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CE/CAF/ys 2170/2012

14 August 2017

Dear Mr. Grant,

I have the honour to transmit to you herewith, the (advance unedited) text of the Views, adopted by the Human Rights Committee on 21 July 2017, concerning communication No. 2170/2012, which you submitted to the Committee for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights, on behalf of Ms. Shanta Neupane et al.

In accordance with the established practice, the text of the Views will be made public.

Yours sincerely,

Ibrahim Salama  
Chief  
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**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Views adopted by the Committee under article 5(4) of the  
Optional Protocol, concerning Communication  
No. 2170/2012\*\***

<i>Submitted by:</i>	Shanta Neupane and Nisha Neupane (represented by counsel, Philip Grant, of Track Impunity Always-TRIAL)
<i>Alleged victim:</i>	The authors and Danda Pani Neupane (husband and father of the authors, respectively)
<i>State party:</i>	Nepal
<i>Date of communication:</i>	14 December 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 2 August 2012 (not issued in document form)
<i>Date of adoption of views:</i>	21 July 2017
<i>Subject matter:</i>	Enforced disappearance
<i>Substantive issues:</i>	Right to life; prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; respect for the inherent dignity of the human person; recognition as a person before the law; and right to an effective remedy
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	6; 7; 9; 10 and 16, alone and read in conjunction with article 2, para.3
<i>Articles of the Optional Protocol:</i>	5, para. 2 (b)

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\* Adopted by the Committee at its 120<sup>th</sup> session (3 – 28 July 2017).

\*\* The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam, Ahmed Fathalla, Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The authors of the communication are Shanta Neupane and Nisha Neupane, born on 27 June 1955 and 13 April 1980, respectively. They claim that the State party has violated the rights of their missing husband and father, Danda Pani Neupane, a Nepalese national born on 26 March 1946, under articles 6; 7; 9; 10 and 16, read alone and in conjunction with article 2, paragraph 3, of the Covenant; as well as their own rights under article 7, read in conjunction with article 2, paragraph 3, of the Covenant. The Covenant and its Optional Protocol entered into force for Nepal on 14 August 1991. The authors are represented by counsel.

### **The facts as submitted by the authors**

2.1 In 1996 a ten-year internal armed conflict between the government and the Communist Party of Nepal-Maoist (CPN-M) began in Nepal and the human rights situation deteriorated. The number of human rights violations, including arbitrary arrest and detention; torture; summary executions; and enforced disappearances increased significantly. A great number of disappearances occurred between 1998 and 2004 in the context of counter insurgency operations launched by security forces against members and supporters of the CPN-M.<sup>1</sup> A large number of the victims were students, businessmen, workers, farmers, journalists and human rights defenders, among others.

2.2 Mr Danda Pani Neupane and Mrs Shanta Neupane had three children, including Ms Nisha Neupane. Since 1985, Mr Neupane was an active member of the CPN-M. At the time of his arrest, he was a Central Committee Member of the CPN-M and the head of its publication division. Since the beginning of the armed conflict in 1996, Mr Neupane went into hiding to avoid being arrested by the police. Two years before his arrest and subsequent enforced disappearance, he moved from Gitanagar VDC, Chitwan District to Kathmandu, Kalanki ward N°14. Mrs Shanta Neupane stayed in Gitanagar VDC with her parents-in-law and her two daughters.

2.3 On 21 May 1999, at approximately 17:30, Mr Danda Pani Neupane was stopped by four uniformed policemen in Sundhara, near Tebahal, Kathmandu. After asking his name, they reportedly put him into a van with five or six other uniformed policemen and drove him to an unknown destination. Ms S.A., a CPN-M cadre, was with Mr Neupane at the time of his arrest. She informed Mr B.G., a local cadre of the CPN-M, about the arrest, and Mr B.G. later informed Mrs. Shanta Neupane.

2.4 On 25 May 1999, Mrs Shanta Neupane began searching for her husband, and visited the District Police Office of Kathmandu, Hannumandhoka (DPO), where she was informed that her husband had never been held in police custody. Between 26 and 30 May 1999, Mrs Neupane visited the three main detention centres in Kathmandu: the Central Jail, Nakhu Jail and Charkal Jail, where she was also informed that Mr Neupane had never been detained in those places.

2.5 On 26 May 1999, Mrs Neupane filed a writ of habeas corpus before the Supreme Court of Nepal in favour of her husband. The Court issued a show cause order to the DPO, which responded that it had not arrested Mr Danda Pani Neupane. However, Ms S.A. and Mr M.P., two eyewitnesses, testified before the Court about Mr Neupane's arrest by the Police. On 12 July 1999, the Supreme Court quashed the writ of habeas corpus, arguing that the author could not demonstrate that her husband was detained and did not indicate the location where he was being held.

