

United Nations

Office of the High Commissioner of Human Rights in Nepal



**The torture and death in custody of Maina Sunuwar
Summary of concerns**

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Maina Sunuwar, a 15-year-old girl, was allegedly tortured and died in the custody of the (Royal) Nepalese Army (NA) in February 2004 at the Birendra Peace Operations Training Centre in Panchkhal, Kavrepalanchowk District. Her body is reportedly buried at the centre, where members of the NA are given training before being deployed on UN peacekeeping missions. As with other cases of human rights abuses, OHCHR has persistently advocated that those responsible be held fully accountable, and has documented attempts to seek justice for the alleged torture and subsequent death of Maina Sunuwar.

In September 2005, after intense public and international pressure, three NA officers were brought before a Court Martial and sentenced to a mere six months imprisonment for failing to follow proper procedures when disposing of Maina Sunuwar's body. In spite of many requests, the NA has consistently refused to disclose to OHCHR the nature of the charges that led to this sentence, or provide copies of any documents relating to the Court of Inquiry or Court Martial. It has also refused to cooperate with police investigations launched after a First Information Report (FIR) was filed on the grounds that those responsible had already been tried. At the same time, police have been reluctant to proceed with investigations which could lead to prosecution in a civilian court.

OHCHR maintains that justice has not been done in this case. It believes that police should carry out a full investigation into the alleged torture and death of Maina Sunuwar, with collaboration from the NA, and that the officers and soldiers alleged to be responsible should be brought before an independent civilian court.

The lack of progress in this case and the lack of transparency on the part of the NA, documented below, illustrate the many obstacles that victims of human rights violations or their relatives still face when seeking redress. They also raise serious concerns about the apparent lack of political will on the part of the Government to hold accountable members of the security forces suspected of involvement in human rights violations. OHCHR believes that such prosecutions would be mutually beneficial for both victims and for the security force institutions, and help to restore confidence in the rule of law in Nepal.

Nepalese Army investigations into the death of Maina Sunuwar

Although it is not clear when the NA began its investigation, the NA established a Court of Inquiry Board, and subsequently a Court Martial, to look into the death of Maina Sunuwar. The Court of Inquiry was apparently completed by 14 March 2005

and the Court Martial issued its verdict in September 2005. Despite numerous requests, the NA has failed to provide OHCHR with copies of documents associated with the Court of Inquiry Board and Court Martial. However, through other sources, OHCHR has obtained a document which appears to be the report of the Court of Inquiry Board. The report recounts the horrifying details of Maina Sunuwar's torture and death and suggests that the NA's refusal to provide such documentation directly to OHCHR was not the result of confidentiality issues as claimed, but was part of an attempt to cover up the gravity of the abuses.

Court of Inquiry

The copy of the report obtained by OHCHR summarises the investigations by the Court of Inquiry Board, including statements by NA personnel acknowledging their participation in the torture of Maina Sunuwar.

According to the report, NA officers took Maina Sunuwar from her home in Kavrepalanchowk District to the Birendra Peace Operations Training Centre in Panchkhal on 17 February 2004. At the Training Centre, she was subject to torture in the presence of seven NA officers and soldiers, including two captains who ordered that Maina Sunuwar's head be submerged in a large pot of water for one minute six or seven times under the orders of then Lt. Col. Babi Khatri.¹ According to the report: the soldiers then administered electric shocks to her wet hands and feet four or five times; the torture continued for one and a half hours, after which she was detained in a building on the premises of the Training Centre, where she was left blindfolded and handcuffed; she later began vomiting and foaming at the mouth, and died before medical assistance could arrive. The Court of Inquiry Board concluded that "It was indeed as a result of torture inflicted during the course of interrogation that the death of Maina Sunuwar occurred", and that "the tortuous treatment, done in an inexperienced and unskilled manner, was inhumane."

The Court of Inquiry Board report also concluded that the officers and soldiers involved in Maina Sunuwar's torture attempted to cover up the death. The body was shot in the back and buried inside the Training Centre. The colonel in charge of the Training Centre at the time then fabricated a report stating that Maina Sunuwar had been shot while trying to escape NA custody. The Court of Inquiry Board rejected the report outright stating that it "cannot agree in any way whatsoever with the account sent by the Birendra Peace Operations Training Centre one year ago... it is clear that the then Acting Chief of the Training Centre Colonel Babi Khatri has submitted a false report of the incident with imagined facts in an exaggerated manner." The Court of Inquiry Board recommended that "the process of punishment according to military law should move forward" against Colonel Babi Khatri, Captain Sunil Prasad Adhikari and Captain Amit Pun.

¹ It appears from the Court of Inquiry Board report that Babi Khatri, who was a Lt. Colonel at the time of the incident, had already been promoted to full Colonel by the time that the Court of Inquiry Board report was finalised.

The outcome of the Nepalese Army Court Martial

On 15 March 2005, the day after the report of the Court of Inquiry Board was apparently finalized, the NA issued a press release stating that it would proceed to try the alleged perpetrators, but described the Court of Inquiry Board as concluding that Maina Sunuwar's death was a mistake.

