



**United Nations**

**Office of the High Commissioner for Human Rights in Nepal**

**The April Protests  
Democratic Rights and the Excessive Use of Force**

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**Findings of OHCHR-Nepal's Monitoring and Investigations**

**September 2006**

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## THE APRIL PROTESTS

### DEMOCRATIC RIGHTS AND THE EXCESSIVE USE OF FORCE

#### Introduction

The 19-day protest movement organized by the Seven-Party Alliance (SPA) and civil society, with CPN-M support, from 5 April brought hundreds of thousands of protestors onto the streets throughout the country. Many of the protests (known as the *Jana Andolan* or People's Movement) were peaceful, though there were significant incidents of violence at times. Curfews, bans on demonstrations and sometimes intense violence on the part of the security forces did not dampen the motivation of protestors, and participation grew until 24 April, when the King announced the restoration of the House of Representatives (HoR).

Throughout the protests, in spite of many constraints, OHCHR monitored the conduct of the security forces and demonstrators to assess whether the response of the Nepal Police (NP), Armed Police Force (APF) and Nepal Army (NA – known at the time as the RNA, Royal Nepali Army) was necessary and proportionate, to follow up the many cases of arrest and also to maintain contacts with and promote dialogue between all actors in an attempt to prevent or minimise violence.

Since its establishment in May 2005, OHCHR had repeatedly raised concerns with the then Government about restrictions on freedom of expression and association as well as reports of excessive use of force by the security forces against demonstrators. For instance, in August and September 2005, it conveyed concern to the Inspector General of Police about the use of excessive force in the policing of demonstrations during those months. In September 2005, it also expressed concern that district administrators were imposing blanket bans on public gatherings as a means to prevent the exercise of the right to peaceful assembly. OHCHR's concerns grew in January 2006 as public protests in opposition to the municipal elections called for 8 February 2006 intensified and the authorities responded by carrying out mass arbitrary arrests of political and civil society activists under the Public Security Act (PSA).

During the April 2006 protests, as concerns about injuries and loss of life due to excessive use of force grew, the Representative called on the Government to acknowledge that the level of violence against civilians was not acceptable. The High Commissioner for Human Rights herself said she was "shocked" by the excessive use of force by Nepal's security forces in a press statement on 13 April and reminded the security forces of their obligation to use only minimum necessary force "even when faced with demonstrators throwing rocks and other projectiles".

OHCHR continued to monitor demonstrations and the police response throughout the period of protests, and has since completed detailed investigations into allegations of excessive use of force and in particular the cases of those who died in the context of the protests. This report analyses the information gathered in the course of both monitoring and investigating activities. Part One looks at the nature of the demonstrations, the response of the security forces and the types of human rights violations documented, as well as the question of accountability for the violations which occurred. It concludes with a series of recommendations. Part Two comprises 15 case studies, 14 related to the April protest movement and one case which relates to the killing of a demonstrator in February.

## **Methodology and constraints**

### *Monitoring demonstrations*

Teams based in each of OHCHR's regional offices monitored over 140 demonstrations, 70 in Kathmandu Valley, 23 in the Western Region, 28 in the Mid-Western Region and 21 in the Eastern Region in the course of the 19-day protest movement. It also continued to monitor demonstrations, rallies and assemblies after the end of the protest movement which was called off after the 24 April announcement by the King regarding the restoration of the HoR.

Primarily because of security reasons and also lack of resources, most monitoring efforts focused on the four cities where OHCHR has regional offices – Biratnagar, Kathmandu, Pokhara and Nepalgunj. During the demonstrations, mobile teams observed the conduct of security forces as well as demonstrators, interviewing human rights defenders and others present. Where possible, OHCHR contacted the civilian authorities and the leadership of the NA, APF and NP, to collect information about crowd control plans and also to raise concerns about the use of excessive force by the security forces. It conducted numerous visits to hospitals and medical centres to assess the condition of injured demonstrators. At times, OHCHR also facilitated medical assistance for victims injured in the violence, liaising with the Nepali Red Cross and other medical institutions.

Although OHCHR could not have a permanent presence monitoring demonstrations outside the regional cities where its offices are based, it monitored some protests in the following districts: Morang, Sunsari (Eastern Region); Lalitpur, Bhaktapur, Kabrepalanchowk, Bara, Chitwan and Makwanpur (Central Region); Kaski (Western Region); and Humla, Banke, Surkhet, Dailekh, Kailali and Kanchapur (Mid- and Far-Western Regions). OHCHR offices were in daily contact with NGOs, journalists, human rights defenders and the authorities in more remote districts whenever possible in order to gather information.

In many instances, especially in Kathmandu, OHCHR was only able to effectively monitor the demonstrations when the Office was issued curfew passes, which had to be obtained daily once the curfew had been announced, often with only two or three hours' notice.

While the authorities were generally cooperative, there were key moments when OHCHR's monitoring work was obstructed. Most notably, on 20 April, OHCHR teams were denied curfew passes in Kathmandu, preventing it from monitoring the massive demonstrations which took place that day. The denial of curfew passes forced OHCHR monitors to move only outside the ring road and to monitor the demonstrations only later in the afternoon that day, by which time four people had been fatally shot by security forces and many more injured in Kalanki.

### *Monitoring arrests and detention*

On a daily basis, OHCHR visited prisons, police stations, army barracks and makeshift detention centres to document the cases of those arrested, assess the legality of the detention and the nature of detention conditions, as well as to identify medical concerns which needed to be addressed. It raised cases both at the district and national level on numerous occasions, either in meetings, by letter or in press statements and media interviews.

While for the most part, police were generally cooperative in allowing access to detainees, OHCHR occasionally had to request the intervention of the NP and APF Human Rights Cells in order to resolve an access problem. It had particular problems on a number of occasions accessing detainees held at the APF HQ in Kathmandu, including a group arrested in Gongabu on 11 April, among them several juveniles (the youngest being 12 years old). On one occasion, access was delayed for several hours.

### *Investigative activities*

In addition to monitoring the demonstrations and arrests as they occurred, OHCHR initiated investigations into many allegations of excessive use of force, focusing particularly on the cases of those killed in the context of the demonstrations. In addition to the 15 case studies detailed in Part Two of this report, OHCHR conducted field investigations into reports of excessive use of force in the following districts: Morang, Jhapa, Sunsari (Eastern Region); Kathmandu, Kabrepalanchowk, Chitwan and Bara (Central Region); Arghakhanchi, Kaski, Nawalparasi, Syangja, Rupandehi and Parbat (Western Region); and Banke, Humla, Surkhet, Dailekh, Kailali, Kanchanpur and Dang (Mid- and Far-Western Regions).

In the course of these investigations, OHCHR held meetings with Government authorities at the national, regional, district and village levels, as well as with members of the security forces (NA, APF and NP) at all levels, including those allegedly responsible for excessive use of force. OHCHR also met with local journalists, NGOs, many witnesses, victims and their families. It visited the sites of all of the reported killings as well as several mortuaries, both as part of the investigations and also in order to locate the bodies of individuals who had been killed when relatives were not able to do so. OHCHR received excellent collaboration from medical authorities during its many visits to hospitals and clinics in Kathmandu and elsewhere to collect information about injuries and deaths.

In addition to meetings, it also sought reports of official inquiries, including forensic reports such as *post-mortems* and ballistics analysis, as well as other documentation from the authorities.

For the most part, state entities and authorities extended their cooperation to OHCHR, although in some limited cases both police and military authorities have not been completely forthcoming in sharing the results of their own investigations with OHCHR. In particular, the NA has systematically refused to share with OHCHR reports of military courts of inquiry and court martials.

### *Civil society*

OHCHR maintained regular communications with human rights and civil society organisations on a range of issues, as well as liaising at the sites of demonstrations. In many cases, information shared by them constituted an essential contribution to OHCHR's investigations and OHCHR greatly appreciated their collaboration.

## PART 1

### THE APRIL PROTEST MOVEMENT

#### EVALUATION OF RESPONSES BY THE AUTHORITIES IN TERMS OF RESPECT FOR HUMAN RIGHTS

##### Background to the protests

The protests in April were unprecedented in size – larger than the protests that occurred in 1990. Since King Gyanendra assumed direct executive authority as Chairman of the Council of Ministers on 1 February 2005, the political parties had organised protests but never on the same scale. In January 2006, the Government had thwarted protests organized by the SPA in opposition to municipal elections called for 8 February. On 16 January, the authorities imposed a ban on all assemblies, processions and sit-ins within the Kathmandu Ring Road, and a major demonstration planned for 20 January was unable to proceed as the Government imposed a day-time curfew in the city on that day. In addition, more than three thousand activists were arrested, with hundreds, including senior SPA leaders, detained under the Public Security Act. Many of the leaders had been taken from their homes on 16 January. At the beginning of the April protest movement, a handful of leaders were still being held without charge or trial. In the context of the SPA's protests against the February elections, one demonstrator was shot dead, by the NA – his case has been included in the case studies section of this report (see Case 15).

The protests in April differed significantly from early protests in at least three ways: there was a tacit understanding between the CPN-M and the SPA; the protests occurred throughout the country; and many leaders managed to avoid arrest and to direct the protests without necessarily being present.

Following the end of its unilateral ceasefire in January 2006, the CPN-M had stepped up its military activities. A blockade of Kathmandu and district headquarters called by the CPN-M crippled transport across the country from 14 March. It also announced an indefinite nationwide *bandh* (strike) due to start from 2 April. Representatives of the SPA engaged in talks with leaders of the CPN-M in New Delhi, India in March, as a result of which, the CPN-M called off its indefinite *bandh* and lifted the blockade on 19 March, while the SPA announced a four-day *bandh* from 6 April to 9 April with a rally on 8 April in Kathmandu. An indication of the Government's response came on 24 March when Home Minister Kamal Thapa, who had called the talks between the SPA and the CPN-M in Delhi a "heinous crime", warned that the Government would treat the SPA on a par with the CPN-M if the SPA failed to review the understanding reached in Delhi. According to press reports, he stated that the Government would take all necessary measures to foil the protests. The Minister of State for Information and Communication, Shresh Shumsher Jung Bahadur Rana, also warned that a curfew may be imposed, and that communications services may be disconnected if necessary (the mobile phone network was eventually cut off for a number of days in April). On 30 March, the press reported that the Government had compiled a list of 400 names of political party members to be arrested but quoted officials as saying that the arrests had been "postponed" as those on the list had "absconded."

Demonstrations began to be organised in the days leading up to 6 April. A demonstration in Itahari, in the Eastern Region, reportedly drew close to 10,000 people, and was conducted without any major incidents of violence or intervention by the security forces. Other demonstrations by the Confederation of Nepalese Professionals (CONEP), loosely coordinated with the SPA, took place in Pokhara and Nepalgunj also without incident.

OHCHR intensified meetings with relevant actors to gather information about planned protests and to convey messages regarding the need to keep the demonstrations peaceful, and in the case of the security forces to use force only in accordance with international standards and national laws. The Representative, speaking at the Reporters' Club on 3 April, reminded the Government of its responsibilities to uphold the right to peaceful assembly and to ensure that security forces use only minimum force to maintain law and order.

### **Restrictions on the right to freedom of assembly and freedom of movement**

As in January, the authorities took immediate action to try to curtail the strike and protests. In advance of the planned demonstrations, Chief District Officers (CDO) throughout Nepal imposed daytime and nighttime curfews, and also issued orders prohibiting demonstrations from taking place in certain areas. For example, on 4 April, the CDOs of Kathmandu and Lalitpur announced an indefinite ban on demonstrations at any location within the Ring Road which circles the cities of Kathmandu and Lalitpur. The ban was reportedly imposed because of the "increasing violence and unruly activities in various parts of Kathmandu and Lalitpur". The Government, in particular Home Minister Kamal Thapa, stated that the imposition of the ban on demonstrations was dictated by a need to stop CPN-M infiltration into Kathmandu as the CPN-M could incite violence. A subsequent CPN-M-declared ceasefire in Kathmandu Valley was said by the Minister to be "a ploy". He referred to four members of the CPN-M arrested in Kathmandu on 19 and 20 March as evidence of the infiltration.

On 5 April, the Kathmandu CDO imposed a curfew from 11pm to 3am. Daytime curfews started to be imposed from 8 April, initially from 10am to 9pm, the curfew on 9 April being from 7am to 8pm, purportedly because of "possible violence and loss of property during agitations". Similarly, the Pokhara CDO imposed a curfew on 9 April, from 9am to 9pm. Curfews continued to be imposed at different times for varying numbers of days and in different districts throughout the country. In Kathmandu, curfew times changed on a daily basis with little warning.

#### *International and national provisions governing restrictions on the right to freedom of movement and assembly*

Under domestic law, CDOs are authorised to impose curfews in order to prevent persons from moving about, assembling or taking any other actions in certain areas during certain hours if there is a possibility that peace may be disturbed as a result of demonstrations or riots.<sup>1</sup> The CDO must publicise curfew orders in the area where the curfew is to be imposed and surrounding areas,<sup>2</sup> and also inform the Regional Administrator and the Ministry of Home.<sup>3</sup> During the curfew, only persons who have obtained a "secret password" from the CDO may move about in the prescribed area.<sup>4</sup> In practice, those who wish to move around must obtain curfew passes.

The police are required to arrest any persons breaking a curfew and immediately take them before the CDO<sup>5</sup>, who may sentence curfew breakers to imprisonment for up to one month and/or impose a fine of up to 1,000 Rupees, subject to appeal before the Appellate Court.<sup>6</sup> When issuing a curfew order, the CDO may also order the police to fire on any person or group breaking the curfew.<sup>7</sup> Before opening fire, domestic law requires that the police use

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<sup>1</sup> Local Administration Act, Section 6A (1)

<sup>2</sup> Local Administration Act, Section 6A (1)

<sup>3</sup> Local Administration Act, Section 6A (6)

<sup>4</sup> Local Administration Act, Section 6A (2)

<sup>5</sup> Local Administration Act, Section 6A (3)

<sup>6</sup> Local Administration Act, Section 6A (3)

<sup>7</sup> Local Administration Act, Section 6A (4)

baton charge, teargas or water canon against the person or group violating the curfew, and then issue a clear warning that fire will be opened if the person or group does not disperse.<sup>8</sup> The police may thereafter fire at persons only below the knee.<sup>9</sup> However, nothing in the domestic law prevents the police from opening fire against any person or group who breaks the curfew in a violent manner.<sup>10</sup>

The right to assembly is protected under international human rights law, provided that the assembly is peaceful. Nevertheless, the right to assembly may be subject to certain restrictions. The International Covenant on Civil and Political Rights (ICCPR), to which Nepal is a State Party, requires that any such restrictions are: 1) "in conformity with the law"; 2) for the objective of "national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others"; and 3) "necessary in a democratic society".<sup>11</sup> All three requirements must be met for the restrictions to comply with the ICCPR.

The curfews imposed throughout Nepal during April arguably met the first two requirements under the ICCPR. They were "in conformity with the law", as they were based on the Local Administration Act. In addition, as the curfews were reportedly for the purpose of maintaining public safety and order, they appear to have been imposed for one of the objectives permitted under the ICCPR. However, the curfews clearly did not meet the third requirement under the ICCPR - that they are "necessary in a democratic society". This requirement demands that any restriction on the right to assembly be proportional to the stated objective. The duration of the curfews impaired access to doctors and hospitals, interrupted family contacts, and otherwise resulted in serious consequences for the daily lives of the population. On some days, the curfew in Kathmandu was lifted for only a few hours, confining residents to their homes and allowing them very little time to obtain essential food and supplies. Such drastic measures pose unnecessary and excessive limitations on the right to assembly under international human rights law, and also under the Constitution of Nepal, which allows only "reasonable" restrictions on the right to assembly.<sup>12</sup>

There are no provisions in domestic law which allow CDOs to prohibit demonstrations from taking place in certain areas. The orders issued by the Kathmandu and Lalitpur CDOs on 4 April prohibiting demonstrations within the Ring Road of Kathmandu were reportedly based on Section 6 (3a) of the Local Administration Act. However, Section 6 (3a) only allows CDOs to prohibit a particular person from taking any action if, as a result of that action, there is a possibility that peace and security may be disturbed, any person may suffer inconvenience, or public health may be affected.<sup>13</sup> Consequently, it does not provide a legal basis for the sweeping prohibitions imposed by the Kathmandu and Lalitpur CDOs.

As noted, one of the requirements under the ICCPR is that any restriction on the freedom of assembly be "in conformity with the law". The orders to prohibit demonstrations within the Ring Road did not meet this requirement. Section 6 (3a) of the Local Administration Act may be used to order specified individuals from taking certain actions, but does not provide any basis for prohibiting demonstrations applicable to the general public. The orders of the Kathmandu and Lalitpur CDOs were therefore inconsistent with Nepal's international human rights obligations under the ICCPR.

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<sup>8</sup> Local Administration Act, Section 6A (4)

<sup>9</sup> Local Administration Act, Section 6A (4)

<sup>10</sup> Local Administration Act, Section 6A (4)

<sup>11</sup> ICCPR, Article 21.

<sup>12</sup> Constitution of the Kingdom of Nepal, Article 12 (2)

<sup>13</sup> Local Administration Act, Section 6 (3a)

## **Nature of the demonstrations**

In spite of the bans and curfews, demonstrations were organised from the first day of the *bandh* starting on 6 April. The initial four days of demonstrations were marked by the participation of a large number of young people, including many students. Political party flags and banners were not typically seen during this initial period, and the organisation of the rallies in many parts of the country seemed *ad hoc* rather than part of any broad plan. In the main urban areas, demonstrations sometimes deteriorated into stone-throwing and tyre-burning, particularly when groups of students were involved, to which the security forces often responded with aggressive tactics. Many of the protests were entirely peaceful in nature. In Nepalgunj, Banke District, for example, demonstrations only started to become violent towards mid-April. In Kirtipur, Kathmandu District, civil society organised poetry readings and other cultural activities supported by thousands.

The declaration of a daytime curfew in Kathmandu and other urban areas from 8 April heightened tensions between security forces and demonstrators, who increasingly took to the streets in defiance of the curfew orders.

Three demonstrators were killed in the initial days of the general strike, the first in Pokhara, when a soldier posted on the roof of a Telecom building shot dead a young man in the street on 8 April (see Case 8), a woman bystander was shot dead in Bharatpur, Chitwan District, the same weekend (see Case 1) and a third person was shot dead in Kavre District on 9 April (see Case 2).

Following the success of the initial demonstrations in bringing people onto the streets, and also in response to the killings, on 9 April the Joint Mass Movement Central Coordination Committee of the SPA said it would continue its protests indefinitely against the “unconstitutional autocratic royal regime” until complete democracy was restored in the country. This was again supported by a 9 April announcement by CPN-M leader Pusha Kamal Dahal (“Prachanda”) urging CPN-M cadres to participate in the demonstrations, deface royal statues and signboards, refuse to pay taxes and take control of the nation’s highways.

As the protests continued, the size of the demonstrations increased. OHCHR observed thousands to many tens of thousands of participants join the protests, with the crowds being made up of an increasingly broad cross-section of Nepali society: members of professional associations (for example lawyers, health workers, trade unions, bank employees), journalists, teachers, students, members of the business community and even, in the end, government employees. Thousands of women participated in and at times led demonstrations nearly everywhere in the country. By the end of the second week in April, villagers from outside the district and regional headquarters were travelling to urban areas in the thousands to participate in the ongoing demonstrations. Their participation was sometimes organised by the CPN-M, allegedly at times with some level of coercion. These large groups of rural Nepali were occasionally confronted by security forces attempting to prevent them from entering urban areas, especially where a ban on demonstrations or curfew was in place.

The demonstrations also became increasingly well-organised, with a larger political party presence, including the making of speeches by political party leaders. Other demonstrations developed spontaneously, or in response to the use of excessive force by security forces – such as the 9 April demonstrations in Banepa, Kavre District, to protest the killing of Bhimsen Dahal in Pokhara (see Cases 2 and 8). Demonstrations in the capital from 20 April onwards reached unprecedented proportions. That day, hundreds of thousands came out in defiance of yet another day-long curfew imposed by the Government – this time from 3am-8pm. For the first (and only) time OHCHR was not given curfew passes to allow it to

monitor, and for the first time in Kathmandu demonstrators were shot dead. Diplomats, INGOs, NGOs, journalists and medical entities were also denied curfew passes that day.

On 21 April, after almost two hundred thousand people had protested that day in Kathmandu, the King publicly announced in a television address that he was inviting the SPA to nominate a prime minister. The offer was rejected and the protests continued throughout the country, with a large demonstration of up to 30,000 people on 22 April in Tripureshwor, Kathmandu District, where two demonstrators died (see Case 7). On 24 April, the eve of another major demonstration called for by the SPA, the King announced the reinstatement of the House of Representatives, effectively putting an end to the period of demonstrations covered in this report.

### *Aggressive and violent behaviour by demonstrators*

While many of the demonstrations were peaceful in nature, confrontations between demonstrators and security forces were common. Groups of demonstrators often behaved very aggressively toward security forces, even when the security forces did not take an aggressive stance toward them. Sometimes clashes started as soon as an official demonstration was finished, with small groups remaining in an area deliberately provoking the police by throwing stones and burning tyres. Demonstrations generally centred on key traffic *chowks* (junctions) in the regional, zonal and district capitals. Most of the major confrontations between the security forces and demonstrators occurred in and around these *chowks*, especially where there were statues linked to the monarchy or when demonstrators approached government offices or prohibited areas.

OHCHR observed demonstrators on numerous occasions throwing stones and bricks at police, or burning tyres in the streets. At other times, government and police vehicles were set on fire. Billboards in front of government offices were defaced to remove references to the monarchy. In Bara District, on 17 April, clashes began when police attempted to take hold of an effigy of the King before it was ignited by demonstrators (see Case 4). In Nepalgunj, Banke District, on 18 April, an initially peaceful demonstration turned violent as demonstrators approached Gyanendra Chowk, setting on fire and destroying a police car, toppling a billboard and eventually after pushing through a police cordon destroying the monument at the *chowk* which bore the King's name (see Case 13). In both cases demonstrators died in incidents related to the protests. Government buildings in Nawalparasi and Chitwan Districts were among those damaged during protests (see Cases 1 and 9), and municipal offices were damaged on 9 April in Kaski District. After the killing of Bishnu Pandey on 12 April in Parasi, Nawalparasi District, demonstrators set on fire the District Education Office and the Cottage and Small Industry Department (see Case 9).

Scores of police officers suffered injuries, some serious, mainly as a result of stones and rocks thrown by demonstrators. For example, about 20 were reportedly injured in protests in Chandragadhi, Jhapa District, on 19 April (see Case 12), and some 45 during the whole protest period in Pokhara. OHCHR saw a police officer hit in the eye in Balku, Kathmandu District, on 16 April. OHCHR was informed that 12 APF were injured during demonstrations in Gongabu, Kathmandu District, on 11 April. It visited several APF officers in hospital, two of whom had suffered head injuries as a result of bricks thrown at them that day.

In its meetings with demonstration organisers prior to the protests, as well as in press statements and media interviews, OHCHR urged them to ensure that protests remained peaceful. At times, SPA leaders did manage to take action through dialogue to prevent or stop violence, but at other times they were unable to do so as can be seen from some of the case studies. A number of the violent incidents occurred when groups of demonstrators not necessarily under the control of the organisers deviated from routes which had been agreed

with police and moved towards restricted areas with government buildings intent on damaging property.

Nepali human rights defenders played a key role during the demonstrations, at times succeeding in defusing the tension between demonstrators and the security forces and minimising the damage when confrontation could not be prevented. In some cities, including Kathmandu, Nepalgunj and Pokhara, OHCHR observed human rights defenders acting as mediators between security forces and demonstrators. In other locations, human rights defenders helped escort injured demonstrators to safety, as well as protect members of the security forces from violence by aggressive demonstrators. For instance, on 11 April in Gongabu, human rights defenders escorted a policeman injured by demonstrators who accused him of firing upon them (see Case 3). OHCHR also received reports that human rights defenders protected police surrounded by demonstrators in Chandragadhi, Jhapa District, on 19 April (see Case 12). On 20 April, human rights defenders and journalists went to Kalanki, Kathmandu District, in spite of not having curfew passes, and helped to evacuate injured demonstrators because ambulances could not get through.

The prohibitions put into place by the Government restricting demonstrations to certain areas heightened tensions. These restrictions, perceived as restrictions on the right to assembly and freedom of expression, increased the likelihood of conflict between security forces and otherwise peaceful demonstrators when demonstrators attempted to enter areas declared off-limits by the Government. In many of the case studies in Part 2 of this report, fatalities and injuries occurred when demonstrators attempted to enter these prohibited zones, often where government buildings were located as indicated above.

The imposition of day-time curfews also exacerbated the tensions between demonstrators and security forces. These curfews, imposed throughout the country, essentially criminalised the mere act of leaving one's home during certain hours. Responses to the curfews varied from place to place. In Pokhara, towards the end of the period of protests, demonstrations were often postponed until the evening when the curfew was lifted, at which time massive torch rallies would take place. Those residents who insisted on participating in daytime rallies despite the curfew were sometimes targeted by NP, APF and NA, chased into their homes and beaten. When curfews were limited to certain areas, demonstrations often moved to adjacent areas, such as just outside the Ring Road in the Kathmandu Valley. At other times, the curfews were openly defied on a massive scale, resulting in major incidents – most notably at Gongabu, Kathmandu District, on 11 April (see Case 3), and at Kalanki, Kathmandu District, on 20 April (see Case 6).

### **The response of the security forces**

From the very beginning of the protests, security forces – the NP, the APF and the NA – were deployed in various combinations and strengths both to prevent and most often to break up demonstrations and to stop curfew-breakers. In the course of the 19 days, over one thousand persons were detained in police stations and *ad hoc* detention centres, and several hundred political and civil society activists as well as other demonstrators held mostly arbitrarily under the Public Security Act. Many of those arrested were held for peacefully exercising their right to protest in defiance of the bans and curfews. OHCHR intervened on numerous occasions to press for better conditions, for access to lawyers when this was denied, and to call for the release of all those arbitrarily detained. As the protests continued, however, the security forces carried out far fewer arrests.

The sections of the report below describe the degrees and types of excessive use of force which were documented during the protest movement. The use of violence by the security forces was not always systematic and levels of repression changed from day-to-day. OHCHR observed that at certain times and places the NP and APF acted with restraint when faced with

crowds throwing rocks, burning tyres, and overtly threatening members of the security forces. In some areas of the country, OHCHR noticed that as the demonstrations continued, and became larger in size and broader in participation, the security forces tended not to obstruct demonstrators from marching – sometimes walking alongside demonstrators with their shields and weapons lowered.

For the most part, the NP and APF were given front-line responsibilities for crowd control. The NA, with some important exceptions such as the shooting in Chandragadhi, Jhapa District on 19 April when two people were killed (see Case 12), was usually not directly involved in crowd control actions, though they were nevertheless often present behind police lines. It is, however, not so clear how far the NA was involved in directing overall decision-making about crowd control strategies.

On a number of occasions, security forces and civilian authorities took pre-emptive measures to prevent violence, such as contacting the political parties prior to a scheduled demonstration to exchange information about routes, bans, and curfews. Nevertheless, the extent of the excessive and sometimes lethal use of force used by the security forces provoked national and international condemnation. Eighteen people died in the context of the demonstrations in April, mostly either shot or beaten, or apparently affected by the firing of teargas canisters.<sup>14</sup> Several thousand demonstrators, and sometimes bystanders, were injured, many of them as a result of violence from the security forces (see below, *Types of human rights violations documented by OHCHR*).

While some of the crowd control tactics observed can be used as legitimate tools for policing demonstrations, the security forces repeatedly abused them in violation of their obligations under international and national law to respond to demonstrators with proportionality. The use of lethal force, in particular, was highly questionable. OHCHR concluded that there was no imminent threat to life which could have justified the use of lethal force in any of the cases examined in this report.

The NA and NP appear to have been given general instructions not to shoot without orders. However, contradictory information from the security forces and the local administration made it often difficult to determine whether or not an order had been given, and if there was an order whether it was clearly restricted to firing shots in the air. No written orders were shown to OHCHR either by local administrative authorities or by the security forces to confirm that orders had been given and by whom. Such written orders are required, either prior to or within 24 of shooting, by the Local Administration Act.

### **International norms on the use of force**

In order to respect and protect the right to life guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), law enforcement officials must act in accordance with international human rights principles and standards on the use of force. As summarised below, these principles and standards are set out in the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,<sup>15</sup> and must be followed even during

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<sup>14</sup> While according to OHCHR investigations the number of people killed as a result of apparent excessive use of force in April is 18, many sources, including the Government, often refer to the 21 “martyrs” of the protest movement. These include the people who died in April as well as two who died in February 2006 (including Umesh Thapa, Case 15 in this report) and a young man who died in April in Butwal District. OHCHR has not been able to link his death to the protest movement.

