

## **Investigation by the Office of the High Commissioner for Human Rights in Nepal into the violent incidents in Kapilvastu, Rupandehi and Dang districts of 16-21 September 2007**

### **I. Introduction**

OHCHR is releasing this report following the election of a Constituent Assembly. The report is published in the spirit of providing information and recommendations that may help prevent violence from recurring and at a time that is conducive for constructive and forward-looking engagement between the Nepali Government, district authorities and civil society on the issues addressed by OHCHR.

This report focuses primarily on events in Kapilvastu between 16-21 September 2007 and examines the most serious incidents, the context, and the response of the authorities, as well as measures taken by civil society and local authorities to restore calm and communal trust.

The outbreak of violence in Kapilvastu illustrates how easily underlying tensions and State neglect can result in violence. Fourteen people were killed and at least nine people injured between 16 and 21 September 2007 in violence that followed the murder of Mohit Khan, a local Muslim landowner who was also a former long-time Nepali Congress (NC) party member and former member of the vigilante group *Pratihar Samiti*.<sup>1</sup> Several thousand people were displaced as a result, and there was widespread looting and destruction of property.

According to official figures, more than 300 buildings were damaged or destroyed, including five mosques and 200 houses. The violence spilled over into neighbouring Dang and Rupandehi districts where property, including mosques, was also damaged or destroyed and many people temporarily displaced.

Local government authorities and the police failed to prevent or intervene in a timely manner to stop the violence in Kapilvastu and did not reach some of the affected villages for several days. Retaliatory attacks continued in what was essentially a political and security vacuum, particularly in rural areas.

Humanitarian agencies worked closely with local authorities to provide assistance to the internally displaced population, most of whom had returned home by January 2008, as had most of those who fled to India. Some of the displaced have requested resettlement, however, rather than returning to villages that have been targeted by violence several times and where they do not feel safe.

On 20 September 2007, the Government formed a high-level judicial commission to investigate the violence in Kapilvastu and surrounding districts and announced that immediate relief would be provided to the victims. The Home Minister stated that the Cabinet condemned the violence, expressed its condolences to the victims and urged the residents of the affected districts to exercise restraint. The same day, the Prime Minister met with representatives of the Muslim community and reportedly urged them to help maintain communal harmony.

Official investigations into the violence, however, including by the Commission, focused on loss of property and physical damage and there has been no serious attempt to investigate the killings, even though the identity of those responsible is allegedly known in many cases. The Commission established

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<sup>1</sup> *Pratihar Samiti* are commonly referred to as vigilantes or self-defence groups. During the armed conflict, such groups were active in some Western Terai districts in countering the CPN-M influence, with at least the tacit support of the security forces, especially the (then Royal) Nepalese Army (RNA). Activities by *Pratihar Samiti* in Kapilvastu resulted in the killing and the displacement of a large number of the local population, mostly Pahadis, who were seen to be close to or supporting the predominantly Pahadi-initiated Maoist insurgency. After the conflict ended, civil society and the CPN-M have repeatedly complained that former *Pratihar Samiti* members were not disarmed.

by the Government to investigate the violence submitted its report to the Government in January 2008, but the report has not been made public and its recommendations have yet to be implemented.

Although some initiatives have been taken to rebuild confidence among the communities, tensions remain and much work has to be done to prevent further violence in the future. The violence that occurred in Kapilvastu last fall highlighted the urgent need for the Government to address underlying causes of tensions and frustration in the Terai, and to address the public security concerns of the population.

From September to December 2007, OHCHR had an almost continuous presence in the Kapilvastu area, gathering information on the incidents and liaising with humanitarian organisations, local authorities and civil society to identify responses both to the basic needs of the communities concerned, such as shelter and food, as well as ways of preventing further violence. Regular visits continue to be made to the region to follow up concerns.

## **II. Methodology**

In two press releases, on 17 and 19 September, OHCHR condemned the killings in Kapilvastu and Rupandehi districts, urged the population to show tolerance and refrain from further violence, and called on the Government to exert its authority to create a secure environment with access to justice.

From 18 to 20 September 2007, OHCHR and the United Nations Mission in Nepal (UNMIN) conducted a joint preliminary investigation in Kapilvastu and Rupandehi districts. OHCHR maintained a continuous presence in the area until the end of November 2007 and subsequently returned at regular intervals to continue investigations, monitor the response of state authorities to the violence and follow steps that were reportedly being taken to restore calm and re-build confidence. OHCHR also monitored attacks against the Muslim communities in Dang district that were triggered by the anti-Pahadi<sup>2</sup> attacks which followed Mohit Khan's death. During its investigations, the Office liaised closely with local government and security forces, the National Human Rights Commission (NHRC), human rights organizations, and civil society, as well as national and international agencies providing assistance to the people displaced by the violence.

OHCHR visited all villages in the affected areas and conducted more than 150 interviews with victims, witnesses, displaced persons, local residents, as well as human rights defenders, journalists, government and security officials, medical personnel, political party members, and detainees in police custody. In the course of the investigation, OHCHR worked with the NHRC, and in some instances conducted joint monitoring. The NHRC contributed to the development of this report and its findings.

## **III. Context**

The three Terai districts affected by the violence have a mixed Madheshi/Pahadi population. The most seriously affected district, Kapilvastu, has a population of around 500,000, of which some eighty percent are Madheshis.<sup>3</sup> Over the last decades there has been a significant, state-sanctioned migration into the Terai from the northern hill districts, which has resulted in tensions between Terai residents and the Pahadi settlers, who include Muslims and Hindus of all castes, including landless Dalits. The Pahadis have tended to settle in already established Madheshi communities. In the early 1990s, the Government distributed land to some Pahadis (for example in Dipendranagar village, Patthardaiya Village Development Committee (VDC), Kapilvastu). Other Pahadis occupy formerly unused public land, such as in Devipur village, Bishanpur VDC, Kapilvastu. To this day, land issues continue to be a primary source of tension. In addition, a large proportion of the business community in the two Kapilvastu towns

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<sup>2</sup> The term Madheshi in this report refers to the population who have lived in the Terai for generations, whilst the term Pahadi refers to the population who have migrated from the hill districts. Most Muslims are Madheshis, but many Madheshis are Hindus.

<sup>3</sup> According to the 2001 census.

affected, Chandrauta and Krishnanagar, comprise either Pahadi migrants from the hills or Hindus of Terai origin.

Kapilvastu is a predominantly agricultural district. It has a lower literacy rate than other districts in the region and is considered to be less developed. The agricultural land within the district is controlled by relatively few families. A feudalistic landlord system is still in practice, where one individual may own a vast amount of land, including villages. Many of the Madheshi and Pahadi villagers work on the land for the landlords under various systems of tenant farming.

As the district borders India, Kapilvastu's economy depends largely on close cross-border commercial links, both legal and illegal. Western Kapilvastu (Krishnanagar) is an important corridor for smuggling. Competition for control of the border trade has also been a major cause of tension among various factions, including landlords, former *Pratikar Samiti* members, criminal gangs, individual members of the security forces and political parties.

State institutions and law enforcement agencies have been particularly weak since the end of the armed conflict. During the conflict, the Nepal Police (NP) was incorporated into the unified command of the then Royal Nepalese Army (RNA), who became responsible for maintaining law and order. After the people's movement in April 2006 and the Comprehensive Peace Agreement (CPA) in November 2006, the Nepal Army (NA) was confined to barracks and the NP resumed their role of maintaining law and order. The NP were in a poor condition to do so, however, due to lack of resources and equipment, inadequate support from their superiors and low morale. This situation was compounded by the frequent interference of political parties in law enforcement activities.

Relations among the diverse ethnic and religious population were worsened by the armed conflict and in some Terai districts by the emergence of the *Pratikar Samiti*, which were established in late 2004.<sup>4</sup> According to former *Pratikar Samiti* members, they had their own weapons but received training from the RNA.<sup>5</sup> The *Pratikar Samiti* were very active in pursuing anyone perceived to be a supporter or member of the Communist Party of Nepal-Maoist (CPN-M). Many civilians were killed and large numbers were displaced in Kapilvastu as a result of clashes between the CPN-M and *Pratikar Samiti*.

