



International Covenant on Civil and Political Rights

Distr.: General
2 June 2022

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3199/2018*, **

<i>Communication submitted by:</i>	Puniram Tharu and Nira Kumari Tharuni (represented by TRIAL International and the Human Rights and Justice Centre, Nepal)
<i>Alleged victims:</i>	The authors and their son, A.C.
<i>State party:</i>	Nepal
<i>Date of communication:</i>	28 March 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 25 September 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	14 March 2022
<i>Subject matter:</i>	Arbitrary deprivation of liberty; torture; extrajudicial killing
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to life; torture; cruel, inhuman or degrading treatment or punishment; liberty of person; right to privacy and family life; right to special measures of protection as a minor; non- discrimination; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (1)–(3), 6, 7, 9, 17, 24 (1) and 26
<i>Articles of the Optional Protocol:</i>	3 and 5 (2) (b)

1. The authors of the communication are Puniram Tharu and Nira Kumari Tharuni, nationals of Nepal born in 1968 and 1971, respectively. The authors are members of the indigenous Tharu community; they are submitting the communication on their own behalf and on behalf of their son, A.C., born in 1988, deceased at age 15. The authors claim a violation by the State party of their son's rights under articles 6, 7 and 9 of the Covenant, read alone and in conjunction with articles 2 (1)–(3), 24 (1) and 26. They also claim a violation of their own rights under articles 7 and 17 of the Covenant, read alone and in

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Soh Chongrok, Kobauyah Tchamdja Kpatcha, Héléne Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



conjunction with article 2 (3). The Optional Protocol entered into force for the State on 14 August 1991. The authors are represented by counsel.

Facts as submitted by the authors

2.1 The authors note that the facts of the communication must be read in the context of the armed conflict in Nepal (1996–2006), which was characterized by systematic gross human rights violations, including torture, enforced disappearances, extrajudicial killings, arbitrary arrests and sexual violence.¹ During the conflict, members of the Tharu community were routinely targeted by security forces, which associated them with the Communist Party of Nepal (Maoist) guerrillas. On 15 March 2004, the authors' son left the family house in the village of Khuntipur, Bardiya District and cycled towards the village of Fattepur, where he attended school. He was wearing his school uniform and carrying books. On his way, he met another boy and gave him a ride on his bicycle. The two boys were intercepted by a group of approximately 200 security officers, composed of soldiers of the Royal Nepalese Army, the Nepalese police and the Armed Police Force, who were conducting a joint security operation, searching the area for members of the Maoist guerrilla movement. Such joint security operations were routinely conducted in Bardiya District during the conflict.

2.2 As witnessed by numerous passers-by, as soon as the two boys were intercepted, security officers tied their hands behind their backs with shoe-laces and questioned them about any potential link with the Maoist guerrillas. Both boys denied any involvement with the guerrillas. Security officers subjected the boys to verbal assaults and physical abuse, including kicks and punches to different parts of their bodies, and beatings using boots and the butts of guns. The authors' son told the security officers where he lived and studied and the names of his parents. The security officers threatened to kill him, and the beatings continued for over half an hour.

2.3 The security officers dragged the boys to a nearby canal, where they continued to beat them. Security officers then shot the other boy, killing him. The authors' son witnessed this extrajudicial execution. Subsequently, he was questioned and ill-treated for another half an hour. Eventually, security officers opened fire on him while he was lying on the ground, shooting him three times in the back of his head, killing him. The security officers gathered some villagers and ordered them to bury the bodies of the two boys, after which the security officers departed. On 16 March 2004, a local radio broadcaster referred to the incident, stating that two Maoists had been killed in the Padmanh village development committee area. The authors heard the broadcast and, being aware of similar incidents and worried about their son, since they had not heard from him since the day before, went to the village where the school was located. Upon arrival, the villagers informed the authors about the killings of the previous day and took them to the spot where the two bodies were buried. Due to the fear of a potential return of the joint security team and the repercussions that could entail, the authors decided not to bring their son's body to the hospital for an autopsy. In addition, the closest hospital was two hours away by row boat or bus, and the likelihood of encountering security officers of the joint security team was high. They brought the body to their village, performed the funeral rituals and buried their son on 17 March 2004. An autopsy was not conducted and the body has not been exhumed for examination. A few days after the killing, security officers of the joint security team went to the authors' home and searched it, without producing any warrant. Similar searches were conducted on five other occasions. The searches were conducted by 40 to 50 soldiers, who surrounded the village and entered each house, often threatening the inhabitants.

