

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



**Allegations of Human Rights Abuses by the
Young Communist League (YCL)**

June 2007

**Allegations of Human Rights Abuses
by the Young Communist League
June 2007**

Introduction

The Comprehensive Peace Agreement (CPA) signed between the Communist Party of Nepal (Maoist) (CPN-M) and the Seven-Party Alliance (SPA) on 21 November 2006 mandates OHCHR to monitor the implementation of the human rights provisions of the accord. In that context, OHCHR has been monitoring the conduct of the state security forces, particularly with regard to legality of detention, treatment of detainees in police custody (including that of members of the Young Communist League (YCL)) and conditions of detention in police offices and prisons. OHCHR continues to monitor the capacity of the police to respect human rights in maintaining law and order. OHCHR has raised its concerns on these issues directly with the authorities at national and local levels, as well as in public statements. In the context of its monitoring of the CPA, OHCHR has also issued comments and statements on disappearances, on impunity and accountability for state violations and those abuses committed by the CPN-M. An overview of human rights concerns related to the peace process was included in the High Commissioner for Human Rights' report to the Human Rights Council in March. OHCHR also issued a report on the findings of its investigations into the killing of 27 CPN-M members in March 2007 following violence which broke out when the *Madheshi Janadhikar Forum* (MJAF) and CPN-M organized simultaneous rallies in Gaur, Rautahat District, Central Region on 21 March.

Following numerous reports of human rights abuses by the YCL since it was re-established in December 2006, OHCHR has carried out extensive monitoring and investigations in the regions. Though the types and levels of abuses by YCL vary from district to district, those documented by OHCHR include abuses related to the rights to freedom of opinion, assembly and association as well as the rights to personal liberty, security and physical integrity.

OHCHR's investigations included interviews with a wide range of sources to corroborate information, including witnesses, victims, CPN-M leadership, YCL representatives, political parties, human rights defenders, members of the Nepal Police (NP), Armed Police Force (APF) and others. In general, OHCHR was able to access information and individuals as requested. However, in a few cases, the Office had to resort to contacting the CPN-M leadership in order to access individuals held by the YCL. It should be noted that a number of victims of YCL abuses have requested that OHCHR does not raise their cases publicly because of a fear of reprisals, especially individuals who were abducted. At times also, while some sources alleged YCL involvement, the YCL denied this. In some of these cases OHCHR confirmed the involvement nevertheless, but in others, its investigations have so far been inconclusive.

As part of the CPN-M, the YCL must respect human rights commitments made under the CPA and in other agreements made in the context of the peace process to which the CPN-M is a party. Additionally, as part of the Government, the CPN-M has a duty to ensure that the human rights provisions of the Interim Constitution as well as international human rights treaties to which Nepal is a party are respected.

The report begins by looking at context and background, including the role of the YCL. It also looks at patterns of abuses, the CPN-M/YCL response to allegations and the state response. It ends

with conclusions and a set of recommendations specifically related to the YCL, as well as to the Government and parties to the CPA.

Context/Background

The YCL was re-established in December 2006 by the CPN-M Central Committee as a newly affiliated organization of the CPN-M party and has a growing presence throughout the country, in all regions, districts and Village Development Committees (VDCs).¹ Many of the 45-member YCL Central Committee appointed in early February are former People's Liberation Army (PLA) commanders and commissars who left the PLA and transferred to the YCL rather than assembling in the PLA cantonment sites subsequently set up as part of the peace agreement. In addition, YCL leaders at regional and district levels also include former PLA commanders or militia members.

YCL representatives have informed OHCHR that their membership base is aged between 16 and 40 years old. Child protection agencies in one region have noted the presence of a small number of recruits to the YCL under 18, the youngest being 13 years old. Some of them said they had previously been PLA members and had subsequently been involved in the YCL's "law enforcement" activities. While participation by young people under 18 in political activities is not contrary to child rights' principles in itself, OHCHR's main concern with regard to the presence of young people under 18 in the YCL is their potential exposure to violence. It should be noted that a 17-year-old girl killed in Gaur was a YCL member, according to the organization.

A February 2007 press release issued by the YCL following its First National Convention described it as a "militant organization". Its role, as outlined in a speech by Chairman Prachanda at the Convention and in the resolutions passed then, includes helping to conduct elections in a free, fair and impartial manner; being vigilant against conspiracies in relation to the elections; playing an active role in fighting attempts by "regressive royalist forces" to avoid the elections; pushing for the establishment of a republic, including through organizing young people; organizing social campaigns to control "social evils", sports activities and cultural programmes "for the mental and intellectual development" of young people, as well as ideological and political training.

It is clear that the YCL is viewed by the CPN-M as having a central role in the context of the peace and electoral process. However, there are concerns, based on actions already taken by YCL activists, that the organization may be used to target certain groups and individuals, especially those it regards as "regressive forces", thereby infringing on rights to freedom of association, assembly and opinion. When interviewed about the concrete role of the YCL in the elections, YCL representatives at the district level were not able to provide a clear explanation.

