

UNITED NATIONS



Office of the High Commissioner for Human Rights, Nepal

**Investigations into violations of international humanitarian law in the context
of attacks and clashes between the Communist Party of Nepal (Maoist) and
Government Security Forces**

**Findings and recommendations
January – March 2006**

Contents

List of Acronyms	4
I. INTRODUCTION	5
II. METHODOLOGY AND COOPERATION RECEIVED BY OHCHR	6
III. OHCHR’S FINDINGS AND APPLICABLE INTERNATIONAL HUMANITARIAN LAW PROVISIONS	7
A. Endangering civilian populations through launching attacks in civilian areas and use of civilian houses and schools as shields	
B. Indiscriminate aerial bombing and shooting by the Royal Nepalese Army	
C. Use of improvised explosive devices by the Communist Party of Nepal (Maoist)	
D. Abductions of civilians by the Communist Party of Nepal (Maoist) during or in the aftermath of clashes	
E. Damage and destruction of public buildings	
F. Allegations of deliberate killing of members of the security forces in non-combat situations	
G. Use of children	
IV. INCIDENTS INVESTIGATED BY OHCHR	12
CENTRAL REGION	12
Case 1. Thankot VDC, Kathmandu District	
Case 2. Phaparbari VDC, Makwanpur District	
Case 3. Panauti Municipality, Kavrepalanchok (Kavre) District	
Case 4. Hetauda DHQ, Makwanpur District	
Case 5. Bhangzyang area, Kavre District	
WESTERN REGION	14
Case 6. Manakamana and Kichnas VDCs, Syangja District	
Case 7. Tansen DHQ, Palpa District	
Case 8. Sunwal Village, Nawalparasi	
Case 9. Panena, Pokharatok and Khidim VDCs, Arghakanchi District	
Case 10. Chorepatan suburb and Pokhara city, Kaski District	
EASTERN REGION	16
Case 11. Dhankuta DHQ, Dhankuta District	
Case 12. Ilam DHQ, Ilam District	
FAR AND MID-WESTERN REGION	17
Case 13. Nepalgunj DHQ, Banke District	

V. CONCLUSIONS AND RECOMMENDATIONS 17

- A. To Both Parties
- B. To His Majesty's Government
- C. To the Communist Party of Nepal (Maoist)

VI. APPENDIX I 19

NEW CASES INVESTIGATED BY OHCHR IN MARCH/APRIL 2006

CENTRAL REGION

- Case A. Baluwa Tole village, Chandranighapur area, Rautahat District
- Case B. Mujeliya Municipal Ward #14 and Janak Chowk, nakpur, Dhanusa District
- Case C. Thokarpa VDC, Ward #2 and #4, Sindhupalchowk District

EASTERN REGION

- Case D. Birtamode, Jhapa District

VII. APPENDIX II 22

MAP: LOCATIONS OF THE INCIDENTS INVESTIGATED BY OHCHR

List of Acronyms

APF	-	Armed Police Force
CDO	-	Chief District Officer
CPN-M	-	Communist Party of Nepal (Maoist)
DHQ	-	District Headquarters
HMG	-	His Majesty's Government
HRDs	-	Human Rights Defenders
ICRC	-	International Committee of the Red Cross
IED	-	Improvised Explosive Device
NP	-	Nepal Police
NGO	-	Non-Governmental Organisation
NHRC	-	National Human Rights Commission
OHCHR	-	UN Office of the High Commissioner for Human Rights
PLA	-	People's Liberation Army (the armed wing of the CPN-M)
RNA	-	Royal Nepalese Army
TADO	-	Terrorist and Disruptive Activities Ordinance
VDC	-	Village Development Committee (administrative unit)

Investigations into violations of international humanitarian law in the context of attacks and clashes between the Communist Party of Nepal (Maoist) and Government Security Forces

Findings and recommendations January – March 2006

I. INTRODUCTION

Following a decision by the Communist Party of Nepal (Maoist) (CPN-M) to discontinue their unilateral ceasefire on 2 January 2006, there have been dozens of reports of alleged violations of international humanitarian law (IHL) by both parties to the conflict. These allegations have been received in the context of attacks by the PLA, the armed wing of the CPN-M, on HMG security forces in urban, highly populated areas and on government buildings with civilian status, as well as during security forces attacks on PLA forces and clashes between the two sides.

In February 2006, the conflict reached its tenth year. After two previous ceasefire periods, in 2001 and 2003, there were sharp increases in the number of human rights violations, including violations of IHL. This was particularly so after November 2001 when the Royal Nepalese Army (RNA) was deployed. From November 2002, the Nepal Police (NP) and the Armed Police Force (APF) were placed under the “unified command” of the RNA for counter-insurgency operations. Following the ending of the unilateral ceasefire on 2 January 2006, the High Commissioner for Human Rights appealed publicly to both parties to the conflict not to repeat the gross violations of IHL and human rights perpetrated during previous phases of the conflict.

This report summarizes the findings of OHCHR field investigations into alleged violations of IHL which occurred in the context of 13 military operations or clashes in different parts of the country between the end of the ceasefire and early March 2006. It does not include an analysis of other types of IHL violations, for example those which occurred in the context of the elections. The incidents highlighted in this report have been included as emblematic cases, as examples of wider patterns of violations of IHL by both sides. The report consists of an analysis of the findings of OHCHR’s investigations and relevant IHL provisions, followed by details of the cases investigated and recommendations to the parties to the conflict.

OHCHR’s investigations focused on the following incidents:

Central Region

- PLA attack on Thankot VDC police station (Kathmandu District) on 14 January 2006;
- Clashes between an RNA patrol and PLA forces at Phaparbari VDC (Makwanpur District) on 21 January 2006;
- PLA attack against the Pashupatinagar Unified Command post at Hetauda, DHQ (Makwanpur District) on 6 February 2006;
- PLA attack and clashes in Panauti Municipality (Kavre District) on 6 February 2006;
- PLA attack on an RNA post in the Bhangzyang area (Kavre District) on 27 February 2006.

Western Region

- Clashes between the PLA and security forces at Manakamana and Kichnas VDCs (Syangja District) on 12 and 13 January 2006;
- PLA attack and clashes on Tansen DHQ (Palpa District) on 31 January 2006;
- PLA attack on an RNA patrol in Sunwal village (Nawalparasi District) on 9 February 2006;
- Clashes between the PLA and the RNA in Panena, Pokharatok and Khidim VDCs (Arghakanchi District) on 28 February and 1 March 2006;
- PLA-launched explosions in Chorepatan suburb and Pokhara city (Kaski District) on 25 February and 27 February 2006.

Eastern Region

- PLA attack and clashes on Dhankuta DHQ (Dhankuta District) on 7 February 2006;
- PLA attacks and clashes on Ilam DHQ (Ilam District) on 6 March 2006.

Far and Mid-Western

- Crossfire between Police forces and PLA forces in Nepalgunj DHQ (Banke District) on 29 January 2006.

OHCHR investigated in particular the deaths of ten civilians (including three children) killed in the context of the clashes: two children and one civilian adult were killed and six others injured as a result of aerial shooting and bombing by the RNA - in Phaparbari VDC (Makwanpur District) and in Panena, Pokharatok and Khidim VDCs (Arghakanchi District); one child and two adults were killed by shots fired into their homes: in one case by the APF (in Nepalgunj), in another by the RNA (in Ilam) and in the third case by the CPN-M (in Ilam). Four adult civilians were also reportedly killed in crossfire: one each in Panauti Municipality (Kavre District), in Manakamana VDC (Syangja District), in Phaparbari VDC (Makwanpur District) and in Tansen DHQ (Palpa District). There was insufficient information available as to whether these amounted to IHL violations.

