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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>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 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 and degrading treatment; prohibition of forced labour; right to liberty and security of a person; right to a fair trial; respect for the inherent dignity of the human person; right to special protection as a child; and 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)

* 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, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Héléne Trigroudja and Andreas Zimmermann.

The text of the joint individual opinion by Committee members Tania María Abdo Rocholl, Arif Bulkan, Hernán Quezada and Héléne Trigroudja is annexed to the present Views.

1. The author of the communication is Bholi Pharaka,¹ a national of Nepal born in 1997 and a member of the indigenous Tharu community. He claims that the State party has 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 on 14 May 1991.

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 an existing widespread and systematic use of arbitrary detention and torture in Nepal, in particular against children, usually met with impunity.² Additionally, the existence of a situation of generalised inhumane and degrading conditions of detention,³ and the diffusion of child and forced labour practices, mainly affecting children from indigenous communities,⁴ despite their formal prohibition across the country, must be taken into account.

2.2 In 2007, when the author was 9 years old, given the extremely precarious financial situation of his family, he was sent to work to Kathmandu as a domestic worker. He first served in a house where he could regularly attend school and received a modest salary for his services. However, since 2010, he moved to work as domestic helper for another family (notably, for an officer of the Nepalese Army), where he was not allowed to attend school any longer. Being 14 years old, the author was forced to work every day from 4 a.m. until 10 p.m. and was tasked with cooking, kitchen work, cleaning, sweeping, doing the shopping, taking care of the house, attending visitors, massaging feet, and washing clothes. Neither the author nor his family ever received any payment for his work.

2.3 While working for this family, the author was often subjected to physical and psychological abuse.⁵ In July 2012, since he could not bear the abuse any longer, he escaped from the house and returned to his home village. After he escaped, the daughter of the landlord filed a complaint against him, 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,⁶ including death threats, until he promised to bring his nephew back to the capital.

2.4 On 14 August 2012, the author travelled to Kathmandu accompanied by his uncle and they went to the Metropolitan Police Range, Hanumandhoka, to meet the Deputy Superintendent of Metropolitan Police (DSP). The author was arrested and placed in detention with adults. He was not notified of the reasons for his arrest nor informed of any charges against him. In the presence of the DSP, the author was subjected to torture the day of his arrest and the following days. He was punched all over the body, hit with plastic pipes on the soles of his feet ('falanga') and his hair was pulled. The author was repeatedly requested to confess his involvement in the stealing of gold and other objects from the house where he used to serve and to disclose where he had hidden these valuables. Eventually, he was forced to sign with his fingerprints some documents that he was not allowed to read, whereby he confessed his involvement in the stealing of valuables.

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

¹ The author is using a pseudonym for the present communication.

² The author refers, *inter alia*, to the Committee's Concluding Observations on Nepal, CCPR/C/NPL/CO/2, 28 March 2014, paras. 10, 11 and 17 and the Committee against Torture, Report on the Inquiry Procedures conducted in Nepal, 5 October 2012, Annex XIII, paras. 100 and 108.

³ *Ibid.*

⁴ The author refers, *inter alia*, to the Committee's Concluding Observations on Nepal, CCPR/C/NPL/CO/2, 28 March 2014, para. 18 and the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, Report on the Mission to Nepal, 20 July 2009, para. 26 and 39.

⁵ No further information provided.

⁶ The author provides copy of a medical certificate of 18 September 2012 from the Tribhuvan University, Institute of Medicine, Maharajgunj Campus, including the physical examination of his uncle regarding the torture allegedly suffered by the latter, recording his physical injuries from being beaten by the police with sticks in his head, tights and upper arms and over his face and ears.

public offence.⁷ Being 14 years old 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. Upon his appearance before the District Administration Office, the author was erroneously reported by the police as being 18 years old. The Kathmandu District Administration Office subsequently granted the extension of his detention three times. The author did not have legal representation at any of these stages.