In addition, the YCL has viewed "law enforcement" as a core part of its role since its inception. When the first YCL abductions were reported in Kathmandu Valley in December 2006, OHCHR met with YCL leaders for Kathmandu, Lalitpur and Bhaktapur Districts who said they had been tasked to "deal with criminal matters". At the time, they said they would "work closely with the people to combat criminal activities in the districts and take action to abduct the alleged perpetrators as per information received." YCL representatives in different parts of the country continue to refer to "law enforcement" activities, including patrols, "arrests" and punishment as part of their role. One representative told OHCHR in June 2007 that the YCL has "a duty to the

¹ OHCHR received information about the presence of the YCL before December 2006. However, it was not clear at that time if it was a new structure or a student wing, involved in activities such as clashes at university campuses.

people to bring perpetrators to justice when the Nepal Police does not take action: YCL arrests criminals and presents them to the people before people's justice will be served".

While there are legitimate concerns regarding the weaknesses of law enforcement agencies and other state institutions, as well as regarding delays in implementing the provisions of the CPA, developing land reform policy and addressing corruption, these arguments cannot be used to justify actions which amount to human rights abuses. These abuses – including abductions, torture and ill-treatment, destruction of state property, attacks on the right to freedom of assembly and association through the disruption of political activities – violate international human rights law, the CPA and domestic law such as the Interim Constitution. The human rights abuses committed by the YCL are contributing to a climate of fear and intimidation. They also act as a constraint on legitimate political, journalistic and other activities particularly related to freedom of expression and assembly. Past abuses by the CPN-M have served to reinforce the fear, whether perceived or real.

It should be noted, at the same time, that there have been increasing numbers of incidents in which YCL and other CPN-M cadres have become targets of violence themselves. The most serious incident of violence against CPN-M/YCL was in Gaur, Rautahat District, Central Region, on 21 March 2007 when 27 CPN-M members, including YCL cadres, were brutally murdered following violence which erupted at simultaneous rallies by CPN-M and the MJAF). Six CPN-M, including three YCL cadres, were killed in different incidents between 4 and 14 June 2007. One of the most recent incidents was the killing of two YCL representatives in Rupandehi District, Western Region, on 13 June. The killings followed months of tensions between YCL and the MJAF (see below).

Patterns of abuses

Prior to the emergence of the YCL, OHCHR had documented numerous human rights abuses by the CPN-M and raised them with the CPN-M leadership. OHCHR's report of September 2006 "Human Rights Abuses by the CPN-M" outlined patterns of abuses by CPN-M entities and expressed concern that many were committed in relation to their parallel structures, the "people's courts" and "law enforcement" activities. These included abuses of the right to life (killing and deaths of abducted individuals), liberty and security (abductions), and physical integrity (ill-treatment and torture).

In the CPA, the parties agreed not to operate "parallel structures" (provision 10.1) and to end killings, abductions (5.11f), torture and other such abuses (7.1.4). It should be noted that no killings or deaths related to abductions by CPN-M entities were reported to OHCHR since October 2006 apart from one in December 2006 in Rolpa District, Mid-Western Region. In addition, the whereabouts of an NC member abducted by CPN-M in Humla District, Mid-Western Region in March 2007 remain unclarified. Following an earlier directive issued by the CPN-M Chairman Prachanda in July 2006, the "people's courts" gradually ceased to function in some large urban areas. More recently, since the signing of the CPA and especially since the beginning of 2007, OHCHR has observed a considerable decrease in CPN-M activities linked to its parallel structures such as its "people's courts" which for the most part have been dismantled. There are, nonetheless, signs in a few districts that the "people's courts" or some similar mechanisms continue to function.²

² In the Far Western Region, for example, OHCHR received information that structures similar to "people's courts" (previously called "People's Justice Assistance Committee") exist in Kailali and Kanchanpur. In the Mid-Western Region, OHCHR received information indicating the existence of "people's welfare committees" whose purpose is to "help people" by solving cases involving beatings, theft and extortion for example. The People's Welfare Committee representatives said the structure fell under the YCL. They

Abuses by the YCL began to be reported in December 2006 and are conducted in a manner similar to those carried out earlier by other CPN-M entities. They include abductions and ill-treatment in captivity, attacks on physical and mental integrity and the violent disruption of political activities. They have included threats against newly established police posts, and violence against several government officials and property. OHCHR have also received reports of “donations” ranging from 20,000 NPR per month to 400,000 NPR, one-time payments requested in the name of the YCL from business representatives and accompanied by implicit threats. Although this kind of extortion is of concern and has been followed up by OHCHR, investigations have focused primarily on allegations of abuses related to the rights to life, physical integrity, liberty and security. At the same time, the businesses concerned have often asked OHCHR not to raise the cases for fear of reprisals.

OHCHR has noted with concern the increase in reports of YCL and other CPN-M abuses, particularly since the CPN-M Central Committee meeting in mid-April. The level and type of YCL activities and reported abuses vary from district to district. Most of the reports of disruption of political and other activities have been received from the Western Region, though some also from the Central and Eastern Regions. The largest number of abductions since the beginning of this year was reported in the Central and Western Regions.