2.6 Reportedly in June 1999, Mr A, a policeman from Gitanagar VDC, who was temporarily based at the Nepal Police training centre in Maharajgunj, Kathmandu, saw Mr Neupane being held in police custody at the training centre. Mr A. informed Mr D, who was his neighbour in Gitanagara, that he had seen Mr. Neupane being

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<sup>1</sup> The authors refer to the report of the Working Group on Enforced or Involuntary Disappearances on its visit to Nepal (E/CN.4/2005/65/Add.1)

held in detention. Mr D. personally knew Mr Neupane, since he went to school with Ms Nisha Neupane. In this regard, Mr D. passed this information to Ms Nisha Neupane. Afterward, Mrs Shanta Neupane met Mr A. in Kathmandu and showed him 3 photographs of Mr Neupane. Mr A. confirmed that he had seen him being escorted to the toilet on several occasions, handcuffed and blindfolded. Mrs Neupane asked Mr A. to provide a written statement with this information. However, Mr A. was transferred to the Western Region of Nepal and Mrs Neupane was unable to further contact him.

2.7 On 6 August 1999, representatives of civil society organizations and human rights activists met with the then Prime Minister Krishna Prasad Bhattarai to request information about their disappeared relatives. During this meeting, he reportedly informed members of the Families of Victims of State Disappearance Association (FVSDA) that their relatives, including Mr. Neupane, had already been killed.

2.8 On 17 August 1999 Mrs. Neupane filed a second writ of habeas corpus before the Supreme Court in favour of her husband. The respondents were: a) the Home Ministry; b) the Nepal Police Headquarters, Naxal, Kathmandu; c) the Chief District Office, Kathmandu; and d) the District Police Office, Hannumandhoka, Kathmandu. All respondents denied the arrest, detention, torture and disappearance of Mr. Danda Pani Neupane.

2.9 On 31 August 1999, a national daily newspaper *Mahanagar Daily*, published an article stating that six persons, including Mr. Neupane, who were arrested as suspect Maoists and disappeared earlier in the year, had been found alive and were being kept "for their own safety" by the Riot Control Police Force in Pokhara, Kaski District. The article also claimed that Mr. Neupane and his co-detainees had been subjected to torture while being held by the Riot Control Police Force. Mrs Neupane was then informed by Mr B., a retired police officer that her husband was suffering from jaundice and that he had been transferred to Kathmandu for medical treatment. Mr C., a police officer from Chitwan district, who knew Mr Neupane reportedly tried to visit him after he had been transferred to Kathmandu. Mr C was denied access to Mr Neupane, but he was informed that he was sick and he was provided with medical treatment.

2.10 In light of the information published in the *Mahanagar Daily*, which was consistent with the statements of Mr B. and Mr C., on 27 September 1999, Mrs Shanta Neupane requested the Supreme Court to issue a search warrant and investigate the whereabouts of her husband. On 24 January 2000, the Deputy Inspector of the Western Regional Police Office denied that Mr Neupane had been held by them. On 11 February 2000, the Supreme Court ordered the Inspector-General of Police to provide a written response concerning Mr. Neupane's whereabouts within 15 days. In the absence of a response, on 20 March 2000, the Court reiterated its order. On 22 March 2000, police headquarters stated before the Court that it had been unable to locate Mr. Neupane and that he was not in police detention.

2.11 On 5 July 2000, the Supreme Court quashed the second writ of habeas corpus filed on 17 August 1999, maintaining that similar to the habeas corpus writ filed on 26 May 1999, the claims of the author had not been established. The Supreme Court stated that after exhausting all procedures and under mere suspicion it could not be said that Danda Pani Neupane was under police custody.

2.12 The authors alleged that they also submitted a written appeal to the Parliament and the Prime Minister requesting information about the whereabouts of Mr. Neupane. Together with other families whose relatives also were victims of enforced disappearance, they held a press conference requesting the general public and the State authorities any information about the whereabouts of their relatives. Furthermore, in August 1999 and February 2000, Amnesty International published two urgent appeal actions requesting information on the whereabouts of Mr.

Neupane.<sup>2</sup> His name has been included in a list elaborated by National Human Rights Commission of conflict-related disappearances.<sup>3</sup> Mr Neupane is also listed in the Missing Persons Database of the International Committee of the Red Cross<sup>4</sup> (ICRC). Despite all these efforts, Mr. Neupane's fate and whereabouts remains unknown to date. In 2008, Mrs. Shanta Neupane received a compensation of 100,000 Nepalese Rupees<sup>5</sup> (approximately 1200 USD), as an interim relief.

