

Selected Decisions

of

The National Human Rights Commission of Nepal

(As an independent body having special responsibility to protect and promote human rights, National Human Rights Commission should not be compelled to operate as and adopt the standards of government entities. Judicial intervention on this regard is not admissible as it is contrary to the international human rights norms, values and Paris principles which bestows economic and managerial autonomy to the Commission.)

*Supreme Court, Special Bench, Decision No.9050,
N.K.P. 2070, Volume 9*



National Human Rights Commission of Nepal
Hariharbhawan, Lalitpur, Nepal



Office bearers of the NHRCN

Chairperson

Hon. Anup Raj Sharma,

Members

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Hon. Sudip Pathak

Hon. Mohana Ansari

Hon. Govinda Sharma Poudyal

Secretary

Bed Bhattarai

Volume-3

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National Human Rights Commission of Nepal
Hariharbhawan, Lalitpur, Nepal



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Abbreviations

ANNFSU	: All Nepal National Free Students Union
CPN-M	: Communist Party of Nepal-Maoists
CVICT	: Centre for the Victims of Torture, Nepal
DAO	: District Administration Office
DDC	: District Development Committee
HR	: Human Rights
NGO	: Non- Government Organization
NHRCN	: National Human Rights Commission of Nepal
NRS	: Nepalese Rupees
Ref. no	: Reference Number
SP	: Superintendent of Police
TU	: Tribhuwan University
UN Park	: United Nations Park
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 volume contains eight 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 victim and witness, their names have been kept confidential. On the contrary, name of the deceased and the victims of enforced disappearance person 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.
7. Though this is the first publication of the year 2017, for the purpose of the continuity to the publication number, it has been named as volume 3 of the year 'second'.

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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

Complaint no.1532 of 2010

Regional Office, Biratnagar



Subject: Corporal punishment/torture by the teacher.

Submission of a written statement before the Commission confessing the crime and the pledge not to repeat similar acts in the future does not validate not taking of legal action against the perpetrator. Absence of legal action for assuring the safety of the victims and their families will provide a means for impunity to prevail. (Paragraph no. 11)

Infliction of physical punishment upon children in the school not only violates Section 7 of the Children's Act 1992 but also infringes the right to gain education in a fearless environment. Such an act constitutes physical and mental exploitation of a child and is contrary to Article 22 (3) of the Interim Constitution of Nepal 2007. As such, it also is the violation of Articles 37 (a) and 39 of the International Convention on the Rights of the Child, 1989. (paragraph 13)

Instead of initiating legal action in the concerned body stating the violation of the rights of the child as per section 53 (3) of the Children Act 1992, the involvement of the District Education Office and the school's resource persons in reconciliation shows the inability of the government to act as per Article 2 (2) of the Convention on the Rights of the Child. (paragraph 14)

As the victim's family has already received NRs 15,000 (Nepalese Rupees fifteen thousand), from the perpetrator, further decision in this regard is not needed. The Commission hereby decides to recommend the Government

of Nepal to warn the teacher Nakul Prasad Shah against the repetition of such an act of child battery followed by the policy recommendation to the Government regarding the issuance of directives in all parts of Nepal informing to take departmental action against the teachers involved in physical and mental torture of children as per No. 9(2) of the National Child Policy 2012. (paragraph 17)

1. A complaint was registered in the Commission on 03-08-2010 demanding action against the teacher and providing medical and living expenses to the minors stating that, daughters of, a resident of ... VDC ward no..., Saptari District, student of grade 5 and 6, studying in Lower Secondary School have been undergoing treatment for serious injury (slap, punch and beating with sticks) inflicted by Kul Prasad Shah, the teacher of the School on 25-06-2010.
2. The following actions were initiated by the Commission on the complaint:
 - The letter was sent to the District Education Office and District Administration Office of Saptari by the Regional Office (Biratnagar) of the Commission requesting the assistance in providing detailed information about the incident and investigative steps taken if any along with the initiatives taken for the protection of human rights of children and student.
 - A letter was sent to.... Lower Secondary School requesting the report prepared in relation to the investigation of the incident and other necessary information thereof.
 - The response letter from the Lower Secondary School dated 24-09-2010 stated that the writing of bad quotation about the teacher Mr. Nakul by the daughter of the complainant and revealing of it to other student led to violent behaviour by Mr Nakul (slap on the cheek, ear) which caused severe pain in the ear to the victim. A day after the incident the complainant filed an application demanding necessary action from the school management committee. After the discussion between the staffs of the school and the complainant, an apology was requested by the perpetrator, NRs 15,000 (fifteen thousand rupees) was provided for medical expenses and reconciliation between both the parties was done.
3. The investigation report of the Commission revealed that and , daughters of, a resident of ... VDC ward no. ... of Saptari District were the students of Lower Secondary School. Their mother and Nakul

Prasad Shah who works together in the very school had a general dispute in the village before the incident took place.

4. Statement of the victim sheds light on the fact that on 25-06-2010 daughters of the complainant were in their respective classrooms while, student of class 5 shows a poem written about the teacher Mr, Nakul to her friends. Teacher Nakul gets to know about the poem through one of the students and reacts violently by beating the students in the cheek and with a bamboo stick. The beating thereby caused bleeding from the ear of the victim.
5. Statement of reveals that subsequently after showing violent behaviour in class 5 teacher Nakul went to class 6 and started beating another student who accuses him of his bad behaviour in class 5. As a result, became unconscious with bloodstains on the forehead and lips.)
6. As per the reporting of school inspector deployed by the District Education Office, the teacher Nakul Shah had tried to influence the girl children by offering sweets and requesting not to give negative statements about him. Moreover, he had also taken the school inspector himself to his house and fed him fish and meat.
7. The complainant demanded action to be taken against the perpetrator with due consideration for the safety of him and his daughters as the previous reconciliation was also entered into due to the pressure created since the perpetrator was affiliated with an armed group.
8. The analysis of the Commission's investigation highlighted that the claim of the complainant regarding the victim's treatment conducted in India couldn't be relied upon as the complainant had only presented the documents revealing the treatment done in Kathmandu Teaching Hospital. The prescription report of the doctor contained the facts about intimidation faced by the victims, their refusal to go to school, and recommendation for their counselling and medication as well.
9. Among both girls, is studying in class 6 at Boarding School and ... is studying at Primary School in Saptari District.
10. In the statement before the Commission, the alleged perpetrator confessed about slapping the minor because of her writing targeted at him but denied beating her. He further stated that the dispute was settled by providing NRs 15,000 to the victim in the presence of the school management committee.

He realized his mistake after getting clear instructions from Satrudhna Prasad Yadav, District Education Officer and will not repeat the same.

11. The investigation of the Commission depicted the incident as a clear violation of child right. The child victims got NRs 15,000 as compensation, but then, could not demand actions against the perpetrator because of security threats. Submission of a written statement before the Commission confessing the crime and the pledge not to repeat similar acts in the future does not validate not taking of legal action against the perpetrator. Absence of legal action for assuring the safety of the victims and their families will provide a means for impunity to prevail. The conclusion of the investigating team of the Commission also confirms the involvement of the district education officer, resource persons, school principals and teachers in acting against the basic norms of child rights and the prevailing law. On this parlance, the investigating team concludes that the recommendation from the Commission should include warning the perpetrator against repeating such an act and making him incur the medical expenses of the victims.
12. Analyzing with regard to the truthfulness of the incident and, a resident of ...VDC, ward no..., Saptari District, students of grade 5 and 6 of School are found to be the victims of violent acts of beatings by the teacher Nakul Prasad Shah, referring to the conclusion of the investigation. Both the girl child victims had to go through physical and mental suffering as a result of the act of violence by the teacher which is proved by them going under treatment followed by psychological counselling.
13. Infliction of physical punishment upon children in the school not only violates Section 7 of the Children's Act 1992 but also infringes the right to gain education in a fearless environment. Such an act constitutes physical and mental exploitation of a child and is contrary to Article 22 (3) of the Interim Constitution of Nepal 2007. As such it also is the violation of Articles 37 (a) and 39 of the International Convention on the Rights of the Child, 1989).
14. Instead of initiating legal action in the concerned body stating the violation of the rights of the child as per section 53 (3) of the Children Act 1992, the involvement of the District Education Office and the school's resource persons in reconciliation shows the inability of the government to act as per Article 2 (2) of the Convention on the Rights of the Child.
15. It is seen that the alleged perpetrator Nakul Prasad Shah has provided Rs 15,000 to the family of ... and ... after the incident.

- 16. Though the perpetrator Nakul Shah expressed commitment in writing stating non-repetition of such an act in the future, the failure to take legal action conferring to the security of the children and their family in the light of lapse in legal limitation to file the case (*Jaheri*) will provide a base for impunity to prevail.

- 17. Analyzing the facts revealed by the investigation of the Commission, medical report of the Teaching Hospital, it is established that the students of grade five and six of the Lower Secondary School are the victims of corporal punishment perpetrated by the teacher Nakul Prasad Shah on 25-06-2010. The Commission finds that it is undoubtedly a violation of child right. The Commission hereby decides to recommend the Government of Nepal to warn the teacher Nakul Prasad Shah against the repetition of such an act of child battery followed by the policy recommendation to the Government regarding the issuance of directives in all parts of Nepal informing to take departmental action against the teachers involved in physical and mental torture of children as per No. 9(2) of the National Child Policy 2012. As the victim's family has already received NRs 15,000 (Nepalese Rupees fifteen thousand), from the perpetrator, further decision in this regard is not needed.

- 18. For the implementation of the decision made herein, a copy of it shall be delivered to the government of Nepal while also making sure that the complainant is notified about the decision. It is hereby directed to remove the complaint file record from the initial list and transfer it in the record-keeping department of the Commission.

Submitted by

.....
Mandira Shrestha
Assistant First

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Member

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Member

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Member

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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. Dr. K.B. Rokaya

Complaint no.492 of 2005

Regional Office, Biratnagar



Subject: **Extrajudicial Killing.**

(No signs of encounter including bullet marks could be seen from the scene of crime (house of the witness) observation. Moreover, the inability to mention the damage caused to the security force (if any) as a result of an encounter is, in itself, contrary to the claim of an occurrence of a clash between the CPN (Maoists) and the security forces. Although Arjun Subba (Menyangbo) was a cadre of the Maoists (the then rebel group), investigation of the Commission confirmed that he was killed in an unarmed condition denying his right to a fair trial under due process of law, which is a clear violation of his right to life and the norms enshrined in the international humanitarian law. Therefore, the Commission decides to recommend to the Government of Nepal to take legal action against the then Commander of Indralal Company, Major Rupendra Budhathoki and other security personnel whose involvement is later seen from the identification process thereof. (paragraph 7)

1. A complaint dated 02-12-2005 was registered demanding investigation regarding the death of Arjun Subba (Menyangbo), a 32-year-old teacher, resident of Khalte of *Thechambhu* VDC, Ward No. 6, Taplejung District alleged to be shot dead by the Army personnel after taking under their control while fleeing for self-security at 8:10 am on 17-11-2005. Two copies of coloured photograph, three paged scene of crime/dead body examination report, 2 paged body disposal report were found to be attached with the complaint.

2. A copy of the letter dated 12-01-2006, sent to the District Administration Office, Taplejung by Biratnagar Regional Office of the Commission demanding necessary information regarding the incident is found to be attached to the case file.
3. A reply letter received from District Administration Office Taplejung, dated 06-02-2006 stating Arjun Subba (Meyangwo) being killed in a clash with the security forces at *Thumbedin* VDC, Ward No. 7 at 8.50 am on 17-11-2005 is found attached in the case file.
4. The following facts were revealed from statements given by witnesses and knowledgeable person before an investigation team deployed from the Commission's Regional Office, Biratnagar:
 - a) A statement given by one of the relatives of the deceased shed light the fact that Arjun Menyangwo had stayed at the house of the statement giver's related brother on 16-10-2005. The following day at around 8:00 am the security forces of '*Purne Danda*' of Thechambu place arrived at the very home causing Arjun to flee from therein. Later, on 20-10-2005, an unidentified man from Thumbedin came and informed about the killing of Arjun by the army at the place named 'Badahare' in Thumbedin. In the evening of the incident day, sister of the statement giver had come to visit him from Taplejung headquarter after hearing the news about the death of Arjun. On 21st October morning, when he reached the crime scene with the villagers, he came to know about the murder of his related brother Arjun after his arrest at around 8.00 am by the army. Reaching the crime scene, he had witnessed the CPN Maoist taking out the dead body of Arjun from the place of burial with his hands and feet tied in one place. While the cadres of CPN (Maoist) prepared to cremate the body in another place covering with the flag of the Party the statement giver requested to take the body home and then performed the funeral of Arjun on the very day. The army had threatened not to allow CPN (Maoist) cadres to dig their flag in the cremated place. As stated by the grandmother of ...'s house, Arjun had stayed in her house after having a meal downstairs. At the very moment, the army personnel surrounded the house, some of them entered inside the room and arrested Arjun while he was trying to escape breaking the wooden wall of the room. But then, later he was shot dead by the army.