The abuses have impacted members and supporters of political parties, state administration officers, businessmen, journalists, as well as others apparently caught up in disputes or who are perceived as having provoked YCL members. Current and/or former members of the CPN-M and affiliated organizations have also been targeted at times, actions which have been described to OHCHR as ‘internal matters’.

A number of alleged abuses attributed by the media and others to the YCL have, upon investigation, been committed primarily by other CPN-M organizations such as trade unions, student and women’s organizations, although at times YCL have also been involved. Sometimes the links between the YCL and other CPN-M affiliated organizations have been blurred. However, the CPN-M bears responsibility for all its member organizations, including the YCL, and to ensure that in carrying out their activities they do not resort to violence, intimidation or other abuses.

Abductions/ill-treatment/torture in captivity

The number of reports of abductions by CPN-M and its affiliated organizations dropped significantly since 2006 following a peak in October/early November. Nevertheless, they have continued; the first abductions by YCL were reported in December 2006 as indicated above, and appear to have increased since mid-April. Although previously carried out by CPN-M/PLA/militia with a few reported cases of individuals being abducted by CPN-M affiliated trade unions, many of the abductions reported over the past few months can be attributed to the YCL. For example, most recently, at least 24 individuals were abducted by the YCL in the period from 28 May to 14 June, in Kathmandu Valley, Sindhuli, Rupandehi, Kailali, Nawalparasi, Gorkha, Makwanpur, Ramechhap, Jhapa, Banke and Surkhet Districts.

The length of time abductees are held in captivity has generally become much shorter than in the past, usually a few hours or a day although some have been held for up to a week or more. Abductions have primarily been reported in the context of “law enforcement” activities, and in the

denied any similarities to “people’s courts” and said they had handed some cases over to the police. Most cases appeared to be resolved through mediation, according to the representatives.

context of enforcing the CPN-M's social norms, for example with regard to "illicit" sexual relations. Some have also occurred during the disruption of political activities (see below). In many cases, those abducted appear to have been interrogated – and sometimes beaten – in YCL offices. The ill-treatment, in a few cases severe and amounting to torture – is of particular concern. It should also be noted that some individuals are alleged to have been seriously beaten by YCL or other CPN-M cadres, though not abducted.

OHCHR has received only one report of an abduction by the YCL in the Far Western Region. Reports of abductions by the YCL in the Eastern and Mid-Western Regions have been fewer than in the Central and Western Regions. In the Western Region, OHCHR confirmed the abduction of 20 individuals since the beginning of April, 18 of them in Rupandehi District and two in Parbat District. While some of those abductees were accused of crimes³ – most were abducted in the context of YCL threats and attacks against other groups. In addition, a group of 52 MJAF supporters had been briefly held following the disruption of a MJAF rally in February in Rupandehi (see below).⁴

In the Central Region, OHCHR has confirmed cases of 21 people who have been deprived of their liberty by YCL cadres since January 2007, most of them in the last few weeks. In nine of the cases, OHCHR documented ill-treatment of the abductees while in YCL captivity. They were reportedly beaten, sometimes with plastic pipes, kicked all over the body as well as being subjected to death threats in different forms. In one case investigated by OHCHR in April, a 63-year-old businessman, accused of financial irregularities by the YCL, was held for 24 hours in two separate locations and subjected to severe ill-treatment including punches, kicks and beatings with an iron rod and a leather belt all over his body. OHCHR documented the victim's injuries through photographs and interviews with medical experts.⁵

Some victims or their families have asked OHCHR not to raise their cases with CPN-M representatives as they fear reprisals. Others have asked OHCHR to only raise them until the person is released but not to publish the details.

In two cases YCL tried to mislead OHCHR, claiming that they were not responsible for the abductions. OHCHR's investigations confirmed that YCL were directly responsible. For example, a director of a Manpower company in Kathmandu was abducted by un-identified persons on 8 April. Although it is not clear who initially abducted him, he was handed over to the YCL the same afternoon in Lalitpur District, and remained in their hands until his release one week later. The YCL denied responsibility to OHCHR and claimed that he was held by non-CPN-M affiliated persons, at the same time accusing the Manpower representative of criminal activities. The YCL reportedly interrogated the abductee and pressured him and his family to sign over land deeds as compensation for his alleged wrongdoings before he would be released. The YCL also reportedly hid the victim in a taxi during OHCHR's visit to the place of captivity.

³ Eight people suspected of theft were abducted by the YCL on 16 May, several beaten, and released the following day in Rupandehi District.

⁴ It should be noted that in addition to abductions by the YCL, OHCHR investigated the cases of 19 individuals abducted by other CPN-M entities between January and May in the Western Region.

⁵ He had been abducted by 15-20 YCL members from his residence in Kathmandu on 17 April. The YCL cadres cut the phone lines and physically restrained and threatened family members and domestic staff. The police came to the house but left after the YCL sent them away stating that it was an internal matter.

Out of the 21 persons abducted by YCL whose cases OHCHR investigated in Kathmandu Valley, most were released. Five were handed over to the police after between one and seven days in YCL captivity. All of those but one have since been released on bail by police. OHCHR was told by some of the abductees taken in Kathmandu that YCL have confiscated their mobile phones, jewelry, land deeds or tried to persuade them to sign a paper to hand over land in exchange for their release. In other cases ransom or release money has reportedly been handed over to YCL before the abductees were released from captivity.