2.13 The authors also submit that after Mr. Neupane's arbitrary arrest and subsequent enforced disappearance, Mrs. Shanta Neupane was also subjected to harassment. Mrs. Neupane, together with a group of representatives of families of disappeared individuals, founded the FVSDA, an organisation that publicly campaigned for receiving information about the fate and whereabouts of their family members victims of enforced disappearance. As the FVSDA became well-known, the Police and members of the Royal Nepal Army (RNA) would regularly visit and search her house.

2.14 Furthermore, on 31 March 2005, Ms. Nisha Neupane was arrested by the RNA and detained in Kasara barrack Chitwan district for 30 days. She was then transferred to the First Rifle Battalion, in Bharatpur, Chitwan, where she was held for 15 days. She was then handed over for custody to the District Police Office, Chitwan and later she was taken to the district prison in Chitwan, where she was held for four months. Finally she was taken to the Central Jail in Kathmandu, in August 2005, where she was held for six months under the Terrorist and Disruptive Activities Act (TADA). The authors claim that during her detention, Ms Nisha Neupane was regularly interrogated, ill-treated and even tortured. She was handcuffed and her legs were tied together all the time.<sup>6</sup>

2.15 The authors submit that they did not file a First Information Report (FIR) application before the police with regard to Mr Neupane disappearance, since a FIR can only be lodged when it is related to a crime enlisted in Schedule 1 of the 1992 State Cases Act. Since enforced disappearance was not codified in such Act, it was impossible for relatives of victims of enforced disappearance to file a FIR for these acts.

### **The complaint**

3.1 The authors claim that Mr Neupane was a victim of enforced disappearance and that the State party has violated his rights under article 6, 7, 9, 10 and 16, separately and read in conjunction with article 2 (3) of the Covenant by Nepal; and their rights under article 7 in conjunction with article 2 (3) of the Covenant.

3.2 Mr Neupane was arbitrarily arrested on 21 May 1999 and despite the efforts made by the authors, his fate and whereabouts remain unknown. Mr Neupane allegedly was last seen under the control of State agents. However, the Nepalese authorities have systematically denied his arrest and detention. While in August 1999, the then Prime Minister announced that Mr Neupane had been killed, a newspaper article reported that he and five other individuals disappeared by the security forces in 1999 were still alive and being held in the police in Pokhara, Kaski district. None of this information has been confirmed and Mr Neupane continues disappeared until today. Against this background, the authors claim that

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<sup>2</sup> The authors provide a copy of the Amnesty International Urgent Action Appeals of 13 August 1999 and of February 2000

<sup>3</sup> The authors provide a copy of the list of the National Human Rights Commission that includes Mr. Danda Pani Neupane's name.

<sup>4</sup> The authors provide a copy of the ICRC Missing Persons Data Base, where Mr. Neupane's name is listed.

<sup>5</sup> According to the author, this was approximately \$1,200 at the time the communication was submitted to the Committee.

<sup>6</sup> Ms. Neupane's name was listed in the Working Group on Enforced and Involuntary Disappearances E/CN.4/2006/56, page 154.

the burden of proof rests on the authorities to provide satisfactory and convincing explanation, establishing and disclosing with certainty the fate and whereabouts of Mr Neupane. Therefore, in light of the failure of the authorities to demonstrate the contrary, the authors submit that the deprivation of liberty of Mr Neupane, and his subsequent enforced disappearance constitute a violation by the State party of article 6 of the Covenant.

3.3 Mr Neupane was arbitrarily deprived of his liberty by the Nepalese authorities and no charges had been brought against him. His fate and whereabouts have been concealed for more than 13 years and his family has been denied access to him. The incommunicado detention constitutes on its own, a form of inhuman and degrading treatment. The authors also indicate that the article in the newspaper *Mahanagar Daily* reported that Mr Neupane and five other individuals were subject to torture while being held by the Nepal Police in Pokhara, Kaski district. In this regard, the burden of proof to clarify Mr Neupane's treatment while in detention is on the State, and its failure to do so constitutes a violation of article 7 of the Covenant.

3.4 Mr. Neupane was last seen alive in the hands of the Nepal Police at the Police Headquarters in Naxal, Kathmandu. He was also detained in the framework of increasing numbers of arrests of those suspected as Maoists. These elements indicate that Mr. Neupane was deprived of this liberty by agents of the State. Mr. Neupane's deprivation of liberty had not been justified on legal grounds and it had not been entered in an official register or record. Mr. Neupane had not been charged of a crime, nor had he been brought before a judge or any other official authorised by law to exercise judicial authority. He had been unable to effectively challenge the legality of his arrest and detention. The authors claim that all these facts constitute a violation of article 9 of the Covenant.

