



**Attacks against public transportation
in Chitwan and Kabhrepalanchok Districts**

Investigation Report
18 August 2005

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List of Acronyms

CDO	-	Chief District Committee
CPN (Maoist)	-	Communist Party of Nepal (Maoist)
IED	-	Improvised Explosive Device
NGO	-	Non-Governmental Organisation
NHRC	-	National Human Rights Commission
OHCHR	-	Office of the High Commissioner for Human Rights
PLA	-	People's Liberation Army
RNA	-	Royal Nepal Army
UN	-	United Nations
VDC	-	Village District Committee (administrative unit)
Additional Protocol II	-	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

Executive Summary

In accordance with its mandate, OHCHR Nepal conducted investigations into possible violations of international human rights and humanitarian law in the context of attacks on public transportation resulting in the killing of civilians in the Madi Valley, Chitwan District, on 6 June 2005, and in Narke Bazaar, Kabhrepalanchok District, on 10 June 2005. OHCHR deplores the loss of life and injury caused by these attacks.

The objectives of OHCHR's investigations were to: establish the facts and circumstances related to the incidents; assess responsibility and accountability for possible violations of international human rights and international humanitarian law; and to submit recommendations to the State and to non-State actors toward promoting the observance of relevant international human rights and humanitarian law and strengthening accountability.

In the course of the investigations, OHCHR travelled to both Chitwan and Kabhrepalanchok Districts. OHCHR human rights officers met at the District level, as well as in Kathmandu, with a range of State civilian and military authorities, representatives of the CPN (Maoist), as well as victims and other witnesses, victims' family members, medical personnel, local community and political leaders, journalists, and NGO and United Nations personnel. OHCHR also gathered or viewed a range of physical evidence.

OHCHR's investigation found the CPN (Maoist) to be responsible for the killing of civilians and to have been in violation of its international humanitarian law obligations. The investigation identified special concern with regard to legal obligations for the CPN (Maoist) to make a distinction between civilian objects and military objectives and to respect the fundamental guarantees of persons who do not take a direct part in hostilities, including obligations related to the protection of civilians. OHCHR notes that the high number of civilian dead and injured in the attack on the public transport bus in the Madi Valley did not deter the CPN (Maoist) from a similar attack in the Narke Bazaar 4 days later. OHCHR notes the admission of responsibility and expressions of regret from the CPN (Maoist) for the Madi Valley attack and welcomes the action taken by the CPN (Maoist) to launch investigations and to hold those responsible for killing civilians accountable. OHCHR notes that no regret has been expressed with regard to the killing of civilians in the Narke Bazaar attack and looks forward to receiving the CPN (Maoist) report on its investigation into this incident.

While emphasising the primary responsibility of the CPN (Maoist) for the killing of civilians in these cases, OHCHR's investigation also found the State to have been in breach of its international humanitarian law responsibilities through its failure to take precautions to protect the civilian population and civilian objects under its control against the effects of attacks, in the context of the RNA's repeated and regular use of public transport facilities. OHCHR welcomes the initiative taken by the RNA to investigate both incidents.

OHCHR makes a series of recommendations calling for: individual and institutional accountability for violations and breaches of international human rights and humanitarian law; transparency and respect for international standards in efforts to address the violations that have occurred; and the adoption of policies and practices to ensure the prevention of any recurrence of such attacks and respect for relevant international law.

I. INTRODUCTION

1. On 7 June 2005 OHCHR received information about a 6 June 2005 attack on a public transport bus in the Madi Valley, within Chitwan District of the Central Region, leading to the death of at least 35 civilians and 3 RNA personnel. Separately, on 12 June 2005, OHCHR received information about a 10 June 2005 attack on a public transport bus in the Narke Bazaar, a part of the Manghaltar VDC in the Kabhrepalanchok District of the Central Region, leading to the death of 2 civilians and 4 RNA personnel and leaving a large number of persons injured.

2. In accordance with OHCHR's mandate and in the light of international law applicable in Nepal, OHCHR initiated an investigation into both incidents. This report presents the conclusions of the investigation. OHCHR wishes to acknowledge the valuable information and other collaboration provided, in the context of this investigation, by the National Human Rights Commission and by several human rights NGOs.

