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**Human Rights Committee**

 Views adopted by the Committee under the Optional Protocol, concerning communication No. 2906/2016[[1]](#footnote-1)\*,[[2]](#footnote-2)\*\*

*Communication submitted by:* K.R. and S.R. (represented by counsels, Om Prakash Sen Thakuri of Advocacy Forum Nepal and Sarah Fulton and Jürgen Schurr of REDRESS)

*Alleged victims:* R.R., K.R. and S.R.

*State party:* Nepal

*Date of communication:* 10 December 2015 (initial submission)

*Document references:* Decision taken pursuant to rule 92 of the Committee’s rules of procedure, transmitted to the State party on 13 December 2016 (not issued in document form)

*Date of adoption of Views:* 14 March 2022

*Subject matter:* Rape and extrajudicial killing of suspected Maoist girl

*Procedural issues:* Admissibility – exhaustion of domestic remedies; admissibility – level of substantiation of claims

*Substantive issues:* Right to life; torture; torture – prompt and impartial investigation; arbitrary arrest – detention; conditions of detention; gender-based violence; children’s rights; effective remedy

*Articles of the Covenant:* 2 (1), 2 (3), 3, 6, 7, 9, 10 (1), 24 (1), 26

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

1. The authors of the communication are K.R., born in 1952, and S.R., born in 1955, both nationals of Nepal. They claim that the State party has violated the rights of their daughter, R.R., a national of Nepal born in 1987 and deceased in 2004, under articles 3, 6, 7 and 9, 10 (1), 24 (1) and 26 alone and in conjunction with article 2 (3), and article 7 in conjunction with article 2 (1) of the Covenant. They also claim a violation of their own rights under article 7 read alone and in conjunction with article 2 (3) of the Covenant. The Optional Protocol entered into force for the State party on 14 August 1991. The authors are represented by counsels.

 Facts as submitted by the authors

2.1 The authors note that the facts of the present communication must be read in the context of the internal armed conflict in Nepal, from 1996 until 2006, between the Government of Nepal and the Communist Party of Nepal (Maoist). During the conflict, widespread human rights violations by the Royal Nepal Army and the Maoist rebels, including arbitrary arrests, torture, rape, extrajudicial killings, abductions and sexual violence, were documented. Extrajudicial killings were often staged and portrayed as unavoidable “encounter killings”. A very large number of women and girls were subjected to sexual violence. A systematic failure to investigate and prosecute these crimes has resulted in a lack of access to justice and in institutionalised impunity.

2.2 R.R. was born in 1987 to K.R. and S.R. At the time of the events in 2004, she was 16 years old. The family lived in the village of Pokhari Chauri in Kavre District. R.R. was attending secondary school and was teaching at the District Education Office and working as a social worker. Many Maoists were in the area at the time to celebrate the eighth anniversary of the start of the “People’s War”. Although she had attended the compulsory Maoist Student Union at school, R.R. was not involved in any other Maoist activity and she was outspoken to her friends about her dislike for Maoists.

2.3 At around midnight on 13 February 2004, while the family was asleep, around 20 uniformed, armed soldiers of the Royal Nepali Army stormed into the family’s home, telling each other that “this is a Maoist house so be careful searching because there could be bombs or weapons.” One of the soldiers pointed at R.R., saying “There is one Maoist”. R.R. denied that she was a Maoist, but he pulled her out of the house. She was taken to a wall in front of the house where soldiers began questioning her about her involvement with the Maoists. She was hit when she replied that she was unaware of the political parties in the area. They then took her to the cowshed, where they made her stand on the doorframe. One soldier hit her repeatedly on her feet with the butt of his gun, making her cry out in pain.

2.4 While one of the soldiers was tying R.R.’s hands behind her back, another approached D.S., R.R’s paternal aunt. He touched D.S.’s breast and suggested that they could go somewhere. She replied to him that if they wanted to interrogate her, then they should take her downstairs like everyone else.

2.5 After some time, the soldiers took R.R. to a spot outside the house and started to question her again. R.R. said that she needed to go to the toilet. As there was no outhouse, the soldiers took her somewhere outside. R.R. was out of sight of any witnesses, but D.S. could hear her whimpering. She estimated that R.R. was gone for 30-35 minutes and believes that she was raped during this time. The soldiers then brought her back to the spot along the side of the house. One soldier, walking up the hill, told another soldier “One big Maoist was just killed down there” and told him to kill R.R. She was thrown over a wall and taken to a cornfield. At this point, many soldiers left the village for the same cornfield. Around 20 minutes later, at approximately 05:00-05:15 A.M., three gunshots were heard. The soldiers then left the village. That morning, R.R.’s family found her body with her panties and salwar (trousers) pulled down to the mid-thigh. Her blouse was pulled up to her neck and she had scratches on her breasts. She had been shot in the eye, the head and the chest.

