

Selected Decisions

of

The National Human Rights Commission of Nepal

The Commission does not recommend to file a case against someone without any basis or reason. Therefore, it cannot be understood that the body or official receiving such recommendation has discretion of whether to implement the recommendation of the National Human Rights Commission or not. It cannot be interpreted that such legal provisions that provide discretion are conducive to the provisions of the Constitution and its intentions.

Supreme Court writ no.068-WS-0063, Date of Order:

Wednesday, 6 March 2013



National Human Rights Commission of Nepal
Hariharbhawan, Lalitpur, Nepal



Office bearers of the NHRCN

Chairperson

Hon. Anup Raj Sharma,

Members

Hon. Prakash Osti

Hon. Sudip Pathak

Hon. Mohana Ansari

Hon. Govinda Sharma Poudyal

Secretary

Bed Bhattarai

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Editing/Coordination

Shyam Babu Kafle
Officiating Head
Legal Affairs Division

Collection

Human Rights Officers Divya Kumar Jha, Ranjita Shah
Assistant First Maniram Thapa
Legal Affairs Division

Editor

Runa Maharjan, Human Rights Officer
Purnima Rana, Human Rights Officer

Publisher

Legal Affairs Division
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Abbreviations

CPN-M	: Communist Party of Nepal-Maoists
DAO	: District Administration Office
DDC	: District Development Committee
DSP	: Deputy Superintendent of Police
FIR	: First Information Registration
HR	: Human Rights
ICRC	: International Committee of Red Cross
IDPs	: Internally Displaced Persons
NHRCN	: National Human Rights Commission of Nepal
NRS	: Nepalese Rupees
OHCHR	: Office Of The High Commissioners of Human Rights
Ref. no	: Reference Number
RNA	: Royal Nepalese Army
VDC	: Village Development Committee

About the Publication

1. National Human Rights Commission of Nepal has been publishing the selected decisions of the Commission since April 2016. This second volume contains 12 selected decisions of the Commission.
2. The selected decisions published under this volume relates to violation and abuse of human rights and international humanitarian law.
3. As per the Human Rights Commission Act, 1997 and the National Human Rights Commission Act, 2012, the nepali words “thahar” and "nirnaya" have been used respectively in lieu of the word “decision”.
4. For the purpose of making this publication reader friendly and comprehensible, numbering has been done in each paragraph. Besides some minor grammatical changes, the content of the decisions has been mentioned in its exact form without any alterations.
5. For the protection of the rights of the victims and witnesses, their names have been kept confidential. On the contrary, name of the deceased and the enforced disappearance persons is not kept confidential.
6. In case of any ambiguity with regard to the decisions published herein, the original copy of the decision shall be deemed to be valid.

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Decision of The National Human Rights Commission of Nepal

Chairperson
Hon. Kedarnath Upadhyaya

Members
Hon. Ramnagina Singh
Hon. Gauri Pradhan
Hon. Dr. K.B. Rokaya

File No.799 of 2006
Regional Office, Janakpur



Subject: **Displacement.**

The situation arising out of armed conflict has violated the right of internally displaced persons regarding right to freedom of movement and residing in any part of the country, right to acquire, own and sell property and other fundamental rights as mentioned in the Part 3 of the Constitution of the kingdom of Nepal, 1990. It is clear that the Fundamental Rights of the internally displaced persons have been violated due to their inability to exercise their rights guaranteed by the Constitution such as right to freedom of movement, right to use their property and right to live in their original home (paragraph no.16).

Although special rights for internally displaced persons (IDPs) are not guaranteed by the law, the basic human rights of IDPs, like other citizens of the state, are guaranteed by the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, the International Covenant on the Elimination of All Forms of Discrimination against women 1979, the International Covenant on the Elimination of All Forms of Racial Discrimination 1965, the Convention on the Rights of the Child 1989, Geneva Convention on International Humanitarian Law 1949 and Additional Protocol (Protocol I) 1977, the United Nations Convention Relating to the Status of Refugees, 1951 and Protocol relating to the status of refugees, 1967. These instruments have directly or indirectly established the rights of the IDPs. Therefore, displacement cannot be taken as a reason

for depriving them of freely exercising their rights on equal footing with other citizens (paragraph no. 17).

The state undoubtedly has the first and final responsibility for the proper management of the IDPs. International humanitarian aid is only a temporary measure to solve the immediate problems. Therefore, it is the responsibility of the state to guarantee the basic human rights of the IDPs and to ensure their safety not returning them to the unsafe places against their will. (paragraph no.21).

Citizens should be provided with relief and compensation not only in cases where the state has directly violated human rights, but also in cases where state has failed to provide effective protection in the cases of abuse by the non-state actors (paragraph 22).

1. A complaint was registered at the Commission on 19-07-2006 from....., a resident ofDistrict Ward no. ... currently residing in Kathmandu Metropolitan City Ward no..... demanding for compensation and peaceful rehabilitation stating that the CPN (Maoist) cadres came to their house in February 2003 and tied them up, captured the movable and immovable property leading to displacement. The complaint also states that the CPN (Maoist) used to take the annual income NRs.25,000 from the fishpond. Janakpur Regional Office conducted the necessary investigation after the complaint was transferred to the Office as per the decision of the Commission.
2. The action taken by the Commission regarding the submitted complaint are as follows:
3. A letter seeking the clarification about the incident mentioned in the clause one was sent to the District Public Relations Office of the CPN (Maoist) throughfrom the Regional Office of the Commission, Biratnagar. The letter comprises of demand for information about the details of the incident, including whether the action mentioned in the complaint took place or not? If so, such actions are against human rights and international humanitarian law. Thus, in case of violation, Commission urged for creation of a conducive environment for safe return of the victims to their home as soon as possible, to return the seized property to the victim and provide all the details to the Commission as soon as possible. A copy of the letter was also sent to the Regional Bureau Office of CPN (Maoist) for necessary action.

4. It is mentioned in the brief description form (action taken and progress) on 26.03.2007 that the team deployed for monitoring and investigation of the complaints about human rights violations in the district contacted the Chief District Officer Shambhu Koirala, and District representative but could not resolve the problem.
5. Likewise, it is mentioned in the brief description form (action taken and progress) on 08.09.2007 that, the team deployed for monitoring and investigation of the complaints about human rights violations in District monitored the residence and land of the victim and found that the victim's family has been living in Kathmandu by leaving their house.
6. The memo submitted to the Commission from the complaint handling officer on 05-01-2011 states that the house and land ofhave not been occupied by any party and the victim is currently residing in Kathmandu. In relation to the claim of other compensation it can be decided from the government about the loss of personal property by CPN (Maoist) during the period of armed conflict or there is no impediment for the Commission to recommend for compensation by doing further investigation in the future. Therefore, it is necessary to settle the complaint as per Rule 6 of the National Human Rights Commission (Complaints, Action and Determination of Compensation) Rules, 2001.
7. On this,registered the complaint at the Biratnagar Regional Office of the Commission in August 2006 with the verified copy of the complaint registered at the District Administration Office..... Biratnagar Regional office sent the letter to theDistrict Public Relation Office of CPN (Maoist) on 04-08-2006. In the brief report by the monitoring team deployed from.... on 05-04-2007 mentioned about the incident and concluded that the problem could not be solved. But the monitoring team deployed on 08-09-2007 mentioned in its brief facts that the complainant has been living in Kathmandu since 2-3 years leaving their house and none of the party has prevented the house and land of the victim for possession. From the above-mentioned brief details, it is seen that the investigators did not pay attention to the various issues including:
 - a) No attempt has been seen to get factual information by writing letter to the District office about the action taken with regard to the complaint registered in the Office and the reasons for not resolving the issue.

- b) No prompt action has been taken from the District Administration Office to ascertain the amount of damage caused by the looting of household items.
 - c) Factual data with its basic facts of monitoring might be incorporated in the investigation file which has not been found in the file.
 - d) What is the reason for slow and weak monitoring and investigation? Who failed to fulfill their responsibilities on time? Submit the investigation file to the Secretary to send it back to the Officiating Director (Head of Office) of the Biratnagar Regional Office to submit the report by doing immediate monitoring and investigation in this regard and in the above-mentioned issues.
 - e) It has been directed to complete the monitoring and investigation within 15 days from the date of receipt of the investigation file and submit the report to the secretary along with the report and send the investigation file to the Central Office with the opinion on 07-07-2011. Accordingly, the letter dated ... ref. no. 54 sent to the Regional Director, National Human Rights Commission, Regional Office, Biratnagar is enclosed in the investigation file.
8. The Biratnagar Regional Office of the Commission conducted investigation on the complaints registered in the Commission of ... District from 14-11-2022 to 17-11-2011. The following facts were found during the investigation:
 9. The statement of a informed person of the incident states “ Since 1998, I have been looking after the farm of ... as a manager. After the CPN (Maoist) captured all the properties including house, land and pond of the victim the family moved to Kathmandu. They have not returned to their home till now. They also have house in where they used to come sometimes, and we used to go there as well. We have been cultivating since 2009 by taking back the land from the CPN (Maoist). Sometimes we send the crops to Kathmandu via vehicles and sometimes we take the harvest to..... house when they come there. After the CPN (Maoist) seized the house, land and property, all the belongings in the house were taken away and land was given to the local people for cultivation. Maoist used to take income from them. Before being displaced the victim used to live here and Kathmandu. At that time, they had house in ... and in Kathmandu.”
 - 10 It is found that the meeting chaired by Mr. Ram Prasad Ghimire, Chief District Officer and Coordinator of Local Damage Assessment Committee

decided to recommend the Ministry of Peace and Reconstruction to provide compensation toby evaluating the loss of property equivalent to NRs.1,54,000 for the damage of movable and immovable property and NRs.24,94,056 for the damage of house by the CPN (Maoist).

11. Mr. Dilip Ranjan Baral, Administrative Officer of District Administration Office informed that the victim's family has not received compensation as the Office has not received any amount from the Ministry of Peace and Reconstruction as per the above-mentioned decision.
12. Analysis and conclusion of the investigation team states that "No obstruction has been seen from any side to settle the matter of property of the complainant's family, the lands occupied by the Maoists have also been returned and the people employed by the victim's family have been farming. They are also getting the income from their farm. Although the compensation for movable and immovable property damaged by the Maoists during the period of armed conflict has not been received by the victim yet, it has been found that the District Administration Office has evaluated the damage and recommended to the Ministry of Peace and Reconstruction for compensation. Victim will get compensation after the approval. Therefore, it is appropriate to keep the complaint in disposition."
13. During the period of armed conflict many individuals were forced for displacement and were deprived from using their movable and immovable property because of the CPN (Maoist) and other underground armed groups. Thus, it is confirmed that the CPN (Maoist) had seized the property of and forced the family for internal displacement.
14. Judging by the facts obtained in the past, there is no doubt that the problem of internal displacement due to the armed conflict started by the CPN-Maoist in 1996 has become widespread. Although mentioned in the 25-point code of conduct between the Government of Nepal and the CPN (Maoist) after the People's Movement, the Twelve-point Memorandum of Understanding Between the Seven Political Parties and the Maoists, the Eight-point Agreement and the Comprehensive Peace Agreement of 21 November, 2006, the CPN (Maoist) party still seems indifferent to the issue of allowing the displaced people to return their home and seized property with dignity. As the government has not yet been able to fulfill the basic needs of individuals including food, shelter and cloth the role of the Government of Nepal seem weak in the rehabilitation of internally displaced persons.

15. Although the Government of Nepal has introduced programs for displaced individuals and families, the issue of rehabilitation is still a problem because of ineffectiveness and short term nature of such programs. The Government of Nepal have announced of providing special facilities to the displaced people willing to opt for foreign employment but have not been able to act as per the announcement. Similarly, the Government had promised to create environment for displaced people to return to their home, financial, health, education, employment and other facilities and business assistance to the displaced people through the Ganeshman Singh Peace Campaign Program on 20 September, 1999 but the ineffectiveness of the program has helped. In continuation of the problem of IDPs, even though the National Policy on Internally Displaced Persons 2007 was issued, no concrete program was brought in line with that policy.
16. The situation arising out of armed conflict has violated the right of internally displaced regarding right to freedom of moving and residing in any part of the country, right to acquire, own and sell property and other fundamental rights as mentioned in the Part 3 of the Constitution of kingdom of Nepal, 1990. It is clear that the fundamental rights of the internally displaced people have been violated due to their inability to exercise their rights guaranteed by the Constitution such as right to freedom of movement, right to use their property and right to live in their original home.
17. Although special rights for internally displaced persons (IDPs) have not been guaranteed by the law, the basic human rights of IDPs, like other citizens of the state, are guaranteed by the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, the International Covenant on the Elimination of All Forms of Discrimination against Women 1979, the International Covenant on the Elimination of All Forms of Racial Discrimination 1965, the Convention on the Rights of the Child 1989, the four Geneva Conventions on International Humanitarian Law 1949 and their first protocol 1977, the United Nations Convention Relating to the Status of Refugees, 1951 and its protocol 1967. Those instruments have directly or indirectly established the rights of the IDPs. Therefore, just because they are displaced, they cannot be deprived of the same rights as other citizens.

18. Similarly, the United Nations Principles on Housing and Property Restitution for refugee and IDPs, 2005 (The Pinheiro Principle) adopted by the United Nations have introduced a global and codified concept to address the problems of refugees and IDPs in a practical way, including the role and responsibility of state, specialized UN agencies and the international community. Keeping in mind the fact that most of the IDPs and refugees around the world have lost their land, houses and property due to displacement, this theory considers the concept of restitution of property and house as the best solution.

19. The United Nations Guiding Principles on Internally Displaced Persons, 1998, adopted by the UN General Assembly on December 9, 1998 is the only document ever issued focusing on IDPs. It has clearly defined internally displaced persons, general principles of internal displacement, provisions for protection from displacement, provisions for their protection in displacement and provision of necessary humanitarian relief and assistance to the displaced persons for safe resettlement and restitution. It has placed both the state and non-state actors as duty bearers. This Principle has the following provisions for protection of rights of the IDPs.
 - There will be no discrimination in the enjoyment of rights and freedoms based on displacement,
 - These principles apply equally to all displaced persons without any discrimination,
 - The time of displacement should not be extended except in necessary circumstances,
 - All alternative measures should be taken for the solution,
 - Basic facilities such as accommodation, security, food and health care should be provided appropriately,
 - The right to life, liberty, security and dignity should be guaranteed,
 - Family members should not be separated,
 - Protection should be provided from rape, torture, inhumane and degrading treatment, gender-based violence and forced prostitution
 - Protection should be provided from slavery, marital trafficking, sexual exploitation, or forced child labor
 - This principle emphasizes the right not to be forcibly conscripted into

the military, to leave the country, to seek security in any part of the country, to seek refuge in another country, not to be held hostage, and the right to education.

20. It is necessary to identify and document the real displaced persons in order to solve the problem of internally displaced persons. In the present complaint, the fundamental rights of the victim guaranteed by the Article 12 and Article 17 of the Constitution of the then Kingdom of Nepal 1990 and Articles 12, 13 and 19 of the Interim Constitution of Nepal, 2007 have been found violated.
21. There is no doubt that the state has the first and final responsibility for the proper management of the IDPs. International humanitarian aid is only a temporary measure to solve the immediate problems. Therefore, it is the responsibility of the state to guarantee the basic human rights of the IDPs and to ensure their safety by not returning them to the unsafe places against their will. The past and the present constitutions have given all citizens the right to acquire, enjoy, and sell property. The state must take all necessary measures to protect these rights.
22. Citizens should be provided with relief and compensation not only in cases where the state has directly violated human rights, but also in cases where state have failed to provide effective protection in the cases of abuse by the non-state actors. However, the problem of displacement still persists because of the incompetence and the inability of the state to to take this responsibility seriously.
23. Considering the decision, the complaint was lodged in the Commission on 19th July 2006 seeking compensation for the loss and rehabilitation as the victim had been displaced by the cadres of CPN (Maoist) as they even tied up the people in the house and captured the movable and immovable property including farm in December 2002. During the period of armed conflict, the then CPN (Maoist) occupied the house for six years and did not provide its income to the landlords, thus violating the human right to enjoy one's property. It is decided to recommend the Government of Nepal to provide compensation by assessing the loss of the property of the victim as the victim has not received compensation so far on his complaint at the District Administration Office.....

- 24. Send a letter to the Government of Nepal for the implementation of the decision on the complaint. Inform the complainant about the decision. Submit the complaint file to the Archiving section of the Commission by ending necessary proceeding as per the rules.

Submitted by

.....
 Mandira Shrestha
 Assistant First

.....
 Member

.....
 Member

.....
 Member

.....
 Chairperson

Date: Sunday, the 30th day of Ashad of the year 2070 BS (corresponding to 14 July 2013)

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Kedarnath Upadhyaya

Members

Hon. Ramnagina Singh

Hon. Gauri Pradhan

File No.4396/35/069 of 2008



Subject: **Robbery and Internal Displacement.**

It is observed that the Government of Nepal has not been able to protect the human rights of the internally displaced persons as mentioned in Article 8.1 of the National Policy on Internally Displaced Persons 2007, to provide relief to them as per Article 8.2 and to provide the identity of the displaced person as per Article 9. In addition to this, no compensation has been paid for the damaged property as stated in Article 3.2 of the Civil Relief, Compensation and Financial Assistance (First Amendment) Procedure 2012. Therefore, the Fundamental Right to reside in the place of permanent residence as maintained by the Article 12 of the Interim Constitution of Nepal, 2007 and right to use and conduct transactions of property as maintained by the Article 19 are violated. (paragraph 12).

The United Nations Guiding Principles on Internally Displaced Persons, 1998 provides the state with the responsibility of providing alternative accommodation with security, health and other facilities to any displaced person, Part 4 of the mentioned directive states that the state should ensure adequate compensation and humanitarian assistance whereas, Part 5 provides the state with the responsibility of return, rehabilitation and reunification of internally displaced persons. Since the government has not taken any action, it cannot be said that the victim's human rights have not been violated. (paragraph 13).

The brief details of the above-mentioned complaint and the documents attached to the complaint and the details of the action taken on the complaint are as follows.