3.5 The authors allege that prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of any detainee to respect for his inherent dignity as a human being. In the present case, despite the limited information regarding the conditions in which Mr Neupane was detained, the fact that he was held incommunicado detention, with no access to legal recourse or his family members, constitutes in itself a violation of article 10 of the Covenant.

3.6 Despite the evidence that Mr. Neupane was detained by the Nepal Police, the State's authorities have categorically denied their involvement in his detention and subsequent enforced disappearance. There is no formal registration of Mr. Neupane's detention; and he had never been brought before a judge or any other official authority exercising judicial power. Therefore, the Nepalese authorities have placed Mr Neupane outside the protection of the law, in a situation of complete defencelessness, violating article 16 of the Covenant.

3.7 The authors allege that, in the present case, the lack of recognition by the Nepalese authorities of Mr. Neupane's deprivation of liberty has prevented him from accessing the right to an effective remedy. Despite that the authors have requested the Nepalese authorities to establish the fate and whereabouts of Mr Neupane, their efforts have been systematically frustrated as effective remedies are de facto inexistent in the State party. Consequently, the failure of Nepal to ensure an effective remedy to protect Mr. Neupane's rights under articles 6, 7, 9, 10 and 16 is a continuous violation of these provisions in conjunction with Article 2(3) of the Covenant.

3.8 The authors also claim that the enforced disappearance of Mr. Neupane, their husband and father respectively, has profoundly impacted their lives causing on-going feelings of uncertainty and anguish. The authors also state that for approximately three years after Mr. Neupane's arbitrary detention, security forces personnel paid regular visits to the Neupane's family home in Gitanagar, Chitwan.

The authors felt threatened and were in constant fear of physical abuse and even death at the hands of the security forces. Mr. Neupane's daughters were also harassed by security forces. In fact, on 31 March 2005, Ms. Nisha Neupane was arbitrarily arrested and detained by the RNA and subject to severe torture while held in custody. They authors believe that her arbitrary detention was linked to the fact of being Mr. Neupane's daughter. To date, the authors' right to know the truth about the circumstances of Mr. Neupane's enforced disappearance, his fate and whereabouts, as well as the progress and results of any investigation, has been constantly violated by the State party. In this regard, the authors allege that all these facts constitute a violation by the State party of article 7 read alone and in conjunction with article 2(3) of the Covenant in respect of the authors.

3.9 The authors request the Committee to recommend the State party, *inter alia*, to: (a) initiate an investigation as matter of urgency with a view to locating Mr. Neupane and in the event of his death, to locate, exhume, identify, respect and return his mortal remains to his family; (b) bring the perpetrators before the competent ordinary authorities for prosecution, judgement and sanction, and disseminate publicly the results of this measure; (c) suspend from office all Nepal Police personnel against whom there is *prima facie* evidence that they were involved in the arbitrary detention and enforced disappearance; and (d) ensure that the measures of reparation cover material and moral damages and measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition. In particular, the authors request that the State party acknowledge its international responsibility, on the occasion of a public ceremony, in the presence of the authorities representing the State and Mr. Neupane's relatives to whom official apologies shall be issued; name a street or build a monument or a commemorative plate to preserve the memory of all the victims of enforced disappearance; provide them with medical and psychological care immediately and free of charge, and grant them access to free legal aid where necessary. As a guarantee of non-repetition, the State party should take the necessary measures to ensure that enforced disappearance and torture, and the different forms of participation in these crimes, constitute autonomous offences under its criminal law, punishable by appropriate penalties which take into account their extreme seriousness. It should also establish as soon as possible educational programmes on international human rights law and international humanitarian law for all members of the Nepalese army, security forces and the judiciary.

#### State party's observations on admissibility and the merits

4.1 On 13 May 2013, the State party submitted its observations on admissibility and merits of the authors' allegations. On the admissibility, the State party contends that the authors have not exhausted domestic remedies.

4.2 The State party notes that the alleged case occurred during the armed conflict of Nepal. The interim Constitution of Nepal of 2007 and the Comprehensive Peace Agreement of 2006 have set down the means and methods to be adopted to address the issues relating to serious violations of human rights and humanitarian law occurred during the armed conflict. The State party also refers to the decision of the Supreme Court of 1 June 2007, in the case Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal v. the Government of Nepal, which ordered the Nepalese Government to table a Bill to the Parliament for an enabling legislation to establish an independent, impartial and competent transitional justice mechanism and to bring the perpetrators to justice.

