



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2777/2016*, **

<i>Communication submitted by:</i>	Hom Bahadur Bagale (represented by counsel, TRIAL International)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Nepal
<i>Date of communication:</i>	17 December 2015 (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 16 June 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	2 November 2020
<i>Subject matter:</i>	Arbitrary arrest and detention; torture; absence of prompt and impartial investigation; arbitrary and unlawful interference with privacy, home and family life; lack of access to an effective remedy
<i>Procedural issue:</i>	Admissibility – exhaustion of domestic remedies
<i>Substantive issues:</i>	Prohibition of torture and cruel or inhuman treatment or punishment; right to liberty and security of person; respect for the inherent dignity of the human person; right not to be subjected to arbitrary or unlawful interference with one's privacy and family life; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (2) and (3), 7, 9 (1), (2), (3) and (5), 10 (1) and 17
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The author of the communication is Hom Bahadur Bagale, a national of Nepal, born on 28 April 1970. He claims that Nepal has violated his rights under articles 7 and 10 (1) of the Covenant, read alone and in conjunction with article 2 (3), article 2 (2), read in conjunction with article 7, article 9 (1), (2), (3) and (5), read alone and in conjunction with

* Adopted by the Committee at its 130th session (12 October–6 November 2020).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Ahmed Amin Fathalla, Furuya Schuichi, Christoph Heyns, David H. Moore, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Andreas Zimmermann.



article 2 (3), and article 17, read alone and in conjunction with article 2 (3). The Optional Protocol entered into force for the State party on 14 August 1991. The author is represented by the organization TRIAL International.

Facts as submitted by the author

First arbitrary deprivation of liberty and torture, November–December 2002

2.1 The author served in the Nepalese police from 13 February 1984. At the time of the events related to the communication, he was stationed with the Central Police Band Company in Maharajgunj, Kathmandu, Nepal. On 23 November 2002, the author was requested by a deputy superintendent of police to go to the airport to fetch some gold sent by his relatives living abroad. The author refused the request as it was not part of his official duties.

2.2 On 28 November 2002, he was asked to go to the Hanumandhoka Police Range in Kathmandu, where an inspector questioned him about the gold he should have collected from the airport and, together with other policemen, subjected him to beatings, *falanga* (beating on the soles of the feet), slaps, punches and insults, to make him confess to having been involved in the alleged theft of the gold from his superior. Following his refusal to confess, the author was handcuffed and arrested without being informed of the reasons for his arrest.

2.3 After his arrest on 28 November 2002, the author was kept in solitary confinement at the Hanumandhoka Police Range in Kathmandu. He was kept in a dark and dirty room, filled with insects, with no toilet, mattress or blanket. He was not given food or water for several days. He was subjected to several interrogations and severe acts of torture by inspectors and policemen, including beatings, kicks, punches, having sticks rolled on his thighs, electric shocks and having pins inserted into his fingers and toes. He was also forced to urinate on an electric heater to electrocute his genitals. He was stripped naked, had his hair shaved off and was subjected to repeated death threats.¹ Despite his physical and psychological injuries, he was not given any medical treatment. Throughout the period of detention, he was not allowed to communicate with anyone, including his family, or have access to a lawyer.

2.4 On the night of 29 November 2002, six or seven policemen put the author into a private vehicle and drove to his house. The author was forced to stay in the car in front of his house with a hood on his head while the policemen searched the house without producing any warrant or informing his family of the reason for the search. During the search, they mistreated and sexually harassed his 14-year-old daughter and threatened his family with death if they did not hand over the gold. The author could see what was happening through the hood. However, he could not do anything as he had a pistol pointed at his head to keep him silent. After the search, the author's wife was informed of her husband's detention by his friends and her brother, who worked for the Armed Police Force of Nepal. After several attempts to see the author at the Hanumandhoka Police Range, she asked for the help of a lawyer to locate and free her husband.²

2.5 On 3 December 2002, the author's wife lodged a habeas corpus writ on behalf of her husband before the Appellate Court of Patan. On 5 December 2002, in response to a court order to present the author to the Court, one of the inspectors asserted to the Appellate Court that the author was not detained and was working in his office, as he had not committed any crime nor had any formal complaint been filed against him. On the same day, the author was taken to the police headquarters in Naxal, Kathmandu, where his superiors intimidated him into keeping silent about the mistreatment he had been subjected to. He was then taken to the Appellate Court of Patan, where he met his lawyer for the first time. On 11 December 2002, the Appellate Court quashed the habeas corpus writ, acknowledging that he had been working in the office since 28 November 2002. After the decision was issued, the author was forced to stay at the Central Police Band Company building without any duties.

¹ The author provides testimony from his former colleague, a former policeman in Nepal, attesting to his detention and torture during the period 28 November–5 December 2002. The author also submits the testimony of a lawyer, affirming that the lawyer, who visited the Appellate Court of Patan on 5 December 2015, saw the author's injuries.

² The author provides the testimony of his wife describing the police search on 29 November 2002.

2.6 On 20 December 2002, the author managed to escape from the Central Police Band Company building and went to the Department of Forensic Medicine of the Maharajagunj Campus of Tribhuvan University in Kathmandu. A doctor found that his injuries had been produced by “blunt force impacts” compatible with the acts of torture reported by the author.³

2.7 On 24 December 2002, the author submitted a complaint to the police headquarters alleging that the torture and ill-treatment he had been subjected to and the search of his house, including the interference with his family, were illegal. However, the application was neither formally registered nor did it produce any results.⁴

2.8 On 10 January 2003, the author filed a complaint before the Kathmandu District Court for compensation for the harm he had suffered and a departmental action against the perpetrators pursuant to the Compensation for Torture Act 1996.⁵ After the case was registered, the author was threatened by various policemen and pressured to withdraw his complaint.

2.9 On 5 February 2003, the author was taken by his colleagues from the Central Police Band Company to the police headquarters, where he was questioned by his superiors and intimidated to make him withdraw his complaint. Upon his refusal to comply, he was taken to the quarter guard of Armed Police Battalion No. 1 in Kathmandu and detained there until 21 February 2003. During the entire period of detention, the author was chained and his head was covered with a hood.⁶

2.10 On 21 February 2003, he was taken to the legal department at the police headquarters and given a letter asking him for clarification within 24 hours about his involvement in the theft of the gold. The author also learned from the letter that disciplinary proceedings were being brought against him. On the same day, he managed to escape from the police headquarters and went home.

