UN HUMAN RIGHTS COMMITTEE 110TH SESSION

NEPAL’S FAILURE TO IMPLEMENT VIEWS IN INDIVIDUAL COMMUNICATIONS

February 2014
A. SUMMARY

In the list of issues to be taken up in connection with the consideration of the second periodic report of Nepal, the Human Rights Committee has asked Nepal to indicate:


This submission addresses the Committee’s request for information, and shows that there is no effective procedure in place for the implementation of the Committee’s views. In fact, not one of the five views issued by the Committee in relation to Nepal has been implemented, apart from providing (in some cases) a small amount of money as “interim relief”.

Nepal, as signatory to the Covenant and the Optional Protocol, has the obligation to use whatever means lie within its power in order to give effect to the views issued by the Committee.² Nepal should make a commitment to implement the views of the Committee without reference to any future transitional justice mechanisms and must provide effective remedies, including reparation, in relation to the cases the Committee has already considered.

Nepal’s failure to provide a remedy to those who the Committee has recognised as victims of violations of the Covenant is a systemic issue. In addition to providing remedies in individual cases, this should be addressed at a policy level by the introduction of a legal framework designating clear responsibilities and transparent mechanisms for the implementation of views adopted by UN bodies.

B. SURVEY OF IMPLEMENTATION OF VIEWS

This report collates information on the extent to which views adopted by the Committee have been implemented in each of the five individual communications brought against Nepal which have been concluded. Advocacy Forum Nepal, assisted by REDRESS, represents the victims in four of these communications (Sharma, Giri, Maharjan and Sedhai). The authors of this report have also been in contact with the legal representatives of the victim in the fifth case to provide an update in relation to his case (Sobhraj).

¹ CCPR/C/NPL/Q/2.
² CCPR/C/GC/33 (2008), para. 20.
Detailed information about each case, and follow-up information, is provided at the end of this document. A table summarising our findings is below, and demonstrates that:

- The only remedy provided to any of the victims is the provision of small payments of what it termed ‘interim relief’ or ‘interim compensation’ in three cases. These payments are generally in line with the State party’s policy towards conflict victims in any event.\(^3\) In only two cases has the amount provided been greater than that provided to other victims in a similar situation: Sharma (provided with NRS. 400,000 (USD 4000) in circumstances where other victims have received NRS. 300,000 (USD 3000) and Giri (provided with NRS. 150,000 (USD 1,500) in circumstances where other victims have not been provided with payment).

- No effective investigations have been carried out in any of the cases, and no further remedies – including guarantees of non-repetition such as legislative reforms – have been provided.

**Table: Summary of implementation**

<table>
<thead>
<tr>
<th>Author (Date of views)</th>
<th>Violation</th>
<th>Remedy ordered - effective remedy, including:</th>
<th>Remedy provided</th>
</tr>
</thead>
</table>
| Sharma (2008)          | 2(3), 6, 7, 9, 10 | • thorough and effective investigation  
• immediate release if he is still alive  
• adequate information resulting from its investigation  
• adequate compensation  
• prosecute, try and punish those held responsible  
• take measures to prevent similar violations in the future | Provision of NRS. 400,000 (USD 4,000) in ‘interim relief’ (Note all disappearance victims have been provided with NRS 300,000 interim relief and the Author was asked to return NRS. 100,000 by the District Administrative Office as they were not aware of the views of the Committee).  
No investigation carried out and no further remedy provided. |
| Sobhraj (2010)          | 7, 10(1), 14(2, 3a-f, 5, 7), 15(1) | • speedy conclusion of the proceedings  
• compensation  
• prevent similar violations in the future | None. |
| Giri (2011)             | 2(3), 7, 9, 10 | • thorough and diligent investigation  
• prosecution and punishment of those responsible  
• adequate compensation  
• ensure that the author and his family are protected from acts of reprisals or intimidation | NRS. 150,000 (USD 1,500) provided as ‘interim relief.  
Police made one visit to interview witnesses but the investigation did not proceed further and the |

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| Maharjan (2012) | 2(3), 7, 9, 10 | • prevent similar violations in the future | reason for this visit was not clear. Council of Ministers agreed that Ministry of Home Affairs and the Ministry of Defence would develop a mechanism to prevent the reoccurrence of such incidents in future, however this has not been done. A draft bill to criminalise torture was tabled in the Parliament but was not passed before Parliament was dissolved. No effective investigation carried out and no further remedy provided. |
| Sedhai (2013) | 2(3), 6(1), 7, 9, 10(1) | • thorough and diligent investigation prosecution and punishment of those responsible • adequate compensation • amend legislation to bring it into conformity with the Covenant, including amendment and extension of the 35-day statutory limitation from the event of torture or the date of release for bringing claims under the Compensation relating to Torture Act; enactment of legislation defining and criminalising torture; and repealing of all laws granting impunity to alleged perpetrators of acts of torture and enforced disappearance • ensure that the author and his family are protected from acts of reprisals or intimidation • prevent similar violations in the future | Mrs Sedhai has only received NRs. 300,000 (USD 3,000) in interim relief, in line with the general policy for family members of disappeared persons. No investigation carried out and no further remedy provided. |
| | | NRs. 25,000 (USD 250) in interim relief as provided to all victims of ‘abduction’ from the conflict. Mr Maharjan has not been provided with any further money although he has been advised that papers are before the Cabinet awaiting approval of a payment to him of NRs 150,000 (USD 1,500) in interim relief. No investigation carried out and no further remedy provided. | |
| | | • thorough and effective investigation • provide the author and her family with detailed information about the results of its investigation • immediate release if he is still being detained incommunicado • handing over Mr Sedhai’s remains to his family in the event that he is deceased • prosecute, try and punish those responsible for the violations committed • adequate compensation • take steps to prevent similar violations in the future | |
| | | | |
C. BY FAILING TO IMPLEMENT THE COMMITTEE’S VIEWS NEPAL IS IN BREACH OF ITS OBLIGATIONS

Under the International Covenant on Civil and Political Rights (ICCPR) states undertake to ensure that any person whose rights or freedoms, as recognised in the Covenant, are violated shall have an effective remedy. 4 States must also ensure that any person claiming such a remedy shall have his or her right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority. 5 Accordingly, states must also ensure that the competent authorities shall enforce such remedies when granted. 6

The duty to comply with the views of the Committee arises from the State party’s acceptance of the Optional Protocol and its obligations under the Covenant. The views adopted by the Committee represent an authoritative, legal determination made by the recognised interpreter of the Covenant. 7 By ratifying the Covenant and its Optional Protocol, states accept the authority of the Committee in this regard and agree to respect and implement its views.

A duty to cooperate with the Committee arises from an application of the principle of good faith to the observance of all treaty obligations. 8 Compliance is not discretionary. States parties must give full effect to the views of the Committee in view of their obligation to ensure to all individuals within their territory, or subject to their jurisdiction, the rights recognised in the Covenant and to provide an effective and enforceable remedy in cases where a violation has been established. 9 The Committee has made it clear that States parties “must use whatever means lie within their power in order to give effect to the views issued by the Committee”. 10 For a remedy to be effective, Nepal must implement the views expressed by the Committee in a timely manner and provide the requisite reparation measures.

