



## **Investigating Allegations of Extra-Judicial Killings in the Terai**

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### **OHCHR-Nepal Summary of Concerns (July 2010)**

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## Investigating Allegations of Extra-Judicial Killings in the Terai OHCHR-Nepal Summary of Concerns (July 2010)

### I. Issue

Since the signing of the Comprehensive Peace Agreement in November 2006, one of the greatest challenges for the Government of Nepal has been to maintain public security. This has not been easy in a country where police posts and government offices were displaced for many years as a result of the conflict. In the Terai in particular, non-state armed groups have taken advantage of this law and order vacuum, and have engaged in killings, abductions, threats and extortion. This has taken a severe toll on local communities, and also on the morale of the police. In response, the Government of Nepal has increased its police presence in the Terai and expanded the roles of the paramilitary Armed Police Force and the Nepal Army (in the context of national parks), without a corresponding increase in support to and reform of the civilian police and criminal justice system. There are preliminary indications that violent criminal activity has decreased since the Government began implementation of its Special Security Plan in 2009<sup>1</sup>. Though the Plan incorporates a commitment to protecting human rights,<sup>2</sup> credible allegations of unlawful killings have continued to surface, most of which, according to information received by OHCHR, have gone uninvestigated.

OHCHR supports government efforts to counter criminal activity, increase public security and enhance respect for the law, but stresses that these initiatives should be consistent with international human rights standards and the Interim Constitution. Unfortunately, over the years, OHCHR monitoring teams have documented a troubling pattern in which the security forces resort to the use of excessive and sometimes unwarranted lethal force during their operations. Drawing on OHCHR's monitoring experience, this summary of concerns attempts to identify problems of law, policy and practice that contribute to persistent allegations of extra-judicial killings, and the failure to fully investigate such allegations. It provides a tool to address extra-judicial killings with concrete and specific recommendations developed in consultation with or building upon the work of partners including members of civil society organizations, the National Human Rights Commission (NHRC), the Office of the Attorney General, and police personnel at the regional and district levels. The summary of concerns was developed with the cooperation of the Nepal Police and Armed Police Force Human Rights Cells, and formal comments on a draft version were received from the Nepal Police, Armed Police Force, NHRC, Office of the Attorney General and the Nepal Army. OHCHR believes that strong and effective policing can best be achieved by respecting international human rights standards.

### II. Background

According to the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, an extrajudicial killing may be defined broadly as any killing that violates international human rights or humanitarian law, including "unlawful killings by

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<sup>1</sup> The Government of Nepal (GoN) introduced the Special Security Plan (SSP) at the end of July 2009. The GoN claims that the SSP was prepared in the context of a deteriorating public security situation in order to effectively maintain peace and security, to end impunity, and to protect human rights. It sets the objects of 1) protection and promotion of human rights, 2) guarantee of (public) security through full implementation of laws and strengthened security forces, 3) end impunity by holding law-breakers accountable, 4) easy access of citizens to essential services, 5) rebuild public confidence (in the Government) by awareness programs and security management. 6) increase public partnership in security management.

<sup>2</sup> Section 6 of the Code of Conduct associated with the Special Security Plan makes reference to human rights, but is inadequately detailed to serve as a set of operational guidelines.

the police”, “deaths in military or civilian custody” and “patterns of killings by private individuals which are not adequately investigated and prosecuted by the authorities”.<sup>3</sup> While there are many examples of killings by armed groups and criminal gangs that remain uninvestigated (and should be investigated if impunity is to be effectively addressed), this summary of concerns will focus exclusively on allegations that the security forces have used unlawful force during their operations resulting in the unlawful deaths of private individuals. Under international human rights law, the use of lethal force by security forces and other government agents is legal only if it is required to protect life and there is no other means, such as capture or nonlethal incapacitation, of preventing that threat to life. Therefore, this report will in particular address allegations that a death occurred after an individual was taken under the control of Nepal Police, Armed Police or Nepal Army personnel, or that an individual was killed during a security forces’ operations at a time when the person did not pose a serious threat to life and where other means for law enforcement were available. These allegations often contradict official accounts that the individual died as a result of cross-fire during an encounter. The summary of concerns will not cover deaths alleged to have resulted from the excessive use of force during demonstrations, *bandhs*, and protest programmes, though many recommendations will also be relevant to such incidents. The summary of concerns does not take a position on the truth or falsity of particular allegations, but calls on the authorities to fulfill their obligation to impartially and independently investigate them.

The practice of killing or disappearing suspected insurgents either during the process of apprehending them or after taking them into custody was common during certain periods of the conflict.<sup>4</sup> These killings were often justified as an unavoidable consequence of cross-fire, and labeled “encounter killings”. Although the number of individuals killed by the security forces dramatically decreased after the signing of the peace agreement, there have continued to be an alarmingly high number of allegations of deaths in custody, or deaths of individuals during “encounters”. Many of these deaths have occurred in the context of a more aggressive policing policy in the Terai districts where criminal activity by armed groups is a serious problem.

Between January 2008 and June 2010, OHCHR received reports of thirty-nine incidents, resulting in fifty-seven deaths, which involved credible allegations of the unlawful use of lethal force. All but two of these incidents are alleged to have taken place in the Terai districts of the Eastern and Central Regions. Non-governmental human rights organizations have reported even higher numbers of alleged extra-judicial killings.<sup>5</sup> Of the reports received by OHCHR, most of the victims have been Madheshi men, between 20 and 30 years of age, although OHCHR did not find evidence that victims were targeted because of their ethnicity. In one case, the victims included women and children. First Information Reports initiated by relatives of those killed have been registered in very few cases. In several cases, the police claim to have initiated their own investigations. However, none of those investigations have resulted in serious disciplinary or criminal action against the alleged perpetrators.

Allegations of extra-judicial killings are not new, and human rights organizations have raised many serious cases with the authorities during the past several years. However, in the context of the Government’s commitment to implement its Special Security Plan

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<sup>3</sup> *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the situation in the United States of America* (26 May 2009), A/HRC/11/2/Add.5, par. 3.

<sup>4</sup> *Investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu, in 2003-2004*, OHCHR-Nepal (May 2006); *Conflict-related Disappearances in Bardiya District*, OHCHR-Nepal (December 2008).

<sup>5</sup> For instance, the Informal Sector Service Center has reported that during the first six months of 2009 alone, 20 individuals have been killed by security forces <[www.insec.org.np/pics/1247468044.pdf](http://www.insec.org.np/pics/1247468044.pdf)>. Advocacy Forum has also received reports of 12 incidents of possible extra-judicial killings between February and December 2009 <[www.advocacyforum.org](http://www.advocacyforum.org)>. The Democratic Freedom and Human Rights Institute (DFHRI), in a June 2010 report, documented allegations of 73 killings by security forces between March 2008 and June 2010 <<http://dfhri.org>>.

and in view of the intense political pressure being placed upon security personnel in the field to take action against suspected armed group members, OHCHR believes that it is an especially important moment to address the human rights implications of special security operations, and to establish as swiftly as possible an independent mechanism, such as a police complaints commission or special unit, to investigate allegations of wrongdoing. Addressing the systemic problems identified in this summary of concerns is not only likely to help prevent extra-judicial killings, but also decrease the number of false or politically motivated allegations made against members of the security forces.

### **III. Relevant International and National Legal Standards**

Extra-judicial killings are a violation of the right to life as guaranteed in Article 6 of the International Covenant on Civil and Political Rights (ICCPR). As a party to the ICCPR, the Government has an obligation to ensure that every individual has the right to life and security, that this right is protected by law, and that no person is arbitrarily deprived of his or her life (article 6). It is therefore required to ensure the right to life and to take appropriate measures to deter, prevent, investigate, prosecute and punish perpetrators where violations occur. To this end, as stated in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>6</sup>, which outline the relevant international human rights principles, law enforcement officials must as far as possible apply non-violent means before resorting to the use of force. Whenever the lawful use of force is unavoidable to deter a threat to life, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Principle 9). The mere attempt to escape arrest by a person alleged to have committed a crime cannot justify the use of lethal force. According to the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions<sup>7</sup>, government action to maintain "internal political stability... may not be invoked as a justification of such executions." (Principle 1). The responsibility for extra-judicial killings, like other violations of international law, extends to those in positions of command responsibility (Principle 19). Where lethal use of force by law enforcement officials occurs, international human rights law requires this to be thoroughly investigated and that those responsible for unlawful actions be prosecuted. International law requires that investigations are effective, comprehensive and independent, as well as prompt and transparent. With regard to the rights of victims, article 2.3 of the ICCPR requires (a) that any person shall have an effective remedy; (b) that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State; (c) that the competent authorities shall enforce such remedies when granted. Various other provisions in international instruments require equal and effective access to justice, including the provision of effective remedy and reparations.

