



United Nations

Office of the High Commissioner for Human Rights, Nepal

Killing of civilians in Banbehda

Investigation Report

18 August 2005

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Annex 1 – Map of Nepal

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List of Acronyms

APF	-	Armed Police Force
CAT	-	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	-	Convention on the Elimination of All Forms of Discrimination Against Women
CPN (Maoist)	-	Communist Party of Nepal (Maoist)
CRC	-	Convention on the Rights of the Child
ICCPR	-	International Covenant on Civil and Political Rights
NGO	-	Non-Governmental Organisation
OHCHR	-	Office of the High Commissioner for Human Rights
RNA	-	Royal Nepal Army
UDHR	-	Universal Declaration of Human Rights
UN	-	United Nations
VDC	-	Village Development Committee

Executive Summary

During the early hours of 14 June 2005, six civilians - three women, two men and a one-year-old child - were abducted, abused and brutally murdered in the Banbehda area of Kailali District by unidentified perpetrators. All but one of the victims were related to APF personnel. The sixth, along with one of the other victims, had recently arrived in the area in order to be recruited by the APF.

On 20 June 2005, OHCHR initiated an investigation into the Banbheda incident, including a site inspection, interviews with witnesses, meetings with relevant authorities, and gathering of evidence.

The essential facts, as established by OHCHR, are that during the hours of darkness, a group of assailants entered a cluster of houses 150 metres from the APF Badimalika base and abducted the six victims. They were marched to a nearby forested area, abused and murdered. They were found with their hands tied behind their backs and all throats had been cut.

In committing these acts, the perpetrators showed a complete lack of respect for life and human dignity. The human rights of the victims were violated in multiple ways and, if party to the armed conflict, the perpetrators violated international humanitarian law.

No group has claimed responsibility for the incident, and allegations of CPN (Maoist) involvement have been denied by the CPN (Maoist), principally in a press statement.

Although the motives remain a matter of speculation, the acts suggest a level of premeditation and organisation and an ability to carry them out brazenly, in the immediate vicinity of an APF base. Moreover, the insecurity in the area due to the conflict has created an environment where such violent acts can occur and where the competent authorities face significant obstacles in conducting a thorough and timely criminal investigation.

I. INTRODUCTION

1. On the evening of 14 June 2005, the Office of the United Nations High Commissioner for Human Rights in Nepal (OHCHR) received information from a local human rights defender about the alleged abduction, abuse and killing of six civilians in Banbehda, Chaumala VDC, Kailali District, Far Western Region that had reportedly taken place earlier that day. It was further alleged that all or some of the victims were related to APF personnel serving in the area. Reports the following day in the national press supported the allegations.
2. In accordance with OHCHR's mandate, and in the light of applicable international law, on 15 June 2005, OHCHR initiated an investigation into the allegations received. The present report contains the conclusions of this investigation.

II. ACTIVITIES UNDERTAKEN AND COOPERATION RECEIVED BY OHCHR

o Activities undertaken

3. OHCHR human rights officers travelled to Banbehda, Chaumala VDC, Kailali District from 21 to 22 June 2005.
4. In Banbehda, OHCHR visited the place of abduction, two houses immediately to the south of the APF Badimalika Base, and the location, in the Gwasi Community Forest, where the bodies were found. A reconnaissance foot-trip between the abduction site and the crime scene was made.
5. In the course of the investigation, OHCHR held meetings with or interviewed:
 - Neighbours of the victims.
 - Surviving family members.
 - Security forces personnel (APF Regional Headquarters, APF Badimalika Base, and District Police Headquarters, Dhangadhi).
 - Civilian authorities (Chief District Officer, Dhangadhi).
 - Staff at the Seti Zonal Hospital, Dhangadhi.
 - Local journalists.
 - Human rights defenders.
6. Documentary evidence collected includes post-mortem and forensic reports, photographs of the crime scene as the bodies were found, press releases and press clippings, as well as a sketch made of the incident area (Annex 2).

o Cooperation received

7. The APF and civilian authorities were cooperative. The APF provided OHCHR with a dossier on the incident and facilitated access to the crime scene. Personnel made themselves promptly available for interview. OHCHR regrets, however, misleading information given by the APF in regard to two CPN (Maoist) detainees in APF custody.
8. CPN (Maoist) did not make contact with OHCHR during the investigation and have yet to provide any information in response to the OHCHR Preliminary Investigation Report.