2.4 The authors note that members of the Tharu indigenous community were especially targeted by security forces in the Bardiya District during the conflict. They refer to a report published by the Office of the United Nations High Commissioner for Human Rights (OHCHR), according to which members of the Tharu indigenous group comprised 52 per cent of the population in Bardiya District during the conflict but accounted for over 85 per cent of persons disappeared by State authorities in cases documented by OHCHR. Additionally, Tharus were regularly told by security personnel that "all Tharus are Maoists",

¹ The authors refer to Office of the United Nations High Commissioner for Human Rights (OHCHR), *Nepal Conflict Report* (2012).

and search operations were commonly focused on Tharu settlements and houses.² They further note that, according to the report, Tharus constitute one of several indigenous groups that are historically marginalized and discriminated against in Nepal.³

2.5 The authors submit that over the past 14 years, they have tried, without success, to obtain redress for the harm suffered and to have those responsible for the crimes identified, prosecuted and sanctioned. They submitted a complaint to the National Human Rights Commission on 17 March 2004, however, no action was taken by the Commission. Moreover, a compensation claim submitted to the District Court of Bardiya in June 2004 was rejected, as the events described by the authors were deemed to not fall within the domestic definition of torture; that decision was upheld by the Appellate Court in Nepalgunj. When the conflict ended, the authors considered that the establishment of the ad hoc mechanisms envisaged in the Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist) could ensure them access to justice, and they accordingly waited for these mechanisms to be established, knowing that the State party's authorities had been informed in 2004 of the crimes committed against their son and were thus in a position, and under an obligation, to launch an investigation ex officio. After noting several failed attempts to establish transitional justice mechanisms,⁴ and seeing that no investigation was being initiated by the authorities, the authors eventually decided to take new initiatives to relaunch the case.

2.6 The authors note that they have made repeated attempts to have a first information report registered, which in Nepal is the mandatory trigger for a criminal investigation to be undertaken, but that their attempts have been systematically frustrated. On 4 October 2013, they attempted to have a first information report registered before the District Police Office of Bardiya and the District Administration Office of Bardiya, but the offices refused, alleging that it was not feasible to investigate the case as it had occurred during the conflict. The authors claim that the refusal to register first information reports for conflict-related crimes allegedly committed by security forces is a systematic practice in Nepal that persists to this day and renders this remedy ineffective.

2.7 On 27 October 2013, the authors turned to the Appellate Court in Nepalgunj, seeking and obtaining a mandamus order to have the first information report registered by the District Police Office of Bardiya. Despite the mandamus, the Office did not register the first information report. In April 2015, a new request for a mandamus order was lodged before the Appellate Court in Nepalgunj. On 5 August 2015, the Appellate Court in Nepalgunj upheld the authors' requests and issued a certiorari. In its decision, the Appellate Court found that the District Police Office had shown a lack of due diligence. It also declared that the failure to register the first information report since 4 October 2013 and despite the first mandamus order had created a prejudice to the authors and violated rule-of-law principles. It stressed that the authors had attempted to have a first information report registered well before the establishment of the Truth and Reconciliation Commission and therefore the establishment of the Commission could not be invoked as an excuse to justify the lack of due diligence by the authorities. The Appellate Court again ordered the District Police Office to register the first information report, and on 17 December 2015, the authors submitted a new complaint to the Office. However, the Office once again refused to register it. Due to this ongoing failure to enforce the orders of the Appellate Court in Nepalgunj, the authors lodged a contempt of court complaint before the Appellate Court in Nepalgunj on 28 February 2016. While this complaint was pending, the District Police Office reported that, in the meantime, a first information report had been registered. The process relating to the contempt of court complaint was accordingly terminated on 15 June 2016. However, the authors' attempts to obtain a copy of the first information report and information on its contents and progress have been met by an open refusal of the District Police Office. To the knowledge of the authors, no steps have been taken since the alleged registration of the first information report. The authors submitted a complaint to the Truth and Reconciliation Commission on 5 June 2016,

² OHCHR, *Conflict-related Disappearances in Bardiya District* (December 2008), pp. 17–18 and 27–28.

³ *Ibid.*, p. 6.

⁴ The authors note that the act creating the Truth and Reconciliation Commission was not adopted until 2014 and that Commissioners were not appointed to the Commission until 10 February 2015.

but they have not been contacted by the mechanism and to their knowledge their son's case has not been investigated by the Commission. The authors note that they have not received adequate compensation or any other measure of reparation for the harm suffered following their son's killing.

