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For Immediate Release

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Respect Obligations to Prosecute Worst Crimes From Civil War Era

(New York, August 31, 2012) – President Ram Baran Yadav of Nepal should return an executive ordinance that would effectively permit amnesty for crimes committed during the country’s civil war from 1996 to 2006, four human rights groups said today in a [letter](#) to the president. The president should return the ordinance to the government and remind it of its obligations under both national and international law to prosecute acts that constitute crimes under international law, the groups said.

Amnesty International, Human Rights Watch, the International Commission of Jurists (ICJ), and TRIAL (Swiss Association against Impunity) obtained a copy of the ordinance on August 28, 2012. It proposes the establishment of a Commission of Inquiry on Disappeared Persons, Truth and Reconciliation with absolute discretion to recommend the granting of amnesties for serious human rights violations, including crimes under international law. The cabinet delivered the ordinance directly to President Yadav without any consultation – either with the public or the National Human Rights Commission.

“This ordinance in its current form represents nothing more than a blatant attempt to sweep aside years of efforts to establish properly constituted, properly mandated, independent commissions on disappearances and on truth and reconciliation,” said Sam Zarifi, Asia director at the International Commission of Jurists. “Far from delivering justice, truth, and reparation after years of grievances, the proposed commission would allow amnesty for crimes under international law, which flies in the face of Nepal’s obligations under both national and international law.”

The rights groups have previously called on the government to ensure that legislation establishing transitional justice mechanisms conforms to international law and standards, including ensuring that amnesty is not granted for crimes under international law. These include extrajudicial executions, sexual violence committed as war crimes or crimes against humanity, enforced disappearance, and torture.

The groups urged President Yadav to return the ordinance, guarantee a fair and inclusive process for the establishment of transitional justice mechanisms, and ensure that the government meets its obligations under national and international law.

Granting amnesty for acts that constitute crimes under international law – such as torture, war crimes, crimes against humanity, and genocide – violates the duties of countries under international law to prosecute these crimes, the groups said. A developing body of law, standards, and decisions by international bodies highlights the prohibition on amnesty for these crimes. Among other international standards, such a prohibition is included in article 24 of the United Nations Updated Set of Principles for the Promotion and Protection of Human Rights through Action to Combat Impunity and the International Covenant on Civil and Political Rights, as affirmed by the UN Human Rights Committee.

“The mechanism as proposed conforms neither to international nor national standards,” said Polly Truscott, deputy director of Amnesty International’s Asia-Pacific program. “If the president signs off on this ordinance, he will essentially be signalling that short-term political gain, rather than respect for the rule of law and human rights, is what matters in Nepal.”

The groups also expressed concern that under the procedures outlined in the ordinance, commission members would be political appointees, vulnerable to political pressure. The proposed role of a retired Supreme Court judge as chairperson of a selection committee for commission members is insufficient to shield the commission from political pressure, the groups said, as commissioners would ultimately be appointed on the basis of consensus between the political parties.

The ordinance also would allow the Attorney General to retain discretion in prosecuting criminal cases, which would place a political appointee at the centre of a process designed to carry out Nepal’s obligations to prosecute the most serious crimes. Moreover, the Attorney General’s Office has a poor track record in pursuing justice for human rights violations through the criminal justice system, as documented by the International Commission of Jurists in its June 2012 report, “Commissions of Inquiry in Nepal: Denying Remedies, Entrenching Impunity.”

Such inherent, predictable lack of independence and impartiality of the commission, its processes and members will have profound adverse consequences on its competence and effectiveness, the groups said.

“This ordinance evokes a time we all hope is long past, when those who abused their power and committed heinous crimes during the war later sought to cover them up with these kinds of arbitrary measures, ultimately fostering an overall culture of impunity,” said Philip Grant, director of TRIAL.

The executive ordinance would also expose victims and their families to threats and coercion that are certain to arise as those accused of crimes and their associates seek amnesty, the groups said. Nepal has international legal obligations to ensure that victims and their families have access to justice and remedies, including access to effective victim and witness protection programs when necessary.

“Nepal’s government needs to meet its obligation to respect the fundamental rights of victims of the conflict and their families,” said Phelim Kine, deputy director of the Asia division at Human Rights Watch. “Genuine reconciliation cannot be built on a foundation of impunity. While reconciliation is a laudable goal, justice, truth, and reparation are an integral and indispensable part of achieving that goal.”

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