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**Human Rights Committee**

 Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2658/2015[[1]](#footnote-2)\*,[[2]](#footnote-3)\*\*

*Communication Submitted by*:Gyan Devi Bolakhe (represented by counsels, Mandira Sharma, of Advocacy Forum Nepal and Sarah Fulton of REDRESS)

*Alleged victims*:The author, her deceased husband Hari Prasad Bolakhe, and Sajana Bolakhe, Kalasha Bolakhe, Barsha Bolakhe, and Santosh Bolakhe (their children), Pushpa Prasad Bolakhe and Lila Kumara Bolakhe (her parents-in-law)

*State party*:Nepal

*Date of communication*:14 November 2014 (initial submission)

*Document references*:Decision taken pursuant to rule 97 of the Committee’s rules of procedure, transmitted to the State party on 22 October 2015 (not issued in document form)

*Date of adoption of Views*:19 July 2018

*Subject matter*:Enforced disappearance; right to life

*Procedural issue*:Exhaustion of domestic remedies

*Substantive issues*: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

*Articles of the Covenant*:6, 7, 9, 10, 16 and 17, alone and read in conjunction with 2 (3)

*Articles of the Optional Protocol*:2 and 5 (2) (b)

1. The author of the communication is Gyan Devi Bolakhe born in 1973. She submits the communication on behalf of herself, her deceased husband Hari Prasad Bolakhe, their four children Sajana, Kalasha, Barsha and Santosh Bolakhe, as well as her parents-in-law Pushpa Prasad Bolakhe and Lila Kumara Bolakhe. Mr. Bolakhe is a Nepalese national born in 1969. The author claims that the State party has violated the rights of her husband under articles 6, 7, 9, 10, 16 and 17 separately and in conjunction with 2 (3) of the Covenant, and her rights and the rights of her children and parents-in-law under article 7 alone and in conjunction with 2 (3) of the Covenant. The author is represented by counsels. The Covenant and its Optional Protocol entered into force for Nepal on 14 August 1991.

 The facts as submitted by the author

 The conflict

2.1 Between 1996 and 2006, Nepal was immersed in an internal armed conflict between the Government of Nepal and the Communist Party of Nepal-Maoist. A state of emergency was declared from 28 November 2001 to 20 August 2002. Wide powers were given to security officers by the Terrorist and Disruptive Activities Ordinances and the Terrorist and Disruptive Activities Act (2002), including to arrest persons believed to be involved in what were termed “terrorist activities,” which led to a steep increase in violations committed by the Royal Nepali Army. During the conflict, widespread human rights violations, including arbitrary arrest and detention, torture, rape and enforced disappearances were documented.[[3]](#footnote-4) Unlawful killing and extrajudicial executions by law enforcement officers and unlawful killings by Maoists was a constant features of the conflict.[[4]](#footnote-5) One of the patterns of extrajudicial executions by security forces was to launch search operations in villages, take into custody a number of local people, interrogate and beat them, then take them to a secluded place and shoot them. Killings were often justified as an unavoidable consequence of cross-fire and labelled “encounter killings”.[[5]](#footnote-6)

 First arrest and enforced disappearance

2.2 Mr. Bolakhe was a Christian pastor of the Seventh-day Adventist Church located at Gatthaghar, Bhaktapur District. He resided there but frequently visited his family, who lived in Fulbari Village, Kavrepalanchowk (Kavre) District. The family had a public telephone booth at their home, which had been sometimes used by Maoists.

2.3 On 1 May 2001, Mr. Bolakhe was arrested by a joint unit of security forces, including the Army, on the allegations of involvement with Maoist activities and allowing Maoists to use the phone. At the time of his arrest, he was not formally informed of the charges against him and was not allowed to consult a lawyer. His family was able to establish his whereabouts only 14 months later, when he was transferred to Dhulikhel prison on 14 July 2002. Mr. Bolakhe was held in different army barracks before being released on 20 April 2003. He was released after his father signed a paper stating that his son would not commit any illegal acts, and on the condition of reporting regularly to the Kavre District Police Office (DPO).

 Interrogation and arrest and torture of the elder brother

2.4 In November 2003, Mr. Bolakhe was again called by Army officials of Bhakundebesi barracks for interrogation after a bomb targeting the army went off near his house. The army then arrested two other men from the same village on suspicion of involvement in implanting the bomb. Mr. Bolakhe was in Bhaktapur at the time.

2.5 Some days after, the Army arrested his elder brother, who was found in possession of a note from the Maoists. He was tortured and ill-treated, and repeatedly asked whether Mr. Bolakhe had connections to the Maoist. He was released after his father signed a document committing to help capture a Maoist commander.

 House search, interrogation and threats

2.6 On 20 December 2003, army personnel from the Bhakundebesi barracks came to Mr. Bolakhe’s house and searched the entire premises.[[6]](#footnote-7) At the time, Mr. Bolakhe was in Gatthaghar but the author and her four children were at the house. The Army scolded them and asked about Mr. Bolakhe’s whereabouts. The army personnel said that he was a Maoist and that they had come to arrest him, and asked her to send him to the barracks upon his return. On 21 December 2003, the author went to meet her husband and told him about the Army’s visit. On 23 December 2003, Mr. Bolakhe went to Bhakundebesi barracks where he was interrogated and threatened with death before he was released.

 Second arrest and enforced disappearance

2.7 On 27 December 2003, Mr. Bolakhe travelled by bus from Bhaktapur to Banepa for some church-related activities. While he was getting off the bus in Banepa, the Head Constable of DPO, KBL, in plain clothes, approached him, hugged him and said that the Deputy Superintended of Police wanted to see him and took him away. Mr. Bolakhe’s father, who was waiting at the bus station, and two shopkeepers located nearby witnessed the arrest. Immediately afterwards, the father went to DPO looking for his son but the arrest was denied. On the same day, the father accompanied by the author went to Satrumardan army barracks in Dhulikhel (Dhulikhel barracks) looking for Mr. Bolakhe. They were severely reprimanded by the Army who denied having made such an arrest. One army personnel member on duty told them that the previous night a man was brought to the barracks. Based on his physical description the author believed her husband was in Dhulikhel barracks. When the father again visited the barracks, he saw his son from afar. After this he made frequent visits but was never provided access to his son.

2.8 On 28 December 2003, Mr. Bolakhe’s sister received a call from someone pretending to be a friend of Mr. Bolakhe, saying that her brother was at one of his friends’ home. The phone call was made from the District Forest Office, where the Army was stationed. A few days later, an army officer from Dhulikhel barracks approached the sister and said that he had made that call, and asked for money for her brother for tobacco. On a different occasion, an army sergeant told the sister that her brother was in the Dhulikhel barracks.