2.11 On 24 February 2003, two human rights lawyers supported him in filing an injunction petition before the Appellate Court of Patan. On 25 February 2003, the Appellate Court issued a stay order (interim order) against the police headquarters, directing the police department not to take any departmental action against the author. The court said that such action would be illegal because the gold that had allegedly been stolen had not been found and there was no evidence whatsoever indicating the author’s responsibility.

2.12 On 25 February 2003, however, the Appellate Court of Patan issued an order for the author to be brought back to the premises of the quarter guard of Armed Police Battalion No. 1. The author was detained there, chained and his head covered with a hood, until 3 April 2003. During his detention, he was subjected to repeated threats in order to make him withdraw his complaint and compensation claim, which he kept refusing to do.⁷

2.13 On 4 April 2003, the author filed a complaint before the National Human Rights Commission and a petition before the Chief District Officer of the District Administration Office in Kathmandu for the protection of his life in view of the police threats, but no measures were taken in response to his applications.

2.14 On 25 April 2003, after several failed attempts, the author managed to go back to work and was assigned to the canteen, where he worked until March 2006.⁸ During the entire

³ The author provides the medical certificate. After the author returned home and met his family, he went back to the premises of the Central Police Band Company as he did not want to lose his job and source of income, or his right to pensions, although he was scared to go back.

⁴ The author provides a copy of his complaint to the police headquarters legal department.

⁵ The allegation is based on sections 4, 5 (1), 6 (1) and 7 of the 1996 Compensation for Torture Act.

⁶ Between 5 and 8 February 2003, he was kept there alone. Subsequently, other policemen were briefly detained with him and transferred elsewhere.

⁷ In testimony dated 31 October 2015, the author’s wife testifies to the physical and mental damage suffered by her husband, which she witnessed after he managed to return home in April 2003.

⁸ From 4 to 7 April 2003, the author went to the police headquarters in his uniform to carry out his duties as he was instructed, but he was not given any duties. On 7 April 2003, he filed a mandamus writ petition before the Appellate Court of Patan to ask to be allowed to enter the office and perform his duties. When he received the interim order from the Appellate Court, he was able enter the premises, but was not allowed to register his attendance between 8 and 23 April 2003.

period, he received continuous threats from his superiors, who were attempting to force him to withdraw the complaint he had submitted to the court.

2.15 On 13 July 2004, the Kathmandu District Court rejected the author's complaint on the basis that his claims could not be substantiated. Noting that there was no record of the author being detained, the Court found he had not been subjected to torture. The Court also held that the injury examination report of the Department of Forensic Medicine of Maharajagunj Campus was irrelevant as evidence for torture because the author had been examined a long time after his alleged torture. The author appealed against this decision. On 3 April 2007, the Appellate Court upheld the ruling of the Kathmandu District Court. The author appealed to the Supreme Court of Nepal, which upheld the ruling of the lower courts on 1 September 2014.

Second arbitrary deprivation of liberty and torture, March 2006

2.16 On 13 March 2006, the author applied for retirement. On 20 March 2006, he went to the police headquarters to discuss his retirement. There, he was told by a superior inspector that his retirement would be approved only if he withdrew the complaint he had filed with the court on the alleged torture he had been subjected to in 2002.⁹ After refusing to comply, he was taken to the premises of the quarter guard of Armed Police Battalion No. 1, where he was held until 21 March 2006. During this period of detention, he was not given any food or water and was chained, with his head covered by a hood. He was detained alone and not allowed to contact his family. He was also subjected to acts of torture, including beatings, punches, kicks and death threats, and his hair was shaved off with a knife. He was thrown into a hole containing muddy water and dirt and beaten with bamboo sticks by an inspector and policemen.

2.17 On 21 March 2006, a group of human rights lawyers located him and managed to get him released. However, on the same day, he was again arrested without a warrant and he was detained in the ward police office in Tinkune, Baneshwor, from the afternoon of 21 March 2006 to 22 March 2006. During that period, he was handcuffed and given no food or water. On 22 March 2006, he was brought to Hanumandhoka, where he was kept until 28 March 2006 and subjected to further violence and mistreatment.¹⁰

2.18 On 24 March 2006, a human rights lawyer filed a habeas corpus petition before the Supreme Court. The police made a written submission, alleging that, on 21 March 2006, the author had voluntarily gone to the police headquarters and misbehaved, defaming the organization. However, on 28 March 2006, the Supreme Court of Nepal issued a decision ordering the release of the author and acknowledging that his detention was illegal. The author was freed on the same day.

2.19 On 26 April 2006, he filed a case against 12 policemen at the Kathmandu District Court. He requested 100,000 Nepalese rupees¹¹ as compensation for the harm he had suffered and that departmental action should be brought against the policemen concerned pursuant to the Compensation for Torture Act of Nepal.¹²

2.20 After filing the complaint, the author and his family were subjected to further threats and harassment. On 12 April 2007, the author reported the threats to the District Administration Office and sought protection for himself and his family, fearing for their lives, with no meaningful result.

⁹ At the time, the case was being considered by the Appellate Court of Patan.

¹⁰ The author submits the medical report which confirmed that the author's hair was shaved in an unusual style and the nature of his injuries was compatible with injuries produced by blunt force impacts.

¹¹ Equivalent to approximately \$1,000 at the time of submission of the initial complaint by the author.

¹² The allegation is based on sections 4, 5 (1), 6 (1) and 7 of the Compensation for Torture Act of Nepal. The author submitted to the court a medical report of his physical examination and testimonials attesting to the fact that he had injury marks and wounds on his body and that his head was shaven inappropriately.

2.21 On 18 September 2008, the Kathmandu District Court found that the author was tortured in March 2006 and ordered the Government to pay 21,000 Nepalese rupees¹³ to him as compensation. However, the Court denied the author's request for departmental action against the policemen. In August 2009, the author filed an appeal before the Appellate Court of Patan. He argued that the amount of compensation was not enough for his rehabilitation and that the physical, mental, social and economic harm and impact of torture should have been analysed. He also alleged that the perpetrators should be subjected to departmental action.

