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COMMUNIQUE DE PRESSE – COMUNICADO DE PRENSA

Nepal Government Should Allow Parliament to Debate Laws on Disappearances and Truth and Reconciliation

30th January 2009

The International Commission of Jurists (ICJ) urges the Government of Nepal to ensure that legislation on Disappearances (Crime and Punishment) and Truth and Reconciliation are adopted through regular democratic process and not by executive ordinance. The ICJ also reiterated that adoption of such legislation should follow broad based national consultation and should fulfil Nepal's human rights obligations.

Addressing past human rights violations, ending the culture of impunity, and establishing a fair and effective transitional justice process are among the most critical issues facing the people of Nepal during their historic transition from war to peace and monarchy to a democratic republic. One of the landmarks in this process was the election of the Constituent Assembly (CA) following the end of a brutal 10-year civil war marked by systemic violations of human rights, including enforced disappearances. The ICJ is deeply concerned that the Government is seeking to undermine the Constituent Assembly and bypass public debate by enacting executive decrees on matters of fundamental national importance.

"If the Government is serious about respecting the rule of law, these bills must be decided by the elected representatives of the people," said Roger Normand, ICJ's Asia-Pacific Director. "There are no exceptional circumstances to justify overriding the normal democratic process, especially on issues that are so important for peace and justice in Nepal."

Under the Comprehensive Peace Accord of 12 November 2006, all parties to the conflict committed to respect human rights and undertake specific measures to resolve disappearances and establish accountability during the transition to democracy. The Interim Constitution of 2007 reiterated these pledges. On 1 June 2007, the Supreme Court of Nepal issued a directive order to the Government to enact legislation that would criminalize enforced disappearance and establish a Commission to investigate past abuses in accordance with international law, referring to the Convention for the Protection of All Persons from Enforced Disappearance and the International Covenant on Civil and Political Rights.

These commitments raised expectations among the Nepali public that political factions would work together to ensure justice for past violations and commit themselves to rule of law. However, these various agreements, and the detailed recommendations of the Supreme Court, have not been implemented in subsequent Government-proposed bills. The Government's intention to legislate by decree threatens to undermine public and international confidence in the viability of the democratic transition. It is particularly alarming that these bills were not tabled during the Constituent Assembly's recent eight month session, the longest in Nepal's history, or reserved for the upcoming session in February 2009.

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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“The Government must show its sincerity by allowing Nepali civil society, especially victims of human rights violations, to exercise the right to political expression and participation both directly through public consultations and democratically through our elected parliament,” said Govinda Sharma Bandi, ICJ Nepal Lawyer. “Otherwise all the promises of change will appear empty.”

In July 2007 the Government issued the draft Truth and Reconciliation Commission Bill, and the Ministry of Peace and Reconstruction conducted four consultations. Nepali and international human rights groups criticized provisions that failed to conform to international standards as prescribed by the Supreme Court, including definitions of “gross violations of human rights” and “crimes against humanity”, granting of amnesty, weakness of the right to a remedy and reparations, and the commission’s lack of independence (Truth Commission Bill disregards victims’ rights, fails to meet international standards, 23 August 2007, http://www.icj.org/news.php3?id_article=4201&lang=en). The Bill was never tabled before the Constituent Assembly and subject to democratic review.

In November 2008 the Government issued the draft Disappearances (Crime and Punishment) Bill. On 24 November the ICJ submitted a letter to the Speaker of the CA highlighting provisions that failed to conform to international standards, including the definitions of “enforced disappearances”, “victims”, and “principal offenders”, responsibility of superior and subordinate officers, proportional severity of sentences, the appointment process of Commissioners, and the need for effective implementation of the Commission’s recommendations (new Government Bill on Enforced Disappearances fails to meet human rights obligations, 25 November 2008, http://www.icj.org/news.php3?id_article=4419&lang=en). The Bill was never tabled before the Constituent Assembly and subject to democratic review.

While the ICJ welcomes the Government’s commitment to speedily adopting legislation to criminalize enforced disappearances and establish the Commission on Disappearances and the Truth and Reconciliation Commission, it urges that the bills conform to international law and the directives of the Supreme Court, that the public be taken into confidence through effective participation, and that the bills be tabled before the Constituent Assembly for discussion and adoption. Towards these ends, the ICJ supports the call of Nepali civil society groups for a special parliamentary session to discuss these bills and avoid their adoption by ordinance.

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