them recover from their trauma.⁴² AF continues to host stakeholders' forums, organizes workshops. AF has been training medical personnel to recognize and record signs of torture and sexual abuse. This remains one of the most compelling pieces of evidence in legal proceedings. This proactive yet comprehensive and sustained approach of AF has contributed significantly to reducing the practice of torture in detention.⁴³

After 20 years of tireless effort with many ups and downs, including the occasional personal risk of staff members, AF has recorded a gradual reduction in torture in police detention from more than 40% to around 20%. This rate, while improved, remains unacceptable, and AF continues to work to reduce it further.

⁴¹ Advocacy Forum, 'Torture Still Continues. A Brief Report on the Practice of Torture in Nepal 2006-2007' (June 2007) < <http://advocacyforum.org/downloads/pdf/publications/26-June-publication.pdf> > accessed 18 April 2021.

⁴² See Advocacy Forum, Publications – Torture < <http://www.advocacyforum.org/publications/torture.php> > accessed 25 March 2021.

⁴³ Mandira Sharma, Ingrid Massagé and Kathryn McDonald 'Lawyers' Intervention at Pretrial Stage Helps to Prevent Torture, Illegal Detention and Other Human Rights Violations: Experiences of Advocacy Forum–Nepal' (2012) 4 (2) *Journal of Human Rights Practice* 253–272 < <https://academic.oup.com/jhrp/article-abstract/4/2/253/2188807> > accessed 17 April 2022.

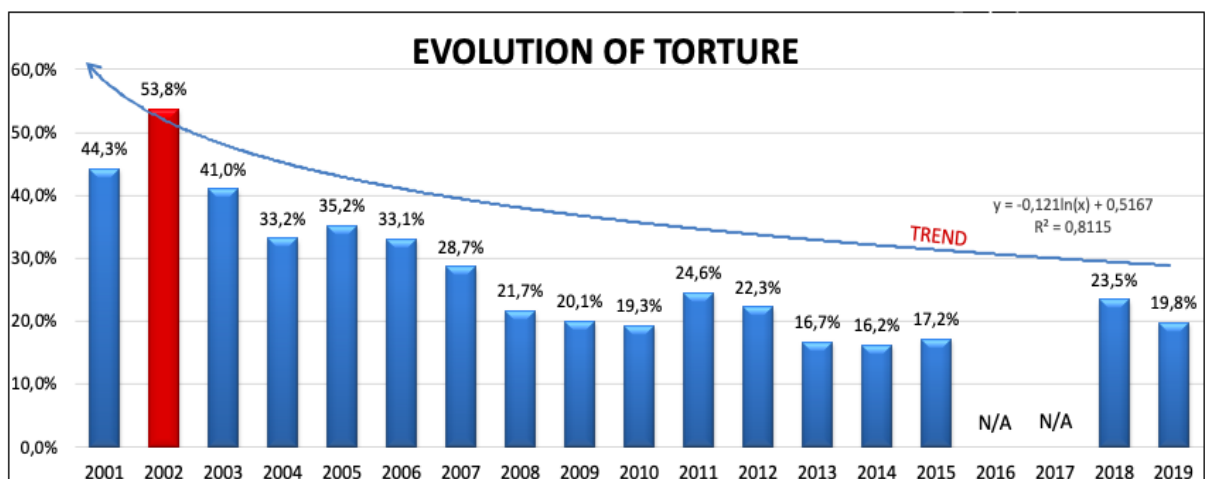


Figure 1. Overall annual torture rates since the collection of data started in 2001⁴⁴

USING THE LAW TO DEMAND LAW REFORMS

Responding to a writ filed by AF raising the problem of non-implementation of court orders in providing compensation, the SC on 29 January 2018 ordered the government to reform the TCA, establish a basket fund to provide timely compensation to victims of torture and provide compensation within 35 days of its order to all torture victims to whom the courts have awarded compensation.⁴⁵

Nepal’s parliament passed the Penal Code in 2017, replacing the nearly six-decades-old Country Code. AF was active reviewing draft provisions relating to torture, making recommendations for the necessary amendments, organizing events with the drafting committee to include provisions that criminalises torture and contribute to its prevention. AF continues to work to make the

⁴⁴ AF’s access to detention was prevented by police in 2017 and 2018 making it difficult to gather information systematically.

⁴⁵ The laws include CDOs may sentence those convicted to a fine of up to Rs 10,000/- and prison term of up to 2 years. Some Public (Crime and Punishment) Act 1970, section 6. Other Acts providing jurisdiction to hear criminal matters include: Essential Goods Protection Act 1955, section 9 ; Black Marketing and Other Social Offences and Punishment Act 1975, section 15; Social Practices (Reform) Act 1976, section 19; Aquatic Animals Protection Act 1960, section 11; Nepal Standards (Certification Mark) Act 1980, section 15; Animal Health and Livestock Services Act 1999, section 22. CDOs also had powers under Section 24 of the Arms and Ammunition Act to sentence people up to 7 years’ imprisonment. For more details see, Advocacy Forum and REDRESS, ‘Held to Account. Making the Law Work to Fight Impunity in Nepal’ (December 2011) 43-47 < <http://www.advocacyforum.org/downloads/pdf/publications/impunity/held-to-account-nov-30-2011-english-version.pdf> > accessed 18 April 2021.

law work in practice. In August 2018, the new Penal Code came into force, incorporating the criminalization of torture as a crime against the state. This means that the initial complaints instigating legal proceedings have to be registered with the Nepal Police via First Information Reports (FIRs). AF has started to help victims file FIRs demanding criminal investigation for the torture they suffered in detention. Through more than 20 FIRs filed so far, AF is also documenting the challenges victims are facing in pursuing remedies and setting accountability in torture-related cases under the new law.

CALLING FOR AN INDEPENDENT OF INVESTIGATIVE MECHANISM

One of the issues that AF has documented with evidence is the apparent conflict of interest as the Nepal Police vehemently refuse to register cases against their own colleagues. The other challenge is the requirement to file the FIR at the police station closest in proximity to the victim's home - which is often the location where she or he were tortured. This puts victims under pressure and undermines their confidence that a fair investigation would take place. A statute of limitation is also seen as a big problem. The Penal Code requires FIRs/complaints of torture cases to be filed within six months of its occurrence. This means thousands of torture survivors from the conflict period, who are waiting for remedies, are excluded from using this law. Documentation of these challenges and problems informs AF's future strategies and serve as the evidence base for its legal reform work. AF now advocates for an independent investigative mechanism for cases involving any security forces and for changes to the statutory limitation provision.

