

## **Follow- Up Information on the Implementation of the Views of 12 July 2016**

### **Concerning the Communication**

#### **No. 2164/2012 *Nepali v. Nepal***

1. On 12 July 2016, the Human Rights Committee issued its Views on the above-mentioned case, finding that the State party violated 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. Milan Nepali; and a violation of Arts. 7 and 2(3), read in conjunction with Art. 7, with respect to the author of the communication. Ms. Sabita Basnet was notified about the adoption of the Views on 1 November 2016.
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:
  - Conduct a thorough and effective investigation into the enforced disappearance of Mr Nepali and provide the author with detailed information about the results of its investigation.
  - If Mr. Nepali husband 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 measures public.
  - Ensure that any necessary and adequate psychological rehabilitation and medical treatment are provided to the author free of charge.
  - Provide effective reparation, including adequate compensation and appropriate measures of satisfaction, to the author and her husband, if he is alive, for the violations suffered.
3. Furthermore, the Human Rights Committee recalled that, “the State party is also under an obligation to take steps to prevent the occurrence of similar violation in the future. In particular, the State party should ensure that: i) its legislation allows for 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>
4. The Human Rights Committee also declared that it “wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the

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<sup>1</sup> Human Rights Committee (HRC), Case *Nepali v. Nepal*, Views of 12 July 2016, para. 12.

Committee's Views".<sup>2</sup> The Committee further requested Nepal to publish its Views and disseminate them widely in the official languages of the State party.<sup>3</sup>

5. More than one year elapsed since the adoption of the Views and the author wishes to submit to the Human Rights Committee, through its Special Rapporteur for Follow-up of Views, information on the lack of progress by the State party in undertaking measures 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**

6. Between July 2016 and October 2017, the author carried out a number of activities, including exchanges of correspondence and requests for meetings, in order to prompt Nepalese authorities to duly implement the Committee's Views. Unfortunately, the level of implementation of the Committee's Views is still inexistent.
7. In particular, the author registered several letters to various Nepalese authorities on 15, 17 and 28 August 2017 respectively. The letters were addressed to Human Rights Unit of Office of the Prime Minister (Annexes No. 1 and 1-bis), to the National Human Rights Commission (Annexes No. 2 and 2-bis), to the Ministry of Peace and Reconstruction (Annexes No. 3 and 3-bis), to the Ministry of Law Justice and Parliamentary Affairs, (Annexes No. 4 and 4-bis); and to the Office of Attorney General Nepal (Annexes No. 5 and 5-bis).
8. Notwithstanding the author's efforts, **to date she has not received any formal response from any of the authorities concerned.** This suggests a general unwillingness of the State party to facilitate the implementation of the Views and to collaborate with the author of the communication, as well as a callous indifference vis-à-vis her acute suffering.

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

9. With regard to the translation of the Committee's Views in Nepali, the author sent a letter dated 15 August 2017 to the Human Rights Unit of the Office of the Prime Minister (Annex 1), asking to and disseminate the Views in the State party's official languages. The letter was officially registered and assigned the registration number 2039.
10. On the same date (i.e. 15 August 2017), the author registered a letter (Annex 2) before 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, in their translation and dissemination. The letter was given registered with file number 502.
11. A similar letter was registered to Ministry of Peace and Reconstruction (Annex 3) on the same date (i.e. 15 August 2017), calling on the recipient to take an active role in the translation and dissemination of the Views in Nepali and to disseminate them widely.

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<sup>2</sup> *Ibid.*, para. 13.

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

12. On 18 August 2017, another letter (Annex 4) was registered by the author before the Ministry of Law, Justice and Parliamentary Affairs, inquiring on the role this Ministry could play in the translation and dissemination of the Views. The letter was assigned file number 05.
13. On 28 August 2017, another letter was registered before the Office of the Attorney General (Annex 5). The author tried to register the letter on 15<sup>th</sup> August however the change in Prime Ministry of Government of Nepal, change in Attorney General during registration of letters and appointment of new Attorney General took author to wait until 28<sup>th</sup> August 2017. The author also tried to register the letter in the name of Deputy Attorney General Mr. Durga Bandhu Pokheral but it was suggested that the letter should be registered in the name of Attorney General but not deputy Attorney General.
14. To date, the Office of Prime Minister and Council of Ministers; the NHRC; the Ministry of Peace and Reconstruction; the Ministry of Law, Justice and Parliamentary Affairs; and the Office of Attorney General **have not provided any update about any step taken to translate and disseminate the Committee's Views in Nepali**. It should be noted that if the State party does not translate and disseminate the Views in local and official languages, it will hamper 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.
15. Despite all the efforts undertaken by the author, at the time of writing, she **has not received any formal response from the authorities concerned and the Committee's Views have not been translated nor disseminated**. Accordingly, the author considers that the level of implementation of this measure shall be graded "D".