The failure of state authorities to take action to prevent extra-judicial killings, or to hold individuals accountable for them also constitutes a violation of Nepali law and regulations, including the Interim Constitution's protection of the right to live with dignity.

While in many respects, existing national laws and procedures are adequate and in line with international human rights law, provisions in the current legal framework which allow, or even encourage, the use of violence must be addressed. For instance, provisions of the Local Administration Act (1971) and National Parks and Wildlife

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<sup>6</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>7</sup> Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

Conservation Act (1973) permit the use of lethal force for the protection of government property or wildlife, both situations where lethal force it is not justified under international human rights standards. The procedures for conducting an internal investigation set out for the Nepal Police in the Police Act (1955) and Police Regulation (1992), and for the Armed Police Force in the Armed Police Act (2001) and Armed Police Force Regulation (2003) are insufficient to ensure independent and impartial investigations. Special court systems envisaged by the Police Act (1955) and Armed Police Act (2001) do not include the excessive use of force against civilians as an offence.

#### **IV. Issues Identified**

The allegations referred to in this summary of concerns, and illustrated by the cases included in the appendices, follow a similar pattern: police receive information regarding the location of a criminal suspect and conduct either an operation during which the suspect is shot, or in some cases, the suspect is killed after having been taken into custody. During its monitoring activities, OHCHR has identified a number of factors contributing to the failure to properly investigate allegations of unlawful killings. These factors include political and public pressure upon the police, lack of access to justice for victims, an absence of credible internal accountability mechanisms within security and law enforcement structures, as well as gaps and weaknesses in the existing legal framework.

##### **A. Underlying Causes: Public Insecurity and Police Investigation**

###### **a. The effects of widespread public insecurity**

In recent years, throughout Nepal but specifically in the Central and Eastern Terai, the public has been confronted with murder, extortion, abductions and robbery by criminal gangs and armed groups. A continuing failure to take action to curb the criminal activities of these groups has created a widespread sense of vulnerability among rural communities in which there has traditionally been a minimal police presence. With the reintroduction of police in the communities and on border security posts in these areas, local government has come under substantial pressure by communities to take action. In the aftermath of an allegation of extra-judicial killing, police personnel sometimes justify their actions by pointing to the pressure directed at them by community members, especially by politically affiliated persons. Very often this pressure is real, and on occasion community members have come out in support of strong-arm tactics, and against investigations into suspicious incidents. Public information campaigns to educate the public on due process and the rights of criminal suspects are almost non-existent in these parts of the country. A broader understanding of the role of the police both in providing public security and enforcing the rule of law could help to reduce pressure at the local level.

###### **b. Political interference as a disincentive to conduct thorough investigations**

Police personnel in the field consistently complain that in addition to community pressure, well-connected political actors, including local leaders of the political parties, regularly interfere with police investigations resulting in the release of criminals who would otherwise be charged and sentenced for their activities. There is evidence that this pressure has acted as a disincentive for the police to follow normal legal procedures. There is a danger that officers may choose to use excessive force during an arrest rather than detaining suspects and subsequently being faced with a situation in which they will receive pressure from political leaders to release the individual concerned. At the

national level, the Council of Ministers has previously ordered the withdrawal of serious criminal cases, including rape and homicide. Pressure to take decisive and sometime extra-legal action against armed group members has also come from within the police itself, and senior police officers have gone on public record advocating the use of lethal force against suspected armed group members. Lower-level officers are often under pressure not to investigate cases in which excessive force is alleged to have been used by the police or members of other branches of the security forces, such as Nepal Army personnel patrolling national parks or reserves.

## **B. Access to Justice and Barriers to Legal Accountability**

### **a. Refusal to file First Information Reports**

In many cases, the police have refused to file First Information Reports (FIR) submitted by the relatives of a victim of an alleged extra-judicial killing. In other cases, family members decide not to file an FIR out of fear that the local police responsible for the investigation – or colleagues of the accused police officers– may retaliate against them. In the case of Jamuna Singh (Case Study #1, Appendix A), the police even initiated an investigation against the family member of a victim apparently to deter the family from filing an FIR against the police personnel involved. In the case of the killings by Nepal Army personnel in Bardiya National Park (Case Study #7), the authorities pressured family members not to seek criminal accountability for the deaths of their relatives. Police commanders in controversial cases sometimes take the position (which has no legal basis) that an investigation cannot proceed without an outside request to register an FIR. In a handful of cases, the police have registered FIRs after intervention from the courts, victims' lawyers, or human rights organizations. Police registered FIRs in the case of Manoj Patel (Case Study #2) only after being ordered to do so by an Appellate Court. The pattern of refusing to register FIRs is so widespread that it appears to have become unofficial policy to avoid scrutiny of allegedly unlawful police action – despite the fact that police are under an obligation to investigate all such allegations whether or not an FIR has been lodged.

### **b. Cover-up of incidents: "Encounter Killings"**

When OHCHR and other human rights organizations raise allegations of extra-judicial killings with police and civilian authorities, a common response is that the killings took place in an "encounter" with armed criminal groups during routine police operations. While there are no doubt cases in which this is true, the authorities almost always use this as a justification for not conducting an investigation into the circumstances of the deaths. In these cases, the police may conduct what they term a "spot investigation" and register the incident as an "accidental death", a designation which is then used to justify forgoing a full investigation. Some police investigators have interpreted Number 20 of the Homicide Chapter of the Country Code (*Muluki Ain*) which prohibits prosecution of homicide after two years (where no complaint is filed) as justification for keeping back possible extra-judicial killing files for up to two years before forwarding them to the public prosecutor for dismissal.

In a number of cases monitored by OHCHR, the version of events provided by police is contradicted by eye-witness testimony as well as evidence collected by the police themselves, and *post mortem* data. In very few cases of alleged extra-judicial killings, even those which officials claim were the result of a firefight between police and armed groups, did police officers receive firearm-related injuries. In several cases documented by OHCHR, suspects and witnesses have accused the police of planting weapons on a body after the fact to justify a killing. These allegations are often difficult to rebut due to poor record-keeping and insecure storage of weapons confiscated during police action.

This is not to say that police personnel do not work under extremely difficult and insecure circumstances. As outlined above, Police are entitled to use lethal force in self-defense in life-threatening situations if there are no other means of defense. However, there is sufficient evidence to suggest that in many cases of "encounter killings", police operations could have led to a lawful arrest, rather than a death.

**c. Independence and impartiality of police investigations**

Criminal procedure in Nepal generally requires FIRs to be registered at the police office nearest to the place where a criminal incident is alleged to have occurred. This tends to be the practice even when the police themselves are alleged perpetrators. In many cases, the investigating police work from the same police office as the individuals whom they are meant to be investigating. This raises concerns that these investigations are neither independent nor impartial. For instance, in one case in Dhanusha District, in which a police officer shot and killed a man at point blank range in front of many witnesses, a Nepal Police Special Court established by the Chief District Officer only investigated the minor offence of the police officer's loss of control over the weapon and did not investigate whether it was excessive use of force that led to the man's death. In contrast, Nepal Police investigations into extra-judicial killings alleged to have been committed by Nepal Army personnel in Chitwan National Park have shown that where Nepal Police investigators are not investigating their own peers, they can do a thorough and professional job (though non-cooperation by the Army remains a major obstacle).

In addition to the obvious conflict of interest of police investigating their colleagues in the same district, there is evidence to suggest that such investigations are sometimes tainted by deliberately poor or coercive investigative techniques. In several cases documented by OHCHR, police have filed poorly reasoned investigative reports classifying alleged extra-judicial killings as accidental deaths. Poor documentation of *post mortem* examinations – which sometimes does not even indicate entry and exit wounds – further compounds the difficulty of making an accurate assessment of allegations, and contributes to a perception that the authorities lack commitment to a full and thorough investigation. In other instances, witnesses claim to have been coerced into signing blank papers, which were later completed and used as exculpatory evidence in support of the perpetrator. Others were threatened not to speak with human rights organizations. Even when completed, the results of such investigations are rarely made public or shared – even with the district authorities themselves.

**d. The supervisory responsibilities of prosecutors and courts**

Nepali law, including the Interim Constitution, gives the Office of the Attorney General and public prosecutors the authority to supervise the conduct of police investigations, including ensuring that FIRs are accurate and actionable. According to the Office of the Attorney General, the Government Cases Act (1992) permits public prosecutors to provide direction to police officials only after a preliminary report has been submitted. As set out above, in cases which the police label as 'accidental deaths', district police sometimes hold case files for up to two years before forwarding them to the prosecutor's office, at which point it is difficult to conduct an effective investigation.

