



# 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. 2413/2014\*,\*\*

<i>Communication submitted by:</i>	Prashanta Kumar Pandey (represented by counsel Philip Grant of Track Impunity Always — TRIAL)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Nepal
<i>Date of communication:</i>	20 February 2014 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 4 June 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	30 October 2018
<i>Subject matter:</i>	Arbitrary arrest and detention, extraction of confession under torture and lack of effective investigation of allegations of torture
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; respect for the inherent dignity of the human person; right to a fair trial; right to an effective remedy
<i>Articles of the Covenant:</i>	7; 9 (1-3); 10 (1); and 14 (2) and (3) (b) and (g)
<i>Article of the Optional Protocol:</i>	5 (2) (b)

\* Adopted by the Committee at its 124th session (8 October – 2 November 2018).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Marcia Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany, Margo Waterval and Andreas Zimmermann

1. The author of the communication is Mr Prashanta Kumar Pandey, a Nepalese national born on 26 September 1985. He claims that the State party has violated his rights under articles 7 and 10 (l) read alone and in conjunction with article 2 (3); article 9 (1-3); and article 14 (2) and (3) (b) and (g) of the Covenant. The Covenant and its Optional Protocol entered into force for the State party on 14 August 1991. The author is represented by counsel.

**The facts as submitted by the author**

2.1 The author used to work as a medical assistant and run a medical shop in Jhulinipur, Rupandehi District, Nepal. On 7 April 2011, while crossing the Indian-Nepalese border, he was arrested by three police officers from the Rupandehi District Police Office. The police officers were dressed in plain clothes, they surrounded the author and asked him to follow them. When the author refused one of the officers placed a gun to his head and tied his hands behind his back. No warrant was presented to him and he was not informed of the reasons for his arrest or of his rights. The author was brought to the Barmeli Tole police post where he was held for two hours. The guards slapped him three times during this period.

2.2 From Barmeli Tole, the author was taken to the office of the Senior Superintendent of Police Prakash Aryal where he was interrogated. He was asked about his involvement in the planning and execution of the bombing of a van that had taken place at 27 March 2011 and had claimed the lives of two persons and had injured dozens of others. The author answered that he did not know anything about the bombing. At that point, policemen started severely beating him by slapping, punching and kicking him. They also put a hard betel nut on his palm, put a leg of a table on over the nut and then three of four policemen climbed on top of the table, pressing the leg of the table onto his palm. This treatment was extremely painful and traumatic. The police subjected him to this treatment for over an hour. Pressure would be put on his hand for about five to seven minutes, then he stopped while questions were asked of the author, only to resume a few minutes later. During the interrogation the police tried to obtain a confession of his involvement in the bombing, as well as the complicity of three other persons. The author refused to provide a confirmation.

2.3 Having not heard from the author, his mother attempted to contact him unsuccessfully via his mobile phone and by making inquiries with family members and friends. On 8 April 2011, she filed a missing person's report with the Rupandehi District Police Office. When she filed the report, the police denied that her son was kept in custody. On the same day, the author's mother also submitted a complaint to the local office of the National Human Rights Commission (NHRC) in Butwal requesting the intervention of the NHRC in establishing the whereabouts of her son and in securing his release. The NHRC did not take any formal steps to establish the whereabouts of her son. It was not until February 2014, after having been requested by the author to provide information on the action taken following the complaint that the NHRC provided a written response to the author.

2.4 On 8 April 2011, the author was again taken to the office of the Senior Superintendent of Police Prakash Aryal where he was interrogated and beaten with batons in order to extract a confession. The interrogation lasted for hours and he was repeatedly questioned about his alleged involvement in the bomb-attack of 27 March 2011. At a certain stage, the author was blindfolded and his mouth and ears were tightly covered with bandages. He was taken to a guard room, where he was forced to stand continuously until 11 April 2011, over 50 hours. Whenever he tried to sit, he was beaten. He was not allowed any food or drink.

2.5 On 11 April 2011, the author was taken back to the office of the Senior Superintendent. The bandages around his mouth and ears were removed. He was left blindfolded. He was interrogated again and subjected to further beatings, including being hit on the head with a baton. One of the policemen stepped on his toe and plucked out his nail. When the author requested to go to the toilet he was forced by the policemen to urinate on an electric heater. The electric shock he received caused him to faint and caused bleeding from his genitals. When he recovered consciousness the blindfolds had been removed. He did not receive any medical assistance or treatment. He was asked once more to confess to his involvement in the bomb-attack and was threatened with death if he refused to do so. Exhausted, scared and in pain he confessed his involvement, as well as the involvement of the three persons mentioned by the police, in the attack. The next day he was taken to the hospital for a medical test, but did not receive any treatment. Later on he was forced to sign

a confession which had been drafted by the police and which he could not read. He was also forced to record a video statement. He was held incommunicado from 7 to 13 April 2011. For this period, he did not have access to a lawyer and could not communicate with his family. He did not receive any food for three days and nothing to drink for two days.

