



Human rights abuses by the CPN-M
Summary of concerns
September 2006

Introduction

This document contains a summary of OHCHR's concerns regarding human rights abuses by the CPN-M since the ceasefire declarations by the CPN-M itself and the Government of Nepal (on 26 April 2006 and 3 May 2006 respectively). The concerns include issues relating to the rights to life (killing and death of abducted individuals), to liberty and security (abductions), and to physical integrity (ill-treatment and torture), as well as the rights of the child and of internally displaced people (IDPs).

On 5 September, OHCHR met with the national CPN-M leadership and raised the concerns summarized in this document. The leadership explained that it had given oral directives to the CPN-M leadership around the country confirming decisions of the CPN-M Central Committee meeting of 27 to 31 August. These were also published in a press statement on 2 September. The directives include the setting up of offices at the district level to resolve issues relating to internal displacement, to ensure that donations are "completely voluntary", and "to take immediate public action against those responsible for beatings, abductions or killings carried out against party policy". The directives require all levels of the Party "to bring about strict observance of this decision".

OHCHR has noted previous commitments expressed by the central CPN-M leadership to reduce abuses, such as the commitments to allow IDPs to return home and to ensure all donations are voluntary which are contained in the 25-point Ceasefire Code of Conduct signed by the CPN-M and the Government of Nepal on 15 May 2006. To OHCHR's knowledge, the above directive is the first to be issued at the national level in relation to accountability, beatings and abductions since the commitments contained in the 12-point Letter of Understanding between the CPN-M and the SPA signed in November 2005 and the CPN-M's 17 April 2006 *Statement of Commitment to Human Rights and Humanitarian Principles*.

In noting these new directives, OHCHR is calling on the CPN-M to ensure that all are fully implemented, in a manner which fully respects human rights. OHCHR has noted that after it raised a series of killings in the Central Region in June (see below), the pattern of killings in the region ceased. However, despite this, and the general commitments expressed by the CPN-M leadership in the past, serious abuses have continued, and the question of accountability has yet to be addressed in most cases. OHCHR has repeatedly expressed concerns that such abuses are contrary to relevant international law and to the CPN-M's 17 April 2006 *Statement of Commitment to Human Rights and Humanitarian Principles*, as well as the human rights provisions of the Code of Conduct.

These concerns have been transmitted during meetings with relevant members of the CPN-M (political, People's Liberation Army (PLA) and "People's Government") at all levels and of the CPN-M sister organizations, some of whom have also been responsible for abuses. OHCHR has also had extensive discussions, especially at the district and regional level, regarding specific cases in the course of its investigations, as well as CPN-M policy and activities linked to the functioning of "people's courts". On most occasions, the CPN-M representatives were cooperative and provided OHCHR with access to individuals they were holding. Following OHCHR's interventions, those held were often either released or handed over to police. Some of those released informed OHCHR that they were no longer ill-treated after OHCHR's intervention. In a few cases, access was, however, denied or relevant information was not provided, in spite of promises to do so. In particular, detailed information about internal investigations into abuses has not been provided and OHCHR has not been given access to CPN-M personnel subjected to disciplinary measures.

Types of abuses

The concerns outlined below are based on extensive investigations by OHCHR staff in the field, including the collection and corroboration of information gathered from a wide range of sources, and discussions with CPN-M representatives at different levels.

Killings and deaths of abducted persons

In June, OHCHR raised its concerns about eight killings in the period between early May and mid-June 2006 following actions of "people's courts" in the Central Region. The killings were attributed directly to members of the CPN-M, or indirectly through their encouragement of villagers. They include the abductions and killing of: Bijaya Mahara Chamar and Ravindra Yadav in Bara District (22 April and 3 May); Prem Bahadur Thokar in Chitwan District (12 May); Tej Biamia in Rautahat District (18 May); Shyam and Sundar Sahani in Rautahat (22 May); Dhup Lal Prasad Yadav in Bara District (1 June), and Bishal Tamang in Sindhupalchowk District (10 June).

