

## **Extrajudicial Killing of Maina Sunar: A Case Report**

Army at Panchkhal barrack severely tortured and killed Maina Sunar, 15, of Kharelthok VDC-6 in Kavre district on February 17, 2004. Maina was a 9<sup>th</sup>-grade student at Bhagawati Secondary School in the locality. After arresting Maina, army called Maina's teachers to the barrack to take her back but when the teachers went there, they were shown indifference prompting the victim's father Purna Bahadur and mother Devi Sunar to go to the city seeking help from rights bodies and media. Although the killing drew national and international attention, Nepal Army has not presented the culprit before the civilian court yet.

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### **Incident Begins on Tuesday, February 17, 2004**

**Incident Spot:** Arrested from her house in Kharelthok VDC-6 with her hands tied, tortured to death and buried in a brook near the barrack in Panchkhal VDC-6.

**Particulars of Victim:** Arbitrarily arrested and tortured to death.

### **Backdrop of the Incident**

Rina Rasaili, 17, of Raikertol in Pokharichauri VDC-4, a VII grade student at Jagriti Secondary School was killed by security force after breaking into her house on February 12, 2004 while she was sleeping at night. Similarly, army killed Subhadra Chaulagain, 17, of Pokharichauri VDC-3 dragging her outside from her room where sleeping to courtyard on February 13, 2004. Devi Sunar was a witness in both of these incidents.

Siblings Rina and Devi were tied around an *uttish* tree after taking them to the backyard from the bed by the security forces and were left there wrapped by a shawl after three rounds of shooting.

Rina was tortured and grilled in a cow-shed throughout the night. Army has not revealed so far how Rina answered. To foil the possibility of Devi's attempt to bring the alleged army persons in the incident to justice, officers of the then Royal Nepal Army had reached Devi's house searching for her. As Devi was not at home, a team of army led by Captain Niranjan Basnet broke into the house in the night, tied up Maina while sleeping and took her to the barrack. It was found that Maina was killed following brutal torture. She died at Birendra Peace Operations Training Center, Panchkhal where many logos of the UN are visible.

### **Details of the Incident**

The verdict of army regarding Maina killing case illustrated killing and violence intensified by security forces deployed against Maoists in the pretext of encounters and

cross-fires. Military Court of Inquiry concluded that Maina was killed cruelly without using alternative of interrogation. A covert team of army deployed on February 17, 2004 from Birendra Peace Operations Training Center, Panchkhal arrested Maina. Though she was killed in course of being torture, army has claimed that she was killed in Hokse area while attempting to escape security forces. The verdict mentions that the local military unit deluded even the Military Court.

Members of Military Court of Inquiry Board included Colonel Mohan Bahadur Basnet, Lieutenant Colonel Ratna Prakash Thapa and Major Bharat Kumar Khadka. According to the facts collected by the Board, army went to the village following the information provided by Maoist cadre Bimala B.K who was arrested by police in the Palanchok area and told the army in course of grilling that Devi Sunar and her daughter Maina Sunar were in contact with the Maoist party.

As per the command of the Officiating Centre Chief Bobby Khatri, the then Captain Niranjana Basnet had led a 12-member team and had reached Palanchok in the afternoon. It is reported that Captain Basnet and Captain Adhikari did not find anything connected to the Maoists during the search at Maina's home. They told the victim's father that they would send Maina back home after interrogation and also asked him to send his wife Devi to the barrack upon her arrival at home. Nothing 'untoward' occurred on the way to barrack.

Interrogation was carried out in the presence of seven persons- Lt Col Khatri, Capt Basnet, Captain Adhikari, Captain Amit Pun, and Sergeant Major Khadak Bahadur Khatri (a runner in the officers' mess), Riflemen Dil Bahadur Basnet and Shree Krishna Thapa. As per the command of the Centre Chief Khatri, Captain Adhikari and Captain Pun had ordered the riflemen to fetch water in a big container. Dil Bahadur and Shree Krishna brought water as ordered then tortured Maina by repeatedly ducking her.

The verdict says that in doing so Maina's clothes were thoroughly wet and she choked repeatedly. As nothing came out while ducking, they could not make her speak, Bobby Khatri then ordered to administer electric shock and acting on Khatri's order, Amit and Shree Krishna ordered the army men in attendance to do the job. Following the order, she was electrocuted on the soles of her feet and on the wrist.

Verdict further says that after 4 or 5 rounds of electric shock, Maina's wrist started to bleed and Shree Krishna stepped back seeing blood on her wrist. By then Maina was impassive but had confessed that she was involved in the Maoist activities for a couple of months. However, Khadak Bahadur resumed the electrocution acting on Capt Sunil and Capt Amit's order. As nothing noteworthy came out, they blindfolded her, tied her hands at the back and took to the Hawaghar (Airy Building) by the temple inside the barrack deciding to grill her after meal. A sentry guarded her. At around 11:00 AM it was informed to Bobby Khatri that Maina was in a serious condition as she was vomiting and frothing. As per the report, shortly, a medical orderly had declared her dead. Following the incident Bobby Khatri instructed that the incident be hushed up and the deceased be buried

secretly. Amit Pun was ordered to overlook the burial and Niranjan Basnet was ordered to fetch police from Panchkhal Police Post to prepare a report.

Pun called Jamdar JCO Surendra, informed him of the incident and instructed him to dig a pit northeast of the officers' mess, 50-60 meters outside the concertina wire. A little later, soldiers Dil Bahadur Basnet and Shreekrishna Thapa were asked to bring over a sack each. The two sacks were slipped over Maina's head and feet, before her body was put into the vehicle. Amit had driven the vehicle to where the body was.

