

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

concerning the Communication

No. 2051/2011 *Mr. Jit Man Basnet and Mr. Top Bahadur Basnet 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. 7, 9, 10, para. 1, and 16 of the International Covenant on Civil and Political Rights, and of Art. 2, para. 3, read in conjunction with Arts. 7, 9, 10, para. 1, and 16 of the Covenant with regard to Mr. Jit Man Basnet; and of Art. 2, para. 3, in conjunction with Art. 7, of the Covenant with regard to Mr. Top Bahadur Basnet. The authors of the communication were 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 authors with an effective remedy, including:
 - Conducting a **thorough and effective investigation into the facts surrounding the detention of Mr. Jit Man Basnet and the treatment suffered at the Bhairabanth barracks**, providing the authors with detailed information about the results of the investigations;
 - **Prosecuting, trying and punishing** those responsible for the violations committed;
 - Providing **adequate compensation** to the authors for the violations suffered;
 - Ensuring that the **necessary and adequate psychological rehabilitation and medical treatment** is provided to the authors; and
 - Providing **adequate measures of satisfaction**.
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 25 April 2015, Nepal was hit by a terrible earthquake, which caused several casualties and huge damages to houses and infrastructure. As a consequence, TRIAL had to postpone the submission of

¹ Human Rights Committee (HRC), Case *Jit Man Basnet and Top Bahadur Basnet v. Nepal*, Views of 29 October 2014, para. 10.

² *Ibid.*, para. 11.

³ *Ibid.*

the follow-up report on the status of implementation of the above-mentioned Views, which was due on 11 May 2015, until normality was re-established in the country. On 6 May 2015, TRIAL sent a letter informing about these exceptional circumstances to the Human Rights Committee, which acknowledged receipt on 16 May 2015.

6. Considering that normality is currently established in the country and that more than nine months have elapsed since the notification of the Views issued by the Human Rights Committee, the authors wish to submit to the Human Rights Committee, through the Special Rapporteur for Follow-up of Views, information on the measures taken by the State party to give effect to the Views concerned.

I. Activities Undertaken by the Authors of the Communication and Their Representatives to Establish a Dialogue with Nepalese Authorities

7. In the period between November 2014 and September 2015, the authors' representatives undertook a number of activities, including exchanges of correspondence and request of meetings, in order to prompt Nepalese authorities to duly implement the Committee's Views. Unfortunately, the **level of implementation of the Committee's Views remains almost inexistent**.
8. In particular, several letters were sent to different Nepalese authorities on 5 February 2015. However, given that the legal representatives of the authors did not receive any response, they sent additional letters on 18 September and 28 September 2015 respectively, with the additional request of scheduling a meeting with the representatives of different authorities in order to discuss about the implementation of the Views. Neither the authors nor their representatives have ever received an invitation from representatives of different authorities to discuss about the implementation of the Views.
9. On 18 September and 28 September 2015, the authors' representatives met the registrar of various authorities to deliver additional follow-up letters at the Ministry of Peace and Reconstruction, Ministry of Law and Justice and Office of Prime Minister. On such occasions, they were repeatedly informed that Nepalese authorities are unsure about the division of competence to implement the Views and, as a consequence, nothing has been done so far. The described situation shows a **general unwillingness of the State party to facilitate the implementation of the Views and to collaborate with the authors of the communication**.

II. The Translation of the Views in the Local Language and their Dissemination

10. With regard to the translation, the authors' representatives sent a first letter dated 5 February 2015 to the Human Rights Unit of the Office of the Prime Minister (Annex 1), asking to translate and disseminate the Views in the State party's official languages. The letter was officially registered and assigned the

registration number C-7634⁴.

