



Thematic publication

Peace Brigades International - Nepal

May 2011

Justice Denied: HRDs, Impunity and the Rule of Law in Nepal



Editorial	p2	New Tactic to Combat Impunity	p8
Conflict-related impunity Interview with Mandira Sharma	p3-5	Killings Beneath Everest	p9
The Case of Maina Sunuwar	p5	Impunity beyond the conflict: Suppressing the Press	p9
Questions of Disappearance and Impunity in Nepal - Ram Kumar Bhandari	p6	Impunity beyond the conflict: Torture	p10
Other Cases of Concern	p7	Impunity beyond the conflict: Abuse of women	p11

Editorial

It is a fact that, 5 years after the end of the conflict, not one single perpetrator of a conflict-era human rights violation has been brought to justice in a court of law. But Nepal's impunity has further implications than conflict-era prosecution simply being 'on hold'. Impunity for crimes has continued to the present day. Torture in state detention facilities is endemic and extremely difficult to prosecute (see page 10). Political interference in the application of law further weakens rule of law. Non-implementation of court orders makes a mockery of justice (see cases on page 7). In such an environment, human rights defenders, journalists and victims who continue to raise cases and concerns are placed in a position of confrontation each time they do so.

Many put this continuing situation down to a distinct lack of political will. The Truth and Reconciliation Commission and the Commission on Disappearances - integral parts of the 2006 Comprehensive Peace Agreement - remain in draft form and seem to have been almost forgotten by politicians. The National Human Rights Commission (NHRC) has made numerous recommendations regarding both conflict-era and post-conflict crimes, but very few of these have been implemented by the government.

Throughout this publication, we take a closer look at impunity, the weak rule of law and the effects that these have on some of the HRDs with whom PBI works. These HRDs speak about the root causes of impunity and its effect on their day to day work, including heightened risk for defending rights. They speak of the methods they use to try and improve the situation. There are clear links between the work of human rights defenders and the end of impunity. Without protection mechanisms, including strong rule of law and an engaged police force, HRDs remain vulnerable.

The Nepal Government should accept UPR recommendations **108.23, 108.27 and 108.28** related to protection of human rights defenders and journalists in the 17th HRC session in June 2011.

During Nepal's Universal Periodic Review session at the UN's Human Rights Council in January 2011, the Nepali government delayed its decision on signing up to three of the four recommendations pertaining to providing security for human rights defenders and journalists. It is particularly telling that these three recommendations the government is 'considering' relate to the investigation and prosecution of violations against HRDs and journalists. The final decision on whether to accept these will be made in the June 2011 HRC session.

It is clear that HRDs and journalists need protection. If the government is serious in its bid to address impunity, accepting these recommendations and implementing protection mechanisms for HRDs is an important first step. Further steps must then be taken to create an environment where the rule of law is upheld and HRDs are seen as a support to the justice system rather than a dangerous challenge to the legal status quo.



Peace Brigades International does not take any responsibility for statements made by third parties in this publication.

For this publication we thank:

For the Articles:

Kristen Cain, Maria Westerlund,

Jitman Basnet, Patrick Robbins,

Ram Kumar Bandhari, Mandira Sharma and Cecilia Deme.

Editors:

Iona Liddell, Daniela Ponce and Jessica Johnston

Design:

Iona Liddell

Front cover - Man looks on at poster showing conflict disappeared persons at a demonstration in Kathmandu.

Tackling impunity: Advocacy Forum's fight for justice in Nepal

Mandira Sharma, Director of Advocacy Forum - Nepal's leading human rights legal aid organisation – knows how it feels to wake up and fight impunity every single day. Since 2001 she has been leading a strategic approach which in the end, she hopes, will contribute to an end to blanket impunity for gross human rights violations from both the conflict period and after.

But she is up against formidable dynamics which weaken the rule of law, “Court orders are not observed, police don't know what to do. Political parties interfere within investigations – a phenomenon which criminal gangs, particularly in the Terai, have been taking advantage of.

Even the National Human Rights Commission is not far from political interference, with the government able to appoint its staff and commissioners”.

For Mandira, the root of impunity is far more than the difficulties investigating officers have in implicating their seniors, or the pressure political cadres exert on witnesses, lawyers and judges in cases.