II. ACTIVITIES UNDERTAKEN BY OHCHR AND COOPERATION RECEIVED

A. Activities undertaken

1. Madi Valley, Chitwan

3. OHCHR human rights officers travelled to Chitwan District from 9 to 11 June 2005 and from 29 June to 2 July 2005. In Chitwan, OHCHR visited the Madi Valley area, Kalyanpur, Gardi, Bagauda and Ayodhapuri VDC.

4. In the course of the investigation, OHCHR held meetings with or interviewed:

- State civilian authorities at the District and local levels.
- Officers and soldiers of the Royal Nepal Army.
- Representatives of the CPN (Maoist).
- Local community and political party leaders.
- Public bus transport companies.
- Local journalists.
- Victims and their family members.
- Witnesses and rescuers.
- Locally based NGO and UN staff.

5. Besides the activities conducted in Chitwan, OHCHR conducted additional meetings and interviews in Kathmandu with civilian and military patients and staff at the Kathmandu Military Hospital, as well as with journalists and NGOs.

6. During the visit to Chitwan, OHCHR staff took photographs of the incident site and drew sketches of the incident area. OHCHR had access to post-mortem reports, death certificates, photographs of the explosion and attack sites, press releases and articles, NGO investigation reports and a preliminary NHRC report.

2. Narke Bazaar, Kabhrepalanchok

7. OHCHR human rights officers travelled to the incident site from 26 to 27 June 2005. They conducted visits to villages along the road from Nepalkhot to Narke, in Bhakunde, as well as at the District Headquarters in Dhulikel.

8. In the course of the investigation, OHCHR held meetings with or interviewed:

- Security forces personnel at the RNA District Headquarters in Bhakunde.
- The Chief District Officer in Dhulikel.
- Bus transport company workers and owners.
- Local journalists.
- Locally based NGO staff.
- Victims, including wounded civilians and soldiers.
- Villagers along the road from Bhakunde to Nepalkhot.

9. In addition to the activities conducted in Kabhrepalanchok, OHCHR human rights officers conducted further meetings and interviews in Kathmandu.

10. OHCHR took photographs and made sketches of the incident location, and obtained photographs taken immediately after the attack, as well as press releases and articles. Death certificates were requested, but have not yet been provided by the relevant authorities.

B. Cooperation received

1. From State authorities

11. State entities and authorities provided good cooperation during OHCHR's investigation. The Chief District Officers rapidly shared all information requested. The RNA and Police Human Rights Cells provided all the assistance requested of them and facilitated OHCHR contacts with relevant authorities in both Districts, including ensuring that OHCHR human rights officers were received by senior RNA officers in both Districts. With regard to Chitwan, OHCHR was able to meet with the 2nd Lieutenant commanding the rescue operation in the Madi valley, although not with any of the soldiers involved. The RNA shared the preliminary findings of its own investigation into the Madi valley incident with OHCHR. With regard to the Narke Bazaar incident, OHCHR human rights officers regret that neither the RNA Captain in charge of the ambushed patrol nor the "Rangers" Captain in charge of the Rangers patrol were available for a meeting. The factual information provided by the security forces was generally corroborated by other OHCHR information sources and found to be accurate, except with regard to the numbers of RNA personnel alleged to have been travelling in the Madi Valley bus.

2. From CPN (Maoist)

12. CPN (Maoist) representatives provided good cooperation during OHCHR's investigation into the Madi Valley incident. OHCHR met with representatives of the CPN (Maoist) and also received from the CPN (Maoist) the report of an internal investigation by the Central Committee into the Madi Valley incident. The factual information provided by the CPN (Maoist) was generally corroborated by other OHCHR information sources and found to be accurate, except with regard to the numbers of RNA personnel alleged to have been travelling in the Madi Valley bus. The CPN (Maoist) stated that its investigation into the Narke Bazaar attack has not yet been completed.

