

# Yashoda Sharma: a wife's fight for justice



Advocacy Forum, Nepal

# **Yashoda Sharma: A Wife's Fight for Justice**

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# INTRODUCTION

*“Though the possibility of people like us getting justice in this country is very difficult, I cannot betray my husband. I have tried everything possible to get the truth about my husband, I have moved to the international level too. Despite all the difficulties that I have to go through I will continue to search for the truth and to get justice.” Yashoda Sharma (known as Jasodha), wife of Surya Prasad Sharma.*

Surya Prasad Sharma was not a child, he was not a woman, and there is very little known about the reasons for his disappearance, the accusations against him and the treatment he received in detention. It is not a case that immediately stands out among the estimated 3,500 other disappearance cases in Nepal that occurred during the 10 years of the armed conflict.<sup>1</sup>

For many reasons, Surya Prasad Sharma nevertheless is representative of the majority of disappearance cases in Nepal. The struggle faced

<sup>1</sup> The International Committee of the Red Cross (ICRC) has recorded 3,500 disappearances since 1999. In 2009, the fate or whereabouts of 1,300 of these people remained unknown. Surya Prasad Sharma is among those considered still missing. See "Missing Persons in Nepal. The Right To Know", ICRC, 2009. <http://www.icrc.org/eng/assets/files/2011/families-of-missing-persons-nepal-report.pdf>

by Yashoda Sharma to obtain information on her husband's fate or whereabouts, the denial by the authorities and the failures of the legal system, are illustrative of the difficulties faced by many of the families of the disappeared. The struggle she faced to continue with everyday life, to support her family and three children after the loss of her husband also illustrate the difficulties faced by many families in a context where the government did not provide any support to those affected in this way. The discrimination, and the intimidation meted out to her by the very authorities supposed to protect her and her family are illustrative of the circumstances that many families lived through during the armed conflict and the period since.

It is the determination and strength of Yashoda Sharma, when faced with all of this that led her to be the first Nepali citizen to use the individual complaints procedures set out in the Optional Protocol to the ICCPR. By pursuing justice at the national level, and exhausting all possible avenues she was able to access the UN Committee on Human Rights. In doing so she has shown a way for all other victims, and has brought renewed hope to all those who have suffered as she has. She has brought the plight of the victims of the armed conflict and the failures of the Nepalese legal system into full view of the international community.

*"I had lost all hope of receiving any kind of justice. However, submitting my case to the Human Rights Committee raised a shimmer of hope in me. Ms. Mandira Sharma carried out an enormous task on my behalf. She assured me of getting justice from the Committee. The Committee gave the decision which I was expecting. The recommendation from the committee to locate my husband within 180 days and provide my family compensation was really a good decision for me. Following this I was told by Mandira that the government has decided to give*

*me NRs. 200,000 as interim relief. I applied to the Local Peace Committee and the District Administration Office attaching a copy of the Human Rights Committee's decision but they provided me with just NRs. 100,000 apart from interim relief. In certain programmes my husband's case gets discussed but at other times everyone takes the case lightly, like any other case. I am still deprived of justice.”<sup>2</sup>*

The disappearance of Surya Prasad Sharma was the first individual communication against the Government of Nepal before the Human Rights Committee, the treaty body set up under the International Covenant on Civil and Political Rights (ICCPR). Submitted on 26 April 2006, the Committee adopted its decision (formally referred to as “Views”) on 28 October 2008. The Views adopted by the Committee found that there were violations of the following ICCPR articles: Article 2(3) the right to an effective remedy, Article 7 the right not to be tortured, Article 9 the right to liberty and security of the person and Article 10 respect for the inherent dignity of a human person. It also found that the disappearance of Surya Prasad Sharma was a violation of Yashoda Sharma's rights under Article 7 (the right to not be tortured).

## CASE INFORMATION

Surya Sharma had been a left wing activist for many years prior to the Maoist uprising. He was a supporter of the movement opposing the *panchayat* system. His marriage to Yashoda Sharma was his second marriage, his first wife having died at a young age. His marriage to Yashoda was unconventional in several ways. It was a love marriage, that broke caste rules and they had very little money. They also did not have a traditional wedding ceremony, preferring instead to go to the

<sup>2</sup> Yashoda Sharma, interview with Advocacy Forum representative Nikesh Sharma.

river by themselves, with no family or relations and get married on their own, as a form of revolutionary marriage. These factors combined made life very difficult for the new family. There was a lot of negative gossip about them. However they managed to set up a small business that they hoped would support them and their three young children.

When the Maoist movement started, Surya Sharma came under a lot of scrutiny due to his past political activities. Fearing that he would be arrested he decided it was best to go underground. This decision made an already difficult situation even worse for Yashoda Sharma as she was ostracised by the community who was afraid of being associated with the wife of a Maoist. She had to take out a loan to support the failing business and her children. However she took on these hardships gracefully and never cried in public. During his time underground Surya Sharma would come home from time to time to visit his family. Although they were happy to see him on these occasions, it also made life difficult for the three very young children had to learn to not tell anyone they had seen their father.

When Surya Sharma returned to his house on 12 January 2002, he looked very tired and unwell; Yashoda felt that he needed medical attention.

Word of his presence at the family house got out and at 5 am on 14 January 2002, a group of 10-15 uniformed army personnel arrived at his home at Srinagar Tole, Baglung district. The soldiers woke the occupants of the house. The captain in charge (name unknown) and another soldier entered the house and arrested Surya Prasad Sharma in his bed. He was taken outside and beaten up. He was then informed that he was to be taken to the army barracks and interrogated. The house was searched for ammunitions and Maoist related documents. Nothing was found. The house was surrounded by army personnel.

After the army took her husband, Yashoda Sharma went upstairs and looked out of a window through which she could see the Kalidal Gulma army barracks. She saw her husband being led into the camp through gate no. 2.

On 15 January 2002, Yashoda Sharma visited the army barracks with food and warm clothes for her husband. Army personnel at the gate denied her access to her husband and told that she could not leave the supplies for him. However she was told that her husband was safe.

On 20 January 2002, a soldier visited Yashoda Sharma at her residence, stating that her husband had sent him to collect tobacco for him. The soldier did not disclose his ID. However, the soldier was able to ask for Surya Sharma's choice brand of tobacco by its exact name. Yashoda Sharma provided the tobacco to the soldier. The soldier told her that her husband had been beaten. He also requested that she not disclose to anyone that he had visited her on behalf of her husband. Two days later she heard rumours that her husband has been severely tortured in the barracks. Following this information she once again tried to visit her husband at the barracks, but was again denied access on both occasions.

