

Follow-Up Information on the Implementation of the Views of 29 October 2014

concerning the Communication

No. 2031/2011 *Mr. Ram Kumar Bhandari v. Nepal*

1. On 29 October 2014, the Human Rights Committee issued its Views concerning the above-mentioned communication, finding violations by Nepal of Arts. 6, para. 1, 7, 9 and 16 of the International Covenant on Civil and Political Rights, and of Art. 2, para. 3, read in conjunction with Arts. 6, para. 1, 7, 9, and 16 of the Covenant with regard to Mr. Tej Bahadur Bhandari; and of Art. 7, alone and in conjunction with Art. 2, para. 3, of the Covenant with regard to Mr. Ram Kumar Bhandari. The author of the communication was notified about the adoption of the Views on 10 November 2014.
2. In accordance with Art. 2, para. 3, of the Covenant, the Human Rights Committee declared that Nepal is under an obligation to provide the author with an effective remedy, including:
 - **Conducting a thorough and effective investigation** into the disappearance of Mr. Tej Bahadur Bhandari, and providing the author with detailed information about the results of the investigation;
 - **Locating the remains** of Mr. Tej Bahadur Bhandari and **handing them over to the family**;
 - **Prosecuting, trying and punishing those responsible** for the violations committed;
 - Providing **adequate compensation** to the author for the violations suffered; and
 - Ensuring that the **necessary and adequate psychological rehabilitation and medical treatment** is provided to the author.
3. The Human Rights Committee further recalled that, “**the State party is also under an obligation to prevent similar violations in the future**. In this connection, the State party should ensure that its legislation allows the criminal prosecution of the facts that constituted a violation of the Covenant”.¹
4. Finally, the Human Rights Committee declared that it “wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present views”² and it requested the State party to “**publish the present views and to have them broadly disseminated in the official languages of the State party**”.³
5. On 8 October 2015, in the framework of the follow-up procedure, the author of the communication sent a letter to the Human Rights Committee with detailed information about

¹ Human Rights Committee (HRC), Case *Ram Kumar Bhandari v. Nepal* (Comm. 2031/2011), Views of 29 October 2014, para. 10.

² *Ibid.* para. 11.

³ *Ibid.*

his efforts to implement the recommendations contained in the Human Rights Committee's Views.

6. On 9 October 2015, the author of the communication received from the Office of the High Commissioner for Human Rights (OHCHR) a copy of the State Party's submission dated 13 May 2015, concerning the follow-up procedure.
7. Consequently, **when the author submitted his allegations on 8 October 2015, he was not aware of the State Party's response of 13 May 2015, and his letter does not respond to the arguments** that were raised by the State Party therein. The author hereby submits his responses to the State Party arguments of 13 May 2015.

I. The State Party's Lack of Willingness and the Continuous Lulls to Implement the Committee's Views

8. The author of the communication was astonished by the State Party's allegation that a decision was taken on 9 April 2015 by the Council of Ministers of the Government of Nepal (hereinafter, "the Council of Ministers") "in order to give effect to the Committee's Views dated 19 October 2014". **Despite having manifested in April 2015 its intention to implement the Views, six months later, the State Party has yet to take any significant step to address the implementation of the Committee's Views.**
9. In the first place, the author of the communication wonders **why**, if such a decision was actually taken by the Council of Ministers six months ago, **he or his legal representatives were never notified or in any way informed about it.** The author regrets that he had to learn of such a significant decision through the follow-up procedure before the Human Rights Committee, despite his countless efforts, described in his letter of 8 October 2015, to contact the authorities and gather information about the implementation of the Committee's Views. Moreover, the author of the communication wishes to highlight that, despite the State Party's assertion that a decision was taken, **no concrete reference is given about the official number of such decision and it was not attached to the State Party's submission.**
10. Secondly, if such a decision was actually taken, the author of the communication wonders why on the occasion of his repeated interactions, detailed in the author's letter of 8 October 2015, with the Human Rights Unit of the Office of the Prime Minister, the Ministry of Peace and Reconstruction, the Office of the Attorney General, the Ministry of Law and Justice and the National Human Rights Commission during September and October 2015, **none of these authorities mentioned that such a decision had been taken by the Council of Ministers in April 2015.**
11. On 29 October 2015, the author's representatives followed up with the Human Rights Unit of the Office of Prime Minister in order to inquire about eventual measures taken to implement the Council of Ministers' decision. The Section Officer informed the author's representatives that the Office of the Prime Minister had written several letters to concerned Ministries, but those have not provided any meaningful reply till date. Therefore, he was unable to provide

any concrete information about the Government's plans to implement the Committee's Views. Nevertheless, **the Section Officer provided a facsimile copy of a letter signed by him and addressed to the author of the communication (Annex 1), whereby he is informed of the decision of the Council of Ministers. The Section Officer claimed that the letter was never sent to the author because the author's address at the disposal of the Ministry was incomplete.** He further suggested that the author or his representatives should submit another application in order to request the documents contained in the author's case file of the Office of the Prime Minister. He concluded that following such a procedure, and if deemed appropriate by the Ministry, the author would be provided with the copies of the documents, including the decision of the Council of Ministers.