III. GENERAL CONTEXT

A. Madi Valley, Chitwan

13. Chitwan District has two municipalities, 37 VDCs and, according to the 2001 National Census, a population of 473,000. Within Chitwan District, the Madi Valley area is comprised of 4 VDCs (Gardi, Baghavat, Kalyanpur, and Ayodhayapuri). The Valley is isolated from other Districts by the Royal Chitwan National Park. The Valley is strategic to both sides in the ongoing conflict, the border with India being a sensitive operational region for the RNA and CPN (Maoist). The RNA, rather than the police, is responsible for patrolling the Royal Chitwan Park, as well as the open border with India.

14. Chitwan District has a reputation for being a comparatively quiet district, in terms of the current conflict. Nevertheless, OHCHR has received reports of a series of incidents over the course of the past 12 months, including: a CPN (Maoist) attack against a police post in Khairani; a clash, in Ayodhayapuri, between seven soldiers in civilian clothes and a CPN (Maoist) contingent; a second incident in Ayodhayapuri in which a CPN (Maoist) member was reportedly killed by the RNA. Schools in the District were closed for a 10-day period after teachers and school administrators received threats from the CPN (Maoist) in opposition to the imposition of school fees.

15. The RNA has two battalions deployed in the District, one especially affected to the Royal National Park zone. Nine Military Posts are positioned around the valley, none are actually located within. The CPN (Maoist) is thought to have several military positions in the vicinity.

B. Narke Bazaar, Kabhrepalanchok

16. Spread over a number of municipalities, Kabhrepalanchok District has 87 VDCs, and a population of approximately 400,000. The incident took place in Narke Bazaar, Mangaltar VDC, in the southern part of the district.

17. The District is known as being militarily active and encounters between the parties to the conflict are frequent. The RNA reported to OHCHR that bombs have been planted in the area on several occasions. On the 3 June 2005, a CPN (Maoist) District Leader, Dhaba Lama, alias Bishwa, was reportedly shot and killed by security forces in the Bhainsigoth area of Kabhrepalanchok District.

18. The RNA presence is comprised of the 9th Brigade, headed by a Brigadier General, with the Brigade Headquarters located in Bakhunde. CPN (Maoist) armed presence in the area is reported to be part of a Brigade that, with three Battalions, covers Kabhrepalanchok and 6 other Districts.

IV. FACTS RELATED TO THE ATTACK IN THE MADI VALLEY

19. This section of the report describes the factual events surrounding the incident, based upon all of the information available to OHCHR, and relying as far as possible on corroboration from multiple sources.

A. Facts relating to the incident as recorded by OHCHR

1. Facts directly related to the incident

20. At approximately 06.00 on 6 June 2005, a public transport bus left Bagai Post, travelling through Ayodhyapuri VDC toward Gardi VDC with an estimated 150 passengers on board, including a considerable number of children and at least 12 RNA personnel. The evening before, two buses failed to arrive in Bagai Post as scheduled, and thus did not travel out of Bagai Post on the morning of 6 June. The bus that did leave was consequently carrying approximately double the number of its usual passengers.

21. A portion of the bus's route took it through the Madi area and across a bridge over a seasonal riverbed. A section of the bridge had been washed away, so that it was unserviceable on 6 June. As the riverbed was dry, road traffic bypassed the bridge on its south side by driving across the riverbed. Traffic leaving the main road drops approximately one metre down onto the riverbed and proceeds approximately 75 metres before climbing up to rejoin the road.

22. At approximately 07.50, the bus reached the damaged bridge. According to witness statements, as the bus descended onto the riverbed to bypass the bridge, it stopped for a few seconds, as though it was stuck. Just as the bus re-started, it exploded. The bus was lifted nearly two feet off the ground. The middle part of the bus was completely destroyed in the explosion and parts of the bus, as well as personal effects were scattered all over the surrounding area. A large crater (3.7 metres in diameter and approximately one metre deep) formed under the bus.

23. 39 persons died as a result of the explosion including, according to official figures, 3 RNA soldiers. 72 persons were wounded, including 4 members of the RNA.

