



# 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 victims:</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>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to life; prohibition of torture or 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; right to an effective remedy
<i>Articles of the Covenant:</i>	6, 7, 9, 10 and 16, alone and read in conjunction with 2 (3)
<i>Articles of the Optional Protocol:</i>	5 (2) (b)

\* Adopted by the Committee at its 120th session (3-28 July 2017).

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



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 national of Nepal born on 26 March 1946, under articles 6, 7, 9, 10 and 16, read alone and in conjunction with 2 (3), of the Covenant, as well as their own rights under article 7, read in conjunction with 2 (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 10-year internal armed conflict between the Government of Nepal and the Communist Party of Nepal-Maoist began and the human rights situation deteriorated. The number of human rights violations, including arbitrary arrest and detention, torture, summary execution and enforced disappearance, increased significantly. A great number of disappearances occurred between 1998 and 2004 in the context of counter-insurgency operations launched by the security forces against members and supporters of the Communist Party.<sup>1</sup> The victims were students, businessmen, workers, farmers, journalists and human rights defenders, among others.

2.2 Danda Pani Neupane and Shanta Neupane had three children, including Nisha Neupane. Mr. Neupane had been an active member of the Communist Party since 1985. At the time of his arrest, he was a member of its Central Committee and the head of its publication division. At the beginning of the armed conflict, Mr. Neupane went into hiding. Two years before his arrest and subsequent enforced disappearance, he moved from Gitanagar village development committee, Chitwan district, to Kalanki ward No. 4 in Kathmandu. Mrs. Neupane stayed in Gitanagar with her parents-in-law and her two daughters.

2.3 On 21 May 1999, at approximately 5.30 p.m., Mr. 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. S.A., a Communist Party cadre, was with Mr. Neupane at the time of his arrest. She informed B.G., a local Communist Party cadre, and he later informed Mrs. Neupane.

2.4 On 25 May 1999, Mrs. Neupane began searching for her husband. She visited the District Police Office in Hannumandhoka, Kathmandu, where she was informed that her husband had never been held in police custody. Between 26 and 30 May, Mrs. Neupane visited the three main detention centres in Kathmandu — the Central Jail, Nakhu Jail and Charkhal 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 for a writ of habeas corpus with the Supreme Court. The Court issued a show cause order to the District Police Office, which responded that it had not arrested Mr. Neupane. However, S.A. and M.P. testified before the Court that they had witnessed Mr. Neupane being arrested by the police. On 12 July, the Court quashed the habeas corpus petition, 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 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 and informed Mr. D., his neighbour in Gitanagar. Mr. D. knew Mr. Neupane personally, since he had gone to school with Nisha Neupane, to whom Mr. D. passed on this information. Afterward, Shanta Neupane met Mr. A. in Kathmandu and showed him three 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 contact him again.

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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).

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, the Prime Minister reportedly informed members of the Families of Victims of State Disappearance Association that their relatives, including Mr. Neupane, had already been killed.

2.8 On 17 August 1999, Mrs. Neupane filed a second petition for a writ of habeas corpus with the Supreme Court. The respondents were: (a) the Home Ministry; (b) 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 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 had been arrested as suspected 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 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 was transferred to Kathmandu. Mr. C. was denied access to Mr. Neupane, but was informed that he was sick and was being provided with medical treatment.

2.10 In the 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. 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 his service. On 11 February, 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, the Court reiterated its order. On 22 March, 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 petition for a writ of habeas corpus filed on 17 August 1999, maintaining that, as with the first petition filed on 26 May 1999, the claims of the author had not been established. The Court stated that, after exhausting all procedures, it could not be confirmed, on the basis of mere suspicion, that Danda Pani Neupane was in police custody.

2.12 The authors allege that they also submitted a written appeal to Parliament and the Prime Minister requesting information about the whereabouts of Mr. Neupane. Together with other families whose relatives were also victims of enforced disappearance, they held a press conference at which they requested the general public and the State authorities to supply 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 was included in a list compiled by the 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 (ICRC).<sup>4</sup> Despite all these efforts, Mr. Neupane’s fate and whereabouts remain unknown. In 2008, Mrs. Neupane received compensation of 100,000 Nepalese rupees<sup>5</sup> as interim relief.