<sup>15</sup> The Code of Conduct for Law Enforcement Officials (“Code of Conduct”), adopted by General Assembly Resolution 34/169, 17 December 1979; and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (“Basic Principles”), adopted by the Eighth United Nations

exceptional circumstances such as internal political instability or public emergencies.<sup>16</sup> Under these instruments, law enforcement officials are defined as police as well as military authorities and other members of State security forces who exercise police powers.<sup>17</sup>

### *Use of force generally*

When using force, law enforcement officials must act according to the principles of necessity and proportionality. The principle of necessity requires that law enforcement officials use force only when strictly necessary,<sup>18</sup> and that they use non-violent means as far as possible before resorting to the use of force.<sup>19</sup> Force may therefore be used only when non-violent means remain ineffective or without any promise of achieving the intended result.<sup>20</sup>

While the principle of necessity governs the circumstances under which force may be used, the principle of proportionality governs the manner in which force may be used. The principle of proportionality requires that force be used with restraint, and only to the extent required.<sup>21</sup> The means and amount of any force which is used must therefore be in proportion to the seriousness of the offence and the legitimate objective to be achieved.<sup>22</sup> When using force, law enforcement officials must also minimise damage and injury, and respect and preserve human life.<sup>23</sup>

### *Use of firearms*

In addition to the general principles of necessity and proportionality, law enforcement officials are subject to further requirements with respect to the use of firearms. Law enforcement officials may use firearms only in the following specific circumstances: a) in self-defence or in defence of others against imminent threat of death or serious injury; b) to prevent a particularly serious crime involving grave threat to life; or c) to arrest a person posing such a threat and who is resisting efforts to stop the threat, or to prevent his escape.<sup>24</sup> In any case, firearms may only be used when less extreme means are insufficient and when their use is strictly unavoidable to protect life.<sup>25</sup>

Before using firearms, law enforcement officials must identify themselves as law enforcement officials and give a clear warning that firearms will be used. Further, sufficient time must be provided for the warning to be observed, unless this would unduly create a risk of death or serious harm to the officer or other persons, or would be clearly inappropriate or pointless in the circumstances.<sup>26</sup>

### *Use of force in public assemblies*

Law enforcement officials must allow persons to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of

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Conference on the Prevention of Crime and the Treatment of Offenders, 7 September 1990. See also OHCHR Manual for Law Enforcement Officials, Chapter XIV; and OHCHR Pocketbook for Police on International Human Rights Standards for Law Enforcement, pages 7 – 11.

<sup>16</sup> Basic Principles, Principle 8

<sup>17</sup> Code of Conduct, Commentary (a) and (b) to Article 1; and Basic Principles, Note 1

<sup>18</sup> Code of Conduct, Article 3

<sup>19</sup> Basic Principles, Principle 4

<sup>20</sup> Basic Principles, Principle 4

<sup>21</sup> Code of Conduct, Article 3; Basic Principles, Principle 5 (a)

<sup>22</sup> Basic Principles, Principle 5 (a)

<sup>23</sup> Basic Principles, Principle 5 (b)

<sup>24</sup> Basic Principles, Principle 9

<sup>25</sup> Basic Principles, Principle 9

<sup>26</sup> Basic Principles, Principle 10

Human Rights and the ICCPR.<sup>27</sup> In dispersing assemblies which are unlawful but non-violent, law enforcement officials must avoid using force, or where this is not practicable, must restrict force to the minimum extent necessary.<sup>28</sup> In dispersing violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.<sup>29</sup> In any case, firearms may only be used in the specific circumstances noted above, i.e., in self-defence or in defence of others against imminent threat of death or serious injury; to prevent a particularly serious crime involving grave threat to life; or to arrest a person posing such a threat and who is resisting efforts to stop the threat, or to prevent his escape.<sup>30</sup>

### **National norms regarding the use of force**

The CDO has the responsibility for maintaining order, peace and security at district level and is the chairperson of the District Security Committee (DSC)<sup>31</sup>. The committee also includes the Chief of the District Police Office (DPO), the Chief of the District Office of the National Investigation Department, the Chief of the APF local barracks and the Chief of the NA local barracks as members.<sup>32</sup> DSCs were active throughout the 19 days of protests.

According to the Local Administration Act, the CDO must direct the police to prevent any gatherings which are likely to result in a breach of order.<sup>33</sup> If the police are unable to prevent such a gathering, the CDO or a subordinate officer must go immediately to the site and try to persuade the crowd to stop.<sup>34</sup> If the crowd does not stop, the police may use force, including batons (*lathi*), blank shots, teargas and water canon, as the situation may require.<sup>35</sup> If peace still cannot be restored, the police may open fire after receiving a written order from the CDO and after warning the crowd that they will be fired upon if they do not disperse.<sup>36</sup> However, if time does not permit the issuance of a written order, the CDO may issue an oral order, to be followed by a written order within 24 hours.<sup>37</sup>

When opening fire, the police may only shoot at persons below the knee.<sup>38</sup> If there is a serious breach of peace and order which cannot be controlled by the police or if there is such a possibility, the CDO may request the assistance of the APF and the NA.<sup>39</sup> The CDO must inform the Regional Administrator and the Home Ministry within 24 hours of requesting such assistance.<sup>40</sup>

Neither the Army Act nor the Army Regulations contain any provisions on the use of force by members of the NA. However, the NA Human Rights Cell informed OHCHR by letter dated

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<sup>27</sup> Basic Principles, Principle 12

<sup>28</sup> Basic Principles, Principle 13

<sup>29</sup> Basic Principles, Principle 14

<sup>30</sup> Basic Principles, Principle 14

<sup>31</sup> Local Administration Act, Section 5 (5a)

<sup>32</sup> Local Administration Act, Section 6 (7)

<sup>33</sup> Local Administration Act, Section 6 (1a)

<sup>34</sup> Local Administration Act, Section 6 (1a)

<sup>35</sup> Local Administration Act, Section 6 (1)

<sup>36</sup> Local Administration Act, Section 6 (1b)

<sup>37</sup> Local Administration Act, Section 6 (1d)

<sup>38</sup> Local Administration Act, Section 6 (1b): according to international human rights standards, law enforcement officials may use firearms only in the following specific circumstances: a) in self-defence or in defence of others against imminent threat of death or serious injury; b) to prevent a particularly serious crime involving grave threat to life; or c) to arrest a person posing such a threat and who is resisting efforts to stop the threat, or to prevent his escape.

<sup>39</sup> Local Administration Act, Section 6 (2)

<sup>40</sup> Local Administration Act, Section 6 (2): the Regional Administrator may also inform the Ministry of Home.

13 June 2006 that the NA will only be mobilised to aid civilian authorities if “the situation is beyond the control of the NP and the APF”, as decided by the CDO/Home Ministry. In such situations, the NA will follow its Rules of Engagement (ROE), including “the principle of the use of minimum force in case of opening fire”.

The ROE require that NA members give a warning before discharging a weapon. However, a warning is not necessary under the following circumstances: 1) there is a likelihood of death or serious bodily harm to the NA member or others he is protecting if fire is not immediately opened; 2) there is a likelihood of severe damage to property if fire is not immediately opened; or 3) there is a likelihood of armed attack against the NA member or others he is protecting, or while carrying out tactical operations. Under the ROE, “effective fire” (deadly force) may be used if a person’s life is endangered, and if the threat cannot be eliminated by use of other types of force. If fire must be opened, the ROE requires: 1) the use of aimed fire; 2) the use of minimum rounds; and 3) avoidance of collateral damage. As mentioned above, international human rights principles only allow for the use of firearms when there is a threat of death or serious injury. The use of firearms to protect property, even from “severe damage”, is not permissible unless strictly unavoidable to protect life (Basic Principles, Principle 9).

Neither the Police Act nor the Police Regulations contain any provisions on the use of force by members of the NP. However, on 20 September 2005, the NP Human Rights Cell issued a circular to all police offices regarding “public peace and security / riot control”. This circular instructs the NP to prevent the commission of: 1) attacking by stones, injuring innocent persons and provoking demonstrators, thereby intensifying violence; 2) using teargas from a short distance causing injury; 3) using teargas near hospitals and educational institutions; 4) chasing demonstrators when unnecessary and hitting them with a baton instead of dispersing the demonstration; 5) chasing demonstrators by going to private premises and hospital premises and disturbing health services and placing persons seeking medical treatment at risk; 6) using excessive force indiscriminately while arresting any person and hitting them “cruelly” even after taking control of them; 7) not making arrangements for the treatment of injured persons; and 8) making threats against human rights defenders and journalists. Almost all of these provisions were violated in some way during police actions against demonstrators.

Neither the Armed Police Act nor the Armed Police Regulation contain any provisions on the use of force by members of the APF. However, the APF training manual includes a section on “principles on the use of force”. The manual states that the following principles must be applied when using force: 1) no use of unnecessary force; 2) no use of force in the form of punishment; and 3) use of force to be stopped once objective is achieved. The manual also provides a summary of the provisions of the Local Administration Act, according to which the CDO may order the APF to use force. However, APF officials told OHCHR that many of the APF deployed to control the demonstrations, including some officers, had received no training in crowd control.

### **Types of human rights violations documented by OHCHR**

While recognising the difficulties confronting security forces at times, there can be no doubt that all three branches of the security forces were responsible for serious human rights violations in the context of policing demonstrations. While some of these may have been the result of inexperience of crowd control situations, insufficient numbers, lack of training and appropriate equipment, there were numerous instances – including some witnessed by OHCHR – where beatings were not only being used as a form of crowd control but intentionally carried out in a manner to cause harm and to punish. OHCHR witnessed shots being fired at fleeing demonstrators who no longer posed a threat, deliberate beatings of

demonstrators as well as police throwing stones and rocks back at demonstrators. It repeatedly called on security forces to exercise restraint and use only minimum force.

The most serious violations were those relating to the right to life. OHCHR investigated the deaths of eighteen individuals - sixteen male adults and two women - killed in the context of the protests. Seven people died in Kathmandu itself, three in other parts of the Central Region – Kavre, Chitwan and Bara Districts; three in the Western Region – Pokhara, Nawalparasi and Parbat Districts; three in the Eastern Region – Jhapa and Rajbiraj Districts; and two in the Mid-Western Region – Banke and Bardiya Districts. Part 2 of this report comprises individual case studies on the circumstances in which each of them died. Four of the deaths occurred in the first few days of the *bandh*, but most of incidents which led to the deaths occurred between 18 and 22 April, the majority in Kathmandu where demonstrations began to take on unprecedented proportions.

Thirteen of the 18 died as a result of bullet injuries. At least one, and probably two of those who died were hit by teargas canisters, and inhalation of teargas may have contributed to the death of a third person. In one case, a demonstrator is thought to have died as a result of head injuries due to a beating, and another died of a heart attack when police broke up a peaceful torch rally on the first day of the protest movement.

In most cases, OHCHR concluded that the deaths were the direct result of excessive use of force. In one case, it concluded that this was not directly the case (where the person concerned died of a heart attack suffered as a demonstration was being broken up by police). In two others it was not possible to determine whether the deaths were due to excessive use of force, although OHCHR concluded that in the course of the demonstration, the security forces did use excessive use of force.

OHCHR was also seriously concerned that in one case the police prevented the wife of one of the victims from seeing the body and taking part in the funeral rites. Delayed and inaccurate information given to the family (and at times to OHCHR), as well as curfew restrictions on movement, made it difficult to locate the body, which was forcibly removed from one hospital mortuary. The body was cremated by police in the presence of one relative.

The use of batons, live and rubber bullets as well as teargas to disperse demonstrators resulted in many injuries – including to bystanders (see below). In Kathmandu alone, according to hospital statistics and information received from the Nepali Red Cross, approximately 4,300 persons were treated for injuries sustained during the demonstrations. The actual number is probably higher, as many individuals were unable to reach hospitals due to the curfew and strike, and therefore were treated at local clinics, or at home by their families. While it is certain that some were injured accidentally as they fled, or were hurt by stones thrown by demonstrators, many of the injuries are believed to have been caused by force used by security forces.

According to information gathered from hospitals in Kathmandu, 195 individuals had injuries serious enough to require admission. Among them were 15 children. Fifty-six people were admitted with fractured limbs, 29 with head injuries (including four skull fractures) and an additional 11 with eye injuries. Thirty-nine cases had rubber bullet injuries and nine individuals were treated for injuries caused by live bullets.

In some cases, the authorities were reported to have intimidated witnesses and family members. For instance, NA personnel reportedly visited witnesses present when the NA opened fire in Sandikharkha, Argakanchi District, on 16 April, and pressured them to sign papers saying that the PLA was responsible for the shooting. OHCHR investigations into the incident suggest that the NA was responsible for the shooting, which resulted in serious injuries to at least three people, including a minor. Similarly, members of the security forces

had reportedly tried to force relatives of demonstrators killed at Kalanki on 20 April to sign papers saying that the victims were members of CPN-M (see Case 6).

*Indiscriminate beatings and the excessive use of lathis*

OHCHR regularly observed the NP and APF employing *lathis* (bamboo batons) against demonstrators in Kathmandu, Pokhara and Biratnagar in an indiscriminate and excessive manner, resulting in lacerations, bruises and fractures. Police in Nepalgunj appear to have been generally more restrained with the exception of the demonstration on 18 April (see Case 13). Baton charges were often deliberately aimed at the head with the potential to cause serious injury or even death and beatings often continued as demonstrators were fleeing, or after they had been subdued. One demonstrator, Mohammad Jahangir, died from a skull fracture leading to internal bleeding in the brain after being beaten by police in Tripureshwor, Kathmandu District, on 22 April (see Case 7). OHCHR was present at the demonstration and witnessed the excessive use of force as police beat fleeing demonstrators trapped in an alley.

Another egregious example of the excessive use of *lathi* charges occurred at Gongabu, Kathmandu District, on 10 and 11 April when OHCHR observed the APF in riot gear striking many fleeing demonstrators on the head and back. Eyewitnesses told OHCHR that in Kalanki, Kathmandu District, on 20 April, the APF aimed for the heads of demonstrators and continued to beat them after they had fallen to the ground, causing several severe injuries (see also *Denial and obstruction of medical assistance*, below). Film footage of the police striking demonstrators was also widely broadcast in the media.

During visits to hospitals in Kathmandu, OHCHR interviewed seven individuals with serious head injuries and 14 with fractured limbs who said that the injuries had been caused by security forces hitting them with *lathi*. Forty-two others also sustained fractures during the protests in Kathmandu but OHCHR did not have the resources to investigate all the cases to determine how the injuries were sustained. Emergency doctors told OHCHR that, apart from 29 individuals who required hospitalisation for head injuries, many others were treated for head injuries as out-patients. At one hospital alone, almost 200 cases of head injuries caused by “blunt” instruments were treated by the emergency doctors. When the Representative visited a group of 22 detainees arrested by the APF in Gongabu on 11 April, almost half had bandages around their heads covering wounds apparently due to *lathi* charges.

Beatings by the security forces were not limited to attacks upon demonstrators in the streets. OHCHR investigated numerous reports of security personnel entering homes in pursuit of demonstrators or curfew violators and severely beating them. These beatings often seemed indiscriminate, and the victims included women and children, and the staff in medical facilities. For example, from 7 to 10 April in Pokhara, OHCHR investigated reports that joint patrols of APF and NP were entering peoples’ homes and beating the occupants severely. Among the victims were two 14-year-old children. On 9 and 10 April in Gongabu, Kathmandu District, APF were observed by OHCHR breaking into houses, pulling individuals out into the street and beating them with *lathis*, including an 11-year-old child. Even medical personnel were not immune to such beatings (see below). At times, OHCHR facilitated medical assistance, including through contacting medical institutions to inform them of injured demonstrators needing treatment.

Two of those who suffered fractured limbs in Kathmandu sustained their injuries as a result of being beaten inside a police station, although most individuals, once detained in a police station, did not suffer ill-treatment. One of the two cases, both documented by OHCHR, occurred on 8 April in Mangal Bazar Police Station, the other on 20 April at the Maharajgunj Police Station, both in Kathmandu.

### *Inappropriate use of teargas amounting to excessive use of force*

Teargas was frequently used by both the NP and the APF to disperse crowds. If used properly, teargas can be a legitimate tool for controlling aggressive and violent crowds. The NP's own training materials instruct their trainees to avoid firing teargas directly into a crowd, but instead fire into adjacent areas, taking into account the wind direction and other factors. In practice, the security forces seem at times to have used teargas preemptively to prevent demonstrators from protesting peacefully. When teargas was fired, it was sometimes fired in excessive volumes and directly at demonstrators, sometimes at close range, instead of being shot into the air in a manner that would best avoid serious injury. Police sometimes suffered the effects of the teargas themselves through failing to take into account wind direction, with the teargas blowing back towards them.

OHCHR repeatedly witnessed NP firing teargas directly at fleeing demonstrators and/or at close range such as in Tripureshwor, Kathmandu District, on 22 April (see Case 7), and in Nepalgunj on 18 April, where police were standing between five and 20 metres from the crowd (see Case 13). In the former case, a man died after being hit by a teargas canister in the chest and in the latter, a woman died after inhaling teargas. In Gongabu, Kathmandu District, on 10 and 11 April, OHCHR also witnessed the APF firing teargas at close range and observed them firing teargas canisters at houses in which demonstrators had sought shelter - where they were clearly no longer posing a threat.

OHCHR investigated a number of cases of injuries involving demonstrators who were either hit by teargas canisters or were apparently overexposed to teargas, including two cases where the victims were hit by a teargas canister in the eye, leading to a partial or entire loss of eyesight, during demonstrations in Gongabu, Kathmandu District, on 22 April. In this case also, witnesses told OHCHR that police were firing teargas from close range.

### *Unjustified use of lethal force (live ammunition)*

As mentioned, international law requires that security forces exercise restraint when policing demonstrations and public assemblies. In particular, they must use proportional force, and make every effort to minimise damage and injury, and to respect and preserve human life. The use of live ammunition, therefore, can only be justified as a last resort and in the most dire of circumstances, in self-defence or in defence of others against an imminent threat of death or serious injury. Nepali law, as set forth in the Local Administration Act of 1971 – see above, also requires exhausting all other methods of crowd control before firing. In order to shoot, a written order must be obtained from the CDO and the security forces must give a verbal warning to the crowd that they will shoot if the crowd does not disperse. The Local Administration Act clearly specifies that shots may only be fired below the knee.

In almost every case investigated by OHCHR in which live ammunition was used by the security forces (NA, APF and NP) during the April demonstrations, it concluded that the use of force was excessive. Direct live fire was rarely preceded by a clear warning as mandated by the Local Administration Act. An incident in Sandikharkha, Arghakanchi District on 16 April highlights the lack of graduated approach to use of force. Demonstrators were moving towards government buildings in a restricted area after having removed the words “His Majesty” from a billboard when NA soldiers posted on the roof of a building, without warning, fired shots which injured four people, including a 14-year-old girl whose left arm was fractured. Teargas was only fired by police afterwards.

In many cases, the security forces were improperly supervised, insufficiently briefed about firing procedures, and sometimes continued shooting even after protestors had begun to flee. A sizable number of people were injured on upper parts of the body indicating that the firing was not directed at lower, less vital parts of the body. In many cases, the spread of direct live

fire was quite wide, both vertically and horizontally, suggesting that the firing was indiscriminate. In some instances, the estimated distance from which stone-throwing protestors were shot was in excess of 100 metres, raising serious doubts about whether there was any grave or imminent threat to the lives of the security forces. In at least two of the cases investigated by OHCHR, security forces fired upon demonstrators from the safety of nearby rooftops in circumstances when the crowds clearly posed no imminent threat to their or other people's safety.

Three people were shot dead by the NP, and in two other cases it was not clear whether it was the NP or another branch of the security forces. During the first week of demonstrations, the NP were particularly prone to resort to the use of live ammunition when it was clearly unnecessary. For instance, as early as 8 April, the NP fired live bullets at demonstrators in Chitwan, killing Tulasi Chetri, a 32-year-old woman watching the demonstration from her balcony (see Case 1). The next day, the NP shot dead Shiv Hari Kunwar and injured a 14-year-old boy in Banepa (see Case 2). On 11 April, the NP opened fire on a crowd of demonstrators in Pokhara, seriously injuring two women, and on 12 April, Bishnu Pandey was shot dead by the NP in Parasi, Nawalparasi District (see Case 9).

OHCHR has also concluded that the APF were responsible for at least four deaths after APF personnel opened fire upon demonstrators. On 20 April, in one of the worst incidents, four demonstrators were killed by shots fired by the APF in Kalanki, Kathmandu District. An APF SSP was subsequently suspended for his alleged involvement in the shootings (see Case 4). In addition, either the APF or the NP was responsible for the killing of Govinda Nath Sharma in Parbat District on 21 April.

The NA was responsible for killing at least two demonstrators and injuring others. On 8 April, Bhimsen Dahal was shot dead in Pokhara by an NA soldier (subsequently arrested) who was posted on the top of the Nepal Telecom building<sup>41</sup> (see Case 8). Two other demonstrators were killed when the NA and APF opened fire on demonstrators in Chandragadhi, Jhapa District, on 19 April. In one case, OHCHR concluded that the NA was responsible. Information collected by OHCHR suggests that the NA continued to fire upon demonstrators using live ammunition even after the crowd began to disperse and demonstrators began to flee. In the other case, it is not clear whether the NA or the APF was responsible for firing the shots which killed the demonstrator (see Case 12). On 17 April, bullets fired by the APF and the NA in Bara District injured five people, one of whom, Hira Lal Gautam, later died (see Case 6).

In every case involving the firing of live ammunition at demonstrators, the authorities denied to OHCHR that live ammunition was used by their personnel, notwithstanding reliable eyewitness testimony and forensic evidence to the contrary. For instance, the NP denied that live ammunition was fired by its personnel both on 11 April in Pokhara (resulting in the above mentioned serious injury of two women) and in Parasi, Nawalparasi District, on 12 April when Bishnu Pandey was killed (see Case 9). Both the NP and the APF deny having fired live ammunition resulting in the shooting of Govinda Nath Sharma in Kusma, Parbat District, on 21 April (see Case 10), and both the APF and the NA deny firing at demonstrators in Bara District on 17 April (see Case 4).

In other cases, the authorities, without conducting any credible investigations, concluded that shots from the crowd either resulted in fatalities, or caused security forces to fire in self-defence. In the case of Bishnu Pandey killed in Parasi, Nawalparasi District, on 12 April police claim the bullet was fired by an infiltrator in the crowd (see Case 9). Claims have also been made by the security forces that on 17 April in Nijgadh, Bara District, a socket bomb

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<sup>41</sup> It should be noted that he was guarding the building and not among NA troops involved in crowd control.

exploded in the crowd followed by gunfire from CPN-M infiltrators (see Case 4). In Chandragadhi, Jhapa District, the authorities told OHCHR that the security forces fired shots only after the Superintendent of Police had been fired upon by someone in the crowd of demonstrators (see Case 12). In Gulariya, Bardiya District, on 20 April, security forces also claimed that the CPN-M were responsible for the shots which killed Yam Lal Lamichane (see Case 14). In every one of these cases, OHCHR's investigations have failed to discover any evidence corroborating the allegations by the security forces.

In a number of cases, the security forces have attempted to justify their actions by reference to the fact that they were obliged to protect public or private property from destruction by demonstrators. As set forth above, international human rights principles governing the use of firearms do not allow for the use of deadly force unless to prevent a particularly serious crime involving grave threat to life or if there is an imminent threat of death or serious injury. By way of example, NA commanders at the regional level told the OHCHR that the killing of Bhimsen Dahal on 8 April in Pokhara was justified by the fact that the Nepal Telecom building was under threat by demonstrators (see Case 8). The NP proffered similar justifications for firing upon demonstrators from the roof of the Nepal Telecom building in Banepa, Kavre District, on 17 April (see Case 2). The APF also attempted to justify its firing upon demonstrators, killing one and seriously injuring four others at Nijgadh, Bara District, as an effort to protect the Agricultural Development Bank building (see Case 4). OHCHR investigations in each of these cases concluded that demonstrators did not constitute a threat of imminent death or serious injury to security personnel.

In several separate incidents OHCHR investigations confirmed that the security forces were using buckshots which contained lead pellets. Pellets were found in the bodies of Yam Lal Lamichane (Case 14) and Bishnu Pandey (Case 9) during *post-mortems*. In Koteswor, Kathmandu District, on 9 April, one person was seriously injured by this kind of ammunition and as well as in Parasi, Nawalparasi District, on 12 April and in Butwal, Rupandehi District, on 9 April. The advantages of using buckshot rather than other types of bullets are not clear. Compared to rubber bullets (assuming that the rubber bullets are used appropriately), the injuries caused by buckshot are much more severe. Furthermore, the fact that buckshot, when fired, spreads out in the form of multiple pellets, increases the likelihood of demonstrators being hit indiscriminately.

#### *Inappropriate use of rubber bullets amounting to excessive use of force*

Rubber bullets, though less lethal than live ammunition, can nevertheless cause severe injury if directed at a vital part of the human body. A number of injuries, including damage to organs and eye injuries, were caused by rubber bullets fired by the NP and the APF according to information gathered by OHCHR. For instance, on 9 April in Banepa, Kavre District, one victim was seriously injured when he was shot by a rubber bullet in the face (see Case 2). In many cases, injuries sustained were in the upper of the body, in contravention of the Local Administration Act which requires firing to be below the knee.

The NP's own training materials instruct trainees that rubber bullets should never be fired directly into a crowd but indirectly off a hard surface. However, in a number of cases, individuals were shot by rubber bullets at close range, or hit in the back while fleeing from security forces in pursuit. Rubber bullets fired by the NP and the APF are shotgun cartridges containing several rubber pellets which spread out in a similar way to buckshot but are less harmful. OHCHR investigated one case in which an individual had five rubber pellets extracted from his chest. He reported to OHCHR that the APF had shot him at close range in his own residence where he had taken refuge during the demonstrations in Gongabu, Kathmandu District, on 11 April. At least 35 people were treated for rubber bullet injuries from the Gongabu incidents alone. In another case, which occurred in Satobato, Kathmandu District, on 20 April, two individuals were seriously injured after being hit by rubber bullets.

One had six rubber pellets extracted from an area no larger than 20 cm<sup>2</sup> on his lower arms. The other individual was hit by six rubber pellets in his back and legs. The individual alleged that he was shot at a distance of no more than two metres. Three individuals also received serious eye injuries after being shot with rubber bullets in Satobato on 20 April. OHCHR also has video footage showing that the NP fired rubber bullets at fleeing demonstrators on 22 April at Tripureshwor, Kathmandu District (see Case 7).

### **Victims under the age of 18**

A significant number of the cases of injuries followed up by OHCHR were of young people under the age of 18. UNICEF, OHCHR and child protection agencies expressed a number of concerns about the risks to children participating in potentially violent demonstrations. They called for special protective measures to be taken by the political parties and by parents, including preventing the participation of children in such situations. According to a local NGO, 224 children below the age of 18 were injured from 6 to 24 April while participating in the demonstrations or as bystanders<sup>42</sup>. Fifteen of the 224 were girls. A significant proportion of them (20 percent) suffered head injuries caused by blunt instruments, most likely police batons, and 12 percent of the children had bullet injuries.<sup>43</sup> Cases documented by OHCHR include:

- Two 14-year-old boys beaten by a joint APF and NP patrol who entered houses looking for demonstrators/curfew violators in the Chorepatan area of Pokhara.
- On 18 April, in Nepalgunj, a 14-year-old boy received a serious bullet injury during a demonstration (see Case 13)
- In Argakanchi District, on 16 April, a 14-year-old child suffered a fractured left arm as a result of a bullet and a 16-year-old was injured by a bullet in the leg (see above).
- APF members were seen by OHCHR beating an 11-year-old boy in Gongabu, Kathmandu District, on 11 April. They continued to beat him causing his head to bleed profusely (see Case 3)
- A 16-year-old girl was injured by metal fragments, most likely from a bullet fired by the NP from the house of a former police official in Gongabu on 11 April (see Case 3). She was sitting in her bedroom in an apartment across the street.
- An 11-year-old boy was hospitalised with leg injuries after reportedly being beaten by the NP while observing a demonstration in Mangal Bazaar, Kathmandu, on 12 April.
- A 15-year-old boy was injured in his lower limbs by a live bullet at a demonstration in Kalanki, Kathmandu District, on 20 April (see Case 6). A 16-year-old boy also suffered bullet injuries in the same incident.
- A 15-year-old boy was injured by a rubber bullet in the chest and stomach reportedly fired by the NP during the demonstration in Gongabu, Kathmandu District, on 11 April.
- A 17-year-old boy was injured by a rubber bullet which fractured his left elbow during the demonstration in Tripureshwor, Kathmandu District, on 12 April.
- A 17-year-old boy was injured in the eye by a rubber bullet during a demonstration in Satobato, Kathmandu District, on 20 April.
- A 16-year-old boy was injured in the knee by a live bullet shot by the NA during a demonstration in Bharatpur, Chitwan District, on 17 April.
- On 9 April, in Banepa, Kavre District, a 14-year-old boy was amongst the victims when the NP opened fire on a crowd of demonstrators (see Case 2).

