

## Follow-Up Information on the Implementation of the Views of 1 April 2015

### concerning the Communication

#### No. 2000/2010 *Ms. Yuba Kumari Katwal v. Nepal*

1. On 1 April 2015, the Human Rights Committee issued its Views concerning the above-mentioned communication, finding violations by Nepal of Arts. 6, 7, 9 (paras. 1 - 4), 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. Katwal. The author of the communication was notified about the adoption of the Views on 7 April 2015.
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**, with a view to locating the remains of Mr. Katwal and returning them to his family;
  - **Prosecuting, trying and punishing** those responsible for the deprivation of liberty, torture and enforced disappearance of Mr. Katwal and making the results of such measures public;
  - Providing **effective reparation**, including adequate **compensation** and appropriate measures of **satisfaction**, to the author for the violations suffered.
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”.<sup>1</sup>
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”<sup>2</sup> 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”.<sup>3</sup>
5. On 25 April 2015 Nepal was hit by a terrible earthquake, which caused several casualties and huge damages to houses and infrastructure. The author’s house, located in Okhaldhunga, completely collapsed during the earthquake and the author suffered psychological trauma from the earthquake, although there were no human casualties in the author’s family.
6. The author acknowledges the fact that currently the country is recovering from the devastating effects of the earthquake and is in a situation of political crisis due to protests related to the adoption of the

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<sup>1</sup> Human Rights Committee (HRC), Case *Ms. Yuba Kumari Katwal v. Nepal*, Views of 1 April 2015, para. 13.

<sup>2</sup> *Ibid.*, para. 14.

<sup>3</sup> *Ibid.*

new Constitution. However, the author is also concerned that the six months provided by the Human Rights Committee to undertake measures to implement the Views have elapsed and the author wishes 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 Author of the Communication and Her Representatives to Establish a Dialogue with Nepalese Authorities**

7. In the period between April 2015 and September 2015, the author's representatives and the author's daughters undertook a number of activities, including exchanges of correspondence, 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 July and August 2015, the author's daughters, Ms. Kamala Katwal (who works for the Ministry of Finance), and Ms. Bimala Katwal (who works for the Ministry of Home Affairs) tried to meet the representatives of the Ministry of Peace and Reconstruction and of the Ministry of Law and Justice in person in order to discuss the implementation of the Views, given that their offices are located in the same governmental premises. The representatives of the Relief Unit of the Ministry of Peace and Reconstruction informed them orally that the government has not made any particular decision regarding the implementation of the Views and without the order from the concerned authorities, the Relief Unit does not have any power to act to implement the Views of the Human Rights Committee. Moreover, the representatives of the Relief Unit insisted that a Truth and Reconciliation Commission (TRC) and a Commission on Enforced Disappearance had been established to deal with conflict-related cases. The higher-level representatives of the Ministry remained unavailable for a meeting.
9. On 30 September 2015, the author's daughter, Ms. Bimala Katwal sent letters dated 29 September 2015 to the Ministry of Peace and Reconstruction, the Ministry of Law and Justice, the Office of the Attorney General, the Human Rights Unit of the Office of the Prime Minister and the National Human Rights Commission respectively (Annexes 3, 4, 5, 6 and 7). The author, her daughters and their representatives have not received an answer to these letters and no meeting has been organised to discuss the implementation of the Views. 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 author's daughter Ms. Bimala Katwal tried to register a letter signed by the author on 23 August 2015 before the Ministry of Law and Justice (Annex 2), asking to translate and disseminate the Views in the State party's official language. The Section Officer of the Ministry of Law and Justice discouraged her saying that "no one would be reading those letters as everyone was

busy with the ongoing constitution making process, the protests and the demonstration. The letter would end up in the dust bin.” The Section Officer hence did not register the letter. Therefore, Ms. Bimala Katwal herself posted the letter to the Ministry by delivering the letter directly to the mailbox of the Ministry. The author has not received any reply.

11. On 23 August 2015, the author’s daughter Ms. Bimala Katwal tried to register a letter signed by the author on 9 August 2015 before the Ministry of Peace and Reconstruction (Annex 1), but the Officer in charge also refused to register it. Therefore, Ms. Bimala Katwal herself posted the letter to the Ministry by delivering the letter directly to the mailbox of the Ministry. Up till now, the author has not received any reply.
12. On 18 September 2015, the author’s representatives met the Secretary of the Ministry of Peace and Reconstruction and inquired about the translation and dissemination of the Views. The Secretary informed that there would be no problem in providing a copy of the translated Views once they were published and asked the author’s representatives to follow-up in the following week. On 28 September 2015, the author’s representatives contacted anew the Office of the Secretary and the Relief Unit of the Ministry of Peace and Reconstruction. Allegedly, the Ministry of Peace and Reconstruction does not have the translation of the Views and no further information was provided to the author’s representatives regarding when the author may expect the Views to be translated into the official local language.
13. On 30 September 2015, the author’s daughter sent a letter to the Human Rights Unit of the Office of the Prime Minister dated 29 September 2015 (Annex 7), 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-3936.
14. On 30 September 2015, the author’s daughter Ms. Bimala Katwal also registered a letter with the National Human Rights Commission (hereinafter, NHRC) dated 29 September 2015 (Annex 6), inquiring about the role that the NHRC would play in the implementation of the Views and, in particular, for their translation and dissemination. The letter was registered with the registration number 1088. A copy of the letter, signed and stamped, was given to the author’s daughter. Nevertheless, to date, the Ministry of Law and Justice, the Ministry of Peace and Reconstruction, the Human Rights Unit of the Office of the Prime Minister and the NHRC have not provided any update about any steps taken to translate and disseminate the Views.

