

Summary of human rights concerns arising from the Terai protests of 13 – 29 February 2008

OHCHR-Nepal



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Introduction

On 8 February 2008, a new alliance of three Madheshi political parties, the “United Democratic Madheshi Front” (UDMF)¹ announced that it would call a Terai-wide *bandh*² from 13 February to support their demands to the Government³. *Bandhs* were called at the same time by the Federal Democratic National Forum (FDNF)⁴, a coalition of indigenous groups and the Federal Republican National Front (FRNF)⁵. The UDMF *bandh* was called off on 28 February following agreement with the Government and the others were terminated a few days later following similar agreements.

The imposition of the *bandhs* paralysed daily life in most of the Terai and led to violent confrontations between *bandh* supporters and both the Nepal Police and Armed Police Force (APF). All Eastern, Central and Western Region Terai districts except Chitwan were affected, as well as the Mid-Western Region district of Banke and, to a lesser degree, Bardiya and Dang districts. In the Far-Western region, a *bandh* called by the United Tharu National Front (UTNF) was partially respected. The restrictions on daily life were also compounded by the imposition of curfews, for example, in Biratnagar, Birgunj, Nawalparasi and Nepalgunj.

The incidents illustrate the turbulent nature of Nepal’s transition and the challenges faced by the Government, in particular the agencies responsible for maintaining law and order who function under difficult conditions often with insufficient training, resources or operating procedures.

According to OHCHR’s findings, six civilians died during the protests as a result of confrontations with police, five as a result of bullet wounds, and hundreds were injured. An APF officer was also killed and numerous other police officers were injured in connection with a demonstrations, mostly by stones and rocks thrown by protestors.

The Government has a duty to protect the lives and property of the population and to maintain law and order. They also have the right to use force where necessary and proportionate to accomplish those ends and where other means are insufficient. The behaviour of demonstrators during these protests was on many occasions violent and provocative. Demonstrators threw stones, rocks and even petrol bombs at police and, in some places, carried out sustained attacks against police posts. Demonstrators also attacked local government offices and private businesses that defied the *bandh* and vandalised or burned vehicles. Despite public announcements that ambulances would be allowed to move freely, they were often prevented from doing so and several were vandalised.

The district administration was often faced with difficult decisions and police officers, both Nepal Police and APF, came under considerable pressure. In many instances OHCHR saw them act with restraint in the face of provocation. There were also operational constraints. Some senior police officials informed OHCHR that police had inadequate equipment and

¹ The Madheshi People’s Rights Forum (MPRF) led by Upendra Yadav, the *Sadbhavana* Party (SP) led by Rajendra Mahato and the *Terai-Madhes Loktantrik Murcha* (TMDP) led by Mahant Thakur.

² A general strike in which all businesses, shops, schools, etc are closed and public transport halted.

³ The demands included a constitutional amendment to establish an autonomous Madheshi state within a federal democratic republic and fair representation of Madheshis in all organs of the state, including the army.

⁴ The FDNF includes the Federal Limbuwan State Council (Lingden) and the Tamangsaling Autonomous State Council.

⁵ The FRNF includes the FDNF, the United Tharu National Front and a broad Madheshi Front comprising the Madheshi People’s Rights Forum (Biswas/Gupta), Dalit Janajati Party, Loktantrik Madheshi Morcha and Madheshi Loktantrik Morcha.

resources to protect themselves or deal with the protests and they often worked long shifts without a break, and sometimes without adequate food and water.

Taking these significant considerations into account, the policing of the protests raised serious human rights concerns, particularly relating to the use of force by police, including lethal force. The enforcement of the *bandh* affected the freedom of movement of the population, but OHCHR was also concerned at allegations of police actions that violated individuals' rights to freedom of assembly and movement.

Many similar concerns were raised in OHCHR's report on the April 2006 Jana Aandolan. This highlights the continuing need for the Government to address the manner in which public disorder is managed, including through institutional reforms within the agencies responsible for public security, as well as further training and better equipment.

As a result of the incidents affecting the Terai during this period, the exercise by the population of some of its economic, social and cultural rights was also restricted. For example, people were unable to work and many children were unable to access their schools, so that their access to education was disrupted.

OHCHR was present during many of the protests and monitored the response of the administration and police as well as the behaviour of *bandh* supporters. OHCHR also monitored the detention of those arrested during the protests with a view to ensuring respect for legal procedures and the rights of detainees. OHCHR collaborated with the United Nations Mission in Nepal (UNMIN) and liaised closely with human rights defenders, journalists, members of civil society, and the National Human Rights Commission (NHRC), which also closely monitored the situation and raised its concerns with the Government. In addition, OHCHR maintained close contact with the authorities and with protest leaders, promoted dialogue between them and intervened on several occasions with a view to preventing or minimizing violence. OHCHR acknowledges the cooperation of all of the above, which enabled OHCHR to carry out its mandated tasks.

On 20 February, OHCHR issued a press release raising concerns at the growing reports of violence. OHCHR called on protesting groups to use only peaceful means and urged the Nepal Police and APF to exercise restraint in their response to protestors, ensuring that any use of force was proportional to the threat posed, including during curfews.⁶ The release welcomed the Home Minister's statement issued the previous day that *inter alia* noted that the government had issued directives to police to exercise restraint in maintaining law and order. OHCHR's press release followed one issued by UNMIN on 18 February expressing concern at the violence and appealing to the Home Minister to take all possible measures to avoid excessive use of force as well as to leaders of the UDMF to address their grievances through peaceful means.