2.8 The authors note that the extrajudicial killing of their son and the ongoing failure of the State party authorities to investigate his case and prosecute and sanction those responsible, as well as to provide them with adequate redress for the harm suffered, has had serious consequences in terms of their life and health. Ms. Tharuni fell ill and had to stay in bed for six months after her son's death. She experienced depression and recurrent nightmares concerning her son's death and was hospitalized on two occasions. During this period, she was unable to work and to adequately look after her three other children. The situation was worsened by the recurrent visits of security officers to their home, allegedly with the purpose of conducting searches, and she perceived the visits as a form of harassment. She still suffers from insomnia and frequent pain in her head and chest. She has recurrent memories of when she had to drag her son's body from the canal, which cause her suffering and pain. Mr. Tharu also developed illnesses following his son's death. Due to ongoing feelings of anguish, sadness and frustration, he developed severe gastritis and experienced recurring chest pain and headaches. He was also hospitalized, but this did not resolve his health problems. He feels that, due to this situation, he has been unable to provide the necessary care and attention for his three other children, which causes him feelings of guilt and frustration. The fact that his struggle for justice and redress for his son's extrajudicial killing has so far been unsuccessful makes him feel emotionally drained.

2.9 The authors argue that the situation of impunity and lack of adequate redress for victims of gross human rights violations in the State party is facilitated by the flawed legislation on transitional justice and the deficient domestic criminal legal framework concerning gross human rights violations, and especially the failure to criminalize torture. The authors note that section 7 of the children's act of 1992 provides that no child is to be subjected to torture or cruel treatment. The sanction for an offence in contravention of section 7 is punishment with a fine up to 5,000 Nepalese rupees (approximately \$40), imprisonment for up to one year or both. Pursuant to section 54 of the act, complaints relating to an offence under the act must be filed within one year from the date of the commission of the offence. The authors argue that the act contains several flaws. First, it does not provide a definition of torture. Second, the sanctions envisaged for torture of children are extremely low and not commensurate to the gravity of the offence. Third, the act contains an unduly restrictive notion of reparation for child victims of torture, who under the act may be entitled to obtain "reasonable" compensation from perpetrators but do not have access to integral redress, including restitution, rehabilitation, satisfaction and guarantees of non-repetition.

Complaint

3.1 The authors claim that their son is a victim of a violation of his rights under articles 6, 7 and 9 (1–5) of the Covenant, read alone and in conjunction with articles 2 (1), 24 (1) and 26, because of the arbitrary deprivation of liberty and torture he was subjected to, and his subsequent extrajudicial killing, by State party security officers on 15 March 2004. These violations, which perpetrated on discriminatory grounds based on his ethnicity, are aggravated by the fact that when the events took place their son was 15 years old. He was hence entitled to receive special measures of protection owing to his status as a child. The fact that he is a member of the Tharu indigenous community further enhanced his right to special measures of protection. However, the State party authorities failed to adequately protect him and, to the contrary, targeted him, arbitrarily deprived him of his liberty, subjected him to torture and killed him.

3.2 Regarding the claims under article 9 of the Covenant, the authors specifically note that their son was intercepted by security officers on his way to school. This incident occurred in the context of a systematic practice of arbitrary arrests and in an area where Tharu children were especially targeted in these kinds of operations. The authors thus argue that their son's arrest was arbitrary, in violation of his rights under article 9 (1) of the Covenant. They further note that the security officers did not produce any arrest warrant, immediately restrained their son, did not formulate any formal charges against him, and did not bring him before a judge

or any other official authorized by law to exercise judicial power, in violation of his rights under article 9 (2) and (3) of the Covenant. They further argue that given that their son was subsequently a victim of extrajudicial killing, he could not take proceedings before a court to challenge the lawfulness of his deprivation of liberty or be heard by a judge, in violation of his rights under article 9 (3) and (4). The authors also claim a violation of article 9 (5), as they have not obtained any compensation for their son's arbitrary arrest and deprivation of liberty.

3.3 The authors also allege that their son's rights under articles 6, 7 and 9 of the Covenant, read in conjunction with articles 2 (3) and 24 (1), were violated due to the failure of the Nepalese authorities to conduct a thorough, impartial, independent and effective investigation into the arbitrary deprivation of liberty, torture and subsequent extrajudicial killing of their son and to prosecute and sanction those responsible. Despite their repeated attempts, the authors did not even receive adequate compensation or other measures of reparation for the harm suffered. They note that, pursuant to recommendations issued by the village development committee and the municipality on 7 June 2015 and 3 July 2017, respectively, they have received 100,000 Nepalese rupees (approximately \$900) as interim relief.⁵ This is a measure of social support that cannot replace, and is not to be regarded as, compensation.