III. GENERAL CONTEXT

9. The incident took place in an area known as Banbehda and the surrounding Gwasi Community Forest, within Chaumala VDC, in Kailali District, on 14 June 2005.
10. The Far Western Region is one of the five development regions in Nepal. Situated approximately 600km west of Kathmandu, it comprises nine districts, and 383 VDCs. Kailali District is situated on the eastern and southern edges of the Far Western Region. It is the most populous and second largest district in the region, comprising 42 VDCs. At its heart lies the main crossroad of the region, where the east-west Mahendra Highway meets the north-south road.
11. The APF Regional Headquarters is nearby the crossroads. An APF base is also located in Badimalika 12km to the east, on the main highway between the Khutiya and Kuchaini Khola rivers. The base is surrounded by mixed forest and scattered housing.
12. The CPN (Maoist) "People's Liberation Army" in the region reportedly includes three active brigades - the Satbariya Second Brigade, the Third Brigade and the Eighth Brigade. There is also reported to be a Special Task Force operating in and around Dhangadhi, about 30km south of Banbehda. For the purpose of CPN (Maoist) operations, the Banbehda area is reportedly under the responsibility of the Eighth Brigade.
13. According to information provided to OHCHR, the Security Forces – the RNA, the Nepal Police Force (Police) and the APF – seem to have limited control of the territory under their area of responsibility. Check points on main roads are fixed and located near to security force bases. There are reported to be few or no patrols at night.
14. Clashes between security forces and the CPN (Maoist) are frequent. More than 60 serious security incidents (killings, armed clashes, bombings, abductions, etc) have been recorded in the region between February and June 2005.¹ 84% of the incidents recorded took place in the districts of Doti, Kailali and Kanchanpur, where the CPN (Maoist) Special Task Force is said to be operating.
15. The initial abductions took place in the immediate vicinity of the Badimalika APF base, and all but one of the victims was related by blood or marriage to APF personnel. The Base has been the object of repeated attacks by the CPN (Maoist) in the past. According to security forces, a large-scale CPN (Maoist) attack on 24 May 2005, where 200 to 300 insurgents attacked the base from different sides, resulted in the death of four CPN (Maoist) members, including a female commander. The base hosts a battalion, and is surrounded by the houses of family members of APF personnel. Due to the prevailing security situation, security forces are permitted to spend time with their families only in daytime. At night, they come back to sleep in the barracks within the base.
16. According to one source, since the incident occurred, calls have been made to family members of APF personnel, using the Banbehda killings as intimidation. In the past 15 months, the Police have recorded more than 88 incidents nationwide committed against the family members of security forces personnel, including kidnapping, forced displacement, looting and burning of houses, and the locking of houses (under threat of punishment if the owners try to enter).

¹ Office of the Coordinator of Humanitarian Affairs Incident tracking records, 2005.