1. A complaint was registered at the Commission on 6th April 2008 by, the General Secretary of Association Nepal, a permanent resident of District, Ward no., currently residing at VDC, Ward no.demanding the compensation and proper working environment stating that the cadres of then CPN (Maoist) had beaten his parents at their home, looted the property worth approximately NRs.5,00,000 and they have been displaced because of the threat posed by the cadres of the CPN (Maoist).
2. After the complaint was registered at the Commission, the Commission wrote letters to the District Administration Office.... twice on 21 April 2008 and 18 August 2010 asking for information about the incident. The Commission also wrote to the District Police Office on 22 April 2011 and 20 December 2011. However, both the offices did not respond to the letters. After the second follow up letter of the Commission, the District Administration Office sent a letter to the District Police Office on 5 September 2010 requesting for the details of the incident. However, this letter from the District Administration Office went unresponded by the District Police Office. As the letters of Commission went unanswered, two human rights Officers of the Commission and demanded information about the complaint during the field visit at District Administration Office and District Police Office on 13 January 2011. District Administration Office ... wrote a letter to the District Police Office on the same date of field visit asking for an explanation regarding the incident. The team from Commission did not receive any response during their period of field visit thus the team met Deputy Superintendent of Police Dhiraj Pratap Singh on the same day and drew attention to the non-response to the Commission's letter. After the team's attention, DSP Singh promised to inform the Commission via fax about the incident within a week after conducting an inquiry.
3. However, the Commission did not receive any response from the District Police Office for a long time after the team returned from the mission. On 25 December 2011, the Commission sent a letter to the District Police Office to provide the information within 10 days. District Police Office then sent the details of the incident after conducting site reconnaissance of the incident. Reconnaissance document clarified that "people claiming to be CPN (Maoist) came to the victims' house and looted. However, the quantity of property taken could not be ascertained. Victim's family sold the land and are currently living in..... Furthermore as per the locals, during the incident, the perpetrators locked his parents inside the house when they could not find the victim making the locals to open the lock.

4. The news of the incident was published in Rajdhani Daily on, Kantipur Daily on and Saptahik magazine onThe complainant immediately registered a complaint (no.1146) at the District Police Office on 4 February 2002. No immediate action was taken by the Police although the complaint was lodged soon after the incident.
5. In the above-mentioned situation, as mentioned in the complaint, the victim was displaced with his family after the threats, intimidation and looting of property by the then CPN (Maoist). Such an act has violated Article 12 and 13 of the Universal Declaration of Human Rights 1948, Article 1 (2) of the International Covenant on Economic, Social and Cultural Rights 1996, Article 1 (2) and 9 of the International Covenant on Civil and Political Rights 1966 and Fundamental Rights provided by the Articles12 and 13 of the Interim Constitution of Nepal 2007. In addition to this, the human rights of the displaced families have been violated as no action has been taken by the state to provide alternative housing with security, health and other facilities to the displaced persons as per the Principles on Internal Displacement 1998.
6. Therefore, in the mentioned situation, the victim had to be displaced from the place of residence due to the intimidation of the then CPN (Maoist) and no initiative has been taken by the Government of Nepal to provide compensation to the victim so far. Since the victim has not received any relief or compensation, the human rights of victim as mentioned in the Constitution, international human rights law and international humanitarian law have been violated. Therefore, submission has been made to come up with appropriate decision to recommend the Government of Nepal for providing compensation to the victim by conducting pertinent evaluation in accordance with the principles and practices of human rights and the no. 3.2 Provision of the Relief, Compensation and Financial Assistance to the Citizen (first amendment) Procedure, 2009, making arrangements for his business by living in the place of his choice, identifying the perpetrators and taking action against them,...as stated in the memo of the Complaint Handling Officer.
7. From the study of the facts mentioned in the complaint, it is pertinent to decide whether the complainant ... and other members of his family had been displaced from their place of residence after they were looted or not? And is it necessary to make a recommendation from the Commission for protection of human rights of the victim or not?

8. The complainant had mentioned that the cadres of CPN (Maoist) entered his house on 2nd February 2002, beaten both of his parents, looted his property and left his property chanting "Long Live Maoism". Based on the incidents taken place in other parts of the country during the time of the incident and involvement of the CPN (Maoist) in most of such incidents, the news published in the newspapers immediately after the incident, the details mentioned in site reconnaissance document and the document prepared by the District Police Office on 20th January 2012, provides ample grounds to note that the complainant and his family were displaced and looted by the then CPN (Maoist). It is confirmed that the cadres of the then CPN (Maoist) mentioned above, had looted their property and displaced them.
9. Analyzing whether the local administration could protect the right to life and freedom to work of the victim or not, it is seen that the local administration and the police have not been able to provide immediate security to the complainant's house though the house was located in the district headquarters while Maoist cadres were searching for him and even threatening his parents in the family. Furthermore, the complainant had registered the complaint (regd. no. 1146) at District Police Office on 4 February 2002 for necessary investigation but no legal action was taken. However, the complainant had to reodge the complaint on 4th April 2008. Therefore, it is confirmed that the local police and administration were not able to provide effective security arrangements for the peace and security of the victim and his family. Thus, it is clear that the victim and his family members fall under the definition of "Internally Displaced Persons" and "Displaced Persons or Families by Armed Conflict" as mentioned in Clauses A and B of Section 3 of the National Policy on Internally Displaced Persons 2007 of the Government of Nepal, respectively.
10. Preceding facts and analysis confirms that the victim and his family had to be displaced from their residence located in District Ward no..... because of the looting by a group of CPN (Maoist) cadres and the inability of the local administration to arrange effective mechanisms for peace and security. Furthermore, human rights of the victims could not be protected as the Government could not provide the identity of IDPs and relief according to the Articles 8.1, 8.2 and 9 of the National Policy on Internally Displaced Persons 2007. Additionally, victims were not compensated for the damaged property in accordance with the Article 3.2 of the Relief, Compensation and Financial Assistance for Citizens (First Amendment) Procedure 2009. Such an act has violated the Fundamental Right to reside in their place of

permanent residence and right to enjoy and conduct the transactions of property guaranteed by the Article 12 and 19 of the Interim Constitution of Nepal 2007.

11. Similarly, the illegal attack upon the dignity and reputation of the victim and inability of the state to provide legal protection to the victim is contrary to the Article 12 of the Universal Declaration of Human Rights, 1948 whereas, the denial of the freedom of movement and choice of residence inside the country to the victim is contrary to the Article 13 of the Declaration. Victim is found to have been deprived of the means to support himself and his family which is contradictory to the Article 1(2) of the International Covenant on Economic, Social and Cultural Rights, 1966, and Article 1 (2) of the International Covenant on Civil and Political Rights, 1966. It is observed that human rights of the victim has been violated by depriving him of the right to freedom and security guaranteed the Article 9 of the Covenant. The United Nations Guiding Principles on Internally Displaced Persons, 1998 provides the state with the responsibility of providing alternative accommodation with security, health and other facilities to any displaced person, Part 4 of the very directive obliges the state to ensure adequate compensation and humanitarian assistance whereas, Part 5 provides the state with the responsibility of return, rehabilitation and reunification of internally displaced persons. Since the government has not taken any action, it cannot be said that the victim's human rights have not been violated.
12. Aforementioned factual and legal analysis implies that re regarding the complaint lodged in the Commission on 7-04-2008 demanding for the identification of the perpetrator and conduct necessary actions for proper compensation, the CPN (Maoist) cadres had entered the house of....., a resident of.....on February 2nd 2002, beat his parents, looted the property, searched for him and displaced the victim along with his parents from their residence. Investigation of Commission concludes that the victim and his family were displaced because of the activities of the then CPN (Maoist) but have not received any compensation so far. Therefore, Commission decides to recommend to the Government of Nepal to provide compensation to the victim by conducting evaluation of the loss of the property through the District Level Committee. Thus, the Commission recommends the Government of Nepal to determine and provide compensation by assessing the damage through the District level Committee.

Submitted by:

.....
Shyam Babu Kafle
Human Rights officer

.....
Member

.....
Member

.....
Chairperson

Date: Monday, the 11th day of Bhadra of the year 2069 BS (corresponding to 27 August 2012 AD)

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Nayan Bahadur Khatri

Members

Hon. Sushila Singh Silu

Hon. Sudip Pathak

Hon. Gokul Pokharel

Hon. Dr. Ram Dayal Rakesh



Subject: **Extrajudicial Killing.**

The act of CPN (Maoist) including the imposed participation of the general people in the program, conducting such programs in densely populated areas without considering the possibility of physical and financial losses to the people and compelling the general public to perform compulsory labour by issuing orders are contrary to the principles of human rights and international humanitarian law which is the violation of the Common Article 3 of the Geneva Conventions, 1949 (paragraph 17).

1. The Commission initiated a suo moto investigation on the incident considering the severity of the incident, referring to the published various national newspapers about the clash between the CPN (Maoist) and the security forces at Bahadurpur in the eastern part of Palpa district on Saturday evening of 24th September 2005 leading to the death of one civilian and five CPN (Maoist) cadres and injury of two children during the period of the unilateral ceasefire declared by the CPN (Maoist).
2. Letter received from the District Administration Office, Palpa with ref. no. 1154 dated October 21, 2005, stated that the team of joint security force deployed on a regular patrol in the eastern part of Palpa District clashed with the terrorists at Bahadurpur VDC and security forces arrested....., a resident of Palpa District,....., a resident of Chitwan District and his wife..... Medical examination of the arrested people was conducted in Lumbini Zonal Hospital as soon as they got arrested and their health checkup is still done

as per necessity, as the case has been registered at the District Police Office, Palpa with the permission of the Special Court (Appellate Court, Butwal) under the Terrorist and Disruptive Acts (Prevention and Punishment) Ordinance, 2002.

3. Statement of 26 residents of Bahadurpur in the Site reconnaissance document indicates that CPN (Maoist) cadres living in different places in Bahadurpur village clashed with the joint security forces around 1:20 P.M of the same day resulting in the death of Milan Rakhai, a resident of Bahadurpur VDC, ward no. 9 and a student of Shree Dharadevi Secondary School by the bullet fired by security forces at Rahulkhalta. During the confrontation a three-year-old child....., resident of same VDC ward no. 7 was injured with the skin rash under the right hip and was paid 2000 Indian Rupees for treatment,, daughter ofa resident of same VDC ward no. 7 was shot in the right eye and ear by the bullet fired by the security personnel and was taken for treatment via helicopter, even the baby calf of, a resident of same VDC ward no. 1 was injured and a camera worth NRs. 4,000 (Rupees Four thousand only) was borrowed by the security personnel for the purpose of taking photos of the dead body which was not returned.
4. Statement of 29 residents of Bahadurpur states that "CPN (Maoist) cadres were present at Dokantol Chowk on Saturday, 24 September 2005 at around 1.30 pm. The security force took action after assessing the entire situation and making sure that the CPN(Maoist) cadres possessed no weapons by coming in civil dress. Five CPN-M cadres and one civilian were killed in the operation carried out by the army. General public were not informed about not leaving their house by the Royal Nepalese Army. Among the deceased, 17-year old Milan Rakhai, a resident of Bahadurpur VDC ward no. 9 was a civilian. Milan Rakhai was threshing paddy in the field as he told his wife to fetch the oxen because of rainfall and went towards shop when he was shot dead by the army at a distance of about 25 meters. No other civilians were killed in the incident. was airlifted to Kathmandu by the Royal Nepalese Army to treat the serious injury caused by the bullet fired by the Army. The Army provided first aid and 2000 Indian Rupees for further treatment to.... for the minor injury in the incident. During the interrogation, were kicked, beaten and tortured even when they showed their identity cards of teachers. The bullet was suddenly fired by the Royal Nepalese Army. Any sound of crossfire and bomb blast was not heard and no soldier was injured in the incident."

5. Statement of eyewitness asserts that “Since, it was Saturday, my brother..... and I were sitting in our tank (shop) in Dokantol. Cadres of CPN Maoist were sitting outside of our shop while we were playing inside the shop. Suddenly, the Royal Nepalese Army opened fire. The Maoists started shouting and fleeing. In such a situation brother ... and ... were shot inside the shop. I told the Royal Nepalese Army that they had been shot and then I took them inside the house of ... in front of Only the army had fired the bullet. The Maoists fled without firing a shot. I know nothing more than that.”
6. Statement of an eyewitness asserts that “ While I was returning to my house from the shop after buying Dal and Flour, I met Milan Rakhhal in Rahukhalta and asked him where he was headed towards, to which he replied that he was going to shop to buy biscuits for his son. Suddenly, the gunshot was heard when we were just 8-9 steps apart. The bullets were fired by the army from the shed of Milan Rakhhal died on the spot after being shot. Milan was not a Maoist and he had not fled. Even after the firing stopped, the army did not allow us near Milan Rakhhal. The victim was shot in the right arm and right chest. The army should not have fired without notice.”
7. Statement of eyewitness asserts that “ and were playing in the tank (shop) while I was sitting outside. Suddenly a shot was fired from the post office. I went inside the tank (shop) immediately. Just then ... and ... came inside the tank crying and panicking as they were shot. Even after that, the indiscriminate firing was carried out on the tank. We just came to know about the wound of only after the arrival of his mother butwas bleeding from the wound. I tried stopping the blood with my hand. There was also with me. Then we went to ... 's house and hid under the bed.became unconscious there. We all got out when the army commander knocked on the door of our hiding room after the firing was stopped. The sound of a helicopter was heard shortly after the army took’s mother and uncle with them. I don’t know more than this in this regard.”
8. Statement of deceased Milan Rakhhal’s..... states that “On the day of the incident, I went to the tap to fetch water. When I met the soldiers there, they told me to stay inside the house if I wanted to stay alive, so I stayed at my parent’s house nearby. My husband ... had not sent any letter or money even after 5 years of his stay in Saudi Arabia. All the household matter had been handled by My ... had gone to play carom board and had no clue about gunfire. I requested the army personnel to let me go and inform him to stay at home but they refused. When I came home after the shooting had stopped,

I saw people gathered on the road under the house. When I reached there, my Milan was covered in blood. He was studying in class 9 in Takatung. He got married in November 2004 and had gone to the shop to buy biscuits for his 6-months-old son. I would like to request the Commission for initiation of action against the perpetrators both the shooter and the one who ordered the shooting without differentiating the innocent and guilty and for providing proper compensation to the victim's family. Additionally, there was no cross firing but the Royal Nepalese Army fired indiscriminately. Five Maoist cadres died while fleeing for their lives instead of firing”

9. Statement of deceased Milan Rakhali's mentions that “At one o'clock in the afternoon, myMilan Rakhali, who was threshing paddy in the field, came and washed his hands and feet, asked for the money to have food at the hotel and buy biscuits for son, so I gave him money. We tied the buffalo in the barn and went together to the tap below the house and dispersed. Shortly afterwards, the innocent was shot dead by the Royal Nepalese Army. No shots were fired by the Maoists at that time. I saw them flee for their lives. I would like to request the National Human Rights Commission to take initiative for action against the culprit and appropriate compensation for the victim's family as he died on the spot due to indiscriminate firing by the Royal Nepalese Army.”
10. Statement of injured victim.....'s mentions that “At around 1 o'clock on the day of the incident, my son and sister were playing inside the tank when a bullet fired by the Royal Nepalese Army hit in the right abdomen of my son..... The wound is one inch long and one inch deep in the abdomen. Currently, he is undergoing general treatment. We are supposed to take him to Tansen for further treatment but we don't have enough money for treatment. Two thousand Indian Rupees given by the army for treatment has already been spent. My son gets scared even when the prayer bell rings causing mental stress to the family members. I would like to request the National Human Rights Commission to take initiative for further treatment and compensation.”
11. Palpa committee of CPN (Maoist) stated that “A discussion was held with the district level cadres of the CPN (Maoist) focusing on the involvement of the CPN (Maoist) with weapons in such type incidents and the strategy adopted by the party to minimize the loss of life and property of the people. The team had warned the CPN (Maoist) not to repeat the atrocities like killings, abductions, torture and disappearances, to abide by international

treaties and Covenants, and alerted about the possible consequences of violations.”

12. Statement of the Laxman Kumar Thapa, Chief District Officer of Palpa mentions that “We got the information that six terrorists were killed and two children were injured in a clash between the joint security forces and the CPN-Maoist at Bahadurpur in the remote area of east Palpa on 25th September 2005. One of the dead was reported to be a civilian. However, it is being investigated. If the deceased happens to be a civilian then the family of the victim will be provided relief and compensation as per the law. The arrested have been remanded in custody at the Area Police Office, Butwal as per the order of the Rupendehi District Court to prosecute them under the Terrorism and Destructive Act (Control and Punishment) Act, 2004 and the families are allowed to visit them. As one of the arrested is a minor, an initiative is being taken to return him to his family or if not possible to the juvenile correction home as soon as possible.
13. A team deployed on 29 September 2005 to carry out the on-site investigation of the incident submitted the report on 7th November 2005.
14. The report of the investigation team states that “In the investigation initiated by the Commission on the incident by considering the severity of the incident, as published in the various national newspapers about the clash between the CPN (Maoist) and the security forces at Bahadurpur in the eastern part of Palpa district on Saturday evening of 24th September 2005 leading to the death of one civilian and five CPN (Maoist) cadres and injury of two children during the period of the unilateral ceasefire declared by the CPN (Maoist) the statements of the relatives of the deceased, eyewitnesses and the security forces questioned by the team deployed by the Commission regarding this incident has to be taken into consideration. Thus, based on the statements of the relatives of the deceased, eyewitnesses and the security forces interrogated by the team deployed by the Commission regarding the incident, it is observed that the CPN (Maoist) had been preparing a program at Dokantole in the Bahadurpur VDC ward no. 7 on 25 September 2005. The program had not started but participants were arriving for the program. The villagers were informed about the program and local women were given the responsibility of preparing rice and cutting vegetables. The CPN (Maoist) cadres were not killed after arrest but no such initiative was taken despite the possibility of arrest. Five Maoist cadres were killed on the run, but a civilian, Milan Rakhal, who was coming to the shop to buy biscuits for his 6-month-

old son was also shot dead by the indiscriminate firing by the security forces with the mentality of all teenagers being Maoist. The security forces fired indiscriminately without informing the locals to go to a safe place killing the civilians and injuring two children. Many of the tin roofs of the houses became like net because of the bullets. Furthermore, even after the shooting stopped, security forces termed local youths and teachers as Maoist and physically tortured them despite their display of identity cards. Five arrested Maoist cadres were not treated humanely by the security forces, they were kicked while walking, they were not allowed to eat, they got replied "Drink urine" while asking for water and were misbehaved by the security forces."

15. On the subject matter of extrajudicial killing presented at the regular meeting of the Commission regarding the investigation initiated by the Commission on the incident by considering the severity of the incident, as published in the various national newspapers about the clash between the CPN (Maoist) and the security forces at Bahadurpur in the eastern part of Palpa district on Saturday evening of 24th September 2005 leading to the death of one civilian and five CPN (Maoist) cadres and injury of two children during three months-long unilateral ceasefire declared by the CPN (Maoist), the Commission must decide on whether the human rights have been violated or not? If so, what legal action should be taken against the perpetrators? And How much compensation should be provided to the victim's heirs?

