



# 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. 2773/2016\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Bholi Pharaka (represented by TRIAL International)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Nepal
<i>Date of communication:</i>	11 May 2016
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 13 June 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	15 July 2019
<i>Subject matter:</i>	Child and forced labour; arbitrary arrest and torture of an indigenous child; fair trial
<i>Procedural issues:</i>	Exhaustion of domestic remedies; abuse of the right of submission
<i>Substantive issues:</i>	Prohibition of torture and cruel, inhuman or degrading treatment; prohibition of forced labour; right to liberty and security of person; right to a fair trial; respect for the inherent dignity of the human person; right to special protection as a child; right to an effective remedy
<i>Articles of the Covenant:</i>	2, 7, 8 (3) (a), 9, 10, 14 and 24 (1)
<i>Articles of the Optional Protocol:</i>	3 and 5 (2) (b)

1. The author of the communication is Bholi Pharaka,<sup>1</sup> a national of Nepal born in 1997 and a member of the indigenous Tharu community. He claims that the State party has

\* Adopted by the Committee at its 126th session (1–26 July 2019).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Trigroudja and Andreas Zimmermann.

\*\*\* A joint opinion by Committee members Tania María Abdo Rocholl, Arif Bulkan, Hernán Quezada Cabrera and Hélène Trigroudja (concurring) is annexed to the present Views.



violated his rights under articles 2, 7, 8 (3) (a), 9, 10, 14 and 24 (1) of the Covenant. The Optional Protocol entered into force for the State party on 14 May 1991. The author is represented by TRIAL International.

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

2.1 The author notes that the facts of the present communication must be read in the context of the widespread and systematic use of arbitrary detention and torture in Nepal, in particular against children, which is usually met with impunity.<sup>2</sup> Additional factors that must be taken into account are the existence of a situation of generalized inhumane and degrading conditions of detention<sup>3</sup> and the proliferation of child and forced labour practices, mainly affecting children from indigenous communities,<sup>4</sup> despite their formal prohibition across the country.

2.2 In 2007, when the author was 9 years of age, given the extremely precarious financial situation of his family, he was sent to Kathmandu to work as a domestic worker. He first worked in a house in which the conditions were such that he could regularly attend school, and he received a modest salary for his services. However, in 2010, he was sent to work as a domestic helper for the family of an officer of the Nepalese Army, and, in that setting, he was no longer allowed to attend school. At age 14, the author was forced to work every day from 4 a.m. to 10 p.m. and was tasked with cooking, kitchen work, cleaning, sweeping, doing the shopping, taking care of the house, attending to visitors, massaging feet and washing clothes. Neither the author nor his family received payment for his work.

2.3 While working for the latter family, the author was often subjected to physical and psychological abuse. In July 2012, unable to bear the abuse any longer, he escaped and returned to his village. Subsequently, the daughter of the landlord of the Nepalese Army officer's house filed a complaint accusing him of theft of gold and other valuables. In order to convince the author to return to Kathmandu, the police arrested his maternal uncle and subjected him to torture and other forms of ill-treatment,<sup>5</sup> including death threats, until he promised to bring his nephew back to the capital.

2.4 On 14 August 2012, the author and his uncle travelled to Kathmandu and went to the Metropolitan Police Range, Kathmandu, to meet the Deputy Superintendent of the Metropolitan Police. The author was arrested and placed in detention with adults. He was not notified of the reasons for his arrest or informed of any charges against him. In the presence of the Deputy Superintendent, the author was subjected to torture on the day of his arrest and in the following days. He was punched all over the body, hit with plastic pipes on the soles of his feet (a form of torture known as *falanga*) and his hair was pulled. The author was repeatedly requested to confess to his involvement in the stealing of gold and other objects from the house in which he used to work and to disclose where he had hidden the valuables. Eventually, he was forced to sign with his fingerprints documents that he was not allowed to read, which contained a confession to his involvement in the theft.

2.5 On 19 August 2012, the author appeared before the Kathmandu District Administration Office, which ordered the extension of his detention on the basis of a charge

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<sup>1</sup> The author is using a pseudonym for the present communication.

<sup>2</sup> The author refers, inter alia, to the Committee's concluding observations on the second periodic report of Nepal (CCPR/C/NPL/CO/2), paras. 10, 11 and 17, and the report on Nepal adopted by the Committee against Torture under article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/67/44, annex XIII), paras. 100 and 108.

<sup>3</sup> CCPR/C/NPL/CO/2, para. 12.

<sup>4</sup> The author refers to the Committee's concluding observations (CCPR/C/NPL/CO/2), para. 18, and the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, on the situation of indigenous peoples in Nepal (A/HRC/12/34/Add.3), paras. 26 and 39.

<sup>5</sup> The author provides copy of a medical certificate dated 18 September 2012 from the Forensic Medicine Department of the Tribhuvan University Teaching Hospital, including the physical examination of his uncle regarding the torture he allegedly suffered, recording the physical injuries sustained to his head, thighs, upper arms, face and ears from being beaten by the police with sticks.

of public offence.<sup>6</sup> Being 14 years of age at the time, pursuant to domestic legislation, he should have been taken before a separate juvenile bench of the District Court and not before the District Administration Office. At his appearance before the District Administration Office, the author was erroneously reported by the police as being 18 years of age. The District Administration Office subsequently granted the extension of his detention on three occasions. The author did not have legal representation at any of those stages.

2.6 The author was held at the Metropolitan Police Range, Kathmandu, between 14 August and 6 September 2012, where the detention conditions were inhumane and degrading. He was forced to stay in a severely overcrowded cell, together with 12 others. Detainees were forced to share one toilet, which was located right next to the cell and smelled bad. Detainees were forced to clean it on a rotational basis. During his detention, the author was able to bathe only twice, and he received food only every other day. The food provided was of poor quality and prepared in unhygienic conditions.

2.7 During his detention at the Metropolitan Police Range, the author was subjected to torture on a daily basis. He was brought to an interrogation room, where he was tortured by eight police officers. He was forced to lay on a table, with his legs tied to the table, while the police officers whipped the soles of his feet with a stick (*falanga*). He was also slapped in the face, punched on the back of his head, whipped on his back and waist and subjected to electric shocks under his fingernails.