In September 2006, with the end of the conflict, the *Pratikar Samiti* disbanded and a group of Madheshi NC and *Rastriya Prajatantra Party* (RPP) supporters joined former *Pratikar Samiti* members, including Mohit Khan, to form *Loktantrik Madheshi Morcha* (LMM), an organization whose stated objective was to advocate for Madheshi rights.<sup>6</sup> Despite having formally disbanded, former *Pratikar Samiti* members still exercised significant authority in parts of Kapilvastu. Civil society and the CPN-M have frequently complained that former *Pratikar Samiti* members were not disarmed and that no steps have been taken to hold accountable those allegedly responsible for serious crimes.

In January 2007, the NHRC met with government authorities, civil society representatives, political parties, including the CPN-M, and former *Pratikar Samiti* members in Nawalparasi, Rupandehi and Kapilvastu to discuss the issue of disarming former *Pratikar Samiti* members and commencing legal action for alleged crimes. The NHRC began negotiations in Nawalparasi for the return of weapons in the possession of former *Pratikar Samiti* members, but nothing concrete came out of this initiative in Kapilvastu.

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<sup>4</sup> Mohit Khan claimed to OHCHR that he had never been a leader of the *Pratikar Samiti*, but he appears at the very least to have been an extremely influential and important member from late 2004 to April 2006.

<sup>5</sup> Civil society and the CPN-M have often alleged that the RNA also provided weapons to the *Pratikar Samiti*. The RNA has acknowledged to OHCHR that they used the group as informants.

<sup>6</sup> The LMM was formed in Krishnanagar and conducted most of its activities in that area.

Tension among communities in Kapilvastu District resulted in violence as early as 1990.<sup>7</sup> However, the most serious outbreak of violence occurred in February and March 2005, when violent clashes between *Pratihar Samiti* members and the CPN-M resulted in the death of 60 individuals, including members of both parties, and the displacement of thousands of civilians. One of the clashes involved an armed attack on Mohit Khan's house. As a result the RNA established a post, which remains to this day next to Mohit Khan's compound. Civil society and the CPN-M alleged that the army was protecting Mohit Khan and allowing his illegal activities to continue with impunity, and repeatedly requested that it be removed.<sup>8</sup> Many of the villages targeted in September 2007 had also been targeted in the 2005 violence, a fact that influenced the decision of some of the displaced to seek resettlement elsewhere rather than return to their villages.

By 2007, relations between Mohit Khan and the CPN-M leadership had reportedly improved and some kind of dialogue between the two had been initiated.

#### **IV. Chronology of the violence**

Mohit Khan was shot dead between 07:45 and 08:00 on 16 September as he was on his way to inspect land in Balapur village, Shivpur VDC. Sometime after 07:30, Mohit Khan arrived in Balapur alone and unarmed by motorcycle and spoke to some people in the village. Shortly thereafter, two unidentified persons, riding a motorcycle stopped in front of Mohit Khan. Witnesses said they heard gunshots and saw that Mohit Khan had fallen to the ground.<sup>9</sup>

Villagers informed Mohit Khan's son, who later told OHCHR that he informed the police in Chandrauta and left immediately by vehicle to bring back his father's body. At around 09:00, the police arrived at the site, at around the same time as Mohit Khan's son. According to both police and Mohit Khan's son, a group of some 50-60 local Madheshi people gathered at the site started to throw stones at the police vehicle. Mohit Khan's son told OHCHR that he asked the police to leave so that he could collect his father's body, which he brought back to his house.

News of Mohit Khan's murder travelled fast, and many people told OHCHR that as soon as the news of Mohit Khan's death spread, they expected a violent reaction. Within an hour, Pahadi homes and businesses in the towns of **Chandrauta** and **Krishnanagar** (25 kilometres directly south of Chandrauta on the Indian border) were attacked, looted and burnt. According to witnesses, in both cases, the attacks were instigated by a group of men armed with *khukuris*<sup>10</sup>, *lathis*<sup>11</sup>, hammers and sickles, who arrived at the bazaar by motorcycle and by vehicle. The men reportedly initiated the attacks and incited local Madheshis to join them. Some business owners who had heard of Mohit Khan's murder had already closed their shops and warned the police in both Chandrauta and Krishnanagar that there might be trouble. The looting and destruction lasted around two hours in Krishnanagar and up to three hours in Chandrauta. However, large crowds remained in the streets until a curfew was declared at 13:30. Over the next two days, several Muslim-owned businesses close to the Mahendra Highway in and around Chandrauta were burnt down, along with a number of Muslim-owned buses and trucks that were parked along the highway.<sup>12</sup>

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<sup>7</sup> Local people often mention a serious incident in 1990 involving the alleged rape of a group of Pahadi women and the abduction of some 50 Pahadi men from Khururiya VDC by a group of Madheshis.

<sup>8</sup> In meetings with OHCHR, the NA position on this has consistently been that requests for its removal should be submitted to the Government.

<sup>9</sup> There were few direct witnesses to the actual killing and their accounts differ.

<sup>10</sup> Curved Nepalese knife

<sup>11</sup> Long bamboo cane

<sup>12</sup> The Mahendra Highway is the longest Highway in Nepal, connecting Kakarbhitta in the east and Mahendranagar in the west. The places on the Mahendra Highway where the Muslim owned businesses were attacked were near Butwal, Jitpur, Barganga and Chandrauta.

In Chandrauta, 20 NP officers were stationed at the Area Police Office (APO) when the violence erupted. The NP Inspector of the APO went to the crime scene of Mohit Khan's killing with seven officers, leaving less than a dozen at the APO. A crowd of people had gathered at the gate of the police compound and wanted to enter but the NP prevented them from doing so. The NP team returned to the APO around 11:00. All the NP personnel remained inside the APO until noon. They arrived at Chandrauta bazaar after the Armed Police Force (APF) brought the situation under control.

Around 50 APF personnel were deployed to Chandrauta bazaar during the violence. According to the APF in Chandrauta, of 300 APF personnel in the Battalion, 100 APF personnel were on regular duty along the border, patrolling and conducting security checks. The remaining 200 APF personnel were deployed during the incidents, but the numbers and timings of deployment are disputed. The APF did not keep record of such details and the verbal information received by OHCHR was countered by claims by the local population that the APF did not arrive until the looting was over.<sup>13</sup>

In Krishnanagar, local people informed the NP Inspector of Mohit Khan's death at around 08:45. Fourteen of the 20 police officers at his disposal were deployed in two groups when the violence broke out but the number of rioters was overwhelming and the NP retreated.<sup>14</sup> As in Chandrauta, the 20 NP officers at the APO remained within barracks during most of the violence and deployed again onto the streets after the APF had brought the situation under control.

There were 40 APF personnel stationed in Krishnanagar, of whom 17 were on regular patrol during the time of the incident. All the personnel on patrol were called back to the APF barracks after the attacks became known. At 10:15, all 40 APF personnel were deployed to control the situation and reached the bazaar at 10:30, more than an hour after the town was attacked. They reportedly managed to protect some shops and fired in the air after the mob threw home-made bombs at them. The NP returned to the bazaar shortly thereafter and tried to control the crowd using a *lathi* charge. Calm was restored after the NP and APF received orders from the Chief District Officer (CDO) to enforce a curfew at 13:30.

The violence in Chandrauta and Krishnanagar quickly spread to neighbouring villages in Khururiya, Ganeshpur, Patthardaiya, and Jawbari VDCs. According to witness reports, between 10:00 and 17:00 on 16 September, eight to ten armed persons on motorbikes, leading a group of approximately 70-100 persons armed with axes, *khukuris* and *lathis*, went from village to village burning houses, looting household goods and killing two Pahadi residents.<sup>15</sup> Statements from victims and witnesses, supported by the timing of the incidents, suggest that the same group of people was likely responsible for the attacks on all villages.