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<sup>42</sup> *Children affected in the course of suppressing the Janaandolan*, CWIN-Nepal, June 2006

<sup>43</sup> *Ibid*

## **Denial or obstruction of medical assistance**

Article 5(c) of Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that whenever the lawful use of force and firearms becomes unavoidable, law enforcement officials shall provide assistance and medical aid to injured and affected people at the earliest possible moment. OHCHR documented a number of instances during the April protests where the authorities not only failed to provide necessary medical assistance to those injured but impeded access to treatment, including beating up medical personnel.

### *Restrictions on movement of ambulances and medical personnel*

Security forces, particularly in Kathmandu District, restricted and sometimes obstructed the movement of ambulances, preventing them from accessing injured demonstrators. For example, in Banepa, Kavre District, on 9 April, an ambulance transporting the above-mentioned 14-year-old boy suffering from a bullet wound to the head was stopped numerous times by the security forces, significantly delaying the victim's treatment at the hospital. OHCHR also received reports of Nepal Red Cross ambulances being turned away in Kavre and Chitwan Districts. Restrictions on the movement of ambulances meant that hospitals were overwhelmed in places closest to where confrontations between demonstrators and security forces were taking place, or where security forces were using force to disperse demonstrators. For instance, on 20 April when three people were killed and many injured by police in Kalanki, Kirtipur Hospital, the closest medical facility situated outside of the curfew area, had difficulties handling the large influx of injured demonstrators. This reportedly resulted in delays in the treatment of at least one seriously injured person who required emergency treatment for a spinal cord injury suffered after he fell from a building trying to escape a baton charge by the APF during the course of the demonstrations.

### *Denial of curfew passes*

Curfew passes were also sometimes denied to medical organisations attempting to aid people injured during the course of the demonstrations. Medical staff at hospitals and medical centres were often unable to reach their places of work, and on 20 April, no curfew passes were issued to medical personnel in Kathmandu despite numerous requests. Some hospitals decided to send ambulances anyway when they heard that there were injured persons. One hospital director tried to get to Kalanki, Kathmandu District in his car, but was reportedly turned back by the security forces. Ambulances from Model Hospital were also stopped constantly by security forces that day resulting in delays in treatment for some of the many injured. Some private vehicles belonging to NGOs especially managed to come in from outside the Ring Road where there was no curfew and negotiated passage at each security force checkpoint to transport the injured in their vehicles to hospital.

### *Attacks on medical personnel*

In other cases, security forces behaved aggressively with, or even attacked, medical personnel treating injured demonstrators. For instance, during the course of the day on 11 April in Gongabu, the NP entered a community health centre and attacked the medical staff treating injured persons (see Case 3). Consistent testimony indicates that the police used their batons to strike blows indiscriminately at both medical workers and patients. No regard was shown for health care workers easily identifiable by virtue of their surgical masks or white laboratory coats. Reported injuries to medical staff resulting from police *lathi* blows included three head wounds, one hand fracture, a dislocated shoulder, and one knee contusion. A small medical team from Kalanki Chowk, Kathmandu District, was badly beaten by seven to eight APF personnel on 20 April. The staff did not have white uniforms, but wore clearly visible identification cards. On 12 April in Nijgadh, Bara District, security forces also reportedly beat medical assistants in spite of identifying bands around their arms (see Case 4).

### *Denial of medical treatment*

OHCHR also documented cases of security personnel refusing to provide medical assistance to injured persons. For instance, on 20 April in Kalanki, Kathmandu District, APF personnel refused to provide medical assistance to an 18-year-old youth who fell unconscious after being severely beaten. He was later carried away by other demonstrators, journalists and NGO members to a nearby medical facility.

In Parasi, Nawalparasi District, the CDO reportedly did not allow three demonstrators who had been injured on 11 April by *lathi* charges and detained in the district jail to receive proper medical treatment (X-rays). The Nepal Bar Association filed a complaint with the court which reportedly ordered the authorities to provide medical treatment to the detainees but the authorities did not comply with the court order.

There were also repeated delays in police authorising access to medical consultations for detainees held at police stations and *ad hoc* detention centres in Kathmandu. At times OHCHR had to intervene at the national level to advocate for treatment.

### **Accountability**

The climate of impunity for human rights violations in Nepal is one of the key factors which fosters continuing abuse. Investigations into allegations of excessive use of force during the April protest movement and the sanctioning of those responsible will be a crucial step towards holding security forces accountable for their actions and preventing further abuses.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials contains a series of provisions requiring accountability to be addressed. They require that:

- there should be a system of reporting whenever law enforcement officials use firearms in the performance of their duty. If the use of force results in injury or death, law enforcement officials must promptly send a detailed report of the incident to their superiors.<sup>44</sup>
- When there is evidence that excessive force has been used by law enforcement officials, it is the obligation of governments and civil law enforcement agencies to ensure that an effective review process is available, and that the appropriate administrative or prosecutorial authority exercises jurisdiction to investigate the allegations.
- In cases of death and serious injury or other grave consequences, a detailed report should be sent promptly to the competent authorities responsible for administrative review and judicial control.

The new Government which took office at the end of April immediately took steps to respond to demands for justice with regard to the many allegations of excessive use of force and in particular to establish responsibility for the deaths which had occurred. Nine high-ranking APF and NP officials were suspended, including the Inspector Generals of both forces.

Most importantly, on 5 May 2006, the Council of Ministers established a High Level Commission of Inquiry, known as the “Rayamajhi Commission”, to investigate abuse of state funds, abuse of position and human rights violations committed after 1 February 2005, including in the context of the April protest movement.<sup>45</sup> It comprises six members, led by former Supreme Court Judge Krishna Jung Rayamajhi as chairperson. The other members include two journalists, two lawyers and one medical doctor.

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<sup>44</sup> Basic Principles, Principle 6

<sup>45</sup> The Rayamajhi Commission<sup>45</sup> is subject to the Commission of Inquiry Act, 1969, and the Commission of Inquiry (Terms of Services of Members) Regulation, 1994.

The Rayamajhi Commission is carrying out its work in six stages: (i) dissemination of a public request/appeal to provide relevant information in accordance with the mandate of the Commission; (ii) visits and inspections of the relevant places to acquire information and collect evidence, including relevant documents/evidence from the government offices, interviewing victims and witnesses; (iii) identification of persons involved in alleged violations; (iv) summoning and questioning of alleged perpetrators; (v) analysis of the available information, evidence and statements; and (vi) preparation of the final report and its submission to the Government.

Shortly after it was established, OHCHR provided the Rayamajhi Commission with a document setting out the international criteria on the terms of reference, composition, procedures, powers and resources of commissions of inquiry mandated to investigate human rights violations. OHCHR has also provided the Commission with copies of relevant international human rights instruments as well as copies of OHCHR public reports and press releases. This report has also been submitted to the Commission.

The Rayamajhi Commission has already summoned and questioned numerous officials and members of the security forces, former ministers and other senior officials, including senior officers of the NP, the APF and the NA. Although the Commission was originally given a two-month deadline to complete its work, it has obtained two extensions, the latest until the end of October.

The Commission is not a prosecutorial body, and it will be important that its recommendations include calling for the prosecution of members of the security forces and other authorities where there are compelling grounds to believe they committed criminal offences in ordering, covering up or directly perpetrating violations.

#### *Internal investigations by security forces*

Both NP and APF officials have told OHCHR that no internal disciplinary investigations have been launched into the killings or other allegations of excessive use of force at the national level and at times gave the impression of not taking the loss of life and injuries seriously. The security forces at various levels have used the Rayamajhi Commission as a pretext for not proceeding with their own investigations, even though the Chairperson of the Rayamajhi Commission, the Office of the Attorney-General and the NP Legal Section have stated that the authorities are not legally prevented from carrying out internal and/or criminal investigations even while the Rayamajhi Commission carries out its investigations.

Contrary to above-indicated international human rights standards on the use of force, domestic laws and regulations do not require the NA, NP and APF to submit detailed reports regarding any deaths, serious injury or other grave consequences resulting from the unlawful or excessive use of force to the competent authorities responsible for administrative review and judicial control. Also in breach of international human rights standards, domestic laws and regulations do not require internal investigations to be carried out when the NA, NP or APF use force, or when death or injury results from the use of force.

Some internal police reports were made available to OHCHR, which were primarily based on preliminary crime scene reports and requests for *post-mortems* but appeared not to constitute proper police inquiries. A few internal investigations at district level were underway at the time of writing. An internal investigation has also been completed by the NP into the death of Tulasi Chettri in Chitwan on 8 April, in which three police officers were found guilty of negligently firing their 0.303 rifles (see Case 1). However, the NP told OHCHR that no disciplinary action will be taken until the Rayamajhi Commission has completed an investigation into the matter. The CDO in Jhapa District also informed OHCHR that an

internal investigation was being conducted into the 19 April incidents which resulted in two killings, but as of 1 June, an investigative team had yet to be formed (see Case 12).

The NA initially detained the soldier responsible for the killing of Bhimsen Dahal on 8 April in Pokhara and he is reportedly currently confined to barracks carrying out minor tasks (see Case 8). OHCHR is waiting for a response to its May request to the NA Human Rights Cell for details of the court of inquiry in this case. The NA has, however, consistently refused OHCHR access to court of inquiry, and court-martial proceedings and related documents, in violation of the Agreement between the Government of Nepal and OHCHR. Proceedings continue to be shrouded in secrecy. The lack of access of victims and their legal representatives to these internal investigations and court martial proceedings has further added to the culture of impunity for perpetrators.

### *Criminal investigations*

According to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, any arbitrary or abusive use of force and firearms by law enforcement officials must be punished as criminal offences under domestic law.<sup>46</sup> At the same time, persons affected by use of force and firearms or their legal representatives shall have access to an independent judicial process.<sup>47</sup>

Criminal investigations into the incidents of excessive use of force covered in this report clearly fall within the jurisdiction of the NP. According to the applicable domestic law, the Nepal Police are under an obligation to register any complaint regarding a crime which has been committed or may be committed.<sup>48</sup> Upon registration of the complaint, called the First Information Report (FIR), the NP must initiate a criminal investigation.<sup>49</sup> Despite these legal obligations, the NP have shown a reluctance to register and to initiate investigations relating to the deaths and injuries caused during the April demonstrations. Of the 19 deaths investigated by OHCHR and summarised in Part 2 of this report (including the case of Umesh Thapa killed in February), FIRs have been filed in only seven cases on behalf of nine victims. No FIRs were registered for the deaths of the other individuals. In most cases where an FIR has been registered, no proper investigations have been undertaken, and to OHCHR's knowledge, not one FIR has resulted in the transmission of a case file to the District Prosecutor.

Domestic law makes it mandatory for the NP to seize all the relevant material evidence and to save it from loss and extinction.<sup>50</sup> OHCHR has observed that in many of the cases involving the excessive use of force by security personnel, the police have failed to take necessary efforts to collect and preserve key evidence. Key pieces of evidence, such as bullets recovered from the bodies of victims or cartridge cases from the scene of shootings were not collected by police authorities. Instead, evidence sometimes remained in the hands of hospital personnel, the families of the victims, journalists or NGOs.

In several cases where material evidence was officially found implicating the security forces, the police were reluctant to take steps required by law to establish the identify of those responsible. For instance, according to the FIR filed in the case of the killing of Sagun Tamrakar at Kalanki, Kathmandu District, on 20 April, a projectile recovered from the body of the victim had been forensically identified as a 7.62mm SLR bullet, the type of bullet fired from the SLR rifles used by the APF at Kalanki (see Case 6). As of the date of this report, the

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<sup>46</sup> Basic Principles, Principle 7

<sup>47</sup> Basic Principles, Principle 24

<sup>48</sup> State Cases Act, Section 3; and State Cases Regulation, Rule 3

<sup>49</sup> State Cases Act, Section 7; and State Cases Regulation, Rule 4

<sup>50</sup> State Cases Act, Section 4; and State Cases Regulation, Rule 4 (3)

NP had failed to seize and examine the weapons used by the APF at Kalanki to determine whether the bullet had been discharged from an APF weapon. Examination of weaponry and ballistic evidence is particularly crucial given that, according to the information available to OHCHR, in some cases it is not even clear which branch of the security forces were responsible for the killings.

Domestic law also requires investigators to visit, take photographs of and prepare a report about the crime scene, as well as to record the statements of the witnesses.<sup>51</sup> As of the date of this report, the authorities had not visited the crime scenes identified in the two FIRs filed in relation to the shootings at Kalanki, Kathmandu District (see Case 6). Nor has a crime scene visit been conducted in relation to the FIR filed in relation to the case of Shiv Hari Kunwar, killed in Banepa, Kavre District (see Case 2). In interviews with OHCHR, police officials have conceded that they are obliged to act according to the requirements of the national laws, but claim that they are waiting for orders from senior officers. At the time, some police officials cited the political climate of uncertainty as a restraining factor in conducting investigations.

In some cases, the authorities have not only failed to act, but have taken steps to conceal evidence. For example, OHCHR has received credible information suggesting that the NA took possession of cartridge cases used during the shooting of Umesh Thapa on 8 February in Dang (see Case 15), and has yet to turn them over to the NP investigating the case in spite of a formal request to do so.

The failure of the NA and in some cases APF to comply with NP requests as part of criminal investigations, as well as the NP's reluctance to challenge the other security forces through investigations, have been and continues to be a major obstacle in allowing prosecutions to proceed in cases of serious human rights violations.

### *Chain of command*

International principles require that superior officers must be held responsible if they knew or should have known that personnel under their command were involved in the unlawful use of force and firearms, and failed to take measures to prevent, suppress or report such use. Obedience to superior orders cannot be used as a defence if officials knew that an order to use force and firearms resulting in death or serious injury was manifestly unlawful and could reasonably have refused to follow such orders.<sup>52</sup> A lack of clarity and of transparency with regard to the chain of command and the relationship between the various branches of the security forces at both the national and district levels creates a serious impediment to determining lines of responsibility.

At the national level, in a letter to the High Commissioner for Human Rights dated 21 April, the Chief of Army Staff stated that “as regards the Unified Command, NA leads the unified forces in Forward Operating Bases (FOBs) in operational areas while combating terrorists. In the present context, the Ministry of Home Affairs has the leading responsibility to maintain law and order in the country. In this situation, NA does not lead the unified forces.” Nevertheless, the NA is widely believed to have played a leading role in decision-making, through the National Security Council and through the Unified Command structure - made up of the NA, APF, NP and National Intelligence Department (NID). It is understood that the Ministry of Home Affairs was not kept informed of every military operation planned by the Unified Command heads during this period.

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<sup>51</sup> State Cases Act, Sections 7 and 9; and State Cases Regulation, Rule 4 (5) and (6)

<sup>52</sup> Basic Principles, Principle 25

This lack of clarity was often reflected at the district level also, where District Security Committees chaired by the CDO and made up of NA, APF, NP and NID took daily decisions about handling demonstrations. In spite of the Chief of Staff's affirmation that the Home Ministry (and by implication CDOs) had responsibility for law and order during the demonstrations, and the fact that CDOs, as chairs of the District Security Committees, were responsible for issuing curfews and orders to shoot under the Local Administration Act, it was often unclear who exercised ultimate decision-making power on the ground. OHCHR teams monitoring demonstrations were sometimes told by officials that the NA/Unified Command had overall operational responsibility. During the April protests, OHCHR was also informed that the NA Kathmandu Valley Division exercised control over such matters as the issuance of curfew passes. As indicated previously, procedures for obtaining written authorisation for shooting were rarely followed, and the security forces often gave contradictory information regarding whether or not shots were fired, who was responsible for issuing orders and whether or not an order to shoot had indeed been issued.

The fact that each branch of the security forces was in direct contact with their own superiors yet at the same time was supposedly following orders from the Unified Command through the District Security Committees has made it difficult to determine which institution was responsible for the violations. This has had serious consequences in terms of identifying those responsible for ordering or carrying out acts which constitute excessive use of force. Despite numerous discussions between OHCHR and APF and NP officials, the lack of clarity regarding chain of command and coordination between the security forces persists today.

### **Conclusions and recommendations**

It was clear from statements in the days leading up to 5 April that the Government of that time had no intention of allowing the planned strike and protests to go ahead. The then Home Minister, Kamal Thapa, was widely quoted in the national media threatening that the Government would take every possible measure to prevent the protests from taking place. The ban on demonstrations in certain areas, and crippling curfews (especially in Kathmandu) imposed by the Home Ministry through CDOs, and the subsequent actions of security forces, demonstrate this determination. As indicated above, the blanket bans and curfews were considered by OHCHR to be in violation of international principles and served to heighten tensions as demonstrators sought to defy the ban and exercise their right to freedom of assembly.

Policing demonstrations requires clear command and control, experienced and disciplined leadership. Police officials need to act as members of crowd-control units capable of using minimum force to enforce the law, and unresponsive to provocation from the crowd. Contrary to these professional requirements, it often appeared that the violence by the security forces was intended to deter and punish, rather than to disperse the crowds and, where necessary, isolate those demonstrators responsible for the violence.

OHCHR found all three branches of the security forces to be responsible for excessive use of force, including the use of force resulting in the loss of life. The use of batons to strike blows to the heads of demonstrators, teargas fired directly at crowds, and the negligent use of live ammunition all constituted illegal and disproportionate uses of force. The use of live ammunition to control demonstrations should be a last resort and only if there is a life-threatening situation. OHCHR believes that other less extreme means could have been used in all of the situations described in this report. All three branches of the security forces repeatedly denied using live ammunition against demonstrators but OHCHR did not find any evidence in any of the cases to suggest that others may have fired shots. In many cases, it would appear that proper procedures were not followed with regard to obtaining written orders authorising the firing of shots, with contradictory accounts from security forces and local authorities as to whether or not an order had been given and if so by whom. In some

cases, in spite of the denials, OHCHR saw official reports or documents which confirmed that the security forces were responsible for a particular killing.

To this day, members of the security forces, including officials, do not recognise that there was excessive use of force during the April demonstrations. Since then, there have already been cases of police carrying out *lathi* charges aimed at the upper parts of the body to disperse demonstrations in Kathmandu, causing injuries to the head and backs of protestors. A recent incident in Sindaphulchowk District in late July resulted in the APF shooting and killing a bystander watching a demonstration from a hill.

It is essential that the authorities recognise that there were serious and repeated instances of excessive use of force during the April protests and that measures must be taken to redress this in order to prevent further loss of life or injury during demonstrations in the future. Impunity remains a key issue for human rights protection in Nepal and the security forces must be held accountable for their actions. Both the APF and NP have stated that they will not investigate cases currently under investigation by the Rayamajhi Commission. Although in some cases, the police at the local level have initiated investigations, to OHCHR's knowledge, the police have not undertaken a systematic and complete internal inquiry into the killings and the many cases of alleged abuse at the national level. Some police at the local level appear to have done so but the investigations have not been systematic or complete. In cases of deaths and injuries, full investigations should have been initiated immediately, well before the Rayamajhi Commission was set up. The lack of immediate action to investigate by the security forces has meant that vital evidence risks being lost. The failure to punish those responsible for the most egregious violations will send a message that excessive force is tolerated.

The Rayamajhi Commission has been carrying out detailed fact-finding investigations into incidents which occurred in April, including summoning senior members of the government and security forces. As indicated above, it is not a prosecutorial or judicial body. It is hoped that the recommendations of the Rayamajhi Commission will include referral to the courts of any case where there is enough information to suggest that a crime has been committed; and that its report will respect the right of those accused to due process, including ensuring that no information is published which might prejudice them in any criminal proceedings subsequently launched against them.

Chain of command responsibility for abuses is particularly important. The dual chain of command system – of security forces on the ground reporting to their own superiors as well as orders from the Unified Command via District Security Committees - served to mask and confuse chain of command responsibilities, making it easy for each security force to blame the other, and making it difficult to identify who was ultimately responsible for taking decisions as well as who should be responsible for carrying out investigations. In several cases where individuals were shot dead, OHCHR was not able to conclude which of the various security forces present was responsible (see above).

There can be little doubt that even without the ban on demonstrations and curfews, the security forces, and especially police, would have been challenged by the scale of many of the demonstrations that took place between 5 and 24 April. They were ill-equipped and ill-prepared to deal with such massive crowds especially in the last weeks. APF officials told OHCHR that many of those deployed to Gongabu and other places in Kathmandu had never been trained in crowd control or faced a demonstration before.

Both NP and APF have carried out some further training in crowd control since April. It is essential that this training is intensified and the police are fully aware of both international and national requirements with regard to the use of force, and that they are properly trained in

using teargas and firearms. Coordination between the two security bodies needs to be strengthened particularly during crowd control operations where both are present.

Professional responses to crowd control will be crucial in the context of any future electoral process which will undoubtedly give rise to difficult security situations. Even before then, with greater space for assemblies and association in the current transition and the possibility of future protests, police must be ready to intervene appropriately. Lack of intervention to deal with violent crowds and protect civilians is also not acceptable. On 19 and 20 August, by burning tyres and stone-throwing to protest against fuel price rises, demonstrators more or less brought the centre of Kathmandu to a standstill. The first day, police were not visible. The second day, police were present but mostly did not intervene. Such lack of intervention risks allowing the emergence of groups intent on undermining the peace process through violence as well as encouraging citizens to take “justice” into their own hands against those who harm them or destroy property.

As indicated previously, during the April demonstrations, the security forces were at times faced with very violent situations which needed to be contained. At times they acted with restraint, using appropriate force or standing back to allow peaceful demonstrators to exercise their right of assembly. Sometimes police officers tried to prevent abusive action by their colleagues. However, in many cases their conduct was inappropriate. In this transition phase of the peace process, and in the wake of the April protest movement, the Government and its security forces will be judged on their capacity to handle rallies and demonstrations in a professional manner which both serves to protect the civilian population from violence, and at the same time shows that they are upholding human rights principles in the carrying out of their duties.

In the coming months, police are likely to be challenged again by difficult crowd control situations. They need to be given the necessary infrastructure, equipment and training, as well as the political support to enable them to strengthen their professionalism and carry out their duties to protect and uphold the rights of citizens, including the right to peaceful assembly. At the same time, they must be given very clear instructions that abusive and excessive use of force will not be tolerated.

## **Recommendations**

The following recommendations are based on the findings of this report. The recommendations are addressed primarily to the Government and the security forces, but also to the organisers of demonstrations.

### *Restrictions on the right to freedom of assembly and freedom of movement*

- The Government should amend the Local Administration Act to ensure that its provisions relating to the use of force against protesters are consistent with international standards, and that the rights to peaceful assembly and freedom of expression are respected. It should ensure that no blanket restrictions are imposed on peaceful assemblies, and that the existing, indefinite restrictions banning demonstrations in certain areas of Kathmandu are also amended.

### *Review of the Public Security Act (PSA)*

- The Public Security Act was widely used in January and in April to hold demonstrators, civil society and political activists in preventive detention without charge or trial for weeks and in some cases months. The PSA needs to be amended to bring it into line with international standards and should not be used to arbitrarily detain individuals for exercising their right to peaceful assembly.

### *Strengthening the Nepal Police (NP)*

- As a matter of urgency, the Government needs to strengthen the NP so that it can fulfill its law enforcement duties to protect the civilian population and maintain law and order throughout the country, with full respect for human rights. This should include not only adequate personnel, equipment and infrastructure, but also the political support to perform their duties. This will be critical in terms of ensuring full respect for the rights to freedom of assembly and movement, and to ensuring that any electoral process will be free of fear and intimidation.

### *Chain of command*

- Clear rules and regulations need to be developed for the establishment and discharge of operational command of the security forces during future crowd control operations. Legally, the CDO has the overall responsibility of law and order. However, the concept and practice of “Unified Command” created operational confusion for security forces. Though the Unified Command is gradually being dismantled, its current status remains unclear.
- There should be a clear and transparent division of responsibilities among security forces, especially between the NP and APF regarding law and order duties, including reporting mechanisms in the case of incidents where force is used.
- Uniforms of the two forces should be clearly distinguishable, and all police officers should have their name tags or numbers clearly visible at all times.
- Detailed Standard Operational Procedures (SOPs) for the use of force and for dealing with demonstrations of all kinds should be drafted for each branch of the security forces taking into account the experiences drawn from policing the April demonstrations, and training on their implementation should be provided.

### *Accountability*

- The arbitrary and abusive use of force, including lethal use of force, by security forces should be made as a criminal offence under the domestic laws of Nepal.
- In breach of international human rights standards, domestic laws and regulations do not require internal investigations to be carried out when the NA, NP or APF use force, or when death or injury results from the use of force. Internal NA, NP and APF regulations should be amended to include excessive use of force against civilians as a disciplinary offence, with the death or serious injury as an aggravating factor.
- Domestic laws and regulations do not require the NA, NP and APF to submit to the competent authorities responsible for administrative review and judicial control, detailed reports regarding any deaths, serious injury or other grave consequences resulting from the unlawful or excessive use of force. As required by international standards, clear reporting procedures should be developed and employed for any use of force by security forces. The reporting procedures should be more stringent in case serious injury or death is caused by the use of force. The same stringent reporting procedures should be adopted for use of firearms regardless of any death or serious injury caused by them.
- In cases of serious injury or death caused by members of the security forces, including injuries and deaths during crowd control operations, proper review mechanisms should be

established. These reviewing mechanisms should be external and independent. This may not preclude any internal reviewing mechanisms.

- The Rayamajhi Commission is already carrying out extensive investigations into the incidents covered by this report. However, it is not a prosecutorial or judicial body. Those suspected of committing serious human rights violations should be prosecuted in the civilian courts, including those who ordered or covered up such abuses.

#### *Compensation and redress*

- In accordance with international principles, in the cases where security forces are found to have been responsible for killing or injuring as a result of excessive use of forces, victims or their families must be adequately compensated.

#### *Strict control over use of live ammunition*

- International principles stress the need to use live ammunition only in life-threatening circumstances and only after all non-lethal methods have been exhausted. The use of live ammunition for crowd control should be a highly supervised exercise and should be only utilised in situations of imminent and grave danger to life where all the other non-lethal methods of crowd control have failed. The security officers armed with firearms should be highly trained and competent professionals.
- In particular, provisions requiring written orders either prior to or immediately after the shooting should be strictly adhered to, including clear indications as to who was responsible for issuing specific orders to shoot, and, in a report-back, who fired the shots and in what circumstances.
- Rules of engagement and other provisions should be amended so that firearms and live ammunition can only be used to protect property if there is also a serious threat to human life. Using firearms exclusively to protect property when there is no threat to life is in violation of international principles.

#### *Training*

- All security forces should be fully trained on the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as well as how to implement them in practice. Refresher courses should be organised periodically.
- Training in non-lethal methods of crowd control needs to be developed to ensure that non-lethal methods are not used in a lethal way. Police officers should be trained not to use *lathis* to hit persons on the head or upper parts of the body. Those firing rubber bullets should be trained to skip-fire them in a ricochet fashion (i.e., fire against a wall or other object first), in accordance with the NP training manual. They should not fire them directly at individuals. Likewise, training needs to be strengthened in the use of teargas. It should be made clear during training that anyone who causes injury or death through the inappropriate use of *lathis*, rubber bullets and teargas will be severely sanctioned, including through prosecution as appropriate.
- OHCHR is aware that the NP has carried out some training on investigations. This training needs to be strengthened, including regarding the collection and preservation of evidence to ensure complete investigations are carried out.

### *Access for medical services*

- Medical services must be given unimpeded access to demonstrations where requested, to ensure prompt medical treatment for anyone injured. In particular, security forces should be given instructions that medical personnel should be allowed to assist injured demonstrators without fear of being threatened or beaten.

### *Protection of children*

- Security forces should be well briefed on child protection issues, including the rights of children not to be beaten or arbitrarily detained; they should be aware of social welfare organisations to which vulnerable children can be referred in case of need.

### *Duties and responsibilities of demonstrators*

- Organisers of demonstrations should ensure that those participating are aware of their responsibilities to respect the rights and property of others and avoid violence; they should develop strategies for identifying and handling demonstrators who incite or provoke violence in order to prevent such violence as far as possible.
- Organisers of demonstrations should take all necessary measures to ensure that children who participate in demonstrations do so of their own free will, and also that they are not placed in situations where they risk injury or other harm should the demonstration turn violent. Children should not be given food or money to induce them to participate in demonstrations in any way.
- Political parties should draw up a code of conduct for demonstrations which reflects the duty to respect others, and as well as including provisions which prohibit the use of children in demonstrations unless they do so of their own free will.

