

**Follow-Up Information on the Implementation of the Views of 17 March 2017**  
**concerning the Communication**  
**No. 2185/2012 *Dhakal v. Nepal***

**I. Background**

1. On 17 March 2017, the Human Rights Committee issued its Views issued its Views on the above-mentioned communication, finding violations by Nepal of Arts. 6, 7, 9 and 16 of the International Covenant on Civil and Political Rights (hereinafter, “the Covenant”), and of Art. 2, para. 3, read in conjunction with Arts. 6, 7, 9 and 16 of the Covenant with regard to Mr. Rajendra Dhakal; and of Art. 7, alone and in conjunction with Art. 2, para. 3, with respect to Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal. The authors of the communication were notified about the adoption of the Views on 5 April 2017.
2. In accordance with Art. 2, para. 3 (a), of the Covenant, the Human Rights Committee declared that Nepal is under an obligation to provide the authors with an effective remedy, including:
  - Conduct a **thorough and effective investigation** into the enforced disappearance of Mr. Dhakal and **provide the authors with detailed information about the results of its investigation**;
  - If Mr. Dhakal is dead, **locate his remains and hand them over to his family**;
  - **Prosecute, try and punish those responsible** for the violations committed and make the results of such measure public;
  - Ensure that Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal receive the necessary and **adequate psychological rehabilitation and medical treatment**;
  - Ensure that the authors and Mr. Dhakal receive **adequate compensation** and appropriate **measures of satisfaction**.
3. The Human Rights Committee further recalled that “the State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future. In particular, the State party should ensure that: i) **its legislation allows to the criminal prosecution of those responsible for serious human rights violations**, such as torture, extrajudicial execution and enforced disappearance; and ii) any enforced disappearances give rise to a **prompt, impartial and effective investigation**”.<sup>1</sup>

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<sup>1</sup> Human Rights Committee (HRC), Case *Dhakal v. Nepal*, views of 17 March 2017, para. 13.

4. Finally, the 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 part to “**publish the present views and to have them broadly disseminated in the official languages of the State party**”.<sup>3</sup>
5. More than 180 days now elapsed since the adoption of the Views of the Human Rights Committee and the authors deem it appropriate to inform, through the Special Rapporteur for Follow-up of Views, about all the activities they undertook, mostly through Ms. Bimala Dhakal, to trigger the implementation of the Committee’s recommendations and the lack of progress on behalf of the State in this regard. Moreover, they wish to propose to the Human Rights Committee the grades to be assigned to the level of implementation of each measure.

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

6. In the period between March and November 2017, Ms. Bimala Dhakal, also on behalf of Ms. Manjima Dhakal and Mr. Rabindra Dhakal, addressed several letters to Nepalese domestic authorities competent for the implementation of the Committee’s Views. First, she encountered **obstacles in the registration** of these letters (a necessary formality pursuant to Nepalese legislation). Subsequently, even when the letters were eventually registered, **they remained unanswered and no significant progress in terms of enforcement of the Committee’s Views can be registered, to the great dismay of the authors of the communication, whose fight for justice and redress is ongoing since 1999.**
7. In particular, in August 2017 Ms. Dhakal addressed letters to the Office of the Attorney General (Annexes 1 and 2); the Ministry of Law and Justice (Annexes 3 and 4); the National Human Rights Commission (Annexes 5 and 6). On 13 November 2017, Ms. Dhakal submitted letters also to the Human Rights Unit of the Office of the Prime Minister (Annexes 7 and 8); and the Ministry of Peace and Reconstruction (Annexes 9 and 10).
8. Notably, on 15 August 2017 the letter addressed to the Attorney General (Annexes 1 and 2) was delivered to the registration department that alleged the impossibility to register the document due to the fact that the Attorney General had resigned and the new one would be appointed the following day. The authors’ representatives tried nonetheless to register the letter addressing it to the Deputy Attorney General, but this was also considered impossible. The new Attorney General was appointed on 17 August 2017. Ms. Dhakal’s letter could therefore eventually be registered on 28 August 2017. It must be pointed out that, although short, these delays could have been avoided and are mostly due to the strict application of bureaucratic formalities, showing little understanding of the needs and expectations of victims of gross

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

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

human rights violation and imposing on them a disproportionate bureaucratic burden. This is confirmed by the fact that, on the same day (i.e. 15 August 2017), Ms. Dhakal also tried to have a letter (Annexes 3 and 4) registered at the Ministry of Law and Justice. Also in this case, registration was refused because the former Minister had resigned and the new one had not yet assumed the office. It took until 17 August 2017 to eventually see the letter duly registered.