- b) The statement given by an eye witness revealed that on 18-10-2005, at around 9 pm, twelve unarmed people (five of them were women) from the CPN (Maoist), wearing plain clothes, carrying a bag each had come and asked him for homestay. After offering them a room, all of them had slept in the same room that night. At about 4 am, eleven of them came out of the house to wash clothes/bath and went out after 6 am. But, one of them, Arjun Menyangbo, was still at home lying on the bed. At around 8.00 am, he entered the bedroom of noticing his enemy's arrival and jumped out of the wooden wall after smashing it. As soon as he jumped out of the room, 3-4 gunshots were heard. After that, about 150 people including army and police personnel surrounded the statement giver's house ordering everyone to come out. Thereafter some army troops entered the house to search but found nothing. Suspecting the house being used as a Maoist's base, the army inquired his son about the number of grenades placed in the house. At 11 am he had seen the dead body. Later, at noon, the soldiers themselves took the body 200 meters north of his house for burial after which they cooked and ate in the field. They had prepared a report and made the son of the statement giver sign it without letting him know about the content of the report. After shooting Arjun Menyangbo, the army had entered the room where the deceased stayed but found nothing except a bag containing clothes, money, copy and book. They had found NRs. 3,21,000 (three lakhs, twenty-one thousand) in the bag. The army troops left at about 5 pm. While the 12 Maoists had entered the house his son had seen them carrying two loaded guns and a socket bomb. A CPN (Maoist) commander ofVDC was also present among them whose leg was broken while trying to escape. The army had brought him in the yard of the statement giver by tying hands behind his back. The army had airlifted him to a hospital for treatment and released him after taking his statement. Currently, he is seen in the village. Two days after the incident, the villagers and the Maoists had excavated the body and taken it to another place for burial. As per the statement giver, Arjun's hands and feet were tied in the same place, his leg was smashed and the head was wounded and broken. The posterior part of the head was smashed causing the parts of the brain to scatter. Upon requesting the Maoists, Arjun's family had taken the body with them for a funeral.
- c) As per the statement given by another eye witness, at about 9 pm twelve Maoists had arrived at his home while everyone was asleep. As they couldn't find shelter in his home due to lack of space they headed towards his brother's house taking some clothes from him. Next

morning while had come to his house for a cup of tea, at around 7:30 am, sounds of 15-20 rounds of gunshots were heard. While the security forces had cordoned the house from all the sides, at around 8.30 am, they searched inside his house suspecting the presence of Maoists, but had already escaped. When was running away his leg had broken and as he fell down the security personnel caught him. As the statement giver's mother felt terrified hearing gunshots he went to his brother's house for her safety. There he had seen the corpse being laid in the yard of the house which was later buried by the security personnel 200-300 meters north of the house. Peeking from his house, though he could not see Arjun being shot, he had seen the security personnel firing standing at the front and back of his brother's house since both the houses lay at a distance of about 100 meters. 95-100 security personnel were present at that time. They had eaten rice, husks cooked on the barren land in front of his house after the burial of the dead body and had left the place at 6 pm. The next day at around 2.00 pm, a helicopter was landed few meters away from his house to take away an injured person along with two unknown persons who were caught from 'Thechambu' and the three sentries. One of the security personnel was injured with bandages on his face, forehead and cheeks. It was said that Raman (Arjun) threw hot water in his mouth to escape. While the security personnel were shooting he had heard them saying "You had escaped yesterday after pouring hot water at us but you longed to live for only one day and died." After killing Arjun, the security personnel had prepared a spot report and made....., his daughter-in-law, mother to sign but did not read out the content inside it. Security forces had burnt the bags of all twelve Maoists from my brother's house and had kept a grenade, two or three guns in the yard. The Maoists including 3 or 4 women wore a variety of clothes. Among them, three sentries, aged 12-13, had been arrested and brought in the yard by the army.

- d) A statement given by a witness shed light on the fact that at about 9 pm, the Maoists came to the house asking for shelter and four of the women slept near the stove. Everyone left in the morning except one of them who was on the bed outside. At about 8 am, the security personnel had suddenly come rushing in making the Maoist sitting outside enter the house. As soon as the security personnel entered inside, the Maoist got away smashing the wooden wall of the room. Security forces had shot him 5-6 times while running away.

5. After the investigation, the file was submitted to the Honorable Commissioner Ramnagina Singh by making remarks. On, 1-12-2009, he ordered to submit the file in the Commission mentioning the investigation was completed. The order has been found attached to the file of the case.
6. With regard to the complaint registered in the Commission, the major question to be dealt herein is, whether he died in an encounter as stated in the letter of the District Administration Office or was deliberately killed. Referring to the statement of the eye witnesses no elements of encounter is seen as 5-6 rounds of gunshots were fired by the security persons only. Similarly, the investigation team could not find any signs of armed dual confrontation between the deceased and the security forces. No bullet marks were present at the scene of the incident and the District Administration Office could not clearly state the damage caused on the side of security force provided if it was an encounter. This doesn't confirm the occurrence of clash between both the Maoist and security forces. It comes under the legal duty of any security personnel to arrest the accused person and confirm his/her involvement in the crime ensuring the due process of law. But then, the investigation shows that in the presence of 95-100 security forces, Arjun Menyangbo was shot dead in an unarmed condition. Such an action of the security forces cannot be justified on legal grounds as they failed to show valid and logical reasoning behind their decision to shoot. Hence, the investigation report concluded that the security forces violated the fundamental rights guaranteed by the Articles 11, 12 and 14 of the then Constitution of the Kingdom of Nepal 1990, Article 12 of the Interim Constitution of Nepal, 2007, Article 12 of the Civil Rights Act, 1955, and Article 6 of the International Covenant on Civil and Political Rights, 1966.
7. Analyzing the facts revealed from the investigation of the Commission, though the letter received from the District Administration Office, dated 06-02-2006, stated that Arjun Subba (Menyangbo) was killed in an encounter with the security forces at Thumbedin VDC, there lacks an evidence to confirm that claim. Referring to the statements given by the eyewitnesses before the investigating team, only 5-6 rounds of bullets were heard on the day of the incident. No signs of encounter including bullet marks could be seen from the scene of crime (house of the witness) observation. Moreover, the inability to mention the damage caused to the security force (if any) as a result of an encounter is, in itself, contrary to the claim of an occurrence of clash between the CPN (Maoist) and the security force. Although Arjun Subba (Menyangbo) was a cadre of the Maoists(the rebel

group), investigation of the Commission confirms that he was killed in an unarmed condition denying his right to a fair trial under due process of law, which is a clear violation of his right to life and the norms enshrined in the international humanitarian law. Therefore, the Commission decides to recommend to the Government of Nepal to take legal action against the then Commander of Indralal Company, Major Rupendra Budhathoki and other security personnel whose involvement is later seen from the identification process thereof, and to provide NRs.300000 (three lakhs) compensation to the kin of the deceased in accordance with the Section 16(3) of the National Human Rights Commission Act, 2012.

Submitted by

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 Neetu 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 2070 BS (corresponding to 24 March 2013 AD).....

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Kedarnath Upadhyaya

Members

Hon. Ramnagina Singh

Hon. Gauri Pradhan

Complaint no.775 of 2006

Regional Office, Nepalgunj



Subject: **Custodial death (Death in the Prison).**

Inability of the prison administration to keep sensitive substances like petrol out of the reach of Mina Ghartimagar despite having the information about her abnormal mental condition shows weakness on the part of the prison administration. (paragraph 12)

Section 6 (c), (e) and (f) of the Prisons Act, 1963 obliges the prison head with the responsibility to arrange a separate sections for the inmates under 21 and above 21 years of age. Similarly, the very section includes the provision for the segregation of sick, insane and semi-insane detainees in a different section. But then, the non-implementation of this clause resulting in the placement of inmates without segregation is a violation of the Prisons Act, 1963. (paragraph 12 b)

The Commission hereby decides to recommend to the Government of Nepal to alert the prison administrators regarding the placement of minors in child reform centres, not to inflict physical or mental torture in prisons, and to save the lives of all inmates as the prison administration is entrusted with the special responsibility on this regard but negligence on the part of administration is seen thereof. (paragraph 13)

1. A suo-moto investigation was conducted by the Commission with regard to the suspected death of Mina Ghartimagar in Tulsipur Prison, aged 21, resident of Khumel VDC-6, Rolpa District, on the date 15-02-2006 due to

torture and abuse inflicted by security personnel. The suspicion of gross violation of human rights regarding this incident dragged the attention of the Commission for suo-moto initiation.

2. Series of letter demanding information about the incident sent to the District Administration Office Dang, Tulsipur Prison Dang and Nepalgunj Prison Banke by Commission is found to be attached to the file of the case.
3. A copy of the letter sent to the Bheri Zonal Hospital by the Commission demanding record of the victim's admission, postmortem report of the deceased Mina Ghartimagar is seen attached to the file.
4. The response letter of District Administration Office(DAO) Dang stating the surrender of Mina Ghartimagar on 09-09-2005 after submission of an application through Area Police Office, Tulsipur, Dang showing an intent to live an independent life is attached to the file. Similarly, the response letter of Bheri Zonal Hospital with a photocopy of all the documents related to Mina Gharti's treatment including a photocopy of the report regarding post-mortem and miscarriage is attached to the case file.
5. A response letter of Prison Office Dang informing about the decision of sentencing of Mina Ghartimagar in the Dang prison for 6 months from 27-11-2005 applying Terrorism and Destructive Act (Control and Punishment) Ordinance, 2002 is attached to the case file.
6. A response letter received from the Primary Health Centre Dang attached to the case file revealed the fact that Mina Ghartimagar had been admitted to the Health Center on the date 08-08-2005 and 06-03-2006 to treat Dysmenorrhea and Burn injury respectively.
7. A report from human rights activists stated that Mina Ghartimagar was arrested by the security personnel on 16-05-2005 while conducting a public meeting organized by ANNFSU (Revolutionary) near health centre, Labari VDC, Dang. She was detained at the security base camp, Tulsipur Airport and the 19th Brigade of the Army for three and five days respectively. She had been subjected to extreme physical, mental torture and sexual abuse during her detention period. The victim was later detained at the Area Police Office, Tulsipur after which the news of her surrender was broadcasted on Nepal Television. She was then released with an agreement to be present at Area Police Office, Tulsipur when asked for and work as a spy on salary

basis. With that purpose, she had stayed as paying guest for six months and had worked as a spy for three months. But then she was re-arrested in November, 2005 on suspicion of being a Maoist and was shifted to Tulsipur Prison Office after conviction. The study revealed that she had faced extreme sexual abuse and torture in prison and always had fights with other inmates. On 26-02-2006 she tried to commit suicide by pouring kerosene over her body in bathroom due to torture. As she burnt herself by fire, she was rescued by the prison staff and taken to Tulsipur Health Post after two hours. Subsequently she was referred to Bheri Zonal Hospital, Nepalgunj on March 27 after initial treatment at Mahendra Hospital, *Ghorahi*. She had shared how the security personnel had abused her sexually, physically and mentally with the human rights activists, journalists and civil society in Nepalgunj. She had also confessed about her attempt to commit suicide as she could not bear further torture.

8. An investigation team deployed from the Commission's Regional Office, Nepalgunj confirmed the following facts in the investigation report.
 - a) Statement given by Dr..... shed light on the fact that 90 percent of the victim's body had been burnt as a consequence of her attempt to suicide. Owing to this condition, Mina could not be saved besides several attempts as her case was more complex and serious. The cause of her death is burn injury.
 - b) Statement by a medical assistant revealed that Mina was brought for medical treatment on the very day of the incident. She had several past records of treatment in that hospital. The statement giver used to be involved in the treatment of prisoners and so is aware of the victim's medical history. Her behavior was quarrelsome, skeptical, and stubborn. Her menstruation had stopped before her transfer to the jail and was not given anything except iron tablet and B-complex in her previous treatment. She wasn't suffering from any disease.
 - c) Statement given by a female police officer working in Area Police Office, Tulsipur, a resident of, Malneta VDC ward no.6, Salyan, revealed that her duty in prison lasted only for a month of January. She had come to know about the talkative nature of the victim through the prisoners and was not involved in the beatings of many female prisoners. The behavior of, Sub Inspector was good and used to provide a good counselling sometimes.