On 23 January 2002, she visited the barracks again, this time with her mother-in-law who was sick with anguish about her son's arrest and disappearance. First they went to gate no. 2 where they were asked to go to gate no. 1. At that gate, they were asked why they were there. When Yashoda Sharma told them she wanted to visit Surya a soldier asked them to wait, and went inside. When he returned he informed them that Surya Sharma had escaped on 21 January 2002 while being taken to Amalachour village to locate Maoist hideouts. He also told Yashoda Sharma that Surya Sharma had drowned in the Kaligandaki river during an attempt to escape.

On 2 February 2002, she visited the barracks again and met with Major Chandra Bahadur Pun. She inquired as to under which charge her husband was being held and to his state of health. Major Chandra Bahadur Pun declared that Surya Sharma was involved in terrorist activities, and that troops had taken him on patrol in order to identify other Maoists terrorists during which time he escaped from custody. She questioned this statement of Major Chandra Bahadur Pun regarding her husband's alleged escape from custody and asked for her husband's body, in the eventuality that he had been killed by the armed forces. The Major denied that any murder had occurred, refused to disclose any further information, and asked her to leave.

On 3 February 2002, Yashoda Sharma contacted the Chief District Officer (CDO) and enquired as to under which law her husband was detained. The CDO informed her that because of the state of emergency, he could not provide detailed information on her husband.

On 12 February 2002 Amnesty International published an "Urgent Action" appeal for the safe release of Surya Prasad Sharma.

Before he was arrested, during the time he was underground Surya Sharma repetitively told his wife to not believe people who said he was dead unless she saw his body. He told her that people would tell of activists' deaths to try and weaken support for the party.

After Surya's arrest, Yashoda Sarma's phone line was disconnected. She went to several agencies to try and have it re-connected, but to no avail. The disconnection she believes was part of an attempt to intimidate her and isolate her even further.

She was already to a great part ostracised by her community. But in the aftermath of Surya's arrest it got even worse. As she did not believe he was dead, she refused to dress as a widower and continued to wear the red *tika*, the beads and the red sari of married women. This caused a

lot of talk in the village. Furthermore the festivals of Tihar and Dasai, are both very important religious festivals in Nepal. Ever since her husband's disappearance, Yashoda has felt unable to enjoy these celebrations in his absence, and has therefore pretended to have her period during each of these festivals, to avoid having to participate.<sup>3</sup>

### ***APPEALS TO THE NATIONAL HUMAN RIGHTS COMMISSION***

Desperate for information on the fate of her husband, Yashoda Sharma appealed to Nepal's National Human Rights Commission (NHRC) on 9 September 2002 and several human rights organisations. These bodies were unable to assist her.

The NHRC on 20 January 2006 reported to Yashoda Sharma that they had received information from the government that her husband had escaped from custody. They also stated that their investigations had not completed. When she subsequently contacted the NHRC, the response was the same.

### ***APPROACHING THE SUPREME COURT***

On 4 February 2003, Yashoda filed a *habeas corpus* writ petition with the assistance of Advocacy Forum against the Home Ministry, the Defence Ministry, the Police Headquarters, the Army Head Office, the District Administration Office (DAO) of Baglung, the District Police Office of Baglung, and the Khadgadal Barracks of Baglung.<sup>4</sup> The same day she approached the Baglung District Police Office for information on her husband, without success. She was told that they had no time to

<sup>3</sup> In Nepal, traditionally women are not allowed to participate in activities nor touch any food that is to be shared during menstruation.

<sup>4</sup> Annex 1 writ application filed at the Supreme Court of Nepal.

hear her case. On 5 February 2003, the Supreme Court ordered the respondents to show cause and provide reasons for the alleged victim's detention.

The Supreme Court received responses from all the respondents between February and April 2003. All of whom, except for the CDO, denied the arrest and detention of Surya Sharma. They stated that they had not made any order for his arrest, had not arrested him and were not illegally detaining him. On that basis, they demanded that the writ of *habeas corpus* be quashed. However, the CDO responded to the court stating that, as per his records, Surya Prasad Sharma was arrested by the security forces and had escaped while patrolling and jumped into the river from which he did not emerge.<sup>5</sup>

The Supreme Court asked for details about the incidents from CDO in Baglung. A reply dated 2 April 2003 reads:

*“On 21 January 2002, while the patrol team of the then Kalidal barrack was heading towards Modi River and Kligandaki River Confluence, the Maoist insurgents blasted an ambush at around 6pm before the patrol team could reach the rivers confluence. The patrol security forces resorted to retaliation and the two Maoists jumped into the Kaligandaki River. In the meantime, Surya Prasad Sharma who was then with patrol security forces to arrest other Maoist insurgents in the southern region also jumped into the Kaligandaki River grabbing the advantage of the situation. He did not appear out of the river for about one and a half hours.”<sup>6</sup>*

<sup>5</sup> Annex 2 written reply of Baglung CDO to the Supreme Court.

<sup>6</sup> Annex 2 written reply of Baglung CDO to the Supreme Court.

The Court asked for further details to be provided by the Office of the Attorney General. The Office of the Attorney General reported that:

*“the Kalidal Gulm (barracks) had moved to some other place and Khadgadal Gulm (barracks) had come to Baglung. Thus, the latter had neither arrested nor received any information on Surya’s case by the prior barracks”.*

The Attorney General’s Office upheld the CDO’s description of events regarding Surya Sharma’s disappearance.

On 12 November 2003, the Supreme Court again ordered the CDO to provide clarification on the law under which the arrest occurred.<sup>7</sup> In its second reply, the CDO reported that it had already provided details of the death of Sharma, and stated further that he had been arrested by the security forces, in particular those stationed at Kalidal Gulma (barracks), under no order or act by the CDO, but for the purposes of their own investigation.<sup>8</sup> As to the question of the arresting authority, the CDO responded that

*“[T]he record shows that Surya Prasad Sharma disappeared by jumping into the river before he could be charged with any allegation and be produced before the competent authority. So, as he could be acted by any law and the competent authority did not have chance to use its jurisdiction in his case, there is no condition to say that he was arrested.”<sup>9</sup>*

<sup>7</sup> Annex written reply of AG office to the Supreme Court.

<sup>8</sup> Annex 3 Letter from the Supreme Court to the CDO.

<sup>9</sup> Annex 1 writ application filed at the Supreme Court of Nepal.

