

**Follow-up Report to the Human Rights Committee
on the Communication**

No. 2077/2011 *Mr. A.S. v. Nepal*

I. Background

1. On 6 November 2015, the Human Rights Committee issued its Views concerning the communication No. 2077/2011, finding violations of Arts. 7; 9, paras. 1, 2 and 5; 10, para. 1; and 17; read alone and in conjunction with Art. 2, para. 3, of the International Covenant on Civil and Political Rights (hereinafter, "ICCPR") with regard to Mr. A.S.
2. In accordance with Art. 2, para. 3, of the ICCPR, the Human Rights Committee declared that Nepal is under an obligation to provide the author with an effective remedy, including to:
 - Conduct a thorough and effective investigation into the facts submitted by the author, in particular the treatment to which he was subjected on 18 July 2008;
 - Prosecute, try and punish those responsible for the arbitrary arrest, torture and ill-treatment, inhuman detention and harassment of Mr. A.S. and make the results of such measures public;
 - Provide adequate compensation and appropriate measures of satisfaction to the author for the violations suffered; and
 - Ensure that any necessary and adequate psychological rehabilitation and medical treatment is provided to the author.¹
3. The Human Rights Committee recalled that "the State party is also under an obligation to take steps to prevent occurrence of similar violations in the future",² by "taking measures to eradicate torture and ill-treatment, including by adopting legislation defining and criminalizing torture with sanctions and remedies commensurate with the gravity of the crime, in accordance with international standards".³
4. The Human Rights Committee held that it "wishes to receive from the State party, within 180 days, information concerning the measures taken to give effect to the Committee's Views"⁴. In addition, the Committee declared that "the State party is also requested to publish the present views and disseminate them broadly in the official languages of the State party".⁵

¹ Human Rights Committee (HRC), Case *A.S. v. Nepal*, Views of 6 November 2015, para. 10.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*, para. 11.

⁵ *Ibid.*, para. 11.

5. In the framework of the follow-up procedure, the State party submitted a letter to the Human Rights Committee dated 22 March 2016, which was notified to the author on 24 March 2016. The author submitted his response to the State party's submission in its Follow-up report to the Human Rights Committee dated 20 May 2016.
6. At its 118th session, the Human Rights Committee adopted a follow-up progress report, assessing the State party's reply/action in this specific case.⁶To the knowledge of the author, no further reply has been submitted by the State. In fact, at its 119th session, the Human Rights Committee declared the dialogue ongoing and decided to submit a reminder to the State.⁷
7. The author of the communication is frustrated by the fact that the level of implementation of the Committee's recommendations remains alarmingly low and the State party has not shown any willingness to adopt adequate actions in this regard. Mr. A.S. thus submits this additional follow-up report to the Human Rights Committee, calling on the latter to modify its grades accordingly.

II. Activities Undertaken by the Author and His Wife to Establish a Dialogue with Nepalese Authorities

8. In the period between 21 May 2016 and July 2017, the author's wife undertook a number of activities, including the exchange of correspondence and requests of meetings, in order to prompt the government to duly implement the Committee's Views. However, it seems that these endeavours have been to no avail.
9. On 22 April 2016 and 23 September 2016 respectively, closed door meetings were held between government authorities and some applicants before the Human Rights Committee, including the author's wife. During these meetings, Nepalese authorities did not show a genuine willingness to implement the Committee's Views, in particular with regard to investigation, prosecution and sanction of those responsible.
10. On 28 May 2017 and 11 June 2017 respectively, the author's wife sent letters (Annexes 1-4) to the National Human Rights Commission (hereinafter, "NHRC"); the Office of Attorney General (hereinafter, "OAG"); the Ministry of Law, Justice and Parliamentary Affairs; and the Human Rights Unit, Office of Prime Minister and Council of Ministers (hereinafter, "OPM-CM").
11. In the letter sent to the OPM-CM (Annexe 1), the author's wife requested information on the steps taken by the Human Rights Unit for the implementation of the Views of the Human Rights Committee. In addition, the author's wife also asked for a meeting to discuss these important issues.

⁶ HRC, *Follow-up Progress Report on Individual Communications*, UN Doc. CCPR/C/118/3 of 1 August 2016, p. 31.

⁷ HRC, *Follow-up Progress Report on Individual Communications*, UN Doc. CCPR/C/119/3 of 30 May 2017, p. 25.