Overall, OHCHR investigations suggest that prosecutors are reluctant to intervene in police investigations especially when they involve allegations of police involvement in unlawful killings. OHCHR has not documented any cases in which the public prosecutor's office has intervened to ensure that investigations were thorough and complete. This supervisory function is an essential safeguard to deter the manipulation or falsification of evidence. Proper exercise of this supervisory power can also help make police less vulnerable to pressure from both the community and political actors seeking to obstruct an investigation.



In cases in which judges have chosen to scrutinize police investigations pursuant to their writ jurisdiction, they have sometimes returned the case to the police for further investigation, or with an order to register FIRs in controversial cases. Even then, the police have not always complied. In the case of Jamuna Singh, for instance, the police claimed to have appealed an appellate court order compelling them to register an FIR to the Supreme Court without filling the FIR., thereby disregarding the binding effect which the appellate court order retains until the Supreme Court issues any further decision. Judicial oversight may also play a role where the police are making their best efforts to investigate a case but have been unable to secure the cooperation of other state institutions, such as the Nepal Army.

**e. Vetting and promotion**

In some cases, police officials against whom there are credible allegations of involvement in extra-judicial killings have been promoted, rather than investigated. In one case in which an investigation was introduced, a Deputy Superintendent of Police in a district where extra-judicial killings were reported was subsequently nominated for participation in a UN peacekeeping operation and promoted despite a pending case implicating him. His deployment was subsequently blocked by the UN because of the allegations of his involvement. The fact that the Nepal Police has not only shown reluctance to investigate allegations against its officers, but has actively promoted them, risks sending a message to officers and the general public that serious violations of human rights such as extrajudicial killings are condoned by the Nepal Police leadership.

**C. Non-cooperation by the Nepal Army**

Six of the deaths documented in this report are alleged to have resulted from the use of unlawful force by Nepal Army personnel while patrolling in Bardiya and Chitwan National Parks, and the Parsa Wildlife Reserve. Army and National Park officials have justified the killings by claiming that the victims were poachers killed by Army personnel in self-defence. There is evidence in all of these cases casting doubt on these claims, and warranting an independent investigation. In these cases, the Army has not cooperated with police investigations, including by failing to make personnel available to the police for questioning. In a Bardiya National Park case (Case Study #7), in which three women including a 12-year-old child were killed, Army and National Park officials played an active role in obstructing criminal accountability by pressuring the families of the victims to withdraw criminal complaints. The Army continues to withhold its cooperation despite language in the revised Army Act that puts the investigation and prosecution of such cases clearly under the jurisdiction of the civilian authorities. These cases also highlight weaknesses in the National Parks and Wildlife Conservation Act, which appears to permit the use of firearms in situations where there is no immediate threat to life.

**D. The Role of the National Human Rights Commission**

The National Human Rights Commission (NHRC) has an important role to play in preventing extra-judicial killings from taking place. As a constitutional body, the NHRC has a strong mandate and powers, including the power to summon senior officials for questioning and to issue recommendations to the Government. The NHRC has confirmed that it has completed investigations or is actively investigating at least fifteen of the thirty-nine cases documented in Appendix C. Of these, it has issued recommendations in five cases. According to the NHRC, it has initiated action into all cases registered at any of its offices.

Since the signing of the Guidelines of Cooperation between the NHRC and OHCHR in February 2009, OHCHR has been formally referring cases of extra-judicial killings to the NHRC. However, investigations appear to have been initiated into only a few of these

cases, due at least in part to lack of resources, a backlog of cases and ineffective case management systems. Where investigations have been undertaken, the NHRC has sometimes been reluctant to publicize or share its findings. For instance, in a 2008 case in which the NHRC's Eastern Regional branch conducted a thorough investigation of extra-judicial killings in Saptari District, a decision has apparently been made but remains unpublished (Case Study #3). In the case of Jamuna Singh, more than two and a half years have elapsed since an investigation was initiated, and the NHRC has yet to publicize its conclusions.

Where the NHRC has issued public recommendations, including in the cases of Jitendra Tiwari (Case Study #4), Manoj Patel, and others, the Government has consistently failed to implement them despite public commitments to do so. Indeed, none of NHRC's public recommendations relating to these cases have been fully implemented by the Government. When it has agreed to implement NHRC recommendations, the Government has focused exclusively on financial compensation rather than criminal investigation and prosecution. In cases where the NHRC has recommended that criminal action be taken, the Office of the Attorney General, which has ultimate responsibility to initiate prosecutions, has not done so. This pattern of non- or partial implementation damages the credibility of the NHRC, and calls into question the commitment of the Government. It also limits the NHRC's ability to effectively act as a deterrent to prevent future violations.

## **V. Conclusions and Recommendations**

In Nepal, the activities of criminal armed groups and political organizations advocating the use of violence have created a serious public security problem, particularly in the Eastern and Central Terai regions. Unfortunately, efforts by the Government to improve public security have been marred by allegations of unlawful killings by some members of the security forces. Though most civilian and police authorities deny that this is happening, many such cases have been reported and documented in the past two years.

While a pattern of violent crime may at times justify urgent action, such as an increase in police presence, more aggressive police tactics, or the extension of the mandate of bodies such as the Armed Police Force, this should not be done at the expense of the highest level of human rights standards to which Nepal aspires and of building the capacity of the Nepal Police and the criminal justice system primarily responsible for investigating incidents of violence. Treating the armed group threat as a terrorist threat to be dealt with by para-military means risks contributing to the militarization of policing in the Terai, at a time when the criminal justice system, including police with an independent investigative capacity, is in desperate need of support and development.

This report suggests that many of the problems underlying the resort to, and lack of accountability for, extra-judicial killings are systemic. They require amendments to law and policy that can only be made by the government or through the legislative process. But the main problem – the culture of impunity that pervades the security forces and erodes public confidence in the government – can be addressed by taking prompt action against any individuals *potentially* implicated in unlawful killings until a proper judicial process is undertaken, or until the framework for an independent government body empowered to investigate these allegations can be established.

Based on the monitoring and analysis presented in this report, OHCHR makes the following recommendations:

### *To the Office of the Prime Minister and the Ministry of Home Affairs*

- Take immediate steps to fulfill the government's obligations to fully investigate all allegations of the use of extra-judicial killings in the context of the current Special Security Plan, as well as past and future security operations;

- Establish external oversight mechanisms, such as an independent police complaints commission or special investigative unit to investigate and prosecute crimes allegedly committed by state actors. This will protect suspects, but also police officials from false accusations;
- Ensure that any such oversight mechanism is *inter alia* mandated to receive and investigate complaints from the public, empowered to refer cases for criminal prosecution and departmental action, both operationally independent, adequately resourced, and required to issue regular reports to the government and the public.
- Adopt measures to support and protect witnesses as well as victims and their family members;
- Adopt concrete measures to ensure full implementation of National Human Rights Commission recommendations and Supreme Court decisions in cases involving allegations of extra-judicial killings, including the recommendations on the support for victims and witnesses;
- Make public past reports of government commissions formed to investigate allegations of extra-judicial killings;
- Adopt measures to ensure rigorous vetting of all security forces personnel before they are promoted or nominated for United Nations Peacekeeping duties;
- Give clear instructions to the Nepal Police that they should register First Information Reports relating to unlawful killings, irrespective of who the alleged perpetrators are;

#### *To the Nepal Police Command*

- Ensure prompt, thorough and impartial investigations into allegations of extra-judicial killing brought to its attention through the establishment of an independent investigation – not involving police personnel within the same chain-of-command as the alleged perpetrators;
- Take immediate departmental action, such as suspension from service, against any individuals against whom there are credible allegations of involvement in the use of unlawful force resulting in a death until they are cleared by an independent and impartial investigation;
- While respecting the privacy rights of the officers concerned, make public internal disciplinary action taken for violations of police procedure relating to extra-judicial killings – including interfering with ongoing investigations such as the falsification of documents and the intimidation of witnesses;
- Revise policies and procedures to ensure that weapons seized during arrests are properly stored and documented, and that 'accidental death' provisions of the law are not misused in cases where serious allegations exist;

#### *To the Office of the Attorney General*

- Direct the prosecuting attorneys to vigorously exercise appropriate supervisory authority over police investigations into allegations of extra-judicial killings;
- Establish a special investigations and prosecutions unit, under the leadership of a special prosecutor with functional autonomy within the Office of the Attorney General. The unit should be comprised of competent and impartial trained staff, to conduct prompt and thorough investigations into alleged crimes by state actors, including extra-judicial killings;

*To the National Human Rights Commission*

- Continue to investigate all allegations of extra-judicial killings, including those referred to NHRC pursuant to the Guidelines of Cooperation agreed upon with the OHCHR;
- Exercise its constitutional powers to investigate allegations of extra-judicial killings, including the power to summon senior officials for questioning;
- Make public the conclusions and recommendations of past NHRC investigations into extra-judicial killings, and use all means to advocate for the full implementation of the recommendations by the government, including initiation of criminal prosecutions;