9. Finally, even in those cases where the letters submitted by Ms. Dhakal on behalf of the three authors were promptly registered, **this unfortunately did not trigger any progress in terms of implementation of the measures recommended by the Committee in its Views.** In some cases, the registration of the letter was not followed by any formal reply from the authority concerned. In other cases, although there was a response, no concrete action followed, therefore leaving the situation unfortunately unaltered. It is therefore the authors' contention that **Nepal is not showing any genuine will to enforce in good faith its international obligations, as spelled out by the Committee in the Views issued on 17 March 2017.**

### **III. The Lack of An Effective Investigation and Prosecution and Sanction of Those Responsible and the Absence of Information and Action to Locate, Exhume, Identify and Return Mr. Dhakal's Mortal Remains**

10. The authors hold that **Nepal failed to adopt measures aiming at implementing the Committee's recommendations** with regard to the carrying out of an **investigation and the prosecution and sanction of those responsible.** Moreover, despite the well-established case law of the Committee in the sense that transitional justice mechanisms cannot replace judicial remedies in cases of gross human rights violations, Nepal continues arguing that investigation into conflict-related crimes must be carried out by transitional justice bodies. The authors of the communication consider that this interpretation openly runs against the Committee's recommendations and should therefore receive the grade **"E"**.
11. The authors called on the competent Nepalese authorities to launch without delay an investigation into Mr. Dhakal's enforced disappearance (Annexes 1-4). **Neither the Office of the Attorney General nor the Ministry of Law and Justice reacted upon the authors' call.** Instead, as mentioned above, the general policy followed in Nepal is that conflict-related cases should fall under the mandate of the two transitional justice mechanisms (i.e. the Truth and Reconciliation Commission and the Commission of Investigation of Enforced Disappeared People).
12. Not only transitional justice mechanisms cannot replace ordinary judicial authorities when it comes to the carrying out investigations and prosecution and sanction of those responsible, but **in the specific case of the two Nepalese Commissions it is evident that no effective remedy whatsoever can be expected,** including in the case of the authors. Generally speaking, the **two Commissions have fallen**

**short of international standards, both in the constitution and operation.**<sup>4</sup> Moreover, **their mandate is due to expire in February 2018 and they have not conducted any investigation so far.** It is absolutely unlikely that the authors of the communication, who nevertheless reported the case of Mr. Dhakal's enforced disappearance in 2016 to the Commission of Investigation of Enforced Disappeared People (registered under the file No. 1769), will ever obtain any form of justice or redress from this mechanism.

13. Moreover, despite their proactive attempts of communication, Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal **did not receive any information on the progress of investigations concerning Mr. Dhakal's disappearance** and on **the existence of any concrete plan to locate, exhume, identify and return his mortal remains** in the event of his death. The authors therefore hold that the status of enforcement of these measures recommended by the Committee should receive the grade "D".

#### **IV. The Lack of Any Form of Psychological and Medical Support in favour of the Authors**

14. Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal expressly called on the Ministry of Peace and Reconstruction and on the Human Rights Unit of the Office of the Prime Minister (Annexes 7-10) to adopt without delay the necessary measures to ensure that they receive psychological and medical support due to the harm suffered. Unfortunately, at the time of writing **they did not receive any response in this regard and, to their knowledge, no measure whatsoever has been adopted to implement the Committee's recommendation.** In this light, the authors consider that the level of enforcement of this measure shall be graded "D".

#### **V. The Failure to Adopt Measures of Satisfaction**

15. Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal expressly called on the Ministry of Peace and Reconstruction and on the Human Rights Unit of the Office of the Prime Minister (Annexes 7-10) also to adopt without delay the necessary measures of satisfaction, aiming at restoring their dignity and reputation as well as those of their disappeared loved one. In this regard, **the authors specifically requested public apologies and recognition of the State's international responsibility.** However, also in this case, at the time of writing **the authors did not receive any response and, to their knowledge, no measure whatsoever has been adopted to implement the Committee's recommendation.** Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal therefore consider that the level of enforcement of this measure must be graded "D".

#### **VI. The Failure to Provide Adequate Compensation to the Authors**

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<sup>4</sup> International Commission of Jurists, *Nepal's Transitional Justice Process: Challenges and Future Strategy*, August 2017.

16. Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal addressed the Ministry of Peace and Reconstruction and on the Human Rights Unit of the Office of the Prime Minister (Annexes 7-10) **formulating a concrete request for compensation, based on the application of international standards in their case.** Concretely, they pointed out that an adequate compensation for the harm suffered would amount to 42,000,000 NRs (approximately 420,000 US \$), in order to **encompass physical and mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; costs required for legal or expert assistance, medicine and medical services, and psychological and social services.**
17. Unfortunately, at the time of writing the authors **have not received any response from the Nepalese authorities concerned and they have not received any form of compensation for the harm suffered.** Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal therefore consider that the level of enforcement of this measure must also be graded “D”.