24. Immediately after the incident, teachers and students from a nearby school, local Red Cross workers, social workers and other local inhabitants arrived at the scene of the explosion to help in rescue efforts that continued until 17.00. The wounded were taken to Bharapur and Basanthapur health centres. Additional RNA soldiers from nearby military posts reached the site on foot at around 10.00. An RNA helicopter landed at approximately 10.30 and deposited an RNA cameraman. Two more helicopters reached the scene at around 11.30. One helicopter took the 3 dead RNA soldiers and the second carried the 4 wounded and 5 other soldiers, along with weapons and ammunition of the soldiers who had been on the bus. All dead and wounded RNA soldiers as well as the most injured civilians were eventually transported to the Military Hospital in Kathmandu.

25. A report prepared by the CPN (Maoist) and submitted to OHCHR indicates that the explosion was caused by an improvised explosive device (IED), in this case a "bucket bomb", linked by wires to a site approximately 200 meters away from where it was detonated electronically. The remote detonation site offered clear observation of traffic approaching the river crossing point from both directions and generally good observation of any large vehicle actually transiting the riverbed. It would have been evident to those detonating the IED that the bus carried a high number of civilians.

2. Facts related to the identity of the perpetrator

26. Admission of responsibility for the attack in two public statements released by the CPN (Maoist), corroborated by additional OHCHR information, indicates that the attack was carried

out by members of the CPN (Maoist). The CPN (Maoist) report received by OHCHR identifies and details the names and specific military, political and logistical responsibility of each person involved in ordering, planning and implementing the attack.

3. Additional facts relevant to assessing legal responsibility and accountability

27. RNA personnel were using the public bus that was attacked. In assessing legal responsibilities for violations of human rights or international humanitarian law, with respect to the killing of civilians, it is relevant to collect and present information on the character of the RNA presence on the bus and on any pattern of RNA use of public buses.

i. Facts related to the presence of RNA on the bus

28. Witness statements indicate that there were at least 12 RNA personnel on the bus, wearing civilian clothes, and carrying concealed automatic weapons and at least one radio in a bag. During the investigation, the RNA initially reported the presence of 7 soldiers on board the bus, before acknowledging the possibility that other RNA members may have taken the same bus for administrative or personal purposes. CPN (Maoist) sources stated that there were more than 12 RNA present on the bus but the OHCHR investigation found no evidence to support this.

29. Some RNA personnel are reported to have boarded the bus at about 06.30 at Bagai military post to travel to Bhankatta military post. 6 to 7 RNA personnel were seated on the roof of the bus and others were reported to be inside the bus.

ii. Use of public transport buses by RNA in the Madi Valley

30. OHCHR has recorded consistent information from multiple sources indicating that RNA personnel, sometimes in large numbers, in both uniform and civilian clothes and with weapons, have routinely made use of public buses as a means of transportation across the 4 VDCs in the Madi Valley. On a daily basis, RNA personnel boarded public buses to move from Bagai to Kasara military posts. Within that area, the RNA has also been using public buses when leaving their military posts to go to a specific destination from where they would go on patrol.

31. In Chitwan District as a whole, OHCHR's information indicates that the RNA has had a practice of commandeering civilian buses and using them for military operations. In such instances, the RNA obliges the civilian bus driver to drive the bus and the RNA provides fuel. The RNA is reported to have commandeered buses in the District on 1 to 2 occasions per month, sometimes taking 4 or 5 buses at a time.

32. According to the information gathered, over the past 2 years, the CPN (Maoist) has warned and threatened bus companies, owners and drivers not to allow RNA personnel to board public buses. In October 2003 a committee representing the bus companies called a general strike for 10 days in response to the CPN (Maoist) threats. Representatives of the bus companies reportedly held a meeting with the Chitwan CDO and with senior RNA officers. Despite an oral agreement to end the use of public buses, information indicates that the RNA continued to use them. Information indicates that the Chitwan CDO took no further initiative to address this concern.

33. OHCHR's information also indicates that the CPN (Maoist) had called upon the civilian population in the Madi valley not to board public buses when RNA personnel was on board or to exit those buses if RNA personnel entered them. The OHCHR investigation found no evidence of any specific warning given by the CPN (Maoist) prior to this particular bombing.