2.8 On 6 September 2012, charges for “some public offence”<sup>7</sup> were eventually brought against the author. On that occasion, the author was able to meet with a lawyer for the first time since his initial arrest. The Kathmandu District Administration Office ordered his release on bail, fixed at 1,000 Nepalese rupees (approximately \$8.60). The author and his family were unable to pay the bail, and therefore he remained in detention.

2.9 On 8 September 2012, when he appeared before the Kathmandu District Court, the author explicitly reported having been subjected to torture and requested a medical examination. A medical examination was performed, and the doctor documented that the author had an abrasion on his forearm and a fever and was in a general state of depression.<sup>8</sup> Nevertheless, that did not trigger any investigations into the reasons for his condition. On 11 September 2012, the author’s grandfather submitted a complaint before the Kathmandu District Court explicitly claiming that the author had been subjected to torture and inhumane detention conditions and seeking the conduct of a medical examination. Although one was conducted, no thorough, prompt, independent and impartial investigation into the author’s allegations was ever carried out. On the same day, the author filed a complaint for the violations suffered before the National Human Rights Commission. However, it failed to take any action on the case.

2.10 On 30 September 2012, the author was formally charged with theft and was brought before the Kathmandu District Court. Recognizing that the author was a child, the Court declared that he could be released on bail and fixed the amount at 10,000 Nepalese rupees (approximately \$86). Given that the author and his family were unable to pay the bail, he was sent to a juvenile correction centre, pending the conclusion of the court proceedings. On 1 October 2012, the author was transferred to the juvenile correction home located in Sano Thimi. At the juvenile correction home, the author was held in an overcrowded cell, in which he was forced to remain almost all day. He was released on 25 June 2013, pursuant to an order issued by the Supreme Court of Nepal.<sup>9</sup>

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<sup>6</sup> The author states that, although he was arrested and detained on 14 August 2012, the police produced a document stating that he was arrested on 17 August 2012 in Kathmandu for allegedly causing trouble to the public. The author claims that those allegations were evidently false and fabricated, given that he was already detained at that time.

<sup>7</sup> See previous footnote.

<sup>8</sup> The author provides a copy of a certificate dated 13 September 2012 concerning the medical examination conducted to assess his general physical and psychological condition.

<sup>9</sup> The author provides copy of the decision of the Supreme Court of 25 June 2013.

2.11 On 15 October 2012, the author's uncle filed an application before the police headquarters in Naxal, Kathmandu, concerning the torture suffered by his nephew. No response was ever received, and no action was ever taken to investigate the allegations.

2.12 On 21 May 2013, the author's legal representative submitted a habeas corpus petition before the Supreme Court of Nepal seeking the author's immediate release. On 25 June 2013, the Supreme Court of Nepal issued a decision<sup>10</sup> ordering the author's release and holding that the decision to keep a minor in detention solely on the basis of his inability to pay bail was unlawful and contrary to the principle of the best interests of the child enshrined both in international treaties and in domestic legislation.

2.13 On 1 December 2013, the author's father submitted a petition before the Kathmandu District Court pursuant to the Torture Compensation Act regarding both the torture inflicted on his son and his unlawful detention and seeking redress and the prosecution of those responsible. However, on the same day, the Kathmandu District Court refused to register the complaint, alleging that it did not meet the 35-day statute of limitations to report a case of torture.<sup>11</sup>

2.14 On 10 June 2014, the Kathmandu District Court found the author guilty of stealing valuables (i.e. a laptop) and sentenced him to one month's imprisonment and a fine of 4,000 Nepalese rupees (approximately \$34.40). The Court dismissed the claims of theft concerning other items. Because the author was a child, the sentence was reduced by half, pursuant to section 11 (3) of the Children's Act. Given that he had already spent nine months and 19 days in detention, the Court determined that he should not be further detained, nor should he pay the fine. Owing to lack of financial resources, the author could not file an appeal against the judgment.

2.15 On 27 August 2015, the author's legal representative attempted to register a first information report<sup>12</sup> before the Metropolitan Police Range, Kathmandu, to trigger the investigation and prosecution of those responsible for subjecting the author to child labour and forced labour. The police verbally refused to register the report, arguing that the police had never received child and forced labour claims before and that such a case should instead be referred to the Labour Office. On the same day, the author's representative sought an order from the Office of the Chief District Officer so that the report concerning the child and forced labour would be registered by the police, but that Office also verbally refused to register the complaint citing similar reasons. On 13 September 2015, the author's representative attempted to file a complaint before the Labour Office in Kathmandu seeking the prosecution of those responsible for subjecting the author to child and forced labour and compensation for the damage suffered. The Chief of the Labour Office refused to register the complaint, allegedly because it did not meet the applicable statute of limitations of one year set out in the Child Labour (Prohibition and Regulation) Act.

2.16 On 24 March 2016, the author's representative filed two writ petitions before the Supreme Court of Nepal concerning the submission of the author to child and forced labour and torture, respectively. However, the Section Officer of the Writ Section of the Supreme Court verbally refused to register the two writ petitions, alleging that they had no prospect of success. He refused to provide any response in writing. On the same day, the author's representative sought to challenge the refusal to register the two writ petitions with the Joint Registrar of the Petitions Unit of the Supreme Court of Nepal. However, the latter reiterated that none of the complaints would be registered, because they both were time-barred, and he refused to provide a written copy of his decision and the reasons therefor.

2.17 As a consequence of the torture, ill-treatment and abuse inflicted on him, the author suffers from physical and psychological sequelae, including sleep disorders, continual headaches, nightmares and depression.

2.18 Regarding the exhaustion of available domestic remedies, the author submits that, in his case, the remedies offered by the State party's legislation did not prove to be effective.

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<sup>10</sup> Ibid.

<sup>11</sup> The author provides a copy of the decision of the Kathmandu District Court of 1 December 2013.

<sup>12</sup> The first information report is a tool through which information is submitted to the police in the context of reporting crimes and filing complaints.

Despite his repeated attempts and those of his family, since September 2012, to have those responsible for the torture, ill-treatment and child and forced labour duly prosecuted and sanctioned and to obtain adequate redress, Nepalese authorities did not offer any effective remedy. On many occasions, Nepalese authorities, including the Supreme Court of Nepal, refused to register the complaints brought by the author's representative.