On several occasions OHCHR witnessed the participation of children, sometimes in the front lines and armed with sticks, during confrontations between *bandh* supporters and the police. OHCHR and UNICEF issued a joint press statement on 22 February expressing concern at the participation of children in violent protests and *bandhs*.⁷ The agencies urged all parties to respect the provisions of the Convention on the Rights of the Child, to which Nepal is signatory, and the Election Code of Conduct, which clearly states that children should not be forced, coerced or bribed into participating in political activities.

⁷ The issue was also raised by UNMIN in its 18 February press release.

General domestic and international framework

a) Use of force

According to international standards⁸, when law enforcement officials disperse assemblies that are illegal but not violent, they must avoid using force or where this is not practicable, must restrict force to the minimum extent necessary. In dispersing violent assemblies or responding to other criminal actions, including violation of curfews, law enforcement officials may use firearms only when it is necessary (a) in self-defence or in defence of other people against imminent threat of death or serious injury; (b) to prevent a particularly serious crime involving a grave threat to life; or (c) to arrest a person posing this kind of threat and who is resisting efforts to stop the threat or to prevent their escape. Firearms are only to be used when less extreme means are insufficient and when their use is strictly unavoidable to protect life. The use of force more generally must be guided by the principle of necessity and proportionality: force may be used only when non-violent means are ineffective and only to the extent required by the situation.

According to Nepalese law⁹, the Chief District Officer (CDO) is responsible for maintaining order, peace and security at district level. The police are empowered to arrest anyone who commits a prohibited act, including disturbing the peace, trespassing on or damaging government or private property or obstructing the operation of essential social services¹⁰.

It is a matter of concern that the Local Administration Act 1971 and the Essential Installation Protection Act 1955 (EIA) appear to permit the use of firearms in situations outside those permissible under international standards. The Local Administration Act provides for a pre-emptive and graduated response to potential or actual breaches of public order in demonstrations. The police may use force to restore order, including batons, rubber bullets, firing in the air, teargas and water cannon, as the situation requires. If peace still cannot be restored, the police may open fire after receiving a written order from the CDO and after warning the crowd that they will be fired upon if they do not disperse. However, if there is no time to issue a written order, the CDO may issue a verbal order, to be followed by a written order within 24 hours. When opening fire, the police may generally only shoot below the knee, although there is also provision for the police shooting at sight individuals/groups who are 'violating the curfew violently'. The Essential Installation Protection Act empowers senior police to use/order the use of firearms to shoot 'as far as possible below the knee' where necessary to arrest a person who destroys or attempts to destroy an essential installation and is attempting to escape arrest¹¹. 'Essential installation' is defined as including a highway and petrol/petrol stations.

b) Right to protest peacefully

All persons also have the right under the International Covenant on Civil and Political Rights to 'peaceful assembly' and freedom of movement. States are only permitted to restrict these right by law to the extent necessary 'in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others'. The power to call a curfew is established in Nepali law. However, it is important that curfews only be used where 'necessary' or 'necessary in a democratic society', given the effect of curfews on the daily lives of the population.

⁸ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the Code of Conduct for Law Enforcement Officials

⁹ The Local Administration Act

¹⁰ Some Public (Crime and Punishment) Act

¹¹ Note that under the Essential Installation Protection Act, should the use of force result in a person dying, the official is exempted from punishment, and thus criminal liability.

Human rights violations

Right to life

The most serious violations during this period were those relating to the right to life. OHCHR investigated the deaths of six civilians, all male, who died during the protests; in Nepalgunj on 17 February, Siraha district on 19 February, Saptari district on 25 February (two persons), Nawalparasi district on 26 February and Sunsari district on 27 February. OHCHR's findings indicated that five died as a result of police fire and one as a result of injuries sustained when he was hit by *lathis*. In the cases of death by police fire, OHCHR has reached an initial conclusion that in most cases the use of lethal force was not justified. At least thirty civilians were treated in hospitals for bullet wounds sustained as a result of police fire; most bullet injuries were sustained above the knee. The figure was probably higher as some hospitals were unable to give precise numbers. Many protestors had head injuries as a result of being beaten over the head with *lathis* although senior police officials have made commitments on several occasions to stop this practice.

In most of the instances in which live ammunition was used directly against protestors by the police, information gathered by OHCHR suggested that the police did not always comply with Nepal's domestic law or international legal standards. Direct live fire was rarely preceded by a clear warning, as required by international standards and the Local Administration Act, and other methods of crowd control had not always been exhausted. In addition, in most cases there did not appear to be an imminent or grave threat to life or serious injury. Of the five persons who died as a result of police fire, three were found not to have been actively participating in protests and could not have presented any kind of threat to life. Detailed summaries of the six cases are annexed.

The wording of curfew orders issued by the CDOs in different districts was too broad and allowed police forces wide discretionary powers regarding the use of firearms during curfew that risked resulting in violations of the right to life. A curfew order issued by the CDO of Banke district on 17 February stated that '...the security forces deployed for security reason may even open fire if anyone is found moving...' The same day, a 25 year old construction worker, Guljar Khan was fatally shot in forehead during the curfew, in Gahasmandi area of Nepalgunj.

Similarly, the CDO of Morang issued a curfew order on 19 February, which mentioned that, '...security personnel may open fire if this order is violated.' In Parsa district, the CDO issued a curfew order on 26 February, which mentioned that, '...if anyone moves about, assembles, or does any other act which is not allowed in that area, and if anyone violates the curfew order the security personnel who have been deployed for security may, as necessary, take [someone] under control or shoot.'

These curfew orders failed to cite the provisions of the Local Administration Act that require that police may use firearms to enforce curfew¹², on the orders of the CDO, but only if they judge it necessary after using all other non-lethal means of force. Furthermore, the curfew orders do not instruct the police forces that they must issue a clear warning before using firearms. These omissions tend to create a perception among some of the police personnel that with the imposition of curfew in a particular area they are not under the legal obligation to use force in a graduated manner. When OHCHR raised this issue with the Home Secretary, he explained that the curfew order is the public notice of the curfew but that police are still under an obligation to use firearms only on specific instructions from the CDO. However, it would appear that there is some confusion on the ground about this.

