

Transitional Justice

Advocacy Forum Newsletter — November/December 2007



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SC sloughs off slumber on Maina's Case



Late Maina Sunuwar

The Supreme Court on 18 September 2007 executed a verdict directing the officials concerned to carry out and complete the criminal investigation into the murder case of Maina Sunuwar.

Considering over a writ petition of mandamus lodged before the apex court demanding directives against the authorities to conduct a thorough investigation over the heinous crime of extra-judicial killing of juvenile Maina

by the then Royal Nepal Army Officials at Birendra Peace Keeping Operations Training Centre, Panchkhal, in Kavre district nearly four years back, the court has directed the Kavre District Police Office (DPO), the principal defendant in the writ petition, to carry out and furnish the results of the investigation within three months of the order's issuance.

Moving the issue to the court was a bid to challenge the inaction/indifference on the part of the Kavre police administration following the registration of First Information Report (FIR) demanding appropriate criminal investigation in the killing of Maina. Devi Sunuwar, Maina's mother, had filed the FIR at the DPO on 6 December 2005 with the help of Advocacy Forum.

"An order of mandamus has been executed in the name of the defendants to complete the investigation within 3 months of this order as it appears that a thorough investigation has not been carried out even though a long time has elapsed since the FIR was filed," the Apex Court order states.

A ninth grader at Bagawati Secondary School at Kharelthok in Kavre, Maina was 15 years of age when she was arrested, tortured and subsequently killed. At the outset, the Nepal Army installation at Panchkhal refused the charges that it had arrested Maina and tortured the juvenile before she was killed. After mounting pressures, an in-house inquiry of the army was set up later and admitted that army personnel deployed at the army facility, viz. Boby Khatri, Amit Pun and Sunil Adhikari, were involved in the case.

"Now, it is the duty of the concerned law enforcement agency to implement the Supreme Court's verdict. There is no alternative to it; failure to abide by the order will mount to a contempt of court" said advocate Ambar Raut, who drafted the writ petition and co-pleaded before the bench on behalf of Devi. Kavre district office of Attorney General was another defendant in the writ petition.

Since the outset of this case, Advocacy Forum has been closely working and monitoring the developments. Domestic and international human rights organizations and defenders have also been exerting pressure on the government to book the perpetrators, who have already been named without any further delay.

In 2006, The United Nations Office of the High Commissioner for Human Rights (OHCHR-Nepal) after studying Maina's case reiterated that a criminal investigation by civilian authorities in connection with Maina's custodial torture and death was imperative. It also supported the police to exhume the body of Maina by inviting forensic experts. Later, the body was found to have been interred nearby the compound of the Army barracks at Panchkhal.

Advocacy Forum is a leading non-profit, non-governmental organization working to promote the rule of law and uphold international human rights standards in Nepal. Established in 2001, advocacy forum has since grown to have 4 regional offices and 9 district offices in Nepal with the head office located in Kathmandu.

Sharma tops HR defenders' list again



Executive Director of Advocacy Forum Ms Mandira Sharma has been honored with the prestigious Human Rights Defender Awards-2007 by Human Rights Watch (HRW) for the second time in a row. She was conferred with the award last year in New York. This year she was honored in number of countries in Europe.

Along with Ms Sharma, a lawyer and activist from Zimbabwe, Arnold Tsunga, has also been awarded the 'Human Rights Defender' award for 2007.

According to HRW newsletter, executive director of Human Rights Watch, Kenneth Roth stated "We are honoring Mandira and Arnold because of their fight to build and preserve civil society in Nepal and Zimbabwe".

At a gathering organized by AF Staff to celebrate Ms. Sharma's achievement at the forum's central office in Kathmandu, she stated that the real recipients of this award were the staff of the institution.

"I dedicate this award to you all for your hard work and perseverance," she said, adding, "This is the recognition of the causes that we are fighting for and the commitments that we have to promote human rights in the country."

TJ Press coverage on the wax

AF's endeavor to work in collaboration with media persons to highlight transitional justice issues is gaining grounds with the publication of several news articles in various broadsheets and magazines.

Altogether three articles have been published in the Annapurna Post within the span of a month. One of our scholarship recipients, Raj Kumar Dikpal, has published articles entitled "*Pati Ko Parkhayi Ma Punmaya*" (Punmaya –Waiting for her husband), "*Bepatta ko Parkhai ma Dashain ko raunak chaina*" (A mirthless Dashain waiting for the disappeared) and "*Aayog Gathan Ka Lagi Nahatarina Sujhab*" (Suggestions not to hasten for the constitution of the commission) on 23rd



September, 11th and 23rd of October respectively. A radio program on Transitional Justice issues was also aired on Ujyalo FM.