**PART 2**  
**ALLEGATIONS OF EXCESSIVE USE OF FORCE**  
**FIFTEEN CASE STUDIES**

This section of the report contains fifteen case studies based on detailed investigations by OHCHR staff. Thirteen of the case studies are related to 18 individuals who died in the April protest movement. One case looks at the patterns of excessive use of force in Gongabu between 9 and 11 April. The fifteenth case is that of a demonstrator killed in February. It has been included because it occurred in the context of the earlier SPA popular protest movement which was launched in January to protest at the holding of municipal elections.

As already indicated above, OHCHR's investigations included interviews with a range of sources, including national and local authorities, eye-witnesses, victims and their families. The accounts given in the case studies are based on an analysis of all the information gathered, as well as visits to the site of the incidents described and in some cases direct testimony from OHCHR staff who were present at the time. The principle aim of the investigations was to establish whether human rights violations had been committed and which branch of the security forces was responsible.

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## CENTRAL REGION

### Case 1: Tulasi Chettri, killed 8 April, Bharatpur, Chitwan District

#### *Summary*

On 8 April, shortly after 3pm, Tulasi Chettri, 32-years-old, was fatally wounded by a bullet that also injured her two sisters as all three stood together on the first-floor balcony of their home in Bharatpur, Chitwan District. At the time, the three were observing demonstrators who had fled from Nepal Police *lathi* charges and teargas intended to disperse crowds and to protect government property. Evidence suggests that the fatal shot was fired by an NP officer from the area of government buildings where they had been confronting violent demonstrators. OHCHR concluded that while the NP were justified in using force, there is no evidence to suggest that there was any imminent threat to life which would have justified the use of lethal force and that the use of live ammunition unnecessarily placed civilians at risk. An internal police inquiry has found several police officers to have been negligent by opening fire with .303 rifles.

#### *Circumstances of the killing according to information gathered by OHCHR*

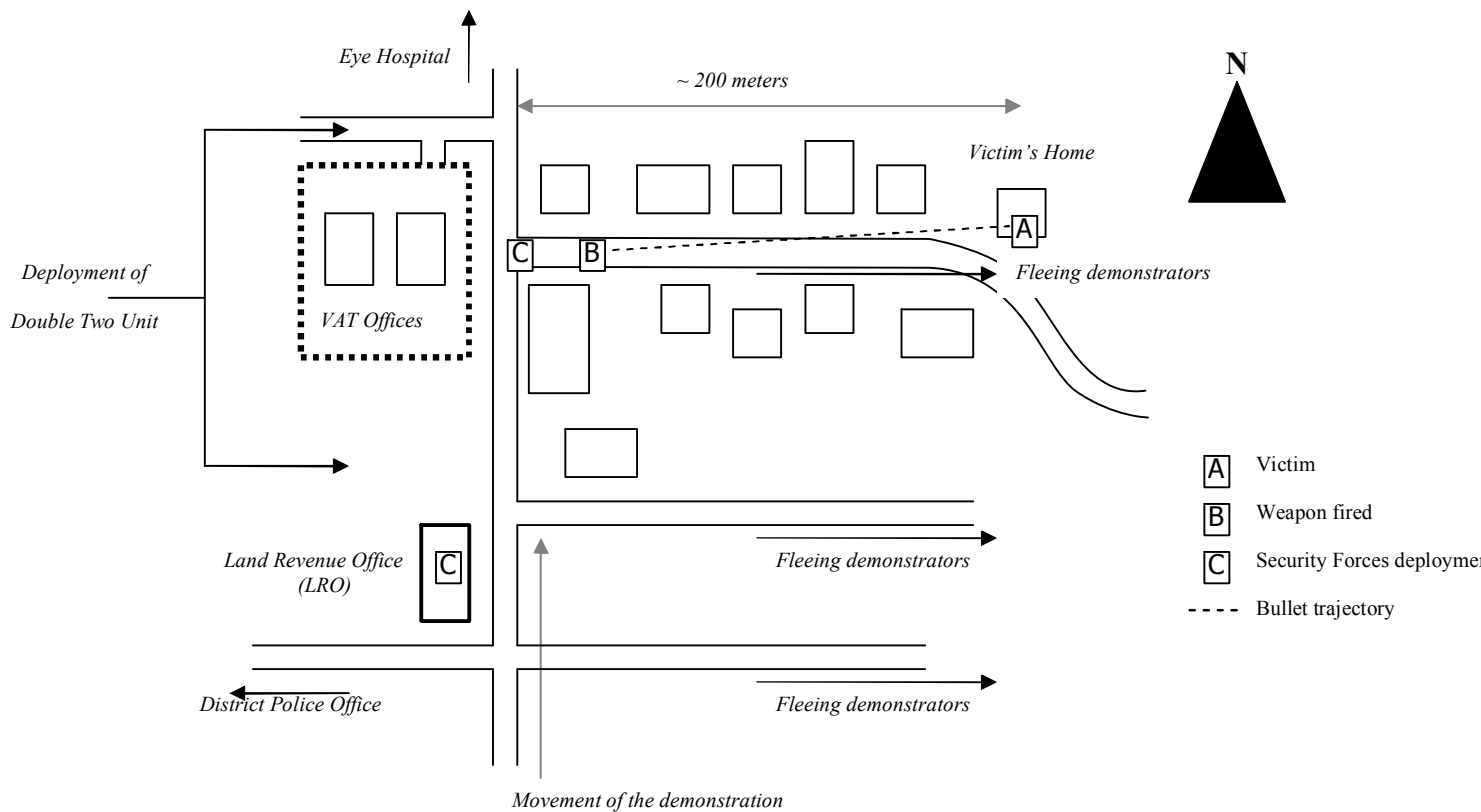
The killing of Tulasi Chettri occurred on the third day of the general strike called by the SPA. A large demonstration in Bharatpur had begun earlier in the day (several kilometres away from Tulasi Chettri's house), drawing thousands of protestors from throughout the district. The demonstration had been peaceful and under the control of local political leaders until some of the youth among the crowd attempted to destroy a public statue. The SPA leaders at this point lost control of the demonstrators. The NP used *lathi* charges, teargas and the firing of live ammunition as warning shots to disperse the crowd.

Some time later, after 2:30pm, tens of thousands of demonstrators moved towards government buildings further north and east, violating an earlier understanding, according to the NP, that this area would be avoided. In response, an NP mobile unit with the code name, "Double Two", arrived on the scene. It consisted of 20 to 25 NP commanded by a NP Inspector and equipped with *lathis* and teargas. On arrival they immediately attempted to disperse the demonstrators by blowing a whistle as a warning, followed by *lathi* charges. Many of the demonstrators fled east down a street leading from the VAT intersection in the direction of the home of Tulasi Chettri. From there, many again regrouped and challenged the NP at the VAT intersection. The NP then resorted to teargas. During these confrontations, according to police, they were overwhelmed by the numbers of demonstrators and three NP members equipped with .303 rifles were brought in to assist.

Shortly after the confrontation with the NP began along the road between the LRO and VAT offices, witnesses reported hearing shots fired from the direction of the LRO. Police acknowledged that the NA opened fire with heavy machine guns as well as the NP, who fired at least 17 rounds from their .303 rifles. There is no evidence to suggest that either the police or the NA fired any live ammunition from the Unified Command post on the LRO roof except as "warning shots" into the air in order to 'disperse protestors and to protect public property'. Witnesses heard warning shots continue for five to ten minutes.

Five to ten minutes after these warning shots ceased, the sound of several rounds of gunfire from the three NP officers with .303 rifles was heard by witnesses. Police sources acknowledge that three armed NP officials who reinforced the "Double Two" unit together fired a total of up to seven rounds. Witnesses report that at this time, demonstrators were fleeing east in the direction of the home of Tulasi Chettri. At about this time, one eye-witness

saw a uniformed official open fire with a long rifle in the direction of the home of Tulasi Chettri.



Between 3:10 and 3:15 pm, witnesses recall that Tulasi Chettri was standing with her two sisters and others on their first-floor balcony, filling and throwing bottles of water to demonstrators gathered below, many of whom were suffering from the effects of teargas. All three sisters were standing together and struck simultaneously by a bullet passing from west to east, from the direction of the main road (the VAT intersection) towards the bedroom window of the Chettri home. One of the two injured sisters recalls hearing gunfire from the direction of the main road at the time of impact. The demonstrators in the area quickly attempted to organize emergency transport to the local hospital. A witness recalls that Tulasi Chettri arrived at the local hospital between 35 and 45 minutes after the firing had started from the LRO, at approximately 3:30 pm.

Later, family members discovered a hole in the window glass in front of which Tulasi Chettri had been standing. Approximately four metres further into the house, beyond the window, an impact mark was left on the wall of a bedroom. OHCHR examined the trajectory of the bullet that went through the window glass and impacted on the bedroom wall. The trajectory leads approximately to the main intersection near the VAT office, 190 metres to the west where armed police had been positioned. There are no other instances of gunfire reported by witnesses interviewed by OHCHR. The NP have not reported any other evidence of a .303 fired by anyone other than the NP.

A bullet was discovered below the impact mark on the bedroom wall and handed to local human rights defenders, who later submitted it to the NP. Police forensic sources informed OHCHR that the calibre of the bullet is .303, the same used by the NP deployed in the area according to police. The NA and the APF were not equipped with .303 rifles. Forensic tests have not been conducted in order to determine whether any of the .303 rifles used that day by the NP fired the lethal shot.

Tulasi Chettri died of her injuries the next day at 6am, while her two sisters underwent surgery in Kathmandu, one of them for serious injuries to her left arm including destroyed nerves. She may not be able to use her arm properly due to the injury.

The NP in Bharatpur claimed that an NA team that had been deployed to the VAT Office at around 3pm discovered evidence of CPN-M explosive devices there, including a “lid” from a pressure-cooker bomb and an improvised explosive device. These alleged discoveries, and the fact that the same office had been attacked several times previously were cited by police officials as evidence that the CPN-M had infiltrated the demonstration and that the CPN-M may have been responsible for shots that caused the death of Tulasi Chettri. However, none of the witness testimony corroborates this theory. The NP officials in charge of the police response did not offer any evidence that anyone other than the NP fired shots in the vicinity of the VAT intersection during the relevant period. The NP would have been aware of any such gunfire since they were in control of this area and identifying and pursuing demonstrators considered violent and dangerous.

OHCHR believes, on the basis of the available information, that Tulasi Chettri was killed by a bullet fired by the NP. It does not believe that the use of live ammunition was justified as there was no imminent threat to life – indeed witness accounts suggest the shots were fired while demonstrators were fleeing.

#### *Post-mortem*

A *post-mortem* was conducted on Tulasi Chettri on 10 April 2006 in the Mahendra Adarsha Health Centre. The report indicates external bullet injuries on the left and right anterior chest wall as well as serious damage to internal organs. When asked by OHCHR, the doctor who performed the autopsy indicated that the bullet entered from the left side and exited from the right. This suggests that Tulasi Chettri had turned away from the demonstrators below her balcony at the moment of impact, perhaps to enter her house. Her left side would have been facing towards the west, in the direction of the main road where police were concentrated. Her right side would have been facing the bedroom window beyond which an interior impact mark and a spent .303 bullet were later discovered.

#### *Internal investigations by the security forces*

On 31 May 2006, a senior police officer from Chitwan informed OHCHR by phone that the internal police investigation which had been carried out had been finalised. Three police officers were found guilty of negligence as they opened fire with .303 rifles. Two of the officers fired two rounds each and the third officer fired three rounds. Forensic tests had shown that the bullet which killed Tulasi Chettri had been fired from a .303 rifle. OHCHR is awaiting details of the internal investigations, and the disciplinary actions taken against the said officers.

#### *Criminal prosecution*

The husband of the victim filed an FIR at the DPO, Bharatpur, on 14 April 2006 (registration number 160).

#### *Compensation*

The Chitwan District CDO and DSP apologized to the family for the incident and promised the family compensation. On 12 April 2006, the family also received the visit of a representative from the Home Ministry who also apologized and stated that the treatment of the two injured sisters would be free of charge.

## **Case 2 :Shiv Hari Kunwar, killed 9 April, Banepa, Kavrepalanchowk District**

### *Summary*

On 9 April, a large demonstration took place from midday until 7pm in Banepa, Kabrepalanchowk (Kavre) District. Between 2 and 3pm, the security forces used teargas and *lathi* charges in an effort to control a violent crowd of 3000 protestors. From 3 to 4pm, the security forces escalated their efforts by shooting rubber bullets and live ammunition. However, independent and consistent testimony states that the crowds were dispersing. Shiv Hari Kunwar, a 22-year-old businessman, was killed after being hit by a bullet in the chest. A 14-year-old boy and another civilian were seriously injured by live ammunition. A 24-year-old man was also seriously injured with a rubber bullet injury to the cheek. While recognizing that there was considerable violence at times by some demonstrators, OHCHR believes that the use of lethal force was inappropriate and disproportionate to any threat they posed. It therefore concluded that Shiv Hari Kunwar died as a result of excessive use of force.

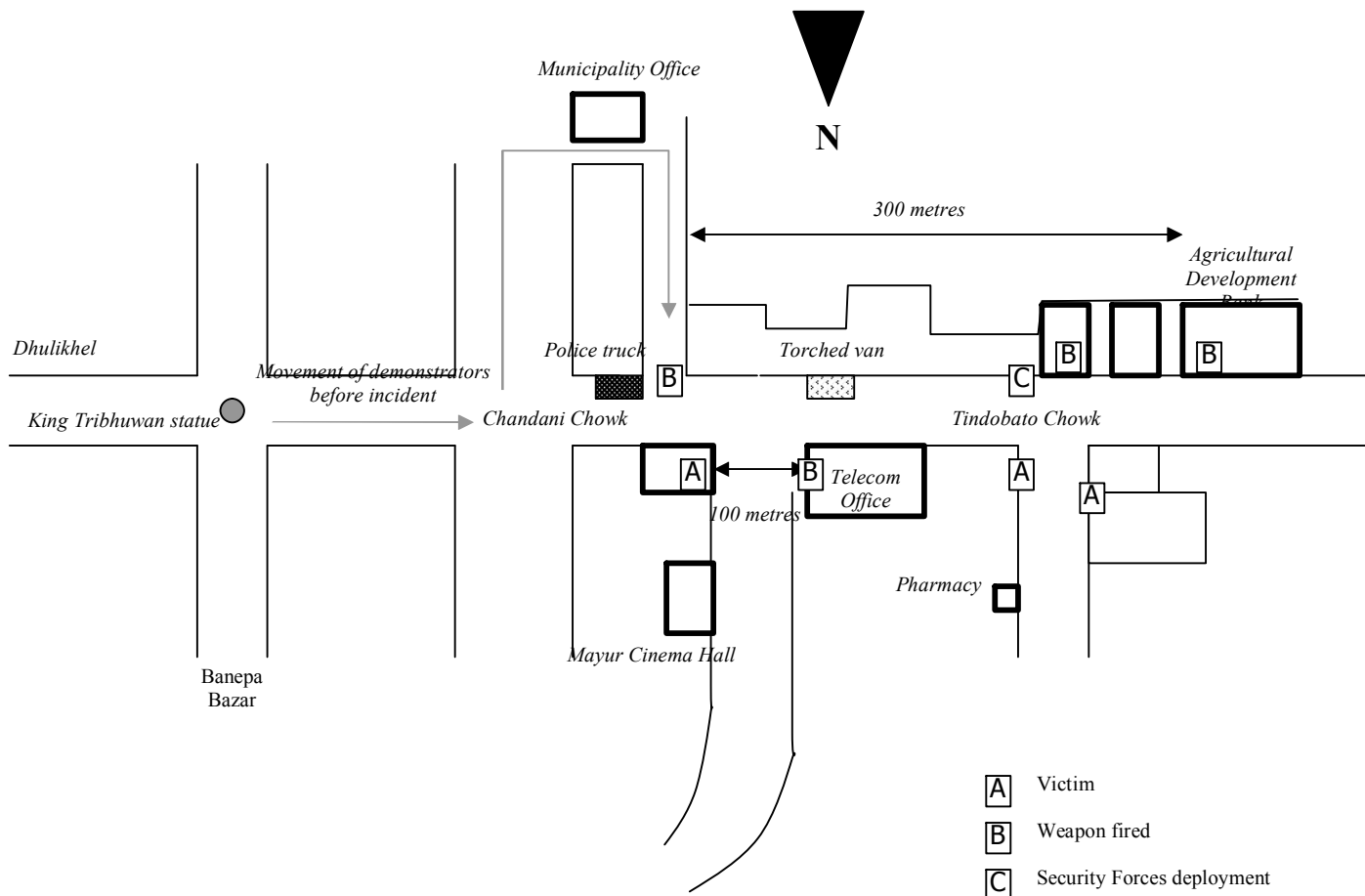
### *Circumstances of killing according to information gathered by OHCHR*

The security forces deployed on 9 April consisted of 70 Banepa and Kathmandu NP personnel, a special task force made up of 20-30 NP, and 60 NA who were deployed in several trucks around the area of King Tribhuwan's statue and the Nepal Bank to the East. The Banepa and Kathmandu police were deployed in the street along the main road, at the Municipality office, the Nepal Telecom office and Tindobato Chowk. The NP were armed with .303 rifles and riot gear, including plastic shields and helmets. The NP special task force personnel were deployed on the rooftops of the Telecom office, the Municipality office, the Agricultural Development Bank (ADB) and on the roofs of a few civilian houses (see map). The special task force had the role of protecting government buildings and property, as well as maintaining security from CPN-M threats. All security forces present on 9 April were coordinated by the local Unified Command.

The demonstration in Banepa on 9 April, unlike other demonstrations which were organized by the SPA, appeared to be spontaneous – with thousands of people from throughout the district expressing their anger at the killing of Bhimsen Dahal on 8 April in Pokhara (see Case 10). Free transportation to bring demonstrators to Banepa was provided by the CPN-M. Demonstrators included farmers, students, workers, teachers and other ordinary citizens. According to eye-witnesses, about a quarter of the demonstrators were political activists from the NC and the CPN-UML. By midday, there were two main groups of demonstrators, the first group of approximately 2,000 were on the road from Dhulikhel and another 1,000 were gathered around the Municipal Office, both groups moving towards Tindobato Chowk.

At around 1pm, witnesses who had been in the crowds moving from Dhulikhel towards the King Tribhuwan statue in Banepa told OHCHR that the group became too unruly for any leadership to exert control, with party cadres failing in their attempts to stop young demonstrators from attempting to damage the statue of King Tribhuwan as they moved to the east. Further violence erupted when the body of Bhimsen Dahal from Pokhara arrived at the Banepa Municipal Office at 2pm. Demonstrators caused damage to the Municipal Office and forcibly removed the body, facilitating its handover to his family. From 2pm onwards, demonstrators began throwing stones and bricks at the police, who responded without warning with *lathi* charges and teargas. The situation remained tense, escalating as a group of 12 police at the Telecom office found themselves surrounded by two groups of converging demonstrators, the 2,000 who arrived from Dhulikel and a group of 1,000 from the Municipal Office.

By 3pm, in response to continued stone-throwing by protestors, police continued to use *lathis* and teargas to forcefully disperse the demonstrators from the main road near Tindobato Chowk into small lanes to the north. During this period, according to the NP, protestors had set alight at least one police van, one customs vehicle and two other unidentified vehicles outside the Telecom office.



Many accounts suggest that between 3 and 4pm, the police had regained control of the situation through the use of *lathis* and teargas, and the crowds were dispersing from the Tindobato area. Despite this, use of force escalated as live shots were fired. The first shots were fired between 3.30 and 4pm. Witnesses reported shots fired by the Banepa NP stationed on the ground just west of the Telecom building, and also by five NP stationed on the roof of the Telecom building. At the time, witnesses report Shiv Hari Kunwar was standing on the roof of a three-storey building along with 22 others. Upon hearing the shots, they all lay down flat on the ground. It was not until the shots ended after approximately 30 minutes, that witnesses became aware that Shiv Hari Kunwar was not moving. He had been standing facing the main road and received a single bullet injury which entered his right arm, traveled through his chest and exited his left arm.

OHCHR has not been able to determine the source of the lethal bullet that killed the victim, and which has not, according to OHCHR's information, been found in order to determine the caliber. The NP were positioned on the roof of the adjacent Telecom buildings but the line of sight between this position and the victim is obstructed by a wall. Further to the west, NP Special Task Force police with high-powered weapons were positioned on the roof of the ADB building and also on adjacent buildings from 200 to 300 metres distant. However, OHCHR has not been able to establish with certainty that shots were fired from these positions in the direction of the victim at the relevant time.

An eye-witness who had been standing near the Telecom office informed OHCHR that at around 4pm, he saw an NP Inspector on the ground outside the Telecom building firing five rounds towards a group of people on the roof of a three-storey building. The witness later learned Shiv Hari Kunwar had been killed there. The NP standing on the roof of the Telecom office and the NP Special Task force on the ADB building were also observed firing shots.

During the 30 minutes of firing, two other civilians, including a 14-year-old boy, were injured with live ammunition at the intersection of Tindobato Chowk and a lane leading to the north. Witnesses concur that at least two rounds of ammunition were fired by the NP at this location. Witnesses reported seeing the 14-year-old boy fall down after it appeared he was shot in the head. A 19-year-old demonstrator was also hit by a bullet which passed through his back and exited from his chest – missing all vital organs and not causing serious injury.

Medical sources told OHCHR that live ammunition struck the 14-year-old boy's forehead with such impact that it fractured the skull. The bullet, however, did not enter his head. On 10 May, OHCHR was informed that the wound was contaminated, resulting in an infection which may result in semi-paralysis for life. The two-hour delay in emergency treatment in Kathmandu, due to the ambulance being repeatedly detained at numerous check-points, was considered by doctors to be a contributing factor to the gravity of his condition.

In addition to the firing of live ammunition, eight to ten NP continued to disperse demonstrators with *lathis*, teargas, rubber bullets and stones which they threw back at demonstrators. One demonstrator who had been throwing stones at police was struck in the left cheek by a rubber bullet which shattered into fragments upon impact, causing extensive bleeding. According to medical personnel, a number of fragments remain to be extracted from his face, suggesting he was shot at close range. He continues to face difficulty speaking, and may not recover sight in his left eye.

When asked about the shooting, a police official informed OHCHR that around 4pm a police inspector had received a call from another police inspector, stating that he and his subordinates were trapped and surrounded by the demonstrators at the Nepal Telecom office, with four of them injured. According to the NP, the then CDO, as head of the District Security Committee, gave the authorisation that inspectors and senior officers could use live ammunition, to be shot in the air only. The police said that the CDO at the time immediately put this in writing, and the authorization was communicated by the DSP to police inspectors on the ground. This was contradicted by the Acting CDO in Dhulikhel, who informed OHCHR that on 9 April, no written or verbal instructions to shoot live ammunition had been issued.

According to one police official in Kavre, the NP shot 42 canisters of teargas, nine rounds of rubber bullets and 36 rounds of live ammunition from .303 weapons that day. All firing occurred at the Nepal Telecom Office and Tindobato area. The NP alleged to OHCHR that the CPN-M had shot at demonstrators “in order to blame and provoke the police”. This has not been substantiated by witnesses or in any subsequent communication from the security forces.

As noted, the crowds had been gradually dispersing from police action at around 3pm. Following the shooting, most had left the area. However, once news of Shiv Hari Kunwar's death spread, and despite the curfew declared by the NP by loudspeaker at 5pm, demonstrators by 5.30pm had pushed the police from their positions and proceeded to burn tyres along the road, damage the Telecom building and police office, break the windows of the ADB and set fire to two motorbikes and a number of vehicles. The crowds dispersed at approximately 7pm.

None of the information gathered by OHCHR suggested that any party other than the NP were responsible for the fatal shooting of Shiv Hari Kunwar and the other injuries caused by live and rubber bullets and *lathi* charges. Indeed, a police report confirms that he was shot by police, who claimed that it was a warning shot that “strayed” (see below). OHCHR received credible testimony that the crowd was dispersing at the time the NP started firing live ammunition, which would have rendered the use of even warning shots unnecessary. Even if warning shots were necessary because of a perceived threat, the evidence shows that a number of shots were fired directly towards demonstrators either intentionally, or because of negligence and disregard for life. OHCHR believes that the use of live ammunition was not justified as there was no imminent threat to life.

#### *Post-mortem*

Shiv Hari Kunwar’s *post-mortem* was conducted on 9 April. The report stated that he died from injury to vital organs, noting a deep entry hole in the right upper arm, 9mm in diameter with a blackening margin. Passing through his chest, heart and lungs, the bullet exited his left arm leaving a 1.3cm hole in diameter. The bullet was not found.

#### *Internal investigations by security forces*

According to the District Administration in Kavre, one police inspector who was widely believed to be responsible for the shooting was transferred as a disciplinary measure but this has not yet been confirmed by OHCHR. The Police Human Rights Cell provided OHCHR with a written report, dated 26 April, which suggests that some inquiry was carried out though it was not clear at which level. The report states that Shiv Hari Kumar was killed in Banepa on 9 April by a “stray” shot fired by police in self-defence and to protect public property. The violence began at 11:45am, according to the report, when the body of Bhimsen Dahal was brought from Pokhara by helicopter and delivered to family members. Up to five-thousand angry demonstrators who had gathered earlier in the day destroyed property at the Banepa municipality office, the Nepal Electricity Authority office, and the District Traffic Police Office. Attempts by the NP to restrain the demonstrators were met with stones and bricks resulting in 13 injuries, two of them critical. The report states that the policemen deployed to the area were “pretty restrained”. In an attempt to reduce tensions between the police and the demonstrators, an inspector led the police team into the Banepa Nepal Telecommunications office. However, the crowd again turned on the police, “putting their life in danger. As the situation was getting out of control, the team commander asked for permission to open fire. Permission was granted to fire shots in the air under the direct command of a senior officer. Accordingly, some warning shots were fired in self-defence and to protect private property. All of a sudden, one such shot strayed and hit Shiv Hari Kunwar.” The report does not say where the shot was fired from. The time that elapsed during this sequence of events is not provided in the report.

#### *Criminal investigations*

An FIR was filed with the area police office of Banepa, Kavre District, on 10 April in relation to the death of Shiv Hari Kunwar. The case is noted as a homicide: death by bullet fired by security forces. The FIR seeks information regarding the circumstances in which Shiv Hari Kunwar was shot. FIRs have not been filed for any other cases related to this demonstration.

### **Case 3: Protests and excessive use of force, 9-11 April, Gongabu, Kathmandu District**

#### *Summary*

Gongabu is located at the northern-most point of the Kathmandu Ring Road. From 6 April, the main intersection, known as Gongabu Chowk, was the starting point for daily protest marches and rallies attended by both well-established and temporary residents of the area. The protests were organized by the SPA but the large gatherings of demonstrators were volatile and reacted spontaneously to events as they unfolded. On 9, 10, and 11 April, OHCHR observed the level and intensity of violence grow in Gongabu as the APF and NP clashed daily with demonstrators who defied the daytime curfew orders imposed from 8 April and the ban on demonstrations. Agitated protestors threw rocks and bricks at police, injuring many. While recognizing the real threat to public safety and property posed by the violent actions of many demonstrators, OHCHR - through its own presence as well as witness testimony gathered in investigations - concluded that the APF and the NP used excessive force in their responses, resulting in serious injury to dozens of civilians due to baton blows, teargas, rubber bullets, and live ammunition. The violence at Gongabu ended abruptly on 12 April, when the daytime curfew order was lifted and after strong national and international protests. Peaceful demonstrations took place at Gongabu Chowk that day without any incident and policing became more restrained and professional.