2.19 The author claims that, to date, those responsible for the grave crimes committed against him enjoy impunity, and he has not received any compensation or reparation for the harm endured. He adds that the existing flawed domestic legislation makes it impossible for him to have any prospect of success in terms of access to justice and redress.

### **The complaint**

3.1 The author claims that the State party has violated articles 7 and 10, read in conjunction with article 24 (1), of the Covenant, given the torture and ill-treatment he endured in attempts to extract a confession about his alleged involvement in the theft of gold and valuables, and because of the inhumane conditions of his detention.

3.2 The author also claims violations under articles 7 and 10, read in conjunction with articles 2 (3) and 24 (1), of the Covenant, owing to the failure of the State party authorities to conduct a thorough, impartial, independent and effective investigation into his allegations and to prosecute and sanction those responsible. He did not receive adequate compensation or integral reparation for the harm suffered.

3.3 The author further claims a violation under article 7, read in conjunction with article 2 (2), of the Covenant, owing to the failure of the State party authorities to adopt adequate legislative measures to give effect to the rights enshrined in the Covenant and to remove obstacles in the existing legal framework concerning torture that remains at odds with its international obligations.

3.4 The author claims to be a victim of a violation of article 9 (1)–(3) and (5), read in conjunction with articles 2 (3) and 24 (1), of the Covenant, because he was subjected to arbitrary arrest and detention. He was not informed, at the time of arrest, of the reasons for his arrest, nor was he promptly informed of any formal charges brought against him. The State party authorities failed to conduct an effective, independent, impartial and thorough investigation into those allegations and the author did not receive compensation for the harm suffered.

3.5 The author also claims to be a victim of a violation of article 14 (2) and (3) (a)–(b) and (g), read in conjunction with article 24 (1), of the Covenant, because he was not guaranteed a fair trial, given that: he was not presumed innocent until proven guilty according to law; in the determination of the criminal charges against him, he was not informed promptly and in detail of the nature and cause of the charges against him; and he did not have adequate time and facilities for the preparation of his defence or to communicate with a counsel of his own choosing. Moreover, he was forced to testify against himself and signed his confession under duress.

3.6 The author further claims to be a victim of a violation of article 8 (3) (a), read in conjunction with articles 2 (3) and 24 (1), of the Covenant, because the State party authorities failed: to adopt the necessary measures to prevent him from being subjected to child and forced labour; to conduct ex officio an effective, independent, impartial and thorough investigation; to prosecute or sanction those responsible; and to provide the author with adequate redress for the harm suffered. Those violations are aggravated by the fact that, when the events took place, the author was a child and, as such, he was entitled to special measures of protection that the State failed to adopt.

3.7 The author submits that indigenous children have been historically marginalized and subjected to discrimination in Nepal. The author claims that all violations are aggravated by the fact that, at the time of the events, he was a young indigenous boy and, as such, he was entitled to special protection from the State party, according to article 24 (1) of the Covenant, given his exposure to intersecting forms of discrimination.

3.8 The author requests that the Committee call upon the State party to ensure that he obtains integral reparation for the harm suffered, covering material and moral damages and

incorporating measures aimed at providing restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition.

3.9 The author also requests that the Committee call upon the State party to adopt the following specific measures: (a) investigate the facts of the case, with a view to prosecuting all those responsible for the violations committed against the author, in a manner commensurate with the gravity of the crimes, and suspend or remove the suspected police officers while the investigation is ongoing; (b) ensure that the author receives medical and psychological care free of charge; (c) award an education grant to the author should he wish to pursue technical or university studies; (d) acknowledge the international responsibility of Nepal and provide an official apology to the author on the occasion of a public ceremony; (e) ensure that the author obtains prompt, fair and adequate compensation proportional to the gravity of the violations suffered, including the physical, mental and moral damage and his loss of opportunity in terms of employment and education; (f) indicate the specific domestic authorities that are in charge of implementing each measure of reparation; and (g) translate the Views of the Committee into Nepalese and publish them in the Official Gazette.

3.10 The author further requests that the Committee call upon the State party to implement the following general measures as guarantees of non-repetition: (a) criminalize torture in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (b) amend the legislation establishing the unduly restrictive 35-day statute of limitations to submit complaints concerning torture; (c) make it mandatory to provide, at the time of the arrest, an arrest warrant stating the grounds for the arrest; (d) establish education programmes on international human rights and international humanitarian law for all members of the Nepalese police, the judiciary and all persons that may be involved in the custody and/or treatment of persons deprived of their liberty; and (e) take the measures necessary to ensure that the inmates of all detention facilities across Nepal have adequate food, medical care and sanitary conditions according to international standards.

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

4.1 In its observations dated 18 September 2017, the State party claimed that the author's allegations were "not based on facts and reality".

4.2 The State party notes that the daughter of the author's landlord filed a first information report against the author for the theft of several of her valuables. The author was legally arrested by the police in Ratnapark, Kathmandu. The State party claims that the author confessed his guilt and that he had received 2,000 Nepalese rupees (approximately \$17.20) from his neighbour for the stolen goods, in his statements before the Government Attorney (the prosecutor).

4.3 The State party denies any allegations that torture took place during the police investigation of the author's case. The State party notes that, after the author reported that he had been tortured and requested a medical examination, the Kathmandu District Court, in the context of the adjudication of the theft case against the author, immediately ordered a medical examination, which was conducted by the Forensic Medicine Department of the Tribhuvan University Teaching Hospital. The forensic report of 13 September 2012 did not show that there had been any kind of physical assault or indication suggestive of injury and did not reveal any significant psychiatric morbidity. Given that the medical report presented before the District Court did not contain evidence of any act of torture committed against the author, the Court did not make any order regarding the author's claim of torture. The State party claims that, if the author was not satisfied with the District Court's decision, he should have filed an appeal before the Appellate Court in Patan, which he did not do. The State party claims that the communication is inadmissible, given that the author failed to exhaust available domestic remedies.