IV. FACTS RELATED TO THE BANBEHDA INCIDENT

○ Facts relating to the incident as recorded by OHCHR

17. On 14 June 2005, between 24.00 and 01:00, a group of unidentified individuals were heard, by people living in the area, arriving in at the Banbehda Bazaar, about 150 metres south of the APF Badimalika Base². The group is thought to have arrived on foot, although one report alleges that a tractor was heard entering the location at that time. According to witnesses, male and female voices were heard among the group, which was estimated to include between five and 12 persons. Reportedly, some of those in the group were wearing heavy-sounding boots and armed with knives, including the traditional kukri.
18. The group walked a number of times around house number 1 (see Annex 2, inset diagram). House number 1 is made up of six adjoining, single-room dwellings, each with a separate wooden entrance and window/ventilation-hole at the rear.
19. At the time of the incident, house number 1 was occupied as follows:
 - Rooms A and B had been vacant for two days: some unconfirmed sources indicate that the previous occupants left due to security concerns.
 - Room C was occupied by the wife of an APF policeman.
 - Room D was temporarily unoccupied, and its dweller, Mrs. Radha Devi Singh, was residing at night in room E with her neighbours, for security reasons. Mrs. Radha Devi Singh was the wife of APF policeman Mr. Man Bahadur Singh.
 - Room E was occupied by four individuals: Mrs. Durgadevi Iyer, its habitual occupant, wife of APF policeman Mr. Upendra Iyer; Mrs. Radha Devi Singh, neighbour from apartment D; and Mrs. Laxmi Shah and her one-year-old child, Dipendra Shah (both of whom had arrived less than 48 hours previously), respectively wife and son of APF policeman Mr. Keshab Shah.
 - Room F was vacant.
20. After having surrounded house number 1, some individuals in the group started to knock on the doors and to peep through the window/ventilation-holes into the rooms with a flashlight, and asking occupants to open their door.
21. In room C, the wife of the APF policeman hid under a bed, pretending the room was vacant. She remained in hiding until daylight at around 05.00.
22. Members of the group apparently tricked the inhabitants of room E into opening the door by posing as members of a police patrol. Members of the group reportedly asked questions on the whereabouts of the room inhabitants' husbands, and the three adult inhabitants were ordered to leave with the group. After having refused to leave behind her one-year-old child, Mrs. Shah was ordered to take him along.
23. After the initial abduction of the four people from house number 1, the group went to house number 2, ten metres away. House number 2 was occupied by Mr. Ganesh B.K., cousin of APF policeman Mr. Dharma B.K., and Mr. Prem Buh. Both had arrived some days earlier to be recruited by the APF. The door was knocked in and the occupants were

² Grid references GR684863, as per 1:25,000 Map Sheet Artiya, FINNIDA/HMG produced maps of Nepal.

abducted. According to one report, house number 2 was searched, and 9,000 Nepalese Rupees and a golden ring were taken.

24. Before leaving the area at between 00.30 and 01.00, the group shouted out to all those within earshot to tell the police to send the victims' husbands to the Khutiya river, west of the village, and warned that "there will be a fight". The abduction took place over an estimated period of 30 to 60 minutes.
25. The group was heard by a number of sources making its way east, in the direction of the Kuchaini Khola river and the Gwasi Community Forest: voices (including a child crying), activation of a water pump and possibly the sound of a tractor were reported. The group is thought to have used the electric pylons to navigate by night through the Gwasi Community Forest.
26. OHCHR was unable to confirm what precisely happened to the 6 abducted individuals between 01.00 and 12.30, when their bodies were found in the middle³ of Gwasi Community Forest.
27. As was later revealed by post-mortem reports, photographs and interviews with witnesses and staff who conducted the autopsy at Seti Zonal Hospital, OHCHR found that:
 - Some of the victims were subject to severe physical abuse, including beatings and stabbing, as well as being dragged along the ground.
 - All of the victims, except for the one-year-old child, had their arms tied behind their back when they were found, suggesting an execution-style murder.
 - The victims were killed with sharp objects, possibly knives or kukris. There were severe injuries to either the front or the back of the neck, which was the cause of death in each case.
 - The best estimation of the time of death was not earlier than 01.00 on 14 June 2005.
28. Given the decomposed and distended state of the bodies by the time of autopsy, it was not possible to determine whether any of the female victims had been subject to rape. However, because of the suspicion of rape, vaginal swabs were taken by the police from the three female victims. Samples were sent to Kathmandu, and forensic testing for the presence of semen gave negative results in all three cases. Nevertheless, photographs of the position in which the bodies were found, as well the lack of lower garments on two of the three women, are consistent with sexual assault.
29. According to the base Commander, the APF Badimalika Base was informed of the abductions between 05.00 and 06.00 on 14 June 2005, by a local female resident. The APF informed local human rights defenders of the incident the same morning, at around 07.30. A search operation was organized, and APF forces were dispatched to the west of Banbehda Bazaar, towards the Khutiya river area.
30. Between 12.00 and 01.00 on 14 June 2005, a local shepherd boy (name unknown) reportedly discovered one female body in the Gwasi Community Forest, 1.3km south-east of the APF Badimalika Base. He subsequently informed Mr. Kaghendra Budha, vice-chairman of the Gwasi Community Forest.