In addition, in the incidents investigated, 18 civilians were injured and one killed as a result of bomb explosions by the CPN-M. OHCHR did not register any targeted, deliberate killings of civilians by either side during the incidents under investigation.

Among the cases also investigated were the abduction by the CPN-M of 14 civilians during or in the aftermath of the clashes investigated, the destruction of public buildings, and the use of children in PLA operations. OHCHR also investigated allegations of the killing of several members of the RNA and five police after capture.

Appended to the report, in Appendix I, are four additional incidents which occurred after completion of the main report and which were investigated by OHCHR. In each case, OHCHR documented serious IHL violations similar to the patterns already described, including drawing conflict into populated areas where civilians are placed at risk, insufficient measures to protect civilians, aerial bombings resulting in civilian deaths or injury, indiscriminate shooting, deliberate killings after capture by both sides, abductions and civilian injuries due to improvised explosive devices.

II. METHODOLOGY AND COOPERATION RECEIVED BY OHCHR

OHCHR officials travelled to the sites of the incidents in Thankot VDC (Kathmandu District); Manakamana and Kichnas VDCs (Syangja District); Phaparbari VDC and Hetauda DHQ (Makwanpur District); Tansen DHQ (Palpa District); Sunwal village (Nawalparasi District); Panauti Municipality (Kavre District); Dhankuta DHQ (Dhankuta District); Panena, Pokharatok and Khidim VDCs (Arghakanchi District); Bhangzyang area (Kavre District); and Ilam DHQ (Ilam District).

In the course of the investigations, OHCHR held meetings with state civilian authorities at the District and village levels as well as with RNA personnel. OHCHR also held meetings with local and regional representatives of the CPN-M and the PLA. OHCHR also met with local community and political party leaders, local journalists, victims and their family members, witnesses and non-governmental organizations (NGOs). Besides the activities conducted in these districts, OHCHR conducted additional meetings and interviews in Kathmandu with national military authorities and NGOs, among others, and communicated with the national leadership of the CPN-M. State entities and authorities as well as CPN-M leaders extended their cooperation during these investigations. OHCHR also received collaboration from human rights and civil society organizations in the districts visited.

Security and logistical constraints prevented allegations of IHL violations during other clashes from being investigated immediately and also delayed follow-up regarding some of the clashes which are the subject of this report, but no restrictions were placed on OHCHR's freedom of access by either party.

III. OHCHR'S FINDINGS AND APPLICABLE PROVISIONS OF INTERNATIONAL HUMANITARIAN LAW

IHL governs the conduct of parties involved in armed conflicts. IHL takes two forms: 1) treaty law, primarily the four Geneva Conventions of 1949¹ and the two Protocols thereto²; and 2) customary law, or "general practice accepted as law".³ Treaty law may also reflect customary law, and may contribute to the development of customary law.

Article 3 common to the four Geneva Conventions (known as Common Article 3) applies to armed conflicts "not of an international character". It contains provisions governing the minimum protection of all persons not taking an active part in hostilities, including civilian populations and members of the armed forces in non-combat situations. Additional Protocol II to the Geneva Conventions also applies to non-international armed conflicts. Nepal has ratified the four Geneva Conventions but has not ratified the two Protocols. By virtue of Nepal's ratification of the four Geneva Conventions, both the Nepalese security forces and the CPN-M are bound by common Article 3 of the Geneva Conventions. In addition, both parties are also bound by customary law applicable to internal armed conflicts including those provisions of Protocol II which constitute customary law.

The Nepalese armed security forces include the RNA and the APF and both are bound by IHL. The Nepal Police are also bound by IHL if and when they take an active part in the hostilities, such as when they participate in military operations under the Unified Command.⁴ Elements of the CPN-M, including but not limited to members of the PLA who are actively participating in the conflict, are also bound by IHL.

In the course of its investigations, OHCHR found that both sides committed serious violations of IHL, principally endangering the lives of the civilian population, including through launching attacks in

¹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (12 August 1949); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (12 August 1949); Geneva Convention relative to the Treatment of Prisoners of War (12 August 1949); and Geneva Convention relative to the Protection of Civilian Persons in Time of War (12 August 1949).

² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (8 June 1977); and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflict (8 June 1977).

³ The International Committee of the Red Cross (ICRC) has identified and published 161 "rules" which constitute norms of customary international humanitarian law. ICRC, Customary International Law, Volume I: Rules (2005).

⁴ In November 2001, the Government of Nepal established by a Cabinet decision the concept of "Unified Command" to channel military operations against Maoist insurgents. The terms of that decision have not been made public.

civilian areas; using civilian houses and schools as shields; indiscriminate bombing; the placing or abandoning of explosive devices in areas frequented by civilians; and the use of children.

A. Endangering civilian populations through launching attacks in civilian areas, and using civilian houses and schools as shields

The distinction between civilians and combatants⁵ is a key principle of IHL. During military operations, the parties to the conflict must ensure that care is taken to spare the civilian population and individual civilians, and that all feasible precautions are taken to avoid deaths of or injuries to civilians.⁶ In addition, the principle of proportionality prohibits parties from attacking if the incidental deaths or injuries to civilians which may occur as a result of the attack would be excessive in relation to the concrete and direct military advantage which may be gained from the attack.⁷ To be “concrete and direct,” the military advantage must be “substantial and relatively close.”⁸ Before carrying out any attack which may affect the civilian population, the parties to the conflict must give effective warning, unless circumstances do not permit.⁹ However, any civilians who remain in the area even after such a warning are still protected by the principle of distinction.¹⁰ Furthermore, the parties are prohibited from using civilians as human shields to render certain areas immune from military attacks.¹¹

OHCHR investigations found that the PLA forces’ choice of location to engage or attack the security forces in most of the clashes examined endangered the lives of civilians causing several deaths and numerous injuries. This was the case at Manakamana and Kichnas VDCs (Syangja District), at Phaparbari VDC and Pashupatinagar-Hetauda DHQ (Makwanpur District), at Sunwal Village (Nawalparasi District) and at Bhangzyang area (Kavre District), all of which were village areas, and at Tansen DHQ (Palpa District), at Panauti Municipality (Kavre District), at Dhankuta DHQ (Dhankuta District), at Pokhara DHQ (Kaski District) and at Ilam DHQ (Ilam District) (see cases in section IV below).

Similarly, in Panena, Pokharatok and Khidim VDCs (Arghakanchi District), the PLA used civilian houses for their own protection putting civilians in danger (see case 9). The PLA also took up positions in or behind civilian houses and/or shops to attack the security personnel in Phaparbari VDC and Hetauda DHQ (Makwanpur District) (cases 2 and 4); Tansen DHQ (Palpa District) (case 7); Panauti Municipality (Kavre District) (case 3); Sunwal Village (Nawalparasi District) (case 8); Dhankuta DHQ (Dhankuta District) (case 11); and Ilam DHQ (Ilam District) (case 12). By using houses and shops as shields, the PLA knowingly put civilians in the line of any return fire by making it impossible for security forces to effectively distinguish between military and civilian objects of fire. In Panauti and Pashupatinagar-Hetauda (see cases 3 and 4 below) there are conflicting reports as to whether effective warning was provided by the PLA to residents in advance of this attack, but even if such a warning had been given with necessary certainty, the attack would still constitute a violation of the CPN-M’s IHL obligations, since none of the parties to the conflict could be sure that buildings were vacated nor reasonably expect citizens temporarily to loan their private property for the strategic aims of the CPN-M. The CPN-M further increased the risk of return fire by launching IEDs from the residential area.

Of particular concern to OHCHR was that during the clashes in Kichnas VDC (Syangja District) on 6 February (see case 6), PLA members took refuge in the Thanapathi school compound, and at a time when there were some 130 young schoolchildren and teachers present, placing them in danger because of

⁵ Although “combatant status” applies only to international armed conflicts, persons engaged in fighting in the context of an internal armed conflict and who have been wounded or surrendered are also protected by virtue of the common Article 3 of the four Geneva Conventions to which Nepal is a party.

