



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 2031/2011

#### Views adopted by the Committee at its 112th session (7–31 October 2014)

<i>Submitted by:</i>	Ram Kumar Bhandari (represented by counsel, Track Impunity Always-TRIAL)
<i>Alleged victim:</i>	The author and Tej Bahadur Bhandari (his father)
<i>State party:</i>	Nepal
<i>Date of communication:</i>	14 December 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 17 February 2011 (not issued in document form)
<i>Date of adoption of views:</i>	29 October 2014
<i>Subject matter:</i>	Enforced disappearance
<i>Substantive issues:</i>	Right to life; prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; respect for the inherent dignity of the human person; recognition as a person before the law; and right to an effective remedy
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	6; 7; 9; 10 and 16, alone and read in conjunction with article 2, para. 3
<i>Articles of the Optional Protocol:</i>	5, para. 2 (b)

GE.14-22802 (E)



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## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (112th session)**

concerning

#### **Communication No. 2031/2011\***

*Submitted by:* Ram Kumar Bhandari (represented by counsel, Track Impunity Always-TRIAL)

*Alleged victim:* The author and Tej Bahadur Bhandari (his father)

*State party:* Nepal

*Date of communication:* 14 December 2010 (initial submission)

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting on 29 October 2014,*

*Having concluded* its consideration of communication No. 2031/2011, submitted to the Human Rights Committee by Ram Kumar Bhandari under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication and the State party,

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication is Ran Kumar Bhandari, born on 13 December 1977. He claims that the State party has violated the rights of his missing father, Tej Bahadur Bhandari, a Nepalese national, born on 23 February 1946, under articles 6; 7; 9; 10 and 16, alone and read in conjunction with article 2, paragraph 3, of the Covenant; as well as his own rights under article 7, read in conjunction with article 2, paragraph 3, of the Covenant. The author is represented by counsel.

#### **The facts as submitted by the author**

2.1 As a result of the armed conflict prevailing in the country, the authorities declared a state of emergency in November 2001. The Terrorist and Disruptive Activities Ordinance

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\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanut, Ahmed Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald Neuman, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Dheerujall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

(2001) allowed State agents, such as enforcement personnel, to arrest individuals on the basis of mere suspicion of involvement in terrorist activities, and various constitutionally granted human rights and freedoms were suspended. Against this background, all parties to the conflict, including the police and the Royal Nepalese Army, committed atrocities, and enforced disappearances became a widespread phenomenon.<sup>1</sup>

2.2 On 27 December 2001 at noon, a group of approximately 60 army and police personnel visited the house of the author's parents, located next to the road in Simpani, Lamjung district. The author's mother was interrogated about the whereabouts of her children and threatened with death if her husband, who was a retired teacher actively involved in social activities, did not go to see the Chief District Officer of Lamjung on the next day.

2.3 On 28 December 2001, the author's father went to the office of the Chief District Officer, who accused him of being a Maoist. Mr. Bhandari refuted the accusation and stated that he was not a member of any committee of the Communist Party of Nepal. Mr. Bhandari was allowed to leave but had to report back the following Monday. He took the opportunity to complain about the incident and threats toward his wife that had occurred the day before. The Chief District Officer and the Deputy Superintendent of Police said that junior staff had acted without orders on the basis of information they had received, but that they would be ordered not to do so again.

2.4 On 31 December 2001, Mr. Bhandari took a bus to the office of the Chief District Officer. Upon his arrival at the bus station at Manangay Chautara, several policemen in uniform and soldiers in civilian clothes were waiting for him. They arrested him in the presence of many people, as the bus station is located in the centre of the town Bal Krishna Baral. According to witnesses, he was beaten and tied up, blindfolded and pushed into a police van.

2.5 On the same day, 15 members of the army and the police broke into the Bhandaris' house, threatened the author's mother, destroyed many household items, threw food away and stole Nr. 15,000 rupees. They regularly repeated those actions over the next two weeks. Later on the night of 31 December 2001, Mr. C.B.B., an acquaintance from Lamjung district and a former member of the armed forces, told the author's mother that her husband had been arrested and that he would not be coming home that day.

2.6 On 1 January 2002, the author's mother, her brother and neighbours inquired about Mr. Bhandari's whereabouts with the Chief District Officer of the Lamjung District, who denied the arrest. On the same day, she went to the police in Besishahar, who informed her that her husband had been arrested for investigation, but would be released in two or three days.

