

**Monitoring/Investigation Report on the Death  
of General Public due to Diarrhea/Cholera**

**and**

**Distribution of Food items in the Mid & Far  
Western Districts including Jajarkot**

**National Human Rights Commission  
Harihar Bhawan, Lalitpur, Nepal**

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## **Foreword**

The epidemic of diarrhea that was observed since the beginning of the 2067 BS (2nd half of April 2009) had greatly affected the Far-west and Mid-west districts of Nepal namely Jajarkot, Rukum, Dailekh, etc. and the epidemic also spread in the surrounding districts. Approximately 400 people died due to this epidemic and more than 64,000 returned home after treatment.

Even though right to health is related to right to life, insufficient health facilities in the districts resulted to the death of so many people. The International Covenant on Economic, Social and Cultural Rights 1966, section 11 to which Nepal is a signatory, Universal Declaration of Human Rights 1948 section 25, Interim Constitution of Nepal 2007 section 16 pursuit right to health as a fundamental right.

News was published regarding contaminated food or food that is not suitable for human was found to be consumed by the locals in the affected districts. Right to food is ensured in the Constitution and the International Covenant on Economic, Social and Cultural rights to which Nepal is a signatory. Right to food is one of the most important rights among all human rights that are directly related to people's right to life. While the Government ensures right to food there is a universal explanation that the people should have constant access on food and food be sufficient and the food should be hygienic, nutritious, clean (uncontaminated), affordable to general people, suitable to one's religion and culture.

The facts on the use and distribution of contaminated food that came in the news media drew attention of the Commission. Therefore, field observation, investigation and monitoring was carried out to find out the fact through a high level monitoring team. During the monitoring, the commission coordinated, discussed, consulted with the government as well as non-government sectors at different phases, gathered facts and figures and published this report to inform general public.

Finally, Commission like to thank human rights activists, journalists, government officials, representatives of parliament and civil society for providing support throughout the monitoring and investigation process carried out by NHRC Nepal.

**National Human Rights Commission, Nepal**

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## **1. Background**

With the beginning of the Nepali new year (May 2009) the outbreak of Diarrhea in Mid-west Nepal, especially in Jajarkot district turned out to be an epidemic from the mid of 2009. It gradually spread in other districts after June/July 2009. The epidemic that started from Jajarkot took attention of many all over the country. It took lives of more than three hundred Nepalese. According to government's data, more than forty thousand people were affected by the epidemic and undergone treatment. In spite of the government's attempt to control the epidemic, there was a complaint that the attempt was ineffective and insufficient. Voices from parliament to street were raised for better prevention and cure and the areas to be declared as Health Crisis Region. The National Human Rights Commission also recommended the government in this regard through press meet on 4 August 2009. Non government agencies working in human rights sectors and other stakeholders pressurize the government to control the epidemic.

National Human Rights Commission came to know about the epidemic through different news media. Similarly, the commission collected more information from local NGOs and INGOs working in human rights sectors. Information that NHRC received was related to serious issue like food consumed had left adverse effect on the health of the public and right to live. Taking this into account the NHRC drew attention of the Nepal government through press release. NHRC felt the need to find out the fact on two issues- whether the food that was provided to the people was of low quality and whether or not the epidemic spread due to the distribution of such food affecting the health of the public.

Considering the right to food or right to health is related to human rights. NHRC formed two teams lead by director and deputy director to monitor the situation. The team monitored the affected districts based on the universal principle and laws related to human rights and aware as well as recommended the government through press-meet.<sup>1</sup> NHRC's monitoring team collected data from the field, consulted with health workers, officials of the government sector and other stakeholders. On the basis of the visit, discussion and interaction with the people, the team prepared a report. Commission discussed with Umakanta Chaudhary, Minister for Health and Population; Constituent Assembly members Ram Chandra Poudel, Maya Prasad Sharma, Bhakta Bahadur Sah and Mohammed Istihak Rai on this issue.

It was suspected that the cause of diarrhea was not only due to polluted water but also due to the intake of food distributed by UNWFP. The news drew the attention of the Commission as it was reported by the human right activists/organizations, media that food is one of the causes of the epidemic because it has greatly affected the health as well as violate the human rights of the people. Based on this, the Commission conducted the investigation. In this context, food sample from different affected areas were tested in Department of Food Technology and Quality Control.

## **2. News Reports**

When the epidemic gradually started taking lives of the people in the remote villages the news was widely covered by the media on regular basis. In this context, news regarding the sub standard food distributed by the UNWFP<sup>2</sup> was also covered by the media. Informal Sector Service Centre (INSEC), an organization working in human rights sector, published

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<sup>1</sup> Monitoring conducted and recommendation made by the commission is in Annex 1

<sup>2</sup> <http://www.nepalnews.com/main/index.php/new-archive/2-political/1028-wfp-supplied-decayed-food-in-jajarkot.html>

the fact of UNWFP distributing low quality food.<sup>3</sup> Immediately after the news being circulated, UNWFP and WHO claimed through a press release that the news published in the newspapers is false and holds no facts.<sup>4</sup> When the news medias and INSEC claimed that the facts to be true, news about UNWFP of not distributing the food in those areas from that day onwards also came into publicity.

When the news about sub standard food being distributed by UNWFP was circulated, the government sent some representatives to find out the facts in the affected districts. Immediately, government of Nepal wrote a letter to UNWFP mentioning that the cause of epidemic in the districts including Jajarkot was not the food supplied by the UNWFP. It did not mention whether the food supplied in the affected districts was edible or not.

### **3. Making NHRC Monitoring Report Public**

The high level team of NHRC headed towards the affected districts (Jajarkot, Rukum, Dailekh, Salyan and many other districts) to find out the facts of the death due to diarrhea/cholera, thousand undergoing medical treatment, health crisis situation and prevention measures applied and to monitor the situation of one's right to food, health and life. Report prepared by the team after the field visit was published on 4 August 2009.