2.6 The author was held at the Metropolitan Police Range, Hanumandhoka, 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 other individuals. Detainees were forced to share one toilet which was located right next to the cell. The toilet stunk badly. Detainees were forced to clean it on a rotation basis. During his stay at the Metropolitan Police Range, the author could bathe only twice, and he received food on alternate days. The food provided was in poor hygienic conditions.

2.7 During his detention at the Metropolitan Police Range in Hanumandhoka, 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 electrocution on the tip of his finger nails.

2.8 On 6 September 2012, charges for "some public offence"⁸ were eventually pressed against the author. On that occasion, the author was able to meet a lawyer for the first time since his initial arrest. The Kathmandu District Administration Office ordered to release the author on bail (fixed at 1,000 Nepalese Rupees, i.e. approximately 8 Euros). The author and his family were unable to pay the bail, thus, 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 exam was performed and the doctor documented an abrasion on the author's forearm, fever and a general state of depression.⁹ Nevertheless, this did not trigger any investigations into the reasons for his conditions. 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 medical examination. Although the medical examination was indeed 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 Commission on Human Rights. However, the latter failed to undertake any action on the case.

2.10 On 30 September 2012, the author was formally charged with thievery and was brought before the Kathmandu District Court. Recognising that the author was a child, the Kathmandu District Court declared that he could be released on bail and fixed the amount at 10,000 Nepalese Rupees (i.e. approximately 80 Euros). 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, Bhaktapur. He was released on 25 June 2013, pursuant to an order issued by the Supreme Court of Nepal.¹⁰ At the Juvenile Correction Home, the author was held in an overcrowded cell, where he was forced to remain almost all day.

⁷ 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 as he would have been allegedly causing trouble to the public. The author claims these allegations were evidently false and fabricated as he was already detained by that time.

⁸ See footnote 7.

⁹ The author provides a copy of a certificate dated 13 September 2012 concerning the medical examination on the general conditions of Mr. Bholi Pharaka.

¹⁰ 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 decision¹¹ 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 the bail was unlawful and contrary to the principle of the best interest 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 (TCA) complaining both about the torture inflicted on his son and his unlawful detention and seeking redress and prosecution of those responsible. However, that same day, the Kathmandu District Court refused to register the complaint, alleging that it did not meet the 35-day statute of limitation to report a case of torture.¹²

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 in prison and a fine of 4,000 Nepalese Rupees (approximately 32 Euros). The Court dismissed the other theft claims concerning different objects. Since the author was a child, the sentence was reduced by half pursuant to Section 11(3) of the 1992 Children Act. Since he had already spent nine months and 19 days in detention, the Kathmandu District Court determined that he should not be further detained, nor should he pay the fine. Due to the lack of financial resources, the author decided to avoid filing an appeal against this judgment.

2.15 On 27 August 2015, the author's legal representative attempted to register a First Information Report (FIR)¹³ before the Metropolitan Police Range Hanumandhoka, Kathmandu to trigger the investigation and prosecution of those responsible for submitting the author to child and forced labour. The police verbally refused to register the FIR, arguing that the police had never received child and forced labour claims before and that it should be referred to the Labour Office instead. On the same day, the author's representative sought an order from the Chief District Officer (CDO) so that the FIR concerning child and forced labour was registered by the police, but the CDO also verbally refused to register the complaint based on similar reasons. On 13 September 2015, the author's representative tried to file a complaint before the Labour Office in Kathmandu, seeking the prosecution of those responsible for submitting 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 limitation of one year set forth in the Child Labour 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 writs, 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 writs 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 as they were both time-barred and refused to provide a written copy of his decision and the reasons thereof.

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, continuous 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 effective. Despite

¹¹ See footnote 10.

¹² The author provides a copy of the decision of the Kathmandu District Court of 1 December 2013.

¹³ The FIR is an information tool submitted to the police to report crimes and file complaints.

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. Notably, on many occasions Nepalese authorities (including the Supreme Court of Nepal) refused to register the complaints brought by the author's representative.