3.4 The authors further claim a violation of article 7 of the Covenant, read in conjunction with articles 2 (2) and 24 (1), in respect of their son due to the failure of Nepalese authorities to adopt adequate legislative measures to prevent instances of torture against children, to punish those responsible in a manner that is commensurate to the gravity of the crime, and to provide fair compensation and adequate measures of reparation that encompass restitution, rehabilitation, satisfaction and guarantees of non-repetition. The authors refer to the Committee's concluding observations on the second periodic report of Nepal, in which the Committee reiterated its recommendation to the State party to amend its legislation concerning torture, with regard to criminalization for acts of torture and compensation for victims of torture.⁶

3.5 The authors claim that they themselves are victims of a violation of their rights under articles 7 and 17 of the Covenant, read alone and in conjunction with article 2 (3), due to the suffering provoked by the arbitrary deprivation of liberty, the torture and the extrajudicial killing of their son, as well as the persistent lack of investigation into those crimes, the reigning impunity and the lack of redress for the harm suffered. This has been exacerbated by the fact that their son was publicly labelled as a terrorist, even though he was a student and not involved in any criminal activity. His honour and reputation, along with those of the authors, have not yet been restored. The authors further claim that their rights under the Covenant were also violated because of interference in their privacy and family life, in the form of repeated searches of their house conducted by Nepalese security officers, amounting to harassment.

3.6 The authors call on the Committee to request the State party to: (a) conduct, without delay, an effective investigation into their son's case and to prosecute and sanction those responsible in a manner that is commensurate to the extreme gravity of the criminal acts he was subjected to; (b) provide them with adequate and fair compensation; (c) ensure that they have access to adequate psychological rehabilitation and medical treatment through specialized institutions, free of charge; (d) provide adequate measures of satisfaction, including a public apology from the State party security forces and the building of a memorial in their son's name to restore his name, dignity and reputation; and (e) adopt guarantees of non-repetition, including through the amendment of existing flawed legislation and the provision of training on human rights and international humanitarian law for all public officials and other persons.

⁵ See paragraph 5.2 below for a clarification by the authors on the amount received.

⁶ [CCPR/C/NPL/CO/2](#), para. 10.

State party's observations on admissibility and the merits

4.1 On 25 March 2019, the State party submitted its observations on admissibility and the merits of the communication. It submits that the communication is inadmissible for failure to exhaust domestic remedies. Should the Committee find the communication to be admissible, the State party submits that it is without merit.

4.2 The State party claims that on 15 March 2004, the joint security team of Bardiya District was on patrol in the area of the village of Fattepur. The team spotted the alleged victim riding his bicycle, with a "Communist Party of Nepal (Maoist) combatant" also on the bicycle. When the team tried to stop and search the two, the person the alleged victim was giving a ride to took out a grenade. This forced the team to act in self-defence, killing the persons on the bicycle. Since there was no one to claim the bodies, the team buried them nearby after having prepared the incident report. As soon as the team left the scene, Maoist combatants reportedly arrived and cremated the bodies. The State party argues that the alleged victim was not taken into custody or tortured by security officers, but that he died as a result of the security force on duty acting in self-defence. It submits that his death constituted an "unwanted casualty" and that he was not targeted because of his ethnicity.

4.3 The State party notes that a complaint on behalf of the alleged victim was submitted before the Truth and Reconciliation Commission on 5 June 2016. It further notes that the Commission has received a large number of complaints and is investigating them in chronological order. The State party argues that the Commission has an exclusive mandate to investigate cases such as that of the alleged victim and has the power to provide reparations to victims that encompass restitution, satisfaction, rehabilitation and guarantees of non-repetition. The Commission is also empowered to submit cases directly to the Office of the Attorney General for prosecution of any offenders involved in serious human rights violations. The State party argues that, as the complaint before the Commission is pending, the authors have not exhausted all available domestic remedies.

4.4 Regarding the petition related to a compensation claim filed by Ms. Tharuni, the State party notes that it was rejected by the District Court of Bardiya as it was found that the incident did not fall under the definition of torture. This decision could have been appealed to the Appellate Court under the Compensation relating to Torture Act of 1996, however, the authors did not pursue the appeal. The State party further notes that following the writs of mandamus issued by the Appellate Court of Nepalgunj, a first information report was registered by the District Police Office of Bardiya on 28 February 2016. The State party further notes that the authors have claimed that they have only received 100,000 Nepalese rupees as interim relief, but it argues that in fact 1.1 million Nepalese rupees have been provided as interim relief to the authors, which shows that the State party authorities are sensitive to their concerns.