2.7 After learning about his father's arrest, the author came back from Kathmandu to look for him. Over the following days, he and his mother searched for his father and met the Chief District Officer of Lamjung, Mr. S.P.N. That officer first denied any knowledge of the arrest and then told them that Mr. Bhandari was under investigation. Two weeks later they went back to the office of the Chief District Officer and Mrs Bhandari asked to see her husband. The Chief reacted by threatening her. The author and his mother also met the Deputy Superintendent of Police of Lamjung, Mr. P.A, who threatened to arrest them and told them that the investigation process was ongoing.

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<sup>1</sup> The author refers to the report of the Working Group on Enforced or Involuntary Disappearances on its visit to Nepal (E/CN.4/2005/65/Add.1), para. 25; and the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his visit to Nepal (E/CN.4/2006/6/Add.5), para. 17.

2.8 On 14 January 2002, a multiparty meeting was held in public in Besishahar in the presence of the Chief District Officer, the Deputy Superintendent and other members of the police, in the course of which political leaders requested Mr. Bhandari's immediate release. The police acknowledged the arrest and said that he would be released. A week after this meeting, the author and his mother received contradictory information from low-ranking army personnel as to his whereabouts, which mentioned different barracks and the military hospital. The author inquired at the hospital, but he was told that his father had never been there.

2.9 On 31 January 2002, the author reported his father's disappearance to the National Human Rights Commission. On 1 February 2002, the Commission wrote to the Chief District Officer and the Deputy Superintendent of Police of Lamjung and to the Army to inquire about Mr. Bhandari's whereabouts. On 15 February 2002, the Chief District Officer responded to the Commission, stating that Mr. Bhandari had told the authorities that he could lead them to artillery which was hidden in the Simpani jungle. However, during the search there, he tried to escape and was killed in crossfire.

2.10 On 4 March 2002, the author submitted a writ of habeas corpus to the Supreme Court. As a result, he received threats from army officers, urging him to stop looking for his father.

2.11 On 6 March 2002, an army officer replied to the Commission that Mr. Bhandari had been detained on the accusation of being an active member of a Maoist organization involved in carrying out violent actions. He further reported on the circumstances of Mr. Bhandari's death in the forest area of Simpani Village, Lamjung District, and indicated that "the security force, which was headed for military action, was compelled to leave the dead body at the scene due to the security point of view, geographical remoteness and transportation problems".

2.12 On 11 March 2002, the author was arrested in Kathmandu, in front of the Supreme Court by army personnel in civilian clothes and placed in detention in the army barracks. He was questioned, beaten and threatened with death if he did not withdraw his writ of habeas corpus. On 5 April 2002, the Supreme Court found that the author's father was no longer alive and that, therefore, the habeas corpus order could not be made as requested. Accordingly, it dismissed the author's habeas corpus writ. In its ruling, the Supreme Court pointed out that according to the Chief District Officer, the Deputy Superintendent of Police and the Army, Mr. Bhandari was killed in crossfire on 1 January 2002, while trying to escape the security perimeter during an operation to locate ammunition hidden by Maoists in the jungle.

2.13 The author claims that he had to flee to India for reasons of personal security for a short period and that he returned to Lamjung in 2006. At that time he was able to gather testimonies from former detainees, who saw or heard his father while in detention. The first one, Mr. R.P.S., also detained in the District Police Office on 31 December 2001, stated that on that night he had seen and could hear the author's father being beaten for one and a half hours; that his father was then moaning; that after a while he heard a police officer saying "I think he is gone" and the lights in the next room went dark. After that, he knew nothing more. That testimony was corroborated by another detainee, Mr. D.S.G., who heard Mr. Bhandari screaming and assumed that he was beaten to death.

2.14 On 27 April 2007, the author wrote to the Chief District Officer and the Deputy Superintendent of Police requesting information about his father's enforced disappearance. As he did not receive any answer from them, on 14 June 2007, he tried to file a "first information report", but the police orally refused to register it, without issuing a formal written refusal. The police told the author that they could not arrest a colleague; that they had no record of the events in question; and that this was a political issue in which they

could not get involved. On 15 June 2007, the author sent the first information report through the post to the police. One week later, a more senior police officer replied to the author, stating that the police did not accept such cases and that they would be considered by the National Human Rights Commission. On 22 June 2007, the author wrote a letter to the Chief District Officer and asked him to register his first information report, but the Chief District Officer refused to do so.