The most serious violence in terms of fatalities occurred in **Devipur** village, Bishanpur VDC, where six Pahadi men were murdered. Devipur is an ethnically mixed village of landless people, including Pahadis, indigenous Tharu and both Madheshi and Pahadi Muslims. There had been a long history of tension over land between the landless people who settled in Devipur and the neighbouring Madheshi community of Bishanpur; the Madheshis claim that the land settled by the landless people had been theirs in the past.

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<sup>13</sup> The DSP stated that around 50 APF personnel were first deployed, and the remaining were deployed as they got ready. The APF used *lathi* charge to push back the crowd and the situation calmed down after the arrival of additional troops at around 11:30 to 12:00.

<sup>14</sup> Interviews with police and members of the public.

<sup>15</sup> Several witnesses stated to OHCHR that they recognised and could identify some of the assailants as former *Pratihar Samiti* members.

On hearing of Mohit Khan's death, Devipur villagers, concerned that there might be trouble, called the NP in Chandrauta.<sup>16</sup> The police reportedly responded that events in Chandrauta meant that they would not be able to send help. At around 09:30-10:00, two groups of Madheshi men (numbering 50-70 in total) armed with spears and sticks converged in Devipur. According to witnesses, they accused the villagers of involvement in Mohit Khan's death and shouted in Hindi for them to leave or be killed. The groups looted and set fire to houses (all but one house in Devipur was destroyed) and sought out specific individuals and killed them. The six persons killed included the chairperson of the Landless Villagers' Committee and a Communist Party of Nepal-Unified Marxist-Leninist (CPN-UML) leader, who were beaten to death in front of their families and their bodies set on fire. Many villagers knew the attackers.<sup>17</sup> The police came to Devipur for the first time three days later, on 19 September, and retrieved the dead bodies.

On 17 September, the predominantly Muslim Madheshi village of **Khaire** was attacked. Khaire is located just off the Mahendra Highway, two kilometres from the place where Mohit Khan was killed. Witnesses reported that at around 15:00, some 200 people, mainly Pahadi youths, arrived by vehicle. They stopped on the highway just north of Khaire and entered the village on foot. At the time, there were only women and children in the village as the men had gone to attend the funeral of Mohit Khan. The attackers burned trucks that were parked near the village and then set fire to houses, burnt rice grain stores and killed some livestock. They also damaged the village mosque and set fire to holy books. The women and children in the village had fled into the fields when they saw the crowd coming and no one was injured. Of the 47 houses burnt down, 46 belonged to Madheshis. Following the incident, most of the villagers fled to India. An NP Inspector from the District Police Office (DPO) claimed to OHCHR that a joint team of APF and NP intervened to stop the attack on Khaire, using teargas and firing into the air. According to the villagers, however, the police came to the village for the first time three days after the incident.

In what appeared to be further retaliation for attacks against Pahadis, on 20 September, three people were killed and nine injured, including a Madheshi human rights defender, after a large crowd of Pahadis surrounded the police post in Jagadishpur, Patthardaiya VDC, and forced the police to hand over three former members of *Pratihar Samiti* from a group of ten/twelve Madheshis who were at the police post. The three victims, who were accused of involvement in the looting and burning of 16 September as well as serious crimes whilst they were *Pratihar Samiti* members, were beaten to death in front of the police (19 APF and 23 NP officers). Simultaneously, members of a delegation coming to promote harmony approached. Two Pahadis and a Madheshi human rights defender carrying human rights flags arrived on a motorbike. The human rights defender was apparently identified as Madheshi and was immediately attacked and seriously injured by a sharp weapon.<sup>18</sup> Both the NP and the APF claim that they had fired teargas and several rounds of bullets in the air to stop the attack on the Madheshis inside the police post but were overwhelmed by the crowd. The police asserted that had they fired into the crowd, there would have been many more casualties and the situation would have further deteriorated.

The attacks against Pahadi communities appear to have been instigated by members of the Madheshi community in direct response to the death of Mohit Khan (as in Chandrauta, Krishnanagar) and in some cases (in Devipur) to resolve past scores. Information gathered by OHCHR suggests that former *Pratihar Samiti* members, including criminal elements, and individual members of the LMM, capitalized on his death and found it easy to instigate attacks against Pahadis.<sup>19</sup> Attacks on Madheshis appear to have been carried out in revenge for attacks on Pahadis.

### *Killings*

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<sup>16</sup> According to witness statements.

<sup>17</sup> Several witnesses gave detailed accounts of the identities of the perpetrators.

<sup>18</sup> According to witness statements.

<sup>19</sup> Many witnesses stated that they recognized LMM members amongst the attackers.

The police, as well as the media, initially reported that there had been up to thirty deaths as a result of the violence.<sup>20</sup> In the immediate aftermath of the violence, neither the police nor representatives of the media, civil society and other organizations, had managed to reach the affected villages. This had the unfortunate effect that most information reported in the press was based on rumour. After careful verification, OHCHR confirmed 14 cases of killings, all in Kapilvastu. After initially having reported higher numbers, the police issued a public retraction and concluded that 14 people were killed.

According to OHCHR's findings, of the 14 persons killed, ten were Pahadi and four were Madheshi. The ten Pahadis were killed on the first day of violence, 16 September; one in Chandrauta (an APF officer in civilian clothes), six in Devipur, Bishanpur VDC one in Chutapatti, Khururiya VDC, one in Manpur, Ganeshpur VDC and an 11 year-old boy who was electrocuted in Krishnanagar. In addition to Mohit Khan's murder, three Madheshis were killed in Jagadishpur, Patthardaiya VDC, on 20 September.

It appears that certain individuals took advantage of the situation to settle political grievances. OHCHR's investigations suggest that in at least nine cases, the victims killed were deliberately targeted.<sup>21</sup> In the case of other killings, the victims were simply in the wrong place at the wrong time.<sup>22</sup>

#### *Spillover into neighbouring districts*

As noted earlier in the report, the violence in Kapilvastu was not contained to that district. In particular, neighbouring districts of Dang and Rupandehi saw a certain spillover effect in areas with a concentration of Muslims.<sup>23</sup> Reprisals for the attacks against Pahadis in Kapilvastu started on 16 September, when two mosques and a Muslim-owned business were attacked in the city of Butwal, Rupandehi District, and a mosque in Bhaluwang village, Lalmatiya VDC, Dang District, was vandalized.

In **Butwal**, at around 11:45, 200-300 people in three trucks came from the direction of Chandrauta and attacked the main Raza-i-Mustapha mosque, located just below the road at the entrance to the town. The attackers seriously damaged and set fire to the interior and burned Islamic texts. People inside the mosque compound escaped over the roof and no one was injured. The attackers also destroyed a house next to the mosque, vandalised a second mosque and damaged and tried to set fire to two Muslim-owned shops on the main road.<sup>24</sup>

At around 12:00, Butwal NP was alerted to the attack on the mosque and took 25 minutes to reach the site. Some witnesses reported that the police came to the bridge that overlooks the mosque but did not intervene. The APF based in Butwal had been sent to back up the APF in Chandrauta but returned as the road was blocked. Subsequently, additional APF officers from Bhairahawa and NP recruits from the Police Academy in Butwal were sent to reinforce the police presence, and a static team of APF/NP was placed near the mosques and the Muslim areas to prevent further incident. The District Administration Office (DAO) issued a curfew from 12:30 in Butwal, which was lifted on 18 September.<sup>25</sup>

Rumours about violence against Pahadis in Kapilvastu spread through **Dang** District, and fuelled attacks against the Muslim community. At least four mosques, 12 Muslim-owned houses and 13 Muslim-owned

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<sup>20</sup> On 22 September, police officials at the DPO informed OHCHR that the death toll had reached 22.

<sup>21</sup> At least four of the six persons killed in Devipur (all Pahadis) were prominent in the village and apparently targeted because of a longstanding land dispute with a neighbouring village. In another case, a Pahadi killed on 16 September in Chutapatti is believed to have been targeted because of close relations to the CPN-M. He had previously been threatened by former members of *Pratihar Samiti*. As explained above, the three Madheshis killed in Jagadishpur were allegedly singled out.