4.4 The State party notes that the author was placed in a "juvenile reform home" on the basis of the order of the Kathmandu District Court and later released by order of the Supreme Court of Nepal, which based its decision on the provisions of the Convention on the Rights of the Child and general comment No. 10 (2007) on children's rights in juvenile

justice of the Committee on the Rights of the Child. It adds that the Supreme Court stated that, under the provisions contained in the preamble of the Children's Act, a legal obligation is imposed on the State to protect children's physical, mental and intellectual development and that it was not in the best interests of the accused child to be in a juvenile reform home. The State party also notes that the District Court subsequently found the author guilty of stealing a laptop and other items and sentenced him to one month in jail and a fine of 4,000 Nepalese rupees (approximately \$34.40). It adds that his imprisonment time and fine were reduced, in accordance with section 11 (3) of the Act.

4.5 The State party notes that, although torture was already assessed by the Kathmandu District Court during the adjudication of the theft case, the author brought a separate torture complaint claiming compensation before the District Court after the expiration of its statute of limitations. The Court refused to register the case, on the basis of section 5 of the Torture Compensation Act, which states that a victim may file a complaint claiming compensation within 35 days from the date the torture was inflicted or of her or his release from detention, and rendered the case inadmissible according to rule 15 (3) of the District Court Regulations.

4.6 The State party notes that, "with regard to the issue of compensation from the employer", the author did not seek remedy within the statute of limitations. The author's complaint before the Labour Office was refused registration, given the expiration of the statute of limitations of one year from the date of commission of the act, in accordance with section 20 (2) of the Child Labour Act. The State party also notes that the author had a right to file a complaint regarding an offence punishable under the Act and that the author's legal remedies did not end with the refusal of registration. The author could have sought recourse before the Labour Court against the refusal to register his complaint and subsequently could have invoked the extraordinary jurisdiction of the Supreme Court.

4.7 Regarding the author's writ petitions before the Supreme Court as to his torture and complaints made under the Child Labour Act, the State party claims that it is unbelievable that the Section Officer of the Writ Section and the Joint-Secretary of the Supreme Court refused to register his cases. The State party argues that, if the author had genuinely lodged the case before the Supreme Court, he would have had an option to go to the Registrar and, in the case of refusal, he could have appealed the Registrar's decision before the Supreme Court bench, according to rule 27 (3) of the Supreme Court Regulations.

4.8 The State party claims that, according to the documents submitted by the author, nothing suggests that the author went through the established judicial proceedings. The judicial process of Nepal is independent, systematic, robust and institutionalized. The State party argues that there are proper and adequate processes for the adjudication and delivery of justice and that the author did not follow any of those established procedures. The State party claims that the recourse to the Human Rights Committee – as the last resort – without having exhausted all domestic remedies, is an abuse of the remedial process available under the Optional Protocol and that the communication is therefore inadmissible.

4.9 The State party claims that the author's allegation of refusal to register his complaints is "not based on facts or reality". The State party reiterates that the author did not exhaust the available domestic remedies within the statutes of limitations and argues that the author seemed to have engaged in the practice of forum-shopping. Therefore, the State party claims that the communication is inadmissible according to article 5 (2) (b) of the Optional Protocol.

4.10 Regarding the merits of the communication, the State party considers that, because the author did not exhaust all the legal remedies available within the statutes of limitations, all his allegations should be rejected.

4.11 The State party notes that Nepal has a number of legal measures to protect children from torture and ill-treatment.<sup>13</sup> It refers, inter alia, to: (a) section 4 of the Child Labour Act,

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<sup>13</sup> The State party refers to articles 22 and 39 of the Constitution of Nepal, sections 53 (3), 7 and 15 of the Children's Act, sections 3, 4 and 19 of the Child Labour (Prohibition and Regulation) Act, section 14 of the State Cases Act, and the national Penal Code.

which provides that no child shall be engaged in work as a labourer against her or his will by way of persuasion, misrepresentation or by subjecting her or him to any influence or threat or coercion or by any other means; (b) section 14 of the State Cases Act, which provides that police personnel conducting an investigation related to any crime may arrest a person if there is reasonable grounds to suspect her or his involvement in a crime and that the arrested person shall be informed about the cause of the arrest; and (c) the bill on torture and cruel, inhuman or degrading treatment, which is under consideration by the Legislature Parliament in order to amend the national Penal Code,<sup>14</sup> which criminalizes torture and defines it as a punishable crime in line with the Convention against Torture, providing that the perpetrators of torture receive a punishment of a maximum of five years' imprisonment or must pay a fine of 50,000 Nepalese rupees (approximately \$500), or both, and providing for 500,000 Nepalese rupees (approximately \$5,000) in compensation to victims of torture.

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

5.1 In his comments of 9 November 2017, the author notes that the fact that it took the State party more than a year to submit its observations on the present communication is another sign of the indifference of Nepal vis-à-vis his acute suffering.

5.2 Regarding the State party's allegation of the lack of exhaustion of domestic remedies, the author recalls that the Committee has clearly established that domestic remedies must be exhausted when they appear to be effective in a given case, are de facto available to the author and objectively offer a prospect of success.<sup>15</sup> The author claims that none of the remedies referred to by the State party in its observations meet those requirements. He also claims that all the remedies he pursued in order to obtain justice and reparation proved ineffective.

5.3 The author confirms that he did not lodge an appeal against the decision of the Kathmandu District Court finding that he should not be further detained or pay the fine, because he and his family lacked the financial resources to lodge an appeal, given that they were indigent, as shown by the fact that they could not even afford to pay his bail. The author refers to advisory opinion OC-11/90 of the Inter-American Court of Human Rights:

If a person who is seeking the protection of the law in order to assert rights ... finds that his economic status, prevents him from so doing because he cannot afford either the necessary legal counsel or the costs of the proceedings, that person is being discriminated against by reason of his economic status and, hence, is not receiving equal protection before the law.

...

Any State that does not provide indigents with such counsel free of charge cannot therefore later assert that appropriate remedies existed but were not exhausted.

...

[If] legal services are required either as a matter of law or fact in order for a right ... to be recognized and a person is unable to obtain such services because of his indigency, then that person would be exempted from the requirement to exhaust domestic remedies.<sup>16</sup>

Moreover, the author argues that lodging an appeal against the decision would not have led to the opening of an investigation into his allegations concerning torture and forced labour nor to his being compensated for the damages suffered. The author claims that such a remedy was not effective in his case.