³ Between grid reference GR 696859 and GR 696857, as per Map Sheet, *supra*.

31. According to Mr. Budha, he went to the place where the body of a woman was found and recognized the body of Mrs. Radha Devi Singh. He then proceeded to inform the APF base. On the way there, he met a fellow ranger who had also seen the body.
32. The APF Badimalika Base Commander dispatched a platoon to the place indicated at around 15.00, headed by Officer Mani M.S., 2nd in command at the base. Six bodies were found: three women, two men and a male child, all within a 30m radius of each other. Pictures were taken of the exact location and position of the bodies, as reportedly found.
33. The bodies were then quickly taken to the APF Badimalika Base as night was approaching. Due to the prevailing security situation at night, it was decided to transport the bodies to Dhangadhi for an autopsy the following day.
34. The victims were identified by relatives as follows:
 - Ganesh B.K., male, age 18.
 - Prem Buhl, male, age 18.
 - Durgagevi Iyer, female, age 19.
 - Dipendra Shah, male, age one.
 - Laxmi Shah, female, age 21.
 - Radha Devi Singh, female, age 19.
35. On 15 June 2005, a press conference was called for 07.00, at the base. The bodies were lined up, and a video was shot by APF personnel. The video clearly shows the bodies of women still wearing jewellery (earrings, necklaces and anklets).
36. The bodies were transferred to the Seti Zonal Hospital at approximately 12.00 on 15 June 2005, by APF personnel. The autopsy was conducted that same day.
 - **Comments by State authorities**
37. On 16 June 2005 the APF Headquarters in Kathmandu submitted to OHCHR a report it had prepared entitled, “Massacre of Families of Armed Police Force Employees “. The report details the APF presentation of facts concerning the incident, including the identity of victims, the identification of perpetrators and possible motives. Photographic and video evidence of the condition of the bodies was attached to the report.
38. According to the APF report, the CPN (Maoist) is the suspected perpetrator, for several reasons:
 - Previous CPN (Maoist) attacks on a number of security forces bases and checkpoints in the months of May and June 2005.
 - “Information from local residents”.
 - Divisions within CPN (Maoist) ranks, with one side attempting to “bring about the failure of Maoist leadership in the area (to defame Baburam Bhattarai)”.
 - CPN (Maoist) policy of “frightening a thousand people by killing one”, being relied upon elsewhere.
 - CPN (Maoist) strategy of “creating Fear Psychosis”, to make security personnel desert security forces.
39. On 3 August, the APF advanced further information in support of their assertion that the CPN (Maoist) were embarked on a strategy of creating fear among security forces and their families. According to the APF, two CPN (Maoist), who were apprehended by them

on 5 June, indicated that the CPN (Maoist) had decided to include “intimidating families of security forces” as part of their strategy.

40. OHCHR regrets that in response to its request on 21 June to interview the two CPN (Maoist), the APF misled the investigation team by saying the two individuals were not in their custody. Subsequent enquiries have led to the APF admitting the two individuals were under APF detention in Kailali at the time.

41. During a meeting in Kailali on 10 August with the District Superintendent of Police, OHCHR was informed that the investigating officer is currently pursuing a line of enquiry that the killings might have been committed by or on behalf of a CPN (Maoist) whose motive was private revenge.

○ **Comments by CPN (Maoist)**

42. The CPN (Maoist) has denied any involvement in the incident, both through the press (Annex 3) and in meetings with human rights defenders.

