

**On-the-spot Investigation of the Clash in Pilikop,
Daha Village Development Committee (VDC)-8
Kalikot District, 7 August 2005**

**Summary Report
(Translated from Nepali)**

**National Human Rights Commission (NHRC)
2005**

Investigation Period: 16-22 August, 2005

Members of Investigation Team

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I. Findings

Following facts have been gathered by the Commission in the course of its investigation to date:

A. Killing/ Mutilation

The investigation team observed the spot of the incident at Pili for about six hours. The team inquired with the Major Nawal Shah the Commander of the camp about the incident and conducted the field investigation to ascertain the losses in the incident. According to the Commander, a total of 55 security personnel were killed, 109 security personnel had come in contact, 60 personnel were abducted by the Maoists, and 4 were still missing. Among the 55 killed, 22 were shot in the head. Lieutenant Tulsi Prasad Shrestha might have been tortured and killed as there were no signs of gunshot wounds in his body and his private parts were found to have been mutilated. The bodies of 9 personnel were found overlapped on top of each other in one spot in the north-west side on the way to the camp raising the possibility that they might have been lined up and killed. Major Nawal Shah also informed that 12 bodies were below the camp near a cliff in the southern part of the camp.

On the other hand, the Maoists informed that all the security personnel were killed in encounters; all the abducted personnel were receiving humane treatment and would be released at an appropriate time. According to the Maoists, their cadres and supporters were mistreated during the search carried out by the army in the villages after the encounter.

1. The Maoists admitted that 26 of their cadres were killed in the incident, but local residents informed that 41 dead bodies were found. Others have stated that the number may be higher.
2. The families of soldiers Shiva Karki and Laxmi Krishna Desai were handed over the dead bodies said to be of the soldiers. However, the two soldiers were not killed in action.
3. In the course of the investigating the area, the team also visited some farms belonging to ordinary people as suggested by villagers. The team found 6 bodies strewn in farms near the incident area; a body was found in the northern side of the way to Jumla across Karkiwada. The 7 bodies in total were found mutilated and scattered in different places and could not be identified. In general, most of the dead bodies were found to be dressed in combat fatigues. The team also came across 4 holes dug in the ground in which two of the holes had two bodies in each of them. The hand and feet of those bodies were protruding outside the covered holes. A toe was also visible in one of the holes while the rest of the

bodies were buried. In the other hole, a shoe was visible, and the body was buried in the hole under stones. According to statements of the villagers, a body that had been lying elsewhere was consumed by dogs, vultures, eagles and foxes; some flesh and body parts was found scattered all over the place. Similarly, at the compound of Kalika Primary School in Pili, it was stated that the Maoists had killed people by cutting off their heads and as blood was all over the entrance gate of the school, students were frightened to return to school. The teachers had cleaned the compound and removed the blood stains using clay and water and the school opened only a week after the incident. Local teachers stated that three bodies were buried by the water-tap near the school due to which the whole school had a foul smell.