4.5 The State party notes that its domestic legislation on the prohibition of torture has been significantly reformed. Torture and cruel, inhuman or degrading treatment was explicitly defined and criminalized in the Penal Code of 2017. Anyone convicted of the charge of torture may be imprisoned for five years and fined up to 50,000 Nepalese rupees. Similarly, the statute of limitations for filing a first information report has been increased to six months. In 2018, a new children's act was enacted, which criminalized torture inflicted against children.

Authors' comments on the State party's observations

5.1 On 7 June 2019, the authors submitted their comments on the State party's observations. The authors argue that the version of events provided by the State party is highly disputable and not substantiated by any evidence that would prove the veracity of the scenario put forward by the State party. They note that the State party does not provide any information as to how the joint security team may have attempted to stop and search their son and the other young man. This lack of explanation is particularly troublesome, especially as a pattern of gross human rights violations, including torture and extrajudicial killings, committed in the context of joint security operations, in particular in the Bardiya District and

against ethnic Tharus, has been documented.⁷ The authors further note that the scenario described by the State party is contradicted by eyewitness reports, including that of their son's schoolteacher, who witnessed him being circled by security officers, restrained and verbally abused and beaten. The authors submit that the State party has completely failed to rebut any of the facts as witnessed by passers-by and simply provides an alternative version of events that is not supported by any evidence. The authors note that, in their initial complaint to the Committee, they submitted pictures of their son's body, which show that he had marks on his wrists; in addition, shoe-laces were found next to his body, and his clothes were torn and the buttons of his shirt were broken. They argue that the version of events put forward by the State party is incompatible with that evidence. They further note that one of the villagers provided a written statement, in which he stated that he had been forced by the security officers to bury their son's body, contrary to the scenario put forward by the State party. They also argue that the State party has not provided any clarification as to how the security officers involved in the operation could have identified a civilian child dressed in a school uniform as a combatant taking part in hostilities. The authors also refer to the Committee's jurisprudence and note that when a person suffers injuries or dies while in the custody of State agents, there is a general presumption that such injuries and, a fortiori, death are attributable to the State party itself.⁸

5.2 Regarding the interim relief received, the authors clarify that between 2009 and 2019 they received approximately 1 million Nepalese rupees as interim relief. They reiterate that interim relief is a form of social support and cannot be regarded as compensation for the harm suffered, nor can it replace other forms of reparation to which victims of gross human rights violations, such as those in the present case, are entitled to.

5.3 Regarding the issue of exhaustion of domestic remedies, the authors reiterate their argument that the Truth and Reconciliation Commission does not constitute an effective remedy. They refer to the Committee's jurisprudence in which it has held that transitional justice mechanisms cannot serve to dispense with criminal prosecution of serious human rights violations and hence do not constitute an effective remedy.⁹ They further note that, despite lodging a complaint with the Commission on 5 June 2016, they still have not been contacted by the Commission. The authors further note that the Committee has also found the remedy offered pursuant to the Compensation relating to Torture Act ineffective.¹⁰ Nonetheless, in order to be as diligent as possible, the authors note that they made an attempt to file a claim for compensation, but their claim was dismissed. Regarding the first information report, the authors note that after multiple attempts to file such a report, one was eventually registered in 2016 by State party authorities. However, the State party has not provided any information on effective steps undertaken since to investigate the case and to identify those responsible, and to prosecute and sanction them. The authors have never been contacted by the authorities as part of the investigation, and they were in fact, on 2 May 2017, denied access to any information regarding the first information report by the District Police Office of Bardiya, after having filed a petition pursuant to the Right to Information Act. In light of these circumstances, the authors submit that the investigation has been unreasonably prolonged and is not effective.

5.4 The authors note that, while the children's act of 2018 can be regarded as a significant improvement from the children's act of 1992, the new legislation is still at odds with international law when it comes to sanctions envisaged for perpetrators of torture against children,¹¹ the relevant statute of limitations for criminal proceedings, and the amount of compensation. They note that the sanction envisaged in the act for someone convicted of torturing a child does not include a minimum fine or a minimum length of imprisonment,

⁷ OHCHR, *Conflict-related Disappearances*, pp. 27–28.

⁸ *Sathasivani and Saraswathi v. Sri Lanka* (CCPR/C/93/D/1436/2005), para. 6.2; and *Hernandez v. Philippines* (CCPR/C/99/D/1559/2007), para. 7.3.