4.3 The State contends that on 14 March 2013 the President promulgated the Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission,<sup>7</sup> which provided for the establishment of a high level Commission on Investigation of Disappeared Persons, Truth and Reconciliation. The Ordinance also

<sup>7</sup> A copy of the Ordinance was submitted by the authors.

defined "serious violation of human rights", including disappearance. In this regard, the State party argues that the allegations made by the authors explicitly fall under the jurisdiction of the Commission set up in the Ordinance. Against this background, the State alleges that it would not be appropriate to consider that the authors have exhausted available domestic remedies, thus the communication is to be declared inadmissible.

4.4 Regarding the merits, the State party states that the Investigation of Disappeared Persons, Truth and Reconciliation Commission was to be established soon and would carry out prompt, independent, impartial and credible investigations. For the State party, this would constitute a viable and legitimate remedial measure for the authors. The State also refers to the writs of habeas corpus that were quashed by the Supreme Court, because the allegations were not substantiated. It also maintains that the amount of interim relief provided to the authors had been substantially increased from 100,000 NRS to 300,000 NRS.

#### **Authors' comments on the State party's observations**

5.1 On 25 June 2013, the authors submitted their comments on the State party's observations on the admissibility and the merits.

5.2 With regard to the exhaustion of domestic remedies, the authors state that the Committee has consistently interpreted this requirement in the sense that not only must domestic remedies be available, but they also must be effective. They submit that the Committee has also considered that whenever the highest domestic tribunal has decided the matter at issue, no other remedies must be exhausted. The authors refer to the steps taken to exhaust remedies in Nepal. Mrs. Neupane made several efforts to locate her husband, including by visiting the DPO and other detention centres in Kathmandu. She also filed two writs of habeas corpus before the Supreme Court of Nepal on Mr Neupane's behalf, which were quashed by the Supreme Court. In addition, the authors argue that they also submitted written appeals to Parliament and to the Prime Minister.

5.3 The authors also reiterate that they did not attempt to submit a FIR because in the circumstance of the case it would not have been an effective remedy because enforced disappearance is not a crime in Nepal. Furthermore, the lack of a FIR should not prevent the Nepali authorities from conducting an ex officio criminal investigation.

5.4 The authors also argue that the Commission set up by the Ordinance of March 2013 would not constitute an effective remedy in line with international standards since it would not be a judicial body and would not have any authority to impose appropriate punishment to perpetrators of grave human rights violations.. In addition, on 24 March 2013, two writs were filed before the Supreme Court arguing that the Ordinance was unconstitutional and contrary to the international law. The authors contend that there is no reasonable possibility of success in obtaining an effective remedy via the prospective Commission.

5.5 The authors note that the response of the State party concerning the merits of the communication, revisited the admissibility issues and it did not contest the authors' allegations on the facts.

5.6 Finally, the authors also claim that the amount for the interim relief received by Mrs. Neupane was 100,000 NRS, since she was not entitled to more because Mr. Neupane's fate or whereabouts remained to be clarified. They also allege that the State party's obligation to conduct and ex officio, prompt, impartial, thorough and independent investigation as well as to criminally prosecute, judge and sanction those responsible for the crimes concerned, and to provide integral redress to the victims, cannot be eluded through an interim monetary compensation.

### Further submissions from the parties

6. On 10 January 2014, the authors informed the Committee that on 2 January 2014, the Supreme Court of Nepal declared unconstitutional and inconsistent with international standards the Executive Ordinance of 14 March 2013, which provided for the establishment of the Commission on Investigation into Disappeared Persons, Truth and Reconciliation. The Court ordered the Nepalese authorities to establish a new Commission. The authors reiterate their positions that under no circumstances can the potential Commission be considered an effective remedy.

7.1 On 11 August and 11 December 2014, the State party informed the Committee that the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation had been enacted by Parliament. The State argues that the Truth and Reconciliation Commission and the Enforced Disappearance Commission would be established soon, and provides a brief description of the main provisions of the Act. The State party affirms that the Act was a landmark instrument to address the issue of past human rights violations committed by both the State party and non-State actors. It also states that the bills to criminalize torture and enforced disappearance had been drafted and were in the process of resubmission to Parliament. In this respect, the State party contends that the author's claims would be addressed fully after the establishment of these mechanisms.

7.2 Notwithstanding that a Chapter on Kidnapping and Hostage is in force under the General Code (Muluki Ain), the State party also argues that the authors have not lodged a complaint with the concerned authorities in connection with the allegations of enforced disappearance of Mr Neupane.

7.3 The State party maintains that Mr Neupane's family was awarded 300,000 NRS as interim relief, and reiterates its previous allegations with regards to the situation of transitional justice in Nepal.

