

## Submission on implementation of Communication 2038/2011 : *THARU ET AL v. NEPAL*

### I. Background

1. On 3 July 2015, the UN Human Rights Committee rendered its decision in Communication 2038/2011: *Tharu et al v. Nepal*. The communication concerns the enforced disappearance of eight young persons of Tharu ethnicity between the ages of 14 and 23 by the then Royal Nepal Army soldiers in April 2002 from their homes in Bardiya District. The Authors of the communication are relatives of the eight disappeared persons, namely:

Chhedulal Tharu (father of Dhaniram Tharu and Soniram Tharu);  
Sara/Sarita Tharu (wife of Dhaniram Tharu);

Padam Tharu and Sanchariya Tharu (father and mother of Radhulal Tharu);

Bribal Tharu, Thagani Tharu, and Bhagawati Tharu (father, mother and wife of Prem Prakash Tharu);

Tulsiram Tharu and Phagani Tharu (father and mother of Kamala Tharu/Chaudhari);

Mahango Tharu and Parmeshwari Tharu (father and mother of Mohan Tharu/Chaudhari);

Jaggu Tharu and Lahiya Tharu (father and aunt of Lauti Tharu/Chaudhari);

Bechaniya Tharu and Manki Tharu (mother of Chill Tharu/Chadhari, and Bechaniya's husband, respectively).

2. Having examined the facts, the Committee found the State Party to be responsible for the enforced disappearance of the young persons, in violation of their right to life (Art. 6(1)), right to liberty (Art. 9), right to be free from torture and other ill-treatment (Art. 7) and right to legal personality (Art. 16) under the ICCPR. It also found the State Party responsible for violations of the Author's right to be free from torture and other ill-treatment (Art. 7). In respect of both the victims and their families it also found the State Party responsible for a failure to provide an effective remedy in respect of these violations (Art. 2(3)).
3. The Committee found that the State Party has the obligation "to provide the authors with an effective remedy, including by:
  - (a) conducting a thorough and effective investigation into the disappearance of their relatives and providing the authors with detailed information about the results of its investigation;
  - (b) if their relatives are dead, locating their remains and handing them over to their families;
  - (c) prosecuting, trying and punishing those responsible for the violations committed and making the results of such measures public;

- (d) ensuring that any necessary and adequate rehabilitation and treatment are provided to the authors; and
- (e) providing effective reparation, including adequate compensation and appropriate measures of satisfaction, to the authors for the violations suffered.

The State party is also under an obligation to take steps to prevent similar violations in the future. In particular, the State party should ensure that its legislation allows for the criminal prosecution of those responsible for serious human rights violations such as torture, extrajudicial execution and enforced disappearance.”<sup>1</sup>

## II. The State Party’s response of 22 March 2016

4. The State Party wrote to the Committee on 22 March 2016 in response to the issuance by the Committee of its Views on the communication. It indicated that it would provide Nepalese Rupees (NPR) 100,000 additional relief to the victims’ relatives for the violations, as the Committee in its decision had considered that the amount previously provided to the victims (NPR 100,000) was inadequate.<sup>2</sup> As a result, the Authors applied to the State Party for this amount through their District Administration Office on 19 April 2016. However, they have not yet received this second payment. The State Party also noted that the Committee’s Views would be translated into Nepali by the Ministry of Peace and Reconstruction and published. There is no indication that this has happened.
5. The State Party stated in its correspondence to the Committee that other action, including legal action against the perpetrators, and provision of compensation, rehabilitation and other forms of reparation, shall only be provided following consideration of the matter by the Commission of Enquiry on Enforced Disappearances and the Truth and Reconciliation Commission. The Authors have filed claims with the Commission of Enquiry on Enforced Disappearances and hope that this process may help to uncover the truth of what happened to their loved ones. However, as the Committee has made clear on numerous occasions, postponing criminal investigation and provision of reparation to the Authors while the Commission investigates the crimes committed, is not in line with Nepal’s obligations under the ICCPR and its Optional Protocol.
6. Although the transitional justice mechanisms may complement the implementation of the Committee’s Views, they cannot replace or further delay it, or dilute the Authors’ rights under the ICCPR. The Committee has held in a number of other communications concerning Nepal that “... transitional justice mechanisms, such as the Truth and Reconciliation Commission, would not be able to provide an adequate remedy in respect of the violations alleged in the present communication” because “in cases of serious violations a judicial remedy was required.”<sup>3</sup> Similarly, the

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<sup>1</sup> See UN Human Rights Committee, *Tharu et al (represented by Advocacy Forum-Nepal and REDRESS) v Nepal*, Communication No.2038/2011, 21 October 2015, para. 12.

