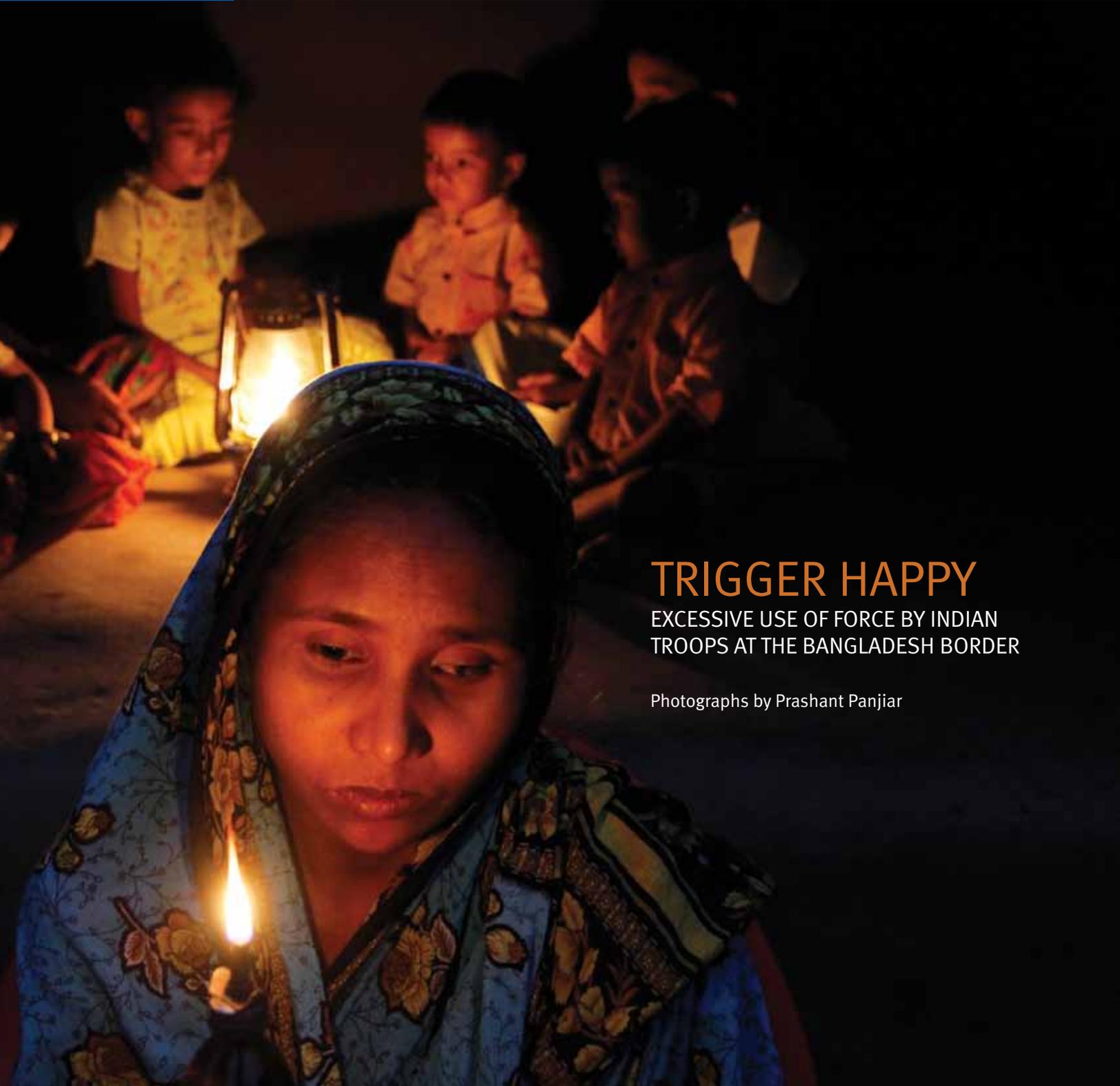


HUMAN
RIGHTS
WATCH



TRIGGER HAPPY

EXCESSIVE USE OF FORCE BY INDIAN
TROOPS AT THE BANGLADESH BORDER

Photographs by Prashant Panjiar

A girl watches her goats as they graze behind the border fence in Kuchlibari village.



