

On June 6, 2004, Krishna Prasad Adhikari, a 17-year old school boy of Phujel, Ward 7, Gorkha was visiting his grandparents" at Ratnanagar Municipality, Chitwan when he was kidnapped at Parsauni, Ward 8 of Ratnanagar by three individuals, who arrived in a motorbike. He was later found murdered ruthlessly in the evening around 8 PM at Bakulahar Chowk of same city. The then Maoist rebels had claimed the responsibility of the murder.

Nanda Prasad Adhikari, father of Krishna Prasad Adhikari registered First Information Report (FIR) at District Police Office, Chitwan on June 7, 2004. One and half years later, Noor Prasad Adhikari, elder brother of Krishna Prasad Adhikari registered another FIR on December 11, 2005 against thirteen individuals. However, the Police didn't even start investigations.

Upon autopsy investigation report released on June 7, 2004, the cause of death was found to be bullet injuries in the head, which had penetrated through the forehead from the rear side. Three such bullet holes were found in the head and the body had marks of blue bruises as both hands were tied with a rope in the scene of crime.

Later on June 12, 2006 the Council of Ministers unilaterally decided to close the file of Krishna Prasad Adhikari labeling it as a conflict era case. On April 5, 2009, National Human Rights Commission (NHRC) recommended the Government of Nepal to provide the family with NRs. 300,000 as compensation. The Commission had also recommended criminal investigation on the case but all successive governments have been turning blind side to the victim's family.

The Adhikari family subsequently grew frustrated at the reluctance of police and district administration offices to investigate the death of their son. Mrs. Ganga Maya Adhikari and Mr. Nanda Prasad Adhikari, as a last resort began their hunger strike in front of Prime Minister's Office at Baluwatar in January, 2013. The police arrested them time and time again and even were admitted to Patan Mental Hospital on June 14, 2013 for 35 days saying that the couple is mentally challenged.

In the light of injustice, Human Rights Organizations of Nepal including civil society organizations pressurized their release. Upon their release the Adhikari duo again resumed hunger strike on July 21, 2013. On August 13, 2013, Maoist leader Pushpa Kamal Dahal held a press conference and warned the government not to initiate the case, threatening that the legal proceeding of Krishna Prasad Adhikari case would hamper the Peace Process and Elections and even blamed Human Rights Defenders who had advocated for justice for creating unnecessary tensions.

On August 12, 2013, NHRC again urged the government to investigate the case of Krishna Prasad Adhikari and to book the guilty individuals. After NHRC's recommendation, The Chitwan District Police Office began receiving records on the murder and on August, 19, 2013, citing technical obstacles to re-launch the 2004 murder file, Chitwan District Police began fresh investigations, trying to gather evidence.

The Adhikari duo ended their hunger strike on September 7, 2013 as the Police had arrested Ram Prasad Adhikari, one of the perpetrators mentioned in the FIR. UCPN (Maoist) called for strike to protest the arrest of their party member and also instructed their members to picket all 75 District Administration Offices in September, 2013. Accused Ram Prasad Adhikari was released at the end of the month by Chitwan District Court citing lack of evidence for his indictment. During the years ahead the police have arrested all but two accused but all have been released due to lack of evidence.

The Chitwan District Court registered the murder case of Krishna Prasad Adhikari on April 13, 2014 after prolonged pressure from Human Rights Defenders and members of civil society organizations throughout the years. Till date, none of the people accused in the FIR have been tried. The family has always maintained that the murder occurred due to land dispute and is a criminal offence while the Maoists have rallied behind this case in a political manner.

Nanda Prasad Adhikari died on September 22, 2014 after 329 days of fast-unto-death at Bir Hospital. The Adhikari family has been refusing to receive the body and give him a funeral until they get justice.