It may be noted that AF had announced fellowships for 8 journalists working in the field of human rights with an objective to help investigate and study on transitional justice and human rights, publish and broadcast articles and papers on TJ, and to campaign and raise awareness to ensure victims' access to justice. Altogether five journos have already been awarded the fellowships – three from print media, one from Nepal Television and the remaining one from a Kathmandu-based FM Station.

FIRs galore, petitioners knock SC's door

FIRs' filed under the avowed activism of AF by the families of the victims before the police for criminal investigations are on a steady rise. Ten more cases have been filed within the month of October making a total of sixty.

Although the progress in these cases have been tediously slow, two victim-families, irked by the apparent apathy of the police, have moved to the Apex court seeking the order of Mandamus against Kavre-based District Police Office and Public Prosecutor's Office.

The victims, Reena Rasaili and Subhadra Chaulagain, were allegedly murdered after their summary arrests by the Army Officers stationed in Kavre. Even after several enquiries and follow-ups by the family members and AF, it was revealed that the police had not initiated any investigation or taken any steps to arrest the alleged perpetrators, the fathers of the victims Karan Bahadur Rasaili and Kedar Chaulagain had decided to knock the Supreme Court's door.

Similarly, the Apex Court, in its rare momentous verdict, has directed the concerned authorities to carry out and complete criminal investigations into the murder case of Maina Sunuwar which has set a precedent for similar cases in the future. An FIR had been filed with the help of Advocacy Forum by the victim's mother, Devi Sunuwar, at District Police Office, Kavre, on 6 December 2006.

The rationale of AF being actively involved in supporting and helping victims file these cases is to bring these issues in the forefront in order to keep the victim's hopes to justice alive, sensitize the victims to be vociferous for justice using the existing judicial mechanisms. Moreover, this also helps to identify, expose and fill the lacunas in the existing laws which will contribute to the reform of justice system. As none of the perpetrators have been brought to justice, this exercise has significantly assisted in AF's campaign for the establishment of a comprehensive transitional justice mechanism Nepal.

TTTJ revs up

Technical Team to Support Transitional Justice(TJ) Initiatives in Nepal (TTTJ) met Carla Fajardo, Transitional Justice Specialist from the International Center for Transitional Justice (ICTJ) at the Center's office at Jawalakhel, Lalitpur, last month to discuss the role of technical team to bring together a broader TJ working group in Nepal.

The discussion also covered wide transitional justice issues including:

- *role of civil society and human rights community during transitional period*
- *legitimacy of Technical Team; setting objectives of Technical Team*
- *collaboration among the actors on Transitional Justice*
- *multi-dimensions of Transitional Justice and collaboration among various actors*
- *Transitional Justice Education focusing the human rights defenders, media and youth among others*
- *reaching to the government*
- *national consultation program and status paper on it to be handed to the government on behalf of human rights community*

TTTJ was formed following the decision of a meeting facilitated by ICTJ and accountability Watch Committee (AWC) which also included various other NGOs on 16 September 2007. The technical team will be of temporary in nature and will continue to work till a wider consultation among the non-governmental organizations working in TJ sector is held and a wider TJ working group is formed.

An Odyssey For Justice

"Scaling the summit of Mount Everest is not a hurdle after a few months of mountaineering training. Arduous it is not to plumb the depths of Marianna Trench after one learns the art of scuba-diving. I devoted my entire life to explore the various facets of justice; but ironically, justice has proved an illusory horizon for me. Whenever I feel that my destination is in front of me, I find myself grouping in the gloomy nadir of impunity."

This is how Jay Kishor Lav, a human right activist and a law practitioner, shares his seemingly never-ending voyage for justice. After his son, Sanjeev Kumar Karna, was abducted by the security personnel on 08/10/03, Lav knocked many doors and sought every possible avenue to bring his son back but to no avail. After the revelation of his son's death in a single police encounter on 14/08/03, he was determined to prosecute the perpetrators and embarked upon the journey of justice espoused by a convoy of human rights organizations, including AF. It has been four years since he has been working double tides to bring the perpetrators to book. Although he doesn't have the faintest of optimism that justice will be delivered to him, he says he will continue to fight till he breathes his last breath. Here are some excerpts of the feelings he shared with an AF reporter:



*Sanjeev kumar Karna alias "Dipu"
(Victim of forced disappearance)*



You have been continuously fighting for justice. Do you think you can achieve what you are striving for?