D. NO PROCESS FOR IMPLEMENTATION OF VIEWS

Nepal does not have specific enabling legislation to receive the views of the Committee into its domestic legal order. Nor does Nepalese law or practice provide for any specific procedure to be followed where treaty bodies adopt views finding violations by the State.

This means that when views are adopted which require implementation by the State:

- the onus rests on victims to approach state institutions to implement the views;

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4 International Covenant on Civil and Political Rights (ICCPR) art.2(3)(a)
5 ICCPR art.2(3)(b)
6 ICCPR art.2(3)(c)
7 General Comment No 33: The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, doc. CCPR/C/GC/33 (2008), paras. 11 and 13.
8 Ibid., para. 15.
9 Ibid., para. 14.
10 Ibid., para. 20.
• it is not clear to victims which state agencies should be approached in order to ensure implementation of their views;
• responses to the views have been one-off decisions by Nepal’s Council of Ministers (part of the Executive with role of Cabinet) to provide small amounts of interim relief, without any follow-through to other state institutions to undertake investigations and reform;
• there has been no publication and consideration of views by the State among state institutions or the wider society, and therefore lessons have not been learned from them.

Even where decisions have been taken by the Council of Ministers to provide interim relief (in the case of Sharma and Giri), these decisions have not been effectively communicated to government officials at the local level responsible for payment to the victims. When they have approached the relevant government office for payment, victims have been refused payment (as in the case of Yubraj Giri11) or asked to return money already provided (as in the case of Yasoda Sharma12).

E. REFUSALS TO IMPLEMENT: REFERENCE TO TRANSITIONAL JUSTICE MECHANISMS

Four of the five cases in which the Committee has adopted views against Nepal relate to violations committed during the conflict (1996-2006). In its responses on follow-up concerning these Communications, the Government of Nepal has repeatedly maintained that it will investigate the violations found, through a yet to be established transitional justice mechanism, and has suggested that to do otherwise would not be equitable to other victims.

Such a position is in clear violation of the State Party’s obligations under both the Covenant and the Optional Protocol. As the Authors have shown in their responses to the Committee (and as is explored in greater detail in these organisations’ main shadow report to the Committee for this review process), the mechanisms proposed by the State party will not provide an adequate remedy in their cases. Instead, the normal criminal justice system is available and should be used immediately to investigate and prosecute the crimes committed.13 The Committee has also taken this position, recently finding in another communication concerning Nepal that:

potential future transitional justice mechanisms, such as the Truth and Reconciliation Commission, will not be able to provide an adequate remedy in respect of the violations alleged in [the communication], and recalls its jurisprudence, establishing that in cases of serious violations a judicial remedy is required....14

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11 See further p. 23.
12 See further p. 13.
More than five years after the first of these views was adopted no progress has been made. Contrary to what the government of Nepal argues, it is not inequitable to other victims to pursue these cases where the Committee has found that serious violations have been committed which require redress through an effective investigation in the criminal justice system. Rather, doing so would serve as a symbol of the State Party’s real commitment to addressing impunity for violations committed during the conflict period, and would assist in the development of the machinery necessary for the State to do so.

F. CONCLUSION: A FAILURE OF PROCESS AND COMMITMENT

Under the Interim Constitution of Nepal of 2007 the State has the obligation to “effectively implement the international treaties and agreements of which the State is a party”\textsuperscript{15}. There is not, however, a procedure for implementing the views of the Committee in Nepalese law, and there has been an almost complete failure to do so. Instead, the State Party has effectively rejected the implementation of the Committee’s views pending the outcome of the transitional justice process, notwithstanding its clear obligations, and findings by the Committee, to the contrary. In addition to violating the State Party’s obligations to implement its Covenant obligations in good faith, this practice frustrates the Optional Protocol’s objectives and leaves victims without any realistic prospect of obtaining redress.

G. RECOMMENDATIONS

- The State Party should establish clear, transparent and effective legal frameworks, institutional arrangements and procedures to ensure that those who have been recognised as victims of human rights violations by the Human Rights Committee promptly obtain the remedy to which they are entitled, without being required to take further action at the domestic level. Legislation should include procedures in case of non-compliance with the Committee’s views.

- The State Party should establish clear procedures to ensure that views of the Committee finding violations established are translated into Nepali and made available online, are publicised in the local media and are disseminated to relevant national institutions including national police, prosecution and judicial training academies for consideration.

- The State Party should commit to and act immediately to appoint an identified state official responsible for ensuring the implementation of all currently outstanding views in individual communications, within twelve months, and as part of the remedy given provide compensation calculated to take into account the delay in the provision of such remedies in the case concerned.

\textsuperscript{15} Interim Constitution of Nepal, Art. 33(m).
SUMMARY OF COMMUNICATIONS AND STATUS OF IMPLEMENTATION

The first three parts of each of these summaries is drawn from the Views of the Committee. Follow-up information is (where specified) taken verbatim from the Committee’s Annual Reports, and further information available to the authors.

|--------------------------------------------|

**Summary of facts:**

Surya Prasad Sharma disappeared after he was arrested by the army in January 2002. His wife followed the soldiers and saw them lead her husband into the Kalidal Gulm army barracks, just 7-10 minutes walk from her house. She was later visited by a soldier who told her that her husband was being severely tortured. In response to a habeas corpus petition filed in the Supreme Court in February 2003, all government authorities denied his arrest and detention. However, the Baglung Chief District Officer (CDO) informed the court that Mr. Sharma had tried to escape and had jumped in the river and drowned. A government committee set up to investigate disappearances provided the same information. In February 2005, the Supreme Court quashed the petition, believing the CDO’s response.

**Violations:**

2(3), 6, 7, 9, 10

**Remedy:**

“In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author’s husband, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the author and her family for the violations suffered by the author’s husband and by themselves. While the Covenant does not give individuals the right to demand of a State the criminal prosecution of another person, the Committee nevertheless considers the State party duty-bound not only to conduct thorough investigations into alleged violations of human rights, particularly enforced disappearances and acts of torture, but also to prosecute, try and punish those held responsible for such violations. The State party is also under an obligation to take measures to prevent similar violations in the future.”

**Follow up information as reported in Committee’s Annual Reports:**

A/66/40 (Vol. I), pp. 143-147

“In its response of 27 April 2009, the State party submitted that Ms. Y[as]hoda Sharma would be provided with the sum of 200,000 Nepalese rupees (approximately 1,896.67 euro) as an immediate remedy. With respect to an investigation, the case would be referred to the Independent Disappearance Commission to be constituted by the Government. A bill had already been submitted to Parliament and once legislation had been enacted, the

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Commission would be constituted as a matter of priority.