*To the Legislature-Parliament*

- Amend the existing provisions of the Local Administration Act and National Parks and Wildlife Conservation Act to ensure that they are consistent with international obligations not to use lethal force unless there is an immediate threat to life;
- Make efforts to ensure that the proposed Penal Code and Criminal Procedure Codes address the issues set out in this report – including by specifically criminalizing the unjustified use of lethal force, and obliging the authorities to register and investigate FIRs in cases of alleged extra-judicial killing;

*To the Nepal Army Command*

- Cooperate with police investigations into alleged extra-judicial killings involving Nepal Army personnel in national parks and reserves, including making personnel available to the police in ongoing investigations;

*To the Judiciary*

- Continue to exercise oversight as appropriate, including through issuing *mandamus* orders, to ensure that the police comply with their responsibilities to register and investigate FIRs;

*To Political Party Leadership*

- Commit to non-interference in the operational activities of the police, prosecutors and judiciary, and publicly denounce and take appropriate action against members who do attempt improper influence or fail to cooperate with police investigations;

*To Armed Groups and their supporters seeking political recognition or responses to their claims*

- Commit to respecting the rule of law, cease advocating violence and engage peacefully with the democratic process;

*To the International Community*

- Commit to providing adequate and broad support to long-term rule of law institutions in Nepal, including earmarked funding for the establishment of an independent police complaints commission and special investigative unit to investigate and prosecute serious crimes committed by state actors;
- Continue to exclude security forces personnel against whom there are credible allegations of involvement in extra-judicial killings from participation in training programmes and UN peacekeeping missions.

## APPENDIX A – Case Studies

The information on the progress of cases was last updated in June 2010.

### CASE STUDY #1: **Jamuna Singh**, Bara District (August 2007)

On 29 August 2007, Jamuna Singh, district commander of the *Janatantrik Terai Mukti Morcha* (Jwala Singh faction), was killed when police allegedly returned fire during a raid in Charmona village in Hardiya VDC-2, Bara District at approximately 03.00 hours. According to eye-witnesses, no such exchange of fire took place. Witness testimony indicated that the victim was shot after being taken into police custody, prior to which Singh had made a phone call pleading for help to a civil society member. The testimony by Nepal Police officers involved in the incident contained substantial contradictions.

On the basis of its own investigation into the killing, OHCHR wrote to the Inspector General of Police in November 2007, expressing serious concern and recommending a full criminal investigation. OHCHR also recommended that the investigation team be sent from police headquarters, and include members from the judicial and prosecutorial services. In reply, the Nepal Police responded that a five-member team from the Nepal Police Regional Office, Hetauda, Makwanpur, would conduct an investigation into the incident. The team concluded that there had not been an extra-judicial killing. In fact, the investigation seems to have been based exclusively on available police information. OHCHR has asked for details of the internal investigation report, but to date the police have refused to make this information available.

The police did file an incident report in which it was alleged that Jamuna Singh was killed in an encounter. The prosecutor did not question the police's version of events despite evidence pointing toward the need for further investigation. As a result, the case in the district court did not move forward.

A family member of Jamuna Singh also tried to lodge an FIR for the killing at the District Police Office (DPO), Bara District, but the police refused to register it. He subsequently filed a writ petition with the Appellate Court in Hetauda, Makwanpur. On 26 December 2007, the Court issued an order to the district and the zonal police offices demanding that they furnish, within 15 days, the reasons why the FIR had not been filed.

On 6 August 2008, the Appellate Court in Hetauda issued a *mandamus* order instructing the District Police in Bara to accept the FIR from the victim's family and reopen the investigation. The Nepal Police Legal Department then reportedly recommended to the Bara DPO that it implement the Appellate Court's decision. However, on 2 April 2009, the Superintendent of Police in Bara District informed OHCHR that the District Police had appealed the decision of the Appellate Court. However, according to the Supreme Court, no such appeal has been registered. Although the decision would remain binding until the Supreme Court issues a stay order, the DPO has refused to file the FIR.

According to the NHRC, the case remains under investigation.

CASE STUDY #2: **Manoj Patel, Bhom Chaudhary, Rajdev Patel**, Parsa District (Feb. 2008)

On the evening of 1 February 2008, Nepal Police personnel killed three individuals in the course of a police operation in Birgunj, Parsa District. Manoj Prasad Kurmi Patel, Bhom Bahadur Chaudhary and Rajdev Prasad Kurm Patel were suspected of being members of a criminal gang involved in abduction, rape and murder cases.

In its report, the police claimed that the three individuals were killed during an exchange of gunfire between Indian criminals and the police. However, OHCHR collected testimony which suggests that the victims were taken under control by the police in Ramghawa VDC, Parsa District and later killed. In addition, the details of the alleged exchange of gunfire given by the police are inconsistent with reliable testimony from eye-witnesses. Moreover, according to the conclusions of the *post mortem* analysis, all three individuals were shot at medium range (less than 10 meters) from behind and through the chest, which also contradicts the official account of the incident. Despite the alleged intense gunfight, no other injuries to either policemen or villagers were reported.

The police repeatedly refused to register an FIR submitted by one of the victims' relatives until ordered to do so by the Appellate Court of Hetauda on 21 December 2008. The Appellate Court also disqualified the previous police investigation and ordered the police to re-investigate the case. The police finally registered the FIR, but since then, the investigation has not progressed.

By order of the Home Minister, the Senior Superintendent of Police of Narayani Region carried out an investigation but never communicated its findings. As of the drafting of this report, OHCHR had not received any indication that anyone had been arrested, charged or otherwise held accountable for the killings. The NHRC has conducted its own investigation. On 10 June 2008, the NHRC issued recommendations that were never implemented by the government, including to conduct an investigation and compensate the family.

CASE STUDY #3: **Raj Kumar Mandal, Chandeswhor Mandal**, Saptari District (Feb. 2008)

Raj Kumar Mandal *alias* Ranjit and Chandeswhor Mandal, both permanent residents of Saptari District and alleged to be cadres of the *Janatantrik Terai Mukti Morcha* (Jwala Singh faction), were killed by a team of Nepal Police at Belhi Chapena VDC, ward no. 9, on 7 February 2008. Officials from the District Police Office in Saptari subsequently claimed that they were both killed in retaliatory firing by police when they were fired upon by an unidentified armed group. However, local eye-witnesses reported that there was no clash and no exchange of fire. There were no reports of injury to any of the policemen involved.

According to witnesses, both of the victims were arrested from a tea stall near the scene of the incident by a group of seven to eight police personnel in plain clothes. They were taken 300 metres west of the tea stall to a grove which leads to a downhill field from where a few shots were heard by locals. The dead bodies were taken to the District Police Office after dark. Several witnesses also implicated Armed Police Force personnel in the incident, a claim denied by both the Armed Police Force and the Nepal Police.

The NHRC initiated an investigation, but there was a lack of cooperation from the police. An investigation report was subsequently submitted to NHRC headquarters for further action. A decision on the case has apparently been taken, but has not been made public.

CASE STUDY #4: **Jitendra Tiwari**, Parsa District (June 2008)

Jitendra Tiwari, a member of the armed group *Akhil Terai Mukti Morcha*, was arrested by the Nepal Police on 5 June 2008 in Birgunj, Parsa District, and allegedly killed a day later in Piparpatey VDC, Gabdi, Bara District.

Police claimed that the victim was killed during an exchange of gunfire after a police patrol was attacked by a group of criminals. However, testimony from eyewitnesses suggests that the victim was arrested by the police in Birgunj near the place where he was renting a room. Moreover, the *post mortem* analysis showed markings on the hands and ankles of the victim indicating that the victim had been tied up before he died. In addition, the details of the alleged exchange of gunfire given by police witnesses are inconsistent with those given by civilian and other police witnesses.

The victim's family, fearing reprisals by the police, only attempted to file an FIR in January 2009. However, as of the drafting of the present report, the police had refused to register an FIR in the case. The police deny having received an FIR from the family despite evidence to the contrary. They have not proceeded with an investigation into the case, and no-one has been arrested, charged or otherwise held accountable for the killing.

CASE STUDY #5: **Ram Narayan Mahato**, Siraha District (July 2009)

Ram Narayan Mahato *alias* Manager Mahato, a 29-year-old resident of Siraha District, Kashaha VDC, was allegedly a leader of an armed group known as the Madhes Rastra Janatantrik Party. He was allegedly killed in a police operation in Hakpada VDC on 19 July 2009. OHCHR received information that Mahato had been arrested by Indian police on 18 July at 4pm from Jainagar in Madhubani District of Bihar in India, and was handed over to Nepal Police of Siraha District. He was later found dead. The source raised concern that Mahato might have been killed by the police.