B. Comments by State authorities

34. The RNA provided OHCHR with a statement of their policy on the "Use of Civilian Transportation and Carriage of Weapons by Soldiers (off duty and on leave)". According to this policy¹:

- The RNA can use civilian transportation for military purposes if the transport is hired in full by the RNA and if there are no civilian passengers on the transportation.
- "RNA patrols may not generally use civilian transportation along with civilian passengers in the same vehicle" with the exception of instances of "extremely serious emergencies, such as medical evacuation" in which case the patrol will "no longer be considered a patrol/Operational Team". According to the policy, this possibility can only be sanctioned on a case by case basis and with approval from, at a minimum, the Division level.
- "RNA individuals in civilian clothes on a personal individual capacity (not patrols), such as those going on leave, can use civilian transportation." They "may, in certain cases, carry personal weapons for self defence purposes. But the weapons have to be carried covertly and should not be carried exposed." The RNA stated that the logic of this policy was to avoid endangering civilians.
- In instances where the RNA is asked to provide escorts, for example during bandhs, the RNA "may locate security personnel in civilian transportation".

35. The RNA stated that its personnel travelling on the public bus attacked in the Madi Valley were off-duty.

36. The provisions of the above policy were confirmed to OHCHR on 27 June by the RNA Adjutant General, in Kathmandu. However, the General added that for soldiers deployed in 8 or 9 posts per battalion it was not always possible to use RNA vehicles for all required transport and that RNA soldiers were therefore permitted to travel on public vehicles while on mission, provided that their weapons were not visible and that they were wearing civilian clothes, to avoid being targeted by the CPN (Maoist). During the investigation RNA officers indicated to OHCHR that the use of civilian buses by the RNA would be investigated very seriously.

C. Comments by CPN (Maoist)

37. CPN (Maoist) comments related to the Madi Valley attack were gathered by OHCHR from public statements released by the CPN (Maoist), meetings by OHCHR staff with CPN (Maoist) representatives, and the report of the CPN (Maoist) investigation into the attack, dated 22 June 2005, submitted by a member of the Central Committee to the CPN (Maoist) leadership and conveyed by the leadership to OHCHR.

38. On 7 June 2005, the CPN (Maoist) chairman, Pushpa Kamal Dahal (Prachanda), issued a public statement admitting responsibility for the attack and indicating that he was "deeply shocked and grieved over the death of a large number of common people". He expressed his

¹ Underlined words appear as in the original.

condolences and stated that the attack was against the Party's policy of not targeting innocent people. On 19 June the CPN (Maoist) District Committee of Chitwan issued an "appeal" expressing regret for the loss of life and property in the bombing of the bus and promising not to repeat such attacks.

39. According to the report of the CPN (Maoist) investigation and statements made to OHCHR in meetings, a decision had been made to send a four-person team of Special Task Force troops to stage an attack on an RNA patrol or transport in the Madi area. If RNA movements were by passenger bus, directions were given to throw a "mine" so as to inflict losses only on those riding on the roof. The team implementing the plan made the decision to change the target from individuals riding on the roof of the bus to the bus itself by planting a landmine. The report is consistent with other information in detailing how the attack was carried out, but states that 19 RNA soldiers were killed.

40. CPN (Maoist) sources told OHCHR that they had made extensive efforts to ensure that soldiers would not use public transport with civilians, indicating "We have been telling them not to ride in civilian buses for a long time, that it was unacceptable for civilians to be used as human shields". The CPN (Maoist) sources also stated belief that there were significantly more RNA personnel among the passengers of the Madi Valley bus than the RNA publicly acknowledged.

41. The investigation report concludes that the incident was a "grave mistake" which has made clear the lack of "sensitivity towards the interest and protection of the masses." The party review had also analysed previous "anarchic incidents." A joint meeting of the district party and the Special Task Force battalion had recommended suspending the five persons regarded as responsible for the incident. CPN (Maoist) sources told OHCHR that the five persons have been detained and sent to a "labour camp".