8. On 1 September 2014 and 12 January 2015, the authors reiterated their allegations regarding the transitional justice mechanism, and argue that several provisions of the Act were not in compliance with international human rights standards<sup>8</sup> and would not offer them an effective remedy.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

9.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether the case is admissible under the Optional Protocol to the Covenant.

9.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

9.3 With regard to the exhaustion of domestic remedies, the Committee notes the arguments of State party that the authors have not exhausted the domestic remedies, since Mr. Neupane's case would be addressed by the transitional justice mechanism created under the Interim Constitution of Nepal of 2007. The Committee also notes the authors' allegations regarding the steps taken by Mrs. Shanta Neupane trying to locate her husband. Mrs Neupane, between 25 and 30 May 1999 visited several detention centres in Kathmandu. On 26 May and 17 August 1999, she also filed two writs of habeas corpus before the Supreme Court in Nepal in favour of her husband.

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<sup>8</sup> The author refers to OHCHR technical note, *The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014)* – as Gazetted 21 May 2014; and OHCHR Press release, *Nepal: truth-seeking legislation risks further entrenching impunity, alert United Nations rights experts*, of 4 July 2014.

Both writs were quashed by the Supreme Court arguing that the claims of the applicant could not be established. In her efforts to locate her husband, Mrs. Neupane also submitted written appeals to the Parliament and to the Prime Minister requesting that his whereabouts be made public. The Committee also notes the arguments made by the authors that the FIR would not have been an effective remedy in the circumstances of the case, since enforced disappearance is not codified as a separate crime in Nepal. Despite the efforts of Mrs. Neupane, the disappearance of her husband has remained unclear for more than 17 years and no investigation has yet been concluded. The Committee further recalls its jurisprudence that in cases of serious violations a judicial remedy is required.<sup>9</sup> In this respect, the Committee observes that the transitional justice bodies established by the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation of 2014 are not judicial organs capable of affording a judicial remedy.<sup>10</sup> Accordingly, the Committee considers that the remedies identified by the State party have been ineffective and that there are no obstacles to the examination of the communication under article 5 (2) (b) of the Optional Protocol.

9.4 As all admissibility requirements have been met, the Committee declares the communication admissible and proceeds to its examination of the merits.

#### *Consideration of the merits*

10.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

10.2 The Committee takes note of the authors' allegations that Mr. Neupane was a victim of enforced disappearance, which were supported by the testimonies of two witnesses who were present at the time of his arrest. Despite the attempts made by Mrs. Neupane to locate him, Mr. Neupane's fate and whereabouts remain unknown. Although, Mrs. Neupane filed two writs of habeas corpus before the Supreme Court, no prompt, impartial, thorough and independent investigations have been carried out. No one has been summoned or convicted for these acts.

10.3 The Committee takes note of the State party's argument that Mr. Neupane's case was considered twice by the Supreme Court when dealing with the writ of habeas corpus lodged by Mrs. Neupane; that within those proceedings, all the authorities stated that Mr. Neupane had not been arrested or detained by the security forces. Therefore his whereabouts could not be established.

10.4 The Committee notes that it has dealt with numerous cases in respect of similar practices in a number of earlier communications, some of them involving the State party.<sup>11</sup> In line with these precedents the Committee reaffirms its position that the burden of proof cannot rest solely on the author of the communication, especially considering that the author and the State party do not always have equal access to evidence, and that frequently the State party alone has access to the relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of

<sup>9</sup> See communications No. 1761/2008, *Giri v. Nepal*, Views adopted on 24 March 2011, para. 6.3.

<sup>10</sup> See communication No. 2038/2011, *Chhedulal Tharu et al. v. Nepal*, Views adopted on 3 July 2015, para. 9.3.; No 2164/2012, *Basnet v. Nepal*, Views adopted on 12 July 2016, para 9.3; No 2184/2012, *Nakarmi v. Nepal*, Views adopted on 10 March 2017, para 10.3; No 2185/2012, *Dhakal v. Nepal*, Views adopted on 17 March 2017, para 10.3.

<sup>11</sup> See communications No. 1422/2005, *El Hassy v. the Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 6.7; No. 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3; and No. 1804/2008, *Il Khwildy v. Libya*, Views adopted on 1 November 2012, para. 7.2; No 2164/2012, *Basnet v. Nepal*, Views adopted on 12 July 2016, para 10.3; No 2184/2012, *Nakarmi v. Nepal*, Views adopted on 10 March 2017, para 11.4; No 2185/2012, *Dhakal v. Nepal*, Views adopted on 17 March 2017, para 11.4.

violations of the Covenant made against it and its representatives, and to provide the Committee with the information available to it. In cases where the author has submitted allegations to the State party that are corroborated by credible evidence, and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider the author's allegations substantiated, in the absence of satisfactory evidence or explanations to the contrary presented by the State party.