 Detention at the Gorakhnath battalion army camp

2.9 Based on testimony by a former detainee, Mr. RP, the author’s husband was transferred at some point to the Gorakhnath battalion army camp in Panauti. Mr. RP testified that he met Mr. Bolakhe at first in a detention room on 13 February 2004, before he went with him on a search mission.

2.10 Mr. PR also testified that he had previously been held in detention at that army camp for three weeks in December 2003. During his time in detention, he stayed blindfolded in a trench with poor hygienic conditions, having to sleep on the floor without being given proper food or water. The detainees were eating fruit and vegetable peels, and had a dirty toilet and a tap that was dry most of the time. The Army used to call the detainees for interrogation and severely beat them with blunt objects, and punched and kicked them all over their body. Although Mr. Bolakhe was transferred to the camp at a later stage there was no reason to suggest that the conditions at the camp had changed. While on patrol, Mr. Bolakhe told Mr. RP that during his detention at the camp he had been frequently interrogated and beaten, and that it was painful for him to walk because of the injuries. Mr. Bolakhe was held incommunicado both in Dhulikhel barracks and in Gorakhnath Battalion.

 Search operation and subsequent killing

2.11 On 13 February 2004, Mr. Bolakhe, along with Mr. RP and a Maoist suspect were taken on a search mission led by Lieutenant BT. They were accompanied by 45 soldiers and three police officers. During the mission, Mr. Bolakhe was ordered to carry weaponry and baggage for army officers. The army went through a number of villages, and beat and arrested villagers for providing food to Maoists. While advancing, a bomb explosion was heard. Some soldiers rushed back and found a bomb. They brought it back and gave it to one of the detainees to explode it.

2.12 By the time they had reached the village of Salleri, Mr. Bolake was separated from the other two detainees by about 150 meters. In his testimony, Mr. RP noted that he overheard soldiers saying that Lieutenant BT had abused alcohol, and that they were scared of what he was going to do next. After a while, Lieutenant BT walked over to where Mr. Bolakhe was kept, and after a few minutes some shots were heard. Mr. RP testified that the shots came from the same direction and sounded like they came from the same guns as they sounded the same. Lieutenant BT and the soldiers, who had been with Mr. Bolakhe, came back without him.

2.13 The next morning, on 17 February 2004, soldiers went to the house of a villager, Ms. TT, in Salleri and asked for digging instruments. Terrified by the shooting she had heard the previous night, she gave them a mattock and a shovel without asking any questions. The soldiers brought the instruments back an hour later. That morning, the soldiers and the two remaining detainees left the area. On the way back, some soldiers told Mr. RP that Mr. Bolakhe was a Maoist and got killed during the cross-fire with Maoists who had come to rescue him.

2.14 Sometime later, a sister of Ms. TT showed her a location in the jungle with a terrible stench and flies hovering around. They suspected that a corpse had been buried there. Two years later, this was confirmed when human remains were exhumed from the same location, which was confirmed to be that of Mr. Bolakhe.

 Attempts to seek justice – writ petition for habeas corpus

2.15 Unaware of these events, the author and her family continued visiting the Dhulikhel barracks. On 30 March 2004, the author submitted an application requesting her husband’s release, which was met with reprimands.

2.16 On 11 October 2004, the Nepali government made public the whereabouts of 126 involuntarily disappeared persons through a report known as the Malego Committee’s report.[[7]](#footnote-8) The report featured Mr. Bolakhe’s name stating that he had been released on 20 April 2003, without any reference to his second arrest on 27 December 2003. Mr. Bolakhe’s brother tried to establish his whereabouts in various locations, including the Sundarijal barrack,[[8]](#footnote-9) Central Jail, Nakkhu Jail, Dillibazar Jail, District Administration Office Dhulikhel, and the Dhulikhel barracks, but to no avail.

2.17 On 11 April 2005, following repeated refusals by the Army to provide information about the fate or whereabouts of Mr. Bolakhe, the family filed a habeas corpus writ petition to the Supreme Court. On 22 June 2005, the court quashed the writ petition after the Home Ministry presented the Malego Committee’s report indicating Mr. Bolakhe’s release.

 Petition before the NHRC, and subsequent body exhumation and opinion of the NHRC

2.18 On 16 July 2005, the family lodged a complaint before the National Human Rights Commission (NHRC). The NHRC initially sought information from the Defence and Home Ministries, who said that no records of the arrest of Mr. Bolakhe on 27 December 2003 were found.

2.19 The NHRC continued with its investigation. It identified the possible burial site. On 5 July 2006, human remains were exhumed in a forest at Mulkhola, Kavre. The forensic autopsy findings confirmed that the remains were those of Mr. Bolakhe. It also concluded that he had died due to gunfire injuries in the pelvis; an “SG (grain) size lead pellets of 12 bore shotgun cartridge and a wad (plastic cup) of 12 bore shotgun carriage.”[[9]](#footnote-10) On 13 September 2006, the family received the body to be cremated.

2.20 The NHRC sought information from Lieutenant BT, who said that he had led the patrol, and that the two other detainees had been on the patrol, but that he did not know anything about Mr. Bolakhe’s arrest and death. He further said that there was no crossfire incident at that time. The NHRC also interviewed Police Head Constable KBL, who said that Mr. Bolakhe had not been arrested, otherwise there would have been an arrest warrant.

2.21 On 6 June 2008, the NHRC adopted a decision in the case.[[10]](#footnote-11) It concluded that Mr. Bolakhe was arrested on 27 December 2003, and was detained incommunicado at Dhulikhel barracks, before being transferred to barracks in Panauti in February 2004. NHRC found that he was taken on search mission and was unlawfully killed and buried at a jungle on 16 February 2004. It also found that the security forces did not follow the prescribed legal processes for the death of a person in their custody, and concealed the incident, making the whereabouts of the person unknown. The NHRC found Police Head Constable KBL responsible for the “illegal arrest” of Mr. Bolakhe; Major KT responsible for illegally detaining him incommunicado; and Captain (then-Lieutenant) BT responsible for “taking a civilian on an army mission and killing him.” The NHRC stated that it was necessary to create personal accountability to those involved, and recommended the government to provide the author’s family with compensation amounting to NRS 300,000.[[11]](#footnote-12)

 Further steps taken by the author and her family

2.22 The Government never formally acknowledged the decision of NHRC nor implemented its recommendations. In the absence of transitional justice mechanisms as envisaged in the Interim Constitution of Nepal, the Government provided the Bolakhe family some “interim measure” in the form of payment amounting to NRS 325,000[[12]](#footnote-13) under the government’s Relief Plan granted by the Ministry of Peace and Reconstruction.[[13]](#footnote-14)

2.23 On 18 October 2006, the author and her father-in-law filed a First Information Report (FIR) to DPO to initiate an investigation against the perpetrators identified by the NHRC. However, DPO flatly refused to register the FIR, saying that they could not register it and arrest the perpetrators unless an order came from higher authority. They advised the family to take the case to the Police headquarters.