Most of the victims were accused of "crimes" or "offences" and were apparently under CPN-M "investigation" at the time they were killed. In four incidents, OHCHR concluded that members of the CPN-M encouraged and actively participated in assaults by local villagers that led to the death of six individuals. The other two men, according to OHCHR's information, were killed deliberately by members of the CPN-M after they were abducted.

On 27 June 2006, OHCHR publicly urged the central CPN-M leadership to investigate this pattern of abduction and killings, and to undertake concrete actions to prevent such abuses in the future. In three of these cases (Sindhupalchowk, Bara and Chitwan Districts) local CPN-M leaders have since accepted responsibility and have apologized publicly. The central CPN-M leadership has given assurances that such killings are not CPN-M policy. OHCHR has noted that since the cases were raised with the central leadership, no further killings have been reported in the Central Region. However, OHCHR regrets that up to late August, OHCHR has not received a written response and information regarding the status or nature of the CPN-M "internal" investigations which had been requested during OHCHR's meeting with the central CPN-M leadership on 23 and 26 June 2006 and in its public statement of 27 June 2006.

In the case of the killing of Bishal Tamang in Sindhupalchowk District on 10 June 2006, the villagers set up a committee with civil society and CPN-M representatives to investigate the incident. The CPN-M political leadership and the CPN-M/PLA in the area reportedly collaborated fully with the committee. They also expressed their commitment to respect the

recommendations of the committee. The committee submitted its conclusions in late June. It identified the members of the PLA and CPN-M responsible for torturing and killing Bishal Tamang, as well as illegally disposing of his body, and recommended that they be handed over to the Nepal Police (NP). However, the CPN-M/PLA have refused so far and has stated that those responsible will remain under PLA “custody” until the formation of an interim government is agreed upon in ongoing peace talks between the Government and the CPN-M.

OHCHR is also seeking clarification about reports of three further killings between May and August which were attributed either to the CPN-M or former members of the CPN-M. OHCHR is investigating the killings of Dhan Bahadur Rai in Bhojpur District (26 May), Patte Kahn in Banke District (13 August) and Sushil Gyawali in Bardiya District (17 August). In the case of Patte Khan, the CPN-M claimed he was killed by the CPN-M in self-defence, even though it appears he had been abducted and was being held by the CPN-M when killed. Dhan Bahadur Rai was found dead on 26 May, and three suspects linked to the CPN-M were handed over by the CPN-M to the police. Three individuals, two of them linked to the CPN-M, were also handed over to the police for the killing of Sushil Gyawali, who was stabbed at his home. In both the latter cases, the CPN-M claims that those responsible were ex-CPN-M cadres.

In a fourth case, that of Nepali Congress member Dip Narayan Yadav, the victim was abducted in Dhanusha on 6 August by the CPN-M, who initially reportedly confirmed the abduction. However, another district representative subsequently denied any knowledge to OHCHR. His whereabouts remains unknown and there have been serious allegations that he was killed. OHCHR’s investigation concluded that CPN-M representatives were responsible for his abduction but to date the body has not been found. It is therefore calling on the CPN-M to clarify his whereabouts.

OHCHR also raised concerns with the regional CPN-M representatives about one killing and several abductions of suspected members of *Tarai Janatantrik Mukti Morcha* (TJMM), an illegal armed group which advocates armed struggle for self-determination of the Madhesi community by the CPN-M during the months of July and August. The killings and abductions were reportedly committed in retaliation for TJMM actions against members of the CPN-M. These cases include the killing of a TJMM-associated villager Kulananda Bhindawar on 16 July in Saptari District.¹

Alleged suicides after abduction

Since the ceasefire, OHCHR has received information about four cases of alleged suicide after abduction. The cases include Shiva Bahadur Khadka, who committed suicide after being abducted by members of the CPN-M on 6 June 2006 in Dolakha District; the suicide of 13-year-old Roshan Majhi on 29 May soon after he was released following abduction after being accused of raping a girl in Morang District; and the alleged suicide of Ash Bahadur Rai, whose body was found hanging from a tree some days after he had been abducted in Ilam District in August.