16. While studying and analyzing the shreds of evidence attached in the investigation file, from the investigation into the complaint lodged in the Commission about the allegation of Extrajudicial killing the unarmed Maoists and civilians by the security personnel in Bahadurpur, Palpa District on 25 September 2005, it is found that the CPN (Maoist) was preparing a big program in the village on the date of the incident, the program had not started but participants were arriving for the program, and the Maoists had issued an order for women to do the chores like preparing rice. At that moment, the Royal Nepalese Army cordoned off the village in the shape of "C" and fired indiscriminately, in such a way that the civilians and even children were victimized from the bullets fired by the army. Eyewitnesses state that there was no crossfire at the time of the incident. CPN (Maoist) cadres were eating while the fire was started and they begin fleeing when five district-level CPN (Maoist) cadres and a civilian were killed and two children were injured. The action of the Security Forces violates the Articles 11, 12 and 14 of the Constitution of the Kingdom of Nepal 1990 and Article 12 of the Civil Rights Act 1955. Furthermore, the acts of the security forces

have violated Article 6 and Article 26 of the International Covenant on Civil and Political Rights, 1966, the common Article 3 of the Geneva Conventions, 1949 and right to life guaranteed by the Article 3 of the Universal Declaration of Human Rights, 1948. Therefore, it is decided to recommend to His Majesty's Government for legal action against the perpetrators by identifying them as per the Sub-sections (1) and (2) of Section 13 of the Human Rights Commission Act, 1997 and Rule 13 of the National Human Rights Commission (Complaint Action and Determination of Compensation) Rules, 2001 and to provide compensation of NRS.1,00,000 to the family of each deceased persons for their livelihood according to Rule 17 of the National Human Rights Commission (Complaint, Action and Determination of Compensation) Rules, 2001.

17. Likewise, it is decided that the act of CPN (Maoist) of imposing the general people to participate in the program, conducting programs in densely populated areas without considering the possibility of physical and financial losses to the people and compelling the general public to perform compulsory labour by issuing orders are contrary to the principles of human rights and international humanitarian law which is the violation of the Common Article 3 of the Geneva Conventions, 1949.

It is hereby directed to provide information about the decision to the victim's family.

Submitted by

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 Yagya Prasad Adhikari
 Chief
 Protection and Monitoring Division

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 Member

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 Member

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 Member

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 Member

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 Chairperson

Date: Tuesday, the 4th day of Magh of the year 2062 BS (corresponding to 17 January 2006 AD)

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Nayan Bahadur Khatri

Members

Hon. Sushila Singh Silu

Hon. Sudip Pathak

Hon. Gokul Pokharel

Hon. Dr Ram Dayal Rakesh



Subject: **Enforced Disappearance.**

The state has the responsibility to guarantee the rights of every citizen to life, liberty, equality and dignity and to provide appropriate treatment in case of violation of such rights. In such a situation, to publicize the status of disappeared people after they got arrested by the security personnel and to bring them under the purview of law, assessment of the current situation and the witness evidence obtained during the investigation can be the ground of reaching to a conclusion. Therefore, while analyzing the above-mentioned facts, evidence and circumstantial situation, it is observed that Mr Amrit Kandel, a permanent resident of Benighat VDC ward no.3 Dhading and currently living in Kathmandu, was arrested by the security personnel and detained at Bhairavnath Battalion, Maharajgunj, Kathmandu and also kept at Nepal Army No. 6, Brigade, Baireni (paragraph 10).

1. A complaint was registered at the Commission on 15 October 2003 by to take initiative for the protection of the life of 21-year-old Amrit Kandel, a 1st-year undergraduate student at Saraswati Campus, Kathmandu stating that he was arrested and disappeared by security personnel from Chabahil, Kathmandu on 11 October 2003. The Commission had also received the complaints on the same subject matter from the Human Rights Organization Nepal and Human Rights Project of Nepal Bar Association on 16 October 2003 and 26 November 2003 respectively.
2. On 17 October 2003, a letter was dispatched from the Commission which was addressed to the Human Rights Section of the then Royal Nepalese

Army and the Human Rights Cell of Police Headquarters demanding the information about the incident. The copy of the letter was also sent to the Ministry of Defense and Ministry of Home Affairs of the Government of Nepal. In response to this, a letter was received from the Human Rights Cell of the Police Headquarters dated 01-01-2004 stating that he was not arrested from the mentioned district. Likewise, the District Administration Office, Dhading had replied to the Commission on 07-04-2006 stating that Amrit Kandel had not been arrested by their office and its subordinate police offices. Regarding the incident, no information was received from the Nepal Army.

3. During the investigation by the Commission,, a permanent resident of District,.....VDC....ward no.... currently residing in Kathmandu, who was also arrested by a security force from Kathmandu on 15 September 2003 and released on from the detention at Bhairabnath Battalion in Kathmandu submitted an application to the Commission on 7-03-2006 stating that Amrit Kandel was also kept in the custody with him from 10-10-2003 to 24-10-2003. As per the application, Mr Kandel had worn red and black coloured jacket, and brown coloured pant at that time and was kept in the shed nearby parking area near the main building of Bhairabnath Battalion.
4. Likewise, in his statement with the Officer of the Commission on 03-04-2006,, aged ... a resident of District VDC ward no.has stated that he had been arrested by the army on 12-09-2003, from Patandhoka in Lalitpur and was released on 10 December 2003 after the detention in Bhairabnath Battalion. While he was in the detention, security forces brought Amrit Kandel in the detention of Bhairabnath Battalion on 10-10-2003 and he met Mr Kandel many times in detention. In the early days of detention, condition of Amrit Kandel was critical whereas, later on, his health condition improved. While in the Battalion, Amrit wore a black and red jacket with Adidas printed on the back and folded pants. He was kept with Mr Kandel in the shed with a thatched roof where they used to hear the sounds of motorcycles, cars and ambulances. There was a temple near the terrace where they were kept. The windows were old. When he went to the bathroom, his friends told him that they were in Bhairabnath Battalion, also the vehicles and clothes were of army colour so he came to know that they were kept in the Bhairabnath Battalion.
5., aged....., a resident of District.... VDC ward no.... stated to the officer of the Commission on 02-05-2006 stating that Amrit Kandel was brought to his room in Kathmandu by security personnel in civil dress at around 1:00 P.M. on 10-11-2003 where Mr Kandel changed his clothes. At that time, he was alone in the room whereas, Amrit Kandel looked scared

but couldn't speak up because of the presence of security personnel. While Amrit opened his clothes, there were bruises on this body and even he couldn't say anything out of fear.

6. a permanent resident ofDistrict VDC ward no.and currently residing in Kathmandu and studying Master's Degree stated to the officer of the Commission that he was arrested by the security personnel from Kathmandu on 13-09-2003 and was tortured while he was kept in the custody for three months in Bhairabnath Battalion Maharajgunj. Later, he was kept in Bairani Barrack in Dhading for 1 day and Gajuri Barrack for.... Months. Finally, he was detained in the District Police Office of Dhading fordays and was released on date. When he was detained in Bhairabnath Battalion, Amrit Kandel was also detained for 2 months and 15 days along with him. During that period, Amrit Kandel was severely tortured, handcuffed and blindfolded. He was kept in water and electrocuted. He was unable to speak, walk or eat, and a few days later he was taken to the search operation, he had bruises because of torture and scars all over his body. His ears, eyes and legs were badly affected and he was given medicine. Amrit Kandel told him that he was in danger when he met Mr Kandel in the bathroom. Mr Kandel remained in the Bhairabnath Battalion until he was moved.
7. and were detained in Bhairabnath Battalion after getting arrested by security forces from different places of Kathmandu and currently detained in.....mentioned that Amrit Kandel was kept at Bhairabnath Battalion in Maharajgunj with them in their statement with the investigation team of the Commission.
8. applied to the Commission asking for monitoring of Brigade of Bairani Dhading on 23-05-2006 stating that a soldier of No.6 Brigade Dhading informed that he had met Amrit Kandel in the detention of the Brigade. The team of the Commission met the soldier on 24-05-2006 as he informed that he had met Amrit Kandel in the Brigade regularly from the first week to 29 April 2006. As the soldier informed about the place where Amrit Kandel was kept, the team of the Commission went to the Brigade for monitoring. However, the team of the Commission was not allowed to monitor the place as per the order of the Brigadier General. Based on the information provided by the soldier working in the Brigade and denying the monitoring of the place indicates the huge possibility of the presence of Amrit Kandel in the custody of the Brigade.
9. A complaint was registered at the Commission on 15 October 2003 stating that he was arrested and disappeared by security personnel from Chabahil,

Kathmandu on 11 October 2003. A letter was dispatched from the Commission which was addressed to the Human Rights Section of the then Royal Nepalese Army and the Human Rights Cell of Police Headquarters demanding the information about the incident. The copy of the letter was also sent to the Ministry of Defense and Ministry of Home Affairs of the Government of Nepal. The Human Rights Cell of Nepal Police and the District Administration Office, Dhading had replied that they and their subordinated offices had not arrested him. However, no information was received from the Ministry of Defense and its subordinate bodies....People who were arrested by security forces from different places who were kept in Bhairavnath Battalion Maharajgunj stated that they had met Amrit Kandel while in detention,...people provided statements to the Commission that they met Amrit Kandel while the security personnel took him in the search operation. Additionally, the monitoring team of the Commission were denied the observation of place as stated by the soldier working in the 6th Brigade Baireni Dhading. Thus, there is evidence that the victim is under the control of the Nepal Army.

10. The state has the responsibility to guarantee the rights of every citizen to life, liberty, equality and dignity and to provide appropriate treatment in case of violation of such rights. In such a situation, to publicize the status of disappeared people after they got arrested by the security personnel and to bring them under the purview of law, assessment of the current situation and the witness evidence obtained during the investigation can be the ground of reaching to a conclusion. Therefore, while analyzing the above-mentioned facts, evidence and circumstantial situation, it is observed that Mr Amrit Kandel, a permanent resident of Benighat VDC ward no.3 Dhading and currently living in Kathmandu, was arrested by the security personnel and detained at Bhairavnath Battalion, Maharajgunj, Kathmandu and also kept at Nepal Army No. 6, Brigade, Baireni.
11. Aforementioned acts show that the Fundamental Rights of the victim not to be deprived of personal liberty except as per the law mentioned in the Article 12 of the Constitution of the Kingdom of Nepal 2007, the right to get information including the reason for arrest and right to seek advice from legal practitioners as per the Article 14 (5), and the right to be produced before the authorized authority within 24 hours of arrest as mentioned in Article 14 (6) of the Constitution has been violated. Similarly, the right to liberty and security of the victim as enshrined by the International Covenant on Civil and Political Rights 1966, has been violated which states that everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention and no one shall be deprived of his liberty except on such

grounds and in accordance with such procedure as are established by law (Article 9.1), anyone who is arrested shall be informed of the reasons for his arrest at the time of arrest and shall be promptly informed of charges against him (Article 9.2). In addition to this, this act has violated the provision 3 of the Nepal Government's Commitment in the Implementation of Human Rights and Humanitarian Law issued on 26 March 2004 which states that no one shall be subjected to arbitrary arrest, detention and measures will be taken to prevent illegal or unwarranted arrests and enforced disappearances.

- 12. Regarding the complaint registered at the Commission stating that Amrit Kandel, aged 21, a permanent resident of Benighat VDC ward no. 1, Dhading District and student of Saraswoti Campus arrested and disappeared by security personnel from Chabhil, Kathmandu on 11 October 2003, the statement produced by the persons who were with him while he was detained in the military custody in Bhairabnath Battalion and No. 6 Brigade, Baireni confirms his detention in military custody. Thus, the Commission decides to recommend the Government of Nepal to bring the victim under the purview of law by publicizing his status and take legal action against the perpetrators by conducting the necessary investigation.

It is hereby directed to provide information about the decision to the victim.

Submitted by

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 Yagya Prasad Adhikari
 Chief
 Protection and Monitoring Division

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Member

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Member

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Member

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Member

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Chairperson

Date: Tuesday, the 20th day of Ashad of the year 2063 BS (corresponding to 4 July 2006 AD)

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Kedarnath Upadhyaya

Members

Hon. Ramnagina Singh

Hon. Gauri Pradhan

Hon. Leela Pathak

Hon. K.B. Rokaya

File No.2965 of 2005



Subject: **Suicide in the Custody.**

1. The entire responsibility of the security of the detainees lies with the custodial security agency (paragraph 14).
2. The death of a detainee inside the barrack while in custody is a sign of serious negligence, recklessness and carelessness of the security agency (paragraph 15).
3. Even though it was revealed that action had been taken against the three soldiers on duty, there is no information about action against the responsible Chief of the Battalion. Therefore, necessary action should be taken against the Chief of the Battalion as he has acted irresponsibly on providing adequate security to the people inside the Battalion (paragraph 16).
4. To assist in the impartial investigation by providing information to the Commission within 48 hours in case of death of any person in the detention centres, prisons, custody etc. under the Government of Nepal (paragraph 17).

1. The Commission decided on taking Suo-motto action on 6 June 2005, regarding the investigation of suicide committed by Dorje Sherpa, a resident of Siddhakali VDC, Ward no. 5 of Sankhuwasabha District, by strangling himself with the laces of his shoes while in the custody of the Shreejung

Battalion of Nepal Army in Singha Durbar at 1.15 pm on Friday, 26 May 2005 as published in various media.

2. On 22 July 2005, A letter was sent to the District Police Office, Hanumandhoka, Kathmandu and Nepal Army to provide a copy of the documents related to the investigation regarding the incident.
3. A team was deployed on 12 June 2005, to investigate the incident and submit the report to the Commission.
4. Shreds of evidence and the report of the forensic doctor show that the victim had committed suicide. As per the information provided by the security personnel, Dorje Sherpa was allowed to use the toilet and bathroom used by the Nepal Army due to lack of space. The day before he committed suicide, he had requested for hospital visit stating that he is HIV positive and felt like vomiting. He requested for a shower before going to the hospital so he was asked to change his clothes and was allowed to wear his shoes immediately after taking a bath. He stayed in the bathroom for a long period so the security personnel opened the bathroom and found that he had committed suicide by strangulating himself with the lace of his shoes in the neck at 3:30 P.M. on 26th May 2005.
5. As per law, the entire responsibility of providing security to detained persons lies with the security agencies. As the investigation team of the Commission could not investigate the condition of the body so it is necessary to prioritize the statements made by the concerned security agencies, the documents obtained from the District Police Office, Kathmandu and the evidence from the scene of an incident.
6. The Commission had repeatedly recommended that military barracks are not a humane place to hold detainees but Dorje Sherpa was placed in the military custody without the implementation of the Commission's recommendations, as the security forces are fully responsible for the security of the detainees as per the law but the security forces are found to be negligent in the security arrangements regarding the incident. The investigation report of the Commission states that it is necessary to recommend the Government of Nepal to adopt adequate precaution and to inform Commission, accordingly.
7. A letter was dispatched to the District Police Office, Kathmandu on 15-06-2006 requesting the copies of the documents related to the investigation. On the same date, a letter was also sent to the Human Rights Cell of the

then Royal Nepalese Army demanding necessary information on the failure to protect the life of the detainee as it is the duty of the detention officer. The letters are attached in the investigation file.

8. The documents related to the incidents including site reconnaissance, reconnaissance of dead body, autopsy report and certificate of issuance of the body were received from the District Police Office Kathmandu on 27-09-2005.
9. The following information was mentioned in the response letter received from the Human Rights Cell of the then Royal Nepalese Army on 02-08-2006.
 - Incident: On 25th May 2005, Dorje Sherpa committed suicide in the military camp, Singh Darbar.
 - Findings: Investigation found that 3 RNA personnel was guilty of negligence. The sergeant was sentenced to 2 months in imprisonment, forfeited of promotion for 6 months. The soldier was sentenced to 2 months of imprisonment and forfeited of the grade for 2 years and a waiter (third-person noncombatant) was sentenced to 2 months of imprisonment.
10. The Commission received a letter from the Human Rights Cell of the then Royal Nepalese Army dated 06-03-2006, (ref. 14644/A/3/HR/062/063/62) regarding the incident of suicide committed by Dorje Sherpa, by strangling himself with the laces of his shoes while in the custody of the Shreejung Battalion of Nepal Army in Singha Durbar at 1.15 pm stating that the incident took place due to the negligence of three military personnel in the point no.75.
11. To establish the credibility of the action taken against the concerned military personnel, the Commission decided on 25-10-2007 to demand all the details related to the incident including names, ranks and dates of their detention from the Human Right Directorate of the Nepal Army. Accordingly, the following details of the three military personnel on duty regarding Dorje Sherpa was received from the Human Rights Directorate on 13-12-2007.
 - a) Name: Om Bahadur Karki
Post: Sergeant
Punishment: 60 days detention form 26-05-2005

- b) Name: Yubaraj Bogati
Post: Soldier
Punishment: 60 days detention form 26-05-2005
- c) Name: Krishna Bahadur BK
Post:
Punishment: 60 days detention form 26-05-2005
12. The investigation initiated by the Commission via Suo-motto action on 6th June 2005 regarding the case of suicide of Dorje Sherpa, a resident of Siddhakali VDC, Ward no. 5 of Sankhuwasabha District considering the possibility of serious violations of human rights concludes that the death of Dorje Sherpa as suicide in the military custody on the ground of investigation report of the team of the Commission, report of forensic doctor and other pieces of evidence.
13. It is seen that, the Commission had repeatedly recommended about military barracks not being a humane place to hold detainees but the victim was placed in the military custody without the implementation of the Commission's recommendations. As per the law, the security force is completely responsible for the security of the detainees. However, the security forces are found to be negligent in the security arrangements thus, leading to the possibility of this incident.
14. Earlier, in the similar natured case of Sadharam Devkota, the Nepal Army had issued a stern warning to a soldier who could not monitor the detention centre and the Commission was informed that a circular has been issued for proper monitoring of the detainees in the barracks. Although the Commission was informed that action was taken against three soldiers in the present case, such incidents are recurring. As the entire responsibility of the security of the detainees lies with the custodial security agency, here the security agency appears negligent in the security arrangements causing the occurrence of such incident.
15. Based on the investigation report prepared by the team of the Commission, report of forensic doctor and other shreds of evidence, the investigation initiated by the Commission via Suo-motto action on 6th June 2005 regarding the case of suicide of Dorje Sherpa, a resident of Siddhakali VDC, Ward no. 5 of Sankhuwasabha District considering the possibility of serious violations of human rights culminates that the incident like the death of a detainee inside the barrack while in custody is a sign of serious negligence, recklessness and carelessness of the security agency.