As set out earlier (see chapter 4), AF has represented 17 victims of torture before the UN Human Rights Committee in cases filed under the Optional Protocol to the ICCPR. In the majority of these cases, the Committee has found violations and deemed the State's obligation to conduct prompt, impartial, and effective investigation and prosecution, trial, and punishment of those responsible for the violations. Furthermore, the Committee has requested the GoN to provide full reparation compensation and appropriate measures of satisfaction to the victims and their families along with criminalization of torture and enforced disappearance and the repealing of all laws granting impunity to alleged perpetrators of acts of torture and enforced disappearance. These recommendations enable AF to enhance its national advocacy for the realization of the internationally agreed norms.

CHAPTER 6: LITIGATION AND LEGAL REFORM

Throughout the 20 years since its founding, AF has adopted a strategy of litigation to ensure the state upholds people's human rights. It has done so in individual cases (whether for torture victims, those killed in custody, disappeared, or detainees facing violations of the right to fair trial) as well as more generally to push for legal reforms, mainly by use of public interest litigation in the SC.

LEGAL AID AND LITIGATION TO PROMOTE FAIR TRIAL

The 1990 Constitution of Nepal guaranteed detainees access to a lawyer. AF has provided legal aid to more than xx detainees detained in different detention facilities in Nepal.

When AF was founded, there was a wider understanding that legal consultation was only needed in the court during trial, not at pre-trial stage. Hardly any detainee held in police custody had access to a lawyer. However, AF believes that legal consultations should start from the time of arrest and legal aid for detainees is equally important at the pre-trial state when detainees are vulnerable to illegal detention, torture and ill-treatment, falsification of records and forced confessions, among other violations.

As AF faced a number of challenges to ensure legal representation to detainees, such as the police not allowing access arguing that the Constitution does not guarantee this right to start from the time of arrest and that lawyers are needed to defend detainees at the court, AF documented all those challenges and advocated for the inclusion of a provision in the 2007 Interim Constitution and the 2015 Constitution to have this right from the time of the arrest. Article 20 (2) of the 2015 Constitution now reads: "Any person who is arrested shall have the right to consult a legal practitioner of his or her choice from the time of such arrest and to be defended by such legal practitioners".

However, this right is yet to be fully implemented. As professional lawyers hardly visit detention places and no functioning legal aid system exists in the country to ensure this right to detainees, AF continues to work to reform the Legal Aid Act and the system to uphold this right of detainees in practice. Having lawyers at the pretrial stage does not only help to ensure detainees their right to access a lawyer and promote the right to a fair trial but also prevents illegal and arbitrary arrest and detention, torture and ill-treatment.

AF has also contributed to bring reforms to prevent administrative body imposing prison sentence. For example, until 2015, CDOs were empowered to decide cases under many laws.⁴⁶ However, AF documented this power of CDOs being widely used to deny a fair trial to those arrested. A CDO is an administrative person, having no legal expertise. No defense could be presented before a CDO. No trial could be conducted. Without a fair trial, CDOs could decide to send people to jail for up to three years. Furthermore, under the Public Security Act 1989, which was widely used during the conflict, CDOs had the power to order issue detention orders for preventive detention for a period of up to 90 days.⁴⁷

Systematically collecting information on these cases, AF provided sufficient evidence to challenge the law. Public interest litigation filed in the SC sought an amendment to this law and ultimately resulted in a decision of the Court requiring review of all laws and policies that allow CDOs the power to decide cases without trial. The amendment that resulted from the Court's decision restricted the power of the CDO significantly. It stated that CDOs could not hear cases that could result in more than six months of imprisonment.⁴⁸

LITIGATION TO PREVENT TORTURE AND TO IMPROVE REPARATION FOR VICTIMS

Criminalisation of torture and to have legislation providing legal framework for prevention of torture, ill-treatment and protection of victims remain central to AF's advocacy. It has used litigation for bringing legal reforms as well. Between 2001 and mid-2017, it has assisted at least 152 victims of torture to file cases, demanding compensation using the Torture Compensation Act (TCA), 1996. This way, AF tried to help victims not only to access compensation but also expose limitations of the Act, paving the ground for legal reform.

⁴⁶ The laws include CDOs may sentence those convicted to a fine of up to Rs 10,000/- and prison term of up to 2 years. Some Public (Crime and Punishment) Act 1970, section 6. Other Acts providing jurisdiction to hear criminal matters include: Essential Goods Protection Act 1955, section 9 ; Black Marketing and Other Social Offences and Punishment Act 1975, section 15; Social Practices (Reform) Act 1976, section 19; Aquatic Animals Protection Act 1960, section 11; Nepal Standards (Certification Mark) Act 1980, section 15; Animal Health and Livestock Services Act 1999, section 22. CDOs also had powers under Section 24 of the Arms and Ammunition Act to sentence people up to 7 years' imprisonment. For more details see, Advocacy Forum and REDRESS, 'Held to Account. Making the Law Work to Fight Impunity in Nepal' (December 2011) 43-47 < <http://www.advocacyforum.org/downloads/pdf/publications/impunity/held-to-account-nov-30-2011-english-version.pdf> > accessed 18 April 2021.

⁴⁷ International Commission of Jurists, 'Authority Without Accountability. The Struggle for Justice in Nepal' (May 2013) 90-91 < <https://www.refworld.org/pdfid/530f04ce4.pdf> > accessed 18 February 2021 ; See also, Public Security Act 1989, section 5.

⁴⁸ *Ambar Bahadur Raut on behalf of Advocacy Forum v Ministry of Home Affairs et al* SC Writ No 066-WS-0043 < https://supremecourt.gov.np/cp/assets/downloads/supreme_85961.pdf > accessed 18 April 2021.

The litigation work also highlighted the unreasonable length of time it takes victims to receive compensation under the TCA, the grossly small amount of money received, and the few victims who have received it, how it fails to deter people to resort to torture.⁴⁹ For example, out of 152 cases filed by victims with the help of AF the courts awarded compensation in 30.26% cases only. Within this group, 22.73% victims were provided 10,000 NRS (82,71 US\$), 15.91% were provided 15,000 NRS (124 US\$), and 13.64% were provided 25,000 NRS (206,77 US\$), all of which do not constitute effective amounts to cover their needs.⁵⁰ These compensations too were paid by the State not by the perpetrators.