Author’s comments

On 30 June 2009, the author commented on the State party’s submission. She highlighted that it had been more than seven years since Mr. Sharma disappeared and that the State party is under an obligation to conduct a prompt investigation into his disappearance and to promptly prosecute all those suspected of being involved. As to the Independent Disappearances Commission, she argued that there was no clear timeline for the passing of the relevant legislation or for the establishment of the proposed Commission. Neither was it clear whether this Commission, if established, will actually examine the Sharma case specifically. In addition, such a Commission is by definition not a judicial body and does not therefore have the powers to impose the appropriate punishment on those found responsible for Mr. Sharma’s disappearance. Even if it did have the power to refer cases of disappearances for prosecution, there is no guarantee that a prosecution process would be initiated or that it would be prompt. Thus, in the author’s view, the said Commission could not be considered an adequate avenue for investigation and prosecution in this case. The criminal justice system is the most appropriate avenue.

As to the prosecution, the author highlighted the State party’s obligation to prosecute violations of human rights without undue delay. This obligation is clear when considering its contribution to deterring and preventing the recurrence of enforced disappearances in Nepal. In the author’s view, in order to prevent such recurrences, the Government should immediately suspend from duty any suspects involved in this case. If they remain in their official capacity, there is a risk that they will be able to intimidate witnesses in any criminal investigation. The author also suggested that an investigation to identify the whereabouts of Mr. Sharma’s remains should also be initiated immediately.

On the issue of compensation and the State party’s submission that the Government has provided the author with “immediate relief” of 200,000 Nepalese rupees, the author stated that it would not amount to the “adequate” compensation required by the Committee. She argued that she is entitled to a substantial amount to cover all pecuniary and non-pecuniary damage suffered.

Author’s supplementary comments

On 11 March 2010, the author provided the following supplementary information. She stated that she had finally received the full amount of 200,000 Nepalese rupees but that despite having been promised in a meeting with the Prime Minister’s Secretary on 30 June 2009 that an investigation into her husband’s death would be initiated, this had still not been undertaken. In mid-December 2009, she received information from the Prime Minister’s Secretary that the army officials were objecting (no specific names provided) to a separate investigation, insisting that this case should be examined by the Independent Disappearances Commission, yet to be established.

State party’s supplementary submission

On 28 July 2010, the State party provided a supplementary submission stating that although Government policy contained a provision to distribute 100,000 Nepalese rupees to the family of the deceased or disappeared during the conflict, the Government had made a special decision in this case, in consideration of the Committee’s Views, to give the author twice that amount. However, it underscores its view that this amount cannot compensate
the family and is only considered to be interim relief. The State party informs the Committee that the Truth and Reconciliation Commission Bill and Disappearance of Persons (Crime and Punishment) Bill have been submitted to the Legislature Parliament. According to the State party, these Commissions shall in no way “substitute” or supersede the administration of any legal proceedings within the existing legal system as outlined in the author’s submission. The Disappearance Bill has been designed to establish enforced disappearance as a crime punishable by law; to establish truth by investigating the incidents that happened during the armed conflict; to end impunity by paving the way for appropriate action to be taken against the perpetrators and to provide appropriate compensation and justice for the victims. The Truth and Reconciliation Bill stipulates that the individuals involved in acts of enforced disappearance shall not be granted amnesty under any circumstances. Due action shall be taken, in accordance with the existing law, against individuals found guilty after the investigations of the two future commissions.

The State party denies that the Prime Minister’s Secretary recommended that a separate investigation team be set up to investigate the case at issue as well as the claim that the army had “objected” to such a recommendation. According to the State party, it would not be feasible or practical from a financial, technical and managerial perspective to set up a separate commission to investigate the case at issue alone.

The State party’s submission of 28 July 2010 was sent to the author on 9 August 2010.

Additional information from the author

On 30 November 2010, the author responded to the State party’s additional comments. She notes first, that even if the Truth and Reconciliation Commission Bill and Disappearance of Persons (Crime and Punishment) Bill have been submitted to the Legislature Parliament, there is no indication as to when the bills would be adopted, in particular in the light of the current political situation. Thus, the Committee’s recommendation to establish an investigative body to carry out prompt investigations and prosecutions of human rights violations, in particular enforced disappearances and acts of torture, was not implemented by the State party. In addition, the two Commissions, as they are envisaged in the bills, are not judicial bodies, and they could not impose appropriate penalties to perpetrators of human rights violations. The process thus would not guarantee the promptness required by the Committee. In addition, Nepalese law does not contain crimes such as torture, enforced disappearance, incommunicado detention, or ill-treatment.

The author recalls that she has received a total of 200,000 Nepalese rupees, as “immediate relief”. According to her, the amount in question, as pointed out by the State party itself, cannot be seen as commensurate to the pain and anguish befallen upon the family, nor can it, according to the author, compensate the pecuniary and non-pecuniary damages inflicted upon her and her children by the enforced disappearance of her husband.

Even if the State party has committed itself to provide her with an additional relief package under the transitional justice system to be established, the author contends that neither the immediate relief nor any future additional relief could absolve the State party of its obligation to provide an effective remedy and full and adequate reparation — including compensation — for the violations suffered.

On the State party’s denial that the Prime Minister’s Secretary recommended that a separate investigation team be set up to investigate the case at issue as well as the claim that the army had “objected” to such a recommendation, the author reiterates her previous
statements, but regrets that she has no material evidence to refute the State party’s affirmation. As to the State party’s contention that it would not be feasible or practical from a financial, technical and managerial perspective to set up a separate commission to investigate the case at issue alone, the author explains that she has not asked to have a specific commission to deal with her case, but she expects to have her case investigated within the existing criminal law framework.

Finally, the author regrets that the authorities have not contacted her to inform her on the developments in her case.

The author’s submission was sent to the State party on 2 December 2010.

*Additional information from the State party*

By note verbale of 9 March 2011, the State party provided additional observations concerning the counsel’s comments of 30 November 2010. The State party notes, first, that article 33 (s) of the Interim Constitution of Nepal provides for the establishment of a Truth and Reconciliation Commission to investigate facts about those involved in serious human rights violations and crimes against humanity during the conflict, and to create an atmosphere of reconciliation in the society. Article 33 (q) of the Constitution stipulates the provision of relief to families of the victims, on the basis of the conclusions made by the Investigation Commission empowered to investigate cases of enforced disappearance during the conflict. Clause 5.25 of the Comprehensive Peace Agreement concluded between the Government and the Communist Party of Nepal (Maoist) states that both sides agree to constitute a high-level truth and reconciliation commission to investigate truth about human rights abuses and create an environment for reconciliation in the society. The Government has already presented two bills in the Legislature-Parliament for the formation of the said commissions. The current Prime Minister, in his first address to Parliament, stated that the Government would take further initiative in having these bills passed promptly.

On the issue of the provision of adequate compensation in the present case, the State party recalls that the family was provided with 200,000 Nepalese rupees as an interim relief. The State party remains committed to provide an additional relief package on the basis of future recommendations of the mechanisms of transitional justice.

As to the author’s comments on reports concerning the lack of cooperation by the Nepalese Army in the context of criminal investigations, the State party explains that under the Constitution and the Army Act (2006), the Army is directed and controlled by the Government. The Army acts in accordance with the laws in force, and always cooperates.