Facts and figures collected by the monitoring team are as below:

#### **3.1 Number of dead and sick<sup>5</sup>**

- a. According to government's data, the numbers of death due to the epidemic are: Jajarkot-142, Rukum-38, Dailekh-10, Kalikot-1, Surkhet-10, Dang-1, Rolpa-2, Salyan-5, Dolpa-6, Total 218.<sup>6</sup>
- b. According to data of Regional Police Office, Surkhet, except Banke and Dang, all the 13 districts of mid-western region were highly affected by the epidemic and the death toll was 272 and 24,454 undergone treatment. As per the data provided by the police, among the dead 93 were male, 89 were female and 90 were small children. This data showed that there is no uniformity even within the government institutions.<sup>7</sup>

#### **3.2 Causes behind the widespread of the disease**

Following are the causes of widespread of the disease the monitoring team reported:

- a. Intake of polluted water (water mixed with excreta).
- b. Lack of medication and 'Jeevanjal' in the district's health posts at the beginning.
- c. Due to lack of laboratories in the districts, medication was provided to the patients without testing what has caused the illness.
- d. In the health post and sub-health posts, there were not enough health workers to treat the patients
- e. Because of the fear and terror that an unidentified disease is spreading widely in the village the family members and villagers did not take the seriously ill people for treatment.
- f. Food (rice, lentils) supplied by different organizations suspected to be of sub standard.

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<sup>3</sup> <http://www.nepalnews.com/main/index.php/new-archive/2-political/1028-wfp>

<sup>4</sup> Source: Nepalnews.com Friday, 21 August 2009

<sup>5</sup> The information provided by the Health Service Department, Epidemiology and Disease Control Division, Ministry of Health and Population, Nepal Government that from Baisakh till 8 Ashwin 2066 BS the death toll was 366 and 64,472 returned home after treatment.

<sup>6</sup> Based on the monitoring report of the commission

<sup>7</sup> These figures increased everyday in the news broadcasted/aired by the news media

### **3.3 Governmental and other attempts to control the epidemic**

After hundreds of people died and thousands of people got sick, Prime Minister Madhav Kumar Nepal visited the districts in July 2009 and Health Minister Umakanta Chaudhary visited the affected district in mid August and instructed for necessary action to control the epidemic. The government established a control room in Regional Health Directorate in Surkhet and deployed one director from the centre to take overall charge. The control room kept daily record of people suffering from diarrhea, death tolls, demand of medicines etc. and manage supplies of medication needed in the mid and far west region. As there was not enough health workers in all the affected districts the government instructed to appoint required health workers in Dadeldhura and provide services from there.

It was learnt that the Nepal Army, Armed Police Force, activists of the Maoist party organized mobile health camps on their own and distributed medications. Leaders of the political party demanded the government to declare the area as Health Crisis Region. The role of the local social activists as well as Nepal Police, human right activists, journalist, and teams of various hospitals of Kathmandu who went there to provide services was commendable. The team found out from the control room that representing the government, the Nepal Army and Nepal Police brought the patients to their camps and provided services whereas not a single medical doctor was deployed except for health assistants and health workers in the health camps organized by Health Service Department and Ministry of Health. Geographical difficulties, unfavorable weather, lack of coordination in the district headquarters, mismanagement in medication distribution, differences among the government health officials regarding the epidemic were the reasons behind the difficulties in controlling the epidemic. Absence of the head of Epidemiology and Disease Control Division throughout this crisis period has been the issue of criticism within the news media and among health professionals.

### **4. NHRC's Presence in Affected Areas**

During the monitoring, NHRC team visited food stores, observed the condition of food consumed by local people, medicine, consulted health workers, affected people, government sectors, human rights activists, journalists and different stakeholders to discuss and interact on the issue. On the basis of information and data collected, commission prepared this monitoring report. The team also collected documents and information in Kathmandu from various government organizations. The two teams of NHRC carried out the monitoring in the affected areas from 31 July to 12 August 2009 on behalf of commission.

### **5. Dissemination of Informal sector Service Centre (INSEC) Report<sup>8</sup>**

INSEC disseminated its monitoring report on diarrhea and food supplied in Jajarkot district on 15 August 2009. In the context of disseminating report, INSEC requested the government to test the quality of food supplied by different organizations and ensure to supply sufficient food. The report recommended that the government should monitor the quality of food distributed on humanitarian grounds right from the beginning. In its report INSEC wrote that till that date total 394 have lost their lives. Among them 190 were male, 204 were female and 124 were children. The report says that among the dead, maximum number of people were from the Dalit community.

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<sup>8</sup> Source: [http://inseconline.org/linkedfile/Pressmeet\\_15\\_Aug\\_Eng.pdf](http://inseconline.org/linkedfile/Pressmeet_15_Aug_Eng.pdf)

Distribution and consumption of non-edible foods, expired water purifier were found in the affected areas. INSEC raised voice against non-edible food distributed by different international and national non-governmental organizations. INSEC brought the sample of food grain consumed by the local people of the affected area and handed over to the representative of consumer forum in a public programme. After the test, Department of Food Technology and Quality Control informed that the food given for test was non edible, so it was not suitable for consumptions.

## **6. NHRC Consultation Program**

The news relating to major cause of diarrhea in the districts including Jajarkot was due to the consumption of non-edible food or food not suitable to people's health was made public through news media and human rights organizations. As it drew the attention of the Commission it conducted a field monitoring, prepared a report and as it felt that the issue need to be discussed among the stakeholders organized a discussion program on 7 September 2009. As the distribution of non-edible food is a matter of public concern and human rights too, the Commission organized a discussion program among the government officials, representatives from NGO/INGOs working in human rights sector, organizations working in consumer's rights and representatives from UNWFP to bring about the facts, collect information and draw attention of the government.