2.6 On 13 April 2011, the author was remanded in custody by the Rupandehi District Court and he was transferred to the Area Police Office in Butwal. He was shown in public in the presence of journalists and his whereabouts were disclosed. Newspaper articles were published presenting him as one of the main perpetrators of the bomb-attack, although none of the allegations had been corroborated by means of thorough investigations and established through a final judgment. He was kept in Butwal for 28 days. During this time he was occasionally beaten and insulted by policemen. He was kept in a severely overcrowded cell with 50 other detainees, in a cell that could only host ten. At night they had to take turns sleeping on wooden planks and they only had a few dirty blankets. There was no ventilation in the cell and hygienic conditions were very poor. The cell was also infested with mosquitos and bugs.

2.7 On 8 May 2011, the author was brought before a judge at the Rupandehi District Court. The author expressly declared that his confession had been extracted under torture and that he had no involvement in the bomb-attack of 27 March 2011<sup>1</sup>. On 11 May 2011, the district court ordered that the author be kept in pre-trial detention. The author was subsequently held in pre-trial detention at the District Prison, at Kalipapath-12, in Bhairahawa, for a year until his trial started.

2.8 On 13 June 2012, the Rupandehi District Court found the author guilty of the preparation of the bomb attack and sentenced him to one year of imprisonment. The Court did not find any evidence of the author's involvement in the actual placement of the bomb. The confession extracted from the author under torture was admitted as valid evidence during the proceedings and no investigation into his claim of having been subjected to torture was initiated by the authorities. However, taking into account that the author had already spent more than a year in detention, he was immediately released upon pronouncement of the verdict. Upon his release, the author was hospitalised due to his poor state of health. The torture he had been subjected to had caused him significant mental and permanent physical harm. He was rendered sexually impotent and sterile due to the electrical shock received when he was forced to urinate on the electric heater. He sometimes suffers from losses of consciousness due to the torture inflicted on him and he has difficulties in sleeping, suffers from panic attacks and depression and lives in a constant state of fear<sup>2</sup>. His health conditions will require prolonged medical treatment.

2.9 On 16 October 2012, the NGO Terai Human Rights Defenders (THRD) submitted an urgent appeal on his behalf to the UN Special Rapporteur on Torture. On 12 December 2012, the author's mother filed a complaint<sup>3</sup> on his behalf before the Rupandehi District Court stating that the police officers had tortured the author. On the same date, the registrar of the Court refused to register the complaint as it did not comply with the 35-day statutory limitation established under Torture Compensation Act (TCA). The author notes that filing a complaint within 35 days from the date of infliction of torture would have been materially impossible for him as he was being held in detention and was not allowed to file a complaint or able to obtain a medical certificate (another condition required under domestic law). He further notes that he did not file his complaint immediately after his release as he was hospitalised and traumatized. It took him months to leave the hospital and to overcome the fear of filing a complaint. He additionally argues that the 35-day statutory limit for bringing

<sup>1</sup> The author, refers to an unofficial translation of the Rupandehi District Court hearing on 8 May 2011 according to which he claimed during this court proceeding to have been subjected to torture.

<sup>2</sup> The author attaches a medical certificate from the Universal College of Medical Sciences in which the author's described his state of anxiousness and his post-traumatic symptoms related to the torture he was subjected to while he was in detention.

<sup>3</sup> Under the Torture Compensation Act (TCA).

claims of torture from the date of the torture or from the date of release is inconsistent with the gravity of the offence.<sup>4</sup>

2.10 On 24 January 2013, the author lodged a complaint to the Supreme Court of Nepal seeking compensation for the harm endured and requesting an exemption from the application of the 35-day limitation in the particular circumstances of his case. At the time of submission of the present communication (20 February 2014), the Supreme Court of Nepal had not pronounced itself on his complaint. However, the author submits that he has exhausted all available and effective domestic remedies as he notes that his complaint before the Supreme Court has no prospect of success given that the Court has never allowed for an exemption from the 35-day limitation in its case-law or declared it inapplicable. He further argues that on 8 May 2011, the first occasion he was brought before a judge, he reported having been subjected to torture and that his confession had been extracted under torture. Despite this, no investigation was undertaken by the authorities, at the time of the author's submission of the communication before the Committee, in the four years that had passed since the allegation was brought to the attention of the authorities. The author submits that this amounts to an undue delay of proceedings. He further notes that on 13 February 2014, he submitted a formal complaint for investigation and reparation of acts of torture to the NHRC. He however submits that a complaint to the NHRC is not a judicial remedy within the meaning of article 5(2) b) of the Optional Protocol as the NHRC can only issue recommendations, without any power to have the recommendations enforced.<sup>5</sup>