16. The response of Human Rights Directorate of the Nepal Army reveals that three soldiers on duty Om Bahadur Karki (Se.), Yubaraj Bogati (Pr.), Krishna Bahadur BK (Meter) were imprisoned for 60 days from 26-05-2005 in the case of suicide committed by Dorje Sherpa at the military custody. Even though it is revealed that action had been taken against the three soldiers on duty, there is no information about action against the responsible Chief of the Battalion. Therefore, necessary action should be taken against the Chief of the Battalion as he has acted irresponsibly on providing adequate security to the people inside the Battalion.
17. Therefore, the Commission recommends the Government of Nepal to take necessary action against the Chief of the Battalion for his irresponsible behaviour in providing adequate security in his Battalion, to provide compensation of NRs.100000 to the victim's family for their livelihood according to the Rule 17 of the National Human Rights Commission (Complaints, Action and Determination of Compensation) Rules, 2001 as the victim died in the military custody due to negligence of the security forces and to assist in the impartial investigation by providing information to the Commission within 48 hours in case of death of any person in the detention centres, prisons, custody etc. under the Government of Nepal.

It is hereby directed to provide information about the decision to the victim.

Submitted by

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 Yagya Prasad Adhikari
 Chief
 Protection and Monitoring Division

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 Member

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 Member

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 Member

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 Member

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 Chairperson

Date: The 26th day of Poush of the year 2064 BS (corresponding to 10 January 2008 AD)

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Kedarnath Upadhyaya

Members

Hon. Ramnagina Singh

Hon. Gauri Pradhan

Hon. Leela Pathak

Hon. K.B. Rokaya

File No.3400 of 2006,

Head Office Pulchowk, Lalitpur



Subject: **Shot dead by bullet.**

Nepal is a party to the Geneva Convention, 1949. In the case where the provisions of this treaty are applicable, in particular, Common Article 3 only indirectly defines the area in which the provisions of the treaty apply to the parties concerned. The responsibility of determining the basis for the direct application of the concept of the armed struggle of a non-international character within the territory of a party lies with the practice and the legal system of the nation. However, when the struggle in a nation reaches a certain level, it becomes the subject of international law. Therefore, there is no dispute over the fact that the actions of the Maoist cadres are subject to international law. This implies that the concerned group will also be responsible for implementing the provisions of the Geneva Conventions (paragraph 16).

Noone is legally entitled or has any right to torture or kill any civilian or hors de combat. State not being able to punish the perpetrators committing heinous crimes by taking state law into their own hands can be perceived as the incapability of the state in the protection of human rights (paragraph 17).

1. A complaint was registered at the Commission on 04-01-2006 demanding for the necessary initiative to provide proper education to the children of the deceased and proper arrangements for the livelihood of the family stating that CPN (Maoist) cadres shot dead Ganesh Dutta Chiluwal, Chairman of

the Maoist Victims' Association, a permanent resident of Dhamilikuwa-2, Lamjung District and currently living at Ganeshsthan, Kathmandu while he was in Office at 5:00 PM on 15-02-2004. Furthermore, despite the assurance of equal financial assistance as that of families of the security personnel, victims' family only got NRs. 50,000 when they went to the Ministry of Home Affairs to apply for action against the perpetrators, adequate compensation and education of the children.

2. The Commission sent a letter on 08-01-2006 with ref. no. 3400 to the Ministry of Home Affairs, Singha Durbar, Kathmandu, demanding to avail all the factual details regarding the incident, the action taken by the Ministry as the complaint was also lodged over there, policy of providing compensation to the family of the deceased.
3. As per the letter with ref no. 1276 received by the Commission from the Ministry of Home Affairs dated 17-01-2006, NRs.2,00,000 has been provided to the dependent family of the deceased Ganesh Dutta Chilawal as financial assistance as per the decision of the Government of Nepal as a relief and scholarships have been provided annually for the children of the deceased.
4. Likewise, The Commission sent a letter of ref no. 3400 to the District Administration Office Kathmandu on 16-03-2006 demanding to avail all the factual details about the action taken for prosecution of the culprit in connection with the incident and certified photocopy of all the documents prepared in connection with the incident, including the site reconnaissance document, autopsy report and the police report. The letter is attached to the investigation file.
5. The document of site reconnaissance of the dead body states that there was blood all over the face, both eyes were open, the mouth was closed, there was a bullet hole in the right side of the chest, there was another bullet hole in the left chest, there was a bullet hole in the ribs, there was a bullet hole in the right thigh and there was a bullet hole in the back of the head.
6. Site reconnaissance document mentions that the body of the deceased was lying on the doorstep of Ganga Savings and Credit cooperatives. As per the site reconnaissance document, a bullet cover with 98/311 ingrained on it was located at 25 meters north of the body, another bullet cover with 7,62 ingrained on it was located 2 meters to the east from the formerly mentioned bullet cover, the door of the Savings and Credit Cooperative was open, the

body of the deceased covered in blood was lying on the ground, nothing else was found at the scene, bullet cover with 8,5 embedded on it was found 2 meters to the east of the dead body along with 2 bullet covers with 98,311 ingrained on it.

7. Post mortem report states Rifled Firearm Injuries to the Head, Chest and Abdomen as the cause of death.
8. Various documents and Postmortem report clarifies that Ganesh Dutta Chiluwal, the President of the Maoist Victims' Association, was shot dead by the then CPN (Maoist) cadres while he was in his office. Thus, it is necessary to decide upon what human rights of Ganesh Dutta Chiluwal have been violated by such acts of the cadres of the CPN (Maoist)?
9. The preamble of the Constitution of the Kingdom of Nepal, 1990 brought by the political changes of 1990 guarantees the civil liberties and basic fundamental rights. Constitution has shown a commitment to the concept of civil liberties, fundamental rights, human rights and the rule of law. Thus, every citizen has the right to enjoy the fundamental rights guaranteed by the Constitution. Similarly, it is the right of every citizen to support any political party or to oppose any ideology. Not only in Nepal, but political freedom has also been granted in many other countries of the world with the multi-party system.
10. Under normal circumstances, the state is the guardian of the Fundamental Rights of the individual including the right to live in a dignified manner. The state has the responsibility for protection, protection and fulfilment of human rights. Therefore, the people trust the state and consider it as their guardian. In a state of armed conflict, the Fundamental Rights of individuals, especially their right to life, possess higher risk which is also proven by Nepal's experience. In such difficult circumstances, state responsibility is more sensitive and risky. The obedience of international humanitarian law and the protection of human rights has been challenging during international armed conflict as observed during various international armed conflict. Modern political science and democratic constitutions have recognized the state as the protector of the Fundamental Rights of citizens.
11. Hundreds of people have been killed, tortured and have disappeared in the name of armed conflict and for going against the party by the Maoist cadres. Many complaints have been lodged at the National Human Rights

Commission regarding these issues. The Commission has decided upon some complaints after completion of investigation whereas, some complaints are still under investigation. It is seen that the CPN-M cadres shot Ganesh Dutta Chiluwal leading to his death. Such action of the Maoist cadres seems to be a flagrant violation of the Fundamental Rights of the victim provided by the Constitution of the Kingdom of Nepal 1990, the prevailing Nepali law and the rights enshrined in international law. Therefore, Such acts of Maoist cadres are considered a crime under current human rights law and international humanitarian law.

12. The principles enshrined in the Charter of the United Nations and Article 55 of the Charter, acknowledges that everyone has a responsibility to respect, protect, promote human rights and fundamental freedoms in general. Among such principles is the fact that all members of human society worldwide have the inherent dignity and inalienable rights supported by other human rights documents and treaties.
13. The right to life of the deceased Ganesh Dutta Chiluwal has been flagrantly violated whereas, the cadres of CPN (Maoist) has created a mockery of the right to life enshrined in international humanitarian law. International humanitarian law i.e. the Geneva Convention is the law that applies during the armed conflict. This law directs and regulates the rules and duties of the warring parties. As per the convention, wounded soldiers who cannot take part in the war, people who have not been directly involved in hostile action are entitled to the respect of their life and moral integrity. Under any circumstances, they should be treated humanely without any adverse discrimination. It is forbidden to kill or harm those who surrender and those who are disabled and incapable of participating in the war.
14. Similarly, it is the responsibility of the parties to provide proper health treatment to the sick and wounded under their control, ensure the right to life, dignity and personal rights of the wounded including the soldiers under their control and protect them against all acts of revenge and violence. No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment, excessive pain or unnecessary use of force, whereas, methods of warfare and use of weapons leading to severe pain or unnecessary destruction is prohibited. Thus, it clarifies that warring parties should treat their captives humanely without any discrimination based on gender, caste, nationality, religion, political ideology or any other criteria. Any attempt to kill or injure them is strictly prohibited by the Geneva Convention.

15. Nepal is a party to the Geneva Convention, 1949. In the case where the provisions of this treaty are applicable, in particular, Common Article 3 only indirectly defines the area in which the provisions of the treaty apply to the parties concerned. The responsibility of determining the basis for the direct application of the concept of the armed struggle of a non-international character within the territory of a party lies with the practice and the legal system of the nation. However, when the struggle in a nation reaches a certain level, it becomes the subject of international law. Therefore, there is no dispute over the fact that the actions of the Maoist cadres are subject to international law. This implies that the concerned group will also be responsible for implementing the provisions of the Geneva Conventions. Thus, considering the CPN (Maoist) 's commitment to abide by the Geneva Conventions and the contradictory act committed by the CPN (Maoist) cadres targeting Ganesh Dutta Silwal by not fulfilling their obligation is illegal and against the rules of war.
16. Noone is legally entitled or has any right to torture or kill any civilian or hors de combat. State not being able to punish the perpetrators committing heinous crimes by taking state law into their own hands can be perceived as the incapability of the state in the protection of human rights.
17. As mentioned above, the state is the guardian of every citizen. Protection, promotion and fulfilment of the human rights of the citizens are the major responsibilities of the state. The state must be more sensitive to protect the basic rights of citizens during armed conflict. On the one hand, the victim had to lose his life even in the centre of the capital due to the weak security system of the state, while on the other hand, the state was not seen sensitive due to lack of prompt search of those involved in the crime. This clarifies that the state has not been able to play the role of protecting, promoting and fulfilling the fundamental rights of the citizens.
18. Effective police investigation is essential to find the culprits and take legal action against them. The police should not work for political parties but should work independently for peace, security and investigation of crime. The police should be sensitive towards this. The police should work with the feeling that the police organization belongs to the state and the people, not to any political party. Therefore, it is the responsibility of the state and the police administration to bring the perpetrators to justice through effective investigation.

19. It has been mentioned in the complaint registered at the Commission on behalf of the deceased that no compensation has been received by the victim's family. The Commission should also consider this as the letter from the Ministry of Home Affairs states that educational scholarships are provided to the children of the deceased on an annual basis and the family of the deceased has already received NRs.200000 as financial assistance.
20. Article 3 of the Universal Declaration of Human Rights, 1948, ensures that everyone has the right to life, liberty and security of person. Likewise, Article 6 (1) of the Covenant on Civil and Political Rights, 1966 states every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his/her life.
21. While considering the decision, a complaint was registered at the Commission demanding for the necessary action for the investigation of the case, action against the perpetrators and adequate compensation for the victims on 04-01-2006 stating that CPN (Maoist) cadres shot dead Ganesh Dutta Chiluwal at 5:00 PM on 15-02-2004. The Ministry of Home Affairs informed the Commission from the letter dated 17-01-2006 that NRs. 2,00,000 has been provided as financial assistance to the dependent family of the deceased Ganesh Dutta Chiluwal as per the decision of the Government of Nepal along with relief. Furthermore, children of the deceased have also got an annual scholarship. The document of site reconnaissance of the dead body states that there was blood all over the face, both eyes were open, the mouth was closed, there was a bullet hole in the right side of the chest, there was another bullet hole in the left chest, there was a bullet hole in the ribs, there was a bullet hole in the right thigh and there was a bullet hole in the back of the head. Post mortem report states Rifled Firearm Injuries to the Head, Chest and Abdomen as the cause of death. Thus, it is clear that Ganesh Dutta Chiluwal was shot dead by the then CPN-Maoist cadres, which is the violation of his right to life and several provisions of the international humanitarian law. Therefore, the Commission recommends the Government of Nepal for legal action against the then CPN-Maoist cadres involved in the incident by identifying them and to provide NRs.3,00,000 as compensation to the heir of the victim as per Article 16 (3) of the National Human Rights Commission Act, 2012.
22. To provide the decision of the Commission to the Government of Nepal, in written form. Inform the complainant about the decision and submit the complaint file to the records branch as per the rules.

Submitted by

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Jeevan Neupane
Human Rights officer

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Member

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Member

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Member

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Chairperson

Date: Thursday, the 13th day of Ashad of the year 2070 BS (corresponding to 27 June 2013 AD).....

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Kedarnath Upadhyaya

Members

Hon. Ramnagina Singh

Hon. Gauri Pradhan

Hon. Leela Pathak

Hon. K.B. Rokaya

File No.7/151 of 2006,
Regional Office Pokhara



Subject: **Enforced Disappearance.**

It is the right of the victim's family to get their family member alive or dead. As per the official reply, Chandra Prasad Khanal was killed but his relatives have not received his body. Thus, on one hand, relatives could not perform funeral and ceremonies according to their religion and culture whereas, on the other hand, the government body responsible for registering and updating the personal incidents of each of its citizens, has not been able to keep records of the documents to be prepared after the incident. Therefore, the victim cannot be considered dead as the family has not received any official information about the death. Also, the family has not been able to cremate the body and perform rituals, accordingly. It seems appropriate to keep the victim in the missing person's list so far (paragraph 20).

1. Chandra Prasad Khanal, a resident of Hanshpur VDC, Ward No. 2 of Gorkha District was arrested without information and arrest warrant by the team of Joint Security Forces from the Bhachchek Area Police Office in Gorkha District while he was threshing paddy in the field near his house at around 3:00 PM on 1-12-2001. The victim's ... was also arrested and released the next day, but the status of Chandra Prasad Khanal was not even made public. Indirect information was received from various people who were arrested at that time, along with him and were later released. As per the indirect information, Chandra Prasad Khanal was kept in the same Police Office till 04-01-2002 but no information was given while asking with the authorities. As his status became unknown, the victim's family filed the complaint at the

Office of the Nepal Human Rights Organization Kathmandu demanding to take initiative to save his life and make the status public. After receiving the complaint, the Nepal Human Rights Organization sent the complaint to the Commission on 15-05-2003. Then the complaint was registered in the Head Office of the Commission which was then transferred to its Regional Office Pokhara for investigation. The file of this case has been submitted to the Regional Office for investigation.

2. Documents attached to the investigation file clarifies that the National Human Rights Commission had written to the Ministry of Home Affairs and District Administration Office, Gorkha on 14-05-2004 requesting for information about the incident. Letter received on 28-05-2003 from District Administration Office Gorkha mentions that Chandra Prasad Khanal, a resident of Hanshpur VDC, Ward No. 2, Gorkha was not arrested and detained from the Office.
3. Commission resent the letter to the Ministry of Home Affairs and also wrote to the Ministry of Defense, Nepal Army West Division Head Office Pokhara, various political parties in Gorkha district, human rights organizations and the office of the concerned Village Development Committee seeking information about the incident.
4. The Commission received an unofficial copy of the report of the Investigation Committee formed by the Ministry of Home Affairs to disclose the status of the disappeared citizens' dated 11-10-2004 which states that the District Administration Office Gorkha sent a letter dated 09-09-2004 to the Nepal Human Rights Organization as the institution had requested for the information about the status of Chandra Prasad Khanal which mentions that Chandra Prasad Khanal was killed on the spot in a retaliatory firing on a joint security force patrol team at Nayangaun in Srinathkot VDC of Gorkha. Likewise, report of the committee formed under the coordination of Baman Prasad Neupane in 2063 BS also mentioned that two unidentified Maoists were killed during a search operation by the joint security forces at Nayansanghu in Srinathkot VDC of Gorkha district on 27-02-2002. Based on the letter no. 530 dated 04-07-2006 from the Police Headquarters Chandrakant Khanal, a resident of Hanshpur-3 in Gorkha district, was not killed in the incident rather Chandra Prasad Khanal from ward no.2 of the same VDC was killed.
5. Letter received by the Commission from the District Police Office, Gorkha on 18-10-2011 states that records from the office do not mention about

arresting Chandra Prasad Khanal, a resident of Gorkha District Hanshpur VDC ward no. 2 from his farm rather Chandra Prasad Khanal was killed in a search operation conducted by the security forces on 27-02-2002 in Srinathkot VDC Ward no.2 Nayasaghu and the Office does not have other documents in this regards.

6. As per the statement of..... “Chandra Prasad Khanal is I and other farmers were threshing paddy in the field near our house on that day. At around 3 pm, a team of the Royal Nepalese Army under the command of Dilip Thapa arrested Chandra Prasad and They tied our hands with ropes and took us to the army camp at Bhachchek. After being taken to the Bhachchek police station, Chandra Prasad and I were blindfolded and kept in different places. I was been kept in the cold bunker for ... days. Chandra Prasad was kept on the other side. We did not meet but I heard Chandra Prasad's voice while coughing. I was released after..... days in the presence of but Chandra Prasad was not released. We were also not allowed to meet with him. Since I was kept in the cold bunker for.....days, I got sick after coming home so I went to India for medical treatment. During that period, other people from the village were also arrested and kept in the camp. Some were released and some went missing. Buddhilal BK, Sarada Adhikari and Madhav Adhikari from the same village are still missing.”
7. As per the statement of..... “Since I was given a date by the army for one and a half years, I had to go to the Joint Security Forces in Bhachchek on the daily basis. We are seven people in our family. We received one lakh Rupees as a relief from the District Administration Office, Gorkha. I was also given job at that level, but that too on a daily wage basis. After Chandra Prasad was taken away by the army, his wife got sick due to mental stress and is still on medication. The army kept me in a cold bunker fordays and I still have back pain but I do not have money for treatment.”
8. As per the statement of.....“ I was arrested along with Chandra Prasad Khanal by the security personnel and were kept at the joint security post in Bhachchek. We were both kept together in the deep bunker of an army for 22 days. Later I was released after 22 days whereas, Chandra Prasad Khanal was not released by the army and police. Buddhilal BK, Madhav Adhikari and Sarada Adhikari of this village also went missing from the same security post. Till date, their family has neither received them alive or their dead body.”