#### *Incidents of violence and excessive use of force according to information gathered by OHCHR*

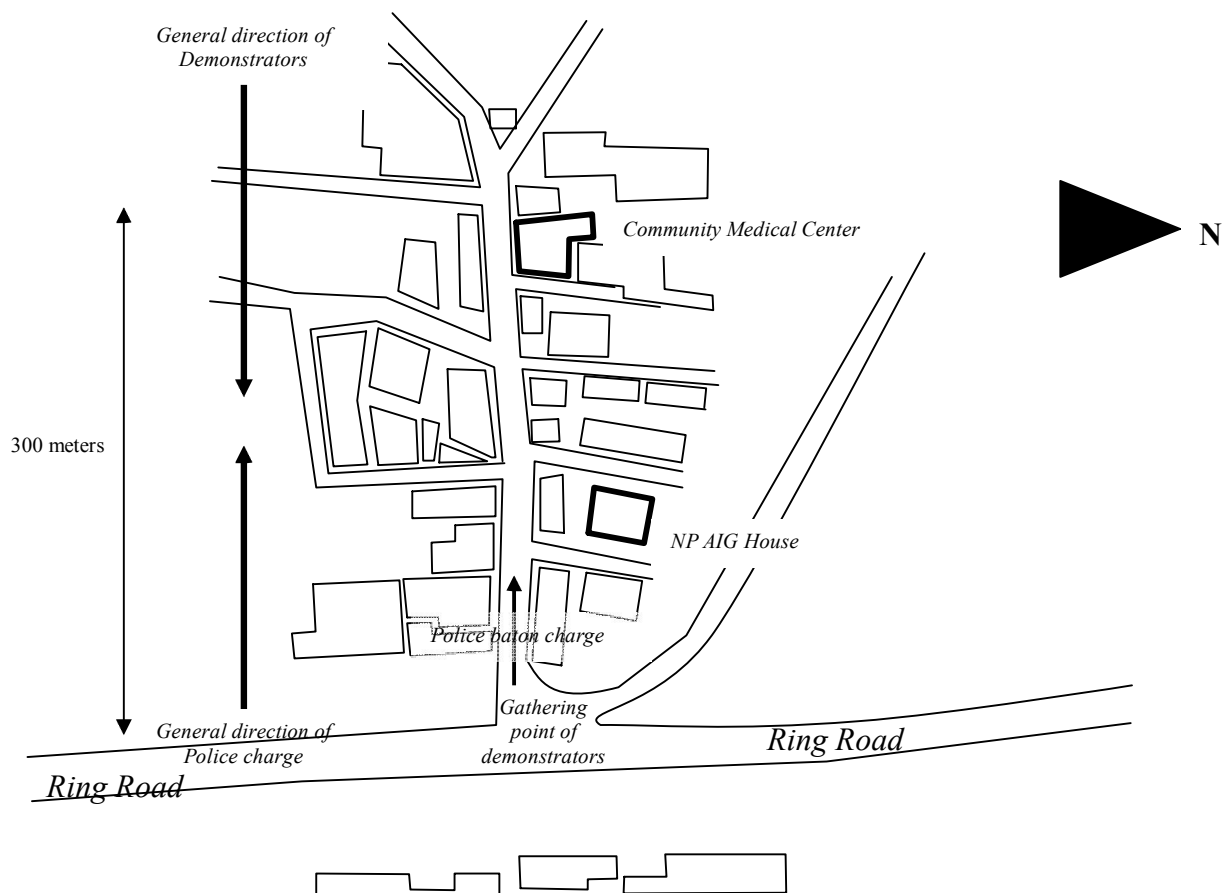
As indicated above, on 9 April, tensions between protestors and security forces began to escalate. Sometime in the afternoon, OHCHR observed the APF initiate a baton charge against demonstrators peacefully assembled on the north and south sides of the Ring Road. The demonstrators responded by throwing bricks and stones at the police and by repeatedly attempting to regroup in defiance of police orders. Following this and subsequent baton charges, OHCHR observed police pursuing demonstrators, including forcibly entering private residences. In one such instance, 15 APF officers were seen by OHCHR forcibly entering private homes, pulling individuals out and beating them repeatedly with batons, even after the individuals were under the control of the police. Some of the victims were observed by OHCHR to be bleeding profusely from head wounds. They were placed under arrest and taken back to the main road by the APF.

On 10 April, thousands of demonstrators again gathered in the area of Gongabu Chowk as a 12pm curfew came into effect. OHCHR observed no change in the tactics used by APF officers as they executed baton charges. On at least 12 occasions, the APF was seen striking victims already subdued and offering no resistance, including an 11-year-old boy. The APF continued to beat him even though he was bleeding profusely from a head wound. On the same day, 50 APF personnel were observed indiscriminately throwing stones and bricks at the windows of houses along streets earlier occupied by demonstrators. The APF were also seen firing teargas canisters in the direction of residential windows, in some instances immediately after demonstrators had run inside.

On 11 April, even though OHCHR had expressed concerns to senior APF and NP officials about the excessive use of force and the need for immediate steps to prevent it from recurring, more than 250 APF (six platoons) armed with batons, teargas, and rubber bullets were observed engaging in the same pattern of excessive use of force as on previous days. The intensity of violence on both sides only increased, as did the number of injured police and civilians. A small NA contingent was also present and had limited operational participation - in one instance keeping the demonstrators back. The NP was not present initially except at one point to deal with a specific incident at around 2pm (described below).

Clashes again began shortly after the 12pm curfew came into effect, as the APF adopted a crowd control formation directly facing demonstrators. Witnesses stated that the first baton charge was ordered without any provocation by violence from demonstrators. Demonstrators then began to throw bricks and stones at the APF as they re-established police lines. At approximately 12.30 pm, OHCHR observed the APF charge the demonstrators with batons. During the next few hours, police and demonstrators clashed with each other, with some APF throwing stones and bricks back at demonstrators.

Periodically, OHCHR observed APF personnel conducting coordinated charges into the small lanes of Gongabu, north of the Ring Road, pursuing protestors along streets and into private residences. They struck fleeing protestors with vertical swings of batons and with kicks and punches, without any apparent necessity or concern for the proportionality of force used. They did not appear focused on identifying and arresting specific individuals suspected of throwing bricks, but rather pursued and struck anyone visible on the scene. An APF SSP was observed by one witness kicking and striking at least one first aid worker during the initial moments of one baton charge although the SSP has denied this allegation.



This pattern of clashes was punctuated by a specific incident involving the firing of scores of rounds of live ammunition in a separate location beginning at 1pm. The incident began when some demonstrators attacked the home of the Additional Inspector General (AIG) of the NP, Rup Sagar Moktan, located along a narrow lane approximately 200 metres north of Gongabu Chowk. His wife, mother and at least four plainclothes NP guards were present inside the house when the attack began. There are unconfirmed reports that the attack was preceded briefly by the sound of several gunshots in the vicinity of the AIG's house. Demonstrators threw stones, ignited a tyre and threw it into the compound, cut the phone line, and attempted to set the house on fire. During this attack, some human rights defenders assisted in rescuing one plainclothes NP official from demonstrators who attacked him in the vicinity of the AIG's

home, accusing him of firing shots at the crowd. In response to the attack by demonstrators, at least three guards inside the house fired rounds of live ammunition from the ground and first floor for more than 30 minutes. A fourth guard remained with the two women in a secure location on the first floor. Following an initial period of confusion in which all security forces at Gongabu Chowk, including the NA, took defensive positions in response to the sound of gunfire, the APF was able to secure the area around the AIG's home. An NP unit arrived shortly after the APF had established control for the specific purpose of defending the AIG's home, using rubber bullets and live ammunition against the demonstrators.

In the course of its investigations into the incident, OHCHR observed at least 16 impact marks along south-facing interior walls of a residential apartment diagonally opposite the AIG's home. Residents stated that live ammunition was fired from the direction of the AIG's walled compound. At least one civilian was struck in the cheek by a metal projectile that passed through the glass of her bedroom window in another apartment building near the AIG's house. The victim recalls seeing demonstrators fleeing from the direction of the AIG's home moments before being struck. The health assistant who later removed the projectile from her cheek was confident that it was a bullet fragment. The location of the bedroom corresponds approximately to the direction in which NP personnel were firing in defence of the AIG home's, according to photographs seen by OHCHR.

The reason why the demonstrators attacked the AIG's house are still unclear. There are unconfirmed reports that the attack may have been a response to the claim, made on 9 April by Home Minister Thapa at a press conference, that CPN-M infiltrators in the SPA movement had fired a shot at the home of a "DSP" in Gongabu that day, concluding that "the terrorists are using bullets" in the context of the SPA's general strike. This allegation has never been corroborated. OHCHR was informed by some local sources that demonstrators may have attacked the AIG's home – confusing it with the alleged "DSP" home – in anger at what they considered a false accusation intended to undermine the protest movement. One police official later pointed to three alleged bullet impact marks located in close proximity on one of the walls of the AIG's house. OHCHR was not able to confirm the nature or cause of these marks. The residents of the home did not volunteer any comment in this regard.

In a separate incident, also on 11 April, approximately two-hundred metres from the AIG's home, between 2pm and 3pm, a reliable witness reported seeing approximately 15 protestors occupying the first and second floors of a building under construction 200 metres north of the main *chowk*, from which they were throwing bricks at police on the street below. Members of the NP reportedly pursued protestors into the building, and most escaped. One was captured by four or five police who were seen beating the victim repeatedly with batons and with a rifle butt while he cowered on the floor. The witness confirmed that a newspaper photograph the following day documents the same incident. The unit in the photograph was identified as NP by both the NP Valley Commander (now suspended) and the APF SSP in charge at Gongabu that day (also suspended). It shows NP officers converging around a single protestor in a red t-shirt.

Late in the afternoon of 11 April, eight civilians, including health workers, were injured in a sudden attack by police personnel at a location approximately one kilometre north of Gongabu Chowk. Up to 30 police personnel carrying batons entered at the ground floor and proceeded up a flight of stairs to the Community Health Center on the first floor, where medical staff were treating individuals wounded earlier in the day. Consistent testimony indicates that the police used their batons to strike blows indiscriminately at both medical workers and patients. No regard was shown for health care workers easily identifiable by virtue of their surgical masks or white laboratory coats. Reported injuries to medical staff resulting from police *lathi* blows included three head wounds, one hand fracture, a dislocated shoulder, and one knee contusion. It is not clear whether the NP or the APF was responsible. Both the APF and the NP have denied being involved in this incident.

Dozens of civilians were injured between 9 and 11 April, many of whom were treated in local clinics or in the Teaching Hospital. One first-aid team in Gongabu reported treating serious wounds from metal and rubber fragments which required emergency treatment in the Teaching Hospital. OHCHR interviewed some of the wounded, including two demonstrators with rubber bullet injuries to the face sustained on 11 April. One of these victims stated that police beat him and accused him of being a CPN-M cadre as he lay on the ground. A 15-year-old boy was injured by a rubber bullet in the chest and stomach reportedly fired by the NP during the demonstration in Gongabu, Kathmandu on 11 April.

Police also suffered injuries mainly from stone and rock-throwing. OHCHR was informed that 12 APF were injured during the demonstrations on 11 April. It visited several APF officers in hospital, two of whom had suffered head injuries as a result of bricks thrown at them that day.

OHCHR visited the APF Headquarters in Halchowk on 12 April and observed the condition of 43 detainees, half of whom were arrested in Gongabu on the previous day, including a 12-year-old boy and two other juveniles who shared an overcrowded single room with the other detainees. More than half were suffering from head wounds of varying severity. The 12-year-old had visible marks on his back from baton blows. He was only released several days later in spite of repeated expressions of concern from OHCHR to the head of the APF HR Cell, who claimed he was obliged to follow CDO orders to keep the 12-year-old in detention.

Between 9 and 11 April, the APF and the NP executed the orders of their superiors to break up demonstrations that were in defiance of curfews and prohibitions of the Home Ministry and additionally, on 11 April, to respond to the threat posed to the residents of AIG Moktan's home. The curfew was enforced with baton charges against assembled protestors regardless of whether those protests were peaceful or violent, and regardless of whether individual demonstrators were involved in violence or not. When violent, the actions of demonstrators in Gongabu posed a real threat to the physical integrity and life of the public and security forces. The reported injuries to the security forces are demonstrative of the threat. However, the response of the APF and the NP to this threat was uncontrolled and excessive. Rather than using minimum force to contain demonstrators when and if necessary, personnel from both the APF and NP used excessive force indiscriminately at every opportunity. Rather than maintaining a coordinated and disciplined policing presence by trying to contain the demonstrators, many APF and NP personnel appear to have been given a free hand by their superiors to pursue and punish anyone in reach especially through the undisciplined and incorrect use of batons, teargas, and rubber bullets by the police. The decision to disperse with indiscriminate baton charges did not sufficiently take into account the disproportionate risk to the safety of both demonstrators and the security forces.

APF and NP command and control over the use of force by their subordinates was clearly demonstrated in subsequent days, when OHCHR observed more professional crowd control tactics and restraint by police in the face of growing protests including in Gongabu. It was clear that the difference in police behaviour was not spontaneous, but the result of clear orders and tactical decisions by operational commanders.

In defending the inhabitants of the AIG's home, OHCHR regards the use of force by the APF and the NP as justified in principle. However, information gathered by OHCHR suggests that the use of live ammunition and rubber bullets fired directly at demonstrators may have continued long after the immediate threat to civilian life had subsided. At least one individual was shot in the face in this context. Further investigation is required to reach a final conclusion in this regard.

When interviewed separately by OHCHR, both APF and the NP senior officers denied command and control responsibility in Gongabu on 11 April, deferring to operational orders that came directly from the Unified Valley Command Post (NA, APF, NP). OHCHR believes that members of the Unified Valley Command knew or ought to have known about the escalating violence and should have taken steps to prevent it.

*Internal investigations by security forces*

To OHCHR's knowledge there has been no internal investigation by the APF into the incidents of excessive use of force in Gongabu between 9 and 11 April. After the change of government, APF SSP Madhav Thapa was suspended at least in part due to the allegations of excessive use of force by the police under his command on 11 April. The acting IGP of the APF told OHCHR that they were waiting for the result of the inquiry by the Rayamhaji Commission. Likewise, OHCHR is not aware of any inquiry by the NP.

*Criminal investigations*

No FIRs have been registered in connection with these incidents.

#### **Case 4: Hira Lal Gautam, killed 17 April, Nijgadh, Bara District**

##### *Summary*

On 17 April, Hira Lal Gautam, 28 years old, was among thousands of individuals assembled on the main road of Nijgadh as part of a demonstration to support the SPA movement. The protest began at 2pm and continued for one hour without interference from the security forces. At approximately 3pm, the NP and APF charged at demonstrators with batons when they attempted to burn an effigy of King Gyanendra. According to consistent witness testimony, within a few moments, security forces (APF and NA) began firing live ammunition without warning from the roof of the Agricultural Development Bank (ADB). At least one shot was likely fired at ground level by security forces. Hira Lal Gautam was fatally wounded by a shot from the roof of the ADB. At least five others were treated for bullet injuries.

The responsible NA and APF commanders denied to OHCHR that any shots were fired from their observation post on the roof of the ADB. However, this is contradicted by consistent testimony from many witnesses who saw no-one but security forces firing. OHCHR concluded that Hira Lal Gautam died and others were injured as a result of excessive use of force.

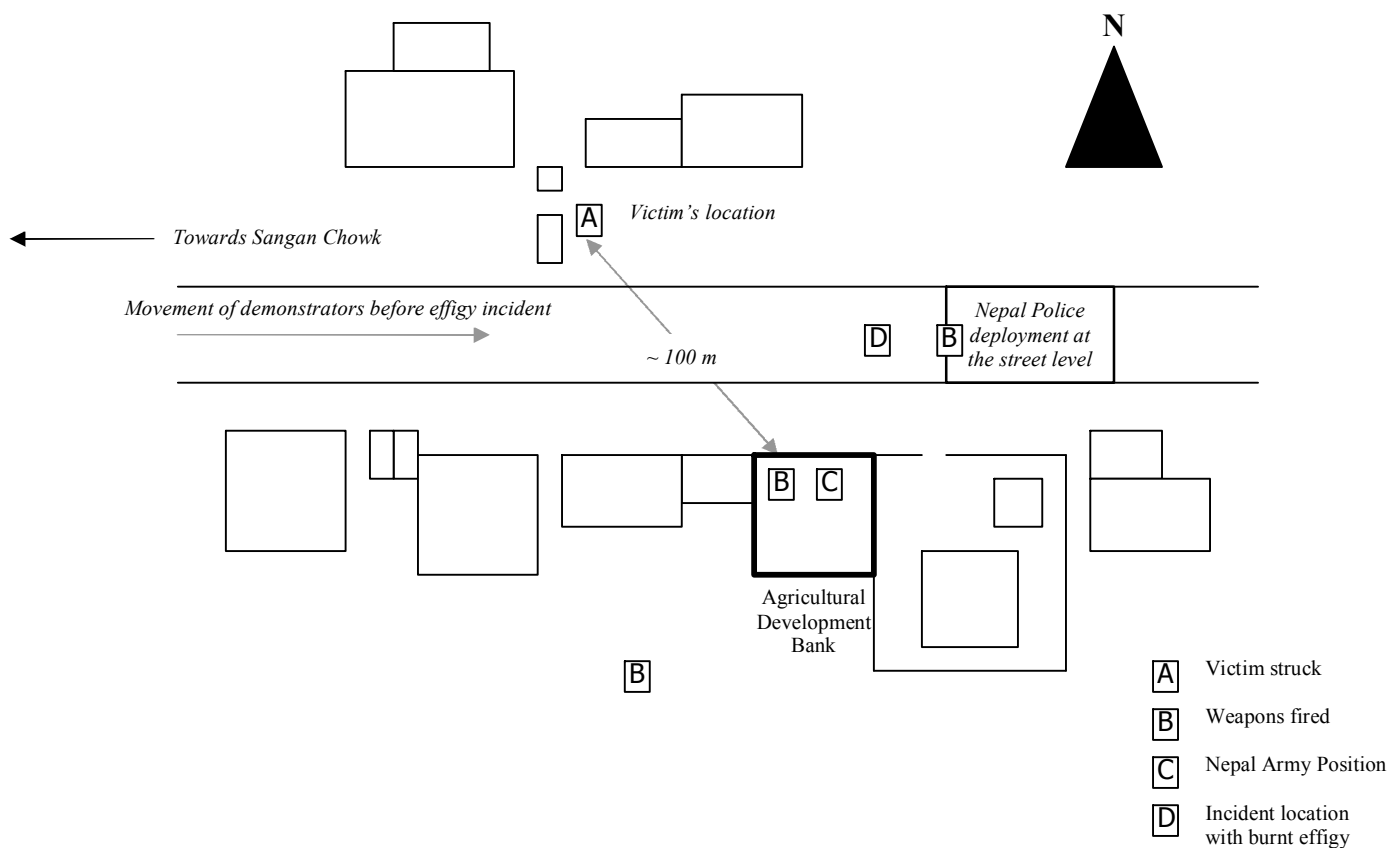
##### *Circumstances of the killing according to information gathered by OHCHR*

At approximately 2pm, approximately 10 to 15,000 demonstrators began a peaceful procession along the main highway through the centre of Nijgadh. They proceeded back and forth along a two-kilometre length of the main road. The ADB is located at the eastern end of the demonstrators' route.

The security forces posted to the ADB were at all relevant times under instructions of the NA commander from the Nijgadh Unified Command post. He maintained unbroken radio contact with his NA subordinate posted at the ADB. According to the security forces, eight APF personnel were positioned at the ADB together with 12 NA and 15 NP personnel. Some of the APF and all 12 NA personnel were positioned on the roof, while the NP and a smaller number of APF were at ground level. The NP were equipped with batons. None of the security force personnel were equipped with teargas.

At approximately 3pm, demonstrators arriving in front of the ADB (see map) attempted to set fire to an effigy of King Gyanendra. The NP positioned in this area acknowledge trying to stop the demonstrators from burning the effigy by using verbal orders and then by grabbing it and pushing the crowd back with batons. Moments after this confrontation began, live ammunition was fired above and at fleeing demonstrators.

Consistent testimony from many witnesses points to the security forces positioned at the ADB as the initial and exclusive source of gunfire. Some witnesses state that a single shot was first fired at ground level in front of the ADB. However, these witnesses could not accurately identify the source of the weapons fire. There was virtually no gap in time between the first shot and those that followed and continued for between five and fifteen minutes, according to witnesses. Available physical evidence and witness testimony suggest that all shots were directed to the north and northwest. There is no physical evidence of shots fired in the direction of the ADB building, nor are there any reports of individuals injured by shots fired toward the security forces at the ADB building.



According to a witness, Hira Lal Gautam was fatally wounded during the first few moments of gunfire. The witness saw him lying on the ground after being struck in the upper left thigh, close to the pelvis. OHCHR was unable to determine Mr. Gautam's precise movements just before he was struck. Some witnesses stated that he had been following the procession behind the effigy and blowing a conch shell. The pattern of bullet impacts on the buildings opposite the observation post on the roof of the ADB building provide compelling evidence that he was struck by shots originating from the roof. There is a pattern of bullet impact marks precisely on the buildings in front of which Hira Lal Gautam was struck and fell. The bullet passed through his upper left leg on a downward trajectory that would correspond to a shot fired from the roof of the ADB. The Red Cross provided immediate first aid and then took Hira Lal Gautam to hospital, but he died en route at 4:30pm. Ten other persons, all males between 17-50 years old, were brought to the emergency ward in Birgunj in addition to Hira Lal Gautam on the day of the demonstration. Five had sustained injuries from live ammunition. The other five suffered injuries consistent with blows from batons or other hard objects, including swelling of the chest and forehead, and cuts to the forehead and scalp.

Following the shooting from the ADB, there were continued confrontations between security forces and demonstrators, including an attempt to set on fire the ADB building with security forces inside, and also some allegations of excessive *lathi* beatings as security forces pursued fleeing demonstrators. Live ammunition was reportedly fired as warning shots, but there was no evidence to suggest that anyone was injured as a result.

The NP, APF and NA denied to OHCHR that their forces fired upon the demonstrators or that any shots were fired from APF or NA positions on the roof of the ADB. The responsible NP and APF officials claimed that, as the NP confronted demonstrators attempting to burn the effigy, presumed CPN-M infiltrators fired a heavy weapon just west of Sangan Chowk, approximately 100 metres west of the ADB along the main highway, an area from which the demonstrators had proceeded earlier before the confrontation with police. Approximately eight minutes later, a socket bomb exploded in the same area, according to the security forces.

When asked by OHCHR whether the security forces fired in response to this alleged attack by presumed Maoists or attempted to pursue the alleged infiltrators, APF and NP officials stated that there was no response from the security forces at this point, nor was there any later inspection of the area where the explosive was allegedly detonated. When asked why demonstrators would have fled west in the direction of the alleged CPN-M attack, the police officials could provide no explanation. OHCHR spoke to witnesses who were present in the area of Sangan Chowk at the relevant time and found no evidence to support the claim that gunfire or explosives were used in this area. Instead, all witnesses concur that the firing started from the position of the security forces at the ADB building, after which demonstrators fled south and west (in the direction of Sangan Chowk).

The NA officer in charge of the Unified Command at the Nijgadh post fully supported the version of events presented by the NA, NP, and APF on site, stating emphatically to OHCHR that not a single shot was fired by the security forces from the ADB building, either from the roof or at ground level. When asked to explain the contradiction of this account with the testimony of dozens of witnesses, he could offer no explanation except that the demonstration was infiltrated by the CPN-M.

An NA commander told OHCHR that at the beginning of April, he received written orders not to fire upon demonstrators without written permission. He said he repeated these instructions to the NA soldiers deployed on 17 April in Nijgadh. He acknowledged that seven rounds of live ammunition were fired on 17 April “in self-defence” by the NA while the security forces were retreating from the ADB building but stated that an investigation was underway to determine why NA personnel disobeyed orders not to shoot (see below). According to him, some demonstrators were attempting to seize NA weapons.

There is no dispute that demonstrators resisted police attempts to confiscate the effigy of the King that they were intending to burn. In the absence of any imminent threat to life, however, there is no justification for the use of lethal force. The height of some of the bullet impacts on buildings suggest that some security forces did fire only warning shots into the air. However, the number of dead and injured demonstrators shows that other security forces did not take due care or intentionally fired at demonstrators.

OHCHR learned subsequently that the APF had filed an FIR with the police confirming that security forces were responsible for firing the bullet which killed Hira Lal Gautam (see below).

#### *Post-mortem*

A *post-mortem* conducted at Birgunj Hospital on 9 April concluded that Hira Lal Gautam died due to haemorrhagic shock caused by a bullet injury. The bullet entered the front and top of his left thigh and exited the back. The bullet was not recovered.

#### *Internal investigations by security forces*

According to an NA commander, an internal investigation into this incident was initiated to establish the circumstances of the death, determine why orders not to fire were not followed, and to investigate why the use of live ammunition had not been immediately reported. OHCHR requested a copy of the investigation from the NA Human Rights Cell

An internal investigation by the NP in Bara was completed on 28 June. OHCHR has requested a copy of the report.

### *Criminal investigations*

No FIR was filed with the NP by the family of Hira Lal Gautam. However, on 9 May, APF filed a “report for legal action” which claims that, in addition to stones thrown by demonstrators, shots were fired at the security forces from the left and right of the crowd “from different weapons”. The APF report then states that “for self defence and security of the weapons, the security forces fired some rounds in the air and in doing this one of the demonstrators, Hira Lal Gautam, was hit and injured by one of the bullets and he passed away.”

OHCHR did not find any witness testimony to corroborate the allegation that shots were fired at security forces from the crowd. It believes that the gunfire by the security forces was intended to disperse the crowd and that the manner in which shots were fired was in negligent disregard for their lives.

### **Case 5 : Anil Lama, died 6 May, Chabahil, Kathmandu District**

#### *Summary*

At around 4pm on 17 April, several thousand demonstrators had gathered in the north-east of Kathmandu, intending to move towards Chabahil from Boudhanath. Among them was 48-year-old CPN-UML party member Anil Lama. Police initially charged the crowd without warning, in spite of an understanding with the organizers that they could assemble. Demonstrators regrouped and began burning tyres and throwing stones. The NP responded using *lathi* charges, teargas and finally rubber bullets. Reports suggest that Anil Lama was hit by a teargas canister, beaten by the police and fell down injured. On 6 May, he died from a cardiopulmonary arrest, with prior respiratory failure and pneumonia as contributing factors. It has not been possible to determine to what extent the inhalation of teargas may have contributed to Anil Lama's death, although medical sources suggest this is a possibility.

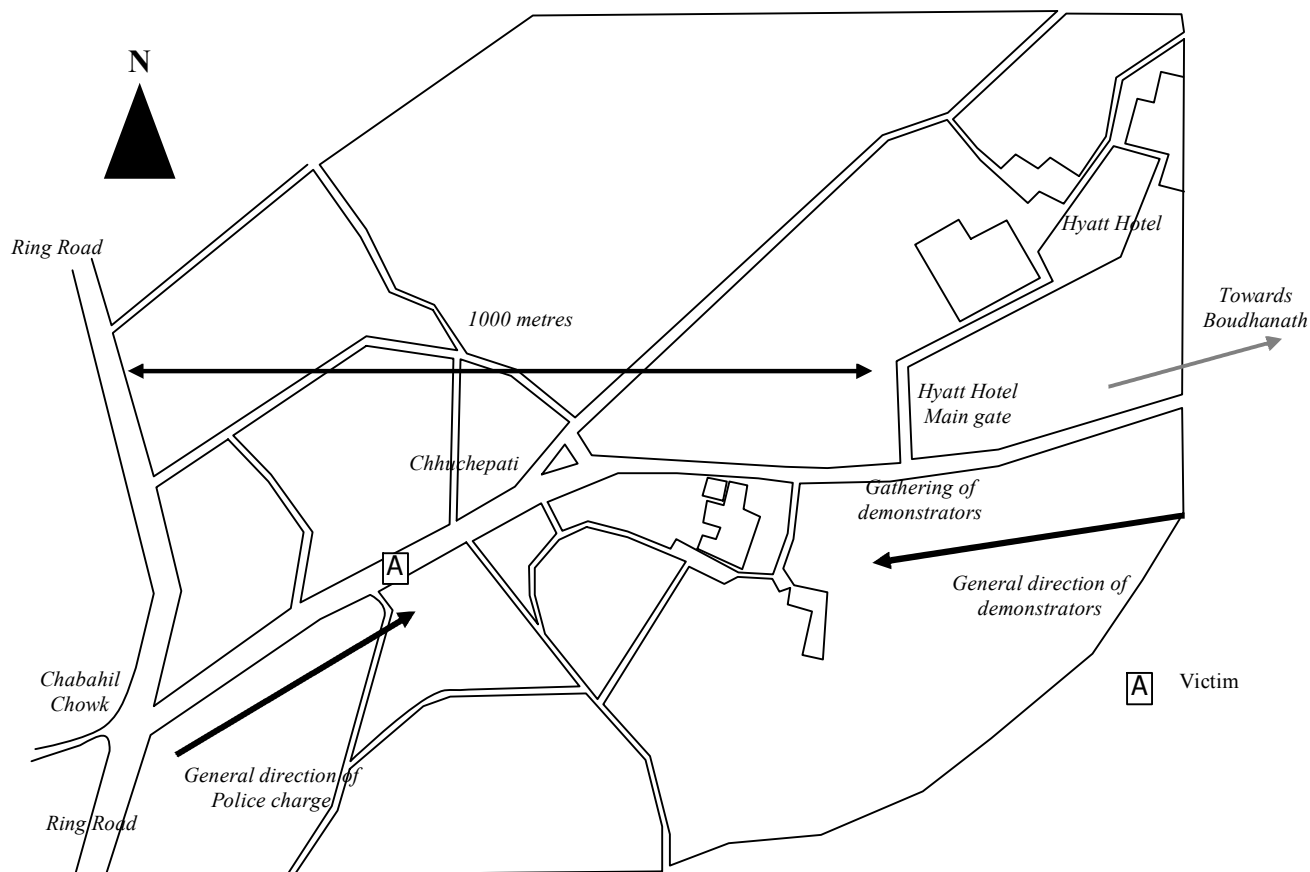
#### *Circumstances leading to Anil Lama's death according to information gathered by OHCHR*

Protests in the Chabahil and Boudha area, in the north-east of the Kathmandu Valley, occurred throughout the April demonstrations. On 17 April, the area of Chabahil Chowk remained a restricted area where demonstrations were banned. Thousands of demonstrators sought ways to avoid police lines and to assemble along other parts of the Ring Road.

