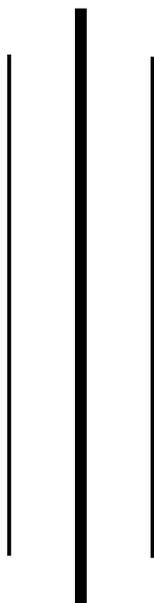
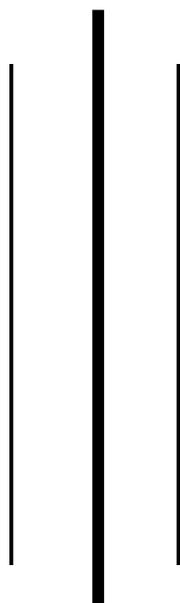


The National Human Rights Commission



Nagi Incident, Panchthar



On-the-spot Inspection and Report of the Investigation Committee
2060 BS (2003)

Nagi Incident Investigation Report

2060 BS (2003)

Constitution of the Committee

The National Human Rights Commission had constituted the following high level Investigation Committee in accordance with Section 11(6) of the Human Rights Commission Act, 2053 (1996), as per its decision of August 26, 2003 to investigate about the Killings of the Security forces who were trapped in an ambush on July 5, 2003 at Hiliyang Chowk of Ward No. 8 of Nagi VDC of Panchthar District in Mechi Zone.

1. Gyaindra Bahadur Shrestha	Coordinator	Ex-Justice, Supreme Court
2. Dr. Meena Acharya	Member	Social Worker
3. Satish Krishna Kharel	Member	Advocate, NBA
4. Surya Bahadur Deuja	Representative	NHRC

Jurisdiction of the Committee

Section 11(6) of the Human Rights Commission Act, 2053 has provided that "a Committee can be set up, as per the need, with regard to any work to be done according to this Act and the functions, duties and powers of such a Committee shall be as prescribed by the Commission." Accordingly, since this high power Committee has been set up to investigate the Killing of the security forces, this Committee has got the powers under Section 11 of the aforesaid Act.

Procedure of Investigation

While investigating the above-mentioned incident the Committee adopted the following procedure:

- a. On-the-spot inspection of the scene of occurrence.
- b. To collect information from the local people also on the basis of interviews,
- c. To gather information from the concerned officials, and
- d. To gather information from all the available victims, persons who had reached the scene for rescue work immediately after the incident and the eyewitnesses.

Background

It is common knowledge that after the people's revolution of 1990 a faction of a political party involved in that movement broke away from that party and, declaring "Janayudha" (People's War) under the name of Communist Party of Nepal (Maoist) since the year 2052 (1995), isolated itself from the mainstream of the national politics, and unsavory incidents of violence have been occurring since then.

After the dismissal of the Council of Ministers headed by Mr. Sher Bahadur Deuba and constitution of the government under the leadership of Mr. Lokendra Bahadur Chand in the month of Ashwin, 2059 B.S., formal attempts were made for a dialogue following reemergence of the conditions conducive to a dialogue between His Majesty's Government and the Maoists. But due to the resignation of Mr. Lokendra Bahadur Chand even before any formal result could emerge His Majesty the King constituted the Government under the leadership of Mr. Surya Bahadur Thapa, which is still in office.

In the process, as the dialogue of the third phase which had started between the negotiation teams of His Majesty's Government and CPN (Maoist) from Nepalgunj of Mid western Region got postponed without reaching any point of agreement with an understanding that another date for negotiation shall be intimated later, incidents of occasional skirmishes and attacks were reported by the newspapers even though the dialogue was in progress and the formal ceasefire between the tow parties had been declared.

This time at the very beginning of the dialogue which had started earlier while the government under the leadership of Lokendra Bahadur Chand was still in existence, "a Code of Conduct approved and to be observed by both parties during the period of ceasefire" was signed by Dr. Baburam Bhattraai and Narayan Singh Pun respectively on behalf of the Maoists and His Majesty's Government and made public. As per no 3 of that Code of Conduct it was agreed "to stop violent use of all kinds of force by both parties."

A news about the death of three men whose vehicle got trapped in an electric ambush set up by the Maoists at Nagi of Panchthar during the period of ceasefire had been published in various newspapers.

The reality and details of the incident gathered, on the basis of various facts, by this Committee set up for investigating the reality about the above-mentioned incident have been mentioned in the succeeding paragraphs.

The Committee has prepared this Report on the basis of inspection of the scene of occurrence and interrogation of the people trapped in the incident and other local people on August 30 and 31, 2003.