“It is a structural issue...we have deep problems of inequality in this country. In the context of Nepal there are always people who think they're above the law. The military and politicians think this. It's a question of equality, being equal before the law. And the justice system, structured as it is, is not able to respond to the issue of justice for the poor, the powerless”.



PBI accompanying AF in Lamjung district where a landmark FIR was successfully filed (see text box below).

National Human Rights Commission

The NHRC's ability to function as an effective institution for the protection of human rights continues to be challenged, most significantly by the lack of government implementation of its recommendations. Since the establishment of the National Human Rights Commission (NHRC) in 2000, it has made 386 recommendations concerning investigation and prosecution of both conflict-era and post-conflict violations. Of these recommendations, only 34 have been fully implemented by the government, 138 have been “partially implemented,” and 214 remain unimplemented. The government has thus far only requested the Office of the Attorney General to prosecute two cases, those of Maina Sunuwar and Ram Hari Shrestha. In a further challenge to the NHRC, a current draft bill removes guarantees that the NHRC will be able to function independently.

Addressing such deep-rooted discrimination will never be an easy task. Mandira feels it is key that people in positions of power who publicly state support for an end to impunity must be held accountable for their inactivity.

The Truth and Reconciliation Commission is a case in hand. It was frustrating to many within civil society that the proposed bill has no prosecution. Yet, this is how it will be - a fact-finding body, not a court. Despite this, many within the law enforcement system use the fact that there will be a TRC to refuse to cooperate with HRDs working on conflict-era cases, arguing that prosecutions will be dealt with by the commission.

Mandira vents the frustration of many, “We don't see political parties being keen to give the mandate of investigation and prosecution to the TRC and Disappearances Commission, yet they are still happy to use a discourse which

says as much, to hide from the criminal justice system”.

She is adamant that such a mechanism should not be able to be used to further institutionalise impunity, saying “you cannot postpone providing justice. You don't need to wait for TRC and TRC is *not* the court”.

Advocacy Forum went to the Supreme Court (SC) to challenge this prevailing attitude in the case of Arjun Lama (see case study on p7). Within their ruling, the SC was very clear and bold in its support of the rights of victims.

Despite such a progressive ruling, and others like it, there have recently been others which could set a precedent for an accepted dismissal of the criminal justice system's ability to deal with conflict-era human rights cases.

The case of Muktinath Adhikari

In April 2011, a report was filed at the Lamjung District Police Office naming the perpetrators in the killing of Muktinath Adhikari. Muktinath Adhikari was a secondary-school teacher tied to a tree and shot dead by the Maoists in 2002. The photos of his body were publicized widely as evidence of Maoist attacks on civilians. PBI accompanied Advocacy Forum lawyers and the victim's wife and son to the Lamjung District Police Office in order to file this information. The following day, in an affront to justice, one of the accused perpetrators, a Maoist cadre, was appointed coordinator of the District Peace Committee in Lamjung .

To this Mandira reiterates

“The TRC and the DC should be supportive of the criminal justice system. They are tools to establish truth but prosecutions *must* be done in criminal courts”

And does the lack of a stable constitution play into this? Mandira agrees that a stable institution is important, “but the bottom line is, we don’t need a constitution for criminal prosecution – the way to do this is already clear”. The problem lies in the fact that members of the UCPN-M and the State Security Forces don’t follow court orders. “The fact is that the criminal justice system is enough to prosecute human rights violations, *if* there is political will”.

National justice mechanisms are weak but to strengthen them requires the attention and engagement of the government. As Mandira affirms:

“The government says it has a zero tolerance on impunity but impunity will not be solved just by speeches. The government should ask police to investigate crimes and to observe arrest warrants and court orders. *That* would demonstrate political will”.

“If,” Mandira continues, “the government is not committed it weakens the judiciary”. Political parties, rather than turning crimes into political power games, should be pressing the government to strengthen the justice system.

The Attorney General (AG) also has a role to play. He is the Chief legal advisor to the government and “as the government is clearly not observing court orders, the AG has the responsibility to remind the government to do so”.

But where the government and political parties are not being proactive, further pressure is required. AF continues to push for the rule of law, in part through exposing continuing impunity. Evidence-based advocacy allows them to argue for legal reform. By helping survivors to file cases and by writing reports demonstrating the lack of progress on these, AF shows how the whole system is failing to work on cases.