11. On 6 February 2015, the authors' representatives registered a letter (Annex 2) with the National Human Rights Commission (hereinafter, NHRC), inquiring about the role that the NHRC would play in the implementation of the Views and, in particular, for their translation and dissemination. A copy of the letter was signed and stamped by the Office.
12. Due to the lack of response to these two letters, a follow-up letter signed by the authors on 14 September was submitted on 18 September 2015 (Annex 7), requesting the Ministry of Law and Justice to take an active role in the translation and dissemination of the Views within the shortest delay and to provide a copy of the translated version of the Views to the authors. The letter was officially registered and assigned the registration number 39/2072/06/06. The Ministry's officer who received the letter from the authors' representatives recalled registering a similar letter in the past but he informed the authors' representatives that there were no updates in relation to it.
13. Likewise, a follow-up letter signed by the authors on 14 September was submitted on 18 September 2015 (Annex 6), requesting the Ministry of Peace and Reconstruction to take an active role in the translation and dissemination of the Views within the shortest delay and provide a copy of the translated version of the Views to the authors. The authors' representatives met the Secretary of Ministry of Peace and Reconstruction and he received the letter and forwarded the letter to the Relief Unit therein. The letter was officially registered and assigned the registration number 137/2072/06/06. The Secretary promised the authors' representatives a follow-up contact after a week or two, and that the translated copy of the Views will be sent to authors' representatives as soon as it is available.
14. On 28 September 2015, the authors' representatives went to the Ministry of Law and Justice for follow-up and were informed by the Section Officer of Ministry of Law and Justice that the Honourable Minister, Mr. Narhari Acharya, read the letter and said that the Ministry of Peace and Reconstruction was in charge of the translation and dissemination of the Views. Therefore, the authors' representatives were asked to follow-up directly with the Ministry of Peace and Reconstruction.
15. On 28 September 2015, the authors' representatives went to the Ministry of Peace and Justice and met Mr. Bishwa Raj Neupane, Under Secretary of the Ministry of Peace and Reconstruction. The Under Secretary informed the authors' representatives that he could not gather detailed information on the status of their request as, during the previous week, the office had been closed due to public holidays. He requested the authors' representatives to return within a week.
16. In the light of the above, the authors are unsure about what steps have been undertaken by the Ministry of Law and Justice and the Ministry of Peace and Reconstruction to ensure the translation and dissemination of the Human Rights Committee's Views.

⁴ The registration number C-7634 is shared with other letters submitted by the authors' representatives on behalf of Mr Ram Kumar Bhandari and Ms Sharmila Tripathi, in order to follow-up on the implementation of the HRC Views on the cases *Bhadari v Nepal* (2031/2011) and *Tripathi v Nepal* (2111/2011).

17. Similarly, a follow-up letter dated 25 September was submitted to the NHRC on 28 September 2015 (Annex 9). In the letter, the authors requested the NHRC to take an active role in the translation and dissemination of the Views and also to coordinate with the Office of the Prime Minister and Council of Ministers of Nepal to translate and disseminate the Views in local languages. The letter was registered with the registration number 1061 and a copy of the letter was signed and stamped by the NHRC.
18. On 28 September 2015, a follow-up letter dated 25 September was submitted by the authors' representatives to the Office of Prime Minister (Annex 10), requesting an update on the translation and dissemination of the Views. The letter was officially registered and assigned the registration number C-3868.
19. To date, the Ministry of Law and Justice, Ministry of Peace and Reconstruction, NHRC and Office of Prime Minister have not provided any update about any step taken to translate and disseminate the Views. **It should be noted that if the State party does not translate and disseminate the Views in the local languages, it will hamper the possibility for the Nepalese authorities and the society at large to be informed about the contents of the Human Rights Committee's Views.**