On 16 February 2005, the Supreme Court quashed the writ of habeas corpus. Yashoda Sharma waited for 7 months for the grounds under which the writ was quashed to be provided. On 23 September 2005 the decision of the Supreme Court was finally published. It stated that

*'the written response submitted by the Chief District Officer states security force from Kalidal Gulma had gone for that on 21 January 2002, the patrolling in southern belt of the district to arrest the terrorists, taking the benefits of this, Surya jumped over the river and did not come out. The Home Ministry also supported the same version of CDO with the letter dated 2 February 2005. So, it seems that at present Surya Sharma is not in custody or control of the state. If that appears in future, the right to file the writ of habeas corpus is secured, so now there is no need to issue the writ it gets quashed.'*<sup>10</sup>

The Supreme Court took no action to compel the respondents to produce the complainant's husband or his body, or to order an investigation though evidence had established that the security forces apprehended him.

### **OTHER MEASURES TAKEN**

In 2004, due to mounting pressure from family members of missing persons and civil society organisations, the then government formed an Investigation Committee (known as Malegu Committee) under the Under-Secretary of the Home Ministry, Narayan Gopal Malegu,

<sup>10</sup> Annex 4 Second letter by Baglung CDO to Supreme Court.

to publicly declare the location of missing persons. On 12 September 2004, the Malegu Committee published a list of missing persons. This list included the name of Surya Prasad Sharma and quoted the response of the CDO to the case as death by drowning in a river while attempting to escape from custody. No further evidence of his whereabouts or his body was produced.

The Home Ministry in a letter of 2 February 2005 supported the abovementioned replies of the CDO and reaffirmed that Surya Sharma was not in army custody or placed under their control.<sup>11</sup>

On 26 April 2006, with the support of Advocacy Forum, Yashoda Sharma submitted an individual petition to the Human Rights Committee for violations of articles 2(3) in connection with articles 6, 7, 9 and 10 of the ICCPR. Although the government responded on the admissibility of the case, it failed to provide a response on the merits, thereby effectively denying Yashoda Sharma any further information on what had happened to her husband after his arrest. The views of the Committee were adopted on 28 October 2008:

“[T]he committee concludes that the facts before it reveal a violation of article 2 paragraph 3 read together with articles 7 and article 9 and article 10 with regards to the authors husband and a violation of article 2 paragraph 3 read together with article 7 in regards to the author herself.”<sup>12</sup>

It found that in the circumstances it was inappropriate to make a ruling on a violation of article 6, as it has not been fully established

<sup>11</sup> Annex 5 Decision of the Supreme Court.

<sup>12</sup> Annex 6 Response of the Home Ministry to the Supreme Court.

that Mr Sharma is deceased, as there has not been a full inquiry. The Committee held that,

“[I]n 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 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 in the future.”<sup>13</sup>

Since the adoption of these Views, Yashoda Sharma with the support of Advocacy Forum has repeatedly tried to obtain from the government that they fulfil their obligations towards her. There has been a regular submission of follow-up reports submitted to the Secretary of the Human Rights Committee by both Advocacy forum and by the Government of Nepal. However Yashoda Sharma has only received NRs. 200,000 as interim relief.<sup>14</sup> The government has stated that full compensation will be paid once the amount has been determined

<sup>13</sup> See Communication No.1469/2006 6 November 2008, CCPR/C/94/D/1469/2006 para. 8.

<sup>14</sup> Communication No.1469/2006 6 November 2008, CCPR/C/94/D/1469/2006, para. 9.

through a full investigation of the case. No investigation has been initiated.

Although Yashoda Sharma is grateful for the interim relief she has received, and is also aware of the fact that other families who have received compensation only received half this amount, the fact remains that the amount remains inadequate in comparison to the suffering she and her family have been put through. It is her contention that she as well as all other victims of disappearances and their families should receive compensation and reparation that reflects the gravity of the crime committed, as reflected in the decision by the UN Human Rights Committee.

#### **SEPARATING FACT FROM FICTION**

4 During the “investigation” into the *habeas corpus* petition submitted by Yashoda Sharma, the response submitted by the barracks was that they did not detain Surya Sharma, and that in fact it was a different battalion which was present there at the time of his disappearance. However, there does not seem to have been an attempt to contact and question the commanders of the battalion who were present at the time of his detention. Yashoda Sharma, when inquiring at the barracks herself was informed by Major Chandra Bahadur Pun that her husband had died while trying to escape. However, this Major was not a respondent during the case before the Supreme Court. Although she did not receive any direct threats, she felt the circumstances at the time meant that naming the Major as a defendant would bring harm to her family.

Furthermore, it was argued by the government (and this was accepted by the Supreme Court) that Surya Prasad Sharma was not arrested nor in custody, as he was never charged with a crime, his death having occurred before this procedure could take place.

*“he was as the matter of fact not arrested but was merely taken into control for investigation. There were chances that he could be arrested if required so and then produce him before the competent authority within 24 hours of his arrest, but it is found that Surya Prasad Sharma jumped into the river during the investigation phase and disappeared, before his case could be proceeded.”<sup>15</sup>*

However, stating that he was in fact not arrested, but being “investigated” does not negate the fact that at the time of his death, he was allegedly being held against his will and in *incommunicado* detention by the army. The Nepali law applicable at the time was the Terrorist and Disruptive Activities Ordinance of November 2001 (TADO).<sup>16</sup> This Ordinance allowed for the detention of a suspected terrorist for up to 90 days without charge. However even under TADO he should have been produced before the CDO within 24 hours of his arrest. This did not occur. The assertion by the CDO that he died before this procedure could be completed may be the truth<sup>17</sup>, but remains a violation of his rights: he was arrested on 14 January and allegedly died or escaped on 21 January; the 24-hour deadline had long passed. However there has been no effort by any authority to investigate the reasons for this failure. Finally it has never actually been stated by

<sup>15</sup> The Government of Nepal used the term “immediate relief” in its letter of 27 April 2009.

<sup>16</sup> The Terrorism and Disruptive Activities Act (TADA) was adopted into law by Parliament in 2002. Its provisions had earlier been promulgated as an Ordinance in the TADO. It lapsed as a law in the absence of Parliament but was re-promulgated as a royal decree from October 2004. It was not renewed after it lapsed in September 2006 and is no longer in force. For more information regarding its provisions in breach of international standards, see Advocacy Forum and Human Rights Watch, ‘Waiting for Justice: Unpunished Crimes from Nepal’s Armed Conflict’ September 2008, page 46-47.

<sup>17</sup> Annex 4 Second letter by Baglung CDO to Supreme Court.

any government or legal authority on what legal basis he was being held.

### ***THE EXHAUSTION OF DOMESTIC REMEDIES***

In order for a case to be admissible before the Human Rights Committee under the individual complaints system, it is necessary for the petitioner to have exhausted all domestic remedies. The government has put forward in its response to the communication to the Human Rights Committee, that Yashoda Sharma failed to seek justice through the established criminal procedure at the national level and that by going to the Supreme Court she attempted to bypass the legal system, then claiming to have exhausted domestic remedies.