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This report documents a pattern of grave abuses by India's Border Security Force (BSF) against both Bangladeshi and Indian nationals in the border area along India's 2,000 kilometer long international frontier with Bangladesh in West Bengal state. The abuses include cases of indiscriminate killing and torture.

Most of the abuses documented in this report are related to efforts by the Indian government to deal with cross-border smuggling, particularly cattle-rustling. However, as this report shows, the abusive methods used by the BSF are disproportionate to the problems that the Indian government faces on its eastern border. Numerous ordinary Indian and Bangladeshi citizens resident in the border area end up as the victims of BSF abuses, which range from verbal abuse and intimidation to torture, beatings, and killings. Furthermore, because of the near total absence of effective accountability mechanisms for abuses carried out by members of the BSF, even the most serious abuses by border guards go unpunished. This sends a clear message that the Indian government finds such abuses acceptable.

The border area between India and Bangladesh is heavily populated and acutely poor. Many farmers on both sides of the border have lost their farms and livelihoods to river erosion. Illegal cross-border activities, such as cattle-rustling, and trafficking in persons and narcotics, have flourished. In several of the cases documented in this report, victims were beaten up or killed while smuggling cattle across the border at night. Others were tortured or killed merely on suspicion of being involved in cattle-rustling. Children, reportedly employed by smugglers to reduce the risk of detection, are among the victims whose cases are documented below.

Several survivors and eyewitnesses of attacks allege that the BSF engaged in indiscriminate shooting without warning. Seventeen-year-old Bangladeshi Shyamol Karmokar sneaked into India to visit relatives. On January 26, 2010, he decided to return to Bangladesh with the assistance of cattle-rustlers. Mohammad Zahid, who had agreed to bring Shyamol back to Bangladesh, said that they were detected by the BSF close to the border. Instead of attempting to arrest them, BSF officers immediately opened fire. Shyamol was killed.

Residents are checked at a Border Security Force outpost on the bank of the Padma river as they go to and from their farmlands and village in Char Muradpur near Farazipara.



Torture is also rife. On January 25, 2010, Motiar Rahman, a Bangladeshi national strayed across the border while cutting grass, a common mistake since there are no clear markers. According to Motiar Rahman, he was captured by two BSF soldiers:

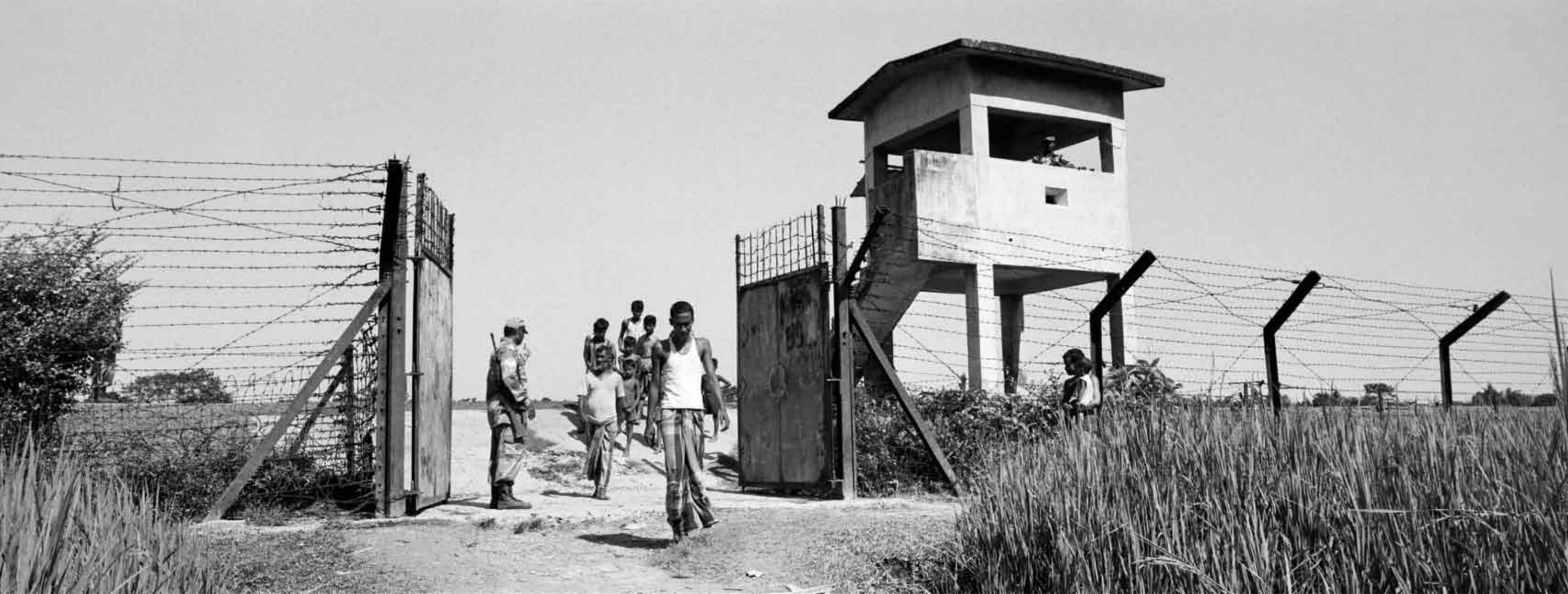
“They blindfolded me and took me to the BSF camp. I thought that the BSF were going to kill me. After reaching the camp, the BSF personnel removed the blindfold and tied me to a tree. They left me there for over 15 hours, until 11 p.m. at night. Then they gave me some food. But once I had finished my meal, the BSF started torturing me. I was beaten severely with a bamboo stick on my back and feet by the same soldier who brought me the food. I was kicked several times and as a result started bleeding from my penis. Another soldier started beating me on my head with a bamboo stick. This went on for at least 45 minutes... The BSF men jumped on my chest, and kicked me on my head and face with their boots.”

Indian villagers residing in the border areas also accuse the BSF of not just indiscriminate shooting, but unprovoked beatings. Indian national Halima Bibi said her 12-year-old daughter was slapped and beaten by three BSF personnel on September 5, 2009 outside

their home close to the border with Bangladesh. When Halima Bibi protested, she was verbally abused with sexual insults.

Nirsingha Mondal, from India’s Murshidabad district, said that on May 10, 2009, he had gone out as usual in the morning to collect firewood for cooking. He was dragged into a nearby BSF camp by two soldiers, who beat him up and accused him of stealing flowers from their garden.

The Indian government says it is seeking to contain the smuggling and mass economic migration from Bangladesh. In recent years, India has also alleged that separatist militants in its northeastern states find sanctuary in Bangladesh and cross into India to perpetrate terrorist attacks. However few of those killed by the BSF have ever been shown to have been involved in terrorism. In an effort to secure the border the Indian government is constructing a large 3,200 kilometer fence. But in densely populated areas of the border, where land is cultivated right up to the international boundary, the border fence is already exacerbating the problems faced by residents of the border areas.



A BSF soldier checks residents as they return through a security gate to their village on the other side of the fence.

The BSF justifies the killing of suspected smugglers by claiming that they were evading arrest, or that its personnel had to fire in self-defense. But suspicion of a crime or evasion of arrest cannot alone justify the use of lethal force. In fact, even India's domestic laws which allow "all means necessary" in case a person attempts to use force to resist arrest, specifically forbid causing the death of a person who is not accused of an offense punishable by death or a life term.

In all the cases we investigated, the alleged criminals were either unarmed or armed with only sickles, sticks, and knives, which suggest that in shooting victims, the border guards are likely to have used excessive force. In a number of cases, the victims were shot in the back, suggesting that they were running away. In others, injuries indicate the person was shot at close range, with witnesses often alleging that the person was tortured and killed in BSF custody. Other victims appear to have fallen victim to bullets because they were too close to the border.