- d) A joint statement given by six female inmates at the Tulsipur Prison revealed the fact that Mina used to be friendlier with the security personnel than with others. She was rather mischievous and used to talk with male security personnel anonymously. On the date of the incident, Mina had been talking with the male prisoners standing at the gate. While the Sub Inspector....., insisted on her going back to own place she had insulted him with bad words showing an intent to stay there. Though being aware of her unstable mental state the sub inspector had ordered to handcuff her based on her refusal to apologize before the prison administration. She had slept in a handcuffed situation after making dinner. She herself had worn the handcuffs teaching others to wear it. Mina was the only one to cook on the stove while others used firewood. At the day of the incident, while everyone was asleep, Mina burnt her body pouring kerosene in the bathroom which she had taken from the stove she used for cooking. Hearing her scream, the prison leader came and extinguished the fire. Police had her for treatment as her body was completely burnt. The Sub Inspector hadn't force upon Mina to commit suicide. While arguing with the Sub Inspector, Mina had warned to entrap him and dismiss him from the job which is why she committed suicide shift the blame on the Sub Inspector. Sub Inspector was not involved in her abuse and torture. The news about women in prison being sexually abused by showing adult contents is fake and has impacted upon the dignity of all the women prisoners. Some time ago, Mina Ghartimagar had once surrendered and had taken up a paid to work as a spy for the army and police. Mina Ghartimagar used to say thatwas her boyfriend and had visited her to the prison time and again giving her money in need. While she worked as a spy for the Area Police Office, Tulsipur. She used to meet him secretly and had once gone to Butwal too. On 13-02-2006, all the female inmates had jointly organized a feast program and had eaten together after putting tika worshipping Swosthani goddess. On the very day, Mina had reached the gate to tell the on-duty police officers "Lalsalam" marking the 10th anniversary of the People's War. Being informed of the ongoing feast in the prison the female police officer, Hurmata BK had come upon the instruction of the sub inspector and had beaten every female inmate twice with stick who had put on tika. Mina was not the only one to be treated that way. The beating of the inmates that day was not the reason of her suicide and has no any relation with the incident.

- e) The statement given by....., claimed to be a lover of Mina Ghartimagar, working at Ganga Bus Transport Committee shed light on the fact that he had come to know about the incident while he visited the prison to meet her on Monday. He used to come and visit Mina every Monday. He had first met Mina while being inquired at Area Police Office, Tulsipur regarding his involvement in an incident eight months ago. He got well acquainted with Mina as he had stayed there for six or seven days. After being released from the Area Police Office, Mina had come to his place of work to meet. Gradually he fell in love with her and had agreed to accept each other as life partners. But then, he had suddenly lost contact with Mina after staying together for one week. Later, she had called from Tulsipur prison and requested to meet up. After that, he had visited the prison regularly but was unaware of her allegiance to the Maoist party, how she surrendered and worked for police and army back then. He came to know about her allegiance to the Maoist party from others. When he visited her at the prison, she hadn't shared anything about the way she was treated by the prison administration and the security personnel. He was physically involved with Mina and knew that she was pregnant with his child. He had no clue about her death until his own staff informed him about the incident on 6th or 7th March, 2006. Since, Mina was already being treated under the initiation of the prison administration, he didn't consider it necessary to go there. He had gone to Kathmandu on 24-02-2006 for official purpose and had returned to Tulsipur on 13-03-2006. He couldn't see any reason behind her suicide and hadn't noticed mental disorder on her.
- f) The statement given by the chief (*naaike*) of women section within prison department revealed that she had spent three months together with Mina. After 10/12 days of her arrival in the prison, Mina had started to show an unusual behavior including the use of bad words, quarrelling and getting too close with the male inmates. Mina used to quarrel with the statement giver herself when she had suggested her to avoid aggressive behavior. The news published in the newspapers against the prison administration is fake as any kind of abuse and torture doesn't occur in prisons. Though Mina Ghartimagar had got into a fight with the security personnel, the news about her being tortured is incorrect. Everything published in the newspaper about Bheri Zonal Hospital, Nepalgunj, is false. She herself had extinguished the fire on the body of the victim and had rushed her to a nearby Medical Centre for immediate treatment.

- g) Statement given by....., Sub Inspector, deployed for prison security (alleged perpetrator) revealed that was deployed in the prison from October 2005. Mina was brought to the prison office on 27-11-2005. Mina was of skeptical, quarrelsome, and talkative nature. Her way of treating people used to change from time to time. Sometimes she would even fight with the watchman. On 26-02-2006, he had instructed Mina to go to her room after seeing her at the gate of the male prisoners talking with the male inmates. But her counter reaction with the use of an obscene words resulted into her being kept in solitude. Knowing about Mina's pregnancy, he had stopped her from smoking for the sake of her own health. When he used to warn the prisoners about their wrongdoing including Mina, she would rather act abusive and show quarrelsome behavior. She had once threatened him of dismissing his job by seeking help from an SSP. On 26th February, the day of the general dispute, neither he nor his subordinates had tortured her. A person called....., used to visit Mina with fruits and money. They both loved each other and had accepted themselves as life partners. The news accusing him of showing an adult content and abusing Mina sexually in solitary confinement is fake. Such an act has never happened in the prison of which female inmates are well aware. The news was published without referring to the truth and verifying the authenticity of such information. As the journalists hadn't consulted him before publishing such fake news about him, his human rights has also been jeopardized. Though being innocent he had been getting frequent calls from home and other places asking unnecessarily about the incident. As a chief with the responsibility to protect the inmates he had tried to counsel her about the possible wrong step she might have taken.
- h) As per the statement given by Pratap Kumar Pathak, Chief District Officer, Meena was an ordinary cadre of the CPN (Maoist). She was kept under surveillance of the security personnel under the prevailing law which allows her being used as a spy. Mina had been taken into surveillance custody in Tulsipur Prison when her allegiance to the Maoist party was seen again. The cause of her death was not torture. The Sub Inspector of Police assigned to guard the prison had been routinely informing him about Mina's activities. Inmates at Tulsipur Prison are not being mistreated by security personnel. Due to security reasons stricter rules has been implemented in *Ghorahi* prison where Maoists are being held. Law practitioners are allowed to meet the inmates only with appointment letter but Tulsipur prison is open for legal practitioners to meet the inmates.

- i) The statement given by Lalit Bahadur Bhatta, Chief of the Prison highlighted upon the fact that Mina was in a state of mental imbalance as she used to show contradicting behaviours including laughing, talking nicely, being quarrelsome etc. Within a few days of being brought to the prison, she had got into a fight with the female prisoners and had beaten the leader of women cell. Due to repetition of violent act, a warning letter had been issued to her. Mina used to be flirty with the security personnel. Sub inspector had also become the victim of her abuse when he had tried to counsel her about the harm of smoking during pregnancy. On the day of the incident, Mina had gone to the men's prison cell to talk to the male inmates. When suggested of returning to the room, she abused the sub inspector with obscene words threatening to dismiss him from the job through her network. After repeated reminders regarding non repetition of the act, she was sent back to the prison. She was initially sent to Ghorahi hospital and was later rushed to Bheri Zonal Hospital, Nepalgunj for treatment after she had attempted suicide by pouring kerosene and setting herself into fire.known to be her lover used to visit her in the prison with fruits and money. Headlines of the newspaper accusing police personnel sexually abusing female inmates showing adult content is fake. Though being a chief employee of the prison office, not even a single journalist had consulted him before publishing news about the incident.
9. Analyzing the facts revealed by the documents attached in the case file, a suo-moto led investigation is found to have been initiated by the Commission being based on the grave nature of the incident considering the possibility of serious violation of human rights of Mina Ghartimagar, aged 21, resident of *Khume/VDC-6*, of who was under surveillance custody at the Tulsipur Prison. She had died on 15-02-2006 during her treatment of burn injury caused as a consequence of her attempt to commit suicide pouring kerosene and setting herself into fire.
10. Referring to the unanimous statement given by those who had witnessed the crime and those well informed about the incident, it is seen that Mina had a general quarrel with the Sub inspector deployed as a security officer of Tulsipur Prison. Due to the unusual impulsive nature of the deceased including being annoyed, suspicious, over talkative, she had attempted to commit suicide. The facts revealed from the investigation is found to be in contradiction with the facts published in newspapers accusing security personnel of inflicting torture and abusing the deceased sexually ultimately

inducing Mina Ghartimagar to commit suicide by setting fire to herself. The validity of the accusation that Mina was pregnant with the child of the security personnel is nullified by the statement of Mina's boyfriend as he himself confessed about him and Mina accepting each other as couples claiming Mina to be the expectant mother of his child.

11. The investigation report of the Commission is of the conclusion that no any connection is seen between Mina being in general dispute with the sub inspector and her committing of suicide. The unanimous facts revealed by the investigation confirmed that deceased had set fire to herself and had died as a consequence of burn injury while being treated at Bheri Zonal Hospital, Nepalgunj.
12. Inability of the prison administration to keep sensitive substances like petrol out of the reach of Mina Ghartimagar despite having the information about her abnormal mental condition shows weakness on the part of prison administration. Owing to the fact that Mina committed suicide in the very prison which was supposed to be a secure place to her, following rights of the deceased is seen to have been violated.
 - a) The prison administration has not only failed to provide better protection to the inmates, but also failed to comply with its responsibilities, resulting in the death of an inmate ultimately leading to the violation of the right to life.
 - b) Section 6 (c), (e) and (f) of the Prisons Act, 1963 obliges the prison head with the responsibility to arrange a separate sections for the inmates under 21 and above 21 years of age. Similarly, the very section includes the provision regarding the segregation of sick, insane and semi-insane detainees in a different section. But then, the non-implementation of this clause resulting into the placement of inmates without segregation is a violation of the Prisons Act, 1963.
13. Thus, the Commission hereby decides to recommend to the Government of Nepal to alert the prison administrators regarding the placement of minors in child reform centers, not to inflict physical or mental torture in prisons, and to save the lives of all inmates as the prison administration is entrusted with the special responsibility on this regard but negligence on the part of administration is seen thereof.

Submitted by

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Yeshoda Banjade
Human Rights Officer

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Member

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Member

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Chairperson

Date: Wednesday, the 3rd day of Jestha of the year 2069 BS (corresponding to 16 May 2012 AD).....

Decision of The National Human Rights Commission of Nepal

Chairperson

Hon. Kedarnath Upadhyaya

Members

Hon. Ramnagina Singh

Hon. Gauri Pradhan

Hon. Dr. KB Rokaya

Complaint no.819 of 2006

Regional Office, Biratnagar



Subject: **Extrajudicial Killing.**

It comes under the responsibility of the security personnel to ensure a fair trial to the accused applying due process of law irrespective of the nature of crime they have committed. But the Commission finds that Panraj Labung (Limbu) was shot dead taking under control by the security personnel. Moreover, the security force could not show any legal and valid ground under which the use of arm deemed inevitable to curb the risk posed by the circumstances. On this parlance, the illegal act of shooting without legal justification has violated the Fundamental Rights guaranteed by the Article 11, 12, 14 of the then Constitution of the Kingdom of Nepal 1990, Article 12 of the Interim Constitution of Nepal, 2007, the Section 12 of the Civil Rights Act, 1955 and the Article 6 of the International Covenant on Civil and Political Rights, 1966 (paragraph 15).

The taking under control of Panraj Labung while sleeping in the house of a relative and thereafter shooting him in lieu of taking legal action by the then Royal Nepalese Army is a violation of right to life and the norms enshrined in the international humanitarian law. (Paragraph 16).

1. On 04-08-2006, a complaint was registered at the Regional Office of the Commission, Biratnagar seeking fair investigation and compensation with regard to taking under control of Panraj Labung Subba (Limbu), aged 16, resident of Sekuwa, Ikhabu VDC, Ward No. 5, Taplejung District, from the house of his relative situated in Setova, Ward No. 2, Ikhabu VDC by the

Royal Nepalese Army and thereby shooting him after infliction of severe torture.

