

Court of Inquiry Board¹

This report submitted by the Court of Inquiry Board includes opinions and suggestions of the Court of Inquiry Board established under the chairpersonship of Colonel Mr. Mohan Bahadur Basnet after having completed understanding the truth from nearly the entire group of relevant individuals and having completed all other working procedures related to the investigation of the facts and truths relevant to the incident whereby the death of a girl named Maina Sunar residing in Kharelthok VDC ward number 6 of Kabhrepalanchok district occurred after she had been taken and arrested by a covert team deployed on the morning of February 17, 2004 from Shri Birendra Peace Work Training Center, Panchakhal.

Structure of the Board

Chairperson: Colonel Mr. Mohan Bahadur Basnet
Member: Lt. Colonel Mr. Ratna Prakash Thapa
Member: Major Mr. Bharat Kumar Khadka

Contextual Materials

1. A preliminary report related to the incident sent to the relevant agency by the then acting Center Chief who was at that time Lt. Colonel and is now Colonel Babi Khatri,
2. Published news from various newspapers and magazines related to the presented incident,
3. Body examination report and incident location report as made and said by the police,

Legal Documents Involved

1. Testimony given before the Board by the then Lt. Colonel, now Colonel, Babi Khatri who was working at the Shri Birendra Peace Work Training Center in the form of Center Chief at that time.
2. Written testimony given by the then Captain, now Major, Niranjan Basnet who was the commander of the covert team that went to arrest Maina Sunar on the morning of February 17, 2004.
3. Testimonies given before the Court of Inquiry Board by those directly involved in the incident, Captain Sunil Prasad Adhikari and Captain Amit Pun.
4. Written testimonies given by 3 soldiers, including a driver, a Sergeant Non-Commissioned Officer-2, and an Infantry-2 who were involved in the incident according to orders and who saw in a direct way the presented incident.
5. Other gathered pieces of evidence.

Summary Details of the Incident

¹ Note: Each page of this document's original has signatures at the top and bottom of the document, except for the last page titled, "Further Details Given Below"

1. It is found that Maoist cadre Bimala B.K., who was arrested by the police from Palanchok Bhagwati area in last week of the month of Magh in 2004 (mid-February), was brought to the Satrumardan company stationed in Dhulikhel for preliminary questioning and after preliminary questioning to the Shri Birendra Peace Work Training Center, Panchkhal.
2. Information was received during the questioning with Bimala B.K. that Devi Sunar, whose house is in Kharelthok, Kabhrepalanchok District and who had been living in that place, and her daughter Maina Sunar also, are involved in the Maoist party.
3. Taking the arrest of Devi Sunar and her daughter Maina Sunar as necessary and according to the order of the then acting Chief of Shri Birendra Peace Work Training Center the then Lt. Colonel, now Colonel, Babi Khatri, under the command at the time of the then working Captain, now Major, Niranjana Basnet, a 12-person covert team was prepared, bringing along the Maoist cadre Bimala B.K. who was there in detention, and at approximately 1:30 in the morning of February 17, 2004 getting into a pick up van that team departed in the direction of Palanchok Bhagwati.
4. After arriving in the area of the Palanchok Bhagwati temple, the covert team headed by foot toward Kharelthok, the place where Devi Sunar's house is, leaving the car and the driver in the place where army individuals had been deployed for security.
5. It is found that, after having arrived at Devi Sunar's house established at Kharelthok, following what was shown by the detained Maoist cadre Bimala B.K., someone made a cordon around the house according to method and some individuals, including Captain Niranjana Basnet and Captain Sunil Prasad Adhikari, had the door opened and undertook searching. During the search, Maoist related things could not be found from the house or from Maina Sunar and other individuals in the house.
6. It is found that at that time, Devi Sunar was not there and in asking "Where has she gone?;" information was received from her husband that she had gone toward her maternal home that is in Pokharichauri area of Kabhrepalanchok district; in her house there was one daughter estimated to be 16 years and a son estimated to be 11 years and according to the gesture that Bimala B.K. made toward the girl, she confirmed that that girl was Devi Sunar's daughter Maina Sunar and the security forces arrested that girl.
7. It is found that in arresting and after taking into custody Maina Sunar, Major Niranjana Basnet saying to the girl's father, "We are taking her for questioning, when your wife comes back, send her to the Panchkhal barrack, we will send her back after questioning," took Maina Sunar by foot toward Palanchok Bhagwati.
8. Having arrived at the place where the vehicle had first been located, Bimala B.K. and Maina Sunar were placed in the back of the vehicle and guards were placed side-by-side with them, with Major Niranjana Basnet driving the vehicle, they arrived at Shri Birendra Peace Work Training Center, Panchkhal in good condition on the morning of that date at approximately 8:30 and no unpleasant incidents took place on the road.
9. It is found that while the vehicle was stopped in front of the officer's mess, Bimala B.K. and Maina Sunar got out of the vehicle and after having given the report of the arrest of Maina Sunar before then Lt. Colonel now Colonel Babi Khatri who was there, he, while sending Bimala B.K. toward the place where she had first been placed in detention, gave the order that Maina Sunar be placed there and sent toward their own lines the team who had come back after having completed their covert deployment.