12. In conclusion, **the author regrets that despite apparent steps being taken by some concerned authorities, he has never been informed or in any manner involved in such steps,** despite his countless efforts to gather information and engage in the implementation process.

II. Recurrent Referral to the Transitional Justice Mechanisms in Relation to the Investigation into the Facts, the Prosecution of those Responsible for the Violations and the Granting of Compensation to the Author

13. According to the Council of Ministers' decision of 9 April 2015 mentioned in the State Party's submission, the Commissions constituted under the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2014 (hereinafter, "transitional justice mechanisms"), shall recommend the Government of Nepal on the following questions: a) "the completion of an investigation in relation to the disappearance and death of Mr Tej Bahadur Bhandari"; b) "the initiation of legal actions against those persons involved in the offence"; and c) "the provision of compensation, restitution, reparation and other benefits".
14. The author of the communication wishes to recall the Committee's established jurisprudence that "in cases of serious violations, a judicial remedy is required. In that respect, the Committee observes that the transitional justice bodies to be established are not judicial organs".⁴ Therefore, **the State Party's argument that the author must refer his case to the transitional justice mechanisms is contrary to the Views of the Human Rights Committee and appears to have a merely dilatory intent.** The fact-finding and truth seeking objectives of the transitional justice mechanisms, though crucial for reconciliation purposes, cannot replace the criminal justice system in providing access to justice and redress to victims of gross human rights violations and their relatives. All the more so when, such as in the present case, an international human rights mechanism has already pronounced itself on the international responsibility of the State and has spelled out the measures to be adopted to provide an effective remedy and integral reparation to the author of the communication. **The implementation of the Human Rights Committee's Views and recommendations cannot be postponed indefinitely and subjected to the additional**

⁴ HRC, Case *Jit Man Basnet v. Nepal* (Comm. 2051/2011), Views of 29 October 2014, para. 7.4.

burden of submission to transitional justice mechanisms.

15. Hence, the author of the communication requests the Human Rights Committee's Rapporteur on Follow-up to Views to remind the State Party that **this argument has already been decided by the Committee and that the follow-up process is not meant to review questions already decided by the Committee.** Moreover, the author urges the Committee to give an "E" (the reply indicates that the measures taken go against the recommendations of the Committee)⁵ to the implementation of the Committee's recommendation to investigate into the facts, provide the author with information of such investigation and prosecute, try and punish those responsible for the offence.
16. Moreover, it must be stressed that, at the time of writing, the transitional justice mechanisms are not fully operational yet and are currently in the process of drafting and adopting their own rules of procedure. Furthermore, on 21 May 2015, the government of Nepal filed a petition before the Supreme Court seeking review of the decision of 26 February 2015 on the Act on Commission on Investigation of Enforced Disappeared Persons, Truth and Reconciliation of 25 April 2014 (TRC Act).⁵ The petition was registered on 24 May 2015 and is currently pending, thus **making it impossible to determine with certainty which powers will the transitional justice mechanisms eventually be entrusted with.** At the current state of affairs, the transitional justice mechanisms would only have the power to recommend prosecution to the Government of Nepal, that holds the final authority to undertake criminal prosecutions through the Office of the General Attorney. Hence, there is no reason to refer the author to the transitional justice mechanisms, when the outcome of such mechanisms will be a simple recommendation for criminal prosecution to the General Attorney. The latter is already under an obligation to conduct an independent, impartial, thorough, and effective investigation into the crimes committed against Mr. Tej Bahadur Bhandari. This obligation, recalled by the Human Rights Committee, must be carried out *ex officio*, without the need for further referral by transitional justice mechanisms.
17. In conclusion, while the author of the communication is considering the possibility of registering his case before the transitional justice mechanisms once they are operative, **this process is independent from the obligation of the State Party to undertake a judicial investigation into the facts and to take legal actions against the perpetrators.**
18. Furthermore, **the author of the communication is surprised to be informed that, according to the Council of Ministers' decision of 9 April 2015, he would be entitled to receive, among others, "restitution".** Restitution measures, according to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law should "restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian

⁵ Grading system adopted in the Report of the Human Rights Committee to the General Assembly on its 108th, 109th and 110th Sessions, A/69/40 (Vol. I), page 169.

law occurred”.⁶ In cases of enforced disappearance, the Working Group on Enforced and Involuntary Disappearances has clarified that “as full restitution is normally not possible in the case of enforced disappearance owing to the irreversible nature of the harm suffered, other forms of reparation, such as compensation and rehabilitation, should complement restitution”.