10.5 The Committee recalls that, while the Covenant does not explicitly use the term "enforced disappearance" in any of its articles, enforced disappearance constitutes a unique and integrated series of acts that represent continuing violation of various rights recognized in that treaty.<sup>12</sup>

10.6 In the present case, the State party has not challenged the authors' allegations concerning the arrest and enforced disappearance of Mr. Neupane in May 1999. After being informed of her husband's arrest, Mrs. Shanta Neupane tried to locate him and visited the Kathmandu DPO, as well as the three main detention centres in Kathmandu, namely the Central Jail, the Nakhu Jail and the Charkhal Jail. The authorities denied that Mr. Neupane's had been arrested or detained. Despite the testimonies of two witnesses before the Supreme Court, the authorities continue to deny the detention of Mr. Neupane. Therefore, the two writs of habeas corpus filed by Mrs. Neupane in favour of her husband were quashed. The Committee also observes that although the then Prime Minister had stated that Mr. Neupane has been killed, an article in the *Manahagar Daily* said the opposite. The article reported that Mr. Neupane was in fact alive and held in detention by the Riot Control Police in Pokhara. The Committee also notes that Mrs. Neupane received information that Mr. Neupane was transferred from the Pokhara to the DPO in Kathmandu to receive medical treatment. The State party has failed to provide the Committee with information of the specific steps taken to carry out a thorough and effective investigation and their results. Mr. Neupane's whereabouts remain unknown to date, and in case of his death, his mortal remains have not been located and returned to his family. The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate of the disappeared person, removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.<sup>13</sup> In the present case, the State party has produced no evidence to show that it met its obligations to protect the life of Mr. Neupane. Accordingly, the Committee concludes that the State party failed in its duty to protect Mr. Neupane's life, in violation of article 6 (1) of the Covenant.

10.7 The Committee notes the authors' allegations that Mr. Neupane's arbitrary detention on 21 May 1999, and his subsequently enforced disappearance amount per se to treatment contrary to article 7. The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. In addition, the Committee takes notes about the information published in an article in *Mahanagar Daily*. Three months after Mr. Neupane's disappearance, this article reported that he was subject to torture whilst being held by the Nepal Police in Pokhara, Kaski district. In the present case, the State party has not provided evidence to clarify the facts regarding Mr. Neupane's treatment while in detention.

<sup>12</sup> See communications No. 2000/2010, *Katwal v. Nepal*, Views adopted on 1 April 2015, para. 11.3; No. 2134/2012, *Molina Arias v. Colombia*, Views adopted on 9 July 2015, para. 9.4; No. 2164/2012, *Basnet v. Nepal*, Views adopted on 12 July 2016, para. 10.4; No. 2184/2012, *Nakarmi v. Nepal*, Views adopted on 10 March 2017, para. 11.5; No. 2185/2012, *Dhakal v. Nepal*, Views adopted on 17 March 2017, para. 11.5.

<sup>13</sup> See communication No. 1913/2009, *Abushaala v. Libya*, Views adopted on 18 March 2013, para. 6.2; No. 2164/2012, *Basnet v. Nepal*, Views adopted on 12 July 2016, para. 10.5; No. 2184/2012, *Nakarmi v. Nepal*, Views adopted on 10 March 2017, para. 11.6; No. 2185/2012, *Dhakal v. Nepal*, Views adopted on 17 March 2017, para. 11.6.

Accordingly, the Committee finds that the enforced disappearance of the authors' husband and father, respectively, and the treatment given to him while in detention constitute a violation of article 7 of the Covenant. Having reached that conclusion the Committee will not examine the claims regarding the violation of article 10 (1) of the Covenant for the same facts.

10.8 The Committee notes the anguish and distress caused to the authors by the disappearance of Mr. Neupane, and the lack of information on the circumstances surrounding it. No investigation has been carried out to ascertain his fate, and in case of his death, to return his body remains to his family. In addition, the Committee also notes the authors' allegations that after Mr. Neupane's enforced disappearance, they received regular visits from security forces, which contributed to exacerbate their fear and anxiety. Additionally, the Committee notes the information that as a result of the family relationship between Ms. Nisha Neupane and Mr. Neupane, she was also victim of arbitrary detention<sup>14</sup> and subject to torture while in detention. In this regard, the Committee considers that these facts reveal a violation of article 7 of the Covenant with respect to the authors.