When the NHRC and OHCHR brought the report to the attention of the Superintendent of Police and Deputy Inspector General of the Eastern Region, they denied the allegation that Indian police had arrested and handed the individual over to Nepal Police. They instead insisted that Mahato had been killed when he opened fire on a Nepal Police patrol and the police fired back. Local human rights defenders claim that their inquiries unearthed no sign of any encounter between the police and the victim.

An NHRC investigation reportedly produced no evidence of a firefight at the location alleged by the police, and found that police had made villagers sign a piece of paper without proper explanation. The *post mortem* analysis confirmed that the death was due to gunshot injury. No official police investigation has been conducted or FIR filed to date. A three-member committee to probe into the case was also formed under the Ministry of Home, and submitted its report. The report has not been made public - even the concerned district authorities are not aware of it.

CASE STUDY #6: **Parshuram Yadav**, Siraha District (July 2009)

Parshuram Yadav was a 32-year-old resident of Siraha District and an alleged member of an armed group known as the Madheshi Mukti Tigers. He died after being shot by Nepal Police on 20 July 2009 while being transferred by police from Kathmandu to Siraha District.

According to the police, the deceased was killed near the Kamala River, in Siraha District, after stopping a police vehicle containing four police, so that Yadav could go to the toilet. Yadav allegedly attempted to snatch a pistol from one of the police, resulting in the gun discharging in Yadav's leg. When Yadav attempted to run away, he was shot in the back. He was taken to the Lahan Hospital where he died. The *post mortem* report confirmed that Yadav died of hemorrhagic shock from a bullet wound.

A group of local human rights defenders investigated the incident and viewed the body. They concluded that there was ample evidence of an extra-judicial killing to warrant an official investigation. The NHRC subsequently informed OHCHR that it had begun an investigation into the death, but has not issued a report or made any recommendations to date. The Nepal Police have not registered an FIR in relation to the case, claiming that a "spot investigation" by the police was sufficient as the incident happened during a police operation. Upon rejection of the FIR, family members of the victim brought a petition to the Appellate Court in Rajbiraj demanding an order of mandamus to register the FIR. The Appellate Court issued a show cause order to the government to furnish a written reply. Officials of the District Police Office have since told OHCHR that they intend to register the FIR.



**CASE STUDY #7: Devi Sara BK, Amrita BK and Chandra Kala BK (March 2010)**

On the evening of 10 March 2010, Nepal Army personnel from the Shree Jwala Dal Battalion shot and killed two *dalit* women (Devi Sara BK, and Amrita BK) and a 12-year-old *dalit* girl (Chandra Kala BK). They were killed while collecting tree bark in the Baspani area within the boundaries of Bardiya National Park. The Army and national park authorities claimed that they were poachers and that the Army patrol shot them in self-defence. Evidence contradicts the claims of the Army and park officials, and suggests that the three were not poachers, and that the killings constituted an unlawful use of lethal force and possibly extra-judicial killings in custody. Army and park officials have refused to cooperate with investigations into the killings, and have actively pressured the families of the victims to withdraw criminal complaints. As of May 2010, no action had been taken against the perpetrators.

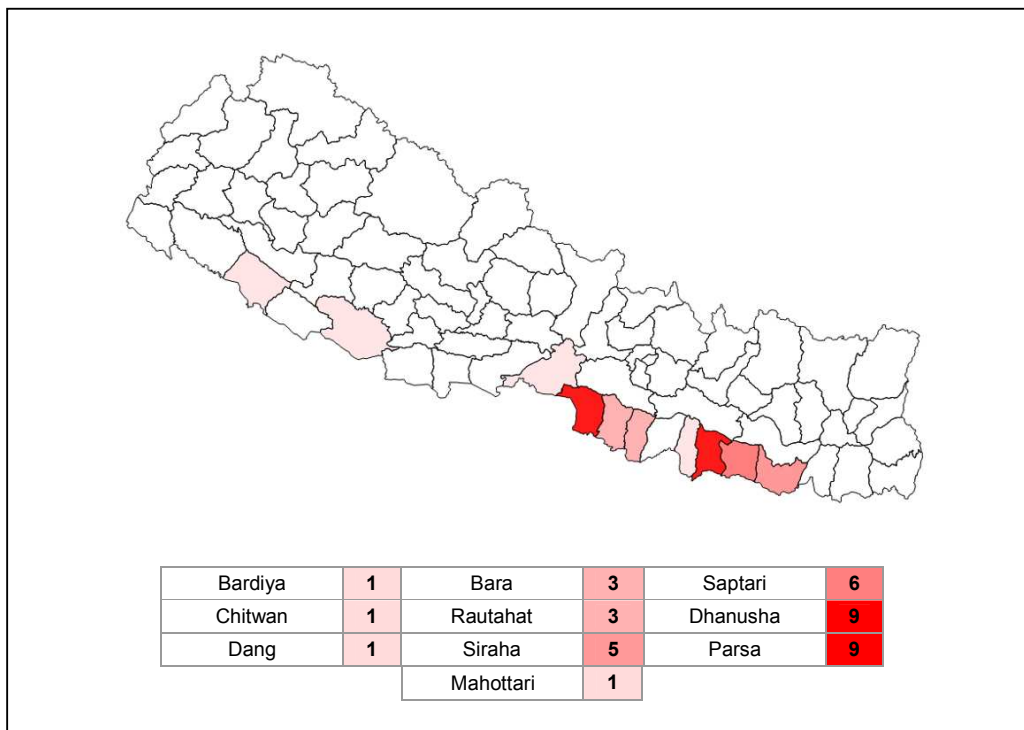
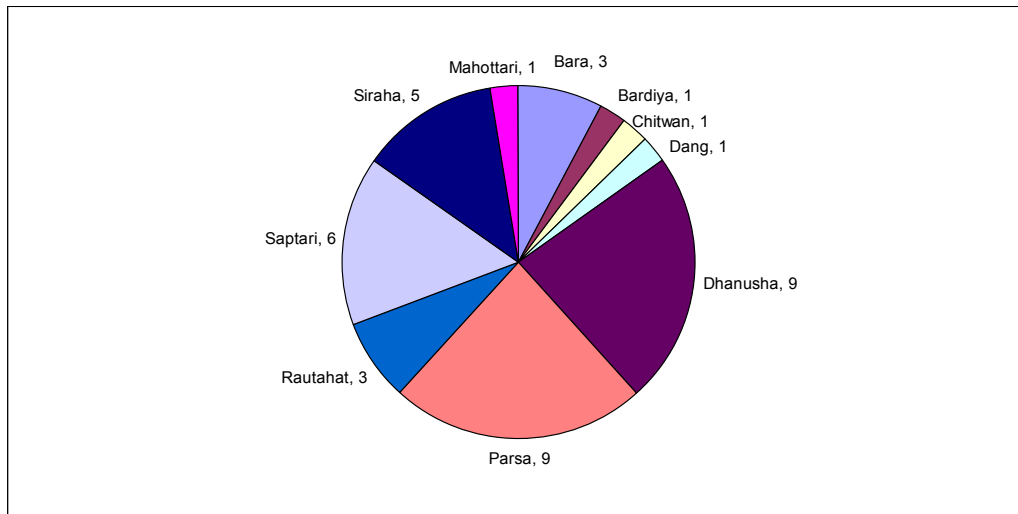
Two FIRs were filed - one on 16 March alleging that the killing was accidental (there is evidence that it was filed as a result of intimidation), and a second on 28 March alleging rape and extra-judicial killing after arrest. The police initiated an investigation into the case, including recovering three pistols from the incident site which were sent for ballistic tests. However, the Nepal Army has not made the weapons used by the patrol available to the police for testing. It has also refused to make the members of the patrol available for questioning. In response to a letter from the Nepal Police, park officials claimed that the deaths of the women were a result of cross-fire, and that a dog was also killed.

The husband of Devi Sara BK, was also arrested from the scene and detained by the National Park Authority for six days. He was released on the seventh day only after signing an agreement not to seek criminal investigation into the case. On 8 April, national park officials entered into an arrangement with the family of one of the victims in which it was agreed that criminal prosecutions would be dropped. There is evidence that the agreement was entered into as a result of undue pressure from park officials and the Nepal Army. Under pressure from human rights organizations and the victims' families, the police acknowledged that despite of the agreement, police have an obligation to fully investigate the case. However, little progress has been made since then and efforts to ensure Nepal Army cooperation have shown no result.