2.24 As an alternative recourse, the author and her father-in-law submitted a petition before the Chief District Officer (CDO) of Kavre on 18 October 2006. He registered the petition and commanded DPO to register the FIR and commence the investigation. On 1 November 2006, the family went to DPO to follow up, but the latter refused to register the FIR. DPO said that perpetrators had higher positions, and hence it could not register the case or arrest them.

2.25 On 8 November 2006, the family filed a writ petition before the Supreme Court demanding a mandamus order for DPO to register the FIR. On 5 December 2006, in a written response DPO informed the Court that it had registered the FIR on 7 November 2006 under the case of homicide, and as such, the investigation had already opened. Subsequently, the family and the lawyers made regular follow-up visits to DPO. When asked about progress in the case, DPO would refer to certain correspondence with criminal justice authorities noting that they remained unanswered. This includes a letter DPO said it had sent to Police headquarters and Zonal Police Office on 8 December 2006, asking the office for an order in the name of the perpetrators.

2.26 On 17 June 2008, the District Attorney’s Office wrote to DPO instructing it to immediately arrest the perpetrators identified in the FIR, and proceed with the necessary actions. DPO failed to act upon these instructions.

2.27 On 9 November 2009, and after repeated postponements of the hearings, the Supreme Court quashed the petition on the basis that the FIR had been registered, and despite the fact that DPO did not submit to the Court a case file describing the developments of the case as per the Court’s request.

2.28 Since then, and despite various efforts by the family to urge DPO to arrest the perpetrators and take the necessary actions, no developments in the case were reported. Their latest visit to DPO was on 24 September 2014, when the police informed the author and her lawyer that they had not worked on the case since 20 October 2013. The police officer at DPO told the author that the case would need to be dealt with by the Truth and Reconciliation Commission, hence the Police would not do anything further on it.

2.29 The family has been undergoing severe challenges and difficulties after the disappearance and subsequent killing of Mr. Bolakhe, who was the sole breadwinner of his family. The author faced extreme economic hardship and adversity to feed and educate her children. Her son was forced to discontinue his studies and go to work. The family suffered mental anguish and continuing psychological impact.

 The complaint

3.1 The author claims that the two separate arrests and detentions of Mr. Bolakhe on 1 May 2001 until 14 July 2002 (until the family established his whereabouts and fate), and on 27 December 2003 (until his whereabouts and fate became known), amount to enforced disappearance constituting by itself, and in conjunction with the facts outlined below, a violation of his rights under articles 6, 7, 9, 10 (1), 16.[[14]](#footnote-15)

3.2 The author submits that Mr. Bolakhe was extra-judicially executed during an army patrol. The evidence supported by two witnesses is inconsistent with Mr. Bolakhe’s death occurring during cross-fire. Both Mr. RP and Ms. TT heard the shooting coming from one direction and from one type of gun. This was supported by the findings of the NHRC and other evidence of Lieutenant BT himself to the NHRC stating that there had been no crossfire incident during that time. The author submits further that there was no possible argument that Mr. Bolakhe’s execution was the result of the use of reasonable force and self-defence, and was not subjected to any judicial process.[[15]](#footnote-16) No investigation into his death was carried out at the time, and his body was buried in secret. The author submits that this amounts to a violation by the State party of article 6 of the Covenant.

3.3 The author argues that her husband was subjected to violations of articles 7 and 10 in a number of ways during his two periods of detention. The author considers that his incommunicado detention twice, without being in touch with his family and the outside world, in itself amounted to a violation of article 7.[[16]](#footnote-17) She also claimed that her husband was subjected to acts of torture and cruel, inhuman or degrading treatment as supported by a witness’ testimony indicating that Mr. Bolakhe told him that he had been severely beaten during interrogations. The author also contends that the overall conditions of detention at Gorakhnath Battalion army camp (December 2002 to February 2003) amounted to cruel, inhuman and degrading treatment. [[17]](#footnote-18) She further argues that subjecting Mr. Bolakhe, before he was shot, to a four-day “search mission” amounted to ill-treatment in violation of articles 7 and 10. He was forced to walk long distances while in pain from beating that had been inflicted on him in interrogations; to carry heavy baggage and weapons, to witness soldiers beating other villagers, and had an unexploded bomb thrown in front of him.

3.4 The author claims that her husband was arrested on both occasions without a warrant and was never informed of the reasons for his arrest or the charges against him. He was held in incommunicado without any opportunity to consult a lawyer or to contact friends or family, or to be brought before a judge. He could not challenge the lawfulness of his detention on his initiative. The NHRC confirmed the illegality of the arrest and detention of Mr. Bolakhe. In light of the above, the author argues that Mr. Bolakhe was arbitrarily deprived of his liberty in violation of Article 9,[[18]](#footnote-19) and that the State failed to provide compensation to his family in line with Article 9(5).

3.5 The author alleges that her husband was denied recognition as a person before the law on two separate occasions. First, when he was arrested on 1 May 2001, and was denied access to the outside world until his family was able to ascertain his whereabouts on 14 July 2002, when he was transferred to a state prison. Second, on 27 December 2003, when state forces abducted him and detained him until he was killed on 16 February 2004. Though his family persistently inquired at various institutions regarding his whereabouts, the state systematically denied information regarding his detention. Even the writ petition of habeas corpus was quashed by the Supreme Court on the basis that the Malego Committee’s report which maintained that Mr. Bolakhe had been released from detention. By producing false reports on Mr. Bolakhe’s detention, the state systematically misled the author and her family, and removed him from the protection of the law and other legal entitlements under the Covenant for a protracted period of time, which means he was denied recognition as a person. To this day, the Army refused to give any information regarding the detention or death of Mr. Bolakhe. The author therefore claims that the State party violated article 16 of the Covenant.

3.6 The author submits that the State party’s systematic refusal to investigate Mr. Bolakhe’s disappearance and extrajudicial execution has ensured that no effective remedy has ever been provided for the aforementioned violations. As such, the State party violated Article 2(3) of the Covenant.

3.7 The author argues that her and her family’s right to privacy under article 17 was violated by the Army’s illegal search without a warrant of her house on 20 December 2003. The author noted that the Army searched the entire home and threatened her and her family members who were present. The author referred to the Committee’s jurisprudence indicating that such arbitrary invasions of privacy and home violates Article 17. [[19]](#footnote-20) The author stressed that entering homes with force along with physical and verbal abuse to the occupants had a significant impact upon the family life of those concerned.