2.11 The author further submits that the urgent appeal he submitted to the UN Special Rapporteur on Torture on 16 October 2012 does not constitute procedures of international investigation or settlement within the meaning of article 5, paragraph 2 (a) of the Optional Protocol to the Covenant according to the well-established jurisprudence of the Committee.<sup>6</sup>

### The complaint

3.1 The author claims that the State party has violated his rights under articles 7 and 10 (l) read alone and in conjunction with article 2 (3), article 9 (1-3) and article 14 (2) and (3) (b) and (g) of the Covenant.

3.2 The author submits that the State party has violated his rights under articles 7 and 10 (1), read alone and in conjunction with article 2 (3), of the Covenant, because of the torture, ill-treatment and inhumane conditions of detention he was subjected to and the subsequent failure by State party authorities to carry out an ex officio, prompt, effective, independent, impartial and thorough investigation into the allegations and to hold those responsible to account. He claims that he was arbitrarily deprived of his liberty and subjected to unacknowledged and *incommunicado* detention between 7 and 13 April 2011. In this connection, the author notes that the Committee Against Torture has previously found<sup>7</sup> that the use of torture in Nepal is widespread, particularly during interrogations and in situations of *incommunicado* detention. He claims that he was subjected to torture and physical ill-treatment by State officials while in detention and was also forced to confess his participation in a terrorist attack by means of torture in violation of his rights under article 7 of the Covenant. He further claims that he was also kept blindfolded for a prolonged period of time, forced to stand without sitting for more than 50 hours, was not given any food for three days and did not have access to drinking water for two days. He was denied medical treatment and assistance, although severely harmed by the treatment inflicted by State agents. The cells in which he was held were filthy, overcrowded and in miserable hygienic conditions. The author submits that the treatment he was subjected to and the conditions in which he was held amount to a violation of his rights under article 10 (1) of the Covenant. The author further submits that State party authorities failure to conduct a thorough, independent, impartial and

<sup>4</sup> The author refers to *Maharjan v. Nepal* (CCPR/C/105/D/1863/2009), para 7.6 and *Giri v. Nepal* (CCPR/C/101/D/1761/2008), para. 6.3.

<sup>5</sup> The author refers to *Giri v. Nepal*, para 6.3.

<sup>6</sup> The author refers to the case *Aboufaied v. Lybia* (CCPR/C/104/D/1782/2008), para. 6.2.

<sup>7</sup> CAT, *Report on Nepal adopted under article 20 of the Convention and Comments and Observations of the State party*, doc. A/67/44 (2012), Annex XII, paras. 1 to 130.



prompt investigation into his allegations of torture amounted to a violation of his rights under articles 7 and 10 (1) read in conjunction with article 2 (3) of the Covenant.

3.3 The author also claims that his rights under article 9 (1-3) of the Covenant were violated as he was subjected to arbitrary arrest and detention, was not informed at the time of his arrest of the reasons for his arrest and was not promptly informed of the charges against him. He was violently arrested without a warrant and was not informed about the reasons of his arrest. He was held *incommunicado* from 7 to 13 of April 2011 while his mother could not obtain any information on his fate and whereabouts, when she approached the authorities to obtain information, they denied that the author had been detained. The author was held without any contact with the outside world and had no access to a lawyer during the initial phases of his deprivation of liberty and no access to medical assistance. In this respect, the author refers to the Committee's General Comment on article 9 considering that the deprivation of liberty of an individual without access to a counsel is arbitrary. Moreover, the author claims that he was not brought promptly before a judge to challenge the legality of his detention or the charges brought against him.

3.4 The author also claims a violation of his rights under article 14 (2) and (3) (b) and (g) of the Covenant. He notes that after he signed his forced confession, the media published articles relating to his arrest and openly referred to him as a member of an illegal armed group in violation of his right to be presumed innocent under article 14 (2). He additionally claims that the fact that he was held in *incommunicado* detention and was deprived of his right to challenge the lawfulness of his detention hampered the presumption of innocence. He further claims that during the first five days of his detention he was subjected to repeated interrogation without any legal assistance. Moreover, although he claimed that evidence against him had been obtained through torture, his forced confession was retained as valid evidence by the court without considering the circumstances in which such evidence was obtained.

