**Basnet and Basnet v. Nepal**

**Summary and Outcome**

The Authors did not claim a breach of the right to freedom of expression in this case although the first Author, who was found to have suffered the most egregious breaches of his human rights, was a journalist and founder of a newspaper, as well as a human rights lawyer. The first Author was detained incommunicado at a military barracks for over eight months in 2004 during which period he was beaten and threatened, and provided with inadequate housing and sustenance. The case did not probe into the reasons behind this treatment, but the facts suggest that it likely had something to do with his work as a journalist and human rights lawyer. The second Author made strenuous efforts to find the first Author, his cousin, without success, and was forced to take over the latter’s leadership role in the family. The UN Human Rights Committee found a breach of the first Author’s rights to be free of torture (Article 7 of the *International Covenant on Civil and Political Rights*, ICCPR), to liberty and security of the person (Article 9), to be treated with humanity and respect while in detention (Article 10), to be recognized as a person before the law (Article 16) and to an effective remedy (Article 2(3) in conjunction with the other breaches). It also found a breach of the second Author’s rights to be free of torture (Article 7) and to an effective remedy (Article 2(3) in conjunction with the breach of Article 7).

**Facts**

On 4 February 2004, the first Author was approached outside of his home by three individuals wearing Army uniforms, blindfolded and taken by force to a local army barracks. Upon arrival, he was questioned about Maoist activities and movements (in the context of an internal armed conflict in Nepal between government and Maoist forces). When he denied having any knowledge of these matters, he was threatened, including with death, beaten with bamboo sticks and plastic pipes, and had his head submerged in water. These abuses continued for several days. During the entire 258 days of his detention, he was kept in inhuman conditions, including being housed in a tent with holes in the roof and inadequate bedding during sub-zero temperature weather and being provided with only small quantities of very sub-standard food. He was also prevented from having contact with his family or anyone else on the outside for nearly the whole period. During visits to the barracks by the National Human Rights Commission (NHRC) and International Committee of the Red Cross (ICRC), the first Author, along with other detainees, was hidden in different areas of the barracks to avoid being seen. Following his detention, he continued to suffer from medical aliments.

On the first night of his detention, the first Author managed to make a phone call to a co-worker to let the latter know of his plight, following which access to his phone was blocked. The co-worker then informed the first Author’s family about the situation. The second Author, the first Author’s cousin, visited several organizations and authorities to try to discover the whereabouts of the first Author, without success, although the second Author did manage to meet with former detainees from the barracks who confirmed that his cousin was being held there. As part of this, the second Author met with senior military and police officials who refused to provide him with any information about his cousin and, instead, threatened him. The second Author eventually managed to get into the barracks, through the intervention of a friend who was in the army, and meet the first Author. The latter was released a couple of weeks later, but only upon signing a document to the effect that he had only been detained for 90 days.

During the period of detention, a third-party lawyer, of his own motion (the case had been publicized in the media), approached the Supreme Court with a writ of *habeas corpus* in relation to the first Author, following which army officials told the Court that the latter was not in military detention. Following his release, the first Author filed a complaint with the NHRC, which concluded, in January 2005, 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. By the time of the HRC decision, some ten years after the release of the first Author from detention, neither of these recommendations had been complied with. The first Author also tried to submit a contempt of court petition against various actors for lying about his detention to the Supreme Court, but this application was blocked by the Supreme Court 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.

**Decision Overview**

The decision, or Views, of the Human Rights Committee in this was unanimous. As a preliminary matter, the Committee had to assess whether the Communication was admissible, as the State claimed that domestic remedies had not been exhausted on the basis that the first Author could still claim the NPR 50,000 compensation and that legislation was being put in place to create a truth and reconciliation commission and to criminalize enforced disappearances (which had not been the case when the events giving rise to the Communication had taken place). The Committee noted that, ten years after the Authors had first requested it, no investigation had yet been undertaken into these events. Furthermore, for cases involving allegations of serious human rights breaches, such as this case, a judicial remedy was required, which condition the (yet to be established) truth and reconciliation commission would not meet. As such, domestic remedies had effectively been exhausted and the Communication was admissible.

In terms of the merits of the Communication, the Committee accepted the main allegations of the Authors, as set out above, in part because the State party did not contest them and in part due to corroborating evidence. It held that the facts disclosed evidence that the first Author was the subject of an enforced disappearance which, of itself, was a form of torture, while the treatment he had received while in detention also represented acts of torture, so that his rights under Article 7 of the ICCPR had been breached. It also held that the “anguish and distress” caused to the second Author, as well as 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 (which prohibits not only torture but also “cruel, inhuman or degrading treatment or punishment”).

The Committee easily found that the enforced disappearance represented a breach of the first Author’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 the first Author received in detention, along with the fact that 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 that the removal of a person by State actors from the protection of the law for a long period of time, as had happened to the first Author, constituted a refusal of recognition as a person before the law, and thus a breach of Article 16 of the ICCPR.

The Committee spent some time analyzing the claimed 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 itself constitute a breach of this right. It was reasonably clear that neither Author had access to an effective remedy, with no investigation having been conducted by the time of the decision, ten years after the events in question took place. The Committee also stated outright that the award of NPR 50,000 in compensation, itself never actually realized in practice, was in any case not commensurate with the gravity of the violations.

The Committee was fairly expansive in terms of the remedies it ordered, indicating 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 by ensuring that the actions which constituted the violations concerned are prohibited through the criminal law.

**Decision Direction**

Technically, this decision did not concern freedom of expression since, although the first Author was a journalist, no breach of this right was claimed by the Authors, perhaps because breach of other rights was more directly evident based on the facts. As a result, the Committee never examined this issue, even though the overall circumstances do suggest that the violations were in fact in response to the first Author’s activities as a journalist. At the same time, the decision could be said to expand freedom of expression, albeit indirectly, inasmuch as it took a fairly 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 Author, they could also claim redress for breach of the rights raised in this case.