When someone is killed during a BSF operation, the BSF is required to file a report with the police. In such cases the BSF usually justifies the killing by accusing the victim of obstructing a public servant while performing his duties, unlawful assembly, or attempted murder. In none of the cases investigated by Human Rights Watch did the BSF show that it had recovered lethal weapons or explosives that could pose an imminent threat of death or serious injury that might justify killings in self-defense.

The Bangladeshi authorities have repeatedly complained about the rampant killing of its nationals by the BSF, as have human rights groups in both countries. Odhikar has documented cases of nearly a 1000 Bangladeshi nationals that have been killed by BSF over the last decade. Describing the BSF as "trigger happy," Bangladesh Home Minister, Sahara Khatun, said in May 2010 that she would again ask New Delhi to stop these incidents.

Despite these strong comments from Khatun, the Bangladesh Rifles (BDR), which is responsible for guarding the border from the Bangladeshi side and reports to the Bangladeshi Home Ministry, often fails to defend the rights of Bangladeshi citizens. The BDR is deployed to contain the smuggling of weapons, explosives, and narcotic substances including Phensedyl, a cough syrup that is banned in Bangladesh, but commonly used as a recreational drug. However, the Indian border authorities complain that their Bangladeshi counterparts do not do enough to prevent illegal cross-border smuggling.

In researching this report, the Bangladeshi human rights organization Odhikar and Human Rights Watch interviewed several BDR officials about Bangladeshi victims. In most cases, if the BSF presented evidence of smuggling, the BDR did not complain about Bangladeshi nationals being killed. For instance, with respect to the killing of Shyamol Karmokar, the BDR Camp Commander at Wahedpur border, Subedar Sirajul Islam, said that while his death was "unfortunate and sad," the BSF had opened fire believing him to be a cattle trader because he was with a group of rustlers. "Thus there was nothing wrong with the fact that the BSF has shot him."



Mritunjay Mondal shows his injured arm at his home in Char Rajpur Paschim Colony village. He was shot and injured by the Border Security Force. He also lost his right eye in the incident.

"Smugglers often operate in this area to take cattle through the border. That day, two BSF constables were chasing some smugglers. I saw them run through the road next to my house and hide. It was dark, so I could not see where they had gone after they ran past me. The BSF men were angry, I think, because the smugglers had got away. They started shooting. One bullet hit the tree next to me, and the other struck me in the arm. I fell down unconscious."



Safanur Bewa, and her grandson Salim Sheikh, at their home in Brahmottor village. Salim's brother Noor Hossain was killed by the Border Security Force. Noor Hossain had stepped out at night, and was brutally beaten by the BSF. Eyewitnesses told family members that he was first beaten to death, and then shot so that the BSF could claim he was evading arrest.



Ramesh Chandra Mondal and Rai Bala Mondal with a photograph of their son in their home in Char Munshipara Barobigha Colony. Shyamsunder Mondal was killed by the Border Security Force. According to eyewitnesses who were with Mondal, BSF personnel from the 191st Battalion caught the smugglers while they were taking the cows into Bangladesh and immediately opened fire without warning. One of the bullets struck Shyamsundar in the back, and he instantly fell down. His associates, believing him to be injured, first started dragging him along as they escaped. But later, realizing that he was dead, they left his body in a jute field and ran away .

A flag is all that marks the border. Without clear markers, people can often cross the border mistakenly, and are then at risk of arrest and torture by border guards in both countries.



In March 2010, BDR chief Maj. Gen. Mainul Islam, explaining that there was a history of “people and cattle trafficking during darkness,” said of the killings: “We should not be worried about such incidents.... We have discussed the matter and will ensure that no innocent people will be killed.” During an official visit to Bangladesh in September 2010, Raman Srivastava, Director General of the BSF, responded to Bangladesh’s complaints that the BSF were killing “innocent, unarmed” Bangladeshi civilians by saying: “We fire at criminals who violate the border norms. The deaths have occurred in Indian territory and mostly during night, so how can they be innocent?”

These comments suggest that officials of both governments believe that it is legal to use lethal force against those suspected of being engaged in smuggling or other illegal activities. This amounts to a de facto shoot-to-kill policy for smugglers, and violates both national and international standards on the right to life and the presumption of innocence which are applicable in India and Bangladesh.