3.5 Accordingly, the author requests the Committee to find a violation of the aforementioned articles and requests the State party to provide him with an integral reparation, rehabilitation and satisfaction for the material and moral damages suffered. In particular, he requests a restoration of his dignity that could be achieved by a public declaration of official apologies from the State party and medical and psychological care, free of charge, in order to treat his mental suffering. As for the guarantees of non-repetition, the author requests the adoption of an autonomous definition of the crime of torture under Nepalese law, the suppression of the unduly restrictive 35-day statute limitations to submit complaints related to ill-treatments and the establishment of educational programmes on international human rights law for all members of the Nepalese forces and the judiciary.

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

4.1 On 6 February 2015, the State party submitted its observations on the admissibility and the merits of the communication. The State party claims that domestic remedies have not been exhausted. It indicates that under domestic law<sup>8</sup>, any suspect may request a medical check-up before the trial Court examining a permission of remand and it stems from the communication that the author did not do so. This was an available remedy for the author that has not been exhausted. In addition to this, the State party submits that it is not clear from the information provided by the author whether or not he filed a writ petition of *habeas corpus*, under article 107 (2) of the Interim Constitution of Nepal 2007, which can be lodged to the District Court, Appellate Court and to the Supreme Court under its extraordinary jurisdiction. The State party further submits that the author could have filed a claim for compensation before the District Court of Rupandehi within 35 day of his release if he felt that he had been ill-treated or tortured during his detention. Regarding the petition the author lodged before the Supreme Court on 24 January 2013, the State party submits that since the court have not yet decided the case, it is unable to comment on it at this stage.

4.2 On the merits, the State party is mainly challenging the credibility of the author's statements. In that connection, the State party claims that the author's allegations are not

<sup>8</sup> Provision of State Cases Act 1992.

based on facts and reality. It indicates that the author has been convicted for his involvement in the Butwal's explosion of 27 March 2011 and submits that he has served a regular sentence for the crime he committed. The State party further affirms that the author, while in detention, was not tortured in any manner in full compliance with article 7 of the Covenant. It argues that the pain or suffering emanating from the lawful sanctions or measures taken in course of criminal justice should not be considered as torture.

4.3 The State party submits that the 2007 Interim Constitution of Nepal guarantees fundamental freedoms and is explicitly committed to respect the spirit of international human rights instruments. In that connection, the State party refers to several dispositions of the 2007 Interim Constitution of Nepal<sup>9</sup> to deny the allegations of the author and recall that its Constitution provides with sufficient guarantees to prevent extra-judicial detention or trial, the use of torture to obtain evidence or the conviction of individuals without legal representation.

4.4 The State party affirms that evidence obtained illegally, for example by inflicting torture, is not admissible evidence before the State party's courts of law.<sup>10</sup> In this context, the author's allegation that the confession was obtained under torture is groundless and emotionalized given that the confession was recorded in front of the prosecutor which is impartial and independent from the police. The State party claims that the author did not raise his allegations of torture during the court proceedings. It notes that according to the 1992 State Cases Act, the police personnel, conducting investigation on crimes, may arrest suspects where there are reasonable grounds to believe that they were involved in a crime. The author was arrested under section 14 of this Act.

4.5 The State party notes that the author was able to appeal the verdict of the District Court of Rupandehi of 13 June 2012 to the Appellate Court of Butwal. However, the appeal was rejected and the Appellate Court confirmed the judgment of the District Court. It argues that due process has been respected during the domestic proceedings by an independent and impartial judiciary.

4.6 The State party further claims that the accusation that torture is common and widespread in the Terai's region is a biased view which is not grounded in reality. In this respect, it notes that a bill to fully criminalize torture and compensate victims is under consideration at the national Parliament in order to better comply with the State party's international obligations.

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

5.1 On 31 March 2015, the author submitted his comments on the State party's observations dated 6 February 2015.

5.2 In response to the State party's argument on the credibility of his statements, the author argues that the State party has not provided any evidence that demonstrate that his allegations are not accurate. He notes that his allegation of torture relates to events that occurred while he was being held in custody by the State party's authorities. The author therefore submits that, according to the Committee's jurisprudence<sup>11</sup>, it is for the State party to produce evidence refuting torture allegations.

5.3 The author reiterates his claim under articles 9 (1-3), 10 (1) and 14 (2) and (3) (b) and (g) of the Covenant. He argues that his claims under these articles have not been rebutted by the State party in its observations and that the State party has not provided any meaningful element to detract from his claims.