In 2015, AF built a coalition against torture in Nepal to push for legislation to criminalise torture. It also floated a model bill to push for a legal framework which made civil society's position clear on what needed to be included in the legislation criminalising torture.⁵¹

AF's years of advocacy and litigation has also resulted in criminalizing torture in the country. In 2017, a new Penal Code was adopted. It includes the criminalisation of both torture and enforced disappearances. Since then, AF has been focusing on ensuring the law is implemented. For example, AF has helped victims to file complaints using the Penal Code in 22 cases involving torture.

LITIGATION ON DISAPPEARANCES

During the conflict, AF had a systematic approach to litigation on the widespread and systematic case of disappearances, informing both courts and the public at large. AF developed a strategy of filing writs of habeas corpus during a state of emergency. This was critical in exposing the way the authorities—especially the Army—were involved in cases involving enforced disappearances. The litigation resulted in many detainees held at army barracks being released or transferred to police custody.

AF also worked hard to provide the SC with arguments that convinced it to make a landmark decision in 2006 which required the Government of Nepal to criminalise disappearances and establish a commission of inquiry to investigate the claims made on behalf of disappeared persons and to pay compensation to victims.⁵²

⁴⁹ Advocacy Forum, 'Torture in Nepal in 2019. The Need for New Policies and Legal Reform' (June 2020) <<http://advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>> accessed 18 April 2021.

⁵⁰ Advocacy Forum, 'Torture in Nepal in 2019. The Need for New Policies and Legal Reform' (June 2020) 36-38 <<http://advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>> accessed 18 April 2021.

⁵¹ The model bill proposed by Advocacy Forum, 'Proposed bill relating to Torture' (2015) is available at: <<http://www.advocacyforum.org/leaflet23June2015PDF.pdf>> accessed 25 November 2021.

⁵² *Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal v Government of Nepal, Ministry of Home Affairs and Others* (2007) Issue No 2 Decision No 7817 Ne Ka Pa 2064 [2007]

As enforced disappearance is also criminalized by the Penal Code, AF is focusing on to make it implemented in establishing accountability for those involved in the crimes and offering remedies to victims. For example, on 30 August 2021, the International Day against Enforced Disappearances, AF's lawyers helped 18 victims from 9 districts to file FIRs, demanding a criminal investigation, including in 16 cases of disappearances committed during the armed conflict. By partnering with the International Commission of Jurists (ICJ), AF is also working to enhance the capacity of local lawyers in understanding the continuous nature of crimes of disappearance, it is also assisting victims in using the law to help demand justice.⁵³ AF will continue to monitor any progress in these cases so it can construct a course of action that will promote the implementation

LITIGATION TO PROMOTE REFORM OF THE JUVENILE JUSTICE SYSTEM

The juvenile justice (JJ) system has been reformed in recent years. AF has contributed significantly to this. The Child Rights Act has been amended in 2018 to increase the age of adulthood from 16 to 18 and ensure a fair trial for children and prevent their imprisonment in prison with adult prisoners. The Government had already adopted the Juvenile Justice Procedures Rules in 2006, which incorporates many of AF's recommendations for reform of the JJ system. For example, it includes having a separate police unit to investigate cases involving children. The guideline also provides that until such units are established, the Police headquarters shall designate an officer for this purpose.⁵⁴ The guidelines require the police to interrogate children in the presence of their parents or guardians,⁵⁵ have a social study report,⁵⁶ to constitute a juvenile bench in every district Court, consisting of a social activist, child specialist or child psychologist in addition to the District Court Judge,⁵⁷ deciding cases within 180 days⁵⁸ and to have a Juvenile Justice Coordination Committee (JJCC)⁵⁹ to coordinate between different agencies to make the JJ system more functional.

⁵³ Advocacy Forum, 'Establishing Victims' Right to Truth, Justice and Reparation in Cases Involving Enforced Disappearances in Nepal' (August 2021) < <http://www.advocacyforum.org/downloads/pdf/publications/impunity/establishing-victims-right-on-enforced-disappearances-30-august-2021.pdf> > accessed 25 November 2021.

⁵⁴ Juvenile Justice Procedures Rules 2006, rule 3.

⁵⁵ Juvenile Justice Procedures Rules 2006, rule 4 (d).

⁵⁶ Juvenile Justice Procedures Rules, 2006 (2006) Rules 4 (g).

⁵⁷ Juvenile Justice Procedures Rules 2006, rule 6.

⁵⁸ Juvenile Justice Procedures Rules 2006, rule 16.

⁵⁹ Juvenile Justice Procedures Rules 2006, rule 22.

The SC has also played important roles in expanding the JJ system. For example, when AF recorded many children being detained under the Public Offense Act, which would allow Chief District Officers (CDOs, senior bureaucrats) to decide cases depriving the liberty of juvenile, it brought a writ challenging such power of CDO. The SC on 22 September 2011 found it problematic to allow non-judicial person to exercise powers rendering lengthy prison sentence for accused. It ordered the state to:

- a) Review laws providing administrative officers, including CDOs, powers to hear criminal cases,
- b) Form a research committee of experts to study these laws and make necessary recommendations for where and how reforms are needed and can be done,
- c) Develop checklists for the quasi-judicial and administrative officer to follow to ensure a free, competent and impartial judicial process,
- d) Take measures to increase people's trust and provide easy access to the judicial process conducted by administrative officers,
- e) Establish a system of review of judicial decisions made by administrative officers,
- f) Develop a guideline for the qualification and necessary judicial trainings required for administrative officers, having powers to adjudicate legal issues.

In respect of the latter point, the Court also stated that as amending the law and making arrangement for cases to be transferred to judicial bodies from the administrative bodies may take time, therefore there should be training for all administrative officers adjudicating cases, and only law graduates with a minimum of 5 years' experience should be allowed to work on criminal cases. Those not having diploma in law must have 3 months' training from the National Judicial Academy or authorized educational institution.⁶⁰

The Child Rights Act also requires children to be sent to Child Correctional Homes (CCHs), not to prison with adult prisoners.⁶¹ Although children have now been removed from prison and sent to CCHs, the correctional homes have started to be overcrowded. This also resulted from the increased age of adulthood by amending the Child Rights Act in 2018.

⁶⁰ *Ambar Bahadur Raut on behalf of Advocacy Forum v Ministry of Home Affairs et al* SC Writ No 066-WS-0043 < https://supremecourt.gov.np/cp/assets/downloads/supreme_85961.pdf > accessed 18 April 2021.

⁶¹ Act Relating to Children 2018, section 52, section 53.

