

National Human Rights Commission

Hariharbhawan, Lalitpur

A summary of the report on the 10 March 2010 incident in which a child and two women were killed in Banspani, Bardiya National Park by a patrol of Jwala Dal Battalion, Nepal Army

1 April 2010

1. Background

Various media sources reported the 10 March 2010 incident in which a Nepal Army patrol of Jwala Dal Battalion, Thakurdwara, deployed in Bardiya National Park shot dead two women, Devisara B.K. and Amrita B.K., and a child, Chandrakala B.K., residents of Ward No. 2, Kapsara Village, Hariharpur VDC, Surkhet district, in Banspani, Bardiya National Park at around 8:30 p.m. Given the seriousness of the incident, the NHRC has pursued a complaint *suo moto*, and a team from NHRC's regional office in Nepalgunj investigated the case from 12 to 19 March 2010.

During the investigation the NHRC team inspected the incident site and spoke to Bardiya National Park personnel, those attached to patrol units, the commanding officer of Jwala Dal Battalion, Thakurdwara, high-ranking officials, eyewitnesses, victims' family members, locals of Hariharpur, Surkhet and doctors of the Bardiya district hospital. The NHRC team also verified the information gathered from police personnel who examined the incident site and the victims' bodies, civil society representatives and others concerned with the incident. The NHRC employed forensic experts sent from the TU-affiliated Teaching Hospital in Kathmandu to conduct an additional post-mortem of the victims' bodies.

The investigation team studied the post-mortem report prepared by doctors of the Bardiya district hospital, the additional post-mortem report prepared by the forensic experts and the police report on the incident site and the victims' bodies. In the process the NHRC communicated with the Office of the Prime Minister and Council of Ministers, the Home Ministry, the Nepal Army, the Bardiya district administration office and Bardiya National Park and asked for information about the incident.

2. Details of the Incident Site

The incident took place in Banspani, Neulapur VDC, which lies within the Bardiya National Park on the border of Hariharpur VDC, Surkhet district. It is 30-35 kilometres northeast of Ambasa, Amreni on the East-West Highway. A shack was found on the site. There was a stove inside and on the top of the shack were brooms made of dried grass, five bundles of bamboo strips used for weaving baskets, seven plastic sacks, three plastic slippers, a maroon shawl, a pair of pink trousers that contained faeces, a blue *patuka* [a long strip of cloth tied around the waist] smeared with blood, a drawstring purse tied to the *patuka* containing a five-rupee note, copper coins, buttons, thread and herbs, and Devisara's medical report prepared by Rana Pathology, Surkhet. Another stove, an old multicoloured blanket, tree branches stripped of their bark were found on the southwest of the incident site. On the west of the site were a half-filled plastic water bottle, a pink shawl, and an empty packet of 'Golden' tobacco. About 15-20 metres southeast a black dog had been shot dead. There was a drinking water source nearby. On the west, north and south the site was surrounded by hills and a cave-like rock formation. The east side was open. Although the site was a protected park area, there were cattle grazing about a hundred metres away and about half an hour away was a village.

3. Facts Gathered during the Investigation

1) Four days before the incident, four men -- Krishna Bahadur B.K., Durga Bahadur B.K., Baldev Giri and Bhupraj Giri -- residents of Ward No. 2, Hariharpur VDC, Surkhet district, had gone to collect the bark of *kaulo* trees in Banspani, Bardiya National Park. They were staying in a temporary shack near a water source.

2) On 10 March 2010, only 2-3 hours before the incident took place, Krishna Bahadur B.K.'s wife Devisara B.K., his daughter Chandrakala B.K., his younger brother's wife Amrita B.K., and Bhumisara Giri had arrived at the site to collect the bark gathered by those who were already there.

3) On 10 March 2010 at 8 p.m. a team of 19 people including 15 Nepal Army personnel led by Lieutenant Subodh Kunwar of Jwala Dal Battalion, Thakurdwara, and four Bardiya National Park personnel, arrived at the site from the southwest.

4) The security personnel told the people in the shack, 'If you try to escape, you're finished' but suddenly started opening fire. Devisara B.K., Amrita B.K. and Chandrakala B.K. were shot from behind. Devisara B.K. and Chandrakala B.K. died immediately and Amrita B.K. died a little later. Durga Bahadur B.K., Baldev Giri, Bhumisara Giri and Bhupraj Giri fled when the shots were fired and Krishna Bahadur B.K. (the husband Devisara B.K. and the father of Chandrakala B.K.) was arrested from the site and placed in Bardiya National Park custody before he was released on 17 March 2010.

5) Nepal Army's Jwala Dal Battalion claimed that the army fired 13 rounds.

6) The condition of the victims' bodies and post-mortem reports suggest that Devisara B.K. was shot once in the back and died due to excessive bleeding. Amrita B.K. received one bullet in the back that pierced her heart, causing excessive bleeding and death. Chandrakala B.K. was shot in the back of her head and the bullet came out of her right eye. She was shot in her left elbow and died due to excessive bleeding.

7) According to the 12 March 2010 press release issued by Bardiya National Park, on 10 March 2010 when a joint team of Bardiya National Park personnel and NA personnel from Jwala Dal Battalion, Thakurdwara were patrolling the area, they heard gunshots near the Puranpur River around 5 p.m. and again in the Basaha area around 6:30 p.m. Suspecting that poachers were hunting animals in the park, they began a search, and around 8:00 p.m. found 5-6 armed persons in Banspani. The press release states that the poachers were first asked to discard their weapons, that the security personnel were compelled to fire in self-defence, and that they stopped firing immediately as some of the persons started shouting and crying and some others fled. It goes on to claim that the hunting dog kept by the poachers also came to attack the security personnel as they approached the site, so they had to fire, and unfortunately two women were also killed in the process and one woman was injured. She died while undergoing treatment. One of the men was arrested and put in custody. The press release also states that three homemade guns, some bullets, explosives and other such materials were found on the site. However, this could not be confirmed by any evidence.