The discussion was concentrated on whether the food supplied in the affected areas was non-edible or not. Along with the institutional perception put forward by the stakeholders and government officials, questions rose on the monitoring conducted by the Commission, news published in the news media regarding food distribution and quality of food was discussed in the program. Perceptions of the representatives from Agriculture Ministry, Health Ministry, Consumer Rights Protection Forum and WFP were also discussed. In the program honorable NHRC Chairperson Kedar Nath Upadhyay, members Ram Nagina Singh, Gauri Pradhan, Dr. Leela Pathak, Dr. K.B Rokaya, Directors and other staffs of NHRC were present. During the program, Subodh Raj Pyakural, Chairperson of INSEC handed over some important documents that might be helpful in the monitoring. DEPROSC Nepal claimed that it is supplying food in mid-west region since 2003 and the food kept in the store is as per the required criteria. It further requested not to suspect on the quality of food they supplied. Likewise, representative from WFP opined that collection of food sample can only be done by the experts.

The letters from UNWFP country representative Richard Regan to INSEC chairperson Subodh Raj Pyakurel dated 4 September 2009 says "how can food be the issue of human rights?"<sup>9</sup> Mr. Pyakurel handed over the letter and other necessary documents to NHRC.

According to Bhesh Bahadur Thapa, joint-secretary of Ministry of Agriculture, food supervisor in Surkhet gathered sixteen samples of food and sent for lab test to the Department of Food Technology and Quality Control in Kathmandu. The report of the test arrived in the Commission on 12 October 2009.

## **7. NHRC Monitoring & Investigation at Bhairahawa<sup>10</sup>**

To find out the facts on the questions raised during the consultation program conducted on 7 September 2009, news published in different weekly and daily newspapers, information

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<sup>9</sup> Copy of the letter is in Annex 8.

<sup>10</sup> Major section of the report is in Annex 2.

gathered by human right activists about the quality of food provided by UNWFP, if the food is exported after quality test or not, if the quality of food is tested or not before storage and distribution and if the government conduct quality test according to laws, high level monitoring team of the Commission perform an investigation in Bhairahawa. To discover the role and activities of the government sectors that are directly or indirectly involved in the export and distribution of food, observation, discussion, investigation was conducted separately with various government institutions, which was one of the part of the Commission's monitoring visit. The team met and discussed with human rights activists, media persons, security persons, industrialists, business persons, heads and representatives of public enterprises etc. Similarly, it studied the contract between WFP and Nepal Food Enterprise regarding the survey of rice.

To observe and collect facts on the process of food import, its quality testing, storage and custom process, the team visited Custom Office in Bhairahawa, Food Technology and Quality Control Office, District Administration Office, Plant Quarantine Office, Animal Quarantine Office, Boarder Security Force, Custom Revenue Patrolling, Nepal Food Enterprises, Federation of Industry and Commerce, Siddarthanagar. In this context, the team found that with the direction of the CDO, Bhairahawa custom started to test the food quality imported by WFP through Shyambaba Enterprises from 28 June 2009. In the quality test, 16.5 metric ton of rice was found of low quality and non-edible.<sup>11</sup>

The information and facts gathered by the third research and fact finding team deployed by the Commission in Bhairahawa were as follows:

1. As per section 32 of Plant Conservation Act 2007, whatever mentioned in Custom Act, entry of plant or seeds should be given entry only after receiving permission certificate from plant quarantine check post and then it should go through custom process. But in this case the imported rice and lentil for WFP entered Nepal without undergoing any such process.
2. It was found that Bhairahawa Plant Quarantine Office had written correspondence to Bhairahawa custom office regarding Plant Protection Act, Bhairahawa Plant Quarantine Office has also informed about the provision of the act during various interaction program and workshop and discussion with the representative from the Custom Office.
3. The team found that the decision of custom department on 16 September 2002 and correspondence no 598 of 17 September 2002 was circulated to all major custom offices (Bhairahawa custom office is one of the main custom offices). The letter mentioned that all the plants and seeds had to compulsorily go through Plant Quarantine before being imported and exported. But in Nepal, this process is followed during the exports only but not in the case of imports. Similarly, necessity of producing Phytosanitary Certificate as notified by the Agriculture and Cooperative Ministry in gazette dated 6 September 2004 was not followed.
4. After Nepal became the member of WTO it is mandatory that the quarantine test had to be done following international standard while exporting and importing the plant products. The team found that quarantine test was performed while plant products are exported but while importing of such products in the country no such procedures were followed.

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<sup>11</sup> For more information see Annex 6.

5. The food (rice, lentils) imported before 28 June 2009 by WFP through different importers had not undergone quality test in Food Technology and Quality Control Office as prescribed in the Food Act 2033.
6. Food Technology and Quality Control Office tested 31 samples of rice imported by WFP during 28 June 2009 to 15 July 2009. Likewise, 41 quality tests were done of the food that was imported by WFP during 16 July 2009 to 9 September 2009. It was found that the Bhairahawa Custom Office sent one sample of food grain to Food Technology and Quality Control Office from 16.5 metric ton of food only since 28 June 2009.
7. Food Technology and Quality Control Office tested the quality of the sample from 16.5 metric tons of rice imported for WFP through Shyambaba Enterprises, Padsari, Rupandehi on 14 July 2009 and verified that the food was sub standard.
8. According to the custom officer, the importer committed to import equal amount of quality rice within a week after the sub standard rice being taken back.
9. It was found that the custom office sends imported food to Food Technology and Quality Control Office if the custom office realizes its need. The officer used to see with his/her eyes (without any microscopic instrument) and feels that the food should be tested then from the whole amount (loaded in a truck) only a small amount from one sack is sent for testing.
10. The distance between the Custom Office and Food Technology and Quality Control Office was far.
11. It was found that the rice imported in the name of WFP was imported only from India. The imported food pack didn't have logo of the donor's organization, dispatch no, place of production, date of manufacture and expiry date etc. But during the monitoring visit the team found food pack with WFP logo were distributed in Rukum, Jajarkot, Mugu, Dailekh, Dolpa and other districts. So, the Commission found that the food was packaged in Nepal.
12. Food imported in the name of donors does not have to pay custom charge and the quality of the food imported before 2066.3.14 were also not tested.
13. The team found that the request letter signed by CDO of Rupandehi district dated 14 March 2006 with reference no. 4422 that was sent to Bhairahawa custom office mentioned that "Quality testing of the rice that is imported from India might reduce the business as well as affect the revenue. Therefore, today onwards the imported rice should be examined by the custom officer and if s/he feels the rice to be tested then only it should be sent for quality testing otherwise the imported rice should be allowed for entry."<sup>12</sup>.
14. But against the request orders from the district administration office Rupandehi to custom office Bhairahawa, a letter signed by the CDO dated 25 June 2009 to Bhairahawa Custom office says "regarding the rice imported from India that is being sold as a local product, it is requested that the rice that come through Bhairahawa entry point should be examined in the Food Technology and Quality Control Office,