¹² As already mentioned, this provision of Local Administration Act (1971) is incompatible with international standards on use of force.

The imposition of curfews was not always clearly or systematically broadcast by CDOs, and the police were often quick to take action against individuals violating curfews in an excessive and unnecessary way, whether or not the violation was deliberate. On 20 February, OHCHR found that the District Administration Office (DAO) had failed to inform Birgunj radio stations, usually used to relay curfew times to residents, of the curfew times that day. At least three people were beaten by police that morning for inadvertently violating the curfew, including a man going for a morning walk whose foot was broken by an APF officer. A journalist informed OHCHR that he had on that day prevented APF from beating a young boy attempting to cross a road.

Right to physical integrity

The police faced a difficult and frustrating situation and were often themselves the target of violence. OHCHR found that the police used considerable restraint on some occasions, with a level of force appropriate to control violent crowds in difficult conditions. On others, OHCHR witnessed the police, and in some cases the same police, using unnecessary and disproportionate force against people who were already under their control, no longer posed a threat or were simply not involved in the protests. OHCHR also witnessed police throwing stones back at protestors and sometimes using catapults to do so.

Statistics from one hospital in Dhanusha district illustrate the level of violence during protests. As of 26 February, Janakpur Zonal Hospital had registered a total of 281 admissions, including seven persons injured with live or rubber bullets, 272 by *lathis*, stones or physical assault, seven by teargas and one who had burns.

OHCHR witnessed police beating protestors with *lathis*, often on their heads or upper parts of their bodies, in an excessive and violent manner. OHCHR observed numerous protestors with serious head injuries as a result, and some with bone fractures. On 17 February in Nepalgunj, OHCHR witnessed at least three incidents in which police personnel severely beat protestors under their control. In one incident, OHCHR observed a group of more than 20 police surround one demonstrator and hit him repeatedly with *lathis* as he lay on the ground.

OHCHR received numerous reports of police personnel assaulting residents of private homes they entered in pursuit of protestors, including elderly persons and juveniles. On 17 February, APF personnel at a violent UDMF rally in the main bazaar area of Nepalgunj (Banke district) entered Madeshi populated side streets in Ward 14 in search of demonstrators. APF systematically forced their way into residences, indiscriminately attacked locals, including men, women and young children, in their homes with *lathis*, and destroyed property including five water pumps. OHCHR observed three residents with serious head injuries and five persons with signs of *lathi* injuries, including bruises on the back and on the hip

Also in Banke district, on 20 February, following violence at a rally of around 200 local people heading toward Nepalgunj, a group of 20-25 APF reportedly chased demonstrators into a residential area in Jaispur VDC and fired at least five rounds of tear gas, as well as live ammunition. The APF also reportedly entered houses, damaged household goods and stole some items, including money. A 60-year-old woman was shot in the hip by APF, reportedly while trying to stop them from looting money from her house. Her husband sustained a head injury and several other locals were reportedly injured from being hit with *lathis*.

In Rautahat district, following a clash in the centre of Gaur on 22 February when protestors tried to prevent a helicopter carrying electoral material from landing, residents who lived 15 minutes walk from the site reported that APF personnel forcefully entered their homes and physically assaulted inhabitants. Several students were also allegedly taken out of a nearby school hostel and beaten with *lathis* and the butts of firearms. In Birgunj (Parsa district), APF officers reportedly forced entry into two houses in Murli Pokhara on 20 February, smashed property and beat at least three people, including a ten year-old boy. Blood was still visible on the floor when OHCHR visited a house where one man was reportedly beaten up in his bed. OHCHR also confirmed allegations that APF personnel beat residents of Golbazaar and Mirchaiya, Siraha district, in their homes, between 16 and 19 February and in Malleth VDC in Saptari district on 26 February. After OHCHR raised concerns at the latter incident with the CDO, he instructed the APF team to leave the area.

On 19 February, the APF was accused of surrounding civilians taking part in a rally near the Dhanusha District Electoral Office and *lathi* charging them towards a pond. One witness described seeing four persons chased and kicked by the APF into the pond. A human rights defender told OHCHR that he was beaten when he intervened to help someone who had fallen into the pond. The APF reportedly then pursued civilians into 15-20 houses and indiscriminately beat residents. Following this incident and the resultant criticism of the Armed Police Force, the police changed its strategy, reduced the visibility and presence of the police, particularly the Armed Police Force, and tension between protestors and the police decreased as a result.

Violations of physical integrity were also reported in the context of attacks by police against journalists who were reporting on or taking photographs of the protests in Dhanusa, Mahottari and Rautahat and Banke districts. They include allegations of physical assault, verbal abuse and deletion of photos from photographers' cameras. In Garuda VDC, Rautahat district, four journalists were reportedly beaten by APF personnel on 26 February after taking photographs of APF personnel allegedly committing abuses against the local population. On 18 February, police officers reportedly entered the office of Mithilanchal FM radio station in Dhanusha at around 17:00, *lathi* charged employees, verbally abused them and threatened to stop broadcasts. They also reportedly detained one media person for around 15 minutes and beat him with *lathis*. After two other journalists complained about police behaviour, journalists and human rights defenders met the CDO and senior police officials to address their concerns. The police reportedly apologized and the CDO set up an investigative committee to look into the allegations.

Some injured protestors who were arrested by police were not given proper medical attention. At least eight injured persons arrested in Nepalgunj on 17 February following a violent UDMF rally were not provided with adequate medical care during their initial detention in the DAO compound. Six had serious head injuries and two others had breathing problems. They were initially provided first aid by medical assistants and then, at OHCHR's insistence, the CDO authorized their transfer to a hospital opposite the DAO. One man detained, diagnosed with a fractured leg, was not taken for treatment for 72 hours.