This claim by the government does not address the specific nature of the crime of disappearance and torture. In order to adequately address these crimes, a criminal justice system needs to provide specific remedies. These are not available in Nepal. Therefore, it was not possible for Yashoda Sharma to approach the normal criminal justice system in Nepal.

There is no specific prohibition on enforced disappearances under the Interim Constitution. The Interim Constitution recognises that in the past, enforced disappearances have occurred, and makes it a state duty to “provide relief to affected families of victims on the basis of the report of the Investigation Commission constituted to investigate the cases of those who went missing during the course of the conflict.” It does not provide for enforced disappearances to be made a crime *per se*. An order by the Supreme Court in 2007 to criminalise enforced and

involuntary disappearances has yet to be acted upon by the government.<sup>18</sup>

In November 2007, Nepal's Interim Legislature-Parliament instructed the Government of Nepal to draft a law on enforced disappearances that is in line with the International Convention for the Protection of all Persons from Enforced Disappearances and the landmark 1 June 2007 Supreme Court judgment. In this ruling the Supreme Court noted that the government has failed to undertake any serious efforts to address the issue of disappearances and ordered that the government form an all powerful Commission tasked to investigate the fate of disappeared persons and to formulate a law on enforced disappearances. Both the Commission and the Bill were to be based on international legal standards. A Draft Disappearances Commission Bill was tabled in Parliament in late 2009. However the definition of disappearances and the prescribed punishments in the bill fall short of international standards. Another area of concern with this draft is the provision of a statute of limitation, whereas in international law enforced disappearances are considered a continuing crime and not subject to limitations..

A draft Criminal Code submitted to Parliament in January 2011 proposes to criminalise disappearances. However this bill also fails to meet international standards. The definition of enforced disappearances needs to be amended in order to comply with international standards. Furthermore, although command criminal liability is set out in the bill, this provision needs to be clarified as it could currently be interpreted in different manners. In this bill as in

<sup>18</sup> The Supreme Court of Nepal Division Bench Order Writ no 3575, 100, 104, 323, 500, 45, 41, 155, 162, 164, 167, 97, 110, 111, 142, 211, 250, 223, 262, 378, 418, 485, 617, 632, 635, 54(0002) 0004, 2588/0038 Re: Habeas Corpus (Disappearance Decision); June 2007.

the Disappearance Commission Bill, the maximum penalty needs to be increased to life imprisonment, and the minimum penalty needs to be set out. Finally the very nature of the crime of disappearances means that the statute of limitations is too restrictive. It needs to be amended to take into account the ongoing violation that is the disappearance as well as the trauma caused to the victim who may not be able to submit a complaint immediately upon release.

In its submission to the Human Rights Committee, the government did recall that under the Nepalese legal system it is necessary to file an FIR (First Information Report) with the police for an investigation into an alleged crime to be investigated. However the government failed to mention that a FIR can only be submitted for one of the crimes listed in Schedule 1 of the State Cases Act, 1992. Enforced disappearance is not one of the crimes listed. It was and is still therefore impossible for Yashoda Sharma to submit an FIR for the disappearance of her husband.

Alternatively it could be argued that Yashoda Sharma could file cases for the separate elements of the crime of disappearance. It has been the government's contention that she should have filed a case for the death of her husband as a means of exhaustion of domestic remedies. Enforced disappearance is made up of various other human rights violations, such as torture and deprivation of the right to life. However, bringing a remedy for these human rights violations involved in a disappearance case is not possible either. Although the Interim Constitution declared torture to be unconstitutional, and established torture as a criminal offence, in the absence of a law providing criminal penalties for torture it remains in practice only a civil offence. Without legislation expressly defining the offence, torturers can only be charged under the assault provisions of the *Muluki Ain* (Country Code). In practice, this rarely occurs, as there is no impartial mechanism for receiving and investigating complaints against torture and it is the

police (in many cases the torturers themselves) to whom a complaint must be made. Under these circumstances, charges lodged against public officials are rarely investigated seriously. Further, the *Muluki Ain's* definition of “assault” does not account for the unique nature of torture, including the psychological impact of the offence.<sup>19</sup>

Filing an FIR for the alleged killing of Surya Prasad Sharma could have been a possibility; however it would not have created the likelihood of adequate redress for his disappearance and does not reflect the gravity of the crime committed. Furthermore filing a case for murder without proof that death occurred (i.e. without a body) is unlikely to succeed. In the experience of AF, filing a case for a conflict related crime in Nepal is highly unlikely to succeed. Since 2006, AF has helped victims and families of victims file FIRs for cases of alleged extrajudicial killings, and disappearances (where there is evidence that the person has died) committed by security forces in the period between 2002 and 2006, as well as FIRs for cases of alleged killings by members of CPN-M. During the armed conflict the police would refuse to file FIRs for human rights violations and people were too afraid of retaliation for even just trying to file a FIR. Since 2006 some relatives have been able to file FIRs but in most cases, for these FIRs to be filed it involves a long process of several attempts, support of NGOs and often resorting to petitioning the courts to order the police to investigate. Up until November 2010, a total of 65 FIRs filed with the assistance of AF have been registered, while 20 are still awaiting registration. Five among the 65 that were registered concern human rights abuses committed by the CPN-M.

The filing of an FIR is only the first hurdle. The police routinely fail to gather evidence and prepare cases for prosecution. They also refuse

<sup>19</sup> *Ibid.*, p. 16.

to inform families of the progress in the investigations. In some cases the courts have even sided with the police and failed to order an investigation, arguing that the transitional justice mechanisms such as the Truth and Reconciliation Commission will take care of such cases.

In some cases even two Supreme Court orders, one to file the FIR and one to investigate have not been sufficient and failed to lead to effective investigations. A ruling by the Supreme Court in the disappearance of Sanjeev Kumar Karna and 4 other students in the Dhanusha district where the court directed the police to register and proceed with the investigations, should have been sufficient. Instead the Dhanusha DPO informed AF that it could not act on any conflict related FIRs and that such FIRs have been filed away separately.<sup>20</sup> In the end, the NHRC proceeded with the exhumation of the five bodies thought to be those of the students in September 2010 and February 2011.

In the few cases where the police appear to have started investigations, the army, APF, and Maoists have consistently refused to cooperate.