⁶ ICRC, pages 51 – 55, 56 - 58. Also Protocol II, Article 13 (1).

⁷ ICRC, pages 58 – 62.

⁸ ICRC, Commentary to Protocol Additional I to the Geneva Conventions, Section 1209.

⁹ ICRC, pages 62 – 65.

¹⁰ Id.

¹¹ ICRC, pages 337 – 340.

the risk of an RNA response. OHCHR found evidence of deliberate shooting from a RNA helicopter into a classroom. No children were injured but a number are said to have been traumatized as a result of the incident. Schools can never be considered a military target even when possible military objectives – such as members of PLA – are present on its premises. The PLA returned to the school afterwards to apologise.

OHCHR investigations also found that during a police operation in Nepalgunj DHQ (Banke District) after a PLA attack on 29 January, police used disproportionate force by firing into a house, killing a 15-year-old girl, Mamata Barma, and injuring one other person (see case 13).

B. Indiscriminate aerial bombing and shooting by the RNA

As noted above, the principle of distinction in IHL requires the parties to a conflict to distinguish between combatants and civilians. Methods or means of combat which cannot be directed at a specific military target are indiscriminate and are prohibited.¹² This includes the use of weapons which are incapable of distinguishing between civilian and military targets.¹³

In four of the thirteen incidents investigated, OHCHR's investigations received testimony of aerial bombings and shooting by the RNA, as a result of which two children and a (civilian) adult were killed. The RNA itself admitted that during the clashes in Phaparbari VDC (Makwanpur District) (see case 2), a helicopter had deliberately dropped bombs over a wide area to cut off presumed CPN-M lines of command and supply. In this incident, a four-year-old child, Resam Bahadur Bholan, was killed by shrapnel from an 81mm mortar bomb. The bomb, which had a potential for killing within a 100m radius, landed within 15 meters of a home in which 17 civilians were present. OHCHR concludes that the practice of releasing bombs over village areas is unacceptable, given the lack of control over the trajectory of the bombs to avoid harm to the civilian population.

Similarly, during the clashes in Panena, Pokharatok and Khidim VDCs (Arghakanchi District) (see case 9), OHCHR's investigation concluded that indiscriminate bombing and shooting from RNA helicopters had killed two civilians (14-year-old Pawan Gautam and Prakash Gharti, a 24-year-old farmer) and injured six, some of them seriously. Some of these casualties occurred near a medical facility.

During the clashes in Tansen DHQ (Palpa District), the RNA forces received aerial re-enforcement by helicopters which indiscriminately dropped at least five 120mm bombs causing damage to at least 13 civilian properties (see case 7). During clashes in Panauti Municipality (Kavre District), civilians reported the presence of an RNA helicopter and their fears that bombs would be dropped (see case 3). An RNA official interviewed stated that a decision was taken not to bomb because of the high risk of civilian casualties were they to do so.

C. Use of improvised explosive devices by the CPN-M

During its investigations, OHCHR also focussed on the impact of the placement or abandonment of explosive devices by the CPN-M usually during and after attacks or clashes with the security forces. The use of IEDs and other non-conventional weapons (such as socket bombs) by the CPN-M is resulting in an increasing number of injuries to civilians. In the cases under review, 18 civilians were injured and one killed as a result of bomb explosions by the CPN-M: one civilian was killed and two injured by the indiscriminate use of an IED in Sunwal Village (Nawalparasi District) (see case 8); twelve other civilians were injured in bomb explosions in Chorepatan suburb and Pokhara city (Kaski District) (see case 10). Four of the civilians injured by explosive devices in incidents covered by this report were children – three in Panauti Municipality (Kavre District) (see case 3) and one in Dhankuta DHQ (Dhankuta District) (see case 11).

¹² ICRC, pages 40 – 43.

¹³ International Court of Justice, Nuclear Weapons Case. Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (8 July 1996).

OHCHR has access to photographic material verifying that after the clashes or attacks in Tansen DHQ (Palpa District); Panauti Municipality (Kavre District); Sunwal Village (Nawalparasi District) and Dhankutha DHQ (Dhankuta District), the PLA forces left behind a considerable number of unexploded ordnance devices in places frequented by the civilian population.

As in the case of bombings by the RNA, the principle of distinction in IHL requires the parties to a conflict to distinguish between combatants and civilians. Methods or means of combat which cannot be directed at a specific military target are indiscriminate and are prohibited.¹⁴

Among the most serious incidents of this type was the placing of an explosive device in the middle of a busy Pokhara city street (Kaski District) which exploded during the daytime on 27 February causing numerous injuries (see case 10). No warnings were given. The CPN-M had apologised for an explosion which had occurred two days early also in Kaski District saying it was due to a technical error but no response was received from the CPN-M regarding the second explosion. In both cases, CPN-M members also failed to distinguish between military and civilian targets and failed to take all necessary measures to protect civilians present in the area.

D. Abductions of civilians by the CPN-M during or in the aftermath of clashes

Common Article 3 of the Geneva Conventions prohibits the taking of hostages with respect to persons who do not take an active part in the hostilities.¹⁵ Customary IHL also prohibits the taking of hostages.¹⁶

Cases investigated by OHCHR included a series of abductions of civilians by the CPN-M in the aftermath of attacks. Most of the abductees were government, administrative or court officials. During the attacks in Tansen (Palpa District), two public officials, among them the CDO, were abducted. In Dhankuta, 12 public officials were abducted on 7 February. In such cases, OHCHR calls for the release of those abducted. According to OHCHR's latest information, all but one of those abducted during the incidents included in this report have since been released.

OHCHR was particularly concerned that one of the 12 public officials abducted in Dhankuta, the Deputy Regional Administrator of the Eastern Region, Prem Prasad Sapkota, died in custody reportedly on the morning of 17 February (see case 11). The 12 were abducted after the CPN-M attack on Dhankuta DHQ, in which three police officers were also taken captive. Eleven of the public officials were released after a short period but Prem Prasad Sapkota and the three police officers remained in custody "under investigation" by the CPN-M. The three were released after the death of Prem Prasad Sapkota, but OHCHR has so far been unable to interview them. Although Prem Prasad Sapkota died of natural causes according to the official autopsy, it is likely, according to forensic experts, that the conditions of his abduction aggravated a previous medical condition.

Public officials such as regional or district administrators cannot be considered a legitimate military target. Although the responsibilities of some of these public officials – such as the CDO – would include participation in decision-making on security-related matters, as these officials do not directly participate in hostilities, they are therefore to be considered as non-combatant unless and during which time their active involvement in certain military operations would cause them to lose their civilian status.

E. Damage and destruction of public buildings

The principle of distinction under international humanitarian law requires that parties to the conflict distinguish not only between civilians and combatants, but also between civilian objects and

¹⁴ ICRC, pages 40 – 43.

¹⁵ Common Article 3 (1) (b).

¹⁶ ICRC, pages 334 – 336. Also Protocol II, Art. 4 (2) (c).

military objectives.¹⁷ Civilian objects are all objects that are not military objectives, i.e., objects “which by their very nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction...in the circumstances ruling at the time, offers a definite military advantage.”¹⁸ Attacks against civilian objects are prohibited, unless and for such time as they are military objectives.¹⁹

Since the resumption of fighting in early January 2006, the CPN-M has repeatedly attacked civilian targets, including public service buildings. The attack conducted on Tansen DHQ (Palpa District) and on Dhankuta DHQ resulted in the total destruction of government infrastructure. In Tansen DHQ, the Tansen Palace, a building considered to be part of the country’s cultural heritage, was destroyed. In Panauti Municipality (Kavre District), OHCHR confirmed the destruction of the municipal buildings as result of the PLA attack.