5.4 The author further refers to the State party's statement denying that he was subjected to torture while held in detention. He notes that the State party bears the burden of producing evidence refuting the torture allegations and providing a plausible explanations as to how his injuries occurred and submits that it has failed to do so. In addition, the author submits that

<sup>9</sup> Articles 12 (1), 13(2), 24 and 100.

<sup>10</sup> Under section 9 (2) (a) ii) of the Evidence Act 1974.

<sup>11</sup> The author refers to the case *Giri v. Nepal* (CCPR/C/101/D/1761/2008), para. 7.4.

the State party has failed to demonstrate that its authorities addressed the torture allegations advanced by him expeditiously and adequately.<sup>12</sup> He further refers to the State party contention that he did not mention the issue of torture in the court proceedings and recalls that he claimed to have been subjected to torture on the first occasion he was brought before a judge (on 8 May 2011 before the Rupandehi District Court).<sup>13</sup> He explains that at this time he was not represented by a lawyer and did not know that he could formally request the Court for a medical examination but he notes that he reported torture allegations and that the judge should have ordered the examination *ex officio*. Accordingly, the author alleges that the State party's authorities failed to order a medical examination and conduct a thorough investigation into his allegations of torture.

5.5 The author indicates that, following the transmittal of the State party's observations, his precarious state of health further worsened because the denial of his suffering frustrates his hope to access justice. Therefore, he reiterates the request presented in his initial communication to immediately receive medical and psychological care, free of charge, provided by the State party.

5.6 The author notes that in its observations the State party submitted that he should have filed a complaint before the Rupandehi District Court under the Torture and Compensation Act (TCA) 1996 in order to exhaust domestic remedies. The author recalls that his mother did so on 12 December 2012. However, this complaint was not registered as the 35-day limitation had expired. The author reiterates that he could not file a complaint before the expiration of the deadline given that he was hospitalized and traumatized. In addition to this, the author refers to the Committee's jurisprudence<sup>14</sup> considering that the strict limitation period provided in the TCA is in itself flagrantly inconsistent with the gravity of the crime and it cannot be considered as an effective remedy pursuant to article 5 (2)(b) of the Optional Protocol.

5.7 Furthermore, the author notes that his claim that torture is widespread and systematic in Terai is not based on his own speculation but rather on the findings of international human rights mechanisms<sup>15</sup> and on the reports of non-governmental organizations.<sup>16</sup> Most notably, in its latest concluding observations on Nepal<sup>17</sup>, the Human Rights Committee expressed its concerns at "reports of unlawful killings in the Terai region, deaths in custody, and the official confirmation of the widespread use of torture and ill-treatment in places of police custody".

#### Further observations of the State party

6.1 On 4 September 2015, the State party submitted further observations on the admissibility and the merits of the communication. The State party reiterates its argument about the non-exhaustion of domestic remedies and additionally notes that the author failed to exhaust domestic remedies by appealing the verdict of the Rupandehi District Court of 13 June 2012.

6.2 The State party notes that in cases of torture allegations, the Court is mandated to order medical examination and it argues that it cannot be assumed that the independent District Court did not follow the due process guaranteed by national law. It further explains that the refusal of the District Court registrar to register the author's complaint was based on the expiration of the 35-day limitation under domestic law. For these reasons, the State party considers that the author's contention about arbitrary arrest and subsequent torture is not

<sup>12</sup> The author refers to the case *Giri v. Nepal*, para. 7.2 and 7.6 as well as *Khoroshenko v. Russia* (CCPR/C/101/D/1304/2004) paras. 9.4 and 9.5.

<sup>13</sup> The author, in his initial communication, attaches as an annex an unofficial translation of the transcript of the Rupandehi District Court hearing on 8 May 2011 according to which he claimed that he had been tortured and forced to sign a confession.

<sup>14</sup> See *Maharajan v. Nepal* (CCPR/C/105/D/1863/2009), para. 7.6.

<sup>15</sup> CAT, Report on Nepal, see footnote no. 8.

<sup>16</sup> Terai Human Rights Defenders Alliance, Arbitrary detention and torture in the Terai, 2013 can be found online at: <http://www.thrda.org/issues/>.

<sup>17</sup> HRC, Concluding observations on Nepal (CCPR/C/NPL/CO/2), para. 10.

supported by facts and evidence. In addition to this, the author's writ of *mandamus* filed to the Supreme Court of Nepal is still pending.

6.3 The State party reiterates that it provides its citizens with a fair and independent investigation and prosecution mechanism. Therefore, it denies that the arrest of the author was arbitrary, given that he was arrested, investigated and prosecuted in accordance with domestic law. The State party argues that its sovereignty implies the ability to govern its own internal affairs without interference from any authority given that no authority exists above the State.