10.9 The Committee takes note of the authors' allegation under article 9 of the Covenant that Mr. Neupane was deprived of his liberty by agents of the State, namely the Nepal Police on 21 May 1999. No legal grounds were provided for his detention. His arrest was not entered into an official register. Mr Neupane was never brought before a judge or any other official authorized by law to exercise judicial power, and he could not take proceedings before a court to challenge the lawfulness of his detention. In the absence of a State party's response in this regard, the Committee considers that the detention of Mr. Neupane constitutes a violation of his rights under article 9 of the Covenant.

10.10 With regard to the alleged violation of article 16, the Committee notes the authors' allegations that despite evidence that Mr Neupane was detained by the Nepal Police, the Nepalese authorities have denied categorically their involvement in his enforced disappearance. The State party has failed to provide them with relevant information concerning Mr Neupane's fate and whereabouts; and no effective investigation has been carried out to ascertain his whereabouts, maintaining him outside the protection of the law since then. The Committee is of the view that the intentional removal of a person from the protection of the law constitutes a refusal of the right to recognition as a person before the law, in particular if the efforts of his or her relatives to obtain access to effective remedies have been systematically impeded.<sup>15</sup> The Committee, therefore, finds that the enforced disappearance of Mr. Neupane deprives him of the protection of the law and of his right to recognition as person before the law, in violation of article 16 of the Covenant.

10.11 The authors invoke article 2 (3) of the Covenant, which imposes on States parties the obligation to ensure an effective remedy for all persons whose rights under the Covenant have been violated. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of rights violations. It refers to its general comment No. 31, which provides, inter alia, that failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. In the present case, the Committee notes that Mrs Neupane

<sup>14</sup> Ms. Nisha Neupane was listed as disappeared in the Report of the UN Working Group on Enforced Disappearances, E/CN.4/2006/56, page 154 (N°17 of Urgent appeals)

<sup>15</sup> See communications No. 2164/2012, *Basnet v. Nepal*, Views adopted on 12 July 2016, para. 10.9; No. 2038/2011, *Chhedulal Tharu et al. v. Nepal*, Views adopted on 3 July 2015, para. 10.9; and No. 2134/2012, *Arias Molina v. Colombia*, para. 9.5.; No 2164/2012, *Basnet v. Nepal*, Views adopted on 12 July 2016, para 10.9; No 2184/2012, *Nakarmi v. Nepal*, Views adopted on 10 March 2017, para 11.10; No 2185/2012, *Dhakal v. Nepal*, Views adopted on 17 March 2017, para 11.10.

immediately after having been informed of her husband's detention by the Nepal Police, visited the Nepal DPO and other detention facilities in Kathmandu to receive information about his arrest. She also filed two writs of habeas corpus before the Supreme Court. Despite the efforts to locate her husband, the State party has not undertaken an independent and thorough investigation to elucidate the circumstances surrounding Mr Neupane's detention, fate and whereabouts. In this regard, the Committee considers that the State party has failed to conduct a prompt, thorough and effective investigation into the disappearance of Mr Neupane. Additionally, the sum received by the authors as interim relief does not constitute an adequate remedy commensurate to the serious violations inflicted. Accordingly, the Committee concludes that the facts before it reveal a violation of article 2 (3), in conjunction with articles 6 (1), 7, 9 and 16, with regard to Mr Neupane; and article 2 (3), read in conjunction with article 7 of the Covenant, with respect to the authors.

11. The Human Rights Committee, acting under article 5 (4), of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses violations by the State party of articles 6, 7, 9 and 16, of the Covenant; and of article 2(3), read in conjunction with articles 6, 7, 9 and 16 of the Covenant with regard to Mr Danda Pani Neupane. The facts also disclose violations of article 7, and article 2(3), read in conjunction with article 7, with respect to the authors Mrs Shanta Neupane and Ms Nisha Neupane.

12. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to: (a) conduct a thorough and effective investigation into the disappearance of Mr Neupane and provide the authors with detailed information about the results of its investigation; (b) if Mr. Neupane is dead, locate his remains and hand them over to his family; (c) prosecute, try and punish those responsible for the violations committed and make the results of such measures public; (d) ensure that any necessary and adequate psychological rehabilitation and medical treatment are made available to the authors; and (e) provide adequate compensation and appropriate measures of satisfaction, to the authors, and Mr. Neupane, if he is alive, for the violations suffered. The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future. In particular, the State party should ensure that: i) its legislation allows for the criminal prosecution of those responsible for serious human rights violations such as torture, extrajudicial execution and enforced disappearance; and ii) any enforced disappearances give rise to a prompt, impartial and effective investigation.

13. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.