F. Allegations of deliberate killings of members of the security forces in non-combat situations

Under the IHL principle of distinction, attacks on persons who are not actively or directly taking part in the hostilities, including unarmed members of the security forces, members of armed forces who have laid down their arms and those placed out of combat by sickness, wounds, detention, or any other cause, are strictly prohibited.²⁰

During an attack on the police station in Thankot VDC (Kathmandu District) on 10 January (see case1), members of the PLA killed traffic police constable Dipendra Niroula. Traffic police, due to the nature of their functions, are not to be considered military targets because they are not participating directly in hostilities. There are sufficient testimonies to confirm that the traffic policeman was well identified as such by his uniform and was unarmed. According to several testimonies, the victim at the time of the attack was carrying out his regular duties and he did not engage in any actions which at any time would have caused him to lose his right to be protected under IHL provisions. However, OHCHR’s investigations were not able to reach a definitive conclusion as to whether five policemen also killed had been shot after capture, as alleged.

In accordance with IHL, captured members of the security forces must be treated humanely while in captivity. OHCHR received serious allegations from the RNA regarding the killing of RNA soldiers after capture by the members of the PLA in the Sunwal (Nawalparasi District) attacks on 9 February (see case 8). OHCHR’s investigations did not so far find sufficient testimony to determine whether the RNA soldiers were taken captive and whether they were killed subsequently while under control of the CPN-M. On 6 March, OHCHR also received allegations from the RNA of the deliberate killing and mutilation of three soldiers, and the abduction of another RNA soldier by CPN-M following an attack on an RNA checkpoint in Bhangzyang area (Kavre District) (see case 5). However, in the course of its investigations, OHCHR received conflicting versions of what happened, including from the RNA at District and national level. The soldier who had allegedly been abducted had in fact reported for duty two days after he went missing and there were contradictory reports as to how the three soldiers died. OHCHR is continuing its investigations into these cases. All other members of the security forces (police and RNA) known to have been captured in the course of the incidents under review were released, as far as OHCHR is aware.

G. Use of children

Customary international humanitarian law prohibits the recruitment of children in armed forces or groups, and also prohibits their participation in hostilities.²¹ It is widely recognized that “participation” for this purpose includes not only direct participation in combat but also the use of children as guides,

¹⁷ ICRC, pages 25 – 29. Also Protocol II to the Convention on Certain Conventional Weapons, Art. 1 (4).

¹⁸ ICRC, pages 29 -34.

¹⁹ ICRC, pages 34 - 36.

²⁰ Common Article 3 (1) (a). Also ICRC, pages 311 – 312; and Protocol II, Article 4 (2) (a).

²¹ ICRC, pages 482 – 488.

couriers, porters and other support functions related to the hostilities.²² The minimum age with respect to recruitment and participation is not yet established under customary international law.²³ The Optional Protocol to the Convention on the Rights of the Child relating to children in armed conflict – signed but yet to be ratified by Nepal - establishes the minimum age of recruitment to be 18 years old.

OHCHR collected eye-witness statements about the presence of many children within the PLA during the clashes in Tansen (Palpa District) (see case 7). OHCHR has also collected testimonies about the large number of children present as helpers and porters during the PLA attack in Panauti (Kavre District) (see case 3). After the clashes in Panena and Pokharatok and Khidim VDCs (Arghakanchi District) (see case 9), the RNA arrested a group of 14 alleged PLA members in Khidim VDC, who were all between 15 and 18 years old, eleven of them girls. One of them was seriously injured. They were subsequently transferred to the custody of Nepal Police but were eventually released and handed over to a humanitarian agency.

IV. INCIDENTS INVESTIGATED BY OHCHR

CENTRAL REGION

Case 1: Thankot VDC, Kathmandu District,

On 13 January 2006, members of the PLA attacked a station of the Nepal Police located at Thankot VDC, Kathmandu District. During the attack, one traffic police officer and eleven other police officers were killed and eight were injured. OHCHR's investigations so far have been unable to establish the full facts relating to allegations received from the Nepal Police that five policemen including the officer-in-charge of the police station were deliberately shot dead after capture. One of the factors that has contributed to OHCHR's inability to reach a conclusion on these allegations has been the contradictory accounts provided by persons who claimed to be eye-witnesses to the killings. In addition, the post-mortem reports do not clearly support the Nepal Police version. During the same incident, OHCHR gathered consistent testimonies confirming the deliberate killing of Dipendra Niroula, a well identified and unarmed traffic police officer. During a communication in February, OHCHR was assured by the leadership of the CPN-M that they do not intend to target unarmed police.

Case 2: Phaparbari VDC, Makwanpur District

On 21 January 2006, at around 6.30pm, PLA members attacked a security forces patrol at a populated area in Phaparbari VDC, Makwanpur District. OHCHR investigations at the site found that during the clashes, one civilian was killed by the RNA while his arms were raised. There is insufficient testimony, however, to determine whether the RNA soldier who shot this person had been able to establish the victim's status as a civilian. The PLA were engaged in a firefight from occupied civilian houses with the RNA at the time the civilian came out with his arms raised, and he was between the RNA and the PLA.

OHCHR also found that the RNA had deliberately dropped at least five but possibly more mortar bombs from a helicopter in a wide perimeter as a tactic to cut off presumed CPN-M lines of command and supply. In one location some three kilometers away from the site of the clash, an 81mm mortar bomb with a potential to kill within a 100m radius landed within 15 metres of a house in which 17 civilians were present, shrapnel killing a 4-year-old child, Resam Bahadur Bholan, sleeping in his bed on the first floor of the house. OHCHR also confirmed that two houses located in Jhurjuri were destroyed by fire

²² ICRC, pages 489 – 490.

²³ ICRC, pages 484 – 485 , 488. See also Convention on the Rights of the Child, Article 38 (2) and (3) and Protocol II, Art. 4 (3) (c).

after the RNA threw explosive devices at these houses while the PLA members were deliberately using the houses as shields.

On 28 January 2006, a senior RNA official at 7th RNA Battalion of Hetauda, Makwanpur DHQ, acknowledged that RNA helicopters dropped mortar bombs in areas surrounding the site of the clash. Later, a senior RNA commander who participated in the clashes denied this account and did not admit knowledge of, or responsibility for, the death of the child. OHCHR was told by the political commander for Southeast Nepal of the CPN-M that the PLA were compelled to attack the RNA because of ongoing abuses against civilians in the area and information received about a planned RNA attack against an intended Maoist political gathering. The CPN-M also maintained that its members took measures to minimize civilian casualties. They claimed, for instance, that the PLA unit had provided warnings to the civilians and had evacuated civilians who were present at the time the clash started. However, these claims were contradicted by other witness testimonies received by OHCHR.

Case 3: Panauti Municipality, Kavre District

On 6 February 2006 at 8.30pm, the PLA launched simultaneous attacks in populated areas around the Panauti Municipality building, on the RNA camp in Panauti and on the 9th RNA Battalion camp in Dulikhel, Kavre District. OHCHR gathered testimonies about the presence of large numbers of children among the PLA forces. During the operation, OHCHR confirmed that PLA members took up positions in several civilian houses from where they attacked the security personnel stationed at the Municipality building. One civilian was killed in the crossfire and the Municipality building was partially destroyed. During the attack on the RNA military camp in Panauti, the PLA members used one of the sites of Goraknath Primary school near the military camp to launch their attack and conducted their attacks in a populated area placing civilians at risk of being harmed in the crossfire. OHCHR verified the efforts of the RNA to prevent more civilian casualties. Civilians in the area told OHCHR that an RNA helicopter was present in the area and expressed their fears that it would bomb the area. On 11 February 2006, a senior official at the RNA Panauti Company and a senior RNA official at RNA Battalion in Dulikhel informed OHCHR that military personnel in the helicopters were ordered not to bomb because this was a populated area and because of the risks of many casualties and considerable destruction. OHCHR is concerned by CPN-M actions which placed civilians at risk of harm by conducting combat in populated areas.