2.22 On 10 June 2012, the Appellate Court of Patan upheld the decision of the Kathmandu District Court, stating that the author had not demonstrated the mental harm he claimed to have suffered as a result of the torture inflicted upon him. The author filed a petition for revision with the Supreme Court. On 1 September 2014, the Supreme Court refused to revise the previous decisions and upheld them.

2.23 The author did not file an application to receive the compensation accorded by the court, as he thought that 21,000 Nepalese rupees was not adequate and fair compensation.¹⁴

2.24 The author continues to suffer from psychological consequences of the ill-treatment he was subjected to, including depression, anxiety, paranoia and personality disorders.¹⁵

Complaint

3.1 The author claims that the State party has violated his rights under articles 7 and 10 (1) of the Covenant, read alone and in conjunction with article 2 (3), article 2 (2), read in conjunction with article 7, article 9 (1), (2), (3) and (5), read alone and in conjunction with article 2 (3), and article 17, read alone and in conjunction with article 2 (3).

3.2 The author submits that the State party violated articles 7 and 10 (1) of the Covenant, read alone and in conjunction with article 2 (3) of the Covenant, with regard to the torture, ill-treatment and inhumane conditions of detention he was subjected to in November–December 2002 and March 2006,¹⁶ as well as the subsequent failure of the Nepalese authorities to carry out an effective investigation into his allegations, to prosecute and sanction those responsible and to provide the author with full reparation for the harm suffered.¹⁷

3.3 The author also claims that the lack of effective legislative measures to protect against torture and ill-treatment constitutes a violation of article 2 (2), read in conjunction with article

¹³ Equivalent to approximate \$210 at the time of the submission of the initial complaint by the author.

¹⁴ Pursuant to section 9 (3) of the Compensation for Torture Act, the victim should file an application to the relevant district administration office within one year of the final decision on the case to claim the compensation.

¹⁵ The author submits a medical certificate dated 17 November 2015 concerning his mental condition. The author also alleges that he suffers from physical difficulties, including dizziness and aches in both his knees, while a medical examination report dated 15 November 2015 concerning the author's physical condition indicates that the injuries have healed without any noticeable consequences.

¹⁶ See the Committee's general comment No. 20 (1992). The author also refers to the Committee's jurisprudence that states that due weight must be given to the author's allegations in similar cases, such as *Adrakhim Usaev v. Russian Federation* (CCPR/C/99/D/1577/2007), para. 9.3; and *Pustovalov v. Russian Federation* (CCPR/C/98/D/1232/2003), para. 8.2. The author also refers to Views of the Committee which acknowledge that certain conduct amounts to ill-treatment, including Human Rights Committee, *Berterretche Acosta v. Uruguay*, communication No. 162/1983, para. 11; Human Rights Committee, *Terán Jijón v. Ecuador*, communication No. 277/1988, para. 5.2; *Butevenko v. Ukraine* (CCPR/C/102/D/1412/2005), para. 7.2; Human Rights Committee, *Grille Motta v. Uruguay*, communication No. 11/1977, para. 16; *Shanta Sedhai v. Nepal* (CCPR/C/108/D/1865/2009), para. 8.3; Human Rights Committee, *El-Megreisi v. Libya*, communication No. 440/1990, para. 5.4; *Kulov v. Kyrgyzstan* (CCPR/C/99/D/1369/2005), para. 8.2; *Medjouné v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.4; and *Giri v. Nepal* (CCPR/C/101/D/1761/2008 and Corr.1), paras. 7.3, 7.6 and 7.9.

¹⁷ See the Committee's general comment No. 31 (2004); the first Optional Protocol to the Covenant, para. 4 (2); *Zheikov v. Russian Federation* (CCPR/C/86/D/889/1999), para. 7.2; *Zyuskin v. Russian Federation* (CCPR/C/102/D/1605/2007), para. 11.4; *Giri v. Nepal*, para. 7.10; and *Maharjan v. Nepal* (CCPR/C/105/D/1863/2009), para. 8.8.

7 of the Covenant.¹⁸ The author especially notes that torture is not codified as an autonomous criminal offence in Nepal and that the Compensation for Torture Act only allows for disciplinary, not criminal, action to be taken and limits the notion of reparation for victims of torture entitled to compensation.

3.4 The author further claims a violation of article 9 (1), (2), (3) and (5) of the Covenant, read alone and in conjunction with article 2 (3) of the Covenant, as he was subjected to arbitrary arrest and detention in both November–December 2002 and March 2006. In both cases, he was arrested without a warrant; he was not promptly informed of any formal charges against him; his arrest and detention were never entered into official records; he was subjected to arrest and incommunicado detention that were not officially acknowledged and did not have prompt access to a lawyer; his case was not promptly brought before a court of law¹⁹ and the author was never given the opportunity to challenge the lawfulness of the arrest and detention in court.²⁰ The author also contends that the State party failed to conduct an investigation into these allegations and that he did not receive any compensation for the arbitrary deprivation of liberty he was subjected to on different occasions.

3.5 The author also alleges a violation of article 17 of the Covenant, read alone and in conjunction with article 2 (3) of the Covenant, as he was subjected to arbitrary and unlawful interference with his privacy, home and family life.²¹ In particular, during the search of his house of 29 November 2002, his family members, including his then 14-year-old daughter, were subjected to abuse, harassment, threats and humiliation by the police officers, who attacked their honour and reputation. In the subsequent years, the author and his family were again subjected to repeated threats and harassment, without any preventive measures being taken by the State party, despite repeated reports of such violations and with none of the police personnel involved being prosecuted or subjected to sanction.²²

3.6 The author requests the State party to investigate the facts of his case, to identify and punish those responsible and to give him full reparation, including prompt, fair and adequate compensation proportionate to the gravity of the harm he was subjected to, encompassing physical and mental harm, lost opportunities in terms of employment, education and social benefits, moral damages and costs required for expert assistance, medicine and medical services. The author further requests that the State party ensure that measures of reparation are adopted to cover material and moral damages and incorporate measures aiming at restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition.

3.7 The author also claims his communication is admissible both *ratione temporis* and *ratione loci*. The author also claims that the case has never been submitted to any other procedure of international investigation or settlement. The author contends that he has exhausted all domestic remedies as he pursued domestic proceedings up to the Supreme Court and could not be reasonably expected to take any further steps at the domestic level. The remedies offered by Nepalese legislation did not prove effective and he never received

¹⁸ See the Committee's general comment No. 31 (2004); *Chihoub v. Algeria* (CCPR/C/103/D/1811/2008), individual (concurring) opinion of Fabián Salvioli, joined by Cornelis Flinterman, paras. 5–7; and *Djebrouni v. Algeria* (CCPR/C/103/D/1781/2008), individual (concurring) opinion of Fabián Salvioli, joined by Cornelis Flinterman, paras. 5–7.

