

# Follow-Up Information on the Implementation of the Views of 29 October 2014

## concerning the Communication

No. 2031/2011 *Mr. Ram Kumar Bhandari v. Nepal*

1. On 29 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. Tej Bahadur Bhandari; and of Art. 7, alone and in conjunction with Art. 2, para. 3, of the Covenant with regard to Mr. Ram Kumar Bhandari. The author of the communication was 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 author with an effective remedy, including:
  - Conducting a **thorough and effective investigation into the disappearance** of Mr. Tej Bahadur Bhandari, and providing the author with detailed information about the results of the investigation;
  - **Locating the remains** of Mr. Tej Bhadur Bhandari and **handing them over to the family**;
  - **Prosecuting, trying and punishing** those responsible for the violations committed;
  - Providing **adequate compensation** to the author for the violations suffered; and
  - Ensuring that the **necessary and adequate psychological rehabilitation and medical treatment** is provided to the author.
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

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<sup>1</sup> Human Rights Committee (HRC), Case *Ram Kumar Bhandari v. Nepal*, Views of 29 October 2014, para. 10.

<sup>2</sup> *Ibid.*, para. 11.

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

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 communication, 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 to 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 Author of the Communication and His Representatives to Establish a Dialogue with Nepalese Authorities**

7. In the period between November 2014 and September 2015, the author's representatives and the author himself undertook a number of activities, including exchanges of correspondence and request 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 remains almost inexistent**.
8. In particular, several letters were sent to different Nepalese authorities on 5 February 2015. However, given that the author did not receive any response, the author sent other letters on 18 September 2015. The author has not received any formal response and 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**.

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

9. With regard to the translation, the author's 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<sup>4</sup>.
10. On the same date, the author's representatives registered a letter (Annex 2) with 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.
11. Due to the lack of response to these two letters, a follow-up letter signed by the author (Annex 7) was sent on 18 September 2015 requesting the Ministry of Law and Justice to take an active role in the

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<sup>4</sup> The registration number C-7634 is shared with other letters submitted by the authors' representatives on behalf of Mr Jit Man Basnet and Ms Sharmila Tripathi, in order to follow-up on the implementation of the HRC Views on the cases *Basnet v Nepal* (2051/2011) and *Tripathi v Nepal* (2111/2011).

translation and dissemination of the Views within the shortest delay and to provide a copy of the translated version of the Views to the author. The letter was officially registered and assigned the registration number 40/2072/06/06. The Ministry's officer who received the letter from the authors' representatives recalled registering a similar letter in the past but he informed the authors' representatives that there were no updates in relation to it.

12. Likewise, a follow-up letter signed by the author (Annex 6) was sent on 18 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 author. On 18 September 2015, the author met Mr. Ramesh Kumar Sharma, Secretary of Ministry of Peace and Reconstruction, who registered the letter under the registration number 138/2072/06/06 and forwarded it to the Relief Unit therein. The Secretary asked the author to do follow-up after a week or two, and promised that the translated copy of the Views will be sent to authors as soon as it is available.
13. On 28 September 2015, the author's representatives went to the Ministry of Law and Justice for follow-up and were informed by the Section Officer of the Ministry of Law and Justice that the Honourable Minister, Mr. Narhari Acharya, had read the letter and said that the Ministry of Peace and Reconstruction was in charge of the translation and dissemination of the Views. Therefore, the author's representatives were asked to do follow-up directly with the Ministry of Peace and Reconstruction.
14. On 28 September 2015, the author's representatives then went to the Ministry of Peace and Reconstruction for follow-up and met Mr. Bishwa Raj Neupane, Under Secretary of the Ministry of Peace and Reconstruction. The Under Secretary informed the author's representatives that he could not gather detailed information on the status of their request as, during the previous week, the office had been closed due to public holidays. He requested the author's representatives to return within a week.
15. Similarly, a follow-up letter dated 29 September was submitted to the NHRC on 30 September 2015 (Annex 9). In the letter, the authors requested the NHRC to take an active role in the translation and dissemination of the Views and also to coordinate with the Office of the Prime Minister and Council of Ministers of Nepal to translate and disseminate the Views in local languages. The letter was registered with the registration number 1089 and a copy of the letter was signed and stamped by the NHRC.
16. On 30 September 2015, a follow-up letter dated 29 September was submitted to the Office of Prime Minister (Annex 10), requesting an update about the translation and dissemination of the Views. The letter was officially registered and assigned the registration number C-3935.
17. To date, the Ministry of Law and Justice, the Ministry of Peace and Reconstruction, the NHRC and the Office of Prime Minister have not provided any update about any step taken to translate and disseminate the Views in local language. It should be noted that **if the State Party does not translate and disseminate the Views in local 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.**