A few days after the attack on Panauti Municipality, three children were severely injured when they were playing with an unexploded improvised explosive device (IED) left behind by the PLA forces in surrounding areas after the attack.

In the aftermath of the attack, at around midnight on 24 February 2006, ten or eleven RNA personnel in plain clothes pretending to be Maoists approached the village of Tipchouk in the area of Panauti and questioned seven civilians about their involvement with the CPN-M and their suspected assistance in transporting dead and wounded Maoists during the attack on Panauti Municipality. One person was seriously beaten by the RNA during the interrogation and another six were verbally threatened by the RNA. Initial reports that one of those beaten was a child were not confirmed by OHCHR. On 2 March 2006, a senior RNA official at the Battalion in Dulikhel confirmed the presence of the RNA patrol in the village and that the RNA had later offered money for medical treatment to the person who had been beaten. According to this RNA source, a soldier (whose name was not divulged to OHCHR) was found guilty of misconduct in an internal investigation by the Battalion Commander and punished with seven days' suspension from duty. No action was taken against the major in charge of the patrol. OHCHR has not yet seen details of the investigation.

Case 4: Pashupatinagar area, Hetauda DHQ, Makwanpur District

On 6 February 2006, at 11.30pm, the PLA launched an attack against a Nepal Police checkpoint in Pashupatinagar (Makwanpur District) using firearms and IEDs. An OHCHR investigation found evidence that PLA troops participating in the attack had taken up positions among civilian houses and

shops, which they had used as cover to launch the attack on the police checkpoint. Nevertheless, there were no civilian casualties during the attack. On 9 February 2006, a senior RNA official at the military camp in Hetauda stated that the security forces had restrained their use of force during the PLA attack. Many civilian homes were hit by police and RNA return fire, narrowly missing some individuals. There were conflicting reports as to whether the PLA had given clear warnings to the civilians prior to the attack.

Case 5: Bhangzyang area, Kavre District

On 27 February 2006, at 8.30am, approximately 50 members of the PLA in three trucks attacked a newly-established RNA checkpoint at Bhangzyang (Kavre District). At the time, the checkpoint was manned by 26 RNA personnel. The time selected by the PLA to attack was reportedly the busiest period of the day and as a result, large numbers of civilians, including some 50 children on their way to school, were placed in danger. Two civilians were injured as a result. Three RNA soldiers were killed by bomb blasts and shooting; one RNA soldier was injured. On the same day, a CPN-M statement was released confirming that the attack was carried out by the PLA's 3rd Division. On 6 March 2006, the RNA Human Rights Cell reported to OHCHR the missing status of one soldier and the killing and mutilation of three others after capture. During its investigations in Kavre, OHCHR learned that the missing soldier had reported for duty two days later, and received conflicting information, including from the RNA, as to how the three other soldiers died. OHCHR is continuing its investigations into these allegations.

WESTERN REGION

Case 6: Manakamana and Kichnas VDCs, Syangja District

On 12 and 13 January 2006, clashes between the PLA and the RNA took place in several villages of Syangja District. Fighting took place in populated areas at Ghate and Sapudi villages in Manakamana VDC on 12 January 2006. One civilian was killed in apparent crossfire. Eleven members of the PLA were reportedly killed during the clashes. OHCHR gathered testimonies about the efforts of the RNA to avoid more civilian casualties and about considerable destruction to civilian property in the area.

Clashes between both sides also took place at a school in Kichnas VDC, Syangja District on 13 January 2006. Of particular concern is that the lives of young schoolchildren and teachers were put at risk by both sides. OHCHR investigations at the site concluded that some PLA members, while under attack from an RNA helicopter, took refuge in a class of primary school children at Thanapathi while 130 school children and five teachers were present in the school. As a result, three classrooms were damaged by bullets fired from the RNA helicopter. The RNA fired through a classroom window, injuring in the thigh one member of the PLA who had taken refuge among the children. In addition, OHCHR found that the PLA fired at the helicopter from positions near civilian houses, thereby drawing fire on civilian occupied areas. A bomb dropped from a helicopter by the RNA fell approximately 200 meters from the school and 30 meters from nearby houses in the hamlet of Ramche. It failed to explode. If it had, it could have caused considerable harm to civilians present in the area, including children. After the incident, the PLA came back and apologized to the teachers of the school for what had happened.

On 17 January 2006, a senior RNA official in Syangja District, during a meeting with OHCHR, maintained that the RNA had not used aerial bombing support during the clashes at the school compound and that the helicopters were only used as psychological warfare. This was contradicted by testimonies obtained by OHCHR and its own observations of the unexploded ordnance found in the village.

Case 7: Tansen DHQ, Palpa District

On 31 January 2006 around 11pm, the PLA launched simultaneous attacks on the RNA military camp, the district jail, the District Police Office and government offices in Tansen, Palpa. OHCHR collected eye-witness statements about the presence of at least 50 children within the armed forces of the PLA. OHCHR confirmed that members of both the PLA and the RNA used civilian houses and properties

during the clashes, thereby putting civilians in danger. One civilian was killed and found with a bullet injury to the neck inside the CDO office and several government offices were set on fire and destroyed. During the attack, the RNA forces received reinforcement from helicopters which dropped 120mm mortar bombs causing damage to civilian property, including the Srinagar Hotel. The PLA freed 139 detainees from the district jail during the attack and they also abducted and captured 29 persons among them the CDO, police officers and trainees, as well as RNA soldiers. They were subsequently all released by the PLA.

On 3 February 2006, the RNA senior official at Tansen RNA company and the Deputy Superintendent of the Nepal Police informed OHCHR that eleven members of the security forces, four PLA members and one civilian were killed and that 22 security personnel had been injured. OHCHR was informed that a girl had been injured during the attacks but was not able to confirm this. The RNA official stated also that soldiers had been instructed to control their firing so as to avoid civilian casualties. This was claimed to be necessary as PLA members had taken up positions on the roof of civilian houses during the attack. On 1 February 2006, a statement attributed to the PLA western military command, disputed the RNA claims.

Case 8: Sunwal Village, Nawalparasi District

On 9 February 2006, the PLA ambushed four trucks of security forces (RNA and police) that had arrived to remove a roadblock on Mahendra Highway. The ambush took place in Debdaha, a civilian populated area near Sunwal (Nawalparasi District). Fighting ensued in the village with security forces and PLA members positioning themselves behind civilian houses. As a result of the attack, one civilian was injured, 17 security personnel and three members of the PLA were killed. Before leaving the scene, the PLA set fire to the four vehicles used by security forces. Approximately two hours later, the PLA exploded a remote-controlled device on the road leading from Sunwal to Parasi. The device was meant to target a military vehicle but instead killed a civilian woman and injured three more while they were cycling. The PLA members also abducted 12 security force members who were later released in Palpa in the presence of journalists and human rights NGOs. The RNA also alleged that several injured security force members were executed after being brought under the control of the PLA. Although from the post-mortems some appear to have bullet injuries to the head, OHCHR has not so far been able to determine the exact circumstances in which they were shot.