Although the JJ procedural guideline encourages judges to divert children from custodial settings to more community reintegration programmes, including parental custody, judges are also facing some dilemmas as to how they implement this as many children are also accused of crimes carrying a longer prison sentence. In some cases, although courts decide to send the children to parental custody, parents or guardians do not come forward. It is also difficult for those children living in the street and those who are orphans, who may not have guardians. All these circumstances lead to many children being sent to CCHs and their overcrowding.⁶²

There are only 8 CCH throughout the country and all of them have become overcrowded. For example, the CCH in Bhaktapur has the capacity of 120 but hosts more than 200 juveniles.⁶³ Because of lack of CCH in many districts, children are also sent to other districts and regions and this prevents them from having representation in courts and having contact with family members.

Considering the situation of CCHs, AF has filed a writ of mandamus in the SC on 26 October 2021.⁶⁴ The petition demands reform of CCHs with enough space for children to live and play, in-house educational and medical services, legal services, safe drinking water, etc. It is under consideration of the SC but AF hopes this will bring positive result towards reforms of CCHs.

There are still numerous challenges to make the JJ system functional. These issues begin from the time of arrest to the social reintegration after release. Though the law provides that juveniles must be taken in custody by civil dressed police only after informing the parents of the allegations, children are routinely arrested by policemen in uniform without informing the allegation to the parents. As per the rules, every police station should have a special observation room exclusively to hold detained juveniles where parents or guardians can stay with children. However, hardly any police station has such a room. Police claim that they do not have the space for this. Due to lack of space, juveniles are detained with adult. In some police stations, juveniles are kept outside the premise in the day time and detain with the adult detainees in the night time, or juveniles are detained in the women detention cell if there are no women detainees.

⁶² According to data collected by AF, the overall capacity of all 8 Child Reform Homes is 500, however in June 2020, there were housed 735 juveniles. Advocacy Forum, 'Factsheet on COVID-19 and its effect on Juvenile Justice System in Nepal' (June 2020) < <http://advocacyforum.org/downloads/pdf/publications/factsheet-on-covid-19-and-it-s-effect-on-juvenile-justice-system-in-nepal.pdf> > accessed 18 April 2021.

⁶³ According to data collected by AF, the overall capacity of all 8 Child Reform Homes is 500, however in June 2020, there were housed 735 juveniles. Advocacy Forum, 'Factsheet on COVID-19 and its effect on Juvenile Justice System in Nepal' (June 2020) < <http://advocacyforum.org/downloads/pdf/publications/factsheet-on-covid-19-and-it-s-effect-on-juvenile-justice-system-in-nepal.pdf> > accessed 18 April 2021.

⁶⁴ *Advocate Om Prakash Thakuri on behalf of Advocacy Forum v Office of the Prime Minister and Council of Ministers and Others* SC 078-WO-0493 (registered 27 October 2021) < https://supremecourt.gov.np/lic/sys.php?d=reports&f=case_details&num=1&mode=view&caseno=237057 > accessed 18 April 2021.

Juveniles continue to report torture and ill-treatment in police detention. Data collected by AF still shows that more than 24% of juveniles complained to AF of torture and ill-treatment in police detention centers.⁶⁵ This problem is exacerbated by police falsifying the age of juvenile so no procedure relating to children can be followed. There is also difficulty in obtaining evidence to verify children’s ages, such as birth certificates and school certificates, due to legal illiteracy of parents or juveniles being exiled from their homes and families.

Many children released from CCHs have also been facing difficulties in resocialization, including to attend schools. AF has recorded complaints that children accused of crimes are not accepted by schools, seemingly because of concerns that this may ruin the reputation of the school.

Furthermore, there are lapses in several areas of implementation of the JJ law. Section 29 (4) of the Child Rights Act, for instance, provides that, “the investigating authority or government attorney shall, before diverting a child, obtain a report on study and analysis of physical and mental condition of the child by the child psychologist and child expert and economic, cultural condition and circumstances of the child by the social worker.” However, either such report is often not presented, or if it is presented, it does not reflect the truth about the economic, cultural and social background of the juvenile because these reports are prepared without visiting the family and community where children come from. AF is prioritizing these areas for further interventions.

LITIGATION TO PROMOTE TRUTH AND JUSTICE

As the political parties attempted to pass laws providing amnesty even to those involved in gross violations of human rights, AF supported several litigation cases challenging this move, resulting in the Court laying down a number of principles on TJ, including amnesty. Strategic litigation and the outcome of it also helped to add clarity on the military court jurisdiction in cases from the conflict period, state responsibility in conflict-related cases, victims’ rights to reparation and victims’ right to justice, among others.

Many of the cases of litigation that AF supported and became part of have helped to lay down key principles that are fundamental to the design of the TJ process in the country.

⁶⁵ Advocacy Forum, ‘Torture in Nepal in 2019. The Need for New Policies and Legal Reform’ (June 2020) 2 < <http://advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf> > accessed 18 April 2021.

THE CASE OF MAINA SUNUWAR

As highlighted above, AF worked closely with Devi Sunuwar, the mother of 15-year-old Maina Sunuwar, who disappeared and was subsequently found to have been tortured to death at the Panchkhal army barracks in Kavre District in February 2004. This resulted in the conviction *in absentia* of four army officers (three retired, and one still serving) by the Kavre district court in April 2017.

Much of this work has involved successful litigation at various stages of the long process. At the time of writing, a key case remains pending in the SC, which has significance not only for the Maina Sunuwar case but more generally: In September 2017, the Office of the Judge Advocate General of the Nepal Army filed a writ of certiorari in the SC seeking annulment of the convictions ordered by the Kavre district court. The army claimed that the incident cannot come under the jurisdiction of the regular court because it happened during a military operation, and therefore military rules should apply. The NA also said that the officers concerned had already been tried by court martial, and were therefore placed in double jeopardy, and that the case should thus be handled by the TRC. The army's petition remains pending before the SC, which has repeatedly postponed its hearing.

CHALLENGING THE TRC ORDINANCE AND ACT

In 2013, the Nepal government issued an Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission, which permitted amnesty for grave human rights violations. The ordinance was successfully challenged in the SC, which rejected the Ordinance in January 2014, ruling that any TJ mechanism must conform to international legal standards, lead to accountability for serious human rights violations, and guarantee victims their right to remedy and reparation. The SC also said that the government should enact laws that criminalize gross human rights violations, including enforced disappearances, torture, crimes against humanity, and war crimes, saying that even if there is political will to prosecute these offenses, in the absence of a distinct criminal law, these human rights abuses will not be fully justiciable.