9. The joint statement of witnesses..... who witnessed security personnel arrest Chandra Prasad Khanal and states "When Chandra Prasad Khanal was arrested by the security personnel from the security post in Bhachchek, we were threshing paddy in the field of..... We were persons together in the paddy field. Chandra Prasad Khanal and ... were arrested in front of us, their hands were tied with rope and were taken away by the security personnel.....was released after 22 days of arrest by the security forces, but Chandra Prasad Khanal's condition remained unknown. We do not know where the security forces took him and killed him. During the same timeframe Madhav Adhikari, Sarada Adhikari (Bharat), and Buddhilal B.K. also disappeared from the same post. At the beginning of the state of emergency, Captain DK Thapa (Dilip Kumar Thapa) was present in the security post. He was the one to arrest them. Later a notorious commander Rajiv Thapa came in the post. It was probably during the time of Rajiv Thapa that those people were disappeared. He had troubled many villagers at that time. He entered every house and arrested people, beat them by keeping in a cold place, interrogated them and released the villagers on condition that they would have to come to the security post. He used to make people report to him on the whereabouts of Maoist every evening. Thus, those armies should be punished."
10. As per the statement of "I am the youngest son of ... While was on my way to the bus park to deliver papers for my sister's admission in the campus, the joint security force of the army and the police met me at the Suryadaya Primary School, they asked me to return to home from here and brought me to home. They surrounded the house and slapped me on the cheek. They arrested and took him away. My is still missing. During the same period, Chandra Prasad Khana of this village was also disappeared by the same army. At the time of his arrest, there was a commander named Dilip Thapa. Later Rajiv Thapa came as a commander. After being kept in the barracks for numerous days, it is unknown where he was taken. Some people saw him even when they were arrested and were kept at custody. It is confirmed that he disappeared from the security post."
11. The statement of.....who was also arrested by security personnel mentions that " I was arrested on the same day or in a difference of one or two days along with Chandra Prasad Khanal, Buddhilal BK, Sharda Prasad Adhikari and Madhav Adhikari. I might have forgotten minute details as the incident was very old but we were placed together at the police post in Bhachchek. I was kept in the security camp of Bhachchek for months. I was kept in

an army bunker while the others were kept in a separate room. I found out that they were being kept in another room from their sound. I was released aftermonths but they were not released. He was taken away by the army under the command of captain DK Thapa. After the transfer of DK Thapa, the Joint Security Forces of Bhachchek was under the command of Rajiv Thapa. I don't know whether Rajiv Thapa was a lieutenant or a captain. I don't know where they were taken."

12. "Chandra Prasad Khanal of Hanshpur-2 was brought to after 15 days of his arrest. During the night.... woke us up and asked for the health check-up of Chandra Prasad. He was brought by the army as his urine had stopped. Chandra Prasad was crying "I won't live anymore".took out as much of his urine as possible with a pipe.advised the security personnel for the surgery of his prostate. However, the army took him inside the barrack without proper treatment. Chandra Khanal has not been seen since then and has been missing" as per the statement of....
13. Analysis of all the facts obtained from the investigation shows that Chandra Prasad Khanal, a resident of Gorkha District Hanshpur VDC ward no.2 was arrested by the joint team of the then Royal Nepal Army and Police at Bhachchek on 01-12-2001 and was kept in the incommunicado detention then he was killed at a place called Naya Sanghu in Srinathkot VDC on 27-02-2002. Thus, the state has violated international and national legal/ constitutional provisions. As it has been found that then commanders of the then Royal Nepal Army, the security forces of Bachchek, Lieutenant / Captain Dilip Kumar Thapa and Commander Rajiv Thapa were directly involved in the incident, so it is necessary to recommend to the Government of Nepal for legal action against the accused soldiers by conducting further investigation, providing a chance to be heard to the soldiers and to provide compensation to the victim's family as per the National Human Rights Commission Act, 1997 and National Human Rights Commission (Complaint, Action and Determination of Compensation) Rules, 2001.
14. Following the completion of the investigation into the complaint, a letter was sent to the Nepal Army, West Division, Pokhara and the District Administration Office, Gorkha for comments regarding the findings of the report. The reply received from the Nepal Army West Division mentions " There are no official records of the arrest of Chandra Prasad Khanal, a resident of Hanshpur VDC, Ward No. 2 of Gorkha District by the Joint team of the Security Force deployed from the Bhachchek Area Police Office on 01-12-2001 while he was threshing paddy in the field."

15. Thus, after completion of the investigation and submission of the investigation file in the meeting of the Commission for the decision on 11-03-2013, whereby the Commission issued an order to find out whether the victim's family received the relief from the Ministry of Peace and Reconstruction, prioritize collecting further information of the case, collecting statement of the security personnel including the then commander of *Bhachchek* security basecamp Dilip Kumar Thapa (DK Thapa) and Rajiv Thapa and in charge of the Police Office whose names and posts are unknown. While conducting correspondence to the concerned agencies based on the decision of the Commission, the Ministry of Peace and Reconstruction replied that the Ministry has provided NRs.3,00,000 relief to the victim's family.
16. Reply received from the Human Rights Directorate of Nepal Army mentioned that although Dilip Kumar Thapa and Rajiv Thapa of Bachchek Security Base Camp Gorkha were mentioned to be involved in the incident, their respective name and rank is not clear so the Commission is requested to clarify their names and posts.
17. The investigation of the case registered at the Commission demanding to publicize the status stating that Chandra Prasad Khanal, 56, a resident of Hansapur VDC was no.2 of Gorkha District was arrested by the team of the Joint Security Forces at Bachchek of Hanshpur VDC on 01-12-2001 and disappeared him. Based on the statements of the witnesses who witnessed the arrest of Khanal, the detainees who met him while he was in the custody and other knowledgeable persons it can be observed that the team of the security forces deployed from *Bachchek* Post of the then Royal Nepal Army led by the Captain/Lt. D. K. Thapa (Dilip Kumar Thapa) arrested Khanal from a nearby field from his house on 01-12-2001 and later disappeared.
18. While corresponding to the concerned government agencies including Ministry of Home Affairs, Ministry of Defense, District Administration Office Gorkha and Nepal Army, the letter was received from District Administration Office Gorkha on 28-05-2003 stating that Chandra Prasad Khanal has not been arrested or detained under any law from their office. Report of the Disappeared Citizens Search Committee 2061 BS states that Chandra Prasad Khanal was killed on the spot in a retaliatory firefight when a joint security force patrol team was suddenly attacked at Nayagaun, Srinathkot VDC in Gorkha district. Similarly, the report of the committee formed in 2063 BS to make public the status of the missing persons stated that two unidentified Maoists were killed during a search operation conducted by the

Joint Security Forces at Naya Saghu in Srinathkot VDC of Gorkha District. One of them was Chandra Prasad Khanal. It is stated in the letter sent to this office by the District Police Office, Gorkha on 18-10-2011 that Chandra Prasad Khanal, a resident of Gorkha District Hanshpur VDC ward no. 2 was not arrested by the security forces on 31-12-2001 from his farm, rather Chandra Prasad Khanal was killed in a search operation conducted by the security forces on 27-02-2002 in Srinathkot VDC Ward no.2 Nayasaghu and the Office does not have other documents in this regard.

19. While analyzing the facts in the investigation file, witnesses have stated to the on-site investigation team of the Commission that Chandra Prasad Khanal was arrested by a team of the Joint Security Forces in Bachchek on 01-12-2001 from the field and he never returned to the home. A few days after his arrest, it was revealed that Chandra Khanal was taken to the clinic of ... for the treatment of urinary related problems. It is learned that the security forces did not have any other facts and evidence to refute that Khanal was kept at the security post as mentioned by the released persons during the same period. The response of the security forces that he died in the operation of the security forces on 17-02-2002 does not prove that the victim was not arrested before that. The first response of the District Administration Office, Gorkha mentioned that he was not arrested. While in the second reply, the District administration officials stated that Khanal was killed before the date of sending the reply. From this, it is found that the responsible body misdirected the incident and tried to confirm that he was killed in the security operation on 17-02-2002 (using the word suspicious: not even during the arrest, not during the escape and not even in a double encounter).
20. Therefore, it is seen that Chandra Prasad Khanal was arrested from his field by the Joint Security Forces at Bachchek on 01-12-2001 and kept in the custody for around 3 months then he was taken to a place called Nayansaghu in Srinathkot VDC on 17-02-2002 and killed and a record was prepared that he was killed in "security operation". It is the right of the victim's family to get their family member alive or dead. As per the official reply, Chandra Prasad Khanal was killed but his relatives have not received his body. Thus, on one hand, relatives could not perform funeral and ceremonies according to their religion and culture whereas, on the other hand, the government body responsible for registering and updating the personal incidents of each of its citizens, has not been able to keep records of the documents to be prepared after the incident. Therefore, the victim cannot be considered

dead as the family has not received any official information about the death. Also, the family has not been able to cremate the body and perform rituals, accordingly. It seems appropriate to keep the victim in the missing person's list so far.

21. As the investigation of the Commission confirmed that Chandra Prasad Khanal was arrested and made disappearance by the Joint Security Forces team at the security base camp in Bachchek, in the response to the Commission's order to send the names, posts and current addresses of the then key security personnel involved in the disappearance, on the contrary, the Ministry of Defense sent a reply stating very irresponsible statement mentioning to send the names and posts of the accused persons.
22. Article 6 of the International Covenant on the Civil and Political Rights, 1966 states that everyone has the right to life, liberty and security of person. The treaty also obliges the state parties to protect the following rights of citizens:
 - Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
 - Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
 - Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.
 - Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
 - Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
23. As the Article 9 of the Nepal Treaty Act, 1990 provides that the provisions of such treaties and agreements ratified by Nepal shall be applied as Nepali law and the state cannot be exempted from the obligation determined by these documents already accepted by Nepal. Analyzing the responsibilities of the state towards the citizens in a normal situation or case of conflict, the

preamble of the Constitution of the Kingdom of Nepal 1990 expresses the commitment to realize the concept of rule of law by guaranteeing the basic human rights of the citizens. According to Article 12 (1) of the Constitution, except as provided for by law no person shall be deprived of his/her personal liberty. Article 14 (5) provides that an arrested person shall not be remanded in custody without information including the reason for arrest and Sub-article (6) mentioned every person arrested and detained shall be brought before the prosecuting officer within 24 hours from the place of arrest, except for the period of travel, and no person shall be remanded in custody beyond that period except by order of such officer.

24. The Interim Constitution of Nepal, 2007 has further secured the fundamental rights guaranteed by the Constitution of 1990. The preamble of the Constitution has expressed full commitment to the concept of civil liberties, fundamental rights, human rights and the rule of law. Therefore, in this case, the state has violated various provisions of the Constitution of Nepal and other Nepalese laws by detaining an unarmed person for months and killing him. It is found that the mandatory provisions provided by the Government Cases Act, 1992 and the Civil Code 1963 including the responsibility of carrying out the autopsy and reconnaissance as per the law and keeping all the records of wounds, scars and bruises were not followed.
25. Considering the decision, the complaint was registered at the Commission on 15-05-2003 demanding the search of Chandra Prasad Khanal, protecting his life and making his status public stating that Chandra Prasad Khanal, a resident of Hanshpur VDC, Ward No. 2 of Gorkha District was arrested without information and arrest warrant by the team of Joint Security Forces from the Bhachchek Area Police Office in Gorkha District while he was threshing paddy in the field near his house at around 3:00 PM on 1-12-2001. Although Human Rights Division of Nepal Army, West Division, Bijaypur Barrack, Pokhara informed the Commission by the letter dated 2068/10/18 that the arrest and disappearance of Chandra Prasad Khanal were not found in their records but the reply of the District Police Office, Gorkha and the Committee for Investigation of Disappeared Persons, 2061 BS states that Chandra Prasad Khanal was killed in a retaliatory attack on a patrol team of the security forces. Investigation report of the Commission confirms that Chandra Prasad Khanal was arrested by the security personnel and was kept in custody for more than three months then he was taken to a place called Nayansaghu in Srinathkot VDC on 17-02-2002 and was killed. However, his status is still missing as the legal process of the autopsy has

not been completed so it is decided to keep the status of investigation ongoing and recommend the Government of Nepal to provide NRs.100,000 interim relief to the heir of the victim.

It is hereby directed to provide information about the decision to the victim's family.

Submitted by

.....
Badri Prasad Subedi
Human Rights Officer
Protection and Monitoring Division

.....
Dr. KB Rokaya
Member

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Gauri Pradhan
Member

.....
Ramnagina Singh
Member

.....
Kedarnath Upadhyaya
Chairperson

Date: Sunday, the 30th day of Ashad of the year 2070 BS (corresponding to 14 July 2013 AD)

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Kedarnath Upadhyaya

Members

Hon. Ramnagina Singh

Hon. Gauri Pradhan

Hon. Leela Pathak

Hon. K.B. Rokaya

File No. 991 of 2007

Regional Office Biratnagar



Subject: **Extrajudicial Killing.**

The District Coordinating Committee of the Unified Communist Party of Nepal (Maoist), Jhapa, has informed in written form that she was arrested and killed on the charge of spying. Therefore it has been confirmed that she was shot dead after being abducted by the cadres of the then Communist Party of Nepal (Maoist). Such an illegal act is a violation of Article 3 of the Geneva Conventions, 1948 by the CPN (Maoist) as it has been confirmed that a person who was not involved in the war during the armed conflict was captured by the cadres of the then CPN (Maoist) and was shot dead (paragraph 12).

1. Complaint filed in the Biratnagar Regional Office of the Commission on 08-03-2007 demanding for action against the perpetrators and compensation to the victims stating that Bimala Pathak, a class 10 student of Sharanamati VDC, Ward No. 8, Jhapa, was abducted and killed by the Maoists on the night of 30 January 2005 on the charge of spying.
2. Regarding the above-mentioned complaint, the Regional Office of the Commission, Biratnagar, wrote a letter to the District Administration Office, Jhapa on 18-03-2007 (ref.no.991, protection, 70) seeking information about the incident mentioned in the complaint.
3. District Administration Office, Jhapa wrote a letter with Ref. No.11893 to the District Police Office, Jhapa on 29-04-2007. The letter also addressed

the National Human Rights Commission. The letter mentioned that District Administration Office, Jhapa received a letter from the National Human Rights Commission Regional Office Biratnagar dated 18-03-2007 ref. no. 990 protection 70, mentioning that a complaint was registered at the National Human Rights Commission stating that Bimala Pathak, a resident of Sharanamati VDC, Ward No. 8, Jhapa was abducted by the CPN-M cadres from her house on 30-01-2005 and killed on the charge of spying, so District Police Office, Jhapa is requested to avail all the details to the Office as soon as possible about what happened in the above-mentioned incident? Whether she was killed by CPN-M cadres or not? If so, has her family received any compensation or not? The letter is attached to the investigation file.

4. Letter from District Administration Office Jhapa dated 31-05-2007, ref. no.13013 mentions that “ Letter received from District Police Office, Bhadrapur, Jhapa, dated 30-04-2007, ref.no.794 states that Bimala Pathak, a resident of Ward No. 8 of Sharanamati VDC, Jhapa, was abducted from her house by CPN-Maoist cadres on 30-01-2005 on the charge of spying and was shot dead at the bridge between Surunga and Dangibari and the records of this office do not show whether her family has received compensation or not.” The letter is attached to the investigation file.
5. The letter wrote by the investigation team of the Commission to the Unified Communist Party of Nepal (Maoist) Jhapa on 07-01-2010 demanding the information about the incident is found attached to the file of the case.
6. Letter from the Unified Communist Party of Nepal (Maoist) District Coordinating Committee, Jhapa replied to the letter from the Commission dated 07-01-2010 stating Bimala Pathak, a resident of Ward No. 8 of Sharanamati VDC of Jhapa district was taken under control and was killed on 30-1-2005 based on the fact that she had spied against the party and the revolution. The letter is attached to the investigation file.
7. The letter of the investigation team from the Regional Office Biratnagar of the Commission, to the District Police Office, Jhapa dated 05-01-2010 and follow up letter dated 18-02-2010 demanding necessary documents have been found attached to the file of the case.
8. Regarding the death of Bimala Pathak, a resident of Sharanamati VDC-8 of Jhapa District on the charge of spying by CPN-Maoist cadres on 30-01-2005 the District Police Office, Jhapa replied to the Commission on 05-01-2010,

letter no. 066/067, ref,no.967 by providing copies of relevant documents including First Information Registration (FIR), reconnaissance of the dead body and autopsy report.

9. “Regarding the complaint, a few days before the incident, the army firstly arrested and asked for various information. When they asked me about Bimala, I told ... is a student, then they told me to leave and started questioning Bimala Pathak. I returned from there. The army then took Bimala to the Charaali Barrack. It is unknown whether she got torture in the Barrack or not. Then she returned home on date. After a few days, she went to Kathmandu with her relatives. After two days of her return from Kathmandu, while she was sleeping in the room of her own house in Sharanamati, some people came to her house and took her to the west side of her house telling that they need to interrogate with her. They took her above the field and then to the east to the bridge of the Surunga River through the bank of the Biring River. After being beaten on the bridge, she was shot in the forehead and killed. Neighbors and schoolteachers had provided information about the incident. Then we went to her .. and the spot of the incident. There was a large crowd present. After that, when I contacted the DSP's office, they asked to bring the body secretly, so we took the body to the DSP office for postmortem. The doctor of Bhadrapur Hospital conducted postmortem at around 8 pm in the postmortem room of the Hospital. The funeral was held in the bank of the river traditionally on 01-02-2005. It is learnt that Maoist killed her on the allegation of being a spy. I don't think the deceased spied anywhere. The financial condition of the family of the deceased Bimala Pathak is normal and the family used to make a living by cultivation in the tenant land and private land.....” as stated by the knowledgeable person of the incident.
10. “..... had said that he had seen 2 men and 2 women had come to the house of At around 7.30 pm on 30-01-2005 had said that he had seen 2 men and 2 women come to the house of He is already dead. Those people were Maoist cadres. They had brought of Sharanamati-8, to detect Bimala's house. Bimala was sleeping in her room at that time. They awoke her and took her away. The search was carried out as Bimala had not returned till 5:00 A.M. of the next morning. While searching, some said that she was abducted by the Maoists. ... said that Bimala was killed and thrown on the Surunga bridge. The villagers rushed to the spot. On the same day, the body was brought to home after completion of postmortem in the district headquarters. The cremation took place on 02-02-2005 as per the rituals. I

don't know anything about her being a spy. I don't believe that the poor girl was a spy. She was accused of spying leading to the death of Maoist cadres Dinesh Paudel and Rijal but I don't believe. She was only a student. The army had already arrested and beat her twice.....” as stated by the knowledgeable person of the incident.