#### **VII. The Failure to Translate and Disseminate the Committee’s Views**

18. Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal called on the Ministry of Law and Justice and on the Human Rights Unit of the Office of the Prime Minister (Annexes 3-4 and 7-8) to obtain the translation into Nepali of the Committee’s Views and their wide dissemination.
19. At the time of writing, **the authors have not received any formal response from the authorities concerned and the Committee’s Views have not been translated nor disseminated.** Accordingly, the authors consider that also the level of implementation of this measure shall be graded “D”.

#### **VIII. The Failure to Amend Domestic Legislation on Torture, Enforced Disappearance and Arbitrary Executions**

20. Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal specifically called on the Ministry of Law and Justice and on the Human Rights Unit of the Office of the Prime Minister (Annexes 3-4 and 7-8), as well as on the National Human Rights Commission (Annexes 5-6) to prompt the amendment of domestic legislation concerning torture, enforced disappearance, and arbitrary executions, to bring it in line with international standards. **At the time of writing, no amendment took place** and although a new Criminal Code has been adopted on 9 August 2017, it will enter into force only one year after its publication in the Nepal Gazette. The new Criminal Code codifies the crime of torture, but the definition is at odds with international law, in particular with regard to the envisaged sanctions. In general, other draft bills on enforced disappearance that were discussed over the past years were eventually

discarded. All in all, it is held that the level of enforcement of this measure must be graded “E”.

## IX. Conclusions and Requests

21. In the light of the above, referring to the criteria to assess the implementation of its Views adopted by the Human Rights Committee, Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal argue that in their case the actions and replies given by Nepal can be rated:

- “E” in relation to the obligation of the State party to conduct a **thorough investigation** into the facts and to **prosecute and sanction those responsible** for the crimes at stake.
- “D” in relation to the obligation to provide the author with **detailed information about the outcomes of such the investigation**, and to **locate, exhume, identify and return Mr. Dhakal’s mortal remains**.
- “D” in relation to the State party’s obligation to provide **adequate compensation** to the authors for the harm suffered.
- “D” in relation to the State party’s obligation to ensure that the necessary and **adequate psychological rehabilitation and medical treatment** is provided to the authors.
- “D” in relation to the State party’s obligation to provide **appropriate measures of satisfaction**.
- “D” in relation to the State party’s obligation to **translate the Committee’s Views into Nepal and to widely disseminate them**.
- “E” in relation to the State party’s obligation to prevent similar violations in the future by **amending its domestic legislation on enforced disappearance, torture and arbitrary executions**.

22. Pursuant to rule 101 of the Rules of Procedure of the Human Rights Committee, Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal 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 Ministry of Peace and Reconstruction **locates Mr. Dhakal and releases him, if he is still alive, or exhumes, identifies, and returns his mortal remains to his family**.

- b) Ensure that the Attorney General **conducts investigations and initiates criminal proceedings against those responsible for the violations committed without delay and without further referral to transitional justice mechanisms.**
- c) Ensure that Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal promptly receive **psychological support and medical treatment** aiming at repairing the harm suffered, through the Ministry of Peace and Reconstruction and the Human Rights Unit of the Office of the Prime Minister.
- d) **Ensure** that Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal without delay receive compensation of NRs 42,000,000 **that covers material and moral damages as spelled out above.**
- e) **Ensure** that Ms. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal receive **public apologies** from Nepalese authorities, as a form of satisfaction.
- f) **Ensure** that the **Committee's Views are translated into Nepali without any further delay and widely disseminated.**
- g) Ensure that the Ministry of Law and Justice and the Attorney General take steps to amend domestic **criminal legislation on enforced disappearance, torture and arbitrary execution** and bring it in line with international human rights law.
  - **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. Bimala Dhakal, Ms. Manjima Dhakal and Mr. Rabindra Dhakal,

Philip Grant

Director of TRIAL International



Geneva, 30 November 2017

## **Annexes**

1. Letter of 28 August 2017 to the Office of the Attorney General (in Nepali).
2. Letter of 28 August 2017 to the Office of the Attorney General (unofficial translation in English).
3. Letter dated 18 August 2017 to the Ministry of Law and Justice (in Nepali).
4. Letter dated 18 August 2017 to the Ministry of Law and Justice (unofficial translation in English).
5. Letter dated 15 August 2017 to the National Human Rights Commission, registered on the same date with the file No. 501 (in Nepali).
6. Letter dated 15 August 2017 to the National Human Rights Commission, registered on the same date with the file No. 501 (unofficial translation in English).
7. Letter dated 13 November 2017 to the Human Rights Unit of the Office of the Prime Minister (in Nepali).
8. Letter dated 13 November 2017 to the Human Rights Unit of the Office of the Prime Minister (unofficial translation in English).
9. Letter dated 13 November 2017 to the Ministry of Peace and Reconstruction (in Nepali).
10. Letter dated 13 November 2017 to the Ministry of Peace and Reconstruction (unofficial translation in English).