Regardless, the government went ahead and passed the 2014 TRC Act in 2015 (see Chapter 3). This was challenged in the SC by 234 victims, with the support of AF and other domestic human rights organizations. In February 2015, the SC found that several sections violated Nepal's Constitution and its international human rights obligations, especially rejecting provisions that could grant amnesty to those responsible for the most serious abuses and provisions for "reconciliation" to be imposed against the wishes of victims. The government filed a petition seeking to overturn the judgment. The SC, on 26 April 2020 rejected the government's petition.

LITIGATION TO PROTECT THE RIGHT TO HEALTH DURING THE PANDEMIC

On 24 March 2020, the Nepal Government placed the country under lockdown in an attempt to prevent the spread of the COVID-19 virus.⁶⁶ AF was conscious that COVID-19 posed a serious threat to vulnerable groups such as children, migrant workers, and detainees who experience limited access to public health resources during the pandemic.

The fate of the detained rests not in their own hands but the GoN's. The densely-packed prisons frequently provide an ideal environment for the transmission of contagious diseases like COVID-19, which was confirmed by the WHO Interim Guidance for Prison and Other Places of Detention. AF recorded similar problems in CCHs. There were no government plans, preparations, or preventive mechanisms in place to respond to the anticipated spread of the COVID-19 pandemic in detention, including in CCHs. AF used strategic litigation to overcome several hurdles that people were facing.

In *Prajun Giri v. Banke District Court et al.*, the Banke District Court refused to release 9 out of 11 prisoners from Nepalgunj Prison who had apparently filed for release. A writ of habeas corpus was filed in the High Court, Tulsipur against the Banke district court decision. The High Court ordered the authorities to “release the applicants after they pay the monetary fine as per the law for their remaining jail term”.⁶⁷ This resulted in the release of nine applicants. This precedent played a vital role in securing the subsequent release of six other detainees.

During this period, AF, in coordination with other human rights defenders, filed a total of 113 writs with the SC between 22 March 2020 and 10 June 2020.⁶⁸ The Court issued remarkable decisions in most public interest litigations and writs of habeas corpus filed during this period. These include: (1) allowing the release of detainees to stop the spread of COVID-19; (2) provision of free testing services to workers on minimum wage; (3) easing access to basic services during lockdown; (4) the importance of non-discrimination in relief distribution; (5) an order to stop inhuman treatment in the name of lockdowns; (6) special arrangements for pregnant women and their newborn babies by guaranteeing regular check-ups and vaccinations during lockdowns;

⁶⁶ Advocacy Forum, ‘Protect the Right to Life of Those under the State’s Custody’ (Press Statement, 28 March 2020) < <http://www.advocacyforum.org/downloads/pdf/press-statement/2020/protect-the-right-to-life-of-those-under-the-state-custody.pdf> > accessed 21 May 2021.

⁶⁷ Advocate Sunil Kumar Shrestha on behalf of applicant Prajun Giri v. Banke District Court et al Writ Petition 076-WO-0007.

⁶⁸ Advocacy Forum, ‘Legal intervention to strengthen Criminal Justice System during COVID-19 in Nepal’ (June 2020) 11 < http://www.advocacyforum.org/downloads/pdf/publications/legal-intervention-to-strengthen-criminal-justice-system-during-covid-19-in-nepal.pdf?fbclid=IwAR1gT0zSKXuKc5oCL7QsEKD4W_n8p5H4oB1IVGaE_BcClkwW0x7esfc5b1g > accessed 21 May 2021.

and (7) ordering the government to bring returnees stranded at the borders and in other countries back to Nepal; and (8) stop shoot at sight to those who run away from quarantine.

Irrespective of the binding nature of these decisions, not all have been properly implemented. Non-implementation of SC decisions is a longstanding problem in Nepal. Thus, AF has forged alliances with other organizations to monitor the implementation of various court orders and has helped different agencies implement them.

On 6 May 2020, AF issued a press statement to bring various Covid 19-related human rights issues to the attention of concerned stakeholders.⁶⁹ Amid this critical situation, the Human Rights Monitoring Committee monitored the human rights predicament in the Banke District and drew the attention of stakeholders to issues of justice faced there. AF's efforts are focused on addressing problems related to health services. AF ensures that conditions are up to standard, closely monitors human rights during the pandemic, and draws attention of the system's stakeholders so that they might better protect and promote the basic rights of Nepalese citizens.

⁶⁹ Advocacy Forum, 'Human Rights Monitoring Committee, Nepalgunj Draws Attention of Stakeholders' (6 May 2020) < <http://www.advocacyforum.org/news/2020/05/nepalgunj-draws-attention-of-stakeholders.php> > accessed 21 May 2021.

CHAPTER 7: EVIDENCE-BASED ADVOCACY

When AF was established, there were organizations like Informal Sector Service Centre (INSEC) doing documentation of human rights violations and releasing annual reports summarizing them. However, there was a gap in documenting human rights violations in a systematic manner and using this as evidence for advocacy. There was not enough effort unpacking the violations and documenting patterns in time or location. Furthermore, the situation was politically volatile and objectivity and impartiality was essential for human rights work. AF adopted an approach of letting the facts speak. It made documentation foundational for all its activities. This documentation work provided, and continues to provide, strong grounds for evidence-based advocacy, both at the national and international level, which contributes positively to reducing human rights violations in the country.

For example, AF's documentation exposed the extent of the problem of enforced disappearances and other violations during the armed conflict. The litigation strategy on disappearances (see previous Chapter 6) paved the way for saving the lives of hundreds of detainees held illegally and incommunicado in multiple military barracks around the country.

INTERNATIONAL ADVOCACY

Documentation by AF also reduced the information gap in the international community regarding ongoing cases of human rights violations in Nepal at that time (2001-2005). As part of its advocacy strategies, AF partnered with a number of international human rights organizations, such as Amnesty International (AI), Human Rights Watch (HRW), International Commission of Jurists (ICJ) and the Asian Human Rights Commission (AHRC) to engage with the UN Human Rights mechanisms. AF's work was instrumental not only in providing first-hand information about incidents of gross violations of human rights but also in putting Nepal on the UN agenda. Informed by information provided by AF and its international partners on the ongoing practice of enforced disappearances in Nepal, the UN Working Group on Enforced Involuntary Disappearances (WGEID) stated in its annual report in 2004 that it received the highest number of new cases of enforced disappearances from Nepal.⁷⁰ The WGEID also visited Nepal.⁷¹ Serious

⁷⁰ UNESC, Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances-Addendum: Mission To Nepal*** 6-14 December 2004, Civil And Political Rights, Including The Questions Of: Disappearances And Summary Executions. Question of enforced or involuntary disappearances (28 January 2005) UN Doc. E/CN.4/2005/65/Add.1 < [https:// documents-dds-ny.un.org/doc/UNDOC/GEN/G05/105/23/PDF/ G0510523.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/105/23/PDF/G0510523.pdf?OpenElement) > accessed 6 September 2020.