3.8 The author contends that she, her children and parents-in-law have experienced severe pain and suffering since the disappearance of her husband and the State’s refusal to give information. They could not establish his whereabouts until the NHRC investigation revealed that her husband had been killed. Mr. Bolakhe’s family faces continuing uncertainty about why he was killed and by who, because of the failure of the police to investigate.[[20]](#footnote-21) His death had a negative financial and mental impact on the family and hampered the children’s education and other general needs of the family, especially given that he was the sole breadwinner. The author notes that the “interim relief” received by the author has been made available to all victims of enforced disappearance and cannot substitute for the effective remedy required by the Covenant. It is a temporary measure intended to support families until proper compensation is provided. The author submits that the State party violated article 7, read alone and in conjunction with article 2 (3) of the Covenant in respect of the author and the family members on whose behalf she submits the current communication.

3.9 Regarding the exhaustion of available domestic remedies, the author indicated that she and her family made several efforts to locate her husband, including by visiting the Kavre DPO, other detention centres and jails, as well as the District Administration Office. They also appealed to the Home Ministry and the NHRC and to national and international non-governmental organisations. They filed two petitions in the Supreme Court of Nepal; a habeas corpus petition, and a writ for a mandamus order for the police to register the FIR and initiate the investigation. Both petitions were quashed by the Supreme Court, which is the court of last resort in the Nepalese judicial system.

3.10 Alternatively, the author submits that she is not expected to exhaust domestic remedies where the State has an *ex officio* obligation to investigate and prosecute crimes of which it is aware, and where there is an unreasonably prolonged delay in doing so.[[21]](#footnote-22) She claims that the State party did not meet its obligation to promptly, thoroughly and effectively investigate the allegations of violations through independent and impartial bodies. There has been only a few correspondences by criminal justice authorities in relation to the case. The author concludes that the delay of almost 11 years since the violations were brought to the State party’s attention constitutes an unreasonably prolonged delay in pursuing the investigation.[[22]](#footnote-23)

3.11 The author claims that available remedies are neither effective nor available in relation to the violations suffered.[[23]](#footnote-24) Although the Interim Constitution acknowledges torture as a crime, the domestic legislation fails to criminalize it and thus does not set the necessary grounds for the State to provide the appropriate remedy. [[24]](#footnote-25) Referring to the jurisprudence of the Committee, the author notes that the remedy provided by the Compensation Relating to Torture Act 205 (1996), which provides only the possibility of suing for limited damages and pursing administrative sanctions against perpetrators, is not an effective remedy.[[25]](#footnote-26)

3.12 The author submits that even for crimes that do exist under Nepali law, immunities for military officials are a bar to prosecutions.[[26]](#footnote-27) In addition, the culture of impunity in Nepal shows that domestic remedies are ineffective.[[27]](#footnote-28)

3.13 The author argues that the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) (the Act) is incompatible with international human rights standards. The Act does not provide an effective judicial remedy, as it diverts all cases of serious violations of human rights committed during the conflict to transitional justice mechanisms, namely the Truth and Reconciliation Commission and the Commission on Investigation of Disappeared Persons. The Act gives a wide discretion to authorities as to whether to undertake an effective criminal investigation and prosecution. Furthermore, the author notes that the Commissions have the power to recommend amnesties for gross violations of human rights. Referring to the Committee’s jurisprudence, the author argues that these transitional mechanisms do not amount to an effective judicial remedy and need not to be exhausted.[[28]](#footnote-29)

3.14 The author requests the Committee to recommend to the State party that it should: (a) initiate without delay a full and effective criminal investigation by an autonomous and independent criminal investigation body into the allegations leading to the prosecution and punishment of all those responsible - both the persons who carried out the acts and those who directed or otherwise authorised or acquiesced to the actions; (b) provide comprehensive measures to protect the author, her family members and other witnesses for potential threats and reprisals while conducting the investigation; (c) provide the family with adequate and effective reparation; (d) ensure that the measures of reparation cover financial compensation for all pecuniary and non-pecuniary losses, including compensation for the loss of income, loss of educational opportunity, cost for the children’s education to tertiary, expenses of the search for Mr. Bolakhe and costs of pursing justice, costs of psychological treatment and damages for emotional distress; (e) ensure that these measures include access to rehabilitation services to the author, her children and her parents-in-law; (f) provide the full file from the NHRC investigation. In particular, the author requested an official apology to the family, made by the Prime Minister, a senior member of the Ministry of Defence, and a senior member of the Ministry of Justice. The author also requested general measures of reforming laws and institutions to ensure sufficient safeguards from the recurrence of similar violations in the future, including: criminalisation of torture and enforced disappearances; removal of immunities from Army and Police Officers responsible for serious human rights violations; reform of the system of registration of an FIR and investigation and prosecution of serious international crimes alleged against State actors; repeal or amendment of the Truth and Reconciliation Commission Act to ensure that investigations can also proceed in the domestic justice system for crimes under international law; reform of the Army to ensure accountability and obedience to the Courts, and implementing a system of vetting of army and police officials.

 State party’s observations on admissibility and the merits

4.1 By note verbale of 2 May 2016, the State party submitted its observations on admissibility and the merits of the communication.

4.2 On the admissibility, the State party contends that the author has not exhausted domestic remedies. The State party submits that DPO registered the FIR in relation to the death of Mr. Bolakhe, brought by his father, “under the case of culpable homicide on 24 October 2006”,[[29]](#footnote-30) and that the case is ongoing under investigation.

4.3 The State party notes that the whereabouts of Mr. Bolakhe have already been identified, and that the body was handed over to his family for final rites. The State party further noted that the case occurred during the time of armed conflict in Nepal. The Commission on Investigation of Enforced Disappeared Persons, and the Truth and Reconciliation Commission have been constituted by the Act on Enforced Disappearances Enquiry, Truth and Reconciliation Commission (2014) to address violations of human rights committed by State and non-State actors during the period of the conflict. On 18 May 2016, the two Commissions separately issued public notices to lodge the complaints regards the act of enforced disappearances and human rights violations committed during the armed conflict within a period of two months.

4.4 The State party claimed that the two Commissions have adequate mandates and competency for impartial and independent investigation into human rights violations and crimes against humanity. Based on the investigation, the Commissions have the power to: (a) recommend for prosecution against perpetrators involved in serious human rights violations; (b) recommend for reparation to the victim; (c) make reconciliation between the victim and the perpetrators; and (d) recommend for amnesty where sufficient ground exists as set forth in the Act.