2.13 The authors also submit that after Mr. Neupane’s arbitrary arrest and subsequent enforced disappearance, Mrs. Neupane was also subjected to harassment. Mrs. Neupane,

<sup>2</sup> The authors provide a copy of the Amnesty International urgent action appeals of 13 August 1999 and February 2000.

<sup>3</sup> The authors provide a copy of the list.

<sup>4</sup> The authors provide a copy of the database.

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

together with a group of representatives of families of disappeared individuals, founded the Families of Victims of State Disappearance Association, an organization that campaigns publicly for the disclosure of information about the fate and whereabouts of victims of enforced disappearance. As the Association became well known, the police and members of the Royal Nepal Army regularly visited and searched her house.

2.14 Furthermore, on 31 March 2005, Nisha Neupane was arrested by members of the Royal Nepal Army and detained in Kasara barracks, 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 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. The authors claim that during her detention, Ms. 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 application with the police with regard to Mr. Neupane's disappearance, as such a report can only be lodged when it is related to a crime listed in Schedule 1 to the 1992 State Cases Act. Since enforced disappearance was not codified in the Act, it was impossible for relatives of victims of enforced disappearance to file a first information report.

### **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 articles 6, 7, 9, 10 and 16, separately and read in conjunction with 2 (3), of the Covenant, and their rights under article 7, read in conjunction with article 2 (3).

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 that he had been arrested and was being detained. 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 by the police in Pokhara. None of this information has been confirmed. In view of the foregoing, the authors claim that the burden of proof rests with the authorities to provide a satisfactory and convincing explanation, establishing and disclosing with certainty the fate and whereabouts of Mr. Neupane. In the 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 have 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 *Mahanagar Daily* reported that Mr. Neupane and five other individuals were subjected to torture while being held by the police in Pokhara. In this regard, the burden of proof that would clarify Mr. Neupane's treatment while in detention lies with the State, and its failure to do so constitutes a violation of article 7 of the Covenant.

3.4 It is alleged that Mr. Neupane was detained in the context of increasing numbers of arrests of suspected Maoists and was last seen alive in the hands of the police at Nepal Police Headquarters in Naxal, Kathmandu. These elements indicate that Mr. Neupane was deprived of his liberty by agents of the State. Mr. Neupane's deprivation of liberty was not justified on legal grounds and was not entered in an official register or record. He was not charged with a crime, nor was he brought before a judge or any other official authorized by law to exercise judicial authority. He was unable to effectively challenge the legality of his

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<sup>6</sup> Ms. Neupane's name was listed in report of the Working Group on Enforced or Involuntary Disappearances (see E/CN.4/2006/56 and Corr.1, annex IV).

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 detainees' right to respect for their inherent dignity as human beings. In the present case, despite the limited information regarding the conditions in which Mr. Neupane was detained, the fact that he was held in incommunicado detention, with no access to legal recourse or his family members, in itself constitutes a violation of article 10 of the Covenant.

3.6 Despite the evidence that Mr. Neupane was detained by the police, the State authorities have categorically denied their involvement in his detention and subsequent enforced disappearance. By failing to formally register Mr. Neupane's detention and to bring him before a judge or any other official authority exercising judicial power, the Nepalese authorities have placed him outside the protection of the law in a situation of complete defencelessness, thereby violating article 16 of the Covenant.

3.7 The authors allege that 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 the fact that the authors have requested the authorities to establish the fate and whereabouts of Mr. Neupane, their efforts have been systematically frustrated, as effective remedies are de facto non-existent 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 of the Covenant is a continuous violation of these provisions, read in conjunction with article 2 (3).

3.8 The authors also claim that the enforced disappearance of Mr. Neupane has had a profound impact on their lives, causing ongoing feelings of uncertainty and anguish. They also state that for approximately three years after Mr. Neupane's arbitrary detention, security forces personnel paid regular visits to the family home in Gitanagar. 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, and on 31 March 2005, Nisha Neupane was arbitrarily arrested and detained by the army and subjected to severe torture while in custody. The authors believe that her arbitrary detention was linked to the fact that she was 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 that the State party, inter alia: (a) initiate an investigation, as a matter of urgency, into the disappearance of Mr. Neupane with a view to locating him 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 authorities for prosecution, judgment and sentencing, 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 of Mr. Neupane; 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 erect a monument or commemorative plaque to preserve the memory of all the victims of enforced disappearance; provide the authors 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 Royal Nepal Army, the 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 the merits of the communication. 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 in 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 that occurred during the conflict. The State party also refers to the decision of the Supreme Court of 1 June 2007 in *Rajendra Prasad Dhakal v. the Government of Nepal*, in which it ordered the Government to table a bill in Parliament on enabling legislation to establish an independent, impartial and competent transitional justice mechanism and to bring the perpetrators of human rights violations 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 defined "serious violation of human rights", including disappearance. In this regard, the State party argues that the allegations made by the authors would explicitly fall under the jurisdiction of the commission. Against this background, the State alleges that it would not be appropriate to consider that the authors have exhausted the available domestic remedies; thus, the communication is inadmissible.