"Captain Amit ordered soldier Dil Bahadur Basnet to fire a shot in back of the dead body with a Colt command weapon, telling him to also take out the sacks after placing it next to the ditch. The soldier misfired, and then Amit himself fired two shots from the same weapon. Only one hit Maina's body in the back," the report states.

After shooting at her body, Amit photographed it and buried with the help of those in attendance.

Meanwhile, Captain Basnet reported the incident to the Sub-Inspector, Assistant Sub-Inspector, and a Police Constable at the Panchkhal Police Office. Colonel Bobby Khatri told police 'made-up' story about the dead body. The fabricated story said that Maina was detained; she tried to break the security ring in Hokse and tried to jump out of the vehicle so the army had to shoot her.

Supreme Court demanded the original file of the case together with the verdict of the Inquiry Board but AG Department of the army provided only the verdict. Even the plaintiff did not know where the file was kept. Responding to the demand of plaintiff to provide the photocopy of the documents submitted by the AG Department of Army to the Supreme Court, deputy registrar at the court answered on June 27, 2007 that documents couldn't be provided as they were secret papers. Demanding the annulment of this decision and stating that even the highest judicial body in the country the Supreme Court was not free from military fear, another petition was registered in the Supreme Court on July 4, 2007. Giving verdict regarding the petition as per the Right to Information Act 2007, the Supreme Court made the decision of the Military Court public. However, Kantipur, a national daily had already published the decision under the news title " Sainik Dastabej Bhanchha- Yasari Mariein Maina (Military Document Says: Maina was killed in this Way)".

### **Statements of Concerned Parties**

Accepting that the Maina had due to the wrong procedure, on March 14, 2005 Nepal Army said, "Court of Inquiry has carried out investigation and forwarded its recommendations on Maina killing case". Issuing a press statement on the date army headquarters stated that because the incident occurred due to wrong procedure, a Court of Inquiry headed by major general was constituted to look into the case of accused officers. According to the Military Act, Court Martial held following the recommendations of the Court of Inquiry can punish the culprits. Stating that Maina died inside the barrack on

July 19, 2004, the military headquarters also informed on March 29, 2005 that one Colonel and two Captains were detained and process for Court-Martial was forwarded. In army's terms, as per the investigation, saying that the nature of incident and interring procedure after death was wrong and there was no motive to kill, Colonel Bobby Khatri, Captain duo Sunil Adhikari and Amit Pun were sentenced jail term of six months holding them responsible for Maina killing case. Similarly, Khatri's promotion was blocked for 2 years and in the case of Adhikari and Pun one year each. This is the first case in Nepal where the army has court-martialed and punished high-level officers like Colonel. However, army did not dismiss any person responsible in the incident.

Military Court also informed that the culprits were made to compensate the victims. Accordingly, the court asked the Colonel to provide Rs 50,000 and each captain Rs. 25 thousand to the victim. It also recommended Nepal Government to pay Rs 150 thousands to the victim's family. Making the military decision public on September 27, 2005, NA's Legal Department Head BA Kumar Sharma said that as the detention time is also counted as being jailed, all the three culprits had served the sentence and were released. Military Court said that not to have postmortem, it was wrong of them not to give dead body to the family and not to give true information to the upper units of army.

Captain Amit Pun and Sunil Prasad Adhikari made public about their resignation from the service on March 2, 2007. When Legal Department of the NA asked Ministry of Defense about the Maina Killing case, they mentioned that their resignation had been approved.

### **Prominent Media Coverage**

Jana Aastha weekly published on 21 April 2004 wrote that Maina, arrested by Niranjana Basnet and Warrant office Sher Bahadur Khadka, was killed while the soldiers were ducking her into water and electrocuting on the breasts. The letter supposedly written by soldiers to the editor of the newspaper stated that following the killing she was interred on a hillock near the kitchen. The letter mistook Maina for 'Tamang' but she is 'Sunar' by surname. The statement issued by Ministry of Defense following the incident said that a Maoist cadre was killed in Hokse area. On September 28, 2004 Kantipur daily, published a news title, " Bepatta Kishor Chhoriko Khabar-Mrityu ! (News on the Disappeared Adolescent Daughter- Death!)" with a photo of Maina's mother Devi shedding tears. Kantipur published follow up news about the case on 28 September 2005 under the heading, "Jail Sentence to the Colonel of Maina killing Case". On 30 September 2005, another news title 'Punishment to the Army, ostentatious' was published. On 18 October and 14 November in 2005 there were other news in the same paper under the headings 'investigation on Maina case incomplete' and 'mother registers case against Maina killing case'. Kantipur Daily continued to publish letters addressed to the editor - 'some queries with military justice', 'action against alleged army person', and Maina's mother decides to go to court'. Kantipur Daily published detailed news-"military document says Maina was killed in this way". Kantipur published the report publicized on 21 December 2006 by OHCHR, Nepal on Maina Killing Case with importance the next day. INSEC had detailed news on Maina Case at <http://www.inseconline.org>. Downloading from INSEC Online Human Rights News Portal a weekly in Bhaktapur, Bayan Saptahik published

lengthy 5-page news about the case on 29, April and on 6 May 2007. Besides Kantipur, Samacharpatra, Annapurna post, Gorkhapatra and Rajdhani, among others, and many national and international dailies, weeklies, human rights reports and electronic media sensitized the incident. Nepal Human Rights Year Book also had full coverage on the case. Articles, feature stories and the news of follow up continued. As per the human rights organizations' record, more than a dozen international human rights organizations expressed their views regarding the case.