As indicated above, in many of the abduction cases investigated, the YCL alleged that the victim was involved in criminal activities. In some cases, the YCL alleged that the police were aware of the criminal activities in question, such as smuggling, theft or murder, but did not investigate or arrest the suspects. In one recent high profile case in Kathmandu, the YCL captured and handed over to police a prominent businessman against whom an arrest warrant was pending but which had not been acted on.

In recent meetings with national and Kathmandu Valley YCL representatives, OHCHR has been informed that the YCL considers that it has both a legal and moral right to act on behalf of the people if the police fail to take what YCL considers to be necessary actions. The YCL further told OHCHR that it is the right of the people to take the law into their own hands if the police do not act.

Police frequently say they release individuals handed over to them by the YCL for lack of evidence, but do not appear for the most part to proactively seek to investigate themselves. OHCHR has noted repeatedly, for example, that police refuse to investigate crimes unless there is a formal complaint, or have placed the onus of naming perpetrators on victims of crime or abuse before accepting to investigate.

Nevertheless, as previously stated, police inaction cannot be used to justify abuses and acting outside the law. OHCHR considers the methods used by the YCL and other CPN-M entities which have also been responsible for abductions, to be arbitrary and without legal basis.

The State Cases Act allows a person who witnesses a crime⁶ being committed by another person to “hold” such person, and thereafter hand him/her over to the nearest Police Office. Non-law enforcement personnel may thus intervene in order to prevent a person who is committing a crime from absconding but may not otherwise deprive the liberty of any person. The State Cases Act also states that a person who knows that a crime has been committed, is being committed or is going to be committed must, as soon as possible, supply such information to the nearest Police Office by lodging a written complaint or verbal information mentioning relevant evidence to the extent available or seen or known by him/her. Additionally, international law requires that anyone taken into custody may only be held in an official detention centre as designated by the law.

Freedom of opinion, assembly and association, and related rights

Following the April 2006 ceasefire and subsequent political developments, there has been greater respect for the rights to freedom of assembly, association and opinion. Full restoration of those rights is essential as part of the building of a democracy and the electoral process. However, it is disconcerting to note that infringement of those rights is continuing, especially by the YCL and other organizations affiliated to the CPN-M. It should be noted, though, that the activities of other

⁶ This includes offences defined in the Civil Code (*Muluki Ain*) as well as offences under the Public Offences Act.

organizations in the Terai, including *bandhs* called by Madheshi and indigenous organizations, as well as the activities of armed groups, have also impacted on those rights.

The disruption of meetings, rallies, demonstrations or other political activities by the YCL has occurred in a number of places since the beginning of the year, most of the reported incidents being in the Western Region. Some have resulted in injuries which have required hospitalization of the victims. Most of the groups targeted are viewed by the CPN-M/YCL as regressive forces, such as the *Rastriya Prajatantra Party-Nepal* (RRP-N) which they (and other political parties in the SPA) accused of suppressing the *Janaandolan* (the People's Movement). Madheshi organizations have also been targeted, although at times the Madheshi organizations themselves have been responsible for the violence.

In Jhapa District, Eastern Region, for example, a demonstration of around 1500 persons from student unions belonging to the SPA but led by the YCL surrounded the hotel where an RPP-N meeting was being held and disrupted the proceedings, beating some of the participants. During a meeting with OHCHR, the YCL acknowledged responsibility for the violence. OHCHR also investigated reports of physical assault by members of the YCL against RPP-N supporters who were reportedly beaten up on 10 February as they arrived for a district meeting scheduled to take place later that day in Lamjung District, Western Region.

In one of the most recent incidents members of another RPP party, the RPP-Rana, were targeted in Parbat District, Western Region. On 27 May, according to numerous eye-witnesses interviewed, some 70 youths including YCL cadres, students affiliated to the Nepali Congress – Democratic (NC-D) Party and members of the *Janamorcha* party entered a hall where an RPP-R district-level political orientation meeting was being held, grabbed documents and beat up RPP-R members and supporters. Some 20 of the 70 members present were slightly injured. Ten police officers arrived shortly afterwards but were unable to control the situation. An RPP-R regional representative told OHCHR they had been informed by the national RPP-R leadership that the CPN-M had given assurances that the programme would not be disrupted, and that RPP-R could freely organize their political activities in the districts. No complaint has been filed with the police regarding the violence, and the CDO confirmed that no-one has been arrested in connection with the incident. The Parbat YCL chairperson denied YCL's involvement in the incident and said that it was a false accusation. The YCL chairperson informed OHCHR that local people and some anti-royalist youths disrupted the programme and the YCL "morally" supported their initiatives. Some sources informed OHCHR that the RPP-R meeting was disrupted because there were rumours that the programme was organized by RPP-N instead of RPP-R.