As Mandira divulges, “the strategy is to try all national mechanisms and when they are exhausted, to take these beyond Nepal to the UN Human Rights Committee”. In this way, AF is able to demonstrate the severity of the issue of impunity in Nepal

AF recognises that international pressure is also essential in order to induce action on impunity. AF issues public reports and works to mobilise the international community. The focus is on vetting of state security personnel – to prevent persons accused of gross human rights violations from receiving visas or being accepted by the UN Peacekeeping forces. AF’s lobbying of embassies and the UN has contributed to tightening policies and stricter vetting. Beyond this, AF have been exploring potential legal action at the international level, particularly universal jurisdiction.

Nepal is the fourth largest country contributor to UN Peacekeeping forces in the world. Nepali police and army officers have served with the UN in places such as Lebanon, DRC and Haiti.

– to prevent persons accused of gross human rights violations from receiving visas or being accepted by the UN Peacekeeping forces. AF’s lobbying of embassies and the UN has contributed to tightening policies and stricter vetting. Beyond this, AF have been exploring potential legal action at the international level, particularly universal jurisdiction.

This approach of making human rights violations personal, is beginning to have an effect. Whilst this is positive in the battle against impunity, it leaves human rights defenders and organisations open to harassment. As Mandira explains:

“An organisation like AF works in a specific way, taking up individual cases and following up systematically. It puts us in a difficult position. No one worries when an HR organisation does workshops on HR or other such capacity building activities. But when an organisation is following up on individual cases, they can be targeted. We are targeted. Whether it is institutionally or personally, people do pressurise us”

It is in situations like these when the lack of protection for HRDs in Nepal is most keenly felt.

Transitional Justice Mechanisms

Both the CPA and Interim Constitution include a commitment to establish a Truth and Reconciliation Commission as part of the transitional process. The government later committed to establishing a Commission on Disappearances as part of the 23-point agreement on the basis of which the UCPN-M joined the government in 2007. To date, neither has been established.

“There is no legal framework to protect HRDs. There are no mechanisms that you feel safe to report attacks or threats to. Instead we see strong protection given by the government to those who stand accused of human rights violations.”

HRDs in Nepal have long been demanding a legal framework for the protection of HRDs. A coalition of NGOs, including AF, have even drafted a bill. But this is yet to be taken up by decision-makers. Mandira views such inactivity as just another way in which the government makes life difficult for those working on human rights:

“The Social Welfare Council also creates administrative hurdles. If they don’t like organisations they can make things very difficult by asking questions and probing into how an organisation operates. As there is no legal protection, HR organisations are very vulnerable.”

Despite, and in some ways because of this backlash (for, after all, it is a sign that pressure on human rights is having an effect), Mandira feels that now is the time to act against impunity.

“At the moment, the general public feels the need to address impunity. Armed groups are on the increase, political parties are acting as institutions that can issue licences for crimes. Law and order is severely affected. People can clearly see the consequences of a lack of rule of law”.

But the people can’t do it alone.

“We need to maintain the momentum otherwise it becomes a fatigue exercise – victims will get frustrated, donors will change their priorities”.

For safe HRDs and an end to impunity “It is crucial to keep public and International awareness high”.

The Case of Maina Sunuwar

Of Nepal’s conflict-era cases, the case of Maina Sunuwar has progressed furthest toward prosecution, only to be abruptly halted by the Nepal Army’s non-cooperation. Major Nirajan Basnet was charged with murdering Maina Sunuwar, a fifteen-year old girl, in 2004. Despite this, the Nepal Army sent him to Chad as a UN peacekeeper. The UN returned him to Nepal at the end of 2009 because of the case pending against him, but on his return, the army refused to hand him over to a civilian court. Maina’s mother, Devi Sunuwar, continues to experience a high-level of insecurity due to her refusal to drop the case and has been accompanied by PBI since 2009.

Extract* from a letter written by Devi to the Chief of Army Staff on the 7th anniversary of her daughter’s death:

“Dear General,

...In the past seven years, my repeated attempts to seek justice have been thwarted at every step. Looking at the manner with which events have unfolded, it becomes glaringly clear that it is the Nepal Army that is strangely unwilling to let this case proceed...

The Supreme Court of Nepal as far back as September 2007 referred the case to the District Court of Kavre, after it had reviewed the earlier court martial findings, basically finding that the case should be dealt with by a civilian court. While the Nepal Army is clearly not abiding by this ruling, it is also not formally challenging the decision. This way your esteemed institution is undermining the rule of law and reinforcing impunity...