11. As per the memo prepared after the investigation while the file was submitted to the Hon. Commissioner, the order of the Commissioner dated 17-01-2011 states that “Based on the submitted file, it is clear from the autopsy report that Bimala Pathak, 19, was abducted from her house by Maoist cadres on July 30-01-2005 on charges of spying and was shot dead. Similarly, Raju Acharya (Agni), Secretary of the Jhapa District Committee of the Unified Communist Party of Nepal (Maoist), in a letter to the Regional Office of the Commission, Biratnagar, on 07-01-2020 stated that Bimala Pathak, a resident of Ward No. 8 of Sharanamati VDC in Jhapa District, was arrested and eliminated based on the fact that she had spied against the party and the revolution. Therefore, the file should be submitted in the meeting of the Commission for the necessary decision.” The order of the Commissioner is attached to the file of the case.
12. Regarding the complaint registered at the Commission on 08-03-2007 demanding for action against the perpetrators and compensation to the victims stating that Bimala Pathak, a class 10 student of Sharanamati VDC, Ward No. 8, Jhapa, who was abducted and killed by the Maoists on the night of 30 January 2005 on the charge of spying, the letters received from District Administration Office, Jhapa and District Police Office, Jhapa, reconnaissance of the dead body, an autopsy report, statements of the witnesses and the District Coordinating Committee of the Unified Communist Party of Nepal (Maoist), Jhapa, has informed in written form that she was arrested and killed on the charge of spying. Therefore it has been confirmed that she was shot dead after being abducted by the cadres of the then Communist Party of Nepal (Maoist). Such an illegal act is a violation of Article 3 of the Geneva Conventions, 1948 by the CPN (Maoist) as it has been confirmed that a person who was not involved in the war during the armed conflict was captured by the cadres of the then CPN (Maoist) and was shot dead.
13. While considering for the decision, it is observed that the complaint was registered at the Commission on 08-03-2007 demanding for action against the perpetrators and compensation to the victims stating that Bimala Pathak,

a class 10 student of Sharanamati VDC, Ward No. 8, Jhapa, was abducted and killed by the Maoists on the night of 30 January 2005 on the charge of spying. It is clear from the investigation carried out by the Commission and autopsy report that Bimala Pathak, 19, was abducted from her house by the then CPN (Maoist) cadres on July 30-01-2005 on the charge of spying and was shot dead. The written information from the District Coordination Committee of the UCPN-Maoist Party stating she was killed because of the allegation of spying against party and revolution also proves that Bimala Pathak was killed by the then CPN(Maoist) by violating her right to life. Therefore, the Commission decided to recommend the Government of Nepal to take legal action against the cadres of the CPN (Moist) involved in the incident by identifying them, to provide NRs.3,00,000 as compensation to the heir of the victim and if the compensation has already been provided then provide compensation by deducting that amount according to the section 16 (3) of the National Human Rights Commission Act, 2012.

It is hereby directed to provide information about the decision to the victim's family.

Submitted by

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Nitu Gartaula
Human Rights Officer

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Member

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Member

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Member

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Chairperson

Date: Sunday, the 11th day of Chaitra of the year 2069 BS (corresponding to 24 March 2013 AD)

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Nayan Bahadur Khatri

Members

Hon. Sushila Singh Silu

Hon. Sudip Pathak

Hon. Gokul Pokharel

Hon. Dr Ramdayal Rakesh



Subject: **With regard to Compensation.**

The act of the state of destroying the property of civilian and displacing him from their residence has violated Article 17 of the Universal Declaration of Human Rights, 1948, Article 1 of the International Covenant on Economic, Social and Cultural Rights, 1966 right to property provided by the Article 17 of the Constitution of the Kingdom of Nepal, 1990, and the Common Article 3 of the Geneva Conventions (paragraph 9).

1. A complaint was registered at the National Human Rights Commission on 01-03-2004 demanding for compensation stating that, the security forces displaced....., a resident of District..... VDC by destroying his house and barn by firing bullets and bombs on 16-04-2002.
2. In response to the letter sent to District Administration Office....demanding information about the incident, the Office replied via the letter dated 02-04-2004 stating that the victim has not applied to the Office regarding his problem and work is underway to collect information in this regard.
3. As per the statement ofgiven on 07-04-2011 “A team of the Joint Security Forces went to the house of, set fire to the house and barn and destroyed all the property inside the house.”
4. “The joint security forces went to ... 's house and detonated a bomb, setting fire to a barn and causing property damage” as mentioned in the statement

by on 07-04-2011.

5. Another complaint was registered in the Commission from the victim on 15-06-2004 demanding transfer of his post of teacher to the safe place of District by conducting consultation with concerned District Education Office..... and District Education Office.....
6. While the Commission wrote a letter to the District Administration Office with descriptions of loss requesting to provide compensation to the victim, the District Administration Office ... replied from the letter dated 18-07-2005 stating that he was involved in the activities of the Maoist party, and used to collect donations in the village. When the security post got information that he had abducted an Indian soldier and kept him in his house, then the deployed team of the security force was able to rescue the abducted person, but he escaped, and no damage has been done to his property and he is currently living in
7. Report of the investigation team deployed from the Commission dated 01-12-2005 stated that "Based on the field observation and statement of the relatives of the victim and villagers and other persons, it is observed that the house, barn and other belongings of the victim were damaged as a team of security personnel bombed his house, shot the buffalo in the barn and set fire in the barn.
8. It is observed that the complaint was registered at the National Human Rights Commission on 01-03-2004 demanding for compensation stating that, the security forces displaced....., a resident of District..... VDC by destroying his house and barn by firing bullets and bombs on 16-04-2002.
9. Regarding the destruction of his house and property by the security forces on 16-04-2002, it has been confirmed by the government side that the patrol of the security forces from the Security Post had reached to the complainant's house. Residents and eyewitness stated to the Commission that the incident was caused by the security forces. Report of the investigation team of the Commission based on field observation states that the security force damaged the house of the victim, destroyed his property, shot down his pregnant buffalo and destroyed his barn by setting a fire. The Commission's investigation has not been able to confirm the loss of NRs.4,93,250 as claimed by the complainant. However, the act of the state of destroying the property of civilian and displacing him from their residence has violated

Article 17 of the Universal Declaration of Human Rights, 1948, Article 1 of the International Covenant on Economic, Social and Cultural Rights, 1966 right to property provided by the Article 17 of the Constitution of the Kingdom of Nepal, 1990, and the Common Article 3 of the Geneva Conventions. Therefore, necessary action has to be taken against the perpetrators and compensation should be provided to the victim according to the Rule 13 of the Human Rights Commission (Complaint, Action and Determination of Compensation) Rules 2001.

- 10. Therefore, the Commission decides to recommend to the Government of Nepal to take legal action against the perpetrators by identifying them and provide NRs. 1,00,000 compensation to the victim as it was found that the house and barn of ... were damaged by the security personnel by detonating a bomb on 16-04-2004, violating his property rights, in turn, violating his human rights.

It is hereby directed to provide information about the decision to the victims.

Submitted by

.....
 Yagya Prasad Adhikari
 Chief, Protection and Monitoring Division

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Member

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Member

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Member

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Member

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 Chairperson

Date: Tuesday, the 6th day of Ashad of the year 2063 BS (corresponding to 20 June 2006 AD)

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Nayan Bahadur Khatri

Members

Hon. Sushila Singh Silu

Hon. Sudip Pathak

Hon. Gokul Pokharel

Hon. Dr Ramdayal Rakesh



Subject: **Extrajudicial Killing.**

Deceased Durga Rai did not possess any weapon so there was no double confrontation and he was shot dead by the army even after he surrendered. Therefore, such an act is extrajudicial killing which is the serious violation of human rights and international humanitarian law (paragraph 20).

According to the existing law of Nepal, any person who commits a crime should be arrested and taken under the control by the security personnel and action should be taken according to the law (due process of law), however, there is no clear evidence that the situation was created that the security personnel had to open fire. Such an illegal act of the security forces seems to have violated the Fundamental Rights provided by Article 11, 12 and 14 of the Constitution of the Kingdom of Nepal 1990, Article 12 of the Civil Rights Act 1955, and Article 6 of the International Covenant on Civil and Political Rights 1996 (paragraph 25).

1. A complaint was filed at the Commission on 26-10-2005 by Advocacy Forum and the family members of the victim while Advocacy Forum was conducting the investigation based on the news broadcasted on 16-10-2005 at 6:30 PM that Purna Shrestha, Mohan Khanal, Bidur Bhattarai and Durga Rai were killed in the security operation in Telkundi on 15-10-2005.
2. A detailed investigation was conducted by the Commission from 19-10-2005 after conducting an on-site inspection of the incident on 17-10-2005.

3. “On the morning of the day of the incident, two persons from *Kaseni Bazaar* forcibly came on a bicycle with my 18-year-old son and my 25-year-old son. When the two strangers came to the middle of the house and asked me if he could go to the toilet, then I replied that there is no toilet in the house and asked him to go to the bush. Then one of them entered the house and came out immediately. They went to the place where Durga was bathing and tried to shake hands saying that they were also cadres of the party but Durga replied that he did not know them. One of them said that a lot of their people were coming to receive *tika*. During the same period, another man pulled out a gun and fired towards Durga and ran after him. When Durga reached a little farther, I saw he was raising his hand. At first there were only two, then after the shooting I saw four people. But I did not see Durga falling. At first, I thought they were Maoists. When my son saw shooting, he told me that they killed Durga. When those people came to my house after killing Durga, the nephew of the deceased was staying in my house. They asked me about him. I told them that the deceased person (Durga) was his uncle. When I told that the deceased has brothers, but they are not at home and they are not party cadres, then they took his nephew to his house and told that they killed his uncle, no matter how much he ran away. They asked him to open the house and asked where the money and weapons were kept. He said that he did not know. They asked about bicycle of Durga and took it with them. At the beginning of the incident, there were two people, later there were eight. I saw them talking from the walkie-talkie. Later, when the same people came in army uniform, I found out that they were army. One of the perpetrators was wearing black boots and a handkerchief in the face. One of them was wearing a bandage in his hand. They had come in the guise of civilians. One of them climbed a tree and called on the phone. My son, who went away throwing bicycle at home since that day, has not been found yet.” as stated by Durga Rai’sa resident ,.....on 19-10-2005.
4. I woke up at 6 in the morning, had tea and started taking photos of my son. My mother and other family members were busy in *tika*. At the same time, I saw people walking from the south wearing old clothes, earrings with a bag. One of them passed by the tap while Durga was washing his vest. Another person was talking to my mother. One of them was sitting on the road. When two people tried to shake hands with Durga saying “Hello Comrade, We are your friends”, Durga responded that he did not know them, but they tried shaking hands with Durga. At the same time, a man with a bandaged hand pulled out a small black pistol. At that moment, Durga ran away from there. While fleeing, four people were chasing him. He

was shot in the left arm. I didn't see what happened after that. The incident took place around 7:30 A.M. Then two of the pursuers came and asked who the girl was. Mother replied that she was her daughter who had just come from Kathmandu. Then he told us to hide upstairs and we all went upstairs. At that time ... 's nephew was also going upstairs with us. They told him to come down asking who he was. He replied that he isAnd when asked who the dead person was then he replied ... then they told him to take off hiss' weapons and he replied he hadn't seen any weapons. They blamed him for cheating and asked when his.....came, to which he replied morning. He was again asked regarding where the goods were kept. Meanwhile, one of those men was saying to kill him....Then they took him to Durga's house and started searching for his belongings, but they did not find anything. When they came down, they found the book. They also asked for Durga's bicycle and took it along with them. Then they sat for a while and climbed the tree and called on the phone. After a while, they started moving around. Later, a man with a bandage on his hand started looking for my brother. He went to search a little farther. At around 9.30 A.M., three persons on two motorcycles came forward from the east side and one person was dragging the motorcycle. People in plain clothes gestured and raised their hands. Then they snatched their bags and started kicking two of them. I saw one coming with a motorcycle running away leaving the motorcycle. Another one chased him. The two arrested persons were shot dead by the army who were in a vehicle. Then they laughed, rejoiced and placed the bodies in the vehicle, saying there was a body in the paddy field. Everyone was told to hide inside the house while placing the body. I saw the body of Durga. He was wearing only a half pant and had a protruding leg. They put acid in his mouth. He was shot by three or four bullets. I recognized him by his clothes and his feet." as stated by Durga Rai's ... aged..... on 19-10-2005.

5. "Two brothers from the village came and asked whether Durga was there or not. I told them that I didn't know. Then he cried and replied that he was beaten during a fight at night, and he wants to settle the issue. I told them to wait for him and also that I was unaware of this. Then I went to the field to cut paddy with my wife. We had just started our work when we heard a gunshot from the south. When we looked at the direction of the gunshot, we saw Durga was running ahead. Three people were chasing him and one person was behind three others. They had carried weapons in their left hand. We could hear one of them shouting shoot at the leg using abusive language. Durga fell while requesting not to kill him by raising his hands. They went near Durga and asked where the weapon was. We could again hear the

close fire. He was thrown into the vehicle saying that he had not died yet. One of them asked to bring his sister and we went with our sickle. The army in plainclothes came and asked where the house was. We said in the street below. They asked whose land were we working on, to which he replied ours. They asked if I knew the man. I replied he was.....When they said that they had killed my brother and not to search for him I told them that I was scared, how can we search? One among those men said that they would search and kill such traitor. One of them said if I wanted to take the body of.....I should talk to their boss. I told them that I was afraid and it would be easier if they had spoken but they went towards corpse stating that they can't. There came another person who asked, "Gopal sir, theof dead person is here and is ready to take the body, Shall we handover?" to which one person from the group replied that he should be shot and not to handover the body by using abusive language. During that period, the sound of a motorcycle came from the east. A man was riding a motorcycle across the bank of the river. A few moments later, a gunshot could be heard from the paddy field. We were near the dead body while we heard orders of Cornering the people. In an instant, an army vehicle came with people in uniform. I did not see the bodies in the vehicle." as stated by the victim's.....on 19-10-2005.

6. "At 6 a.m., while we were returning after selling milk, the betel shopkeeper called us and told us to provide a lift to a person. When we asked him where he had to go, he told us he had to go to Pathari. We denied providing him with a lift but he came with us anyways. I didn't ask for his introduction and he didn't introduce himself. A man with a broken arm and a white bandage was sitting on a bicycle. He was wearing half-pant and a T-shirt. He told me that he was injured because of a fight in '*Tandi*'. When I advised him to go to Pathari by tempo as it only cost 15r rupees he stated that he should not go through that route as the police might arrest him. He asked whether I was a member of their party. I replied that I didn't know about any party, I was a new person over there and I didn't belong to the party. That man again said that young person as I should be joining their party but I replied that I didn't live in the house and I lived in Kathmandu. When we reached Bhutani street, I told him I could not take him any further. I denied his request of taking him further to his destination. He even tried borrowing my bicycle which I rejected. At that moment, a brother came from the other side on a bicycle and he rode on the same bicycle. I saw one...and another man who was dropped on Bhutani Street. Had I told them that I also belonged to a party, they would have certainly killed me. Another man was also forcibly riding a bicycle with.....He was also dropped in the same place. His status is still unknown." as stated by the..... of.....

7. "While I was on my way to work after lunch at around 7:30 in the morning, told me that Durga Rai was killed. As I was about to move, two people asked me to raise my hands and as I raised my hand, they searched my body. After I was allowed to come to Durga's house, they order.....of Kaseni and me to Kneel. I got down immediately. They kicked and slapped.....for slowing down. When they asked Durga's.....if he had seen any weapon to which he replied he didn't know. Then they were talking about hitting him too, as his.....had run away and they hit him. They found no weapons but they took his bicycle and documents. They even made a phone call by climbing on the tree. Some of them wore white and red vests, some wore pants and half pants and they even covered their faces with handkerchiefs" as stated byaged ...
8. "In the morning, there was the sound of five or six gunshots in a row. When I heard the gunshot, I looked west from the house and saw people who went to the upper side were being turned around. Around 8.30 am or 9.00 am, three persons came from Kesalya River on a motorcycle. I saw two people got down from the motorcycle whereas, one was taking motorcycle through the riverbank. Those people seemed busy in conversation. The motorcyclist was seen fleeing to the east by leaving the motorcycle. He was shot from three sides and he fell into a paddy field as four more shots were fired. My ... and the paddy field where the incident took place is about one hundred meters east. Then they came to my house and shouted if anyone was there. Then I came out. There was also my brother downstairs. When I replied that no one was there, they returned and they also used abusive language. Four hours after the incident, four plainclothed men dragged the body from the paddy field and threw it in a vehicle parked in the street and went away" as stated by....
9. At around 6:00 a.m. men in plainclothes had gone south from Durga Rai's house. At around 7:30 a.m., five-six rounds of bullets were fired within a one-minute interval. When a local woman told me that the Maoists had killed people I asked her for details but she also had no clue. As I approached the scene of the incident, a woman signalled me not to go, so I did not go. After that, I inspected the situation on the street from my house. There were three men in plainclothes walking up and down. At around 9:00 am, a motorcycle was seen coming from Kesalya River. When they reached the street, the two men took control of them and were made to kneel. One motorcyclist was chased by another plainclothed man and was shot as he tried crossing the river. Immediately after that incident, a vehicle came and I heard a gunshot.

I don't know what happened there. At around 3 pm on the same day, an unknown person came and tried to know the details of the incident ... and when I asked for his identity, he did not give his identity. The next day, at around noon, the same person came and asked to collect the body." as stated by.....

10. "In the morning, while I had washed my face and was drinking tea, four people came to the south. Two of them covered their faces with handkerchiefs and two did not. Three were wearing vests and one was wearing a shirt. Hand of one of those men was broken and bandaged. He later opened the bandage and pulled out something like a bullet. He was also carrying radio phone. Among the four, one went to the tap, one went to the street, one went to the road and one went tos house asking whether he could urinate. When the man who went to tap tried to shake hands with Durga, he replied that he did not recognize him. Furthermore, one of those men asked Durga aka Antarey where did he live to which, he replied in his house over there. Then, Durga moved a little bit back. As that man was about to pull out his pistol, Durga ran away. Those men started chasing and firing bullets. About 6-7 bullets were fired. When Durga fell, he requested not to kill him but they killed him." as stated by.....
11. "Four persons chased Durga and started firing near the street. I heard that three bullets hit Durga in his arm. My son-in-law and I watched the incident from our veranda on the west side of the road. Security personnel were asking Durga about his friends. When I saw him, Durga was only wearing half pant. The security personnel acted as if he had broken arms but they were carrying guns, pistols and mobile phones." as stated byaged...
...a resident of.....
12. "Two people came towards me asking about Durga and they stated that they were party cadres but I did not pay attention to them. I had never seen them before. They only sat for about 4-5 minutes in my house. After a while, they asked me to arrange for a bicycle going east. I told him that I didn't know anyone. The stranger told me it was necessary to take his sick brother. Just then ... arrived, at that time, he told the personwho came to the shop to carry the patient. I heard that, in each shop, the strangers asked where thes house was" as stated by.....a resident of
13. "While I was sitting outside the house of, I saw brother Durga running. He had only worn a half pant. Suddenly someone came and told me to

go inside, then I went inside the house. He asked if Durga had given me anything and I replied that I don't know but he could see the house." as stated by.....