In another incident in the Western Region, YCL cadres attacked a group of students affiliated to ANNISU (sixth)- a *Janamorcha*-affiliated student union – who were holding a meeting in Bhairahawa on 28 May. According to information gathered by OHCHR, after the meeting, around 60-70 YCL cadres carrying wooden and iron rods, who arrived in two jeeps, attacked a group of some 30 participants. A fight ensued during which several students and several members of the YCL were injured. The YCL chairperson in Rupandehi informed OHCHR that the incident was sparked by the students removing a YCL signboard and replacing it with one which had anti-YCL slogans. Although the police were present, they did not intervene when the YCL attacked the students. The violence ended before additional back-up police arrived. ANNISU (Sixth) has not filed a case against the YCL at the DPO and police are not investigating the incident.

Students were also injured in an attack on 29 April in Kathmandu, when cadres of the CPN-M affiliated All Nepal National Independent Students Union Revolutionary (ANNISU-R) supported by the All Nepal National Trade Union Federation (ANNTUF) forced their way into the Padma

Kanya Campus. The incident was sparked by a demand from ANNISU-R that they be represented on an interview panel regarding scholarships. The demand was rejected by the Nepal Student Union (NSU) who saw themselves as the elected student union representing all students. The CPN-M cadres started kicking and beating the NSU members with lathis and iron rods. Five female NSU students, all affiliated to the Nepali Congress Party (NC), were badly injured, three of them seriously. They were hospitalized for a week with internal injuries, a broken hand and broken leg as well as a head injury. Six ANNISU-R members were also reported to have been slightly injured.

OHCHR was told that some ANNISU-R and ANNTUF members have formed their own YCL units and that some of those members participated in the attack. The existence within ANNISU-R and ANNTUF of independent YCL units which do not fall under the normal YCL structure was also confirmed in interviews with YCL members at the district level in Kathmandu. Whether or not the members participating in the attack were part of the regular YCL structure or not, OHCHR's investigation concluded that the attack was a violation of CPN-M's commitment to respect human rights, the CPA and domestic law. Although police were present at the scene they were not able to stop the violence. No police investigation has been initiated and no First Information Report (FIR) has been lodged.

Tensions between the YCL and Madheshi organizations have also resulted in violence, at times with fatal consequences. OHCHR has already issued a report on the incidents in Gaur which led to the brutal killing of 27 CPN-M members, some of them YCL cadres, on 21 March, and especially the failure of law enforcement agencies to prevent the killings and the violence which led to them. The report noted that the CPN-M had provocatively organized a rally, in which the YCL played a prominent role, in exactly the same location and at the same time as a rally by the MJAF and, like the MJAF, did nothing to contribute to abating tensions which were clearly rising.

On 13 June, OHCHR was informed by both the YCL and a CPN-M representative in Jhapa that they had taken a decision to disrupt a meeting of Madheshi organizations due to take place that day in Bhadrapur, Jhapa District, Eastern Region. Papers with slogans threatening action against those responsible for the Gaur killings were placed on the walls at the entrance to the location where the event was to take place. Potential violence was eventually averted when the CDO banned the Madheshi meeting. OHCHR also contacted a national YCL representative to raise its concerns about potential violence. The representative later told the Office that he had immediately called CPN-M/YCL representatives in the region and been given assurances there would be no violence.

In the Western Region also, the YCL has repeatedly disrupted activities organised by the MJAF. The YCL has physically assaulted and abducted MJAF members on at least three occasions in Bhairahawa, Rupandehi District, to which the MJAF has at times retaliated also with violence. The YCL has told OHCHR that their intention is to prevent the MJAF from establishing a base there. During a rally organized by the MJAF on 25 January 2007 in Bhairahawa, to pay homage to a Madheshi youth killed by a CPN-M cadre in Lahan, YCL cadres abducted and physically assaulted two MJAF leaders before handing them over to the police. On 23 February, YCL cadres tried to disrupt a political programme organized by the MJAF in Bhairahawa. Following the arrival of additional MJAF members from the neighbouring district of Nawalparasi, two CPN-M cadres were severely beaten and two YCL vehicles were burnt. In retaliation, a large number of CPN-M/YCL cadres were deployed from Butwal, where they had gathered to attend a CPN-M mass rally scheduled to take place the following day. On arrival, they indiscriminately beat MJAF supporters gathered at the original meeting place, as well as other Madheshi's living in the area where the event was held. The YCL cadres then gathered together 52 people, took them to a nearby convention hall where the YCL were staying and held them till released five hours later after OHCHR's intervention.

Again in Bhairahawa, YCL cadres prevented the MJAF from holding a press conference on 18 March. According to eye-witnesses interviewed by OHCHR, 40 to 60 YCL cadres with sticks reportedly surrounded the hotel where the press conference was supposed to take place. They started searching for MJAF cadres, entering all the rooms even those occupied by guests, accusing the hotel staff of supporting the MJAF. However, MJAF cadres managed to escape. While the CPN-M district leadership has denied the involvement of YCL, stating that the perpetrators consisted of a mixed group of students, witnesses recognized the YCL district leader amongst those responsible.

International human rights law⁷ requires that the right of peaceful assembly, including political meetings and rallies, must be respected. Such activities may only be subject to restrictions by the state which are: imposed in conformity with the law; necessary in a democratic society; and are in the interests 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. In the CPA, the CPN-M explicitly agreed to respect “freedoms of speech, expression, setting up of organizations and holding peaceful gatherings” and “the freedom to take part in peaceful political activities.”⁸ The mere fact that an organization is pro-monarchy and allegedly linked to “regressive forces” cannot be used as an excuse for disruptive and often violent action.