### **OHCHR, Nepal's Report on the Case**

OHCHR Nepal publicized its report on Maina case on 21 December 2006 stating that the action against the culprits was not sufficient. (See: [http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006\\_09\\_21\\_OHCHR-Nepal.Report%20on%20The%20April%20Protests.pdf](http://nepal.ohchr.org/en/resources/Documents/English/reports/IR/Year2006/2006_09_21_OHCHR-Nepal.Report%20on%20The%20April%20Protests.pdf))

The report has documented that attempts to seek justice were insufficient, there was not any progress in the case and army lacked transparency. The report has also depicted the challenges faced by the victims and family members in course of seeking justice. Similarly, it has seriously raised the issue of political apathy in making the alleged ones accountable for their deeds. It stated that prosecuting the alleged would be mutually beneficial because it helps restore rule of law in the country and lead the ongoing peace process to success.

OHCHR Nepal articulated its dissatisfaction over negligence in dead body management, short period of jail sentence to the culprits and military legal process carried out to punish them. According to the report, gravity of killing has been tried to cover up. Despite many pleas, OHCHR, Nepal could not get the documents related with the Court of Inquiry and Military Court from the army whereas other sources were providing nasty picture of Maina killing to the OHCHR, Nepal. Based on the copy obtained by it, OHCHR stated that army abridged the confession of killing and the investigative report of the court of inquiry. According to the report, after taking to Panchkhal Peace Training Center on February 17, 2004 as commanded by the then Training Center Chief, Lieutenant Colonel Bobby Khatri, Maina was tortured by seven army persons including the one who ordered to duck her into water. She was ducked into water 6-7 times a minute. In line with the report, army persons, then, electrocuted on her hands and legs for four/five times. They meted out torture on her for one and half hour. Afterwards she was locked in a building in the premises of the training center blindfolded, and handcuffed. Following this, she started to vomit and dribble foam and ultimately died with out receiving any treatment.

Court of Inquiry also concluded that the involved army persons tried to cover up this case. The dead body was shot in back and was interred inside the barrack but the barrack in-charge fabricated the report- Maina was killed while trying to escape the military cordon. The report also said that Board of Inquiry could not accept the made-up detail sent by Colonel Bobby Khatri from Birendra Peace Operations Training Centre, Panchkhal.

After setting up Court of Inquiry Nepal army had the Military Legal Process for the punishment and it ended in September 2005. Military Court declared- three officers were on the wrong side of the law, OHCHR Nepal wrote to the army chief expressing its displeasure and condemnation on the failure of Military Court to bring the culprits to justice. OHCHR had its stance that the result of the Military Court was likely to promote the military crimes rather than punishing the criminals. Nepal army hindered OHCHR Nepal and Nepal police to investigate the case by not furnishing the lists of crimes and full text of the decision of the Military Court. To army, the case has been over after the decision of military court so it has always rebuffed police not providing documents and suspects of the case. OHCHR, Nepal doesn't believe that army's investigation comes up with an independent, transparent and complete decision so it has demanded that the culprits be prosecuted under civilian court. It does not believe that the case has been over and closed. It has focused on the inevitability of looking into the case by an independent civilian court. For Nepal government and Nepal army punishing culprits is to grasp opportunity to prove themselves that they shun impunity. Earlier, Chief of army staff assured to the OHCHR Nepal that his office would help the police for the investigation of Maina killing case. Then Minister for Home affairs Krishna Sitaula assured to Louise Arbor that Maina's case would be re-investigated. Responding to a query asked by Maina's father in a program organized by Himal South Asian Magazine in Kathmandu, Louise Arbor replied that possibly Nepal government would decide to re-investigate the case but nothing positive developed after Arbor's departure. She also expressed in the program that trying to cover up the matter and not to investigate is also the violation of International Humanitarian Law.

### **Report of the Human Rights Bodies**

The report of the Amnesty International 2005 has it that many unarmed civilian were killed in Nepal claiming to have been killed in encounters and while trying to escape detention. The report states, "Two women, 18-year-old Reena Rasaili and 17-year-old Subhadra Chaulagain, were shot dead by plain-clothes security force personnel in Pokhari Chauri village, Kavre District, on February 13. Reena Rasaili was allegedly raped before her death. Four days later, soldiers searching for her mother, who had witnessed the earlier shootings, arrested 15-year-old Maina Sunar. She was reportedly killed on the day of her arrest." Amnesty International also issued an urgent action notice demanding whereabouts of Maina Sunar. Towards the end of 2004 Amnesty International in a report titled 'Lives Blown apart-Crimes against Women in Times of Conflict – Stop Violence against Women' has likened Nepal with Afghanistan, Columbia and Sudan and has taken Maina case as an example.

On September 2005 28 when the decision of the Military Court was made public, Human Rights Watch took the punishment as formality and ostentatious. To the organization, Nepal army started punishing process not because it wanted to punish its members, but mounting international pressure was manifest. Advocacy Forum has provided free legal assistance to the victim's family. In January 2005, Human Rights Watch's list also showed its concern regarding the case. Watch list works for the children affected at the times of conflicts. Save Human Rights Movement Nepal - a network of 25 human rights

organizations in Nepal, issuing a statement on 3 October 2005 requested the OHCHR Nepal to investigate the Maina case seriously and to pressurize for the trial of the case in the civilian court. Sister organization Of Asian Human Rights Commission- Asian Legal Resource Center condemned the Maina killing and drew the attention of the UN. This Hong Kong based organization stressed that the case be tried in a civilian court. Advocacy Forum published a book *Maina Sunar: Incident, Facts and Justice* in 2064, which has the reports submitted to the police, petition and order of the court as they are.