Nor was it possible for Yashoda Sharma to file for compensation under the Torture Compensation Act of 1996. Section 5(2) of the TCA allows a family member to make a request to a court on behalf of a victim of torture to obtain a health check-up. However, in a disappearance case it is impossible for this family to obtain any evidence of the whereabouts of the detainee, and therefore s/he cannot get such an order. In any event, under this Act the burden of proof is on the victim to prove torture, not on the alleged perpetrator to disprove it. For a case to be successful a copy of a physical or mental check-up

<sup>20</sup> Advocacy Forum and Human Rights Watch, 'Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict' September 2008.

report must be made available to the concerned District Court.<sup>21</sup> This excludes cases of disappearance. In any event, any case under the TCA is a civil procedure, not a criminal one; at best victims can obtain compensation and get the court to order disciplinary action against the alleged perpetrator. There is no possibility of criminal charges resulting from the complaint.

It was therefore impossible for Yashoda Sharma, under the existing Nepalese legal system to seek redress for the disappearance of her husband as the existing legal system lacks the necessary mechanisms to allow her to submit a complaint to the competent authorities. However this does not mean that she remained without taking any action. Indeed she took all the measures that were available to her such as filing a *habeas corpus* petition in the Supreme Court and complaining to the NHRC.

## THE INDEPENDENT DISAPPEARANCES COMMISSION

The Comprehensive Peace Agreement signed on 21 November 2006 set out the parties undertaking to clarify the fate of those disappeared within 60 days.<sup>22</sup> On 23 December 2007, more than one year later, the government undertook to set up a commission within a month to investigate the alleged disappearances. Such commitment has been repeated in several agreements between the political parties since; most recently in the 7-point agreement of 1 November 2011. But to date, the Commission has still not been established.

<sup>21</sup> Torture Compensation Act of 1996, (3)(3).

<sup>22</sup> Comprehensive Peace Accord Concluded between the Government of Nepal and the Communist Party of Nepal (Maoist) 21 November 2006 para 5.2.3.

In its letter of 27 April 2009 to the Human Rights Committee, the government stated that:

*“For investigation, the case of alleged disappearance of Surya Prasad Sharma will be referred to the Independent Disappearance[s] Commission to be constituted by the government of Nepal shortly. A bill relating to the Commission has already been submitted to the ongoing session of parliament of Nepal. Following the enactment of the legislation, the Commission is being constituted as a matter of priority.”<sup>23</sup>*

However the legislation has not yet been adopted and the commission has not been established. The obligation is not only to conduct a “full investigation”; it is also to be “prompt”. Surya Sharma was disappeared 9 years ago. The concept that an investigation to be carried out by a commission that was promised as part of the Comprehensive Peace Agreement in 2006 and has failed to materialise since will fulfil the government’s obligation to investigate fully, impartially and promptly a 9 year old case illustrates the government’s failure to take its obligations seriously. In a letter of 28 July 2010, the government once again stated its commitment to this process, referring to the fact that the bills had been submitted to the legislative parliament as evidence of this commitment.

The second problem with this argument is that under its international obligations Nepal is to initiate an investigation, and criminally prosecute those responsible. According to the draft bill of the Commission:

<sup>23</sup> Annex 7 Letter from the Permanent Mission of Nepal to the United Nations Geneva to the Secretary, Human Rights Committee, 27 April 2009.

“24. Report submitted: (1) After carrying out the investigation pursuant to this Act, The Commission shall submit its report to the Government of Nepal incorporating the following details:

- b. Matters relating to recommendations made for initiating action against such persons who are found to be guilty from the investigation carried out, [...]
- f. Matters relating to the recommendation on reparation in pursuant to Section 22.”<sup>24</sup>

This makes it clear that the Commission itself is not a criminal procedure, and will not be carrying out criminal investigations into the disappearances. Its mandate is to establish the truth about events that occurred during the armed conflict. This is an important goal in itself and its importance in establishing lasting peace and democracy in Nepal must not be underestimated. But neither should the importance of ensuring that crimes such as murder, torture, extrajudicial killing and disappearances be prosecuted before the competent judicial authorities. Yashoda Sharma is requesting that a draft penal code and criminal procedure code be amended and brought in line with Nepal’s international obligations in regards to criminalising acts of torture and enforced and involuntary disappearances.

Other than the legal and moral obligations of the government, failure to investigate and prosecute the enforced disappearance of Surya Sharma would result in the absence of a deterrent to prevent military

<sup>24</sup> *A bill relating to Providing for the Disappearances* (November 2009) as sent to the Council of Ministers by the Peace Ministry.

or security forces from carrying out the same violations in the future. Furthermore, if past human rights violations remain unpunished, it will undermine the rule of law and the foundations of the new democratic institutions.

On a more personal level, it would also be a case of breaking the promises made to Yashoda Sharma's counsel by the Office of the Prime Minister and the Council of Ministers who promised that the government would "form a team for criminal investigation."

In response to Yashoda Sharma and her counsel's expression of concern that the creation of a team for the criminal investigation could not be formed due to objections by the army, concerns raised following discussions with the Office of the Prime Minister, the government of Nepal responded that

*"The Army, which is an institution under the government of Nepal and which functions in accordance with the existing laws, fully cooperates and supports the activities and initiations of the government in all conditions"*<sup>25</sup>

This statement is in direct contradiction to the actions of the Nepal Army, who have been obstructing the investigation of several cases. Perhaps the clearest manifestation of the longstanding culture of impunity in the country for both for conflict and post-conflict crimes of human rights violations is the successful defiance of court orders by both the Nepal Army and the CPN-M. Despite their public commitments, constant attention from the human rights community,

<sup>25</sup> Annex 7 Letter from the Permanent Mission of Nepal to the United Nations Geneva to the Secretary, Secretariat of the Human Rights Committee July 28, 2010.

and judicial intervention, both armies have stood their ground in refusing to cooperate with investigations of any of their personnel, even at the lowest levels. Moreover, instead of allowing perpetrators to be brought to justice, the army and CPN-M authorities, promote them and appoint them to coveted position in society. The best example of this concern is army major, Nirajan Basnet, suspected of being involved in the torture and death of Maina Sunuwar who was sent on peacekeeping duties instead of being produced in court. Even after he was repatriated from the peacekeeping mission in December 2009, the army took him under its control at the airport and continued to refuse to hand him over to civilian authorities since.<sup>26</sup> In the case of the disappearance of Arjun Bahadur Lama at the hands of the CPN-M, one of the suspects, Agni Sapkota, was appointed Minister of Information instead of being handed over to the authorities for questioning.

It has also been alleged by the government that Yashoda Sharma is asking for a separate “commission” to be tasked with the investigation into her husband’s disappearance and that in that manner she is requesting special treatment.<sup>27</sup> This is a misinterpretation of her statements. What Yashoda Sharma is requesting is that the government of Nepal fulfil its obligation to initiate a criminal investigation into the disappearance of her husband within the ambit of the normal criminal justice system. As there has been no investigation for so long, it was suggested that an investigating committee could be established as the government has done repeatedly in some cases in the past. She is simply requesting that her husband’s case, and all other cases be treated with due diligence before the law.