2.19 Finally, 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, paragraph 1, of the Covenant, because of the torture and ill-treatment he endured, in order 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 claims that articles 7 and 10 were also violated in conjunction with article 2, paragraph 3, and article 24, paragraph 1, of the Covenant, due to the failure of the State party's authorities to conduct a thorough, impartial, independent and effective investigation into his allegations, and to prosecute and sanction those responsible. He did not even receive adequate compensation and integral reparation for the harm suffered.

3.3 The author also claims that article 7 has been violated in conjunction with article 2, paragraph 2, of the Covenant, due to the failure of the State party's 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 further claims to be a victim of a violation of article 9, paragraphs 1, 2, 3 and 5, in conjunction with article 2, paragraph 3, and article 24, paragraph 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 pressed against him. The State party's authorities failed to conduct an effective, independent, impartial and thorough investigation on these allegations and the author did not receive any compensation for the harm suffered.

3.5 The author also claims to be a victim of a violation of article 14, paragraphs 2, 3(a), (b) and (g), in conjunction with article 24, paragraph 1, of the Covenant, because he was not guaranteed a fair trial, in the sense that he was not presumed innocent until proved 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 and to communicate with a counsel of his own choosing. Moreover, he was compelled to testify against himself to confess guilt.

3.6 The author claims to be a victim of a violation of article 8, paragraph 3(a), read in conjunction with article 2, paragraph 3, and article 24, paragraph 1, of the Covenant, because the State party's authorities failed to adopt the necessary measures to prevent him from being subjected to child and forced labour and to conduct *ex officio* an effective, independent, impartial and thorough investigation and did not prosecute and sanction those responsible, and to provide the author with adequate redress for the harm suffered. These 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 marginalised and discriminated in Nepal. The author thus 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, paragraph 1, of the Covenant, as he was exposed to a two-fold form of vulnerability.

3.8 Finally, the author requests that the Committee call on the State party to ensure that the author obtains integral reparation for the harm suffered, covering material and moral

damages and incorporating measures aiming at providing restitution, rehabilitation, satisfaction (including restoration of dignity and reputation) and guarantees of non-repetition.

3.9 The author requests that the Committee call upon on the State party to adopt the following specific measures: (a) investigate the facts of the case, aiming at prosecuting all those responsible for the violations committed against the author, in a manner commensurate to the gravity of the crimes, and suspending or removing the suspected police officers while the investigation is on-going; (b) ensure that the author receives medical and psychological care free of charge; (c) award an education grant to the author in case he wishes to pursue technical or university studies; (d) acknowledge Nepal's international responsibility 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 also 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; (b) amend the legislation establishing the unduly restrictive 35-day statute of limitations to submit complaints concerning torture; (c) make it mandatory to provide an arrest warrant at the time of the arrest 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, judiciary, and all persons that may be involved in the custody and/or treatment of persons deprived of their liberty and; (e) take the necessary measures to ensure that the inmates of all detention facilities across Nepal have an adequate diet, medical care and sanitary conditions according to international standards.

State party's observations on admissibility and merits

4.1 In its observations dated 18 September 2017, the State party claims that the author's allegations are "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 (FIR) against the author for the theft of several of her valuables. The author was arrested by the Police of Ratnapark, Kathmandu, complying with legal guarantees. The State party claims that the author confessed his guilt and that he had received 2,000 Nepalese rupees from his neighbour for the stolen goods in his statements before the Government Attorney (i.e. the prosecutor).

4.3 The State party denies any allegations of torture during the police investigation of his case. The State party notes that, after the author reported that he had been tortured and requested a medical examination, the Kathmandu District Court -within the adjudication of the theft case against the author- immediately ordered a medical examination, that was conducted by the Forensic Medicine Department of the Tribhuvan University Teaching Hospital, Kathmandu. The forensic report of 13 September 2012 did not show any kind of physical assault or suggestive injury and did not reveal any significant psychiatric morbidity. Since the medical report presented before the district court did not show any act of torture committed against the author, the court did not make any order regarding the author's torture claim. 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 since the author failed to exhaust available domestic remedies.