The case of Krishna Prasad Adhikari is still in hearing at Chitwan District Court. Out of 13 defendants, two are still at large. Among these two absconded individuals, the Supreme Court has ordered to arrest one Chabilal

Paudel but the police administration and government haven't arrested him till date. Another alleged individual, Rudra Acharya who has been living in UK can be brought back to Nepal by issuing notice through Interpol but the government and police administration haven't acted. On June, 2016 in support of Ganga Maya Adhikari, application was filed seeking the update of progress made by Nepal Police in regards to Interpol Red Corner Notice, the police has issued against, Rudra Acharya, principal accused but the police haven't been able to arrest him although whereabouts have been found.

On August 14, 2016, eleven Human Rights Activists were taken into custody including a number of HURON members and President, Indra Prasad Aryal for protesting against the lack of promised implementation by the Government as part of "Save Ganga Maya" campaign.

Human Rights Defenders from Human Rights Organization of Nepal has been involved in over a hundred activities for the case of Krishna Prasad Adhikari. HURON has been advocating, lobbying, providing legal support, assisting in case registration at Chitwan District Court, issuing Press Statements organizing sit-ins and even protesting on the streets for swift justice against the perpetrators of the murder.

Out of seven petitioners, Indra Prasad Aryal, President of HURON is also one of the advocates, advocating for Ganga Maya Adhikari in her fight for justice and blatant case against what can be considered political impunity for criminal cases.

There is still strong possibility of justice denial for Ganga Maya Adhikari due to the present nature of the coalition government in Nepal. The Communist Party of Nepal (Maoist Centre) is the key political party to form the present government and the cadres of that party are the prime suspects of the murder. The situation demands the continuous and more pressure on the police, government and the political parties' leaders from the human rights defenders and the civil society activists to bring the justice for Krishna Prasad Adhikari.

Recent Update *(as of March 2018)*

On February 25, 2018 in a blatant case of lengthening the legal proceedings, district judge of Chitwan District Court, Mr. Kul Prasad Sharma gave verdict to inquire more about the case by calling in petitioner Mr. Nur Prasad Adhikari (elder brother of Krishna Prasad Adhikari) at the court.

Human Rights Organization of Nepal is bereaved this recent development since the final verdict on this much awaited war-era case was slated for March 20, 2018 but however, the case which is under the jurisdiction of Chitwan District Court has in turn again defected from providing much delayed justice to Mrs. Ganga Maya Adhikari, a discouraged mother and victim of judicial such a judicial proceeding in Nepal. The repeated rescheduling of the case in a series of postponements, now over a dozen times has led to Mrs. Adhikari giving up hope for justice. This is against the core values of the judiciary which has now lucidly depicted their intent in not providing relief to this politically charged case in Nepal, which we, HURON and the plaintiffs are against since it is not a political case but a blatant case of murder to be served in the scope of criminal justice.

In recent days, Mrs. Adhikari who though old yet still hopeful of justice for her younger son and her martyred husband Mr. Nanda Prasad Adhikari seems to be failing both in health and in confidence is a shameful message that the judiciary system in Nepal is sending which needs to stop. There seems to be sense of propriety in the court proceeding for out of thirteen accused, seven have been released on bail, four have been released on general date and two are reported to be not found by the Nepal Police. However, in recent elections both of these accused were seen parading with Ms. Renu Dahal, the new Mayor of Bharatpur.

The people of Nepal were already left shamefaced when Mr. Nanda Prasad Adhikari passed away after 329 days in the course of hunger strike on September 22, 2014 and now with Mr. Nur Prasad Adhikari who has been out of contact for the last three years is being called at the court for further inquiries after four years of the case being registered at the court; this deliberate prolonging of the case, hesitation in committing to human rights and justice, turning a blind side to humanity and political pressure to not provide final verdict speaks volumes about the intention of those who are in authority to deliver justice.

The friends of Mr. Nur Prasad Adhikari who serve as primary witness in this case have never been called upon and by the court whose statements can considerably be taken into account for an impartial decision in establishing criminal offence. This recent decision of the court to call upon the missing plaintiff Mr. Nur Prasad Adhikari will certainly delay final hearing and the affect the course of verdict which is exactly what the outcome that the Maoists want.