2.6 That same night, the army killed two more people in the village. The killing of Subhadra Chaulagain, a classmate of R.R., is the object of communication No. 2018/2010.[[3]](#footnote-3) A young man called T.L. was also shot by soldiers for being an alleged Maoist. Later on 13 February 2004, the national broadcaster reported that security forces had killed three “terrorists” named R.R., Subhadra Chaulagain and T.L. On 17 February 2004, soldiers attended D.S.’s house. In her absence, they arrested her 15-year-old daughter and tortured her to death in the army barracks. The army tried to cover up the killing, but after sustained pressure, several soldiers were found responsible for disciplinary offences and were sentenced to six months’ imprisonment.

2.7 The day after R.R.’s death, the authors approached the District Police Office to have a First Information Report (“FIR”) filed, but the police showed no interest and refused to file an FIR. Some days later, investigators from Advocacy Forum came to the village, interviewed witnesses and took photographs of her body. No members of the security forces came to approach the body. On the sixth day, she was buried.

2.8 On 13 May 2005, following complaints from K.R., the National Human Rights Commission issued a decision finding that R.R. had been shot dead by security forces. It recommended that the government prosecute those responsible and provide compensation of Rs. 150,000 (approximately 1,250USD) to each of the claimants. However, K.R. never received the compensation recommended by the Commission. He applied unsuccessfully to the District Administration Office Kavre seeking payment of the compensation. The family has received a small amount of money under the government’s “interim relief” scheme for conflict victims, including Rs. 300,000 (approximately 2,500USD) for R.R.’s death.

2.9 On 28 August 2005, a court martial found eleven military officers guilty of disciplinary offences under sections 54 (violation of order and discipline) and 60 (crimes under other laws) of the Military Act 1959 (2016BS) in relation to the three killings. The court martial found that corporal K.K. had shot R.R., contrary to orders, and had since been absent without official leave. It found that R.R. had not been taken to the cowshed and could not have been raped given the considerable presence of army officers. It further found that the battalion commander had attempted to cover up the events by submitting a false report and that the second in command, who chaired the Court of Inquiry, had prepared a report without “finding out the truth”. The court martial imposed disciplinary measures only on three of the officers, including the officer in charge of the raid, Lieutenant S.B., who was sentenced to four months’ imprisonment, Lieutenant Colonel K.L., who had submitted the false report, was to be reprimanded as per Part (H) of Section 62 (1) of the Military Act; and Major S.S.B., the Chair of the Court of Inquiry, was not to be promoted for one year as per the same Part (H).

2.10 On 25 May 2006, shortly after the end of the internal conflict in the State party, K.R. filed an FIR at the District Police Office in Kavre, complaining of the rape and killing of R.R. However, no effective investigation was conducted. The District Police Office obtained the name and address of K.K. from the Ninth Brigade at Bhakundebeshi, as well as information stating that the commander of the search team, S.B., had asked K.K. to look after R.R. as she might run away while under arrest. The District Police Office requested other police posts to search for and arrest K.K. several times until July 2008, but without result. The alleged perpetrators, who were thought still to be working in the army, were not arrested, despite the police’s and the prosecutor’s duty to investigate following the filing of the FIR.

2.11 K.R. filed a writ for *mandamus and certiorari*. On 14 December 2009, the Supreme Court found that, other than exchanges of correspondence, nothing had been done to investigate the case, including because all soldiers involved in the search team had been “opponents in the FIR”. The Supreme Court endorsed the findings made by the National Human Rights Commission and ordered the District Police Office and the District Attorney’s Office to conduct a prompt investigation and the police entities to become “serious and proactive”. It further ordered the Office of the Attorney-General to direct the District Attorney to ensure that the investigation and prosecution advanced.