<sup>22</sup> The APF officer in civilian clothes who was killed in Chandrauta on 16 September and the boy who was electrocuted in a looted shop at the bazaar in Krishnanagar.

<sup>23</sup> The media in Dang reported that Muslims had attacked Pahadis in Kapilvastu.

<sup>24</sup> According to witness statements.

<sup>25</sup> In general there were fewer complaints against the authorities in Rupandehi and OHCHR's findings support the assertion that they responded more efficiently to the violence.

shops were selectively looted, vandalized and/or set on fire in five VDCs and one municipality between 16 and 21 September, by groups of up to 150 unidentified, mainly non-Muslim men. On 20 September, a mosque was damaged in Lamahi, Chailahi VDC, and the contents of a shop were looted and burnt. On the same day in Bagwanpur, Sishaniya VDC (where the damage was most serious), seven houses and a mosque were looted and burned. On 21 September, ten shops and two residential premises in the Tulsipur bazaar area were looted and vandalized and three other houses and a mosque were looted and vandalized and two shop properties were burned in Bagar village, Shrigaun VDC.

The violence in Kapilvastu led to the displacement of almost all the Muslim community in Dang, and some 900 people sought the protection of security forces. OHCHR also received reports of unconfirmed numbers of both Muslims and Pahadis moving into neighbouring districts or into India.

In mid-January 2008, most of the Muslims displaced in Dang District had returned to their villages and there was no tension between the Muslim and Pahadi communities.

In Rupandehi and Dang districts, the situation did not deteriorate to the same degree as in Kapilvastu and the authorities seems to have been somewhat more responsive. However, OHCHR received allegations that the police failed to intervene adequately when mosques were attacked, that arrests and detentions did not comply with national and international law, and that police failed to properly investigate crimes committed.

#### *Internally displaced persons (IDPs) and humanitarian relief*

Thousands of residents of the affected villages and towns fled their homes and gathered at different locations. In Kapilvastu, an estimated 6,000-8,000 individuals, mostly Pahadis, fled to the northern part of the district where the local population is predominately Pahadi. Around one third of these went to stay with family members while the rest, an estimated 4,000, were sheltered in IDP camps. The majority of displaced Madheshis headed south, across the border to India.<sup>26</sup>

The primary responsibility for the protection of IDPs rests with the state and local authorities of Nepal; nonetheless, humanitarian agencies, including the International Committee of the Red Cross (ICRC) and National Red Cross Society (NRCS), the United Nations (UN) and International Non Governmental Organisations (INGOs) reacted immediately to assess the situation and provide relief and assistance to the IDPs and affected villages. The CDO organized relief coordination meetings with the assistance of the UN Office for Coordination of Humanitarian Assistance (OCHA) to facilitate relief to the victims. IDP camps were established at schools in Chandrauta, Birpur VDC, Sundaridanda and Magargatta, Shivagadi VDC and, later in Shankarpur, Patthardaiya VDC.<sup>27</sup>

Security in the IDP camps was initially provided by the IDPs themselves, and included regular night patrols. After two or three days, the CPN-M affiliated Young Communist League (YCL) was also present, though not actively patrolling. IDPs stated that the YCL presence provided an added sense of security. Later, security was provided by the NP and the APF.

The YCL also became engaged in the management of the Shankarpur IDP camp and provided or distributed some of the humanitarian assistance (clothing, food, and medical assistance). According to the CPN-M, the party tried to engage other political parties in the IDP situation, but the CPN-M remained the only political party with an early and sustained presence in the IDP camps. OHCHR did not receive any

<sup>26</sup> According to witness statements not all villagers left. Some residents of Manpur, Bhatani, Darkas, Bangana, Gorusinghe, Turuntapur and Bijadahi villages remained.

<sup>27</sup> By the beginning of October, IDPs that were previously spread across different IDP camps in the area were relocated to Shankarpur camp. The location was identified by political parties and the DAO to facilitate more efficient humanitarian assistance and was considered generally a more appropriate site.

statement from the local population opposing the presence of the YCL at the camps. However, some interlocutors expressed concerns about the politicization of IDPs.

In a 24 September meeting between the Kapilvastu CDO, representatives of political parties, human rights activists and journalists, it was decided to temporarily relocate IDPs from Chandrauta to an interim camp in Sundaridanda before moving them to the Shankarpur IDP camp. The CDO insisted that the transfer would be voluntary and IDPs who opted to remain behind in Chandrauta would still receive assistance.<sup>28</sup> However, OHCHR found that there had been no consultation with the IDPs before taking the decision to transfer them and no efforts by the authorities to explain the situation to the IDPs.

Agencies, including OHCHR, OCHA and ICRC, expressed concerns to the district authorities over the relocation of the IDPs to areas that were perceived as less secure in terms of risks of further attacks. An estimated 145 families resisted leaving Chandrauta and unilaterally settled at two locations in Barkalpur and Barganga along the Mahendra Highway. As of April 2008, most of the IDPs along the highway had moved into a forested area next to Gorusinghe along Gorusinghe-Sandikharka highway in Kapilvastu where they are living in poor conditions without support from authorities or civil society.

The last week of December 2007 and early January 2008 saw the return of several displaced families from Shankarpur camp to their homes, leaving an estimated 82 families, who in April 2008 told OHCHR they do not wish to return to their villages for security reasons.

OHCHR received reports of hundreds, perhaps thousands of people, mostly Madheshis, fleeing across the border. It was very difficult to obtain reliable confirmation, however, of the numbers and situation of these refugees in India. It appears that most of them were provided with shelter and other support by family members in India.<sup>29</sup>

On 24 September, the Indian authorities, representatives of Nepal political parties, civil society and the NP organized a meeting at the Indian border to encourage the return of the displaced Madheshis. As a result, on 26 September some 500 Madheshi IDPs returned from India with police escort to their homes in Kapilvastu. Other large returns followed until the first week of October, and by end of January 2008 most Madheshis had returned to Nepal, including influential political elites, landlords, and individuals fearing arrest due to alleged involvement in the violence. However, some individuals against whom charges were brought in connection with the violence have not returned.

## **V. Response of the State**

Under international human rights law, the State has an obligation to respect, protect and fulfil the rights of all those within its territory or subject to its jurisdiction including the rights to life, and security of the person. This responsibility includes taking measures to prevent and punish deprivation of life by criminal acts. Law enforcement officials, in assisting the State to fulfil its duty, must protect all persons against such acts, respect and protect human dignity, and uphold the human rights of all persons.<sup>30</sup>

Under Nepalese law, the State has a responsibility to maintain law, order and peace, and to protect and promote human rights.<sup>31</sup> At the district level, the CDO is responsible for maintaining order, peace and

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<sup>28</sup> The practical aspects of the transfer were facilitated by the APF and the YCL.

<sup>29</sup> The number of people crossing the border was alleged to be as high as 12-15,000.

<sup>30</sup> U.N. Code of Conduct for Law Enforcement Officials.

<sup>31</sup> Interim Constitution 2007.

security.<sup>32</sup> The NP has a duty to prevent crime,<sup>33</sup> and the APF can be mobilized to control breaches of the peace or riots.<sup>34</sup> The role of the NP and APF in maintaining law and order is affirmed in the CPA.

In the case of the response to the violence in Kapilvastu, the district authorities were faced with difficult judgement decisions. Police officials from both APF and NP indicated to OHCHR that because of previous criticism about excessive use of force, they were reluctant to use more force than they did. It should also be noted, however, that not using adequate force when there is legal justification to do so constitutes a human rights violation such as, for example, when this results in loss of life.

OHCHR found that human rights violations were committed in the context of shortcomings in the law enforcement response to the outbreak of violence, actions or omissions during arrest and detention of suspects, and failure to investigate serious crimes committed during the violence. The flawed response to the Kapilvastu violence demonstrates that the Kapilvastu District Security Committee (DSC)<sup>35</sup> lacks clear instructions and Standard Operating Procedures (SOPs) from the Home Ministry on crowd control and dealing with emergency situations. It also shows that if the Kapilvastu DSC had a contingency plan to respond to emergencies of this nature, it was not implemented in an effective manner.