12. In the letter sent to the NHRC (Annexe 2), the author's wife requested the NHRC to play active role for the translation and dissemination of the Views of the Human Rights Committee. In addition, the author's wife requested the NHRC Chairperson to monitor the implementation of the Committee's Views, pursuant to the Commission's mandate. Lastly, she asked to schedule a meeting to discuss these subjects.
13. In the letter sent to the OAG (Annexe 3), the author's wife requested to take all necessary measures to ensure effective investigation of the case and to prosecute and sanction those responsible for the crime concerned. In addition, she also requested the Office to inform her in writing on the developments of the investigation. Lastly she requested a meeting to further discuss these matters.
14. In the letter sent to the Ministry of Law, Justice and Parliamentary Affairs (Annexe 4), the author's wife called on the authority to proceed without delay to criminalise torture in line with international standards. She also requested to inform her on the progress of the investigation and prosecution of those responsible; and to take the necessary steps for the translation and dissemination of the Views; and ensure that her husband receives medical treatment and psychological rehabilitation.
15. On 5 July 2017, the author's wife sent another letter to the NHRC (Annexe 5) reiterating her request to the Commission to play an active role in the translation and dissemination of the Views and reminding previous letters sent with similar requests. On the same day the NHRC replied to the author's wife (Annexe 6).
16. Notably, the NHRC is the only authority that sent a formal reply to the author's wife, while all other letters remained unanswered and no meeting was ever scheduled.

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

17. In the Follow-up Progress Report on Individual Communications adopted at its 118th session, the Human Rights Committee assigned grade B1 to the translation and dissemination of the Views.
18. The Human Rights Committee's Views were eventually translated by the Ministry of Law, Justice and Parliamentary Affairs and uploaded on the website of the OPM-CM.
19. In light of the above, the author would suggested that while the grade proposed by the Committee (i.e. "B1") is adequate, more needs to be done to ensure wide dissemination of the Views.

III. State Party's Lack of Willingness to Investigate the Facts, Prosecute and Punish Those Responsible

20. In the Follow-up Progress Report on Individual Communications adopted at its 118th session, the Human Rights Committee assigned grade C1 to the measures concerning investigation of the cases and for prosecution and punishment of perpetrators. The author is persuaded that this **grade must be lowered in light of the lack of progress and of some of the responses provided by Nepalese authorities.**
21. The author's wife consistently called on Nepalese authorities to prompt them to conduct an investigation and to prosecute and sanction those responsible of the crime concerned, pursuant to the Committee's Views, both on the occasion of the closed door meetings with authorities and in the letters she sent on 28 May 2017 and 11 June 2017 (Annexes 1-4).
22. In its letter of 5 July 2017, **the NHRC expressly mentioned that there will not be any new investigation into this case provided that it has already been adjudicated by the Supreme Court** (Annexe 6). This reply shows the **blatant unwillingness of Nepalese authorities to implement the Committee's Views and evidently go against its recommendations.**
23. Thus, the author respectfully requests the Committee to grade the implementation of the recommendations on "Investigation of the facts and information to the family" and "Prosecution and punishment of perpetrators" with an **E** instead of C1.

IV. The Failure of the State Party to Provide the Author with Adequate Compensation

24. In the Follow-up Progress Report on Individual Communications adopted at its 118th session, the Human Rights Committee rated B2 the compensation provided to the author. The author respectfully disagrees with the assigned grade as the meagre amount awarded so far (approximately 200 US \$) is by no means commensurate to the gravity of the damage suffered.
25. Among other international instruments, the United Nations 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 establish that compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: (a) physical or mental harm; (b) lost opportunities, including employment, education and social benefits; (c) material damages and loss of earning, including loss of earning potential; (d) moral damage; (e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services (Principle 20).

26. Thus, compensation should be calculated considering the above-mentioned elements. Because of the torture and ill-treatment endured by the author and his wife, the family has suffered from physical and mental harm, for the treatment of which the author made significant expenses. Because of the physical harm, the author cannot continue his work as trekking guide, hence losing his income. The family could not continue its hotel business due to the threats received from the police. All these elements should be considered when calculating the amount to provide adequate compensation to the author. It is considered that an adequate compensation for Mr. A.S. would be 3,600,000 Nepalese Rupees (US \$ 33,500), consider that his past annual income was of 600,000 Nepalese Rupees.
27. The author's wife requested the payment of adequate compensation in all the letters she sent to the authorities (Annexes 1-5). In its reply, the NHRC promised to pay an additional 20,000 Nepalese Rupees (US \$ 200) through the Ministry of Finance (Annexe 6). However, at the time of writing, this has not been the case.
28. In the light of all the above, the author respectfully requests the Committee to grade the implementation of the recommendations on "Adequate Compensation" with **D2** instead of "B2".

V. The Failure to Provide the Author with Measures of Satisfaction

29. In the Follow-up Progress Report on Individual Communications adopted at its 118th session, the Human Rights Committee rated C1 the measures of satisfaction. The author respectfully contends that this grade should be further lowered.
30. The author of the communication requested a public ceremony whereby the Nepalese authorities recognize their international responsibility and issue public apologies to restore his dignity and reputation. The author also requested that his children receive adequate education free of charge as a form of satisfaction. These requests were formally made to the Nepalese authorities in the letter submitted to them (Annexes 1-4), but no answer was received.
31. Thus, the author calls on the Committee to grade the implementation of the recommendations on "Appropriate measures for satisfaction" with **D2** instead of "C1".

VI. The Failure to Provide the Author with Adequate Rehabilitation and Medical Treatment

32. In the Follow-up Progress Report on Individual Communications adopted at its 118th session, the Human Rights Committee rated C1 for rehabilitation and medical treatment. The author considers that also this grade should be lowered.