2.12 On 14 September 2010, K.K. was arrested. Three days later, charges of murder were filed against him by the District Attorney and, *in absentia*, against S.B. In his statement to the police, K.K. denied all involvement but acknowledged that R.R. had been raped by a group of soldiers. To date, S.B. has not been arrested. On 26 January 2011, a Brigadier-General wrote to the Kavre District Court that S.B. had been tried in a court martial and that the principle of double jeopardy meant that the army was not obliged to comply with the Supreme Court’s warrant. On 23 December 2013, the Kavre District Court acquitted K.K., as none of the witnesses had seen him shoot R.R. The Court found that no court martial had been conducted, and that any shooting would have been tried in such a court. On 14 October 2014, the Patan Court of Appeal upheld K.K.’s acquittal.

2.13 The authors argue that they have exhausted domestic remedies and that national proceedings have been unreasonably prolonged. Torture is not criminalised in Nepal and rape is subject to a 35-day statute of limitation period. Given the difficulty of reporting to the police during the conflict and the police’s refusal to register complaints against soldiers, this effectively precluded the prosecution of rape. Moreover, the trial of K.K. did not result in an effective remedy, as the lack of cooperation by the army created fatal difficulties for the investigative team. The team did not appear to have access to any of the materials from the court martial, or even to be aware of it, and did not interview anyone except K.K. S.B. was not handed over despite an arrest warrant.

2.14 The authors argue that the court martial was not an effective remedy. Such a tribunal is inappropriate for trying soldiers suspected of ill-treating and killing a civilian, given the lack of independence of the investigator and decision-maker. Court martials have incentives to minimise any violations, and the authors cannot participate in the proceedings. Additionally, the court martial fell short of the standards of a prosecution required by the right to an effective remedy. It lacked independence as it was composed of military within the same hierarchy and disciplinary structure as the accused. There is no indication that any of the decision makers had any legal training and the tribunal was unqualified to try serious human rights violations. The decision shows a superficial examination of the facts, and no attempt to adduce evidence from those outside of the army. The punishments were very low and none of the perpetrators were pursued for investigation except for K.K. The decision was not released and the many documents listed in it, including a 42-page compilation of statements, do not appear to have been provided to the police or to the court trying K.K.

2.15 The authors argue that any proceedings before mechanisms established by the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation would not be an effective remedy, as they are not of a judicial nature. Moreover, the bodies to be established under this Act are liable to promote impunity, as they may recommend amnesties.

2.16 The authors note that the torture and killing of R.R., their only child at the time, and the continued impunity around her rape and death, have resulted in their ongoing physical and mental illnesses.[[4]](#footnote-4)

The complaint

3.1 The authors claim a violation of article 6 read alone and in conjunction with article 2 (3) of the Covenant as R.R. was fatally shot in the face and chest at point blank range while under control of soldiers, without any justification. She was unarmed and made no attempt to escape. The illegality of her killing was confirmed in the decisions of the National Human Rights Commission and the court martial.

3.2 The authors claim a violation of article 7 alone and in conjunction with article 2 (3) of the Covenant. While noting that not everything is confirmed about what happened to R.R., they argue that it is clear, based on what witnesses saw and heard and from K.K.’s statements, that she was subjected to acts amounting to torture and other prohibited ill-treatment. They emphasise that she was a 16-year-old girl who was taken from her home in the middle of the night by heavily armed soldiers in the context of a civil war where extrajudicial killings of civilians were commonplace. She was pulled down the stairs and out of the house. One of them said to D.S., within R.R.’s earshot, “Don’t leave the house or you will be killed too”. From that moment until her killing, R.R. was almost continuously held at gunpoint, and her hands were tied at some point during the interrogation. Her awareness of the threat of death, which is clear from her statement to D.S. that “The soldiers are going to kill everyone”, would have caused severe mental suffering. This would have been exacerbated when she heard a soldier giving a direct order to kill her.

3.3 R.R. was also subjected to physical violence. She was slapped twice and was made to stand on the doorframe of the shed where her feet were hit repeatedly with the butt of a gun. She was then grabbed by the hair and thrown over a wall. Additionally, she was raped by a number of soldiers. This was confirmed by K.K., who stated before the Court of Appeal of Patan that he did not know who had raped and killed her. The rape is also apparent from the state in which her body was found (para. 2.4). Her rape was consistently mentioned by witnesses in press reports, the FIR and in evidence submitted to the police and in court. Although she could not see what was happening, D.S. heard R.R. whimpering while outside with the officers. Additionally, there was a period of around 20 minutes between R.R. being led away into the field and the gunshots. From the state in which her body was found, it can be deduced that she was raped again. Given the inherently gender-discriminatory nature of rape, the authors also claim a violation of article 3 of the Covenant, and article 7 in conjunction with article 2 (1) of the Covenant.