OHCHR also received allegations that police fired tear gas into hospital compounds on at least three occasions. On 18 February, police allegedly fired three rounds of tear gas within the Janakpur Zonal Hospital premises, forcing the medical staff to evacuate patients from the emergency ward. On 25 February, Nepal Police and APF personnel under the command of an APF inspector entered a hospital in Rajbiraj and fired teargas inside the hospital premises to disperse UDMF supporters who were there either for treatment or to help others. According to eye-witnesses, the police approached the emergency section and accused hospital staff of being biased and failing to treat injured police. On 22 February in Siraha, some 50 police personnel reportedly came into a hospital, including into the emergency ward, and beat protestors receiving treatment.

Freedom from arbitrary arrest and detention

Most protestors arrested by the police were released after a short period, even protestors who had engaged in criminal actions. For example, more than 90 UDMF cadres who obstructed candidates from registering their nominations at the District Electoral Office of Rajbiraj on 25 February were arrested by police, but released the same evening.

OHCHR found that there was a general lack of respect for legal procedures in the case of many of those arrested. In Nepalgunj, for example, 31 persons were arrested on 17 and 18 February for offences committed under the Public Offences Act during a violent rally on 17 February. Of these, 18 were detained at an irregular location (the Byaamsala Nepal Police riot control reserve camp) for lack of space at the District Police Office (DPO). OHCHR found that they were not informed of the reason for their arrest and were not provided with arrest and detention letters within 24 hours, nor were they brought before either the CDO as required by the Local Administration Act or the court within 24 hours as required by the Interim Constitution. By 28 February all 18 detainees had been released without charge.

Torture and ill-treatment in detention

OHCHR received some allegations of serious ill-treatment of protestors by police after arrest and in police custody, and was also concerned that, in some instances, injured protestors were arrested from hospital wards.

In one of the most serious cases, on 25 February in Rautahat, APF personnel arrested two people in separate incidents during protests near Garuda in Shivanagar VDC. Both were allegedly severely beaten with *lathis* and the butts of firearms during arrest and whilst in APF custody overnight. They were taken to hospital after they were handed over to the Nepal Police the following day. Despite serious head injuries and multiple bruises they were taken back to the DPO, but returned to hospital a few hours later following a deterioration in the condition of both detainees.

Freedom of assembly

In some instances, the police reportedly disrupted peaceful rallies. On 17 February several witnesses reported that in Birgunj, Parsa district, police officers, mostly APF, *lathi* charged and used tear gas to disperse a peaceful UDMF rally. Rally participants were setting up banners and loud speakers by the clock tower when they were attacked. A witness who tried to explain to police that this was a peaceful rally was also beaten up. The CDO and Nepal Police later insisted that police had charged only after rally participants had thrown stones at them.

Failure to observe impartiality

At some locations, OHCHR observed that police failed to act with impartiality when policing demonstrations. In Biratnagar, for example, on 19 February, OHCHR observed several hundred youths congregate in the Sarauchiya area, throw rocks and vandalise property in the mostly Madheshi neighbourhood. The police watched but did not intervene; some even participated in rock throwing. On 21 February, OHCHR observed confrontations between Madheshi demonstrators and APF personnel, who were supported by rock-throwing youths, that continued until shortly after the imposition of curfew in the area at 17:00.

In Kapilvastu and Rupandehi districts, where the CDOs had issued prohibitory orders banning meetings of more than five people, OHCHR observed that the orders were not enforced impartially. Whilst they were enforced against *bandh* supporters, the Seven Party Alliance (SPA) was permitted to carry out a 'harmony rally' in Rupandehi and in Kapilvastu; the police also allowed various political parties to hold rallies whilst submitting their candidate lists at the District Electoral Office.

At Murli Chowk in Birgunj, Parsa district on 20 February, OHCHR's investigations showed that the use of derogatory language by the Nepal Police against Madheshi protestors led to a deterioration in an already tense situation.

Accountability

OHCHR has consistently stated that perpetrators of human rights violations and abuses must be held accountable if future violations are to be prevented. Criminal actions, no matter who they are committed by, should also be investigated and prosecuted according to the due process of law. In Nepal, the current lack of accountability means that persons breaking the law, including police officers, can do so knowing they are unlikely to be punished. This diminishes the effectiveness and credibility of the police and denies others their rights to truth and justice.

Of special concern are the cases where police action has led to loss of life. The UN's Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require that in the event of death or injury from firearms, police officials must submit a detailed report of the incident. A detailed report must also be sent to the authorities responsible for administrative review and judicial control. Furthermore, Governments and civil law enforcement agencies are obliged to ensure that an effective review process is in place for incidents when there is evidence of excessive force by law enforcement officials. The appropriate administrative or prosecutorial authority must exercise jurisdiction to investigate the allegations. However, Nepal's domestic laws and regulations do not require police to conduct internal investigations into allegations of excessive use of force. Nonetheless, the Nepal Police are obliged by domestic law to register information about all crimes (that is, lodge a First Information Report (FIR)) and initiate a criminal investigation.

OHCHR followed up with police the six cases of civilian deaths during the protests and found that two FIRs had so far been submitted, one on the initiative of the police in the case of the death of Guljar Khan in Nepalgunj, and one by a private individual in the case of the death of Mohammad Biskud Miya in Sunsari district. The police told OHCHR, however, that an investigation has not yet been formally initiated into Biskud Miya's death.