<sup>2</sup> On 1 June 2007, the Supreme Court of the State Party issued a judgment in which it ordered the Government, inter alia, to provide all families, including the Authors in the present case, with 100,000 Nepalese rupees (approximately \$1,420 USD at the time), which the Authors had received; see para. 2.14 of the Committee’s decision in the present case, finding that the amount was inadequate.

<sup>3</sup> See the Views of the Committee, para. 6.3, referring to the Decision on Admissibility, and citing further Communication No. 1761/2008, *Giri v. Nepal*, Views adopted on 24 March 2011, para.6.3.

Committee raised concerns about the transitional justice mechanisms in the State Party in its concluding observations and stressed that they “cannot serve to dispense with the criminal prosecution of serious human rights violations.”<sup>4</sup>

7. In this communication, the Committee has already established that violations have occurred that require criminal investigation and prosecution, along with the provision of adequate reparation to specific individuals.
8. Diverting this case to investigation by the Commission on Enforced Disappearances and Truth and Reconciliation Commission is therefore contrary to the Committee’s recommendation and its consistent jurisprudence. Even if a criminal investigation were to eventually proceed following such investigation, the additional delay will only serve to undermine its effectiveness.
9. The State Party’s response therefore does not fully address the remedies requested by the Committee. Following receipt of the State Party’s response, REDRESS and Advocacy Forum as the organisations representing the Authors in the present case, carried out a consultation with the Authors so as to ensure that they are fully aware of the developments in this communication including the Views adopted by the Committee and the State Party’s response, and had the opportunity to have any questions answered and discuss next steps. The consultation also provided an opportunity for the Authors to present their views on and provide instructions to Advocacy Forum and REDRESS as to how to proceed with this matter. In particular, the Authors discussed their response to the State Party’s submission, and set out in more detail the remedies they believe are required to redress the violations.<sup>5</sup>
10. We have set out in detail below the Authors’ claims for reparation arising from the Committee’s findings in line with the Authors’ rights under international law and reflecting the detailed consultations with the Authors. This covers the investigation and prosecution of perpetrators, rehabilitation, compensation, measures of satisfaction and guarantees of non-repetition as required by the Committee’s Views, calculated in line with the approach taken in other cases of enforced disappearance, including in other transitional justice contexts.

### **III. Reparation owed**

#### **III.1. Conducting a thorough and effective investigation**

11. The Committee’s findings require the State Party to conduct a thorough and effective investigation into the disappearance and to provide the Authors with detailed results of the investigation. As set out above, this must be a criminal investigation as the Committee has established that serious crimes have been committed, and the Authors notified authorities of this crime by the lodging of a *habeas corpus* petition in 2003.

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<sup>4</sup> Human Rights Committee, ‘Concluding observations on the second periodic report of Nepal’, 15 April 2014, CCPR/C/NPL/CO/2, (‘Concluding Observations 2014’) at Section C.

<sup>5</sup> Transcripts of the detailed interviews with the Authors are on file with Advocacy Forum and REDRESS, and can be made available, in redacted form, upon request.

12. The authorities conducting the criminal investigation may provide information to the Commission on Enforced Disappearances as to the progress of their investigation, and vice versa, as appropriate.
13. The Authors request that:
  - a criminal investigation is opened under the First Information Report;
  - a team of investigating officers is appointed and this is communicated to the Authors' legal representatives;
  - the Authors' legal representatives are provided with the name and telephone contact details of the lead investigating officer and public prosecutor managing the case;
  - the investigation considers carefully information already collected by the National Human Rights Commission, Neupane Commission,<sup>6</sup> Informal Sector Service Centre (INSEC), and Advocacy Forum Nepal;
  - the Authors are interviewed with respect to their knowledge of the crimes;
  - the Authors' legal representatives are provided with monthly updates as to the progress of the investigation in the case.