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<sup>12</sup> A copy of the letter is in Annex 3

Bhairahawa and allowed to enter after analyzing the quality test report."<sup>13</sup>. The CDO who had taken voluntary retirement from 29 July 2006 to 9 July 2009 was found to be working continuously.

15. On 29 July 2009, 35,305 kg of maize imported by Annapurna Agro Industries was allowed by the Bhairahawa Custom Office without quality testing which was against the Plant Protection Act 2007. The monitoring team also inquired if this type of mismanagement is done regarding the WFP's food, it was learnt the rice and lentil of WFP had never go through quarantine test.
16. The team found that if Custom's mobile police had to raid a place with a suspicion of storing inedible food then they had to do it jointly with the representative of custom office and Federation of Industry and Commerce. In such situation the information might get leaked and the real culprit might escape.
17. Food imported under World Food Program are free of custom charge and the Commission came to know that the food imported under the WFP are sold in the market rather than distributing it to the targeted population. Selling of such imported rice is illegal and misuse of the facility provided by the Government (custom free imports). It was found that the Sidharthanagar Federation of Industry and Commerce wrote "Food that is imported for special purpose like this should be packed in printed sack with the importing agency's name and logo."<sup>14</sup>

## **8. Examination of Sample Food Grains Collected by NHRC**

Two separate high level teams of the Commission monitored the diarrhea affected areas from 31 July 2009 to 12 August 2009. During the monitoring, the team came to know that the main cause of diarrhea was also the food that was distributed in the affected areas so the team collected sample food grains. In this regards, a sample grain of rice and lentil that was stored in Ram Prasad Gharti's store situated in Khalanga VDC of Jajarkot district was collected in two different envelopes and sample of lentil from Food for Work Program of WFP DEPROSC in Khagenkot of Jajarkot district was collected and sent to Food Technology and Quality Control Office in sealed envelopes for testing on 23 August 2009 in the presence of local human rights activist.

Food Technology and Quality Control Office, Ministry of Agriculture and Cooperative, Government of Nepal, submitted the test report on 25 August 2009. The Office adopted physical and sensory test process and the test analysis report is as follows -

- a. As per the standard determined by the Nepal government, the lentil should be clean and healthy but the provided sample does not meet the standard and is not edible.
- b. Nepal government has determined a standard for food and the provided rice grain sample is decayed and the natural color of the rice grain is also missing so it is not suitable for human consumption.

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<sup>13</sup> A copy of the letter is in Annex 4

<sup>14</sup> A copy of the letter is in Annex 5

## 9. National and International Standards on Food Quality

Food is not only a matter of human rights but a very important element for human life. For human being sufficient food is not enough but to attain good health, the food should be of good quality and nutritious. To maintain the quality of food national and international law has some provisions.

Section 2 of Food Act 1966 defined “food” as a thing that human drinks/eats, it may be unprocessed, semi-processed or processed and produced food or drink. Food also meant the spices, color, food additive or aroma used in the food products and drinks. Section 2 of the same Act defines "contaminated food item" as below –

1. The food which is in a state of decay/rotten, contaminated or prepared or kept in a dirty or polluted condition.
2. A part or entire food that is produced with the use of harmful plants or ailing animals or fowls.
3. Food that has additive, preservatives, chemicals or insecticides more than the prescribed limitation hence becomes harmful to health.

Section 3 of same act has a provision which prohibits the production or sell or distribution of contaminated food items or food of low quality and further states that no one is liable to produce, sell or distribute, import or export or store such contaminated or low quality food. Section 6 of the Act has a provision regarding the crime performed by organization or firm that "if any firm or organization performs against the act or regulations of this act, the chief administrative officer of that firm or organization is punishable".

Likewise, rule 9 (ka) of Food Regulation 1970 permits to destroy the food not suitable for consumption and states that "if it is easily visible that the food item that are being sold is in rotten, decayed form or not suitable for consumption and the sample is being sent for testing, in such condition the already decayed food might get worse so in the presence of representatives from local administration, VDC or municipality the food shall be destroyed through any means, it be buried, burnt or with any other appropriate method."

Rule 23 of the same regulation has a provision that no one is liable to keep or store food items that are produced, sold, distributed or exported which is produced using preservatives against the rules prescribed in annex 11 of the Regulations.

Article 32 of Plant Protection Act 2007 has a provision relating to custom and states that “Whatever written in the prevailing law relating to Custom, plants or plant item imported according to this act should be given permission for entry after it gets permission from the Plant Quarantine Check Post then only process for custom check should be carried out.

Food quality control fact sheet of World Food Program mentions about basic testing procedures of food and minimum standards to be followed while purchasing food from the importer. Minimum standard regarding food security, nutrition and food support has been determined internationally.<sup>15</sup> Similarly, Paris Declaration on Aid Effectiveness (Ownership, Harmonization, Alignment, Results and Mutual Accountability)<sup>16</sup> also has mentioned about the responsibilities the donor countries or organizations have to follow.