Incidents in Bardiya in relation to ex-Kamaiya and landless people

One of the more complex set of incidents in which the YCL was alleged to have been widely involved as instigators and which was investigated by OHCHR took place in the Mid-Western Region at the end of April/beginning of May. They were sparked off by the establishment of a temporary Armed Police Force (APF) unit for border control in a Cotton Development Committee (CDC) building Kusumba Bazaar, Sanoshree VDC on 30 April, in Bardiya District. According to information collected by OHCHR, there were three violent incidents during demonstrations in Bardiya District, two in Sanoshree VDC on 30 April and 2 May and one in the District Headquarters (DHQ) Gulariya on 5 May.

The incidents involved at different times different groups including freed *kamaiyas* (former bonded labourers),⁹ the APF, the YCL and a group of local people including businessmen and members of political parties other than the CPN-M. The initial protest centred around the fact that land within the CDC compound where the post was being established, and which was being cultivated by freed *kamaiyas*, would be appropriated. This also sparked fears that the freed *kamaiyas* living within and in the vicinity of the compound might be displaced. Even though it appears that there had been an eight-party agreement on the setting up of the post, the freed *kamaiyas* say they had not been

⁷ ICCPR, Article 21.

⁸ CPA, Sections 7.4.1 and 7.7.1.

⁹ 'Kamaiya' is a system of bonded labour that was formally abolished by the Government on 17 July 2000. It especially affected Tharus and dalits. Landless people without alternative means of subsistence would live and work on a landowner's property in exchange for loans in cash or kind that allowed them to eat. Whole families were forced to labour under this system. Although the system has been abolished, the question of access to land and other support for the ex-*kamaiyas* has still not been fully resolved. The Government provided limited rehabilitation assistance, for example, in 2002 when small plots of land were distributed to some freed *kamaiyas*. However, the assistance did not provide for all of them and widespread anomalies have been reported.

informed or consulted, including with regard to a decision that they would be allowed to stay on the land.

The first violence occurred on 30 April, the evening of the establishment of the police post. A group of local freed *kamaiyas*, and possibly YCL members, participated in a demonstration outside the CDC compound to protest against the establishment of the post. Police stated that the crowd became violent, throwing stones. The police reportedly used force, including baton charging and firing shots in the air in response. There were some minor injuries, though numbers of injured are not known, and it is not clear whether the force used by police was excessive. According to local CPN-UML members, following these incidents, the outside of their office was vandalized by an unidentified group of men not from the area, who dismantled the signboard and flag.

The second incident involving violence took place on 2 May, when a group of freed *kamaiyas* and YCL (who were present, but the extent of whose involvement has not been established) were again taking part in a demonstration outside the CDC compound. Multiple reports state that violence ensued when a group of between 100 and 300 local people, including businessmen and members of political parties approached, demonstrating in favour of the establishment of the police post and against a *bandh* which had been called. Sources agree that the violence occurred when the original demonstrators and the approaching group clashed, and the APF intervened firing shot gun pellets and rounds and *lathi*-charging. OHCHR verified that seven APF personnel and ten civilians were injured in the clash. The seven APF personnel told OHCHR they were injured by stones that were thrown. According to police records, the ten civilians include three CPN-M members, five freed-*kamaiyas*, one landless person and one businessman. According to local sources, following the demonstration, a group of unidentified individuals who are thought to be YCL cadres threw stones at the houses of selected local CPN-UML, NC and NC(D) members, breaking some windows, and set fire to two motorbikes belonging to two CPN-UML members.

Authorities interviewed by OHCHR all said they believe the YCL was behind the demonstrations and violent incidents that took place on 30 April and 2 May in Sanoshree VDC. The common view, including in the press, appears to be that YCL cadres were inflaming the situation by agitating amongst the freed *kamaiyas* and literally “pushing them forward” during the demonstration. Representatives of the freed *kamaiyas*, the YCL, the CPN-M and a representative of a local business association insisted, however, that the demonstrations were genuine protests by the local freed *kamaiya* community. The YCL and the CPN-M claim they support the movement but are not actively involved.

Following the initial protests, by the afternoon of 3 May the incidents in Sanoshree VDC set off wider district level campaigning for the rights of landless people. A *chakka jam* was called by the *Tharu Rastriya Mukti Morcha* followed by *bandhs* in the districts of the Tharuwan area on 4 and 5 May, calling for land to be allocated to freed *kamaiyas* and landless people. Demonstrations led by groups of freed *kamaiyas* were staged in Gulariya on 4 and on 5 May. This latter demonstration ended in violence, as demonstrators set fire to the Land Reform Office (LRO) and the Nepal Electricity Distribution Centre. According to a police source, the demonstration had grown to around 1,000 people when it passed the Land Reform Office. A small group at the back of the demonstration were seen entering the LRO after the majority of the crowd had passed. According to a Land Reform Officer, these individuals set fire to four rooms in the LRO, damaging records covering 15 VDCs in Bardiya District. Property in the Nepal Electricity Distribution Centre including a vehicle and a computer were set on fire shortly afterwards. According to police, forty-six individuals were arrested on the day of the incident, 38 of whom were charged with arson and vandalism and released on bail on 21 May.