⁹ *Nyaya v. Nepal* (CCPR/C/125/D/2556/2015), para. 6.5.

¹⁰ *Ibid.*, para. 6.4.

¹¹ The authors note that under sections 66 and 72 of the children's act of 2018, the sanctions range from a fine of up to 50,000 Nepalese rupees (approximately \$420) to 100,000 Nepalese rupees (approximately \$840) and imprisonment of up to one year or of up to five years, depending on the offence.

meaning it does not contribute to any deterrent effect or to a sanction commensurate to the gravity of the offence. The authors urge the Committee to find that the children's act of 2018 is at odds with international law and should be amended. Regarding compensation, the authors note that, under the act, perpetrators can be ordered to pay a "reasonable" amount of compensation to victims, which should be no less than the amount of the fine imposed on the offender. The authors argue that the expression "reasonable" amount is overly vague. They further note that the statute of limitations under section 74.2 of the act is one year. Additionally, the act further specifies that a case shall be filed within the period of limitations specified under "the prevailing law". The authors note that this is a reference to the Penal Code of 2018, which under section 170 requires the registration of a complaint of torture within six months.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, 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 authors' claim that article 7 of the Covenant has been violated, in conjunction with articles 2 (2) and 24 (1), in respect of their son. The Committee recalls its jurisprudence that the provisions of article 2 (2) cannot be invoked as a claim in a communication under the Optional Protocol in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.¹² The Committee notes, however, that the authors have already alleged a violation of their son's rights under articles 7 and 24, and the Committee does not consider that examination of whether the State party also violated its general obligations under article 2 (2) of the Covenant, read in conjunction with articles 7 and 24, to be distinct from examination of the violation of the rights under said articles. The Committee therefore considers that the authors' claims in this regard are incompatible with article 2 of the Covenant, and inadmissible under article 3 of the Optional Protocol.

6.4 The Committee notes the State party's submission that the communication is inadmissible for failure to exhaust domestic remedies because the authors filed a complaint pertaining to the case before the Truth and Reconciliation Commission on 5 June 2016, which is currently pending. The Committee recalls its jurisprudence that it is not necessary to exhaust avenues before non-judicial bodies to fulfil the requirements of article 5 (2) (b) of the Optional Protocol and that transitional justice mechanisms cannot serve to dispense with the criminal prosecution of serious human rights violations.¹³ The Committee therefore considers that resorting to the Truth and Reconciliation Commission would not constitute an effective remedy for the authors.

6.5 In addition, the Committee notes that the authors have attempted numerous avenues to pursue their son's case, including by: (a) submitting a complaint to the National Human Rights Commission on 17 March 2004; (b) submitting a compensation claim to the District Court of Bardiya in June 2004; (c) attempting to have a first information report registered before the District Police Office of Bardiya and the District Administration Office of Bardiya on 4 October 2013, which was refused by the authorities; and (d) twice seeking mandamus orders before the Appellate Court in Nepalgunj, in 2013 and 2015, in order to compel the District Police Office of Bardiya to register the first information report, which eventually resulted in the first information report being registered in 2016, after several refusals by the

¹² *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), para. 7.4.

¹³ See, among others, *Purna v. Nepal* (CCPR/C/119/D/2245/2013), para. 11.4; *Nyaya v. Nepal*, para. 6.5; and *Tharu et al. v. Nepal* (CCPR/C/114/D/2038/2011), para. 9.3.

District Police Office. The Committee further notes the authors' claim that, since the complaint was registered, they have not been contacted by the District Police Office and no steps have been taken to meaningfully investigate the circumstances of their son's death and to identify those responsible. The Committee further notes that the State party has not provided any information on any progress made in the investigation or any steps taken by the authorities to investigate the case. The Committee considers that, under these circumstances, the investigations have been unduly prolonged, particularly considering the gravity of the crimes alleged.

6.6 In light of the foregoing, the Committee concludes that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

6.7 As all other admissibility criteria have been met, the Committee declares the communication admissible as concerns the claims raised pertaining to the authors' son's rights under articles 6, 7 and 9 of the Covenant, read alone and in conjunction with articles 2 (1) and (3), 24 (1) and 26, as well as the claims raised pertaining to the authors' rights under articles 7 and 17, read alone and in conjunction with article 2 (3), and it proceeds with its consideration 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 required under article 5 (1) of the Optional Protocol.