OHCHR believes that independent and impartial investigations need to be carried out to establish the circumstances which led to each suicide or alleged suicide, including whether treatment while held by the CPN-M was a contributory factor. In the case of Ash Bahadur Rai, the investigations need to establish whether or not the individuals did indeed commit suicide.

OHCHR is also investigating the circumstances surrounding the death of Phuli Devi Yadav Mahato, a pregnant woman who died on 26 August while being transferred from one hospital in

¹ OHCHR has also raised concern with the TJMM regarding abuses by its members in the same period.

Saptari District to another in another in Sunsari District. It is seeking to confirm the veracity of initial reports that she committed suicide after being taken by the CPN-M but the events leading up to her death are as yet unclear. Preliminary information indicates that she and her husband had returned from India to their community, some of whom were unhappy with the return as she had remarried following the death of her first husband. At a public meeting to discuss the issue, two CPN-M cadres reportedly beat the couple and forced the meeting to order their separation. She was then taken to the house of one of the CPN-M cadres where she fell sick apparently due to poisoning. According to OHCHR's information, the two CPN-M cadres are currently being held by the CPN-M, under investigation for forcing villagers to take the "wrong decision".

"People's courts"

OHCHR's investigations into allegations of human rights abuses by the CPN-M have found that many are committed in relation to the "people's courts" and "law enforcement" activities. After the ceasefire declaration, the CPN-M started to extend their parallel structures to districts headquarters and villages where they had previously not been present, most notably through the setting up of "people's courts". OHCHR confirmed that "people's courts" gradually ceased to function in some urban areas after CPN-M Chairman Prachanda issued a directive, on 3 July, that "people's courts" were to cease to function in "big cities and Kathmandu". In some cases, the "people's courts" were transferred from the district headquarters to a nearby Village Development Committee (VDC) apparently to circumvent the instruction. At the village level, the "people's courts" continue to function in many areas as they did prior to the ceasefire, although the concept of a "people's court" varies from place to place.

It is recognised that some villagers in some rural areas appear to seek to use the CPN-M "people's courts" because of the absence, passivity of, or a lack of trust in the state law enforcement and criminal justice system. Local populations have, for example, reacted positively to CPN-M actions against those suspected of serious crimes such as rape and murder. OHCHR's investigations suggest that many abductions for "law enforcement" purposes occurred in VDCs where there is no Nepali Police (NP) presence. During the decade-long conflict, many police posts were destroyed or abandoned and police were killed or threatened. The NP has started to redeploy to some posts but have mostly been unable or unwilling to respond to the need for the re-establishment of former police posts, often being prevented from doing so by the CPN-M, by lack of resources or due to prevailing uncertainty regarding the outcome of the peace process. Most of the current NP posts are located in district headquarters and the three or four largest towns of any district.

Nevertheless, OHCHR believes that the abductions, related investigations and punishment related to the "people's courts", including holding people in private houses, fail to provide minimum guarantees of due process and fair trial by an independent court. They give rise to concerns regarding issues related to the right to liberty and security and, in some cases, to physical integrity (ill-treatment and torture) and to life (killing).

OHCHR has been encouraged by the number of instances where the CPN-M has handed over suspects to the police, and that there is more collaboration between the NP and the CPN-M on such matters, though this varies from district to district. For example, on 7 July, in Banke District, eight villagers suspected of involvement in robbery and murder were handed over to the police in the presence of OHCHR. Similarly, the CPN-M handed over three members who were allegedly involved in the above-mentioned killing of Dhan Bahadur Rai. However, such handovers are far from systematic, and in a few cases, police have handed suspects over to the CPN-M.