2. A letter sent to the District Administration Office, District Police Office, Taplejung on the date 08-01-2007, having ref. no. 811, protection no. 59 and to the Human Rights Cell of the Nepal Army Eastern Division Headquarters, Itahari and Jagargunj Company, Taplejung on 16-12-2008, having ref. no. 813, demanding necessary information about the incident is found attached to the file.
3. A copy of a letter dated 16-12-2009 received by the Commission for information purpose initially sent by District Administration Office Taplejung addressing the District Police Office Taplejung with the request of providing information with regard to the action taken against the persons mentioned in the list including the one associated with the case of Panraj is found attached to the case file.
4. A response letter dated 18-02-2007, letter no.063/064, ref.no.704 received by the Commission from District Police Office Taplejung stated that Panraj Labung (Limbu) was killed in a security operation after his attempt to break through the security cordon and escape while patrolling in the area of Ikhabu VDC.
5. A response letter received from Human Rights Division of the Nepal Army, dated 03-06-2009, having reference no.15165, H.R.065/66/58 stating the death of Panraj Labung (Limbu), resident of Ikhabu VDC, Ward No. 5 in an encounter on the date 05-12-2003 and compensation received by his father, has been attached to the case file.
6.
7. The statement given by, a resident of VDC, ward no.... Taplejung revealed the fact that on the night of the incident Panraj was sleeping in the house of the statement giver. Without her knowledge, Panraj along with, residing down the road from her house were sleeping on the bed kept outside her house. At about 11 pm, the army and police had come to her house knocking the door. They had inquired about her husband including the place he was staying. She had replied stating his presence in the Cardamom field. Panraj and ... had already been arrested by the army and were kept aside. The soldiers had taken both of them to her father-in-law's house.

About an hour after them being taken away, sound of gunshots were heard. Many army personnel were present at her house yard at that moment. The next day, her daughters had mentioned about the corpse being kept nearby, but she didn't not go to see it. The troops had stayed at Rani Primary School the next day. Some soldiers had gone to the place where the body was kept and had raised the corpse. Two days later, the relatives of the deceased had conducted funeral of the deceased by taking away the dead body.

8. The statement given by, a resident of ... VDC ward no.... attached to the case file shed light on the fact that the statement giver had heard a gunfire between 10.30 to 11 pm while sleeping along with his 3 family members. As he couldn't sleep after hearing the gunshot, at about 12pm the troops had come inside his home forcefully kicking and breaking the main door and thereby breaking into their shop before letting them open it. They had eaten and took some goods from the shop though they couldn't get inside the bedroom. The next day at around 8am he had witnessed soldiers taking photos as a commotion was caused by them at the scene of crime. While he was preparing to go to school after having lunch at 9am, the troops had made people come out of their houses including him. The army had pointed a gun and punched him asking about his place of stay the night before. A soldier had ordered him to walk with the troops by tying his hands behind. Reaching the compound of Rani Primary School, they had again inquired about where he was the night before. They had inquired about the things Maoists used to do at his home to which he had replied revealing how they would come, ask for vegetables, cook it and leave. He had told them about the maoists having the gun resembling with the one troops were carrying. Being asked about Panraj showing an identity card he had told that Panraj was a student of class 7 studying in the school where he teaches. The soldier had let him go untying the rope from his hand when he said he is unsure about Panraj being a Maoist. He had seen the corpse while going back through the main road. Later the statement giver had called the parents of Panraj after seeing his dead body in the crime scene. He had observed a small hole at the back which seemed bigger when observed from the chest. A big hole in one part of the rib was also present. There were seven cartridge present at the ground. Rather than a combat dress the deceased was wearing a school dress and slippers. The corpse was cremated by the family members.
9. The statement given by a resident of ... VDC ward no., revealed the fact that at 10 pm, the soldiers had stayed at the statement giver's house while the police at his uncle's house. There were altogether 24 well

uniformed security personnel each having a weapon except one of them. While sleeping on the ground floor with wife and daughter, the soldiers had stepped on his leg pointing weapons at him. They inquired about the owner of the house and his name. At the order of the army the statement giver with his family had gone upstairs to sleep and had arranged bedding on the ground floor for them. At 10:30 PM, they had seen a person running away whose identity was known four days after the incident. Five to six minutes later, series of gunshots were heard. The army had arrested him and taken to the Rani Primary School the next day therefore, he couldn't see the body. They had kept him till 10pm before releasing. The troops had left his house at about 6-7 o'clock. The day after the incident, he came to know that Panraj Labung along with were sleeping one house ahead of his residence. After being released from Rani Primary School, he had known about Panraj Limbu being shot dead by the army that night. Gunfire shot that night didn't indicate of it being an encounter. He had heard the gunfire about 40 meters away from his house. The sounds of the gunshots were too low as though it was fired within a very close range.

10. The joint statements given by ..., a residents of ... VDC ward no.....shed light on the fact that from class five Panraj was appointed as a coordinator of Maoist Student Union ANNFSU (Revolutionary). The statement givers were also its members. Other students had started to become a member of that organization. Panraj got married in December 2002. One day while the statement givers along with Panraj had gone to fetch some paddy, they had to flee instantly as they had heard the rumors that army troops were coming. Panraj and other two went towards ward no.2 while the other three went towards ward no.5 at about 5 o'clock. Panraj had also taken a notebook containing their names and address. They used to go to the program arranged by the Maoists. They had studied at Sablung Lower Secondary School, which was later named as Panraj Lower Secondary School. He has two brothers, a wife and parents. His wife is still living in her parent's home. Among the three brothers, his elder brother studied in class seven and junior brother in class three. It is hard for them to survive a whole year relying on the income generated from agriculture. Relief of NRs.1,00,000(Nepali Rupees one hundred thousands) was provided to the family of the deceased by the District Administration Office which was handed over to his wife and father(half of the amount to each)
11. Statement given by revealed the fact that before the incident took place.....had known about the army's arrival to the village. The deceased

Panraj and ...were staying at his house that night. Panraj and his son had left the house at 7-8 pm to save themselves from the security personnel. They had slept at the house of situated in ward no 2. Gunshots were heard at around at 11 pm. The army had arrested him while sleeping. His son had managed to escape from the army but then Panraj was taken beside the land ofand was killed. His son had told everything when he had returned four days after the incident.

12. Statement given by shed light on the fact that in the night of the incident, Panraj had come to the statement giver's house with the news about army's arrival. He, along with 4-5 youths had rushed up the road. Underestimating the risk associated, Panraj and..... headed tos house situated five minutes away in ward no 2. The statement giver had gone far up the road and rested for a while. After that they stayed inside a small cave some meter away from....'s. At around 11.30 pm, as they heard three to four gunshots they (team of 6 or 7) headed towards the steep hill from there. The dead body was already cremated when he had returned the next day. Blood stains and cartridge were present at the crime scene.
13. Statement given by shed light on the fact that at the date of the incident, troops had come to his house at about 12-1pm. Claiming the arrest of his friends, the troops had accused him of being a commander of the Maoist besides his denial. He was tied and interrogated at the house of for half an hour. One of them had threatened to him while interrogating. The sounds of 2-3 rounds of gunfire was heard half an hour later. No dual confrontation had occurred that night. They had taken the statement giver to show the houses in the village. The troops were in civil dress with each of them carrying weapons.
14.
15. With regard to the complaint lodged at the Commission, seeking fair investigation of the alleged infliction of torture followed by shooting of Panraj Labung Subba by the Royal Nepalese Army, the District Police Office has claimed that he had died in the security operation while he tried to break free from the security boundary. Similarly, the Human Rights Division of Nepal Army had sent the letter to the Commission stating encounter as the reason for his death. Here, two differing facts revealing the cause of death is highlighted by the two responsible security entities. Referring to the statement of the eye witness, no any kind of encounter had occurred at

the day of the incident as only 3 to 4 shots of gun were fired. Similarly, the investigation team of the Commission observed no any signs of encounter at the scene of crime. On the one hand, no bullet marks were observed while on the other, the reply letter of both the entities failed to mention any damage caused to the security personnel in the course of an encounter. Such a contradicting facts having no valid ground to prove its existence does not confirm the occurrence of an encounter between the Maoists and the security forces or the fact that the deceased tried to break through the security fence. Hence, referring to the analysis of the investigation report, it comes under the responsibility of the security personnel to ensure a fair trial to the accused irrespective of the nature of crime they have committed. But the Commission finds that Panraj Labung (Limbu) was shot dead, taking under control by the security personnel. Moreover, the security force could not show any legal and valid ground under which the use of arms deemed inevitable to curb the risk posed by the circumstance. On this parlance, the illegal act of shooting without legal justification has violated the Fundamental Rights guaranteed by the Article 11, 12, 14 of the then Constitution of the Kingdom of Nepal 1990, Article 12 of the Interim Constitution of Nepal, 2007, the Section 12 of the Civil Rights Act, 1955 and the Article 6 of the International Covenant on Civil and Political Rights, 1966.

16. For the purpose of coming into a final decision, it is expedient to analyze the response letter of the District Police Office Taplejung dated having ref.no.704 stating Panraj Labung (Limbu) being killed in a security operation when tried to escape while patrolling in the area of Ikhabu VDC which contradicts with the letter from the Human Rights Division of the Nepal Army, dated 03-06-2009, stating the death of Panraj Labung (Limbu) in an encounter on 05-12-2003. Though both the claims emphasize that the deceased died in the course of a legitimate operation an inability to show valid ground or evidence to prove the legitimacy of the acts of the security personnel does give a valid ground to deny the authenticity of the very claim. Thus, the Commission confirms that Panraj Labung (Limbu) killed by the security force after taking him under control on 05-12-2003. The taking under control of Panraj Labung while sleeping in the house of a relative and thereafter shooting him in lieu of taking legal action by the then Royal Nepalese Army is a violation of right to life and the norms enshrined in the international humanitarian law. The Commission decides to recommend to the Government of Nepal to identify and take legal actions against the security personnel who were involved in the incident and to provide NRs.3,00,000 (Three hundred thousands) compensation to the heir of the deceased deducting the amount already

received (if any) as per the Section 16 (3) of the National Human Rights Commission Act, 2012.

Submitted by

.....
Neetu Gartaula
Human Rights Officer

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Member

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Member

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Member

.....
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. Kedarnath Upadhyaya

Members

Hon. Ramnagina Singh

Hon. Gauri Pradhan

Complaint no.847 of 2011

Central Office, Lalitpur



Subject: **Justiciable Management of Squatters.**

Being a party to the International Covenant on Economic, Social and Cultural Rights, 1966, Nepal holds the primary responsibility to fully comply with the provisions of the Convention. Though there remains no dispute in the removal of the settlements from a government land possessed by illegal encroachment, arrangement of other alternatives before removal of the actual squatters comes under the responsibility of the government. Human rights must be fully respected before and during the period of settlement removal. Special arrangements should be made for the people, especially the senior citizens, sick persons, disabled persons, pregnant /postnatal women and children. (Paragraph 27)

In the present context, a Nepali citizen or family, who owns no land in name of himself/herself, family members or co-heir under the title of a landowner or a tenant and the one who possess no resources to acquire land or house in any part of the state of Nepal shall be considered to get a status of squatter. (Paragraph 28).

Legally, squatters cannot claim ownership over the place they are residing and the state can, at any time, remove their house/tent irrespective of the time period they stayed in that place. However, the inactiveness of the concerned government authority to stop the squatters before initiating to build the shelter place shows fault on the part of the government. Owing to the fact that their houses and tent have been long built, the

government failed to consider the sensitivity of human values and norms before starting the demolition thereof in compliance with the norms of international human rights law. Therefore, the Commission decides to recommend the Government of Nepal to vacate the government-owned land only after identifying the squatters displaced by the demolition ensuring an alternative arrangements for their re-settlement. Moreover, the Commission recommends to compensate them assessing the damage caused followed by the demolition of their houses/tents and to vacate the encroached government lands at other places only in compliance with the above-mentioned criteria. (Paragraph 33)

1. On 11-12-2011, the United National Squatters Front Nepal had registered a complaint in the Commission with multiple demands including the protection of economic, social and cultural rights of squatters ensuring justiciable alternative arrangements owing to the decision of Government of Nepal to remove houses and tents of squatters built in the various places of Kathmandu Valley including the bank of Bagmati river.
2. Likewise, on 14-04-2012, another complaint was registered in the Commission seeking an initiative to ensure the protection of the economic, social and cultural rights of squatter's living in '*Bashinghat*' as the government's decision to remove squatters living in different parts of the Kathmandu Valley, including the banks of Bagmati River has adversely impacted upon the education of children, mental health of disabled people, elderly people and pregnant women.
3. A copy of a letter written by the Asia Human Rights and Cultural Development Forum to the Chief District Officer, District Administration Office, Bhaktapur requesting information regarding an initiation taken to secure the future education of the children studying in Shree Saraswati Primary School established after getting a permission to recruit permanent and relief teacher from 2062 BS by the Community School, Bhaktapur owing to the government's plan to evacuate the Manohara squatter settlement from the banks of Manohara River in Bhaktapur district.
4. The copy of a letter along with the follow up letters sent to the Ministry of Home Affairs, Ministry of Physical Planning and construction, Ministry of Land Reforms and Management and Ministry of Local Development by the Commission demanding the information concerning programs and plans of action made for the management of the squatters.