3.4 Further, the authors claim that their own mental suffering incurred throughout the torture and killing of R.R. and the impunity despite their fight for justice amounts to inhuman treatment. They were forced to endure a period of hours during which they heard and to some extent saw the torture being inflicted on R.R. without being able to protect her. They tried on numerous occasions to push for an effective investigation and prosecution, but were met with ineffective actions by the police and the blocking of action by the army. They claim a violation of article 7 read alone and in conjunction with article 2 (3) of the Covenant.

3.5 The authors allege that the State party violated R.R.’s rights under articles 9 (1), (2), (3) and (5) and 10 of the Covenant. They argue that her arrest was arbitrary as a group of soldiers barged into the house at night and arrested and detained her, at the age of 16, without an arrest warrant or specifying any charges. No legal basis was given for her arrest and there is no evidence of its justification under Nepali law. Instead of being brought before a judge or being allowed to challenge her detention, she was tortured and summarily executed.

3.6 The authors further allege that the arrest, torture, including rape and extrajudicial execution of R.R. also amount to a violation of article 24 (1) read alone and in conjunction with article 2 (3) of the Covenant, as she was only 16 years old at the time.

3.7 The authors claim a violation of article 2 (3) in conjunction with articles 6, 7, 9, 10 and 24 (1) of the Covenant, as the investigation was ineffective. Those identified as responsible by the court martial have not been investigated, and S.B. has been protected by the army. R.R.’s family received Rs. 300,000 as “interim relief”, but this is a humanitarian policy that does not constitute an effective remedy. Moreover, the 35-day statute of limitation for rape is contrary to article 2 (3) in conjunction with article 7. As a form of torture, rape should not be subject to any statute of limitation. Apart from the impossibility of filing an FIR during the conflict, 35 days may not be enough for a victim of rape to report the crime. The authors also claim a violation of articles 3 and 26 of the Convention, as the limitation period restricts complaints about a crime that, during the conflict, predominantly affected women, as it does generally. Crimes committed predominantly against men do not have the same statute of limitation. The law therefore limits access to justice for a crime predominantly committed against women in a way that is more restrictive than that applicable to crimes committed against men and women. However, there are no objective or reasonable grounds for treating rape so restrictively. Thus, the State party is failing its obligation to respond to violence against women.

3.8 The authors request the Committee to find that the State party violated the rights invoked in the communication and that the statute of limitation for rape is incompatible with the Covenant. They request the compensation for pecuniary and non-pecuniary damages reflecting the pain and suffering imposed on R.R. and themselves, the loss of earnings over her expected lifetime, the loss of income for the authors as a result of the consequences of R.R.’s killing on them, and the costs of medical, psychological and legal support incurred. They further request to be provided with medical, psychological and social rehabilitation, including through a rehabilitation plan with appropriate and accessible services and guaranteed funding. They also request a full and effective investigation capable of leading to the prosecution of all those responsible, which must include appropriate steps to ensure full cooperation from the army. In terms of satisfaction, they request a public apology from the government personally through an official holding high office, and consultations with them about an appropriate memorial to be established concerning the events of 13 February 2004. Finally, they request guarantees of non-repetition, including by: (a) removing the statute of limitation for rape; (b) criminalising torture, war crimes and crimes against humanity in line with international law and removing provisions allowing for impunity; (c) establishing an effective Special Unit for investigation of international crimes; (d) repealing or amending the Truth and Reconciliation Commission Act to ensure that international crimes can be investigated domestically; and (e) reforming the army to ensure accountability and obedience to the courts and implementing a vetting system to exclude those suspected of being responsible for human rights violations.

 State party’s observations on admissibility and the merits

4.1 In its observations dated 7 July 2017, the State party submits that R.R. was interrogated outside the family home for her alleged involvement in terrorist activities, and that she was not subjected to torture or rape. During the interrogation, she confessed her involvement in terrorist activities. As she tried to escape, one of the soldiers shot her dead. A court martial was constituted and upon a finding of guilt, those involved were convicted and punished. Charges of murder were filed against K.K., but he was acquitted for lack of evidence. The acquittal was upheld on appeal. The State party submits that the Committee cannot base its competence on an acquittal by two national courts, as it is not an appellate authority.