Six months later, on 27 September 2005, the NA publicly announced that the Court Martial had found three officers guilty of negligence and sentenced them accordingly. On 20 October 2005, OHCHR responded with a letter to the then Chief of Army Staff expressing concern that the Court Martial failed to assign responsibility and properly punish those responsible for Maina Sunuwar's death. On 4 December 2005, OHCHR received a letter from the Adjutant General's Office confirming that a Court Martial had been conducted and that it had found three officers guilty of "not following the standard procedures and orders". According to the letter, the Court Martial sentenced the three officers to six months imprisonment for failing to follow proper procedures when disposing of Maina Sunuwar's body. The Court Martial ordered the two captains to pay Rs 25,000 and the colonel to pay Rs 50,000 as compensation, and ruled them ineligible for promotion for one and two year(s), respectively.

In its subsequent correspondence with the NA, OHCHR has maintained that the results of the Court Martial were wholly inadequate and unlikely to serve as a deterrent to future criminal acts by the security forces. In its 20 October 2005 letter, OHCHR expressed its "hope that the RNA will cooperate with the judiciary in helping to bring perpetrators to justice". OHCHR continues to advocate for an independent investigation and prosecution of this case in a civilian court. Unfortunately, in the intervening year, the NA has failed to cooperate with, and has sometimes affirmatively obstructed OHCHR's investigations into the alleged torture and death of Maina Sunuwar. The NA has also failed to cooperate with police investigations.

The Nepalese Army's failure to cooperate with the Nepal Police

In November 2005, the family of Maina Sunuwar filed an FIR naming four NA personnel as responsible for her death: Colonel Babi Katri, Major Niranjan Basnet, Captain Sunil Prasad Adhikari and Captain Amit Pun. Although initially reluctant to register the FIR, the Nepal Police finally did so on 13 November 2005. Since the investigation was initiated, the NA has failed to extend its full cooperation to the Nepal Police by denying access to the accused officers for questioning.

On 6 December 2005, the Kavre District Police Office wrote to the Chief of Staff of the Training Centre requesting that the police be given access to the four officers named in the FIR. Despite the request by the police, and a 4 May 2006 request by OHCHR that the NA cooperate with the police investigation, the NA has yet to make the accused officers available to be interviewed by the Nepal Police as part of their criminal investigation.

In the NA's clearest statement of non-cooperation with police to date, on 22 May 2006, Brigadier General B.A. Kumar Sharma of the NA Legal Section wrote to the District Police Office in Kavre stating that since the Court Martial has rendered a verdict, "it is not lawful to initiate actions" against the four officers. In the letter, the NA appears to partly blame Maina Sunuwar for her own death, stating that she did not die as a result of torture but "due to the wrong process and techniques adopted out of carelessness, whims and senselessness and her own mental weakness." The NA reiterated its 22 May 2006 position in a 19 June 2006 letter sent in response to an 11 June 2006 letter from the DPO Kavre requesting access to the four officers. Nepal Police investigators, accompanied by OHCHR, were nevertheless allowed to enter the Training Centre on 26 June 2006 to mark the burial site in preparation for an exhumation, but only after OHCHR sent a letter to the then Chief of Army Staff, and to the NA Human Rights Cell following a previous occasion on which OHCHR had been denied access to the Training Centre (see below).

On 9 November 2006, the NA also refused to hand over a copy of the Court Martial decision to the police in spite of a formal request for the document.

Obstructions to OHCHR's work

In accordance with Article XIV of its Agreement with the Government,² OHCHR has made repeated requests for documents related to the NA's Court of Inquiry and Court Martial. OHCHR has made written requests for Court Martial and other documents, including to Adjutant General Pradip Pratap Bom Malla, former Chief of Army Staff General Pyar Jung Thapa and the NA Human Rights Cell, on 28 July 2005, 29 September 2005, 20 October 2005, 23 December 2005 and 3 July 2006, as well as orally during several meetings. In response to these many requests, the NA has provided OHCHR with only summary information, and has refused to supply OHCHR with the names of the perpetrators, a list of charges, or the full text of the Court Martial decision. Although OHCHR was given access to a file during its 26 June 2006 visit to the Training Centre, the file did not contain any Court of Inquiry and Court Martial documents. On 22 September 2006, OHCHR also met with the Adjutant General, the Chief of the NA Human Rights Cell and the Judge Advocate General, who reiterated the refusal to allow OHCHR access to the Court of Inquiry and Court Martial files.

The NA also initially prevented OHCHR from having unrestricted access to the site where Maina Sunuwar is believed to be buried, inside the premises of the Training Centre. On 6 April 2006, when OHCHR attempted to visit the Training Centre, OHCHR staff were refused access, and treated in an openly hostile manner by the then

² "The staff of the Office shall enjoy freedom of entry into, exit from, and movement throughout Nepal. His Majesty's Government shall facilitate freedom of movement in areas of restricted access in coordination with the competent authorities. Freedom of movement shall include the following prerogatives, exercised in accordance with the mandates of the Office... (d) Access to such official documents and material as may be needed for the proper discharge of the activities of the Office, except for those documents containing privileged information, and as stipulated by the Constitution of the Kingdom of Nepal." Paragraph 1, Article XIV of the Agreement between the United Nations High Commissioner for Human Rights and the Government of the Kingdom of Nepal (April 2005) [emphasis added]

Officer-in-Charge. As set out in OHCHR's 25 May 2006 letter to the then Chief of Army Staff, his refusal to cooperate with OHCHR was particularly objectionable in view of the fact that the Training Centre was established to prepare NA personnel for deployment to UN peacekeeping operations. The NA subsequently wrote to OHCHR claiming that it was a "misunderstanding". As indicated above, after further communications with the NA, OHCHR was eventually able to visit the centre.