### **Writ Petition Filed Demanding Action against Perpetrator**

Demanding investigation and perceptible action against the alleged, Maina's mother filed a writ petition at District Police Office, Kavre, through District Administration Office Kavre on 13 November 2005. As the District Police Office did not accept the writ petition, the case was filled through District Administration Office. Representative of OHCHR Nepal Kristine Peduto, INSEC Mid Regional Coordinator Krishna Gautam and executive director of Advocacy Forum Mandira Sharma had filed the case there as the team was not allowed to register the case by the then DSP Sanjaya Singh Basnet there (he is in the list of Rayamajhi Commission). Directing district police to investigate the case and to forward judicial procedure, Devi filed the writ petition at District Administration Office, as per the State Cases Act 1993 section 3(5), registered No. 1175. Registering the case then Chief District Officer Sambhu Koirala (who has been prescribed to be punished by Rayamajhi Commission) commented: the dead one does not come alive.

### **After the Case Filing only the Letters Are Reciprocally Circulated**

After the case was filed, Kavre Police said that a letter was sent to Police Headquarters on November 13 2005. Following the permission from headquarters police in Kavre registered the case and pronounced the officer to look into. Police also stated that the preliminary report of the case was given to the Office of the Public Prosecutor. During this period, the victim's family demanded with Nepal government a National Committee to look into the case.

District police wrote a letter to the perpetrators for the hearing on 6 December 2005 but they did not go, rather, COS Depart Panchkhal Training Center wrote a letter back to the police demanding clarification on the matters being asked to the perpetrators. Police informed the matters through a letter and then wrote another letter to the army demanding to present perpetrators. Still, army did not send the alleged. Then, Zonal Police Office wrote a letter to the Police Headquarters and the latter corresponded to the AG Department of army. However, the AG department responded on 11 June 2006 that the perpetrators were already punished.

District Police Office wrote to the witnesses on 5 April 2006 to be present. The witness did not go so Bhairav Sedhain, Ambika Khakurel, the Headmaster Tikadutta, and the teacher Sudha Silwal were interrogated on May 3, 2006. On June 17, 2006 police prepared a report going to the premises of training center where the dead body was buried. The next day after the registration of the case District Administration Office had written a letter (ref. No. 944) to the District Police for the investigation and the police had written a letter (ref.no1760) to the Office of the Attorney General, Zonal Police and

Police Headquarters. Those resolutely declared by media as the other perpetrators- the then Captain Niranjana Basnet and Warrant Officer Sher Bahadur were not named in any letters. After exhuming the dead body, District Police wrote a letter to the Army Headquarters to give profile of retired Captain Amit Pun and Major Sunil Prasad Adhikari. Similarly, on March 22, 2007 it wrote a letter to District Police Office in Dipayal. Even after repeated requests, army did not provide profile. Finally, their addresses were obtained from Office of Provident Fund by the time the case was taken to the court. An investigation team of District Police Office had prepared public witness report going to the locality of the perpetrators. All the villagers had their say that the alleged be taken to the civilian court.

### **Army Writes to Accept Compensation**

AG Department of the army wrote a letter to District Administration Office on 12 June 2006 to accept compensation from the perpetrators. Accordingly, DAO on the same date wrote to the victim's mother, Devi Sunar, to collect the amount but she did not go to receive. The letter signed by Brigadier General BA Kumar Sharma has it that as per the decision of the Military Court on killing of a civilian woman, Maina Sunar, brought from Kharelthok on February 17, 2004, Ministry of Defense had written the Home Ministry as per the Military Act 2006 (Section 141) to provide Rs 150,000 as the compensation to the victim.

### **Exhumation**

Skeleton of Maina Sunar was exhumed on 23 March 2007 from near a bushy area at Panchkhal- 6. In course of criminal investigation, police exhumed the skeleton with the technical assistance from OHCHR Nepal and National Human Rights Commission, Nepal. The skeleton was exhumed by a team of pathologists Dr. Harihar Wasti and Dr Pramod Kumar Shrestha of TU Teaching Hospital Forensic Medicine Department and internationally known Forensic expert Maria Mosilio from under 5 feet.

At 2 ft 7' downwards, 12 flat stones were found placed. The skeleton was broken. The dead body was buried 167 meters away from the training center. Together with the skeleton, beads with a locket and a knotted rope were found. Devi identified that the locket was of her daughter. It took 7 hours to exhume. As per Dr. Wasti, Maina's rib was broken. At the back of her body, she had 13 pieces of ribs. Out of 100 of thousands people rarely a couple of persons have 13 ribs. As no clothes were found there, she probably was interred naked. Forensic study had proved that the skeleton was of Maina.

The statement issued by OHCHR, Nepal on 24 March 2007 said that the exhumation of Maina's skeleton was an achievement for the investigation and was a step ahead for those seeking for justice. It also stated that Nepal police now needed to proceed to criminal investigation to determine who was responsible and to make them accountable for the actions. It also stated that Louise Arbor in her visit to Nepal was assured by the Minister for Home affairs and the head of the army to investigate the case.

### **Supreme Court Issues Mandamus**

Devi Sunar registered another writ petition at the Supreme Court demanding Mandamus writ against the defendant bodies to abide by duties. The petition mentioned that Nepal's constitution has the provision that all citizens shall be equal and no person shall be denied the equal protection of the laws but the alleged were still at large. She also demanded that the alleged be shortly arrested and investigation be proceeded to as per the State Cases Act 1993. The demands included arrest of the culprits, protection of the proofs, further collection of evidences, sending of preliminary report to the governmental lawyer, search of suspected places and arrest of the suspects. Whereas even OHCHR Nepal was disgruntling over the insufficiency of punishment adjudged by Military Court and Devi was pleading for the protection of her rights, Nepal army kept on harboring Colonel Bobby Khatri and Captain duo Sunil Adhikari and Amit Pun. Giving decision over the writ no 641, a joint bench of Justice Anupraj Sharma and Ram Kumar Prasad Shah on May 8, 2007 issued order to provide the verdict, supposedly carried out by Court of inquiry, and original documents of the killing case within seven days. Written reply of District Police Office in Kavre showed that AG Department of army had written to the Police Headquarters regarding the settling of the case. It also ordered to the Kavre District Police Office to provide investigation detail within seven days as written reply of the governmental lawyer on February 12, 2005 showed that district police office was directed to investigate the case.

