

[Detention and disappearance of Nepalese National violates International Covenant on Civil and Political Rights](#)

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Katwal v. Nepal (2000/2010)

Summary

In April 2015, the Human Rights Committee was asked to consider whether Nepal had violated its obligations under the International Covenant on Civil and Political Rights in connection with the detention and disappearance of a Nepalese national.

The communication was submitted by the victim's wife, Yuba Kumari Katwal, on behalf of herself and her missing husband, Chakra Bahadur Katwal.

Background

On 13 December 2001, Mr Katwal was summoned to the office of the Chief District Officer, who ordered him to be placed in detention. He was then transferred to army barracks in Okhaldhunga.

On the following day, witnesses saw Mr Katwal unconscious and in blood-stained clothes, being carried by security officers.

After numerous attempts, the author was unable to discover the location of her husband as none of the authorities that she had contacted would acknowledge responsibility for his arrest.

In December 2005, the author was arrested by a group of soldiers near Jhapre and retained in custody for 13 days, where she was interrogated with the use of physical force regarding her and her daughter's alleged involvement with Maoists. The injuries that the author sustained over the course of her detention continued to cause her pain and prevent her from working to her full capacity at the time of submission of the communication.

In July 2005, Mr Katwal's daughter instructed a lawyer in Kathmandu to file a claim regarding Mr Katwal's disappearance as part of a joint submission relating to further alleged disappearances.

On 20 August 2006, a Prisoner Investigation Team was established by the Supreme Court of Nepal investigate Mr Katwal's disappearance.

In its report, the Prisoner Investigation Team confirmed that Mr Katwal had been tortured by security personnel and had died in detention as a result of this torture on 16 December 2001, three days after his arrest.

Upon consideration of the Prisoner Investigation Team's report, the Supreme Court ordered an investigation and subsequent prosecution of those responsible for the death and torture of Mr Katwal. The Court also ordered the immediate payment of compensation to the author.

At the time of the communication, no prosecution of responsible individuals had taken place and the author

had received only a portion of the expense that she has incurred pursuing her claims before the Nepalese courts (Nr 300,000 out of a total of Nr 730,000).

On 27 October 2010, the author filed this communication with the Committee under the Optional Protocol to the Covenant. She claimed that Nepal had breached her husband's rights to: (i) life; (ii) freedom from cruel and inhuman treatment, (iii) liberty and security of person and freedom from arbitrary detention; (iv) respect for the inherent dignity of the human person while in detention; and (v) recognition as a person before the law (under articles 6(1), 7, 9(1-4), 10 and 16 of the Covenant, respectively). The author also claimed that Nepal had violated her own rights under article 7 of the Covenant.

The Committee's decision

With respect to admissibility, Nepal had argued that the complaint was inadmissible due to a failure by the author to exhaust domestic remedies. Nepal submitted that the court-ordered investigation was still ongoing and that legislation would soon be passed in Nepal to offer the author the chance to present her case in front of two investigative commissions. In response to the legislative measures cited by Nepal, the Committee pointed out that it was not necessary to exhaust non-judicial avenues in order to fulfil the requirements of article 5(2)(b) of the Optional Protocol. With regard to the ongoing criminal investigation, the Committee noted that Nepal had not demonstrated that an effective investigation was being carried out, given that very little information had been revealed in the years since the death of Mr Katwal. The author's claim was therefore deemed admissible.

On the merits, the Committee noted that the allegations raised by the author of her husband's treatment at the hands of the Nepalese authorities had not been refuted by Nepal.

The Committee considered the evidence of the Prisoner Investigation Team and concluded that the killing of Mr Katwal in army custody was a violation of the victim's right to life. The Committee also found that the allegation of severe torture had been confirmed by the Prisoner Investigation Team's investigation. The Committee emphasised the degree of suffering caused by incommunicado detention, and implored States to make provisions to ban this practice.

The Committee also highlighted the gravity of the threats and ill-treatment towards the author, the misleading explanations provided regarding her husband's disappearance and the continuing failure to return her husband's remains. The Committee also noted Nepal's failure to provide reasons for her husband's arrest and observed that her husband had been systematically impeded from accessing judicial remedies during his detention. This was facilitated by the misleading information that had been provided to the author by various State authorities.

In relation to the claim for enforced disappearance, the Committee noted that although the term does not appear expressly in the Covenant, it can be satisfied if an integrated and continuing violation of various Covenant rights is shown. The Committee concluded that Nepal's treatment towards the author's husband met this threshold.

In view of the above, the Committee concluded that Nepal had violated article 2(3) in conjunction with articles 6, 7, 9(1-4) and 16 with regard to the author's husband, and article 2(3) in conjunction with article 7 with regard to the author. Having found a breach of article 7, the Committee found it unnecessary to consider the author's claims under article 10.

In accordance with article 2(3) of the Covenant, the Committee observed that Nepal was under an obligation to: (a) conduct an effective investigation with a view to returning Mr Katwal's remains to his family; (b) prosecute and punish those responsible for the Covenant violations; and (c) provide the author with effective reparations.

Nepal must now submit its written response within six months of the Committee's decision, including information on the action taken in the light of the Committee's recommendations, and ensure that the Committee's decision is published widely.

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