

Follow-Up Information on the Implementation of the Views of 28 October 2014

concerning the Communication

No. 2111/2011 *Ms. Sharmila Tripathi and Ms. Chunauti Tripathi v. Nepal*

1. On 28 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. Gyanendra Tripathi; and of Art. 7 and 2, para. 3, in conjunction with Art. 7, of the Covenant with regard to Ms. Sharmila Tripathi and Ms. Chunauti Tripathi. 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. Gyanendra Tripathi and the treatment suffered at the Maharajgunj barracks**, providing the authors with detailed information about the results of the investigations;
 - **Releasing Mr. Gyanendra Tripathi if still alive or, in the event of his death, handing over his mortal remains to the family;**
 - **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

¹ Human Rights Committee (HRC), Case *Tripathi v. Nepal*, Views of 28 October 2014, para. 9.

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 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 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 since the notification of the Views issued by the Human Rights Committee elapsed, 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 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 and their representatives 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 particular, several letters were sent to different Nepalese authorities on 5 February 2015. However, given that the authors did not receive any response, on 24 April 2015, the authors submitted further letters to Minister Narahari Acharya, who is both the Minister of Peace Reconstruction and the Minister of Law and Justice (Annexes 6 and 7). Ms. Sharmila Tripathi was a member of the taskforce formed under the Relief and Reconstruction Unit under the Ministry of Peace and Reconstruction and the taskforce’s members had a meeting with the Minister on 24 April 2015. On such occasion, Ms. Sharmila Tripathi submitted the letters and asked to the Minister how the Ministries would implement the Views. She was told by the Minister that he would call a meeting soon. However, since then, Ms. Sharmila Tripathi has never been contacted for the organisation of the said meeting aimed at discussing the implementation of the HRC Views.
9. Till date, the authors have not received any formal invitation to the meeting by any authorities to discuss about the implementation of the Views. **The authors are therefore persuaded that Nepalese authorities are not willing to facilitate the implementation of the Views and to collaborate with them.**

² *Ibid.*, para. 10.

³ *Ibid.*

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-7634.⁴
11. On 6 February 2015, the authors' representatives registered a letter (Annex 2) in 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. 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 Ms. Sharmila Tripathi (Annex 9) was sent on 28 September 2015, 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 42/2072/06/11. The Section Officer, while registering the letter, informed that according to the Minister, the translation and dissemination of the Views would be done by the Ministry of Peace and Reconstruction. He recalled having registered 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 Ms. Sharmila Tripathi (Annex 8) was sent on 28 September 2015, 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 to provide a copy of the translated version of the Views to the authors. However, the Section Officer said that the letter would be registered after only he receives authorization of his superior. He asked the author to follow-up in few weeks to be informed about whether the letter was finally registered or not; and promised the authors' representatives that the translated copy of the Views will be sent to authors' representatives as soon as it is available.
14. Similarly, on 28 September 2015 a follow-up letter was submitted to the NHRC (Annex 11). The letter was officially registered and assigned the registration number 1060, but no meaningful information about the role that the NHRC will play in the translation and dissemination of the Views was provided.
15. On 28 September 2015, a follow-up letter was submitted to the Office of the Prime Minister (Annex 12), requesting updated information about the steps taken by the authorities in relation to the translation and dissemination of the Views. The letter was officially registered and assigned the registration number C-3867.
16. To date, the Ministry of Law and Justice, the Ministry of Peace and Reconstruction, the NHRC and

⁴ The registration number C-7634 is shared with other letters submitted by the authors' representatives on behalf of Mr Ram Kumar Bhandari and Mr Jit Man Basnet, in order to follow-up on the implementation of the HRC Views on the cases *Bhadari v Nepal* (2031/2011) and *Basnet v Nepal* (2051/2011).

the Office of Prime Minister have not provided any information about the 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 as such the possibility for the Nepalese authorities and individuals and the society at large to be informed about the contents of the Human Rights Committee's Views.**