4.4 The State party notes that the author was placed in a "Juvenile Reform Home" based on the order of the Kathmandu District Court and later released based on the order of the Supreme Court of Nepal, which based its decision on the provisions of the Convention of the Rights of the Child and General Comment No. 10 of its Committee. It adds that the Supreme Court stated that the Preamble of the Nepalese Children's Act of 1992 imposes a legal obligation on the State to protect children's physical, mental and intellectual development and that, it was not in the best interest of the accused child to be in a juvenile home. The State

party also notes that later the Kathmandu District Court found the author guilty of stealing a laptop and other materials and sentenced him to one month in jail and a fine of 4,000 Nepalese rupees. It adds that his imprisonment time and fine were reduced in accordance with Sub-Section 3 of Section 11 of the Nepalese Children's Act.

4.5 The State party also notes that, although torture was already assessed by the Court during the adjudication of the theft case, the author brought a separate torture complaint claiming compensation before the Kathmandu District Court after the expiration of its statute of limitation. The Court refused to register the case, based on Section 5 of the Torture Compensation Act of 1996 which states that a victim may file a complaint claiming compensation within 35 days from the date of being inflicted torture or of her/his release from detention, and rendered the case inadmissible according to Rule 15 (3) of the District Court Regulation of 1995.

4.6 The State party notes that, "with regard to the issue of compensation from the employer," the author did not approach the remedy within the statute of limitation. The author's complaint before the Labour Office was refused registration as the statute of limitation of one year from the date of commission of the act, according to Section 20 (2) of the Child Labour Act of 2000, had passed. The State party notes that the author had a right to file a complaint regarding an offence punishable under the Child Labour Act, and that the author's legal remedies did not end with the refusal of registration. The author could have presented a recourse before the Labour Court against the refusal of registration of his complaint and could have then 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 Child Labour Act's complaints, the State party claims that it is unbelievable that the Section officer and Joint-Secretary of the Supreme Court had 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 first had an option to go the Registrar and, in case of refusal by the Registrar, he could have appealed the Registrar's decision before the Supreme Court bench, according to Rule 27 (3) of the Supreme Court Regulation of 1992.

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 to adjudicate and deliver justice and the author did not follow any of those established procedures. The State party claims that the recourse to the Human Rights Committee as the ultimate resort, without completing the domestic remedies, is an abuse of the remedial process available under the Optional Protocol and, therefore, the communication is inadmissible.

4.9 The State party claims that the author's allegation of refusal of registering 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, as the author has not exhausted all the legal remedies available within the statutes of limitation, 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.¹⁴ It refers *inter alia* to: a) Section 4 of the Child Labour Act that provides that no child shall be engaged in works as a labourer against her/his will by way of persuasion, misrepresentation or by subjecting her/him to any influence or threat or coercion or by any other means; b) Section 14 of the State Cases Act of 2000 that provides

¹⁴ The State party refers to the Nepalese Constitution, articles 22 and 39; the Children's Act of 1992, Sections 53 (3), 7 and 15; the Child Labour Act of 2000 (Prohibition and Regulation), Sections 3, 4 and 19; the State Cases Act of 1992, Section 14; and the National Penal Code.

that police personnel conducting an investigation related to any crime may arrest a person if there is reasonable ground to suspect about her/his involvement in a crime and the arrested person shall be informed about the cause of the arrest; and c) the Torture and Cruel, Inhuman or Degrading Treatment Bill, under consideration by the Legislature-Parliament to amend the National Penal Code,¹⁵ that criminalizes torture and defined it as a punishable crime in line with the Convention against Torture, providing that torture perpetrators would receive a punishment of a maximum of five years of imprisonment or would have to pay a fine of 50,000 Nepalese rupees (approx. 500 US dollars) or both, and providing for a 500,000 Nepalese rupees (approx. 5,000 US dollars) compensation to victims of torture.

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

5.1 In his comments of 9 November 2017, the author notes that it took the State party more than one year to submit its observations in the present communication. Thus, the author claims this is yet another sign of Nepal's indifference vis-à-vis his acute suffering.