General Sahib, I am hopeful that you will hear the cry of my daughter's skeleton for justice and take seriously my prayer to you to defend our country from the prevailing impunity for my sake and for the sake of all Nepalese! I am sure that this single step from your side will prove a giant leap towards ending impunity in Nepal. I want to see my Army Chief standing in favour of victims' rights and not defending alleged murderers”



Devi Sunuwar and PBI team members in Kavre district

Questions of Disappearance and Impunity in Nepal

Ram Kumar Bhandari

Over 1350 persons are disappeared and missing in Nepal and their families are still waiting to have answers from the alleged perpetrators regarding the fate of their missing loved ones. The families' aspirations to seek truth and justice have been ignored for the sake of political expediency, which has promoted a culture of impunity and thus made a mockery of the high ideals of "New Nepal".

The organs of State, including the government, the parliament, and the judiciary, have turned a deaf ear to the plight of the hundreds of families of the Disappeared, who are unable to meet their basic needs and afford a square meal. The future of their children is in doldrums as there is no long-term economic and social support for their education and upbringing. With little political will, authorities' unwillingness to listen, and ever-increasing gaps between the state, donors, agencies and the victims' community, the pain of suffering families and the questions of disappearance and impunity have never faded.

Perpetrators of war crimes, far from being punished, are being rewarded. Supreme Court verdicts and court directives have been ignored. The cases prove that impunity starts at the very top and sets a precedent for those in the districts. The promotion of Toran Bahadur Singh, the in-charge of the infamous Bhairabnath camp, and the army's attempt to prevent Niranjana Basnet, from appearing in a civilian court, together with Maoist attempts to prevent many cases from facing the justice process have shown that impunity in Nepal is deep rooted. Such blatant attempts

to obstruct the path of justice have significantly weakened Nepal's human rights movement and have also given the perpetrators an excuse to get away with their own abuses. The issue of transitional justice and truth has become a charade.



Ram speaking at a memorial program for his father.

The families' need for truth, justice and reparation have been deliberately ignored. Their uncertainty and pain is felt daily because they still don't know whether their loved ones are dead or alive. This trauma is accentuated by the psychological, economic, social, political and legal problems that they have to bear. The victims' movement is becoming increasingly disillusioned and weakened by political divisions

and the interest groups. Transitional justice has been an elite discourse limited to urban centres. The Disappearance Bill drafted in Kathmandu, which was approved in late 2009, registered in parliament on 2010 and pending at parliament due to political conflict, focuses largely on amnesty and reconciliation. But how can we have true reconciliation through a bill drafted by the movers and shakers in Kathmandu without a word of input from those affected by what the bill proposes to correct?

The culture of impunity and unaccountability are more sustained and growing in Nepal's political transition, where every transitional justice process was started from the very top, through imported concepts and expertise. Their definition of peace and reconciliation has failed to address the questions of disappearance and impunity. They will be buzzwords understood only by donors, agents and their middlemen. Families, relatives and victims in rural areas are never consulted or asked for feedback. The peace committees across Nepal have, ironically, stirred up more conflict and made victims' families even more disillusioned. In reality, the committees have failed and are mere showpieces for stakeholders and donors. The whole peace process, as well as the Peace Ministry, has become a donor-driven project.

Unfortunately, many families have lost hope for justice and reconciliation and feel marginalised by the peace process. Families and witnesses do not feel secure, and human rights activists in the field face regular threats. Therefore, we must ask, is reconciliation possible at all? As long as the plight of the victims is politicised, we will not see true peace. The movement towards reconciliation has become fragmented and the grief of tens of thousands of victims' families is being held hostage to vested political interests.

The proposed Commission on Disappearances now with the Legislative Parliament, should include the disclosure of

truth, handover of the dead body to family members, protection of evidence, recognition and honour to the victims by the government, guaranteeing the right to reparation, and that perpetrators will be brought to justice. The commission should be independent and have the power to prosecute those involved. Otherwise negative history will be repeated as it was with the Mallik and Rayamajhi Commissions set up to investigate past abuses. The Rayamajhi Commission's report has never been published or implemented, and ultimately contributed to the culture of impunity in Nepal. Unless we address these concerns, Nepal's peace process will remain fragile.