The gaps in the security response in Kapilvastu serve as a reminder of the State's urgent need to strengthen its capacity to provide effective law enforcement in all parts of the country. The violence also highlights the need to address underlying causes of tension in Kapilvastu district, in particular to dismantle and disarm the former members of *Pratikar Samiti* who, despite having formally disbanded, were still in a position to organize and instigate violence, and to address tensions over land between communities caused by state-sanctioned settlement in the area.

#### *Law enforcement response*

OHCHR investigations show that the security forces, including the CDO, the NP and the APF, failed to respond in an adequate and timely manner to the outbreak of violence in Kapilvastu. Given the underlying tensions in the district, it did not come as a surprise to most observers that there was a quick and violent response to the death of Mohit Khan. But the district administration appears to have been taken by surprise by the speed and extent of violence. There is conflicting information as to the decision making process within the Kapilvastu DSC<sup>36</sup>. Information gathered by OHCHR suggests that the CDO gave orders to the APF SP to deploy his troops to get the situation under control before declaring a curfew and that the APF were reluctant to deploy without a curfew. However, a senior APF official informed OHCHR that he called the CDO before 09:30 on 16 September to discuss what measures should be taken and, because the CDO had wanted to assess the situation, the APF deployed without orders. The CDO finally imposed a 24-hour curfew on the affected areas at 13:30, more than four hours after the violence erupted. The curfew was enforced for a week, gradually relaxed over the following weeks, and finally lifted on 10 October.

On 18 September, the Deputy Inspector General (DIG) of the APF and the NP respectively from the Western Region headquarters in Pokhara went to Chandratta to coordinate activities. On 19 September, the Additional Inspector General (AIG) of the APF and NP respectively informed OHCHR they were deployed from police headquarters in Kathmandu to coordinate and oversee the security situation in the violence-affected areas. During the first week, NP and APF efforts focused on the recovery of the bodies

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<sup>32</sup> Local Administration Act 1971.

<sup>33</sup> Police Act 1955.

<sup>34</sup> Armed Police Act 2001.

<sup>35</sup> The CDO is Chairperson of the District Security Committee and responsible for maintaining order, peace and security.

<sup>36</sup> During the initial phase of responding to the violence in Kapilvastu it is unclear if the members of the District Security Committee met to discuss measures to be taken.

of those killed. In the villages, bodies were partially decomposed after being exposed to the elements for several days and were buried by the security forces after identification by family members, without *post mortem* examination.<sup>37</sup> OHCHR confirmed that of the 14 persons killed, a *post mortem* examination was only conducted in six cases.<sup>38</sup>

Despite encouragement from OHCHR and UNMIN to take immediate action to calm tensions, civil administration officials, including the CDO and representatives of local political parties, did not visit any affected areas until several days after the outbreak of violence. The police were very slow to reach the affected areas, especially the villages, and were for days unable to obtain any verified information, which created confusion and contributed to uncertainty as to what had actually taken place.<sup>39</sup> It was clear to OHCHR that the NP did not have accurate information about what had happened.

Among those interviewed by OHCHR, there was consistent criticism of the initial police response to the violence. Victims of the violence at most affected locations reported to OHCHR that as soon as they heard the news of Mohit Khan's murder, they called the police or went to the NP or the APF to enquire about police preparedness in case of violence. In many cases their impression was that the police did not take the threat of an imminent and violent response to Mohit Khan's death seriously or the police were reluctant or uncertain how to respond.<sup>40</sup>

If the police and CDO had responded faster to warnings and reports of violence, the initial general confusion could have been avoided, including confusion as to the numbers of persons killed and the nature of the violence (for example, rumours of rapes that later proved to be false). Retaliatory attacks that were fuelled by rumours might also have been prevented in Khaire and Jagadishpur in Kapilvastu, as well as in Dang.

The Home Minister, accompanied by the State Minister for Agriculture and a CPN-M Central Committee member, visited Butwal and Taulihawa on 21 September to assess the situation and meet with authorities, victim representatives, human rights activists, representatives of political parties and other civil society representatives. On 22 September, the Home Minister arrived at the APF camp in Chandrauta. A large crowd of people who had gathered outside the camp and wanted to speak to the Home Minister were dispersed by police, who fired into the air. For security reasons, however, the Home Minister remained inside the APF camp and did not visit the affected villages.

The Kapilvastu CDO and APF Superintendent of the Police (SP) in Chandrauta were widely blamed for the slow response. The Home Minister responded to public criticism of the CDO and police after the violence by ordering the transfer of the SP of the APF and CDO.<sup>41</sup> No information was provided as to the reasons for the transfers and, as far as OHCHR is aware, no internal inquiries were initiated by the Home Ministry, APF or NP into the possible breakdown of chain of command and the allegations that the CDO and the SPs of the NP and the APF did not respond adequately and timely to the situation.

Following the outbreak of violence in Kapilvastu, the NP and the APF patrolled the affected villages and around IDP camps. After the first week, existing NP police posts were reinforced with additional NP officers or, in some cases, by joint NP/APF teams.<sup>42</sup> Additional NP officers and APF personnel were

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<sup>37</sup> According to police sources and witness interviews.

<sup>38</sup> See annex for details regarding circumstances of persons killed.

<sup>39</sup> The media was quick to publish unverified information and rumours, which further exacerbated the already tense situation.

<sup>40</sup> Witness interviews.

<sup>41</sup> Transferred 18 and 22 September respectively.

<sup>42</sup> A week after the incident, the deployment of security forces to the VDCs was as follows: 20-21 NP in Sundaridanda, 15 NP in Bahadurganj, 100 NP in Krishnanagar, 90 NP in Chandrauta, 70 NP/APF (35-40 NP) in Patthardaiya and 40-50 (15 NP) in Thakurpura. The police strength remained the same in Ganeshpur. Moreover, APF/NP temporary bases were established in

brought in from other districts to cope with the security situation. During the third week, after the situation had normalised somewhat, the police presence was slightly reduced but still remained substantial. During the first weeks following the outbreak of violence, the APF established five temporary camps to reinforce the existing permanent camps in Krishnanagar and Chandrauta. The NP sent a written request to its headquarters for the temporary joint APF/NP bases to be made permanent.

According to local authorities in Kapilvastu, the APF were pulled out of three of the temporary camps on 10 February 2008 to provide security support for the 10 April Constituent Assembly election. The population of the surrounding villages expressed fear of insecurity, since the withdrawal of the APF meant that only two APF camps were responsible for assisting the NP in maintaining security for the entire area. A number of people from Devipur and other villages in Ganeshpur VDC moved temporarily to Chandrauta during the electoral period as they were afraid that they might be attacked again. Villagers will probably stay in the area as long as the APF is deployed there but, if the security forces are withdrawn, villagers are likely to leave out of fear of further attacks. The DIG of the APF told OHCHR that the APF would remain in the area as long as the situation required.

#### *Arrest and detention*

Under international human rights law, including the human rights treaties ratified by Nepal, everyone has the right not to be subjected to arbitrary arrest or detention. If arrested, a person must be informed of the reasons for arrest and promptly brought before a judicial authority. Everyone also has the right not to be subjected to cruel, inhuman or degrading treatment.<sup>43</sup> These rights are affirmed in Nepal's Interim Constitution.

Each of these rights appears to have been violated in all affected districts. There were widespread allegations that arrests were arbitrary, procedures for arrest and detention were not followed, and detainees were ill-treated.

On 16 September, the police in Kapilvastu made 13 arrests of suspects linked to incidents of that day. By the end of December 2007, a total of 50 persons had been arrested, all of whom were male and aged between 16-57 years old. Apart from five Indian nationals, all were from Kapilvastu District<sup>44</sup>. As of June 2008, 19 adult males were charged of whom 17 remain in pre-trial detention.<sup>45</sup>

Most arrests within the first week of the violence were made by the APF. Persons arrested were initially kept at the APF camp but transferred to the DPO in Taulihawa four to five days later.<sup>46</sup> The APF has legal authority to make arrests but does not have powers to detain or interrogate. Nor do they have legally sanctioned detention facilities or detention registers, thus creating conditions that encourage violations of the right not to be arbitrarily detained and the right to due process. There are no SOPs outlining procedures to be followed by the APF when arresting and handing over suspects to the NP. It is therefore not surprising that the NP received no documentation providing any information on the circumstances or reason for the arrest from the APF regarding the transferred detainees.