6.4 The State party further submits that it is untrue to claim that the author was not informed about the reasons of his arrest since his right to a due process was guaranteed by the Interim Constitution of Nepal. In addition to this, it alleges that the arguments put forward to substantiate the author's allegations of torture are not based on facts. In this connection, article 100 of the Interim Constitution of Nepal guarantees the independence of justice which, in numerous examples, intervened to protect the fundamental rights of its citizens.

6.5 The State party notes that anyone that is in custody, either in detention or serving time after a final verdict, can request a medical examination. In this regard, the Attorney General makes sure that each individual is treated humanely and has access to family visits, legal advice and medical examination. The State party submits that the author could have filed a complaint to the Attorney General.

6.6 The State party claims that it is a common practice in Nepal that when a person is brought before a judge, she or he is asked whether she or he was subjected to torture during the course of investigations. In the present case, it claims that the author's claim that the Rupandehi District Court was informed of his allegations of torture is wrong and fabricated.

## 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(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 reference to the provisions of article 14(2) of the Covenant, the Committee notes that the author submitted two excerpts of articles published by local newspapers on 13 and 14 of April 2011, just after he signed his forced confession, openly referring to him as a member of an illegal armed group, that he claimed to be in violation of his right to be presumed innocent. On the basis of the material available to it, the Committee notes that the author did not raise this complaint at the domestic level, and that, while complainants are not obliged to cite specific provisions of the Covenant which they claim to have been violated, they must mention in substantive terms, in domestic courts, the grounds which they later present to the Committee.<sup>18</sup> Since the author failed to lodge his complaint related to his rights under article 14 (2) before the domestic courts, the Committee concludes that this part of the communication is inadmissible under article 5(2) (b) of the Optional Protocol.

7.4 With respect to the exhaustion of domestic remedies as concerns the rest of the author's claims, the Committee notes that the author's complaint reporting the allegations of torture, filed by his mother on his behalf to the registrar of the Rupandehi District Court on 12 December 2012, was not registered as it allegedly did not comply with the 35-day statutory limitation established under Torture Compensation Act (TCA). The Committee further notes the author's argument that filing a complaint within 35 days from the date of infliction of torture would have been impossible for him as he was being held in detention and not allowed to file a complaint. It further notes his submission that he could not file a complaint within the 35 day time limit after his release, as he was hospitalised for several months upon release.

<sup>18</sup> See *Pisconieri v. Spain* (CCPR/C/78/D/956/2000), para. 6.5.



The Committee additionally considers that because the 35-day statutory limit from the event of torture or the date of release for bringing claims under the Torture Compensation Act, is in itself flagrantly inconsistent with the gravity of the crime<sup>19</sup>, this remedy was not available to the author.<sup>20</sup>

7.5 The Committee also notes the State party's argument that the communication does not fulfil the requirements of article 5 (2) (b), of the Optional Protocol, because the author did not formally request a medical examination, under the provision of the State Cases Rules, before the District Court examining his remand in custody. In that connection, the Committee takes note of the author's submission that during the first hearing of the Rupandehi District Court in May 2011, he claimed that he had been ill-treated and that his confession had been obtained under torture. The Committee observes that, even though the State party challenged this part of the author's statement, this allegation is corroborated by the unofficial translation of the Court hearing provided by the author which is not refuted by any official translation produced by the State party. The Committee further notes that the author explained that he was not represented by counsel at this time, that he was unaware that he could formally request the Court for a medical examination and argued that the judge should have ordered the examination *ex officio* when he reported his allegations of torture.

7.6 The Committee also notes the State party's argument that the author failed to exhaust domestic remedies because no petitions for writ of *habeas corpus* were filed and because a petition for writ of *mandamus* filed by the author was still under consideration by the Supreme Court of Nepal. In this regard, the Committee observes that the State party has merely listed *in abstracto* the existence of remedies regarding the author's allegation of torture under the 2007 Interim Constitution of Nepal, without relating them to the circumstances of the author's case and without showing how they might have provided effective redress in these circumstances.<sup>21</sup> In addition to this, the Committee notes that the State party provided contradictory information when it first submitted that the author had filed an appeal to the Appellate Court before claiming that the author did not file such an appeal. In this context, the Committee recalls that the effectiveness of a remedy depends on the nature and the particular seriousness of the alleged violation.<sup>22</sup>

7.7 The Committee further recalls that for the purposes of article 5(2) (b), of the Optional Protocol, domestic remedies must both be effective and available, and must not be unduly prolonged<sup>23</sup>. In the present case, the State party has provided no information indicating that an investigation into the author's allegations of torture has been undertaken by the State party since the allegations were firstly brought to its attention in May 2011. The Committee concludes that this constitutes an unreasonably prolonged delay. The Committee therefore concludes that it is not precluded by article 5(2) (b), of the Optional Protocol from examining the author's claims under articles 7 and 10 (1) read alone and in conjunction with article 2 (3), article 9 (1-3) and article 14 (3) (b) and (g) of the Covenant.