Ram Kumar Bhandari, whose father was disappeared in 2001, is a Human Rights Defender and Chair of the National Network of Families of the Disappeared and Missing, Nepal (NEFAD).

Other cases of concern

Case: Arjun Lama

HRD: Advocacy Forum

Arjun Lama was a secondary school management committee member from Kavre district who was disappeared by Maoist cadre in June 2005. One of the accused in the case, Agni Sapkota, is a UCPN-M Central Committee member. Arjun's wife Purnamaya repeatedly tried to file an FIR with police but only succeeded after the Supreme Court ordered it in August 2008. Since then, little police or government action has been taken on the case. AF are pushing the government to begin an exhumation of the suspected burial site but have had no clear response.

See more:

- <http://www.advocacyforum.org/emblematic-cases/2011/01/arjun-bahadur-lama.php>
- <http://www.youtube.com/watch?v=1pmVWkSST0PM>

Case: Tej Bahadur Bhandari

HRD: Ram Kumar Bhandari

Tej Bahadur Bhandari was disappeared in Lamjung District by police when on his way to meet with a local government official in December 2001. His wife and son (Ram Bhandari, see article opp) met with authorities and petitioned the NHRC but could not register the case with police, who refused to cooperate. Ram lodged the case twice at the Supreme Court. The first attempt was squashed and the results of the second are pending. In the absence of functioning local mechanisms, Swiss INGO TRIAL assisted Ram to file the case at the UN HRC in December 2010.

See more:

- <http://www.trial-ch.org/en/activities/litigation/the-advocacy-center-trial-act/acts-cases/nepal/affaire-bhandari-decembre-2010.html>

Case: Dhanusha 5

HRD: Advocacy Forum

In October 2003, 5 students were disappeared in Dhanusha district by police and handed over to the Nepal army. Local lawyer and father of one of the boys, Jai Kishor Labh (JKL) took on the case. In March 2006 NHRC extracted letters from the Police HQ and the Home Ministry detailing that the boys had been killed in a security forces operation in October 2003.

The case was finally accepted for registration by police in September 2009 only after a Supreme Court ruling. Jai Kishor Labh and his family began receiving harassment from police shortly afterwards. PBI worked with JKL from this time until his death in April 2010. Work on the case has been continued by AF, supported by a coalition of organisations including OHCHR and the NHRC. National and International pressure saw a NHRC-led exhumation of the suspected burial site in late 2010, where four bodies were recovered. In February 2011 a fifth body was found. Forensic experts in Nepal and Finland are analysing the evidence but it will take sustained pressure for legal proceedings to continue.

See more: <http://www.advocacyforum.org>



JKL and his wife Bimala with PBI team at Dhanusha district airport, Nov 2009

A New Tactic to Combat Impunity

When rife impunity causes national institutions designed to address human rights violations to fail, one might find oneself uttering the Nepali phrase “Ke Garne” - “What to do?” One response can be found outside Nepal. The Human Rights Committee (HRC) is ‘the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties’¹. Where someone believes their civil and political rights are being violated by a State, they can submit a case to be reviewed by the HRC. One prerequisite of this submission is that domestic remedies have been “exhausted”. This means that if the culture of impunity and the lack of sufficient rule of law in a country are overwhelming enough to prevent human rights violation cases from receiving justice, then there is another option. When a case is submitted to the HRC, assuming it meets all of the specified requirements, an official recommendation is made to that country’s government. Although these recommendations are not legally binding, they can act as official high-level pressure on a government. This form of pressure is now being used by Human Rights Defenders (HRDs) in Nepal.

Nepal has an entrenched culture of impunity. One can easily find the word impunity all over the national newspapers or in reports produced by human rights organizations. The Supreme Court has also issued investigation or prosecution orders in several cases including high profile cases like Maina Sunuwar, Reena Rasili and Subadhra Chaulagain, among others, which have been ignored and unimplemented². Also, the Truth and Reconciliation Commission and Disappearance Commission that were agreed upon in the 2006 Comprehensive Peace Agreement have yet not been formed. The non-cooperation of the Police, Attorney General’s Office, the Government of Nepal and the Nepal Army with Supreme Court recommendations is a strong indicator that impunity has made the ‘domestic remedies’ referred to by the HRC ineffective. Finally, the fact that not even a single conflict-era human rights perpetrator has been prosecuted sets the stage for cases in Nepal to be submitted to the Human Rights Committee.