Nature of the Scene of Occurrence

There is a place called Hiliyang Chwok about 3 or 4 kilometers north of Gopetar market, which is situated at a place on the way that goes to Taplejung and Panchthar districts. There is a forest near the place where a new path leading towards Amarpur of Panchame VDC is being dug up to the north of Hiliyang Chowk. The security forces riding in a truck with registration number Na-1-Kh 7699 had been killed in an ambush some 20 ft away in north of the corner of that Hiliyang chowk. That truck carrying registration number Na-1-Kh- 7699 was still lying at the place in a destroyed state even during the time the Committee was conducting the investigation.

There were no other houses at that place except the three houses which were at some distance as shown in the map and there was complete loneliness around the place which was in the midst of the forest.

There was a cow shed of Ganga Lal Sigdel some 40 meter north of the place where the incident took place. As reported, that cow shed had remained unoccupied quite for long, There was a motorable road above the house of Ganga Lal and about 10 to 12 meter above that path there was the house of Tank Bahadur Sunuwar. Above the house of Tank Bahadur some 70 meter away from the scene of occurrence there was the house of Budhiman Yongyang Limbu. Besides those, there were no other houses around and there was a forest around the road where the incident had taken place.

At the particular place of Hiliyang where the incident had occurred the truck with registration number Na-1-Kh 7699 stood in a damaged condition. The seat of the truck where driver sits and the seats behind that meant for passengers were completely destroyed and damaged. However, the part of the truck meant for carrying goods was not damaged. The seat of the truck and the two front side tyres had got separated and were lying at some distance. The bonnet of the engine was found to have flown to some 100 ft. below and the engine had flown to some 40 ft. below. The driver's seat and the passenger's seats of that truck were in a completely destroyed and damaged condition. There was found a huge ditch under the drivers seat and the passenger's seat which had been caused by explosion of the ambush. The real picture of that damaged truck has been photographed. The map sketch has been attached in Annex 1.

The name list of the persons who had been contacted with and interviewed in the process of investigation has been mentioned in Annex 2.

The Place, Date, Time and Facts of the Incident

On August 5, 2003, at about 5 O'clock in the morning, 18 army men and 17 civil policemen belonging to the joint security post stationed at a place called Jorpokhari at the border Varda and Subhang VDC's of Panchthar district had set out on foot for patrolling. Since that contingent had set out also with the purpose of escorting 3 army jawans going to Taplejung safely to Kaveri at the border of Taplejung, except those three army jawans all the security forces were armed. It was also disclosed by the army jawans trapped in the incident that after safely escorting those three army jawans to the Kaveri river at the border of Panchthar district that contingent was returning on foot by the Taplejung – Panchther motorable road. On that day while returning to the Security Post at about 12 or 1 o'clock they reached a place called Ganesh Chowk and ordered for cooking their meals at a local hotel and were later taking their food. At that very time they saw the truck with registration number Na-1-Kh 7699, returning from Taplejung to Panchthar, which was being driven by Mohan Shrestha, aged 30, of Local Varpa VDC-8 and which was under his joint ownership. Since it was returning empty towards Jorpokhari that security contingent requested the driver to give them a lift in that truck as it was going to pass by the way where the security post was situated. Since Mohan Shrestha was a local resident who used to transport goods mostly in that route he accepted the request of the security personnel.

Army "Jamdar" Raj Kumar Karki, "Amaldar" Bhagiman Limbu, "Pyuth" Amrit Tamang and Assistant Police Inspector Bhakta Bahadur Majhi climbed the truck to sit inside the cabin, "Pyuth" Upendra Thapa and "Amaldar" Muna Bahadur Thapa sat on the hood and the other army and police jawans occupied the vacant part of the truck in the back. The army or the police had been allowed to ride in that truck not for any fare or payment. The tired army and the police had been rather given a lift purely on a humanitarian basis. Soldiers Sunil Kathayat and Bindu Kuman Raut who had survived the incident of the ambush explosion and were only slightly injured told that, given the state of the recent ceasefire and the agreement about no-attack, they had not imagined even remotely that the truck might become a casualty of explosion only because they were riding that truck.

As described by the army jawnas slightly wounded in the incident, at about 2 or 2:30 in the noon when that truck, which was carrying 38 people including 35 security personnel, a driver, a helper and one ordinary man and was returning towards Jorpokhari, was about to reach the turn in the ascending height at the place named Hiliyang Chowk, after the recent opening of the road to Amarpur located at a place called Nigale of Nagi VDC-8 of Panchthar district, a bomb

planted on the road at the right side of the front part of the truck exploded and the truck jumped upto the height of about 25 to 30 feet and then fell down. The truck was completely destroyed in the explosion and its driver and some of the security personnel riding in that truck died on the spot and some other also got wounded. According to the version of soldiers Sunil Kathayat and Bindu Kumar Rai who were riding in that truck but were in a normal condition, immediately after that explosion since there had been firing towards the truck from the jungle which was at some height in the south west from the scene of occurrence and in the south of the road leading to Amarpur, the security personnel who were not wounded had immediately returned the fire. Even 20 to 25 minutes after the explosion the sound of firing could be heard. But as told by Tank Bahadur Sunwar present in a house closest to the scene of occurrence and Meena Yongyang who lived in a house some 800 meters near the scene of occurrence, it could not, however, be ascertained whether it was a cross fire or firing resorted by the army alone. But no case of injuries sustained due to firing was discovered. Nor could any mark of bullet on the truck be found. A sketch describing the nature of the scene of occurrence has been attached to Annex 1. Photographs of the Scene of occurrence and the truck taken during in process of investigation are also attached herewith and presented with this report.