2.15 On 30 October 2007, representatives of the Office of the United Nations High Commissioner for Human Rights and the International Commission of Jurists visited the District Police Office and enquired about the status of report. They were informed that the report had not been registered following an order by a more senior officer. That was also confirmed by the the Deputy Superintendent of Police. On 23 November 2007, the International Commission of Jurists wrote to the Inspector-General of Police to inquire about the refusal to register the first information report. No answer was ever forthcoming.

2.16 On 12 May 2008, the author filed a writ of mandamus before the Supreme Court and requested the registration of the first information report. On 24 June 2008, the Chief District Officer and the the Deputy Superintendent of Police informed the Supreme Court that the author's father had tried to break the cordon of security forces as they were patrolling the Simpani village development committee; that terrorists opened fire to which the security forces replied; and that Mr Bhandari had died in the crossfire. They also held that, as the shooting had occurred during the night, it was unclear whether the bullet that killed him was from the terrorist group or the security forces. The the Deputy Superintendent of Police further held that the uncertainty concerning the provenance of the bullet should make it impossible for the author to submit such a petition to the Supreme Court. At the time the communication was submitted, hearings regarding the writ of mandamus had been postponed five times and the case had been pending for three years.

2.17 In June 2009, the author received Nr. 100,000 as interim relief granted to the families of victims of enforced disappearance. At some point, the author asked the Chief District Officer and the Deputy Superintendent of Police for his father's personal belongings to be returned. However, new police agents, appointed after the peace agreement, told him that they were not aware of his father's case and that they could not do anything about the return of his belongings. The author claims that his father's disappearance caused him a high degree of suffering and that he has been subjected to harassment from the authorities. His mother suffers from social stigma, as it is difficult to live without a husband in Nepalese society. The disappearance also caused an important economic loss to his family, since his father was the family's main source of income.

2.18 The author claims that the National Human Rights Commission cannot be considered an effective remedy. As regards the first information report, it is limited to the crimes listed in schedule 1 of the State Cases Act of 1992, which does not include enforced disappearance and torture. In 2007, the Supreme Court ordered the Government to criminalize enforced disappearance, but no action has been taken in this respect. The filing of first information reports in cases of disappearance does not constitute an appropriate remedy, as the authorities usually argue that the person's death cannot be proved in the absence of a body. The author submits that domestic remedies have been unreasonably prolonged and that there is no other domestic remedy to exhaust.<sup>2</sup>

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<sup>2</sup> The author refers to the Committee's jurisprudence concerning communication No. 1469/2006, *Sharma v. Nepal*, Views adopted on 28 October 2008, para. 6.3.

### The complaint

3.1 The author argues that his father was the victim of enforced disappearance and, therefore, of a violation of his rights under articles 6; 7; 9; 10 and 16, alone and read in conjunction with article 2, paragraph 3, of the Covenant.

3.2 The author's father was arbitrarily deprived of his liberty by the police and members of the army in civilian clothes in the presence of numerous eye-witnesses. Despite the fact that he was last seen alive in life-threatening circumstances in the hands of agents of the State party and that his deprivation of liberty was promptly denounced by his wife, the authorities initially denied that his deprivation of liberty had occurred, and later alleged that he was killed by crossfire in Simpani. The arbitrary arrest, ill-treatment and subsequent enforced disappearance of the author's father was perpetrated in a context of widespread and systematic practice. In that respect, the author argues that the placement of persons deprived of their liberty under the control of State agents or of persons acting with the authorization, support or acquiescence of the State, who commit acts of torture or arbitrary killing, amounts, by itself, to a breach of the obligation to prevent violations of the right to life and to personal integrity, even when it is not possible to demonstrate that acts of torture or deprivation of life actually took place in the specific case.

3.3 Numerous eye-witnesses saw the author's father being severely beaten by the police and members of the armed forces on 31 December 2001, upon his arrival at the bus station of Manange Chautara in Besishahar. Likewise, people who were held at the District Police Office at the end of December 2001 testified that he was tortured and severely ill-treated by the guards at the detention facility. That conduct constitutes a violation of article 7 of the Covenant. His enforced disappearance and the degree of suffering involved in being held without contact with the outside world also amounts to a violation of article 7. In this regard, the author submits that the violations suffered by his father have to be considered within the general context of human rights violations existing in the State party,<sup>3</sup> taking into account that the most serious violations of physical and psychological integrity were systematically committed against those suspected of being Maoists.