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<sup>14</sup> In 2018, the State party amended its Criminal Code, including with regard to the criminalization and definition of torture under section 167 of the Code.

<sup>15</sup> The author refers, inter alia, to the Views of the Committee in *Benaziza v. Algeria* (CCPR/C/99/D/1588/2007), para. 8.3, and *Ondracka and Ondracka v. Czech Republic*, (CCPR/C/91/D/1533/2006), para. 6.3.

<sup>16</sup> Inter-American Court of Human Rights, *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, paras. 22, 26 and 36.



5.4 The author asserts that only in 2015 was he able to denounce and seek compensation for the forced labour to which he was subjected. He was subjected to forced labour and physical and psychological abuse until July 2012, when he escaped and returned to his village. In August 2012, he was arbitrarily deprived of his liberty and, by the time he was released, the unduly restrictive one-year deadline to file a complaint, established pursuant to the Child Labour Act, had already passed, leaving him without an effective remedy. The author reiterates that, considering the extreme gravity of crimes such as child and forced labour, a one-year statute of limitations for the submission of claims renders that remedy, per se, ineffective. The author adds that he lived for many years in fear, indignity and without the possibility of acquiring qualified and free legal assistance, until the non-governmental organization TRIAL International learned of his case and agreed to cover the legal expenses of his case before the domestic authorities.

5.5 The author notes that, in its observations, the State party neglects to account for the fact that, before he attempted to file the complaint before the Labour Office whose registration was rejected, on 27 August 2015, he first attempted to register a first information report before the police, in order to trigger an investigation into his case and the prosecution of those responsible for subjecting him to child and forced labour. The police refused to register the author's first information report and, on the same day, he lodged a complaint before the Office of the Chief District Officer for his first information report to be registered. The Office also refused to register his complaint. Moreover, the author recalls that, in September 2017, he attempted to invoke the extraordinary jurisdiction of the Supreme Court, but it did not offer any effective remedy either.

5.6 Regarding the State party's allegation that the author submitted his complaint for compensation for the torture suffered after the 35-day statute of limitations had expired, the author recalls that the Committee has held that that particular statute of limitations is in itself inconsistent with the gravity of the crime<sup>17</sup> and requests that the Committee apply its well-established jurisprudence in the present case.

5.7 The author notes that the State party does not dispute in any way that, after all his attempts to trigger the investigation and prosecution of those responsible for his torture, none of the Nepalese authorities concerned ever launched an investigation into his torture allegations.

5.8 The author takes note that the State party considers the fact that the Supreme Court refused to register his cases "unbelievable", and he is deeply disturbed by the fact that Nepal also suggests that his allegations are "false". The author recalls that he provided copies of the writ petitions as supporting documentation to the present communication, in addition to the identities of the Supreme Court officers who refused the registration. Instead of only insinuating that his allegations are false, Nepal should provide solid evidence to rebut the allegations, explain why the officers refused to register his complaints and, if appropriate, open an investigation in that regard. The author argues that it is incumbent upon the State party to offer an effective remedy and, in his case, the submission of a writ petition before the Supreme Court proved impossible and therefore an ineffective remedy. Regarding the State party's claim that he could have appealed to the Supreme Court bench against the order of the Registrar, referring to rule 27 (3) of the Supreme Court Regulations, the author notes that: (a) that rule establishes that the Registrar should provide a written rationale for not registering the writ petitions and makes no reference to the possibility to submit an appeal; and (b) despite his requests, he could never obtain in writing the reasons for the non-registration of the writ petitions. Therefore, it is difficult to see how he could have bypassed the verbal refusals of the Registrar and the Joint-Secretary of the Supreme Court in order to have his case heard; he was therefore left without any effective remedy.

5.9 Regarding the merits of the communication, the author notes that the State party claims that his allegations are not based on facts or reality. However, the author argues that

<sup>17</sup> The author refers to the Views of the Committee in *Maharajan v. Nepal* (CCPR/C/105/D/1863/2009), para. 7.6, and *Giri v. Nepal* (CCPR/C/101/D/1761/2008 and Corr.1), para. 6.3, and to the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 18.

Nepal only challenged the author's allegation that he had been subjected to torture, and therefore all other facts are uncontested and should be regarded by the Committee as such.

5.10 The author claims that the information provided by the State party about his torture allegations is not accurate. He notes that the contents of the report from the medical examination conducted by the Forensic Medicine Department of the Tribhuvan University Teaching Hospital differ from what the State party claims when stating that the medical report did not "reveal any significant psychiatric morbidity" and "did not contain evidence of any act of torture committed against the author". He argues that the medical report attested that the author had an abrasion on his right forearm and a fever and was in a general state of depression.<sup>18</sup>

5.11 The author notes that the State party does not dispute that the authorities that were informed of the author's torture allegations failed to launch an investigation. Nepal thus admits that no investigation was ever carried out into his allegations of torture and requests the Committee to declare a violation of article 7, read alone and in conjunction with articles 2 (3) and 24 (1), of the Covenant.

5.12 The author welcomes the information that a new national Penal Code, in which torture is criminalized and defined as a punishable crime, has been passed by the Legislature Parliament of Nepal. Nevertheless, he notes that, as at the time of submission of the present comments, the new Penal Code has not yet entered into force, does not have retroactive effect and is therefore not relevant to his case. The author argues that the fact that Nepal is in the process of enforcing a new Penal Code only proves the author's allegation that Nepal lacks an adequate legislative framework to address torture, thereby incurring a violation of article 7, read alone and in conjunction with article 2 (2), of the Covenant. The author also argues that a sentence of a maximum of five years' imprisonment or a fine equivalent to \$500, or both, for a person held responsible for torture, as envisaged in the new national Penal Code, can hardly be considered to be commensurate with the gravity of the crime and therefore remains at odds with international law and standards.

5.13 The author reiterates his allegations on the admissibility and the merits of the communication, as well as the measures of reparation that he requested, which would serve as guidance for the State party and would enhance the level of implementation of the recommendations in the Committee's views on the present case.

## **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 it 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 any other procedure of international investigation or settlement.