I don't have even a glimmer of hope that justice will prevail. The country is in the hands of political leaders –most of who are perpetrators themselves. The judiciary is at their mercy. Although the momentous April revolution brought a lot of promises in its wake, the much-hyped Comprehensive Peace Accord turned out to be a wooden loaf to many. Even the so-called Truth and Reconciliation Commission is destined to be proved a mere damp squib as it emphasizes on reconciliation and exoneration. I don't think any possibility of that.



Even though you say that you don't have a scintilla of optimism, you have sought for a mandamus from the Supreme Court. Do you still hope that justice will be delivered?

Yes, of course, I am a frustrated man and I know that the current legal system, which is just a puppet in the hands of some chosen elites and political leaders, is not going to do justice to me. But it does not mean that I would not fight for justice. I will resist till I have a last ounce of energy in my sapped-up limbs and till my tongue carries my voice. As far as the mandamus is concerned, the esteemed Supreme Court has asked for clarifications from the police. However, it has not specified any deadlines for the response. It has been a year since I filed the writ but there has not been any progress. Without a thorough judicial reform in our country, it is ludicrous to talk even about justice. The prevailing circumstances dictate that justice is a far, far cry. However, I know the perpetrators personally and I will move heaven and earth to bring them to book.



This means you have been tracking the perpetrators. Do you have any idea where they are now?

I have to do that. I know all of them. But many of them have been transferred to others places and I don't have an exact record of them as to where they are stationed presently. But the chieftain of perpetrators, Chuda Bahadur Shrestha, who was the then Superintendent of Police has retired lately, and has now established a human rights organization named "Legal Research and Consultancy" which aims at helping victims of the conflict. Isn't this ridiculous? A person who was both, directly and indirectly, involved in the murder of so many innocent civilians is now a human rights activist. These are the people who have cast a shadow over the good name of human rights.



What is your feeling about the human rights organizations in Nepal?

Leaving aside a few like the one I have just mentioned, they are really serious to end the culture of impunity in the country. Besides Advocacy Forum, it is the Amnesty International which has been

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Forthcoming Activities



In post conflict scenarios, a victim's role has been instrumental in the course of demanding and achieving justice. Looking at experiences in other post conflict countries, role of organized and effective victim groups have been pivotal in shaping that countries policies and laws which are favorable towards victims and that go a long way towards delivering justice to them. Therefore, AF believes that uniting the victim groups under one umbrella with their representation at the national level will not only lead to better coordination but also act as effective means to pressurize the government for justice. Hence, AF is organizing a one-day intensive workshop involving fifteen coordinators of the victim groups from fifteen districts along with AF staff to formulate and finalize a national victim mobilization strategy in mid December 2007.



Protection Desk Nepal (PDN) is going to organize a two-day meeting in partnership with AF on the issue of witness protection on 11 th and 12th of Dec.

The discussions during the meeting will particularly revolve around the article 18 of the Truth and Reconciliation Bill, which is related to the protection and security of the witnesses.

Victim Group submits memo to PM

The Conflict Victim Committee, Bardiya, have submitted a memorandum to the Prime Minister via the Chief District Officer on October 14, 2007.

The memo, pointing out the failure of the government formed after the April Uprising to herald rule of law in the country and to do away with the unabated culture of impunity, has made a host of demands as follows:

1. Making public and finding the whereabouts of those disappeared during the conflict.
2. Due amendments in the proposed TRC draft bill vis-à-vis impartial and proper investigations into the violations and violators of International human rights and international humanitarian laws, and the subsequent prosecution of the perpetrators
3. Invoking the UN working group on enforced involuntary disappearances to start its work in Nepal without further ado.
4. Meting out severe punishments to the perpetrators who are found, both directly and indirectly, accountable for the violations of human rights and humanitarian laws via civilian courts.
5. Immediate ratification of International Convention on Enforced Disappearances (20 Dec 2006)
6. Drafting of productive/substantial laws concerning disappearance with the participation of the families of the disappeared and its due implementation.
7. Drafting of productive/substantial laws to curb impunity and its due implementation.
8. Gratis legal aid to the conflict victims
9. Security of human rights activists, who are fighting for the cause of victim families and justice, should be guaranteed.
10. The family members of the conflict victims should be declared "Special Citizens" and should be bestowed with special facilities, opportunities and rights.
11. Memorials should be constructed to commemorate those who lost their lives during the conflict.
12. Immediate allocation of interim relief-aid to the families of the victims.
13. Those made victims by both the state and the then rebel group must be granted equal facilities, opportunities and attitudinal conduct.
14. Any work related to conflict victims should be started after consultations and participation of the victims.
15. The families of the victims should be provided with compensations without any dillydallying. It includes:
 - a. Free education to the children of the victims so that they can pursue their studies up to higher-levels.
 - b. Guarantee as to the fundamental needs like food, clothing, shelter, education and health to the families of the conflict victims.
 - c. Provision of employment to every member of the victims' families.
 - d. Skill-developing trainings and provisions of loan disbursement for the victims' families to start their own business
 - e. Special programs for the conflict victims.