3.4 After his arbitrary arrest, the author's father was taken to the District Police Office and there detained without any legal grounds being put forward, in violation of his rights under article 9 of the Covenant. His detention was not entered in any official register or record and his relatives have not seen him since. He was never brought before a judge, or any other official authorized by law to exercise judicial power, nor could he take proceedings before a court to challenge the lawfulness of his detention. The unacknowledged incommunicado detention of any individual constitutes a violation of article 9 of the Covenant.

3.5 The author's father did not have the possibility of communicating with the outside world and, according to the above-mentioned credible eye-witnesses, he was subjected to torture. Furthermore, it is a matter of fact that the conditions endured by those held in pretrial detention during the armed conflict were inhumane and degrading.<sup>4</sup> Therefore, his enforced disappearance and the conditions he was subjected to constitute by themselves violations of article 10 of the Covenant.

3.6 The enforced disappearance of the author's father and the failure by the authorities to conduct an effective investigation concerning his whereabouts and fate, have maintained him outside the protection of the law since 31 December 2001, preventing him from

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<sup>3</sup> The author refers to E/CN.4/2006/6/Add.5, paras. 3 and 26; and concluding observations of the Committee against Torture, CAT/C/NPL/CO/2, paras. 13 and 24.

<sup>4</sup> CAT/C/NPL/CO/2, paras. 28 and 31.

enjoying his human rights and freedoms. Consequently, the State party is responsible for a continuing violation of article 16, read in conjunction with article 2, paragraph 3, of the Covenant.

3.7 Although the author promptly reported the arbitrary deprivation of liberty, ill-treatment and enforced disappearance of his father and filed several complaints, no *ex officio*, prompt, impartial, thorough and independent investigation has been carried out and the fate and whereabouts of his father remain unknown. His remains have not been located, exhumed, identified and returned to the family. Moreover, as of today, no one has been summoned or convicted for his arbitrary deprivation of liberty and subsequent ill-treatment and enforced disappearance. Accordingly, the State party has violated and is continuing to violate his father's rights under articles 6; 7; 9 and 10, alone and read in conjunction with article 2, paragraph 3, of the Covenant. The author further claims that his and his mother's effort have been systematically frustrated, owing to loopholes in the legal framework. For instance, in the context of judicial proceedings, government officials are not considered to be "witnesses" and are not constrained by any legal provision to tell the whole truth.<sup>5</sup> In addition, the fact that enforced disappearance and torture do not constitute separate offences under the criminal law makes the prosecution and conviction of those accused of such crimes difficult.

3.8 The author argues that he has suffered anguish and distress since 2001, owing to the arbitrary deprivation of liberty, ill-treatment and enforced disappearance of his father, as well as to the acts and omissions of the authorities over the following nine years in dealing with the issues. The lack of an effective investigation into his father's enforced disappearance causes him a painful ongoing uncertainty, which affects his life. Due to his quest for justice, the author and his family have been repeatedly subjected to intimidation and harassment. The State party has failed to adequately prevent these incidents and to investigate them when they occurred. Although the authorities claim to know the location of Mr. Bhandari's remains, they have never undertaken any meaningful effort to return those remains to the family, fostering the author's ongoing anguish and frustration in not being able to give his father a proper burial. Moreover, he has not received adequate compensation for the material and moral harm suffered by him and his father, nor any measure of rehabilitation or satisfaction. Accordingly, he claims that those facts constitute a continuing violation of his right under article 7, read in conjunction with article 2, paragraph 3, of the Covenant.