¹⁹ The author alleges that this is against the State party's domestic laws, including the Interim Constitution of Nepal, the State Cases Act and the Police Act.

²⁰ See the Committee's general comment No. 35 (2014). The author refers to several Views of the Committee, including *Khoroshenko v. Russian Federation* (CCPR/C/101/D/1304/2004).

²¹ See the Committee's general comment No. 16 (1988). The author refers to the Committee's jurisprudence, including *Faraoun v. Algeria* (CCPR/C/109/D/1884/2009 and Corr.1), para. 7.12; *Mezine v. Algeria* (CCPR/C/106/D/1779/2008/Rev.1), para. 8.10; and *Peiris v. Sri Lanka* (CCPR/C/103/D/1862/2009), paras.7.6–7.7.

²² The author submits that he was not able to benefit from his entitlement to a pension as his retirement was not formally acknowledged and that this was in retaliation for the complaint he had made concerning torture. The family has suffered severe economic conditions since his retirement because of his lack of a pension and loss of a peaceful family life as a consequence of the threats and harassment.

compensation or any other redress.²³ The author also adds that the present communication cannot be considered an abuse of right of submission.²⁴

State party's observations on admissibility and the merits

4.1 On 13 October 2016, the State party submitted that the author's communication is inadmissible, or without merit, claiming that the author's allegations are not based on facts and reality and that the case has already been settled at the domestic level.

4.2 The State party submits that, in December 2002, a policeman at the police headquarters filed a complaint against the author claiming that he had stolen gold at the airport. On 21 February 2003, the police headquarters authorities requested the author to respond to the charges against him and the author filed the writ of mandamus against the police headquarters in the Appellate Court of Patan, requesting an interim order to avoid possible departmental actions. Though the Court issued the interim order as requested by the author, it quashed his writ petition, including the interim order, in its final verdict on 25 February 2003.

4.3 The State party claims that, after the verdict of the Appellate Court, police officers tried to deliver a letter to the author to request him to provide clarification on the issue. However, the author refused to receive the letter, left his assigned duties and could not be contacted. Five police officers made a report stating the circumstances and requesting that further action be taken against the author in line with the police rules. It is on this ground that, on 19 March 2006, the police headquarters authorities started departmental action against the author and took action to dismiss him from his post in line with the police rules. He submitted an appeal against the decision to the Ministry of Home Affairs, but the appeal was annulled by the Home Minister. The author filed a writ of certiorari in the Supreme Court, intending to nullify the departmental action against him. On 1 September 2014, the Supreme Court decided there was no ground to nullify the decision concerning departmental action, as the author had been given the opportunity to be heard in that connection many times, but had refused to take receipt of the letter.

4.4 The State party also adds that a habeas corpus writ that the author's wife lodged on 3 December 2002 was rejected as the author was following his normal work schedule in the office and it was thus not necessary to issue the order as claimed by the petitioner.

4.5 As for the author's alleged torture during the period between 28 November and 5 December 2002, the State party emphasizes that the District Court rejected his allegation on 13 July 2004 on the ground that the author's claim could not be substantiated because the alleged torturer had not been identified, there were no detention records proving the author's deprivation of liberty and the injury report of the Department of Forensic Medicine of the Maharajgunj Campus was irrelevant because the examination took place too late to substantiate the alleged torture. That ruling has been upheld by the higher courts.

4.6 With regard to the allegation that the author was arrested without a warrant, the State party claims that the arrest of the author was conducted according to the law. Under the 1970 Some Public (Crime and Punishment) Act, the police have the authority to arrest persons without warrant in the case of specific crimes. The author was arrested on 20 March 2006 without a warrant as he was found to be engaged in activities undermining public peace and order, as indicated in the Act. The Act stipulates that the arrested person shall be presented before the competent authorities and shall not be kept in custody without an order for such custody; it provides furthermore for the person to be held in custody for investigation for a maximum period of seven days. Accordingly, the author was kept in custody with the

²³ *Katwal v. Nepal* (CCPR/C/113/D/2000/2010), para. 6.4; *Sobhraj v. Nepal* (CCPR/C/99/D/1870/2009), para. 6.3; *Giri v. Nepal*, para. 6.3; and *Maharjan v. Nepal*, para. 7.4. See also *Zdenek and Milada Ondracka v. Czech Republic* (CCPR/C/91/D/1533/2006), para. 6.3; Human Rights Committee, *Baboeram et al. v. Suriname*, communications Nos. 146/1983 and 148-154/1983, para. 9.2; *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; Human Rights Committee, *A.P.A. v. Spain*, communication No. 433/1989, para. 6.2; and *Benaziza v. Algeria* (CCPR/C/99/D/1588/2007), para. 8.3.

²⁴ CCPR/C/3/Rev.11, rule 99 (c).

permission of the competent authority and was released on 28 March 2006 by the order of the Supreme Court.

4.7 The State party also contends that the Constitution of Nepal guarantees fundamental rights, including the right to be protected from torture and arbitrary deprivation of liberty.²⁵ The State party argues that, pursuant to article 126 of the Constitution, judicial power is exercised by independent courts and other independent bodies in accordance with the Constitution, the State party's laws and recognized principles of justice. Among them, the provision of section 9 of the Nepal Treaty Act 1990 establishes the sanctity of the international human rights instruments and ensures that no laws or actions can be interpreted in contravention of the standard of fair and competent justice. In accordance with the Constitution, prevailing laws and the standard of fair and competent justice, the author received justice. Regarding the case filed by the author with the Kathmandu District Court on 26 April 2006 against 12 police officers regarding his alleged torture and ill-treatment by them, the Court ordered that he should be paid 21,000 Nepalese rupees and that no departmental action should be taken against the police officers; that order has already been confirmed by the higher courts.

4.8 Although the author asserts that the amount of compensation, 21,000 Nepalese rupees, is neither adequate nor fair compensation for the damage he suffered, the State party claims that the amount was determined by a national court in line with the provisions of prevailing laws and based on the gravity of the case, the harm suffered by the victim and other related facts. Thus, the decision made by the independent judiciary must be respected by all.