5.2 Regarding the State party's allegation on 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 the given case, are *de facto* available to the author and objectively offer a prospect of success.¹⁶ The author claims that none of the remedies referred by the State party in its observations meet these requirements. He further 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 that found that he should not be further detained nor pay the fine because he and his family lacked the financial resources to lodge an appeal as they were indigent, shown by the fact that they could not even pay his bail. The author refers to the 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 recognised and a person is unable to obtain such services because of his indigence, then that person would be exempted from the requirement to exhaust domestic remedies."¹⁷ Moreover, the author argues that lodging an appeal against the decision would have not led to the opening of an investigation into his allegations concerning torture and forced labour nor to his compensation for the damages suffered. The author claims that such remedy was not effective in this case.

5.4 The author asserts that he was able to denounce and seek compensation for the forced labour he was subjected to only in 2015. 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 established pursuant to the Child Labour Act to file a complaint 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 limitation for the submission of claims renders this remedy, *per se*, ineffective. The author adds that he lived for many years in fear, indigence and without the possibility to count with qualified and free legal assistance (until the NGO TRIAL International learnt about his case and accepted to cover the legal expenses of his case before domestic authorities).

¹⁵ In 2018, the State party amended its Criminal Code, including the criminalization and definition of torture under Section 167 of the Code.

¹⁶ The author refers *inter alia* to the views of the Committee in cases *Benaziza v. Algeria*, 26 July 2010, para. 8.3 and *Zdenek et al v. Czech Republic*, 14 December 2007, para. 6.3.

¹⁷ Inter-American Court of Human Rights, Advisory Opinion OC-11/90 on Exceptions to the Exhaustion of Domestic Remedies, 10 August 1990, paras. 22, 26 and 36.

5.5 The author notes that the State party seems to forget in its observations that, before trying to file a complaint before the Labour Office that got rejected; on 27 August 2015, he tried first to register a First Information Report (FIR) before the Police to trigger the investigation and prosecution of those responsible for subjecting the author to child and forced labour. The Police refused to register his FIR and that same date he complained before the Chief District Officer (CDO) for his FIR to be registered. The CDO also refused to register his complaint. Moreover, the author recalls that in September 2017 he also tried to invoke the extraordinary jurisdiction of the Supreme Court, which 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 days statute of limitation had expired, the author recalls that the Committee itself held that this statute of limitation is in itself inconsistent with the gravity of the crime¹⁸ and requests the Committee to apply its well-established jurisprudence.

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

5.8 The author takes note that the State party considers "unbelievable" the fact that the Supreme Court refused to register his cases and 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 -that he tried to register before the Supreme Court- as supporting documentation of this communication and also provided the identity of the Supreme Court officers who refused the registration. Instead of only insinuating that his allegations are false, Nepal should have provided solid evidence to rebut these allegations and explained why these officers refused to register his complaints and, if appropriate, open an investigation in that regard. The author argues that it is incumbent to the State party to offer an effective remedy and, in this case, the submission of writ petition before the Supreme Court proved impossible, thus, useless. 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 regulation, the author notes that: 1) this rule establishes that the "Registrar should provide in written cause for note registering the writ" and makes no reference to the possibility to submit an appeal and; 2) despite his requests, he could never obtain in writing the reasons for the non-registration of the writ. Therefore, it was hard to see how he could have by-passed the Registrar and the joint-Secretary's verbal refusal to have his cause hears, he was 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 and reality. However, the author argues that Nepal only challenged that the author was 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 differ from what the State party claims when stating that the medical report did not "reveal any significant psychiatric morbidity" and "did not show any act of torture committed against the author." He argues that the medical report attested an abrasion on his right forearm, fever and a general state of depression.¹⁹

5.11 The author notes that the State party does not contend that the authorities who were informed on the author's torture allegations failed to launch an investigation. Thus, the author

¹⁸ The author refers to the views of the Committee in cases *Maharajan v. Nepal*, 19 July 2012, para. 7.6 and *Giri v. Nepal*, 24 March 2011, para. 6.3 and to the Committee's General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, para. 18.