4. According to the statement of local residents, there were other bodies in different places that were consumed by vultures, eagles, dogs and foxes. Local residents also stated that the Maoists had carried away some bodies on *doko*'s (bamboo baskets).
5. The local residents have stated that the Maoists had forcefully recruited ordinary citizens from Daha, Mugraha, Sukatiya, Pakha, and Manma VDCs and even from faraway places including neighboring districts to carry out the attack on the Army Camp. Due to limitations and the fixed duration of the investigation, the team could not collect a list of ordinary people involved in the attack. Representatives of various political parties stated that number of the civilians killed in the incident could only be ascertained if enquiries could be made on whereabouts of people from different villages involved in the incident.
6. It was found that the security personnel of the Pioneer Battalion had been assigned to work in road construction and they were not assigned for combat purposes. However, the security personnel of the Pioneer Battalion were equipped with some weapons, general training and combat fatigues for self defense purposes and thus fought throughout the night.
7. Pieces of combat fatigues and bullet cartridges were found scattered near the way near to the helipad in the area.
8. Trenches were found to have been dug around the incident spot and on sides of the Pili-Manma road. Maoists had also dug trenches in the garden of the ordinary people damaging their crops, which were destroyed as a result of the encounter as well.
9. Caps, clothes, torn and burnt boots, and shoes belonging to security personnel lay scattered everywhere on the road near the base camp. Similarly a large number of bullet cartridges were found in the spot. Furthermore, the house and the tent used by the army were burnt down. Pots and pans, combat fatigues sacks, etc. were found strewn around the base camp at Kop.
10. It was found that the non-combatant soldiers who were carrying the goods brought by the helicopter had been captured and soldiers were then forced to carry the loads of weapons and food and thereafter abducted by the Maoist.
11. The Kop area in Pili, Kalikot District had been a CPN-M stronghold and therefore a Maoist-affected area. As such, it was found that the Maoists had constructed an entry gate, square and training camp in the area more than two years ago as the symbol of their presence.

12. The barrack was found to be situated at the line of highway from Surkhet to Jumla through Pili and in between a road frequently and commonly used by people. The army had prohibited movement in the particular road and an alternative pathway is yet to be constructed. A makeshift route was found to be risky. Moreover, ordinary people were also restricted in using this makeshift route after 1700hrs everyday.
13. While, there were no losses of lives of the local residents near the camp during the encounter in August 7, 2005, Pare Gharti, a resident of Gela VDC Ward no. 3 across the Tila River was killed by gunshot wounds. However, the source of the gunshot that killed him could not be determined.
14. Among the dead civilians, Shakti Malla was working as contractor supplying necessary goods to the army in the area. The Maoist had previously abducted him on August 11, 2000 for selling foodstuff to the Army. However, he had managed to escape from the Maoist captivity and consequently, had been a target of Maoists since then. He had displaced from the village and had been residing in the District Headquarters in Manma for the past two years. On the day of the incident, the Maoists had captured him as he was in the village to drop off Ram Bahadur Malla, a sick person from Pili village. The Maoists had captured him in a farm and killed him after meting out extreme torture by taking out his eyes, cutting his ears and pulling out his teeth, as per the statement of the relatives of the deceased Malla as well as eyewitnesses. The final rites and Malla's cremation took place in the district headquarters in Manma in Kalikot.
15. It was found that the Chief District Officer of Kalikot had informed the family members of the deceased (Shakti Malla) that they would be provided compensation as per His Majesty's Government policy, but such compensation was yet to be provided. As per the information from the Birendra Hospital in Chhauni and the District Administration Office in Kalikot, it was found that the injured had been provided medical treatment free of cost.
16. A local resident Hukum Bahadur Malla's house was damaged due to the shooting and bombing carried out by the night-vision helicopter on the evening of 7 August.
17. A cowshed belonging to a local resident Dip Bahadur Malla was also burnt down in the same incident.
18. The land area, houses and plantation belonging to ordinary locals Aan Bahadur Malla, Nanda Bahadur Malla, Jeer Bahadur Malla, Hansha Bahadur Malla and Dhani Ram Chaulagain had been acquired by the army camp and the land belonging to Gorkhe Karki had been acquired by army for the helipad. However, the individuals had not been provided with compensation for the property acquired from them.
19. It was also found that a day after the incident, the Royal Nepal Army had called a local resident in the army camp for inquiries and was then under detention for a whole day.
20. The Maoist had spread fear and threatened the laborers around the Karnali Highway not to be involved in the construction of the road. The Maoists had also extorted money and taken away the seasonal crops belonging to the laborers. As such, it was found that local residents and laborers had been discontented by such activities of the Maoists.
21. The local residents were concerned that the decomposing dead bodies could lead to spreading of diseases in the area as the bodies remained out in the open and unclaimed by either of the parties.