II. The Investigation into the Detention and Torture of Mr. Jit Man Basnet

20. On 5 February 2015, a letter was registered to the Ministry of Law and Justice (Annex 5), asking to ensure that the Attorney General investigates into the detention and torture of Mr. Basnet, and to inform the authors about the outcome of the investigation. The letter was received and registered under number 238⁵ on the same day. However, the authors have not received any feedback from the authorities ever since.
21. Moreover, on 6 February 2015, the authors' representatives registered a letter before the Office of the Attorney General (Annex 4), prompting the latter to conduct a thorough investigation into the detention and torture of Mr. Basnet
22. Additionally, through a letter dated 6 February 2015, the authors' representatives asked the NHRC (Annex 2) to identify the State authorities in charge of implementing the HRC's Views and to prompt them to act without delay.
23. The authors' representatives also demanded the Human Rights Unit of the Prime Minister (Annex 1) to encourage all the Nepalese authorities to enforce the Human Rights Committee's recommendations. The letter was registered on 5 February 2015 under number C-7634.⁶

⁵ The registration number 238 is shared with other letters submitted by the authors' representatives on behalf of Mr Ram Kumar Bhandari and Ms Sharmila Tripathi, in order to follow-up on the implementation of the HRC Views on the cases of *Bhadari v Nepal* (2031/2011) and *Tripathi v Nepal* (2111/2011).

⁶ The registration number C-7634 is shared with other letters submitted by the authors' representatives on behalf of Mr Ram Kumar Bhandari and Ms Sharmila Tripathi, in order to follow-up on the implementation of the HRC Views on the cases *Bhadari v Nepal* (2031/2011) and *Tripathi v Nepal* (2111/2011).

24. As the authorities had not replied, on 28 September 2015, follow-up letters dated 25 September (Annexes 8, 9 and 10) were sent by the authors to the authorities mentioned above, stressing the importance of investigating over the facts surrounding the detention and torture of Mr. Basnet and asking to schedule a meeting. The letters were officially registered under numbers 3946 by the Office of the Attorney General (Annex 8), 1061 by the NHRC (Annex 9) and C-3934 by the Office of the Prime Minister (Annex 10).
25. However, **the authors have not received any reply from the authorities and they have not been informed about the status of the investigations.** This situation is the source of additional distress to the authors of the communication.

III. The Efforts to Prosecute, Try and Sanction Those Responsible

26. The authors' representatives prompted the Attorney General (Annex 4) to prosecute, try and sanction those responsible for the detention and torture of Mr. Basnet through a letter dated 5 February 2015. On 6 February 2015, a copy of the letter was received by the officer Mr Binod Bhattarai, who signed and stamped it, but, to the knowledge of the authors, no action has been undertaken since then.
27. On 28 September 2015, the authors' representatives sent a follow-up letter dated 25 September (Annex 8), urging the Attorney General to implement the Views and to schedule a meeting. A copy of the letter was signed and stamped by the Office of the Attorney General. The authors' representatives were informed that, if necessary, they will be updated in the future.
28. **The lack of cooperation of the Attorney General in bringing the perpetrators to justice is exacerbating a general sense of impunity in the country and the increasing the frustration of the authors of the communication.**

IV. Adequate Compensation to Mr. Jit Man Basnet and Mr. Top Bahadur Basnet

29. At the time of writing, the authors haven't received any adequate compensation. On 5 February 2015, a letter signed by the authors' representatives was addressed to the Ministry of Peace and Reconstruction (Annex 3), requesting it to provide compensation. The Section Officer received the letter but did not proceed to its registration, arguing that a specific authorisation from the Minister was required to proceed with the registration of such letter. The authors' representatives did not get any update from the Section Officer despite of regular follow-up calls.
30. On 6 February 2015, the authors' representatives sent letters to the NHRC (Annex 2) and the Office of Prime Minister (Annex 1) requesting them to play a pivotal role in monitoring and prompting the implementation of all the measures of reparation indicated by the Human Rights Committee in its Views. At the time of writing, the authors have not received any formal response.
31. On 18 September 2015, the authors' representatives met with Mr. Ramesh Kumar Sharma, Secretary of

Ministry of Peace and Reconstruction and briefly discussed about the possibility of providing adequate compensation. As the Secretary had been transferred only recently to the Ministry of Peace and Reconstruction, he was not acquainted with the subject. However, the Secretary said that the work of newly established Truth and Reconciliation Commission (TRC) would be important to ensure that the authors receive compensation for the harm suffered, and encouraged them to refer their case to the TRC.