¹⁹ The author provides a copy of a certificate dated 13 September 2012 concerning the medical examination on the general conditions of Mr. Bholi Pharka.

understands that Nepal admits that no investigation was ever carried out on his allegations of torture, and requests the Committee to declare a violation of article 7 of the Covenant, read alone and in conjunction with articles 2 (3) and 24 (1).

5.12 The author welcomes the information that a new National Penal Code has been passed by the Legislature-Parliament of Nepal, criminalising torture and defining it as a punishable crime. Nevertheless, he notes that the new Penal Code has not yet entered into force at the time he submits these comments and does not have retroactive effect and, is thus 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 deal with torture, hence, incurring in a violation of article 7 of the Covenant, read alone and in conjunction with article 2 (2) of the Covenant. The author also argues that a sentence of maximum five years of imprisonment or 500 US dollars of fine or both, for a person held responsible for torture (as envisaged in the new National Penal Code) can hardly be considered as commensurate to the gravity of the crime and, therefore, remains at odds with international law and standards.

5.13 Finally, the author reiterates his allegations on the admissibility and the merits of the communication, as well as the measures of reparation already requested to the Committee. In particular, the author claims that his specification of the measures of reparation will serve the State party as guidance and will enhance the level of implementation of the eventual Committee's Views on the case.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 97 of its rules of procedure, decide whether it is admissible under the Optional Protocol to the Covenant.

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 plain refusal of registration of 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, as, despite his repeated attempts to access justice and compensation for the torture and child and forced labour 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 -which found that he should not be further detained nor pay a fine and that, at the same time, did not request any investigation on his torture allegations- because he could not afford either the necessary legal counsel or the costs of the proceedings. The Committee recalls that ordinarily financial considerations and unsubstantiated doubts about the effectiveness of domestic remedies do not automatically absolve authors from exhausting them.²⁰ However, the Committee notes that, in the present case, the author and his family were already unable to pay the bail established by the Kathmandu District Court in its decision of 30 September 2012, and that for this reason he

²⁰ See views of the Committee in *Kadić v. Bosnia and Herzegovina*, communication No. 2048/2011, 9 December 2015, para. 8.3 and communication No. 397/1990, *P.S. v. Denmark*, decision of inadmissibility, 22 July 1992, para. 5.4.

was sent to a Juvenile Correction Home and, therefore, the Committee does not consider the inability to file an appeal in his case as a matter of an “ordinarily financial consideration.” Thus, the Committee considers that the author proves that appealing the decision of June 2014 would have signified a financial burden he could not afford due to his economic status and that he was not provided with free legal services²¹ to access and exhaust this remedy, deeming it unavailable, especially considering 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 Chief in Naxal, with no response or action taken; (c) filed a claim for compensation, pursuant to the Torture Compensation Act 1996 (‘TCA’), which was rejected due to the 35-day statute of limitations; (d) tried to file FIR before the Metropolitan Police Range Hanumandhoka and the Chief District Officer for his submission to child and forced labour, which were also rejected; (e) tried 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) tried to register two writ petitions before the Supreme Court, both verbally rejected with no refusal in writing as 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.²² The Committee also notes the author’s uncontested allegations that he was unable to file a child and forced labour complaint within the prescribed one-year period, given that, during that time and being a child, after suffering physical and psychological abuse and escaping, 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 to count with qualified and free legal assistance. These factors precluded him from seeking support. The Committee further notes that the author provided copies of the writ petitions submitted before the Supreme Court and notes that the State party has not substantially contended the fact that the author has not received a decision in writing from the Supreme Court on the non-registration of his writ petitions. Therefore, after the author’s several attempts to access and seek justice and, in view of the legal and practical limitations on filing complaints for the investigation and compensation for torture and child and forced labour allegations he faced in the State party, and the obstacles encountered with registration proceedings before the Supreme Court, the Committee considers that the remedies at stake were both ineffective and unavailable to the author.

