



**Press Statement
30 August 2019
Kathmandu, Nepal**

On the International Day of the Victims of Enforced Disappearances, Advocacy Forum, THRD Alliance and ICJ Decry Lack of Progress

On the occasion of the International Day of the Victims of Enforced Disappearances, Advocacy Forum-Nepal, the Terai Human Rights Defenders Alliance (THRD), and the International Commission of Jurists (ICJ) voiced their concern about the Government's failure to provide justice for the victims of the country's decade-long armed conflict, including victims of enforced disappearance.

The organizations also remembered the victims of enforced disappearances in Nepal and recognized the unceasing efforts of victims and their families and others advocating and campaigning for truth and justice for serious human rights violations in Nepal for over a decade.

Nepal faced a protracted internal armed conflict from 1996 to 2006. In the decade-long conflict, serious human rights violations and abuses were committed by both sides: the Government, including the Royal Nepal Army; and the Communist Party of Nepal (Maoist). Approximately 1,300 people were "disappeared" during the conflict. The fate of many of those "disappeared" is yet to be known.

The Comprehensive Peace Agreement (CPA) put an end to the conflict on 21 November 2006, with both sides agreeing to hold perpetrators of human rights violations and abuses accountable and provide access to effective remedies and reparation to victims, including a commitment to publicize the fate or whereabouts of "disappeared". However, nearly 13 years after the signing of the Comprehensive Peace Agreement in November 2006, these promises remain unfulfilled.

The Truth and Reconciliation Commission and Commission on Investigation of Disappeared Persons, both established in February 2015, have failed to resolve the many thousands of complaints brought to them by victims and their families, and have yet to publicize their findings. Furthermore, in 2015, the Supreme Court ruled the 2014 Act creating the legal framework for the Commissions to be unconstitutional, due in part to the inclusion of provisions that could be used to grant amnesty to perpetrators. In February 2019, the tenure of the commissions was extended to 2020, but the terms of the commissioners expired on 13 April 2019. As of August 2019, no formal replacements had been announced, though a committee to recommend appointments has been established. The ICJ and other organizations have called for a suspension of the current appointment process until amendments to the legal framework are made, and a more consultative and transparent process is initiated.

Nepal has also enacted a new Penal Code, with effect from August 2018. For the first time, the Penal Code recognized enforced disappearance as a distinct crime. While the intent behind this measure is commendable, the law does not meet Nepal's obligations concerning crimes under international law. In

particular, the definition of enforced disappearance falls short of international standards; the crime of enforced disappearance is not absolutely prohibited; provisions related to superior and command responsibility are inadequate; and the penalties for enforced disappearance are inconsistent with international standards. The provisions will apply retroactively to the more than 1,300 conflict era cases.

The organizations urged the Government of Nepal to:

- Amend the 2014 Transitional Justice Act to ensure it is consistent with international human rights standards and Supreme Court rulings, including removing amnesty for perpetrators;
- Revise the criminal code to bring it in line with international standards. At the minimum, this should include:
 - (i) amending the definition of enforced disappearances to bring it in line with Nepal's international obligations and the Convention on the Protection of All Persons from Enforced Disappearance (CED)
 - (ii) revising the penalty provisions in the Criminal Code Bill to comply with relevant provisions of the CED and other international law and standards
 - (iii) removing the statute of limitations for enforced disappearance cases
- Ratify International Convention for the Protection of All Persons from Enforced Disappearances;
- Publicize the findings of the CIEDP; and
- Ensure that in Nepal's legal system, the victims of enforced disappearance, including family members of "disappeared" persons, have the right to obtain reparation and prompt, fair and adequate compensation; and they can effectively exercise that right in practice.

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Background

The International Day of the Victims of Enforced Disappearances falls on 30 August every year. Nepal is bound by international legal obligations under the International Covenant on Civil and Political Rights (ICCPR) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) – both of which it has acceded to – to investigate, prosecute, punish and provide remedies and reparation for the crimes of torture, other acts of ill-treatment, and enforced disappearance.