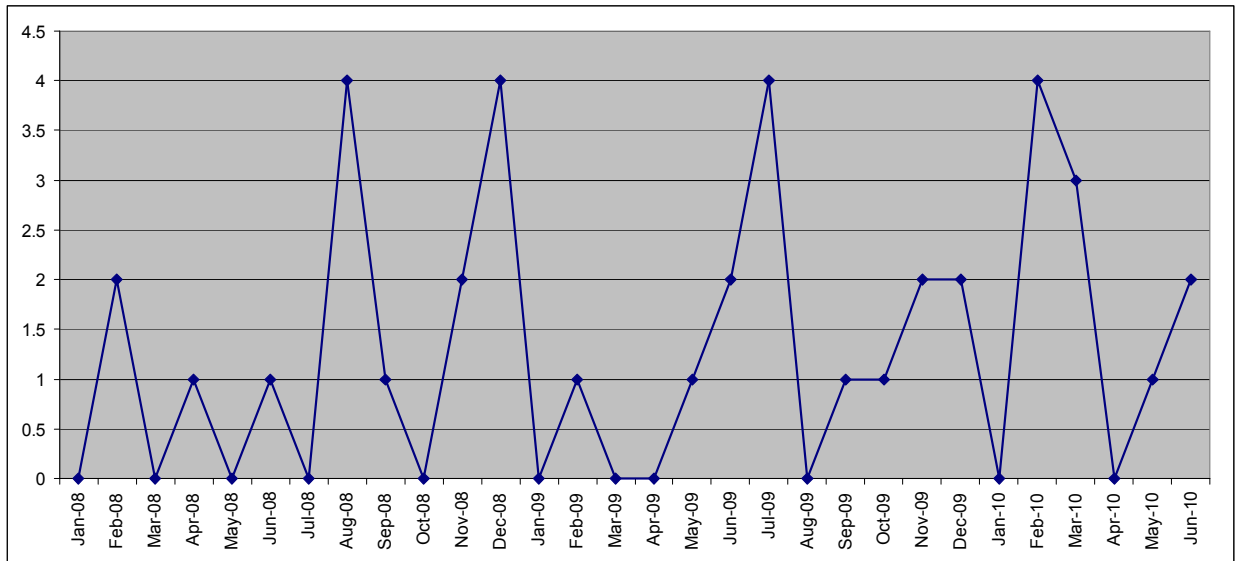
On 22 March, the Army issued a press statement announcing the findings of its internal inquiry, concluding that Army personnel had acted within the law while attempting to take action against poachers. The NHRC also conducted an investigation, concluding that the three were killed as a result of the unlawful use of lethal force. According to its report, the Army was responsible for firing upon the women, who were not engaged in illegal activity, and had attempted to cover-up the incident by re-arranging the bodies. The NHRC recommended criminal investigation and prosecution. A Parliamentary Commission was also formed to look into the case and concluded that the Army had interfered with police investigations.

## APPENDIX B – Chart and Graphs

Allegations of Extra-Judicial Killings, January 2008 to June 2010  
(Number of incidents by district)



Allegations of Extra-Judicial Killings, January 2008 to June 2010  
(Number of incidents per month)



## APPENDIX C – Abbreviated Summaries of Allegations (January 2008-June 2010)

The information on the progress of cases was last updated in June 2010.

1, 2 & 3. **Manoj Patel, Bhom Chaudhary, Rajdev Patel**, Parsa District (February 2008)

- On 1 February 2008, Nepal Police personnel killed Manoj Prasad Kurmi Patel, Bhom Bahadur Chaudhary and Rajdev Prasad Kurmi Patel during the course of a police operation in Birgunj, Parsa District against a suspected criminal gang alleged to have been involved in abduction, rape and murder cases. Witness testimony suggests that the victims were taken under control by the police in Ramghawa VDC prior to their deaths. Despite an order issued by the Appellate Court Hetauda to register the FIR and re-investigate the case, the investigation has not progressed. The NHRC on 10 June 2008 also issued its recommendations, including recommendations to conduct an investigation, take action against the perpetrators and to pay the family NRs 250,000 in compensation. According to the NHRC, their recommendations have not been implemented.

4 & 5. **Raj Kumar Mandal, Chandeshwor Mandal**, Saptari District (February 2008) -

On 7 February 2008, Raj Kumar Mandal *alias* Ranjit and Chandeshwor Mandal, alleged to be cadres of the *Janatantrik Terai Mukti Morcha* (Jwala Singh faction), were killed by a team of Nepal Police at Belhi Chapena VDC, ward no. 9. The District Police in Saptari subsequently claimed that the deaths occurred when police fired in self-defence. Local eye-witnesses reported that there was no clash and no exchange of fire. The Eastern Regional Office of the NHRC initiated an investigation and submitted its report to NHRC headquarters for further action. According to the NHRC, a decision has been made on the case recommending NRs 300,000 to be paid in compensation, but the recommendations have not been implemented. No FIR has been filed. The police report lists the second victim as Chandeshor Sada.

6 to 12. **CPN-M cadres**, Dang District (April 2008) - On 8 April 2008, seven CPN-M cadres were killed and at least 13 injured when APF and NP personnel escorting Nepali Congress candidate Khum Bahadur Khadka opened fire on CPN-M vehicles near Lamahi. The circumstances of the incident suggest that the deaths may have constituted extra-judicial killings. OHCHR found no evidence to support claims that police opened fire in response to fire by armed Maoists, or that there was any imminent threat to life justifying the use of lethal force. Witnesses reported that there was no exchange-of-fire. According to the Armed Police Force, a pistol and three bullets were recovered from the scene. An FIR was registered at the Area Police Office in Lamahi. An investigation commission was established at the central level. Its report has been finalized, but not been made public. The NHRC issued a decision calling for action to be taken against the perpetrators and the provision of compensation, but its recommendations have not been implemented.

13. **Jitendra Tiwari**, Parsa District (June 2008) - Jitendra Tiwari, a member of the armed group *Akhil Terai Mukti Morcha* was arrested by the Nepal Police on 5 June 2008 in Birgunj, Parsa District, and allegedly killed a day later in Piparpatey VDC, Gabdi, Bara District. The police claimed that the victim was killed during an exchange of gunfire after a police patrol was attacked by a group of criminals. Testimony from eyewitnesses and the *post mortem* analysis do not fully support the police interpretation of events. The police deny having received an FIR. NHRC has not registered the case or initiated an investigation.

14 & 15. **Kaushal Kumar Sahani alias "Mr. John", Mahant Sahani**, Rautahat District (August 2008) - On 30 August, the Nepal Police shot two men at the Janaki temple at approximately 3.30am during a police operation. Witnesses claim that they were shot by police after arrest, and that the body had its hands tied behind its back. "Mr John" was reportedly known as a local leader of the Terai Army. The police registered the case as an "accidental death". NHRC has not registered the case or initiated an investigation.

16. **Nagendra Yadav**, Bara District (August 2008) - The victim, alleged to be an *Akil Terai Mukti Morcha* military commander, was reportedly inside a house at 1pm on 20

August 2008 with three other persons when a masked individual entered the house and shot the victim three times, killing him. Nepal Police from the Bara District Police Office reportedly arrived at the scene in two vehicles. Eye-witnesses claim that the masked individuals left the scene in the police vehicles. Family members of the victim made two attempts to file an FIR, requests which they claim were denied by the police. The NHRC has not registered the case or initiated an investigation.

17. **Sone Lal Yadav**, Siraha District (August 2008) - On 14 August 2008, a prison inmate was shot dead while attempting to flee following a jailbreak at the Siraha District Jail. Local human rights defenders and prison inmates alleged that the deceased inmate was detained by jail security outside the prison gates before he was brought inside the prison compound, shot and beaten on his head with the butt of a police rifle. An FIR was filed by the a family member of the deceased on 18 September 2008. A three-member police investigation committee has been formed and an investigation is reportedly ongoing. The NHRC has not registered the case or initiated an investigation.

18. **Mahendra Masrangi Magar**, Parsa District (August 2008) - On 17 August (22 August according to the Nepal Army) 2008, the victim was killed 100m outside of the boundaries of the Parsa Wildlife Reserve by a patrol of five Nepal Army personnel accompanied by officials from the Reserve. According to the Army, at about 5.30 am, an Army patrol encountered two poachers and while warning them to stop, they opened fire and fled away. The patrol chased them and again encountered a man in the forest about 300 meters north from a village, who was shot in self-defence after he pointed a gun at the patrol. Eye-witness testimony suggests that he may have been shot at a time when he did not pose a threat. The police in Parsa appear to have conducted a thorough investigation, but are unable to complete it as the Army has not made their personnel available for questioning despite multiple requests. The Army has declined to share the findings of its own investigation with OHCHR. The NHRC has not registered the case or initiated an investigation.