10. After that, questioning of Maina Sunar took place in the presence of 7 people including: then Lt. Colonel, now Colonel, Babi Khatri; then Captain, now Major Niranjan Basnet; Captain Sunil Prasad Adhikari; Captain Amit Pun; Sergeant Non-Commissioned Officer Khadak Bahadur Khatri; soldier Dil Bahadur Basnet who was doing the work of runner for the officer's mess; and soldier Shrikrishna Thapa.
11. It is found that soldiers Dil Bahadur and Shrikrishna Thapa brought cold water in a large pot that had been hanging on a nail after, according to the order of Colonel Babi Khatri, it was said that there should be submersion in water, and after it had been ordered by Captain Sunil and Captain Amit for the soldiers who were there to bring water in a large pot. It is found that, after that, Captain Sunil and Captain Amit gave the order saying that she won't be convinced just like that, make her convinced by soaking her in water; soldier Shrikrishna Thapa, in grabbing Maina Sunar by the neck, started submerging her in the water that was in the pot. It is found that after getting the order that submersion should be for about 1 minute before removal; Shrikrishna did submersion and removal 6 or 7 times. It came to be understood that in doing this, all of the clothes that the girl was wearing became soaked and she coughed and sneezed with the water in her nose.
12. It has become clear the fact that Major Niranjan Basnet who had gone and returned with the covert team was there only during the beginning of the questioning and, in the time after the girl had been submerged in water once, after telling Colonel Babi Khatri, he went to sleep.
13. It is found that after not being able to force a confession about anything despite submerging and removing Maina Sunar in the water, and Colonel Babi Khatri having given the order that now she will be convinced by being administered **electrical current**; according to the **orders** given by **Captain Sunil** and Captain Amit, soldier Shrikrishna Thapa, taking and fixing the line from the hot water heater, said "On what part of her body shall I administer?;" having gotten the order that it should be administered on the soles of the feet and on the hands, on Maina Sunar's wet feet and wrists, an electrical current was administered. It is found that after the captains having said, even now she isn't convinced, convince by administering more, soldier Shrikrishna administered the electrical current up to 4 or 5 times to Maina Sunar.
14. In this way, during the time that the electrical current was being administered, Maina Sunar was initially frightened and in seeing that after 4 or 5 times of administering the electrical current, blood was coming from her wrists, soldier Shrikrishna Thapa in saying that blood is coming from her wrists, what to do, and in becoming afraid of administering the electrical current, from there slowly backed off and stopped administering the current. What has been revealed from his testimony is that at that time, Maina Sunar had already become weak. It has come to be understood that during the questioning with administering of electrical current of Maina Sunar, she had admitted that she had been involved with Maoist activities for 2 or 3 months, but there is no other evidence to clarify this.
15. It is found that after soldier Shrikrishna Thapa pulled back, Captain Sunil and Amit, after ordering Sergeant Non-Commissioned Officer who was there, Khadak Khatri, to convince by administering more electrical current, that Sergeant Non-Commissioned Officer started administering the electrical current. What has come to be clear is that even after about 1 ½ hours of torturing, and in nothing of significance having come from Maina Sunar, while saying that after providing her food, there would be questioning, she

was sent toward the watchtower.² An attendant, having gone from the officer's mess to bring food to that girl, gave the food but Maina Sunar didn't eat. Despite the testimony given by **Captain Sunil Adhikari** saying that she had eaten, he hadn't seen himself, and in that he explained that I have heard as much, there is no other evidence to clarify this and according to the written testimony of eyewitnesses saying that she had not eaten, it does not appear necessary to conduct further inquiry into whether she had eaten or not eaten.