*Author’s additional comments*

The author presented her comments on the State party’s observations on 20 June 2011. She notes that the State party has failed to implement the Committee’s Views in the case related to the disappearance of her husband. She recalls that the only concrete action undertaken by the State party is the payment of 200,000 Nepalese rupees (US$ 2,790 at the time of writing), as an interim relief; the author welcomes the State party’s commitment to provide her with further compensation. No further investigation has been carried out into the disappearance of her husband. The author reiterates her comments of the irrelevance of the transitional justice proceedings (which are not in place yet) to her husband’s case and asks to have the case dealt by promptly under the ordinary criminal proceedings. With
reference to a recent legal opinion issued by the OHCHR office in Nepal, the author notes that truth commissions should be viewed as complementary to judicial action, and that the regular judicial system cannot be held in abeyance because a commitment to establish transitional justice mechanisms has been made or even if such mechanisms are established and function.

The author reiterates that in this case, the army officials have not cooperated satisfactorily in connection to her husband’s disappearance, in particular by failing to provide information which could help identify her husband’s whereabouts. Lastly, she expresses concern at the recent calls of high-level State party’s officials to have a number of criminal cases relating to the conflict period, including alleged serious human rights violations, withdrawn.

Further action taken or required

On 28 October 2009, the Special Rapporteur met with Mr. Bhattarai, the Ambassador, and Mr. Paudyal, First Secretary, of the Permanent Mission. The Special Rapporteur referred to the State party’s response in this case, including the information that the Disappearance Commission would be set up, and asked the representatives whether, given the limitations of such a commission, “a factual investigation” could not be conducted immediately. The representatives responded that there were still reservations that the author had not exhausted domestic remedies and that this was just one of many similar cases which, for the sake of equity, would all have to be considered in the same way, i.e. through the Disappearance Commission and the Truth and Reconciliation Commission which would be set up shortly. They stated that the legislation was before Parliament, the functioning of which was currently being obstructed, but that the enactment of legislation in this regard was assured. They could give no deadline for its enactment. The representatives noted the Special Rapporteur’s concerns and would report back to their headquarters. They highlighted throughout the discussion the fact that the State party was recovering from a civil war and that the path to democracy is a very slow one.

The author’s latest submission was sent to the State party in June 2011. The Committee decided to organize a further meeting with the Permanent Mission of Nepal, to take place during the 103rd session (October –November 2011).

Decision of the Committee The Committee considers the follow-up dialogue ongoing.”


“On 4 August 2011, the State party reiterated in part its previous submissions, and provided additional observations. It explains that Ms. Sharma has been provided with the sum of 200,000 Nepalese rupees, that is, double what other individuals in her situation are entitled to under the law, by decision of the Government. The State party explains that it is committed to providing further relief packages, once the mechanisms of transitional justice are in place. On 15 July 2011, the Government presented to the Parliament a budget for the provision of relief to the families of martyrs and of persons disappeared during the conflict, in the National Budget 2011/2012. The Government states also that it continues to work to promote additional relief measures for [the family of] Mr. Sharma and other victims of the conflict and their families.

As to the investigation concerning the disappearance of Mr. Sharma, the State party reiterates that it will be dealt with under the mechanisms to be created under the transitional justice system, in line with the provisions of the Interim Constitution. The bills
are before Parliament.

In this context, the State party explains that the Supreme Court of Nepal, through a directive order, has asked the Government to formulate a separate law governing investigations into the status of disappeared persons and to carry out investigations through a commission to be formed under such law.

The State party, lastly, explains that the Nepalese Army acts in conformity with the law. It has extended full cooperation to the investigating officials or agencies.

On 20 October 2011, the author’s counsel noted that in its most recent submission, the State party in fact reiterated the information contained in its previous submissions. According to counsel, the State party’s continued refusal to give effect to the Committee’s Views amounts to a failure to fulfil, in good faith, its commitments under the Covenant and the Optional Protocol, and constitutes a separate violation of the author’s rights. If the State party does not give full effect to the Committee’s Views, the author will submit a separate communication to the Committee, based on article 2 of the Optional Protocol.

The State party was provided with the author’s submission on 25 October 2011. The Committee will await receipt of further information in order to decide on the matter.

The case was also mentioned at a meeting between the Special Rapporteur for follow-up on Views and representatives of the State party, which took place on 25 October 2011, during the 103rd session. The State party’s representatives recalled the State party’s commitment to act against impunity of crimes committed during the conflict. They reiterated that it was a Constitutional requirement that such acts be dealt with under the future post-conflict mechanisms, namely, the commissions on disappearances and on reconciliation. Draft laws are before Parliament, and a draft of the new constitution was to be completed by the end of 2011. The case of Mr. Sharma will be dealt with under the new mechanisms, as will the cases of several thousand other victims.

The Committee considers the follow-up dialogue ongoing, while noting that, to date, its recommendation has not been satisfactorily implemented.”


“On 20 July 2012, author’s counsel, with reference to the meeting held with the Committee’s Special Rapporteur on Follow-up to Views during the Committee’s 105th session, recalls her briefing to the Rapporteur on the current political situation in the State party, and the latter’s failure to establish transitional justice mechanisms, despite assurances that it would investigate the violations found by the Committee through a yet to be established transitional justice mechanism.

According to the author’s counsel, such a mechanism will not provide an adequate remedy to the victims, and the ordinary criminal justice system must be used to investigate and prosecute the crimes committed.

In the light of the recent political developments in the State party, the prospect of any transitional justice mechanism being established in the immediate future became even more remote. Under the interim Constitution and successive extensions, the Government had a final deadline of 28 May 2012 to adopt a new Constitution. The Parliament failed to do so, and following this, the Constituent Assembly was dissolved, leaving Nepal without legislative authority. Although legislative elections were scheduled for November 2012, there is little prospect that they take place, and the possibility of a transitional mechanism
being established is very slim. Also, a transitional justice mechanism, which would be established through Ordinance, without any consultation with civil society, and without a process of amendments, would fail to bring justice to victims (either because of a weak commission, or because it is not endorsed by Parliament). With no transitional justice mechanism in sight, the authors’ counsel is of the view that the State party must use the existing criminal justice system to investigate the violations.

The author’s Counsel confirms that the author was provided with a total of Rs. 400,000 ([at the time] approximately USD 4,520) by the Government in “interim relief”, made in three separate payments. She further notes that all families of victims of disappearances and extra judicial killings have now been paid up to Rs. 300,000 under the interim relief policy. Ms. Sharma has therefore received Rs. 100,000 more than other victims. However, the Chief District Officer of Baglung has in return asked her to reimburse the Government Rs. 100,000. She has challenged this demand, but this has put additional strain on her and her representatives. Aside from the provision of “interim relief”, which is not sufficient as compensation, the State party has taken no steps to meaningfully implement the Committee’s Views.