4.9 In conclusion, the State party argues that the communication is not admissible, or alternatively lacks merit, since the case has been settled by the independent, impartial, competent judiciary in accordance with the Constitution and prevailing laws and in accordance with due process and internationally accepted standards for fair trial in all three tiers of the courts.

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

5.1 On 21 October 2016, the author submitted his comments on the State party's observations.

5.2 With regard to the admissibility of the communication, the author notes that it is not clear on what grounds the State party alleges that the communication is inadmissible. The author considers that the State party's allegation that the communication is inadmissible refers to the requirement of exhaustion of domestic remedies pursuant to article 5 (2) (b) of the Covenant. The author reiterates that he undertook all legal steps available at the domestic level, which proved to be ineffective since no effective investigation was conducted, the perpetrators were not prosecuted and no appropriate reparations were made. Furthermore, the author contends that the State party itself confirms that the author has exhausted all available domestic remedies by indicating that the author's case was already settled through examination in all three tiers of the domestic courts. The author argues that the communication fulfils the criteria regarding other grounds of admissibility under article 5 (2) and thus should be declared admissible.

5.3 Regarding the merits of the communication, although the State party insists that the author's case was settled in the domestic proceedings, the author reiterates that there was no effective investigation in the context of legal proceedings, nor were those responsible prosecuted and punished. Although the State party cited the court ruling of 13 July 2004 which rejected the author's claim because the alleged torturer had not been identified, he contends that he has always known the identity of the perpetrators of the criminal acts committed against him and has publicly denounced them on several occasions. He indicates that some of the alleged perpetrators were even promoted or offered a promotion in the police force, which, in his view, confirms that no investigation into the author's allegation has taken place and that impunity still prevails.

²⁵ The State party reiterates that, under the Constitution, torture is considered as a criminal offence and compensation must be awarded to victims of torture.

5.4 The author also contests the State party's allegation that he was working in his office during the time of the alleged torture in November–December 2002.²⁶ The author argues that the absence of prison records documenting his detention is not enough to refute the allegation of torture. The author reiterates his claim that the fact that his arrest and detention were not registered in any custody report reflects an existing systematic practice denounced by several international human rights bodies, including the Committee,²⁷ and amounts to a violation *per se* of article 9 of the Covenant.

5.5 With regard to the fact that the medical report on the author's injuries was disregarded by the State party as providing no conclusive evidence that he had been tortured, the author contends that it demonstrates that no thorough and effective investigation was conducted into his allegations. He also argues that the fact that the domestic courts decided to grant him compensation is recognition of the fact that he was indeed subjected to torture and ill-treatment.

5.6 The author reiterates that the decision to grant him compensation can by no means be regarded as an effective remedy. Despite the allegation of the State party that the amount of compensation was determined on the basis of the gravity of the case and the harm he suffered, the author contends that the amount of money awarded as compensation pursuant to the decision of the Kathmandu District Court is not commensurate with the gravity of his arbitrary arrest and detention, the inhumane conditions of detention and the hindrances to his and his family's rights to privacy. The author argues that, although the amount of compensation of 21,000 Nepalese rupees is the standard amount paid to victims of torture in Nepal, this sum is not commensurate with the extreme gravity of the crime committed against the author and is therefore at odds with international standards.²⁸ The author argues that, in the case of allegations of torture, pecuniary compensation alone can never be considered sufficient to provide adequate reparation to the victims. He reiterates that, pursuant to international law, measures of reparation for victims of torture must also include restitution, rehabilitation, satisfaction and guarantees of non-repetition.

5.7 In sum, the author alleges that the State party failed to provide solid legal arguments against the admissibility of the communication and to adequately challenge the merits. The author reiterates that the State party has violated articles 7 and 10 (1), read alone and in conjunction with article 2 (3) of the Covenant, because of the torture, ill-treatment and inhumane treatment the author was subjected to during the periods of arbitrary detention and the subsequent failure by the State party to carry out an *ex officio*, prompt, effective, independent, impartial and thorough investigation, to prosecute and sanction those responsible and to provide the author with an effective remedy.

5.8 The author also claims a violation of article 7 in conjunction with article 2 (2) of the Covenant as a result of the State party's failure to adopt effective legislative measures to give effect to the rights enshrined in the Covenant and to remove obstacles in the existing legal framework concerning torture that remain at odds with the international obligations it has assumed. Despite the State party's allegation that the right to be free from torture is recognized in the Nepalese Constitution of 2015, the author contends that the recognition of this fundamental right in the Constitution is not sufficient unless it is accompanied by enabling criminal legislation that allows for the penal prosecution of such acts and the appropriate punishment of the perpetrators, which is still not the case in the State party.

5.9 The author further reiterates that the State party has violated article 9 (1), (2), (3) and (5), read alone and in conjunction with article 2 (3) of the Covenant, as the author was subjected to arbitrary arrest and detention; and he was not informed, at the time of arrest, of the reasons for his arrest. Furthermore, the State party violated article 17, read alone and in

²⁶ He reiterates witness testimony from his colleague and mentions the medical certificates he has submitted as proof of his arbitrary arrest and the injuries he received, which the State party does not contest.

²⁷ CCPR/C/NPL/CO/2, para. 11.

²⁸ The author argues that the compensation for gross violation of human rights should take account of physical and mental harm, lost opportunities in terms of employment, education and social benefits, moral damages and the costs required for expert assistance, medicine and medical services.

conjunction with article 2 (3) of the Covenant, because the author and his family were subjected to arbitrary and unlawful interference with their privacy, home and family life.

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 observes that article 5 (2) (b) of the Optional Protocol precludes it from considering a communication unless it has been ascertained that domestic remedies have been exhausted. Taking into account the author's argument that he has exhausted domestic remedies and in the absence of any objection by the State party in this connection, the Committee considers that it is not precluded by the provisions of article 5 (2) (b) of the Optional Protocol from examining the present communication. In this connection, the Committee notes that, while the author considers that the State party's allegation that the communication is inadmissible refers to the requirement of exhaustion of domestic remedies pursuant to article 5 (2) (b), the State party acknowledges in its observation that the case has been examined in three tiers of its judicial system.