The lack of political will to investigate the torture and killing of Maina Sunuwar

Despite efforts by the Kavre District Police Office, OHCHR is concerned that there is a lack of political will on the part of the Government to move forward with the investigation into the death of Maina Sunuwar and to prosecute those responsible. Between 17 July and 5 September 2006, a series of communications took place between the Kavre District Police Office (DPO), Kavre District Government Attorney (DGA), the Appellate Government Attorney in Patan and the Attorney General's Office regarding a legal opinion on the "double jeopardy" issue (i.e. whether they can be tried by a civilian court having already been tried by court martial). In the latest development, according to OHCHR's information, the DGA informed Kavre DPO that the AG cannot give an opinion without the necessary documentation from the NA. Police in Kavre then wrote to the Criminal Investigation Department to request that it approaches the NA for the documentation. As indicated above, the NA responded on 9 November 2006 that it could not provide a copy of the Court Martial decision.

OHCHR is seriously concerned that the exchanges of communication between the different authorities regarding the "double jeopardy" issue has caused unnecessary and protracted delays in the investigation of the case. OHCHR has met with senior officials in the Home Ministry, the Nepal Police and the Attorney General's Office to advocate for progress in the investigation and prosecution of this case. As indicated above, OHCHR does not believe that the NA investigations constitute an independent, transparent and complete inquiry. OHCHR understands, from its meetings with the Attorney General's Office, that there are no legal obstacles to the police investigation proceeding in the case. OHCHR has written three letters to the Home Ministry, on 7 July, 4 August and most recently on 27 September 2006, in which OHCHR requested the Home Ministry to send "unequivocal instructions" to the Nepal Police to proceed with their investigation into Maina Sunuwar's death. OHCHR has so far received no response to these letters.

On 1 December 2006, OHCHR met with officers from Kavre DPO and the DGA. Police said they had requested forensic expertise for the exhumation of Maina Sunuwar's body from the NP Headquarters in September but was awaiting a response. The NP and the DGA in Kavre claimed that there were now no obstacles to the police investigations continuing, and that the exhumation could be carried out, even though the "double jeopardy" question has not been resolved.

Conclusions and recommendations

OHCHR maintains that it is essential that the criminal investigation by civilian authorities into the death of Maina Sunuwar, including a proper exhumation, be completed - both to provide accountability for Maina Sunuwar's death and to deter future human rights violations. The outcome of the NA Court Martial serves to underline that military tribunals cannot replace the jurisdiction of civilian courts for the prosecution of serious crimes and human rights abuses. OHCHR has repeatedly brought to the attention of the NA that international standards require that serious human rights violations be tried in civilian courts, not by military tribunals.³

Notwithstanding the history of non-cooperation and apparent lack of political will described in this summary, there is still an opportunity for the Government and the security forces to demonstrate to the Nepali people and the international community that they are serious about holding human rights violators accountable for their actions. In this regard, OHCHR recommends that:

- the NA immediately extend its full cooperation to the Nepal Police in its investigation into the torture and death of Maina Sunuwar, including granting unimpeded access to the officers named as alleged perpetrators in the FIR, access to the burial site for purposes of exhumation and access to all NA documentation related to the case;
- the NA immediately provide all documentation requested by OHCHR, including documents relating to the Court of Inquiry Board and Court Martial;
- the Home Ministry immediately issue a directive instructing the Nepal Police to continue with its investigation into Maina Sunuwar's alleged torture and death with the full cooperation of all government institutions and the NA, including the exhumation of the body;
- the Nepal Police carry out a full investigation in the Maina Sunuwar case, including the exhumation of the body in accordance with international standards and best practices, so that those responsible for her torture and death are brought to justice in a timely fashion. OHCHR has offered to make experts in forensic anthropology available to the Nepal Police to assist them in exhuming the body but has yet to receive a formal request from the NP to enable it to proceed.

In a meeting with OHCHR's Officer-in-Charge in September, the Chief of Army Staff gave assurances that OHCHR would have access to relevant documentation and that "justice should run its course" in the case of Maina Sunuwar. OHCHR hopes that these assurances will result in the immediate provision of all requested documentation to

³ These standards have recently been reaffirmed by the United Nations Commission on Human Rights: "The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court." (See principle 29 in E/CN.4/2005/102/Add.1 and CHR resolution 2005/81)

OHCHR, and in the NA immediately removing all present obstacles to the police investigation so that those responsible for the torture and death of Maina Sunuwar may be brought to justice.