### **III.2. Location and return of remains**

14. The Committee requires that, if the young persons are dead, the state party locate their remains and hand them over to the families.
15. The Authors request that any information as to any suspected burial site uncovered in the criminal investigation is communicated immediately to them, that the site is securely protected, and that any attempted exhumation is conducted by appropriate independent forensic experts in conjunction with the National Human Rights Commission, and that the Authors' legal representatives are informed in advance and permitted to attend. If remains are identified, they should be returned to the Authors as soon as possible after necessary investigations are completed.

### **III. 3. Prosecution, trial and punishment of those responsible**

16. The Committee requires those responsible for the violations to be prosecuted, tried and punished for the violations committed and that the results of such measures are made public. The Committee has stressed on many occasions that this means that amnesty provisions under the legislation establishing the transitional justice mechanisms cannot be used in relation to the crimes committed in this case.<sup>7</sup>
17. The Authors request that their legal representatives are advised immediately once a suspect has been charged with the crimes committed, and that they are provided at least monthly updates as to the status of any prosecution.

### **III. 4. Rehabilitation**

18. The Committee has stated that the State Party must "ensure[...] that any necessary and adequate rehabilitation and treatment are provided to the authors". The UN Committee Against Torture in its General Comment No. 3 on Article 14 of the UN Convention Against Torture has provided further guidance as to what States need to

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<sup>6</sup> Also known as the Ministry of Home Affairs Disappearances Committee, established on 25 May 2006.

<sup>7</sup> See for instance, Concluding Observations 2014, Section C.

do so as to provide rehabilitation to victims of torture and ill-treatment.<sup>8</sup> General Comment No. 3 for instance identifies certain steps States should take in providing rehabilitation, including the adoption of a “long-term, integrated approach and ensure that specialist services for victims ...are available, appropriate and readily accessible.”<sup>9</sup> This necessitates a procedure for evaluating and assessing victims’ therapeutic and other needs, which may include medical, physical, and psychological services; re-integrative and social services; family-orientated assistance and services.<sup>10</sup>

19. The Inter-American Commission on Human Rights (IACmHR) has recommended in a case involving enforced disappearances that the State provide “health services, including psycho-social and family support programs for the next of kin affected by the disappearance, according to their needs and to the opinion of professionals trained in treating the effects of violence and forced disappearance.”<sup>11</sup> The Inter-American Court of Human Rights (IACtHR) followed that recommendation and requested that the State provide, inter alia, psychological treatment “that takes into account the particular circumstances and needs of each of the next of kin, so that they can be provided with collective, family or individual treatment, as agreed with each of them and following individual assessment.”<sup>12</sup>
20. The Authors and their families have suffered significant mental and physical harm arising from the disappearance of their loved ones.<sup>13</sup> The Committee recognised that the effects of the anxiety and anguish caused by enforced disappearance in this case amount in itself to a violation of the prohibition of torture and other ill-treatment.
21. The Authors request that the State Party
  - sends qualified professionals to the Authors’ village to carry out a full assessment of ongoing physical and psychological harms and treatment required to address it; and
  - provides on an ongoing basis free treatment required as identified in the assessment, including psychological counselling, through state-run or private institutions as preferred by the Authors.
  - During the consultations carried out by Advocacy Forum, some of the Authors have stated that the State Party should issue a “victim identity card” entitling them to such treatment.

#### **IV. Compensation**

22. The Committee requires that adequate compensation is provided to the Authors in this case. The United Nations Basic Principles and Guidelines on the Right to Remedy and Reparation for Gross Violations of Human Rights and Serious Violations

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<sup>8</sup> UN Committee Against Torture, General Comment No.3 (2012), Implementation of article 14 by States parties, CAT/C/GC/3, 13 December 2012, (UN CAT General Comment No.3), paras. 11-15.

<sup>9</sup> Ibid, para.13.

<sup>10</sup> Ibid.

<sup>11</sup> See IACtHR, *Case of the 19 Merchants v Colombia*, Judgment of 5 July 2004 (Merits, Reparations and Costs), para. 254 (i).

<sup>12</sup> Ibid, para. 278.