4.2 The State party argues that the authors have not exhausted domestic remedies as they did not file an FIR in relation to the alleged rape of R.R. within the prescribed statute of limitation. The authorities were therefore unable to investigate this matter.

4.3 On the merits, the State party argues that it has established mechanisms to deal with the authors’ claims, including a Truth and Reconciliation Commission to investigate facts concerning persons involved in serious violations of human rights and crimes against humanity committed during the conflict. As the present case relates to the period of the conflict, the State party expects that the Commission could initiate an investigation and recommend remedies. The State party reiterates that K.K. was acquitted from the charge of murder. It observes that the authors have received Rs. 300,000 as compensation for R.R.’s death.

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

5.1 In their comments of 23 November 2018, the authors argue that they are not requesting the Committee to re-evaluate the facts and evidence, but rather to consider whether the State party breached its obligations under the Covenant.

5.2 The authors submit that the State party has failed to demonstrate how the remedies it invokes are adequate in the present case. They argue that, once its authorities had been made aware of allegations concerning violations of the right to life and the prohibition of torture, the State party had the obligation to provide remedies, including a criminal investigation, prosecution, punishment where appropriate and compensation. In the present case, the authors have done all they could to ensure an investigation, including by complaining to numerous authorities, filing an FIR and pursuing proceedings before the Supreme Court. They reiterate that the court martial, the criminal investigation for murder and the provision of interim relief did not result in an effective remedy (paras. 2.12-2.13). They also reiterate that remedies for rape and torture are unavailable in Nepal and that an investigation by the Truth and Reconciliation Commission would not constitute an effective remedy (paras. 2.12, 2.14, 3.8). By February 2018, not a single case had been recommended for prosecution out of 60,298 complaints received by the Commission.[[5]](#footnote-5)

5.3 The authors note that the State party does not submit any evidence to support its factual claims. They argue that the State party’s position is grossly unsubstantiated and contradicted by the documentation enclosed with the present communication as well as the findings made by the court martial and the National Human Rights Commission (paras. 2.7-2.8). Moreover, K.K. has acknowledged that R.R. was raped by a group of soldiers.

5.4 The authors note that the medical problems that they incurred due to R.R.’s torture and death and the consequent impunity, including sleeping problems and high blood pressure, as well as high sugar and dental and gynaecological problems in the case of S.R., have worsened. They require, but are not receiving, urgent medical and psychological assistance.

 Issues and proceedings before the Committee

 Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the claim 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 submission by the State party that the authors did not exhaust domestic remedies, as they did not file an FIR concerning the alleged rape and torture of R.R. The Committee notes, however, the authors’ uncontested statement that, on the day following their daughter’s death, they attempted to file an FIR, which was refused by the police. The Committee further recalls that, in any event, it has previously considered that the 35-day-statute-of-limitation for rape offences is incompatible with the State party’s obligations under the Covenant.[[6]](#footnote-6) The Committee also notes that the Court of Appeal of Patan was made aware of K.K.’s acknowledgment that R.R. had been raped. In light of all the above, the Committee considers that this remedy was both ineffective and unavailable to the authors.

6.4 The Committee notes the State party’s observation that its Truth and Reconciliation Commission could initiate an investigation and recommend remedies. Recalling its jurisprudence that a judicial remedy is required in cases of serious violations, the Committee considers that the transitional justice mechanisms of the State party, including the Truth and Reconciliation Commission, are unable to provide an adequate remedy in respect of the violations alleged in the present communication.[[7]](#footnote-7) Accordingly, the Committee concludes that it is not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

6.5 The Committee notes the State party’s argument that the Committee is not an appellate body that can be seized based on K.K.’s acquittal by the domestic courts. The Committee notes, however, the authors’ arguments, according to which they are not requesting the Committee to re-evaluate the facts and evidence assessed by the domestic courts, but rather to consider whether the State party breached its obligations under the Covenant. In this regard, the Committee considers that the authors have sufficiently substantiated their claims based on the torture and killing of R.R. and the lack of investigation thereof, for the purpose of admissibility. The Committee therefore concludes that it is not precluded from considering the communication under article 2 of the Optional Protocol.

6.6 Therefore, and in the absence of any other objections by the State party to the admissibility, the Committee declares the communication admissible and proceeds with its consideration on the merits of the claims made under articles 2 (1), 2 (3), 3, 6, 7, 9, 10 (1), 24 (1) and 26 of the Covenant.