V. FACTS RELATED TO THE ATTACK IN NARKE BAZAAR

42. This section of the report describes the factual events surrounding the incident, based upon all of the information available to OHCHR, and relying as far as possible on corroboration from multiple sources.

A. Facts relating to the incident as recorded by OHCHR

1. Facts directly related to the incident

43. On 9 June at approximately 18.00 a patrol of some 70 to 75 RNA personnel of the 9th Brigade reached Nepalthok, after several days of military activities in the region, and stayed there overnight. The following day, on 10 June 2005, the 9th Brigade patrol left Nepalthok on foot at around 15.30 travelling in the direction of Bakhunde. At approximately 16.00 a civilian public transport bus left Nepalthok with approximately 6 civilian passengers and picked up 5 additional passengers *en route*. Several kilometres further, in Manghaltar, the RNA personnel boarded the bus, as well as a passing truck, with their weapons and wearing their uniforms.

44. At about 16.30, the bus and truck were ambushed as they approached Narke Bazaar, Mangaltar VDC. An estimated 13 civilians were in the bus, with 2 civilians in the truck. The RNA personnel were distributed between the bus and the truck, with some seated on the roof of the bus.

45. A large number of attackers situated on both sides of the road attacked the bus and truck with guns and socket bombs. The RNA personnel returned fire. Both the bus and the truck continued moving for another 500 metres before stopping. All the dead and injured civilians and RNA personnel were transported to the Military Hospital in Kathmandu.

46. According to figures provided by the State authorities, as a result of the attack 2 civilians and 4 RNA personnel were killed, and 3 civilians and 22 RNA personnel were severely wounded. One attacker is reported to have died, and one to have been injured.

2. Facts related to the identity of the perpetrator

47. All information available to OHCHR indicates that the attack was conducted by the CPN (Maoist). Sources indicate that the CPN (Maoist) had between 200 and 400 troops organized in an ambush deployment immediately before and after Narke bridge, where the attack took place. CPN (Maoist) sources have stated publicly that the attack was conducted by the 5th brigade of the People's Liberation Army.

3. Additional facts relevant to assessing legal responsibility and accountability

48. RNA personnel were using the public bus that was attacked. In assessing legal responsibilities for violations of human rights or international humanitarian law, with respect to the killing of civilians, it is relevant to collect and present information on the character of the RNA presence on the bus and on any pattern of RNA use of public buses.

i. Facts related to the RNA presence on the bus and the use by the RNA of public buses

49. The Kabhrepalanchok Bus Association has a station in Nepalthok VDC and approximately 20 buses that travel on a daily basis from Nepalthok, toward Mahendra Highway and Banepa, and vice versa. The users of this transport service are mainly the population from Matsapana, Jagaduli and Kabhremenap VDCs and other VDCs along the Mahendra highway.

50. OHCHR found that RNA personnel sporadically use public buses as a means of transportation in the District. At about 13.30 on 10 June, a few hours before the attack, 5 other public buses rented by the RNA carried a contingent of approximately 230 RNA Rangers on the same road and travelling in the same direction as the bus and truck that were later attacked. The Rangers, operating under the 9th Brigade command, were travelling from Sindhuli to Nepalthok, after several days of military operations in the region. The Rangers had joined-up briefly that morning in Nepalkhot with the RNA patrol that was later attacked. In the 5 buses used by the Rangers, only the drivers were civilian. They reached Banepa, passing by Narke, without incident.

ii. Efforts to avoid civilian casualties

51. There are approximately 50 shopkeepers – including their families – living and working in groups of shops along a 500 metre stretch of road that forms Narke Bazaar, the location of the attack. OHCHR received information, which it was unable to corroborate satisfactorily, that earlier in the day of 10 June, before the attack, the civilian population around Narke Bazaar was warned by the CPN (Maoist) to close their doors and that the traffic on the road from

Banepa to Nepalthok was stopped by the CPN (Maoist) two hours prior to the incident, with a view to preventing civilian casualties during the attack.