<sup>13</sup> The table at Appendix One sets out some of the physical and psychological harms the Authors have suffered.

of International Humanitarian Law (“the Basic Principles”) are clear that adequate compensation in should cover:

“any economically assessable damage... such as:

- (a) Physical or mental harm;
- (b) Lost opportunities, including employment, education and social benefits;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Moral damage;
- (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services”.<sup>14</sup>

23. The IACtHR considered in a case of enforced disappearance, that “it is appropriate to fix the payment of ‘fair compensation’ in sufficiently broad terms in order to compensate, to the extent possible, for the loss suffered.”<sup>15</sup> According to the Court, compensation may include loss of earnings- for instance as a result of an enforced disappearance-, as well as costs incurred by family members to find the whereabouts of the disappeared.<sup>16</sup> Other losses to be covered can include loss of opportunities, including education, and damage suffered to one’s life plan. According to the IACtHR, the life plan is akin to “personal fulfilment, which in turn is based on the options that an individual may have for leading his life and achieving the goal that he sets for himself... . Those options, in themselves, have an important existential value. Hence their elimination or curtailment objectively abridges freedom and constitutes the loss of a valuable asset, a loss that this Court cannot disregard.”<sup>17</sup>
24. Below, the Authors set out an estimate of the financial losses they have suffered to indicate what would amount to an appropriate sum of compensation. From this, the amount of interim relief they have already received (currently NPR 100,000, with NPR 100,000 more promised) should be deducted.<sup>18</sup> The total figures are set out in summary in **Appendix Three**. The Authors submit that this estimate should serve as a baseline for the State Party when assessing the amount of compensation due to the Authors.

#### IV.1. Compensation for financial losses

##### *IV.1.1. In respect of the disappeared persons*

25. Each of the disappeared young persons had their life cut short by the actions of the state party’s agents, depriving them and their dependants of a lifetime of earnings. At the time of the disappearance some of the young people were working and some

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<sup>14</sup> Basic Principles, Principle 20.

<sup>15</sup> Inter-American Court of Human Rights, *Velasquez Rodriguez v Honduras*, Judgment of 17 August 1990 (Interpretation of the Judgment of Reparations and Costs), para. 27.

<sup>16</sup> IACtHR, *Case of the 19 Merchants v Colombia*, Judgment of 5 July 2004 (Merits, Reparations and Costs), paras. 240-242.

<sup>17</sup> See IACtHR, *Loayza Tamayo v Peru*, Judgment (Reparations), 27 November 1998, para. 150.

<sup>18</sup> On 1 June 2007, the Supreme Court of the State Party issued a judgment in which it ordered the Government, *inter alia*, to provide all families, including the Authors in the present case, with 100,000 Nepalese rupees (approximately \$1,420 USD at the time), which the Authors had received; see para. 2.14 of the Committee’s decision in the present case.

were students. A number of the students had plans for further study and to go on to more formal employment. A number of them were already breadwinners for their families, while others were shortly expected to contribute to or provide the family income.

26. As set out in the Basic Principles the victims' loss of earnings over their expected working life should be compensated. For those who were working at the time this could be calculated on their actual earnings, however, this does not take into account the fact that so early in their working life there was significant potential for increased earnings and development into more lucrative employment. For those who were students, it is not possible to use a figure of existing earnings, and it is important to consider that a number of them had plans for further study. For example, according to the parents of Kamala Tharu, who had invested significantly in her education, she planned to continue to higher study and to become a high level officer, and to support her parents and the education of her brothers and sister with her wages. Similarly Lauti Tharu planned to undertake training in sewing and to open her own tailoring shop. Chillu Tharu intended to go onto further study and to obtain a professional job. Raghu Lal Tharu was working in the furniture industry and was planning to one day open his own furniture shop. Mohgu Tharu was working and earning approximately NPR 15,000 per month, and his dream was to become a carpenter and to own his own shop.
27. The Authors therefore suggest that an appropriate approach to calculate the financial losses of the disappeared person could be to adopt a basic average earnings figure to be applied to all of the disappeared young people. Accordingly, the Authors have taken the government's own minimum wage of NPR 9,700 per month to calculate a figure for each of the disappeared young people over the course of their working lives.<sup>19</sup> This does not reflect the actual loss, which would likely have been much higher (for example, at the time of disappearance Mohan Tharu earned 15,000 per month, and it is likely that many of the young people would have gone on to earn much more than the minimum wage), but is a symbolic recognition of the loss suffered.
28. A table is attached as Appendix One showing calculations of lost earnings for each of the disappeared young people on this basis. This figure has been calculated with a discount rate of 15% to reflect the fact that it would be made in a lump sum.