32. On 28 and 30 September 2015, the authors' representatives sent a follow-up letter (Annexes 8 and 9 respectively), urging the Office of Prime Minister and the NHRC respectively to guarantee that compensation is provided to the authors and asking to schedule a meeting. Till date, the authors' representatives have neither received any update on the State party's willingness to provide compensation nor any information on a potential meeting.
33. **All in all, to date, any compensation has been granted**, showing a clear unwillingness of the State party to ensure that this remedy is given to the authors, who have encountered serious material and moral damages over the years.

V. The Provision of Adequate Psychological Rehabilitation and Medical Treatment to Mr. Jit Man Basnet and Mr. Top Bahadur Basnet

34. On 5 February 2015, the authors' representatives sent a letter to the Ministry of Peace and Reconstruction (Annex 3), stressing the importance of guaranteeing adequate psychological rehabilitation and medical treatment to the authors.
35. On 18 September 2015, the authors' representatives met Mr. Ramesh Kumar Sharma, Secretary of the Ministry of Peace and Reconstruction and briefly discussed about the possibility of providing adequate psychological rehabilitation and medical treatment to the authors. However, the Secretary did not provide any meaningful information and indicated that the authors may receive some measures of psychological rehabilitation and medical treatment from the TRC.
36. On 28 September 2015, the authors' representatives went to the Ministry of Peace and Reconstruction to seek further information and they were referred to the Relief Unit. The Section Officer of the Relief Unit tried to assist the authors' representatives by contacting the Under Secretary over the phone who is in charge of the Relief Unit of the Ministry. Mr. Damodar Bhandari, Under Secretary showed hesitant to meet the authors' representatives stating that he did not have information to share and asked the author's representative to come back in a week or two. The Section Officer said that it might be difficult to schedule a meeting with the Minister, provided that the latter "is very busy due to the critical political situation in the country".
37. All in all, **the authors have not received adequate psychological rehabilitation and medical treatment to date**, nor have been able to engage in a meaningful conversation with the authorities about the possibilities for receiving such support.

VI. The Adequate Measures of Satisfaction

38. On 5 February 2015, the authors' representatives sent a letter to the Ministry of Peace and Reconstruction (Annex 3) asking that satisfaction is ensured in the form of a public ceremony whereby the Nepalese authorities recognize their international responsibility and issue apologies to the authors of the communication.
39. In the absence of any meaningful feedback, on 18 September 2015 and 28 September 2015 the authors' representatives contacted the Secretary of the Ministry of Peace and Reconciliation and the Section Officer of the Relief Unit of the Ministry of Peace and Reconstruction. At the time of writing, no formal response has been received.

VII. The Amendment of Criminal Domestic Legislation on Enforced Disappearance and Torture

40. On 5 February 2015, the authors' representatives sent a letter to both the Ministry of Law and Justice (Annex 5) and the Ministry of Peace and Reconstruction (Annex 3), asking to amend the legislation in order to allow for the criminal prosecution of the facts that constituted a violation of the Covenant. The Ministry of Law and Justice registered the letter on the same day under number 238,⁷ but the Ministry of Peace and Reconstruction did not register it.
41. To the knowledge of the authors, the Nepalese criminal legislation has not been amended, and they have not received any feedback from the authorities concerned on whether any action in this sense may be forthcoming.

VIII. Conclusions and Requests

42. 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,⁸ Mr. Jit Man Basnet and Mr. Top Bahadur Basnet argue that in their case the actions and replies given by Nepal can be rated "**C**" (**no action taken**).
43. Pursuant to rule 101 of the Rules of Procedure of the Human Rights Committee, Mr. Jit Man Basnet and Mr. Top Bahadur Basnet call 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 Attorney General investigates, prosecutes and sanctions those responsible for the detention and torture of Mr. Basnet;

⁷ The registration number 238 is shared with other letters submitted by the authors' representatives on behalf of Mr Ram Kumar Bhandari and Ms Sharmila Tripathi, in order to follow-up on the implementation of the HRC View son the cases *Bhadari v Nepal* (2031/2011) and *Tripathi v Nepal* (2111/2011).