22. It was found that the Maoists had prohibited people from Dailekh and Jumla Districts, along with local residents in the area from working in the construction of the road.
23. In the aftermath of the incident, local residents are still fearful of the possibility of another attack in the area.
24. It was found that minors were used in road construction and they were paid unequally in comparison to others.
25. The road construction work was found to be risky. In the course of the construction, laborers were killed and injured but had not been provided with compensation.
26. The age of the child soldiers used in the attack could not be ascertained. However, according to the locals, the Maoists abducted children and use them in missions while also forcefully making the children take up whole-timer (WT) or full-time membership of the Maoists against their wishes. It was also stated that those who were forced to take the WT membership had been used as human shields.
27. The letter from the Kalikot District Police Office dated 31 August 2005 stated that about 5000 Maoist cadres had attacked the camp and a public affidavit was carried out on 15 August. However, the autopsy affidavit and the postmortem of the ordinary citizens killed in the incident had not been carried out.

B. Other Issues:

The local people want peace. They seek freedom from fear, threats and coercion from either party to the conflict. The local people believe that the parties to the conflict should be flexible in their respective stands to seek a way out for the resolution of the conflict. Due to the prevalent environment of fear, no one is able to speak in favor or in opposition of any side.

II. Analysis and Conclusion

1. Right to Life

- Based on the study of the post-mortem report, among the 58 dead, three personnel were killed by bomb blast injuries, 52 were killed by rifle firearms injuries, one by sharp force injuries and two were killed by blunt force injuries. The statement issued by the Army Directorate of Public Relations on August 9, 2005 which mentioned that some of the security personnel were killed in a brutal manner including through the mutilation of their private parts or by burning, is not supported by the postmortem report. The postmortem report indicates that the nature of injuries is similar to injuries occurring in armed conflict. The investigation did not find any evidence to support the statement of army official who stated that bodies of 9 personnel were found overlapped on top of each other in one spot, thereby raising the possibility that they might have been lined up and killed. This issue can be ascertained only after further investigation. However, based on the facts gathered to date, it can be concluded from the post-mortem report that one security personnel was found to have been killed by a sharp weapon which was used to cut his throat, thereby providing grounds to suppose that the soldier had been killed after being taken under control.

- The right to life has been guaranteed by prevalent laws of Nepal and also guaranteed by International Humanitarian Law. However, the Maoists have in contravention to these laws killed a non-combatant civilian Shakti Malla by subjecting him to torture after taking him under their control.
- Similarly, it was found that the Maoists captured and took people hostage including the injured and sick as well as security personnel who had laid down their arms before them. Hostage taking of security personnel who have laid down their arms is in contravention to Article 3 of the Geneva Conventions, 1949.
- The main reason for the large number of casualties can be attributed to the armed attack of Maoists and their use of bombs, explosives and firearms; the casualties are also high due to the location of the base camp next to a high cliff. This conclusion was reached on the basis of the statements of local residents, security officials in the district, and statements of the injured and sick persons, as well as the study of the nature of dead bodies and the inspection and observation of area where the incident had occurred.
- The post-mortem report states that 9 bodies among the dead security personnel could not be identified. The autopsy report does not even mention name of the 9 deceased persons. This shows that there has been serious negligence in identifying them. It was found that Shiva Karki (of Dhading District) and Laxmi Krishna Desai (of Lalitpur District) were identified as soldiers of the Royal Nepal Army who had been killed. However, their names became public among those security personnel abducted by the Maoists. Families of Shiva Karki and Laxmi Krishna Desai were given the bodies of some other persons. The Royal Nepal Army Headquarters' Human Rights Cell in this connection stated that the condition of the bodies made it almost impossible to identify, primarily due to head wounds as well as blast injuries in the bodies, along with the decomposing state of the bodies. The body in which the name card of Shiva Karki was found was handed over to his family on the assumption that it was his body. While other security personnel wear a name tag in their neck, it was informed that the personnel of the Pioneer Battalion might not have had such name tags. The explosion that occurred during the cremation of the deceased Dhan Bahadur Pandit is a serious matter. The expert involved in the autopsy of the body clarified that he could not gather all the details of the body due to the lack of an X-Ray machine in the hospital to undertake examinations. The possibility that the bomb may have been intentionally concealed in the dead body, or the possibility that one of the bombs aimed at the person had not detonated and had remained in the body (given that the person had died from a bomb explosion), were also discussed with the expert.