<sup>26</sup> See Maina Sunuwar Separating Fact from Fiction, Advocacy Forum 2010.

<sup>27</sup> Annex 7 Letter from the Permanent Mission of Nepal to the United Nations Geneva to the Secretary, Secretariat of the Human Rights Committee July 28, 2010.

*'I want to know how long further I need to wait to see government being faithful and honest in telling the truth and providing justice to me and families like me?'*

Yashoda Sharma is now considering filing a new petition to the Human Rights Committee.



**ANNEX 1: WRIT PETITION FILED IN THE SUPREME COURT OF NEPAL**

**Application  
Submitted to the Supreme Court of Nepal**

**Subject: To issue habeas corpus order according to Art 88(2)  
of the constitution of the kingdom of Nepal**

Jashodha Sharma (wife) on behalf of Surya Prasad Sharma, 39, resident of Baglung Municipality-2, Baglung District .....  
.....Applicant

**Against**

His Majesty's Government, Home Ministry,  
Singhadurbar, Kathmandu ..... 1  
His Majesty's Government, Defense Ministry,  
Singh Durbar, Kathmandu ..... 1  
Police Headquarter, Naxal, Kathmandu ..... 1  
Army Headquarter, Bhadrakali, Kathmandu ..... 1  
District Administration Office, Baglung ..... 1  
District Police Office, Baglung ..... 1  
Khagdadal Barrack, Baglung ..... 1

On behalf of my husband, I am submitting this application according to Art 23, 88 (2) of the constitution of the kingdom of Nepal and Rule 31 of the Regulation of the Supreme Court.

1. On 14 January 2002, a group of some 10-15 armed RNA soldiers from the then Kalidal barrack of Baglung came to my house under the command of a captain at around 5 Am, while we were all (my husband, three children and myself) sleeping. They forced us to open the door. When I opened the door, the captain and one soldier entered the house and asked whether my husband was at home. When I told them he was sleeping inside, they entered the room and dragged him out of the room saying that some interrogation had to be made with him and that he would have to go to the army barrack with them. They made a search of entire house. He was taken outside and beaten severely. All the neighbors were threatened to shut the door. I followed him but I was not allowed to enter the army barrack. I saw my husband being taken into the barrack from Gate no. 2.
2. On the next day, on 15 January 2002, I visited the barrack with some foods and clothes. However, the security man at the gate no. 1 returned me saying that my husband was well, and neither the food nor the clothes could be provided to him. On 20 January 2002, one soldier (name and rank unknown) from the same barrack came to my house saying my husband had asked for some tobaccos. He told me that my husband was beaten severely that morning when he tried to run away while he was being taken for toilet. On the next day, on 21 January 2002, I again visited the barrack to inquire about his health status. This time, I was allowed to see my husband, but from a distance. They did not allow me to talk to him.
3. Again, on 2 February 2002, I visited the barrack and talked to the then major Mr. Chandra Bahadur Pun. I asked him about health condition of my husband and the expected period that he would be put in detention. When I asked him about the reason that required my husband's arrest he said that my husband was a maoist and that he had been taken outside on patrol with security

forces to identify other maoists. He also said that my husband would be released after completion of necessary investigation. I then returned. Despite my repeated visits to the barrack, I was not allowed to see my husband. On 3 February 2002, I went to Baglung District Administration Office but I was replied that nothing could be revealed regarding my husband in the state of emergency. On 4 February 2002, I visited Baglung District Police Office but I was not provided an inch of information regarding my husband's whereabouts.

4. In this manner, my husband was detained for about a year illegally. In April 2002, the Kalidal barrack left and it was replaced by Khagdadal barrack. I repeatedly visited the Khagdadal barrack as well but from them also, I could not get any information on my husband. They would simply say that I could not meet him. Then, I reported my husband's case to national and international human rights organizations including National Human Rights Commission, appealing for his release from illegal detention and for his life safety. Still, the opponents are not willing to give reason of his arrest.
5. I have yet not been given information about his condition and the reason of his arrest. He has not been taken to any competent authority for his remand extension. Art 14(5) of the constitution of the kingdom of Nepal provides that "the arrested person shall be provided arrest notice mentioning the reason of his arrest at the earliest possible". Similarly, Art 14(6) has the mandatory provision that "the arrestee or detainee shall be produced before the competent authority within 24 hours of his/her arrest". But, in the case of my husband, the opponents have violated these constitutional provisions. Without any arrest notice, without any allegation and without allowing him access to family members, the opponents have challenged the fundamental human rights and personal liberties enshrined in the constitution of the country.

Their moves have totally disregarded the democratic concept of rule of law as well.

6. Therefore, as my husband is being detained illegally against the Art 11, 14(4) (5) and (6), curtailing his personal liberties and fundamental rights guaranteed by the constitution, I have, in the absence of other alternatives, come to this court with this writ application under Art 88(2) of the constitution. I appeal the court to issue the habeas corpus order to the opponents to produce my illegally detained husband Surya Prasad Sharma before the court and for his immediate release from illegal detention. I further appeal to issue order for “search warrant” if necessary according to Rule 34 of the Regulation of the Supreme Court 2049 if the opponents do not comply by the court’s order to produce my husband before the court.

Applicant  
Wife Jashodha Sharma (on behalf of Surya Prasad Sharma)

Date: 4 February 2003, Tuesday

## ANNEX 2: RESPONSE FROM CHIEF DISTRICT OFFICER TO SUPREME COURT

### Written reply of Baglung CDO to the Supreme Court

1. On 21 January 2002, while the patrol team of the then Kalidal barrack was heading towards Modi River and Kaligandaki River Confluence, the Maoist insurgents blasted an ambush at around 6 Pm before the patrol team could reach the rivers confluence. The patrol security forces resorted to retaliation and the two Maoists jumped into the Kaligandaki River. In the meantime, Surya Prasad Sharma who was then with patrol security forces to arrest other Maoist insurgents in the southern region also jumped into the Kaligandaki River grabbing the advantage of the situation. He did not appear out of the river for about one and a half hours.
2. The applicant has mentioned in the application that “the District Administration Office told her that no information could be given about her husband in the state of emergency when she visited the DAO on 3 February 2002” which is nothing but a blatant lie. The DAO right then verbally gave her the information mentioned in no. 1.
3. Despite knowing the fact that her husband jumped into the river and then disappeared, the applicant has filed case to the Supreme Court making this office as opponent stating that her husband’s rights ensured by the constitution have been violated. Thus, the case shall be quashed.
4. All the details described in this letter are true.