3.9 The author requests the Committee to recommend the State party to: (a) order an independent investigation as a matter of urgency concerning the fate and whereabouts of his father and, in the event that his death is confirmed, to locate, exhume, identify and respect his mortal remains and return them to the family; (b) bring the perpetrators before the competent civilian authorities for prosecution, judgment and sanction, and disseminate publicly the results of this measure; (c) ensure that the author obtains integral reparation and prompt, fair and adequate compensation; and (d) ensure that the measures of reparation cover material and moral damage and measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition. In particular, he requests that the State party acknowledge its international responsibility, on the occasion of a public ceremony, in the presence of the authorities and of himself, to whom official apologies shall be issued; and that the State party name a street or build a monument or a commemorative plate in Lamjung in memory of all the victims of enforced disappearance during the internal armed conflict. The State party should also provide the author with medical and psychological care immediately and free of charge, through its specialized institutions, and grant him access to free legal aid,

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<sup>5</sup> See E/CN.4/2005/65/Add.1, paras. 40-42.

where necessary, in order to ensure that he has available, effective and sufficient remedies. As a guarantee of non-repetition, the State party should take the necessary measures to ensure that enforced disappearance and torture, and the various forms of participation in those crimes, constitute autonomous offences under its criminal law, punishable by appropriate penalties, which take into account their extreme seriousness. Finally, the State party should establish as soon as possible educational programmes on international human rights law and international humanitarian law for all members of the army, the security forces and the judiciary.

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

4.1 By note verbale of 4 May 2011, the State party submitted its observations, challenging the admissibility of the communication on the grounds of failure to exhaust domestic remedies.

4.2 As to the facts of the case, the State party maintains that the author's father was involved in violent activities. On 31 December 2001, he was taken to the forest area at the border of Simpani village by the security forces, where he had said that weapons were being kept hidden. As he tried to break the security cordon and run away, the security forces had to intervene, which resulted in his accidental death.

4.3 Pursuant to the Government Cases Act, 1992, the police carried out an investigation and a report was submitted to the Office of the District Government Attorney of Lamjung. As a result of the introduction of a first information report on the accidental death, an investigation was carried out, including an examination of the remains. In the light of this, the State party submits that the case does not constitute an enforced disappearance.

4.4 With regard to the author's claim that the Supreme Court several times postponed hearings of his writ of mandamus, the State party maintains that the procedure of hearings at the Supreme Court is regulated by its regulation 2049 BS. The author's application requesting the registration of the first information report was lodged on 12 May 2008. On the next day, the Supreme Court held hearings on the writ and issued a "show cause" notice in the name of the defendants – the Chief District Officer and the Deputy Superintendent of Police. As ordered by the Supreme Court, the defendants submitted their written responses within the stipulated time frame. By the time the State party submitted its observations to the Committee, the proceedings were at the final stage. The author's case was awaiting the final hearing and the verdict of the Court was expected in the next hearing schedule. That shows that effective and adequate remedies are still ongoing. It cannot, therefore, be concluded that the author has exhausted domestic remedies in accordance with article 5, paragraph 2 (b), of the Optional Protocol.

5.1 By note verbale of 13 September 2011, the State party submitted its observations on the merits and reiterated that the author had not exhausted domestic remedies.

5.2 As to the merits of the communication, the State party points out that it has repeatedly refuted the reports of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Enforced or Involuntary Disappearances, in which they stated that torture was systematically practised by the police, armed police and the Army.

5.3 The Supreme Court decision of 5 April 2002 stated that the author's father was dead. Since there is no doubt about his fate, the State party reiterates that it is not appropriate to consider the case as an enforced disappearance.

5.4 The State party is aware of its obligation to carry out a thorough investigation, exhume the body and return the mortal remains. It also has serious concerns as to the existence of excessive use of force, torture or inhuman and degrading treatment against



victims of the armed conflict. To address that situation, it has decided to establish a commission to investigate cases of disappearances and a truth and reconciliation commission, in compliance with article 33 (s) of the Interim Constitution of Nepal of 2007 and with clause 5.2.5 of the Comprehensive Peace Agreement of 21 November 2006. To this end, bills on the truth and reconciliation commission and enforced disappearances (offence and punishment) have been submitted to Parliament. By the time the State party submitted the present observations, the bills were pending approval. The two commissions to be formed after endorsement of those bills will investigate cases which occurred during the conflict and bring to the surface the truth about those cases.

5.5 The State party also notes that the author was granted Nr. 100,000 as interim relief. The State party remains committed to investigating, prosecuting and punishing the perpetrators and providing compensation to the victims of the human rights violations committed during the armed conflict between 13 February 1996 and 21 November 2006.