Advocacy Forum (AF) has submitted one such case, on disappearance during the conflict, to the Human Rights Council. Eight people were forcefully detained and disappeared from a village all on the same night in 2002. The alleged perpetrators were from the Nepal Army and although this case was first filed with the police six years ago there has been little to no progress in attaining truth or justice for the victims’ families, in spite of the fact that AF has filed a Habeas Corpus with the Nepali Supreme Court concerning this case, and the National Human Rights Commission (NHRC) has been tasked with conducting an investigation into this case.

INGOs Redress and TRIAL are amongst those assisting local human rights defenders to register cases at the UN Human Rights Committee. Advocacy Forum, Jitman Basnet and Ram Kumar Bhandari have all taken this route (see this publication).

AF’s Kashiram Dhungana comments that in Nepal there are “no proper laws on disappearances and there are no proper investigations”. This case is an example of how the level of impunity and lack of rule of law in Nepal has crippled the national mechanisms for addressing human rights abuses.

Dhungana is optimistic about the impact the HRC recommendations may have for many other cases in Nepal. Cases such as this one being brought to the Council could also pressure the government to form the long awaited Disappearance Bill.

Dhungana thinks the UN Human Rights Committee’s recommendations will be different to those made by the NHRC, an estimated 86% of which in 2010

were not implemented by the government³. “The UN is much bigger and more influential” he says and then adds that their recommendations could damage the Government of Nepal’s international reputation. And if these recommendations do not bring about significant change then “we will send more and more cases. This is just the beginning.”

The success of this new tool in Nepal is not yet proven, but it does give another option in a country where, as Dhungana says,

“There is no alternative for the victims. All ways are closed.”

1. <http://www2.ohchr.org/english/bodies/hrc/index.htm>
2. <http://www2.ohchr.org/english/bodies/petitions/individual.htm#when>
3. Advocacy Forum, Human Rights Watch. “Indifference to Duty.” Dec. 2010. Pg 6-7.
4. Advocacy Forum, Human Rights Watch. “Indifference to Duty.” Dec. 2010. Pg 12.

Killings Beneath Everest: LAFHUR's fight for justice

Nepal's 10 year conflict left around 16,000 people dead. Whilst armed conflict accounts for some of this number, hundreds were extra-judicially killed in 'encounters', accused of being either military informers or Maoist supporters. According to LAFHUR Director Jitman Basnet, in Solukhumbu district, in the Everest region, at least 80 people were killed in this way. Due to the remote conditions and a lack of legal support, affected family members have not managed to register any First Information Reports (FIRs) of these cases with the Police.

Jitman, who himself suffered illegal detention and torture at the hands of the Nepal Army*, has now begun work providing legal aid to victims' families in the district. He is aware there are many challenges ahead. Villagers are unaware of their rights and how to access assistance; some of the accused perpetrators are among the local police forces, and would be unlikely to take any action following any successful filings of FIRs by LAFHUR. However, "You have to go through the system first before you can properly criticize" says Basnet.

When dealing with authorities in the district, Jitman requests accompaniment from PBI.

"With the help of PBI accompaniments we support the victims and our one destination is justice".

*Jitman Basnet's own case is registered at the UN HRC, with the support of TRIAL, www.trial-ch.org



Jitman on his way to attempt to file a case at the DPO, accompanied by

Impunity beyond the conflict...

Whilst impunity is often cited in relation to conflict-era human rights violations, its effects are far more widespread. Today in Nepal, impunity creates the conditions for a number of human rights violations to continue, including censorship of freedom of speech, torture and the gendered abuse of women.

Impunity beyond the conflict - Suppressing the Press

Nepal ranks seventh on the Committee to Protect Journalists' world 'Impunity Index' - a list of countries that fail to bring perpetrators of violence against journalists to account. Where perpetrators can act with impunity, journalists are made vulnerable, unable to rely on the protection of the State. This is especially so in the Terai region, where journalists are caught between armed groups and the State.

The effects on journalism are many. Self and external censorship is rife. As one journalist told us "reporters don't dare report the truth". Another journalist spoke of "news produced at gunpoint", with the general practice now that groups go into newspaper offices with written statements they want published. All agreed that investigative journalism, so necessary for democracy and human rights, cannot exist under these conditions,

"Government promises to support journalists, but that never happens. Locally authorities are often involved in making threats, even publicly (police, local administration). At the local level journalists are important for human rights, so attacks on media persons have wider effects than just on media".