4.5 The State party submits that the Rules of the Commissions, which were approved by the Council of Ministers in line with the Supreme Court’s ruling of 26 February 2015, provide stronger measures for effective implementation of the transitional mechanisms. According to these Rules, reconciliation or recommendations for amnesty can be made only with prior consent of the victim. The Commissions are also empowered to forward cases directly to the Office of the Attorney General for prosecution against the offenders involved in serious violations of human rights.

4.6 The State party argues that the allegations made by the author would fall under the jurisdiction of the Truth and Reconciliation Commission, and that the author did not register the complaint regarding the death of Mr. Bolakhe with the Commission.

4.7 The State party claims that the author cannot get full justice or remedy only from the regular criminal justice mechanisms and should have registered the complaint regarding the death of her husband to the Truth and Reconciliation Commission. On the basis of a completed investigation on the case and further to the recommendation of the Truth and Reconciliation Commission, the Government shall take legal action against the persons involved in the offence. The State party therefore alleges that the author have not exhausted the available effective and accessible domestic remedies and that the complaint was not admissible.

4.8 Regarding the merits, the State party notes that the Nepalese Army provided the information that there is no record of arrest and detention of Mr. Bolakhe in Dhulikhel barracks. The State party recalled the autopsy and forensic investigation which confirmed that he died as a result of gunfire injuries in the pelvis and that they were SG (grain) size lead pellets of 12 bore shotgun cartridge and a wad (plastic cup) of 12 bore shotgun carriage. The State party contends that the Nepalese Army has not used such arms so it can be concluded that Mr. Bolakhe was not killed by the gun of an army personnel.

4.9 The State party notes that it has already provided a sum of 500,000 Nepalese Rupees to the author as an “interim relief” under the guidelines and standards adopted to provide interim relief and other benefit to conflict victims and survivors. The State party further notes that the author would be entitled to the benefit and reparation to be provided as per the provision of section 23 of the Act.

 Author’s comments on the State party’s observations on admissibility and the merits

5.1 On 25 August 2016, the author submitted her comments on the State party’s observations on admissibility and merits.

5.2 With regard to the exhaustion of domestic remedies, the author argues that she and her family have availed themselves of every possible remedy and that those remedies have been exhausted. The author reiterates that the Committee has repeatedly stressed that the newly-established transitional justice mechanisms referred to by the State party are not an effective judicial remedy required for violations as serious as those alleged in the communication.

5.3 The author argues that the Act is deeply flawed and is incompatible with the Covenant. She notes that since the submission of the communication, namely on 26 February 2015, the Supreme Court of Nepal declared the Act to be unconstitutional and ordered the government to amend or repeal certain provisions of the legislation. The Court held that provisions of the Act that serve to compromise the central role of the courts in delivering justice are invalid, including the power to grant amnesties, powers to divert such cases from the court or to otherwise interfere in such cases.[[30]](#footnote-31) The author claimed that amendments have not been introduced to the Act to implement the Court’s judgement.[[31]](#footnote-32) Concerning the State party’s reference to the Rules introduced for the Commissions, the author notes that they do not transform the Commissions into a judicial remedy. The author further argues that the Act will always take precedence over the Rules.

5.4 The author reiterates that even if the Transitional Reconciliation Commission did provide an effective remedy, it has been unreasonably delayed in the provision of the appropriate remedy and would not form a bar to admissibility.

5.5 The author recalls that the interim relief she received and referred to by the State party is provisional and not a bar to admissibility, and does not amount to adequate reparation for violations as serious as those alleged in this case.

5.6 Concerning the merits, the author argued that the absence of a record of the arrest and detention of her husband as set out in the State party’s report does not disapprove the allegation that Mr. Bolakhe was arrested on 27 December 2003 and detained. It is widely documented that during the conflict in Nepal, the Army and police regularly failed to follow safe guards for arrest and detention, including in particular the maintenance of custody records.[[32]](#footnote-33)

5.7 The author adds that there is extensive witness and circumstantial evidence attesting to the fact that Mr. Bolakhe was arrested and kept under the control of the Army and Police. The evidence was strong enough for the NHRC to make a formal finding that he was arrested on 27 December 2003, and was detained incommunicado at Satru Mardan army barracks, before being transferred to arms barracks at Panauti in February 2014. The NHRC also identified the perpetrators. The author further submits that the witness evidence in this case, including those referred to by the NHRC decision, is entirely consistent with practice of the Police and Army at the time.

5.8 With regard to the State party’s argument that according to the autopsy, the type of bullets found with Mr Bolakhe’s remains were from a 12-bore shotgun, and that the Army did not use such a gun, the author contends that this did not disapprove the Army and the Police’s responsibility for the killing. She adds that there is insurmountable evidence, corroborated by the later finding of his remains, witness evidence and findings of the NHRC that he was shot by the Army or the Police on a joint operation. The author submits that, although it may be true that 12-bore shotguns were not official Army issued weapons during the conflict, the police, which was also part of the joint operation in which Mr. Bolakhe was killed, did use this type of weapon during the conflict. Soldiers from the Army also had easy access to such weapons, as Maoists used 12-bore shotguns. Maoist weapons were regularly seized by the Army and it is public knowledge that soldiers had access to them.

 Issues and proceedings before the Committee

 Consideration of admissibility

6.1 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.

6.2 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.

6.3 The Committee notes the argument of the State party that the DPO registered an FIR in relation to the death of Mr. Bolakhe, and that the case is under investigation. The Committee also notes the State party’s allegation that the author has not exhausted domestic remedies, since Mr. Bolakhe’s case would be addressed by the transitional justice mechanism created under the Act on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation of 2014.

6.4 The Committee observes the steps taken by the author and her family in trying to locate Mr. Bolakhe. After his arrest on 27 December 2003, the author and her family visited various locations, including DPO, jails, barracks and the District Administration Office to establish his whereabouts. They also appealed to the Home Ministry. Despite all these attempts, the author received no information from the State party regarding the whereabouts of her husband. The Committee also notes that a habeas corpus petition was filed in the Supreme Court of Nepal soon after the author’s husband disappeared but this was dismissed. The Committee also notes that following this a complaint was lodged with the NHRC, who investigated the case and found that Mr. Bolakhe was unlawfully killed by state forces and recommended prosecution of named individuals. The Committee observes that after the final exhumation of the remains of Mr. Bolakhe the author and her father-in-law attempted to file an FIR on 18 October 2006, but DPO refused to register it. Subsequently, they submitted a petition to the CDP requesting an investigation. The CDP ordered DPO to register the case, but the latter failed to comply. Consequently, the family filed a petition to the Supreme Court demanding an order of mandamus against DPO, who informed the Court that an FIR had already been registered on 7 November 2006, urging the Supreme Court to squash the petition. The Committee observes that since the registration of the FIR, the Police’s action on this case has been amounting solely to sending correspondence to higher police authorities and another district police office requesting relevant individuals to present themselves for interrogations. The legal proceedings had been drawn out and no real investigation had been undertaken.