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Khadica, Laxmanpur-Bishanpur and Devipur-Bishanpur. Another temporary APF base was established in Dalpur, with between 30 and 57 officers.

<sup>43</sup> International Covenant on Civil and Political Rights (ICCPR), Article 7.

<sup>44</sup> The detainees were of mixed origin and identified themselves as Madheshis (ten), Pahadis (ten), Madheshi Muslims (five), Muslim (one), Indian Muslim (one) and Hindu (one).

<sup>45</sup> One person charged for murder and the remaining 18 were charged for arson and looting.

<sup>46</sup> Whilst the APF are legally permitted to arrest people, they must hand them over as soon as possible to the NP.

OHCHR's investigation suggests that the police arrested individuals arbitrarily based on lists of names of Madheshis given to the police by Pahadis.<sup>47</sup> Although this is not an unusual practice in Nepal, it remains problematic and, in this case, did little to increase confidence of the Madheshi community in the impartiality of the police. The alleged possession by police of a list of some 160 Madheshis suspected of having participated in the violence was cited as one reason that Madheshis who fled to India were reluctant to return.

Some detainees stated that ill-treatment took place at the time of the arrest. Detainees told OHCHR that they were slapped, kicked or beaten with a plastic pipe on the arms, legs and back by APF personnel at the time of arrest. Four detainees stated they were tortured at the DPO during interrogation.

OHCHR observed numerous irregularities in detention procedures. Nepalese law requires arrested persons to receive a notice or letter informing them of the reasons for their arrest. It also requires any person who is detained to be informed of the grounds for such detention.<sup>48</sup> When interviewed by OHCHR at the DPO on 22 September, none of the detainees had received arrest or detention letters or been presented before judicial authorities within the timeframe provided for in the law. Contrary to Nepalese law, the NP made a list with the names of the detainees, but did not record the names in the detention log book. The Inspector-in-Charge of the log book explained to OHCHR that the details of arrest would be logged only when detainees were charged and taken to court.<sup>49</sup> All but one detainee stated that they had been interrogated by the police without the presence of a lawyer.

On visiting the NP/APF joint posts of Jagadishpur and Chandrauta, OHCHR found that neither were using any form of documentation, either official or unofficial, to register detainees. Because of poor record keeping by the NP and the APF, it was not possible to keep track of the persons who had been arrested and later released or handed over to the DPO in either of the two offices. The APF officer in charge explained that the persons arrested were transferred the same day, so there was no need to register them. However, according to the detainees interviewed by OHCHR, they spent several days in APF custody. In Chandrauta, the NP Inspector explained that suspects were not registered unless they were 'found guilty', in which case they were transferred to the DPO, where legal procedures were initiated.

The NP claims that most of the families of the detainees were informed by phone where possible, particularly those of the juveniles. However there was no record of any contact with detainees' families having been made at the DPO and the NP was unable to provide the families' contact details. Furthermore, according to international standards, detainees must be allowed to inform their families of their detention immediately and be given all reasonable facilities for receiving visits from their families.<sup>50</sup> The majority of the detainees stated that their families had not been informed by the police, nor had they been allowed to visit them at the DPO.

#### *Failure to investigate*

The State has an obligation under international human rights law to investigate the killings in Kapilvastu pursuant to its obligations with respect to the right to life,<sup>51</sup> and Nepalese law empowers the NP to conduct investigations into such killings and other serious criminal acts.<sup>52</sup> The Home Ministry issued a

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<sup>47</sup> A police officer acknowledged to OHCHR that the police had arrested innocent persons because they were pressured by local people to do so. OHCHR also received information from both Madheshis and Pahadis that the public has provided the police with lists of names of persons involved in the incidents and that the NP was making arrests based on that list.

<sup>48</sup> Civil Rights Act (1955); State Cases Act (1992); State Cases Regulation (1998); Country Code, chapter on Court Management

<sup>49</sup> The Inspector and the DSP clearly made use of the established (mis)practice that the logbook is only used once a detainee is charged with an offence and that if they log a detainee, they have to charge them.

<sup>50</sup> U.N. Standard Minimum Rules for the Treatment of Prisoners.

<sup>51</sup> ICCPR, Article 6.

<sup>52</sup> State Cases Act (1992).

press release on 8 October 2007 urging the local authorities to take legal action against perpetrators of crimes committed during the violence. However, police investigations have so far produced little in terms of accountability for those alleged to be responsible for murder, arson and a number of other serious crimes committed during the violence.

As of April 2008, the police had registered a total of 25 First Information Reports (FIRs) in connection with the incidents in Kapilvastu.<sup>53</sup> Eight of the FIRs relate to killings (some to multiple killings, bringing the total number of victims cited to 13, including Mohit Khan). One FIR was registered for attempted murder, twelve for arson, two for armed robbery and two for theft.

The district court in Kapilvastu informed OHCHR on 23 April 2008 that five cases had been registered.<sup>54</sup> Two cases were registered for arson and two for robbery and theft. These cases refer to incidents in Krishnanagar and Chandrauta and were filed by the respective APOs. One murder case was registered by the APO Chandrauta in relation to the killing of the APF officer. A court official explained to OHCHR on 18 January that, given the large number of incidents, relatively few cases have been registered as the NP has filed collective FIRs representing several cases.

Although FIRs were registered for almost all the killings, investigations and arrests have been conducted at a very slow pace and the police have been reluctant to speed up investigations and arrest alleged perpetrators. According to local observers, the investigation of the Kapilvastu incident is an extremely difficult task in the local context as several groups, including political parties, have exerted pressure on the authorities, including the police, to withdraw cases, which they find difficult to ignore. It is, however, the duty of law enforcement agencies to fulfil their public security and human rights protection obligations by conducting investigations, despite such pressure.

## **VI. Judicial commission and compensation**

On 20 September, the Government appointed a three-member high-level judicial commission with a one-month deadline to submit a report on the violence in the three affected districts.<sup>55</sup> According to a Home Ministry official, the Commission, which started work in Taulihawa on 3 October, was mandated to submit a report of investigation into causes and effects of the incidents that occurred in the Kapilvastu district and the Butwal area of Rupandehi District, and damages suffered, along with recommendations for necessary action to be taken against the persons found guilty for such incidents.<sup>56</sup> In reality, the Commission focused primarily on documenting loss and damage to property and did not investigate individual cases of killings or physical attacks resulting in injury.

The Commission submitted its report to the Government on 16 January. The report has not been made public, but the Chairman informed OHCHR that the Commission concluded that the violence was instigated by 'criminal groups' and was not inter-communal in nature. The Chairman further advised OHCHR that he had identified perpetrators of the violence, including the killings, and recommended an independent criminal investigation. The Commission also made recommendations regarding compensation and assistance to the families of those killed.

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<sup>53</sup> Two FIRs were filed in the DPO, four FIRs in the APO of Chandrauta, eight in the APO of Krishnanagar and two in the APO of Gorusinghe.

<sup>54</sup> The court has sent a notice to all the accused persons in the case. The court set dates for hearings as the accused persons report back, and if they do not, the court will wait for 100 days after the issuance of notice for the first hearing.

<sup>55</sup> Composed of Appellate Court Judge Lokendra Mallik (Chairman), DIG of Nepal Police Niraj Pun and Joint Attorney General Pushpa Raj Koirala.

<sup>56</sup> Telephone conversation with a Home Ministry official on 26 September 2007.

At an emergency meeting of the Cabinet on 20 September, it was agreed that 10,000 Rupees should be paid to the families of the persons killed in the violence as immediate relief and the medical expenses of the injured should be covered. Through funds made available by the Ministry for Peace and Reconstruction, the Government authorized additional compensation payments to allow the victims of the violence to start rebuilding homes and businesses. Over time 9 families of the 14 killed have each received 65,000 Rupees in compensation.<sup>57</sup> The reconstruction of houses has started through a CARITAS project and material donations of the District Forest Office and the District Development Office.<sup>58</sup> The CDO has as of May 2008 not received funds for this purpose from the central government.