Present Status of Human Rights in Nepal

- A. *Dalits* are historically marginalized, oppressed and treated as untouchables in Nepal and assigned to the bottom of the social hierarchy. Historically known as a *Tallo Jati*, and frowned upon, they are deprived of basic human dignity. Although legally untouchability was declared illegal in Nepal in 1963 AD, however socially, Dalits are still subjected to discrimination. In urban areas though discrimination against Dalit group is uncommon, it is still prevalent and entrenched in rural areas in Nepal.
- B. *Women* in Nepal are regarded as the second-class citizens. Due to the patriarchal mindset and male chauvinistic attitude, women, especially in rural Nepal are facing social problems as they do not have accessibility to safe motherhood, maternity health care and security. Violence against women is an overwhelming reality in Nepal that occurs in various forms such as sexual violence, rape, sex selective abortion, domestic violence and workplace discrimination. Additionally, social evils and ill practices against women are still prevalent which includes *Balbibaha*, *Chaupadi*, Dowry System, problem of uterus prolapse due to discrimination that put women and their lives at greater risk and position them subordinate to men in every aspect of their lives even in the 21st century.
- C. The major concern of *Madhesh* in Nepal is the problem of accessibility to the state mechanism. Madhesi group and communities believe that they do not have the same rights as other citizens. There is a shared feeling of identity crisis as they think of themselves as excluded and discriminated social group. Few yet powerful high caste populations within the Madhesi community have dominated and oppressed the Dalit and marginalized communities within Madhesh. Due to lack of accessibility in Madhesi communities in the social and economic sector, they do not have equal and adequate access to basic education and health services. Another prejudice against prevalent among the Madhesi community is the oppression of Madhesi women. Gender discrimination in Madhesh subjugates women deeply as they are affected by domestic and sexual violence where the practice of child marriage is much more prevalent. Lack of education and labor migration is two corresponding problems existing among this community all because of the lack of access to development.
- D. Nepal is a home and host for tens of thousands of *Refugees*, mostly Bhutanese and Tibetan origin. Due to the existence of many refugees in Nepal and issues surrounding their settlement and integration has created many problems among the refugee communities. The concerns and problems affecting Tibetan Refugees start in Nepal are with birth registration. Since 1989, the government has stopped the provision of Refugee Card. The new Tibetan refugees and children born to Tibetan refugees' lack identification. Refugees are not permitted to pursue higher education, involve or start a business or even get an employment. Furthermore, cultural and religious practices of Tibetan refugees are limited by the Government.

Challenges for Human Rights in Nepal

Rule of Law: Following each major political event in Nepal, the rule of law deteriorates marked by violations of human rights law from both sides i.e. the ruling government and the opposition. Nepal's post-Rana history has been epitomized by constitutional uncertainty and fight for democracy time and again which has created ambiguities subject to manifold interpretations and contributed to decline in security situation.

Political Pressure on Judiciary: Time and again, the Judiciary of Nepal has found itself intimidated and vulnerable against political parties and leaders, who for their own greed continue to corrupt and disrespect the judicial system, its appointments and decisions.

Elected Dictatorship: As Nepal appoints individuals to the upper hierarchy of bureaucracy and elects new representatives and assembly members, the connection with public seems to be lost with focus on maintaining and exploiting power, incumbent of the high positions leaving behind infrastructure development works to nepotism and corruption, denying the citizens of development, violating human rights

Lack of Executive Implementation: On decisions of the Court, the sense of responsibility and accountability is low from the side of government is low. The cases of Bal Krishna Dhungel and Ganga Maya Adhikari are enough to suffice the explanation of lack of implementation. The Supreme Court has ordered Nepal Police to arrest Bal Krishna Dhungel, an absconding murder convict since April, 2017. The CPN Maoist Center leaders have publicly been challenging the court verdict since he was convicted of murder by Okhaldhukga District Court in 2004. There is always an enormous political pressure not to arrest Mr. Dhungel, defying the judicial system. There is also lack of judicial implementation in Nepal. In the case of Ganga Maya Adhikari, who has been in hunger strike since January, 2013 for her murdered son, the Chitwan District Court has been hearing the case only since September 2016. Out of 13 defendants, two are still at large. Among these two absconded individuals, the Supreme Court has ordered to arrest one Chabilal Paudel but the police administration and government haven't till date. Another alleged individual, Rudra Acharya who has been living in UK can be brought back to Nepal by issuing notice through Interpol but the government and police administration haven't acted.