## II. The Investigation into the Enforced Disappearance of Mr. Tej Bahadur Bhandari

18. On 5 February 2015, the author's representatives registered a letter at the Office of the Attorney General (Annex 4) prompting the latter to conduct a thorough investigation into the enforced disappearance of Mr. Bhandari.
19. Moreover, on the same day, a letter was registered before the Ministry of Law and Justice (Annex 5), asking to ensure that the Attorney General conducts investigations and prosecutes those responsible. The letter was received and registered under number 238<sup>5</sup> on the same day. However, the author has not received any feedback from the authorities ever since.
20. Additionally, through a letter dated 5 February 2015, the author's representatives asked the NHRC (Annex 2) to seek cooperation for the implementation of the Views and to make a public statement appealing the Government to promptly implement the Committee's recommendations.
21. The author's 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 recommendations; to provide regularly the author with updated information about the investigation, and to identify which authorities are in charge of implementing the measures. The letter was registered on 5 February 2015 under number C-7634<sup>6</sup>.
22. As the authorities had not replied, on 30 September 2015, follow-up letters dated 29 September (Annexes 8, 9 and 10) were sent by the author to the Office of the Attorney General, the NHRC and the Office of the Prime Minister respectively, stressing the importance of investigating over the facts surrounding the detention and torture of Mr. Basnet and asking to schedule a meeting. The letters were officially registered under numbers 4138 by the Office of the Attorney General (Annex 8), 1089 by the NHRC (Annex 9) and C-3935 by the Office of the Prime Minister (Annex 10).
23. On 31 August 2015, the author was invited as a panellist in the interaction programme organised by the Commission on Inquiry of Enforced Disappearance to commemorate the International Day of the Disappeared. The author took the opportunity to raise the issue of implementation of the Human Rights Committee's Views and of the investigation into the enforced disappearance of his father before the expert members of the Commission on Inquiry of Enforced Disappearance. Nevertheless, the expert members did not reply to his queries about his case and limited themselves to reply that the "government should criminalise enforced disappearances". At the time of writing the Commission has not yet started working on the investigation of cases of enforced disappearance and is in the process of adopting its rules of procedure and methods of work, as its regulation is still being drafted.
24. However, **the author has not received any formal reply from the authorities and this situation**

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<sup>5</sup> The registration number 238 is shared with other letters submitted by the authors' representatives on behalf of Mr Jit Man Basnet and Ms Sharmila Tripathi, in order to follow-up on the implementation of the HRC Views Basnet v Nepal (2051/2011) and Tripathi v Nepal (2111/2011).

<sup>6</sup> The registration number C-7634 is shared with other letters submitted by the authors' representatives on behalf of Mr Jit Man Basnet and Ms Sharmila Tripathi, in order to follow-up on the implementation of the HRC Views Basnet v Nepal (2051/2011) and Tripathi v Nepal (2111/2011).

**generates further anguish to him and his family.**

### **III. The Efforts to Locate the Mortal Remains of Mr. Tej Bahadur Bhandari and Hand Them Over to the Family**

25. On 5 February 2015, the author's representatives attempted to register a letter to the Ministry of Peace and Reconstruction (Annex 3) demanding to promptly locate the mortal remains of Mr. Bhandari and to hand them over to the family. Section Officer Mr. Rajesh Khadka received the letter but did not proceed to its official registration, arguing that a specific authorisation from the Minister was required to proceed with the registration of such letter.
26. Nevertheless, to date, **the Ministry of Peace and Reconstruction has not made any effort for implementing the recommendations, situation that is generating incertitude and discouragement for the author.**

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

27. On 6 February 2015, the author's representatives prompted the Attorney General to prosecute, try and sanction those responsible for the enforced disappearance of Mr. Bhandari through a letter (Annex 4). A copy of the letter was signed and stamped by the Office. However, to the knowledge of the author, as of today, the Attorney General's Office has not taken any action.
28. On 30 September 2015, the authors' representatives sent a follow-up letter dated 29 September (Annex 8), urging the Attorney General to implement the Views and to schedule a meeting. A copy of the letter was signed and stamped by the Office of the Attorney General. The authors' representatives were informed that, if necessary, they will be updated in the future.
29. All in all, **the lack of cooperation of the Attorney General in bringing the perpetrators to justice is exacerbating a general sense of impunity in the country and the increasing frustration for the author of the communication.**

### **V. Adequate Compensation to Mr. Ram Kumar Bhandari**

30. At the time of writing, the author has not received any adequate compensation. On 5 February 2015, a first letter signed by the author's representatives was addressed to the Ministry of Peace and Reconstruction (Annex 3), requesting it to provide compensation. The letter was not registered.
31. On 18 September 2015, the author met Mr. Ramesh Kumar Sharma, Secretary of the Ministry of Peace and Reconstruction and briefly discussed about the possibility of providing him adequate compensation. As the Secretary had been transferred only recently to the Ministry of Peace and Reconstruction, he was not acquainted with the subject. However, the Secretary said that the work of the newly established Truth and Reconciliation Commission (TRC) would be important to ensure that the author receives

compensation for the harm suffered, and encouraged him to refer his case to the TRC. The Secretary further informed the author that he would check with the Relief Unit in the Ministry and would provide information later. The Secretary asked the author to follow-up within a week. When the author did so on 28 September 2015 by going personally to the Ministry offices, he did not obtain any meaningful information.

