

INTERNATIONAL COMMISSION OF JURISTS

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Nepal: International Commission of Jurists concerned that Nepal Army obstructing justice

The International Commission of Jurists (ICJ) urged the Government of Nepal to produce Major Niranjan Basnet before Khavre District Court to face charges related to his alleged involvement in the enforced disappearance, torture, and unlawful killing of 15-year-old Maina Sunuwar on 17 February 2004.

Major Basnet was removed from the UN Peacekeeping Mission in Chad in light of the serious charges against him. On 12 December, prior to Major Basnet's arrival in Nepal, the Prime Minister expressed his concern to the Defence Minister that Major Basnet should be produced before the Court to face the charges. In continuing defiance of the Khavre District Court's arrest warrant, the Nepal Army took Major Basnet under its control at the airport and escorted him to Nepal Army Headquarters 'for his own security', according to reports. The Nepal Police on 13 December again requested of the Nepal Army that Major Basnet be surrendered into police custody.

"As long as it refuses to surrender Major Basnet to be produced before the civilian court, the Nepal Army is obstructing the course of justice," stated Roger Normand, the ICJ's Asia Pacific Director. "This is a matter of grave concern for the integrity of Nepal's justice system and the credibility of the Government's commitment to the rule of law. The Nepal Army's actions will also reflect how seriously it treats UN human rights concerns that led to Major Basnet's withdrawal from peacekeeping duties."

In previous statements, the ICJ emphasized that, under international law, military jurisdiction is for matters specific to the military. Universally held principles of justice oblige the Government to fully prosecute such crimes before an impartial and independent tribunal, a standard that can only be met in this case by a civilian court of law. In addition, the accused must be afforded a fair trial before a competent, independent and impartial court in accordance with international law and standards.

The Nepal Army has argued that its Court Martial in September 2005 closed the book on the case with the issuing of six-month sentences and a temporary suspension of

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promotions for “failing to follow procedures”. Following a *writ of mandamus* brought by Devi Sunuwar, the victim’s mother, Nepal’s Supreme Court in September 2007 denied this claim to exclusive military jurisdiction. The Court issued an order to the police and to the Attorney General to investigate and prosecute the case in the Khavre District Court. The led to arrest warrants against Major Basnet and three others, still at large, on 31 January 2008.

The Nepal Army has steadfastly defied police investigations and court rulings, instead choosing to promote Major Basnet and reward him with service in a UN Peacekeeping Mission.

“Nepal cannot extricate itself from the causes and consequences of the armed conflict unless all person stand – and are seen to stand - equal before the law,” stated Govinda Sharma Bandi, ICJ Legal Adviser in Nepal. “The case of Maina Sunuwar can set a precedent for bringing all such serious crimes into the criminal justice system, whether committed by Maoists or the State. The national and international community are watching this emblematic case to see if the Government is serious about upholding the rule of law,” he concluded.

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