On 29 August 2012, the State party reiterated its previous observations regarding the transnational justice mechanisms and explains that elections are scheduled for 22 November 2012 to elect a new constituent assembly, to function as parliament, and to establish the transitional justice mechanism. The State party reiterates that the current criminal justice system does not allow it to provide full justice of victims of acts occurring during the conflict.

The State party explains that it has implemented the Committee’s Views by providing the author with an interim relief; it is, in addition, effortful in establishing a transitional justice mechanism. Accordingly, the State party considers that there is no justifiable ground to take any action in this case by the Committee.

The State party’s submission was sent to the author, for comments, on 15 January 2013 (one-month deadline). The Committee will await receipt of further information before finally deciding on the matter.

The Committee considers the follow-up dialogue ongoing, while noting that, to date, its recommendation has not been satisfactorily implemented.”

Further information:

On 20 March 2013 the Author’s counsel wrote to the Committee and advised that no further steps had been taken to implement the Views.

The State Party sent a further response on 19 September 2013, and the Author’s counsel responded on 14 November 2013.
**Summary of facts:**

In September 2003 the author was arrested by the Nepalese police, initially accused of being in possession of false documents, then accused of having committed a murder in 1975. He was detained for 25 days without the assistance of a lawyer. During the trial, the author was not able to confront any of the witnesses testifying against him as he did not speak or understand Nepali. In August 2003 he was sentenced to life imprisonment. The verdict was appealed. However in August 2005 a new panel of appeal judges confirmed the original verdict. The author appealed to the Supreme Court. In June 2009 the Appeal Court quashed its previous judgment and sentenced the author to one year imprisonment and a fine of 2000 rupees for illegal entry into Nepalese territory in 1975, while the main part of the appeal remained in issue. At the time of the views the appeal remained undecided.

**Violations:**
7, 10(1), 14(2, 3a-f, 5, 7), 15(1)

**Remedy:**

“In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including the speedy conclusion of the proceedings and compensation. The State party is also under an obligation to prevent similar violations in the future.”

**Follow up information as reported in Committee’s Annual Reports:**

A/66/40 (Vol. I), pp. 147-150

“The author’s counsel (based in France) informed the Committee, on 5 January 2011, that following the adoption of the Committee’s Views, the author was placed in isolation, for an undetermined period of time, in isolated and insalubrious premises, with a clay floor, slits in the brick walls and no protection from the winter cold. The author has been prohibited from communicating with visitors, he is prevented from making phone calls and cannot communicate with his lawyer. The lawyer also informs the Committee that the author’s Nepalese lawyers do not represent her client any longer, pursuant to an action undertaken by the Supreme Court, and thus, as a result of this, he faces a situation where he no longer has legal representation.

Finally, the lawyer reports that the Chief of the detention facility in question has prevented the author from signing his review petition to the Supreme Court, which he had to prepare on his own, so as to hand it to a representative of the French Embassy in Nepal. Counsel provides a copy of the unsigned review petition. The Committee’s support is sought.

The lawyer’s submission was transmitted to the State party on 7 January 2011.

**State party’s submission**

The State party presented its comments on 19 January 2011. Firstly, it regrets that the Committee’s Views have “undermined the independence, impartiality and competence of the Judiciary” of Nepal, and that the Committee has “failed to recognize that an administration of justice has its own procedures which need to be recognized and respected”.

The State party recalls that it had submitted its observations, on 29 July 2010, challenging
both the admissibility and the merits of the author’s allegations, but, as it subsequently transpired, the Committee’s Views had already been adopted, on 27 July 2010.

It states also that the Supreme Court of Nepal has already rendered its verdict in the case of Mr. Sobhraj, “almost concurrent in timing with the adoption of the Views by the Committee”.

On the issue of independence and competence of the judiciary, the State party notes that the Interim Constitution of Nepal (2007) enshrines the principle of the separation of power. The executive, the legislative and the judiciary have been established in the Constitution and their jurisdictions have been clearly defined so as to maintain the spirit of the separation of power, and they act independently, avoiding the interference of one organ into the function of another. The Constitution encompasses the concept of independent judiciary and the prevailing law has ensured the respect of the same in the administration of justice. It is explicit in the Constitution that the people’s right to justice is to be served, in accordance with the prevailing provisions of the Constitution and the fundamental principles of law and justice, through competent courts and other relevant judicial institutions. The Constitution has established the Supreme Court, the Appellate Court and the District Court for independent and fair administration of justice at three levels. The prerogative of the final interpretation of laws and constitutional provisions remains with the Supreme Court. The supremacy of the Supreme Court has been asserted by the constitutional provisions that all mechanisms of the Government and the public are required to respect the verdict and decisions of the court; the government machineries have to assist in the smooth functioning of the courts, and they have to respect and abide by the interpretation of law and establishment of the principles of law and justice by the courts.

The State party explains that the courts in Nepal are competent and independent in reaching a decision, on the basis of facts and evidence before them and the relevant provisions of prevailing law, on the cases brought to their attention and are immune, in doing so, from external pressure, influence, threat and interference of any kind. Every individual has been guaranteed the right to fair trial in a case against him in the competent court of law and this universal right has been fully respected in Nepal. Established judiciary procedures have been impartially observed in the rendering of justice and rights of the defendant and the plaintiff have been duly honoured. The Nepalese judiciary has been commended for its contribution to promotion and protection of justice, human rights and fundamental freedom of people even in adverse times.

As per the stipulation of Administration of Justice Act (1991) that the preliminary hearing of the cases related to murder and fake passports should begin at a district court level, the hearing of the case of Mr. Shobhraj was initiated in the District Court of Kathmandu. As required by law, reviews of verdicts are undertaken by higher courts, and the first verdict of the district court was reviewed by the Appellate Court and the review of the decision of the latter has now been concluded by the Supreme Court, reaffirming the decision of the lower courts.

The State party continues by explaining that Nepal is a democracy, and as a party to the Covenant, the Government takes the Covenant seriously and it is committed to abide by all its provisions. The Constitution and the laws have accordingly incorporated the fundamental rights guaranteed by the Covenant. Thus, anyone accused of a crime is entitled to the rights of fair trial, a trial at an independent and impartial court, presumption of innocence until proven guilty and punishment only as decided by the competent court. According to the
State party, these fundamental rights have been fully honoured in the case related to Mr. Shobhraj.

Mr. Sobhraj’s conditions of detention do not undermine “the inherent dignity of human persons”. Every provision of the Prison Act (1962) and the Prison Regulations (1963) applies to him without distinction and discrimination. He has been provided with healthy food, appropriate medication and has been allowed to receive visits and to communicate as per the terms of the Prison Act and Regulations. The allegation that Mr. Sobhraj has been placed in “solitary confinement” is, according to the State party, untrue.

The peremptory norm of international law vests unquestionably upon a sovereign State an authority to investigate and sanction offenders as determined by the competent court of law. This is not simply a State prerogative, but also an indispensible task expected of the State for the general well-being of the public and protection of their life and property from criminal behaviour. Mr. Sobhraj has been serving incarceration as per the verdict of two lower courts on the charges of murder and the use of a fake passport and his appeal for the review of the verdict has been repealed by the Supreme Court.