## **II. The Investigation into the Arbitrary Detention, Torture and Enforced Disappearance of Mr. Chakra Bahadur Katwal**

15. On 30 September 2015, a letter dated 29 September 2015 was registered with the Ministry of Law and Justice (Annex 4), asking the Minister to ensure that the Attorney General investigates into the detention, torture and enforced disappearance of Mr. Katwal, and to inform the authors about the

outcome of such an investigation. The Section Officer in charge 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. The author's daughter has done several follow-up calls to the Section Officer, but she has not received any meaningful information yet.

16. On 30 September 2015, the author's daughter registered a letter dated 29 September 2015 before the Office of the Attorney General (Annex 5), prompting the latter to conduct a thorough investigation into the detention, torture and enforced disappearance of Mr. Katwal.
17. The author's daughter also requested the Human Rights Unit of the Office of the Prime Minister (Annex 5) to play a coordination role among all authorities in order to enforce the Human Rights Committee's decisions. The letter was registered on 30 September 2015 under number C-3936.
18. The author has not received information from the Ministry of Law and Justice, the Office of the Attorney General or the Human Rights Unit of the Office of Prime Minister regarding the investigation into the arbitrary detention, torture and enforced disappearance of her husband. To the knowledge of the authors, no measures are being taken in this regard.

### **III. The Measures Taken to Ensure the Release of Mr. Chakra Bahadur Katwal or to Locate, Exhume, and Return to the Family His Mortal Remains**

19. On 30 September 2015, the author's daughter, Bilama Katwal, registered a letter dated 29 September 2015 (Annex 5) with the Office of the Attorney General, urging it to take all necessary measures to locate, exhume, identify and return the mortal remains of her father to her family.
20. Similarly, on 30 September 2015, the author's daughter, Bilama Katwal, tried to register a letter dated 29 September with the Ministry of Peace and Reconstruction (Annex 3), through which the Ministry is asked to take all necessary measures to ensure that Mr Katwal mortal remains are located, identified and returned to her family. The Section Officer of the Ministry did not proceed to the registration of the letter, arguing that a specific authorisation from the Minister was required to proceed with such registration. On 1 October 2015, the author's representative followed up with the concerned Section Officer and was informed that the letter had been registered under the registration number 42/2072/0/13. The Section Officer further informed that the letter had been forwarded to the Relief Unit of the Ministry.
21. The author maintains that her husband's current fate and whereabouts should be disclosed promptly by the authorities. Until the author receives reliable proof about her husband's death, such as receiving his mortal remains, she cannot acknowledge his death. Therefore, **the author is enduring great suffering and pain as the fate and whereabouts of her husband remains unknown.**

#### **IV. The Efforts to Prosecute, Try and Sanction Those Responsible**

22. The author's daughter prompted the Attorney General to prosecute, try and sanction those responsible for the enforced disappearance of Mr. Katwal through a letter dated 29 September 2015 (Annex 5). On 30 September 2015, the letter was registered with the Office of Attorney General and was assigned the registration number 4139.
23. The author is not aware of any steps taken by the Attorney General in bringing the perpetrators of the crimes concerned to justice. This has exacerbated a general sense of impunity in the country and increases frustration of the author of the communication.

#### **V. Adequate Compensation to the Author**

24. On 30 September 2015, a letter dated 29 September 2015 signed by the author's daughter was addressed to the Ministry of Peace and Reconstruction (Annex 3), requesting it to provide adequate compensation to the author. The Section Officer of the Ministry received the letter but did not proceed to its registration, arguing that a specific authorisation from the Minister was required to proceed with such registration. On 1 October 2015, the author's representative followed up with the Section Officer and was informed that the letter had been registered under registration number 42/2072/0/13. The Section Officer further informed that that the letter had been forwarded to the Relief Unit.
25. Similarly, on 30 September 2015, the author's daughter sent letters to the NHRC (Annex 6) and the Human Rights Unit of the Office of Prime Minister (Annex 7) 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, including the measures concerning compensation. At the time of writing, the authors have not received any response.
26. To date, the author of the communication has not received any compensation for the serious material and moral harm suffered.