⁷¹ 'Working Group on Enforced or Involuntary Disappearances of the United Nations Commission on Human Rights concludes visit to Nepal' reliefweb (14 December 2004) < <https://reliefweb.int/report/nepal/working-group->

concerns were also raised by the UN Special Rapporteurs on Torture⁷² and Summary, Arbitrary and Extra-Judicial Executions.⁷³

Reports by these different mandate holders in turn provided leverage for AF and other civil society organisations to argue for an international monitoring mission in Nepal. This ultimately resulted in the establishment of the UNOHCHR's human rights monitoring mission in Nepal which carried a mandate to investigate cases of human rights violations in addition to providing technical assistance.

Because impunity for perpetrators of gross human rights violations continued to remain a problem even after the conflict, AF's documentation work continues. This ongoing documentation and advocacy keep alive the hope of challenging impunity. All the cases AF took as part of its strategic litigation work (see previous chapter) were based on evidence it collected through its documentation work (including in the Maina Sunuwar case, cases before the Human Rights Committee and the Kumar Lama case).

For example, during the conflict period, despite a court order to the contrary, detainees were not released. Even if the Court moved to release them, they would be rearrested immediately after release in the presence of the Court. The defiance of court orders not only weakened the judiciary but also increased the general vulnerability of detainees. In this context, updates and information on these cases provided the impetus for international organisations to advocate for the suspension of military aid to Nepal.

AF and others used the U.S.'s Leahy's law, which contains two statutory provisions barring the U.S. Government from providing funds or military assistance to foreign security forces who have committed human rights violations with impunity.⁷⁴ Using this law, the U.S. prevented many soldiers from getting training in the U.S. and suspended support to some of the barracks.

enforced-or-involuntary-disappearances-united-nations-commission-human > accessed 6 September 2020.

⁷² UNESC, Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances-Addendum: Mission To Nepal*** 6-14 December 2004, Civil And Political Rights, Including The Questions Of: Disappearances And Summary Executions. Question of enforced or involuntary disappearances (28 January 2005) UN Doc. E/CN.4/2005/65/Add.1, para 7, 27 < [https:// documents-dds-ny.un.org/doc/UNDOC/GEN/G05/105/23/PDF/ G0510523.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/105/23/PDF/G0510523.pdf?OpenElement) > accessed 6 September 2020.

⁷³ UNESC, Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances-Addendum: Mission To Nepal*** 6-14 December 2004, Civil And Political Rights, Including The Questions Of: Disappearances And Summary Executions. Question of enforced or involuntary disappearances (28 January 2005) UN Doc. E/CN.4/2005/65/Add.1, para 7 < <https:// documents-dds-ny.un.org/doc/UNDOC/GEN/G05/105/23/PDF/ G0510523.pdf?OpenElement> > accessed 6 September 2020.

⁷⁴ The U.S. State Department's Leahy Law became permanent under section 620M of the Foreign Assistance Act of 1961, 22 U.S.C. 2378d.

This positively impacted the army's practice of illegal and incommunicado detention of civilians during the armed conflict.

As the lack of implementation of court orders continues to be a problem in ongoing cases of human rights violations, AF continues to document such cases to provide objective assessment on Nepal's compliance on human rights and international treaty obligations and design intervention strategies accordingly. As part of these efforts, AF has been working with HRW to examine how the Nepal justice system responds to allegations of human rights abuses by tracking the progress of 62 cases documented in 49 FIRs filed with the Nepal Police between June 2006 and 2008, including 46 relating to crimes of alleged extrajudicial killings, disappearances, torture, and rape committed by security forces between 2002 and 2006. The remaining three FIRs relate to cases of alleged killings by members of the CPN-M (see chapter 4).

An analysis of developments over the past decade in the 62 cases shows the continued obfuscation and failure by state authorities to initiate meaningful investigations and prosecute human rights violations, even when court orders require they do so.⁷⁵

ADVOCACY FOR REFORMING LAW AND POLICY

In the aftermath of the conflict, various armed groups emerged, especially in the Terai region, the southern belt of Nepal. These groups were engaged in abductions for ransom and other criminal activities, while also calling for autonomy for the Madesh, the Terai region. In responding to these groups, the State repeated its conflict-era practice of extra-judicial killings claiming they were "encounter killing." Using the power that CDOs had in imposing imprisonment for public offense-related 'crimes' (see chapter 6), many people were also subjected to arbitrary detention and torture. AF documented the cases of extrajudicial killings, and also arbitrary arrest and detention depriving detainees of their right to a fair trial, and made the report public.⁷⁶ It was the first report of such kind to be released focusing on human rights violations in Terai. This report provided evidence for advocacy which various emerging groups interested to work in Terai continue to use demanding reforms in the way state institutions respond to the people in Terai.

⁷⁵ Advocacy Forum and Human Rights Watch, 'No Law, No Justice, No State For Victims. The Culture of Impunity in Post-Conflict Nepal' (November 2020) < http://advocacyforum.org/_downloads/no-law-no-justice-no-state-for-victims-20-november-2020-english.pdf > accessed 25 November 2021.

⁷⁶ Advocacy Forum, 'Torture and Extrajudicial Killings Amid Widespread Violence in the Terai' (2010) < <http://advocacyforum.org/downloads/pdf/terai-report-english.pdf> > accessed 25 November 2021.

INSTITUTIONALISING HUMAN RIGHTS IN THE CONSTITUTION

As discussed above, AF directly contributed to the recognition of detainees' right to legal consultation from the time of the arrest. AF commenced this work by visiting places of detention and providing legal assistance to detainees who were unable to afford lawyers. AF faced many hurdles—and continues to do so—while visiting detainees in police detention.

AF advocated for direct mention of pre-trial consultation when the Interim Constitution 2007 was drafted. This ensured that the right to legal counsel was guaranteed from the time of the arrest. Using a thorough assessment of the status of fair trials in Nepal,⁷⁷ AF provided evidence-based arguments for the need to strengthen constitutional protection relating to this right. Cumulative efforts and the opportune moment provided space for the inclusion of many of these fair trial rights in the Constitution of Nepal 2015.