The State party explains that it rejects the author’s claim that the documents submitted by the police authority to the court are “fake” and that the Appellate Court reached its decision in the absence of strong “material evidence”. It is the competent and independent court, not the parties in the case, that is mandated to decide whether evidence is admissible. In the case of Mr. Sobhraj, the Appellate Court issued the verdict on the basis of the factual report prepared by the relevant experts who examined thoroughly the documents and evidence to verify their reliability and authenticity. All the processes observed during investigation of the case have been in full compliance with general principles of law and existing laws.

The State party adds that every legal case follows certain procedure and every hearing in the court is regulated by relevant rules. In Nepal, the hearing procedures in the Supreme Court, the Appellate Court and the District Court have been regulated by the Supreme Court Regulations (1992); Appellate Court Regulations (1991); and District Court Regulations (1995), respectively. The hearing of every case is conducted as guided by these instruments and this was the situation in Mr. Sobhraj’s case. He has been incarcerated as he was found guilty by the two lower courts and finally by the Supreme Court on the basis of substantive evidence. The case of Mr. Sobhraj was accorded priority and all hearings were held in his presence. The State party further draws the Committee’s attention to the fact that Mr. Sobhraj’s lawyers have expressed gratitude to the Court for according priority to the case of their client.

The State party contends that the Supreme Court has full authority to decide on the admissibility of all evidence submitted, in accordance with law, at the time of prosecution. In the case of Mr. Sobhraj, the Supreme Court reached its decision on the basis of standard values of universally recognized evidence law, upon examination of relevant decisions of courts of other countries and as provided in the criminal law and the Evidence Act of Nepal 2031 BS. The Court admitted only evidence that did not go against the principle of fair trial and all investigations with respect to the case were carried out in accordance with the standard principles of law and relevant national law. No retroactive application of law and no application of controversial procedures have occurred in this case. The State party also notes that the Act Related to Foreigners 2015 BS and it Regulations 2031 BS deemed the use of a fake passport as a crime punishable by law and the Immigration Act 2049 BS that...
annulled the 2015 Act incorporated those offences. Mr. Sobhraj used a fake passport to enter Nepal in 1975 and he was convicted for this as per the Act Related to Foreigners 2015 BS and its Regulations 2032 BS and no penalty in excess of that prescribed by the law has been applied to him.

According to the State party, the allegation that the burden of proof has been shifted to the “detriment of the author” is a complete misrepresentation of facts. The evidence law of Nepal places on the prosecution the responsibility to provide evidence to prove the claim. The principle of burden of proof assumes that while it is the responsibility of the prosecutor to substantiate his claim, the responsibility to substantiate a special plea made with a view to reduce the penalty for an acquittal from the charge falls upon the party that makes the plea. Clause 27 (1) of the Nepal Evidence Act 2031 BS states that if the defendant makes a counter claim regarding remission of the penalty or acquittal from the charge (penalty) pursuant to existing law, the burden of proof of proving such a fact shall lie with the defendant him/herself. Pursuant to clause 28 of the same Act, the burden of proof as to any particular fact falls on the person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other particular person. This is a universal law of evidence. In the case of Mr. Sobhraj, while the prosecutor submitted with evidence that Mr. Sobhraj was in Nepal at the time when the crime was committed, the latter submitted a plea of alibi and consequently was asked to substantiate his claim, which he could not do.

The State party explains further that under the Constitution, every individual arrested retains the right to consult a lawyer of his choice right from the time of the arrest and Mr. Sobhraj was no exception to this provision. At the time he testified in the Court, he was assisted by a lawyer (name provided), who also served as his interpreter. He was allowed to speak in English, which he did, and the questions in Nepali were translated to him by his lawyer. A French lawyer (name provided) also took part in the process as Mr. Sobhraj’s legal counsel.

The State party explains that it has taken note of the concerns expressed by the Committee over the alleged infringement of human rights that Mr. Sobhraj is entitled to under the national law and the international human rights commitments. It expresses assurances to the Committee that it is committed to ensure that even convicted prisoners enjoy the rights that are accorded to them by national and international law.

Finally, the State party reiterates its wish to remain constructively engaged with the Human Rights Committee and other United Nations international human rights mechanisms.

Additional comments from the author

On 23 February 2011, the counsel provided further comments. She refers to her previous correspondence and affirms that no change had occurred in the situation of Mr. Sobhraj. The counsel also notes that the State party has not made any proposal in its submission as to the measures it intends to take in order to comply with the Committee’s Views. On the contrary, the State party denies having breached the author’s rights under the Covenant, thus disregarding the Covenant’s and the Optional Protocol’s provisions, the Committee’s rules of procedure, and the Committee’s Views. The lawyer recalls that the author is entitled to an effective remedy, including compensation, for the violations he had suffered and is still suffering.

As to the independence of the judiciary in Nepal, the counsel contends that the conduct of
numerous enquiries about corruption and different reports from human rights organizations show that the State party’s arguments are incorrect.

The counsel requests the Committee to intervene and ensure that the author receives an effective remedy.

On 27 June 2011, the author’s counsel informed the Committee that State party has failed to implement the Committee’s Views. The State party still denies Mr. Sobhraj the right to have his review petition examined by the Supreme Court. The letters sent by the counsel, on 23 February 2011, to the State party’s President and the Prime Minister also remained unanswered.

**Further action taken or required**

The counsel’s latest comments were transmitted to the State party in July 2011. The case should be discussed during a meeting with the State party’s representatives at the Committee’s 103rd session (October –November 2011).

Decision of the Committee

The Committee considers the follow-up dialogue ongoing.”

**A/67/40 (Vol. I), p. 121**

“The case was mentioned at a meeting between the Special Rapporteur for follow-up on Views and representatives of the State party, which took place on 25 October 2011, during the 103rd session.

By note verbale of 5 December 2011, the State party reiterated its previous submissions and explained that judgments of the Supreme Court are final and not subject to appeal. The Supreme Court may, however, in exceptional circumstances, review its own judgments. Review petitions must be written in the Nepalese language, which was not done in the present case, and for this reason the Supreme Court referred them back to the author.

With reference to article 14, paragraph 3 (f), of the Covenant, the State contends that the Covenant does not provide for a right to have petitions for the reconsideration of final judgments translated. All decisions in the author’s case are final at present. Under Nepalese law, the author has to initiate a petition for revision. In the hearing of review petitions, the author would not undergo oral legal proceedings, and therefore the State party does not have to provide him with an interpreter for the initiation of the review. The author’s appeals to the Appellate Court and the Supreme Court were filed in Nepali.

On 1 February 2012, the author’s counsel reiterated her previous submissions and noted, in particular, that the refusal to admit Mr. Sobhraj’s review petition to the Supreme Court, because it was not written in Nepali, prevented him from having his case reviewed with a focus on the violations revealed by the Committee in its Views, and thus prevented him from receiving an effective remedy. Counsel believes that article 14, paragraph (f), of the Covenant should also be applicable to the right to present a review petition in languages other than Nepali.