On September 18 2007 issued mandamus against ineffective investigation over the case and ordered to complete investigation within three months. This very mandamus compelled police to take the case to the court.

### **Lawsuit Registered in Court**

A lawsuit, under homicide as per the State Cases Act 1993, Section 18, was registered on 31 January 2008. Colonel Bobby Khatri of Kathmandu Metropolis-33, Gyaneshwor, the then Captain Sunil Prasad Adhikari of Kathmandu-3 Bansbari, the then Captain Amit Pun of Anandaban VDC-3 in Rupandehi district and Major Niranjan Basnet of Makaibari VDC-9 in Dolakha currently working at Peace Operations Training Center, Panchkhal have been made the defendants. The lawsuit states that so-called already carried out punishment of the Court of Inquiry Board has been meaningless. It has referred to the provision in the Army Act that if a military person kills a civilian, the former is not prosecuted under military law. It has also included 33 evidences. Following the exhumation, skeleton of the deceased was sent to CDFD, Hyderabad in India for the DNA test and the report of the test obtained on July 14, confirmed that the body was of Maina. Earlier, on January 31, 2008, Kavre District court had ordered to register lawsuit with documents and it had ordered to issue a 7-day arrest warrant and to present the absconding defendants before the bench after crossing 70 days' time.

Similarly, on September 17, 2009 Kavre District Court had a letter written to the AG Department of Army ordering to act as per the Army Act 2006 Section 66 (3) regarding Basnet's case. The court even carried out the hearing of witnesses on November 17, 2009.

Following the order from the court, arrest warrant was issued against Niranjana Basnet on 31 January 2008. Accordingly, District Police Office in Dolakha wrote to Kavre District Court that warrant was pasted at Niranjana Basnet's house. Similarly, District Police Office in Rupandehi informed to have passed information to Amit Pun's home on 17 March 2008 regarding his arrest. Court also informed that arrest warrant of Sunil Adhikari was completed on 1 July 2008 and then of Colonel Bobby Khatri on July 13, 2008. Colonel Bobby Khatri who was alleged in the incident, retired on May 28, 2009 when Bidhya Devi Bhandari, the Minister for Defense, going against the recommendation of the Army Headquarters, denied extending Khatri's tenure by additional two years. Colonel Bobby Khatri was working under intelligence department of the army then.

### **Decision of National Human Rights Commission**

Completing investigation on Maina's torture and killing case, National Human Rights Commission made its decision public on 4 February. As per the decision Maina Sunar of Kharelthok VDC-6 in Kavre district and studying in grade 9 at Bhagawati Higher Secondary School at Kharelthok was arbitrarily arrested by security force on March 2004 at 6:30 from her own home and her whereabouts were unknown. Demanding her whereabouts and safety of life, a complaint was registered at National Human Rights Commission. As per the explanation of one detainee at Panchkhal Maina was arrested by security force on 4 March 2004 at 8:30 and was brought to Panchkhal barrack. She went unconscious afterwards for she did not eat rice due to impassivity following interrogation carried out in a wrong way and she died at 11:30 on the same day.

The commission further stated that following her death, the dead body was interred without fulfilling necessary legal procedure and without informing to her family. Then army constituted court of inquiry. The commission referred to the decision of the court of inquiry that although the three officers did not have motive to kill Maina, she could have been dead by other reasons. On charge of not following the proper procedures when Maina was found dead in custody, the culprit Colonel had to pay Rs. 50,000 to the victim's family and his any promotion was blocked for two years besides jail sentence for 6 months. Two Captains had each to pay Rs 25,000 and their promotions were blocked for one year besides jail sentence of six months. Commission also stated that crime was confessed and the culprits were punished. To the commission, the Office of the Public Prosecutor in Kavre, on behalf of Nepal government, had already registered a lawsuit under homicide at the district court against Bobby Khatri, Sunil Prasad Adhikari, Amit Pun and Niranjana Basnet so nothing needed to be done. However, commission demanded compensation (as provisioned in its statute) that Nepal government give Rs. 300,000 to the victim family.

### **Dependent Members of the Victim**

<i><b>Sn</b></i>	<i><b>Name</b></i>	<i><b>Relation</b></i>	<i><b>Address</b></i>	<i><b>Age at the Time of Recording Incident (year)</b></i>
1	Devi Sunar	Mother	Kharelthok-6	41
2	Ram Sunar	Younger brother	Kharelthok-6	15
3	Ramji Sunar	Younger brother	Kharelthok-6	13

### **Death of Maina's Father**

Maina's father Purna Bahadur Sunar who was impatiently searching for his daughter disappeared at once on 9 October at 7 AM. Sunar who was in a rented room at Nayabasti, Banepa-4 had left room to go to poultry shed at Janagal after taking tea. According to the family members, Earlier, he was disappeared himself during 5 days of Dashain in 2009 and was found in India. His family said his mental health was not sound after the death of his daughter. While filing application at the district Police Office on October 13 the corpse at mortuary of Banepa Hospital was identified to have been of Purna Bahadur. Police say the dead body was brought from Budol Jungle, Banepa lying dead using poison. In the spot police had found slippers, a cap and poison tablets that are used to preserve wheat grain. Earlier, before setting out Purna Bahadur had left his Rs. 2000, diary and wrist watch in the room covered with a pot. Dr. Harihar Wasti declared after postmortem that the corpse was of Purna Bahadur. His dead body was cremated at Pashupati crematorium.