B. Comments by State authorities

52. RNA sources stated to OHCHR that, during the attack, 4 RNA personnel had in fact surrendered after falling from the roof of the bus when the attack began, and that they were summarily executed as they raised their hands. The RNA stated that approximately 30 soldiers jumped from the two vehicles in order to return fire and to save the wounded while the 2 vehicles continued towards Bakhunde. These soldiers continued to return fire for up to 15 minutes, after which the attackers withdrew.

53. The RNA stated that its personnel travelling on the public bus attacked in the Narke Bazaar were part of a returning security patrol. The RNA 9th Brigade stated to OHCHR that none of its patrols had permission to board civilian vehicles and that the use of the bus and truck in this instance had been at the initiative of the patrol commander. The RNA further indicated that a Board of Inquiry has been set up to investigate the incident, and will include a focus on why the RNA personnel had boarded the bus and the truck.

54. During a meeting in Kathmandu², the RNA Adjutant General stated that the decision by the RNA patrol to “hitch a ride on the bus” was not a planned move. The General also stated that these troops were “5 to 7 kilometres from 9th Brigade Headquarters and took a ride to save time.”

55. The RNA in Bhakunde informed OHCHR that 3 alleged Maoists have been arrested in conjunction with the attack.

C. Comments by CPN (Maoist)

56. OHCHR was told by the leadership of the CPN (Maoist) that the CPN (Maoist) Central Committee had not yet completed its investigation into this case and that according to preliminary information the bus attacked was carrying only RNA personnel, with no civilians on board. OHCHR has received no other information from the CPN (Maoist) with regard to the attack.

VI. OHCHR CONCLUSIONS

57. OHCHR has reached its conclusions based upon an analysis of the facts in the light of the international human rights and humanitarian law applicable in Nepal - including the Geneva Conventions, to which Nepal is a party, and customary international law derived from the Additional Protocols to the Geneva Conventions relating to the protection of victims of armed conflicts.

58. The attacks in Chitwan and Kabhrepalanchok Districts raise particular concern with regard to the legal principles of *distinction* and *proportionality*, and consequent provisions of international humanitarian law. Specifically, in terms of distinction, international humanitarian law recognises that parties to a conflict are under obligation to make a distinction between

² See paragraph 36.

civilians and combatants³, as well as between civilian objects and military objectives⁴. The principle of distinction extends to include a requirement that the parties to a conflict take precautions to protect civilian populations and civilian objects under their control from the effects of attack⁵. These obligations should be understood in the light of Common Article 3 to the Geneva Conventions that prohibits “violence to the life and person” of “persons taking no active part in the hostilities”⁶. Further, in terms of proportionality, where a military action is found to be legitimate, incidental loss of civilian life, injury to civilians or damage to civilian objects must not be excessive in relation to the concrete and direct military advantage anticipated⁷.

A. CPN (Maoist) legal responsibility and accountability

59. In assessing legal responsibility of the CPN (Maoist) with regard to the Madi Valley and Narke Bazaar incidents, OHCHR considered:

- The obligation upon the parties to the conflict to make a distinction between civilian objects and military objectives and to respect the fundamental guarantees of persons who do not take a direct part in hostilities, including prohibition of violence to the life, health and physical or mental well-being of persons.
- That the buses attacked in both instances were public buses transporting civilians, in addition to varying numbers of military personnel.
- That the IED used in the Madi Valley attack was a weapon that was certain to indiscriminately kill and injure passengers in the bus, irrespective of their civilian or combatant status.

60. OHCHR finds the CPN (Maoist) to be responsible for the killing of civilians and to have been in violation of its international humanitarian law obligations.

B. State authorities legal responsibility and accountability

61. In assessing possible legal responsibility of State authorities in the context of the killing of civilians by the CPN (Maoist) in both the Madi Valley and Narke Bazaar cases, OHCHR considered:

- The obligation incumbent upon the RNA to protect civilians from the effects of attack.
- The repeated and regular use by RNA personnel of public buses, including when the buses are also carrying civilians.
- That RNA personnel using public buses are sometimes in uniform and sometimes in civilian clothing; that they carry their weapons sometimes overtly and sometimes covertly; and that while some of these personnel have been reported by the RNA to be off duty, in certain instances RNA personnel using public buses have been clearly on duty.