Witnesses told OHCHR that at around 1pm, the NP and the demonstration leaders reached an agreement that demonstrators could proceed towards Chhuchepati and on towards Chabahil. In between Chhuchepati and Chabahil, the demonstration was halted by the NP. After about 30 minutes, however, without any warning and even though the demonstration had been entirely peaceful up to this point, some 40 police suddenly started charging towards the demonstrators, using *lathis* and firing teargas, apparently in order to prevent the demonstrators from reaching the Ring Road.

According to indirect testimony gathered by OHCHR, Anil Lama was participating at the front of the demonstration and was hit directly by a teargas canister on the chest. He fell to the ground, inhaling large quantities of teargas. He was carried to the side of the road, short of breath and unable to walk, according to these reports. By 4pm, around 40 people in the Chhuchepati area had been injured and taken to hospital. Anil Lama was taken to his home.

After this incident, the demonstrators were pushed into small side lanes to the left and right. Even though the crowd was dispersing, police continued firing teargas at them. When OHCHR arrived, the demonstrators had regrouped in Chhuchepati in front of the Hyatt Hotel and began burning tyres and throwing stones and projectiles towards the NP. The NP was throwing the stones back at the demonstrators and beating them with *lathis*. OHCHR saw police pursuing individual demonstrators at least 200m into the small lanes. At this time, the section of the road leading from Chabahil Chowk to Chhuchepati was still covered in bricks, stones and hundreds of shoes abandoned by fleeing demonstrators.



Anil Lama's condition worsened in the coming days, and on 26 April, he was diagnosed as suffering from pneumonia. He was admitted to hospital and he died eleven days later. Although OHCHR does not have enough information to assess to what extent the inhalation of teargas may have contributed to his death, the death certificate states that the inhalation of teargas caused pneumonia which ultimately resulted in his death.

#### *Post-mortem*

No *post-mortem* was done due to religious reasons cited by Anil Lama's family. A letter to this effect was signed by the NP and by the family in Boudha, dated 8 May. It further stated that it "was evident that teargas and nothing else" was the cause of death.

The death certificate of Anil Lama specifies the primary cause of death as a cardiopulmonary arrest with antecedent respiration failure and pneumonia as contributory factors. According to medical assessments, exposure to excessive teargas was a key factor which led to his death. Doctors surmised that this could have contributed to the lungs being prone to infection, leading to pneumonia. Doctors noted that Anil Lama did not appear to be suffering from any other serious physical injuries.

#### *Internal investigations by security forces*

No investigations have been initiated by the NP.

#### *Criminal investigations*

No FIR has been registered in this case.

**Case 6 : Basu Ghimere, Deepak Kami, Sagun Tamrakar and Pradhumna Khadkha,  
killed 20 April, Kalanki, Kathmandu District**

*Summary*

Basu Ghimere, Deepak Kami, Sagun Tamrakar and Pradhumna Khadkha lost their lives as a consequence of live ammunition fired by APF personnel in Kalanki on 20 April. Three of the victims died on 20 April, the fourth on 29 April in a hospital in India. A large number of demonstrators also suffered severe injuries. Curfew passes were denied to human rights organisations, media and most seriously to medical personnel, which resulted in many injured demonstrators not receiving immediate medical assistance. Some medical personnel who were on site were beaten by APF troops. OHCHR-Nepal was also denied curfew passes by the authorities and was not able to monitor the situation in Kalanki until 5pm.

Although it was not able to determine the exact circumstances in which all of the four victims died, OHCHR gathered enough information to conclude that there was no imminent risk to lives of APF personnel which would have justified the use of live or rubber bullets, nor the excessive force exercised during *lathi* charges. Furthermore, the use of live ammunition took place in an area outside the restricted area imposed by the authorities that day.

*Circumstances of the killings according to information gathered by OHCHR*

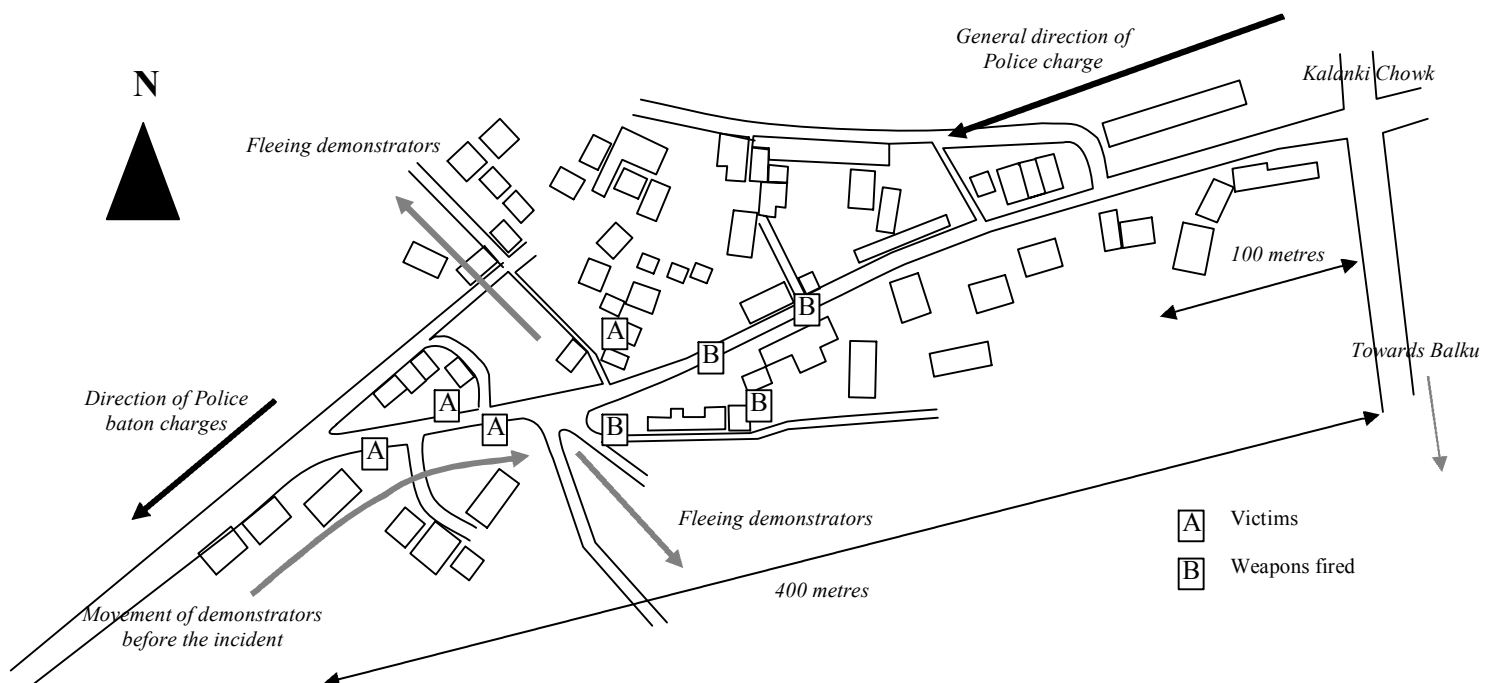
Kalanki is a neighborhood located south-west of the Kathmandu Ring Road. Throughout the April *bandh*, it was frequently the site of confrontations between security forces and demonstrators. A curfew was declared from 3am to 8pm on 20 April, with security forces deployed from early morning, comprised of predominantly APF personnel supported by a smaller contingent of NP. They were stationed at the cross-roads leading to Thankot (West), Balku (South), Balaju (North) and Kalimati (East). The NA was only deployed at Kalanki Chowk. No curfew passes were issued to international and national human rights or humanitarian bodies, media or medical personnel for the entire day. Limited OHCHR monitoring outside the Ring Road took place from 5pm onwards and some medical personnel broke the curfew and arrived on site at 3pm.

Despite the curfew, the number of demonstrators gathering at Kalanki from early morning was estimated to be between 100,000 and 300,000 persons, including a significant proportion of women and children. According to OHCHR sources, at around 12.30pm, the organisers informed the APF SSP that demonstrators intended to enter Kalanki at 2pm from Kirtipur, Gongabu, Thankot, Balabu and Satungal and move towards the area where demonstrations were banned. In response, the SSP reportedly stated that the APF would not accept this, and that he had received the order to stop the crowd from moving into the restricted area “at any cost”.

Consistent witness testimony recalled a helicopter circling low around the area at around 12.45pm. Shortly after, demonstrators started throwing stones at the APF personnel who were blocking the route to Kalanki Chowk. The APF personnel responded at around 1.30pm with *lathi* charges, pushing the demonstrators between Kalanki Chowk and Balku bridge, with witnesses hearing orders from the security forces such as: “charge them” and “hit the bastards”. The *lathi* charges resulted in severe injuries according to eyewitnesses and photographic evidence. Most policemen appeared to be aiming directly for the heads of the fleeing demonstrators. The APF did not show restraint in their beatings even when persons were seeking to flee the area, and witnesses reported seeing individuals being beaten on their heads while lying on the ground cowering from the blows, including in one case a journalist who was attempting to protect them.

Other demonstrators tried to escape by climbing onto roofs of nearby shops. The APF were seen to follow them and continue the beatings. Some individuals were observed trying to escape by jumping from the roofs of the single-storey shops. Following the *lathi* charges, the APF started firing rubber bullets. From 2.40 p.m. onwards, it is confirmed that APF started firing live ammunition, injuring several demonstrators, four of them fatally.

The shootings took place approximately 300 metres outside the area covered by the ban on demonstrations (see map). Testimonies and photographic evidence indicate that some 150 demonstrators were actively throwing stones from this area. Around 20 demonstrators were on a path heading north opposite a petrol-pump station, and approximately 30 were throwing stones from roof-tops. The initially large numbers of demonstrators had dispersed.



No witnesses reported any specific incident which may have prompted the APF to begin firing live ammunition and no-one heard any warning from the APF, mentioning only the abusive language used by the APF. Ten minutes after the shooting started, an AFP constable announced by megaphone that the police had orders to shoot anyone who dared to approach the security forces. He also yelled at the demonstrators to “run away”, adding “people, what will you gain from giving your lives?”

Witnesses state that the shooting of live ammunition continued for one hour, from at least two different types of weapons, self-loading rifles (SLR) and pistols. A number of different sources reported that at around 2.40pm, the APF SSP fired pistol shots at close range towards demonstrators. Eyewitnesses confirmed that no attempt was made to prevent this action by other police officers. Photographs of the SSP aiming his pistol towards the crowd were widely disseminated in the media. The APF SSP systematically denied shooting at demonstrators.

According to eye-witnesses and photographs taken at the time of the shooting, the APF SSP in charge of the APF operations in Kalanki was positioned between houses and a petrol pump located on the south side of the road. He first fired in the direction of a tree located west of the pump station, where a number of persons suffered live bullet injuries. Newly-made holes in the tree and two walls resembling bullet impacts were evident when OHCHR visited the

site. At that time of the shooting, several journalists and at least five persons were in the vicinity, hiding around four metres away. These witnesses stated that another APF policeman threatened to shoot the journalists who were taking pictures. Witnesses and photographic evidence attest to at least three APF police officers using SLRs, firing from the petrol pump station towards demonstrators standing at least 200 metres west of the bridge, outside the restricted area.

OHCHR documented the following deaths alleged to have resulted from APF personnel opening fire at the demonstrators:

- Dipak Kami, a 21-year-old dairy labourer from Thankot, was the first person to be killed by the APF shooting, according to several eyewitnesses. He is believed to have been shot once by the APF SSP as he was standing on a roof approximately seven metres away. Dipak Kami was identified by many witnesses as being one of the most active demonstrators throwing stones at police, recognisable due to the fact he had removed his shirt. A thick pool of blood, and one bullet hole in a wall several metres behind the blood, was visible where he had been shot, as witnessed by OHCHR.
- Basu Ghimire, a furniture supplier from Kalanki, was hit in the chest by an unidentified bullet which exited from the back of his body. Forensic evidence suggests the bullet had been fired from an SLR rifle, rather than a pistol. His body was found near the bridge on the road leading to Thankot, more than 350 metres outside the restricted area. OHCHR was not yet able to confirm exactly where he was shot and in what circumstances.
- Pradhuma Kadhka, a member of the Nepal Transport Workers Association, was injured in the lower abdomen while he was on a small path opposite the third pump station according to witnesses. He was first treated at Kathmandu Model Hospital before being transferred to a hospital in India where he died on 29 April. OHCHR was not yet able to confirm the exact circumstances in which he was shot.
- Sagun Tamrakar, an 18-year-old student, was killed by a 7.62 mm bullet that struck him in the chest. The bullet was retrieved from his body during the *post-mortem*, and is consistent with ammunition used in SLR rifles. His body was photographed lying some metres before the bridge on the left side of the road going to Thankot, approximately 20 metres from the third pump station.

The day after these incidents, families of the deceased reported being intimidated by members of the security forces, who attempted to force them to sign papers attesting that the victims were members of the CPN-M.

OHCHR received information from hospitals and medical clinics that more than 200 persons were injured by the APF actions in Kalanki during that afternoon. Some were treated in nearby clinics and health posts, while the most serious cases were eventually transferred to hospitals. In addition to those who died, four others were treated for injuries caused by live ammunition. Two boys aged 15 and 16 years respectively were hit in their legs, a 20-year-old man was injured in his hand while another 20-year-old man received a gunshot wound to his stomach.

Among other serious injuries reported to OHCHR are:

- A 30-year-old man fell and was trampled by people running over him as they tried to escape the violence and suffered a serious spinal injury: doctors report he may become a quadriplegic.
- A 35-year-old woman who tried to escape from the top of a house was chased by the APF, beaten with *lathis* and fell from a height, losing consciousness and suffering a serious leg injury. After her fall, she reportedly pretended to be dead so that the security forces would go away, which they did.
- An 18-year-old man was one of the first victims severely injured as a result of an aggressive *lathi* charge to his head and other parts of the body. He lay unattended in a large pool of blood for 15 minutes despite human rights activists' and journalists' efforts to convince the APF SSP to provide him medical assistance. The photograph of his body lying on the street led to speculation in later days that he had died but he was eventually located alive.

During the afternoon of 20 April, OHCHR received repeated phone messages from human rights activists and political leaders asking for medical assistance to be sent to the Kalanki area. Messages were relayed by OHCHR to the Police Human Rights Cell so that ambulances could be granted access. The first vehicle arrived at 3pm, and later two more arrived to transport some of the most serious cases to hospital. The lack of access to medical assistance was due to the denial of curfew passes by the authorities and active prevention of access by security forces on the ground.

In addition, OHCHR documented the case of several medical personnel from Kalanki Chowk who were badly beaten in the street by seven to eight APF personnel. The staff did not have white uniforms, but wore clearly visible identity cards.

OHCHR concluded that during the one-hour period during which the shooting occurred, there was no life-threatening risk to APF personnel which would have justified the use of live or rubber bullets, or the excessive force exercised during *lathi* charges. Furthermore, the use of live ammunition took place in an area outside the restricted area imposed by the authorities that day.

#### *Post-mortems*

A *post-mortem* was conducted on Basu Ghimire on 19 April. The cause of death is reported as "rifle firearms wounds to the chest". The report shows that there was an entry wound at the left anterior chest and an exit wound at the left posterior chest, suggesting that the trajectory of the bullet was from front to back and slightly downwards.

The *post-mortem* on Sagun Tamrakar was conducted on 21 April. The cause of death is also reported as "rifle firearms wounds to the chest." There was an entry wound over the anterior mid-chest. A bullet was retrieved just below the skin at the back of the right chest and has been submitted to the NP. The trajectory of the firearm wound was front to back, slightly left to right, and slightly downwards.

A *post-mortem* was conducted on Deepak BK on 21 April. The cause of death is reported as "rifle firearms wounds to the head". There was an entry wound at the left side of the face and an exit wound at the right temple. The trajectory of the firearm wound was left to right.

In all three cases, the autopsy request letter from the NP stated that the deceased sustained fatal firearms injuries during demonstrations at Kalanki. The results of the *post-mortems*

corroborate information on site regarding the type of weapons and locations of APF forces at the time they were shot. OHCHR has not seen the *post-mortem* of Pradhumna Khadkha who died in India.

#### *Internal investigations by security forces*

The APF SSP was suspended from service immediately after the incident. The Rayamajhi Commission formed to investigate the violations committed during the April protest movement was cited by both APF and Nepal Police as the reason why internal investigations have not been initiated.

#### *Criminal investigations*

Two FIRs were filed, one for Pradhumna Khadka, and the other for the three remaining victims. Both apparently were filed initially by the NP, and state that the victims died while participating in a demonstration. Relatives of all four subsequently gave statements. The Kathmandu District Police Office has collected some evidence from the Kalanki incident but have informed OHCHR that they will not proceed with any criminal investigation until they get orders from the Police Headquarters or Home Ministry to do so.

**Case 7: Mohammed Jahangir Khan and Chandra Bayalkoti, fatally injured 22 April, Tripureshwor, Kathmandu District**

*Summary*

At 2pm on 22 April, between 10,000 and 30,000 persons were participating in a protest rally moving from Baneshwor and Thapathali areas toward Tripureshwor, from where they were to move north towards Ratna Park. In front of the National Stadium, Tripureshwor, NP and NA lines blocked the route north. OHCHR saw the police firing teargas and rubber bullets at the crowd, and pursuing the fleeing demonstrators with *lathis*. Some police were seen beating demonstrators who were escaping into side alleys. Two of the demonstrators, Mohammed Jahangir Khan and Chandra Bayalkoti, were seriously hurt during this incident and later died from their injuries. Mohammed Jahangir Khan sustained head injuries and died in hospital ten days later on 1 May 2006. Chandra Bayalkoti was hit by a teargas canister in his chest and succumbed to his injuries on 5 May 2006.

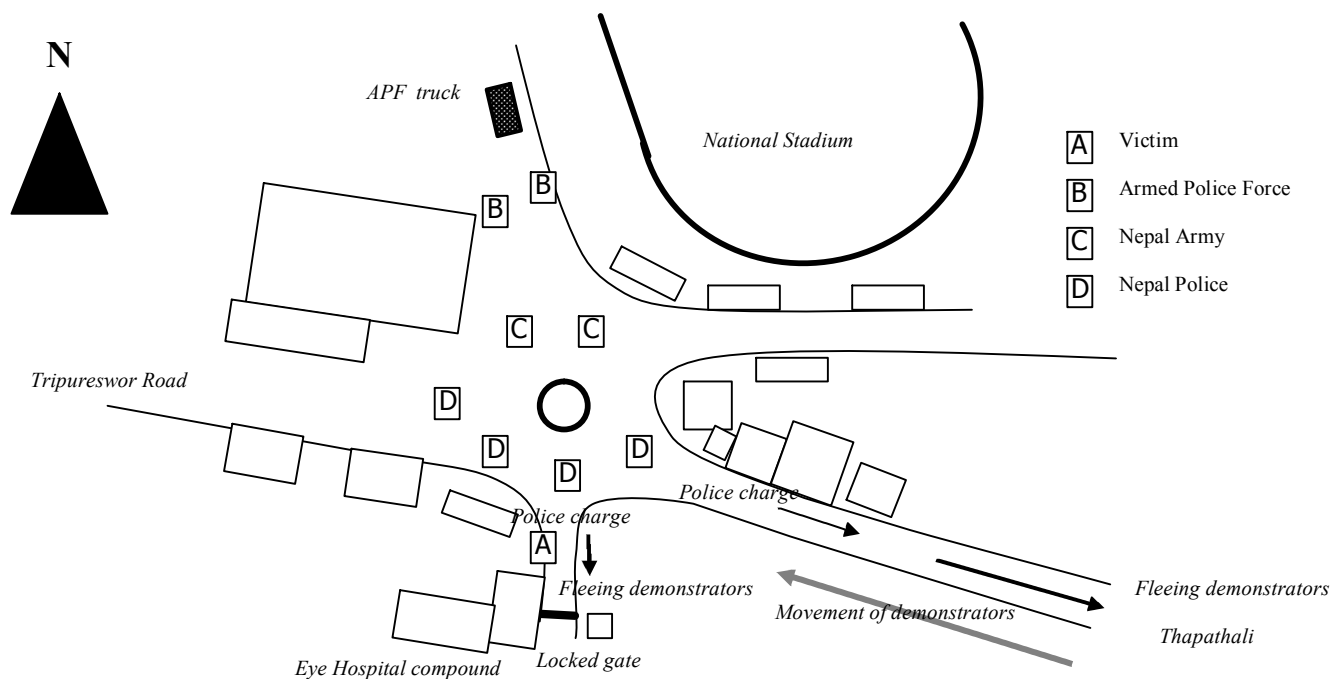
OHCHR concluded that the NP response to the mainly peaceful demonstration constituted an excessive use of force. They failed to use a graduated approach to controlling the crowd at a time when there was no imminent threat to life. The two deaths could have been avoided had appropriate crowd control methods been used.

*Circumstances which led to the two deaths according to information gathered by OHCHR*

OHCHR was already present when tens of thousands of demonstrators starting arriving at Tripureshwor. Around 100 NP formed a line blocking the protestors from moving north beyond the national stadium towards the centre of the city. Around 10-15 NA formed the second line. An APF truck with approximately 20 personnel was on site, but they did not leave their vehicle. The security forces unsuccessfully attempted to negotiate with leaders of the demonstrators and persuade them to move west towards Teku and Kalimati.

The demonstration was entirely peaceful until 2pm, when a small group of demonstrators in the crowd attempted to burn a sign-board containing a statement by King Gyanendra, while others displayed an effigy of the King. A helicopter circled low over the demonstrators and shortly after, police began shooting multiple rounds of teargas and rubber bullets at the demonstrators. No warnings or *lathi* charges preceded the shooting. Immediately after the teargas and rubber bullets had been fired the police initiated a very violent *lathi* charge including the aggressive pursuit of demonstrators who were struck by vertical *lathi* blows. The crowd tried to escape into side allies and back towards Thapathali (see map below).

Many of the demonstrators attempting to escape were trapped in a lane leading towards the Nepal Eye Hospital, Tripureshwor which ended in a locked gate. OHCHR witnessed Nepal police continuing to beat those trapped with downward blows of their *lathis*. This was corroborated by local television footage. People were only able to leave this location ten minutes later, after the police retreated. Many sustained serious injuries at this time. The police indiscriminately pursued and struck demonstrators with *lathis* regardless of whether they had been involved in the previous confrontation with police.



OHCHR saw a man, later confirmed to be Mohammad Jahangir Khan, who was trapped in the closed lane leading to the Nepal Eye Hospital, being taken away in an ambulance. He appeared to be unconscious from a head injury. Medical testimony stated that Jahangir Khan had a depressed skull fracture, i.e. the skull was open and the brain was in contact with the air, termed a “diffuse axonal injury”. This type of injury is caused by an external object hitting the skull at high velocity. He was operated on in the afternoon of 22 April. Five days later, a second internal injury began bleeding inside the brain, causing the brain to swell. On 30 April he was declared brain dead, and he died on 1 May 2006. Over 43 other individuals, including seven women, were admitted to hospital primarily as a result of blows from *lathis*.

More than 100 Nepal Police continued to push demonstrators through Tripureshwor towards the Ring Road by regularly firing rubber bullets and teargas followed by *lathi* charges. Many demonstrators were injured during the police actions at different points along the route.

The second person who died later after being injured in the demonstration was Chandra Bayalkoti, a shoe-shiner who, according to his family, was participating in the demonstrations because the extended curfews had disrupted his livelihood. According to medical testimony, it appears he was hit in the chest with a teargas canister, in addition to being struck by *lathi* blows.

He was also taken, unconscious, to a hospital around the same time as Mohammad Jahangir Khan, and was found to have suffered a cardio-pulmonary arrest which had temporarily stopped the blood flow to the brain. When his heart resumed, his brain had been severely damaged by the shortage of oxygen. He eventually died on 5 May. According to medical staff, the cardio-pulmonary arrest could have been caused by a strong blow on his chest from the teargas canister, the excessive inhalation of teargas, or both. Marks on his chest were said to be consistent with the impact of a teargas canister, as well as burn injuries on his legs. These may also have been caused by the canister, which first hit his chest at close range and rebounded off his leg. OHCHR did not directly witness the circumstances in which Chandra Bayalkoti was injured.

From its direct observations, and subsequent investigations into the two deaths, OHCHR concluded that the NP did not exhaust all non-violent methods of crowd control, nor use minimum force to control the mainly peaceful demonstrators, as evidenced by teargas and rubber bullets fired at chest height (including at close range), as well as *lathi* blows targeting the head, at a time when the protestors were already under control. The demonstrators did not

pose an imminent threat or danger to life and the police response was to pursue and punish anyone within reach rather than to control the crowd with minimum force.

#### *Post-mortem*

The *post-mortem* on Chandra Bayalkoti's body was performed at Tribhuvan University Teaching Hospital, citing the probable cause of death as prolonged teargas inhalation and indicating that liquid was also found in his lungs. It also indicates that Chandra Bayalkoti had two (5 x 7cm and 3cm diameter) burn injuries on the left leg, as well as multiple abrasions along his hands, knees, left leg and trunk.

A *post-mortem* was also performed on Mohammed Jahangir Khan. It concluded that a 10.5 cm long, blunt injury to the head was the cause of death.

#### *Internal investigations by security forces*

To OHCHR's knowledge, no internal investigations have been carried out by police. The Kathmandu District Police Office informed OHCHR that they were waiting for the results of the Rayamajhi Commission's inquiry.

#### *Criminal investigations*

No FIRs have been filed in these cases.

## WESTERN REGION

### **Case 8 : Bhimsen Dahal, killed 8 April, Pokhara, Kaski District**

#### *Summary*

On 8 April, Bhimsen Dahal, a 32-year-old civilian, was shot and killed by an NA soldier who fired at least three live bullets from the rooftop of the Nepal Telecom building into a crowd of demonstrators in the Mahendrapool area of Pokhara. There is no evidence that the NA specifically targeted the victim. OHCHR has concluded nevertheless that the victim posed no threat to the security forces or to the property being guarded by the NA, and that his killing constituted an excessive use of force.

#### *Circumstances of the killing according to information gathered by OHCHR*

According to witnesses interviewed by OHCHR, on the morning of 8 April, a group of between 1000 and 2500 demonstrators, including a large number of students, congregated in the Palike Chowk area of Pokhara, and began marching towards Mahendrapool Chowk. At approximately 12pm, between 15 and 20 NP personnel, some in riot gear, blocked the demonstrators from passing through Mahendrapool Chowk. Human rights defenders who had been monitoring the demonstration intervened and negotiated with the NP officers, who agreed to allow the march to continue toward the Chipledhunga area. However, when the demonstrators began to march, one large group went toward Chipledhunga and another smaller group tried to pass through Mahendra pool. The smaller group of demonstrators began to throw stones at the police at Mahendrapool Chowk, at which time most of the demonstrators started to scatter, leaving only about 100 demonstrators in the *chowk*. The police fired at least one teargas canister, and began chasing small groups of demonstrators. In addition to the rock-throwing, a small group of demonstrators vandalized a police post near the Telecom building, where four NA guards were stationed on the rooftop of the building. For 10-15 minutes, the demonstrators threw stones at the Nepal Police personnel, and police and demonstrators chased one another. Witnesses told OHCHR that rocks were thrown at the Telecom building, and that two windows were broken.

