

AMNESTY INTERNATIONAL JOINT PUBLIC STATEMENT FOR INTERNATIONAL DAY OF THE DISAPPEARED

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Nepal: Ensure Justice for Nepal's "Disappeared"

On the 30th annual International Day of the Disappeared, victims and human rights organizations urge the Nepali government to ensure that investigations to determine the fate and whereabouts of disappeared persons are carried out without further delay, and that those suspected of criminal responsibility for these gross violations of human rights are brought to justice in fair trials.

Enforced disappearance constitutes a multiple violation of the human rights of both the individuals disappeared and their families. It has repeatedly been described by the UN General Assembly as "an offence to human dignity" and a grave violation of international human rights law.

The practice of enforced disappearance during Nepal's 1996-2006 armed conflict was among the worst anywhere in the world. The fate and whereabouts of more than 1,300 possible victims of enforced disappearance are still unknown. To date, not one person suspected of criminal responsibility for serious human rights violations or crimes under international law committed during the conflict has been brought to justice.

The government must take meaningful initiatives to address its human rights obligations. Ending impunity, ensuring accountability, and strengthening the rule of law are essential for a durable transition from armed conflict to sustainable peace in Nepal.

On 21 November 2006, the Government of Nepal and Communist Party of Nepal (Maoist) signed the Comprehensive Peace Agreement (CPA), which committed both parties to investigate and reveal the fate of those killed or disappeared during the armed conflict within 60 days. Both parties promised they would "not protect impunity" and vowed to safeguard the rights of families of the disappeared. More than six years later, the promises made in the CPA have still not been fulfilled. Instead, the government has actively protected and even promoted those accused of committing human rights violations.

On 14 March 2013, the President approved an ordinance to establish a Commission on Investigation of Disappeared Persons, Truth and Reconciliation to investigate human rights violations committed during the armed conflict. However, the establishment of the commission was temporarily halted after the Supreme Court issued a stay order in April following legal challenges. The proposed commission is not in compliance with international law and standards on commissions of inquiry, to effectively discharge Nepal's duty to provide remedy and reparation to victims in two important respects: 1) the Commission has wide discretion to recommend amnesty for crimes under international law, including enforced disappearance, which violates a number of Nepal's obligations under international law; 2) the process of the appointment of the Chairperson of the Commission does not ensure independence and impartiality. Furthermore, the Commission would not have the power to recommend prosecutions against suspected perpetrators,

leaving the Ministry of Peace and Reconstruction and Council of Ministers to initiate prosecutions, a process potentially open to political interference.

The ordinance to establish a Commission on Investigation of Disappeared Persons, Truth and Reconciliation is the result of a bargain between political parties, and seems designed to enable those suspected of criminal responsibility to avoid accountability for human rights violations and crimes under international law. Enforced disappearance is not recognized as a crime or even defined under Nepali law.

We urge the government of Nepal to:

- Ensure that any transitional justice mechanisms established to address conflict era violations do not replace judicial proceedings and are in accordance with international law and standards and do not have the power to grant or recommend the granting of amnesties for crimes under international law;
- Respect court orders calling on the police to investigate human rights violations and crimes under international law and, if there is sufficient admissible evidence, prosecute those suspected of criminal responsibility in trials that meet international due process standards;
- Define and criminalize enforced disappearances in domestic law in line with international standards;
- Promptly accede to the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, without making any reservation or declaration amounting to reservation.

NAMES of ORGANIZATIONS

1. Advocacy Forum Nepal
2. Amnesty International
3. Committee for Social Justice
4. Conflict Victim Orphans Society
5. Conflict Victim Society for Justice
6. Informal Sector Service Center (INSEC)
7. National Network of Families of Disappeared and Missing (NEFAD)
8. OHR-Nepal
9. TRIAL