³ The term “combatant” is used here in its generic meaning indicating persons who do not enjoy the protection against attack accorded to civilians, but does not imply a right to combatant status or prisoner-of-war status. See, inter-alia, Additional Protocol II, Article 13(2).

⁴ See, inter-alia, Additional Protocol II, Article 13 (1) and (2)

⁵ See, inter-alia, Additional Protocol II, Article 13 (1).

⁶ See, inter-alia, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Article 3.

⁷ See, inter-alia, Amended Protocol II to the Convention on Certain Conventional Weapons, Article 3(8)(c).

62. While emphasising the primary responsibility of the CPN (Maoist) for the killing of civilians in these cases, OHCHR finds the RNA to have been in breach of its international humanitarian law responsibilities. OHCHR found there was insufficient evidence to support CPN (Maoist) claims that the RNA was deliberately using civilians travelling in the buses as human shields.

VII. OHCHR RECOMMENDATIONS

A. Recommendations to State authorities

63. OHCHR:

- Acknowledges the cooperation extended by the State authorities – both civilian and military – to the OHCHR investigation.
- Welcomes information that since the 6 June attack the RNA in the Madi valley has reduced the use by its personnel of public buses, but strongly regrets credible reports that armed RNA personnel in uniform have used public transport buses carrying civilians in the Madi Valley on at least one occasion during July 2005.
- Welcomes references by senior RNA officers to official policy that restricts the use of publicly licensed civilian buses by the military, but notes that it has not received official information on any change in RNA practice regarding the use of public buses in Chitwan District as a whole.
- Welcomes the State authorities' efforts to conduct investigations into both incidents.

64. OHCHR recommends that the State authorities:

- Continue to guarantee access to health care for those wounded in the attacks and ensure, for these persons as well as with regard to any future incidents, that emergency health care is provided free of charge.
- Publish, as early as possible, the results of the RNA investigations into both incidents and any measures taken as a result of the investigations' conclusions.
- Given the civilian deaths, ensure that a police investigation is conducted into the incidents.
- Ensure timely access for OHCHR to any persons arrested in conjunction with either incident and that such persons are treated in accordance with applicable international human rights standards.
- Ensure accountability with regard to those responsible for violations of international humanitarian law.
- Review RNA policy with regard to the military's use of civilian transportation in any context that may endanger civilians and breach international humanitarian law. In this regard, the RNA has already noted this recommendation and has invited OHCHR to suggest ways in which its policy on the use of civilian transportation could be amended.
- Ensure that RNA policy is enforced as well as widely disseminated within the RNA, and among relevant civilian authorities and private entities such as bus companies.

B. Recommendations to CPN (Maoist)

65. OHCHR:

- Acknowledges the cooperation extended by the CPN (Maoist) to OHCHR personnel in their investigation of the Madi Valley attack, including the submission to OHCHR of a report of an internal investigation.

- Notes the CPN (Maoist) statements of regret for civilian deaths and injury during the Madi valley attack, but that the Narke Bazaar attack on a civilian bus carrying civilians took place just 4 days later.
- Welcomes the CPN (Maoist) commitments to investigate the incidents and that the Central Committee will soon publish the report of its investigation into the Madi Valley attack.
- Notes statements by the CPN (Maoist) that the four persons directly involved in the Madi valley attack have been suspended and detained, and looks forward to learning what accountability measures, within respect for international standards, have been taken with regard to those persons.
- Regrets that it has received no further information from the CPN (Maoist) on action to address violations and abuses committed with regard to the Narke Bazaar attack.

66. OHCHR recommends that the CPN (Maoist):

- Publicly release the results of the CPN (Maoist) investigation into both incidents.
- Ensure accountability for those responsible for the killing of civilians in both incidents.
- Issue, publish, disseminate and implement directives to CPN (Maoist) personnel prohibiting attacks on civilians or civilian objects with a view to ensuring respect for international standards, most especially with regard to the protection of civilians.