43. The CPN (Maoist) cite the incident as an “...example of [the] severity of the security forces’ internal divisions and internal discord.” More specifically, CPN (Maoist) has alleged that:

- Accusations against CPN (Maoist) are motivated by a conspiracy to foster misconceptions about the “People’s Liberation Army”.
- They are also motivated to deflect responsibility away from the security forces.
- The killings may have been the result of an organised plan to foster such misconceptions and to halt alleged desertions among soldiers.
- The disappearance of one APF personnel from the APF Badimalika Base the day before the incident occurred may be connected to the incident.

V. OHCHR CONCLUSIONS

○ **Violations of international human rights and humanitarian law**

44. Whereas international humanitarian law is applicable to the parties to an armed conflict, the applicability of international humanitarian law to the Banbehda incident cannot be determined without ascertaining the perpetrator of the acts committed. This report makes reference to violations of relevant international humanitarian law, that would be found to have occurred if indeed this body of law is applicable, and to violations of the victims’ human rights.

45. The abduction of the victims from their homes involved violations of their rights to security of person and to liberty (UDHR, Article 3 and ICCPR, Article 9).

46. Physical evidence, specifically the condition of the bodies, strongly suggests that the victims were subjected to torture or to cruel, inhuman or degrading treatment or punishment in violation of their right to physical integrity, (UDHR, Article 5, ICCPR, Articles 7 and 9 and potentially, CAT, Article 1).

47. The killing of each victim was an arbitrary deprivation of life in violation of the right to life, (UDHR, Article 3 and ICCPR, Article 6).

48. As regards the female victims, evidence suggesting gender based violence also indicates violations of provisions of the CEDAW, (Article 1).⁴
49. As a child, Dipendra Shah's rights under the CRC were also violated, including: the right to life, (Article 6); the right not to be abducted or arbitrarily deprived of his liberty, (Articles 35 and 37); the right to freedom from torture or other cruel, inhuman or degrading treatment or punishment, (Article 37); if it is established that the victims were targeted because of their status (i.e. family connection to the APF), his right to protection from discrimination and punishment, (Article 2.2); and his right to the protections afforded under international humanitarian law in an armed conflict, (Article 38).
50. Under international humanitarian law, in that none of the six victims were taking part in hostilities, they had the right to be treated humanely under Common Article 3 of the Geneva Conventions. Under that Article, the following acts are specifically prohibited: *violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture... outrages on personal dignity, in particular humiliating and degrading treatment*. Furthermore, although Nepal is not a signatory to Additional Protocol II, many of the Protocol's provisions are accepted as part of customary international law. Accordingly, the prohibition of attacks on civilians was breached, on the assumption that international humanitarian law applies.

○ **Legal responsibility and accountability**

51. To date, OHCHR does not have any information establishing or admitting responsibility for the abduction and killing of the six victims, and OHCHR is unable to identify those responsible.
52. However, the method of the abduction and killing suggests premeditation. The perpetrators, possibly through accurate intelligence, went directly to the house of the victims, did not attempt to abduct additional/different people and appeared to know who lived in the different dwellings.
53. Though interviews with local residents did not reveal the existence of specific and explicit threats, it is safe to assume that a certain degree of perceived danger was present, as women chose to live together at night, reportedly "for security reasons", and allegedly some dwellers of adjacent rooms had chosen to move out on the same grounds.
54. A criminal investigation is being pursued by the police in Dhangadhi. According to its staff, due to the uncertain security situation, its freedom of movement is seriously limited. In addition, its work is hampered by the lack of cooperation by local residents, fearful of "potential CPN (Maoist) reprisals".
55. Some sources state that between 100 and 150 CPN (Maoist) members were seen in the Gwasi Community Forest, possibly the night of the incident. Witnesses also reported seeing "new faces" around the house of the abduction that same afternoon.
56. Authorities, newspapers and a number of local residents have attributed the abduction and killing to the CPN (Maoist), due to a number of factors:

⁴ CEDAW, General Recommendation 19 (Eleventh Session, 1992): Violence Against Women, A/47/38 (1992) 5 at paragraph 7(d).

