

NEPAL

Follow-up - Jurisprudence Action by Treaty Bodies

CCPR, A/64/40, vol. I (2009)

VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

230. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Ms. Ruth Wedgwood has been the Special Rapporteur since July 2009 (ninety-sixth session).

231. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 543 Views out of the 681 Views adopted since 1979 concluded that there had been a violation of the Covenant.

232. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

233. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

234. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

235. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the ninety-sixth session (13-31 July 2009), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory,

in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

236. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/63/40) is set out in annex IX to volume II of the present annual report.

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Nepal (1)	1469/2006, <i>Sharma</i> A/64/40					X
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A/64/40 vol. II (2009)

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Annex IX

Follow-up of the Human Rights Committee on individual communications under the Optional Protocol to the International Covenant on Civil and Political Rights

This report sets out all information provided by States parties and authors or their counsel since the last annual report (A/63/40).

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State party	Nepal
Case	<i>Sharma, 1469/2006</i>
Views adopted on	28 October 2008
Issues and violations found	Disappearance, failure to investigate - articles 2, paragraph 3; 7, 9; 10; and 2, paragraph 3, read together with article 7, 9 and 10 with regard to the author's husband; article 7, read together with article 2, paragraph 3, with regard to the author's herself.
Remedy recommended	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.
Due date for State party response	28 October 2009
Date of State party	27 October 2009

response

State party response

The State party submits that Mrs. Yeshoda Sharma, will be provided with the sum of NRs. 200,000.00 (around 1,896.67 euros) as an immediate remedy. With respect to an investigation, the case of the alleged disappearance of Mr. Surya Prasad will be referred to the Independent Disappearance Commission to be constituted by the Government. A Bill has already been submitted to the Parliament and once legislation has been enacted, the Commission is being constituted as a matter of priority.

Author's comments

Awaiting author's comments

Consultations with the State party

A meeting should be arranged between the State party and the Rapporteur during the ninety-seventh session in October 2009.

Committee's Decision

The Committee considers the dialogue ongoing.

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Chapter VI. Follow-up on individual communications under the Optional Protocol

202. The present chapter sets out all information provided by States parties and authors or their counsel since the last annual report (A/64/40).

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State party	Nepal
Case	<i>Sharma, 1469/2006</i>
Views adopted on	28 October 2008
Issues and violations found	Disappearance, failure to investigate - articles 7, 9, 10 and 2, paragraph 3, read together with article 7, 9 and 10 with regard to the author's husband; and of article 7, alone and read together with article 2, paragraph 3, with regard to the author herself.
Remedy recommended	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.
Due date for State party response	28 April 2009
Date of State party response	27 April 2009
State party response	The State party submitted that Ms. Yasoda Sharma would be provided with the sum of Nr 200,000 (around 1,896.67 euros) as

an immediate remedy. With respect to an investigation, the case of the alleged disappearance of Mr. Surya Prasad Sharma would be referred to the Independent Disappearance Commission to be constituted by the Government. A Bill has already been submitted to Parliament and once legislation has been enacted, the Commission will be constituted as a matter of priority.

Author's comments

On 30 June 2009, the author responded to the State party's submission of 27 April 2009. The author highlights that it has 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, the author argues that there is no clear timeline for the passing of the relevant legislation or for the establishment of the proposed Commission. Neither is 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 does have the power to refer cases of disappearances for prosecution, there is no guarantee that a prosecution would take place or that it would be prompt. Thus, in the author's view the said Commission cannot 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 highlights 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 must 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 suggests 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 Nr 200,000, the author states that, apart from the fact that Ms. Sharma has not yet received this amount, it would not amount to "adequate" compensation required by the Committee.

The author argues that she is entitled to a substantial amount to cover all pecuniary and non-pecuniary damage suffered. For the purposes of calculation, the author suggests that the Government of Nepal contact Ms. Sharma to obtain estimates of all costs incurred. In the meantime, the author hopes that the State party will initiate a criminal investigation, immediately pay the Nr 200,000 already proposed as immediate relief and initiate communication with Ms. Sharma about the progress of the investigations and the amount of compensation outstanding.

Consultations with the State party

On 28 October 2009, the Special Rapporteur for follow-up on Views 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 a 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 equality, would all have to be considered in the same way, i.e., through the Disappearance Commission and Truth and Reconciliation Commission which would be set up shortly. They stated that the legislation is before Parliament, the functioning of which is currently being obstructed, but that the enactment of legislation in this regard is assured. They could give no deadline for its enactment.

On compensation, the representatives stated that the author had not accepted the unconditional preliminary amount proposed subject to review following investigation by the Disappearance Commission. Following a request by the Special Rapporteur, the representatives promised to forward a copy of the compensation proposal that was sent to the author as well as the way in which the amount was calculated. 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 is recovering from civil war and that the path to democracy is a very slow one.

Committee's Decision

The Committee considers the dialogue ongoing.

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