Case 9: Panena, Pokharatok and Khidim VDCs, Arghakanchi District

On 26 February and 28 February 2006, extended clashes between the RNA and the PLA took place in the border areas of Palpa, Rupandehi and Arghakanchi Districts. OHCHR investigations concluded that clashes started in a non-populated area, but were drawn into populated areas by both the PLA and RNA forces. OHCHR investigations found there had been at least three incidents during which RNA helicopters had indiscriminately bombed and had fired shots from helicopters in civilian areas. As result, in Khidim VDC, a 14-year-old child, Pawan Gautam, was killed and six civilians (including four children) were injured, some of them seriously. During the RNA bombing and shooting, according to villagers, there were no PLA members present in the village. In Pokharatok VDC, Prakash Gharti, a 24-year-old farmer, was killed by a bomb dropped from a helicopter.

On 28 February 2006, in the aftermath of the clashes, a group of 14 alleged members of the PLA who are all between 15 and 18 years old (including 11 girls) were arrested by the RNA in Khidim VDC. They were initially detained at the military camp of the 22nd RNA Brigade in Butwal (Rupandehi District). On 1 March 2006, they were transferred to the custody of the Nepal Police and reportedly placed in preventive detention under the TADO. On 15 March 2006, all of them were released and handed over to a humanitarian organization.

Case 10: Chorepatan suburb and Pokhara city, Kaski District

During two bomb attacks carried out by the CPN-M in Chorepatan and Pokhara city on 25 and 27 February respectively, at least twelve civilians were injured. OHCHR-Nepal has investigated these two bomb attacks. The first bomb was left some 10 metres from a bus stop and 100m from a police post; the second one was apparently aimed at an RNA patrol passing through the area but it exploded in a busy shopping area in the city centre in the middle of the day. In each case, OHCHR-Nepal found that precautions were not taken to protect civilians: the bombs were left in urban areas known to be frequented by civilians (in one case, a metre from where several fruit vendors had their stalls). There was no evidence to suggest that any warnings had been given to the civilians in the area. The CPN-M apologized publicly after the first incident in 25 February 2006, but has not responded to an OHCHR communication regarding the second incident on 27 February 2006.

EASTERN REGION

Case 11: Dhankuta District

On 7 February 2006 around 8.45pm, PLA forces attacked Dhankuta, the Eastern Regional HQ. The attack lasted until the early hours of the following morning. During the attack, approximately 16 buildings were set on fire. Among them were 13 public buildings, while three were private offices or residences. Twelve public and court officials and three police officers were abducted by PLA troops. During the attack, the PLA forces used civilian houses to engage the security forces. OHCHR gathered information that both the PLA and the RNA claimed to have made efforts to avoid civilian casualties. The command of the RNA said they avoided bombing by helicopter as this was an urban and populated area. The attack resulted in at least one RNA soldier and one PLA member killed. Three days after the attack, a 15-year-old child was seriously injured when a socket bomb he was touching, thought to have been left behind by the PLA, exploded. Other devices were also found in Dhankuta town that could have caused more injuries to civilians. On 9 February 2006, the PLA forces released two abductees due to their health conditions. On 11 February 2006, the PLA forces also released nine civilians while one civilian and three members of the security forces continued to be held as hostages and captives. On 17 February 2006, the civilian, Prem Prasad Sapkota, Deputy Regional Administrator of the Eastern Region, died in the custody of the CPN-M. According to forensic expertise obtained by OHCHR, his captivity could have aggravated a number of long-term health problems he had which required medication, and may thus have contributed to his death. Finally, the three police members remained in custody were released on 23 February 2006 in the presence of human rights activists and journalists.

Case 12: Ilam DHQ, Ilam District

On 5 March 2006 at 9.30pm, PLA forces attacked Ilam DHQ (Ilam District). As a result, three members of the security forces were killed, four PLA members and two civilians. OHCHR found that during the attack both the security forces and the PLA did not take sufficient measures to avoid civilian casualties while engaging and returning fire. In particular, indiscriminate fire from the side of the security forces seemed to have caused the death of 82-year-old Harka Bahadur Rai, and also the injury of another. Rockets were also reportedly fired towards the town centre from the RNA barracks. In spite of the PLA attackers having generally taken greater care than in other attacks in sparing the civilian population, it appears that the second civilian killed, 35-year-old Manoj Koirala, was hit by PLA fire. The PLA forces also apparently intentionally refrained from setting fire to public buildings, as well as from abducting any public administration officials or security personnel. The PLA forces did, however, loot medicines from the hospital. Some civilian houses were occupied by the attackers, although it appears that was done in an orderly manner, such as by knocking on doors and arranging alternative shelter in other houses for them. All the prisoners of the District jail were released during the attack. Some of the 47 detainees who decided to return to the city reported having been treated well by the attackers before being released.

MID-WESTERN REGION

Case 13: Nepalgunj DHQ, Banke District

On 29 January 2006, at 6pm, there was an exchange of gunfire between members of the PLA and a patrol of the security forces in Nepalgunj. In the aftermath of the incidents, 15-year-old Mamata Barma was killed by a single bullet wound to her chest while inside the living room of a house situated near a sentry post of the District Police Office in Nepalgunj. Her employer, Bhima Devi Sunar, was wounded in the same incident. According to police officers - including the commander of a foot patrol mobilised in the area at the time - Mamata Barma was killed in crossfire between PLA forces and the members of the foot patrol consisting of APF and Nepal Police. Nevertheless, OHCHR found consistent witness accounts that at the time of the gunfire, Bhima Devi Sunar had been in the compound of her house with her children, the other victim, Mamata Barma and her mother. She immediately locked the gate of the compound and all of them hurried inside the house. The security forces patrol had called from the gate urging those inside to open it. When Bhima Devi Sunar peered through the door, the foot patrol opened fire, wounding her and Mamata Barma. At least five rounds were reported to have been fired, four inside and one outside the compound. While the police maintained that Mamata Barma was killed by gunfire from PLA forces cadres inside the compound, an OHCHR investigation at the scene of the incident, including of the required likely trajectory of the bullets, concluded this was physically impossible. OHCHR did establish the likely presence of a number of PLA members on the roof of one of the neighbouring buildings of the compound at some point. However, there was no evidence to suggest that any firing had taken place from the PLA members throughout the time of the foot patrol's presence near the compound. OHCHR concluded that Mamata Barma was killed as a result of indiscriminate firing by the patrol and that the security forces personnel involved resorted to using lethal force without due care.

V. CONCLUSIONS AND RECOMMENDATIONS

The ending of the ceasefire on 2 January 2006 and the resumption of hostilities has again placed civilians – so often caught between the two sides – at risk, in spite of stated commitments from both sides to respect IHL. OHCHR acknowledges that the number of civilian casualties in most of the incidents which are the subject of this report could have been much higher had both sides not exercised a certain amount of restraint. It is clear, nevertheless, that casualties could have been avoided had the two parties conducted hostilities in strict accordance with IHL and that certain measures are needed to address these concerns. OHCHR acknowledges the cooperation extended by the State authorities – both civilian and military – and by the CPN-M representatives in the course of OHCHR's investigations.

A. Recommendations to both parties to the conflict

- All necessary measures must be taken to protect civilian populations from the impact of clashes, both in terms of avoiding civilian casualties and in terms of avoiding trauma to civilians caused by proximity to military action; this applies to the choice of location for engaging in military operations and the manner in which hostilities are conducted; any actions taken should minimize the risks of drawing any fire which could harm civilians or civilian objects.
- In particular, launching of attacks from civilian residences and public buildings should be prohibited. Schools should neither be used as places from which to launch attacks or as places of refuge which could draw fire.
- All necessary measures should be taken to avoid placing or abandoning unexploded devices in areas where they could cause harm to civilians, and especially to children, who are often the principal victims of such devices.
- Appropriate measures must be taken to ensure that those who commit violations of IHL are held accountable, and that victims of those violations are provided with effective remedies and receive adequate reparation.