Transitional Justice

Either there is a minimal understanding of human rights or there is an acute level of indifference for human rights among political leaders in Nepal. Since the signing of Comprehensive Peace Agreement in November, 2006, the major political parties have time and again succeeded to influence the legislation with vague and ambiguous interpretations of law and misuse of power as in the case of Truth and Reconciliation Commission. The agony and trauma of tens of thousands who lost family members during the conflict era will not be never be addressed in Nepal if Comprehensive Peace Agreement is cited loosely for escaping justice.

The CPA mentions of establishing a National Peace and Rehabilitation Commission which may set up necessary mechanisms for the success of peace campaign. However, with tacit support from both sides, the commission has been used to deny justice rather than provide it.

There are 60,000 petitions registered in Truth and Reconciliation Commission from the conflict victims. Further, 3,000 are complaints are received in Commission of Investigation on Enforced Disappeared Persons (CIEDP). The mandates of both these commission should be to ensure that justice, accountability and reparations are achieved by the victims of Maoist era conflict but these commissions look to serve political interests to escape justice rather than achieve it.

In addition to this, with powers to grant amnesty to even those who were seriously involved in heinous crimes under the banner of politics, parliament passed the TRC Act. When the TRC and Commission on Enforced Disappearance bill was adopted in April, 2014, even the UN High Commissioner of Human Rights had reservations regarding failure to abide by the decisions of Supreme Court (January, 2014) and practice of

minimum international standard to be considered in formation of such commissions. There have been repeated calls of amendments and to scrap out the amnesty provisions however none of these calls are heeded till date.

There is also a major imbalance of power between the victims and alleged perpetrators in Nepal. The Article 22 of TRC Act states that “if a perpetrator or a victim files an application to the Commission for mediation, the Commission may mediate to reconcile mutually between them”. There are concerns that in criminal matters such reconciliation is very problematic and almost impossible. These concerns highlight the imbalance of power between the victims and perpetrators. The victims are from poor and marginalized communities whereas the alleged perpetrators are from the political parties, police, military in our case.

The appointment to TRC has been constituted of individuals, which are political in nature and are to serve the vested interest of people in power. For a comprehensive legal proceeding, there needs to be preservation of documents of proofs which the TRC seems unable to carry out. Also, on the government hasn't heeded the directives of the Supreme Court that any mechanism for transitional justice must ensure victims the right to remedy and reparation, which includes right to truth, justice and guarantees of non-repetition and the government is required to make necessary legal and institutional measures to enable and ensure the establishment, adequate resourcing and maintenance of effective victim and witness protection mechanisms.

The government, international community and non-government organizations clearly have responsibility to support the victims and ensure justice, including giving technical support and strong advocacy for their predicament. Even though the United Nations has claimed to have evidences of conflict era cases, in Criminal Justice, such burden of proof is a problem for concrete establishing evidence. The project based tendency of non-government organizations has also hampered the grievances of victims as the international community is gradually failing to ensure transitional justice in Nepal.

Recommendations to TRC

1. There is an urgent need for protection and preservation of documents of proof which includes, concrete evidences, eye witness, prior state level and NGO reports and, dead bodies.
2. The political leaders should be made aware of the role of TRC that the commission isn't predominantly for pretentious reconciliation but also for recommendation of legal actions. This can also include training the new generation of political leaders on Transitional Justice.
3. Development of and recruitment of independent experts for transitional justice and forensics.
4. Immediate documentation statements made by eye witness.
5. Ensuring that the composition and structure of commission comply with international standard by pressuring the amendment of TRC Act from the parliament.