16. There was a sentry deployed for Maina Sunar who had been placed close to the tower in a condition whereby she was blindfolded and her hands were bound behind her. It is understood that at that time, those who were there included Sergeant Non-Commissioned Officer Khadak Bahadur Khatri and soldier Shrikrishna Thapa. It is found that at approximately 11:00 Maina Sunar, in having come to be in serious condition, vomiting and foaming at the mouth; the sentry told this to Sergeant Non-Commissioned Officer Khadak Bahadur Khatri and Sergeant Non-Commissioned Officer Khadak, in having given the message to the sleeping Major Niranjan Basnet, that Major and Sergeant Non-Commissioned Officer Khadak Bahadur both arrived at the room of Colonel Babi Khatri to report. It has been informed by those including Major Niranjan Basnet, in reporting that the condition of Maina Sunar had become serious; a call for medical happened from those including Colonel Babi Khatri; in going to the place where Maina was, her condition was serious and when the medical orderly came and checked, her death had already occurred.
17. It is found that, in this way, after Maina Sunar's death had already occurred, in that there was Colonel Babi Khatri's order saying that this issue should be kept secret, while putting into practice the secrecy, thinking toward burying the corpse, Colonel Babi Khatri gave an order to Captain Amit Pun that the corpse be buried in a secret manner and an order to Major Niranjan Basnet that the police be brought from the Panchkhal police post in order to make the affidavit from there.
18. It is found that Captain Amit Pun, having gotten the order to bury the corpse in a secret way, in calling Junior Commissioned Officer Surendra and giving information about the incident, gave the order that a pit be dug approximately 50-60 meters outside the wire fence to the northeast of the officer's mess and after some time, according to the order they were given, soldiers Dil Bahadur Basnet and Shrikrishna Thapa each brought 1 sack; after the soldiers brought the 2 sacks, the sacks were pulled over the head and feet of the corpse and having been made to place [the corpse] in the vehicle, with Captain Amit Pun driving, [they] headed in the direction of the place where the pit was made. It is found that while the vehicle was stopped having reached the place below, the soldiers who had gone together were given the order to quickly take the body out and carry it away and soldiers Shrikrishna and Dil Bahadur quickly carried the corpse that had been placed in the sack to the edge of the pit that had been prepared outside the wire fence and placed it there.
19. It is found that, in having placed the corpse close to the pit, being made to remove the sack, soldier Dil Bahadur Basnet was given the order by Captain Amit to shoot one round from a colt command weapon into the back of the deceased and, in soldier Dil Bahadur's

² The term *hawaghar* is literally wind house, but refers to a type of structure often built for palaces that generally served as watch towers. The term generally refers to a structure consisting of more than one level above ground level.

having fired a round, after that round had not struck the body of the deceased, Captain Amit himself from that weapon fired 2 rounds; but it has come to be understood that only one round struck the body of the deceased. In this way, after the bullet had entered the body of the deceased, while taking a photo of the corpse and saying that in no case should the corpse be buried with clothes, bring the corpse to the pit having removed clothes,³ following the given order that the clothes be removed, having removed the clothes the deceased and the deceased's clothing were put in the pit; at that time, through those including Non-Combatant Enrolled, the work of burying the corpse was completed.

20. In having been deployed to do the work of summoning the police for that affidavit, Major Niranjan Basnet came to the police office in Panchkhal, brought 3 people including Police Sub-Inspector-1, Police Assistant Sub-Inspector-1, and Policeman-1 and in coming to the barrack reported to Colonel Babi Khatri. It is found that Colonel Babi Khatri, to the police workers who had arrived there, explained with a fabricated story that Maina Sunar, who had been arrested and taken in by the covert team, in having thrown herself from a vehicle in a place called Hokse, broke the security cordon and in attempting to escape, was shot at and killed by the security forces; having been given the direction to prepare a body examination report in accordance with the law, the police workers prepared the report while sitting in the barracks. It is found that the police were not shown the place within the barracks where the incident really occurred and were not shown the corpse.
21. The fact has become clear that after that, a fabricated report was made and sent to the relevant agencies saying that Maina Sunar, placed in the pick up van and taken by the covert team, having broken the cordon of security escaped into the jungle in Hokse, a place between Bhagwati temple in Palanchok and Panchkhal and in the security forces having fired shots, her death occurred in the place of that incident.
22. In that her own daughter Maina Sunar, who had been arrested by the security forces had not returned home, those including Maina Sunar's mother, Debi Sunar, father Purna Bahadur, and teachers from the school where Maina Sunar had been studying, having made contact and come to the Panchkhal barracks many times, were, according to orders, given the answer that [she] had not been brought; and given that interest increased in understanding the truth of the presented incident after they sought assistance from various national and international human rights organizations, the Court of Inquiry Board was established to find out the reality through understanding the facts and truths about this incident from the Royal Nepali Army Headquarters.

Opinion of the Court of Inquiry Board

The Court of Inquiry Board, in a thoroughly constitutional manner, has completed the work of seeking out the truths about the presented incident associated with the image of the Royal Nepal Army. The Court of Inquiry Board being located in the Royal Nepali Army Headquarters, has completed the work including the questioning from various perspectives of individuals involved in the incident. In considering and deliberating on the testimony given by eyewitness military personnel and military personnel, the situation didn't appear to require the inspection of the place of the incident. Nearly all of the military personnel who had been deployed in the covert team from Panchkhal on the morning of February 17, 2004, gave factual testimony in a very simple

³ In Hindu culture, a respectful burial of a corpse requires removal of clothes.