6.4 The Committee notes the author's submission that the State party has violated its obligations under article 2 (2) of the Covenant, read in conjunction with article 7, since it failed to adopt effective legislative measures to give effect to the rights enshrined in article 7 of the Covenant and to remove obstacles in the existing legal framework concerning torture. The Committee recalls its jurisprudence indicating that the provisions of article 2 of the Covenant set forth a general obligation for States parties and cannot, when invoked separately, give rise to a claim in a communication under the Optional Protocol.²⁹ The Committee also considers that the provisions of article 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 (2) is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim. The Committee notes, however, that the author has already alleged a violation of his rights under article 7 resulting from the interpretation and application of the existing laws of the State party 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 article 7, is distinct from examination of the violation of the author's rights under article 7 of the Covenant. The Committee therefore considers that the author's claims in this regard are incompatible with article 2 (2) of the Covenant and inadmissible under article 3 of the Optional Protocol.

6.5 The Committee notes the State party's allegation that the case of the author was already properly addressed and settled in the domestic courts with a judgment to provide compensation to the author pursuant to the Compensation for Torture Act. However, the Committee notes that the author argues that the amount of money awarded as compensation pursuant to the decision of the domestic court is not commensurate with the severity of the torture he was subjected to in March 2006. The Committee also takes note of the author's allegation that pecuniary compensation alone can never be considered sufficient to provide adequate reparation to a victim of torture and that none of the persons suspected of inflicting the torture was ever identified, tried and punished, despite a number of complaints made by the author regarding the torture that he suffered in March 2006. In this connection, the Committee recalls that reparation should be proportionate to the gravity of the violations

²⁹ See *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; and *Peirano Basso v. Uruguay* (CCPR/C/99/D/1887/2009), para. 9.4.

suffered.³⁰ The Committee considers that the remedy provided for under the Compensation for Torture Act is not sufficient in the light of its standard of effective remedy, particularly given that the information before the Committee indicates that the State party has not conducted an adequate investigation into the torture suffered by the author in March 2006. In addition, the above-mentioned compensation was only intended to cover the torture the author was subjected to in March 2006, not the act of torture, his arbitrary arrest and detention in inhumane conditions and the infringement of his own and his family's rights to privacy that the author alleges to have been subjected to in November–December 2002, in respect of which claims the State party has provided no information indicating that it has undertaken sufficient investigation. Thus, the Committee considers that the author has sufficiently substantiated his claim under articles 7, 9 (1), (2), (3) and (5), 10 (1) and 17, read alone and in conjunction with article 2 (3), regarding the above allegations, for the purposes of admissibility.

6.6 In the absence of any other challenges to the admissibility of the communication, the Committee declares the communication admissible insofar as it concerns the author's claims under articles 7, 9 (1), (2), (3) and (5), 10 (1) and 17, all read alone and in conjunction with article 2 (3), of the Covenant. Accordingly, 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 submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 In regard to the author's allegation under article 7 of the Covenant, the Committee notes the various findings of international human rights bodies and reports of non-governmental organizations highlighting the widespread practice of torture and ill-treatment in Nepal.³¹ The Committee recalls that article 7 of the Covenant cannot be subject to derogation, even in situations of public emergency,³² and that, once a complaint about torture and ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially. The Committee reiterates its position that the burden of proof cannot rest solely with the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently the State party alone has access to the relevant information.³³ 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 an author's allegations to be substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party. The Committee further recalls that, in the absence of any convincing explanations from the State party, due weight must be given to the author's allegations, if sufficiently substantiated.³⁴

7.3 In the present case, concerning the torture and ill-treatment the author alleges to have suffered during the period from 28 November to 5 December 2002, the Committee notes that the State party argues that the claim of torture and ill-treatment cannot be substantiated because the alleged perpetrators had not been identified and there were no detention records or valid injury report. The Committee also notes that the author submits that he identified the alleged perpetrators and that the lack of a record of detention does not prove that no detention took place. In addition, the author submits testimonies to prove that he was not working in

³⁰ A/RES/60/147, annex, para. 15.

³¹ CCPR/C/NPL/CO/2, para. 10; CAT/C/NPL/CO/2, para. 13; E/CN.4/2006/6/Add.5, paras. 17–19; A/HRC/16/52/Add.2, paras. 77–79; A/HRC/10/53; A/67/44, annex XIII, paras. 100–108. See also *Pandey v. Nepal* (CCPR/C/124/D/2413/2014), *Giri v. Nepal* and *Katwal v. Nepal*.

³² General comment No. 20 (1992), para. 3.

³³ *Khoroshenko v. Russian Federation*, para. 9.5. See also *Kandel et al. v. Nepal* (CCPR/C/126/D/2560/2015), para. 7.4; *Pandey v. Nepal*, para. 8.3; *Sharma and Sharma v. Nepal* (CCPR/C/94/D/1469/2006), para. 7.5; *Sharma et al. v. Nepal* (CCPR/C/122/D/2364/2014), para. 5.3; *Nakarmi and Nakarmi v. Nepal* (CCPR/C/119/D/2184/2012), para. 11.4; *Dhakal et al. v. Nepal* (CCPR/C/119/D/2185/2012), para. 11.4; *Maya v. Nepal* (CCPR/C/119/D/2245/2013), para. 12.2; *Maharjan et al. v. Nepal*, para. 8.3; *Tripathi et al. v. Nepal* (CCPR/C/112/D/2111/2011), para. 7.2; and *Katwal v. Nepal*, para. 3.6.

³⁴ *Giri v. Nepal*, para. 7.4; and *El Awani v. Libyan Arab Jamahiriya*, para. 6.5.

the office during that time. The Committee further notes that the author submits a medical certificate to prove that he was injured on 20 December 2002 and that he could not be examined by a doctor earlier as he was forced to stay in the office. The author also points to the habeas corpus proceedings initiated by his wife during the same period, which further supports his allegations. The Committee also takes into consideration the fact that the State party did not contest the testimonial evidence provided by the author and did not mention any further investigation into the facts. The Committee considers that, in the absence of convincing explanations from the State party in respect of the author's claims concerning torture and other cruel, inhuman and degrading treatment that he suffered during the period from 28 November to 5 December 2002, due weight should be given to the author's allegations.