### **Condition of the Victim's Family**

Following Maina's arrest victim's family could not go to their house due to fear since 18 February 2004 until Peace Agreement was signed. As the incident was spread nationally and internationally, the family members' free mobility was always unsafe. Devi's house at Kharelthok has collapsed. The family has rented rooms in the district headquarters.

### **Film on Maina Killing Incident**

Devi Sunar, who attended free of cost eye check up camp in her parental village without taking her daughter despite the latter's insistence to follow, could not see the daughter back at home. Owing to the brutality of the army and Maoist combatants Devi's daughter Maina was killed following torture. Film *Maina* develops around this very theme. Shooting of the film began in Maina's village.

At a time when vicious warfare continued in the country, Army takes away Maina while asleep and tortures to death at the barrack. This issue has been the theme in the film. Director of the film, KP Pathak had reached to Maina's village along with his shooting unit on May 8, 2008. This is the first case in Nepal that a film has been made on the persons killed in the violent conflict. The film begins showing Maina walking with her mother and uncle by the side of public rest place under trees at Chapadanda close to the village.

Anita KC, 18, of Imadol, Patan has enacted the role of Maina and Radha shrestha, Govinda Prabhat, Saurav Chaulagain, Anita KC are in the roles of Maina's mother Devi, father Purna Bahadur Maina's brother and her friend respectively. The film made by Jeevnath Subedi and script envisioned by Nayan Raj Pandey has given a picture of laxity and irresponsibility of the security force. In addition, a documentary titled *Saree Soldier* has been made. The director of the film Pathak informed that 5 percentage of the amount of profit from the film would be given to the Maina Children's home established in Kavre. With the aim to teach the children victimized in armed conflict, a Children's Home has been established in Kavre as initiated by human rights defenders. Kabhe and Braian, Students from America, among other 21 students have written their dissertations on Maina's tortured killing.

### **Devi Struggles for Justice**

Devi Sunar, 40, born at Pokharichauri, a remote VDC in the district has turned into a human rights defender following the killing of her daughter translating her grief into strength. Demanding the daughter's whereabouts, she restively reached to army headquarters and different human rights bodies.

Maina's parents demanded whereabouts of Maina going to the Human Rights Unit of the army in August/September 2004. Chief of the unit Raju Nepali had suggested them go collect their daughter's belongings from area police office, as he said, she was already killed. However, when Devi and others reach to area police office at Palanchok expressed ignorance about the case and also stated that no belongings of Maina were there.

Following the pressure the army declared that Maina was killed by the army and the culprits were already punished by the military court. Devi then demanded the culprits be perceptibly prosecuted under civilian court. Registering the lawsuit of Maina killing incident in the court was a hard nut to crack. Police refused to register so Devi registered the case through District Administration Office with the help of human rights defenders from Kathmandu. Police did not begin investigation process; Devi reached to the Supreme Court. Court had to issue order for the purpose. At the age of 14, siblings Devi and Rina were in marriage relation with the siblings, Purna Bahadur and Murali. She continued to struggle despite the fact that she lost her daughter Maina, sister Rina and brother Surendra in the war. Nepal army has victimized her still she denounces the killings carried out by both the warring sides. For her daughter's sake she has established a Maina Balbikash Committee for the children deprived of education to teach free of cost.

She has kept in mind that Human Rights High Commissioner Louise Arbour assured, meeting her twice, to bring the culprits to justice.

### **Major Basnet Returns from Peace Keeping Mission**

Despite the fact that Prime Minister directed on December 13, 2009 to present alleged Basnet before the court, army did not do as directed. Military police took him to the army headquarters in their vehicle. On December 12, 2009 newspapers wrote that military police arrested him from Tribhuvan International Airport on charge of human rights violation.

Following the news, about 3 dozens journalists and human rights activists assembled at the court's premises. UN had repatriated one Nepali army person in a long history of army so the PM directed the Minister for Defense and the Minister for Home Affairs to take Action against Basnet. Earlier UN had sent a letter to Nepal government informing Major Basnet's expulsion from Peacekeeping Mission in Chad. Through an open letter dated 5 December 2009 and addressed to the PM, Maina's mother, Devi Sunar had expressed her grievance that despite arrest order of the court the culprits were still at large. Shortly after that, PM directed the Minister for Defense and the Minister for Home Affairs to take action against Basnet. However, as per the pressure from the army, PM Madhav Kumar Nepal and Minister for Defense, Bidhya Devi Bhandari opined differently regarding presenting him before the court. Taking the case as an internal matter of the army, they wanted to remain detached. In the mean time, the concerned ones were also divided over the issue of presenting Basnet before court. Minister for Defense on 8 December stated that the UN corresponded to the government regarding Basnet's repatriation but Defense Ministry was uninformed about the matter. A meeting of CoAS Chhatraman Singh Gurung, Legal Department Head BA Kumar Sharma and other Senior Generals decided to ask information with the UN regarding Basnet's Repatriation. Rather than deciding to present the alleged one before the court, the meeting of some senior Generals on December 13, decided to ask the UN back why it repatriated Basnet and the meeting decided to study the case in detail internally.

OHCHR had informed to the UN headquarters that despite his allegation in criminal case Nepal Army had promoted and had sent him to the peacekeeping mission. Due to homicide lawsuit registered at Kavre District Court and issuance of arrest warrant against him UN had repatriated him with the intention of helping his prosecution. Upon his arrival to Nepal, police should have arrested him but army took control over him and did not present before the court.