14. "They were five in civil dress. The two persons sitting under the tree were talking to the other three persons. They were telling somebody to come as soon as possible mentioning that they had no weapons and were saving their lives by staying near the trunk of a tree. They again said to come as soon as possible. Then, I got scared. I thought they were Maoists, not police. At that time, I saw one of the three climbing a tree. He was talking while staying on a tree. He had a thing that looked like a diary in his hand. I could not see by turning back. Then I went home. Everybody was saying not to go there telling that they were not the army but the Maoists. Then everyone told me that the Maoists would kill me" as stated by.....
15. "Three people from the east were crossing the river laughing. As the motorcycle doesn't carry three, two persons got down and were walking forward. They were carrying black bags. A man was coming from behind while riding a motorcycle. Those men grabbed two people in front of them. Seeing that, the motorcyclist ran away leaving his motorcycle. The two were kicked and beaten. We heard that they were crying due to pain. I saw a man wearing an army uniform firing from a vehicle. The two were scattering. Later, they dragged them and put them in a vehicle. A man with a broken arm chased a fleeing man with a pistol, chased him and killed him in a paddy field" as stated by....
16. "We got the body a day after the incident. At first, they had told us to come to Belbari to take the body, but later the body was taken to Ghopa from there and ... received the dead body. The body was brought to the Pathivara and cremated. I inspected the body before cremation. While observing the corpse, it seemed that the person must have been in a sleeping position after they were captured. It seemed that the bullet must have been fired from short range as the bullet hole was big. If the bullet was fired from long range, there would have been a small hole. Furthermore, if the bullet was fired from long-range, bullet cover in the body. It seemed as 11 bullets were fired at the body. Nine bullets were seen below the neck, below the abdomen and around the chest. Similarly, one was in the right eye and the other was on the right side of the head" as stated by, brother in law of the deceased.
17. "I don't know if he was involved in the party. If so, he should have been arrested and prosecuted. How can the act of arresting and killing during a ceasefire

be justified? Did he take up arms during the period of the ceasefire? During the cremation, four or five bullets burned along with the dead body. We had to sign more than four papers” as stated by the deceased's.....

18. “He had joined the party. There was a rumour about the incident in the afternoon of 15-10-2005. Then at around 1:00 p.m, I calledon his mobile no..... It was replied by unknown person mentioning he was in the meeting and I was told to call in an hour. I was convinced that.....was killed. I heard the complete news about the incident from Kantipur news at 6.30 p.m. While we went to BP Koirala Institute of Health Science, Dharan to receive the body, we saw that body was dumped in a cemented room. The body was completely swollen, blood came out of the mouth, there was a bruise on the head, two bruises were present as if hit by the butt of a gun. He was shot in the right arm. Nature of the body showed that he was arrested and tortured. ... had a problem with ... because of the same face with.....” as stated by deceased Purna Shrestha’s
19. “He had been involved in the party for two years. He used to come home every 5-6 months. He had come home on the day of Dashain. He was a teacher at the school in the village. He had been arrested twice by security personnel. I heard the news of his death on the radio in the evening. The family got the body on the next day. When I looked at the body, he had been beaten and then shot. There was blood coming from his nose. The financial condition of the family of the deceased Purna Shrestha is weak. They have no land. A 10-year-old boy is in 6th grade and a 5-year-old daughter has just started studying” as stated by.....
20. Investigation report of the Commission dated 20-01-2006 stated that “ On 15-10-2005 when Durga Rai was about to take a bath at Morang District Belbari VDC Ward no. 6 Telkudi Limbu Chowk, few strangers tried introducing themselves to Durga Rai by shaking hands with him. But, Durga Rai got suspicious and tried fleeing away as he was chased by those men and was shot dead even after surrendering. The fact that Durga Rai did not possess any weapon suggests that he had been captured by the security personnel. Since deceased Durga Rai did not possess any weapon so there was no double confrontation and he was shot dead by the army even after he surrendered. Therefore, such an act is extrajudicial killing which is the serious violation of human rights and international humanitarian law. Regarding the other three people, eyewitnesses and the site reconnaissance document prepared by Area Police Office Belbari displays that there is no

dispute that three people came from *Kesaliya* River on a motorcycle, two in front and one on a motorcycle. The two men appeared to have been captured by security personnel. There is no basis to prove the fact that the grenade attack was carried out as the items with the person under control were searched and seized. The statement of the witnesses clarifies that they were initially tortured and then shot dead. It has been stated that he was killed while fleeing the site of the incident as the statement of the witnesses, site reconnaissance document of the Police shows no signs of encounter. Thus, human rights and humanitarian law have been violated by illegally killing the persons by taking in the capture.”

21. Regarding the incident, various news were published and broadcasted under the headline "Murder of four Maoist cadres in Belbari, Morang by the security forces”.
22. In connection with the incident, an official letter was received from the Area Police Office, Belbari, Morang on 22-11-2005 at the Regional Office of the Commission, Biratnagar. It is mentioned in the letter that, Durga Rai and three other terrorists were killed in the clash while the team of security forces were deployed under the command of Captain Dipendra Bahadur Ayer on 15-10-2005 at Belwari-6, Telkudi, Morang. Furthermore, site reconnaissance document and reconnaissance of the dead body was attached along with the letter.
23. It is found that the complaint was received at the Commission on 26-10-2005 via telephone while conducting the investigation from the Advocacy Forum and victims on 16-10-2005 based on the news broadcasted on the same day at 6:30 PM that Purna Shrestha, Mohan Khanal, Bidur Bhattarai and Durga Rai were killed in the security operation in Telkundi on 15-10-2005.
24. The statements of the eyewitnesses, news on the radio, the news published in various newspapers concerning the incident shows that Durga Rai was about to take a bath at Morang District Belbari VDC Ward no. 6 Telkudi, Limbu Chowk, on 15-10-2005 when he was approached by strangers who tried introducing themselves as party members and tried shaking hands with him. But, Durga Rai got suspicious and tried fleeing away as he was chased by those men and was shot dead even after surrendering. The fact that Durga Rai did not possess any weapon suggests that he had been captured by the security personnel and there was no double confrontation.

Therefore, such an act is extrajudicial killing which is the serious violation of human rights and international humanitarian law. Regarding the other three people, eyewitnesses and the site reconnaissance document prepared by Area Police Office Belbari displays that there is no dispute that three people came from Kesaliya River on a motorcycle, two in front and one on a motorcycle. The two men had been captured by security personnel. Reconnaissance document prepared by the Police states that while security forces tried arresting two men as they had approached suspiciously towards security forces. They tried snatching the weapon of the security forces by using force. During that period, a plastic grenade that fell from their pocket could have blasted and also there was a possibility of further attacks so the security forces had to open fire. They were killed at 400m east from the site of incident across *Kesaliya* River. However, the statements of eyewitnesses stated that the first two persons were captured by the security personnel and one of them was killed being chased. Thus, there is no basis to prove the fact that the grenade attack was carried out as the items with the person under control were searched and seized.

25. According to the existing law of Nepal, any person who commits a crime should be arrested and taken under the control by the security personnel and action should be taken according to the law (due process of law), however, there is no clear evidence that the situation was created that the security personnel had to open fire. Such an illegal act of the security forces seems to have violated the Fundamental Rights provided by Article 11, 12 and 14 of the Constitution of the Kingdom of Nepal 1990, Article 12 of the Civil Rights Act 1955, and Article 6 of the International Covenant on Civil and Political Rights 1996. Therefore, it is decided to send a recommendation to the Government of Nepal to identify the guilty security personnel and take necessary legal action as per Section 13 (1) and (2) of the National Human Rights Commission Act, 1997 and to provide NRs.1,50,000 to each family of the deceased Durga Rai, Bidur Bhattarai, Purna Shrestha and Mohan Khanal according to the Rule 17 of the National Human Rights Commission (Complaint Action and Determination of Compensation) Rules 2001.

It is hereby directed to provide information about the decision to the victim's family.

Submitted by

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 Yagya Prasad Adhikari
 Chief, Protection Division

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 Member

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 Member

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 Member

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 Member

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 Chairperson

Date: Tuesday, the 23rd day of Jestha of the year 2063 BS (corresponding to 06 June 2006 AD)

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Nayan Bahadur Khatri

Members

Hon. Sushila Singh Silu

Hon. Sudip Pathak

Hon. Gokul Pokharel

Hon. Dr Ramdayal Rakesh



Subject: **Extrajudicial Killing.**

The security forces captured an unarmed civilian who was not involved in the war, was not wearing combat uniform and after taking him to custody as he went unconscious during interrogation, he was not provided with any treatment. When he regained consciousness, he was again interrogated. Therefore, the provisions that the person captured and kept under control by the security personnel should be provided medical treatment in case of illness and the detainees should be treated humanely as stated by the Article 3 of the Geneva Convention 1949, the Section 12 of the Civil Rights Act 1955 and the Article 6 of the International Covenant on Civil and Political Rights 1966 have been violated (paragraph 21).

1. A complaint was registered at the National Human Rights Commission on 10-01-2006 by, a resident of Bhojpur DistrictVDC ward no....., demanding impartial investigation and punishment to the perpetrators and compensation to the victims stating that Devendra Rai, aged 20, a resident of Devantar VDC Ward no....Bhojpur District was arrested on 04-01-2006 by the Joint Security Forces at Ranibas VDC ward no. 8, Hatuwagadi in Bhojpur District and he died in the custody of the Base Camp on 05-01-2006 because of torture. Likewise, another complaint was registered at the Commission by Civil Society for Human Rights, Bhojpur on 12-01-2006 demanding impartial investigation stating that the victim died in the custody and no details have been released about the death.

2. After receiving the complaint, the team of the Commission had initiated an investigation by visiting the spot of the incident.
3. “The deceased was my ..., Devendra Rai used to plough the land and work as a porter to earn a living. He had gone to Dhankuta district to earn money by fetching greenwood. He was asked to buy two bronze plates byfor his twins' son's Bratabandha (ritual) to be held on 11-01-2006. So, he had left the house saying that he would bring it on 9th or 10th January. Told me that he had heard about Devendra's death on the radio at around 11:00 am on 10th January 2006. At 7:00 a.m. on the 12th January, 25-30 villagers went to Ghoretar. The security personnel did not allow us upstairs. They said Devendra had two bullets and a combat dress half-pant. They said he has been sent to the district due to illness. Later, they said that Devendra was buried as he was dead. When they said that they had buried his dead body, we demanded the body of Devendra in any condition and any case to which they couldn't reply. He would not talk to strangers and even when the CPN (Maoist) members came, he used to go upstairs and stay. He did not have any disease and was strong and able to work. He must have been beaten to death by security forces” as stated by.... a resident of on 22-01-2006.
4. My had gone to Dhankuta on 25-12-2005 to fetch firewood. When he left the house, he told us that he would come home either on 9th or 10th January 2006.had asked him to bring him a pair of bronze plates. On 10-01-2006, ... told me he heard the news of the death of Devendra on Saptakoshi FM. As soon as he said that, I, ... and ... went to Ghoretar. On the way to the Camp, I asked security personnel of the base camp about the incident. The details regarding name and address matched our house and the name of Devendra. Later, while I asked at Ghoretar Bazar, they informed me that Devendra was taken to Bhojpur as he was unconscious instead of informing me that he died there. Devendra was not involved in any political activities. He is a 23-year-old was a healthy person and I didn't know of any incident when he was unconscious before. ... was not called to the headquarters from any government office in connection with the incident. We had gone to Ghoretar Security Base Camp to ask for the body. They said that the body had already been buried. Since Devendra is the main breadwinner at home, I would like to request you to take initiative for compensation as per the law.” as stated by , a resident of.....on 21-01-2006.
5. “Deceased Devendra Rai, a resident of Devantar VDC, Ward No. 7 of Bhojpur district was an ordinary and a good man. He was an ordinary farmer who

used to work on a farm and as a porter for a merchant to earn financially. He had no children and a total of eight family members. Whereabout of his father is unknown for eight years. He was not a member of any political party and was not affiliated with it. As far as we know, Devendra Rai had gone to Dhankuta on the 25-12-2005 to fetch firewood. He had come to the home for Bratabandha of his relative. After hearing the news in Saptakoshi FM(Radio) that Devendra Rai had died in the military custody, it became clear that the dead person was Devendra of Devantar. When the villagers went to the Ghoretar Army Camp on 12-01-2006 to inquire about the incident, the Captain informed that Devendra Rai of Devantar was brought for interrogation and he was sent to the district as he suddenly fainted during interrogation. When we asked about why the incident as not informed to his family, they replied that they had sent the information to his family. When we asked to provide him as he is, he replied that they had already done his funeral in the presence of President and vice president of District Development Committee, Regional Head and Secretary of the local body. When we approached them about their presence in the funeral, they replied that they had no idea about it. Examination of all these incidents indicates that Devendra Rai must have been tortured to death at the Joint Security Base Camp in Hatuwagadi.” as stated in the joint statement of 33 residents of *Devantar* VDC.

6. “We came to know about Devendra Rai's death through Saptakoshi FM(Radio). Dinesh Shrestha, the captain of the Base Camp, informed us that initially Devendra was released after a normal interrogation. Instead of going to Ranibas his way to home, he went to Sindrang. Thus, the security personnel suspected searched and arrested him from the west post as they found two bullets and combat dress. Devendra himself testified that he just came from Hongtang and was given the responsibility of collecting information of the situation over there by the rebel forces so he had to be detained. He also said that he used to be senseless from time to time and was sent to Bhojpur for treatment as he was ill. When asked why he was not brought to the nearest health post, it was informed that he was taken to Bhojpur for immediate treatment. And we told that if they had made such a serious thing public.” as stated by.....
7. On 04-02-2006, the complainant informed to the National Human Rights Commission Regional Office Biratnagar via telephone that the CPN (Maoist) Ghoretar 2 no. area in-charge Rohit informed him that the deceased Devendra Rai was not a party cadre.

8. "We cannot say whether the deceased Devendra Rai was a Maoist or a civilian. People are afraid to speak clearly. A letter was received at Bhojpur VDC and DDC from the District Police Office. Verbal information was sent to provide the information to the deceased's house by an unknown person. It was not reported that the family had received the information. Later, when the family came to Bhojpur on 18-01-2006, they stated that they had not received any information. Although we asked them to provide details, they opted to return on the same day which might be because they are afraid. No one was kept in acquaintance while taking body"..... the joint statement of, president,vice president andarea member of the District Development Committee.
9. A letter was received from the District Police Office on 10-01-2006 for the cremation of the body. I released a notice for the person carrying the body on the same day, as per the rules. However, the men who excavated and carried the body was arranged by the Police. I did not go to the hospital and did not even look at the body. The body was cremated on 10-01-2006" as stated by the statement of the secretary of Bhojpur VDC.
10. "I had gone to the VDC office to get my sisters' citizenship when I saw the notice on the wall of the office. As per the notice, a person was sought to bury an unclaimed body and will be paid NRs. 3,000 as wage. When I asked a policeman about the notice, he took me to the District Police Office. When the payment was confirmed, I applied to the Office of the VDC, then went to the hospital with one of my relatives.....Three policemen had gone with us. The police tried to open the lock of the room where the body was kept, but I did not open it. I smashed it with a stone. When we opened the door and entered, the corpse was lying on the table with his chest torn. Then we wrapped the body in plastic. There was a check shirt on the table which was shattered and covered in blood. He had a green vest on his back. After wrapping the body in plastic, we wrapped the body in sacks again and tied a rope to a bamboo. We took the body to the lower part of the market to the west side of the Radhakrishna temple and excavated by ourselves and buried him with all his clothes. The man was tall and heavy. His body looked swollen and the chest was also swollen. His legs were green and cold. The three policemen had gone to the place of burial" as stated by the personand.....carrying and burying the body.
11. "I don't know the date of the postmortem. The corpse had a small one-inch wound near the left shoulder and chest. I did not see any injuries in

other places. After the postmortem, the body was kept in the mortuary for three days. As far as I know, a few days after the death of a person, blood clots in the body were seen and the whole body had turned green and Devendra's body had also turned green. The doctor was also present during the postmortem. During the postmortem of the earlier corpses, the doctor used to take out various parts of the body, but he did not ask to take out anything from Devendra's body. There were no bruises on any other part of the body. As the body was laid to rest, the back of the body was all blue. It happens in all corpses. No one told me not to tell anyone about the body. The wound on the chest was not pierced at the back, the wound looked very small." as stated by

12. Devendra Rai had gone to Dhankuta and slept at his in-law's house on his way back to home. On 05-01-2006, he got up at 4:30 am and went to his house but did not reach the house. When got information that he did not reach his housewrote a letter. The statement mentioned in the letter to ... by Devendra'safter the incident.
13. "Around 8:30 a.m. Devendra came to the place where we were on duty. We started checking his bag according to our regular work. When I started checking his bag, he refused. He ran away while looking at the bag and fell. He told us that his house is in Devantar but he went to Sindrang. He didn't say anything while we asked him the reason he ran away. After the commander slapped him on the cheek, he said that he was on leave. After being brought to the camp, the interrogation was done. When questioned, he told us that he was sick. He had two bags. At first, he spoke well, but later he started stammering. For this, he again received a slap on his cheek then he started speaking well. His breath smelled as if he had been drinking. We blindfolded him, hold him between us and took him up to the Base Camp. When he arrived at the place he fainted for a while and then came to his senses only 10 minutes later." as per the statement of Lance Corporal Kamal Aryal.
14. "I was on duty after 2:00 p.m. The deceased Devendra told me that he was not feeling well and asked for water. I gave him water. However, he had not drunk much water. After 2-3 minutes he fell to the ground and couldn't reply to us. The Lieutenant put his ear to the chest of the deceased and tried pressing it. Medical personnel was called. I did not see the pulses. At that time, it was around 2.30 pm." as per the statement of the Yeljit Rai, guard duty.