8) So far no reliable evidence has been found to determine that the women were raped during the incident. It is understood that samples of vaginal swabs have been sent to a lab for testing but the report is not yet available.

9) The NHRC investigation team found some *kaulo* bark gathered at the site.

10) The photos made available to NHRC by Bardiya National Park show three guns scattered in three different places in different positions, a khukuri and the bodies lying on the site in an implausible way. However, the items collected by the Bardiya district police office from the site did not include a khukuri. The photos taken by the police show the guns placed together in one spot in an implausible way.

11) During a seven-hour walking survey from Amreni to Banspani, the NHRC team found poachers' huts, cooking stoves and bamboo frames for drying meat in four or five places.

12) The NHRC team found that on 17 March 2010, in the presence of Chief District Officer of the Bardiyā district administration office, chief of the district police office, chief of Bardiyā National Park, members of the National Dalit Commission, various political parties and civil society representatives, it was agreed in writing that Krishna Bahadur B.K. is an ordinary person who is not involved in poaching or other arms-related activities.

13) It was understood that eyewitnesses who had reached the site soon after the incident claimed not to have seen any guns on the site.

14) Among the victims Devisara B.K. was the wife of Krishna Bahadur B.K., Chandrakala B.K. was his daughter and Amrita B.K. was his sister-in-law. It was found that the victims, who belonged to the Dalit community, were very poor people who had hardly any source of income and owned about 5 *kattha* of land that did not produce enough to feed them. Krishna Bahadur B.K. made iron implements like hoes and often went to the area to collect bark, which he sold for a living.

15) It was found that the security patrol had arranged the victims' bodies and tampered with the evidence before the police went to the site for investigation.

4) Analysis and Conclusion

Facts and evidence gathered from eyewitness accounts, testimonies of locals from the victims' home village and the 17 March 2010 agreement signed in the Bardiyā district administration office suggest that several people including the victims Devisara B.K., Amrita B.K. and Chandrakala B.K. had gone to Banspani in the Bardiyā National Park area to collect the bark of *kaulo* trees. There is no evidence to suggest that they were armed poachers. The same day a team of 19 security personnel including 15 Nepal Army personnel led by Lieutenant Subodh Kunwar of Jwala Dal Battalion, Thakurdwara and four personnel of Bardiyā National Park arrived at the site from the southwest. The Bardiyā National Park personnel came from the hill on the upper side, and firing by Nepal Army personnel killed a child and two women. Site inspection, eyewitness accounts, the condition of victims' bodies and autopsy reports contain no evidence that the people who were killed, arrested or escaped from the site fired gunshots. Post-mortem reports, photos related to the incident and the victims' bodies reveal that they were shot from behind. There is no evidence that there was an exchange of fire.

As the incident site is surrounded by hills on three sides, there was plenty of scope for the Nepal Army patrol to take the victims under their control. But the army personnel opened fire on them without following the rules of engagement. The NHRC investigation team found that excessive force was used to kill three people including a child. Eyewitness accounts and other evidence suggest that the security personnel did not take the victims under their control before the incident took place. Autopsy reports also reveal that the victims were shot from a distance. The site should have been left untouched until the police examined it and gathered evidence but the army had arranged the dead bodies before the police arrived. This suggests that the army destroyed the evidence and issued a false claim that they opened fire in self-defence.

No evidence was found to suggest that the women were raped during the incident.

Security personnel used excessive force during the incident and violated the provisions of Clauses 23 and 24 of the National Park and Wildlife Protection Act, 2029 B.S.

The security personnel opened fire and killed three women including a child in violation of the right to life enshrined in Article 12 of the Interim Constitution of Nepal, 2063 B.S. and the right to life and individual liberty enshrined in Clause 12 of Citizens' Rights Act, 2012 B.S. In the incident the army has also violated the right to life enshrined in Article 3 of the Universal Declaration of Human Rights, 1948 and Article 6 of the International Convention on Civil and

Political Rights, 1966. Similarly, it has breached Article 37 of the Convention on the Rights of the Child, 1989.

5. Recommendations

Based on an analysis of the available evidence, the following recommendations are made to the Government of Nepal:

- 1) Identify all those involved in the incident and file criminal cases against them in a regular court, including against Nepal Army Lieutenant Subodh Kunwar of Jwala Dal Battalion, Thakurdwara, Bardiya, who gave the order to open fire, killing three women including a child, despite there having been sufficient scope to take the victims under their control. Identify those who tampered with evidence related to the incident and take action against them according to the law.
- 2) Provide Rs 300,000 compensation to each victim's next of kin in accordance with National Human Rights Commission (Complaint, Action and Determination of Compensation) Rules, 2057 B.S. (2001)
- 3) The state should provide free education to the victims' children.
- 4) The victims belonged to a poor family and were killed when they went to collect the bark of *kaulo* trees to make a living. In this context the government should coordinate with concerned agencies and implement programmes to improve the economic and social condition of people, particularly Dalits, in this region.
- 5) To prevent such incidents in the future, train the personnel of all national parks in protecting human rights.

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