The Damage Done and Its Factor

So far the question- how, where and when this incident took place is concerned, as reported by captain Ramhari KC of Kalidhoj Battalion, who had reached the scene of occurrence immediately after the incident for rescue works from the Jorpokhari security Post, the investigation conducted immediately after the incident revealed that a big size pipe containing explosives had been buried in the road and a wire had been taken from the scene of occurrence to a forest located at the height some 300 meters away from the scene of occurrence in the south-west, and having seen the truck coming that way the explosion had been made. As an evidence of that an electric wire was found to have been buried in the soil and taken from the scene of occurrence upto that spot. The nature of the incident indicated that after receiving the information that the patrolling team of the security personnel which had gone out in the morning was returning, after taking food at Ganesh chowk, by riding in a truck, the preparations for the explosion were made targeting that very truck. That explosion was not caused by a self-exploding mine or a booby trap. Rather it was caused by remotely detonable cabled dynamite which could be detonated only at the sight of a targeted vehicle or a group of people coming in that direction. On the basis of the accounts given by Major Budhi Bahadur Khadka of Sub-branch, Jorpokhari of Kali Dhwoj Battalion, Captain Ramhari KC who immediately after the explosion had arrived at the scene of occurrence for the rescue work, "Amaldar" Dambar Bahadur Mahat and soldiers Sunil Kathayat and Bindoo Kumar Rai who were riding in the truck at the time when the incident occurred

and as mentioned by the local people and also on the basis of the letter dated September 4, 2003 with dispatch no 378, the following persons were found have died in that incident:

Name of Dead

S.No.	Post	Name	Where Seated	Injuries on the body
1	"Jamdar"/Army	Raj Kumar Karki	In the cabin of the truck.	The lower part of the body completely destroyed.
2	"Amaldar"/Army	Bhagiman Limbu	In the cabin of the truck.	Legs completely destroyed. Injuries sustained in the chest.
3	"Pyuth"/Army	Amrit Tamang	In the cabin of the truck.	Injuries on the hand and legs and internal bleeding.
4	"Pyuth"/ Army	Upendra Thapa	On the hood of the truck	Bleeding caused by cutting of nerve of the hand, injury in legs, and death after having been taken to Kathmandu.
5	Assist. Police Ins./ Police	Bhakta Bahadur Maghi	In the cabin of the truck.	The lower part of the body completely destroyed.
6	Citizen/ Civilian	Mohan Shrestha	In the Driver's seat.	Both legs completely destroyed. Died at night after having been brought to Jorpokhari Security Post.

Of the people killed in the ambush "Jamdar" Raj Kumar Karki, "Amaldar" Bhagi Man Limbu, "Pyuth" Amrit Tamang and Assist Police Inspector Bhakta Bahadur MaJhi - all four had died on-the-spot immediately after the explosion. Of the injured, Mohan Shrestha died at about 11 p.m. at night at the Security Police Post located at Jorpokhari while undergoing primary treatment by AHW Tara Mainali. And as opined by other Army officials, since seriously injured "Pyuth" Upendra

Thapa could not be taken to a hospital on the same day due to the failure of the arrival of helicopter, despite repeated attempts. To land due to bad weather, although next day a helicopter became available in the morning "Pyuth" Upendra Thapa succumbed to his injuries in Kathmandu due to excessive bleeding in course of his treatment.

Similarly, as described by the officials and jawans of Jorpokhari Security Post and the eyewitnesses, the persons who were seriously injured in that accident are as follow:

Name List of the Injured People:

- | | |
|--------------------------------------|------------------------|
| 1. Amaldar/ Army | Mun Bahadur Thapa |
| 2. Soldier/ Army | Khem Bahadur Thapa |
| 3. Soldier/ Army | Leela Bahadur Bhandari |
| 4. Soldier/ Army | Jaya Singh Negi |
| 5. Soldier/ Army | Lal Bahadur Shrestha |
| 6. Soldier/ Army | Shiva Ram Karki |
| 7. Soldier/ Army | Durga Bahadur Bhandair |
| 8. Soldier/ Army | Etraj Mahato |
| 9. Head Constable / Police | Hari Bahadur Thapa |
| 10. Head Constable / Police | Raj Kumar Thapa |
| 11. Head Constable / Police | Santosh Sah Halwai |
| 12. Head Constable / Police | Govind Khanal |
| 13. Head Constable / Police | Madan Gajmer |
| 14. Police Constable | Khamb Adhikari |
| 15. Police Constable | Bisheshwar Sah |
| 16. Police Constable | Palten Dorje Lama |
| 17. Police Constable | Dinesh Sah |
| 18. Police Constable | Ganesh Bhujel |
| 19. Police Constable | Vijay Rajbanshi |
| 20. Police Constable | Pradeep Basnet |
| 21. Police Constable | Mahesh Sah |
| 22. Joint Owner of the truck/citizen | Roop Bahadur Chauhan |
| 23. Helper | Unidentified |

Autopsy

Of the people killed in that incident the autopsy of driver Mohan Bahadur Shrestha was conducted at Phidim, the headquarters of Panchthar District, and his dead was handed over to his family members who performed his last rites. Since "Pyuth" Upendra Thapa had died in Kathmandu in course of Medical treatment his postmortem was conducted in Kathmandu and his dead body was thereafter handed over to his family members. And the Postmortem of the other dead bodies

was performed at B.P. Koirala Memorial Medical Science Centre, Dharan And the bodies were thereafter handed over to their families and their last rites had been already performed as was informed by Captain Ram Hari KC.

When District Administration Office Panchthar was requested for providing the autopsy reports and other related documents it informed through a letter dated September 4, 2003 of that office that no records of such postmortem reports were available in that office.

Thus it was found that in that accident, besides the army and the police jawans, even civilian/ citizen Mohan Bahadur Shrestha, the/owner and driver of the truck, also got killed. He used to live at Bharpa VDC-8 of Panchthar district and was the only source of income of the family. The deceased had two minor daughters and two minor sons – in all four children by his two wives, and as informed by the local residents, all the six members of the family were dependent on him.

Whether any compensation had been provided by His Majesty's Government to the family of the civilian/citizen Mohan Shrestha, the owner of the truck, for to the damaged truck and the death of Mohan Shrestha, as per the above mentioned letter (dated September 4, 2003) of the District Administration Office, Panchthar, so far no compensation had been made available but a meeting of the District Security Committee held on September 2, 2003 had decided to initiate the concerned body of His Majesty's Government to grant compensation.

Who Caused the Incident?

Who was responsible for causing the incident? There were differences of opinion in this regard among the local people and the security personnel and every one similarly opined that the incident had been caused by the Maoist activists. No document could be acquired showing the formal claim of responsibility by CPN (Maoist) for that incident. Nor could it be possible to ascertain what was the relation of CPN (Maoist) in the present context in regard to that incident. It was disclosed by the local people that when ever there was absence of the security forces in that area it used to remain under the control of CPN (Maoist), and that there was a similarity to the "modus operandi" adopted by the activists of CPN (Maoist) in the earlier incidents of similar explosions. Also, because the Maoists had not come out with any adverse reaction to the news items, which had been publicly published squarely blaming the Maoists for that incident, such symptoms and reasons also led this Committee to come to the conclusion that that incident of the explosion had been engineered by the activists of CPN (Maoist).

Finding of the Committee:

Besides the facts mentioned above, the Committee has arrived at the following conclusions:

- a. The incident had occurred at a time when the dead and the victim security forces had not anticipated such an attack and were naturally not alert since the ceasefire was in operation.
- b. The road, on which the explosive material had been buried, being a general thoroughfare meant for the movements of general public and as the explosive material had been placed at such a place where the general public moved freely and as it had come to the knowledge that only some time before the accident a public bus had passed through the same way, had there been even any ordinary inadvertence or technical mishap, the aggressors had exposed the citizens to undue risk of mass casualty
- c. The truck with registration number Na-1-Kh 7699 was a civilian transport and even the driver of that truck Mohan Shrestha was also a civilian. It was found that the driver had not allowed the army and the police jawans to ride in the truck in lieu of any monetary or other reward. Rather he had given them a lift purely on the humanitarian basis and that, too, during the period of declared ceasefire. Even one month after the lapse of the incident in which the truck had been targeted and damaged by the Maoists and the driver of the truck who was also its owner died only because the Army and Police officials and jawans had ridden in that truck, no compensation for the same had been given so far to his dependents.
- d. Violent use of force was found to have been made at a time of formal ceasefire in blatant contravention of the agreement mentioned in no.3 of the Code of Conduct which had been enforced with the consent of both CPN (Maoist) and His Majesty's Government at time when the above-mentioned incident of explosion took place.
- e. The above- mentioned incident of explosion seems to have been caused in contravention of the provision contained in Article 3 of the Geneva Convention of August 12, 1949.