## **VII. Restoring confidence within the communities**

State interventions to protect the civilian population are not limited to law enforcement but should also include the facilitation of dialogue among communities to reduce tensions and address grievances. The lack of official mechanisms at the district level whereby the public can complain or seek remedial actions in cases related to community disputes has also contributed. In the absence of such mechanisms to resolve disputes, there has been a tendency for some segments of the population in Kapilvastu to resort to violence to resolve even minor disputes. In addition, OHCHR has often in the course of its work in the western Terai received complaints from the Madheshi population of discrimination against them and the lack of representation of Madheshis in the police and other local authorities.

Despite underlying tensions and grievances related to poverty, land issues, impunity and the conflict, both the Pahadi and Madheshi communities told OHCHR that they had co-habited peacefully before this violence, (except in Devipur due to longstanding land disputes). In Pahadi villages, the villagers generally made the distinction between the perpetrators of the violence and the Madheshi community as a whole. Some Pahadis stated that problems existed only with particular individuals who belonged to criminal groups or to *Pratikar Samiti*. OHCHR received reports from victims and witnesses of many instances of support provided after the violence by villagers of one ethnic group to those of the other group.

However, a lack of trust between the Pahadi and Madheshi communities has prevailed since the incidents and many Pahadis fear further attacks, as some villages in Khururiya, Bishanpur, Shivagadhi, Shivpur, Patthardaiya VDCs had been attacked several times in the last fifty years. Madheshis interviewed said that trust between the two communities had been damaged, but they would continue to live together with Pahadis.

In the aftermath of the outbreak of violence, OHCHR urged the authorities, local community leaders, civil society representatives and political parties to engage with both the Madheshi and Pahadi communities in order to build confidence and trust. There have been several initiatives in this regard. The District Administration of Kapilvastu organized public activities with civil society representatives and local leaders of the political parties to facilitate dialogue and restore confidence between Madheshi and Pahadi communities in Krishnanagar, Chandrauta, Taulihawa, Bishanpur and Jagadishpur. Meanwhile, a group that included a cross-section of civil society and representatives of different communities was also established to address the question of how to re-build confidence between communities. While the group has met several times at the district headquarters, it has not so far conducted activities in the affected villages. Other initiatives have included ‘goodwill’ rallies by political parties and affiliated organisations in affected VDCs, and a programme of peace education in schools, provided by United Nations Children’s Fund (UNICEF) and Save the Children.

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<sup>57</sup> The remaining families have been asked to report to the CDO’s office with the necessary documents

<sup>58</sup> According to Sahaj Nepal, an NGO involved in the reconstruction of houses in the affected villages, reconstruction started in early May in Devipur (118 houses), Manpur (14 houses), Dipendranagar (50 houses), Udaypur (12 houses) and Amlawa villages (30 houses) with funding from CARITAS Nepal.

## VIII. Findings

During a visit to Kapilvastu at the end of January 2008, the UN Deputy High Commissioner for Human Rights and the Representative of the High Commissioner in Nepal noted that some important steps had been taken, including the establishment of a special commission of inquiry, the appointment of a CDO from the Terai region, and local initiatives to bring together communities. Nevertheless, they stressed to OHCHR the need for further Government action and called on all sectors to work together to find common solutions to grievances in a non-violent way and in the spirit of the peace process.

The Government has the opportunity to act now to review the legal and policy gaps highlighted in this report, tackle the underlying problems and prevent a recurrence of violence in Kapilvastu. OHCHR believes that there are valuable lessons to be learned from what happened in Kapilvastu in terms of early warning indicators, as well as in terms of improving the preparedness of police and local administration.

At an important time of change in Nepal, the Government has the opportunity to strengthen the rule of law by ensuring that serious crimes are investigated and those responsible are held accountable.

OHCHR found that although positive steps were taken by the authorities to cope with the situation, the Kapilvastu violence demonstrates that an environment of impunity, lack of respect for the rule of law, weak state authorities and police forces, lack of trust in the police and land issues all combined to encourage people to take the law into their own hands.

### *Addressing underlying issues*

Although Mohit Khan's murder triggered the violence, the underlying tensions and frustrations, deep seated ethnic, caste-based and political divisions, which have been exacerbated by land and other economic issues, as well as social exclusion and inequality, all contributed to creating an environment in which violence easily erupted.

Land issues remain one of the common underlying causes of tension in Kapilvastu. The long-standing unequal distribution of land in the district seems to be a significant problem that easily ignites strong emotions and reactions among those who benefit the least from the current discriminatory system.

Conflict-related divisions have also not been addressed. Relations in the diverse ethnic and religious population were worsened by the conflict, in particular by the clashes between the CPN-M and *Pratihar Samiti*. As a result, many civilians were killed and large numbers of people were displaced during the conflict years. Despite being formally disbanded, former *Pratihar Samiti* members were not disarmed and the structure of the organisation remained intact. No steps have been taken to hold accountable those responsible for violations of human rights, international humanitarian law or serious crimes during the conflict.

The NP did not properly investigate the cases involving serious crimes committed by the CPN-M and *Pratihar Samiti* during the conflict. Most of the cases were dropped and a negligible number of cases were presented before the court. Even in some cases where the perpetrators were identified and charged, they were never arrested. The NP is under pressure from political parties not to pursue investigations.

### *Public security*

For the affected communities, particularly those in Kapilvastu, a strong reaction to Mohit Khan's murder did not come as a surprise, but the scale and brutality of the violence did. At the time of the outbreak of violence, the police did not have the resources to maintain a presence in all villages. The mostly Pahadi police force did not seem to have developed a relationship of trust among the Madheshi population, thus

the authorities did not take seriously warnings from local people that the murder of Mohit Khan would most likely spark violence.<sup>59</sup> When the towns of Chandrauta and Krishnanagar were attacked, the NP was overwhelmed, the APF intervened too late to stop the violence and the CDO waited several hours before imposing a curfew. The police also failed to come to the assistance of residents of rural areas who were attacked, and took up to three days to reach the affected areas. Rumours, fuelled by the lack of verified information as to what had happened, encouraged further violence.

Security remains one of the principal concerns of all those interviewed by OHCHR. While the police have reinforced their presence in the wake of the violence, the population lacks faith in the will or ability of the police to protect them and enforce law and order.

Because many of the perpetrators are known and continue to live alongside victims and their families, fear of future attacks and unrest remains a genuine and serious concern of the local population.

#### *Response of the authorities*

OHCHR investigations show that the authorities did not take control of the situation decisively and swiftly enough to prevent the attacks, in particular those against the Madheshi community that were fuelled by misinformation. Although the police bear a responsibility to produce and impart accurate information, the media must also demonstrate professional integrity in sensitive situations and only report verified facts.

Although the initial response of civil and law enforcement authorities was flawed in terms of timing, OHCHR commends the CDO, NP and the APF for showing restraint in the use of force and thereby possibly preventing a further escalation of the violence.

When the seriousness of the situation became apparent, high level police officials were quickly deployed to take the lead in operations. The Home Ministry also responded quickly to criticism of the performance of the APF SP and the CDO by taking the decision to replace both.

OHCHR acknowledges the difficulties of the NP and the APF to respond to large scale outbreaks of violence. Until recently the Nepal Army had a strong presence in Kapilvastu, but with the dissolution of the unified command and the army being confined to barracks following the peace agreement, the army no longer played a role in law enforcement. This left a small, seemingly insecure, and poorly resourced police deployment to deal with a district marred by illegal cross-border activity, the activities of illegal armed groups, interests of former *Pratihar Samiti* members, and interference by political parties.