The 2015 Constitution guarantees many fundamental rights. In the absence of legislation on the topic, detainee rights such as the right to be free from torture were regularly violated with no legal remedies. The evidence-based response that AF developed provided the opportunity for broader advocacy. Now, there is a time-bound provision in the Constitution, requiring that the Government of Nepal enact legislation to give effect to the fundamental rights enshrined in the Constitution. Not surprisingly, the implementation of these constitutional rights continues to remain a problem. AF prioritises documenting the progress made in the implementation of these provisions and will push for legislation that offers protection to the people of Nepal.

⁷⁷ Advocacy Forum, 'The Right To Fair The Right To Fair The Right To Fair Trial In Nepal Trial In Nepal Trial In Nepal. A Critical Study' (2012) < http://advocacyforum.org/_downloads/fair-trial.pdf > accessed 25 October 2021.

CONCLUSION

During its 20 years, even under the most trying conditions, AF has regularly reviewed its work and adapted its strategies, organizational structure and working modality, depending on changes in patterns and types of human rights violations and the political, economic and social context. It constantly develops new strategies to achieve the goals it had set for itself from the outset: to provide redress for victims of injustice and to promote accountability for violations of human rights, so that basic human rights of all are respected and acknowledged.

In the past year, for example, AF has expanded its working areas to address human rights issues that emerged during the COVID-19 pandemic by focusing on vulnerable groups such as detainees and migrants. After a year of political upheaval resulting in the dissolution of parliament, a new government and the SC stepping forward to uphold the 2015 Constitution, AF has been assessing what the current situation means for its work in the future.

AF's integrated strategy has helped to bring truth and justice to the national agenda after the armed conflict. Victims, with AF's support, have brought human rights violations to the attention of international and domestic communities. They have successfully engaged the judiciary in processes of fair trial litigation and have held state officials accountable for their actions. By sustaining the discourse on human rights and accountability, most people would agree that AF has made an unprecedented impact on the preservation and promotion of human rights in Nepal.

AF PRIORITIES FOR THE YEARS TO COME

ADDRESSING IMPUNITY AND PROMOTING TRANSITIONAL JUSTICE

As the TJ process has stalled, AF's priority is to create a force to make the process move forwards to establish victims' right to truth, justice and reparation. By helping to forge a joint strategy of victims and civil society and advocating for integrated strategies among the international community and helping to implement it, AF is aiming to put political actors under pressure to priorities the issue of TJ.

With local and parliamentary elections due in May and late 2022 respectively, it appears that most likely there will be little or no progress in TJ processes before the elections. However, AF will work with victims' groups to ensure TJ is part of the political parties' manifestos and clear commitments are obtained during the election campaign so the advancement of the TJ agenda is ensured when a new government takes office.

For this to be successful, it is important to unify the existing scattered network of conflict victims to form a consolidated voice in pushing for a TJ process that ensures victims' access to truth, justice and reparation. A coordinated movement is required if these rights are to be obtained. Various groups' traditional affiliations with political parties must be transcended.

Other organizations working in the field of TJ look to AF for its technical expertise, including its legal and advocacy strategies both at national and international level. These groups seek opportunities for collaboration and coordination in support of the grassroots movement. AF will continue to engage in domestic and international litigation to sustain pressure for developing a strong TJ process.

Impunity for perpetrators is not limited to cases from the conflict period but has continued even after that. AF believes that a meaningful TJ process would help to address ongoing and future violations of human rights and hold the perpetrators who continue to enjoy positions of power and promotion accountable. Building on its expertise in documentation and monitoring, AF will continue to document cases of gross violations, creating an evidentiary database and demanding accountability through litigation. It will continue its advocacy work and support to victims. Sustained monitoring of the progress in all the cases AF has already filed will remain a key tool to sustain the pressure on the Government to act on past gross human rights violations.

PREVENTING TORTURE AND PROMOTING FAIR TRIAL PRACTICES

One of the main focuses of AF's work from its founding is the prevention of torture, promotion of fair trial practices and contributions to sweeping reforms of the criminal justice system.

For the past two decades, AF prioritized the prevention of illegal arrest, torture and ill-treatment in pre-trial detention centers. Regularly visiting places of detention and providing free legal aid to detainees in need and torture victims, medical support and medical age estimation are some of the ways AF has accomplished its goals. In addition, AF supports wronged detainees by taking on their cases and engaging with actors in the judiciary by providing data analysis and highlighting what reforms are needed to ensure laws are implemented.

AF's experience shows that many court cases regarding torture and ill-treatment were lost because of insufficient medical evidence. Now AF prioritizes incorporation of medico-legal training for health professionals in its work. The integrated approach that AF employs and constantly tests and refines over the years has been the most cost-effective and efficient model for torture

prevention.⁷⁸ AF will continue implementing its torture prevention strategy by engaging with medical professionals and continuing training based on the Istanbul Protocol.

The new Penal Code and Criminal Procedural Code offer new opportunities for the prevention of torture and ill-treatment. Prior to the Penal Code, these practices were not criminalized. Now, the statutes provide a framework to hold authorities in charge accountable for investigative malpractice and failure to initiate investigations. AF will continue to ensure these provisions are implemented in practice.

There are many social, economic, geographic and legal factors which influence and obstruct victims' access to justice in Nepal. Additionally, cumbersome court proceedings and lack of information make it difficult for those seeking justice to obtain it.

The 4th five-year strategic plan of the judiciary aims to improve the performance of the judiciary and introduce systematic reform in different aspects of its work. The plan includes five goals and 23 strategic objectives.

AF strongly believes in the constitutional guarantee that detainees should have the choice to receive legal counseling from the moment of their arrest. However, this fundamental right has not been given enough attention by the courts and it is absent in the new strategic plan. AF has collected an abundance of evidence showing how critical it is for detainees to have access to lawyers while in pre-trial detention. During this phase, detainees are more vulnerable to torture, ill-treatment and falsification of records, among other wrongs. Although Nepal has a Legal Aid Act, which also envisions lawyers' access in the Court, it does not take the need of detainees into consideration. AF will be working to reform the legal aid system to ensure lawyers' access to detainees from the start of detention.

As highlighted by AF for years, there are not enough Child Correction Homes in Nepal and the ones currently operating lack adequate infrastructure. The Criminal Code brought reformative provisions in the criminal justice system pertaining to this issue. AF will monitor whether these provisions are implemented and whether they meet international standards. AF will provide necessary information throughout the process to facilitate reforms of these homes.