#### **Author's comments on the State party's observations**

6.1 In his comments of 14 November 2011, the author rejects the State party's observations. He reiterates his allegations and contests the fact that his father was not subjected to enforced disappearance. He highlights the fact that many people witnessed the arrest of his father on 31 December 2001 at Manange Chautara and that the Army itself admitted in its response to the Supreme Court in 2002 that his father had been taken into custody under section 5 of the Terrorist and Disruptive Activities Ordinance (2001). Moreover, he received Nr. 100,000 as interim relief, which is the amount to which the families of victims of enforced disappearance are entitled. Although in February and March 2002, the authorities informed the National Human Rights Commission and the Supreme Court that his father had been killed on 1 January 2002 by State agents, allegedly when trying to escape, the circumstances leading to his death were never completely clarified and his mortal remains have not been located and returned to the family. Therefore, inasmuch as the State party has not fulfilled its obligations to provide information on the fate and whereabouts of his father; identify and return his mortal remains in the event of his death being confirmed; judge and sanction those responsible; and provide integral reparation to the author, his father's situation continues to be one of enforced disappearance.

6.2 As to the facts of the case, the author points out that his attempts to submit a first information report never succeeded, owing to the refusal by the authorities to register it. The State party cannot claim that a report on his father's death was prepared within a first information report proceeding, since the authorities never admitted its registration. He received no information or report concerning the investigation and findings on his father's case and death. To date, no details whatsoever as to the nature of the alleged investigation or report have been provided by the State party. In that respect, the author submits that a refusal to provide any information or communicate with the relatives at all is a violation of the right to the truth. Providing general information on procedural matters is insufficient and should also be considered a violation of the right to the truth.<sup>6</sup> In the absence of any explanation from the State party as to the nature of the investigation allegedly carried out by its authorities, and in light of the harassment suffered by the author as a result of his inquiries on the fate and whereabouts of his father, he contests that the alleged investigation indeed took place and fulfils the requirements under international law.

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<sup>6</sup> The author refers to general comment No. 10 (2010) of the Working Group on Enforced or Involuntary Disappearances on the right to know the truth in relation to enforced disappearances, para. 3.

6.3 By the time the author submitted his comments, the hearings regarding the registration of the first information report, within the writ to mandamus lodged before the Supreme Court on 12 May 2008, had been postponed six times. The last scheduled hearing was supposed to take place on 23 August 2011. However, the authorities simply placed a notice saying that it was postponed, without providing any reason.

6.4 The State party's assertion that an examination of his father's remains was conducted contradicts what is stated in the letter submitted on 6 March 2002 by a section officer of the Army to the Supreme Court. If the examination took place afterwards, no evidence or documentation has been provided to the author.

6.5 As to the length of the writ of mandamus proceedings before the Supreme Court, the author claims that he was forced to lodge this writ in May 2008, as the authorities refused to register his first information report. Likewise, local victims' organizations have tried to register hundreds of cases of enforced disappearance, but the police and the Chief District Officer have continuously rejected their first information reports. The author reiterates that there is no effective remedy to exhaust and that domestic remedies have been unduly prolonged.

6.6 In May 2009, the Supreme Court issued a judgment, ordering the Government to criminalize torture, but it is yet to be implemented, much like its judgment of June 2007 concerning the need to criminalize enforced disappearances. Moreover, those decisions have not been followed by reforms to the lower judiciary, which continues to perform poorly when handling mandamus petitions and other aspects of cases alleging serious human rights violations, such as torture and enforced disappearance.

6.7 At the time the author submitted his comments, the establishment of the future truth and reconciliation commission and the commission on disappearance, as well as their powers to carry out prompt, independent and effective investigations and prosecutions, were uncertain. Further, fact-finding processes by non-judicial bodies, although crucial for the establishment of the truth, could never replace access to justice and redress for victims of gross human rights violations and their relatives, the criminal justice system being the more appropriate avenue for immediate criminal investigation and punishment.

