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ICJ urges the Government of Nepal to cease obstruction of justice

5 October 2010

The ICJ today urged the Government of Nepal to take swift action to enforce pending judicial orders regarding serious crimes allegedly committed by members of both the Nepal Army and the Maoist Party, including the 2004 murder of 13-year-old Maina Sunuwar while detained at the Army's Peacekeeping Training Centre and the 1998 murder of Ujjan Kumar Shrestha by Constituent Assembly (CA) Member Balkrishna Dhungel.

The ICJ also called on the United Nations, including its agencies and its Member States, to insist that Nepal's Government take immediate steps to end impunity with regard to serious human rights abuses, including war crimes and other crimes under international law committed during the armed conflict.

The ICJ press statement comes on the eve of an official visit to Nepal by UN Under-Secretary-General for Political Affairs, Lynn Pascoe, and to the UK by Nepal Army Chief General Chhatra Man Singh Gurung.

"The same political and institutional structures that gave rise to serious crimes under international law are now obstructing individual justice in these cases," stated Douglass McCrae, ICJ representative in Nepal. "The Government of Nepal must know that the international community cannot ignore such blatant impunity, lest it risk complicity in undermining the rule of law."

Notorious cases include the abduction, torture and extrajudicial killing of Maina Sunuwar in February 2004 while in military custody. The Nepal Army has openly defied a judicial order by the Kavre District Court to present Major Niranjan Basnet, one of four suspects subject to January 2008 arrest warrants in the case. Major Basnet has been under the protection of the Nepal Army after being repatriated to Nepal by the UN Peacekeeping Mission in Chad on 12 December 2009 following revelations of the arrest order.

"The Nepal Army continues to harbour a fugitive from justice and refuses to allow Nepal's civilian courts to exercise their rightful jurisdiction," stated Roger Normand, ICJ Regional Director for Asia. "This after the Army's own internal inquiry whitewashed the shocking enforced disappearance, torture and murder of a young girl by finding the four accused officers guilty of only 'indiscipline and not following procedures'."

Similarly, the Maoist Party has enjoyed effective amnesty for serious crimes committed by its members. The Supreme Court's twenty-year sentence against CA member Balkrishna Dhungel for the murder of Ujjan Kumar Shrestha remains unenforced and Balkrishna

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33, rue des Bains, P.O. Box 91, 1211 Geneva 8, Switzerland
Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 – Website: <http://www.icj.org> - E-mail: info@icj.org

Dhungal continues to move freely while his party calls for clemency on the grounds that an agreement between the parties exists for the withdrawal of such 'political' cases.

"These cases are 'political' only in the sense that the offenders are now closely connected to political parties who see themselves as above the law," stated Mr. McCrae.

In October 2008, the Nepal Government withdrew 349 cases in which most of the alleged perpetrators were Maoists, many senior members of the Government at that time. In his January 2009 Report to the Security Council, the UN Secretary General expressed concern about the risk of "de facto amnesty" being granted for what might amount to international crimes (S/2009/1, para. 43). In spite of the Secretary General's concern, the Government of Nepal continues to discuss the withdrawal of other 'political' cases.

"The victims and their families continue to suffer while the perpetrators and those responsible in the chain of command continue to enjoy the perks of power without consequences," stated Mr. Normand. "The international community and the Government of Nepal must work together to ensure that the transition to democracy is grounded on respect for human rights, including the right of victims to an effective remedy."

For further information, contact:
Douglass McCrae, ICJ-Nepal +9779849656781