B. Recommendations to HMG

- HMG security forces' (RNA, APF and NP) policy and operational guidelines should be reviewed and brought fully in line with IHL provisions, widely disseminated amongst the members of the security forces and enforced effectively. In particular, rules of engagement should be reviewed in order to include detailed guidelines on the protection of civilians in different operational contexts.
- Aerial bombing can only be justified in cases where there is a clear military objective and where all necessary measures have been taken to minimize the risk to civilians. Though restraint was used in certain incidents, OHCHR believes that in other cases bombing amounted to indiscriminate attacks endangering civilians. Measures need to be taken to address this and prevent indiscriminate bombings in the future.
- Locations for armed security forces' checkpoints should be selected using criteria to ensure that the risk to surrounding populations is minimized.
- Any children under 18 who surrender in the course of clashes or are captured should be immediately handed over to the civilian authorities and measures taken to facilitate their reintegration. HMG should take immediate steps to ratify the Optional Protocol to the Convention on the Rights of the Child relating to children in armed conflict, which it has already signed, in order to establish 18 as the minimum age for recruitment and use into all armed forces and groups. Recruitment and use of anyone under the age of 18 should also be criminalised.
- Timely access should be facilitated not only for OHCHR and the NHRC but also for local human rights organizations to the places where attacks or clashes took place and to any persons arrested or injured in conjunction with either incident.
- The RNA should provide OHCHR with access to reports and court-martial decisions with regard to investigations into allegations of IHL violations, in order to enable OHCHR to assess whether perpetrators have been/are being held appropriately accountable.

C. Recommendations to the CPN-M

- The CPN-M/PLA forces' operational policies and guidelines should be brought fully in line with IHL provisions, widely disseminated amongst the CPN-M/PLA members at all levels and enforced effectively. Rules of engagement should include detailed guidelines on the protection of civilians in different operational contexts.
- The practice of abducting civilians, including government and administrative officials is in violation of IHL and should end. An investigation should be carried out into the death of Prem Prasad Sapkota while abducted in order to determine the degree to which lack of medical treatment and negligence may have contributed to his death and to determine any responsibilities in this regard.
- Government/administrative and other public buildings cannot be considered legitimate military targets except in very specific circumstances where and for such time as the building is being used for military purposes. The practice of damaging and destroying such buildings in any other circumstances should cease.
- The CPN-M should refrain from recruiting and using children, including during military operations, whether in combat or in support roles such as portering. Although HMG has not yet ratified the Optional Protocol to the Convention on the Rights of the Child relating to children in armed conflict, OHCHR believes that the CPN-M should demonstrate a commitment to protecting child rights by adopting as 18 the age below which individuals cannot be recruited or used.
- The CPN-M should provide OHCHR with details of investigations it carries out into allegations of IHL violations, including their findings and action taken against individual cadres found to be responsible.

VI. APPENDIX 1

NEW CASES INVESTIGATED BY OHCHR IN MARCH/APRIL 2006

Since the finalization of its report of investigations into violations of international humanitarian law (IHL) in the context of attacks and clashes between CPN-M and HMG security forces after the ending of the ceasefire in January, OHCHR has investigated several more recent incidents which are summarized below. Most of the attacks took place during the day, unlike many of those described in the main report. The findings of these investigations are consistent with those documented in the main part of the report, namely that both parties have committed serious IHL violations, including deliberate killings of individuals in non-combat situations (three by the RNA and one by the PLA), inadequate protection of civilians causing death and injury of civilians, including through RNA aerial bombings (one killing) and indiscriminate shooting by the RNA (two cases) and by police (two cases), as well as the targeted killing of a traffic policeman by the PLA.

CENTRAL REGION

Case A : **Baluwa Tole village, Chandranighapur area, Rautahat District**

On 9 March 2006, at 12.10pm two units of the Unified Command led by the RNA attacked a CPN-M political cadres meeting at Baluwa Tole village, Kanak Pur VDC, Chandranighapur area, Rautahat District. Four political cadres of the CPN-M and one civilian were killed, three of the five in circumstances which amount to IHL violations.

According to OHCHR's on-site investigations, on that day the political wing leader of the CPN-M in Rautahat District had visited and after a short time left the area. At the time, CPN-M cadres were holding a propaganda gathering and collecting "taxes" in front of a small crowd of locals. At around 12.10 pm around 100 members of the Unified Command approached the area. Ten RNA soldiers and two police officers, all in plain clothes and under the command of an RNA Captain, opened fire on the political cadres and civilians present indiscriminately and without giving any prior warning.

As a result of the initial indiscriminate shooting, civilian Surendra Thakur was killed. The security forces continued shooting at anyone who ran away from the scene. Two CPN-M cadres were captured, one of them badly injured. According to information gathered by OHCHR, after being interrogated by members of the security forces led by the RNA officer they were executed by a shot in the head and the chest from close distance, in violation of IHL.

The RNA commander responsible claimed that the CPN-M had fired first and that the two had resisted arrest in a way that could justify the use of lethal force during the operation. OHCHR has found no evidence to support these claims. It is possible that some CPN-M were armed with socket bombs in their belts, but OHCHR's investigation received no information to suggest that CPN-M cadres made any attempts to throw any bombs.

OHCHR has not so far been able to establish the facts relating to the circumstances of the killing of the two other CPN-M cadres. However, the post-mortem reports and other information available to OHCHR suggest that they were killed by the security forces from close range (from within 10 metres' distance) when they were about to be arrested.

Case B: **Mujeliya Municipal Ward #14 and Janak Chowk, Janakpur, Dhanusa District**

On 24 March 2006 two separate incidents took place in Janakpur DHQ, Dhanusa District. According to OHCHR's investigations, in the first incident, a unit of the PLA's Special Terai Battalion (STB) launched an attack on Mujeliya police station. Two policeman were killed. Around two hours

later, indiscriminate firing by the police led to the death of a staff member of the National Human Rights Commission and a member of the political party Rastriya Prajatantra Party (RPP) in Janak Chowk, a crowded market area of Janakpur town.

OHCHR investigations found that one of the two policemen was killed immediately during the attack on Mujelya police station at 5 pm, while the majority of the police escaped from the station. The PLA entered the station and seriously injured two police officers who appeared to have been unarmed. Another policeman tried to escape through the front of the station, and was chased by a member of the PLA unit for around 100 metres. According to OHCHR's findings, the police officer was injured by gunfire, and after his weapon was seized by his pursuers, he was killed in the presence of three PLA forces while effectively under their control.

Later the same day, at around 6.30 pm, a group of police officers were moving through the town centre towards the District Police Office following their involvement in reinforcement at Mujelya station. According to OHCHR's investigations, the led by an inspector was passing by Janak Chowk, a crowded market area, at approximately 6.45 pm and suddenly began firing indiscriminately. As a result, Ram Chandra Yadav (a member of the RPP) was hit by two bullets and killed immediately. NHRC staff member Daya Ram Pariyar was hit by two bullets and died subsequently in hospital. All eyewitness accounts report that there was no CPN-M or PLA presence in the area at the time, and no shooting other than from the police. OHCHR also received information that the police, after realizing that injuries had been sustained, began running away from the scene, attempting to remove their uniforms. Police denied to OHCHR that any police bullets had caused injury or death to civilians. OHCHR is waiting for the outcome of a police investigation.

On 30 March, a PLA officer denied to OHCHR that his forces had killed the policeman in a non-combat situation. He also denied the presence of CPN-M in Janak Chowk. OHCHR has requested that CPN-M Janakpur-Sagarmatha Regional Bureau carry out a full investigation into the killing of the unarmed police officer.

Case C: Thokarpa VDC, Ward #2 and #4, Sindhupalchowk District.