The BDR raises serious concerns with the BSF only when cases of indiscriminate firing lead to the death of villagers not involved in smuggling. For instance, on March 13, 2009, a BSF trooper got into an argument with a boy fishing in a lake, barely 20 meters from the international border. According to eyewitnesses, when the altercation became heated, the soldier opened fire, hitting two boys who were grazing their buffaloes nearby. Thirteen-year-old Abdur Rakib was shot in the chest and died instantly. Mohammad Omar Faruq, 15, was injured and later described the indiscriminate firing. A flag meeting was held between the BDR and the BSF the next day to discuss the incident. The BSF initially tried to insist that the victims were illegal cattle traders, but the BDR personnel presented witness accounts countering this version. Some villagers who were present during the flag meeting said that the BSF eventually apologized and promised that the soldier responsible would be punished. It is not clear if any disciplinary action was taken.



Durga Charan Mondal and Tunubala Mondal outside their home in Char Munshipara village. Their son Shibajit, 28, was killed by the Border Security Force. Shibajit was smuggling cattle around midnight on March 14, 2009, when, according to his associates, four soldiers of the BSF's 90th Battalion came upon the smugglers and started shooting at them without warning.



Rima Bewa with her children at her home in Bishwanathpur village. Her husband Abdus Samad was killed by the Border Security Force.

Saying that they suspected 35-year-old Abdus Samad of smuggling, several BSF personnel forcibly entered his mud hut in Murshidabad district on May 5, 2009. The soldiers beat Abdus Samad in front of his wife and children and then dragged him away. Family members say that he died due to torture in custody. The BSF claims that he became suddenly unwell, and then died.

Residents graze their cattle in Char Muradpur near Farazi para. Cattle smuggling is one of the main illegal activities in this border region.



Members of the BSF are described by local residents as unsympathetic, aggressive, and violent. This may be explained by the fact that many are deployed to the region after difficult and tense tours of duty on the India-Pakistan border in Kashmir. Human Rights Watch researchers witnessed BSF troopers shouting at villagers, calling them names, and often making them wait for hours as each person was searched and signed as they crossed BSF outposts, to reach their fields or homes which adjoin the border.

To prevent the accidental shooting of villagers, an informal curfew is imposed on both sides of the border. But the restriction of movement after dark causes numerous difficulties. In India, the BSF patrols are deployed in posts a few kilometers inside Indian territory. They restrict access to areas beyond the outposts, effectively cutting people off from their farms or markets. To prevent infiltration by Bangladeshi nationals, the BSF require residents to surrender their identity or citizenship cards when they cross the border outposts and to claim them on return. Mithoo Sheikh, a young man in Murshidabad, said that there are long queues as the BSF checks each identity:

“Sometimes by the time we get to the field it is noon. And we have stop work by 4 p.m. because they stop us from returning after dark. The BSF does not understand cultivation problems. We cannot water our fields at noon. Sometimes we only get water at night, but they will not let us remain in the field. If we disobey, we get beatings or they file false charges... We are treated as outsiders in our country.”

The police are unwilling to lodge complaints against the BSF. When Tutan Sheikh, an Indian national, complained to the police that he and his brothers were subjected to unprovoked beatings by the BSF, he was told by the police officer on duty that the BSF trooper had committed no crime since the BSF was there to “beat the people.” In another case, after Indian national Noor Hossain was killed by the BSF, police told family members who wanted to lodge a complaint: “Why do you bother? What will happen to the BSF? Nothing can happen to the BSF. The BSF will say that the ... border area is under their control.”

The Indian NGO Banglar Manabdhikar Suraksha Mancha (MASUM), one of Human Rights Watch's partners in researching this report, has repeatedly approached the courts, the National Human Rights Commission (NHRC), the National Minorities Commission, the National Commission for Scheduled Castes and Scheduled Tribes as well as the National Commission for Protection of Child Rights, to hold abusers accountable. None of the cases raised have been brought to a satisfactory conclusion. According to Kurity Roy, who heads MASUM, "As the de facto complainant, we were never summoned to appear or depose before any inquiry conducted by the BSF. However, we are aware that in some cases, family members or victims did appear before the BSF court of inquiry." No verdicts were made public.