2. Right to Health

Neither of the parties to the conflict had paid any attention to environmental hazards and the possibility of the an outbreak of diseases that could spread due to the decomposing dead bodies left out in open areas where people generally pass by and in fields belonging to ordinary citizens. This has resulted in the violation of the right to physical and mental health guaranteed by Article 12 of the Convention on Economic, Social and Cultural Rights, 1966. Similarly, the act is also in violation of the rights of the child to enjoy the highest attainable standard of health, as well as facilities for the treatment of illness and rehabilitation of health guaranteed by Article 24 of the Convention on the Rights of Child, 1989.

3. Freedom of Movement

Every citizen of Nepal has the freedom to move throughout the kingdom as guaranteed by article 12 (d) of the Constitution of the Kingdom of Nepal, 1990. Similarly, Article 12(1) of the International Covenant on Civil and Political Rights, 1966 states that “Everyone lawfully within the territory of the state shall have the right to liberty of movement and freedom to choose his residence.” However, the establishment of the temporary base camp in Pili and its boundaries that were surrounded by barbed wires obstructed the pathway used by the ordinary people and there were no alternative roads for the local people to use. As such, it was found that the security personnel had violated the right to freedom of movement guaranteed by the Constitution and legal instruments.

4. Use of Child Labor

It was found that child laborers had been used in construction of the Karnali highway and as the Royal Nepal Army is responsible for the construction of roads in the particular area, the use of child laborers violated existing Nepalese laws and Article 32 of the Convention on the Rights of Child, 1989.

5. Right to Education

It was found that the Maoists had abducted schoolchildren and forcefully made them take up whole timer (WT) membership. Moreover, the killings in Kalika Primary School in Talloshera with the slitting of throats and spilling of blood around the school premises as well as the dead bodies left near the school created a great deal of fear among the students who could not attend the school for one week frightened by the violence in the school. Such acts have violated the right to education guaranteed by Article 13 of International Covenant on Economic, Social and Cultural Rights, 1966 and the Right of the Child to education guaranteed by Article 28 of the Convention on the Rights of Child, 1989.

III. Suggestions and Recommendations

1. To His Majesty’s Government (HMG) and the Security Agencies

The Commission makes following recommendation to His Majesty’s Government and the security agency:

- 1.1 The Commission recommends His Majesty’s Government to provide maximum compensation as per the HMG policy to the relatives of Shakti Malla and Pare Gharti, the unarmed civilians not associated with the conflict. Furthermore, the Commission recommends the Government to provide maximum compensation to the families of security personnel killed in the incident; to make arrangements for free medical treatment of injured people; to enquire about the loss of property owned by ordinary people and to provide them with compensation, and also provide compensation to the owners of the land acquired by the security agencies for the temporary security base camp and the helipad.
- 1.2 As it was found that the identification of dead bodies had been carried out in a negligent manner and had resulted in confusion due to the shortcomings in undertaking proper inquiry, the Commission draws the attention of the Royal Nepal Army not to repeat such errors and to be aware on such activities in future.