Abductions and ill-treatment

Since the CPN-M 26 April ceasefire declaration, OHCHR has confirmed the cases of some 184 individuals abducted by members of the CPN-M throughout the country (Eastern Region 62; Central Region 74; Western Region 15; Mid-Western Region 23 and Far-Western Region 10). As mentioned above, some of those abducted were killed or committed suicide. In numerous cases, OHCHR learned that the victims were released. Its regional offices are verifying the current situation of others to clarify whether they have been released or are still held. Accusations against those abducted include: murder, robbery, rape, posing as CPN-M to collect “donations” or “taxes”, and land disputes. A small number were accused of having violated certain cultural traditions, mostly by engaging in “illicit sexual relations”.

Victims of abductions also included at least 16 political party members (UML, NC and NC-D) though the abduction was not necessarily always related to their party affiliation. At least 14 people were reportedly targeted for their affiliation with the previous regime. In at least four cases, the CPN-M alleged that the abductees had been informants of the NA. Nine former members of the CPN-M were also abducted, for unclear reasons. At the same time, it would appear that some businessmen and others were abducted in order to pressure them to hand over “fines” which in some cases appeared to amount to extortion. Children were also victims, abducted reportedly on suspicion of involvement in rape, robbery or other crimes. Some reportedly continue to be held in captivity.

Depending on the nature of the case, abductions were carried out by members of the CPN-M political, district and area committee members, the “People’s Government”, the PLA or militias. Those abducted were most often kept at private houses. They were moved around frequently and were often not given access to their relatives initially. In some cases investigated by OHCHR, a ransom or “fine” was requested in return for their release, or compensation was paid as part of a settlement. Others were sentenced to periods of “corrective punishment” such as forced labour.

OHCHR also received a number of reports that some of those held by the CPN-M were ill-treated, primarily as a result of beatings with sticks. In some cases, the ill-treatment took place immediately after the abduction, and in others during the CPN-M “investigation” period. In a few cases, OHCHR saw marks on victims’ bodies which were consistent with beatings. After OHCHR raised the case, in June, of two individuals who had been severely beaten, the CPN-M, which had initially denied the allegations, acknowledged responsibility, stating that it had “been a mistake.”

Violations against children

The CPN-M’s 17 April 2006 *Statement of Commitment to Human Rights and Humanitarian Principles* states that “the rights of children will be respected” and that no one below the age of 18 will be recruited into the PLA.

OHCHR has confirmed the presence of numerous children in the PLA and prior to the ceasefire had documented the use of children as combatants by the PLA. Other information clearly suggests that the CPN-M’s cultural groups and militias have significant numbers of children who may at the same time also be used for military purposes as messengers or informants, and to attract other children into the CPN-M-affiliated movements. In addition, since the ceasefire, concerns have been raised that some 50 children - including some as young as 12 years old - were taken away from their families to take part in PLA and militia activities. OHCHR has received credible reports that some of them have received military training with weapons. In August alone, allegations of child recruitment were received from Chitwan, Dolakha, Gorkha,

Ilam, Nawalparasi, Nuwakot, Ramechhap, Kaski, Baglung, and Kathmandu Districts. In all instances, the CPN-M denied that the children were forced to join and stated that the recruitment was voluntary. While some children may have consented to accompany those recruiting initially, it is not clear under what conditions. In some cases parents stated that they had not given their consent. In other cases, the parents denied that the recruitment was voluntary. Recruitment of children –whether forced or voluntary – is in violation of international child rights principles and instruments which the CPN-M has given commitments to respect.

Lack of access and the fact that the CPN-M systematically denied having recruited or used children makes it difficult to assess the scope of the problem, though access is now increasing and more information is becoming available. On 24 August, the CPN-M leadership agreed to child protection agencies carrying out assessment missions to gather information and plan the process of returning children to their families. OHCHR and UNICEF believe that the CPN-M should issue a clear directive that children under 18 should not be recruited, either voluntarily or forcibly, to join the PLA/militia or groups which may provide support to them.