5. The copy of a letter received by the Commission for information purpose sent from the Ministry of Local Development on 18-12-2011, addressing the Kathmandu Metropolitan City and another copy of a letter sent from the Ministry of Local Development on 20-01-2012 addressing Kathmandu Metropolitan City demanding the information with regard to the incident is found attached to the file.
6. A press release issued by the Commission on 20-01-2012 stating the need of taking an initiation by the state to protect the rights and interests of actual squatters after their identification together with the orderly and environment friendly settlement of the city is attached to the case file. Furthermore, the Commission urged to take an effective step in solving the problem through peaceful dialogue involving all the concerned parties and the state. Following the press release, a memorandum submitted to the Commission on 25-01-2012 by the victims with multiple demands is found attached to the file.
7. On 27-01-2012 a discussion program was organized by the Commission with the concerned ministries, departments, government offices including Ministry of Physical Planning, Department of Survey, Ministry of Home Affairs, Office of Kathmandu Valley Urban Development Committee, Office of Kathmandu Metropolitan City, Office of the Commissioner of Police, Empowered Bagmati Civilization Integrated Development Committee, District Administration Office. Thereby, a suggestion was issued by the Commission to ensure an alternative arrangements for the protection of real squatters affected from the removal of the settlements from the banks of Bagmati River.
8. Documents issued by the Lalitpur Appellate Court revealing a case being registered in the court, a summon ordered in the name of the opposition party for discussion on 11-12-2011, an interim order restricting the removal and destruction of the houses of the petitioners, an interim order issued on 12-01-2012 against the opposition party to maintain the status quo of the petitioners without any interference for 35 days and various orders concerning the sanitation of the Bagmati River is attached to the case file.
9. A copy of the letter dated 29-01-2012 sent from the Kathmandu Valley Urban Development Committee addressing the Kathmandu Valley Urban Development Planning, Implementation Committee, Kathmandu seeking information on the case is attached to the case file. The response letter of the Ministry of Home Affairs dated 26-02-2012 contains the information that

the removal of the encroached and unorganized settlement on riverbank shall be done as per the action plan as various decisions were made on the meetings conducted with concerned agencies.

10. Recommendation of the Commission to the Government of Nepal dated 27-11-2008, after monitoring the protest program organized by the National Land Rights Forum with various demands related to landless squatters, freed *Kamaiyas* and *Haliyas* is attached to the case file. The Commission had urged the state to make necessary arrangements including the immediate formation of a high level Commission for the protection of the rights of the landless. The very recommendation is found to have been incorporated in the report of the Universal Period Review submitted to the United Nations, Office of the High Commissioner for Human Rights on July 7, 2010.
11. The monitoring report of the Commission dated 08-05-2012 with regard to the removal of squatter settlements from Bagmati River, Thapathali by the Government revealed the arrest of the protesters during the eviction placing them in the 2nd Police Battalion, Maharajgunj. After consultation with the concerned squatters and civil society representatives, the Commission pressurized the government for the medical treatment of squatters injured in the clashes over the eviction. Similarly, issuing a press release on 08-05-2012, the Commission urged the Government to identify the real squatters, make arrangements for their proper rehabilitation and care including that of women, children, pregnant, postnatal women, sick, disabled and senior citizens affected by the eviction process, to release the detainees in a lawful manner and to provide humanitarian relief and rehabilitation to the affected people.
12. From the monitoring of the Commission, it is revealed that the security personnel had used a dozer to remove the settlements followed by an announcement to remove goods from the houses confirming the presence of no one in the house. Before demolition of the squatter settlements, the items removed from the houses were left unorganized in an open space nearby, some people along with the children in school uniform were detained and released later while some were injured. Through the report prepared thereof, the Commission urged the Government of Nepal to provide food, temporary accommodation, water, toilets, etc. in a humane manner by identifying the condition of the demolished houses and the people lived there before, especially children, women, persons with disabilities, elderly, disabled, and pregnant women. The report also stated the need to provide first aid to the

displaced people in that area as the area along the riverbank in itself is very sensitive with regard to sanitation.

13. Among the documents attached in the case file, a letter found to have been sent to the Valley Urban Development Authority, Kathmandu on 15-04-2012 requesting the information regarding the alternative arrangements made for the sick, disabled including for the education of the squatter children living in the riverbanks of Kathmandu Valley.
14. The news report on the Televisions revealed the use of sticks (*lathi charge*) and tear gas by the police on the squatters protesting against the demolition of houses.
15. The monitoring report highlighted how the condition of the squatters deteriorated after the demolition of their houses, limiting them to living in the tent under inhumane situation with some squatters left without place to live and food to eat.
16. Analyzing the facts revealed from the Commission's investigation, the government has acted in contradiction with the responsibility to solve the problem of squatters showing unwillingness to secure their habitat and conducting work relating to their habitat by providing water, electricity services mentioning squatter area in their voter list, lack of government attempt to prevent them from settling illegally from the very initial stage, non-implementation of the recommendations by the high level Commissions including right oriented land reform after identifying their status, failure to protect encroached government land after identifying the actual squatters and demolish their houses only after ensuring alternative arrangements for them, lack of proper coordination among government stakeholders. At the same time, political parties have been influencing squatters with various assurances to merely use them as a vote bank.
17. Looking into the current legal system, Article 13 (1) of the Interim Constitution of Nepal 2007 states that all citizens shall be equal before the law and no one shall be deprived of equal protection of the law. Under the clause relating to the responsibility of the state, Article 33 (h) provides for a policy to secure the rights of all citizens in education, health, housing, employment, food sovereignty and the sub clause (i), includes the provision to undertake economic and social security policy including land to the economically and socially backward classes especially squatters, Kamaiyas, Haliyas

and Haruwa-Charuwa. Article 35 (10) obliges the state to adopt a policy to upgrade education, health, housing, food sovereignty and employment for a certain period of time to uplift economically and socially backwarded citizens including Adivasi Janajati, Madhesi, Dalit and other marginalized communities and people below the poverty line. Similarly, Article 14 obliges the state to adopt a policy based on positive discrimination directed at making special arrangements for women, Dalits, indigenous tribes, Madhesi Muslims, minorities, landless, squatters, kamaiyas, disabled, backwarded areas/communities and conflict victims.

18. Moreover, Article 25 (1) of the Universal Declaration of Human Rights 1948, Article 2 of the International Covenant on Economic, Social and Cultural Rights 1966, Article 27 (3) of the Convention on the Rights of the Child 1989, Article 14 (2) of the Convention on the Elimination of All Forms of Discrimination against Women 1979, Article 17 (1) of the International Covenant on Civil and Political Rights, 1966, and Article 28 of the Convention on the Rights of Persons with Disabilities, 2006 obliges the state with the primary responsibility to protect, promote and ensure the human rights of citizens.
19. Within the Human Rights System of United Nations, the UN Special Rapporteur on adequate housing defines human rights to adequate housing as, "The right of every women, man, youth and child to gain and sustain a safe and secure home and community to live in peace and dignity". It describes the human right to adequate housing being an integral part for the realization of the right to live with dignity, as is the right to land. As per the general comment no 4 with regard to article 11(1) of the International Covenant on Economic, Social and Cultural Rights, drafted by the Committee on ESCR, the following seven core elements must be met for housing to be adequate:
 - Legal Security of Tenure
 - Availability of services
 - Affordability
 - Accessibility
 - Habitability
 - Location and Culture
 - Adequacy

Likewise, UN Basic Principles and Guidelines on Development based Evictions and Displacement 2007 mentions about the scope, nature, general

obligation of duty bearers, nature of such obligations, basic human rights principles, preventive strategies, policies and programs prior, during and after eviction, remedies in case of forced eviction including compensation, restitution, return, resettlement and rehabilitation, monitoring, evaluation and follow up of the international community, including international organizations.

20. Nepal, being a party to the International Covenant on Economic, Social and Cultural Rights, 1966, including other core human rights conventions, it comes under the responsibility of the state to fully abide by the provisions of these conventions. On this parlance, it is seen that, the state has not been able to effectively manage the problem of squatter in line with the main responsibility to protect and promote human rights of the citizens.
21. Many interim order issued by the Supreme Court with regard to the cleanliness of the Bagmati River is relatable to the problem of squatters living in that area. In the writ no.... of the year 2052 BS, the Supreme Court had issued an interim order to stop the construction of an unauthorized road alongside the bank of Bagmati River from Shankhamul, Buddhanagar to the Panchayan Ghat near *Prashuti Griha* (child delivery home). Similarly, in the writ no. 3017, the Court had issued the order to the local administration office and Kathmandu Metropolitan City against the construction of an unauthorized road since the United Nations Park Construction Committee will also be constructing the road later.
22. Following a writ petition filed in 2067 BS, the Supreme Court had issued an order in the name of the Ministry of Local Development, District Administration Office, Chief District Officers of Kathmandu, Bhaktapur and Lalitpur and Kathmandu Metropolitan City, Lalitpur, Sub-Metropolitan City, Bhaktapur Municipality and Madhyapur Thimi Municipality referring to the writ petition filed in 2052 BS to make necessary and effective arrangements for maintaining cleanliness in the Bagmati River. Despite the issue of initial orders the court found that the dumping of garbage in the river still persisted, sand was removed affecting both sides of the river, houses were being constructed on both the banks of the river against the norms set by the Urban Development Committee, thus, such hazardous activities in the canals and tributaries of Bagmati River including Manohara, Kotku, Dhovikhola, Balkhukhola (Indramati), Nakhu, Karmanasa, Bishnumati and other rivers in the valleys was ordered to be stopped immediately. Moreover, the order included the setup of an effective mechanism to monitor such activities

till the final decision on the writ petition. But then, in the writ petition filed by Raju Tamang against the Ministry of Home Affairs the appellate court, Patan had issued an interim order dated 04-12-2011 against the opponents restricting the demolition or removal of the applicants from their habitants as the court found it appropriate to come into conclusion only after conducting discussion with both the parties.

23. Similarly, with regard to the writ petition filed in Patan Appellate Court by Yam Bahadur Subba on 2068 BS, the court decided on 11-12-2011 referring to another petition filed by Raju Tamang against Ministry of Home Affairs requesting non implementation of the notice issued to remove the houses and tents built against the standards of the Bagmati River. As inability on the part of the petitioner to show an undisputed right over their place of residence is seen in the ongoing aforementioned case, an interim order cannot be made until the final settlement of the petition under the principle of convenience and balance. However, the court issued an interim order restricting the respondents from proceeding with the notice for 35 days without any interference since the time period given in the notice would not be fair for the petitioners including women, elderly, minor, sick and disabled to make appropriate arrangements. Owing to the fact that the petitioners lack the registration certificate, under the principle of convenience and balance, the court could not issue an interim order in the name of the opponents as per the Rule 33A (1) of the Appeal Court Rules, 1992.
24. Raju Tamang, a resident of Mahankal VDC, Ward No. 9 had registered a case of injunction in the appellate court Patan against the Office of the Prime Minister and Council of Ministers. It is found that on 08-02-2012, the Court had concluded declaring no clear violation of the law with regard to the notice published on 29-11-2011 to remove the settlements on land due to the inability to show undisputed ownership rights over the land. The land claimed by the petitioners neither belonged to them nor the occupants rather the Bagmati River bank along with its tributaries including Bishnumati belongs to the government. In this context, the court showed no possibility of issuing an order of injunction restricting the removal of the petitioners from their place of residence as mentioned in the notice published disregarding any alternative arrangements. The court took Section 17 (2) of the Civil Rights Act, 1955 and Section 8 (2) of the Administration of Justice Act, 1991 as a ground to not issue an order. Hence, the court had found it impossible to issue the order of injunction.

25. The case file contains various documents including the permission letter granted to open schools in squatter settlements on the riverbanks in Kathmandu Valley, an agreement signed between Kathmandu Metropolitan City, Lumanti Housing Support Group, Nepal Basobas Basti Samrakshan Samaj and Nepal Mahila Ekta Samaj for safe housing of squatters living in and around the metropolitan area, permission of Nepal Electricity Authority Kathmandu to connect electricity, approval by the Kathmandu Metropolitan Office to add floors on their houses, Voter Identity Card issued by the Election Commission in the name of squatters' area, Citizenship certificate distributed from Kathmandu District Administration Office, letters of commitment from the various political parties committing just management of the landless squatters. Moreover, an agreement to provide long term shelter to the squatters living in and around the metropolitan area concluded between Kathmandu Metropolitan City, Lumanti Housing Support Group, Nepal Basobas Basti Samrakshan Samaj and Nepal Mahila Ekta Samaj signed by the government and NGO representatives is also found attached to the file.
26. Over the years, various efforts is seen to have been made by the Government of Nepal to solve the problems of Nepali squatters including food, shelter, cloth, education and health. Although different bodies, including the High-Level Commission formed in the past to solve squatter problem, have submitted suggestions and recommendations to the Government of Nepal from time to time, the issue remains partially resolved. The case file revealed the government's plan to build a UN Park on the banks of the Bagmati River making it clean and the management of the settlement and environment in the Bagmati Corridor and other areas within the Kathmandu district. Accordingly, the Government of Nepal had approved the Bagmati Action Plan 2066-71 in July 2009 with the intention of making the Bagmati River and its tributaries within the Kathmandu Valley pollution free and protected. With the objective of protecting the river from pollution and encroachment, the Kathmandu Valley Urban Development Committee issued an urgent notice on December 29-11-2011 to remove the encroached structures on the banks of the Bagmati River and its tributaries within five days stating it to be a violation of construction standards 2064 BS of the municipalities and the urban VDCs within the Kathmandu Valley as structures built on encroached public lands created obstacles. However, the notice is silent with regard to any alternative arrangements for the squatters thereof.