19. **Khaheru Dewan**, Rautahat District (September 2008) - On the evening of 25 September 2008, the Nepal Police carried out a search of the victim's house following a tip-off but failed to find him. The police stated that a police patrol subsequently searched the jungle area near the victim's home around midnight when shots were fired from the jungle. According to the police, the patrol fired 10 to 12 rounds in response. The following day, the body of Khaheru Dewan was reportedly found in the jungle with one bullet wound to his head, which according to the *post mortem* had been fired from a distance of between 5 and 10 feet away. No FIR was filed nor was an investigation carried out. The deceased was reportedly a leader of the JTMM-JS Muslim Liberation Front for Parsa, Bara and Rautahat districts. The NHRC has not registered the case or initiated an investigation.

20. **Dhurba Narayan Saradar**, Saptari District (November 2008) - A member of the Samyukta Janakranti Party (SJP) was killed in a clash with the Nepal Police in Gamarhiya Parwah VDC-9 in Saptari District on 7 November 2008. Police have claimed that its personnel fired in retaliation after the man fired upon police. No arrests have been made and no injury to police personnel was reported. Local eye-witnesses claim that there was no exchange of fire. No FIR has been filed. The NHRC has not registered the case or initiated an investigation.

21. **Ram Narayan Yadav**, Siraha District (November 2008) - On 22 November 2008, Ram Narayan Yadav, an alleged member of Madhes Rastra Janatantrik Party-Revolutionary, was killed in Bishnupurkatti-7. According to the police, Yadav was shot while attempting to flee following his arrest from his house in Bishnupurkatti-7. According to eyewitnesses, the entry point of the bullet was the stomach. According to the NHRC, it has initiated but not completed an investigation.

22 & 23. **Manoj Kumar Yadav, Suresh Yadav**, Dhanusha District (December 2008) - On 20 December 2008, between 10am and 12pm, police officers allegedly shot and killed two men, who were possibly accompanied by two other men and who may have been

riding on a motorbike. According to the police investigation, the case has been registered as an accidental death and was therefore not subject to a full investigation. The circumstances of the deaths remain unclear.

24. **Bechan Yadav alias "DSP"**, Saptari District (December 2008) – On 5 December 2008, a member of the Madhesi Liberation Tigers was allegedly killed by a joint team of Nepal Police and Armed Police Force. The police claimed that the person was killed when the police fired in self-defense. Four other persons were arrested during the same incident and detained under the Arms and Ammunitions Act. Local sources have claimed that the person was killed after he was taken under control by the police. No FIR has been filed. The NHRC has not registered the case or initiated an investigation.

25 & 26. **Kameshor Mukhiya and 'Malhi'**, Saptari District (December 2008) - On 28 December 2008, two alleged cadres of the Madhesh Rastriya Janatantrik Party-Revolutionary (MRJP-R) were allegedly killed in a retaliatory firing by the police in Kochabakhari VDC. According to the police, police personnel fired after being attacked by the group. Local sources have questioned the police version of events, but no eye-witnesses have come forth. According to the police in Saptari, a policeman in plain clothes was approached by three armed group members who he believed were about to attack him. He fired upon the alleged armed group members, and detained Mukhiya. The other two individuals escaped. Mukhiya was taken to BPKIHS, Dharan for treatment where he died. No FIR has been filed. The NHRC has not registered the case or initiated an investigation.

27. **Indal Kumar Mahato**, Siraha District (December 2008) - On 19 December 2008, an alleged member of the Madhes Rastra Janatantrik Party Revolutionary was killed in a police operation. Two others were arrested with a pistol and ammunition. According to the police, a group of people fired on the police patrol team and the police fired back. No FIR has been filed. The NHRC has initiated an investigation, which has not yet been completed.

28. **Lalan Kumar Yadav alias "Bikrant"**, Saptari District (February 2009) - On 8 February 2009, at approximately 9pm, Lalan Kumar Yadav and two other persons were allegedly having dinner at the house of a third man when a joint Nepal Police and Armed Police Force team arrived asking Bikrant to identify himself. According to local sources, police opened fire without a warning. The Armed Police Force claims that their personnel returned fire in self-defence and that they recovered weapons from the scene. Bikrant sustained two bullet injuries in his back and was allegedly then beaten by police before succumbing to the bullet injury. The Superintendent of Police in Saptari told OHCHR that the investigation would not be completed in the near future, and did not allow access to the police file. No FIR has been filed.

29 & 30. **Udgar Mandal & Gurana Shah aka Santosh Shah**, Dhanusha District (May 2009) – According to witnesses, a group of between five and thirteen men in civilian clothes apprehended two men in Mahadaya VDC-7, Mahottari, tied their hands behind their backs with a cloth towel and covered their heads before taking them by foot to Kurtha VDC. The group stopped on the eastern outskirts of Kurtha-2, in a place where the road is flanked by mango groves and fields on both sides. The two men were then allegedly beaten and shot. An FIR was filed on 25 May 2009 a family member of Udgar Mandal as an accidental death due to cross-fire, though there are indications that he may have signed the FIR under duress.

31. **Ajaya Mandal**, Dhanusha District (June 2009) - Ajay Mandal was reportedly killed on 28 June 2009 in an encounter with a police patrol at Bhutahi Partewa VDC-9. According to the police, between four and six men attacked the patrol with guns and threw an improvised explosive device. The police returned fire, hitting Ajay Mandal four times. He allegedly died on the way to the hospital, though local sources have called this into question. The incident was registered as an accidental death, and a full criminal investigation has not been conducted.

32. **Surendra Mahato**, Dhanusha District (June 2009) - On 7 June 2009, Surendra Mahato was allegedly shot by a police constable during an argument. The exact circumstances of the death remain unclear. The police did not register an FIR by the victim's family, but formed a special police court which concluded that the death was due to an accidental discharge, fined the constable NRs 82,000 for allowing his weapon to be handled by a civilian and allowed him to return to duty. On 3 November 2009, the NHRC issued a decision recommending 300,000 rupees be paid in compensation and that action be taken against the perpetrator. No compensation has been received by the family to date.

33. **Indirajit Ray Bhar**, Parsa District (July 2009) - On 9 July, Indirajit Ray Bhar was killed by a Nepal Army team patrolling inside Parsa Wildlife Reserve. The team allegedly encountered between five and seven suspected smugglers, shooting the victim in the back when he attempted to flee. According to Army and park officials, as the patrol was trying to arrest him, the victim tried to attack them with an axe and was shot a second time, leading to his death. As part of a preliminary investigation, the Nepal Police has requested that the Army give the police access to its officers, which has not happened. The NHRC has also initiated an investigation.

34. **Ram Narayan Mahato**, Siraha District (July 2009) - Ram Narayan Mahato *alias* Manager Mahato, an alleged leader of an armed group known as the Madhes Rastra Janatantrik Party, was allegedly killed during a police operation in Hakpada VDC on 19 July 2009. According to some sources, Mahato had been arrested by Indian police on 18 July and was later handed over to Nepal Police in Siraha District. The police deny that he had been handed over by the Indian police, and claim that he was killed when he opened fire on a Nepal Police patrol. The NHRC and local human rights defenders claim that their inquiries unearthed no sign of any encounter between the police and the victim. The *post mortem* analysis confirmed that the death was due to gunshot injury. No official police investigation has been conducted or FIR filed to date. According to the police in Siraha, a three-member committee was formed to look into the case, and submitted its report to the Ministry of Home Affairs. It has not been made public or shared with district-level authorities.

35. **Parshuram Yadav**, Siraha District (July 2009) - Parshuram Yadav was a 32-year-old resident of Siraha District and an alleged member of an armed group known as the Madheshi Mukti Tigers. He died after being shot by Nepal Police on 20 July 2009 while being transferred by police from Kathmandu to Siraha District. Local human rights defenders concluded that there was ample evidence of an extra-judicial killing to warrant an official investigation. The NHRC has also conducted an investigation into the death, but has not issued a report or made any recommendations to date. The Nepal Police have not registered an FIR, claiming that a "spot investigation" by police was sufficient as the incident happened during a police operation. The issue of the police's refusal to register the FIR is currently before the Appellate Court in Rajbiraj.

36. **Akash Tyagi**, Dhanusha District (July 2009) - Akash Tyagi was allegedly the commander of *Terai Rastriya Mukti Sena* (National Liberation Army of the Terai). Early on the morning of 22 July 2009, he was killed in a police encounter on an isolated road outside of Janakpur. According to the police, three other armed individuals fled the scene. Human rights defenders visited the incident site and found seven bullet shells near a large pool of blood. A sighting of the body suggested that Akash Tyagi had been shot six times. No FIR was filed. An NHRC investigation proved inconclusive.

37, 38 & 39. **Humayu Yadav alias "Bhawani Singh", Likeho Mandal, Jitendra Yadav alias "Jituwa"**, Saptari District (September 2009)- According to the police, three alleged members of the Madheshi Mukti Tigers were killed by police in an 'encounter' in Bairba 6 VDC, Saptari District on 25 September. Other sources have called into question the police version of events.