OHCHR has also received reports of individual abductions of children, often on suspicion of involvement in petty crime. Twenty-nine children were known to have been abducted, accused mainly of robbery, rape or murder. As indicated above, one 13-year-old boy committed suicide after being abducted and reportedly sentenced to carrying out “forced labour”.

Children have been taken for short periods of time to attend mass political/student gatherings. In Kathmandu, on several occasions in August, thousands of children were taken from schools to participate in day-long programmes organized by the ANNISU-Revolutionary. Further, the CPN-M and its sister organizations such as the ANNISU-R have disrupted classes by taking children away temporarily from their schools to participate in political demonstrations, student organization conferences and mass rallies in Ramechhap, Rasuwa, Achham and Banke Districts. In some cases, reports indicate that participation was forced. While recognizing children’s right to participate in political activities, OHCHR and UNICEF believe that children’s education should not be disrupted for such activities, and they should not be taken from family and caretakers without voluntary agreement of the child and legal guardians.

Although the most serious type of violations affecting educational facilities, such as military attacks in and around schools, have stopped since the ceasefire, incidents of inappropriate use of schools have continued to occur. Thirty such violations were documented mostly in districts of the Western and Mid-Western Regions, such as the occupation of, or (particularly in the case of the Western Region) settlement in the immediate vicinity of educational facilities by the PLA. Such violations are in contravention of the Ceasefire Code of Conduct, under which the CPN-M explicitly agreed to “create an atmosphere conducive to the operation of schools.”

Since the ceasefire, there have been no cases of children killed or injured as a result of military operations. Nevertheless, 12 incidents have been documented in which 19 children were injured and two lost their lives in explosions of devices believed to have been left behind by the PLA.

Rights of internally displaced persons (IDPs)

Since April 2006, the CPN-M has repeatedly given commitments in writing to respect the right of internally displaced persons (IDPs) to safely return to their places of origin and to have their land and property returned to them. Information gathered by OHCHR shows that this commitment has not been universally adhered to. In some regions, IDPs have been able to safely return and local CPN-M cadres have handed back their land and houses (but generally not movable property). In other areas, the CPN-M local and district-level representatives have

ignored CPN-M central-level commitments to allow IDPs to return safely. In those areas, CPN-M local cadres either disapprove of IDP return or condition return on the returnees appearance before the “people’s courts”, or in front of the community, to apologize or “clarify their action” before they were displaced. Others have had to pay sums of money to the CPN-M upon return.

In some areas, the CPN-M has classified the IDPs into categories of displaced persons. The label “IDP” is often used for a very limited and specific group of displaced persons, namely the wealthier land-owners, those affiliated to political parties or those openly opposed to the CPN-M, as well as persons the CPN-M judges to be “bad or anti-revolutionary people”. In its on-going dialogue with the CPN-M, OHCHR has tried to create a better understanding of the international definition of an IDP and the fact that most individuals have fled quietly due to threats of forced recruitment, extortions or other violations.

OHCHR is therefore urging the CPN-M to unconditionally fulfill its commitment to respect safe and sustainable return of all displaced persons and to return all the property illegally confiscated or looted by the CPN-M. While recognizing the CPN-M Central Committee's recently stated willingness to provide institutional support to this process, OHCHR is deeply concerned about an emerging pattern of CPN-M selective "approval" of IDP return, which risks being further formalized by the Central Committee-proposed establishment of CPN-M administered "IDP-return application" processes in each district. Given that many IDPs were originally displaced by the CPN-M, their internationally recognized right to a dignified return would be violated if they had to "apply" for permission to return from the same organization that displaced many of them. In addition, central and regional-level CPN-M representatives have the obligation to monitor and ensure that local CPN-M cadres adhere to commitments to respect safe, dignified and unconditional return of all IDPs.

Extortion and “voluntary donations”

On 3 July, the CPN-M Chairman, Prachanda, issued a “special directive” to CPN-M District Committees ordering that they should only collect “voluntary” donations. The central CPN-M leadership has publicly denied several times that the CPN-M obtain resources through coercion or intimidation but has stated publicly that the collection of donations will continue until resources are provided to sustain the PLA and political workers.