Mr. Sobhraj is still in detention, and the prolongation of undue delays in the judicial proceedings causes additional harm to him. In addition, he has received no compensation.

The submission by counsel was transmitted to the State party, in February 2012, for observations.

The Committee will await receipt of further information before finally deciding on the
matter.

The Committee considers the follow-up dialogue ongoing, while noting that, to date, its recommendation has not been satisfactorily implemented.”

A/68/40 (Vol. I), pp. 179-181

“By note verbale of 27 March 2012, the State party presented additional observations. It recalls that the Supreme Court of Nepal had adopted final decisions in the cases of murder and fraudulent passports filed against the author; the judgments are final and not subject to appeal. The Supreme Court may review its own judgments only in exceptional circumstances. Review petitions must be written in Nepalese, which was not done in the present case, and for this reason, the author’s petitions were returned.

As to counsel’s contention that the Supreme Court judges understand English, the State party notes that the Supreme Court cannot register petitions which are not submitted in the official language.

The State party further notes that under the law, everyone arrested has the right to consult a lawyer of his/her choice. Accused can have free assistance of an interpreter if they do not understand Nepalese. The author had retained private lawyers of his choice during his court proceedings, who, on his behalf, submitted appeals against the judgments of the district and appellate courts. Moreover, he received assistance of an interpreter and the counsel’s allegations that he was denied access to copies of his case-file are unfounded.

The State party explains that when a person intends to submit his/her petition to the court, it is up to he/she to prepare his/her petition and the State party does not have an obligation to provide legal assistance or interpretation therein. Moreover, the author never requested to be provided with a lawyer or an interpreter for the preparation of his review petition.

The State party maintains that by refusing to register the author’s review petition, the Supreme Court did not commit any violation. Such a refusal in itself does not establish that the person was deprived of exercising the rights protected by the Covenant or that the State party has failed to fulfil its obligations under the Covenant.

As to the alleged undue delay of the author’s court proceedings, the State party maintains that the Supreme Court, in line with the Constitution and other pertinent legal acts, examines cases promptly. The judiciary cannot decide a case without due process established by the law, in the name of a speedy justice. Consequently, there is no room for allegations in the present case that the judiciary made unreasonable delay and harassment by devoting unnecessarily long period of time to settle the case. The State party further emphasizes that taking into consideration the nature and sensitivity of the matter, the author’s cases were given priority. Moreover, counsel’s comments are contradictory, as on the one hand she highlights that the excessive length of the proceedings before the Supreme Court and the regular hearing adjournments demonstrated a lack of effective justice, but on the other hand, she claims that the Supreme Court delivered its judgment in a “somehow sudden and rapid manner”.

The State party further contends that the author’s detention was not arbitrary. No physical or mental torture or cruel, inhuman or degrading treatment was inflicted upon the author during the pretrial investigation or the trial. It further emphasizes that Nepalese judiciary is independent and its independence and competence have been guaranteed by the Constitution and the laws.
On 27 April 2012, counsel presented her comments to the State party’s observations. Counsel stresses that according to the Committee, its Views are legally binding and not mere recommendations, and notes that the State party continues to disregard the Views in the present case, violating article 2 of the Covenant. Counsel further notes that at this point in time, the question whether Mr. Sobhraj’s rights under the Covenant are violated is closed, and the case should not be reargued now. The issue concerns the kind of remedy to be provided to the victim.

Counsel reiterates that she requested the President and the Prime Minister of Nepal to address the author’s case and to compensate him for the violations suffered, but her requests were ignored. Moreover, the author himself had filed two review petitions to the Supreme Court, but both were dismissed without consideration as they were in English; the author does not speak Nepalese and cannot file the petitions in this language. In this connection, counsel notes that in its observations, the State party acknowledges that no free legal aid or translation services were available for the author to prepare his review petitions. Consequently, according to counsel, the State party was still persecuting the author, as the violations he had suffered were not remedied.

Counsel further notes that the duty “to give full effect” to the Committee’s findings, presupposes that the remedy shall be provided by the State party on its own initiative and not within the review petition mechanism. Therefore, the State party’s arguments concerning the language used by the author in his review petitions are not pertinent.

Finally, counsel requests the Committee:

- To inform the State party that according to the Committee’s jurisprudence, its Views are legally binding;
- To recommend the State party to grant the author a judicial review implementing the Views adopted in the present case, either by the Supreme Court on its own initiative, or at the initiative of the author, permitting the author to submit the review petition either in English or in Nepalese (in such a case translation services have to be provided to him); to recommend that the author is discharged;
- To recommend the State party to pay the author a compensation;
- To express its deep concern about the lack, in general, of a mechanism in the State party to implement its Views;
- To have the possibility of Nepal to nominate and to elect members of the Human Rights Committee suspended.

On 11 July 2012, counsel inquired about the status of the case and reiterated its previous submission.

On 15 October 2012, counsel provided an update on the author’s situation in prison in Nepal and informs the Committee that the latter was attacked and life threatened in this locked cell room at odd hours by a co-detainee.

On 24 January 2013, the State party transmitted comments to the latest observations of the author: on the receipt of information that the author was threatened by a co-detainee, the prison officials investigated, and learnt that a minor exchange of words had occurred between the two detainees. As the author also stated in his observations that he was feeling unsafe, the prison office has deployed plainclothes police in the prison around-the-clock, so
as to prevent any future altercation. The leader staff member of the internal administration is also being periodically alternated.

The State party’s submission was transmitted to the author on 12 February 2013 (one-month deadline). The Committee will await receipt of further information before finally deciding on the matter.

The Committee considers the follow-up dialogue ongoing, while noting that, to date, its recommendation has not been satisfactorily implemented.”

**Further information:**

The organisations submitting this report confirmed with the Author’s counsel in December 2013 that no further steps have been taken to implement the views.
**Summary of facts:**

Mr Yubraj Giri was arbitrarily arrested and detained, held in incommunicado detention in appalling conditions, tortured repeatedly, and subjected to ill-treatment in 2004 to 2005 during the conflict between the then-government and Maoist forces in Nepal. Despite bringing this to the attention of the police and court authorities, including by attempting to file a criminal complaint, no investigation was carried out into his treatment, no person was prosecuted and no compensation was provided.

**Violations:**

2(3), 7, 9, 10

**Remedy:**

“In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author and his family with an effective remedy, by ensuring a thorough and diligent investigation into the torture and ill-treatment suffered by the author, the prosecution and punishment of those responsible, and providing the author and his family with adequate compensation for the violations suffered. In doing so, the State party shall ensure that the author and his family are protected from acts of reprisals or intimidation. The State party is also under an obligation to prevent similar violations in the future.”

**Follow up information as reported in Committee’s Annual Reports:**

**A/67/40 (Vol. I), p. 120-121**

“The case was mentioned at a meeting between the Special Rapporteur for follow-up on Views and representatives of the State party, which took place on 25 October 2011, during the 103rd session.