### **Army Constitutes Court of Inquiry**

Nepal army informed to have constituted a Court of Inquiry Board on 22 December 2009 to examine the repatriation issue of Major Niranjan Basnet from Peacekeeping Mission in Chad. Colonel Shivaram Kharel and Lieutenant Colonel of Military Police Rabindra KC are the members of the 3-member Inquiry Board headed by Brigadier General Pradip Bahadur Singh of AG Department. CoAS constituted the board as per the

suggestion from AG Department. The board is supposed to submit report with suggestions.

Nepal Army has it that it inquires with the UN regarding repatriation. Discounting Nepal Police's correspondence that requested Basnet's handover, Nepal Army constituted the inquiry board. Army says during inquiry period Basnet will be given security by it. Army also claims that the inquiry board of the army set up earlier proved him innocent. Army claims that it is crucial to ask with the UN why Basnet was repatriated as UN would send back from mission only in the cases of military crime, familial loss and bad health conditions. Following the national and international pressures to take action against Major Basnet, the family of Basnet urged the Minister for Defense on December 22, 2009 not to take action against him. In a meeting with the family members of Basnet, Bhandari expressed her commitment that she would not allow any action against him. Media published it the next day.

Reacting Bhandari's expression more than 15 human rights organizations, issuing statement, in Sunsari District dissented her expression. For them Bhandari's expression was condemnable and disgraceful at the same time. Law practitioners condemned and termed the expression as an unconstitutional because rather than presenting him to the Civilian Court army wanted to inquire internally.

### **Demands to Present Basnet before the Court**

Accountability Watch Committee condemned the act of army that rather than presenting before the court, Major Basnet against whom arrest warrant was issued and was still was controlled by the army upon his arrival to Nepal after being expelled from UN Peace Keeping Mission in Chad. Sushil Pyakurel, the chairperson of the committee demanded through a statement on December 13 that to end impunity and for the establishment of rule of law the alleged person be submitted before the court.

Issuing a press statement on December 14, 2009 the Chairperson of Informal Sector Service Center (INSEC) Subodh Raj Pyakurel asked questions whether or not Nepal Army abides by law, whether the Minister for Defense was misled while sending an accused person to the UN Peacekeeping Mission or the minister picked him on purpose. The statement also demanded view of the Minister for Home Affairs that Nepal Army discounted the letter written by Nepal Police regarding handover as per the court's order and urged concerned ones to be ethically and legally responsible to take action against the alleged in the incident that has threatened discipline, rule of law and national dignity.

Issuing a statement on December 14, 2009 Amnesty International demanded assurance from Nepal government that Major Basnet's would be handed over to the civilian court. Amnesty stated that disregarding PM Madhav Kumar Nepal's instruction to arrest Basnet upon his arrival at the airport and presenting to the court, military police escorted him to the army headquarters. It sated that presenting Major Basnet to the civilian court would provide opportunity for the army to show respect towards human rights and rule of law.

Patrick Leahy, American Senator, drew attention of the American Congress and the US Department of State about reluctance of Nepal Army to present the alleged to the court. Delivering his special view on Justice in Nepal, Leahy urged CoAS to prove democratized. Reminding Nepal Army's initial commitment, request of police and instruction of the PM he stated that the allegation that selection of army persons to send to peacekeeping mission was unfair was proved.

International Commission of Jurist (ICJ) through a statement on 14 December 2009 demanded that Major Basnet be submitted to the Kavre District Court, for the investigation. Rojer Normand, Asia Pacific Director of ICJ stated that insistence not to present alleged Basnet to the civilian court proved army's hindrance to the court.

National Human Rights Commission stated to have been worried by the information that rather than presenting alleged Major Basnet to the court, Nepal Army set up Inquiry Board for the investigation. Writing to the Office of the Prime Minister and the Council of Ministers on December 24, 2009, National Human Rights Commission clarified that the cases related with grave violation of rights can't be looked into by any courts like Military Court, People's Court and others of similar nature but by the regular courts.

In a press meet at Nepal Bar Association Hall, Maina's mother Devi on December 24, 2009 urged Major Basnet be presented to the civilian court. She said she was not satisfied with the army's decision and but order of the civilian court was acceptable for her.

### **Representative News Titles Published Regarding Major Basnet**

<i>Newspaper/ Magazine</i>	<i>Date</i>	<i>News Title</i>
Himal Khabar	16-31 Nov 2009	When to Get Justice
Nepal Samacharpatra Daily	December 10, 2009	UN Urges to Repatriate Major Basnet
Nepal Samacharpatra Daily	December 13, 2009	Major Basnet Returns to Nepal
Kantipur Daily	December 13, 2009	Alleged Basnet Being Presented Before Court Today
Nagarik Daily	December 13, 2009	Major Basnet Arrested
Kantipur Daily	December 14, 2009	Basnet Won't be Presented Before Court Soon
Rajdhani Daily	December 14, 2009	Army Refuses to Present Basnet before Court
Nayapatrika Daily	December 14, 2009	Police Writes to Army for Basnet's Handover, Army Doesn't reply
Nepal Samacharpatra Daily	December 14, 2009	Dilemma, what to do with Basnet