7.2 The Committee notes the authors' claim that their son was subjected to arbitrary deprivation of liberty and torture, and was subsequently a victim of extrajudicial killing, by State party security officers on 15 March 2004. It notes their claim that their son was targeted based on his ethnicity and that the violations were aggravated by the fact that he was 15 years old at the time of the events. The Committee further notes that the State party does not contest that the authors' son was killed by its security forces, but that it disputes that the alleged victim was taken into custody, tortured or targeted because of his ethnicity. It notes the State party's claim that the security officers on duty acted in self-defence and its assertion that the alleged victim's death constituted an "unwanted casualty". The Committee also notes the authors' submission that their son's death must be examined in the context of other similar events that took place in Bardiya District during the conflict. It notes their argument that members of the Tharu indigenous group were especially targeted by security forces in Bardiya District and that they accounted for over 85 per cent of persons disappeared by State authorities in the district.¹⁴

7.3 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.¹⁵ 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. In the present case, the Committee notes the authors' argument that the version of events provided by the State party is not substantiated by any evidence and that the scenario described by the State party is contradicted by eyewitness reports, including that of the alleged victim's schoolteacher, who reportedly witnessed the alleged victim being apprehended by security officers, restrained, verbally abused and beaten. The Committee further notes the authors' argument that pictures of their son's body show that he had marks on his wrists consistent with being restrained, that his clothes were torn and the buttons of his shirt were broken. Thus, and in the absence of any documented substantiation provided by the State party in this regard, the Committee decides to accord due weight to the authors' allegations.

7.4 The Committee recalls its general comment No. 36 (2019) on the right to life, in which it observed that article 6 (1) of the Covenant prohibits arbitrary deprivation of life, and that,

¹⁴ OHCHR, *Conflict-related Disappearances*, p. 6.

¹⁵ *Purna v. Nepal*, para. 12.2.

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 that should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat.¹⁶ The Committee further notes that an important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving excessive use of force with lethal consequences. The Committee recalls that that prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations.¹⁷

7.5 In the present case, the Committee notes that the State party authorities have not submitted any information that would clarify the circumstances of the authors’ son’s death, especially considering the reported discrepancies between the account of events of eyewitnesses and the incident report drawn up by the security forces, or provided any information on any efforts made to identify those responsible for the authors’ son’s ill-treatment and death. Against this background, and taking into account the lack of information provided by the State party, the Committee considers that the State party has not explained the specific circumstances of the ill-treatment and death of the authors’ son, nor has it produced evidence to indicate that it has fulfilled its obligation to protect his life. Accordingly, the Committee concludes that the State party has not only failed in its duty to protect the authors’ son, who was a child at the time of the events, but by the actions of its security forces has directly and arbitrarily deprived the author’s son of his life and has subjected him to torture and ill-treatment. The Committee further notes the authors’ claim that their son was targeted by security forces for being a member of the Tharu indigenous community. It notes that this claim is supported by country reports describing a pattern of similar violations against members of this indigenous community. The Committee therefore concludes that the authors’ son’s rights under articles 6 and 7 of the Covenant, read alone and in conjunction with articles 24 (1) and 26, have been violated.

7.6 Having found a violation of articles 6 and 7 of the Covenant, read in conjunction with articles 24 (1) and 26, the Committee decides not to separately examine the author’s claims of a violation of articles 6 and 7, read in conjunction with article 2 (1), for the same facts.

7.7 The Committee further notes the authors’ claims that their son was arbitrarily deprived of his liberty in violation of his rights under article 9 of the Covenant, and that the incident occurred in the context of a systematic practice of arbitrary arrests and in an area where Tharu children were especially targeted in these kinds of operations. It further notes their claim that their son was arrested by a large military and police contingent without a warrant and without being informed of any charges against him, and that he was not brought before a judge, in violation of his rights under the Covenant. The Committee notes that the State party denies that the authors’ son was arrested; however, it has not provided any explanations to the contrary, especially taking into account the discrepancy between the account of events of eyewitnesses and the report of the security forces. Therefore, the Committee considers, in the absence of a pertinent explanation by the State party, that the authors’ son’s deprivation of liberty by State party security forces in the context of the internal conflict constituted a

¹⁶ General comment No. 36 (2019), para. 12.

¹⁷ *Ibid.*, para. 27; See also *Dhakal et al. v. Nepal* (CCPR/C/119/D/2185/2012), para. 11.6; *Chaulagain v. Nepal* (CCPR/C/112/D/2018/2010), 11.3–11.5; and *Neupane and Neupane v. Nepal* (CCPR/C/120/D/2170/2012), para. 10.6.

violation of his rights under article 9 of the Covenant, read alone and in conjunction with articles 24 (1) and 26.