6.3 The Committee notes the State party's claim that domestic remedies have not been exhausted because: (a) the author did not appeal the decision of the Kathmandu District Court; (b) he did not respect the legal statutes of limitations regarding his complaints of torture and child and forced labour; and (c) his allegation of the outright refusal of the authorities to register his writ petitions before the Supreme Court is "unbelievable" and "not based on facts or reality".

6.4 The Committee notes, however, that the author submits that remedies offered by the State party's legislation were not effective or available to him and had no prospect of success, given that, despite his repeated attempts to acquire access to justice and

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<sup>18</sup> The author provides a copy of a certificate dated 13 September 2012 concerning the medical examination conducted to assess his general physical condition.

compensation for the torture and child and forced labour that he endured, Nepalese authorities plainly refused to even register his complaints.

6.5 In particular, the Committee notes the author's claim that he could not appeal the decision of the Kathmandu District Court of 10 June 2014, in which the Court found that he should not be further detained or pay a fine, and that he did not request an investigation into his torture allegations, because he could not afford either the necessary legal counsel or the costs associated with the proceedings. The Committee recalls that ordinary financial considerations and unsubstantiated doubts about the effectiveness of domestic remedies would not automatically absolve authors from exhausting them.<sup>19</sup> However, the Committee notes that, in the present case, the author and his family were unable to pay the bail established by the Kathmandu District Court in its decision of 30 September 2012 and that for that reason he was sent to a juvenile correction home; therefore, the Committee does not consider the inability to file an appeal in his case as a matter of an ordinary financial consideration. The Committee considers that the author has proven that appealing the decision of 10 June 2014 would have represented a financial burden that he could not afford, due to his economic status, and that he was not provided with free legal services<sup>20</sup> through which to acquire access to and exhaust that remedy, therefore rendering it unavailable, especially considering that he was a child at the time and deserved special protection from the State party.

6.6 The Committee also notes that the author: (a) reported his torture allegations before the Kathmandu District Court and no investigation was triggered; (b) filed a complaint, due to the torture endured, before the police in Naxal and no response or action was taken; (c) filed a claim for compensation, pursuant to the Torture Compensation Act, which was rejected, due to the 35-day statute of limitations; (d) attempted to file before the Metropolitan Police Range, Kathmandu, a first information report of the child and forced labour that he had endured, whose registration was refused, and appealed that refusal before the Office of the Chief District Officer, an appeal that was also rejected; (e) attempted to file a claim for compensation, pursuant to the Child Labour Act, before the Labour Office in Kathmandu, which was rejected, due to the one-year statute of limitations; and (f) attempted to register two writ petitions before the Supreme Court, both of which were verbally rejected, with no refusal in writing, on the basis that they were time-barred. The Committee recalls its jurisprudence according to which 35 days is an unreasonably short statutory period for bringing compensation claims for torture and is flagrantly inconsistent with the gravity and nature of the crime.<sup>21</sup> The Committee notes that the author does not contest that he was unable to file a child and forced labour complaint within the prescribed one-year period, given that, during that time period, in addition to being a child, after suffering physical and psychological abuse and escaping those circumstances, he was arbitrarily detained and, by the time he was released, one year had already passed. The author has also argued that he lived for many years in fear, indigency and without the possibility of acquiring qualified and free legal assistance. Those factors precluded him from seeking support. The Committee notes that the author provided copies of the writ petitions submitted before the Supreme Court and also notes that the State party has not substantially contested the fact that the author did not receive a decision in writing from the Supreme Court on the non-registration of his writ petitions. Therefore, after the author's several attempts to acquire access to and seek justice and, in view of the legal and practical limitations on filing complaints for the investigation of the torture and child and forced labour allegations, and for compensation therefor, he faced in the State party, and the obstacles encountered with registration proceedings before the Supreme Court, the

<sup>19</sup> See the Committee's Views in *Kadirić and Kadirić v. Bosnia and Herzegovina* (CCPR/C/115/D/2048/2011), para. 8.3, and decision of inadmissibility in *P.S. v. Denmark* (A/47/40, chap. X, sect. R), para. 5.4.

<sup>20</sup> See the Views of the Committee in *Quelch v. Jamaica* (A/48/40, part two, annex XII, sect. F), para. 8.2.

<sup>21</sup> Committee's concluding observations on the second periodic report of Nepal (CCPR/C/NPL/CO/2), para. 13; its Views in *Nyaya v. Nepal* (CCPR/C/125/D/2556/2015), para. 7.9; and Committee against Torture, general comment No. 3 (2012) on the implementation of article 14, para. 40.

Committee considers that the remedies concerned were both ineffective and unavailable to the author.

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

6.8 The Committee notes the State party's claim that the communication should be declared inadmissible as an abuse of the right of submission (see para. 4.8 above). The Committee observes, however, that the fact that the State party and the author disagree on some facts and on the application of the law does not, in itself, constitute an abuse of the right of submission.<sup>22</sup> In the absence of any other information in the file, the Committee considers that the communication does not constitute an abuse of the right to submission under article 3 of the Optional Protocol.

6.9 Regarding the author's allegations under article 14 of the Covenant, the Committee notes that they are not sufficiently substantiated and that they are based on the lack of guarantees during his detention and before any trial had been initiated. The Committee therefore considers that those allegations should be examined under article 9 of the Covenant.<sup>23</sup>

6.10 Given that all other admissibility criteria have been met, the Committee declares the communication admissible, with regard to the alleged violations of articles 2 (3), 7, 8, 9, 10 and 24 (1) of the Covenant, and proceeds with its consideration of the merits.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claims under article 7 of the Covenant that, while in detention and during police interrogations, when he was 14 years of age, he was subjected to acts of torture, including being punched all over his body, hit with plastic pipes on the soles of his feet (*falanga*) and subjected to electric shocks under his fingernails, and that he endured inhumane conditions of detention, including overcrowding, lack of medical care and precarious hygienic and alimentary conditions. The Committee notes that the State party denies that the author was tortured, arguing only that the forensic report of 13 September 2012 presented before the Kathmandu District Court did not show any kind of physical assault or injury and that it did not reveal any significant psychiatric morbidity, and that that was the reason for the Court not taking further action on the torture allegations. The Committee also notes, however, that the author provided a credible description of the torture he endured, as well as copy of the forensic report in question, which documented an abrasion on the author's forearm and that he had a fever and was in a general state of depression. Therefore, the Committee concludes that the State party has violated article 7, read alone and in conjunction with article 24 (1), of the Covenant.