 Consideration of the merits

7.1 The Committee has examined the present communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors’ allegation that, around midnight on 13 February 2004, some 20 uniformed armed soldiers of the Royal Nepali Army stormed into the family’s home, accused R.R., who was 16 years old at the time, of being a Maoist, and pulled her out of the house. They further allege that R.R. was slapped, hit on the feet, raped, thrown over a wall and shot in the eye, the head and the chest, causing her death. According to witnesses, her body was found with her panties and trousers pulled down to the mid-thigh, her blouse pulled up to her neck and she had scratches on her breasts. The Committee notes that, while the State party has denied that R.R. was tortured or raped, and indicated that she was shot as she was trying to escape, it has not provided any evidence that would corroborate this version, including through forensic reports and other expert reports, following a thorough investigation of the events. Nor has the State party explained the contradiction between this version, and the statements by witnesses and by K.K. himself that R.R. had been raped.

7.3 In this regard, the Committee recalls that 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.[[8]](#footnote-8) In cases where the allegations are corroborated by credible evidence submitted by the author 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 as substantiated in the absence of satisfactory evidence or explanations to the contrary by the State party. The Committee notes that the authors’ detailed description of the events are corroborated by witness statements, pictures of R.R.’s body in the field, a newspaper article, copies of decisions from the National Human Rights Commission and the FIR that was submitted by the authors, but refused to be filed by the police. The Committee further notes that the authors’ allegations coincide with the general pattern of violations committed by Nepalese security forces during the internal armed conflict as documented in various intergovernmental and nongovernmental reports — including, in particular, sexual violence against women suspected of being Maoists or Maoist supporters, in the context of interrogation.[[9]](#footnote-9) Thus, and in the absence of any credible and reliable information or documentation from the State party contradicting these submissions, the Committee decides to accord due weight to the authors’ allegations.

7.4 The Committee recalls that the right to life is “the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies which threaten the life of the nation.[[10]](#footnote-10) It further recalls that article 6 (1) of the Covenant prohibits arbitrary deprivation of life, and that, as a rule, deprivation of life is arbitrary if it is inconsistent with international law or domestic law. A deprivation of life may, nevertheless, be authorized by domestic law and still be arbitrary. The notion of “arbitrariness” is not to be fully equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law as well as elements of reasonableness, necessity, and proportionality (…). The use of potentially lethal force for law enforcement purposes is an extreme measure, which should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat (…).”.[[11]](#footnote-11)

7.5 In the present case, the Committee considers that the State party has failed to demonstrate how R.R., a 16-year-old unarmed girl, posed any threat to a squad of twenty fully armed soldiers, much less justify how the indiscriminate use of lethal force in response by the said squad was strictly necessary to protect life or prevent serious injury. Nor has the State party otherwise presented any information indicating that it has fulfilled its obligation to protect the victim’s life. In light of all of the above, the Committee finds that the State party has directly and arbitrarily deprived R.R. of her life in violation of article 6 (1), read alone and in conjunction with article 24 of the Covenant.[[12]](#footnote-12)

7.6 Regarding the authors’ claim that R.R. was subjected to physical and mental torture, as she was raped, slapped, hit on the feet, thrown over a wall and was repeatedly confronted with the threat of death, including when she heard a soldier giving a direct order to kill her, the Committee finds that the aforementioned facts constitute a violation of article 7 of the Covenant, read alone and in conjunction with article 24 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.

7.7 The Committee notes the authors’ claim of a violation of R.R.’s rights under articles 3 and 7 in conjunction with article 2 (1) of the Covenant, given the discriminatory nature of the rape inflicted on her. The Committee notes that the authors argue that rape predominantly affected women during the conflict, as it does generally. The Committee recalls that, by its nature, sexual violence affects women and girls in particular,[[13]](#footnote-13) that women and girls are particularly vulnerable in times of internal or international armed conflict and that, during such situations, States must take all measures to protect women and girls from rape, abduction and other forms of gender-based violence.[[14]](#footnote-14) Among these measures, States must ensure that victims of sexual violence have effective access to justice, including adequate measures of reparation.[[15]](#footnote-15) Moreover, a State’s failure to compensate women and girls victims of sexual violence may constitute tacit permission or encouragement of such violence, thus increasing their vulnerability.[[16]](#footnote-16) Given the context surrounding the rape to which R.R. was subjected (see paras. 2.2-2.4) as well as the State party’s general failure to investigate and establish accountability for such crimes, the Committee considers that the State party has violated R.R.’s right not to be subjected to gender discrimination under articles 3 and 26, read alone and in conjunction with articles 7 and 24 of the Covenant. Having reached this conclusion, the Committee will not examine separately the authors’ claims under article 2 (1) in conjunction with articles 3 and 7 of the Covenant for the same facts.

