CCPR/C/112/D/2051/2011

Basnet and Basnet v. Nepal

Violation of article 7 for the distress suffered by the cousin of an individual forcibly disappeared

Substantive Issues
- Enforced disappearance

Relevant Articles
- Art. 2 (3) in conjunction with art. 7, 9, 10 and 16
- Art. 7
- Art. 9
- Art. 10
- Art. 16 a
- Art. 2 Optional Protocol
- Art. 5 Optional Protocol

Violations
- Art. 2 (3) read in conjunction with art. 7, 9, 10 (1), and 16
- Art. 7
- Art. 9
- Art. 10 (1)
- Art. 16

Facts
The authors, a journalist (J.M Basnet) and his cousin (T.B Basnet), both of Nepalese nationality, claim that the victim (J.M Basnet) was arrested by three people in army uniform and disappeared for 258 days. During his time in detention, the victim was severely ill-treated, held in inhuman conditions, and tortured and was deprived of all contact with relatives and access to legal assistance. The physical torture is confirmed by a medical report. After his release, he tried to obtain legal acknowledgement of what had happened to him as well as adequate compensation. Despite filing numerous requests, these attempts have not been successful. The National Human Rights Institution investigated and found he had been illegally detained and subject to torture and recommended the authorities investigate and prosecute those responsible and provide compensation but at the time of the commission no action had been taken.

The authors invoke a violation of article 7 with regard to the severe ill-treatment and torture during the detention of the victim. Furthermore, they alleged the incommunicado detention amounts to violations of articles 2 (3), 7, 9, 10 (1), and 16 of the Covenant. With regard to the second author, the cousin of the victim, they claim that Nepal violated his rights under article 7 read in conjunction with article 2 (3), due to the anguish and distress that he suffered during the period his cousin was missing.

Committee’s View
Consideration of admissibility
The Committee considers that the facts presented by the authors with regard to the cousin of the victim are sufficiently substantiated for purposes of admissibility. With regard to the exhaustion of local remedies, it notes the state party’s argument that the victim could have addressed his claim to the transitional justice mechanisms and
claimed 50,000 rupees for his detention and torture but finds that a mere monetary compensation is not sufficient for severe violations judicial remedies are required and transitional justice mechanisms are not judicial organs. The Commission therefore finds the case admissible.

**Consideration of merits**
The Committee finds that Nepal has violated the author’s right to article 7, through his enforced disappearance. With regard to his cousin, the Committee also found article 7 was violated as both authors not only entertain a formal family link, but also a very close relationship as they grew up as one family. In addition during the author’s detention, his cousin had been required to provide for the disappeared victim's family.

The incommunicado detention amounts to a violation of the articles 9, 10 (1), and 16 of the Covenant. The Committee furthermore concludes in finding violations of article 2 (3), in conjunction with articles 7, 9, 10 (1) and 16 with regard to the detained author and of article 2 (3) in conjunction with article 7 with regard to his cousin. In particular, it the Commission finds the monetary sum offered by the State party inadequate and not commensurate to the serious violations inflicted. The Committee gave recommendations similar but less detailed than those suggested by the authors.

**Recommendation**
The Human Rights Committee therefore decided the state party is required to:

a. Provide the authors with an effective remedy, including by conducting a thorough and effective investigation into the disappearance of the victim; and prosecuting, trying and punishing those responsible for the violations committed;

b. Provide the authors with detailed information about the results of its investigation;

c. Provide adequate compensation to the authors for the violations suffered;

d. Ensure that the necessary and adequate psychological rehabilitation and medical treatment is provided to the authors; and

e. Provide adequate measures of compensation.

f. Take steps to prevent similar violations in the future.

g. Ensure its legislation allows criminal prosecution on the facts that constituted a violation of the Covenant.

**Deadline to Submit the Report on the Implementation of the Recommendations**

180 days from the adoption of the views: 29 March 2015