Police failure to register FIRs in relation to the other deaths is a breach of domestic law. Police told OHCHR that a murder investigation will be conducted in the case of Rajesh Thakur, who was killed in Siraha, but no FIR has yet been registered. Police also informed OHCHR that investigations were under way in relation to three other deaths, those of Guljar Khan in Nepalgunj, Lakhani Safi in Saptari and Jagadish Pasi in Nawalparasi. The nature of these investigations, whether internal or criminal, is unclear. OHCHR is concerned that without the registration of FIRs, there will be no criminal investigations into these killings. Finally, the police told OHCHR that they had no plans to initiate an investigation into the death of Gultani Das in Rajbiraj.

OHCHR has also followed up on the allegations of the beating of two civilians in APF custody in Rautahat district. The two were also initially denied adequate medical assistance. Both the CDO and the Nepal Police told OHCHR they will only conduct an investigation into the allegations of ill-treatment when the alleged victims report back to the Nepal Police from hospital, where they were taken as a result of the seriousness of their injuries.

The need to end impunity for current and past violations of human rights was strongly stated during the visits of both the UN High Commissioner for Human Rights and her Deputy, in January 2007 and February 2008 respectively. The effectiveness of the police force and, more broadly, the consolidation of the peace process will continue to be at risk until the authorities ensure full accountability by the security forces.

Lack of investigation into criminal offences

OHCHR is also unaware of any FIRs or police investigations into the sometimes violent and criminal behaviour associated with demonstrators and actions to enforce the *bandhs*, including the use of violence against police and others and the attacks on government buildings, including police posts and private property. All of those arrested appear to have been released without charge. The practice of providing amnesty or pardons in agreements with different groups prevents police from investigating crimes, as well as the prosecution of people accused of criminal activity.

Conclusion

Some restraint was demonstrated by law enforcement agencies during the February 2008 Terai protests in a situation where they were under considerable pressure. However, the human rights concerns highlighted in this report indicate that although the Home Ministry, APF and Nepal Police have expressed commitments to address concerns arising from past incidents, including the Jana Aandolan of April 2006 and the Madheshi protests of January/February 2007, many of the deaths and injuries incurred during the recent Terai protests may have been avoided if earlier recommendations had been implemented.¹³ OHCHR remains available to scale up its assistance to the Government on the human rights aspects of public security and recommends that the Government take advantage of all available international expertise to address institutional concerns relating to public security and the maintenance of public order, so that Nepal is better equipped to meet its human rights obligations under international law.

During investigations into allegations of use of excessive force, for example, OHCHR has found that guidelines for the use of lethal force need to be strengthened. On many occasions, firearms using live ammunition have been employed without detailed instructions from commanding officers and without the benefit of standard operating procedures that meet international standards. Of special concern is the Nepal Police and APF officers' capacity to apply the principal of proportionality in situations where they are under pressure. OHCHR has on numerous occasions found that police officers under pressure have resorted to using lethal force in situations when other options were available.

Some of the violations and issues raised in this report were influenced by the lack of preparedness of the police to deal with the circumstances faced. OHCHR was informed by some police officers that they had acted to restrain the junior ranks, many of whom had no experience of monitoring violent demonstrations. In some cases, OHCHR learnt that police personnel in the front lines were new recruits. OHCHR was also informed that police were often forced to work long hours under difficult conditions and were unable to protect themselves or property from attacks because of a lack of appropriate equipment. Police at the Maheshpur police post in Nawalparasi district commented that they were forced to use live ammunition to disperse a crowd (during which one protestor was shot dead) because they did not have alternatives, such as tear gas, rubber bullets or loud speakers.

¹³ OHCHR has been monitoring and reporting on the performance of police at demonstrations, protests and *bandhs* in Nepal for more than two years. Concerns similar to those raised in this report were raised in OHCHR's September 2006 report "*The April protests, democratic rights and the use of force*" and its December 2007 report "*Human rights in Nepal one year after the Comprehensive Peace Agreement*".

OHCHR considers that strengthening the accountability of the police would help to prevent and deter human rights violations. Internal police accountability mechanisms do not exist in most cases and where they exist are neither independent nor seen to be credible. Government-appointed commissions, such as the Rayamajhi and Terai Commissions, set up in response to the Jana Aandolan of 2006 and the Madheshi protests of 2007, have been of limited impact as they have not been adequately followed up. According to OHCHR's records, not one Government or law enforcement official has to date been held accountable for any of the human rights violations committed from the time of Jana Aandolan until today. A review of internal accountability mechanisms of the district administration and law enforcement agencies and the development of mechanisms that comply with international standards appears necessary.

In the course of its monitoring of the Terai protests, OHCHR again observed a common problem; the population's perception that the local administration, the Nepal Police and the APF working in the Terai districts are not impartial in the execution of their functions. OHCHR's monitoring shows that this is only true in part. In many instances, the local administration and police act in a professional manner, striving to be both objective and fair in carrying out their duties. There are, however, instances where OHCHR has observed behaviour that gives many Terai residents the impression that the police are biased. This includes instances where police officers have been inactive during violent protests by people of mainly hill origin, but have intervened forcefully during similar protests by *bandh* supporters. On other occasions, police officers have been heard to use derogatory language while policing demonstrations that indicates discriminatory opinions. OHCHR welcomed recent steps taken by the Government to be more inclusive, including through the appointment of Madheshi CDOs to some Terai districts, as well as the adoption of quotas for recruitment to the police and civil service and encourages the Government to ensure that the local administration in all parts of the country becomes fully inclusive.

Citizens also have responsibilities. The right to protest, reflected in the rights to freedom of speech and assembly, is only applicable when protests are carried out peacefully, with respect for the law and for the rights of others, including local government officials and the police. The State has the right to intervene to protect the rights of others. The leaders of political parties and other groups have a special responsibility to make sure that protests are peaceful. OHCHR observed many incidents when protestors committed criminal acts for which they should be subject to investigation and prosecution.