⁸ Report of the Human Rights Committee to the General Assembly on its 108th, 109th and 110th Sessions, A/69/40 (Vol. I), page 169.

- b) 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;
 - c) Ensure that Mr. Jit Man Basnet and Mr. Top Bahadur Basnet **receive without delay fair and adequate compensation that covers material and moral damages, as well as adequate psychological rehabilitation and medical treatment;**
 - d) Ensure that measures of satisfaction aimed at restoring the dignity of the authors and to pay them a tribute are taken; and
 - e) Ensure that the Ministry of Peace and Reconstruction translates and disseminates 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. Jit Man Basnet and Mr. Top Bahadur Basnet

Philip Grant

TRIAL Director

Geneva, 8 October 2015

Annexes

1. Letter submitted by the authors' representatives to the Human Rights Unit of the Office of the Prime Minister, 5 February 2015 (in Nepalese).
1. **bis.** Letter submitted by the authors' representatives to the Human Rights Unit of the Office of the Prime Minister, 5 February 2015 (unofficial translation into English).
2. Letter submitted by the authors' representatives to the National Human Rights Commission dated 4 February 2015, 6 February 2015 (in Nepalese).
2. **bis.** Letter submitted by the authors' representatives to the National Human Rights Commission dated 5 February 2015, 6 February 2015 (unofficial translation into English).
3. Letter submitted by the authors' representatives to the Ministry of Peace and Reconstruction, 5 February 2015 (in Nepalese).
3. **bis.** Letter submitted by the authors' representatives to the Ministry of Peace and Reconstruction, 5 February 2015 (unofficial translation into English).
4. Letter submitted by the authors' representatives to the Office of Attorney General dated 5 February 2015, 6 February 2015 (in Nepalese).
4. **bis.** Letter submitted by the authors' representatives to the Office of Attorney General dated 5 February 2014, 6 February 2015 (unofficial translation into English).
5. Letter submitted by the authors' representatives to the Ministry of Law and Justice, 5 February 2015 (in Nepalese).
5. **bis.** Letter submitted by the authors' representatives to the Ministry of Law and Justice, 5 February 2015 (unofficial translation into English).
6. Letter submitted by the authors' representatives to the Ministry of Peace and Reconstruction dated 14 September 2015, 18 September 2015 (in Nepalese).
6. **bis.** Letter submitted by the authors' representatives to the Ministry of Peace and Reconstruction dated 14 September, 18 September 2015 (unofficial translation into English).
7. Letter submitted by the authors' representatives to the Ministry of Law and Justice dated 14 September 2015, 18 September 2015 (in Nepalese).

7. bis. Letter submitted by the authors' representatives to the Ministry of Law and Justice dated 14 September 2015, 18 September 2015 (unofficial translation into English).

8. Letter submitted by the authors' representatives to the Office of Attorney General dated 25 September 2015, 28 September 2015 (in Nepalese).

8. bis. Letter submitted by the authors' representatives to the Office of Attorney General dated 25 September 2015, 28 September 2015 (unofficial translation into English).

9. Letter submitted by the authors' representatives to the National Human Rights Commission dated 25 September 2015, 28 September 2015 (in Nepalese).

9. bis. Letter submitted by the authors' representatives to the National Human Rights Commission dated 25 September 2015, 28 September 2015 (unofficial translation into English).

10. Letter submitted by the authors' representatives to the Human Rights Unit of the Office of the Prime Minister dated 25 September 2015, 28 September 2015 (in Nepalese).

10. bis. Letter submitted by the authors' representatives to the Human Rights Unit of the Office of the Prime Minister dated 25 September 2015, 28 September 2015 (unofficial translation into English).