6.8 The amount of Nr. 100,000 that the State party granted to the author as interim relief is a negligible amount and clearly not enough to cover the material and moral harm suffered by him and his father. Furthermore, mere pecuniary compensation for a human rights violation of this nature is not a sufficient remedy. Reparations in case of gross human rights violations must include restitution, rehabilitation, satisfaction and guarantees of non-repetition.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

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

7.3 With respect to the requirement of exhaustion of domestic remedies, the Committee notes the State party's argument that the Supreme Court has dealt with the writ of mandamus submitted by the author on 12 May 2008, as prescribed by its regulations, and that this proceeding is still ongoing. The Committee takes notes of the author's allegations

that he reported the detention and disappearance of his father promptly and filed a complaint with the National Human Rights Commission and a writ of habeas corpus before the Supreme Court on 31 January and 4 March 2002, respectively. In 2007, he attempted to lodge a first information report, but the police refused to register it. The Committee observes that 12 years after the alleged disappearance of the author's father, the circumstances of his disappearance remain unclear and the State party has failed to provide convincing arguments to justify the delay in completing the investigation. Accordingly, the Committee considers that domestic remedies have been unreasonably prolonged<sup>7</sup> and that it is not precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol.

7.4 As all admissibility requirements have been met, the Committee declares the communication admissible and proceeds to its examination on the merits.

#### *Consideration of the merits*

8.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee takes note of the author's allegations that on 31 December 2001, his father, Tej Bahadur Bhandari, was arrested by policemen and soldiers in civilian clothes and taken to the office of the Chief District Officer. During his arrest and subsequent stay in the detention facility, he was severely ill-treated, according to witnesses. Although the author reported promptly the arrest, ill-treatment and disappearance of his father, and filed several complaints and writs, no ex officio, prompt, impartial, thorough and independent investigation has been carried out by the authorities, the fate and whereabouts of his father remain unknown to date, and no one has been summoned or convicted for those acts. The Committee also takes note of the State party's argument that the fate of the author's father is known, that, according to a report prepared by the police upon investigation, he was taken to the forest area at the border of Simpani village by the security forces in order to locate weapons which had been hidden by Maoist groups; that he tried to break the security cordon and run away; and that the action taken by the security forces to prevent his escape resulted in his accidental death.

8.3 The Committee notes that both parties agree that the author's father was arrested by members of the security forces, taken to the office of the Chief District Officer and kept in custody. The Committee observes, however, that in 2002, when the events occurred, the author and his mother received contradictory information concerning the detention and, despite their requests, never received an official notification about the place where the author's father was being held, nor could they visit him or have any contact with him. Further, the Committee observes that the Chief District Officer, the Deputy Superintendent of Police and the Army informed the National Human Rights Commission and the Supreme Court that the author's father had been killed in crossfire on 1 January 2002, rather than in the manner stated by the State party (see para. 8.2 above), and that it was unclear whether the bullet that killed him was fired by the security forces. It also notes that, according to testimonies gathered by the author from former detainees who saw or heard his father while he was in detention, Mr. Bhandari was beaten to death in the District Police Office. In any event, the Committee notes that his mortal remains have not been returned to the family and no information has been provided by the authorities as to the location of the remains and the efforts that may have been undertaken to return them, thus keeping the author in constant uncertainty.

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<sup>7</sup> See communication No. 1761/2008, *Giri v. Nepal*, Views adopted on 24 March 2011, para. 6.3.

8.4 In the instant case, the State party indicates that it has conducted an effective investigation of the incident allegedly leading to the death of Mr. Bhandari, after his detention by the security forces. However, the Committee considers that the State party has not sufficiently explained the specific circumstances of his detention and alleged death, nor has it produced sufficient evidence to indicate that it has fulfilled its obligation to protect his life. Accordingly, the Committee concludes that the State party has failed in its duty to protect the life of Mr. Bhandari, in violation of article 6 of the Covenant.

8.5 The Committee takes note of the author's allegations under article 7 that his father was severely ill-treated by the authorities at the moment of his arrest and while in detention; that he was held without contact with the outside world; that his enforced disappearance amounts per se to a treatment contrary to article 7 of the Covenant; and that the State party has failed to carry out a prompt and effective investigation. The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 (1992) on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, in which it recommends that States parties should make provision to ban incommunicado detention. In the present case, in the absence of a satisfactory explanation from the State party, the Committee finds that the acts of torture, to which the author's father was subjected, and his incommunicado detention constitute a violation of article 7 of the Covenant.

8.6 The Committee also takes note of the anguish and stress caused to the author by the disappearance of his father. In particular, the author and his family have never received an adequate explanation concerning the circumstances surrounding the alleged death of his father, nor have they received his body remains. In the absence of a satisfactory explanation from the State party, the Committee considers that the facts reveal a violation of article 7 of the Covenant, with respect to the author.