manner about the incident. According to the testimony that they gave, Maina Sunar was arrested from her house established at Kharelthok and taken to the barracks; no unpleasant incidents happened along the road; in the process of questioning by giving torture, in not being able to withstand the torture, her death occurred; this detailed account of facts has been received. The Court of Inquiry Board cannot agree in any way with the account sent one year ago from the Shri Birendra Peace Work Training Center saying that Maina Sunar's death occurred by the security forces shooting in the situation whereby there was escaping by breaking the security cordon in the Hokse jungle. The issue that has become clear includes that a false report written about the incident was sent to the superior agency by the Acting Chief of that Training Center Colonel Babi Khatri who by writing patently untrue things in an exaggerated manner, fabricated things. Despite the efforts to knowingly conceal guilt, to disrupt and to keep in the dark through ignoring the initial insisting that factual testimony be given by Colonel Babi Khatri, Captain Sunil Prasad Adhikari and Captain Amit Pun presenting themselves before the Court of Inquiry Board, which they ignored and through taking a stand on the original account of the incident saying that Maina Sunar's death occurred by shooting having attempted escaping security cordon in the Hokse jungle and that she hadn't been brought to the barracks; in having clarified the reality of the incident through the factual eyewitness military personnel testimony given before the Court and other circumstantial evidence, [the Court] was powerless to compel Colonel Babi Khatri and other officers to give testimony based on truth. Coming to the end, at their discretion they gave confessional testimony before the Board.

In considering the question of whether Maina Sunar, who at that time was arrested on the basis of the notice given by Bimala B.K. and detained in military custody, is or is not a Maoist cadre, a strong possibility can be seen that she was not affiliated with the Maoist party through the testimony given by Bimala B.K. and in studying other developments of the incident. It is the obligation of the security forces to arrest individuals who spread terror and are involved in destructive acts against the country and among the people. It cannot be considered odd that the security forces arrested Maina Sunar but also it has been revealed in a clear way that the torturous treatment done in an immature and incompetent way by those arresting was inhumane. It can be seen that the death of Maina Sunar, who was brought to the barracks in good condition on the morning of February 17, 2004 at 8:30, occurred in an approximately 3 hour interval. It has become clear that the now Colonel Babi Khatri who had taken acting responsibilities as the Shri Birendra Peace Work Training Center Chief gave the order that Maina Sunar be submerged in water and be given electrical current and in carrying out the orders of the Colonel, those who were there including Captain Sunil Prasad Adhikari and Captain Amit Pun, made, by giving the order, Sergeant Non-Commissioned Officer Khadak Bahadur Khatri, Soldier Dil Bahadur Basnet and Soldier Shrikrishna Thapa who were present there bring water and first submerge and remove from the water that was in the large pot. What has come to be understood is that in doing even this, after not getting any confession from Maina Sunar, through the order of Colonel Babi Khatri, the administering of electrical current happened. In considering what Shrikrishna Thapa said in his testimony that, "While the electrical current was being administered, blood came from Maina Sunar's wrist and in seeing her become serious, I slowly pulled back and stopped administering the electrical current as I was afraid," it doesn't appear necessary to doubt that Maina Sunar's death had indeed come from torture given in the process of questioning. It has been revealed from the testimony that her death came to be destined, in an unfortunate way, while giving severe torture in the act of making the arrested girl confess the truth. It does not

appear that the situation is such that the torture given to one unarmed, defenseless girl is appropriate.

Despite it not being apparent that the torture given in the process of questioning was with murderous intent that death can happen while giving severe torture is common knowledge that should be thought about. What can be understood from the military personnel testimony is that from the start of the questioning, Colonel Babi Khatri was present in that place, and gave orders, sometimes making to be submerged in water, sometimes making to administer electrical current. Despite him not desiring to answer about these circumstances before the Court of Inquiry Board in a clear way, it has become clear from the testimony of other military personnel that he gave orders, being present there. A fact that has become clear is that there were acts of negligence from Colonel Babi Khatri including: even after the death of Maina Sunar, who had been arrested and taken from her house, where those relevant should have been informed, besides not turning over the corpse to the relatives, the deceased was treated like an unclaimed corpse, and there was no showing of any interest toward doing or having done the post mortem. It is never appropriate to forget the fact that, for the country and the people, each act and punishment of the existing Royal Nepali Army should be carried out in a pure way in accordance with the law. In the present situation, a clear perspective on the promotion and protection of human rights has been moved forward, and the image of the Royal Nepali Army must be maintained high in national and international arenas. In relation to the presented incident, Colonel Babi Khatri having given the order that questioning through giving torture be done, even while alternative questioning options existed, while going outside the line of duty, committed an undisciplined act and those present including Captain Sunil Prasad Adhikari and Captain Amit Pun in having witnessed an undisciplined act; the Board submits the opinion that the process of punishment according to military law should move forward against the above mentioned officers.