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COMMUNIQUE DE PRESSE – COMUNICADO DE PRENSA

Nepal: After Two Years, Government Still in Non-Compliance with Supreme Court Order on Enforced Disappearance

1st June 2009

The International Commission of Jurists (ICJ) is concerned by the Government of Nepal's failure to enact legislation in the present parliamentary session of the Constituent Assembly (CA) that would criminalize the practice of enforced disappearances, investigate past cases, prosecute the perpetrators and provide reparation to victims in accordance with the landmark Supreme Court ruling on June 1, 2007.

In its judgment, the Supreme Court ruled on a large number of enforced disappearance cases, including 80 *habeas corpus* writs, and ordered the Government to immediately investigate all allegations of enforced disappearances. The Court also ordered the Government to enact the required legislation and to establish a Commission of Inquiry mandated to investigate past violations and recommend meaningful reforms in accordance with international human rights standards.

On 15 November 2008, the Government made public a draft Bill on Enforced Disappearance (Crime and Punishment) Act 2008. The ICJ welcomed the Government's commitment to criminalize the act of enforced disappearance and establish a Commission of Inquiry to address, while also critiquing provisions did not fully comply with Nepal's obligations under international law and the Supreme Court's directions.

Rather than tabling the Bill in Parliament, the Government bypassed the democratic process by instead promulgating it as an Ordinance on 12 February 2009. And now, pursuant to article 88 of the Interim Constitution which requires adoption of Ordinances within 60 days from the commencement of a session of Parliament, the Government's failure to adopt the Bill at the ongoing current Parliamentary session of the CA means that the legislation has lapsed.

The ICJ has consistently taken the view that addressing past human rights violations is an essential part of the peace-building process and is required to secure a lasting peace founded on the rule of law and human rights. (See, *Nepal - ICJ calls for amendments to Ordinance on Disappearances to Ensure Human Rights*, at: http://www.icj.org/news.php3?id_article=4460&lang=en; *Nepal - Government Should Allow Parliament to Debate*, at: http://www.icj.org/news.php3?id_article=4443&lang=en; *Nepal - "New Bill on Enforced Disappearances proposed by Government of Nepal fails to meet human rights obligations"*, at: http://www.icj.org/news.php3?id_article=4419&lang=en).

"The Government's failure to enact the Court-ordered legislation during this session of Parliament not only represents a missed opportunity, but even more troubling, a threat to the Peace Process itself," said Vince Calderhead, ICJ-Nepal Country Director.

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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While the ICJ commends the Government's initiative in drafting legislation on enforced disappearances, such measures must effectively and meaningfully address the deep wounds that this practise inflicted on Nepali society through the civil war of 1996-2006. The law must fully implement the Supreme Court's directions and the highest international standards and best practices on enforced disappearances.

"It will be a tragedy if the Government abandons the path of national reconciliation and human rights accountability," said ICJ Asia-Pacific Director, Roger Normand, "The failure to enact this legislation and comply with the Supreme Court Order will raise serious questions about the Government's commitment to the rule of law at a sensitive stage in the Peace process."

The ICJ strongly urges the Government to use the current session of Parliament to enact legislation which fully complies with the Court's ruling. This must be done in consultation with civil society, including victims groups.

In its historic judgment, the Supreme Court noted; "[a]t a time when the nation is making a leap forward with great hope and confidence in the direction of democratization, if the present State does not become serious on matters relating to disappeared persons, the objective underlining the Peoples' Movement will not be realized."

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