#### *IV.1.2. In respect of the Authors*

- (a) *Reimbursement of expenses of the search and efforts to obtain justice, including lost wages*
29. The State Party officials' refusal to reveal the whereabouts of the missing young people led their families to spend years and a great deal of money searching for them, by travelling to different areas where they may have been held, to government offices to seek information, to the courts and to temples and Guruwas (witch doctors) for information. This also meant that in some cases they were not able to work and lost their own livelihoods. For example, the Authors have recorded the following:

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<sup>19</sup> Note that this is in line with, for example, the amount that Prem Prakash Tharu earned at the time of his disappearance as a tractor driver (NPR 8,000 per month plus food).

- Parents of Kamala Tharu – spent six months searching for their daughter and around NPR 250,000.
- Wife of Prem Prakash Tharu – spent one year searching for her husband and around NPR 100,000.
- Parents of Dhani Ram and Soni Ram Tharu – spent approximately NPR 250,000 in the search, including transportation, lost earnings and visits to temples, sacrifices and Guruwa.
- Parents of Chillu Tharu – visited numerous government offices, temples, and Guruwas in the search for their son and spent approximately NPR 270,000, including lost wages.
- Father of Lauti Tharu- spent around two years travelling from place to place seeking the whereabouts of his daughter, meaning that he could not work to support his family. This amounted to expenses of approximately NPR 360,000 for the search and lost earnings for 2 years.
- Father of Mohan Tharu- spent around NPR 100,000 for the legal battle and NPR 150,000 for Guruwa, temples, worship.
- Parents of Raghu Lal Tharu - spent around NPR 150,000 searching for their son and lost NPR 365,000 in earnings.

*(b) Reimbursement of medical expenses*

30. Similarly, many of the Authors have suffered significant medical and psychological injuries arising out of the disappearance of their loved ones, and have spent large sums of money for treatment of these. For example:

- Wife of Prem Prakash Tharu stated that she fell sick following the disappearance of her husband, which also included a gradual loss of her vision. She cannot see properly today, and is suffering from low blood pressure. She stated that she spent around NPR 70,000 to 80,000 on medical treatment following her husband's disappearance.
- Parents of Dhani Ram and Soni Ram Tharu – spent approximately NPR 50,000 on medical treatment.
- Parents of Chillu Tharu – have spent more than NPR 100,000 on medical and psychological treatment.
- Father of Lauti Tharu stated that since his daughter's disappearance he is suffering from dizziness and other physical and mental problems, and that he spent around NPR 100,000 for his treatment.
- Father of Mohan Tharu stated that when the soldiers were taking his son, his late wife tried to stop them. A soldier then beat her with his rifle butt,



causing physical injury. He spent around NPR 50,000 for her treatment. His wife died shortly after her son's disappearance.

- Parents of Raghu Lal Tharu stated that they had to spend around NPR 30-35,000 for the treatment of injuries caused by soldiers who had beaten Rahu Lal Tharu's mother with rifle butts on the shoulder of her right arm. As a result, she spends approximately NPR 300 (and sometimes more) per month on medical expenses. The parents estimate that they spent more than NPR 150,000 on medical and psychological treatment.

*(c) Compensation for lost opportunities*

31. The UN Basic Principles highlight that compensation should include lost opportunities, including education, which is also reflected in the jurisprudence of human rights bodies. The Inter-American Court for instance has considered that the loss of educational opportunities must be addressed so as to ensure that victims receive compensation to be able to study.<sup>20</sup>

32. The consultation with the Authors highlighted that the disappearance of the young persons had an impact not just on the victims' parents, but also on the ability of the victims' children (where applicable) and their brothers and sisters to benefit from further education. Prem Prakash Tharu's son was only 18 months old at the time of his father's disappearance and is now 15; the loss of his father meant the loss of the only breadwinner in the family, and his mother does not have resources to provide for further study. Similarly, Mohan Tharu's son was only 9 days old at the time of the disappearance and his grandfather has had to take loans to pay for his education. Prior to her disappearance, Kamala Tharu intended to carry out further studies and to obtain a job paying enough to support the education of her brothers and her sister. Raghu Lal Tharu planned to establish a furniture shop and to earn enough to send his brother to a good school. After the disappearance, Raghu Lal's younger siblings were forced to leave school. Similarly, after the disappearance of Dhani Ram and Soni Ram, their younger brother Rabram was forced to discontinue his education because of lack of funds, and his younger sister Bal Kumari had to work as a bonded labourer rather than studying.