Some protestors, including members of armed groups, interfered with the Constituent Assembly electoral process and threatened or intimidated electoral candidates. This demonstrates a lack of respect on the part of these protestors and possibly their leadership towards the democratic process which is the legitimate vehicle for the change they demand. The use of threats and violence, which infringe upon the rights of others cannot be justified under any circumstances.

Recommendations

The recommendations made below resemble many of those made by OHCHR in 2006 following the Jana Aandolan II. OHCHR is confident that their implementation would contribute to better protection of human rights including a reduction in deaths and injury from excessive use of force by police as well as accountability for human rights violations. In turn this will increase public confidence in the police. OHCHR would welcome the opportunity to assist the Government in implementing these recommendations.

In response to the protests in the Terai that are the subject of this report, OHCHR urges the Government to implement the following recommendations immediately:

On accountability

1. NP should immediately file an FIR and conduct an investigation into any death or serious injury occurring during the Terai protests. In addition, allegations of ill-treatment of civilians in detention should be investigated, including the alleged beating of two civilians in APF custody in Rautahat district and the initial failure to provide them with medical assistance.
2. Investigations should be conducted into the allegations of arrest and removal from hospitals of injured civilians by police, and the lack of medical assistance rendered to persons in police custody.
3. Instructions should be issued to police that they must register First Information Reports relating to suspected crimes committed during protests and demonstrations. Those suspected of criminal activity should be charged, investigated and prosecuted in accordance with due process and other rights.
4. The practice of granting ‘blanket amnesties’ that prevent investigation of crimes and/or provide amnesty or pardon including arrangements in agreements with agitating groups, should be ceased. Similarly, provisions in agreements relating to the withdrawal of cases and release of detainees should not prevent the application of due process and the investigation and prosecution of people accused of criminal activity.

On the use of force by security forces

5. The use of live ammunition should be strictly supervised and restricted to situations where necessary to respond to imminent or grave threats to life and when non-lethal methods have failed. In this regard:

-Standard Operating Procedures should be established in relation to the use of force by both APF and National Police, incorporating international standards for the use of force during demonstrations and curfew periods.

-Police should be made aware, including through training, that injury or death through excessive use of force may be severely sanctioned, including through prosecution.

-Police should be made familiar with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, as well as how to implement them.

-Training in non-lethal methods of crowd control needs to be conducted to ensure that non-lethal methods are not used in a lethal way. For example, police officers should be trained not to use *lathis* to hit persons on the head or upper parts of the body and not to fire tear gas or rubber bullets directly at individuals, in accordance with the National Police training manual.

- Journalists should be allowed to report on protests free of intimidation and violence.

6. The Government should issue instructions to CDOs¹⁴ and police commanders to closely supervise the use of force by police forces and take immediate action if violations are detected. Furthermore, the wording of the curfew orders issued by the CDO must be detailed and precise, specifically instructions issued to the police forces regarding the use of force should refer to the need to use force in a graduated fashion. The imposition of curfews should be clearly and effectively broadcast by CDOs to ensure that the public is adequately informed.

In addition to taking the above immediate steps to respond to the recent incidents, OHCHR strongly encourages the Government to begin instituting medium term reforms in relation to the prevention of and response to public security challenges. These reforms, which should be introduced through a plan approved at a high level of government and implemented according to a firm timetable, should address structural, policy, legislative, operational and training issues and should be aimed at developing institutional accountability among all responsible agencies, under democratic oversight and in accordance with international human rights standards. The following specific measures are recommended as a starting point:

7. OHCHR recommends a complete review of accountability mechanisms of the district administration and law enforcement agencies and the establishment of both internal and external oversight mechanisms that comply with international standards.

8. The Local Administration Act and the Essential Installation Protection Act should be amended to ensure that the provisions relating to the use of force against protesters are consistent with international standards, and that the rights to peaceful assembly, freedom of expression and freedom of movement are respected.

9. Arbitrary and abusive use of force, including use of lethal force, by security and law enforcement agencies should be made a criminal offence under domestic legislation of Nepal.

10. Internal Nepal Police and APF regulations should include excessive use of force against civilians as a disciplinary offence. Death or serious injury as a result of such use of force should be regarded as an aggravating factor with serious penalties attached.

11. Regulations and policies should also specify that acts of unlawful discrimination, including verbal abuse, will not be tolerated and will be subject to serious disciplinary sanctions.

Finally, OHCHR would like to make the following general recommendations:

Organisers of *bandhs*, demonstrations and protests should be aware of and respect their responsibilities to ensure that all such activities are peaceful, that any kind of violence is avoided and that the human rights of others are respected at all times.

The rights of the child should be fully respected. Every effort should be made to protect the right of children to education. Children should only participate in demonstrations of their own free will. They should not be given food or money to induce them to participate in demonstrations in any way or placed in situations where they risk injury or other harm. As with adults, children should not use violence and must never be incited or encouraged to do so.

¹⁴ The CDO is Chairperson of the District Security Committee and responsible for maintaining order, peace and security. He also authorizes the police forces to use force in the context of a law and order situation.

ANNEX

Cases where possible excessive use of force by the police resulted in loss of life

Case 1: Guljar Khan, killed on 17 February in Nepalgunj, Banke district

Guljar Khan, a 25-year-old construction worker from Nepalgunj, was shot in the forehead at around 15:20 on 17 February by police and died shortly afterwards.