27. Being a party to the International Covenant on Economic, Social and Cultural Rights, 1966, Nepal holds the primary responsibility to fully comply with the provisions of the Covenant. Though there remains no dispute in the removal of the settlements from a government land possessed by illegal encroachment, arrangement of other alternatives before removal of the actual squatters comes under the responsibility of the government. Human rights must be fully respected before and during the period of settlement removal. Special arrangements should be made for the people, especially the senior citizens, sick persons, persons with disabilities, pregnant /postnatal women and children. Although the government has introduced data collection and relief distribution programs to identify the real squatters, it does not seem effective enough. Analyzing the facts revealed by the documents attached in the case file, a need of comprehensive decision addressing the following core issues is expedient.
- a) Who is a squatter? What is the legal basis for her/his identity?
 - b) What kind of rights are created from building a house/tent irrespective of an ownership over that land?
 - c) What rights are violated when the government demolishes the houses built by squatters using force?
 - d) How to solve the problem of squatters' rights according to human rights norms and values?
28. Regarding the first question, there exists no clear definition of squatters in Nepalese laws. The second edition of the Experimental Nepali Dictionary (Editor-in-Chief Hemang Raj Adhikari and Editor Badri Vishal Bhattarai), 2063 BS, defines squatters as " a person having no house, land, etc. neither in the name of himself/herself nor his/her parents in the country." The meaning and concept enshrined in the dictionary is not legally binding. However, the concepts described in the dictionary in common use, can be of significance in the absence of a clear legal definition. So, being based on the aforementioned meaning, in the present context, Nepali citizen or family, who owns no land in name of himself/herself, family members or co-heir under the title of a landowner or a tenant and the one who possess no resources to acquire land or house in any part of the state of Nepal shall be considered to get a status of squatter.
29. With regard to the second question, legal provision on property recognizes the possession of an immovable property by the one who owns it through registration. As such, it is illegal to build structures on the land which one

doesn't possess. There is no any legal provision granting right to the one constructing structures over government owned land. Therefore, the government can, at any time, vacate such lands and take possession. The fixing of electricity line, drinking water line without following legal procedures after building house/tent, or the possession over the land by building of children learning center cannot be taken as a base to establish right of person over such land. As per the Land Revenue Act, the Land Revenue Officer can revoke the registration of the government land in the name of an individual. According to the principle established by law, a person living on such land does not have any right over it. And in the absence of right, one does not hold the authority to file a case in the court. Rights that are not legally established cannot be violated. The same conclusion is seen to have been drawn by the aforementioned court orders indicating that building a house on a land that is not legally owned cannot create rights.

30. Referring to the third question, the problem of squatters is not new in Nepal. The records show the setup of the high-level Commissions by the government at different times to solve the problem of squatters and the Commission holds the collected data regarding the lands being distributed to the number of squatters till date. The Commission has been involved in the settlement of disputes highlighted by the complaints. However, the problem of the squatters has not been resolved. This problem persists in different parts of the country. Despite this, government lands along the rivers of the capital city have been encroached by squatters time and again. It seems as though the government has plans to remove the houses built illegally on government lands to manage the unorganized settlement ensuring environment protection in the Bagmati corridor and other areas within the Kathmandu district to ultimately build a UN park on the river bank. In the course of the campaign to clean the river and clear the encroached land along the riverbank, the government issued an urgent notice on December 29-11-2011 with 5 days limitation to remove the encroached structures along the Bagmati River. Similarly, the order of appellate court, Patan and the Supreme Court to remove the squatter houses and clear the encroached land making necessary and effective arrangements for maintaining cleanliness in the Bagmati River in the Kathmandu Valley is attached to the file. With the purpose of showing possession on the government land situated in the Bagmati Corridor, the building of house/tents illegally and living therein does not grant the right to the people to acquire, enjoy, sell and transfer the property. And this cannot be interpreted as a violation of the fundamental rights provided by Article 19 (1) of the Interim Constitution 2007. However, it is certain that the rights of

the citizens including housing, education, health and social security is in the risk of being violated in the process of eviction with negative effect on the Senior citizens and children.

31. Shedding light on the fourth question, the monitoring report of the Commission has revealed the demolition of the houses made in the Bagmati riverbank on 08-05-2012 using dozer. Before conducting such act, the security personnel had announced to remove the belongings from the houses and the items removed thereafter were kept in an open unorganized place. The report highlighted that the removal of the houses took place without an effective alternative arrangements including for senior citizens, persons with disabilities, sick, disabled, pregnant/postnatal women and children. The squatters could have been stopped from the very initial stage of their act of encroachment along the land placed to build a park in the Bagmati Corridor, but it didn't happen. The issuance of citizenship certificate in the absence of evidence and legal base to prove their habitat, approval to build a permanent house over such encroached land by the Metropolitan City, and the collection of fake evidences through the abuse of various official capacity and similar kind of whatever illegal acts cannot establish the ground to claim ownership over the land. However, there exists no dispute over the fact that the people living in the area are Nepali citizens. Article 13 (1) of the Interim Constitution of Nepal 2007 states that all citizens shall be equal before the law and no one shall be deprived of equal protection of the law. Article 33 (h) of the Constitution obliges the state to undertake the policy of establishing the rights of all citizens to education, health, housing, employment and food sovereignty. Similarly the sub-section (i) has obliged the government to make policy for providing socio-economic security including land to the economically and socially backward sections specially squatters, Kamaiyas and Haruwa-Charuwa. Article 35(10) of the Constitution provides for the state to pursue a policy to uplift the socially backward indigenous tribes, Madhesis, marginalized communities and workers below the poverty line. Sub article 14 of the very Article obliges the state to adopt a policy making special arrangements for women, the disabled, Adivasi, Janajati, Madhesi, Muslim and other minorities, landless, squatters, Kamaiyas, people of backward areas/communities and conflict victims. On this parlance, it is necessary to take these provisions seriously.
32. Article 25 (1) of the Universal Declaration of Human Rights 1948 ensures that everyone has the right to an adequate standard of living including health and well-being of the family, food, clothing, housing, medical care, essential

social services and the right to protection in case of illness, disability, widowhood, old age or any other situation beyond one's control. Article 2 of the International Covenant on Economic, Social and Cultural Rights 1966 guarantees that no citizen shall be deprived of his/her means of subsistence in any situations, Article 11 (1) of the Covenant puts an obligation upon the state party to recognize the right of every person to adequate food, clothing and shelter, as well as to the continuous improvement in the standard of living of himself and his family. Similarly, Article 27(3) of the Convention on the Rights of the Child 1989 states that, the state parties should always strive to ensure rights of children including the right to education, nutritious food, clothing and shelter. Article 28 of the Convention on the Elimination of All Forms of Discrimination against Women 1979 and the Convention on the Rights of Persons with Disabilities 2006 imposes an obligation on the State to provide adequate living standards, social security and protection to their citizen. As the Government of Nepal has already ratified the aforementioned international conventions, the commitment to abide by the provisions of these conventions is expedient.

33. Analyzing the facts revealed by the documents attached in the case file, the complaint is found to have been lodged at the Commission seeking the protection of human rights by ensuring appropriate alternative arrangements for the squatters as the government's decision to remove the houses of squatters located in different parts of the country, including the Bagmati coast of Kathmandu district, has violated economic and social rights. The monitoring report of the Commission on this regard has shed light on the fact that the squatters living there, especially children, pregnant women, senior citizens and the disabled were abused during the eviction process conducted by the police on the government land situated in the Bagmati corridor. Legally, squatters cannot claim ownership over the place they are residing and the state can, at any time, remove their house/tent irrespective of the time period they have stayed in that place. However, the inactiveness of the concerned government authority to stop the squatters before initiating to build the shelter place shows fault on the part of the government. Owing to the fact that their houses and tent have been long built, the government failed to consider the sensitivity of human values and norms before starting the demolition thereof in compliance with the norms of international human rights law. Therefore, the Commission decides to recommend the Government of Nepal to vacate the government-owned land only after identifying the squatters displaced by the demolition ensuring an alternative arrangements for their re-settlement. Moreover, the Commission recommends to compensate them assessing

the damage caused followed by the demolition of their houses/tents and to vacate the encroached government lands at other places only in compliance with the above-mentioned criteria.

Submitted by

.....
Maya Devi Sharma
Human Rights Officer

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Member

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Member

.....
Chairperson

Date: Monday, the 1st day of Jestha of the year 2069 BS (corresponding to 14 May 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. Ramdayal Rakesh

Complaint no. 2005

Regional Office Biratnagar



Subject: **Extrajudicial Killing.**

Legally, any person accused of committing a crime should be arrested and taken into custody by the security personnel to initiate a legal action as per the prevailing law (due process of law). But then, Bhim Prasad Poudel was found to have been arrested and shot dead in an unarmed state despite the existing situation to take action legally. The security personnel was also unable to show any clear basis to prove the existence of an inevitable situation to shoot. Such an unlawful act of the security forces violates the fundamental rights enshrined in the Articles 11, 12 and 14 of the Constitution of the Kingdom of Nepal 1990, section 12 of the Civil Rights Act 1955 and the Article 6 of the International Covenant on Civil and Political Rights 1966. (paragraph 13)

1. A written complaint was registered at the Regional Office, Biratnagar of the Commission on 14-07-2005 seeking protection and compensation to the family of the victim and necessary legal action against the perpetrators involved in the shooting of Bhim Prasad Poudel, aged 43, resident of Bhrikuti Chowk, Sharanamati VDC Ward no.4, Jhapa District at around 4 am on 25-06-2005. At the time of the incident the deceased was at his home taking care of his father who was suffering from tuberculosis and asthma. Subsequently, on 16-07-2005 another complaint was lodged by the Nepal Human Rights Organization, while the Commission had deployed an investigation team with regard to the murder of Rama Adhikari in Tanghanduwa, Jhapa.

2. Following the complaint, an investigation team of the Commission is found to have been deployed on 19-07-2005. As per the statement of, on the day of the incident, her husband had asked her to come with him to take care of his serious father. As their daughter felt scared to stay at home, her husband had gone alone. At about 3:30am that night, she had heard a gunshot from her bedroom but couldn't go out to see. While heading to the house of her father-in-law, the security forces had stopped her at the school ground and asked questions at around 5:00am. After telling them that she was daughter-in-law of that house, she didn't see her husband beside her sick father-in-law. Later, she had seen her husband lying on the back side of the house from the door at the top of the house. She went unconscious after witnessing it. At about 8am, she had noticed a gunshot wound on the forehead of her husband. At around 11am, the dead body was taken for the funeral under the monitoring of thirty-two security personnel. Mentioning about the family condition, the statement giver had claimed her family to be ordinary farmers with one of her nephew being a Maoist cadre who was killed in a security operation on 15-11-2004. He seldom came home before death. She couldn't process the reason behind the killing of her husband as he was not involved in Maoist activities. She has three children of minor age having eight kaththa land for livelihood. She mentioned how hard it is for her to support her family financially without her husband. She demanded the government to take responsibility for the livelihood of her family by paying compensation for loss and take action against the security personnel as her husband was killed despite of being innocent.
3. According to the statement given by....., dated 20-07-2005, the statement giver had gone to Biratnagar on the day of the incident. On the way back to the Surunga from Biratnagar at around 2:00 pm, the news about Bhim being shot dead by the security personnel was heard and he hadn't returned that day out of fear. On 26-06-2005, Charaali Battalion of Nepal Army had confessed with him about the killing of Devendra Poudel alias Dinesh on 15-11-2004 and Bhim the day before. They had told him about Bhim being a Maoist and also used to feed other Maoists otherwise he wouldn't run seeing security forces. They also accused him of building a house in Surunga out of the money looted by Devendra. The statement giver denied their claim by revealing how he sold his ancestral property situated in Laxmipur VDC ward no. 3 of Ilam District and taken loan to build the house. He also promised to hand over his house to the state if the accusation turned out to be true. Then, they released him taking assurance from him of providing answer whenever inquired by them. On 27-06-2005, in the morning, he had gone to ...'s father's house in Saranamati-4. Reaching there, he had witnessed the

wife and minor son mourning the death of.... Bhim had been working hard for fourteen hours to support his family of five members. Under the false information of the intelligence Bhim was killed though being innocent. The statement giver accused the state of shooting and killing the 43-year-old Bhim while taking care of his father instead of arresting him.

