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FOR HUMAN RIGHTS IN NEPAL**



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OHCHR-Nepal welcomes steps to criminalize disappearances and calls for further strengthening of Disappearance Bill

OHCHR-Nepal today met with the Honorable Subas Nemwang, Speaker of the Interim Legislature-Parliament, regarding the “Disappearance Bill” which is currently pending before the Interim Legislature-Parliament. Lena Sundh, the Representative of the High Commissioner for Human Rights in Nepal, welcomed the Bill as an important step forward in criminalizing enforced disappearance, and presented recommendations on strengthening the Bill to ensure that it meets international human rights standards more fully. These standards include the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the UN General Assembly in 1992, which contains a range of principles that States must undertake to prevent, terminate, investigate, punish and provide redress for acts of enforced disappearance.

One of OHCHR-Nepal’s recommendations is to make the Bill applicable to past acts of enforced disappearance. Although international human rights law generally prohibits the retroactive application of criminal laws, there is an important exception with respect to crimes under international law such as enforced disappearance. Furthermore, until the fate of a disappeared person has been clarified, the disappearance is considered to continue as an ongoing crime rather than a past crime under international law.

OHCHR-Nepal also believes that the Bill should explicitly state that civilian courts will have jurisdiction over all persons alleged to have committed enforced disappearance, including Nepalese Army personnel. International human rights standards require that ordinary civilian courts exercise jurisdiction over military personnel who commit serious human rights violations.

OHCHR-Nepal’s recommendations also include:

- fully incorporating the elements of the internationally-accepted definition of enforced disappearance (for example, by ensuring not only that Government officials, but also any person acting with the support or acquiescence of the Government, may be held responsible);
- increasing the penalty for disappearance (the Bill provides for a maximum of 5 years of imprisonment and a fine of up to 50,000 Rps) to reflect the extreme seriousness of the crime;
- extending the time period for disappearance cases to be filed in court (the Bill requires that this be done within 6 months after a person is known to have disappeared or released, or his/her whereabouts are made public), taking into account the extreme seriousness of the crime as well as its continuous nature;

- providing adequate reparations to victims, including immediate family and dependants of disappeared persons.

“Enforced disappearance is amongst the most serious human rights violations, and extremely traumatic for family members of the victims. The criminalization of enforced disappearance is an encouraging step towards bringing perpetrators to justice. However, a comprehensive law on enforced disappearance which encompasses relevant international human rights standards would be an even stronger indication that the Government of Nepal is serious about ending impunity and ensuring accountability,” said Lena Sundh, the Representative of the High Commissioner for Human Rights in Nepal.