According to eyewitness testimony, at approximately 12.20pm, NA soldiers at one of the sentry posts located on the top of the Telecom building and facing Mahendrapool fired into the crowd on the street near Mahendrapool Chowk. A witness standing next to Bhimsen Dahal in front of the Himalayan Trade House near Mahendrapool Chowk stated he heard shots and turned around to see Bhimsen Dahal fall to the ground when a bullet hit him in the head. According to witnesses interviewed by a local NGO, the victim was not participating in the demonstrations, but had been at the Telecom building to purchase pre-paid mobile phone cards.

Witnesses interviewed by the OHCHR consistently stated that most of the crowd had dispersed, and only 50 to 100 people remained in the *chowk* at the time the shooting occurred. Several witnesses told OHCHR that they heard four or five rounds of gunfire. The positioning and angle of two of the bullet holes in the storefront across the street from the Telecom building support eyewitness accounts that the firing came from the NA guards on top of the building. In addition to a cartridge case found by a local NGO near the place where Bhimsen Dahal was shot, the police found two cartridge cases at the bottom of the Telecom building. According to a police forensic report, the casings were from a 5.56mm calibre rifle.

According to one witness interviewed by a local NGO, an ambulance arrived around 12.30pm but the crowd did not allow the body to be taken. A few minutes later, the NA, with the

assistance of the police, transported the body to Gandaki Hospital. Bhimsen Dahal was dead on arrival at the hospital, most likely as a result of massive bleeding from the head.

Shortly after the shooting, the CDO of Kaski and the NA Major who was commanding the troops on the ground, both acknowledged to OHCHR that an NA soldier guarding the Telecom building had been responsible for the shooting. Another army official also later acknowledged the responsibility of the NA, but claimed that the guard had fired to protect the police and Nepal Telecom property. He also insisted that two rounds of warning shots were fired by the NA.

An NA source told OHCHR that four NA soldiers were positioned on the roof of the Telecom building – two at each sentry post located at the front corners of the rooftop, and that between 10 and 12 demonstrators out of a group of 100 to 150 tried to break the windows and enter the building on the ground floor. OHCHR's assessment is that it would have been difficult for the NA positioned at the sentry posts on the roof of the building to see what was happening directly beneath them in front of the building. The first floor of the building was also well protected by bars on the windows and a wall surrounding the building, which would have made it very difficult for demonstrators to enter into the building even if the ground floor windows had been broken.

The family of the victim were prohibited by police, who blocked the entrance to the mortuary at the hospital, from seeing the body until 5.30pm. When the family returned to the hospital the next morning, 9 April, it was no longer there. According to an NGO, plain-clothed NA soldiers came to the hospital at 5.30am that morning, and removed the body. Contradictory information given by the security forces made it difficult to determine for some time what had happened to the body. The CDO of Kaski District later confirmed to OHCHR that the body had been taken to a hospital in Kavre District, which was the home district of Bhimsen Dahal.

#### *Post-mortem*

The *post-mortem* indicated that Bhimsen Dahal died of a gunshot wound to the head with the entry point at left temporal region and exit point at right occipital region.

#### *Internal investigations by security forces*

In April, the NA informed OHCHR that the soldier responsible for the shots was under “line arrest” at NA Divisional Headquarters, Phulbari Barrack in Kaski District, and that an investigation was taking place. OHCHR was able to interview the soldier on 21 April. On 16 May, the NA reported that the investigation was carried out in accordance with the Army Act by a court of inquiry, which forwarded the results to the 3<sup>rd</sup> Brigade (Divisional) Command. The results of the investigation should then be forwarded to NA Headquarters in Kathmandu but it is not known whether this was done. OHCHR has since made a request to the NA Headquarters for the results of the investigation, but has not received a response. The soldier himself appears to be confined to barracks doing minor tasks.

#### *Criminal Investigations*

No FIR has been filed with the Kaski District Police Office, and the police has not initiated a criminal investigation into the incident.

### **Case 9: Bishnu Pandey, killed 12 April, Parasi, Nawalparasi District**

#### *Summary*

On 12 April, Bishnu Pandey was killed during a demonstration in Parasi, Nawalparasi District. The NP has denied using live ammunition against the demonstrators and suggested that the fatal gunfire may have originated from within the crowd itself. However, eyewitness testimony and other evidence collected by OHCHR indicates that Bishnu Pandey was most likely killed by live ammunition fired by the NP, probably from two different weapons. Although information suggests that the crowd had become aggressive and confrontational, OHCHR has nonetheless concluded that opening fire on the demonstrators constituted an unnecessary and excessive use of force, in light of the fact that the shooting occurred after much of the crowd had dispersed, at a time when there was no immediate threat to life.

#### *Circumstances of the killing according to information gathered by OHCHR*

In the early afternoon of 12 April, approximately 10,000 people attended a large demonstration in Parasi and began to march towards an area that had been declared a restricted zone by the CDO. At approximately 1.30pm, the demonstrators entered Mahespur Chowk, near the restricted area, where they were confronted by over 90 NP in riot gear and armed with *lathis*. Between 15 and 20 of the police also carried firearms. The demonstrators began to pelt the police with rocks, to which the police responded by firing a water cannon into the crowd. When the crowd failed to disperse, the police fired teargas and rubber bullets, and conducted *lathi* charges. According to the NP, the APF was not deployed at the scene, and the NA was conducting only routine patrols in the area.

Demonstrators fled in a number of directions. One group of demonstrators was chased by police to Budda Chowk, where between 25 and 30 NP took position. Eyewitnesses told OHCHR that they then saw the police open fire, without warning, at a group of approximately ten demonstrators in the street. It was at this time that Bishnu Pandey sustained gunshot wounds to the head and chest in front of the Parasi Hospital. One witness told OHCHR that he saw police fire a .303 rifle in the direction of where Bishnu Pandey was standing. Other sources reported that demonstrators saw a policeman take a weapon from another policeman and fire it in the direction of where Bishnu Pandey was standing. Witnesses standing close to Bishnu Pandey reported to OHCHR that they heard shots and saw Bishnu Pandey fall to the ground. A second person standing a few metres from Bishnu Pandey was seriously injured after sustaining gunshot wounds to the chest.

When word spread that Bishnu Pandey had been killed, demonstrators set fire to the house of the District Development Committee chairman, the District Education Office and the office of the Cottage and Small Industry Department, after which the demonstrators dispersed.

A total of thirty nine persons were treated at Parasi hospital on 12 April for minor injuries, while two seriously-injured people and Bishnu Pandey were referred to hospitals in Bairawa and Butwal respectively. A police report states that Bishnu Pandey died while undergoing treatment at Butwal hospital. According to medical staff, one person was injured by a small round pellet that entered at the left shoulder and flattened when it hit bone. A doctor at a Kathmandu hospital, to which the injured demonstrator was evacuated on 13 April, told OHCHR that X-rays suggested that injuries to the lung were superficial. A female demonstrator received a four to five-inch wound to the head after being beaten by the butt of a police rifle. She was discharged the same day at her own request.

The Superintendent of Police (SP) in Nawalparasi District denied giving an order to the police to fire, and insisted to OHCHR that no live bullets were used, only rubber bullets and “long

and short range” teargas canisters, as well as 60-70 “dummy” rounds. He suggested that live bullets had probably been fired from within the crowd, although OHCHR has not found any evidence to suggest that this was the case. Notably, a police official in Rupandehi told OHCHR on 5 May that, in his opinion, the pellet found in the body of the injured demonstrator had probably been fired from an NP shotgun.

#### *Post-mortem*

According to the *post-mortem* report, Bishnu Pandey was killed by multiple bullets which entered the cranial, thoracic and the abdominal cavity. One bullet entered the lumbar region and exited his chest; and one bullet entered his head (no exit wound). Neither of these bullets was recovered. Two small round pellets, approximately 0.5cm in diameter, were also found underneath his skin in the abdominal area. OHCHR considers it probable that these were shotgun pellets, although this is not stated in the *post-mortem* report.<sup>53</sup>

#### *Internal investigations by security forces*

According to documentation provided to OHCHR by the NP, a five-member board of inquiry was created by the Nawalparasi SP on 16 April to investigate the use of weapons and ammunition by the NP on 12 April.

In its report, submitted to the SP on 8 June, the board of inquiry acknowledges that the NP used water cannons and fired teargas canisters and rubber bullets. The report specifies that the SP gave verbal orders to senior officers to deploy to prevent demonstrators from entering the restricted area, and to protect the Municipality Office, and that junior officers were deployed by a verbal order of a police sub-inspector. The report states that, after the crowd began throwing stones at the police, the SP first ordered the use of water cannons, and then tear gas, dummy rounds and rubber bullets.

The report states that an assistant sub-inspector did take a shotgun from a policeman. The report also finds that the statement given by the assistant sub-inspector that he was not on duty at the time and place of the shooting incident was false. However, no disciplinary action appears to have been taken against him.

The report concludes, however, that no live ammunition was fired by any police who were deployed that day. The report omits any discussion or examination of the cause of Bishnu Pandey’s death, where the live ammunition came from if it was not fired by police, and who might have been responsible for Bishnu Pandey’s death.

#### *Criminal investigations*

The family of the victim filed an FIR on 13 April. On 7 August, OHCHR was informed by police that the report of the police board of inquiry contains the complete details and conclusions of their investigation, implying that no further investigations will be carried out.

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<sup>53</sup> The doctor conceded to OHCHR that he had not performed a thorough examination due to the chaotic situation. OHCHR has a photograph of the two pellets retrieved from the deceased.

### **Case 10: Govinda Nath Sharma, killed 21 April, Kusma, Parbat District**

#### *Summary*

On 21 April, during a confrontation between security forces and demonstrators at Mahendra Chowk in Kusma, Parbat District, Govinda Nath Sharma, a 52-year-old bystander, was shot and killed. OHCHR has concluded that the bullet that killed Govinda Nath Sharma was most likely fired by the NP or the APF. Witnesses reported seeing NP and APF personnel firing weapons in two locations. The NP and the APF have both denied that live ammunition was used by their personnel, although statements by representatives of the NP and APF were contradictory. Further, two official letters from the Kaski DPO acknowledge that the security forces were responsible for the death. The District Deputy Superintendent (DSP) of the NP, the Superintendent (SP) of the APF and the CDO observed the confrontation from a nearby location. OHCHR found no evidence to suggest that anyone other than security forces were shooting. The fact that Govinda Nath Sharma was shot on a roof and not while participating in the demonstrations some distance away is of particular concern. Although there were violent clashes between demonstrators and security forces, the killing of Govinda Nath Sharma would appear to be the result of excessive use of force as he was not posing any threat to the security forces.

#### *Circumstances of the killing according to information gathered by OHCHR*

According to eyewitnesses, in the early afternoon of 21 April, political leaders addressed several thousand demonstrators gathered in the street near Mahendra Chowk. At least 17 APF officers were deployed in Mahendra Chowk, guarding a statue of King Mahendra, and 30 NP officers were guarding the road on the southern side of the *chowk*, leading to the District Administration Office. The APF and the NP were also deployed on a hillside, known as Kalika Park, approximately 100 metres from the *chowk*. The SP of the APF and DSP of the NP were both in Kalika Park, observing the situation as it evolved. They were joined by the CDO at least twice during the afternoon. Some NA soldiers were also seen patrolling around the area, but were not involved in securing the *chowk*.

After the leaders of the demonstration delivered their speeches, a group of demonstrators attempted to destroy the statue of King Mahendra. The APF and the NP then charged the demonstrators with *lathis* and the NP fired teargas from both the *chowk* and Kalika Park. The confrontation between demonstrators and the police lasted for several hours, with some witnesses reporting that the crowd dispersed and then reformed at least once, some distance from the *chowk*. According to several eye-witnesses, demonstrators to the north and east of the *chowk* were throwing stones and bottles at the NP and the APF in the *chowk*. After the crowd re-entered the *chowk*, the APF and the NP again charged the demonstrators with *lathis*, dispersing the crowd, which moved east. Some demonstrators then turned down a road that branched off to the north.

Shortly after 4pm, Govinda Nath Sharma, who was standing with eight to ten other people on the roof of his house (a two-story building about 180 metres from Mahendra Chowk), was struck by a bullet. Witnesses told OHCHR that they heard several gunshots just before he was struck. The same bullet then struck a second witness, standing directly behind him, passing through his arm. The bullet was not recovered.

Govinda Nath Sharma was transported by ambulance to hospital, where he died on 25 April. A doctor confirmed to OHCHR that he was struck by a single bullet which entered between his ribs, damaged his lung and liver, and exited his back. The doctor added that only live ammunition, and not a rubber bullet, could have caused the injuries. The casing of a .303 bullet was found in front of Govinda Nath Sharma's house, according to one report

In addition, another person in a different location also sustained a bullet injury to the neck. Doctors were not certain whether this injury was caused by a live or a rubber bullet. Other demonstrators sustained injuries from beatings with *lathis* and exposure to teargas. A total of 24 people received medical treatment at the Kusma hospital, four of whom were admitted.

The DSP told OHCHR that the NP had been armed with shotguns, teargas guns and Lee-Enfield .303 rifles. Police officials gave contradictory information as to who had given orders to start shooting. One police official at the scene informed OHCHR that the DSP had given the order to fire teargas and rubber bullets. However, the DSP denied this, adding that the CDO had taken charge and issued orders directly to an NP inspector. The CDO admitted to having given an order to fire teargas and rubber bullets, but denied giving any order to fire live rounds. An NP official stated that an ammunition check had been conducted and revealed that teargas shells and 16 rubber bullets had been fired during the confrontation, but that no live ammunition had been fired.

The APF SP told OHCHR that 17 APF were deployed at the *chowk*, and that five of them were armed - with a machine gun, a pistol, and three self-loading rifles (SLR). He also claimed that an NP officer had authorized the NP to fire live ammunition into the air from the *chowk*. The APF SP denied giving any order to fire from Kalika Park. An ammunition check by the APF reportedly found that no rounds had been fired from any APF firearm.

Based upon information collected from various sources, OHCHR identified three locations from where the fatal shot may have originated.

*Shooting from behind a truck by the NP:* A truck was positioned at the turn-off of the north road, about 80 metres from the *chowk* and 100 metres from the victim's house. Several witnesses saw NP officers firing from behind the truck, but not in the direction of Govinda Nath Sharma's house. The NP officials denied having been behind the truck, despite photographic evidence to the contrary.

*Shooting from Mahendra Chowk by APF:* An APF official told OHCHR that 17 APF officers were deployed at the *chowk*. Two witnesses reported seeing one APF officer firing a rifle (type unknown) in the direction of Govinda Nath Sharma's house from near the *chowk*. The witnesses added that they had seen an APF colleague reprimand the officer, apparently because he had fired without receiving orders. When asked about this alleged incident the APF official denied any knowledge thereof.

*Shooting from Kalika Park:* A medical source told OHCHR that the "high velocity bullet" which killed Govinda Nath Sharma had entered from the left side, at a downward angle. This information suggests that the shot may have been fired from Kalika Park, which would have been to Govinda Nath Sharma's left, at a higher elevation.

#### *Post-mortem*

The *post-mortem* report confirms that the victim died of "internal bleeding due to bullet injury" and "gun shot injury".

#### *Internal investigations by security forces*

The APF SP informed OHCHR that an investigation had been completed on 23 May and that the written report had been forwarded to the NA and the newly-appointed CDO. The NP also submitted its investigation report to the CDO on 24 May.

A letter, dated 7 June, from the CDO in Parbat District was received by OHCHR regarding these internal investigations. The letter indicated that, according to the DPO in Parbat, the

weapons of all NP officers on duty on 21 April had been checked and it was found that no live ammunition had been fired. The letter also indicated that the APF had conducted its own enquiry and concluded that no APF officers had fired their weapons on 21 April. This conclusion conflicts with information included in a “body examination report” dated 25 April prepared by the Kaski DPO, which indicates that the victim “was injured by a bullet fired by security forces”. The NP also seems to acknowledge that the victim was killed by gunfire from the security forces in two letters it transmitted in relation to the case. In a 25 April letter from the Crime Investigation Branch of the Kaski to the hospital, requesting a *post-mortem*, it is indicated that the victim was “shot by bullet fired from security forces and was seriously injured”. In a letter of the same date from the Kaski DPO, regarding the handover of the body to the family, it is noted that the victim was “injured by the bullet from the security forces”.

#### *Criminal investigations*

Although a crime scene report was prepared and a *post-mortem* conducted, no FIRs have been filed in the case, and the police have indicated that no criminal investigation has been opened.

## EASTERN REGION

### Case 11: Darshan Lal Yadav, died 5 April, Rajbiraj, Saptari District

#### *Summary*

On 5 April, on the eve of the *bandh*, Darshan Lal Yadav died in Rajbiraj, Saptari District, while participating in a peaceful evening torch rallying organized by the CPN-UML. Darshan Yal Yadav died of a cardiac arrest in the hospital, after he fell to the ground during a confrontation between the NP and the demonstrators. At this stage there is no information to suggest that he died of anything other than of natural causes, possibly exacerbated by the stress experienced during these incidents. OHCHR does, nevertheless, believe that violently breaking up the torch rally by police without any obvious threat to the physical integrity of security forces, was a violation of the right to peaceful assembly.

#### *Circumstances of leading to the death according to information gathered by OHCHR*

On 5 April, on the first evening of the *bandh*, the UML organized a torch rally in Rajbiraj. At 4pm, approximately 40 UML cadres gathered at the UML office in Rajbiraj and walked peacefully through the city toward Thangachhi Street. According to witnesses, when the demonstrators reached there, the NP had deployed between 50 and 60 police officers to block the street from both sides. The NP began to take the torches and banners from the demonstrators, which led to fighting between some of the demonstrators and the NP. The NP tried to disperse the crowd with a *lathi* charge, which caused a stampede as demonstrators tried to escape from the NP which had blocked any exit from the street. One demonstrator with whom OHCHR spoke stated that he had been beaten four or five times with a *lathi* by an NP officer. During the confusion resulting from the confrontation between the NP and demonstrators, Darshan Lal Yadav fell to the ground by the side of the road. He was taken by other demonstrators to a nearby shop where he regained consciousness but complained of chest pains. He was brought to the hospital where he died several hours later.

#### *Post-mortem*

According to the police and medical staff at the hospital where the body of the victim was taken, a *post-mortem* was neither requested by the police nor conducted. According to hospital records, the victim was admitted to the hospital at 6.30pm and declared dead at 9.15pm, as a result of “cardio-respiratory arrest”.

#### *Internal investigations by security forces*

According to the police in Rajbiraj, no internal investigations have been conducted.

#### *Criminal investigations*

The NP indicated to OHCHR that no investigation had been conducted as the victim had died from natural causes. The CDO told OHCHR that he had not initiated any investigation into the case nor had he received any investigative reports from any of the security forces. He indicated to OHCHR this was unnecessary because the Rayamajhi Commission had taken over responsibility for the case.

## **Case 12: Rajan Giri and Suraj Biswas, killed 19 April, Chandraghadi, Jhapa District**

### *Summary*

On the afternoon of 19 April 2006, security forces fired upon a crowd of demonstrators in Chandraghadi, Jhapa District. That morning, tens of thousands of demonstrators had gathered to move towards a stadium for a rally. However, some of the demonstrators started to move towards a prohibited area and there were clashes with police, who charged the demonstrators with batons and fired teargas. When they tried to break through a barricade, NA soldiers began firing towards the demonstrators, who started to flee. Two demonstrators, Rajan Giri and Suraj Biswas, were shot dead. More than one hundred demonstrators, and twenty-three policemen were injured. Based on the available information, OHCHR concluded that the NA, and possibly the APF, used indiscriminate and excessive force by opening fire upon demonstrators using live ammunition at a time when there was no imminent threat to life that could justify the use of lethal force. It also found no information to corroborate allegations by the security forces that shots were fired from the crowd. Further investigation is required to determine whether an order to fire originated with the district administration, or with the NA. Although other sources suggested two other people were killed in the incident, OHCHR has no information to confirm this and has clarified the whereabouts of at least four people who were initially alleged to have been missing.

### *Circumstances of the killings according to information gathered by OHCHR*

According to the testimony of witnesses interviewed by OHCHR, on the morning of 19 April between 11 am and 1 pm, tens of thousands of demonstrators gathered near the Panchayat Silver Jubilee Chowk in Chandraghadi. According to the authorities, an agreement had been reached with the political parties that the demonstrators would congregate for a mass rally at the stadium on the southern edge of the *chowk*. However, the crowd moved outside the agreed area and became aggressive, destroying the Panchayat Silver Jubilee Statue, and several thousand people began to move north towards the area in which the District Development Committee (DDC) office is located, an area that had been declared a prohibited area on 18 April by the CDO.

According to some witnesses, by the time the crowd had reached the front of the DDC office, it had become very aggressive, with individuals throwing stones at the NP who were positioned there. Some demonstrators took a chair from inside of the DDC office and burned it in the street.

As the confrontation continued, the NP fired teargas shells and fired shots into the air. Some witnesses also informed OHCHR that the NP and APF were throwing stones back at the demonstrators. Several witnesses informed OHCHR that the police then charged the crowd with *lathis*. Two witnesses told OHCHR that an announcement was made using a megaphone warning the crowd not to throw stones, but it remains unclear who made the announcement. According to some witnesses, the crowd began to disperse at this point, but regrouped shortly afterwards in the Panchayat Silver Jubilee Chowk. Several witnesses informed OHCHR that the crowd was dispersed several times in this fashion, but regrouped each time.

Shortly after regrouping, a crowd of several hundred people continued to move north in the direction of the CDO office. On the way, the security forces had erected a barricade of barbed wire brought in by the NA. According to one witness, at this time several trucks of NA soldiers arrived to reinforce the NP and NA already positioned there. The officer in charge of Chandraghadi barrack and several other NA officers were present. At some point, the barricade itself was removed, although it remains unclear whether it was removed by demonstrators or by security forces, as the NP prepared to *lathi* charge the crowd. One

witness informed OHCHR that tyres were set on fire between the demonstrators and the security forces.

According to several witnesses, when the people closest to the barricade attempted to breach it, 15-20 NA soldiers started running towards the crowd firing their weapons. One witness told OHCHR that the NA shot several rounds in the air before firing at the crowd. Other witnesses told OHCHR that the NA fired directly into the crowd without warning.

After the NA started firing, a stampede occurred as the crowd began to run south toward the Silver Jubilee Chowk, past a small park where a statue of King Mahendra was being guarded by APF. Several witnesses informed OHCHR that the NA continued to pursue the demonstrators and continued to fire upon them as they ran away. Suraj Biswas was shot in the side of the head. His body was found inside the stadium situated approximately 100m from the DDC office according to the *NP* crime scene report. Some sources suggest he was shot as he was trying to climb the fence surrounding the stadium. Rajan Giri was killed by two bullets, one shot from the left, the other from the right which passed through the chest. His body was found near the statue of King Mahendra. It is not clear whether the APF or the NA were responsible for his death.

OHCHR met with hospital staff in Dharan, who treated the injured and confirmed that two people were killed and at least 12 people were injured by bullets. More than 100 others were injured during the stampede as the crowd ran from the NA gunfire. OHCHR interviews with victims indicate that both live ammunition and rubber bullets were fired. OHCHR was shown a live bullet removed from the hand of one demonstrator. One of the injured demonstrators was apparently shot with a rubber bullet to the forehead. Medical staff showed OHCHR a bullet fragment removed from one victim and identified it as having probably been shot from a "hunting gun."

Five victims informed OHCHR that they had been shot while running away. An examination of one victim, who had a bullet entry wound in the back of the thigh, corroborates other victims statements that they were being shot at while they were running away. The fact that the body of Suraj Biswas was found near the fence inside the stadium, some distance from the place where the firing began, also supports testimony that the soldiers pursued the crowd while continuing to fire. Medical sources also informed OHCHR that the Superintendent of the NP had been shot in the leg, and that by the way that the flesh had been taken off, it would appear that he had been shot from a short distance with a rubber bullet. A senior police official told OHCHR subsequently that SP had not been shot from the crowd but that he had been injured by shrapnel from an APF or NA bullet. A second police officer was injured in the eye. Both officers were airlifted to Kathmandu on 20 April for treatment.

Four other demonstrators were initially reported by NGOs as missing, but were later located. The CDO also said he had received no response to a public notice that he published asking people to come forward and report anyone missing as a result of the incident.

The accounts provided to OHCHR by the security forces are contradictory, with the APF, NP and NA command accusing one another of being responsible for firing into the crowd. Information provided to OHCHR by the NA, NP and district administration regarding who gave the order to fire and whether the security forces were deployed under the Unified Command is also inconsistent. One source told OHCHR that a meeting of the Zonal Security Committee took place on 19 April, at which time the Zonal Commissioner authorized the use of force as a last resort.

According to interviews conducted with the NA district and regional command, the NA told OHCHR that it was the NP who initially opened fire, after the SP was injured by gunfire originating from the crowd, and only after the NA received a written order from the CDO.

The CDO denied giving such an order. OHCHR has received no evidence corroborating NA allegations that gunfire came from the crowd despite interviewing a number of witnesses.

OHCHR interviewed numerous APF personnel in Jhapa District, who consistently denied that APF personnel had been deployed in the area where the shooting had occurred. The APF Eastern Command, however, acknowledged that APF personnel had been deployed to reinforce NA and NP near the DDC, and the *chowk* where the statue of King Mahendra stood, near the spot where Rajan Giri was killed. The APF Zonal Command blamed the killings on the NA and the NP. The APF Eastern Command told OHCHR that it was deployed as part of the Unified Command under orders from the NA, which contradicts statements by the APF made to OHCHR that the Unified Command was not applicable to urban areas of Jhapa District at the time.

According to NP and APF sources, the NP and NA were positioned jointly in several positions, including at the DDC office, where the NA were positioned behind a line of police. The Inspector in command of NP deployed to control the demonstration told OHCHR that the NP had to resort to using teargas and *lathis* to protect themselves from stone-throwing demonstrators, and as a last resort shot into the air but never into the crowd.

#### *Post-mortems*

According to the autopsy reports viewed by OHCHR at the DPO in Jhapa, the body of Rajan Giri was found in front of the southern gate of the park where the statue of King Mahendra is located. The body had suffered two bullet wounds to the chest and axila causing fatal heart and lung injuries. According to a report seen by OHCHR, one bullet entered the left side of the body and exited the other. The second bullet entered the right side of the body and exited on the left, suggesting he was shot from both sides. The body of Suraj Biswas was found inside the stadium with one bullet wound to the side of the forehead, causing death by injury to the brain.

#### *Internal investigations by the security forces*

The authorities have either not initiated an investigation or suspended their investigations on the grounds that this is now the responsibility of the Rayamajhi Commission. According to the CDO in Jhapa District, no internal investigation has been initiated by the district administration, despite information provided by the former CDO to OHCHR that such an investigation was underway. According to the APF, no internal investigation was carried out into the incident, and the Inspector who commanded the APF on that day has been transferred to another duty station. The SP of the NP told OHCHR that a police report had been conducted and that the results had been forwarded to the Police Human Rights Cell for submission to the Rayamajhi Commission. A police report seen by OHCHR states that the two died as a result of shots fired by the NA and the APF, who began firing when the demonstrators entered a prohibited area. The report contains no information regarding ballistic or other evidence found at the scene of the killings, which were both visited by the NP.

According to the regional command of the NA, an NA internal investigation was halted when the Rayamajhi Commission was formed.

#### *Criminal investigations*

As of August, no FIRs had been filed at or registered by the DPO in Jhapa, and the SP informed OHCHR that no criminal investigations into the incidents were underway.

## MID-WESTERN REGION

### **Case 13: Setu Sunwar Bishwakarma (BK), died 18 April, Nepalgunj, Banke District**

#### *Summary*

Setu Sunwar Bishwakarma (BK), a 25-year-old woman and mother of three young children from Bageshwary VDC, Banke District collapsed during a demonstration in Nepalgunj on 18 April. It is thought she suffered a respiratory arrest, possibly as a result of inhaling teargas during the demonstration. Without the results of a toxicology test to establish whether or not the level of teargas in the victim's body was high enough to be fatal, it is not possible to draw definitive conclusions about the cause of death on the basis of the information currently available. Nevertheless it is believed that the sharp inhalation of teargas could have contributed to her death. OHCHR witnessed police firing teargas at very close range in contravention of safety requirements.

Although OHCHR is unable to conclude whether or not Setu BK died as a result of the excessive use of force, a broader investigation of the response by the police during the demonstration in which she participated was undertaken. While there was violent conduct by some of the demonstrators, OHCHR concluded that the firing of 102 rounds of live ammunition and rubber bullets, reportedly without orders, causing bullet injuries to four people including a 14-year-old boy, constituted an excessive use of force.