- 1.3 In such an incident with significant losses of lives and property, it was found that necessary cautionary measures such as protecting the incident spot and legal procedures before removing dead bodies such as preparing the affidavit of autopsy, photographing of the bodies were not undertaken, which resulted in the loss of important evidence related to the incident. Not undertaking the autopsy of Shakti Malla was also a serious procedural error. As such, the Commission recommends His Majesty's Government to draw the attention of the concerned agencies to these issues.
- 1.4 The explosion of the dead body during cremation indicated danger to the person involved in carrying out autopsy of the dead body and even indicated risks in the autopsy processes. It is therefore necessary to suggest that learning from the incident, arrangements for necessary preventive security measures in the process is required. Likewise, the Commission draws attention towards making arrangements for providing necessary instruments for the autopsy process including the availability of an X-Ray machine.
- 1.5 In view of the fact that the dead bodies remained out in the open and were not claimed by either parties and the possibility of an outbreak of diseases due to the decomposition of the bodies as feared by the local villagers in the area, and since no humanitarian relief organization had managed to reach to the spot, the Commission recommends to the Government to make necessary arrangements in this regard and be aware of the problem in the future.
- 1.6 There was no clear policy to provide with medical treatment for the non-military laborers who had been injured in accidents during the construction work in the Karnali highway. Neither was there any provision to provide compensation in cases of mutilation and death of the non-military laborers. As such, it is recommended to immediately create a relief fund from the construction budget and immediately clarify a position as to who would provide the compensation about and the time period within which the compensation would be provided.
- 1.7 To issue direction to all the persons involved in the construction work to prohibit the use of child labor in such risky work as it was found that the child laborers below the age of 16 years had been used in the construction work.
- 1.8 To make arrangement to introduce and monitor transparency measures to prevent unequal pay between men and women as confusion was widespread among general people about it.

2. To CPN (Maoist)

The National Human Rights Commission calls the CPN (Maoist) to act as following in regards to the incident in Pilli:

- 2.1 As it was found that non-armed civilians under the control of the Maoist cadres were killed after being subjected to cruel torture, such activities should be immediately halted and the Maoists should caution its cadres in all levels to halt such activities. The CPN (Maoist) should cooperate with the Commission and assist in its investigation work by providing details of the individuals involved in such criminal activities; individual responsibility for such actions is incurred as per the Geneva Conventions.

- 2.2 The Commission considers it a positive step taken by the Maoists in making public the names of the RNA personnel in their captivity and their commitment to treat the captives humanely as published in newspapers on August 22, 2005. The Commission believes it is a positive step towards conflict mitigation and initiating dialogue. As hostage taking is in contravention to the Common Article 3 of the Geneva Conventions, 1949, the hostages should be immediately released.
- 2.3 As local residents have stated that more people were killed than the number stated by the Maoists, the CPN (M) should make public the actual numbers of people killed and their detailed description including details of their names and identities.
- 2.4 The CPN (M) should observe human rights and international humanitarian law by informing the family members of those who died from their side and allow the practicing of cultural and traditional rituals related to cremation and its aftermath.
- 2.5 The CPN (M) should introduce themselves as a responsible political party before international community by cooperating in the construction work and not posing any obstruction to the construction of the Karnali highway, as it is for the most backward, poor people of the Karnali region who have long been denied the realization of human rights.
- 2.6 Armed groups that are distinct from the armed forces of the state should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years as per article 4(1) of the optional protocol to the Convention of the rights of the child on the involvement of children in armed conflict, 2000.

3. Miscellaneous

The Construction of the Karnali Highway

The construction of the Karnali highway which serves as the lifeline for the residents of Karnali is for the benefit of everyone. The ordinary people, representative of political parties and civil society have all stated that the construction of the highway should not be linked to the cause of conflict. In this regard, the Commission appeals for the following:

- 3.1 Both parties to the conflict should not to undertake any military action to affect the areas where the highway is being constructed.
- 3.2 In the present context of the armed conflict between the security forces and the CPN (Maoist), bearing in mind the occurrence of armed encounters anywhere and at any time, any activity causing risk to body and life of general people should be halted in roadways that are regularly used by the ordinary people, and in other public places where people may gather, such as schools, community houses, health centers, and places of religious significance etc., while abiding by human rights and humanitarian law in practice.
- 3.3 As an environment of fear still prevails in Pili and nearby villages, any kind of activity that infringes on the exercise of the rights of local people should be stopped.