#### *Official investigations*

OHCHR found that the NP is not actively investigating the crimes committed during the outbreak of violence in Kapilvastu, Rupandehi and Dang. Of particular concern is the NP's failure to conduct timely investigations into the killings of fourteen people, whose perpetrators in many cases are known. Steps were taken to investigate damage to property, but faced with continued tension in the affected areas, the police are not as of April 2008 taking steps to arrest and prosecute those responsible for loss of life, although FIRs were filed in most cases and the perpetrators are known. There have also been no developments in prosecuting former *Pratihar Samiti* members for the past crimes that have contributed to the eruption of violence in Kapilvastu.<sup>60</sup> Failure to investigate serious crime and prosecute those responsible serves to reinforce impunity, further undermines respect for the rule of law in Nepal and

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<sup>59</sup> In October 2007, the Government of Nepal took a decision to institute quotas for recruiting women and members of marginalized groups to fill vacant posts in the NP and APF.

<sup>60</sup> Neither has legal action been taken in connection with alleged crimes committed by the CPN-M.

deprives the families of the victims of justice. The payment of compensation to victims, while helpful, does not alone fully address their needs, and in the absence of other measures including thorough investigations and judicial accountability, may actually reinforce impunity.

Although the mandate of the investigative commission appointed by the Government was not shared formally with OHCHR, its Chairman stated that the primary focus was to investigate looting and destruction of property. The Commission did not investigate killings, physical attacks with resulting injuries or the law enforcement response. Neither did it examine the impact on the affected communities from other than material and economic perspectives.

## **IX. Recommendations**

OHCHR makes the following recommendations to the Government of Nepal to:

### *Investigations into the violence*

- Ensure that thorough and impartial investigations are carried out into the killings that occurred during this outbreak of violence. It is the duty of the DPO of Kapilvastu and the Attorney General to ensure that suspects are investigated, charged and prosecuted.
- Ensure that the key findings of the judicial commission established to investigate the violence are made public and recommendations implemented.

### *Community relations*

- Include IDP representatives in all stages of the district level decision-making process on the assistance, resettlement and return of IDPs. The same principle should apply to the representation of victims of the Kapilvastu violence in the overall institutional decision-making process related to the definition of the type of assistance and relief to be received by affected individuals or communities and to their compensation.
- Appoint a focal point at district level for community relations to coordinate confidence building activities among political parties and Non Governmental Organisations (NGOs), and work together with the victims' groups to build trust and confidence between Madheshi and Pahadi communities. The focal point could work closely with all relevant stakeholders, especially civil society, to provide a permanent forum for the general public to raise issues related to communal differences. To ensure accountability and transparency of the local confidence building process, the focal point should release regular public reports to inform about the confidence building activities undertaken by the District Administration, the political parties, victims groups and other civil society organizations.

### *Law enforcement*

- Consider a reform of law enforcement agencies to include early warning mechanisms through community policing; this would go a long way to prevent recurrence of violence in Kapilvastu and neighbouring districts.
- Initiate steps to strengthen public security in Kapilvastu District, and in the Terai as a whole, which would increase the confidence of the population in the will and ability of the police to maintain law and order. OHCHR strongly encourages the Government to begin instituting medium term reforms in relation to the prevention of and response to public security challenges. These reforms, which should be introduced through a plan approved at a high level of government and implemented according to a firm timetable, should address structural, policy, legislative, operational and training issues and should be aimed at developing capacity among all responsible agencies, under democratic oversight and in accordance with international human rights standards.
- Take immediate steps to review APF arrest powers in order to establish proper procedures, including SOPs, for arrest and transfer of arrestees to the NP.
- Ensure that all NP respect the human rights of detainees and that the detention of persons arrested respects national legal requirements as well as international human rights standards, especially in relation to keeping proper records of detainees, providing them with arrest letter and detention order, informing their families of the arrest, presenting the detainees to the court with the time stipulated by the law and refraining from any cruel, inhuman or degrading treatment or punishment.
- Apply existing quotas for recruiting women and members of marginalized groups to fill vacant posts in the NP and APF across the ranks of the police forces, ensuring representation of women and marginalized groups in the officer ranks.
- Adopt an inclusive hiring policy for all future recruitment to the NP.

#### *Underlying causes*

- In accordance with the “23 Point Agreement” of the Seven Party Alliance of 23 December 2007, form a Study and Recommendation Commission for Scientific Land Reform.
- Address impunity through prosecutions for serious crimes committed by both the CPN-M and former *Pratihar Samiti* members in the past. The Attorney General’s Office should provide guidance to the CDO and the NP of Kapilvastu on how to proceed with prosecution of former *Pratihar Samiti* members where cases have not been properly investigated or are not moving through the judicial system.<sup>61</sup>

#### OHCHR recommendations to others:

- Political parties and other stakeholders should refrain from interfering in police investigations and allow the police to independently and impartially discharge their duties. National leaders of all political parties should give clear instructions to their regional, district and local level cadres and supporters in this regard.

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<sup>61</sup> Non-conflict related crimes for which suspects have never been charged, investigated and prosecuted.

- Representatives of the media should acknowledge their responsibility for reporting accurate and verified information, particularly in situations where their reports may have a major influence on developments in a crisis situation.

## ANNEXE

## DETAILS OF INDIVIDUALS KILLED IN KAPILVASTU 16-20 SEPTEMBER 2008 कपिलवस्तुमा मारिएका व्यक्तिको विवरण

	Name	Age	Sex	Community	Date of death	Where killed/ body located	Post - Mortem	FIR filed Charge	Known affiliations of the deceased
1.	Mohit Khan	51	M	Madheshi/ Muslim	16/09/07	Balapur, Shivpur VDC	Y	Yes Murder	Landlord. Former leader of <i>Pratihar Samiti</i> , former member of NC and LMM leader
2.	Dhan Bahadur Thapa	45	M	Pahadi	16/09/07	Chutapatti, Khururiya VDC	N	Yes Murder	Father of YCL cadre
3.	Hasan Puri	30	M	Pahadi, Chhetri	16/09/07	Chandrauta, Birpur VDC	Y	Yes Murder	APF officer from Surkhet on duty in civilian dress
4.	Hiramani Kharel	55	M	Pahadi, Brahmin	16/09/07	Manpur, Ganeshpur VDC	Y	Yes Murder	
5.	Shovaram Sunar	35	M	Pahadi, Dalit	16/09/07	Devipur, Bishanpur VDC	N	Yes Murder	Local leader of a landless community in Devipur
6.	Dil Bahadur Sunar	22	M	Pahadi, Dalit	16/09/07	Devipur, Bishanpur VDC	N	Yes Murder	Brother of Shovaram Sunar (see above)
7.	Hemraj Basnet also known as Hari	34	M	Pahadi, Chhetri	16/09/07	Devipur, Bishanpur VDC	N	Yes Murder	Local leader of a landless community in Devipur
8.	Jhabindra Khanal	40	M	Pahadi, Chhetri	16/09/07	Devipur, Bishanpur VDC	N	Yes Murder	Relative of Hemraj Basnet (see above)
9.	Chandru Gharti Magar	35	M	Pahadi, Magar	16/09/07	Devipur, Bishanpur VDC	N	Yes Murder	Resident of Hallanagar, Shivpur VDC
10.	Dal Bahadur Pun also known as 'Maite Bahadur '	42	M	Pahadi, Magar	16/09/07	Bishanpur, Bishanpur VDC	N	Yes Murder	Resident of Ramuwadaha, Shivagadi VDC
11.	Arjun Thatel	11	M	Pahadi, Chhetri	16/09/07	Krishannagar-9	N	No. Victim was electrocuted outside a shop. Family accepted death as accidental, so NP did not investigate	
12.	Rameshwor Chaudary		M	Madheshi	20/09/07	Jagadishpur, Patthardaiya VDC	Y	Yes Murder	Local leader of LMM and former member of <i>Pratihar Samiti</i> , from Khairehar, Patthardaiya VDC
13.	Dudhnath Teli		M	Madheshi	20/09/07	Jagadishpur, Patthardaiya VDC	Y	Yes Murder	LMM member from Khairehar, Patthardaiya VDC
14.	Nur-u-udin Musalman		M	Madheshi, Muslim	20/09/07	Jagadishpur, Patthardaiya VDC	Y	Yes Murder	LMM member from Khairehar, Patthardaiya VDC