4.4 Regarding the merits, the State party states that the commission on investigation of disappeared persons, truth and reconciliation would be established soon and would carry out prompt, independent, impartial and credible investigations. In the view of the State party, this would constitute a viable and legitimate remedial measure for the authors. The State party also refers to the petitions for 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 to 300,000 Nepalese rupees.

#### **Authors' comments on the State party's observations on admissibility and the merits**

5.1 On 25 June 2013, the authors submitted their comments on the State party's observations on 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 District Police Office and other detention centres in Kathmandu. She also filed two petitions for writs of habeas corpus with the Supreme Court of Nepal on Mr. Neupane's behalf, which were quashed by the 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 first information report because in the circumstance of the case it would not have been an effective remedy, as enforced disappearance is not a crime in Nepal. Furthermore, the lack of a first information report should not prevent the Nepali authorities from conducting an ex officio criminal investigation.

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

5.4 The authors also argue that the commission to be set up under the ordinance of March 2013 would not constitute an effective remedy in line with international standards as it would not be a judicial body and would not have any authority to impose appropriate punishment for perpetrators of grave human rights violations. In addition, on 24 March 2013, two writs were filed with the Supreme Court arguing that the ordinance was unconstitutional and contrary to 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 did not contest the authors' allegations concerning the facts.

5.6 Finally, the authors also claim that the amount of the interim relief received by Mrs. Neupane was 100,000 Nepalese rupees; 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 an *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.

### **Additional observations**

#### *From the authors*

6. On 10 January 2014, the authors informed the Committee that on 2 January, the Supreme Court of Nepal had declared unconstitutional and inconsistent with international standards the ordinance of 14 March 2013, which provided for the establishment of a commission on investigation into disappeared persons, truth and reconciliation. The Court ordered the Nepalese authorities to establish a different commission. The authors reiterate their position that under no circumstances can a potential commission be considered an effective remedy.

#### *From the State party*

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 adopted by Parliament. The State argues that a truth and reconciliation commission and an 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 is 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 bills to criminalize torture and enforced disappearance have 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-taking 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 Nepalese rupees as interim relief and reiterates its previous submissions with regard to the situation of transitional justice in Nepal.

#### *From the authors*

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 communication is admissible under the Optional Protocol.

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

9.3 The Committee notes the argument of the State party that the authors have not exhausted 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' claims regarding the steps taken by Shanta Neupane in trying to locate her husband: between 25 and 30 May 1999, Mrs. Neupane visited several detention centres in Kathmandu and on 26 May and 17 August 1999, she also filed two writs of habeas corpus petitions with the Supreme Court on behalf of her husband. Both petitions were quashed by the Court, which determined that the claims could not be established. In her efforts to locate her husband, Mrs. Neupane also submitted written appeals to Parliament and to the Prime Minister requesting that his whereabouts be made public. The Committee also notes the argument made by the authors that a first information report 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 Mrs. Neupane's efforts, the disappearance of her husband has remained unclarified for more than 17 years and no investigation has yet been undertaken. The Committee further recalls its jurisprudence according to which a judicial remedy is required in cases of serious violations.<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 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 (1) of the Optional Protocol.

10.2 The Committee takes note of the authors' allegation that Mr. Neupane was a victim of enforced disappearance, which was 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 petitions with the Supreme Court, no prompt, impartial,

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<sup>8</sup> The authors refer to the technical note issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR), "The Nepal Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) — as gazetted 21 May 2014" and the OHCHR press release, "Nepal: truth-seeking legislation risks further entrenching impunity, alert United Nations rights experts", of 4 July 2014.