### ANNEX 3: LETTER FROM SUPREME COURT TO HOME MINISTRY

To,  
The Secretary  
Home Ministry, Singha Durbar

**Sub: Regarding to send information**

Acting on the habeas corpus case of Surya Prasad Sharma filed by his wife where the Home Ministry was also made one of the opponents, the written reply of the Chief District Officer by the order of the division bench of this court on 206.07.26 shows that the husband of the applicant was arrested. However, the reply did not mention the authority that ordered his arresting and the laws acting on which he was arrested and kept into detention.

In this regard, the Supreme Court wrote letters (Letter no. 160 dated 2060.07.27 and Letter no. 304 dated 2060.09.25) to Chief District Officer to give details on the above mentioned concerns. The copies of the letters were also sent to the Home Ministry for information. But the concerned Chief District Officer did not respond whatsoever.

Again on 2060.11.19, another letter (no.436) was sent to the Home Ministry, attaching the copies to the Baglung Chief District Officer. Until yet, no information has been sent in this regard.

The concerned ministry, who was also communicated, did not bother to give directives to the CDO to provide necessary information to the court.

Because of irresponsibility and negligence of the Ministry and the CDO, the process to act on the habeas corpus is pending. Therefore, this court issues directive order to the CDO to come up with clear-cut reply on Surya Prasad Sharma within the three days of the reception of this letter. Otherwise, on the ground of the same, concerned officers and responsible bodies will be taken action according to Art 29 of the Justice Administration Act 2048 and Article 219(a) of the Country Code.

**ANNEX 4: SECOND RESPONSE FROM CHIEF DISTRICT OFFICER TO THE SUPREME COURT**

His Majesty's Government  
Home Ministry

**District Administration Office**  
Baglung

Letter No.: 05/06 Case Section  
Disp. No.: 1859

Dhawalagiri Zone  
Date: 5 December 2004

**Sub: Regarding to send information**

To,  
The Supreme Court  
Writ Section  
Ramshahpath, Kathmandu

We have received the letter dated 3 December 2004 with dispatch No. 2255 of the honorable Supreme Court and gone through all details.

Regarding the habeas corpus case of Surya Prasad Sharma filed by his wife Jashodha Sharma on his behalf in which the Home Ministry is also made as one of the opponents, we have sent four letters at different times responding to the court's inquiries. We are also attaching the shadow copies of those previously sent letters along with this letter.

*Details of the previously sent letters:*

First letter dated 23 November 2004 with dispatch no. 1392

Second letter dated 20 January 2005 with dispatch no. 1970

Third letter dated 11 March 2005 with dispatch no. 2476

Fourth letter dated 16 March 2005 with dispatch no. 2535

From our record, it is found that the husband of the applicant was taken into control by the security forces, and before he could be produced before the competent authority within 24 hours of his capture, he escaped from the security forces and jumped into the Kali Gandaki River and disappeared for ever.

Regarding the court's concern on the arresting authority, he was as the matter of fact not arrested but was merely taken into control for investigation. There were chances that he could be arrested if required so and then produce him before the competent authority within the 24 hours of his arrest, but it is found that Surya Prasad Sharma jumped into the river during the investigation phase and disappeared, before his case could be proceeded.

Therefore, the record shows that Surya Prasad Sharma disappeared by jumping into the river before he could be charged with any allegation and be produced before the competent authority. So, as he could not be acted by any law and the competent authority did not just have chance to use its jurisdiction in his case, there is no condition to say that he was arrested.

CC:

Home Ministry

Chief District Officer

## ANNEX 5: SUPREME COURT DECISION

The Supreme Court  
Division Bench  
Honorable Justice Khil Raj Regmi  
Honorable Justice Parmananda Jha

Order

Writ no. 138 of the year 2002

### Case: Habeas corpus writ petition

Jashoda Sharma acting on the behalf of her husband Surya Prasad Sharma of Baglung District, Baglung Municipality-2 - Applicant

### Against

|  |   |
|--|---|
| His Majesty's Government, Home Ministry,<br>Singhadurbar, Kathmandu .....    | 1 |
| His Majesty's Government, Defense Ministry,<br>Singhadurbar, Kathmandu ..... | 1 |
| Police Headquarters, Naxal, Kathmandu .....                                  | 1 |
| Army Head Office, Bhadrakali, Kathmandu .....                                | 1 |
| District Administration Office, Baglung .....                                | 1 |
| District Police Office, Baglung .....  | 1 |
| Khadgadal Gulm, Baglung .....  | 1 |

The facts of the case produced to this court according to the Art 23 and 88(2) of the Constitution of the Kingdom of Nepal are as follow:

*The details of the application for the issuance of a habeas corpus writ petition against the abovementioned opponents:*

“On 14 January 2002 (2058.10.01) at around 5 a.m., about 10-15 armed and uniformed RNA soldiers under the command of a Captain (name unknown) laid siege on my house. The soldiers had come from the then Kalidal barrack (Gulm) which was located some 250 meters away from my house. My husband Surya Prasad Sharma was then sleeping. The captain and one soldier entered and searched the house. They then brought my husband out of the house and took him with them saying he was needed for interrogation. I followed my husband but the soldiers dismissed me saying that I could not enter the barrack. I saw the soldiers taking my husband inside the barrack through gate no. 2.

The next day on 15 January 2002 (2058.10.02), I visited the barrack to see my husband but I was not allowed to. On 21 January 2002 (2058.10.08) I visited the barrack to learn of my husband’s health condition. I was only allowed to look over at my husband from some distance away. I was not allowed to talk with him. On 2 February 2002 (2058.10.20), I again visited the barrack and asked Major Chandra Bahadur Pun the reason for my husband’s arrest. He told me: ‘Your husband is involved with the Maoists, right now he is out with the patrol soldiers, we will release him only after the investigation, we cannot tell anymore than this, you must leave now.’

After illegally detaining my husband in the barrack for about a year without any charge, the Kalidal barrack shifted from there and the Khadgadal barrack came and replaced it. I also frequently visited the Khadgadal barrack but I did not receive any information on my husband. I then informed the NHRC and other national and international human rights organizations for their support in ensuring the life safety of my husband. Still, I have not yet been told the reason for my husband’s arrest and his whereabouts. This directly violates

the rights stipulated in articles 11 and 14.4(5) of the Constitution of the Kingdom of Nepal. My husband has been deprived of his personal and fundamental rights. Therefore, I appeal to this court to immediately issue a habeas corpus writ petition against the opponents to produce my husband to this court and to release him from illegal detention. I also request that a search warrant (*Khantalasi Purji*) be issued according to Rule 34 of the Supreme Court Regulation 2049 in the case where the opponents did not produce my husband to this court.”