7.4 The Committee takes note of the author's allegations that the overall conditions of detention at the Hanumandhoka Police Range in Kathmandu from 28 November to 5 December 2002, which included no contact with the outside world, solitary confinement, interrogations under duress with the use of electric shocks and other severe measures and no food or water for several days, amounted to torture and other cruel, inhuman and degrading treatment. The Committee recalls its general comment No. 20 (1992), in which the Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts of torture.³⁵ The Committee also recognizes the degree of suffering involved in being held without contact with the outside world.³⁶ Furthermore, the Committee recalls that deprivation of liberty followed by a refusal by the State party to acknowledge the deprivation of liberty in effect removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.³⁷ In the absence of information from the State party concerning the treatment of the author in detention during this period, the Committee gives due weight to the author's allegations that his conditions of detention amounted to torture or other cruel, inhuman and degrading treatment³⁸ and concludes that his treatment while in detention constitutes a violation of article 7 of the Covenant. In view of the above, the Committee considers that it is not necessary to examine the claims under article 10 (1) with regard to the same facts.

7.5 The Committee observes that, after the author lodged a complaint regarding his torture and ill-treatment during the period from 28 November to 5 December 2002, no effective investigation was carried out by the authorities of the State party. The Committee considers that, in the circumstances of the present case, the State party has failed to demonstrate that its authorities addressed the torture allegations brought by the author expeditiously and adequately.³⁹ The author has demonstrated that he repeatedly endeavoured to report his allegations to the authorities of the State party on several occasions by filing complaints to the National Human Rights Commission, the Chief District Officer of the District Administration Office and the Supreme Court. The Committee considers that, particularly in the absence of any convincing explanations from the State party as concerns the author's claims, which are supported by the testimonies he submits, due weight should be given to the author's allegations. In the circumstances of the present case, the Committee therefore concludes that the facts before it disclose a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3) of the Covenant, in regard to the ill-treatment the author was subjected to in November–December 2002.

7.6 Regarding the torture he was subjected to in March 2006, the author also invokes a violation of article 7, read alone and in conjunction with article 2 (3) of the Covenant. In order to make the remedy effective, as stipulated in article 2 (3) of the Covenant, the State party is under a duty to investigate alleged violations of human rights promptly, impartially and thoroughly, to prosecute the suspected perpetrators, to punish those held responsible for

³⁵ General comment No. 20 (1992), para. 6.

³⁶ *Dhakal et al. v. Nepal*, para. 11.7.

³⁷ *Abushaala et al. v. Libya* (CCPR/C/107/D/1913/2009), para. 6.2; *Nakarmi and Nakarmi v. Nepal*, para. 11.6; and *Dhakal et al. v. Nepal*, para. 11.6. See also the Committee's general comment No. 36 (2018), para. 58.

³⁸ *Maharjan v. Nepal*, para. 8.7; and *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002), para. 5.2.

³⁹ *Khoroshenko v. Russian Federation*, para. 9.5.

such violations⁴⁰ and to provide other forms of reparation, including compensation, to the victims.⁴¹ Those obligations arise notably in respect of violations recognized as criminal under international law, such as violation of the rights protected under article 7 of the Covenant.⁴² The Committee further recalls that the rights protected under article 7 of the Covenant cover not only physical pain but also mental suffering.⁴³

7.7 In the present case, the Committee notes the State party's allegation that the domestic courts have already addressed the author's claim concerning torture suffered in March 2006 by issuing a decision to provide compensation to the author. The Committee notes that the author contends that the amount of compensation is not adequate, given the severity of the torture he was subjected to in March 2006 and the physical and mental suffering that he endured as a consequence of that torture and that it does not take account of the State party's failure to protect him from or adequately respond to the torture he suffered. While the State party alleges that the amount of compensation was determined by the court on the basis of the gravity of the case and the harm suffered by the author, the Committee notes the author's claim that it does not take account of the mental harm he has suffered, his economic and social situation or his need for rehabilitation and that no adequate investigation has been conducted, nor have the alleged perpetrators been prosecuted. The Committee notes that the State party does not provide any convincing explanations concerning whether it has undertaken any adequate investigation into the severity of the torture, in particular the mental suffering that the author endured as a consequence, which should lead to the consideration and determination of a fair amount of compensation in the courts on this ground; or why the alleged perpetrators identified by the author were not prosecuted and, if found guilty, punished. Given the aforementioned, the Committee considers that due weight should be given to the author's allegations and that the material on file does not allow it to conclude that an adequate investigation into the allegations of torture and his physical and mental suffering was carried out effectively, despite the evidence the author provided.⁴⁴

7.8 Accordingly, the State party may not avoid its responsibilities under the Covenant by pointing to the fact that the domestic courts have already dealt with the matter, when it is clear that the remedies granted appear to be ineffective. The Committee therefore concludes that, in light of the lack of any prompt, impartial and thorough investigation, of prosecution or punishment of the perpetrators of torture and of adequate reparation for the author, the information before it discloses a violation by the State party of article 7, read alone and in conjunction with article 2 (3), of the Covenant regarding the torture the author was subjected to in March 2006.

7.9 The Committee notes, with regard to the alleged violation of article 9 (1), (2), (3) and (5), read alone and in conjunction with article 2 (3) of the Covenant, the author's claims that, when he was detained from 28 November to 5 December 2002 and from 20 March to 28 March 2006, he was arrested without a warrant, without being informed of the reasons for his arrest or the charges against him and without there being any official record of the detention. The Committee notes the State party's claim that the author's arrest without a warrant on 20 March 2006 and his subsequent detention were conducted according to the procedure defined in the law, as the author was engaged in activities undermining public peace and order (see para. 4.6). However, the State party did not provide any further information on this allegation.

7.10 In this regard, the Committee recalls that the notion of "arbitrariness" in article 9 is not to be equated with "against the law", but must be interpreted more broadly to include

⁴⁰ *Rajapakse v. Sri Lanka* (CCPR/C/87/D/1250/2004), para. 9.3. See also the Committee's general comment No. 20 (1992), paras. 13–14; and its general comment No. 31 (2004), para. 18.

⁴¹ See, for example, *Gapirjanov v. Uzbekistan* (CCPR/C/98/D/1589/2007), para. 10; and *Peiris et al. v. Sri Lanka*, para. 9.

⁴² General comment No. 31 (2004), para. 18.

⁴³ See, for example, *K.N.L.H. v. Peru* (CCPR/C/85/D/1153/2003), para. 6.3; and *L.M.R. v. Argentina* (CCPR/C/101/D/1608/2007), para. 9.2. See also the Committee's general comment No. 20 (1992), para. 5.