II. The Investigation into the Arbitrary Detention, Torture, and Enforced Disappearance of Mr. Gyanendra Tripathi

17. On 6 February 2015, the authors' representatives sent a letter to the Office of the Attorney General (Annex 4) prompting the latter to conduct a thorough investigation into the arbitrary detention, torture and enforced disappearance of Mr. Tripathi.
18. Moreover, on 5 February 2015, a letter was sent to the Law Ministry (Annex 5), asking to ensure that the Attorney General investigates into the arbitrary detention, torture and enforced disappearance of Mr. Tripathi, and to inform the two 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 reply from the authorities ever since.
19. Additionally, through a letter dated 5 February 2015, the authors' representatives asked the NHRC (Annex 2) to seek cooperation for the implementation of the Views. The author requested the NHRC to play a pivotal role in monitoring and prompting the implementation of all the measures of reparation recommended in the Views.
20. 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 Views through a letter registered on 5 February 2015 under the registration number C-7634.⁶
21. On 24 April 2015, Ms. Sharmila Tripathi participated in a meeting organised by the Peace and Reconstruction Ministry due to her condition of member of a taskforce created by such Ministry to collect data related to the conflict. On such occasion, and given that she had received no response to her previous letters, she approached the Minister Mr. Narahari Acharya, who was present at the meeting, handed a copy of the letters (Annex 6 and Annex 7) and raised her demands for justice directly to him. Ms. Tripathi emphasised the need for an independent and prompt investigation into the arbitrary detention, torture and enforced disappearance of her husband. Minister Narahari Acharya received the letters and promised her that "all conflict victims whose case has been decided by the

⁵ The registration number 238 is shared with other letters submitted by the authors' representatives on behalf of Mr Ram Kumar Bhandari and Mr Jit Man Basnet, in order to follow-up on the implementation of the HRC View son the cases *Bhandari v Nepal* (2031/2011) and *Basnet v Nepal* (2051/2011).

⁶ The registration number 238 is shared with other letters submitted by the authors' representatives on behalf of Mr Ram Kumar Bhandari and Mr Jit Man Basnet, in order to follow-up on the implementation of the HRC Views *Bhandari v Nepal* (2031/2011) and *Basnet v Nepal* (2051/2011).

Human Rights Committee will be shortly contacted and invited to a meeting with the authorities". At the time of writing, no such meeting has ever taken place and the author has never been contacted back by the Ministry.

22. On 28 September 2015, the authors sent a follow-up letter (Annexes 10) to the Office of Attorney General stressing the importance of investigating into the facts surrounding the detention, torture and enforced disappearance of Mr. Gyanendra Tripathi and the treatment suffered at the Maharajgunj barracks, and asking to schedule a meeting. The Office of Attorney General registered the letter, under the registration number 3947 and gave a signed and stamped copy to Ms. Sharmila Tripathi.
23. 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 Measures Taken to Ensure the Release of Mr. Gyanendra Tripathi or to Locate, Exhume, Respect and Return to the Family His Mortal Remains

24. On 5 February 2015, the authors' representatives attempted to register a letter to the Peace and Reconstruction Ministry (Annex 3) stressing the urgency of releasing of Mr. Tripathi, if still alive, or locating, exhuming and returning the mortal remains to his family. Section Officer Mr. Rajesh Khadka 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.
25. It should be noted that Ms. Sharmila Tripathi maintains that she does not wish to imagine that Mr. Gyanendra Tripathi is dead thus she and her daughter prefer to refer to the obligation to disclose the fate and whereabouts of Mr. Tripathi. However, to date, **Nepalese authorities have not taken any meaningful step to ensure that Mr. Tripathi's fate and whereabouts are established and this fosters their state of incertitude and frustration.**

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

26. On 6 February 2015, the authors' representatives sent a letter to the Attorney General (Annex 4) to promptly prosecute, try and sanction those responsible for the arbitrary detention, torture and enforced disappearance of Mr. Tripathi. The Office of Attorney General registered the letter. However, no update was provided to the authors since then.
27. On 28 September 2015, the authors sent a new letter (Annex 10), urging the Attorney General to implement the Views and to schedule a meeting. The letter was registered by the Office and the Ms. Sharmila Tripathi was given a copy of letter with the stamp of the Office. However, no information about the efforts to prosecute and sanction those responsible for the crimes committed against Mr. Gyanendra Tripathi was provided by the Office.

