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P ICJ urges the Government and Nepal Army to respect civilian jurisdiction in the case of Maina Sunuwar

R The ICJ today urged action by the Government to ensure respect for civilian jurisdiction in the Maina Sunuwar case. The Nepal Army has acknowledged that Maina Sunuwar died following prolonged torture at the Nepal Army's Birendra Peacekeeping Training Centre in Panchakhal on 17 February 2004. However, it has refused to recognize civilian court jurisdiction as established by the Supreme Court's September 2007 decision, and to surrender Major Niranjan Basnet to the Kavre District Court pursuant to a 31 January 2008 arrest warrant.

E "International law and standards establish that the State's duty to guarantee a judicial remedy for gross violations of human rights can only be met through adjudication by civilian and not by military courts," explained Roger Normand, the ICJ's Asia Pacific Director. "This principle has effectively been supported by the Supreme Court's 2007 decision in this case. The refusal of the Government to abide by this decision undermines the integrity of the criminal justice system, the separation of powers, and the independence of the judiciary."

S The Nepal Army Court Martial decision of September 2005 characterized Maina Sunuwar's torture, death and clandestine burial as matters of accident, carelessness, failure to follow procedures, and even blamed the "physical weakness" of the 15-year-old schoolgirl for her death following acknowledged torture through simulated drowning and electrocution. It then imposed a minimal sentence of six months imprisonment and a temporary suspension of promotions.

R "The Nepal Army's claim that Maina Sunuwar's torture and murder occurred in the context of battle, and that its own Court Martial closed the matter, is unjustifiable under Nepali and

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international law, in light of the acknowledged facts of the case, and taking into account the grossly disproportionate sentence imposed by the Court Martial,” emphasized Normand. “We appeal to Nepal’s Attorney General to clarify the lingering ambiguity caused by the contradictory statements of Government and Nepal Army officials and ensure that Major Basnet is surrendered to the Kavre District Court.”

The ICJ emphasized that future commissions of inquiry cannot substitute for the jurisdiction of civilian courts to make individual determinations of guilt, nor can amnesty or statutes of limitation be legitimately applied where there is evidence of acts that may amount to crimes under international law.

“The failure to prosecute such cases only further entrenches impunity, undermining the prospects for a democratic transition in Nepal based on the rule of law,” concluded Normand.

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