19. Notwithstanding that the term “restitution” is mentioned in the State Party’s submission without any detail about the content of such a notion nor the concrete measures that it requires, **the author of the communication wishes to ask to the State Party how it defines the term “restitution” and which concrete measures it intends to undertake in order to guarantee that “restitution” is provided to him.** In this connection, the author wishes to highlight that the State Party has so far failed to provide information to the author about its plans to locate, exhume, identify and return the mortal remains of Mr. Tej Bahadur Bhandari to his family.

III. The Translation of the Views in the Local Language and its Dissemination

20. According to the Council of Ministers’ decision of 9 April 2015, “the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs shall translate the views adopted by the Human Rights Committee into Nepali language, and the Ministry of Peace and Reconstruction shall publish and disseminate the views accordingly”.
21. **The author regrets that this information does not correspond to the information he received when he inquired with different Nepalese authorities in September 2015 about the potential developments on the translation and dissemination of the Views.** On such occasions, he repeatedly received misleading information about which were the authorities in charge of the translation and the dissemination of the Views respectively.
22. When on 18 September 2015, the author’s representatives registered a letter at the Ministry of Law and Justice urging the translation and dissemination of the Views and requesting to be informed about any relevant development, the Ministry’s officer informed them that there were no updates since his last letter was registered on 5 February 2015.⁷ On 28 September 2015, the author again inquired with the Ministry’s officials, who informed him that the Minister of Law and Justice, after reading his letter, had said that the Ministry of Peace and Reconstruction was in charge of both the translation and the dissemination of the Views.⁸
23. When the author addressed the Ministry of Peace and Reconstruction, the outcome was similarly inconclusive. Despite the registration of the author’s letter on 18 September 2015 and the Ministry officer Mr. Ramesh Kumar Sharma and Under-Secretary Mr. Bishwa Raj Neupane’s promises that the translation would be shared with him as soon as it is available⁹,

⁶ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; General Assembly resolution 60/147 of 16 December 2005, para. 19.

⁷ See Follow-up Report of the Author of 8 October 2015, para. 11.

⁸ *Ibid.*, para. 13.

⁹ *Ibid.*, para 12.

at any point they clarified whether the Minister was in charge of the translation and dissemination of the Views or only of the dissemination.

24. As if this were not enough, **at any point neither the representatives of the Ministry of Law and Justice nor the representatives of the Ministry of Peace and Reconstruction ever mentioned to the author that there was a Council of Ministers' decision from 9 April 2015 dealing with this particular issue.**
25. On 29 October 2015, the author's representative followed up with the Office of the Prime Minister, the Ministry of Law and Justice and the Ministry of Peace and Reconstruction regarding the translation of the Views.
26. The Section Officer of the Human Rights Unit of the Office of the Prime Minister provided a facsimile copy of a letter addressed to the author (Annex 1) in which it was stated that in the meeting of the Council of Ministers of 9 April 2015, it was decided that the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs would translate the Views adopted by the Human Rights Committee into Nepalese language and that the Ministry of Peace and Reconstruction would publish the translated Views. The letter further informs that the Council of Ministers' decision has been communicated to concerned Ministries for its implementation. **However, this letter was never sent to the author of the communication, and it was only shown to the author's representatives after several requests.**
27. Similarly, the author's representatives requested information from the Under-Secretary of the Ministry of Peace and Reconstruction, who confirmed having received the letter from the Office of the Prime Minister, but admitted that he was not acquainted with any other detail related to the measures of implementation.
28. Following the conversations held between the author's representatives and representatives of the Office of the Prime Minister and the Ministry of Peace and Reconstruction on 29 October 2015, it is clear that, despite the Council of Ministers' decision of 9 April 2015, **the Views of the Human Rights Committee have yet to be translated into Nepalese and disseminated.** In addition, the author's representatives have received on repeated occasions misleading or contradictory information about which is the concerned body mandated with the translation and the dissemination of the Views.
29. To conclude, the author believes that **the Ministry of Law and Justice and the Ministry of Peace and Reconstruction have had sufficient time to proceed with the translation and implementation of the Human Rights Committee's Views, as they were mandated to by the Council of Ministries' decision of 9 April 2015.** The delays in doing so, the failure to inform the author about the Council of Ministers' decision, and the misleading or inconclusive information repeatedly provided to the author regarding which are the authorities in charge of the translation and dissemination of the Views, show a clear unwillingness of the State Party to implement the Human Rights Committee's recommendations.