28. **The lack of cooperation by 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.**

V. Adequate Compensation to Ms. Sharmila Tripathi and Ms. Chunauti Tripathi

29. At the time of writing, the authors have not received any adequate compensation. On 5 February 2015, a letter signed by the authors' representatives was addressed to the Peace and Reconstruction Ministry (Annex 3), requesting it to provide compensation. The Section Officer received it but did not proceed to its registration.
30. On 24 April 2015, the author handed over a letter to the Minister of Peace and Reconstruction (Annex 6), requesting him to provide adequate compensation to her and her daughter. Ms. Sharmila Tripathi highlighted that the compensation could take the form of a scholarship in favour of her daughter Chunauti Tripathi as she is facing economic difficulties to pay her daughter's tuition fees. The Minister mentioned that this could be discussed during a future meeting to ensure the implementation of the Views, but such meeting has not taken place to date.
31. On 28 September 2015, the authors sent a follow-up letter to the NHRC (Annex 11), urging the NHRC to monitor the implementation of all measures of the reparation. The letter was officially registered by the NHRC and assigned the registration number 1060. A signed and stamped copy of the letter was given to Ms. Sharmila Tripathi.
32. On 28 September 2015, the authors' representatives sent a follow-up letter (Annex 12), urging the Office of the Prime Minister to guarantee that compensation is provided and asking to schedule a meeting. Till date, the author's 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 such a relief is given to the authors, who have encountered serious material and moral damages over the years.**

VI. The Provision of Adequate Psychological Rehabilitation and Medical Treatment to Ms. Sharmila Tripathi and Ms. Chunauti Tripathi

34. On 5 February 2015, the authors' representatives sent a letter to the Peace and Reconstruction Ministry (Annex 5), stressing the importance of guaranteeing adequate psychological rehabilitation and medical treatment to the authors. A copy of the same letter was handed to the Peace and Reconstruction Minister on 24 April 2015 by Ms. Sharmila Tripathi.
35. As the Ministry has not taken any action, on 18 September 2015 the authors' representatives met Mr. Ramesh Kumar Sharma, Secretary of the Ministry of Peace and Reconstruction and briefly discuss

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 Truth and Reconciliation Commission (TRC).

36. On 28 September 2015, the authors' representatives contacted the representatives at the Relief Unit of the Ministry of Peace and Reconstruction. The Section Officer of the Relief Unit tried to assist the authors' representatives by contacting Mr. Damodar Bhandari, Under Secretary of the Ministry who is in charge of the Relief Unit, over the phone. The Under Secretary showed hesitant to meet the authors' representatives stating that he did not have information to share and asked the authors' representatives to come back in a week or two. At the time of writing, the authors do not have information on which measures will the Ministry of Peace and Reconstruction put in place to provide them adequate psychological rehabilitation and medical treatment.
37. On 28 September 2015, the authors sent a letter to the NHRC (Annex11), urging the latter to monitor the implementation of all measures of the reparation, in particular to ensure that the authors receive the necessary and adequate psychological rehabilitation and medical treatment. The letter was officially registered by the NHRC and assigned the registration number 1060. A signed and stamped copy of the letter was given to Ms. Sharmila Tripathi.
38. **The failure of the State party to provide the authors with these essential services shows a lack of recognition by the authorities of the ongoing suffering endured by the authors.**

VII. The Adequate Measures of Satisfaction

39. On 5 February 2015, the authors' representatives sent a letter to the Peace and Reconstruction Ministry (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. A copy of the same letter was handed to the Peace and Reconstruction Minister on 24 April 2015 by Ms. Sharmila Tripathi.
40. On 28 September 2015, the authors sent a letter to the NHRC (Annex 11), urging the latter to monitor the implementation of all measures of the reparation, including satisfaction. At the time of writing, the authors have not received any formal reply.