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

6.8 The Committee also notes the State party’s claim that the communication should be declared inadmissible as an abuse of the right of submission (para. 4.8). The Committee observes, however, that the fact that the State party and the author disagree on some facts and the application of the law does not, in itself, constitute an abuse of the right of submission.²³ 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 these are not sufficiently substantiated and that are based on the lack of guarantees

²¹ See views of the Committee in *Quelch v. Jamaica*, communication No. 292/1988, 23 October 1992, para. 8.2.

²² See, Concluding Observations on Nepal, CCPR/C/NPL/CO/2, para. 13, and communications No. 2556/2015, *Fulmati v. Nepal*, Views adopted 18 March 2019, para. 7.9 and Committee against Torture, General Comment No. 3: Implementation of article 14 by States parties, 13 December 2012, para. 40.

²³ See, the Views of the Committee in communication No. 2537/2015, 27 July 2018, *Arias Leiva v. Colombia*, para. 10.4.

during his detention and before any trial had been initiated. The Committee therefore considers that these allegations should be examined under article 9 of the Covenant.²⁴

6.10 As 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, as required under 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 police interrogation, and being 14 years old, he was subjected to acts of torture, including punches all over his body, hits with plastic pipes on the soles of his feet ('falanga'), electrocution on the tip of his finger nails; 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, only arguing 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 was the reason for the Court not to take further action on the torture allegations. The Committee 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, fever and 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, paragraph 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 also notes the author's claim regarding the failure of the State party's 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 explanations 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 remove obstacles in the existing legal framework concerning torture. It further notes that the author claims that the 35-day statute of limitations under domestic legislation, that 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 this same 35-day statute of limitation. 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.²⁵ The Committee also takes note that, at the time of its submission, the State party informed that its legislation regarding torture would be amended, to criminalize and define it as a punishable crime (para. 4.11) and takes also 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 to file torture complaints from the day of the commission of the torture or from the day the person was released, if deprived of her/his liberty, and establishing a punishment of a maximum of five years of imprisonment or 500 US dollars of fine, or both, for a person held responsible for torture. The Committee considers that this new legislation

²⁴ See, Committee's General Comment No. 32 on Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, para. 31.

²⁵ See the Views of the Committee in cases *Fulmati v. Nepal*, 18 March 2019, para. 7.9, *Maharajan v. Nepal*, 19 July 2012, para. 7.6 and *Giri v. Nepal*, 24 March 2011, para. 6.3.

does not have retroactive effect and, thus, it is 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 crime.

7.6 In light of the foregoing, the Committee concludes that the failure of the State party to conduct any investigation on the author's torture allegations, especially as a child, and the fact that the statute of limitation 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 article 2, paragraph 3 and article 24, paragraph 1 of the Covenant.

7.7 Having found a violation of article 7, alone and in conjunction with articles 2(3) and 24(1) of the Covenant, the Committee decides not to separately examine the author's claims of a violation of article 7 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 he was not informed, at the time of arrest, of the reasons for his arrest nor was he promptly informed of any formal charges pressed 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 cause of the charges against him and without having the opportunity to communicate with a counsel until 6 September 2012. The State party has merely stated that the arrest of the author complied with legal guarantees, but 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, paragraph 1, of the Covenant.

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

7.10 The Committee notes the author's allegations that, since 2010, when he was 14 years old, 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 notes the author's claim that he spent almost 2 years cooking, doing kitchen works, cleaning, sweeping, doing the shopping, taking care of the house, attending visitors, massaging feet, and washing clothes for this family, without being allowed to attend to school and without receiving any payment for his work. He also alleges 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's authorities failed to conduct *ex officio* an effective, independent, impartial and thorough investigation and did not prosecute and sanction those responsible, nor provided the author with adequate redress for the harm suffered. It notes that the State party has not contested the author's allegations as to the fact that the Police and the Chief District Officer rejected his FIR complaints to trigger the investigation and prosecution of those responsible for subjecting him to child and forced labour. It further notes that the State party up 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 which he was subjected as a domestic worker and the impossibility to attend school. Therefore, the Committee considers that the failure of the State party to protect the author, who was 14 years old at the time, from such abuses and its failure to conduct any investigation into his allegations, especially given his condition as a child, constitutes a violation of his rights under article 8, paragraph 3, read in conjunction with article 2, paragraph 3 and article 24, paragraph 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, alone and in conjunction with article 2 paragraph 3, and article 24, paragraph 1; article 8 paragraph 3, in conjunction with article 2, paragraph 3, and article 24, paragraph 1; and article 9, read alone and in conjunction with article 24, paragraph 1, of the Covenant.