#### **VI. The Adequate Measures of Satisfaction**

27. The author's daughter sent letters dated 29 September 2015 to the Ministry of Peace and Reconstruction (Annex 3), to the National Human Rights Commission (Annex 6) and to the Human Rights Unit of the Office of Prime Minister (Annex 7) 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 author of the communication. While all the letters were registered under the registration numbers 42/2072/06/13, 1088 and C-3936 respectively, no reply from the authorities has been received by the author or her daughter.
28. Therefore, the author is not aware of any steps taken by the State party's authorities to ensure adequate measures of satisfaction for her and her family.

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

29. On 30 September 2015, the author's daughter sent a letter dated 29 September to 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 Peace and Reconstruction registered the letter on the same day under number the registration number 42/2072/06/13, but to date no formal response has been received.
30. Similarly, on 30 September 2015, the author's daughter Ms. Bimala Katwal sent a letter dated 29 September to the Ministry of Law and Justice (Annex 4). The Section Officer in charge received the letter, but did not proceed to its formal registration arguing that a specific authorisation from the Minister was required to proceed with the registration. The author's daughter has done several follow-up calls to the Section Officer, but she has not received any meaningful information about the fate of the letter to date.
31. On 30 August 2015, the author's representatives inquired orally with Mr. Mahesh Sharma, Secretary of the Commission on Inquiry of Enforced Disappearance, who assured that one of the Commission's priorities would be to advocate for the adoption of new legislation on enforced disappearance. However, it should be noted that the Commission has not the capacity of passing legislation.
32. The author has not received any information about the steps taken by the authorities to criminalise enforced disappearance and torture in Nepal.

## VIII. Conclusions and Requests

33. 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,<sup>4</sup> the author argues that in her case the actions and replies given by Nepal can be rated "**C**" (**no action taken**).
34. Pursuant to rule 101 of the Rules of Procedure of the Human Rights Committee, the author calls on the Special Rapporteur for Follow-up on Views to:
  - Make such **contacts and take such action 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 deprivation of liberty, torture and enforced disappearance** of Mr. Chakra Bahadur Katwal;
    - b) Ensure that the Law Ministry and the Attorney General takes steps to **amend domestic criminal legislation on enforced disappearance and torture** and brings it in line with international human rights law;

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<sup>4</sup> 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) Ensure that the Peace and Reconstruction Ministry takes action **for releasing Mr. Chakra Bahadur Katwal, if still alive, or to locate, exhume and return his mortal remains** to his family;
  - d) Ensure that the author **receives without delay fair and adequate compensation that covers material and moral damages, as well as measures of satisfaction**; 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 Ms. Yuba Katwal

Philip Grant

TRIAL Director

Geneva, 8 October 2015

## Annexes

1. Letter submitted by the author to the Ministry of Peace and Reconstruction, 23 August 2015 (in Nepalese).
1. **bis.** Letter submitted by the author to the Ministry of Peace and Reconstruction, 23 August 2015 (unofficial translation into English).
2. Letter submitted by the author to the Ministry of Law and Justice, 23 August 2015 (in Nepalese).
2. **bis.** Letter submitted by the author to the Ministry of Law and Justice, 23 August 2015 (unofficial translation into English).
3. Letter submitted by the authors to the Ministry of Peace and Reconstruction dated 29 September 2015, 30 September 2015 (in Nepalese).
3. **bis.** Letter submitted by the authors to the Ministry of Peace and Reconstruction dated 29 September 2015, 30 September 2015 (unofficial translation into English).
4. Letter submitted by the authors to the Ministry of Law and Justice dated 29 September 2015, 30 September 2015 (in Nepalese).
4. **bis.** Letter submitted by the authors to the Ministry of Law and Justice dated 29 September 2015, 30 September 2015 (unofficial translation into English).
5. Letter submitted by the authors' representatives to the Office of Attorney General dated 29 September 2015, 30 September 2015 (in Nepalese).
5. **bis.** Letter submitted by the authors' representatives to the Office of Attorney General dated 29 September 2015, 30 September 2015 (unofficial translation into English).
6. Letter submitted by the authors' representatives to the National Human Rights Commission dated 29 September 2015, 30 September 2015 (in Nepalese).
6. **bis.** Letter submitted by the authors' representatives to the National Human Rights Commission dated 29 September 2015, 30 September 2015 (unofficial translation into English).
7. Letter submitted by the authors' representatives to the Human Rights Unit of the Office of the Prime Minister dated 29 September 2015, 30 September 2015 (in Nepalese).
7. **bis.** Letter submitted by the authors' representatives to the Human Rights Unit of the Office of the Prime Minister dated 29 September 2015, 30 September 2015 (unofficial translation into English).