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<sup>15</sup> [http://www.sphereproject.org/handbook/html/5\\_ch3.htm](http://www.sphereproject.org/handbook/html/5_ch3.htm)

<sup>16</sup> [http://www.adb.org/media/articles/2005/7033\\_international\\_community\\_aid/paris\\_declaration.pdf](http://www.adb.org/media/articles/2005/7033_international_community_aid/paris_declaration.pdf)

## 10. Food and Diarrhea in the Context of Human Rights

Part 3 of Interim constitution of Nepal 2006 under fundamental rights Article 18 has a provision of right to employment and social security and it further states that each citizen has the right to food as stipulated in the law.

Article 16 of the Interim Constitution of Nepal 2006 under fundamental rights has a provision of right to environment and health and further states that the state shall provide each citizen the right to basic health services free of cost.

Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights 1966 to which Nepal is a signatory ensures the right to enough food, clothes and shelter for self and family as well as better lifestyle. Article 12 (1) of the Covenant ensures the right to optimum level of physical and mental health. Similarly, sub article 2 of article 12 states that the signatory countries<sup>17</sup> to this Covenant shall do the following to achieve full rights:

- a) Decrease infant mortality rate, child mortality rate and manage child development.
- b) Improve all aspects of environmental and industrial cleanliness/sanitation.
- c) Prevent, cure and control disaster, epidemic and professional and other illness.
- d) Create a situation that ensures medical services and care to people when they are sick.

While defining various articles of the Covenant, the committee on Economic, Social and Cultural Rights mentions following things in general comment no. 15.<sup>18</sup>

Right to water is to have access to enough, hygienic and drinkable water and physically reachable to the source of water for personal and household use.

A report on **what is Right to food?** by the United Nations' Committee on Economic, Social and Cultural Rights and another report of the special rapporteur have described that the right to enough food is right to food, which is unalienable. It further mentions that the person should have regular, permanent and uninterrupted access to food and such food shall be affordable, qualitative and ample. In the report of the Special Rapporteur and the report of Committee on Economic, Social and Cultural Rights in its Covenant general comment no. 12<sup>19</sup> have mentioned the provision that the food shall suit to the Culture of a person, get proper physical and mental health. Similarly, nowadays hygiene is taken as human rights and also as a matter of prestige.<sup>20</sup>

## 11. Analysis and Conclusion

Commission received the fact from the Department of Epidemiology and Disease Control, Ministry of Health and Population, Government of Nepal with a claim that the main cause of diarrhea in the mid and far western remote and hilly districts of Nepal is due to polluted water, use of expired Piyus (water purifier) and cholera contained in the water.<sup>21</sup> But it is also revealed that non-edible and decayed food was distributed in the affected areas.<sup>22</sup>

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<sup>17</sup> Nepal has been Signatory country since 1991

<sup>18</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/GO3/402/29/PDF/G0340229.pdf?OpenElement>

<sup>19</sup> [http://unhcr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?OpenDocument](http://unhcr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?OpenDocument)

<sup>20</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/IExpertSanitation.aspx> ("Sanitation is undoubtedly a matter of human rights and human dignity.")

<sup>21</sup> Information provided by the Department of Epidemiology and Disease Control, Ministry of Health and Population, Government of Nepal during consultation meeting organized in the premises of Commission's hall on 7 September 2009.

<sup>22</sup> The commission and INSEC separately collected sample of the distributed food grain and test.

Healthy and nutritious food is not only the right of general people but also important from the point of consumer's right. Even though WFP has been distributing food in remote and hilly districts of Nepal since the last 40 years, dependency has increased due to lack of improvement in agricultural sector and assurance of food safety as per the principle of food sovereignty. People have complained time and again regarding the distribution of decayed and non edible food. Although the government should have regularly monitored the distribution, quality testing and selling of such non-edible food items nothing as such has been done from the state level. Though sub standard food like rice and lentils distributed by WFP has reached to the targeted population it cannot be considered as the only cause of diarrhea. Whatever may be the cause of diarrhea, no one can argue that sub-standard/non-edible food was distributed in the affected areas.

The report from the Department of Food Technology and Quality Control on the food grain sample collected by the commission from Jajarkot also clarifies this. A letter dated 28 June 2009 from the CDO's office, Rupandehi to Custom Office instructing to carry out the quality test of the imported food proves that no such test had been done before this date. Report of the Food Technology and Quality Testing showed that 16.5 metric ton rice was of low quality and non edible. Therefore, there is greater possibility of non edible food being distributed in the areas from long before.

While this report was being prepared, the death toll in the mid and far west region has reached to 400 and 64000 had returned home after treatment. The situation was still not under control. Therefore, to bring the situation under control, an independent committee consisting representatives from health, agriculture, quality testing technology and human rights activists should be formed and investigation should be carried out. Department of Health Services and Ministry of Health had not mobilized schedule number of doctors and adequate number of health workers at the right time in the affected areas. Also, it is the duty of the government to provide safety, security and support the children and dependents of those who lost their lives.

The field monitoring and research conducted by the Commission's team found that the agriculture experts suspected that in the affected areas there is greater possibility of food being supplied that is grown through genetically modified organisms (GMOs<sup>23</sup>/GM FOOD). The commission received information through various sources that though the Government does not permit to import, use and supply genetically modified food, it might have been imported secretly for consumption and experiment/trial. Regarding this, one of the media house<sup>24</sup> in its webpage wrote that the government should be sensitive on GM FOOD. Agriculture experts also expressed their views that they cannot deny the possibility of the use and existence of such food products in the country.<sup>25</sup> Government should investigate to find the truth if supply of GM Food exists in the affected district or not. If it is proved that GM food are provided in those areas illegally, it should be considered as a crime.

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<sup>23</sup> Even though the production of this type of food is natural, the process used in the production is unnatural due to which production increases significantly. This not only increases the production but the plant develops the capacity to get protected from insects, virus and herbicides (so, this type of plants are free from insects). Regarding the effect of such products in humans depend on the effects of toxicity, allergic reaction on one's health. The issue of such plants having nutritional elements as well as toxic elements and its advantage and disadvantages have been raised in the international food markets. For detail information see: <http://www.who.int/foodsafety/publications/biotech/20questions/en/>

<sup>24</sup> <http://www.nepalnews.com.np/contents/englishdaily/ktmpost/apr/apr13/index.htm>

<sup>25</sup> For detail information see Annex 7.

