



24 May 2011

Right Honorable Jhala Nath Khanal  
Prime Minister  
Office of the Prime Minister and Council of Ministers  
Singh Durbar  
P.O. Box: 23312  
Kathmandu, Nepal

Re: Persistent Impunity in Nepal

BY FAX AND EMAIL

Dear Prime Minister Khanal,

Amnesty International, Human Rights Watch, and the International Commission of Jurists write to you concerning recent developments that reinforce long-standing impunity in Nepal. Impunity denies justice to victims of human rights abuses and erodes the credibility and effectiveness of the criminal justice system in Nepal.

We are particularly concerned by recent public comments by Deputy Prime Minister and Minister for Home Affairs Krishna Bahadur Mahara that the government is poised to seek the withdrawal of criminal cases currently before the courts, including the killings of Arjun Lama and Maina Sunuwar. We also write regarding the appointment of Agni Sapkota as Information and Communication Minister while he is under police investigation for his alleged involvement in the killing of Arjun Lama.

*Withdrawal of Cases.* On 20 May, Minister Mahara stated that conflict-era cases should be withdrawn from the courts. He suggested that ongoing cases against Sapkota, who has been implicated in the killing of Arjun Lama, and Nepal Army Major Niranjana Basnet, who has been implicated in the killing of Maina Sunuwar, may be among the cases withdrawn. In October 2008, when the government recommended the withdrawal of 349 cases on the grounds that they were "political" in nature, those cases included murders, rapes and other serious crimes. The National Human Rights Commission condemned the withdrawals and the Supreme Court of Nepal ruled that any withdrawal decisions must be subject to an independent review by the courts. In February 2011, Attorney General Yuvraj Sangroula made a public commitment to oppose the withdrawal of pending cases.

The politically motivated withdrawal of cases would constitute a breach of the government's obligations under international law, which prohibits *de facto* or *de jure* amnesties for crimes under international law, including gross human rights violations. Where there is evidence of bias and political motivation

behind particular prosecutions, a transparent and impartial procedure should be established to review those prosecutions on a case-by-case basis.

*Appointment of Minister Sapkota.* Agni Sapkota is one of six persons under investigation by the Nepal police for their alleged involvement in the April 2005 abduction and killing of Arjun Lama, a resident of Kavre District. The appointment of Sapkota, a member of the politburo of the Unified Communist Party of Nepal–Maoist (UCPN-M), while he is under police investigation sends a strong signal of government indifference to such serious allegations and reinforces the culture of impunity in Nepal.

In August 2008, the Supreme Court issued a directive ordering the police to register a First Information Report naming six Maoist cadres, including Sapkota, explicitly rejecting arguments that the case should instead be heard by a future Truth and Reconciliation Commission. The charges are so serious that on 26 June 2010 the US embassy in Kathmandu denied a visa to Sapkota due to “serious and specific human rights allegations associated with his conduct during the insurgency.” Despite the Supreme Court order and allegations against Sapkota, the UCPN-M has withheld cooperation from the authorities and protected him from arrest. Lawyers working on behalf of victims have been threatened by Maoist cadres. The UCPN-M has not given any justification for its attempts to block this investigation.

The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment state that those potentially implicated in such violations should be removed from any position of direct or indirect power or control over victims, witnesses and families, pending disposition by an independent legal process. The UN Human Rights Committee has also affirmed this principle. Persons in senior levels of political authority, such as ministers, may well be in a power and control relationship with victims, families and witnesses. The appointment of Mr. Sapkota appears inconsistent with these principles, and further highlights the need to establish a proper vetting mechanism to ensure that those against whom there are credible allegations of involvement in human rights violations do not assume positions of power in government until they have been cleared through an independent and impartial process.

*The Role of Transitional Justice Institutions.* A number of government officials and senior politicians have recently made statements suggesting that conflict-related violations should be dealt with exclusively by non-judicial institutions, such as a Truth and Reconciliation Commission, and not by the criminal justice system. This reflects a basic misunderstanding about the appropriate role of such institutions. As is clear from the draft legislation now being considered by the parliament, the proposed commissions will not have prosecutorial powers and cannot act as a substitute for Nepal's existing and permanent rule of law institutions responsible for investigating and punishing violations of criminal law.

Prosecutions should not be characterized as impediments to the establishment of sustainable peace. Not only will prosecutions address outstanding abuses perpetrated during the conflict, but will contribute to addressing widespread impunity before the law. Achieving both of these aims is essential to ensure that gross human rights abuses are not repeated and to build respect for the rule of law in Nepal, which will help build a lasting peace.

We urge you to ensure police investigations and criminal cases for human rights abuses are allowed to proceed without political interference. Cases of serious human rights abuses should not be dropped for political reasons. We also urge you to reconsider the appointment of Agni Sapkota as Information and Communication Minister until police investigations into his alleged involvement in the killing of Arjun Lama is resolved in a professional and transparent manner.

In addition, we call upon the government to live up to the commitment to end impunity that it made during the Universal Periodic Review of the Human Rights Council in February. The government should issue a clear and unequivocal statement that Nepal's long-awaited Commissions on Enforced Disappearances and on Truth and Reconciliation cannot replace criminal prosecution and punishment of those responsible for human rights abuses.

Finally, we ask you to send a strong public message that your government will not tolerate threats to families of victims, victims, and human rights defenders in this, or any other, case.

We thank you for your attention to these matters.

Sincerely,

Sam Zarifi  
Asia-Pacific Director  
Amnesty International

Brad Adams  
Executive – Asia Division  
Human Rights Watch

Frederick Rawski  
Nepal Country Representative  
International Commission of Jurists