33. The Authors submit that appropriate compensation includes provision of educational scholarships to the level of higher education for the children and siblings of the disappeared persons to enable them to be reintegrated into society.

IV.2. Compensation for pain and suffering

34. The UN Basic Principles provide that compensation should also cover moral damages or non-material loss as a result of the human rights violation. Moral damages are meant to compensate for harm, pain and suffering, including mental anguish and a sense of injustice. The right to compensation for pain and suffering is also well-established in the jurisprudence of human rights bodies. The IACtHR for instance considers that non-material injury consists of the "suffering and the harm

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<sup>20</sup> IACtHR, *Aloeboetoe v Suriname*, Judgment (Reparation and Costs), 10 September 1993, para. 96; the Court held further that victims not only require compensation, but that further a school should be made available for the children, and ordered that the State should re-open the local school and employ teachers and administrative personnel.

caused to the direct victims and their relatives, the erosion of values of great significance to people, as well as the alterations of a non-pecuniary nature, in the living conditions of the victim or the victim's family."<sup>21</sup> According to the Court, such pain and suffering is evident "as it is in accordance with human nature for any person subjected to brutal acts... to feel deep suffering, moral anguish, terror, and insecurity."<sup>22</sup> Accordingly, where the Court has found that an individual has suffered gross human rights violations such as those in this communication, there is no need for evidence of damage.

35. In determining the amount of compensation for pain and suffering, human rights bodies apply principles of equity, taking into account the severity of the violation, the degree of suffering, the characteristics of the victim (including age, gender and health). In cases of enforced disappearances, the family link with the disappeared person may also be factored into the calculation of the compensation required to address the pain and suffering, as will be the authorities' efforts to investigate and prosecute those responsible for the enforced disappearance.<sup>23</sup> The Inter-American Court has awarded up to USD \$ 100,000.00 in favor of a disappeared person who was never found (and who had been pregnant at the time of her disappearance), and up to USD \$ 80,000.00 in favour of the next of kin (in this case, her daughter).<sup>24</sup> In another case, where the bodies of the disappeared persons had eventually been found, revealing signs of severe torture and ill-treatment prior to their death, the Court awarded \$ 80,000.00 USD in favour of the disappeared persons, and \$50,000.00 to their 'direct' next of kin (children, spouses, parents) and \$8,500.00 USD to their 'indirect' next of kin (siblings).<sup>25</sup>
36. The Committee has in the present communication found that the State Party violated the eight disappeared persons' right to life (Art. 6(1)), right to liberty (Art. 9), right to be free from torture and other ill-treatment (Art. 7) and right to legal personality (Art. 16). The disappeared were never seen again following their disappearance in the night of 11 April 2002, and their fate remains unclear. In addition, as outlined in the complaint, several of the young disappeared persons were below the age of eighteen at the time of their disappearance, and thus entitled to additional protection, which the State Party failed to provide. The Authors therefore suggest that an appropriate approach to determine the pain and suffering of the eight disappeared persons could be to take into account the State Party's failure to provide the truth about what happened to the eight victims more than fourteen years ago, as well as their age at the time of their disappearance and the circumstances of their disappearance (see below, para. 33).
37. The Committee furthermore found the State party responsible for a violation of the Authors' rights under Articles 7 and 2 (3) ICCPR. The Committee considered that the State Party has failed to provide the Authors with clarity about the fate of their loved ones, to investigate and prosecute those responsible. This failure, and the corresponding uncertainty, is currently ongoing, creating tensions within the families, frustration, anguish, anxiety and a feeling of powerlessness. In assessing

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<sup>21</sup> IACtHR, *Guilherme Gomes Lund v Brazil*, Judgment of 24 November 2010, para. 305.

<sup>22</sup> IACtHR, *Mapiripan Massacre v Colombia*, Judgment (Merits, Reparations and Costs), 15 September 2005, para. 248.

<sup>23</sup> *Ibid.*, para. 249.

<sup>24</sup> IACtHR, *Case Gelman v Uruguay*, Judgment of 24 February 2011 (Merits and Reparations), paras. 294-296).