At 14:00 the Chief District Officer of Banke district had imposed a curfew in different parts of Nepalgunj municipality following a violent protest and clashes with police and some 2,000 *bandh* supporters that started around one hour earlier. The UDMF had announced their intention to close Government offices and OHCHR observed that the violence started at around 12:50, when UDMF supporters approached the District Administration Office (DAO) along the main bazaar road from a northerly direction, and started throwing stones and bricks at police deployed there. The police responded with graduated force, first baton charging then using tear gas and firing rubber bullets. During this time, demonstrators scattered northwards and along side streets. The police gave chase and demonstrators re-emerged throwing stones. This pattern was repeated many times. Sometime after 13:00, a Government office¹⁵ in the vicinity of the DAO was looted and equipment burned.

At around 15:00, police officers in the main bazaar area, the scene of most of the violence, reportedly announced that they would use firearms. According to various sources, at around 15:20 Guljar Khan was at that time on a side road approximately 100 metres east of the main bazaar road. Information gathered by OHCHR from several sources indicates that he was not taking part in the protests and was in fact on his way home for lunch. According to a person who was with him, he was stationary on the street when a police team (it is not yet known if they were from the Armed Police Force (APF) or Nepal Police) approached from the direction of access to the bazaar road, to the south. The team reportedly fired four rounds of live ammunition northwards, in Guljar Khan's direction. Guljar Khan was shot in the forehead, and his companion was shot in the hip. Around 15 minutes later, Guljar Khan was taken by ambulance to the nearby hospital, where he died shortly afterwards. The *post mortem* report records the cause of death as "head injury due to firearm".

OHCHR observed two bullet marks at around three meters and five meters high, in a wall some ten metres north of the location where Guljar Kahn was shot, which appeared to confirm information from sources that the police fired shots above knee level, in violation of national legislation¹⁶. OHCHR found no indications that Guljar Kahn represented a threat to life at the time he was shot to justify the use of lethal force. OHCHR concluded that he died as a result of excessive use of force.

An FIR into the death of Guljar Khan was registered on the initiative of Nepal Police on 20 February. Both the Nepal Police and APF are conducting internal investigations to establish the circumstances of his death. In addition to the fatal shooting of Guljar Khan, eleven men sustained bullet injuries on 17 February in Nepalgunj, seven above the knee.

¹⁵ Ministry of Land Reform and Management, No. 2 Survey Party office

¹⁶ Local Administration Act

Case 2: Rajesh Thakur, killed on 19 February in Bishnupur, Siraha district

Rajesh Thakur died on 19 February as result of bullet injuries sustained during a confrontation between UDMF demonstrators and police at a place where demonstrators were blocking a bridge on the main highway to enforce the *bandh*. Thirty Nepal Police and 60 APF were deployed to clear the road. Throughout the day, demonstrators threw stones at the police. Police first responded by throwing stones back and with a *lathi* charge, pushing the demonstrators several hundred metres away from the bridge. This was followed by firing in the air and tear gas shells. As the confrontation continued, a small crowd of approximately 30 demonstrators grew to several hundred.

Between 14:30 and 15:00, police fired on the crowd of protesters attempting to approach the highway. According to an eyewitness, Rajesh Thakur was shot from a distance of 100 metres, while picking up a stone to throw at the police. At least two other people were also injured by live ammunition fired by the police at this time. OHCHR found fourteen bullet marks on nearby buildings. More than half the marks were less than a metre from the ground.

According to police records, four rounds of .303 ammunition and 30 rounds of shotgun ammunition were fired by Nepal Police, as well as nine tear gas shells and 15 rubber bullets. According to the Armed Police Force, tear gas was used but no live ammunition was fired by APF personnel during the incident.

Rajesh Thakur died in an ambulance on the road to the hospital in Dharan. Multiple road blockades set up by demonstrators may have contributed to his death. According to the *post mortem* report, the victim died of injuries caused by two bullets - one piercing the upper abdomen, and a second fracturing the right arm.

The Nepal Police denied that Rajesh Thakur died as a result of police fire, claiming that someone else shot him and that they would thus conduct a murder investigation. Witnesses who were present, including Human Rights Defenders, told OHCHR that they did not see anyone with firearms in the crowd. No FIR has been filed. According to the police, the government has already declared the victim a martyr and provided the family with compensation.

While the police were faced with a hostile crowd and acting lawfully to remove a road blockade, OHCHR's preliminary investigations suggest that firing live ammunition into the crowd was neither necessary nor proportionate and amounted to an excessive use of force.

Case 3: Gultan Das, killed on 25 February in Rajbiraj, Saptari District

OHCHR has concluded that an APF officer shot and killed 30 year-old shop owner Gultan Das during a confrontation between approximately 800 UDMF cadres and police on 25 February, after police arrested UDMF cadres who attempted to stage a sit-in protest in front of the electoral office in Rajbiraj. Throughout the day, UDMF demonstrators had confronted both Nepal Police and Armed Police Force, throwing stones, rocks, bricks, bottles and using sling shots. Police responded with multiple *lathi* charges, firing of tear gas shells and firing of live ammunition into the air. At least ten other civilians were injured during these clashes, as were at least three Nepal Police and, according to the Armed Police Force, at least seven APF personnel.

According to several eyewitnesses, Gultan Das was not taking part in the confrontations, but was leaning against a rickshaw watching from the front of his shop at a distance of approximately 100 metres from where the police were deployed when he was shot. Several sources, including the Nepal Police, speculated that shots were fired by APF personnel when the crowd threatened to vandalize an APF vehicle that was carrying an injured APF officer. A bullet reportedly pierced the hood of the rickshaw and hit Gultan Das in the chest.

According to the *post mortem* report, he died from multiple gunshot wounds. A second person who was near Gultan Das was shot in the thigh.

Although the District Administration had issued an order restricting demonstrators from entering the area surrounding government offices, the area where the victim was shot was not within the prohibited area.¹⁷ A curfew was imposed only after the killing.