According to the Bangladeshi authorities, India has never provided details of any BSF personnel who have been prosecuted for human rights violations. Until India ends its legal protection of security forces and civilian officials implicated in criminal offenses, a culture of impunity will prevail and abuses will continue.

The BSF, which has a long record of severe human rights abuses and members of India's other security forces, are exempt from criminal prosecution unless specific approval is granted by the Indian government to undertake a prosecution in a particular case. This legally sanctioned impunity is even included in a new bill to prohibit torture under consideration in the Indian parliament. The bill, as presently drafted, will require approval from the central or a state government for a court to have jurisdiction over an offense committed by a public servant.

BSF personnel are in theory liable to be produced before an internal court for making false accusations, or for "disgraceful conduct of a cruel, indecent or unnatural kind." Although the BSF claims that these courts are routinely used to prosecute those that commit crimes or violate the Border Security Force Act, there are no publicly known cases in which a BSF member was convicted of a crime for a human rights abuse at the India-Bangladesh border. It is time for the Indian government, which claims to follow the rule of law and respect basic rights, to take strong steps to end abuses and hold those responsible to account.



Nazim Mondal holds a picture of his dead son. Sixteen-year-old Peparul Sheikh was killed by the Border Security Force. Chakmathura village.

Peparul was with his cousin Aminul Islam when they saw the BSF constables helping smugglers push through some 30-40 cows into Bangladesh. Fearing that this large herd of cattle would damage the standing crop in the field, the two boys tried to chase the cattle away. According to his cousin as soon as the cattle had been smuggled safely across the border, the BSF personnel started chasing the boys. While Aminul managed to flee, he saw Peparul being caught by the soldiers who beat him with their rifles, boots and wooden sticks. Then one of the soldiers shot the teenager in the chest.



Floodlit sections of the Indian fence in West Bengal, on the border with Bangladesh.

KEY RECOMMENDATIONS

- The Indian government should publicly order the Border Security Force (BSF) and other security forces to abide by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. This requires officials to apply, as far as possible, non-violent means before resorting to the use of force and firearms. Even in self-defense, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. International law also requires security forces to give a clear warning of their intent to use firearms, and sufficient time to surrender.
- Given the continuing failure of the BSF's internal justice system to prosecute its own members for human rights abuses, personnel of all ranks implicated in serious rights abuses should be investigated by civilian authorities and prosecuted in civilian courts. In cases of abuses against Indian and Bangladeshi nationals, the police must register complaints filed against the BSF. Guidelines as laid down by the National Human Rights Commission to investigate all cases of deaths in armed encounters should be applied to the BSF.
- The Indian government should establish an independent and impartial commission of inquiry into serious violations of international human rights law by the BSF. The government should invite both Indian and Bangladeshi nationals to submit evidence and bring complaints to such a commission. The inquiry should be time bound and transparent, and should have the ability to provide protection to witnesses.
- The Indian government should repeal all legal provisions that require approval of the executive branch for prosecutions against members of the security forces to proceed, including in article 197 of the Criminal Procedure Code. Similar provisions in the Indian Prevention of Torture Bill currently in front of the Indian parliament should be deleted. Such provisions provide effective immunity to the security forces and violate the principles of equality under the law enshrined in both the Indian Constitution and international law.
- The UN Department of Peacekeeping Operations should inform the Indian government that those BSF personnel responsible for human rights violations should be excluded from peacekeeping duties.
- The Government of India and Bangladesh should agree upon the request of the special rapporteur on extrajudicial, summary, and arbitrary executions to visit the country, pending since 2000 for India and since 2006 for Bangladesh. The Special Rapporteur should also include in his program, visits the border areas between India and Bangladesh.

Cover : The family of Abdus Samad who was killed in BSF custody. Hundreds of Indian and Bangladeshi nationals have been killed due to indiscriminate use of lethal force by India's border guards.
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