The government has not gone through any scientific procedures like post mortem to the body to find out the cause of the death which created difficulties in finding out the real cause of the death.

Despite the supply of food by WFP since 40 years, it is not found that the government had effective monitoring and testing of food quality and the government has not questioned about the origin of the imported food items inside the country. It is deemed necessary to carry out analysis on what type of positive contributions the program had regarding the achievements, infrastructure development, agricultural production as well as in self dependency within this period in the remote districts of the country.

The sample food grains collected from the diarrhea affected areas by one of the food inspectors of Surkhet appointed by Nepal Government was sent for testing in Department of Food Technology and Quality Control in Babarmahal, Kathmandu. The report dated 12 October 2009 says "Out of the 16 food samples (rice, lentil and cooking oil), 4 samples were found to be unfavorable for consumption".

As the people of the affected areas are deprived of healthy and nutritious food and water, they were not able to enjoy the rights to healthy and nutritious food and water. Right to food and water is one of the most important and foremost right which is directly related to the right to life and good health.

## **12. Recommendation of the Commission**

The National Human Rights Commission recommends the following to the Government of Nepal for immediate action according to sub-section 2 of section 132 of the Interim Constitution of Nepal 1997 based on the monitoring report prepared by three different high level field monitoring teams sent by the commission for monitoring, research and investigation in the diarrhea affected mid and far western districts including Jajarkot, Rukum, Dailekh which caused death of hundreds of people and thousands of people infected returned home after treatment.

### **A. To the Government of Nepal**

1. Form an independent commission including the representatives from health, agriculture, quality technology departments & human right activists to bring out the facts and take action against the guilty on the distribution of low quality food in the affected areas due to which 400 people lost their lives.
2. Mention compulsorily and also maintain records regarding the origin of the food, certificate of quality, stamp/symbol/letters to identify the importer, name of the areas food is to be distributed, target group/community, expiry date of the food, etc.
3. Make necessary arrangements to ensure people of the remote and hilly areas the right to food and water.
4. In order to raise health awareness conduct awareness raising program in local language through mass media (FM).
5. Execute special integrated package to provide relief, compensation, safety and security to the deceased family (children, orphans, senior citizens and people with disability). Prepare and implement action plan to eliminate food dependency and search for other sustainable alternatives at the local level.

6. News that are published and broadcasted in the news media on famine, food insufficiency and public health should be taken seriously and taking into account its seriousness address the issue and formulate necessary mechanism.
7. The tendency of supplying food by the donor agencies on their own need to be stopped rather government owned organizations should be made responsible for the storage, protection, quality testing and distribution of the food items after formulating minimum national standard.
8. Build effective coordination among the offices related to custom, plant quarantine, animal quarantine, food technology and quality control office and custom's mobile police to provide speedy service to the clients and manage to carry out effective monitoring.
9. Make the work of the Committee of Food standard determination effective and speedy as stated in Section 16 of Food Regulation 1972.
10. Ensure the preservative used in the food meets the criteria as provisioned in Rule 23 of Food Regulation Act 1972 and manage to carry out monitoring by food inspectors on the use of preservative as specified by the Rule.
11. To ensure the right to health of the people, draw the attention of Ministry of Health and Population to manage sufficient medications as well as first aid facilities, schedule number of doctors and health workers in the hospitals, health posts and sub health posts in the affected areas and carry out regular monitoring.

**B. Recommendation to the Commission for Investigation of Abuse of Authority (CIAA)**

1. Request CIAA to investigate on the supply and quality test of the food distributed in the epidemic affected areas, different minimal standards used by the district administration office (DAO), Rupandehi and Bhairahawa custom office regarding the export of food items, provisions stipulated in Section 8 and preamble of Food Act 1966, Section 32 of Plant Protection Act 2008 and Section 15 of Consumer Rights Protection Act 1997 is not followed by the DAO and custom office. Though the quality of food is related to human health and right to life, the monitoring team of the Commission found that the standard used by the stakeholders, importers, custom office, district administration office, Rupandehi varied greatly which is against the law. Therefore, the Commission requested the CIAA for comprehensive investigation on this issue.
2. Request to conduct investigation and research in Bhairahawa Custom Office and other custom offices relating to the supply and process of quality testing of the food.

**C. Recommendation to WFP Nepal through UN system**

1. To draw attention of WFP Nepal country representative Richard Regan and inform other UN agencies about a letter dated 4 September 2009 from WFP to INSEC which was later handed over to the commission. The letter mentions "You also reference in your chronology issues around alleged sale of WFP food. I'm not sure why you've raised this issue since it has little to do with either human rights or the epidemic"

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## **Annex 1**

### **National Human Rights Commission Harihar Bhawan, Lalitpur**

4 August 2009

#### **Preliminary Summary Report**

**Prepared by the National Human Rights Commission after field monitoring in diarrhea affected districts in mid and far western region**

**Dear Journalists,**

We would like to present a report on the outbreak of cholera and diarrhea in the mid-western region including Jajarkot districts and the death of hundreds of people and thousands of people being infected of the disease. The report is prepared based on the field monitoring conducted by two teams from the NHRC. The teams visited and discussed and interacted with health workers, victims and other stakeholders including representatives from government agencies.

NHRC teams with the directors went for field monitoring in Jajarkot, Rukum and Surkhet districts to monitor the health crisis in the diarrhea affected districts and the ongoing attempts to control the epidemic. Following are the facts noted by the teams -

Facts:

1. According to government's data, the number of people who lost their lives in the epidemic affected area are – Jajarkot-142, Rukum-38, Dailekh-10, Kalikot-1, Surkhet-10, Dang-1, Rolpa-2, Salyan-5, Dolpa-6, Total 218.
2. According to data from the regional police office, Surkhet, except Banke and Dang districts, all the 13 districts of mid-west were badly affected and 272 died and 24,454 undergone treatment. As per the data provided by the police, among the dead 93 were male, 89 were female and 90 were children. So, there is no uniformity within the government institutions.
3. One representative was sent from the center after establishing a control room at the regional health directorate to control the disease.
4. Employed health workers on contract in the vacant positions at health offices in Jajarkot district.