Nepal Samacharpatra Daily	December 14, 2009	Army doesn't Handover to Police, PM Seeks Clarification
Annapurna Post Daily	December 14, 2009	Army Headquarters Dissatisfied after Police's Letter
Nagarik Daily	December 15, 2009	Army to Ask on Basnet's Repatriation
Nayapatrika Daily	December 15, 2009	End Impunity (Editorial)
Kavretimes Weekly	December 15, 2009	Alleged in Maina Killing Be Brought to Justice (Article)
Nagarik Daily	December 16, 2009	UN to be Asked on Basnet's Repatriation
Nagarik Daily	December 16, 2009	Amnesty Urges to Present Basnet before Civilian Court
Samadhan Daily	December 16, 2009	Army didn't Follow Court's Order
Kantipur Daily	December 19, 2009	Why is Basnet not presented to Court? (View of American Senator, Patrick Leahy)
Kantipur Daily	December 19, 2009	Concerned Authorities Divided over Basnet Case
Nayapatrika Daily	December 19, 2009	Maina Killing Case Revives (Cover Story)
Nayapatrika Daily	December 20, 2009	Basnet be Handed Over (Editorial)
www.inseconline.org	December 13, 2009	AWC Calls Government to Present Basnet to the Court

### **Representative News on Constitution of Court of Inquiry and Basnet's Repatriation**

<i>Newspapers</i>	<i>Date</i>	<i>News Title</i>
Annapurna Post Daily	December 21, 2009	Army Constitutes 'Board of Inquiry'
Kantipur Daily	December 22, 2009	Won't Allow any Action against Basnet
Nayapatrika Daily	December 22, 2009	Army sets up 'Board of Inquiry' Challenging Court
Nagarik Daily	December 22, 2009	"Court of Inquiry" Formed

Annapurna Post Daily	December 22, 2009	Military "Court of Inquiry" Begins Work
Nepal Samacharpatra Daily	December 22, 2009	Another Court of Inquiry Formed to Take Action against Basnet
Kavretimes Weekly	December 22, 2009	Army Forms "Court of Inquiry"
The Kathmandu Post	December 22, 2009	Maj Basnet need not worry: Defense Minister
Republica	December 22, 2009	Court of Inquiry on Basnet Case Formed
The Kathmandu Post	December 23, 2009	Bidhya Comes under Fire
Kantipur Daily	December 23, 2009	Defense Minister's view Denounced
Nayapatrika Daily	December 23, 2009	Basnet's Arrest and Handover to Court Recommended
Janaastha Saptahik	December 23, 2009	Niranjan Sir's New Narrative
Susandesh Weekly	December 24, 2004	Why is the Perpetrator of Maina Killing Case Not Punished?
Kantipur Daily	December 25, 2009	Demand to Punish as per Law
Nayapatrika Daily	December 25, 2009	Letter to the Government to Present Basnet to Court
Annapurna Post Daily	December 25, 2009	Can't Escape on being Army, Punish Them: Devi

## **Conclusion and Recommendations**

- Interim constitution of Nepal part 3, article 1 under Right to Freedom states that every person shall have the right to live with dignity. Preamble of the constitution stated full commitments towards democratic norms and values, democratic rules system, fundamental rights human rights and independent judiciary. Similarly part 3 of the constitution has included right against torture, right to privacy, rights against exploitation and right to constitutional remedy as the fundamental rights. In the earlier constitution, too these rights were guaranteed to every individual. In this context, taking a girl away while asleep tying her hands, torturing, killing in barrack and even not to inform to the family members is a grave violation of human rights.
- As per the article 6 (right to life), 7 (right against torture inhuman degrading activities an punishment, 9 (right to liberty and security), 14 (fair trail), 17 rights against arbitrary and unlawful interference against privacy), 18 (freedom of conscience, thought and religion), 12 (freedom of association, forming and joining trade unions), 24 (child rights) and 26 (right to be protected equally) of ICCPR to which Nepal became state party on May 14, 1991 it is a violation of rights.
- At any moment and situation of war security force and Maoist party should have differentiated between civilian and military and the military objective and civilian objects but it was lacking. It is an incident of violation of human rights and humanitarian law because governmental security force has killed an unarmed person going against article 3 of Geneva Convention.
- Punishing the culprit and to control crimes legally by investigating the crime and bringing them within the judicial gamut is the duty of any state. A state can't stand and run under rule of law as envisioned by constitution if each organ and unit of the sate doesn't follow the duties as desired by law. Consequently, impunity and criminal activities get promoted instead of rule of law. Covering up crime on the on the basis of agreements and political affiliations intensifies pessimism among peoples. Power can't determine justice; rather, justice should exercise power. To address the plea and infliction of the victim, each organ of the state should accept supremacy of rule of law.
- To dig truth about the persons involved in violation of human rights during the armed conflict and for the reconciliatory ambience in the society, a high-level Truth and Reconciliation Commission should be constituted or a separate commission should begin an in-depth study on Maina killing incident. Such commission should be made as per law and such committee will give amnesty to none involved in grave crime against humanity.

- Nepal army should fully support to bring such alleged persons to justice. It is just to provide the amount to the victimized family equal to the amount Nepal government has been giving to the dependent family of the persons killed after violation of human rights. Compensation and reparation being given to the family should be decided as per the family needs and following discussion with the family as per law.
- The documents except the ones not allowed by constitution and special rights should be provided to human rights bodies. To stop the recurrence of similar incidents in the future Rome statute of ICC should be instantly acceded.
- To discourage the possible violations in the future and to show accountability, it is imperative that the criminal investigation regarding Maina killing case has to be completed. Military judicial decisions can't substitute the scope of civilian courts so it is the demand of the international standards that such heinous crime against humanity be prosecuted under civilian courts.
- Lack of Political will power and cooperation are seen in the incident. Nepal Army still has the opportunity to show to the Nepali people and international communities that Nepal army is serious regarding the case. For this, Nepal Army has to make the rights violators accountable for their deeds.
- Human rights bodies and media should be given easy access up to the officers named by police as perpetrators in its investigation and writ registration regarding Maina case.
- Regarding Maina killing case, Victims and the human rights bodies are assured that the victim's family will get justice. If such assurances are fulfilled the alleged can be brought justice.