#### *Circumstances leading to her death according to information gathered by OHCHR*

OHCHR officers who were present monitoring the protests in Nepalgunj on 18 April estimated that there were between 40,000 and 60,000 participants in the demonstration. OHCHR monitored the majority of the demonstration retreating inside for only ten minutes (3.05-3.15pm) due to the effects of teargas. According to police, there were 40 NP deployed who were joined by another 36 when the demonstration turned violent. There were no APF or NA present. Eighteen police were armed with .303 rifles and shotguns, the rest were armed with *lathis*, according to police.

The demonstrators were initially peaceful. At approximately 2.30pm, there were about 70 police guarding the monument in the centre of Gyanendra Chowk. As the demonstration approached, large stones and bricks were thrown by protestors at a billboard with King Gyanendra's name on it and demonstrators vandalized a police car parked near the *chowk*. Despite initial stone-throwing, the police at the *chowk* did not respond, except to urge protestors to continue on their route, which the protestors refused to do. As stone-throwing continued, demonstrators managed to topple the billboard and also tried to push through the police cordon. The police responded by striking the demonstrators with batons, resulting in their retreat. The demonstrators then surged forward, throwing large stones and bricks, retreating again when the police charged with batons. This pattern repeated itself a number of times until 2.50pm.

At 2.50pm, the situation escalated as the protestors succeeded in breaking through the police cordon and taking over the *chowk* monument. The police at the *chowk* retreated into a side road to the east and the open space to the north of the *chowk*. Another group of police approached the *chowk* from the west. Demonstrators vandalized and placed political party flags on the *chowk* monument. At approximately the same time, and without a clear warning or orders, the police responded by firing teargas followed by gunfire. Video footage shot by a journalist and seen by OHCHR shows that at least one police officer aimed his gun laterally, although he was not shown shooting.

The then CDO maintained that he had not given orders to the security forces to fire live ammunition. A police official stated that no-one gave an order to fire and that the police fired of their own volition. He explained that because the police were coming from different directions (west, north and south), there was a lack of coordination and communication between the commanders and the units. He also said that the police were scared and responded by firing into the air. The new Acting CDO subsequently reported that officially there has been no action taken against the police for firing without orders.

OHCHR witnessed one of the protestors picking up a canister of teargas and throwing it back at the police. The police were estimated to be between five to 20 metres away from the crowd when firing both teargas and bullets. At 3.05pm OHCHR monitors retreated into a building due to the effects of the teargas, which was being fired in some cases at very close range. Firing continued until around 3.15pm, when the level of violence tailed off, the crowd dispersed and the police regained control of Gyanendra Chowk and reformed their cordon. Demonstrations continued throughout the afternoon and subsequent to the police deciding to retreat from the *chowk*, it was eventually destroyed.

One witness interviewed by OHCHR, who was around three to four metres behind Setu BK, confirmed that police fired teargas at around 2.50pm into the crowd. The witness arrived at a small water stall set up along the route just after Setu BK, who was sitting on the ground. Setu BK told the witness that she could not recognize her as she had teargas in her eyes. She was taken to hospital where she was treated by six doctors. According to interviews with medical staff, Setu BK was going into respiratory arrest upon arrival and she was immediately put on a ventilator. As her condition was not improving, she was referred to hospital in India. According to hospital employees who accompanied Setu BK in the ambulance en route to Lucknow and the *post-mortem* report, she died during transfer.

A police report provided to OHCHR stated that during the course of the events, two civilians suffered bullet injuries and were taken to the Bheri Zonal Hospital for treatment: a 22-year-old man, and a 14-year-old boy. Hospital records also indicate that two others not named in the police report also suffered bullet injuries. Medical staff at the hospital concluded that the injuries were caused by live ammunition. Police officials told OHCHR they thought that the injuries occurred when the bullets rained down after being fired in the air.

By the end of the afternoon, OHCHR received confirmation of 53 injured associated with the demonstration, including the four cases reported above. Other injuries sustained were the result of beatings with *lathis* to the head, chest, abdomen and ankles. Among the 53 were 19 police officers. The CDO assured OHCHR that only the minimum necessary force in accordance with international standards on the use of force and firearms was applied, and further claimed that any gunfire up to that point had been rubber bullets or live firing in the air.

According to police reports, two police officers sustained serious injuries at the demonstration and were hospitalized in Birendra Police Hospital in Kathmandu for two months. The police further maintain that the DSP incurred damage to his ankle when he was beaten by demonstrators with sticks and stones, and was not able to work for two months. Sixteen other police officers sustained minor injuries as a result of being hit by stones and by demonstrators as they were rushing forward toward the *chowk*.

Police reports also indicate that a total of 102 rounds of ammunition were fired, which included live ammunition (96) and rubber bullets (six). According to the DPO investigation, the total ammunition used at Gyanendra Chowk included the following: 38 shotgun cartridges, 58 .303 rifle rounds, six rubber bullets, 47 rounds of teargas (fired) and five teargas grenades (thrown). The police confirmed that all .303 rifle and shotgun rounds were live ammunition. A police official maintained that the police fired in the air and not at the

crowd. He reported that two types of gas canisters were used: short-range and long-range canisters. OHCHR was not able to confirm the exact nature of these canisters and their possible effect on people's health.

#### *Post-mortem*

The *post-mortem* on Setu BK was conducted by the Bheri Zonal Hospital on 18 April. The *post-mortem* stated that the victim's blood and viscera samples were sent for toxicology reports and examination and that the cause of death would be ascertained after the forensic lab reports were completed (see below). Medical sources did, however, inform OHCHR that her lungs were filled with excessive fluid/froth and it was likely that she choked to death. One of the doctors indicated that the inhalation of teargas can produce excessive salivation and it is possible that this was the cause of the excessive fluid in her trachea and lungs.

#### *Internal investigations by security forces*

According to the Police Inspector, there have been no internal police investigations conducted.

#### *Criminal investigations*

The police started an investigation into the death of Setu BK on 19 April, the day after the demonstration after filing an FIR registered under number 202. As part of the investigation, viscera samples taken during the autopsy of Setu BK were forwarded to the Central Police Science Laboratory in Kathmandu on 26 April. The investigating officer had asked for verification of the presence of poison or poisonous gas including teargas in the viscera. When OHCHR met with laboratory staff on 5 May 2006, it was told that the laboratory does not have the facility or expertise to test for poisonous gas in viscera and that it will be impossible to ascertain whether teargas is present and if so, which type of teargas was present in viscera. As of 21 July 2006, the Nepalgunj police had still not received information on the results of the tests from Kathmandu. The only other steps apparently taken as part of the investigation were interviews with police officers who were there on the day. The NP did not interview other witnesses or conduct a site visit after the incident.

#### *Compensation*

Although not the result of criminal investigations, two to three days after she died, the then CDO informed OHCHR that the DAO had provided compensation to Setu BK's family, and especially for her three sons. OHCHR confirmed that the money has already been paid.

#### **Case 14: Yam Lal Lamichane, fatally injured 20 April, Gulariya, Bardiya District**

##### *Summary*

Yam Lal Lamichane, a 55-year-old member of the CPN-UML from Gulariya, Bardiya District was shot in the leg by police and also sustained severe head injuries while participating in a large demonstration in his home town on 20 April. At the time, he appears to have been assisting two others who had just been shot. After being taken to a local hospital he was transferred to a hospital in India, where he was declared dead on arrival on 21 April. The cause of the head injuries sustained by Lamichane has not yet been established.

OHCHR found that the use of force by the police leading up to their use of firearms was both necessary and proportionate for appeasing and dispersing the increasingly violent crowd. It is noted that seven police officers were also injured. However, the subsequent firing of live ammunition by the police and possibly the NA on demonstrators was not proportionate to the level of threat posed by stone-throwing demonstrators. At the point when the police commenced firing, they had retreated inside the District Administrative Office (DAO) compound and there was no imminent threat of death or serious injury to themselves or others. OHCHR therefore concluded that police used excessive use of force.

##### *Circumstances of the killing according to information gathered by OHCHR*

The SPA-organised demonstration on 20 April started at around 12pm, with many thousands of protestors gathered at Radhakrishna Chowk, in front of the DAO. Twenty police officers armed with batons and plastic shields and five police officers carrying firearms including shotguns and .303 rifles were deployed outside the main gate of the DAO compound. Twenty NA personnel armed with M16s were deployed inside the DAO compound. Members of the District Security Committee (DSC) were present in the CDO's office inside the DAO compound. The members included the CDO, a senior NA officer and the SP.

Between 12pm and 12.30pm, some demonstrators tried to change the notice board of the DAO to eliminate the phrase "His Majesty's Government". The police stationed outside the main gate of the DAO initially tried to stop them but then allowed the demonstrators to change the sign. Approximately 100 to 120 demonstrators then started throwing stones at the DAO. In response, the police began making announcements over a loudspeaker asking demonstrators to leave peacefully, not to destroy anything and not to target the police. The police told OHCHR that they also spoke to local leaders asking them to calm the crowd down.

When this did not have any apparent effect and the crowd continued to throw stones, the police charged the crowd with batons. The crowd scattered, but then reemerged at the DAO, throwing stones in increasing numbers. At this point, the police baton-charged again and this pattern repeated itself many times, during which time the police continued to make announcements over the loudspeaker.

At around 2.30pm, according to the CDO, the DSC authorized the police to fire teargas and, if needed, shots in the air. The CDO communicated this decision to the SP, who gave orders to police officers to fire teargas to try to disperse the crowd. Teargas was initially fired from outside the main gate of the DAO compound. The police then retreated inside the DAO compound and teargas was fired from the stairs leading to the rooftops of shops making up the front wall of the compound. According to one police officer, after the police retreated, some of the crowd attempted to force their way through the main gate of the DAO compound but were unsuccessful. OHCHR was not, however, able to confirm this information.

At around 2.45pm, a group of demonstrators set fire to tyres outside the main gate of the DAO compound. Around the same time, the DSC declared a curfew from 3pm. Shortly after

this, one witness saw another group of NP arrive in the *chowk* and heard them making announcements to try to persuade the crowd to be peaceful as well as giving warnings that they would start shooting.

A police officer told OHCHR he gave orders to fire in the air at around 3pm. According to him, four NP fired shots in the air from inside the DAO compound. The crowd scattered again and some police emerged from the main gate of the DAO compound into the street. The senior NA officer said he gave instructions to his personnel to leave the DAO compound at around this time. The NA exited the main gate of the compound, keeping close to the walls of the shops that make up the front wall of the compound. Both the police and the NA were then present in the street in front of the DAO compound, between the main gate and the northern corner of that compound.

The police and the NA maintain that no shots were fired by them subsequent to their exit into the street. This claim is, however, contradicted by witness statements and physical evidence collected by OHCHR. According to witnesses nearby, Yam Lal Lamichane was about thirty metres away across from the northern corner of the DAO compound when teargas was being fired. People were bringing water from inside a nearby house and Yam Lal Lamichane was using this to help people whose eyes were stinging. One witness stated that when the NA emerged to join police officers in the street, between the main gate and the northern corner of the DAO compound, the NA and/or the police at that location started shooting in the air and laterally. Two men standing in the doorway of the house about one metre away from Yam Lal Lamichane were shot in the leg. Witnesses reported that Yam Lal Lamichane was shot three or four minutes after these two men, as he was trying to help them. Although it is not known whether these shots were targeted, one witness reported that some demonstrators were throwing stones from the side of the street where Lamichane was located. It is possible that the shots were aimed at these demonstrators.

Shortly afterwards, the NP announced over loudspeakers that a curfew had been declared. The level of violence tailed off and the police emerged to take control of the *chowk* as the crowd dispersed and Lamichane was taken to hospital.

During a subsequent visit to the site of the killing, OHCHR found what appeared to be bullet holes in the metal canopy of a shop at the northern corner of the DAO compound. The bullet holes were in sets of four or five that formed lines. The form of the metal sheet surrounding the holes indicated that the holes were made by bullets being fired from below the canopy upwards. The pattern of the holes also suggested that they were made by bullets from an automatic firearm. These placement of these holes is consistent with witness statements that the police and/or the NA were firing shots in the air from that location. As only the NA were carrying automatic weapons, it is likely that the NA fired the shots that created the holes.

OHCHR also found three bullet holes in a shop on the same street and about twenty metres away from where Yam Lal Lamichane was shot: one at about eye-level in the front shutter of the shop; another at about eye-level in a bag hanging on shelves in the middle of the shop and a third just above eye-level in the back wall of the shop. These bullet holes formed a line and appeared to have been made by the same single bullet. They indicate that there was lateral firing from somewhere opposite the shop and across the street from where Yam Lal Lamichane was shot, probably from in between the main gate and the northern corner of the DAO compound.

These bullet holes correspond with eyewitness accounts and provide clear evidence that shots were also fired laterally by the police or the NA, who eyewitnesses place between the main gate and the northern corner of the DAO compound at the time of shooting. According to police forensic tests, the metal fragment removed from Yam Lal Lamichane's right thigh during the *post-mortem* is a piece of a lead shotgun pellet. The police were the only party

known to be carrying shotguns on that day, and this strongly suggests that a police officer firing from across the street, between the main gate and the north corner of the DAO compound, was responsible for shooting Yam Lal Lamichane.

Furthermore, OHCHR found that information previously provided by a police official regarding the weapons carried and ammunition expended by police officers was incorrect and misleading. In particular, it was claimed that only rubber bullets were fired by police officers carrying shotguns on that day. Through subsequent interviews with the police officers concerned, however, OHCHR verified that at least one police officer deployed at the DAO fired shotgun cartridges loaded with lead pellets.

A police official and a senior NA officer told OHCHR that they heard shots during the demonstration which may have been attributable to the CPN-M. The police official said these shots were fired sometime between 2.45pm and 3pm. The First Information Report submitted to the Public Prosecutor specifies that 14 to 15 sub-machine gun (SMG) rounds were fired from the crowd. The senior NA officer said these SMG rounds came from the direction of the District Development Committee, about 600m away from the DAO. The claim that there was firing other than by the security forces was not, however, supported by NP deployed at the DAO or by any other witnesses interviewed by OHCHR. Furthermore, the authorities could not point to any concrete details or other evidence indicating that there had been firing by the CPN-M. In addition, the results of the forensic tests indicate that Yam Lal Lamichane was not shot by SMG fire.

OHCHR found that the use of force by the police leading up to their use of firearms was both necessary and proportionate for calming and dispersing the increasingly violent crowd. By making announcements and speaking to local leaders to try to calm the crowd, the police used non-violent means as far as possible before first baton charging and then firing teargas. The clear warnings issued by the police that firearms would be used were also in accordance with international standards on the use of force. At the point when the police commenced fire, however, they had retreated inside the DAO compound and there was no imminent threat of death or serious injury to themselves or others. The subsequent firing of live ammunition on unarmed demonstrators by the police, and possibly also by the NA, caused as many as 11 bullet injuries and did not minimize damage. It therefore constituted an excessive use of force.

The injury examination reports obtained from the District Health Office indicate that of the seven police officers injured at the DAO, two were injured with lacerated wounds, one on the upper lip and the other on both legs, and the other five with swelling and tenderness to the arms, legs and chest, probably as a result of being hit by stones. OHCHR confirmed that 11 people, including Lamichane, were admitted to Gulariya hospital with bullet wounds that day.

#### *Post-mortem*

The *post-mortem* on Yam Lal Lamichane was conducted at King George Medical College, Lucknow on 21 April. It states that the death was due to head injuries which brought on a coma. The report also specifies that he sustained injuries to the brain, chin and right thigh, from which a metallic bullet was removed. According to the letter accompanying the *post-mortem* report, which was sent by police in Lucknow, to the District Police Office (DPO) Bardiya, the *post-mortem* report states that the cause of death was possibly a bullet injury. The forensic tests on the bullet removed from Lamichane's right thigh during the *post-mortem* found that it is a fragment of a lead shotgun pellet. OHCHR was not able to confirm the cause of the head injuries sustained by Yam Lal Lamichane. While it is possible that they are related to him being shot in the thigh, the link between these two injuries remains unclear.

### *Internal investigations by security forces*

There have not been sufficient internal investigations carried out by the authorities into responsibility for injuries sustained by civilians during the demonstration. The NA has not conducted an official internal investigation. A senior NA officer stated that no shots were fired by NA personnel on that day and that they were therefore not responsible for the shooting of Yam Lal Lamichane. The CDO stated that he did not know who was responsible for the shooting.

The NP told OHCHR that they have not conducted an official internal investigation separate to their criminal investigation in relation to the death. The DPO did, however, submit an overall account of the incident to the Bheri Zonal Police Office on 21 April. It also subsequently sent a list of the wounded police officers, a list of wounded civilians, an expenditure account of ammunition used and a chronological description of the weapons used by the NP during the demonstration to the Zonal Police Office.

These reports refer to a number of demonstrations taking place in Gulariya on 20 April, including at the DAO and the District Development Committee and state that a total of 49 rounds of live ammunition (28 .303 rounds, 18 shotgun rounds and three magnum rounds), 35 rounds of rubber bullets and 56 teargas canisters were fired by police on that day. The reports also state that 20 civilians and 15 NP were injured at the demonstrations. Seven of these NP were injured during the demonstration at the DAO.

The reports do not, however, discuss responsibility for the injuries sustained by civilians during the demonstration, and despite receiving the results of the forensic tests on the pellet removed from Yam Lal Lamichane at the beginning of June, as of 28 July the police had not conducted any further investigation into possible police responsibility. The police told OHCHR that this was because at the end of May they had provided all their documents relating to the killing of Lamichane to the Mid-Western Regional Police Office so these could be provided to the Rayamajhi Commission, and they were now awaiting instructions from that commission before taking further action. The police also stated that although the police were the only party known to have carried shotguns on that day, it was possible that the NA or the CPN-M were also carrying that type of weapon and responsible for shooting Yam Lal Lamichane.

### *Criminal investigations*

An FIR for the accidental homicide of Lamichane was filed at the DPO by a relative of Lamichane on 25 April. On the same day, the Inspector who was the commanding officer at the DAO on the day of the demonstration was appointed investigating officer of the case and the FIR was sent to the public prosecutor by him. As part of their investigations, the police have done a crime scene report and a body examination report, collected testimonies from demonstrators and injury examination reports for the police officers injured from the District Health Office, and obtained the *post-mortem* of Yam Lal Lamichane and the results of police forensic tests on the pellet removed from him. As of 21 August, the police investigation in relation to the FIR was inconclusive. The public prosecutor informed OHCHR that as of 18 August, he had not received a preliminary report from the police.

OHCHR is concerned that aspects of the way in which the criminal investigation has been managed by the police suggest a lack of genuine will to establish criminal responsibility for Yam Lal Lamichane's death. In particular, the fact that the commanding officer at the DAO at the time of the demonstration was appointed as investigating officer compromises the impartiality of police investigations. Indeed, information initially provided to OHCHR on weapons and ammunition used by police officers at the DAO, which was gathered by the investigating officer, was subsequently found by OHCHR to be inaccurate and misleading. In

addition, police investigations appear to have been focused on the circumstances of the demonstration during which Yam Lal Lamichane was shot and injured, rather than on establishing responsibility for his death. The fact that no further investigations were carried out by the police in the two months after they received the results of the forensic tests on the pellet removed from the body further reflects this shortcoming.

### **Case 15: Umesh Thapa, killed 8 February, Ghorahi, Dang District**

#### *Summary*

On the day of the municipal elections, 8 February 2006, at around 12.30pm a patrol consisting of 14 NA, one APF and three NP personnel under the Unified Command of the NA opened fire on a group of about 20 to 30 demonstrators near the Super Lodge Area, Ghorahi, Dang District. Umesh Thapa, who was a CPN-UML party worker, and an NC party worker were seriously injured as a result of the firing. Forty-five-year-old Umesh Thapa was shot in the back as he was running away from the shooting. He therefore clearly did not present a threat to the security forces or anyone else. He died from his injuries later the same day while undergoing treatment in hospital. Security forces claimed they opened fire only after a shot was fired injuring a police inspector but there are serious doubts as to the veracity of this claim. OHCHR concluded that the use of lethal force was unnecessary, excessive and disproportionate as there was no imminent threat to life.

#### *Circumstances of the killing according to information gathered by OHCHR*

According to the CDO, the District Security Committee had developed a district-wide security plan for election day which had been approved by the Zonal Security Committee and the National Security Council. According to that plan, the security forces under Unified Command were to patrol around Ghorahi every hour. The commander of the patrol had briefed the patrols in the morning. According to NA sources interviewed by OHCHR, the commander had said that the SPA and the CPN-M were going to attempt to disrupt the elections and that the patrols should not let this happen. The CDO, NP SP and NA Battalion commander were together at the Battalion headquarters where they had established a “command centre”.

NA officers of the Srinath Battalion told OHCHR that the patrol was sent after a request was received from the NP at approximately 12.20pm to go to an area where demonstrators were “heading to loot the ballot booth”. However, a senior police official denied that there had been such a request from the police to the NA. According to the CDO, it was part of a “routine hourly patrol” under the security plan and he also denied that reinforcements had been asked for.

Earlier that morning, around 15 NP, using *lathis*, had dispersed 150-300 demonstrators from nearby Tulsipur junction where students had been throwing stones. Subsequently, about 30 of those demonstrators were trying to re-group in the Super Lodge area when the patrol came across them. The patrol was moving in two vehicles, one NA truck and a pick-up truck from the Road Transport Division in Dang District. Four NA members, one APF and one NP officer were travelling in the pick-up truck. There were ten NA soldiers in the NA truck. An NP inspector was also sitting in the cabin of the NA truck together with another policeman. The NA members of the midday patrol carried M-16 rifles, the officer from the APF carried a submachine gun and the Nepal Police carried 7.62mm Self-Loading Rifles (SLRs).

According to eye-witness accounts, when the patrol came down the road leading south towards Super Lodge Chowk, the pick-up truck slowed down and an NA officer stopped two or three students and asked them what they were doing. Some students ran away fearing they would be arrested. At least twelve individuals who participated in the demonstrations or were eye-witnesses, interviewed separately by OHCHR, consistently stated that they had heard a voice from the cabin of the truck giving an order to shoot. However, they described what they heard differently, some said they heard an order to “fire”; others said they heard someone shout: “Shoot, shoot the bastards”. All confirmed that it was at that moment that the patrol opened fire from the NA truck towards the demonstrators.

NA sources interviewed by OHCHR claimed that the demonstrators had started throwing stones and black plastic bags which they said appeared to be improvised explosives devices (IEDs) as soon as the vehicle came close. The security forces also claimed that there was a gunshot from the demonstrators following which the police inspector was injured on his left thumb. They claim this was the immediate reason for opening fire. However, there was no sign of damage to the truck door or indeed of any impact of the bullet inside the truck. When questioned about this, the concerned officers who had been in the truck claimed that the bullet had continued its trajectory out of the opposite window. NA sources interviewed by OHCHR claimed that the patrol had not received any orders and that they had fired on their own.

Umesh Thapa and the NC worker had been walking down towards Super Lodge Junction with other demonstrators. According to an eye-witness, as the shooting started, Umesh Thapa started running to take cover but fell almost immediately after being shot in the back. The NC party worker also fell close by after being hit by a bullet. To OHCHR's knowledge, no-one else was injured. After the security forces stopped firing a few seconds or minutes later, they collected the two injured people and took them to hospital.

Investigations by OHCHR concluded that the security forces fired in a wide angle both horizontally and vertically. Some of the bullets hit the ground. Others hit various objects such as walls, shutters and trees over a 40-metre horizontal area.

OHCHR did not find any eye-witness testimony or evidence that the demonstrators threw stones or IEDs (or any objects resembling IEDs). There was no damage to the patrol vehicles. OHCHR also obtained a photograph, taken shortly after the shooting, which shows two patrol vehicles in the middle of the road collecting the injured persons. There is no unusual presence of stones or black plastic bags in the photograph.

OHCHR spoke to at least 30 eye-witnesses and none of them said that they had heard a shot being fired at the army patrol, nor had they seen or heard that the police inspector had been injured as a result. The fact that no damage was found inside or outside the truck, the actual physical nature of the injury and other elements cast serious doubts on the veracity of the allegation. In addition, forensic experts consulted by OHCHR maintained that any bullet injury would have resulted in extensive damage to the thumb and that as a minimum there would have been injury to the bone. However, an X-ray of the thumb did not reveal any such damage.

Accounts from different NA sources regarding the findings of the three different courts of inquiry (see below) give contradictory information as to how many rounds had been fired, one stating ten, another 30 and another 22. Records of the ammunition expenditure seen by OHCHR showed that two soldiers had discharged their weapon: one had fired two rounds from an M-16 and the other had fired six rounds from an SLR. The commander said that they had no record of the other rounds fired as the personnel involved were from another barracks. Other NA sources claimed that four to five rounds were fired in total. APF and NP sources claimed that between five and seven rounds were fired.

OHCHR documented a total of 24 clear bullet marks on various objects in the vicinity within a wide horizontal and vertical spread. Umesh Thapa was shot once and the NC worker received three bullet wounds. These figures show that there were at least 28 or more rounds fired. OHCHR concludes that the security forces resorted to excessive use of force, including lethal force, disproportionate to the perceived threats, in breach of international standards.

#### *Post-mortem*

According to the *post-mortem* report, Umesh Thapa died from one shot in the lower right back which destroyed internal organs and caused him to bleed rapidly to death. According to

the *post-mortem*, there were two exit wounds from the front abdomen due to either a shattered bullet or bone fragment propelled by bullet.

#### *Internal investigations by security forces*

The NA informed OHCHR that the Battalion, the Brigade and the Division had each constituted boards of inquiry. The inquiry conducted by the battalion was finalized around 1 June. In addition to the three NA inquiries, the DPO also initiated its own investigation, which as of 15 August 2006 had not yet been finalized.

According to a letter from the NA HR Cell to OHCHR dated 22 May 2006 the findings of the court of inquiry (it is not clear which one) were that initially the patrol had successfully managed to control a violent mob of about 150 people at Balmandir. They were then deployed to control “a similar situation” near the polling centre at Saraswati lower secondary school. The inquiry concluded that the security forces were “compelled to open fire” and had “acted in self-defence” when the “mob...attacked the security personnel by throwing stones and other projectiles and somebody amongst the crowd even fired from a small arm weapon injuring a police officer” and “it became apparent” that the mob posed “an imminent threat to their lives”. It goes on: “The firing of small arms from the mob injuring an officer manifests the ulterior motives to the mob to create utter disorder and pandemonium in order to disturb the election”, and “verbal warnings and other efforts made by the security personnel to pacify the mob were not given heed to and hence the security personnel for their own security were forced to fire.” The court of inquiry recommended compensation to be paid to the family of Umesh Thapa although it is unclear on what basis. It is further unclear whether any compensation was recommended for the injuries sustained by the NC worker.

OHCHR has not received a response to a subsequent request to the NA Human Rights Cell of 23 May to be provided with copies of the court of inquiry and court martial documentation. As far as OHCHR has been able to establish, the findings of the NA court of inquiry differ from the findings of OHCHR on several points:

- according to the police and the CDO there was no request for assistance to control the crowd;
- there was no violent mob at the Balmandir polling booth. NA personnel informed OHCHR that they went to the Balmandir booth, saw three-four persons whom they told to “please vote and then go home” and they then proceeded towards Super Lodge Chowk;
- the bullet injury to the police inspector is unsupported by eye-witnesses, demonstrators and medical sources;
- reference to a mob of 150 people moving from the alley towards the Super Lodge Chowk is inconsistent with the eye-witnesses and demonstrators’ accounts according to which approximately 30 people were on the road at the time of the shooting;
- according to eye-witnesses and demonstrators there was no throwing of stones and “other projectiles” at the time of the incident;
- OHCHR heard no evidence from the NA or from the eye-witnesses that verbal warnings had been given prior to the shooting.

#### *Criminal investigations*

An FIR was filed at Kathmandu DPO on 9 February 2006 in which it is claimed that Umesh Thapa was killed by the security forces. The FIR does not name any specific officers allegedly involved in the killing. The Dang DPO is investigating the incident but claims there has been little progress as eye-witnesses are unwilling to give their statements. According to the police, they have questioned two persons from the NA patrol and have requested to interview the remaining NA persons in the patrol, but this has not been possible so far.

According to the police, the NA claim that the remaining patrol members have all been transferred to new duty stations.

According to eye-witnesses and police, the NA took away the cartridges cases from the site. The NP reportedly asked the NA to hand over the empty cartridge cases in February but as of 1 June 2006, they had not been handed over to police. The NA deny having picked up the empty cartridges.

A case was filed in the Supreme Court on 3 May 2006 against the Dang CDO, the NA HQ, the Srinath Battalion, the Ministry of Home, the Ministry of Defence and office of the Prime Minister in which the court was requested to direct the relevant authorities to investigate the killing and to pay compensation, as well as issue a order of *mandamus* to the Government to frame a law on compensation. On 4 May 2006 the Supreme Court issued a *show cause* order to the respondents. As of mid-August, the respondents had not replied to the orders.