5. Nepal Army's helicopter was used for the supply of medicine and mobilization of health workers in the affected districts – Jajarkot and Rukum.
6. Nepal Army established health camps and provided services at 5 different places of Jajarkot and 3 places in Rukum. Likewise, 3 health camps were organized by Armed Police Force and Civil Police. Similarly, People's liberation Army organized one camp on their own.
7. Two health camps were operated by Armed Police Force (health) in Surkhet district. Health workers led by two medical doctors from Civil police was deployed.
8. One thousand water guards were distributed by Nepal Red Cross in various village development committees of Surkhet districts and has planned to distribute five thousands water guards.

### **Causes of the disease**

- a. Polluted water (mixed with excreta).
- b. At the beginning, there was no medicines and 'Jeevanjan' in the district.
- c. Lack of laboratories in the districts due to which medicines were distributed without doing tests.
- d. The disease cannot be controlled due to insufficient health workers in the health post and sub-health posts as scheduled.
- e. Because of the fear and terror that an unidentified disease has spread in the village, even the family members and villagers did not take the seriously ill patients for treatment due to which death toll rose.
- f. Food (rice, lentils) supplied by different organizations was suspected to be of sub standard.

### **Situation of government initiatives**

1. Ninety five percent of people who had access to treatment went back home after treatment.
2. Government claimed that the number of death as reported by the media is more than the actual.
3. Assurance give by the Prime Minister during his visit in the affected areas to provide compensation of Rs. 10,000 per death and extra 5000 rupees if the head of the family died was not applicable.
4. Government has not introduced any motivating measures or incentives to the health workers involved in the treatment. The economic/administrative regulations created complexity while taking travel and daily allowance for more than 7 days.
5. The role of the Epidemic and Disease Control Centre was not effective as it could not find the cause of the disease on time. In spite of the existence of three posts for the

doctors in Jajarkot only two were working. The positions in other affected districts were still not fulfilled.

6. District's Disaster Relief Committee was not able to coordinate effectively to control the disease.
7. There was complains (from public) that the role of regional administration office was not effective and lacked coordination. Even though there is a position of secretary the office was run by officer level staff as acting secretary.
8. Medicines, medical experts and health workers have not yet reached to some of the diarrhea affected remote areas.

### **Challenges**

1. The sick people were not able to reach the Health Posts and the health workers inability to reach the villages become a challenge in the controlling the disease. Geographical remoteness and unfavorable weather condition added extra challenges.
2. There was a debate among the doctors whether to announce other districts except Jajarkot as an epidemic area.
3. There was lack of co-ordination among the relief providers recruited by different sectors and organizations.
4. Public complained that the local administration did not take sufficient initiatives to control the disease.
5. Government's statement that geographical difficulties and unfavorable weather conditions in the affected districts added problem in controlling the disease and it will take two months to bring situation under control.
6. Lack of awareness and poverty are the main challenges to control the disease.

### **Recommendation to the Government of Nepal**

1. An investigation committee should be formed to find out the cause of the epidemic and identify person or organization responsible for prevention and control of the epidemic and take action against them as well as fact and figures be made public. Adopt method that prevents in spreading of such epidemic in the future.
2. The affected area should be immediately declared as Health Crisis Area and campaign to control the disease should be expanded. For this, vacant positions of health workers should be fulfilled and manage sufficient medications. To motivate health workers provision of extra allowance, proper food, and shelter, life insurance and period to work in such situation/area should be specified.
3. Provide authority to Regional Health Directorate, Regional Administration Office, respective offices in the districts regarding financial and administrative rights and be made responsive in taking decisions immediately in controlling the epidemic. Manage system where all the departments/institutions of the state work hand in hand to bring the ill people to health posts and provide medications.
4. Start special integrated package for the family (children, orphan, elderly people, disabled) of the deceased due to the epidemic.

5. As the food (rice and lentils) distributed by different organizations are suspected, quality of such food needs to be tested. Manage pure and clean drinking water immediately.
6. Campaign to raise awareness on health through communication media (FM) need to be managed.
7. The government should address the issue raised by the news media taking into account its seriousness.

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## **Annex 2**

**The secretary  
National Human Rights Commission  
Harihar Bhawan, Pulchowk**

**Subject: Third summary report on monitoring/investigation on the death of general public due to diarrhea/cholera in mid and far western districts including Jajarkot.**

In reference to the subject mentioned above following are the facts based on the monitoring of diarrhea affected area during 6 to 12 August 2009 by team comprised of directors of the commission, press meet on 4 August 2009 and recommendation to the government of Nepal, collection of food supplied in the area by UNWFP, lab test and its report, and organized an interaction program on 7 September 2009 relating to this issue in the Central office of the Commission, Harihar Bhawan, Lalitpur with the stakeholders and governmental officials along with their institutional views. On the basis of questions raised in the program, news of non-edible food distributed in the affected area and its quality, separate discussion was carried out, queries and proofs were collected from Custom Office Bhairahawa, Food Technology and Quality Control Office, District Administration Office, Plant Quarantine Office, Boarder Security Force, Custom Revenue, Animal Quarantine, Nepal Food Corporation, local journalists and human right activists during 9-12 September 2009. The Commission presents the following facts:

1. As per section 32 of Plant Protection Act 2007, whatever mentioned in Custom Act, entry of plant or seeds should be given entry only after receiving permission certificate from plant quarantine check post and then it should go through custom process. But in this case the imported rice and lentil for WFP entered Nepal without undergoing any such process.
2. It was found that Bhairahawa Plant Quarantine Office had written correspondence to Bhairahawa custom office regarding Plant Protection Act, Bhairahawa Plant Quarantine Office has also informed about the provision of the act during various interaction program and workshop and discussion with the representative from the Custom Office.
3. It was found that the decision of custom department on 16 September 2002 and correspondence no 598 of 17 September 2002 was circulated to all major custom offices (Bhairahawa custom office is one of the main custom offices). The letter mentioned that all the plants and seeds had to compulsorily go through Plant Quarantine before being imported and exported. But in Nepal, this process is followed during the exports only but not in the case of imports. Similarly, necessity of producing Phytosanitary Certificate as notified by the Agriculture and Cooperative Ministry in gazette dated 6 September 2004 was not followed.
4. After Nepal became the member of WTO it is mandatory that the quarantine test had to be done following international standard while exporting and importing the plant products. The team found that quarantine test was performed while plant products are exported but while importing of such products in the country no such procedures were followed.
5. The food (rice, lentils) imported before 28 June 2009 by WFP through different importers had not undergone quality test in Food Technology and Quality Control Office as prescribed in the Food Act 2033.

6. Food Technology and Quality Control Office tested 31 samples of rice imported by WFP during 28 June 2009 to 15 July 2009. Likewise, 41 quality tests were done of the food that was imported by WFP during 16 July 2009 to 9 September 2009. It was found that the Bhairahawa Custom Office sent one sample of food grain to Food Technology and Quality Control Office from 16.5 metric ton of food only since 28 June 2009.
7. Food Technology and Quality Control Office tested the quality of the sample from 16.5 metric tons of rice imported for WFP through Shyambaba Enterprises, Padsari, Rupandehi on 14 July 2009 and verified that the food was sub standard.
8. According to the custom officer, the importer committed to import equal amount of quality rice within a week after the sub standard rice being taken back.
9. It was found that the custom office sends imported food to Food Technology and Quality Control Office if the custom office realizes its need. The officer used to see with his/her eyes (without any microscopic instrument) and feels that the food should be tested then from the whole amount (loaded in a truck) only a small amount from one sack is sent for testing.
10. The distance between the Custom Office and Food Technology and Quality Control Office was far.
11. It was found that the rice imported in the name of WFP was imported only from India. The imported food pack didn't have logo of the donor's organization, dispatch no, place of production, date of manufacture and expiry date etc. But during the monitoring visit the team found food pack with WFP logo were distributed in Rukum, Jajarkot, Mugu, Dailekh, Dolpa and other districts. So, the Commission found that the food was packaged in Nepal.
12. Food imported in the name of donors does not have to pay custom charge and the quality of the food imported before 28 June 2009 were also not tested.
13. The team found that the request letter signed by CDO of Rupandehi district dated 14 March 2006 with reference no. 4422 that was sent to Bhairahawa custom office mentioned that "Quality testing of the rice that is imported from India might reduce the business as well as affect the revenue. Therefore, today onwards the imported rice should be examined by the custom officer and if s/he feels the rice to be tested then only it should be sent for quality testing otherwise the imported rice should be allowed for entry."

*But this direction is against the preamble and section 8 of Food Act 1966. The Act has a provision that the food items should be tested in the prescribed laboratories.*

14. But against the request orders from the district administration office Rupandehi to custom office Bhairahawa, a letter signed by the CDO dated 25 June 2009 to Bhairahawa Custom office says "regarding the rice imported from India that is being sold as a local product, it is requested that the rice that come through Bhairahawa entry point should be examined in the Food Technology and Quality Control Office, Bhairahawa and allowed to enter after analyzing the quality test report." The CDO who had taken voluntary retirement from 29 July 2006 to 9 July 2009 was found to be working continuously.

15. On 29 July 2009, 35,305 kg of maize imported by Annapurna Agro Industries was allowed by the Bhairahawa Custom Office without quality testing which was against the Plant Protection Act 2007. The monitoring team also inquired if this type of mismanagement is done regarding the WFP's food, it was learnt the rice and lentil of WFP had never go through quarantine test.
16. The team found that if Custom's mobile police had to raid a place with a suspicion of storing inedible food then they had to do it jointly with the representative of custom office and Federation of Industry and Commerce. In such situation the information might get leaked and the real culprit might escape.

### **Commission's recommendations to be made to the government of Nepal**

1. Shall request CIAA to investigate on the supply and quality test of the food distributed in the epidemic affected areas, different minimal standards used by the district administration office (DAO), Rupandehi and Bhairahawa custom office regarding the export of food items, provisions stipulated in Section 8 and preamble of Food Act 1966, Section 32 of Plant Protection Act 2008 and Section 15 of Consumer Rights Protection Act 1997 is not followed by the DAO and custom office. Though the quality of food is related to human health and right to life, the monitoring team of the Commission found that the standard used by the stakeholders, importers, custom office, district administration office, Rupandehi varied greatly which is against the law. Therefore, the Commission requests the CIAA for comprehensive investigation on this issue.
2. Shall recommend the government to mention compulsorily and also maintain records regarding the origin of the food, certificate of quality, stamp/symbol/letters to identify the importer, name of the areas food is to be distributed, target group/community, expiry date of the food etc.
3. Shall recommend the government to stop the tendency of supplying food by the donor agencies on their own rather the government owned organizations should be made responsible for the storage, protection, quality testing and distribution of the food items after formulating minimum national standard.
4. Shall recommend to build effective coordination among the offices related to custom, plant quarantine, animal quarantine, food technology and quality control office and custom's mobile police to provide speedy service to the clients and manage to carry out effective monitoring.
5. Shall recommend the government to review, revise, update, amend and implement the Food act 1966 as per the need.

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**Annex 3**

1st Letter from CDO Office, Rupandehi

**Annex 4**

2nd Letter from CDO Office, Rupandehi

**Annex 5**

Letter from Siddhartha Nagar Chamber of Commerce and Industry

**Annex 6**

Letter, Regional Office of the Food Technology and Quality Control

**Annex 7**

**Government takes cautious approach to GM foods**

**Annex 8**

Letter to INSEC by World Food Program

❖ ENDS