- The method of abduction, allegedly characteristic of previous CPN (Maoist) patterns of behaviour.
- Their *de facto* control of the rural areas surrounding the base.
- Previous threats to families of security personnel, in their places of origin.
- The common denominator linking all victims, i.e. association with APF.

57. Information from local human rights defenders indicates that a young woman is currently being held by the CPN (Maoist) in connection with this incident. However, OHCHR has received reliable information that, at the time of the incident, this person was actually in Nepalgunj, in the care of a local NGO. OHCHR is in contact with the CPN (Maoist) in order to gain access to the woman concerned.

58. There have been suggestions that perpetrators could be local criminal gangs, posing as CPN (Maoist). Two factors seem to contradict this scenario:

- Despite a report suggesting that money and an item of jewellery went missing from house number 2, jewellery was found on the bodies of victims (earrings, necklace, anklets), casting doubt on robbery as a motive.
- All victims came from different places of origin, making private revenge unlikely as a motive.

59. Except for the allegations by the CPN (Maoist), no information has been brought to the attention of OHCHR that implicates any of the security forces in the incident.

60. Whoever the perpetrators, OHCHR condemns the violent abduction, abuse and murder of Ganesh B.K., Prem Buhl, Durgadevi Iyer, Dipendra Shah, Laxmi Shah and Radha Devi Singh, which demonstrate a complete disrespect for the life and dignity of the individual.

VI. OHCHR RECOMMENDATIONS

○ Recommendations to the State authorities

61. OHCHR:

- Recognises the efforts being made by the police to investigate the incident and the security constraints under which they operate.

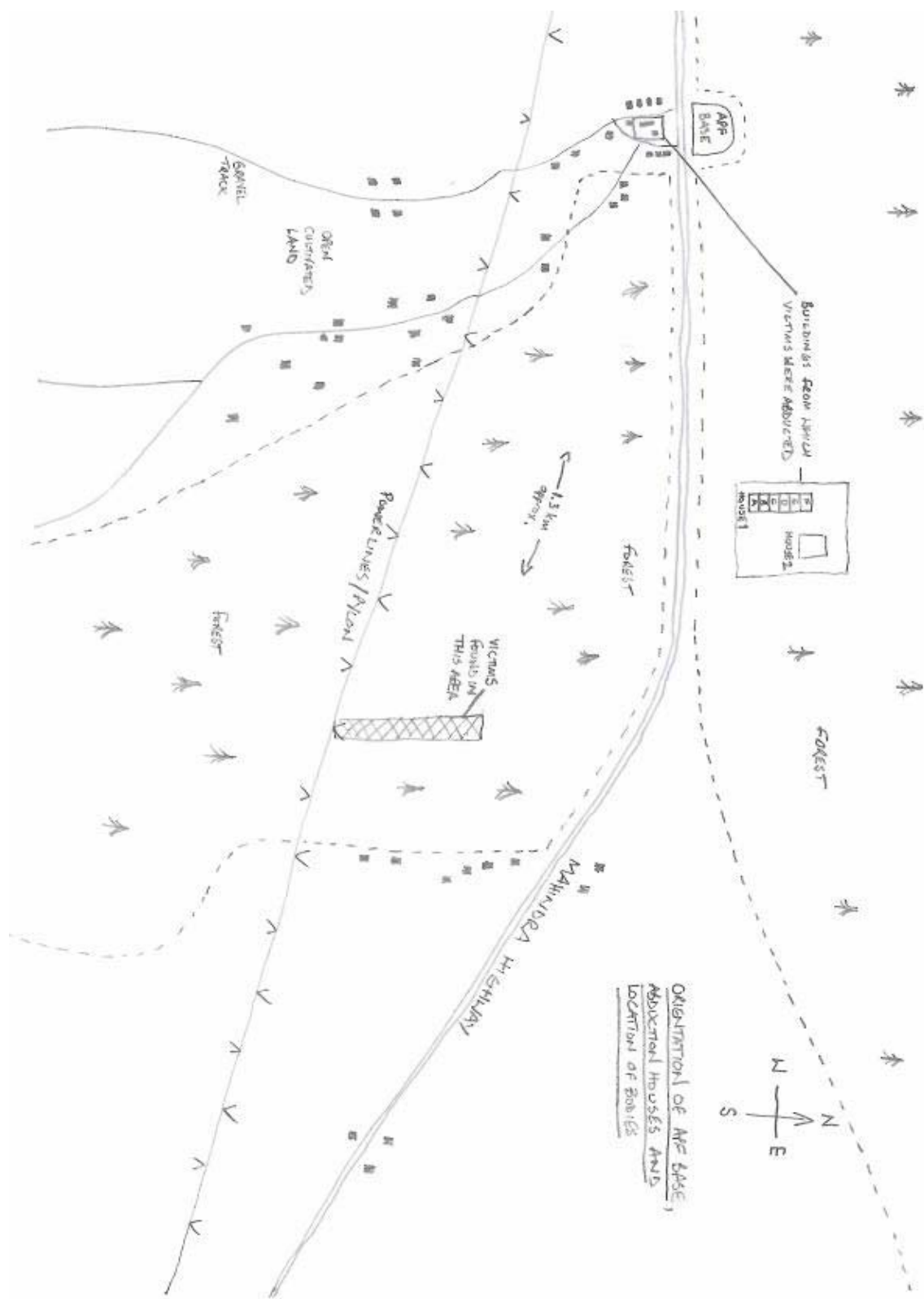
62. OHCHR recommends that:

- The police continue to pursue a full criminal investigation aimed at identifying and apprehending those responsible for the crimes committed.
- The APF ensures in future cases that evidence is promptly handed over to the police, to facilitate criminal investigations, including forensic analysis.
- The security forces and the competent authorities ensure that any individual/s apprehended in connection with the crimes committed are assured full respect for their rights, including the rights to a fair trial, presumption of innocence and representation by counsel.

○ Recommendations to the CPN (Maoist)

63. OHCHR recommends that the CPN (Maoist):

- Conduct an enquiry, at the initiative of its leadership, to establish whether any of its local cadres were involved in the Banbehda killings and make its findings public.
- Provide the police authorities with any cooperation required to conduct a full criminal investigation and to share any information that may lead to the apprehension of those responsible.
- Provide further information in respect of recent reports that it has taken individuals 'under control' in relation to the crimes committed in Banbehda and to hand them over to the police in support of their criminal investigation.



ORIENTATION OF AF BASE,
ABDUCTION HOUSES AND
LOCATION OF BABIES

People's Liberation Army, Nepal

Western Division Office

NCP (Maoist)

Press Statement

News of the killings of six family members, including a child, of security personnel from the Badimalika Armed Training Centre in Kailali District has drawn our serious attention.

First and foremost we want to make it clear that NCP (Maoist) and the People's Liberation Army had no involvement in this incident whatsoever. This incident is just one example of severity of the security forces' internal division and internal discord. Not only could we not commit such criminal acts against humanity, we can't even contemplate them. There is no revolutionary who can imagine killing captured soldiers as they are being rescued from the battlefield, much less the senseless killing of family members of the security forces.

In terms of this accusation made against us, the causes could be as follows: First, given that they are not able to fight us directly, they are resorting to cowardly acts for self-preservation, creating widespread misconceptions about the People's Liberation Army through these conspiratorial accusations. Second, these killings could be the result of an organised plan to create misconceptions about the People's Liberation Army among the lower ranks of soldiers as a way of halting their desertions. Third, given that during the investigation of this criminal incident the evidence began to point in the direction of the security forces, this is also a way for them to avoid taking responsibility for the results of their investigation.

This inhumane incident is simply the outcome of the unsteady morale brought about by the security forces' recent embarrassing defeats in Shankapur and Aamkhaiya. We firmly refute this accusation and we responsible revolutionaries ask that no one be misled by the accusation made against us.

June 15, 2005

Prabhakar
Commander
Western Division Office
People's Liberation Army, Nepal
NCP (Maoist)