7.8 The Committee notes the authors’ claim under article 9 of the Covenant and their argument that R.R.’s arrest was arbitrary as a group of soldiers barged into the house at night and arrested and detained her, at the age of 16, without an arrest warrant and without specifying any charges or allowing her to challenge her detention. The authors also argue that there is no evidence that the arrest was justified under Nepali law. The Committee further notes that the commander of the soldiers had instructed K.K. in relation to her arrest. In the absence of any pertinent explanations from the State party in this regard, the Committee gives due weight to the authors’ statements and concludes that the facts before it reveal a violation of article 9, read alone and in conjunction with article 24 of the Covenant.

7.9 The Committee 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. 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).

7.10 The Committee notes the authors’ allegation that the treatment to which they themselves were subjected, including being forced to witness the torture of R.R., the ensuing lack of a proper investigation and the impunity of the perpetrators, amounts to treatment contrary to article 7 alone and read in conjunction with article 2 (3) of the Covenant. The Committee observes that the authors’ numerous efforts to obtain justice for R.R.’s torture and death have not resulted in an effective remedy. In this regard, the Committee notes that no one has been held accountable for torturing and killing R.R. Recalling its jurisprudence that the effectiveness of a remedy also depends on the nature of the alleged violation, if the alleged violation is particularly serious, purely administrative and disciplinary remedies cannot be considered adequate and effective, the Committee considers that disciplinary measures taken in the court martial cannot be considered adequate and effective given the particularly serious nature of the facts of the present case.[[17]](#footnote-17) Moreover, the State party has not effectively refuted the authors’ claims according to which the trial of K.K. did not result in an effective remedy, as the investigative team had no access to or knowledge of any of the materials from the court martial. Neither has the State party effectively refuted that the non-arrest of S.B. despite the charges against him was due to the army’s refusal to hand him over. The Committee further notes that the prosecution of those responsible for R.R.’s rape could not be pursued through the criminal justice system (para. 7.3). In this regard, the Committee considers that a statutory period of 35 days for bringing complaints for rape as was applicable at the time is flagrantly inconsistent with the gravity and nature of the crime and that it has a disproportionately negative effect on women, who are predominantly the victims of rape.[[18]](#footnote-18) Noting that, in 2018, the State party extended the statute of limitations for filing complaints of rape and other sexual offences to one year,[[19]](#footnote-19) the Committee considers that even this new statute of limitation is not commensurate with the gravity of such crime.[[20]](#footnote-20) In light of the above and the Committee’s finding of R.R.’s torture, rape and arbitrary deprivation of life, the Committee concludes that the authors were deprived of an effective remedy for establishing truth and justice regarding the State party’s responsibility for the death and treatment of their daughter.[[21]](#footnote-21) Additionally, the Committee notes that the authors have only received Rs. 300,000 as interim relief for R.R.’s death. The Committee considers that the interim relief granted does not constitute an adequate remedy commensurate with the serious violations inflicted.[[22]](#footnote-22) Accordingly, the Committee considers that both the authors’ witnessing of R.R.’s torture, as well as the State party’s failure to ensure a prompt, thorough and effective investigation into her rape and death, constitute treatment contrary to article 7 alone and read in conjunction with article 2 (3) of the Covenant. Having reached this finding, the Committee will not examine the authors’ claim of a violation of article 2 (3) read in conjunction with articles 7 and 26 of the Covenant based on the same facts.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation, by the State party, of R.R.’s rights under articles 6 (1) and 7, read alone and in conjunction with article 24 of the Covenant; articles 3 and 26, read alone and in conjunction with articles 7 and 24 of the Covenant; article 9, read alone and in conjunction with article 24 of the Covenant; and of the authors’ rights under article 7, read alone and in conjunction with article 2 (3) of the Covenant.