<sup>25</sup> IACtHR, *Mapiripan Massacre v Colombia*, Judgment (Merits, Reparations and Costs), 15 September 2005, para. 250.

the amount of compensation for the pain and suffering caused to the Authors, it is furthermore important to recall the circumstances of the disappearances in the present case, as also set out in the complaint (see paras. 21-72). Groups of two to five armed soldiers broke into the Authors' houses between the hours of midnight and 2am, carrying torches and weapons, taking the victims by force and despite the protests of their families. They did not provide information why the victims were taken, and generally did not disclose where they would be taken to. The Authors saw their children and siblings respectively being taken. In several cases, the soldiers threatened the Authors with their weapons. The soldiers also threatened and beat the mothers of Radhulal and Mohan with a rifle and gun respectively when they tried to prevent their children from being dragged out of the house.

38. Against this background, and taking into account the jurisprudence of other human rights bodies in the context of enforced disappearances, the Authors suggest that an appropriate amount of compensation for pain and suffering caused to the young disappeared persons would be NPR 4,000,000. Regarding the next of kin, the Authors suggest that an appropriate amount of compensation for their own pain and suffering should be fixed at NPR 3,000,000 for each of the Authors.

#### **V. Measures of satisfaction**

The Committee also requires the State Party to provide "appropriate measures of satisfaction" to the Authors. The UN Basic Principles, as well as the UN Committee Against Torture's General Comment No. 3 provide for a list of measures that States should take so as to provide satisfaction to victims.<sup>26</sup> Accordingly, measures of satisfaction include key components of justice for victims, such as public acknowledgement of wrongdoing, truth and accountability. Measures aimed at revealing the truth of the human rights violations and accountability thereof are key components of the right to satisfaction. The right to know the truth also forms part and parcel of the jurisprudence of human rights bodies, in particular in cases involving enforced disappearances. It is also enshrined in Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>27</sup>

39. During the consultations, the Authors underlined that the most important measures of satisfaction are a thorough investigation, revelation of the truth of what happened to the their loved ones, location and return of remains if found to have been killed, and prosecution and punishment of those responsible. According to the Authors, without these steps any other reparation is token only.
40. In addition, some of the Authors emphasised that it would be important for the State Party to take symbolic steps to recognise the disappearance of their loved ones and to respect their memory, including, for example by a public apology made by an appropriate state official and any person found guilty of the crimes, the commissioning of a sculpture or statue in their memory, and the establishment of a scholarship to remember them.

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<sup>26</sup> See for instance UN CAT General Comment No. 3, paras. 16-17; UN Basic Principles, Principle 22.

<sup>27</sup> International Convention for the Protection of All Persons from Enforced Disappearance, UN Doc. A/61/448, 20 December 2006, entry into force 23 December 2010.

41. The Authors seek to open a dialogue with the official responsible for coordination of reparation to consult further on the commissioning of appropriate ways to publicly honour the memory of the Authors' disappeared loved ones, including consideration of a memorial, and scholarship established in their loved one's memory.

## **VI. Guarantees of non-repetition**

42. The Committee further stated that Nepal "is also under an obligation to take steps to prevent similar violations in the future. In particular, the State party should ensure that its legislation allows for the criminal prosecution of those responsible for serious human rights violations such as torture, extrajudicial execution and enforced disappearance"
43. The Authors request an update from the Prime Minister's Office, through the official responsible for coordination of reparation, on progress towards:
- enactment of the Torture Act;
  - criminalisation of extrajudicial execution and enforced disappearance;
  - removal of official immunities that may otherwise be applicable to any such crimes; and
  - criminalisation of war crimes and crimes against humanity.