⁴⁴ Basic Principles and Guidelines on the Rights to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, annex, para. 15.

elements of inappropriateness, injustice, lack of predictability and due process of law.⁴⁵ The Committee also recalls its general comment No. 35 (2014), in which the Committee prohibits arbitrary and unlawful deprivations of liberty, i.e., deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law. The two prohibitions overlap, in that arrests or detentions may be in violation of the applicable law but not arbitrary, or legally permitted but arbitrary, or both arbitrary and unlawful. Arrest or detention that lacks any legal basis is also arbitrary.⁴⁶ Article 9 also requires compliance with domestic rules that define when authorization to continue detention must be obtained from a judge or other officer,⁴⁷ where individuals may be detained,⁴⁸ when the detained person must be brought to court⁴⁹ and legal limits on the duration of detention.⁵⁰ Persons deprived of their liberty must be assisted in obtaining access to effective remedies to vindicate their rights, including initial and periodic judicial review of the lawfulness of the detention, and to prevent conditions of detention incompatible with the Covenant.⁵¹

7.11 In the present case, the Committee notes, based on the information provided, that the author's alleged arrest on 28 November and detention between 28 November and 5 December 2002 were both arbitrary and unlawful, as he was not informed of the reasons for his arrest, he was not brought promptly before a judge and he did not receive any remedies for the rights violated. Moreover, the author's arrest of 28 November 2002 and his subsequent detention until 5 December 2002 were not recorded, in violation of international guidelines on safeguards for detained persons. Regarding his arrest on 20 March 2006 and his detention during the period between 20 and 28 March 2006, the Committee also notes that, even if the arrest and detention were conducted pursuant to the 1970 Some Public (Crime and Punishment) Act of Nepal, the author's right to know the reason for his arrest and the charges against him at the outset of his detention and his right to promptly consult a legal practitioner of choice should have been guaranteed. The Committee also notes that the court decisions regarding compensation for the torture of the author during his detention between 20 and 28 March 2006 do not make any reference to the arbitrariness of his arrest and detention; it is thus not clear whether national courts examined those claims and took them into consideration in determining the compensation for the author. In the absence of a response from the State party in this regard, the Committee considers that the arrest and detention of the author and the absence of any official record of either arrest and detention constitute a violation of his rights under article 9 (1), (2), (3) and (5) of the Covenant.

7.12 With regard to article 17 of the Covenant, the Committee recalls its general comment No. 16 (1988), which affirms that the right under article 17 is required to be guaranteed against all such interferences and attacks, whether they emanate from State authorities or from natural or legal persons, and that searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment.⁵² The Committee notes that the police searched the author's house on 29 November 2002 without presenting a warrant and that the author's wife and 14-year-old daughter were subjected to verbal and sexual harassment and death threats from the police officers, who attacked their honour and reputation. In the absence of any explanation from the State party in this respect, due weight must be given to the author's allegations.⁵³ The Committee concludes that the entry of the police officers into the home of the author and his family in such circumstances

⁴⁵ See, inter alia, *Gorji-Dinka v. Cameroon*, para. 5.1; and *Van Alphen v. Netherlands* (CCPR/C/39/D/305/1988), para. 5.8.

⁴⁶ General comment No. 35 (2014), para. 11.

⁴⁷ *Gridin v. Russian Federation* (CCPR/C/69/D/770/1997 and Corr.1), para. 8.1.

⁴⁸ *Umarov v. Uzbekistan* (CCPR/C/100/D/1449/2006), para. 8.4.

⁴⁹ *Gómez Casafranca v. Peru* (CCPR/C/78/D/981/2001), para. 7.2.

⁵⁰ *Israil v. Kazakhstan* (CCPR/C/103/D/2024/2011), para. 9.2.

⁵¹ *Fijalkowska v. Poland* (CCPR/C/84/D/1061/2002), paras. 8.3–8.4; *A. v. New Zealand* (CCPR/C/66/D/754/1997), para. 7.3; and general comment No. 31 (2004), para. 15.

⁵² General comment No. 16 (1998), para. 8.

⁵³ *Giri v. Nepal*, para. 7.4; *El Awani v. Libyan Arab Jamahiriya* (CCPR/C/90/D/1295/2004), para. 6.5; and *Khirani v. Algeria* (CCPR/C/104/D/1905/2009 and Corr.1), para. 7.3. See also *Faraoun v. Algeria*, para. 7.12; *Mezine v. Algeria*, para. 8.10; and *Peiris v. Sri Lanka*, paras. 7.6–7.7.

constitutes unlawful interference with their privacy, family and home, in violation of article 17 of the Covenant.

7.13 In the present case, the Committee notes that the material on file does not allow it to conclude that the investigation into the allegations of arbitrary arrest and detention and arbitrary and unlawful interference with his privacy, home and family life was carried out promptly or effectively or that any of the suspects were identified, tried and punished, despite a number of complaints and efforts made by the author, who specifically identified some of the alleged perpetrators. The State party has not clarified why no such investigation has yet taken place, or why there has been a delay in carrying out such an investigation. Accordingly, the Committee considers that the State party has failed to conduct a prompt, thorough and effective investigation into the circumstances of the arrest and detention of the author and the arbitrary and unlawful interference with his privacy, home and family life. Thus, the Committee concludes that the facts before it reveal a violation of article 2 (3), read in conjunction with articles 9 and 17 of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses violations by the State party of articles 7, 9 and 17, read alone and in conjunction with article 2 (3) of the Covenant.

9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author 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*: (a) to conduct a prompt investigation that is effective and thorough, impartial and independent, and transparent into the facts surrounding the arrest, detention and torture of the author and the treatment he suffered during detention, both in 2002 and in 2006, as well as the interference with his private life, home and family life and to provide the author with detailed information about the results of the investigation; (b) to prosecute and punish those found responsible for the violations committed; (c) to ensure that necessary and adequate psychological rehabilitation and medical treatment are made available to the author; and (d) to provide adequate compensation, including appropriate measures of satisfaction, beyond the partial compensation already offered to the author for the violations suffered. The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future. In particular, the State party should ensure that its legislation effectively criminalizes torture and provides for appropriate sanctions and remedies commensurate with the gravity of the crimes.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 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 Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.