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

<sup>10</sup> See communications No. 2038/2011, *Tharu and others 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; and No. 2185/2012, *Dhakal and others v. Nepal*, Views adopted on 17 March 2017, para. 10.3.



thorough and independent investigations have been carried out. No one has been summoned or convicted for this act.

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 it dealt with the petitions for writs of habeas corpus brought by Mrs. Neupane and 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 with 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 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of 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. Neupane tried to locate him and visited the Kathmandu District Police Office, as well as the three main detention centres in Kathmandu, namely the Central Jail, Nakhu Jail and Charkhal Jail. The authorities denied that Mr. Neupane 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 petitions filed by Mrs. Neupane on behalf of her husband were quashed. The Committee also observes that although the then Prime Minister stated that Mr. Neupane had been killed, an article in the *Mahanagar Daily* 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 had been transferred from Pokhara to the District Police Office 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, should he no longer be alive, his mortal remains have not been located and returned to his family. The Committee recalls that, in cases of enforced disappearance, 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.

<sup>11</sup> See communications No. 1422/2005, *El Hassy v. 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; No. 1804/2008, *Il Khwildy v. Libya*, Views adopted on 1 November 2012, para. 7.2; *Basnet v. Nepal*, para. 10.3; *Nakarmi v. Nepal*, para. 11.4; and *Dhakal v. Nepal*, para. 11.4.

<sup>12</sup> See communications No. 2000/2010, *Katwal v. Nepal*, Views adopted on 1 April 2015, para. 11.3; No. 2134/2012, *Molina Ariasa et al. v. Colombia*, Views adopted on 9 July 2015, para. 9.4; *Basnet v. Nepal*, para. 10.4; *Nakarmi v. Nepal*, para. 11.5; and *Dhakal v. Nepal*, para. 11.5.

<sup>13</sup> See communications No. 1913/2009, *Abushaala v. Libya*, Views adopted on 18 March 2013, para. 6.2; *Basnet v. Nepal*, para. 10.5; *Nakarmi v. Nepal*, para. 11.6; and *Dhakal v. Nepal*, para. 11.6.

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 subsequent 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 note of the article in the *Mahanagar Daily*, published three months after Mr. Neupane's disappearance, which reported that he was subjected to torture while being held by the Nepal Police in Pokhara. As the State party has not provided evidence to clarify the facts regarding Mr. Neupane's treatment while in detention, the Committee finds that the enforced disappearance of Mr. Neupane and his treatment 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 and that no investigation has been carried out to ascertain his fate and, in the event of his death, to return his remains to his family. The Committee also notes the authors' allegation that after Mr. Neupane's enforced disappearance they were regularly visited by members of the security forces, which exacerbated their fear and anxiety. The Committee further notes the information that, as a result of the family relationship between Nisha Neupane and Mr. Neupane, the former was also a victim of arbitrary detention<sup>14</sup> and subjected to torture. 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. He was never brought before a judge or any other official authorized by law to exercise judicial power, and he could not bring proceedings before a court to challenge the lawfulness of his detention. In the absence of a response from the State party 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' allegation that despite evidence that Mr. Neupane had been detained by the Nepal Police, the Nepalese authorities have denied categorically their involvement in his enforced disappearance. The State party has failed to provide relevant information concerning Mr. Neupane's fate and no effective investigation has been carried out to ascertain his whereabouts, effectively placing him outside the protection of the law. 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 a 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 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, which provides, inter alia, that

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<sup>14</sup> See E/CN.4/2006/56 and Corr.1, annex IV.

<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.

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, immediately after having been informed of her husband's detention by the Nepal Police, visited the District Police Office and other detention facilities in Kathmandu to gather information about his arrest. She also filed two writs of habeas corpus petitions with 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 with the serious violations committed. Accordingly, the Committee concludes that the facts before it reveal a violation of article 2 (3), read in conjunction with articles 6 (1), 7, 9 and 16, of the Covenant 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 Committee, acting under article 5 (4) of the Optional Protocol, 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, with regard to Danda Pani Neupane. The facts also disclose violations of articles 7 and 2 (3), read in conjunction with article 7, with respect to the authors, Shanta Neupane and 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) locate his remains, if Mr. Neupane is no longer alive, 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 to Mr. Neupane, if he is still 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: (a) its legislation allows for the criminal prosecution of those responsible for serious human rights violations such as torture, extrajudicial execution and enforced disappearance; and (b) 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, 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.