9. 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

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 to 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 steps 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 standards²⁶ 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 a violation has been established, 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 widely in the official languages of the State party.

Annex

Joint individual opinion of Committee members Tania María Abdo Rocholl, Arif Bulkan, Hernán Quezada and H el ene Trigroudja

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” (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 in all the circumstances.

2. We recall at the outset that public apologies have been recognized by the UN General Assembly as an efficient, necessary and complementary measure of remedies in cases of

²⁶ See, for instance, Committee against Torture, General Comment No. 3: Implementation of article 14 by States parties, 13 December 2012, para. 40.

grave and massive violations of human rights.²⁷ More importantly, public apologies are also included in the *Guidelines on Measures of Reparation* adopted by this very Committee in 2016, which also provide that that in deciding on measures of reparation, the position of the parties should be taken into account.²⁸ We note that in this communication the author specifically requested a public apology, a claim not contested or otherwise answered by the State party. Further, the Guidelines indicate that among the measures of satisfaction, “(e) 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.”²⁹ Notably, the suggested criteria are not cumulative, but disjunctive.

3. Ordering apologies is a longstanding and uncontroversial measure of reparations in the Inter-American human rights system.³⁰ 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.³¹ These considerations clearly inform this Committee’s 2016 Guidelines, which specifically regard apologies as warranted in cases of ‘grave or systematic violations where the injury cannot be fully redressed by restitution or compensation only.’ As we demonstrate below, the facts in this case meet both conditions of ‘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 thus itself accountable for it. Moreover, under Article 24 of the ICCPR 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’s authorities to open any investigation or punish those responsible for the violations of absolute rights protected by Articles 7 and 8 of the ICCPR. 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. Finally, 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 (para 7.5-7.6).³²

5. As to the other criterion identified in the 2016 Guidelines, there are several factors which indicate that the violations suffered by the author constitute a systematic problem in the State party. Both this Committee³³ and the Committee against Torture have expressed ‘serious concerns’ in their respective Concluding Observations at 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.’³⁴ This Committee

²⁷ Res. 60/147 adopted in December 2005 (Principle IX-e) 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).

²⁸ Guidelines on Measures of Reparation under the OP to the ICCPR, 30 November 2016, para. 4.

²⁹ Ibid, para. 11 (emphasis added).

³⁰ For instance: *Case of Durand and Ugarte v. Peru*. Reparations and Costs. Judgment of December 3, 2001. Series C No. 89, paras. 38-39; *Case of Terrones Silva et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2018. Series C No. 360, paras. 254 and f.

³¹ MU Walker, ‘Restorative Justice and Reparations’ (2006) 37:3 *Journal of Social Philosophy* 377-395.

³² See also *Fulmati v. Nepal*, 18 March 2019, Communication No 2556/2015, para 7.9.

³³ HRC Concluding Observations on Nepal, CCPR/C/NPL/CO/2, 28 March 2014, paras. 10 and 11.

³⁴ Committee against Torture, Report on the Inquiry Procedures conducted in Nepal, 5 October 2012, Annex XIII, para. 3 ;

has also expressed concern that child labour and traditional practices of bonded labour are still prevalent in some regions of the State party.³⁵ Yet despite these repeated exhortations by various treaty bodies, and even though expressly raised in this communication (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 thus 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 publicly apologise to the author for the extremely grave violations he suffered as a child.

6. Finally, 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.

³⁵ HRC Concluding Observations on Nepal, CCPR/C/NPL/CO/2, 28 March 2014, para. 18.