OHCHR has continued to receive reports during the month of August that members of the CPN-M are taking “taxes” or “donations” from local communities, government officials, NGOs, schools, business people and teachers throughout the country. OHCHR has noted that the modalities of “voluntary donations” vary greatly from region to region and district to district, and in some cases, rates have been negotiated. It has also witnessed some instances where “donations” were collected. OHCHR is particularly concerned when individuals are threatened if they refuse to pay the requested sum of money or when individuals are abducted to force them to pay. In the Western Region, OHCHR received various reports of the CPN-M threatening government staff and development workers with abduction in Parbat, Baglung and Myagdi Districts if they refused to pay a “tax,” though in other districts of the regions “donation” collections appear to have diminished.

In cases where there is no explicit threat and individuals appear to comply and pay without question, the threat is often implicit. For many people, refusing to pay is not an option, given the patterns of abuses in other cases where individuals have been threatened or abducted. OHCHR welcomes the statement issued after the recent CPN-M Central Committee meeting recalling to CPN-M cadres that donations must only be voluntary. However, the CPN-M needs to ensure its implementation, and to make a clear statement to reassure the public that there is no obligation to

respond to requests for donations, that those who refuse to pay will not suffer aggressive language, threats or other abuse.

Accountability

In each of the deaths in suspicious circumstances, confirmed killings, cases of ill-treatment and other abuses, OHCHR has requested information about steps taken to investigate by the CPN-M. In a number of cases, OHCHR has been informed by the CPN-M at district and regional level that investigations are under way but little information is available. Where CPN-M members are said to have been disciplined, OHCHR has not been able to obtain detailed documentation in order to be able to assess the investigations. The exception has been the *ad hoc* investigation into the killing of Bishal Tamang in Sindhupalchowk District, where OHCHR had access to a copy of the findings of the committee which investigated the case. Requests to have access to CPN-M members who have been disciplined have been denied. However, on the basis of the information it has received, the investigative process does not appear to be uniform, systematic or transparent. As indicated above the CPN-M exceptionally handed over four suspects to the police in the case of Dhan Bahadur Rai (Bhojpur District).

OHCHR has also noted with special concern that although the CPN-M leadership has said that action was taken against those responsible for the 2005 attack on a public bus in Madi, Chitwan District, resulting in the death of at least 35 civilians and members of the security forces, some of those responsible were freed after two to three months “corrective punishment”.

On 26 June, OHCHR-Nepal urged the CPN-M to set up an internal mechanism at the national level to oversee internal investigations into allegations of abuses by CPN-M cadres in order to ensure that they are impartial and complete, and do not result in further violations. During its meeting with the CPN-M leadership on 5 September, OHCHR reiterated its request for information about investigations, including regarding the setting up of an oversight mechanism. It has also made clear to the CPN-M its position that such internal investigations cannot substitute for criminal investigations by police, independent investigations and prosecutions carried out in a state court. The NP, and victims or their families, have, for the most part, been extremely reluctant to file First Information Reports in cases of alleged abuses by the CPN-M, which would launch a criminal investigation. There have been a handful of exceptions, one of them being the case of Bishal Tamang.

OHCHR has noted the recent CPN-M directive that action be taken against those cadres found guilty of beatings, abductions or killings, and urges that any internal investigations be carried out in accordance with international principles, including with respect to the rights of the accused.

Conclusions

As noted above, OHCHR recognises that some efforts have been made by the CPN-M to curb abuses and that action has been taken to remedy some of the cases which OHCHR has brought to its attention at the local and national level. Nevertheless, the concerns documented in this report clearly indicate the need to ensure full implementation of the CPN-M’s repeatedly stated commitment to human rights and humanitarian principles. OHCHR hopes that the new directives represent a new determination on the part of the CPN-M leadership to ensure that its cadres comply with these commitments.