

# The UN and the case of Charles Sobhraj

## Myth and reality

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The UN Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) has noted the media attention and the series of reporting further to a decision by the UN Human Rights Committee (HRC) regarding the case of Charles Sobhraj, a French national who has been convicted for murder in Nepal. A number of reports have presented inaccuracies with regard to the HRC mechanism and have sometimes created confusion regarding the role of OHCHR. However, this also demonstrates the relative complexity of the UN human rights machinery and the need to continue awareness raising activities. In Nepal, it is also a welcome opportunity for OHCHR in particular and all human rights organizations in general, to shed light on the mandate of the UN HRC and the responsibility of the OHCHR with regard to the individual complaints procedure under the International Covenant on Civil and Political Rights (hereafter ICCPR).

The ICCPR was adopted and opened for signature, ratification and accession in December 1966. Nepal ratified the ICCPR on 14 May 1991. Among the main provisions, articles 6 to 11 are considered as the core provisions for the protection of life, liberty and physical security and integrity of individuals. These rights extend to everyone within the jurisdiction of Nepal, including Charles Sobhraj, however notorious their cases or alleged crimes.

The Committee is an independent UN body of 18 independent experts that monitors the implementation of the ICCPR by its States parties (the States that have ratified the Covenant). The members of the Committee are elected and serve in their personal capacity. They neither represent their country nor OHCHR. The Office of the UN High Commissioner provides secretarial support to the HRC which meets in Geneva or New York three times a year.

All States parties are under the obligation to submit regular reports to the Committee on how the relevant rights are implemented. Nepal submitted its initial report to the Committee in 1994 and is currently preparing its second and overdue periodic report to the Committee.

In addition to the state reporting procedure, the First Optional Protocol to the ICPRR gives the Committee competence to examine individual complaints with respect to alleged violations of the Covenant committed by the State parties. It is commendable that Nepal is among the few states in Asia that have signed this Optional Protocol which has already allowed the consideration of two individual cases against Nepal by the Human Rights Committee. These complaints cannot be anonymous and should be submitted by a person or persons subject to the jurisdiction of a State that is a party to the Optional Protocol. A third party with no apparent links to the alleged victim cannot submit a complaint.

The complaint cannot be considered if the same problem is being investigated under

another international procedure, and all domestic remedies must have been exhausted before it can be taken up by the Committee unless, according to the jurisprudence of the Committee, domestic remedies are both ineffective and unavailable or unduly prolonged. The Committee reviews the merits of the case on the basis of the arguments submitted by both parties which are placed on an equal footing throughout the proceedings. In a number of cases dealing with the right to life, torture and ill-treatment, and arbitrary arrests or disappearances, the Committee has considered that the burden of proof cannot rest alone with the alleged victim. However, it rarely pronounces itself on the actual culpability of a person convicted of a criminal offence, including because it does not have independent fact—finding functions.

Several countries have changed pieces of legislation as a result of decisions by the Committee on individual complaints. The decision of the Committee on the merits of a case is formally referred to as the “Views”. In a number of cases, prisoners have been released and compensation paid to victims of human rights violations. Wherever OHCHR has field presences, it will bring its support to the implementation and follow-up of the decision of the Committee.

In the first case of its kind against Nepal, *Sharma v. Nepal*, a case of enforced disappearance in the context of the armed conflict, the Committee, in November 2008, found violations of articles 2, 7 and 9 of the ICCPR and considered that Nepal was under an obligation to provide the victim with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the victim, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for his spouse and her family for the violations suffered. Charles Sobhraj filed a complaint with the Committee in November 2008 alleging a number of violations of the ICCPR by Nepal which took place during the course of his trial. At its 99th session, the Committee adopted a decision on the merits of the case.

The decision has been transmitted to the parties and has now been made public. In its decision, the Committee has found a number of irregularities in the trial of Charles Sobhraj, including with regard to the length of his trial and conditions of detention. According to the Committee, these constitute violations of articles 10, 14 and 15 of the ICCPR. The Committee did not pronounce itself on the culpability of Charles Sobhraj and did not ask for his release.

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