15. "On 05-01-2006, Devendra Rai was arrested in the morning. After interrogation, it became clear that he was a Maoist. At around 3.15 pm, the information about his death came from Hatuwagadi Joint Security Base Camp *Ghoretar*. I told to keep the dead body there on that day. The body was brought to Bhojpur district headquarters by helicopter the next day. We found half-pant combat dress, two rounds of bullet, a photograph of another man in combat dress and a photo of Devendra with his family while searching body and bag. We did not take photos of the body. As soon as the body was brought here, it was handed over to the police. The body could not be shown to everyone in Ghoretar Bazaar due to security reasons." as stated by Nabin Basnet, Colonel of *kalidhwaj* Battalion, Bhojpur.
16. "I got the information that, Devendra Rai, nicknamed Shri, was arrested by the Hatuwagadi Joint Security forces at 9.00 a.m. on 05-01-2006 and was taken to the Camp where he died at 15:05. We had received a letter with a dead body from *Kalidhwaj* Battalion Bhojpur on 05-01-2006 asking us to take the necessary action. We sent the body for a postmortem on the very same day. Reconnaissance of the dead body was done at the hospital. We didn't take a photo of the body, but we should have. Our camera had malfunctioned so we could not take photos. However, we should have rented a camera and take photographs of the dead body. We agree it was our fault. None of the local human rights activists came to talk about his body nor take the photos of his body. Even the family of the deceased did not come. A letter was sent to the DDC office from our office on 06-01-2006 to inform his family members. Verbal information was sent to the member of area no.13, Deputy Chairman, Chairman of the DDC and former Chairman of the Monitoring Committee to inform the family. After the postmortem, the body was kept in the mortuary. After 6-7 days, the corpse began to smell bad. As no family members came, a letter was sent from our office to Bhojpur VDC for cremation on 10-01-2006 and information was received from the VDC office that the body was cremated on the same day as per the law." as stated by Nal Prasad Upadhyaya, DSP of District Police Office Bhojpur.
17. "To investigate the death of Devendra Rai, an inquiry team comprising Colonel Tajman Singh Basnet, Major Fatte Bahadur Basnet and Captain Mahendra Jung Shah from Eastern Division of Nepal Army was formed. Some security personnel, including the commander of the Base Camp, have been found guilty of using excessive force. The process of action has already started. A military court will decide on it. The investigation report will be made available to the National Human Rights Commission, ICRC and OHCHR." as

stated by Arjun Sapkota, Judge, Advocate General's Department, Eastern Division, Itahari, dated 13-02-2006.

18. "The body was brought from the District Police Office, Bhojpur along with a letter for conducting a postmortem on 06-01-2006. After bringing the body, postmortem was done on the same day. The upper layer of the skin around the right shoulder of the corpse had peeled out. No other part of his body was found injured. It seemed that he died of shock. There are two types of shock: neurogenic and hypovolaemic. Shock occurs because of a lack of oxygen in the brain when a person suddenly faints. Neurogenic shock occurs if there is a lack of oxygen in the brain which might be due to fear or injury. Damage in the internal organs of the body leads to hypovolaemic shock. Since no internal organs of the body of the deceased are damaged, it can be stated that Devendra Rai died of neurogenic shock." as stated by medical superintendent.....
19. It is seen that the complaint was registered at the National Human Rights Commission on 10-01-2006 by a resident of Bhojpur DistrictVDC ward no....., demanding impartial investigation and punishment to the perpetrators and compensation to the victims stating that Devendra Rai, aged 20, a resident of Devantar VDC Ward no....Bhojpur District was arrested on 04-01-2006 by the Joint Security Forces at Ranibas VDC ward no. 8, Hatuwagadi, Bhojpur District and he died in the custody of the Base Camp on 05-01-2006 because of torture. Likewise, another complaint was registered at the Commission by Civil Society for Human Rights, Bhojpur on 12-01-2006 demanding impartial investigation stating that the victim died in the custody and no details have been released about the death.
20. Based on the various statements gathered by the Commission's investigation team and other evidence related to the incident, the deceased Devendra Rai was a common man and was interrogated by the security personnel on 05-01-2006 at 9:00 am. Excessive force was used during the interrogation which frightened him. Thus, he fainted because of fear and could not regain consciousness leading to his death.
21. The security forces captured the unarmed civilian who was not involved in the war, was not wearing combat uniform and after he was taken to custody, he went unconscious during interrogation but he was not provided with any treatment. When he regained consciousness, he was again interrogated. Therefore, the provisions that the person captured and kept under control by the security personnel should be provided medical treatment in case

of illness and the detainees should be treated humanely as stated by the Article 3 of the Geneva Convention 1949, the Section 12 of the Civil Rights Act 1955 and the Article 6 of the International Covenant on Civil and Political Rights 1966 have been violated. Thus, it is necessary to take legal action against the perpetrators by identifying them as per Section 13 (1 and 2) of the National Human Rights Commission Act 1997 and compensation should be provided to the family of deceased Devendra Rai according to Rule 17 of the Rights Commission (Complaint Action and Determination of Compensation) Rules 2001.

22. Therefore, regarding the complaint that Devendra Rai, a resident of Devantar VDC Ward no. 7, Bhojpur District was arrested and detained on 05-01-2006 by the Joint Security Base Camp at Hatuwagadhi, Ghoretar of Bhojpur District and he died the next day after being tortured in the detention. Based on the statements of residents, statements of the deceased family member and relatives and report of the investigation team deployed to the field for the investigation, the statement from the District Administration Office and a written reply from Kalidhwaj Battalion Bhojpur which stated that Devendra Rai was killed by the security forces shows that the said action has led to the violation of human rights. Thus, it is decided to send a recommendation to the Government of Nepal to conduct a special investigation in this case and take action against the culprit and provide NRs.2,50,000 as compensation to the victim's family.

It is hereby directed to provide information about the decision to the victim's family.

Submitted by

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Yagya Prasad Adhikari
Chief, Protection Division

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Member

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Member

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Member

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Member

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Chairperson

Date: Tuesday, the 23rd day of Jestha of the year 2063 BS (corresponding to 06 June 2006 AD)

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Nayan Bahadur Khatri

Members

Hon. Sushila Singh Silu

Hon. Sudip Pathak

Hon. Gokul Pokharel

Hon. Dr Ramdayal Rakesh



Subject: **Death and injury in electric ambush.**

The act of detonating an electric ambush on a public road by the CPN (Maoist) has violated the provision related to treatment between military and non-military as provided by the international humanitarian law and the act is against the provision of the Common Article 3 of the Geneva Conventions 1949 that civilian population and civilian property should not be destroyed. Therefore, such an act is a violation of international humanitarian law (provision 13).

The brief description of the complaint is mentioned below:

1. Considering the seriousness of the incident, the Commission took Suo-motto initiation and investigated the case after the news was published in various national level newspapers that two security personnel, including a civilian, were killed by the electric ambush detonated by the CPM (Maoist) and two more civilians were killed after the incident on 08-07-2005 at Kharhuriya VDV in Kapilbastu District.
2. "I was at home on the day of the incident. I heard a loud sound. Masuradevi was shot in the chest and had died while fetching water from a stream because of indiscriminate firing. Similarly, Khum Bahadur Gandharva was shot in the same place. After being beaten and injured by the security personnel, was taken to the zonal hospital in Butwal for treatment. Two security personnel and the driver died on the spot in the electric ambush.

I don't know how many security personnel were injured.” as stated by.... on.....19-07-2005.

3. “I was not present at the site of the incident. Later, when I came to the village, I came to know that Masuradevi was shot dead while fetching water from the stream due to indiscriminate firing by the security personnel. I came to know that ... was shot injured while bathing in the same stream. I came to know thatwas taken to Butwal Zonal Hospital by the security personnel for treatment as he was injured. I came to know that 16 people from the village had been interrogated by the security personnel” as stated by..... on 19-07-2005.
4. "We were 50 meters from Bazaar Chowk at around 7:00 when we heard a loud sound. When we came out, we saw that the security personnel were getting out of the trolley and at the same time they fired indiscriminately. The shooting lasted for about an hour. It was not possible to leave the house. When the shooting stopped at around 9:00 am, we went to ...'s house and found thatwas found dead after being shot and ... was injured after being shot in the thigh. He was taken to the medical at no.4 *Haat Bazar* for treatment. The next day, at around 7:00 a.m., the security personnel came to the spot and inspected it. They came to Masuradevi's house and said that the bullet was not ours but that of the Maoists. They went away stating that body should be taken for postmortem. I heard that had been taken to the Doctor at *Krishnanagar* for the treatment and they spent NRs.1,250 for the treatment.” as stated by on 19-07-2005.
5. “At approximately 7 p.m. on the day of the incident, I had a bicycle puncture. So, I had gone to street no.4 to repair it. At the same time, two Army tractors were heading towards South Ganeshpur and a third tractor exploded. We were all sitting inside the house after the explosion. Then the army came and beat us. About 17 of us have been injured. My head was hit by a stone. There are two stitches on the right side of my head. The thumb of my right hand has also been injured. I lost my consciousness because of head injury. When I regained consciousness, I was bleeding from my head. An ambulance from Ganeshpur took me to Butwal Hospital with the injured Army and the Police. I did not have to pay for the treatment. I was discharged the next day. I still have pain in my right hip and I haven't even done an X-ray of my head. The government should bear the cost of my further treatment.” as stated by an injured person.... on 19-07-2005.

6. At around 7:00 a.m. on 08-07-2005, the security personnel of Ganeshpur camp said that a tractor was needed for the patrol and they requested to avail the tractor at Ganeshpur Camp within 8:00 am. As there was no driver to drive the vehicle, I sent the tractor with Rajesh Kurmi, who is like my grandson in relation and is also known as Doctor. The tractor did not arrive till evening. On the next morning, I came to know from the villagers that the tractor got into an electric ambush. When we went to seek information, we came to know that the driver Rajesh Kurmi (Doctor) along with the security personnel who were returning from patrolling was also killed in the incident. We found that the body was taken to a hospital in Bahadurganj for postmortem and was kept in a state of disarray. The cremation was held as per the rites after we got the concerned documents. None of us knows how the incident happened. Since my tractor is completely damaged and cannot be used, I should get compensation and expenses of the final rituals from the government.” as stated by the owner of the tractoron 19-07-2005.
7. Statement of ... andsupporting the same statement.
8. “At about 7:00 pm on that day, I was about to take a shower at my home. My neighbour Masuradevi had come to fetch water. Just then the sound of a loud explosion was heard. Then, a bullet hit me in the thigh. Masuradevi fell as a bullet hit her chest. I was scared when I came home. The next day we came to know that, the security personnel had boarded on three tractors from Ganeshpur Camp on 08-07-2005 for patrolling on public transport as usual. On arrival at no. 6 of Khurhuriya VDC, two tractors crossed the electric ambush. And another tractor (Lu.1 TA.3024) drove by Rajesh Chaudhary (called as Doctor) had got into the powerful electric ambush. The middle part of the body of the tractor was affected by the explosion below the driver’s seat. The big wheel of the body part of one side got lifted and reached on the field, other parts were all scattered, the driver of the tractor and two security personnel died on the spot, 5 security personnel got seriously injured, a pit about 6 feet long and 5 feet wide was created on the spot. Public and security personnel stated that CPN (Maoist) cadres managed the blast by plotting the wire to the Sissoo tree which was 300m far from the place of incident. Only security personnel of Ganeshpur Camp were on board the tractor. The injured security personnel were taken in an ambulance to Lumbini Zonal Hospital, Butwal for treatment and then taken to Kathmandu. After the incident, security personnel in two other tractors searched the houses of the civilians around the incident site and beat up the people. A resident of Ganeshpur VDC ward no....fell down being unconscious due to a head

injury and he was taken to the Lumbini Zonal Hospital in the ambulance which came to receive the injured security personnel and was treated with two stitches on the head. In addition to the beatings, while security forces fired indiscriminately,.....was injured by the bullet of the security forces on his right thigh while he was bathing at the stream 400m north from the place of incident. As he had no money for treatment, he arranged for a loan and got treatment on his expenses and is now living at his home. Similarly, Masuradevi, who had come to fetch water taking pot was shot in the chest and died on the spot. The marks of the bullet on the walls of many houses verify that the security forces had fired bullet indiscriminately.” as stated in the report of the investigation team of the Commission.

9. Letter of the District Administration Office, Kapilbastu dated 31-10-2005, ref.no.640 and the letter from Ministry of Home Affairs dated 23-11-2005 ref. no.1346 mentions that “The tractor driver, Rakesh Chaudhary, a resident of Ganeshpur VDC ward no. 4 Kapilbastu District and two other security personnel died on the spot while 5 security personnel were injured. Masuradevi Panthi, a resident of Khurhuriya VDC ward no.6, Premnagar, Kapilbastu District was killed at the crossfire which occurred after the blast. was wounded by a bullet in the right thigh. Security forces did not beat anyone, and no complaint was received about beating by the security forces. According to the residents, the incident did not take place. The tractor (LU.1 TA 3024) had been on its work in Khurhuriya VDC ward no. 6. The incident took place on the way back to Pemra Nagar village ward no. 6 as the security personnel reached the spot by coincidence. For the compensation of the deceased civilians, correspondence has been sent to the District Administration Office, Kapilbastu. It has not been revealed that the person living in the same place was beaten by the security forces.”
10. Considering the seriousness of the incident, the Commission took Suo-motto led initiation and investigated the case after referring to the news published in various national level newspapers stating two security personnel, including a civilian, were killed by the electric ambush detonated by the CPN (Maoist) and two more civilians were killed after the incident on 08-07-2005 at Kharhuriya VDC in Kapilbastu District.
11. Rakesh Chaudhary (called as Doctor) and two security personnel were killed, and five others were injured in the electric ambush set by the CPN (Maoist). After the explosion, the security personnel of the two tractors searched the houses around the site of the incident and beat up the people

present at that time.a resident of Ganeshpur VDC ward no....fell down being unconscious due to a head injury and was taken to the Lumbini Zonal Hospital in the ambulance which came to pick the injured security personnel where he was treated and had two stitches on the head. In addition to the beatings, security forces lost their restraint and had fired indiscriminately,

12.was injured by the bullet of the security forces on his right thigh when he was bathing at the stream 400m north from the place of incident. As he had no money for treatment, he took a loan and managed to get treatment on his expenses and is now living at his home. . Similarly, Masuradevi Panthiwho had come to fetch water was shot in the chest and died on the spot. As the marks of bullet were found in the walls of many houses, it is proved that the security forces fired bullet indiscriminately.
13. While studying and analyzing all the documents of the case file, it is found that one civilian and two security personnel were killed, and five others were injured in the electric ambush set by the CPN (Maoist) on 08-07-2005 at *Khurhuriya* VDC in Kapilbastu District. After the incident, the security personnel searched the houses around the incident site and beat up the people present at that moment. In addition to the beatings, security forces indiscriminately started firing which led to the death of one civilian and one civilian got injured. Regarding the incident, the act of detonating an electric ambush on a public road by the CPN (Maoist) has violated the provision related to treatment between military and non-military as provided by the international humanitarian law and the act is against the provision of the Common Article 3 of the Geneva Conventions 1949 that civilian population and civilian property should not be destroyed. Therefore, such an act is a violation of international humanitarian law. Similarly, the Royal Nepalese Army used public, private and rented vehicles for military purposes. Such an illegal act of the security force has violated the right to life enshrined by the Constitution of the Kingdom of Nepal 1990, the inalienable right to life enshrined by Article 6 of the International Covenant on Civil and Political Rights 1966 and the right to life, liberty and security enshrined by the Universal Declaration of Human Rights 1948.
14. Rajesh Kurmi (called as Doctor) and two security personnel died in this incident. Also, another civilian Masuradevi Panthi lost her life and was injured by the bullet fired by the security force after the incident. Therefore, it is decided to recommend to the Government of Nepal to provide NRs.1,50,000 compensation to the family of deceased persons on the basis of cost of

treatment and to provide NRs.60,000 as compensation to the injured victim. Furthermore, the Commission decides to condemn the act of CPN (Maoist) of planting and dropping explosives in public places in rampant manner which is also the act against humanity.

It is hereby directed to provide information about the decision to the victims and victim's family.

Submitted by

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Yagya Prasad Adhikari
Chief, Protection Division

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Member	Member	Member	Member

.....
Chairperson

Date: Tuesday, the 30th day of Jestha of the year 2063 BS (corresponding to 13 June 2006 AD)

NHRCN Central Office

Harihar Bhawan, Pulchowk, Lalitpur, Nepal
G.P.O. Box: 9182, Kathmandu, Nepal
Tel.: 00977-(0)1-5010015 (Hunting Line)
Audio Notice Board Service No.: 1618-01-5010015
Fax: 00977-(0)1-5547973
Website: www.nhrcnepal.org
E-mail: nhrc@nhrcnepal.org
Complaints : complaints@nhrcnepal.org

Province 1 Office

Bargachhi, Biratnagar, Morang, Nepal
G.P.O. Box: 187
Tel: 00977-(0)21-461931, 461093
Fax: 00977-(0)21-461100
E-mail: nhrcbrt@nhrcnepal.org

Province 2 Office

Janakpurdham, Dhanusha, Nepal
Post Box: 50
Tel: 00977-(0)41-590313, 590314
Fax: 00977-(0)41-590315
E-mail: nhrcjnk@nhrcnepal.org

Bagmati Province Office

Sanepa, Lalitpur, Nepal
Tel: 00977-(0)1-5529172, 5530362
E-mail: nhrcsnp@nhrcnepal.org

Gandaki Province Office

Janapriya Marga- 8, Pokhara, Nepal
P.O. Box -72, Pokhara
Tel: 00977-(0)61-462811, 463822
Fax: 00977-(0)61-465042
E-mail: nhrcpkr@nhrcnepal.org

Lumbini Province Office

Butwal, Rupandehi, Nepal
Tel: 00977-(0)71-410175, 410176
E-mail: nhrcbtl@nhrcnepal.org

Karnali Province Office

Surkhet, Nepal (yet to be established)

Sudurpashim Province Office

Uttar Behadi, Ratopul, Dhangadi,
Kailali, Nepal
Tel: 00977-(0)91-525621, 525622
Fax: 00977-(0)91-525623
E-mail: nhrcdhn@nhrcnepal.org

Province Branch Offices

Province 1 Branch Office, Khotang, Diktel,
Tel: 00977-(0)36-420284,
E-mail: nhrckht@nhrcnepal.org

Lumbini Province Branch Office

Shantinagar, Nepalgunj, Bake
Tel: 00977-(0)81-526707, 526708,
Fax: 00977-(0)81-526706,
E-mail: nhrcnpj@nhrcnepal.org

Karnali Province Branch Office

Jumla, Khalanga
Tel: 00977-(0)87-520222,
E-mail: nhrcjum@nhrcnepal.org