7.3 In the light of the foregoing, the Committee decides not to examine separately the author's claims under article 10 of the Covenant.

7.4 The Committee notes the author's claim regarding the failure of the State party authorities to conduct a thorough, impartial, independent and effective investigation into his torture allegations. It notes that the State party has not contested the author's allegations as to the fact that the Kathmandu District Court and the police in Naxal did not launch an investigation into his torture complaints. The Committee considers that the State party has neither provided any explanation to challenge the author's submissions nor conducted the necessary investigations into his torture allegations.

7.5 The Committee notes the author's claim regarding the failure of the State party to adopt adequate legislative measures to give effect to the rights enshrined in the Covenant and to remove obstacles in the existing legal framework concerning torture. The Committee

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<sup>22</sup> Views of the Committee in *Arias Leiva v. Colombia* (CCPR/C/123/D/2537/2015), para. 10.4.

<sup>23</sup> Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 31.

also notes that the author claims that the 35-day statute of limitations under domestic legislation, which precluded him from filing his torture compensation claim, is not commensurate with the gravity of the crime. The Committee further notes that the grounds alleged by the Nepalese authorities for refusing to register the author's complaints were based on the same 35-day statute of limitations. The Committee recalls its jurisprudence according to which such an unreasonably short statutory period for bringing complaints for such grave violations is flagrantly inconsistent with the gravity and nature of the crime.<sup>24</sup> The Committee takes note that, at the time of its submission, the State party informed that its legislation regarding torture would be amended, in order to criminalize and define it as a punishable crime (see para. 4.11 above) and also takes note that, in 2018, the State party amended its Criminal Code, including the criminalization and definition of torture under section 167 of the Code, setting a statute of limitations of six months from the day of the commission of the torture or from the day the person was released, if deprived of her or his liberty, to file a torture complaint and establishing a punishment of a maximum of five years' imprisonment or a \$500 fine, or both, for a person held responsible for torture. The Committee considers that, given that the revised legislation does not have retroactive effect, it is therefore not relevant to the author's case and that the new statute of limitations and imposed penalties for torture are still not commensurate with the gravity of such a crime.

7.6 In the light of the foregoing, the Committee concludes that the failure of the State party to conduct any investigation into the author's torture allegations, especially given that he was a child, and the fact that the statute of limitations for torture compensation claims under Nepalese law in force at the time of the events prevented the author from accessing an effective remedy, violated, in both instances, his rights under article 7, read alone and in conjunction with articles 2 (3) and 24 (1), of the Covenant.

7.7 Having found a violation of article 7, read alone and in conjunction with articles 2 (3) and 24 (1), of the Covenant, the Committee decides not to examine separately the author's claim of a violation of article 7, read in conjunction with article 2 (2), of the Covenant.

7.8 The Committee notes the author's claims under article 9 of the Covenant that he was subjected to arbitrary arrest and detention as a child and that he was not informed, at the time of arrest, of the reasons for his arrest nor was he promptly informed of any formal charges brought against him. The author has further claimed that he was deprived of his liberty between 14 August and 6 September 2012, without being informed of the charges against him and without having the opportunity to communicate with a counsel until 6 September 2012. The State party has stated merely that the arrest of the author complied with legal guarantees, without providing any additional information or evidence. The Committee considers that the author presented a consistent and detailed description of the facts surrounding his arrest and deprivation of liberty, which have not been contested by the State party. Therefore, the Committee concludes that the State party violated the author's rights under article 9, read alone and in conjunction with article 24 (1), of the Covenant.

7.9 In the light of the latter conclusion, the Committee decides not to examine separately the author's claims under article 9, read in conjunction with article 2 (3).

7.10 The Committee notes the author's allegations that, between 2010, when he was 14 years of age, and 2012, he was forced to work for a family in Kathmandu, from 4 a.m. to 10 p.m. every day, as a domestic helper. It also notes the author's claim that he spent almost 2 years cooking, doing kitchen work, cleaning, sweeping, doing the shopping, taking care of the house, attending to visitors, massaging feet and washing clothes for the family, without being allowed to attend school and without receiving any payment for his work. He also alleges that he was subjected to psychological and physical abuse by the family, until he decided to escape in July 2012.

7.11 The Committee notes that the author claims that the State party authorities failed to conduct ex officio an effective, independent, impartial and thorough investigation and did not prosecute or sanction those responsible, nor provide the author with adequate redress for the harm suffered. It also notes that the State party has not contested the author's allegations as to the fact that the police and the Office of the Chief District Officer rejected

<sup>24</sup> *Nyaya v. Nepal*, para. 7.9, *Maharajan v. Nepal*, para. 7.6, and *Giri v. Nepal*, para. 6.3.

his attempted to lodge first information report complaints that would trigger the investigation and prosecution of those responsible for subjecting him to child and forced labour. It further notes that the State party, to date, has not conducted any investigation into his child and forced labour allegations. The Committee is of the view that the author has presented a credible description of the facts as to what he was subjected to as a domestic worker and the impossibility of attending school in those circumstances. Therefore, the Committee considers that the failure of the State party to protect the author, who was 14 years of age at the time, from such abuses and its failure to conduct any investigation into his allegations, especially given that he was a child, constitutes a violation of his rights under article 8 (3), read in conjunction with articles 2 (3) and 24 (1), of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose violations by the State party of article 7, read alone and in conjunction with articles 2 (3) and 24 (1), article 8 (3), read in conjunction with articles 2 (3) and 24 (1), and article 9, read alone and in conjunction with article 24 (1), 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*, to: (a) investigate the facts of the case and ensure that those found responsible are sanctioned with penalties commensurate with the gravity of the crimes and, if necessary, suspend or remove suspected police officers while the investigation is ongoing; (b) provide free of charge medical and psychological care, if needed; (c) provide effective reparation and appropriate measures of satisfaction to the author for the violations suffered, including the provision of educational support, as appropriate; (d) ensure that the author obtains prompt, fair and adequate compensation, proportional to the gravity of the violations suffered; and (e) indicate the specific domestic authorities that are in charge of implementing each measure of reparation. The State party is also under an obligation to take all steps necessary to prevent the occurrence of similar violations in the future. In particular, the State party should ensure the removal of legal, practical and administrative obstacles that hinder the filing and investigation of complaints and effective access to justice and compensation for victims of torture and victims of child and forced labour, including by amending the legislation and statutes of limitations in accordance with international standards<sup>25</sup> and by criminalizing torture and slavery, with sanctions and remedies commensurate with the gravity of such crimes and consistent with its obligations under article 2 (2) of the Covenant.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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<sup>25</sup> See, for example, Committee against Torture, general comment No. 3, para. 40.