The government should follow through on its promises to protect journalists - particularly in prosecuting those who abuse journalists. An important step towards this would be accepting the UPR recommendations related to the protection of HRDs and journalists in the June HRC session.



A journalist captures scuffles between police and protestors at a demonstration in Kathmandu about protection for journalists.

Impunity beyond the conflict - Torture

Not only is torture legal in Nepal, it is also encouraged. That is the conclusion of local human rights defenders (HRDs) and non-governmental organizations (NGOs) working to end torture. After more than four years since the end of the armed conflict, torture continues to be systematic practice in detention centres with cases on the rise.

At the beginning of 2011, Nepal underwent its first Universal Periodic Review (UPR) of its human rights situation at the UN in Geneva. The Nepal NGO Coalition for the Universal Periodic Review, an alliance representing 235 human rights and civil society organizations in Nepal, said in a statement that it was troubled by the response of the government which claimed there was no systematic torture in Nepal in spite of “well documented and credible reports of systematic practices of torture at the hands of state security forces.”¹

In terms of legislation in Nepal, the Torture Compensation Act states “No person who is in detention in the course of inquiry, investigation or hearing, or for any other reason, shall be tortured.”² According to human rights lawyer Kashiram Dhungana, this makes torture in Nepal “technically” illegal. However, the Torture Compensation Act is just what it says it is - an act designed to give compensation to the victims of torture. It is not designed to punish those who mete out torture. The reprimand for the perpetrators of torture within the state police is as follows, ‘In case it is proved that torture has been inflicted in the manner mentioned in this law, the district court shall order the appropriate agency to take departmental action according to the current law against the government employee who has inflicted torture’³. This ‘departmental action’ allows the perpetrators to be merely disciplined as opposed to being charged with a criminal act.

Furthermore, since torture is a commonly used practice of the Nepal Police, departmental action is rarely, if ever, taken.

PBI’s partner organization Advocacy Forum (AF) recently published a report entitled, “Recent Trends and Patterns of Torture in Nepal: Briefing July to December 2010.” According to this report the trend of state police usage of torture has slowly gone down since 2001, but the second half of 2010 saw a sharp increase⁴. Advocacy Forum states that 22.5% of the detainees they interviewed throughout the nation during this period were subject to torture⁵. This general increase in torture coincides with the government’s implementation of a “Special Security Plan,” designed to curb criminal activity.



PBI accompanies lawyers to detention centres where they collect reported incidents of torture.

The torture levels vary from district to district. Three in particular have a significantly higher percentage of detainees reporting being tortured in the latter half of 2010; Dhanusha (46.5%), Morang (39.4%) and Banke (37.7%)⁶. PBI works with AF in all three of these districts on a regular basis.

According to AF’s report, torture in Banke district has gone up more than 50% in the second half of 2010⁷. The report goes on to say, “In Banke district, when conducting a further analysis, it transpires that the arrested people are mostly engaged with armed groups, and arrested under charges of abduction and robbery.” This is evidence of the problem of torture being exacerbated by the open border that this district shares with India. This increase in torture places Banke as the district with the third highest torture rate at 37.7%⁸. One human rights lawyer working in the region said that the increase could be due to political pressure. This could be pressure to yield results from a region that has a high crime rate and poor security or it could be direct pressure from political parties interfering in police work. Basanta Gautam, head of AF’s Banke office said that the local Deputy Superintendent of Police had already labeled AF’s report on torture an attempt to stop the police from doing their work.

As AF points out, the increase in torture in the second half of 2010 is evidence of and a contributing factor to the entrenched culture of impunity and lack of the rule of law. With the police’s capacity low and the demand for high results, combined with a Torture Compensation Act that allows for impunity, torture continues, although HRDs in Nepal continue to fight against it.

1. http://www.thaindian.com/newsportal/world-news/rights-groups-cry-foul-as-nepal-denies-torture-at-un_100493643.html
2. *Compensation for Torture Act, 1996* [Nepal], 18 December 1996, available at: <http://www.unhcr.org/refworld/docid/3ae6b4fac.html> [accessed 12 April 2011]
3. *ibid*
4. Advocacy Forum. “Recent Trends and Patterns of Torture in Nepal: Briefing July to Dec. 2010.”
5. *ibid* , 6. *ibid* 7. *ibid* 8. *ibid*

Impunity beyond the conflict - Abuse of Women

In Nepal, impunity is often associated with the ten-year conflict period, but another kind of war has been waged against women for much longer than this. For human rights defenders who choose to fight this oppression and work on domestic violence and rape cases in the districts, impunity is apparent at every level.