33. The author experiences pain in his joints and has trouble walking. He has difficulties to sleep. He lives in a state of constant fear and anguish. He needs medical treatment and psychological rehabilitation and considers a crucial first step the carrying out of a thorough medical and psychological examination to be conducted at a national health institution and the costs of which shall be assumed by the authorities.
34. The request to provide Mr. A.S. with adequate psychological and medical treatment was formulated by his wife in all the letters she submitted to the Nepalese authorities (Annexes 1-5). In this case, also the NHRC failed to provide any significant response.
35. Thus, the author respectfully requests the Committee to grade the implementation of the recommendations on "Rehabilitation" with **D2** instead of "C1".

VII. The Failure to Amend Domestic Legislation to Ensure Non-repetition as Recommended by the Committee

36. In the Follow-up Progress Report on Individual Communications adopted at its 118th session, the Human Rights Committee rated C1 the measure concerning guarantees of non-repetition.
37. In all the letters submitted to the authorities (Annexes 1-5), the author and his wife recalled the obligation to amend domestic criminal legislation on torture and bring it in line with international standards.
38. Although a draft bill on torture and cruel, inhuman and degrading treatment has been submitted to the Parliament since 2014, at the time of writing it has not passed into law and domestic legislation remains at odds with international law.
39. Thus, the author respectfully requests the Committee to grade the implementation of the recommendations on "Non-repetition" with **D2** instead of "C1".

VIII. Conclusions and Requests

40. In light of the above, referring to the criteria to assess the implementation of the Human Rights Committee's Views, Mr. A.S. argues that in his case the actions and replies given by Nepal must be rated:

"**E**" in relation to the investigation of the facts and information to the family, in particular the treatment to which he was subjected to.

"**E**" in relation to prosecution and punishment of perpetrators who tortured the author.

"**D2**" in relation to compensation and appropriate measures of satisfaction to the author for the violations suffered.

"**D2**" in relation to rehabilitation by ensuring necessary and adequate psychological rehabilitation and medical treatment to the author.

“D2” in relation to the adoption of guarantees of non-recurrence by means of amendment of domestic legislation concerning torture.

“B1” in relation to translation into Nepali and wide dissemination of the Views.

41. Pursuant to rule 101 of the Rules of Procedure of the Human Rights Committee, Mr. A.S. calls on the Special Rapporteur for Follow-up on Views to:

A) Make such contacts and take such actions as appropriate for the due performance of the mandate. In particular:

- Ensure that the State bears the costs of a thorough medical and psychological examination, to be conducted in a public health institution agreed to by both parties, which should serve as a basis to assess the victim’s long term psychological and medical needs and provide him adequate treatment.
- Ensure that a thorough and independent investigation on the crime concerned takes place without any further delay and those responsible are prosecuted and sanctioned.
- Ensure that the government holds a ceremony, public apologising and acknowledging its international responsibility.
- Provide all material resources necessary so that, if the author’s daughters wish to continue and obtain higher education, either at technical schools or at the university, they are awarded a scholarship covering all expenses and costs involved in such higher education at the Nepalese public higher education centres they may choose.
- Ensure that the author obtains 3,600,000 Nepalese Rupees (\$ 33,500) as compensation for the harm suffered.
- Ensure that the translated Views of the Committee are further disseminated, including through the NHRC, ministries, police, and social organizations working for human rights litigation.

B) 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 reports; and

C) Remain actively seized of the matter.

On behalf of Mr. A.S.

Philip Grant
TRIAL International Director



Geneva, 11 August 2017

Annexes

1. Letter submitted by the author's wife to the Human Rights Unit, Office of Prime Minister and Council of Ministers, 11 June 2017 (Nepali).
- 1.bis Letter submitted by the author's wife to the Human Rights Unit, Office of Prime Minister and Council of Ministers, 11 June 2017 (unofficial translation in English).
2. Letter submitted by the author's wife to the National Human Rights Commission, 11 June 2017 (Nepali).
- 2.bis Letter submitted by the author's wife to the National Human Rights Commission, 11 June 2017 (unofficial translation in English).
3. Letter submitted by the author's wife to the Office of Attorney General, 11 June 2017 (Nepali).
- 3.bis Letter submitted by the author's wife to the Office of Attorney General, 11 June 2017 (unofficial translation in English).
4. Letter submitted by the author's wife to the Ministry of Law, Justice and Parliamentary Affairs, 11 June 2017 (Nepali).
- 4.bis Letter submitted by the author's wife to the Ministry of Law, Justice and Parliamentary Affairs, 11 June 2017 (unofficial translation in English).
5. Letter submitted by the author's wife to the National Human Rights Commission, 5 July 2017 (Nepali).
- 5.bis Letter submitted by the author's wife to the National Human Rights Commission, 5 July 2017 (unofficial translation in English).
6. Letter submitted by National Human Rights Commission to the author's wife, 5 July 2017 (Nepali).
- 6.bis Letter submitted by National Human Rights Commission to the author's wife, 5 July 2017 (unofficial translation in English).