On 26 March 2006, PLA troops from Kavrepalanchowk, Sindhupalchowk and Sindhuli Districts started gathering in Thokarpa-2 VDC of Sindhupalchowk District with the stated aim of celebrating an operation which had taken place earlier in Bankunde VDC, Kavre District. The following day, some 150 armed PLA members in uniform were preparing for a mass meeting which was to be held in a field in front of a hostel for students of the Bagh Bhairav Higher Secondary School. By around 12.45 pm, around 100 civilians together with PLA members had started assembling when an RNA reconnaissance plane was spotted circling above the village. Five minutes later, two RNA helicopters started bombing and firing at the village and nearby fields for about 45 minutes. One civilian male – 61-year-old Bam Bahadur Khatri - died in a bomb explosion while another civilian male was injured. Several goats were also killed and others injured. OHCHR confirmed extensive damage to the local school buildings (including its only computer room), civilian houses and a clinic. It also observed the impact of 13 mortars (some identified as 120mm): one which fell near a clinic, one in the school yard, seven in other parts of the village, two which fell very close to civilian houses, injuring an occupant in the leg and cutting off electricity supplies, and two which landed in nearby fields.

OHCHR gathered first-hand testimonies which suggest that the reconnaissance plane had sufficient time to determine the presence of civilians in the village. The bombings took place in broad daylight, and OHCHR believes that the school and inhabited areas were clearly visible from the helicopters when the bombs were dropped. A senior RNA officer of the 9th Brigade in Bankunde VDC told OHCHR on 5 April that the attack had been launched because the first shot had been fired from Thokarpa VDC at a helicopter completing administrative tasks and on its way back from Sindhuli to Kathmandu. OHCHR has so far not found any evidence to corroborate his statement regarding the alleged shot being fired at the helicopter.

At the same time, OHCHR is concerned that CPN-M/PLA chose to hold a mass gathering in the middle of a village putting the civilian population at risk. OHCHR is further concerned that the CPN-M planted a bucket bomb and pressure cooker bombs in the outskirts of the village, IEDs which had not been defused 10 days after the incident when OHCHR visited the village. It has also communicated its concerns to the CPN-M leadership regarding the abduction of the VDC Secretary reportedly as part of the CPN-M's internal investigation to identify the person who allegedly informed the RNA about the mass-gathering.

EASTERN REGION

Case D: Birtamode, Jhapa District

On 21 March 2006, at 7am, the PLA attacked Birtamode police station Jhapa District, which led to the killing of eight policemen, as well as the injuring of 14 others. In the course of the attack, two detainees held in custody by the police at the time were also injured by PLA fire.

OHCHR found that before the attack, members of the PLA deliberately shot at an unarmed traffic police Sub Inspector, Khem Kumar Basnet, who was in civilian dress in front of the traffic police post. He later died from the injuries sustained. This is contrary to assurances given to OHCHR by the CPN-M leadership following the killing of an unarmed traffic policeman in Thankot (see Case 1 of main report) that traffic police would not be targeted.

OHCHR also investigated allegations from police that six policemen were killed by the PLA members after having surrendered. However, contradictions in witness accounts and other information prevented OHCHR from reaching any conclusions with regard to these allegations in the time available.

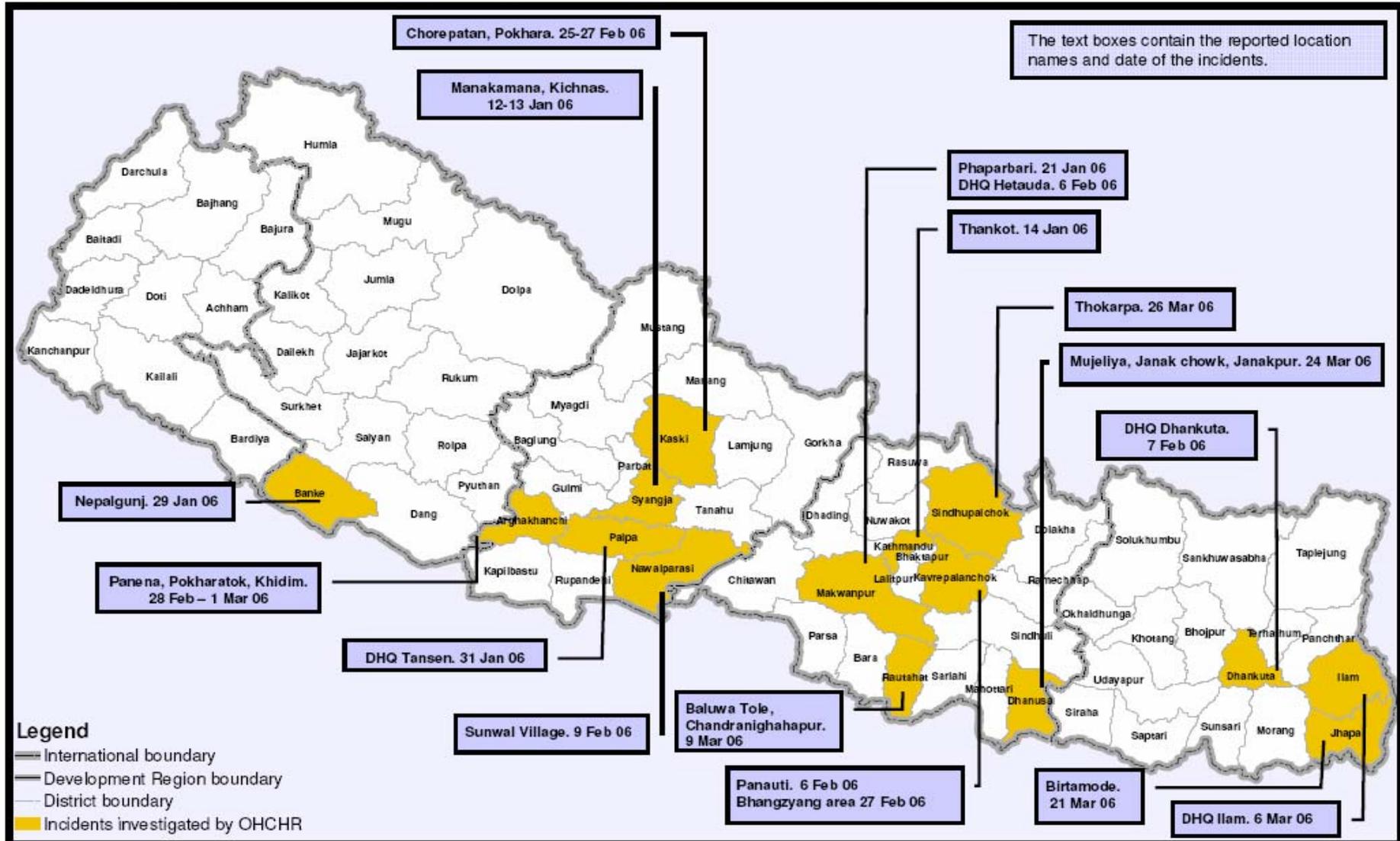
OHCHR did, however, receive compelling testimony that after the attack, an unarmed and injured PLA member was killed after capture and interrogation by RNA personnel brought in as reinforcements to the site of the incident. The body of the PLA member was found under a bridge approximately one kilometre away from the police station.

According to accounts received by OHCHR, after the attack on the police station, RNA personnel from the Charaali Battalion were patrolling through Birtamod firing randomly. A woman in a shelter was found shot dead, most likely as a result of this shooting. According to numerous accounts received by OHCHR, there was no CPN-M presence in the village at the time and there was only shooting by the RNA.

VI. APPENDIX II

MAP SHOWING LOCATIONS OF THE INCIDENTS INVESTIGATED BY OHCHR

NEPAL Incidents investigated by OHCHR, January - March, 2006



Map Produced by OCHA, Nepal.
Data Source: OHCHR, Nepal.

Last Updated
April 11, 2006