7.8 In the absence of any other challenges to the admissibility of the communication, the Committee declares the communication admissible insofar as it concerns the author's claims under articles 7 and 10 (1) read alone and in conjunction with article 2 (3) as well as articles 9 (1-3) and 14 (3) (b) and (g).

#### *Consideration of the merits*

8.1 The Committee has considered the present 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.

<sup>19</sup> See Human Rights Committee, general comment No. 31 (CCPR/C/21/Rev.1/Add. 13), para. 18.

<sup>20</sup> See *Maharajan v. Nepal*, para. 7.6.

<sup>21</sup> *Ibid.*, para. 7.4.

<sup>22</sup> See *Vicente et al. v. Columbia* (CCPR/C/60/D/612/1995), para. 5.2.

<sup>23</sup> See *Marcellana and Gumanoy v. The Philippines* (CCPR/C/94/D/1560/2007), para. 6.2 and *Giri v. Nepal* (CCPR/C/101/D/1761/2008), para. 6.3.

8.2 The Committee first notes the author's allegations that he was tortured and subjected to ill-treatment by the police in order to obtain his confession of guilt in a crime investigation while detained. In that connection, the Committee notes the various findings of international human rights bodies and reports of non-governmental organizations highlighting the widespread practice of torture in Terai submitted by the author<sup>24</sup>. The Committee also notes the author's claims that he reported having been tortured to the Rupandehi District Court on two occasions, first personally on 8 May 2011 and later his mother on 12 December 2012, acting on his behalf, filed a complaint to the Court's registrar. It also takes into consideration that the State party did not challenge the fact that the author's mother reported the allegations of torture to the District Court on 12 December 2012.

8.3 The Committee recalls that article 7 allows no limitation, even in situations of public emergency<sup>25</sup> and that once a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially. The Committee reiterates its position that the burden of proof cannot rest solely with the author of the communication, especially considering that the author and the State party do not always have equal access to evidence and that frequently, the State party alone has access to the relevant information.<sup>26</sup> In cases where the allegations are corroborated by credible evidence submitted by the author and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider an author's allegations to be substantiated in the absence of satisfactory evidence or explanations to the contrary presented by the State party. The Committee further recalls that in the absence of any convincing explanations from the State party, due weight must be given to the author's allegations.<sup>27</sup>

8.4 According to the material on file, the Committee observes that several years after the author reported allegations of torture for the first time, no investigation has been carried out by the State party's authorities. The Committee considers that in the circumstances of the present case, the State party has failed to demonstrate that its authorities addressed the torture allegations advanced by the author expeditiously and adequately.<sup>28</sup> In addition to this, the author has demonstrated that he has endeavoured to report his allegations to the State party's authorities on several occasions by filing complaints to the National Human Rights Commission, the District Court and the Supreme Court. The Committee considers in particular that in the absence of any convincing explanations from the State party as concerns the author's claims, which are supported by the transcript of the court hearing of 8 May 2011, due weight should be given to the author's allegations. In the circumstances of the present case, the Committee therefore concludes that the facts before it disclose a violation of the author's rights under article 7, read alone and in conjunction with article 2 (3) of the Covenant.

8.5 The Committee notes, with regard to the alleged violation of article 9, the author's claims that he was arrested on 7 April 2011 without a warrant and without being informed of the reasons for his arrest or his rights, that he was detained *incommunicado* until 13 April, his relatives being unaware of his whereabouts, and had no access to a lawyer or to medical assistance. According to the information on file, the Committee further notes that the author was brought before a judge for the first time on 8 May 2011, one month after his arrest and that he claims in this connection that his right to be brought promptly before a judge has been violated by the State party. In the absence of any pertinent explanations from the State party

<sup>24</sup> See, also in respect of similar cases before the Committee, *Giri v. Nepal* (CCPR/C/101/D/1761/2008), *Maharajan v. Nepal* (CCPR/C/105/D/1863/2009) and *Katwal v. Nepal* (CCPR/C/113/D/2000/2010).

<sup>25</sup> General comment No. 20: Article 7 (Prohibition of torture or other cruel, inhuman or degrading treatment or punishment), para. 3.

<sup>26</sup> See *Khoroshenko v. Russia* para. 9.5.