## Annex

### **Joint opinion of Committee members Tania María Abdo Rocholl, Arif Bulkan, Hernán Quezada Cabrera and H  l  ne Trigroudja (concurring)**

1. The present opinion does not deal with the decision of the Committee on the merits – a decision we fully support – but with the remedies afforded to the author, who was the victim of grave breaches of the Covenant when he was a child. In his claim for reparations, the author requested, among other measures, “an official apology ... on the occasion of a public ceremony” (see para 3.9). However, the majority of the Committee, while granting some of the measures requested, declined to order the State party to provide a public apology to the author. Our dissent concerns this refusal, since, in this case, we consider that a public apology is fully justified, given the totality of the circumstances.

2. We recall at the outset that public apologies have been recognized by the General Assembly as an efficient, necessary and complementary measure of remedies in cases of grave and massive violations of human rights.<sup>1</sup> More importantly, public apologies are also included in the guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights adopted by the Human Rights Committee in 2016, which also provide that that, in deciding on measures of reparation, the position of the parties should be taken into account (CCPR/C/158, para. 4). We note that, in the communication, the author specifically requested a public apology, a claim not contested or otherwise responded to by the State party. Furthermore, the guidelines indicate that, among the measures of satisfaction, the Committee may request that State parties issue a public apology, particularly in cases of grave or systematic violations where the injury cannot be fully redressed by restitution or compensation only (para. 11 (e)). Notably, the suggested criteria are not cumulative, but disjunctive.

3. Ordering apologies is a longstanding and uncontroversial measure of reparation in the Inter-American human rights system.<sup>2</sup> The justification for so doing is rooted in a number of reasons that serve both symbolic and practical ends. Where the human rights violation is large-scale, individual measures may be impractical or even impossible, and in such circumstances, a public apology can be useful in addressing collective harms. More profoundly, given that some human rights violations may result in losses that cannot be quantified and so redressed by mere monetary compensation, an apology may well be the most powerful, if not the only, means of assuaging the grief, pain and anger felt by victims.<sup>3</sup> These considerations clearly inform the guidelines on measures of reparation, in which the Committee specifically regarded apologies as warranted in cases of grave or systematic violations where the injury could not be fully redressed by restitution or compensation only. As we demonstrate below, the facts in this case meet the conditions of both grave and systematic violations.

4. In the present case, the condition of gravity is met for three reasons. First, the author was a child when he was tortured and ill-treated by the State agents. He was also a child when he was the victim of forced labor. Although the latter occurred at the instance of private persons, the Committee recognized that the State failed to prevent and protect the author from this grave violation and was therefore itself accountable for it. Moreover, under

<sup>1</sup> Principle IX of the Basic Principles and Guidelines on the Right of Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, annex).

<sup>2</sup> For example, see Inter-American Court of Human Rights, *Case of Durand and Ugarte v. Peru*, judgment of 3 December 2001 (merits), paras. 38–39; and *Case of Terrones Silva and others v. Peru*, judgment of 26 September 2018 (preliminary objections, merits, reparations and costs), para. 254 and sect. F.

<sup>3</sup> Margaret Urban Walker, “Restorative Justice and Reparations”, *Journal of Social Philosophy*, vol. 37, No. 3, pp. 377–395.

article 24 of the Covenant, the State has a special duty to protect children's rights, a duty justified by the extreme vulnerability of children, especially, as in the present case, when they live in situations of extreme poverty. The second factor of gravity rests upon the failure of the State authorities to open any investigation or punish those responsible for the violations of absolute rights protected by articles 7 and 8 of the Covenant. As described in the communication, and as stated by the Committee, despite the attempt of the family of the author to lodge complaints against the acts of torture by police officers and forced labor by private persons, the judicial authorities consistently resisted conducting any investigation of the facts. The third element of gravity is that the statute of limitations for seeking redress for these crimes is contrary to the State's obligation to fight against impunity, especially in relation to such grave violations, as recognized by the Committee (see paras. 7.5–7.6).<sup>4</sup>

5. As to the other criterion identified in the guidelines on measures of reparation, there are several factors which indicate that the violations suffered by the author constitute a systematic problem in the State party. Both the Human Rights Committee (CCPR/C/NPL/CO/2, paras. 10–11) and the Committee against Torture (A/67/44, annex XIII) have expressed serious concerns in their concluding observations on the periodic reports of the State party, regarding allegations of the widespread use of torture, the prevailing climate of impunity for acts of torture and the lack of a legal provision in domestic law to make torture a criminal offence. The Human Rights Committee has also expressed concern that child labour and traditional practices of bonded labour are still prevalent in some regions of the State party (CCPR/C/NPL/CO/2, para. 18). Despite these repeated exhortations by various treaty bodies, and even though expressly raised in the communication (see para. 2.1), the State party has not provided any information to show that legislative and other measures have been taken by it to address these deep-seated problems. It is therefore the widespread nature of these problems, together with the context of impunity, which satisfies the other criterion of a systematic problem and provides a compelling reason to recommend that the State party publicly apologize to the author for the extremely grave violations that he suffered as a child.

6. In conclusion, we recall that one factor justifying public apologies is the inadequacy of compensation in addressing certain types of injustices. Into that category surely falls the acute suffering faced by the author for a significant part of his childhood. We doubt that any amount of money can compensate for the many years of forced labour he endured or for the loss of his childhood or repair the severe psychological damage that is likely to result from such prolonged trauma. In those circumstances, we are of the view that this is an eminently fit case for the State party to acknowledge its failure to protect the author, by providing him with a public apology.

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<sup>4</sup> See also *Nyaya v. Nepal* (CCPR/C/125/D/2556/2015), para 7.9.