6.5 The Committee recalls its jurisprudence according to which a judicial remedy is required in cases of serious violations.[[33]](#footnote-34) 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.[[34]](#footnote-35) 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.

6.6 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

7.1 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.

7.2 The Committee takes note of the author’s allegation that the arrest and detention of Mr. Bolakhe from 1 May 2001 until 14 July 2002, when his family established his whereabouts, amounted to enforced disappearance. It further notes that the State party did not challenge these allegations. The Committee observes that the 2014 Malego Committee’s report which made public the whereabouts of 126 involuntarily disappeared persons featured Mr. Bolakhe’s name among those and confirmed that he had been released on 20 April 2003.

7.3 The Committee notes the author’s argument that her husband was subjected to an enforced disappearance after he was again arrested on 27 December 2003. The Committee takes note of the State party’s argument that there is no record of Mr. Bolakhe’s arrest or detention.

7.4 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.[[35]](#footnote-36) In line with these precedents, the Committee reiterates 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.

7.5 In the present case, the Committee notes the author’s claim that her husband was arrested on 27 December 2003 without a warrant as supported by two testimonies. She further argued that he was held incommunicado in two different locations. The Committee observes that despite the efforts made by the author and her family to locate Mr. Bolakhe, his whereabouts and fate remained unknown until the investigation of the NHRC led to the identification of a burial site where his remains were exhumed more than 2.5 years after his disappearance. The Committee observes that the authorities denied their involvement in Mr. Bolakhe’s deprivation of liberty, and persistently refused to disclose his fate or whereabouts, including in the context of habeas corpus, which led the Supreme Court to dismiss the case petition. The Committee also takes note of the NHRC decision concluding that Mr. Bolakhe was arrested on 27 December 2003, and was detained incommunicado by the authorities.

7.6 In light of the documentation submitted by the author, the Committee considers that the State party has not provided a sufficient and concrete explanation to refute the author’s allegations regarding her husband’s enforced disappearances, either during the period from 1 May 2001 until 14 July 2002, or during the period from 27 December 2003 until 5 July 2006. The Committee, therefore, considers that Mr. Bolakhe’s deprivation of liberty, followed by the authorities’ refusal to acknowledge it and conceal his fate, during both periods, constitute an enforced disappearance.

7.7 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 violations of various rights recognised in the treaty.[[36]](#footnote-37)

7.8 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.[[37]](#footnote-38) In the present case, the State party has produced no evidence to show that it met its obligations to protect the life of Mr. Bolakhe when he was in the authorities’ custody.

7.9 The Committee notes the author’s allegation that Mr. Bolakhe was extra-judicially executed during an army patrol. Two witnesses heard the shooting at the time coming from one direction and from one type of gun the day Mr. Bolakhe was killed. The Committee observes that this was supported by the findings of the NHRC and other evidence of Lieutenant BT himself to the NHRC stating that there had been no crossfire incident during that time. The Committee takes note of the author’s argument that Mr. Bolakhe’s execution was not compatible with a possible argument of use of reasonable force or self-defence and was not subjected to a judicial process. The Committee takes note of the findings of the NHRC in this case stating that the security forces did not follow legal process for the death of a person in their custody, and concealed the incident, making the whereabouts of the person unknown.

7.10 The Committee takes note of the State party’s claim that the Army does not use the type of gun of which bullets were found during the autopsy in Mr. Bolakhe’s remains. The Committee also notes the author’s claim that this does not disapprove the Army and Police’s responsibility for the killing. She adds that there is insurmountable evidence that her husband was shot by Army or police on a joint operation. This evidence is corroborated by the finding of Mr. Bolakhe’s remains in the spot referred to in the witness evidence, and correspondence with the findings of the NHRC. The Committee observes that the NHRC named responsible individuals from the Police and Army, and called on the government to hold them accountable and to provide the author’s family with compensation.

7.11 The Committee further recalls that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.[[38]](#footnote-39) The Committee also recalls that, under article 2, paragraph 3, of the Covenant, States parties must ensure that all persons have accessible, effective and enforceable remedies in order to claim the rights enshrined in the Covenant. The Committee further recalls its General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, particularly the fact that, when investigations reveal violations of certain Covenant rights, States parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. Those obligations arise notably in respect of violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment, and summary and arbitrary killing (para. 18).

7.12 The Committee takes note of the writ petition before the Supreme Court demanding a mandamus order for DPO to register the FIR, which was quashed. The Committee also notes the State party’s argument that DPO registered the FIR under the case of culpable homicide in 2006, and that the case is under investigation. The Committee also took note of the State party’s argument that the author should register the complaint regarding the death of her husband with the Truth and Reconciliation Commission, and that the Government shall take legal action against those persons involved in the offence, as per the recommendations of this Commission.

7.13 Despite the efforts made by the author and her family, no investigation has been concluded by the State party in order to elucidate the circumstances surrounding the arrest and death of Mr. Bolakhe and no perpetrator has been tried and punished although the NHRC identified three of them. The State party refers to ongoing investigations, but the status of such investigations and the reasons for their delay remain unclear.

7.14 Accordingly, the Committee considers that the State party has failed to conduct a prompt, through and effective investigation into the circumstances of the arrest, detention and killing of the author’s husband, in violation of article 6, read alone and in conjunction with article 2 (3) of the Covenant.

7.15 The Committee notes the author’s argument that her husband’s arbitrary detention and his subsequent enforced disappearance on both occasions 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 testimony of Mr. RP to whom Mr. Bolakhe said that he was severely beaten during interrogation. The Committee takes notes of the author allegations that the overall conditions of detention at Gorakhnath battalion army camp (December 2002 to February 2003) amounted to cruel, inhuman and degrading treatment. The Committee notes the author’s claim that subjecting Mr. Bolakhe, before he was shot, to a four-day “search mission” in the health condition he was in, among others, itself amounted to a form of ill-treatment under article 7. As the State party denies the arrest and does not provide any evidence to clarify the facts regarding Mr. Bolakh’s treatment in detention, the Committee finds that his enforced disappearance 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.

7.16 The Committee notes the anguish and distress caused to the author and her family by the disappearance and extrajudicial killing of Mr. Bolakhe; the continuing uncertainty about the circumstance that led to his death; that no investigation has been carried out; and that no one has been convicted. In this regard, the Committee considers that these facts reveal a violation of article 7 of the Covenant with respect to the author and the family member on whose behalf she filed the present communication.