By note verbale of 9 November 2011, the State party referred to its submission on the admissibility and merits of the case, and explained that the draft bill for the establishment of the Truth and Reconciliation Commission was at the final stage of consideration by the Legislative Committee of the Parliament. The Commission has temporal jurisdiction for crimes committed during the armed conflict from 13 February 1996 to 21 November 2006, including serious human rights violations and torture. The aim is to establish an independent, impartial, credible, autonomous and resourceful body to carry out thorough and credible investigations on alleged human rights violations. The State party contends that the Commission would ensure an effective remedy to the author. The bill provides also for the protection of witnesses and other persons, and for compensation for victims and their families. The State party also makes assurances that neither the author nor his family would be subject to reprisals or intimidation.

As a consequence of the Committee’s Views, the State party decided to provide the author and his family with an interim compensation for the violation of the author’s rights, to be determined by the Council of Ministers. As for the non-repetition of similar violations, the State party explains that a bill on the Criminal Code was submitted to the Parliament, criminalizing acts of both physical and mental torture, and inhuman and degrading treatment; perpetrators of such crimes would risk prison terms and/or fines.
The State party adds that it does not intend to prolong or dilute the case, nor to shield the perpetrators. It is constitutionally (art. 33 of the Constitution) and politically (the 2006 Comprehensive Peace Agreement) obliged and determined to establish the Commission to investigate crimes during the armed conflict and secure justice for victims and their families.

On 8 December 2011, the State party informed the Committee that the Government had decided to grant an immediate relief amount of 150,000 Nepalese rupees to the author and his family. It was also decided that the Ministry of Home Affairs and the Ministry of Defence would develop a mechanism to prevent the reoccurrence of such incidents in future, and that the Ministry of Peace and Reconstruction would write to the future Truth and Reconciliation Commission, to carry out investigation into the alleged torture inflicted on the author.

The State party’s submissions were sent to the author in December 2011, for comments. The Committee will await receipt of further information before finally deciding on the matter.

The Committee considers the follow-up dialogue ongoing, while noting the current steps taken by the State party to satisfactorily implement the recommendation.”

Further information:

On 20 July 2012 the author’s counsel wrote to the Special Rapporteur on Follow-up to Views, with reference to the meeting held during the Committee’s 105th session. She recalled her briefing to the Rapporteur on the current political situation in the State party, and the latter’s failure to establish transitional justice mechanisms, despite assurances that it would investigate the violations found by the Committee through a yet to be established transitional justice mechanism (see further detail of the same letter described in relation to Sharma, above).

The author’s Counsel confirmed that to date Mr Giri had not received the Rs. 150,000 that the State Party had committed to providing, despite Mr Giri attending in person at the Ministry of Peace and Reconstruction on 19 March 2012 to collect the money.

On 29 August 2012 the State Party provided a further response.

On 20 March 2013 the Author’s counsel confirmed that Mr Giri had received Rs. 150,000 in interim relief, but that no further steps had been taken to implement the Committee’s views.

A further response from the State Party was sent on 19 September 2013. The author responded on 14 November 2013.
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<th><strong>Summary of facts:</strong></th>
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<tr>
<td>Mr Dev Bahadur Maharjan was dragged from his house in the middle of the night on 26 November 2003 by members of the Nepal Army. He was illegally detained incommunicado at the Chhauni military barracks from the time of his arrest until 17 September 2004, when he was transferred to a detention facility. While Mr Maharjan was detained in the military barracks, he was subject to torture and ill-treatment. Once transferred to the detention facility he was kept in overcrowded rooms infested with lice, was made to sleep on a blanket on the floor, and was allowed to wash only three times during the period of his detention there. Mr Maharjan was finally released from detention on 7 January 2005, after his sister filed a petition for a writ of habeas corpus. The state party did not carry out any investigation into Mr Maharjan’s enforced disappearance and torture, nor give him any compensation for his illegal arrest and detention, or torture.</td>
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<th><strong>Violations:</strong></th>
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<td>2(3), 7, 9, 10</td>
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<th><strong>Remedy:</strong></th>
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<td>“In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author and his family with an effective remedy, by (a) ensuring a thorough and diligent investigation into the torture and ill-treatment suffered by the author; (b) the prosecution and punishment of those responsible; (c) providing the author and his family with adequate compensation for all the violations suffered; and (d) amending its legislation so as to bring it into conformity with the Covenant, including the amendment and extension of the 35-day statutory limitation from the event of torture or the date of release for bringing claims under the Compensation relating to Torture Act; the enactment of legislation defining and criminalizing torture; and the repealing of all laws granting impunity to alleged perpetrators of acts of torture and enforced disappearance. In doing so, the State party shall ensure that the author and his family are protected from acts of reprisals or intimidation. The State party is also under an obligation to prevent similar violations in the future.”</td>
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<th><strong>Follow-up:</strong></th>
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<td>On 20 March 2013 the Author’s counsel wrote to the Committee to advise that the author and his family have not received any payments above NRs. 25,000 provided generally to victims of “abduction” from the conflict period. Mr Maharjan has not been provided with any other remedy or reparation, despite the adoption of the Committee’s Views in July 2012 finding numerous violations of the Covenant.</td>
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<td>On 6 February 2014 the Author made further enquiries and was told that papers have been prepared for the award of NRs. 150,000 (USD 1,500) in “interim relief” to him. According to the government official the papers are awaiting approval by the Cabinet.</td>
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<td>Summary of facts:</td>
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<td>Mr Mukunda Sedai was arbitrarily arrested by plain-clothes men while playing cards at a tea stall nearby his Kathmandu apartment in 2003. According to the testimony of witnesses, he was subsequently detained in the custody of the Jagadal Batallion stationed at Chhauni Army Barracks to the west of Kathmandu but there have been no reported sightings of him since mid-February 2004. His wife received a handwritten note from the victim on 16 January 2004 which stated that Mukunda was being detained at Chhauni Barracks. The state authorities repeatedly denied detaining the victim, but the National Human Rights Commission, which conducted an investigation into the disappearance of the victim, concluded that he had been arrested by Army personnel and was detained at Chhauni Barracks. Despite repeated attempts by his wife, friends and family members to locate the victim, his whereabouts still remain unknown.</td>
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<td>Violations:</td>
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<td>2(3), 6(1), 7, 9, 10(1)</td>
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<td>Remedy:</td>
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<td>“In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author and his family with an effective remedy, including by: (a) conducting a thorough and effective investigation into Mr. Sedhai’s disappearance; (b) providing the author and her family with detailed information about the results of its investigation; (c) releasing him immediately if he is still being detained incommunicado; (d) in the event that Mr. Sedhai is deceased, handing over his remains to his family; (e) prosecuting, trying and punishing those responsible for the violations committed; and (f) providing adequate compensation to the author and her children for the violations suffered and to Mr. Sedhai, if he is still alive. The State party is also under an obligation to take steps to prevent similar violations in the future.”</td>
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<td>Follow-up:</td>
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<td>The 180 day period within which the State Party was requested to report to the Committee on implementation of the views expired on 15 January 2014. The Author is not aware of any steps having been taken to implement the views to date. She has not received any relief after the decision of the Committee.</td>
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