Information received from multiple sources suggests that the violence in Gulariya was carried out by a small group of individuals taking part in the demonstration, and was not the intention of the larger group. Although demonstrators were reported to be carrying batons and other weapons, there was no other violence. OHCHR has not been able to establish the level of involvement of the YCL, but information received from various sources indicates that at least some YCL cadres were involved in the demonstration itself and at least one took part in the violence that ensued. At least five of the 46 individuals arrested were confirmed to be YCL members.

CPN-M/YCL response to allegations of abuses

A draft copy of this report was presented to Chairman Prachanda by the Representative at a meeting on 20 June. OHCHR raised the issues presented in this document and stressed that the abuses are contrary to relevant human rights standards, as well as key commitments of the CPN-M in the CPA. In his response, Chairman Prachanda stated that he understood OHCHR's concerns and emphasized that such abuses are not in accordance with CPN-M policy. He gave assurances that the party would discuss and address them. He noted that the YCL included former CPN-M militia, whose situation had not been addressed in the context of the peace agreement. Other CPN-M national leaders interviewed by OHCHR also commented that the problems need to be considered in the context of ten years of armed conflict and the difficulty some YCL cadres have in understanding the implications of transforming the CPN-M from an armed movement into a political party within a competitive multiparty system.

Issues raised in this report were presented to a senior leader of the YCL at a meeting in Kathmandu on 15 June. While reiterating the leadership's intention to correct practices which are contrary to human rights principles, he denied that YCL practices in the context of "law enforcement" amount to abuses. He made note of all OHCHR's concerns and told the delegation that he would raise them with party cadres at the national and local level. He stressed that action is and would be taken against those responsible for abuses if they are confirmed, through internal disciplinary measures and re-education.

Following press articles at the end of May claiming that a YCL Central Committee meeting had decided to investigate allegations of YCL abuses, OHCHR met with one of the committee's members, who denied that any decision had been made regarding internal CPN-M investigations of YCL actions. He furthermore stated that there was no need for such investigations as the YCL had done nothing wrong. He stated, on the contrary, that the YCL would intensify their actions to bring alleged perpetrators of crimes to justice, as the police continue to be inactive and ineffective in maintaining law and order.

The State response

Holding perpetrators of abuses accountable for their actions – whether committed during the conflict or since the April 2006 ceasefire, and whether committed by State, CPN-M linked entities – continues to be one of the main human rights issues to be addressed in any meaningful way. Like others who have been responsible for acts of violence and abuses, including the police, members of the YCL have generally enjoyed impunity for their actions. At the same time, law enforcement agencies have an obligation to take action to prevent violence and human rights abuses from occurring, and more generally to protect the Nepal's citizens.

In some cases recently YCL cadres have been arrested by police in connection with alleged abuses or related acts of violence. For example, one YCL member was arrested on 15 May in Kailali on suspicion of attempting to murder a district administration official when a group broke into his

office during a protest organized by the Tharu National Liberation Front (TNLF) on 8 May. Protestors armed with bricks had earlier forced their way through the gate to the DAO compound and broken down doors and windows of the office. The Attorney General's office filed a charge sheet for attempted murder against the arrested YCL member and the court process is ongoing. The next court hearing is scheduled for 2 July, in the meantime the District Court has released the man on his own recognizance. In at least one case investigated by OHCHR, that of a YCL cadre arrested for driving an unlicensed car, local YCL leaders freed him from detention.

For the most part, however, police continue to be unwilling or very reluctant to intervene and arrest those responsible for abuses, even when they themselves witness them, despite the 3 April 2007 Home Ministry instructions requiring Chief District Officers (CDOs) and police to strengthen their operations with regard to maintaining law and order. As with complaints of human rights violations against the APF and NP, police have not fulfilled their legal responsibility to take action against alleged YCL perpetrators by claiming that an FIR must be filed by the victim or on his/her behalf before NP can take any legal action or that they require authorization from higher police authorities.

More specifically, the NP must register an FIR without a complaint from the victim and commence investigations. Some of the victims of YCL beatings tried to register FIRs in the relevant police offices but were told instead to present themselves to offices of more senior police and administrative officers for registering the FIR. In other cases, when YCL cadres handed over abducted persons who had visible injuries from beatings, the NP officers did not question what had caused the injuries but instead took the accused individual into custody, although sometimes this would appear to be for the protection of the individual also. In some districts, police have told OHCHR that they feel under pressure from political parties whenever YCL/CPN-M cadres are involved in cases as alleged perpetrator. Such cases are often resolved through mediation and an agreement to either investigate or pay compensation, rather than holding individual perpetrators fully accountable. The lack of political and institutional support for police on the ground to take action against perpetrators of violations and abuses continues to be of serious concern.