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

41. On 5 February 2015, the authors' representatives sent a letter to both the Ministry of Law and Justice (Annex 5) and the Attorney General (Annex 3), asking to amend the legislation and to establish appropriate judicial mechanisms for addressing enforced disappearance and torture under domestic

legislation. The Ministry of Law and Justice registered the letter on the same day under number 238,⁷ and the Attorney General signed and stamped a copy of it.

42. On 24 April 2015, Ms. Sharmila Tripathi raised the issue of the amendment of domestic legislation during her above-mentioned meeting with the Ministry, but this was to no avail.
43. On 28 September 2015, the authors sent a letter to the Attorney General (Annex 10) asking to guarantee the full respect of international standards in relation to the enforced disappearance, including by amending the relevant legislation.
44. **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.**

IX. Conclusions and Requests

45. 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 Ms. Sharmila Tripathi and Ms. Chunauti Tripathi argue that in their case the actions and replies given by Nepal can be rated "**C**" (**no action taken**).
46. Pursuant to rule 101 of the Rules of Procedure of the Human Rights Committee, Ms. Sharmila Tripathi and Ms. Chunauti Tripathi 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, torture and enforced disappearance** of Mr. Tripathi;
 - 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 the Peace and Reconstruction Ministry **takes action for releasing Mr. Tripathi, if still alive, or to locate, exhume, respect and return his mortal remains to his family**;
 - d) Ensure that Ms. Sharmila Tripathi and Ms. Chunauti Tripathi **receive without delay fair and adequate compensation that covers material and moral damages, as well as adequate**

⁷ The registration number 238 is shared with other letters submitted by the authors' representatives on behalf of Mr Ram Kumar Bhandari and Mr Jit Man Basnet, in order to follow-up on the implementation of the HRC Views on the cases *Bhandari v Nepal* (2031/2011) and *Basnet v Nepal* (2051/2011).

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.

psychological rehabilitation and medical treatment;

- e) Ensure that measures of satisfaction aimed at restoring the dignity of the authors and to pay them a tribute are taken; and
- f) 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. Sharmila Tripathi and Ms. Chunauti Tripathi

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 5 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 2015, 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 to the Ministry of Peace and Reconstruction, 24 April 2015 (in Nepalese).
6. **bis.** Letter submitted by the authors to the Ministry of Peace and Reconstruction, 24 April 2015 (unofficial translation into English).
7. Letter submitted by the authors to the Ministry of Law and Justice, 24 April 2015 (in Nepalese).

- 7. bis.** Letter submitted by the authors to the Ministry of Law and Justice, 24 April 2015 (unofficial translation into English).
- 8.** Letter submitted by the authors to the Ministry of Peace and Reconstruction, 28 September 2015 (in Nepalese).
- 8. bis.** Letter submitted by the authors to the Ministry of Peace and Reconstruction, 28 September 2015 (unofficial translation into English).
- 9.** Letter submitted by the authors to the Ministry of Law and Justice, 28 September 2015 (in Nepalese).
- 9. bis.** Letter submitted by the authors to the Ministry of Law and Justice, 28 September 2015 (unofficial translation into English).
- 10.** Letter submitted by the authors' representatives to the Office of Attorney General, 28 September 2015 (in Nepalese).
- 10. bis.** Letter submitted by the authors' representatives to the Office of Attorney General, 28 September 2015 (unofficial translation into English).
- 11.** Letter submitted by the authors' representatives to the National Human Rights Commission, 28 September 2015 (in Nepalese).
- 11. bis.** Letter submitted by the authors' representatives to the National Human Rights Commission, 28 September 2015 (unofficial translation into English).
- 12.** Letter submitted by the authors' representatives to the Human Rights Unit of the Office of the Prime Minister, 28 September 2015 (in Nepalese).
- 12. bis.** Letter submitted by the authors' representatives to the Human Rights Unit of the Office of the Prime Minister, 28 September 2015 (unofficial translation into English).