**Basnet and Basnet v. Nepal**

**Summary and Outcome**

The UN Human Rights Committee unanimously found that a journalist suffered the most egregious breaches of his human rights under the International Covenant on Civil and Political Rights (ICCPR).

A journalist who is a human rights lawyer and founder of a newspaper was 2004 detained unlawfully, beaten, and threatened with inadequate housing, sustenance and incommunicado in a military barracks for over eight months. His cousin's strenuous efforts to find him without success forced him to take over the latter's leadership role in the family.

The UN Human Rights Committee held that the Applicants' various human rights, such as to be free of torture, liberty and security of the person, to be treated with humanity and respect while in detention, to an effective remedy and other rights were violated. The Committee concluded that he had been illegally detained by the army, while the police and Ministry of Home Affairs had refused to acknowledge the arrest. The NHRC recommended that the State pay the first Author compensation of NPR 50,000 and carry out an investigation and sanction those responsible for these abuses.

**Facts**

On 4 February 2004, three individuals wearing Army uniforms approached the Journalist outside his home. He was blindfolded and taken by force to a local army barracks. They questioned him about Maoist activities and movements (in the context of an internal armed conflict in Nepal between government and Maoist forces) upon his arrival at the barrack. He was threatened with death, beaten with bamboo sticks and plastic pipes, and submerged in water when he denied knowing these matters. These abuses continued for several days. During the entire 258 days of his detention, they kept him in inhuman conditions, including being housed in a tent with holes in the roof and inadequate bedding during sub-zero temperature weather and only provided with small quantities of very sub-standard food. The soldiers prevented him from having contact with his family or anyone else. During the visit National Human Rights Commission (NHRC) and the International Committee of the Red Cross (ICRC) officials, the Journalist, along with other detainees, were hidden in different areas of the barracks to avoid being seen. In addition, he continued to suffer from medical ailments while in detention.

The Journalist made a phone call to a co-worker about his plight on the first night of his detention, and they blocked access to his phone thereafter. The co-worker then informed his family, the second Applicant, about the situation. The second Applicant, the Journalist's cousin, visited several organizations and authorities to discover his whereabouts without success. However, the second Applicant met with former detainees from the barracks who confirmed that his cousin was being held there. The second Applicant met with senior military and police officials who refused to provide him with any information about his cousin and threatened him. Eventually, he managed to get into the barracks through a friend who was in the army, where he met the Journalist. The latter was released a couple of weeks later, but only upon signing a document that he had been detained for 90 days.

During the period of detention, a third-party lawyer, of his motion (the case had been publicized in the media), approached the Supreme Court with a writ of *habeas corpus* (a judge order directing the army officials to produce the person in their custody). The army officials told the Court that the Journalist was not in military detention.

Following his release, the Journalist tried to submit a contempt of court petition against various actors for lying about his detention to the Supreme Court, but the Supreme Court blocked this application on technical grounds. He also filed a petition before the Supreme Court asking it to order the government to conduct an independent, high-level judicial investigation into disappearances at the barracks where he had been held (specifically, a writ of mandamus). This, too, was blocked on essentially technically grounds.

The Journalist then filed a complaint with the UN Human Rights Committee alleging violations of Article 7 (rights to be free of torture), Article 9 (to liberty and security of the person, and Article 10 (to be treated with humanity and respect while in detention), Article 16 (to be recognized as a person before the law), Article 2(3) to an effective remedy and in conjunction with the other breaches of the International Covenant on Civil and Political Rights. The second Applicant alleges violations of Article 7 (rights to be free of torture) and Article 2(3) (to an effective remedy) in conjunction with the breach of the ICCPR.

**Decision Overview**

The main issue for the Committee's determination is Whether the Army breached the Journalist's various human rights as set out above.

As a preliminary matter, the Committee had to assess whether the Communication was admissible. The State claimed that domestic remedies had not been exhausted because the first Author could still claim the NPR 50,000 compensation. That legislation was being put in place to create a truth and reconciliation commission and criminalize enforced disappearances- There was no such legislation when the events giving rise to the Communication took place. Ten years after the Authors had first requested it, the Committee noted that the State had not investigated these events. Furthermore, for cases involving allegations of serious human rights breaches, such as this case, a judicial remedy was required, a condition the (yet to be established) truth and reconciliation commission would not meet. The Committee held that the domestic remedies had effectively been exhausted and the Communication admissible.

Regarding the merits of the Communication, the Committee accepted the Applicants' allegations, as set out above, in part because the State party did not contest them and in part due to corroborating evidence.

The NHRC held a breach of Article 7 of the ICCPR, which prohibits torture and "cruel, inhuman or degrading treatment or punishment, because the facts disclosed evidence that the Journalist was subjected to an enforced disappearance which, in itself, was a form of torture. The treatment he received while in detention also represented acts of torture. It also held that the "anguish and distress" caused to the second Applicant and the fact that he had to take over as head of the family, as evidenced, among other things, by the extensive efforts he made to find his cousin, represented a breach of Article 7.

The Committee easily found that the enforced disappearance represented a breach of the Journalist's rights under Article 9 of the ICCPR-right to liberty and security of the person and to be free of arbitrary arrest and detention. Similarly, the treatment he received in detention and his detention had been "incommunicado" represented a breach of Article 10 of the ICCPR-being treated humanely and with respect for one's dignity while in detention. Similarly, the Committee held a violation of Article 16 of the ICCPR, the removal of the Journalist by state actors from the protection of the law for an extended period, constituted a refusal of recognition as a person before the law.

The Committee analyzed the breach of Article 2(3), which protects the right to accessible, effective and enforceable remedies, noting that the mere failure to investigate alleged violations could constitute a breach of this right. It clarified that neither the Journalist had access to an effective remedy nor any investigation conducted at the time of the decision, ten years after the events in question took place. The Committee also stated outrightly that the award of NPR 50,000 in compensation, itself never actually realized in practice, did not commensurate with the gravity of the violations.

The Committee held further that the State party was under an obligation to:

* Conduct a thorough and effective investigation into the facts and prosecute and punish those responsible for the violations.
* Provide the Authors with detailed information about the results of the above.
* Provide “adequate compensation” to the Authors and ensure that they receive “adequate psychological rehabilitation and medical treatment”.
* Provide “appropriate measures of satisfaction”.
* Take steps to prevent similar violations in the future, including ensuring that the actions that constituted the violations concerned are prohibited through the criminal law.

In conclusion, the NHRC recommended that the State pay the Journalist compensation of NPR 50,000 and investigate and sanction those responsible for these abuses.

**Decision Direction**

Technically, this decision did not relate to freedom of expression, no breach of this right was claimed by the Applicants. However, the first Applicant was a journalist, and the violation of other rights was more directly evident based on the facts. As a result, the Committee never examined the freedom of expression issue, even though the overall circumstances suggest that the violations responded to the First Applicant's activities as a journalist. At the same time, the decision could expand freedom of expression, albeit indirectly, since it took a relatively broad view of the rights in question, which could be applied, by analogy, to similar cases involving journalists. In other words, if other journalists were subjected to similar treatment to that meted out to the first Applicant, they could also claim redress for breach of the rights raised in this case.