Police passivity or their lack of capacity has also been identified as a major problem in preventing violence and abuse. The most egregious example of this, as mentioned above, was the failure of the police and CDO to prevent the Gaur killings. This report has also cited a number of incidents where police have been unable to prevent attacks by the YCL and others, or to stop violence once it starts.

Conclusions

Since the re-establishment of the YCL in December 2006, it has emerged as an organization central to the CPN-M, with increasing prominence. Though it has been undertaking community activities which are generally viewed as positive and demonstrations involving the YCL have not always been violent, it is the YCL's challenging of certain political and other organizations through threats and violence, as well as the abuses committed in the context of "law enforcement" that have principally been cause for concern. Though the types and levels of abuses vary from district to district, those documented by OHCHR include abuses related to the rights to freedom of opinion, assembly and association as well as the rights to personal liberty, security and physical integrity.

As an integral part of the CPN-M structure, the CPN-M leadership is ultimately responsible for the YCL's actions. While OHCHR understands that the leadership has been trying to address YCL abuses, there has so far been little improvement and indeed over the past few weeks allegations of abuses appear to have increased. Confidence in the CPN-M's commitment to human rights in

accordance with the CPA provisions will be seriously undermined if effective action is not taken to address these concerns.

At the same time, CPN-M criticism of police inaction to address crime, corruption and law and order, which echoes broad concerns of the population as a whole, must be addressed. The weakness of the State law enforcement agencies and criminal justice system overall remains a critical challenge both in relation to addressing YCL abuses but also to the broader issue of restoring law and order, maintaining security and protecting the community against acts of violence, threats and intimidation whatever their origins.

It is one of the biggest impediments to creating conditions for free and fair elections, and to ensuring a successful peace process. The lack of effective law enforcement has created a vacuum which is easily exploited both for political and criminal interests. It has also created the conditions for violence and abuses such as those included in this report and for those responsible to carry them out knowing they will not be held accountable.

In spite of repeated calls both nationally and internationally for the Government and the eight parties to address the issue of law enforcement and accountability, there has been little progress to date. OHCHR has noted that in April the Home Ministry took steps to issue directives to police requiring them to maintain law and order and fulfill their duties according to the law, and these have resulted in a spate of arrests of YCL cadres as well as members of armed groups operating in the Eastern and Central Region. At the same time, police have been re-deployed to previously abandoned police posts in many parts of the country. But there have been setbacks following attacks by *Janatantrik Terai Mukti Morcha* (JTMM – an armed group operating in the Terai) and others, including in a few cases the YCL, and the redeployment of police has not been matched by a redeployment of resources generally. In some cases, the YCL has also challenged the return of police.¹⁰

Local police remain passive for the most part, demoralized, under-resourced and ill-equipped to support and protect the local communities they are expected to serve. As a result, CPN-M/YCL claims to address criminality through their own apprehension of suspects have at times been met with positive approval by the local communities affected. Nevertheless, the manner in which the YCL and other branches of the CPN-M carry out “law enforcement” activities does not guarantee respect for human rights and cannot be condoned.

Likewise, the YCL’s violent disruption of activities of opposing groups, at times with other parties from the SPA, must not be tolerated. Such actions close the political space for dialogue and risk contributing to a spiral of violence. They are contrary to the principles of freedom of opinion, assembly and association and run contrary to conditions conducive for free and fair elections. As indicated above, any persons responsible for crimes or abuses must be dealt with by state authorities in accordance with the law.

¹⁰ For example, OHCHR visited three NP posts in Ramechhap, Rasuwa and Sindhupalchowk Districts and confirmed allegations that the YCL had forced police to leave their posts. In Bethan VDC, Ramechhap District, the CPN-M/YCL forced the police into a neighbouring VDC. In May, the YCL evicted the NP from the Dandagaon police post, Rasuwa District, following NP attempts to arrest a YCL cadre who was accused of injuring someone during a fight. The police were reinstated the following day after political parties and the local authorities negotiated their return. Also in May, the CPN-M/YCL confiscated weapons from the NP post in Bhimtar VDC, Sindhupalchowk District and evicted the NP. The weapons were returned to the NP after the DSP spoke to the CPN-M district in-charge but the NP have not returned and are staying in a neighbouring VDC.

Recommendations

In the light of the above, OHCHR is making the following recommendations:

1. The CPN-M and YCL leadership must give clear, public directives to the YCL cadres to stop abuses and that such abuses will not be tolerated.
2. In addition to any internal disciplinary measures that may be taken, those responsible for such actions should be held accountable by the State authorities, with whom the CPN-M and YCL must cooperate.
3. At the same time, while law enforcement agents must be instructed to intervene to prevent and investigate any kind of violence or abuse - whether by the YCL/CPN-M, by state agents or others - and to arrest and investigate those responsible, they must also be given the political support by the Government and political parties to do so, with full respect for human rights.
4. The Government must develop a coordinated strategy to address public security and law enforcement, with full consultation with and the support of all parties to the CPA. Without it, there risks being a further deterioration of law and order with inherent risks to respect for human rights also.
5. Finally, as political activities increase, especially in the context of the electoral process, political differences must be resolved through dialogue and not through violence, threats and intimidation by any party. Such conduct has the potential to jeopardise the integrity of the electoral process.