<sup>27</sup> See *Giri v. Nepal*, para. 7.4 and *El Awani v. Libyan Arab Jamahiriya* (CCPR/C/90/D/1295/2004), para. 6.5.

<sup>28</sup> *Khoroshenko v. Russia*, para. 9.5.

on the author's arrest and detention<sup>29</sup> from 7 April 2011 to 11 May 2011, the Committee finds a violation of the author's rights under article 9 (1-3) of the Covenant.

8.6 Regarding the author's claims under article 10 (1), the Committee notes the author's submission that his conditions of detention amounted to cruel, inhumane and degrading treatment. In particular, the author alleges that during his incommunicado detention he was kept blindfolded for a prolonged period of time and forced to stand without sitting for more than 50 consecutive hours. He also submits that he was not given food for three days and had no access to drinking water for two days. During the rest of his detention, the author claims that, in different detention facilities, he was detained in overcrowded cells in miserable hygienic conditions infested with bugs and mosquitoes.

8.7 The Committee reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty, and that they must be treated with humanity and respect for their dignity.<sup>30</sup> It further notes that the author has demonstrated that he has endeavoured to report his allegations to the State party's authorities by filing complaints to the National Human Rights Commission, the District Court and the Supreme Court. In the absence of information from the State party concerning the treatment of the author in detention, the Committee gives due weight to the author's allegations that his conditions of detention at the different detention facilities amounted to ill-treatment<sup>31</sup> and concludes that his rights under article 10(1), read alone and in conjunction with article 2 (3) of the Covenant were violated.

8.8 With reference to the provisions of article 14 (3) (b) of the Covenant, the Committee takes note of the author's submission that during the first five days of his detention he was subjected to repeated interrogations without any legal assistance. In that connection, the Committee recalls that, under article 14 of the Covenant, in the determination of any criminal charges, everyone shall be entitled to have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing. In the absence of any submission from the State party about the author's access to legal assistance during the first days of his detention and taking note of the author's submission that as a result he was not legally represented and therefore was not able to file a formal request of medical examination before the District Court, the Committee considers that the author's rights to prepare his defence and communicate with counsel under article 14 (3) (b) of the Covenant have been violated.

8.9 The author further submits that during his arbitrary detention, he was tortured by several police officers and forced to confess to a crime. That confession, the author claims, was used as a basis for his conviction on 13 June 2012, in violation of his rights under article 14 (3) (g). Considering the Committee's findings as concerns the violations under article 7 of the Covenant and the State party's inability or unwillingness to investigate the allegations of torture made by the author, and the undisputed fact that the author's confession was retained as evidence and used as a basis for his conviction, the Committee considers that the author's rights under article 14 (3) (g) of the Covenant were also violated by the State party.<sup>32</sup>

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the author's rights under articles 7 and 10 (1), read alone and in conjunction with article 2 (3), as well as articles 9 (1-3) and 14 (3) (b) and (g) of the Covenant.<sup>33</sup>

10. In accordance with 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

<sup>29</sup> See communications *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004) para.8.5; *Sharma v. Nepal* (CCPR/C/94/D/1469/2006) *supra* note 33, para. 7.3 and *Giri v. Nepal*, para. 7.8.

<sup>30</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty), 10 April 1992, para. 3.

<sup>31</sup> See *Maharajan v. Nepal*, para. 8.7 and *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002), para. 5.2.

<sup>32</sup> See *Bazarov v. Kyrgyzstan* (CCPR/C/118/D/2187/2012), para. 6.4.

<sup>33</sup> See *Neupane and others v. Nepal* (CCPR/C/120/D/2170/2012), para. 11 and *Purna Maya v. Nepal* (CCPR/C/119/D/2245/2013) para. 15,

reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to: (a) conduct a thorough and effective investigation into the author's allegations of torture and to provide the author with detailed information about the results of its investigation; (b) prosecute, try and punish those responsible for the violations committed and make the results of such measures public; (c) expunge the author's criminal record as connected to the present complaint; (d) ensure that any necessary and adequate psychological rehabilitation and medical treatment are made available to the author and (e) provide compensation and appropriate measures of satisfaction, to the author for the violations suffered, including a public apology. The State party is also under an obligation to take all necessary steps to prevent the occurrence of similar violations in the future. In particular, the State party should ensure that its legislation i) criminalizes torture and enforced disappearance and provides for appropriate sanctions and remedies commensurate with the gravity of the crimes, ii) guarantee that such cases give rise to a prompt, impartial and effective investigation.; iii) allow for the criminal prosecution of those responsible for such crimes; and iv) amend the 35 days statutory limit for claiming compensation for torture in accordance with international standards.

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 there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory 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 disseminate them broadly in the official language of the State party.

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