Victim groups formation & Orientation

In a continued effort to get the victims organized, self-reliant and independent, AF has been involved in the formation of victim groups in the districts of Banke, Bardiya, Baglung, Morang, Kapilvastu, Surkhet, Udayapur, Dhanusha, Rupandehi, Kanchanpur, Kathmandu and Kaski. The total number of victims groups formed till date is seventy. These victim groups have been formed to help lobby for and exert pressure on the government to address the legacy of injustices.

Moreover, AF has also been organizing orientation programs with the victim groups in the VDC level. The modality of this program has been to first, train the leaders of the victims groups about TJ and TRC, after which the leaders themselves will be organizing workshops with the victims in their respective VDCs. The first phase of training the leaders has been successfully completed and the workshops with the victims are currently being held as we speak.

Consultations on Prosecution held



A half-day consultation meeting on "Prosecution" was jointly organized by International Center for Transitional Justice (ICTJ), Office of the High Commissioner for Human Rights (OHCHR) – Nepal and Accountability Watch Committee (AWC) at Shangrila Hotel, Lazimpat, Katmandu, on 15 Nov 2007.

Chaired by human rights activist Mr. Subodh Pyakurel, the meeting was addressed by Patrick Burgess, Asia Director of ICTJ, and a host of representatives from National Human Rights Commission and various human rights organizations.

Speaking on the occasion, Burgess, highlighting the importance of prosecution in transitional justice initiatives, shared his experiences on prosecution during his vocation in East Timor. However, he dwelt upon the fact that prosecution to the perpetrators is a long process and its goal can't be achieved overnight.

After a wider consultation among the participants in connection to the relevancy of restorative and retributive justice system in the country, the following conclusions were drawn unanimously: prosecution doesn't derail the peace process; human rights organizations should exert unremitting pressure upon the government to punish the perpetrators; the problem of systematic documentation is found wanting; there is exigency to prepare a report vis-à-vis the lacunas in the existing laws on prosecution and seeking out apt laws to gear the process of prosecution forward; greater need to initiate discussions on TJ in general and prosecution in particular; there is an urgent need to maintain a single voice of human rights communities and civil society with regard to prosecution; and, above all, upholding the interests of the victim.

AF's TJ staffers meet ICTJ Asia Director

Staffers of AF's transitional justice wing held a meeting with Patrick Burgess, Asia director of International Center for Transitional Justice (ICTJ), at the meeting-hall of ICTJ Country Office, Nepal, at Jawalakhel, Lalitpur, on the 13th of November, 2007.

Discussions during the meeting revolved around AF-ICTJ partnership and other issues and challenges concerning the establishment of a comprehensive Transitional Justice Mechanisms in the Himalayan Nation.

Speaking on the occasion, Patrick underscored the importance of prosecution to keep the sanctity of justice intact.

"We need to give priority to prosecution. Although it is a long process and might take 15-20 years, we must start prosecuting the perpetrators. We can do this by bringing the culprits of sexual violations to book", he said.

Meanwhile, Burgess and Ms. Carla Fajardo, acting head of ICTJ Nepal Office, visited Biratnagar on 12 November 2007 for a three-hour interaction with members of the victims' group, local NGOs and INGOs.

The discussions during the interaction mainly focussed on issues of reparations to the victims and their role in the Truth and Reconciliation Commission's processes.

Mr. Burgess was recently in Nepal on a week-long visit to gauge the TJ initiatives in Nepal.

An Odyssey.....

constantly fighting for me and people like me. I have been to Geneva and have participated in many conferences and meetings concerning the enforced disappearance at both national and international levels. All the human rights organizations, without any respite, are clamoring for justice. But they haven't been able to speed up things. They are doing their best but they find themselves meshed up in various constraints and entanglements, for instance lack of appropriate laws, the notorious red-tapism and other political snags.



Do you have to say anything to your fellow brethren who are also going through the same pain you are living with?

What I want to convey to them is that whatever the impediments may be, no matter how frustrated we become, we should stick to our pursuit of justice. If we give up in the midstream, it would be our impotency. We should be constantly vociferous for justice so that our posterity may not have to reel under the pain and trauma afflicted upon us by the pervasive culture of impunity. Justice must reign supreme. We have to fight for that. Let all the victims of the country unite – for there is no possibility of justice unless we chorus in unison.

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