32. All in all, to date, **any compensation has been granted, showing a clear unwillingness of the State party to ensure that this remedy is given to the author, who has encountered serious material and moral damages over the years.**

## VI. The Provision of Adequate Psychological Rehabilitation and Medical Treatment to Mr. Ram Kumar Bhandari

33. On 5 February 2015, the author's representatives sent a letter to the Ministry of Peace and Reconstruction (Annex 3), stressing the importance of guaranteeing adequate psychological rehabilitation and medical treatment to the author.
34. As the Ministry had not taken any action, on 18 September 2015, the author met Mr. Ramesh Kumar Sharma, Secretary of Ministry of Peace and Reconstruction and briefly discussed about the possibility of providing adequate psychological rehabilitation and medical treatment to him. However, the Secretary did not provide any meaningful information and indicated that the author may receive some measures of psychological rehabilitation and medical treatment from the TRC, indirectly hinting at the fact that there currently is no procedure in place to offer him the expected remedy.
35. All in all, **the authors have not received adequate psychological rehabilitation and medical treatment to date**, nor have been able to engage in a meaningful conversation with the authorities about the possibilities for receiving such support.

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

36. On 5 February 2015, the author's representatives sent a letter to both the Ministry of Law and Justice (Annex 5) and 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 Law and Justice registered the letter on the same day under number 238<sup>7</sup>, but the Peace and Reconstruction Ministry did not register it.
37. To the knowledge of the author, **the Nepalese criminal legislation has not been amended**, and he has not received any feedback from the authorities concerned on whether any action in this sense may be forthcoming.

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<sup>7</sup> The registration number 238 is shared with other letters submitted by the authors' representatives on behalf of Mr Jit Man Basnet and Ms Sharmila Tripathi, in order to follow-up on the implementation of the HRC Views on the cases *Basnet v Nepal* (2051/2011) and *Tripathi v Nepal* (2111/2011).

## VIII. Conclusions and Requests

38. 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,<sup>8</sup> Mr. Ram Kumar Bhandari argues that in his case the actions and replies given by Nepal can be rated "**C**" (**no action taken**).
39. Pursuant to rule 101 of the Rules of Procedure of the Human Rights Committee, Mr. Ram Kumar Bhandari 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 Peace and Reconstruction Ministry **locates, exhumes and return the remains of Mr. Bhandari to his family**;
    - b) Ensure that the Attorney General and the Law Ministry **conduct investigations and initiate criminal proceedings against those responsible**;
    - c) 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;
    - d) Ensure that Mr. Ram Kumar Bhandari **receives without delay fair and adequate compensation that covers material and moral damages, as well as adequate psychological rehabilitation and medical treatment**; 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 Mr. Ram Kumar Bhandari,

Philip Grant  
TRIAL Director

Geneva, 8 October 2015

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<sup>8</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

## Annexes

1. Letter submitted by the author's representatives to the Human Rights Unit of the Office of the Prime Minister, 5 February 2015 (in Nepalese).
1. **bis.** Letter submitted by the author's 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 author's representatives to the National Human Rights Commission dated 5 February 2015, 6 February 2015 (in Nepalese).
2. **bis.** Letter submitted by the author's representatives to the National Human Rights Commission dated 5 February 2015, 6 February 2015 (unofficial translation into English).
3. Letter submitted by the author's representatives to the Ministry of Peace and Reconstruction, 5 February 2015 (in Nepalese).
3. **bis.** Letter submitted by the author's representatives to the Ministry of Peace and Reconstruction, 5 February 2015 (unofficial translation into English).
4. Letter submitted by the author's representatives to the Office of Attorney General dated 5 February 2015, 6 February 2015 (in Nepalese).
4. **bis.** Letter submitted by the author's representatives to the Office of Attorney General dated 5 February 2015, 6 February 2015 (unofficial translation into English).
5. Letter submitted by the author's representatives to the Ministry of Law and Justice, 5 February 2015 (in Nepalese).
5. **bis.** Letter submitted by the author's representatives to the Ministry of Law and Justice, 5 February 2015 (unofficial translation into English).
6. Letter submitted by the author to the Ministry of Peace and Reconstruction, 18 September 2015 (in Nepalese).
6. **bis.** Letter submitted by the author to the Ministry of Peace and Reconstruction, 18 September 2015 (unofficial translation into English).
7. Letter submitted by the author to the Ministry of Law and Justice, 18 September 2015 (in Nepalese).



**7. bis.** Letter submitted by the author to the Ministry of Law and Justice, 18 September 2015 (unofficial translation into English).

8. Letter submitted by the authors' representatives to the Office of Attorney General dated 29 September 2015, 30 September 2015 (in Nepalese).

**8. bis.** Letter submitted by the authors' representatives to the Office of Attorney General dated 29 September 2015, 30 September 2015 (unofficial translation into English).

9. Letter submitted by the authors' representatives to the National Human Rights Commission dated 29 September 2015, 30 September 2015 (in Nepalese).

**9. bis.** Letter submitted by the authors' representatives to the National Human Rights Commission dated 29 September 2015, 30 September 2015 (unofficial translation into English).

10. 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).

**10. 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).