On 7 February 2003 (2059.10.24) this court ordered the General Attorney's office and the opponents to provide written replies.

### *Written Replies of the Opponents:*

The Home Ministry and the Defence Ministry in their written replies demanded that the case be quashed saying that they had not ordered the arrest and detention of Surya Prasad Sharma. The Army Head Office, the Police Headquarters and District Police Office, Baglung also denied arresting and detaining Surya Prasad Sharma and demanded that the case be quashed.

The District Administration Office, Baglung demanded the quash mentioning that: ‘On 21 January 2002 (2058.10.08), while a patrol team of the Kalidal barrack (*Sheradil Barrack*) under the command of *Padik* was heading towards the Modi river and the Kali Gandaki river confluence, Maoist terrorists set off an ambush at around 6 p.m. During the retaliation acts of the patrol team, two Maoists jumped into the Kali Gandaki river. Surya Prasad Sharma, who was taken with the patrol team to assist them in arresting suspected Maoists, took full advantage of the situation and he too jumped into the Kali Gandaki river. He never resurfaced from the river even after half an hour. This incident had been verbally reported to the applicant.’

The statement of Jashodha Sharma dated 2 May 2003 (2060.01.19.06) taken according to no. 133 of the Court Management Rules provides:

‘On 27 March 2003 (2059.12.13), I saw my husband inside an army vehicle. All the soldiers were wearing their caps while my husband was wearing a round-shaped cap. So, it was not difficult for me to recognize him. My husband had shaved his beard and was also in army uniform. Since then, I have not been allowed to see my husband. My husband was arrested at my house on 14 January 2002 (2058.10.01) at around at 5 a.m. by the soldiers.’

The Khadgadal barrack responded that when it replaced the Kalidal barrack on 11 May 2002 (2059.01.28), the latter did not handover Surya Prasad Sharma. It also mentioned that it has neither seen nor has it had contact with him.

On 5 December 2004 (2061.08.20), the District Administration Office, Baglung replied that: ‘Records show that Surya Prasad Sharma disappeared by jumping into the river before any allegation against him could be established and before he could be produced to the concerned authority. Therefore, as everything happened before he could be charged by any authority under any Act, it cannot be claimed that he was arrested.’

*The pleadings of the advocates at the court hearing:*

On the behalf of the applicant, advocate Hari Krishna Karki pleaded: ‘Surya Prasad Sharma was arrested from his house and then detained in the Kalidal barrack. His wife was only allowed to see him from a distance. The written replies indicate that he died in detention.’

On the behalf of His Majesty’s Government, Deputy Attorney Brajesh Mishra pleaded: ‘The written replies of the District Administration Office, Baglung and the Home Ministry stipulate that Surya Prasad was not in army custody. So, the case should be quashed.’

*Decision of this court:*

The applicant has appealed to this court mainly to issue a habeas corpus writ to release her husband Surya Prasad Sharma who was arrested on January 14, 2002 (2058.10.01) and then kept in illegal detention at the Kalidal barrack of Baglung. The District Administration Office, Baglung has replied that Surya Prasad Sharma was taken to the southern side of Baglung to arrest terrorists, that he had jumped into the river during an encounter with Maoists and that he had not come out of the river for half an hour. The letter of the Home Ministry dated February 2, 2005 (2061.10.20) also supports the abovementioned reply of the District Administration Office and reaffirms that Surya Prasad Sharma was not in army custody or under their control. Thus, considering that at present date there is no necessity to issue a habeas corpus writ petition, the writ application is quashed for now.

I agree to the mentioned decision.

Justices:

Honorable Justice Khil Raj Regmi

Honorable Justice Parmananda Jha

Bench Officer: Lal Kaji Shrestha

February 16, 2005, Wednesday

**ANNEX 6: HOME MINISTRY RESPONSE TO THE  
SUPREME COURT**

**The written reply produced to the Supreme Court**

Through: Office of the Attorney General, Ramsahapath,  
Kathmandu

**Date:** Writ No. 138 of 2002

**Subject:** Habeas Corpus

His Majesty's Government, Home Ministry .....  
Defendant (written reply producer)

**Against**

Jashoda Sharma on the behalf of Surya Prasad Sharma .....  
Opponent/Petitioner

Acting on the notice dated 12 February 2003, received by this ministry that sought written reply on the case of Surya Prasad Sharma wherein this ministry was made opponent within three days through the office of the Attorney General, this ministry has following reply in this concern:

1. Other authorities who were made opponents in this case shall furnish their written replies separately. No such order has been issued by this ministry for his arresting and detention. On this ground, as this ministry has not violated any of his rights, this ministry requests to quash the registered petition.

2. We hereby also request to validate the pleading notes of the public prosecutor who will be representing on the behalf of this ministry, as a part of this written reply.

.....  
Replied by Home Ministry

## ANNEX 7: RESPONSE FROM THE GOVERNMENT OF NEPAL TO THE HUMAN RIGHTS COMMITTEE



संयुक्त राष्ट्र संघका लागि नेपालको स्थायी नियोग  
 PERMANENT MISSION OF NEPAL  
 TO THE UNITED NATIONS  
 GENEVA

CONFIDENTIAL

April 27, 2009

The Secretary  
 Secretariat of the Human Rights Committee  
 Office of the High Commissioner for Human Rights  
 Palais des Nations  
 CH 1211 Geneva 10  
 Switzerland

With reference to the note of the Secretariat of Human Rights Committee ref. G/SO 215/51 NEP. (1) of 6 November 2008, regarding the views of the Committee concerning communication no. 1469/2006 on behalf of Surya Prasad Sharma, the Mission has the honor to communicate the followings as per the instruction received from the capital:

1. In connection to the implementation of the views of the Committee pertaining to the above mentioned communication, Mrs. Yeshoda Sharma, wife of Mr. Surya Prasad Sharma, is being provided by the Government of Nepal a sum of NRs: 200,000.00 as an immediate relief.
2. For investigation, the case of alleged disappearance of Mr. Surya Prasad Sharma will be referred to the Independent Disappearance Commission to be constituted by the Government of Nepal shortly. A Bill relating to this Commission has already been submitted to the ongoing session of the Parliament of Nepal. Following the enactment of the legislation, the Commission is being constituted as a matter of priority.

The Permanent Mission of Nepal to the UN Office in Geneva would request the Secretariat to kindly bring this report of the Government of Nepal to the kind attention of the esteemed membership of the Committee.

Thanking you for your cooperation.

Bikash Raj Paudyal  
 Minister Counsellor/Deputy Permanent Representative