4. The statement given by an eye witness and neighbor of the deceased person dated 20-07-2005 revealed the fact that the statement giver had gone to take care of Bhim Prasad's father as per Bhim's request since it was difficult for him to come at night. He had gone there and sat on the ground floor with Bhim's father. They had woken up at about 3:00 am that night when the security personnel in plain clothes approached them. The security personnel had called them down into the courtyard after asking their names. Immediately after reaching the yard, the screaming of the security forces uttering "he escaped" with the sound of gunshots were heard from the back of the house followed by three more shots later. After that, Bhim Prasad's brother and the statement giver were interrogated separately. He had described Bhim as an ordinary citizen who earns a living through farming when asked if Bhim was a Maoist. He and his family were not allowed to go to the place where the body was found. At around 8 am in the morning, the neighbors had gathered to see the body of Bhim lying facing the ground having a firearm injury in the forehead and neck. After the incident, security personnel had searched the house for weapons, socket bombs or any documents but couldn't find any. The deceased should have been arrested and shot dead by the security personnel. Nephew of Bhim Prasad Poudel, a Maoist cadre had also been killed in a security operation on 15-11-2004 and Bhim was also killed due to the same suspicion.
5. The statement given by on 20-07-2005 revealed the fact that on 25-06-2005, at 3:30 am sounds of gunshots were heard while the statement giver was sleeping. Subsequently three more gunshots were heard but he could not go out. Waking up at around 5:15am, four/five armed security personnel had come to his house inquiring about his family members and Bhim Poudel. He had replied saying Bhim was the villager from near the school, he does farming and used to walk from there carrying plough in the field. The statement giver had mentioned about him being unaware of whether or not Bhim was a Maoist besides he being a farmer. After replying to every answer, the security personnel had expressed the need to gather the villagers since an incident had occurred over there. As he went to the house where the incident had occurred he heard a group of four/five security

personnel saying that the person other than the one who was targeted had been killed. At first, 20-25 security personnel were present at the scene of crime followed by the arrival of 150 more personnel's at around 10-11am. The security personnel's wearing plain clothes were also present.

6. The statement given by the deceased person's on 20-07-2005 shed light on the fact that at around 3.30 am on the date 25-06-2005, sound of gunshots were heard from the east side window of his house. Two armed police and an army personnel had come to his house at about 4 am calling him downstairs. They had taken him to the school nearby. On the way to the School, they had asked him "How often do the Maoists come in the village and what they usually do?". They had further inquired about how much money he donated from the money brought by his son. He had denied their assertion. They had asked him to stay at the house where the incident took place. He had seen the dead body after climbing over the house. The villagers had gathered and the children had started crying. When he told the Assistant Sub Inspector that they did a great mistake, they had confessed about the shooting of the deceased saying they wouldn't shoot if he hadn't tried to escape from the cordoned area. The statement giver had cross questioned them saying "How is it possible for a man to escape who was taken under control from his own bed?" and he repeatedly accused them of killing an innocent person. They had asked him to come at 'chaaraali' barrack when he had further questioned them about compensation. The security personnel tried to know whether the relatives Bhim wanted to do postmortem or direct funeral when asked about the place of the corpse. Later, they pointed to the field where the corpse was present.
7. The statement given by ... aged 73, ... on the date 20-07-2005 revealed that at the day of the incident he was preparing grains for cows at his house early in the morning. His house is on the main roadm from the crime scene. He had heard seven-eight gunshots at that time whereby the sound of two bullets were slightly different. That could be the bullet fired at him. The shootings had made him feel like a war was going on. After some time, while he was going to the field with buffalos, the security personnel had called him along with other people. Some security forces were guarding the body. They had told him to see the body from twenty yards away by restricting them to get closer. He had witnessed the body was lying facing the ground. Nobody had responded to his question about what they intend to do as they had already shot him. He hadn't seen any documents or goods referring to the involvement of the deceased with the Maoists.

8. The information provided jointly by Prem Narayan Sharma, Assistant Chief District Officer and Suresh Karki, Colonel of Jabarjung Battalion, Charali, Keshariraj Ghimire, SP of District Police Office Jhapa, Min Bahadur KC, SP from investigation team revealed the fact that after receiving the information about the involvement of Bhim Prasad in Maoist activities they had conducted search operation. When the security forces had reached his house on the day of the incident, he had tried to escape from the security fence besides given enough warnings. He was then shot dead by security forces due to his refusal to comply with their orders. The dead body was handed over to his relatives for cremation. Post-mortem examination of the dead body was not conducted however they had prepared other related reports/documents.
9. The investigation report of the Commission dated 08-08-2005 highlighted that on 25-06-2005, at around 3.30 am, during the search operation involving 100 to 150 security forces surrounded the house where Bhim's sick father was being cared by two persons. Two security personnel in plain clothes came to the courtyard ordering them to come out. Upon the call of the security personnel, Bhim Prasad Poudel went down to the courtyard introducing himself. The investigation team found that the security personnel shot him in the east-south side of the house instead of arresting him. This fact has been confirmed in the statements of the eyewitnesses and those witnessing the gunshots during the incident. After shooting Bhim Prasad Poudel, the security personnel questioned the person who was sleeping beside Bhim regarding Bhim being a member of Maoist and whether the Maoists visited his house. In reply he stated that Bhim was a farmer who wasn't involved in Maoist activities but his nephew was a Maoist cadre and was killed in a security operation dated 15-11-2004. No documents related to Maoist prone activities were found during their search operation. The villagers were called upon at the scene of crime to inquire about Bhim Prasad after the incident. Everyone had unanimously confirmed him being a farmer and his non-involvement in Maoist activities. Even the statements of the people witnessing the incident refused the killing of Bhim Prasad Poudel during the security operation after his attempt to escape. The corroboration between the facts revealed from the statement of the witnesses confirms that Bhim Prasad Poudel was shot dead by the security personnel relying on false information. Also, the witnesses themselves heard from 5-6 security personnel confessing about the killing of wrong person at the crime scene.
10. The security office couldn't provide further information to the investigation team reached on 20-06-2005 due to the visit of Assistant Chief District

Officer to India. No response was received to a letter sent to the District Administration Office and District Police Office, Jhapa on 22-07-2005 requesting all the details and information related to the incident. Following the follow up letter sent on 09-08-2005, the response letter received from the District Administration office Jhapa dated 30-08-2005 is found to have stated about the shooting of the deceased in the head and back during a search operation by the security forces on 25-06-2005 at 3.30 am as he had tried to break free from the cordon of the security forces.

11. Regarding the complaint registered at the Commission on 14-07-2005 seeking protection and compensation to the family of the deceased with necessary legal action against the perpetrators against the killing of Bhim Prasad Poudel, the report of the Commission's investigation team, statements of the eyewitnesses, news published on various newspapers, sheds light on the fact that at around 3.30 am, the security personnel had surrounded the house of Bhim's father forcing Bhim to come out and flee to the south-eastern part of the house with them. Subsequently, he is found to have been shot at his back while under the custody of the security personnel.
12. In the statement given by the Officials of the district security agencies, they have accused Bhim Prasad Poudel of being involved in the Maoist activities. During the search operation conducted by the security forces based on the very information, on the incident day, they had reached Bhim's house and shot him as he had tried to break the security fence to escape. The body is found to have been handed over to his relatives for cremation without post mortem examination. In response to the letter sent on 22/07/2005, the document concerning the receiving of dead body and dead body examination report is found to have been attached to the letter dated 31-08-2005.
13. Legally, any person accused of committing a crime should be arrested and taken into custody by the security personnel to initiate a legal action as per the prevailing law (due process of law). But then, Bhim Prasad Poudel is found to have been arrested and shot dead in an unarmed state despite the existing situation to take action legally. The security personnel was also unable to show any clear basis to prove the existence of an inevitable situation to shoot. Such an unlawful act of the security forces violates the fundamental rights enshrined in the Articles 11, 12 and 14 of the Constitution of the Kingdom of Nepal 1990, section 12 of the Civil Rights Act 1955 and the Article 6 of the International Covenant on Civil and Political Rights 1966. Therefore, according to the section 13 (1) and (2) of the Human

Rights Commission Act, 1997, the Commission decides to recommend His Majesty's Government of Nepal to take legal actions against the security personnel involved in the incident after identifying them and also to provide NRs. 100000 (Rupees one lakh) compensation to the heir of the deceased as per the Rule no. 17 of the National Human Rights Commission (Complaint, Action and Compensation Determination) Rules 2001.

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

Submitted by

.....
 Yagya Prasad Adhikari
 Head
 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 14th day of Mangsir of the year 2062 BS (corresponding to 29 November 2005 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

Complaint no. 2003

Head Office, Lalitpur



Subject: **Enforced disappearance**

It is the responsibility of the state to guarantee the rights of every citizen to life, liberty, equality and dignity with appropriate arrangement of remedy in case of violation of such rights. However, contrary to this, the act of arresting and making the victim disappear by the security personnel is a violation of the Fundamental Rights guaranteed by the then Interim Constitution of Nepal 2007, specially the restriction to take away personal liberty except in accordance with the law guaranteed by Article 12, arrest only after providing proper information regarding the reason of arrest, right to legal counsel and defense by legal practitioner guaranteed by article 14 (5) and the producing of the arrested person before the authorized officer within 24 hours as per the Article 14 (6). Such an act is a clear violation of the right to life, liberty and security of a person, the right against arbitrary arrest or detention, the right not to be deprived of liberty except under the procedure established by law as enshrined in the Article 9 (1) and Article 9(2) of the International Covenant on Civil and Political Rights, 1966 (paragraph 8).

1. On 29-09-2003, a complaint is found to have been registered in the Commission to save the life and make public the status of Gyanendra Tripathi, a resident of Ratnanagar Municipality, Ward No. 13, Chitwan District, who was arrested and made to disappear by the security personnel in plainclothes from the Shantinagar Gate of Kathmandu on 26-09-09-2003.

2. In this regard, a letter dated 08-09-2003, sent to the Human Rights Cell of the then Royal Nepalese Army and the Ministry of Defense followed by the reminder letters sent to the Ministry of Defense on the date 26-11-2003, 15-06-2004 and 12-08-2004 is found attached to the file. Similarly, the letters sent to the District Administration Office Kathmandu, District Police Office Kathmandu and Human rights Cell of the then Nepal Army on 15-03-2006, with a copy of it sent to the Ministry of Home Affairs and Ministry of Defense for reference requesting the information about Gyanendra Tripathi is also attached to the case file. So far, no response is found to have been received from any of the bodies.
3. The two persons and detained together with Gyanendra Tripathi in the famous Mahendra Battalion, revealed before the investigation team deployed on 19-03-2005 that Gyanendra was taken to Shivapuri by the army on the night of 30-12-2005. The statement subsequently given by them on 18-09-2005 to the team of the Commission stated that Gyanendra Tripathi was also kept in Bhairabnath Battalion Maharajgunj with them.
4. The statement given by, a resident ofcurrently detained inprison Kathmandu on 22-08-2005 revealed that he was arrested by the security personnel and detained in the same Bhairabnath Battalion where Gyanendra Tripathi was detained. Another witness, a resident of, currently detained in the, Kathmandu stated that he had also met Gyanendra Tripathi from Chitwan at the Bhairabnath Battalion Kathmandu in a detained state.
5. The statement given by, a resident of, revealed the fact that after his arrest by the security personnel on 03-11-2003, the statement giver was detained in the same Bhairabnath Battalion where Gyanendra Tripathi was also detained. Similarly the statement of, a resident of, before the Commission revealed that he had been detained in the Bhairabnath Battalion Kathmandu from the date 16-10-2003 to 18-01-2004 whereby he had met Tripathi who was introduced by, providing him further ground to know that Gyanendra was from Chitwan with his age being about 28 years.
6. On 21-03-2006, an investigation team of the Commission is found to have been deployed at the Bhairabnath Battalion to verify the presence of physical materials and conditions present there as mentioned in the statements of the people claiming to have been detained therein on different dates. The on-site observation of the Bhairabnath battalion revealed that most of the

physical conditions were same as mentioned in the statement. The report published by the the United Nations High Commissioner for Human Rights, Nepal Office titled "Arbitrary Detention, Torture and Disappearance of the Bhairabnath Battalion" on May 2006 has listed out the name of Gyanendra Tripathi in no.29 confirming his arrest on September 26, 2003 followed by his placement in the Bhairabnath Battalion.