### **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. Nepali's Mortal Remains**

- 16 The author holds 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 author of the communication considers that this interpretation openly runs against the Committee's recommendations and should therefore receive the grade "E".
- 17 The author called on the competent Nepalese authorities to launch without delay an investigation into Mr. Nepali's enforced disappearance. **Neither the Office of the Attorney General nor the Ministry of Law and Justice reacted upon the author's**

**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).

- 18 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 author of the communication, who nevertheless reported the case of Mr. Nepali's enforced disappearance to both mechanisms (file No. 1262 before the Commission of Investigation of Enforced Disappeared People; and file No. 1260 before the Truth and Reconciliation Commission), will ever obtain any form of justice or redress from these Commissions.
- 19 Moreover, despite her proactive attempts of communication, Ms. Sabita Basnet **did not receive any information on the progress of investigations concerning her husband'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 author therefore holds 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 Author**

- 20 Ms. Sabita Basnet expressly called on the Ministry of Peace and Reconstruction and on the Human Rights Unit of the Office of the Prime Minister to adopt without delay the necessary measures to ensure that she receives psychological and medical support due to the harm suffered. Unfortunately, at the time of writing she **did not receive any response in this regard and, to her knowledge, no measure whatsoever has been adopted to implement the Committee's recommendation.** In this light, the author considers that the level of enforcement of this measure shall be graded "D".

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

- 21 Ms. Sabita Basnet expressly called on the Ministry of Peace and Reconstruction and on the Human Rights Unit of the Office of the Prime Minister also to adopt without delay the necessary measures of satisfaction, aiming at restoring her dignity and reputation as well

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

as those of her disappeared husband. In this regard, **the author specifically requested public apologies and recognition of the State's international responsibility.** However, also in this case, at the time of writing **the author did not receive any response and, to her knowledge, no measure whatsoever has been adopted to implement the Committee's recommendation.** Ms. Sabita Basnet therefore considers that the level of enforcement of this measure must be graded **"D"**.

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

22 In order to receive adequate compensation, the author registered letters before the competent authorities of the government of Nepal (Annex 1 and Annex 3), **formulating a concrete request for compensation, based on the application of international standards in her case.** Concretely, she pointed out that an adequate compensation for the harm suffered would amount to NRs 4,710,000 (approximately 47,000 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.**

23 Unfortunately, at the time of writing the author **has not received any response from the Nepalese authorities concerned and she has not received any form of compensation for the harm suffered.** Ms. Sabita Basnet therefore considers that the level of enforcement of this measure must also be graded **"D"**.

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

24 Ms. Sabita Basnet specifically called on the Ministry of Law and Justice and on the Human Rights Unit of the Office of the Prime Minister, as well as on the National Human Rights Commission 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 contained therein is at odds with international laws, 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"**.

## VIII. Conclusions and Requests

25 In the light of the above, referring to the criteria to assess the implementation of its Views adopted by the Human Rights Committee, Ms. Sabita Basnet argues that in her 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. Nepali’s mortal remains**.
- “D” in relation to the State party’s obligation to provide her with **adequate compensation** for the harm suffered.
- “D” in relation to the State party’s obligation to ensure that she receives the necessary and **adequate psychological rehabilitation and medical treatment**.
- “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**.

26. Pursuant to rule 101 of the Rules of Procedure of the Human Rights Committee, Ms. Sabita Basnet calls 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. Nepali 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 she promptly receives **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 she receives without delay compensation of NRs 4,710,000 **that covers material and moral damages as spelled out above.**
- e) **Ensure** that she receives **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. Sabita Basnet,

Philip Grant

Director of TRIAL International



Geneva, 30 November 2017

## **Annexes**

1. Letter submitted by the author's representatives to the Human Right Unit of the Office of the Prime Minister 15 August 2017 (in Nepali).
  - 1.bis Letter submitted by the author to Human Right Unit of the Office of the Prime Minister 15 August 2017 (unofficial translation in English).
  
2. Letter submitted by the author's representatives to the National Human Rights Commission 15 August 2017 (in Nepali).
  - 2.bis Letter submitted by the author to National Human Rights Commission 15 August 2017 (unofficial translation in English).
3. Letter submitted by the author to the Ministry of Peace and Reconstruction, 15 August 2017 (in Nepali).
  - 3.bis Letter submitted by the author to the Ministry of Peace and Reconstruction, 15 August 2017 (unofficial translation in English).
4. Letter submitted by the author to the Ministry of Law, Justice and Parliamentary Affairs, 15 August 2017. (in Nepali).
  - 4.bis Letter submitted by the author to the author to the Ministry of Law, Justice, and Parliamentary Affairs 15 August 2017 (unofficial translation in English).
  
5. Letter submitted by the author's representatives to the Office of the Attorney General, 28 August 2017 (in Nepali).
  - 5.bis Letter submitted by the author's representatives to the Office of the Attorney General, 28 August 2017 (unofficial translation in English).