7.17 The Committee takes note of the author’s allegation under article 9 of the Covenant that her husband was deprived of his liberty on both occasions. No arrest warrants were presented at the time of his arrest. No legal grounds were provided for his detention. He was never brought before a judge, and could not challenge the legality of his detention. The Committee also takes notes of the findings of NHRC underlining the illegality of the arrest and detention of Mr. Bolakhe the second time when this occurred. In the absence of a response from the State party in this regard, the Committee considers that the detention of Mr. Bolakhe constitutes a violation of his rights under article 9 of the Covenant.

7.18 With regard to the alleged violation of article 16, the Committee notes the author’s allegation that despite the fact that her husband was arrested and detained incommunicado by security forces on both occasions, the authorities systematically denied involvement in his enforced disappearance, including during the *habeas corpus* process before the Supreme Court. The State party failed to provide relevant information concerning Mr. Bolakhe’s fate and later the circumstances which led to his death. No effective investigation has been carried out to ascertain his whereabouts before his remains were exhumed, 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.[[39]](#footnote-40) The Committee, therefore, finds that the enforced disappearance of Mr. Bolakhe deprived 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.

7.19 With regard to the author’s allegation under article 17, the Committee must first determine whether the specific circumstances of the search of the Bolakhe’s family’s house constitute a violation of article 17 of the Covenant. According to the author the search was carried out without a warrant and the Army scolded the author and her children, who were present. The State party, on the other hand, did not provide any explanation in this regard to justify the Army’s actions. Consequently, the Committee concludes that there has been a violation of article 17, paragraph 1, insofar as there was unlawful interference in the home of the author and her family members who were present.[[40]](#footnote-41)

7.20 The author invokes 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 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 the author and her family, immediately after Mr. Bolakhe’s arrest, visited DPO and other detention facilities to gather information about his detention. They also filed a writ of habeas corpus petition. Despite these efforts, the State party has not undertaken an independent and thorough investigation to elucidate the circumstances surrounding Mr. Bolakh’s arrest, detention, and killing. In this regard, the Committee considers that the State party has failed to conduct a prompt, thorough and effective investigation into the disappearance and the death of Mr. Bolakhe. Additionally, the sum received by the author 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), in conjunction with articles 6, 7, 9, 16, and 17 of the Covenant with regard to Mr. Bolakhe; and article 2 (3), read in conjunction with article 7, of the Covenant with respect to the author, her children and parents-of-law.

8. The 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, 16 and 17 read alone and in conjunction with article 2 (3) of the Covenant with regard to Mr. Bolakhe, and a violation of article 7 read alone and in conjunction with article 2 (3), with respect to the author, her children and parents-in-law.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author her children and parents-in-law 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 facts surrounding the detention of Mr. Bolakhe and the treatment he suffered during detention and killing; (b) provide the author and her family with detailed information about the results of its investigation; (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 author and her family; and (e) provide effective reparation, including compensation and appropriate measures of satisfaction, to the author, her children and parents-in-law 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 its legislation (i) criminalize torture and enforced disappearance and provide for appropriate sanctions and remedies commensurate with the gravity of the crimes; (ii) guarantee that such cases give rise to a prompt, impartial and effective investigation; and (iii) allow for criminal prosecution of those responsible for such crimes.

10. 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.

1. \* Adopted by the Committee at its 123rd session (2-27 July 2018). [↑](#footnote-ref-2)
2. \*\* The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Christof Heyns, Ahmed Amin Fathalla,, Bamariam Koita, Marcia V. J. Kran, Olivier de Frouville, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval. [↑](#footnote-ref-3)
3. The author refers to Amnesty International, “Nepal: A Spiralling Human Rights Crisis,” 3 April 2002,