9. 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 rape and other forms of torture inflicted on R.R., her arbitrary detention and her extrajudicial execution; (b) Prosecute, try and punish those responsible for the violations committed and make the results of those measures public; (c) Provide the authors with prompt and detailed information about the results of the investigation; (d) Ensure that any necessary and adequate psychological rehabilitation and medical treatment is provided to the authors free of charge; (e) Provide adequate compensation and appropriate measures of satisfaction to the authors for the violations suffered, including an official apology and a memorial in R.R.’s name. The State party is also under an obligation to take steps to prevent the occurrence of similar violations from occurring in the future, including by amending the legislation and statutes of limitations in accordance with international standards and by prescribing sanctions and remedies for the offence of torture commensurate with the gravity of such crimes and consistent with its obligations under article 2 (2) of the Covenant.

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 or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely distributed in the official language(s) of the State party.

1. \* Adopted by the Committee at its 134th session (28 February–25 March 2022). . [↑](#footnote-ref-1)
2. \*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Shuichi Furuya, Carlos Gómez Martínez, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi [↑](#footnote-ref-2)
3. Chaulagain *v Nepal* (CCPR/C/112/D/2018/2010). [↑](#footnote-ref-3)
4. The authors enclose witness statements by K.R., S.R., D.S. and a cousin of K.R., a map of the location, pictures of R.R.’s body in the field and of the location, an article from the Kathmandu Post on the rape and killing of R.R. and copies of decisions from the National Human Rights Commission, among other documents. [↑](#footnote-ref-4)
5. Human Rights Watch, “Nepal: Transitional Justice Proving Elusive. Term Extensions Do Not Cure Act’s Fundamental Problems”, <https://www.hrw.org/news/2018/02/13/nepal-transitional-justice-proving-elusive>. [↑](#footnote-ref-5)
6. See the Committee’s views in *Purna Maya v Nepal* (CCPR/C/119/DR/2245/2013), para. 12.5. See also the Committee’s Concluding observations on the second periodic report of Nepal (CCPR/C/NPL/CO/2), para. 13. [↑](#footnote-ref-6)
7. See, inter alia, *Giri v Nepal* (CCPR/C/101/D/1761/2008), para. 6.3; *Chaulagain v Nepal* (CCPR/C/112/D/2018/2010), para. 6.3. [↑](#footnote-ref-7)
8. CCPR/C/119/D/2245/2013, para. 12.2. [↑](#footnote-ref-8)
9. See, inter alia, OHCHR, *Nepal Conflict Report 2012*, <https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf>, p. 158. [↑](#footnote-ref-9)
10. General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para. 2. [↑](#footnote-ref-10)
11. Ibid, para. 12. [↑](#footnote-ref-11)
12. See, in this regard, the Committee’s Views in *Japalali v Philippines* (CCPR/C/125/D/2536/2015); *Mezine v. Algeria* (CCPR/C/106/D/1779/2008), para. 8.4; and *Bousseloub v Algeria* (CCPR/C/111/D/1974/2010), para. 7.4. [↑](#footnote-ref-12)
13. CEDAW, General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 (CEDAW/C/GC/35). [↑](#footnote-ref-13)
14. General comment No. 28 (2000) on equality of rights between men and women (HRI/GEN/1/Rev.9 (Vol. I)), para. 8; *Purna Maya v Nepal* (CCPR/C/119/DR/2245/2013), para. 12.4. [↑](#footnote-ref-14)
15. CEDAW, General Recommendation NO. 35. [↑](#footnote-ref-15)
16. *Eugénie Chakupewa et al. v. Democratic Republic of the Congo* (CCPR/C/131/D/ 2835/2016); CEDAW, *X. v. Timor-Leste* (CEDAW/C/69/D/88/2015), para. 6.7. [↑](#footnote-ref-16)
17. Vicente *et al. v Colombia* (CCPR/C/60/D/612/1995), para. 5.2. [↑](#footnote-ref-17)
18. Concluding observations on the second periodic report of Nepal (CCPR/C/NPL/CO/2), para. 13; CCPR/C/105/D/1863/2009, para. 7.6; *Purna Maya v Nepal* (CCPR/C/119/DR/2245/2013), para. 12.5. [↑](#footnote-ref-18)
19. Chapter 18, Section 229 (2) of the new Nepalese Criminal Code, Act 2074 (2017), entered into force in August 2018. [↑](#footnote-ref-19)
20. *Fulmati Nyaya v. Nepal* (CCPR/C/125/D/2556/2015), para. 7.9. [↑](#footnote-ref-20)
21. See Japalali v Philippines, op. cit, para. 7.9 [↑](#footnote-ref-21)
22. *Chaulagain v* Nepal(CCPR/C/112/D/2018/2010), para. 11.6. [↑](#footnote-ref-22)