7.8 The Committee further notes the authors' claims that their son's rights under articles 6, 7 and 9, read in conjunction with articles 2 (3) and 24 (1), of the Covenant were violated due to the failure of State party authorities to conduct a thorough, impartial, independent and effective investigation into the arbitrary deprivation of liberty, torture and subsequent extrajudicial killing and to prosecute and sanction those responsible. The Committee notes that, shortly after their son's death, the authors sought to have his death investigated by filing a complaint before the National Human Rights Commission. Once the conflict ended they also filed a complaint before the Truth and Reconciliation Commission and made numerous attempts at having a first information report registered before the District Police Office of Bardiya, including two requests for mandamus orders and one contempt of court complaint. Despite the authors' efforts, no investigation has been concluded by the State party to elucidate the circumstances surrounding their son's death and no criminal proceedings have been initiated. Given the lack of information provided by the State party in that regard, the Committee considers that it has failed to explain the effectiveness and adequacy of any investigation carried out by District Police Office of Bardiya or the Truth and Reconciliation Commission and the concrete steps taken to clarify the circumstances surrounding the death of the authors' son. Therefore, the Committee considers that the State party has failed to conduct a thorough and effective investigation into his death. Additionally, the Committee recalls its jurisprudence that payments provided by the State party as interim relief do not constitute an adequate remedy commensurate to the serious violations inflicted in the present case.¹⁸ Regarding the authors' claims that the State party has failed to adopt adequate legislative measures to prevent instances of torture in line with international standards, the Committee considers that, given that the revised legislation referred to by the State party does not have retroactive effect, the legislation is therefore not relevant to the authors' case. The Committee further recalls its jurisprudence in which it has expressed that the new statute of limitations and imposed penalties for torture in the revised legislation are still not commensurate with the gravity of such a crime.¹⁹ Accordingly, it concludes that the facts before it reveal a violation of the authors' son's rights under articles 6, 7 and 9 of the Covenant, read in conjunction with articles 2 (3) and 24 (1).

7.9 The Committee notes the authors' claims that the killing of their son and the ongoing failure of the State party authorities to investigate his case and prosecute and sanction those responsible, as well as to provide them with adequate redress for the harm suffered, has had serious consequences in terms of their life and physical and mental health. It also notes their claims that the repeated searches of their home by the units responsible for their son's death exacerbated their fear and anxiety. Taking into account the fear and anguish experienced by the authors, which has caused them both to be hospitalized following their son's death, the Committee considers that these facts reveal a violation of their rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3).

7.10 With regard to the alleged violation of article 17, the Committee notes the authors' claims that their family life and right to privacy has been arbitrarily interfered with because of the searches of their home without a warrant, the public labelling of their son as a terrorist – which affected the family's honour and reputation – and because of the repeated threats and harassment by the security forces responsible for their son's death and in instances where searches in their village were conducted by 40 to 50 soldiers, who surrounded the village and threatened the inhabitants. The Committee further notes that the State party does not address the facts as described by the authors. In the absence of any specific information from the State party refuting the authors' allegations, the Committee concludes that the conduct of the security forces constituted an unlawful interference with the authors' privacy, family and home, in violation of article 17 of the Covenant.²⁰

¹⁸ *Tharu et al. v. Nepal*, para. 10.10.

¹⁹ *Pharaka v. Nepal* (CCPR/C/126/D/2773/2016), para. 7.5.

²⁰ *A.S. v. Nepal* (CCPR/C/115/D/2077/2011), para. 8.5, and *Bolakhe et al. v. Nepal* (CCPR/C/123/D/2658/2015), para. 7.19.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose violations by the State party of the authors' son's rights under articles 6, 7 and 9 of the Covenant, read alone and in conjunction with articles 2 (3), 24 (1) and 26, and of the authors' rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3), as well as of their rights under article 17 of the Covenant.

9. Pursuant to 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 take appropriate steps to: (a) conduct a thorough and effective investigation into the facts surrounding the death of A.C. and the treatment he suffered while deprived of his liberty; (b) prosecute, try and punish those responsible for the violations committed; (c) provide the authors with prompt and detailed information about the results of the investigation; (d) ensure that any necessary psychological rehabilitation and medical treatment is provided to the authors free of charge, and that it is adequate; and (e) provide adequate compensation and appropriate measures of satisfaction to the authors for the violations suffered, including an official apology and a memorial in their son's name to restore his and the family's name, dignity and reputation. The State party is also under an obligation to take all steps necessary to prevent the occurrence of similar violations 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 there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory 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 Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.