 <http://nepalconflictreport.ohchr.org/files/docs/2002-04-02_report_ai_eng.pdf>; “Nepal: A Deepening Human Rights Crisis,” 19 December 2002, [https://www.amnesty.org/en/documents/asa31/
072/2002/en/](https://www.amnesty.org/en/documents/asa31/072/2002/en/); Human Rights Watch, “Between a Rock and a Hard Place: Civilian Struggle to Survive in Nepal’s Civil War”, 6 October 2004, https://www.hrw.org/reports/2004/nepal1004/; and OHCHR, “Nepal Conflict Report 2012”, October 2012, [http://www.ohchr.org/Documents/Countries/NP/
OHCHR\_Nepal\_Conflict\_Report2012.pdf](http://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf). [↑](#footnote-ref-4)
4. In this context, the author refers to Amnesty International, “Nepal: Killing with Impunity,” (2005), p.3, <https://www.amnesty.org/en/documents/asa31/001/2005/en/>. [↑](#footnote-ref-5)
5. The author refers to Amnesty International, “Nepal: Killing with Impunity”, 20 June 2005, https://www.amnesty.org/en/documents/asa31/001/2005/en/, and OHCHR-Nepal, “Investigating Allegations of Extra-Judicial Killings in the Terai”, July 2010, <http://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf>. [↑](#footnote-ref-6)
6. According to the complaint submitted by the author there was no search warrant. [↑](#footnote-ref-7)
7. The Committee was convened under the Joint-Secretary of the Ministry of Home. [↑](#footnote-ref-8)
8. The author refers to this location as Sundarijal Jail. [↑](#footnote-ref-9)
9. The decision of the NHRC is available on file. [↑](#footnote-ref-10)
10. The decision of the NHRC was communicated to the family by letter dated 28 January 2009, a copy of it is on file. [↑](#footnote-ref-11)
11. Equivalent to USD 3,400. [↑](#footnote-ref-12)
12. The amount is equivalent to USD 3,700. In 2010, the author received NRS 100,000 and a further NRS 200,000 in 2011. In addition, she received NRS 25,000 as a signal woman allowance in 2010. [↑](#footnote-ref-13)
13. The government provided some “interim measures” in the form of payments for “interim relief” to victims of certain categories of crimes including enforced disappearances from the conflict period. These have been implemented through the Standards for Economic Assistance and Relief for Conflict Victims (2008) adopted by the Council of Ministers and further developed through policy documents. [↑](#footnote-ref-14)
14. The author refers to El Hassy v. Libyan Arab Jamahiriya (CCPR/C/91/D/1422/2005); Kimouche v. Algeria (CCPR/C/90/D/1328/2004); and Celis Laureano v. Peru (CCPR/C/56/D/540/1993). [↑](#footnote-ref-15)
15. The author refers to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the 8th UN Congress on the Prevention of Crime and the treatment of Offenders (1990). [↑](#footnote-ref-16)
16. The author refers to Bousroual v. Algeria (CCPR/C/86/D/992/2001), and Grioua v. Algeria (CCPR/C/90/D/1327/2004). [↑](#footnote-ref-17)
17. The author refers to the Standard Minimum Rules for the Treatment of Prisoners (1995), approved by ECOSOC by resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; the Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment, 9 December 1988, A/RES/43/173. [↑](#footnote-ref-18)
18. The author refers to Sharma v. Nepal (CCPR/C/94/D/1469/2006),and Sarma v. Sri Lanka, **(CCPR/C/78/D/950/2000)**. [↑](#footnote-ref-19)
19. The author refers to Rojas Garcia v. Colombia (CCPR/C/71/D/687/1996), and Coronel v. Colombia(CCPR/C/76/D/778/1997), and the Human Rights Committee’s General Comment No. 16 (1988) on Article 17 (Right to Privacy). [↑](#footnote-ref-20)
20. The author refers to Quinteros v. Uruguay, (CCPR/C/19D/107/1981); and Giri v. Nepal (CCPR/C/101/D/1761/2008). [↑](#footnote-ref-21)
21. The author refers to Giri v. Nepal, para.6.5. [↑](#footnote-ref-22)
22. The author refers to Giri v. Nepal, para.6.4. [↑](#footnote-ref-23)
23. The author refers to Marcellana and Gumanoy v. The Philippines (CCPR/C/94/D/1560/2007), para.6.2. [↑](#footnote-ref-24)
24. The author refers Maharjan v. Nepal (CCPR/105/D/1863/2009), para.7.5. [↑](#footnote-ref-25)
25. The author refers Maharjan v. Nepal, para 7.6. [↑](#footnote-ref-26)
26. The author refers to immunity provisions that protect state officials and allow them to evade criminal accountability for the crimes they committed, specifically Army Act, 2006, Section 22; the Police Act, 1955, Section 37; and the Public Security Act, 1989, Section 22. [↑](#footnote-ref-27)
27. The author refers to Advocacy Forum-Nepla and REDRESS, “Held to Account,” December 2011, <http://www.advocacyforum.org/downloads/pdf/publications/impunity/held-to-account-nov-30-2011-english-version.pdf>. [↑](#footnote-ref-28)
28. The author refers to Sharma v. Nepal; Giri v. Nepal; and Chaulagain v. Nepal (CCPR/C/104/D/2018/2010). [↑](#footnote-ref-29)
29. In the communication the author notes that DPO informed the Supreme Court that it had registered an FIR on 7 November 2006. [↑](#footnote-ref-30)
30. The author submitted an extract of the Supreme Court of Nepal, Order 070-WS-0050, 26 February 2015. [↑](#footnote-ref-31)
31. In this regard, the author cited the position of OHCHR clarifying that the Act fails to comply with Nepal’s international legal obligations and is inconsistent with the United Nations policy on amnesties, OHCHR, “Nepal: OHCHR position on UN support to the Commission on Investigation of Disappeared Persons and the Truth and Reconciliation Commission”, 16 February 2006, para.6, available at: [http://www.ohchr.org/Documents/Countries/NP/Nepal\_UN%20osition\_supportTRC
\_COIDP\_Feb2016.pdf](http://www.ohchr.org/Documents/Countries/NP/Nepal_UN%20osition_supportTRC_COIDP_Feb2016.pdf). [↑](#footnote-ref-32)
32. The author made a reference to the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to Nepal, E/CN.4/2006/6/Add.5, 9 January 2006, para.20. [↑](#footnote-ref-33)
33. See communication Giri v. Nepal, para. 6.3; Chaulagain v. Nepal (CCPR/C/112/D/2018/2010), para. 6.3; Neupane v. Nepal (C/120/D/2170/2012), para. 9.3; and Tharu et al. v. Nepal (CCPRC/114/D/2038/2011), para. 9.3. [↑](#footnote-ref-34)
34. See communications Chaulagain v. Nepal, para. 6.3; Tharu et al. v. Nepal, para. 9.3; Basnet v. Nepal (CCPR/C/117/D/2164/2012), para. 9.3; Nakarmi v. Nepal (CCPR/C/119/D/2184/2012), para. 10.3; and Dhakal and others v. Nepal CCPR/C/119/D/2185/2012, para. 10.3. [↑](#footnote-ref-35)
35. See communications Sharma v. Nepal, para 7.5; Sharma et al. v. Nepal (CCPR/C/WG/122/D/2364/2014), Chaulagain v. Nepal (CCPR/C/112/D/2018/2010); Tharu et al. v. Nepal (CCPRC/114/D/2038/2011), Basnet v. Nepal (CCPR/C/117/D/2164/2012); Nakarmi v. Nepal (C/119/D/2184/2012); Dhakal and others v. Nepal CCPR/C/119/D/2185/2012; Maya v. Nepal (CCPR/C/119/D/2245/2013); A.S. v. Nepal (CCPR/C/115/D/2077/2011); Yasoda and Surya Prasad Sharma v. Nepal (CCPR/C/94/D/1469/2006); Sedhai v. Nepal (CCPR/C/108/D/1865/2009); Maharjan v Nepal (CCPR/C/105/D/1863/2009); Tripathi v. Nepal (CCPR/C/112/D/2111/2011); Katwal and Katwal v. Nepal (CCPR/C/113/D/2000/2010). [↑](#footnote-ref-36)
36. See communication Neupane v. Nepal, para.10.5; Katwal v. Nepal, (CCPR/C/113/D/2000/2010), para. 11.3; Molina Arias et al. v. Colombia (CCPR/C/114/D/2134/2012), para. 9.4; Nakarmi v. Nepal, para. 11.5; and Dhakal v. Nepal, para. 11.5. [↑](#footnote-ref-37)
37. Abushaala v. Libya, (CCPR/C/107/D/1913/2009), para. 6.2; Basnet v. Nepal, para. 10.5; Nakarmi v. Nepal, para. 11.6; and Dhakal v. Nepal, para. 11.6. [↑](#footnote-ref-38)
38. See the Committee’s General Comment No. 6 (1982) on the right to life, para. 3. [↑](#footnote-ref-39)
39. See communications Basnet v. Nepal, para. 10.9; Tharu et al. v. Nepal, para. 10.9; and Arias Molina v. Colombia (CCPR/C/114/D/2134/2012), para. 9.5.; Nakarmi v. Nepal, para. 11.10; Dhakal v. Nepal, para. 11.10. [↑](#footnote-ref-40)
40. See communications Rojas Garcia v. Colombia, para.10.3; Coronel v. Colombia**,** para.9.7and the Human Rights Committee’s General Comment No. 16 (1988) on Article 17 (Right to Privacy). [↑](#footnote-ref-41)