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COMMUNIQUE DE PRESSE – COMUNICADO DE PRENSA

The ICJ Calls on the Government of Nepal to Arrest Army Officer Accused of Enforced Disappearance, Torture and Killing

10 December 2009

The International Commission of Jurists (ICJ) today urged the Government of Nepal to demonstrate its commitment to ending impunity by arresting Major Niranjan Basnet upon his return from a UN peacekeeping mission in Chad. Major Basnet is one of four Nepal Army officials accused in the enforced disappearance, torture and killing of Maina Sunuwar on 17 February 2004. Maina Sunuwar's body was exhumed in March 2007 from its clandestine burial site at the Nepal Army Birendra Peace Operations Training Centre in Panchkhal.

Under pressure from the international community and national human rights organizations, a Nepal Army Court of Inquiry Board was completed in March 2005 that led to Court Martial convictions in September 2005, with three officers sentenced to six months imprisonment for failing to follow proper procedures. The Court of Inquiry concluded that:

"It was indeed as a result of torture inflicted during the course of interrogation that the death of Maina Sunuwar occurred" and that "the tortuous treatment, done in an inexperienced and unskilled manner, was inhumane."

The Nepal Army Adjutant General's Office subsequently confirmed to OHCHR in December 2005 that the officers had been found guilty of "not following the standard procedures and orders".

The Nepal Army has refused to cooperate with police investigations and court orders regarding four officers named in a November 2005 First Information Report, or to disclose the details of the their own investigations into the case. Brigadier General B.A. Kumar Sharma of the Nepal Army Legal Section told investigating police in May 2006 that "it is not lawful to initiate actions" against the four officers since a verdict had already been rendered by the Court Martial.

The military investigation was widely criticized for lacking independence and transparency, and Maina's family, supported by human rights advocates, continued to seek justice in civilian courts.

Challenging the Nepal Army's claim to exclusive military jurisdiction, Maina's mother, Devi Sunuwar, filed an FIR and brought a writ of mandamus to the Supreme Court urging a police investigation and trial of the accused in a civilian court. In September 2007, the Supreme Court ordered the Attorney General's office to carry out an investigation and bring the case before the Khavre District Court. In January 2008, the office of the Attorney General filed charges before the District court. Arrest warrants and subpoenas for Major Basnet and three others (Colonel Babi

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Khatri, Captain Sunil Prasad Adhikari and Captain Amit Pun) were issued. None of these orders have been executed.

On 13 September 2009, the Khavre District Court ordered the Adjutant General to suspend Major Basnet and to release all witness statements given to the Nepal Army Court of Inquiry, and also required the District Attorney to present the witnesses and accused before the Court. These orders have also been ignored.

“Almost six years after the torture and murder of a 15-year-old girl in a military barracks, the alleged perpetrators remain above the law and shielded from prosecution. Major Basnet has even been promoted and rewarded with overseas peacekeeping service,” stated Roger Normand, ICJ’s Asia Pacific Director.

Since his alleged involvement in the crime, former Captain Basnet gained the rank of Major and was sent on a UN Peacekeeping Mission in Chad. He is now reportedly returning to Nepal due to concerns expressed publicly by the UN about his involvement in serious human rights violations.

“In the case of Maina Sunuwar, one family’s struggle for justice has come to symbolize the persistence of a culture of impunity for gross human rights violations in Nepal,” stated Govinda Sharma, ICJ Legal Adviser. “It is a central function of the Government to provide a judicial remedy to victims of abuses, whether committed by Maoist forces or the Nepal Army.”

The Nepal Army has argued that its internal investigation is sufficient to close the book on the case. However, under international law, the special jurisdiction of military courts is justifiable only for offences specific to the military. Cases of enforced disappearance, torture, and unlawful killing, must be tried in a civilian court in order to ensure independence and impartiality and guarantee the non-derogable right of victims to a judicial remedy. This norm is found in many recognized sources of international law and explicitly codified in the UN *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (Principle 29).

Amendments to the *Nepal Army Act* in 2006 similarly remove rape and homicide from the jurisdiction of military tribunals (s. 66) and also stipulate that ordinary civilian courts will have jurisdiction in the case of any uncertainty (s. 69). Following its mission in December 2004, the UN Working Group on Enforced Disappearances urged the Government to exclude enforced disappearances from the jurisdiction of military tribunals.

“The ICJ urges the Government of Nepal to uphold the independence of the judiciary in this emblematic case of enforced disappearance. The credibility of the peace process, and the legal basis of democratic governance, depends on the principle that the law applies equally to all persons, regardless of rank or status,” concluded Roger Normand.

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