One of the key challenges faced by AF is the lack of effective coordination among the stakeholders of the criminal justice system. AF will continue to promote Justice Sector Coordination Committees, including Juvenile Justice Coordination Committees, and promote more effective coordination and cooperation among these bodies. Specifically, AF will organize regular

⁷⁸ Ben Schonveld, 'Mid-Term Evaluation of Advocacy Forum's Prevention of Torture Project' (February 2010) < http://www.advocacyforum.org/downloads/pdf/Mid-Term-Evaluation-of-Advocacy-Forums-Prevention-of-Torture-Project_Final-2.pdf > accessed 25 October 2021.

consultations and forums for stakeholders to discuss any legal, procedural and attitudinal hurdles which prevent the swift delivery of justice. AF will identify problems and make recommendations to solve these issues.

IMPROVING WOMEN'S RIGHTS BY PROMOTING ACCOUNTABILITY FOR SGBV

AF has documented hundreds of cases of gender-based and sexual violence (SGBV) committed against women during the armed conflict (1996–2006). It has also conducted a qualitative study to understand barriers to justice and to help AF and other actors design strategies that best address needs and demands of these victims.⁷⁹

The GoN has not acknowledged that women suffered rape during the conflict years. AF analyzed the GoN's failure to deliver on its promise to end impunity for abusers and rapists and to seek justice and reparations for victims of human rights violations. These include victims of SGBV who were excluded from the Interim Relief Program (IRP) that compensated individuals whose family members were killed or disappeared during the conflict.⁸⁰

Furthermore, the government has yet to introduce comprehensive medical or psycho-social programs to help survivors of SGBV from the conflict era and allow them to cope with the long-term consequences of the violence they experienced. These consequences include physical ailments such as chronic pelvic pain, gynecological and pregnancy complications, back pain, migraines, premenstrual syndrome, and gastrointestinal disorders. Many women are still suffering from ongoing emotional and mental distress, sometimes fueled by rejection and ridicule by their husband, family, or community.

AF recognizes the need for concerted and coordinated efforts to hold the state accountable and ensure these victims' access to medical and psychosocial support. Justice, reparation and a guarantee of non-repetition of the crimes of SGBV is imperative to AF's goals. Taking the lead role, AF will try to forge joint strategy in women, peace and security.

⁷⁹ Advocacy Forum and International Center for Transitional Justice 'Across the Lines. The Impact of Nepal's Conflict on Women' (December 2010) < <https://www.ictj.org/sites/default/files/ICTJ-Nepal-Across-Lines-2010-English.pdf> > accessed 15 August 2021.

⁸⁰ Advocacy Forum, 'Discrimination and Irregularities. The Painful Tale of Interim Relief in Nepal' (2010) < http://www.advocacyforum.org/downloads/pdf/publications/Discriminations_and_Irregularities_A_painful_tale_of_Interim_Relief_in_Nepal.pdf > accessed 25 October 2021.

AF will also take the opportunity created by the GoN's promise expressed in the National Action Plan II under Security Council Resolution 1820 to address the SGBV from the conflict.⁸¹ Furthermore, as AF will also be working to galvanize support for the amendment of the TJ legislation, victims of SGBV will be consulted, so their voices will also be heard throughout the process.

PROMOTING ACCOUNTABILITY FOR THE VIOLATION OF ECONOMIC SOCIAL AND CULTURAL RIGHTS (ESCR)

The core obligations under the Covenant on ESCR need to be immediately identified and fulfilled by the State and respective stakeholders. Many ESCR obligations are incorporated in the new Constitution as fundamental rights. This empowers citizens as rights holders and provides a great deal of opportunities for demanding accountability for violations of human rights. However, until now, people have not been able to enjoy most of these rights due to several substantive and procedural hurdles. Most of the Acts related to fundamental rights contained the qualification that they are "as prescribed" which entails framing of directives, manuals and regulations. This causes a delay in developing necessary legal and institutional infrastructure to bring these rights to fruition and will continue to affect citizens' ability to enjoy the rights contained in the Covenant on ESCR.

Furthermore, AF recognizes a lack of understanding among stakeholders, including human rights defenders and legal practitioners, as to how accountability for violations of ESCR should be established. Unlike CCPR violations, where lawyers and HRDs are very active in developing legal suits, hardly any cases are developed demanding accountability for ESCR violations. Thus, AF will work with various stakeholders, including the networks of ESC Rights organizations to promote dialogues on finding ways to improve observance of ESCR in practice and promote accountability for their violations.

Building on its strategic approach in litigation and advocacy, AF will explore and work towards developing strategies to establish whether and how individual and institutional liability against the duty-holder for non-compliance with the corresponding obligation can be established as a criminal case under Nepali law.

⁸¹ Ministry of Home Affairs, 'Second National Action Plan (NAP-II) Preliminary Draft' (23 January 2020) < <https://www.moha.gov.np/en/post/second-national-action-plan-nap-ii-preliminary-draft> > accessed 11 November 2021.

PROTECTING THE RIGHTS OF MIGRANT WORKERS AND SUPPORTING ADVOCACY EFFORTS

In Nepal, migration is defined *per se* as labor migration. Often the migration issue is understood as foreign employment/migration, not including the issues of domestic migration, conflict displacement, environmental disaster migration, etc.

The GoN claims that 28% of the GDP is contributed by the remittance of foreign migrant workers but the exact numbers of foreign migrants are not clear in the government's data. The estimated government data is that between 3 and 4 million people go people outside the country to work each year. Despite significant economic contributions from remittances, the government has not paid much attention to the protection of this population. Especially labor migrants working in Gulf countries face many problems. Records show foreign employment agencies benefiting from labor migration rather than the laborers themselves.

Article 51 of the Constitution states that the government will take necessary measures to regulate foreign employment. Despite repeated attempts of the government to do so, its policies have failed to provide protection to the migrants or to regulate the industry.

In the past, some organizations working on the issue of migration requested that AF help them enhance their documentation, litigation and advocacy strategy. AF has responded by sharing its experience in strategic litigation and advocacy. AF has also helped design a database of people being subjected to violations in destination countries and has helped develop strategies about how best to advocate on the issue. AF continues its membership in the network of organizations working on the issues of migrant workers. As most of the members of the network focus on the rescue of migrant workers face difficulties and lack legal expertise, AF aims to fill the gap and provide support to other organizations working in this field.