New laws have recently been promulgated with the aim of protecting victims of abuse and facilitating their access to justice, although a wide gap exists between legislation and its implementation. Through the voices of WHRDs in Bardiya District, the story of challenges in legal implementation and fight against impunity is told. It is a journey from the founding of a stronger legal framework into the field of practice and reality.

Law and the dark shadow of impunity

The Domestic Violence Act (DVA)¹ was passed in 2009, indicating that the Nepal government is taking the issues of domestic violence and rape more seriously. Prior to the DVA, it was only possible to file cases at the District Police Office (DPO) but today it is possible to file cases all the way from local community level to the Women's Commission², and do so verbally. However, new laws in themselves are not always enough and the practical implementation of a new law can be problematic. Bimala from DAFUO says:

if the victims can register a case verbally, they can be helped. One problem is that because they can in theory register the cases at different levels, wherever they go victims are told to go to somewhere else to register it.

“The security situation is normal, no human rights violations, only some domestic violence cases and even there 99% of them are solved at a community level. Other normal incidents include cases of trafficking”.

A highly ranked police officer in meeting with PBI, whose statement demonstrates how normalised domestic violence is, even with those who have the responsibility to protect.



PBI monitors demonstration in Midwest region.

In March 2011 PBI was invited to an interaction program organized by WHRDs in Gulariya, Bardiya District. The topic was obstacles in their work and how to solve them. For many of the women working within communities, working for human rights is an uphill struggle. At the program, one young Nepali woman untied her red scarf and pointed to her neck, showing the members and supporters of the woman human rights network the bruises from the rope her husband tried to strangle her with. This is not the first time he tried, she told the group, she is his second wife and he has beaten her on a number of occasions but she has not yet filed a case for attempted murder or domestic abuse. Instead she wants support and feedback from the network about filing a

case against him to have his land transferred to her daughter.

AF, Awaaj, TWUC, and DAFUO all agree that trying to file a case against a member of the authorities, be it army or police or a powerful political figure is often futile. as the president of Awaaj confirms:

“ The main problem is impunity, especially in domestic violence, rape and polygamy cases related to the army which are generally not filed or investigated. Access to the legal department inside the army barracks is very difficult. Women are often too scared to file a case because they don't feel safe.”

Sangita from Awaaj ends the interview with PBI and leans forward to say:

“You want to know how it really is? The police don't know how to handle these cases and they want us to mediate. And Awaaj and the other WHRDs can do this sometimes but the police and other actors in the state structure also need to do their job, especially in complicated cases when cases go to court, otherwise this culture of impunity will never end”.

1. lawcommission.gov.np/index.php/ne/acts-english/doc/424/raw

In time of writing only 3 cases have been filed in Nepal and only one rape case is being investigated.

2. www.nwc.gov.np/uploads/.../2Strategic%20Planning%20English.pdf

Donors PBI Nepal

Sigrid Rausing Trust, Philamonic Strust, Misereor, BMZ (CPS), Weltwaerts, French Agency for Development, Non-Violence XXI, I.C.C.O, Swiss Department of Foreign Affairs, British Foreign and Commonwealth Office, PBI France, PBI Canada, PBI Italy, Individual Donations.

For more info on who we work with and how -

www.pbi-nepal.org

Contact info@pbi-nepal.org

If you wish to contribute, you can:

- Support us by donation as an individual or through an organisation
- Join your nearest PBI group and the Nepal Support Network
- Become a PBI volunteer

Ram Kumar Bhandari at work in Nawalprasi District



Peace Brigades International (PBI) is an international grassroots organisation registered with the United Nations that has been working to promote nonviolence and protect human rights since 1981.

Established in 2006, the Nepal Project works according to the philosophy of nonviolence, within the framework of international norms of human rights. It is independent of political and religious agendas, abides by principles of non-interference and works on the request of its partners.

P.O. Box 8975,
E.P.C. 1865
Sanepa, Lalitpur,
Kathmandu, Nepal

Phone: +977 1221 1200
Fax: +977 1553 7473
Email: info@pbi-nepal.org