IV. The Incomplete Understanding of the Measures of Non-Recurrence Recommended by the Committee

30. The Human Rights Committee recommended that “the State Party is also under an obligation to take steps to prevent similar violations in the future. In this connection, the State Party should ensure that its legislation allows the criminal prosecution of the fact that constituted a violation of the Covenant”¹⁰.
31. According to the Council of Ministers’ decision of 9 April 2015 mentioned in the State Party’s submission, “the Ministry of Home Affairs and the Ministry of Defence will ensure that family members of Mr. Tej Bahadur Bhandari are protected from acts of reprisals or intimidation, and develop measures to control the recurrence of similar incidents in the future.” The author of the communication welcomes these measures, although regrets that the State Party fails to provide more details about the concrete contents of such measures.
32. Nevertheless, the adoption of security measures to guarantee the security of the author and his protection from acts of reprisals or intimidation, although crucial to prevent similar or connected violations against the author and his family in the future, are not enough to prevent similar violations at a larger scale. In this sense, the Committee specified that the State Party must amend its criminal legislation to allow for prosecution of those responsible for committing acts of enforced disappearance. **The State Party fails to provide any detail in its letter of 13 May 2015 about whether any steps are being taken to criminalise enforced disappearance under Nepalese legislation.**

V. The Absence of Measures to Provide the Author with Adequate Rehabilitation and Medical Treatment

33. The author observes that the State Party’s submission includes **no reference to the Committee’s recommendation that it should ensure that “the necessary and adequate psychological rehabilitation and medical treatment is provided to the author”**.¹¹

VI. Conclusions and Requests

34. In the light of the above, referring to the criteria to assess the implementation of the Human Rights Committee’s Views adopted by the Human Rights Committee,¹² Mr. Ram Kumar Bhandari argues that in his case the actions and replies given by Nepal can be rated:

¹⁰ See *supra* n 1.

¹¹ See *supra* n 1.

¹² Report of the Human Rights Committee to the General Assembly on its 108th, 109th and 110th Sessions, A/69/40 (Vol. I), page 169.

- “C” (no action taken) in relation to the translation and dissemination of the Views;
 - “E” (the reply indicates that the measures taken go against the recommendations of the Committee) in relation to the obligation of the State Party to conduct a thorough investigation into the facts and provide the author with detailed information about the outcomes of the such an investigation;
 - “C” (no action taken) in relation to the State Party’s obligation to locate the remains of Mr. Tej Bahadur Bhandari and handing them over to the family;
 - “E” (the reply indicates that the measures taken go against the recommendations of the Committee) in relation to the State Party’s obligation to prosecute, try and punish those responsible for the violations committed;
 - “C” (no action taken) in relation to the State Party’s obligation to provide adequate compensation to the author for the violations suffered;
 - “C” (no action taken) in relation to the State Party’s obligation to ensure that the necessary and adequate psychological rehabilitation and medical treatment is provided to the author; and
 - “C” (no action taken) in relation to the State Party’s obligation to prevent similar violations in the future by amending its domestic legislation.
35. Pursuant to rule 101 of the Rules of Procedure of the Human Rights Committee, Mr. Ram Kumar Bhandari calls on the Special Rapporteur for Follow-up on Views to:
- Make such **contacts and take such actions as appropriate for the due performance** of the mandate. In particular:
 - a) Ensure that the Peace and Reconstruction Ministry **locates, exhumes and return the remains of Mr. Bhandari to his family;**
 - b) Ensure that the Attorney General and the Law Ministry **conduct investigations and initiate criminal proceedings against those responsible without delay and without waiting for any referral from transitional justice mechanisms;**
 - c) Ensure that the Ministry of Law and Justice and the Attorney General take steps to amend domestic **criminal legislation on enforced disappearance and torture** and bring it in line with international human rights law;
 - d) Ensure that Mr. Ram Kumar Bhandari **receives without delay fair and adequate compensation that covers material and moral damages, as well as adequate psychological rehabilitation and medical treatment;** and
 - e) Ensure that the Ministry of Law and Justice and the Ministry of Peace and Reconstruction **translate and disseminate the Views in the State party’s official languages.**

- **Report to the Human Rights Committee on the follow-up information** gathered on this case and make sure that the **Committee includes data on follow-up activities in its annual report**; and
- **Remain actively seized of the matter.**

On behalf of Mr. Ram Kumar Bhandari,



Philip Grant
TRIAL Director

Geneva, 9 November 2015

Annexes

1. Letter provided by the Human Rights Unit of the Office of the Prime Minister to the author's representative on 29 October 2015 (in Nepalese).

1. bis. Letter provided by the Human Rights Unit of the Office of the Prime Minister to the author's representative on 29 October 2015 (unofficial translation into English).