Sources within the District Administration and the Nepal Police indicated that the death occurred as a result of APF fire. The District Administration claimed that the APF personnel who fired the shot had intended to fire in the air and, in any case, had acted in self-defence. No FIR has been registered in the case, and the police indicated that they were unlikely to initiate an investigation on the grounds that a police investigation would not be viewed as impartial by the community. Although the APF has acknowledged that at least 43 rounds of ammunition were fired in Rajbiraj that day (aerial shots), an APF source claimed that no APF personnel were present at the site of the incident.

OHCHR found no evidence that the victim, who was not even participating in the demonstration, posed a threat. OHCHR's preliminary investigations therefore suggest that he died as a result of excessive use of force by the police.

Case 4: Lakhan Safi, fatally injured on 25 February in Rajbiraj, Saptari District

On the same day, a 57-year-old man named Lakhan Safi was injured during a *lathi* charge by the Nepal Police and the APF and died three days later in Dharan Hospital.

According to several eyewitnesses, a joint team of Nepal Police and APF were deployed at Hatiya in Rajbiraj to enforce a prohibitory order restricting demonstrators from entering the area surrounding the District Electoral Office to obstruct the registration of candidates. During several hours of confrontations, demonstrators threw bricks, stones, glass bottles and used sling shots against the police as they attempted to enter the prohibited area. Police responded with multiple *lathi* charges, firing of tear gas shells and firing into the air.

Several sources stated to OHCHR that Lakhan Safi was injured during a *lathi* charge by both APF and Nepal Police at approximately 15:30, after several hours of confrontations. A *post mortem* report confirmed that Lakhan Safi died as a result of internal haemorrhage leading to shock and death after sustaining two blunt injuries in the left leg and thigh.

The Nepal Police told OHCHR that they had formed a three-member police inquiry team to look into the circumstances of the death, and would draw their conclusions by the second week of March. No criminal investigation has been initiated or FIR filed.

Case 5: Jagadish Pasi, killed on 26 February in Maheshpur, Nawalparasi district

On 26 February, 19 year-old Jagadish Pasi was shot in the chest by Nepal Police while participating in a protest in front of the customs police check-point on the Indian border at Maheshpur, Nawalparasi district.

¹⁷ Issued pursuant to the Local Administration Act, Article 6 (3).

Early in the afternoon, a crowd of several hundred UDMF supporters and local villagers reportedly approached the police post and some UDMF leaders requested that the Nepal Police leave the police post. The Nepal Police claim to have heard shots fired from the direction of the crowd that was moving towards the police post and saw a group of people heading towards the nearby house of a former minister and NC Nepali Congress candidate in the Constituent Assembly elections, which was subsequently looted and burnt. A few minutes after receiving the request, the Nepal Police fired five or six rounds of ammunition into the air. Some shots were then allegedly fired into the crowd, which had already started dispersing after the initial shots were fired. Eyewitness report that the victim was standing about 50 metres away from the compound of the police post and was shot as he was turning to run away, after the first set of shots had been fired, allegedly from the balcony of the police post. This is reflected in the *post mortem* report, according to which the bullet entered from the right side of the chest, passed through the thoracic cavity penetrating the lungs and heart and exited on the left side of the chest. The *post mortem* report indicated that Jagadish Pasi died from excessive bleeding due to a bullet injury.

OHCHR found that whilst the use of force was probably necessary to deter the crowd from attacking the police station, but that the use of lethal force by firing into the crowd was neither necessary, nor proportionate. The crowd, including Jagadish Pasi, had already begun to disperse when he was shot. He was not at that time posing a threat to life. OHCHR found out afterwards that the police post was not equipped with any means to control the crowd apart from firearms and was without loud hailer, tear gas or rubber bullets.

The Nepal Police acknowledged that Jagadish Pasi was killed by a police bullet but claimed that it was a stray bullet and that no one fired from the balcony. Nepal Police informed OHCHR that an investigation had been initiated but that no FIR had yet been filed.

Case 6: Mohammad Biskud Miya, killed on 27 February in Duhabi, Sunsari District

A fourth civilian death occurred in the Eastern Region on 27 February at approximately 08:00 at Duhabi in Sunsari District when a group of civilians entered the streets in defiance of a curfew.¹⁸ According to eyewitnesses, approximately six Nepal Police deployed at the edge of the area under curfew clashed with residents when 15 to 20 people entered the road to place bamboo sticks across the highway (to block the police from approaching Madheshi houses). According to the police, at the time of the incident, more than 100 people took out a rally in the curfew area and began to pelt the police with rocks. From a distance of 20 to 30 metres, the police fired approximately four rounds of live ammunition into the air from .303 rifles to disperse the crowd.

At this time, the crowd began to disperse. According to an eyewitness, the victim, a young Muslim man named Mohammad Biskud Miya, was standing in front of a tea shop on the side of the road when he was shot by a Nepal Police officer fired at him from a distance of 10 to 15 metres without warning. The victim ran from the shop and collapsed approximately 100 metres from the tea shop, where he died from blood loss. The *post mortem* report states the cause of death as “haemorrhagic shock and injury to the lungs due to bullet injury”.

An FIR has been filed by an individual alleging he was killed by the police, but an investigation has not been formerly initiated. Without explicitly acknowledging responsibility, the District Administration, after consulting with the Home Ministry, has pledged to compensate the victim’s family, and declare the deceased a martyr.

¹⁸ Review of the order confirms that the death occurred within the curfew area. It did not contain any explicit authorization to the police to open fire to enforce the order.

OHCHR found no indications of a real, imminent and serious threat to police personnel at the moment when Mohammad Biskud Miya was shot that would justify the use of lethal force by police. OHCHR concluded that the use of live ammunition was neither necessary nor proportionate and amounted to an excessive use of force.