## Appendix One: Examples of physical and mental harms suffered by the Authors<sup>28</sup>

Parents of Kamala Tharu	Suffering from mental problems, including crying and particular difficulties at festival times.
Wife of Prem Prakash Tharu	Fell sick after the disappearance and suffered a gradual loss of vision and low blood pressure.
Parents of Dhani Ram and Soni Ram Tharu	Has caused difficulties within the household and mental anguish.
Parents of Chillu Tharu	After the disappearance the family members have been suffering from mental anguish, and had trouble eating and working. Chillu's father suffers from high blood pressure that requires ongoing medication.
Father of Lauti Tharu	Has been suffering from dizziness and other physical and mental problems. The family suffered a lot of mental pain and on-going tension, and Mr Lauti Tharu highlighted that the disappearance was particularly hard for him as it was his youngest daughter who had been disappeared.
Father of Mohan Tharu	Has suffered from both medical and psychological problems. Mohan's mother died shortly after his disappearance and his daughter-in-law remarried so now Mohan's father is raising his 'orphan' grandson – causing huge pain and stress on the father.
Parents of Raghu Lal Tharu	At the time the soldiers arrested their son, the army beat both parents with rifle butts, requiring treatment, and the mother still requires treatment for her shoulder and chest. The son is missed in particular during the festival times where the family cry a lot and also due to his memories they cannot concentrate on work at all some days.

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<sup>28</sup> These examples are based on interviews carried out by Advocacy Forum with the Authors on the basis of a questionnaire. Further information about harm suffered may come to light once the State Party carries out a full assessment of all losses.

## Appendix Two: Calculation of Lost Earnings

Based on the Nepal Minimum wage of NPR 9,700 per month (NPR 126,100 per year), as set out in the Labor Act 1992 (2048), and amended by notices in Nepal Gazette Part 5, Volume 63, Number 43, dated 1 February 2016 (2072-10-18). This has been discounted at a rate of 15% to reflect the fact that the payment would be made in one lump sum and that other events may have intervened.

<b>Name of the Disappeared</b>	<b>Age<sup>29</sup></b>	<b>Years of earning</b>	<b>Compensation for earning</b>	<b>Discounted value (15%)</b>
Dhaniram Tharu	18 years old	42	5,296,200 NPR	4,501,770 NPR
Soniram Tharu	16 years old	44	5,548,400 NPR	4,716,140 NPR
Radhu Lal Tharu	19 years old	41	5,170,100 NPR	4,394,585 NPR
Prem Prakash Tharu	23 years old	37	4,665,700 NPR	3,965,845 NPR
Kamala Tharu	16 years old	44	5,548,400 NPR	4,716,140 NPR
Mohan Tharu	18 years old	42	5,296,200 NPR	4,501,770 NPR
Lauti Tharu	18 years old	42	5,296,200 NPR	4,501,770 NPR
Chillu Tharu	16 years old	44	5,548,400 NPR	4,716,140 NPR

<sup>29</sup> Note that where age of the disappeared person is not certain the higher age range has been used.

**Appendix Three: Summary of Losses for Consideration of Appropriate Compensation<sup>30</sup>**

Disappeared Person	Disappeared person		Family of the Disappeared person			TOTAL
	Loss of earnings	Pain and suffering	Expenses of search and legal action	Past medical and psychological expenses	Pain and Suffering	
Dhaniram Tharu	4,501,770	4,000,000	125,000 (half of 250,000)	25,000 (half of 50,000)	Chhedulal Tharu: 3,000,000 Sara/Sarita Tharu: 3,000,000	14,651,770
Soniram Tharu	4,716,140	4,000,000	125,000 (half of 250,000)	25,000 (half of 50,000)	Chhedulal Tharu: 3,000,000	11,866,140
Radhu Lal Tharu	4,394,585	4,000,000	515,000	150,000	Padam Tharu: 3,000,000 Sanchariya Tharu: 3,000,000	14,924,585
Prem Prakash Tharu	3,965,845	4,000,000	100,000	70,000	Bribal Tharu: 3,000,000 Thagani Tharu: 3,000,000 Bhagawati Tharu: 3,000,000	17,135,845

<sup>30</sup> The below figures are based on interviews carried out by Advocacy Forum with the Authors on the basis of a questionnaire. Further information about losses may come to light once the State Party carries out a full assessment of all losses.

Kamala Tharu	4,716,140	4,000,000	250,000	N/A	Tulsiram Tharu: 3,000,000 Phagani Tharu: 3,000,000	14,966,140
Mohan Tharu	4,501,770	4,000,000	250,000	50,000	Mahango Tharu: 3,000,000 Parmeshwari Tharu: 3,000,000	14,801,770
Lauti Tharu	4,501,770	4,000,000	360,000	100,000	Jaggu Tharu: 3,000,000 Lahiya Tharu: 3,000,000	14,961,770
Chillu Tharu	4,716,140	4,000,000	270,000	100,000	Bechaniya Tharu: 3,000,000 Manki Tharu: 3,000,000	15,086,140