8.7 The Committee takes note of the author's allegations under article 9 that his father was detained; that he was never brought before a judge or any other official authorized by law to exercise judicial power; nor could he take proceedings before a court to challenge the lawfulness of his detention. In the absence of a response from the State party in this regard, the Committee considers that the detention of the author's father constitutes a violation of his right under article 9 of the Covenant.

8.8 With regard to the alleged violation of article 16, the Committee reiterates its established jurisprudence, according to which the intentional removal of a person from the protection of the law for a prolonged period of time may constitute a refusal to recognize that person as a person before the law, if the victim was in the hands of the State authorities when last seen, and if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies (art. 2, para. 3, of the Covenant), have been systematically impeded.<sup>8</sup> In the present case, the Committee notes that shortly after the arrest of the author's father, the authorities provided the author and his mother with contradictory information about his arrest. Later, they failed to provide sufficient information concerning the fate or whereabouts of Mr. Bhandari, despite many requests. Accordingly, the Committee concludes that the enforced disappearance of the author's father since 31 December 2001 has denied him the protection of the law and deprived him of his right to recognition as person before the law, in violation of article 16 of the Covenant.

8.9 The author invokes article 2, paragraph 3, of the Covenant, which imposes on States parties the obligation to ensure an effective remedy for all persons whose rights under the

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<sup>8</sup> See communication No. 1905/2009, *Khirani v. Algeria*, Views adopted on 26 March 2012, para. 7.9.

Covenant have been violated. The Committee attaches importance to the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of rights violations. It refers to its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, which provides, *inter alia*, that a failure by a State party to investigate allegations of violations could, in and of itself, give rise to a separate breach of the Covenant. In the present case, the Committee observes that, shortly after the detention of the author's father, the author and his mother approached the Chief District Officer and the Deputy Superintendent of Police seeking information and later complained to the National Human Rights Commission, the Supreme Court and the police (see para. 7.3 above). Despite the author's efforts, almost 12 years after the disappearance of his father, no thorough and effective investigation has been concluded by the State party, in order to elucidate the circumstances surrounding his detention and alleged death, and no criminal investigation has even been started to bring the perpetrators to justice. The State party refers in a general fashion to ongoing investigations within the author's writ of mandamus proceedings, but it has failed to explain the effectiveness and adequacy of such investigations and the concrete steps taken to clarify the circumstances of the detention of the author's father and the cause of his alleged death, or to locate his mortal remains and return them to the author's family. Therefore, the Committee considers that the State party has failed to conduct a thorough and effective investigation into the disappearance of the author's father. . Additionally, the Nr. 100,000 received by the author as interim relief does not constitute an adequate remedy commensurate with the serious violations inflicted. Accordingly, the Committee concludes that the facts before it reveal a violation of articles 2, paragraph 3, read in conjunction with article 6, paragraph 1; 7; 9 and 16 of the Covenant, with regard to Tej Bahadur Bhandari; and article 2, paragraph 3, read in conjunction with article 7 of the Covenant, with respect to the author.

8.10 Having concluded to violation of the above provisions, the Committee decides not to examine separately the author's claims under article 10 of the Covenant.<sup>9</sup>

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the information before it discloses violations by the State party of articles 6, paragraph 1; 7; 9 and 16; and of article 2, paragraph 3, read in conjunction with articles 6, paragraph 1; 7; 9 and 16 of the Covenant with regard to Tej Bahadur Bhandari; and of article 7 and article 2, paragraph 3, read in conjunction with article 7, with respect to the author.

10. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including by: (a) conducting a thorough and effective investigation into the disappearance of Tej Bahadur Bhandari and providing the author with detailed information about the results of its investigation; (b) locating the remains of Mr. Bhandari and handing them over to his family; (c) prosecuting, trying and punishing those responsible for the violations committed; (d) providing adequate compensation to the author for the violations suffered; and (e) ensuring that the necessary and adequate psychological rehabilitation and medical treatment is provided to the author. The State party is also under an obligation to take steps to prevent similar violations in the future. In that connection, the State party should ensure that its legislation allows for the criminal prosecution of the facts that constitute a violation of the Covenant.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has

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<sup>9</sup> See communication No. 1900/2009, *Mehalli v. Algeria*, Views adopted on 21 March 2014, para. 7.11.

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, or subject to its jurisdiction, the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information concerning the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

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