7. With regard to the complaint registered at the Commission on 29-09-2003 requesting to save the life and making public the status of Gyanendra Tripathi, a resident of Ratnanagar Municipality, Ward No. 13, Chitwan District, no any information is found to have been received from the concerned responsible agencies. Seven persons who were arrested from different places and kept in Bhairabnath Battalion, Maharajgunj informed the investigation team of them meeting with Gyanendra Tripathi in the very detention center.
8. It is the responsibility of the state to guarantee the rights of every citizen to life, liberty, equality and dignity with appropriate arrangement of remedy in case of violation of such rights. However, contrary to this, the act of arresting and making the victim disappear by the security personnel is a violation of the Fundamental Rights guaranteed by the then Interim Constitution of Nepal 2007, specially the restriction to take away personal liberty except in accordance with the law guaranteed by Article 12, the arrest of a person only after providing proper information regarding the reason of arrest, right to legal counsel and defense by legal practitioner guaranteed by article 14 (5) and the producing of the arrested person before the authorized officer within 24 hours as per the Article 14 (6). Such an act is a clear violation of the right to life, liberty and security of a person, the right against arbitrary arrest or detention, the right not to be deprived of liberty except under the procedure established by law as enshrined in the Article 9 (1) and Article 9 (2) of the International Covenant on Civil and Political Rights, 1966. Likewise, section 3 of the Government of Nepal's commitment to the implementation of human rights and humanitarian law issued on 26 March 2004 states that no one shall be subjected to arbitrary arrest and detention and measures shall be taken to prevent illegal or unwarranted arrests and enforced disappearances. On this parlance, the above-mentioned constitutional provisions, legal provisions, commitments and principles of human rights is found to have been violated in the incident.
9. Based on the evidences including the statements given by the detainees of Bhairavnath Battalion Maharajganj, it is seen that Gyanendra Tripathi

was detained in the military custody before being disappeared. Therefore, the Commission decides to recommend the Government of Nepal to make his status public, put him under the purview of legal process and to take necessary action against the perpetrators with proper investigation from the responsible authority.

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

Submitted by

.....
 Yagya Prasad Adhikari
 Head
 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 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. Nayan Bahadur Khatri

Members

Hon. Sushila Singh Silu

Hon. Sudip Pathak

Hon. Gokul Pokharel

Hon. Dr. Ramdayal Rakesh

Complaint no. 2005

Head Office, Lalitpur



Subject: **Torture.**

The response letter of the District Administration Office and the Ministry of Home Affairs to the Commission has accepted the fact that the victim was arrested, kept in Kawasoti Barrack during the investigation and released in the presence of his relatives few days later. While the aforementioned letter itself mentions about him being proved innocent with no infliction of torture, the report of the forensic expert on the contrary confirms his torture shedding light on the similarity between the time of arrest and the time of infliction of torture. On this parance, it is proved that the victim was tortured by the security personnel (paragraph 13).

1. The complaint registered at the Commission seeking protection of human rights by taking action against the perpetrators and providing compensation to, a resident of ...aged 28, teacher ofPrimary School....., who had sustained a series of torture including the one while being detained at Kawasoti Police Station from 11-02-1999 to 17-02-1999 is attached to the case file. The complaint letter mentions about his physical disability caused due to infliction of torture by the army at Kasara Barracks in Chitwan District from 24-02-2002 to 21-03-2002. At that time, he had been dragged on gravel in a blindfolded condition with his hands and feet tied. Similarly, on 06-03-2005, he was arrested without any reason and detained by the security forces on his way to school fromNawalparasi asking unnecessary questions and torturing him to the point of making him physically disabled.

2. The letters sent to the Ministry of Defense, Ministry of Home Affairs, Human Rights Unit of Police Headquarters, Human Rights Section of Royal Nepalese Army and District Administration Office, Nawalparasi on 16-01-2005 by the Commission requesting the information concerning the reason of his arrest and torture is attached to the case file.
3. The letter received from the District Administration Office, Nawalparasi dated 2062-03-01 stated that the victim and other two persons were arrested on suspicion of terrorism and destructive activities in the course of search operation by the security forces in Pragatinagar area. He was released on 10-03-2005 in the presence ofand ... after being found innocent and he was not tortured in detention. Similarly, a letter received on 15-08-2005 from the Peace and Security Branch of the Ministry of Home Affairs stated that during the interrogation the victim was kept in the Base Camp situated in Kawasoti and was released on 10-03-2005 in the presence of his relatives.
4. The records show that the victim got treatment at the Centre for Victims of Torture (CVICT). According to the letter of the CVICT, Nepal dated 29-05-2005, examining his health, the medical officer ... found the victim had physical pain, dizziness and mental restlessness. The victim felt scared, had nightmares and was diagnosed with Acute Stress Reaction with Multiple Abrasions. The records show that he had taken medicine, counseling, physiotherapy services and forensic consultation as well.
5. The medical report of the Forensic Department of TU Teaching Hospital, Medical Campus, Maharajgunj, dated 17-03-2005 revealed the presence of blunt force injuries on his body. He seemed agitated when reminded of the incident and had to undergo treatment in consultation with a psychiatrist. Another letter of the Forensic Department dated 26-05-2005 revealed that, the following injuries on his body which according to him were caused due to beatings. Moreover, the age of the injury matched with the alleged time of infliction of torture.
 - Scar of wound measuring 8cmX1.5cm in the upper part of the shoulder.
 - Fresh wound in the neck measuring 18cmX1.5cm
 - Fresh wound in the left chest measuring 10cmX2cm
 - Wound Scars in the upper part of the arm measuring 6cmX1.5cm
6. Similarly, the scars of fresh and old wounds on different parts of the body is found to have been mentioned in the report.

7. Analysing the facts revealed in the case file, the victim is found to have been arrested previously while studying in the Tribhuvan University(TU), Kirtipur Kathmandu and was re-arrested on 19-11-2005 at 6:00 pm by the security forces in plain clothes regarding which ..., had filed a case at Nepal Human Rights Organization demanding protection of life and making his status public. The very complaint addressing the Commission is found to have been registered on 13-12-2005 stating him having the hold of the documents regarding the complaint lodged at the Commission and the documents received from the CVICT is the reason behind his arrest.
8. It is seen that the Commission had contacted the Human Rights Cell of the then Royal Nepalese Military immediately after the complaint being registered. Followed by the response from the Royal Nepalese Military concerning the information about him being kept at the Investigation and Interrogation Center, Sundarijal, the Commission had taken initiation to release the victim for which the Commission received a letter of thanks on 02-02-2006.
9. The statement given by the victim before the Commission revealed the fact that the then Inspector of Police, Dhiraj Pratap Singh had kept him in the custody from 11-02-2000 to 16-02-2000 at the Kawasoti Barracks inflicting severe physical torture with his mouth covered by cloth and hands/feet tied for hours. As a result, he couldn't walk properly. They had even inserted pin on his legs. After that on 25-02-2002, a team led by the then Captain Rohit Gurung of Nandapur Post under Kasara Barracks, Chitwan, had arrested him again. Five minutes after the arrest, he was kept in a blindfolded condition with his hands and feet tied, he was rubbed on a gravel, chilly and stinging nettle water was put over his body with head repeatedly submerged in water resulting into him being unconscious many times. It had lasted for 25 days. They had falsely accused him of being a Maoist showing fake evidence. He was released on the 26th day. He couldn't complain immediately as he was disabled physically due to torture. After that, he was made to visit Nandapur Post situated in kaluwa 85 times till 05-02-2005. On 10-02-2005, while he was teaching in the school, the soldiers had surrounded the school. Being informed of them not being allowed to arrest while teaching, they had left telling the Principal to ensure his presence at 4:00 pm in the barrack. Then, on 06-03-2005, he was taken to Kawasoti Police Station from Pragatinagar at 6:00 in a blindfolded, handcuffed and legs tied condition. After reaching there, they had continued to put chilly, water in his noses, piercing with pins. He was released at 7:00 pm on 10-03-2005. Thereafter, he had lodged a

complaint at the Commission on the advice of his well-wishers. He had been living in Kirtipur, Kathmandu after being displaced, and is not in a position to return to his district. He wishes the authority to take action against the perpetrators providing him with proper compensation.

10. The statement given by, shed light on the fact that ... is a teacher by profession. For the first time, he was arrested in the year 2000 by the security personnel in plain clothes. Then in 2002, he was arrested again during the state of emergency. Again in 2005, the security personnel of Unified Command had arrested and taken him to the Kawasoti police station. They used to forcefully take statements and torture him depriving his family to meet him whenever he was arrested. He had been released after 7 days with his face blue and yellow, his legs and feet blue, blood flowing from his nose. He could not walk without support and was able to drink water only after receiving treatment at Narayanghat Hospital. The effects of the torture including trembling, drowsiness, knee pain, and inability to walk properly were still present. He also suffers from the problem of indigestion and stomach burns for which he is still taking medicines. The security personnel had accused him of being a Maoist. As per the statement giver, he is a person with a pure mind who is involved in teaching. He is known as a skilled teacher for the last 10 years but is not in a position to return to his district. He has given up his teaching profession after being displaced. The torture inflicted by the security personnel had a long-term effect on his health.
11. The statement given by....., shed light on the fact that he had known ... since 2000 and was also his..... He had been teaching in Primary School and Secondary School. The police in plain clothes had arrested and taken him to the market while teaching in the School. He had returned six days later with many bruises on his body. He looked physically and mentally disabled. Even after that, he was re-arrested from his home and detained by the Royal Nepalese Army for a month inflicting torture. His legs and feet were torn apart and was unable to walk. The statement giver had taken him to the hospital for treatment. After that, a team of the Unified Security Forces had again arrested and tortured him in 2005, the evidence and effect of which could still be seen. The infliction of torture has had a long-term effect on him. The statement giver expects the Commission to investigate the case, provide justice and compensation to the victim and create an environment where he can continue his teaching profession returning to his home district.
12. Analyzing the facts revealed by the investigation,....., aged 27, a resident ofNawalparashi District, a teacher of Primary School.....is found

to have been detained at Kawasoti police station from 11-02-1999 to 17-02-1999 with the infliction of severe torture by security personnel. Subsequently, he was again detained and tortured in the Kasara Barrack in Chitwan District from 24-02-2002 to 21-03-2002. He was physically disabled due to the infliction of torture in the barrack. He had been dragged being placed on gravel in a blindfolded, hands/feet tied condition and stinging nettle water was poured over his wound by the army. As per the victim, on 06-03-2005 he was re-arrested from Pragatinagar, Nawalparashi while he had gone to the School leaving him disabled by torture. From the Commission's investigation it is seen that a total of 16 people including local teachers, social workers, VDC secretary, former VDC chairpersons and members, former parliamentarians and health workers have submitted the document with their signature regarding the incident to the Commission. The victim seems to have been involved in teaching at School for a long time.

13. The medical report submitted by the victim confirms the infliction of physical and mental torture after his arrest by the security personnel without any reason. The response letter of the District Administration Office and the Ministry of Home Affairs to the Commission has accepted the fact that the victim was arrested, kept in Kawasoti Barrack during the investigation and released in the presence of his relatives few days later. While the aforementioned letter itself mentions about him being proved innocent with no infliction of torture, the report of the forensic expert on the contrary confirms his torture shedding light on the similarity between the time of arrest and the time of infliction of torture. On this parlance, it is proved that the victim was tortured by the security personnel.
14. The statements given by the victim and eyewitnesses unanimously highlights on the fact that victim, involved in teaching profession was arrested by the security forces from the School premises without any reason and was subjected to extreme torture making him to still take medicines as he suffers from sleep deprivation. The report of the forensic expert also confirms this fact.
15. The aforementioned actions and behaviors by the security personnel has violated Articles 12 and 14 of the Constitution of the Kingdom of Nepal 1990, Article 5 of the Universal Declaration of Human Rights 1948, Article 7 of the International Covenant on Civil and Political Rights 1966, and Article 2 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 1984. Therefore, being based on the extent and

severity of the physical and mental pain suffered by the victim, physical/ mental damage and the loss of the victim's ability to earn a living due to such damage, the cost of treatment and the estimated cost of treatment, the Commission decides to recommend the Government of Nepal to take action against the security personnel involved in the torture after in-depth investigation and to provide NRs.50,000 (Rupees fifty thousand) compensation to the victim making the perpetrators pay 50% of the amount pursuant to the Rule 18 of the National Human Rights Commission (Complaint, Action and Compensation Determination) Rules 2001.

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

Submitted by

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 Yagya Prasad Adhikari
 Head
 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 23th day of Jestha of the year 2063 BS (corresponding to 4 June, 2006 AD)

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