40. **Ram Pukar Kapar**, Dhanusha District (October 2009) - Ram Pukar Kapar was reportedly a well-known criminal in Dhanusha District. On the morning of 1 October

2009, while riding on his motorbike, he was stopped by plainclothes police officers near Judi Bazaar. According to the police, a firefight took place during which Ram Pukar Kapar was shot dead. There is a question as to whether the police had ample opportunity to make an arrest without using deadly force in view of the large number of officers whom they had deployed to the area. No investigation has been conducted.

41. **Mohammad Miya Ansari**, Parsa District (October 2009) – Local sources claim that APF personnel from the Birgunj Customs Office beat the deceased to death on the night of 29 October 2009 while he was irrigating his field. The APF claim that the deceased was involved in smuggling goods and died during a struggle with police when approximately ten people including the victim attempted to take weapons from an APF customs patrol. The next day, an agreement was reached between the administration and family members including payment of compensation. Family members attempted unsuccessfully to file an FIR at the District Police Office in Parsa. To date, no criminal action has been taken, and no compensation has been paid. A regional APF inquiry team was sent to investigate, but its conclusions have not been made public. The NHRC has not registered the case or initiated an investigation.

42. **Raj Kumar Darai**, Chitwan District (November 2009) – The victim was allegedly killed by a Nepal Army team patrolling inside Chitwan National Park on 27 November 2009. The team reportedly encountered six illegal tree loggers at their camp site, who ran away while the team tried to arrest them. The team fired upon them as they ignored the warning, discharging approximately 18 bullets and hitting the victim twice – once through the chest and once through the back. The Army has refused to allow OHCHR to meet with members of the patrol team. The Army has alleged that the patrol team acted in self-defence as the tree loggers pelted stones at them. An FIR has been registered by the Nepal Police.

43. **Asarfi Mohammed**, Parsa District (December 2009) – On 4 December 2009, at approximately 2am, police attempted to stop Mohammed and several other men on a tractor. According to the police, the tractor was carrying a large amount of marijuana, and a shoot-out ensued during which the victim was shot twice and killed. Local witnesses claimed that only the police had fired their weapons. The family of the victim unsuccessfully tried to file an FIR several days later.

44. **Asmudin Dendy**, Parsa District (December 2009) – Dendy was allegedly killed while attempting to extort money from a mill owner in Birgunj. The police claim that he was killed when his gun back-fired. However, witnesses claim that plainclothes police officers from the zonal police office were at the mill at the time and were responsible for his death. No FIR has been registered, or police investigation initiated.

45 & 46. **Jhaman Raya Yadav and Binod Raya Yadav**, Rautahat District (February 2010) – On 22 February 2010, two alleged cadres of the *Janatantrik Terai Mukti Morcha* – Jwala Singh were killed and seven others injured in a 'clash' with police at Belbichwa of Gigadwa VDC, Rautahat. The police recovered two pistols and ammunition, and claim that the deaths occurred after police fired in self-defence. Local sources claim that the killings were unlawful. *Post mortem* reports confirm that the deaths were due to excessive bleeding from bullet injuries. No FIR has been filed. Police have classified the cases as accidental deaths. NHRC has conducted a preliminary investigation but has not published its findings.

47. **Moti Chamar**, Parsa District (February 2010) – On 1 February 2010, the victim – a leader of the JTMM-Jwala Singh in Parsa – was allegedly killed after opening fire upon a police patrol between Mahuvan and Gamaria when the police attempted to arrest him. Local testimony cast doubt upon police claims that the death was a result of crossfire, and claims have been made that he died after being taken into police custody. No FIR has been registered. NHRC has not registered or conducted an investigation into the case.



48. **Guddu Yadav**, Parsa District (February 2010) – Late in the evening of 7 February 2010, Guddu Yadav was allegedly killed by police near a bridge over the Sirsiya river in Ramgadhawa VDC. Police claim that the deceased was involved in a bomb explosion that occurred near the clock tower in Birgunj earlier the same evening. According to police, he was killed in an 'encounter' during an operation to arrest him. He died of bullet injuries to the chest and head. No investigation has been initiated into the circumstances of the death.

49. **Newal Kishor Yadav**, Dhanusha District (February 2010) – Yadav, an alleged cadre of *Akhil Terai Mukti Morcha* (Goit) allegedly died as a result of an encounter with Armed Police Force personnel in Balabakhar VDC. According to the APF, he was shot when APF personnel fired upon him in self-defence when he attempted to grab their weapons. Madeshi Jana Adhikar Forum (D) has claimed that the encounter was fabricated, and initiated protest programmes demanding action against the police. Bullet markings on the body suggest that Yadav may have been shot from behind, though a *post mortem* report is not yet available. No FIR has been registered. According to the NHRC, it has conducted an investigation, but its conclusions have not yet been made public.

50. **Ram Babu Sahani**, Bara District (March 2010) – Sahani, an alleged cadre of the Akhil Terai Mukhti Morcha (Goit) (ATMM), was killed in crossfire between ATMM cadres and a police patrol near Manarhawa on the night of 6 March 2010. The police claim that the death occurred when police fired in self-defence when ATMM cadres opened fire. The *post mortem* report confirms that the deaths occurred due to bullet injuries. However, some local residents claim that he was arrested while traveling from Bara to Birgunj and brought to the district police office. There is evidence that police pressured family members to sign a document stating that he had died in crossfire in order to retrieve the body. Family members have reportedly submitted a letter to the Home Ministry requesting an investigation and compensation. No FIR has been registered. The district police have already forwarded the dossier to the public prosecutor asserting that the death was accidental. The NHRC has conducted an investigation but has yet to make its conclusions public.

51, 52 & 53. **Devi Sara BK, Amrita BK and Chandra Kala BK** (March 2010) - On the evening of 10 March 2010, Nepal Army personnel from the Shree Jwala Dal Battalion shot and killed two *dalit* women (Devi Sara BK, and Amrita BK) and a 12-year-old *dalit* girl (Chandra Kala BK). They were killed while collecting a tree bark in the Baspani area within the boundaries of Bardiya National Park. The Army and national park authorities claimed that they were poachers and that the Army patrol shot them in self-defence. Evidence contradicts the claims of the Army and park officials, and suggests that the three were not poachers, and that the killings constituted an unlawful use of lethal force and possibly extra-judicial killings in custody. Army and park officials have refused to cooperate with investigations into the killings, and have actively pressured the families of the victims to withdraw their criminal complaints. The NHRC has issued a decision in the case, but its recommendations have not been implemented. As of May 2010, no action had been taken against the perpetrators.

54. **Sudhir Pandey**, Mahottari District (March 2010) – On 30 March 2010, the body of the victim – alleged to have been affiliated with the *Janatantrik Terai Mukti Morcha* - Jwala Singh and possibly involved with the recent abduction of an official from the Land Revenue Office in Mahottari - was found near the Bighi River in Mahadaiya Tapanpur VDC, blindfolded and with his hands tied behind his back. The *post mortem* confirmed that he died from multiple bullet wounds. The police claim to have found four spent cartridges and a bullet at the scene, and that the victim was most likely killed by criminals with a homemade pistol. Others have claimed that police personnel were complicit in the killing. An FIR has been registered at the District Police Office.

55. **Unidentified**, Parsa District (May 2010) – On 18 May 2010, an unidentified person, reportedly an Indian criminal named Suresh Das, was killed in crossfire at Bhediya Tole

of Birgunj Municipality. According to the police, they deployed a team to arrest a group of three Indian criminals who had come to the Adarsangar area carrying bombs on that day. The police claim that the group opened fire at the police during which one member of the group collapsed. Local sources claim that there was no crossfire and believe that the individual had deliberately been killed. The autopsy report confirms that the death was caused by a bullet injury.

56. **Advash Kumar Mandal**, Dhanusha District (June 2010) – On 13 June 2010, the victim, alleged to be a member of the JTMM, was found dead as a result of multiple bullet injuries in Janakpur. Testimony from multiple eye-witnesses suggests that the victim and three others were detained by Nepal Police personnel at a tea shop, and shot nearby. The death occurred in the aftermath of four days of tensions between police and armed groups in the district which left three people dead. The Nepal Police claim that the victim was shot in self-defence. OHCHR has referred the case to the NHRC which is looking into the incident.

57. **Mohammad Badal Ansari**, Dhanusha District (June 2010) – On 14 June 2010, the victim, alleged to have been affiliated with the JTMM-Jwala Singh in Mahottari District died as a result of multiple gunshot wounds fired by Nepal Police personnel at Naktajhijh VDC. According to the police, the deceased died when police returned fire after being attacked while searching for suspected armed group members in the area. Others have claimed that Ansari was taken into police custody and later killed. The police have not initiated a criminal investigation. OHCHR has referred the case to the NHRC.