



वकालत मञ्च-नेपाल ADVOCACY FORUM- NEPAL

Lawyers forum for human rights and rule of law

Nepal breached its Treaty Obligations: Human Rights Committee

Directives to the Government of Nepal to provide effective remedy within 180 days

In a decision passed on 12 April 2011, UN Human Rights Committee (UN-HRC) has once again held the government of Nepal responsible for breaching treaty obligations under the International Covenant for Civil and Political Rights (ICCPR).

AF welcomes the decision of the committee and requests government of Nepal to respect the decision and take prompt actions to fulfill its obligation to provide effective remedies by ensuring thorough and diligent investigation into the torture and ill-treatment suffered by torture survivor Yubraj Giri, the prosecution and punishments of those responsible and provide victims and his family with adequate compensation for the violations suffered. In doing so the State is also responsible for ensuring the protection of the victims and his family from possible acts of reprisal or intimidation. The committee has further asked the government of Nepal to submit the progress made in this regard to the committee within 180 days as stated by the committee.

The First Optional Protocol of International Covenant for Civil and Political Rights (ICCPR) allows individuals, whose countries are party to the ICCPR and the protocol, who claim their rights guaranteed by the ICCPR have been breached, and who have exhausted existing domestic legal remedies in the pursuit of justice, can submit written communications to the UN Human Rights Committee (HRC). Nepal is a party to both the ICCPR and its protocol.

On 29 April 2004, between 4 and 5pm, Yubraj Giri was arbitrarily arrested in Laknawar village, Ward No. 7, Kohalpur Village Development Committee, Banke District, Bheri Zone, Nepal by soldiers deployed from the Kalidal Battalion, the then Royal Nepalese Army (RNA), and illegally detained at what was then the Mid-Western Divisional Headquarters of the RNA, i.e. Immamnagar Barracks. The soldiers did not inform Mr. Giri of the reasons for arrest, nor did they inform him of his rights at

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the time of his arrest. At the Immamnagar Army Barracks, he was detained incommunicado in a dark room for almost 13 months (from 29 April 2004 to 12 May 2005). At no point during his detention was the Mr. Giri allowed contacting his family or a lawyer. He was not provided with adequate water, food, bedding, natural light or recreational facilities. RNA soldiers tortured him and subjected him to cruel, inhuman and degrading treatment. On 12 May 2005, victim was transferred by the RNA from the Immamnagar Army Barracks to the Banke District Police Office (“DPO”) in Nepalgunj. On 13 May 2005, on the decision of the Chief District Officer (CDO), he was transferred to the Banke District Jail in Nepalgunj. He was detained in the District Jail for 126 days and was released on 15 September 2005 by order of the Appellate Court in Nepalgunj.

It may be noted that Mr. Rukmangat Katuwal, ex-Chief of Army Staff and the then Regional Army Chief, was in command of the Mid-Western Divisional Headquarters (which included Immamnagar Army Barracks). According to the victim, Mr. Katuwal used to take rounds of the barracks in the morning and the evening and whenever he walked very close to the medical detention room, where Mr. Giri was kept, the sentries would make sure that the victim's blindfold was secured properly.

In the HRC submission, the author had demanded investigation and punishment to all superior officers involved in the torture, including Rukmangat Katuwal under the doctrine of command responsibility.

As all the existing legal provisions of Nepal were exhausted, Mr. Giri, with the legal assistance from AF, had submitted the case to the UN-HRC on 14 January 2008. It may be noted that AF is the first organization in Nepal to use individual complaint mechanism under the First Optional Protocol of International Covenant for Civil and Political Rights (ICCPR), assisting victims of human rights violations to access all possible avenues of remedies for the suffering that they have experienced.

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The HRC, in its decision, has outlined violations of Article 2.3 (the right to an effective remedy), Article 7 (the right not to be tortured), 9.1 (the right to liberty and security of person) and 10.1 (respect for the inherent dignity of a human person) of the International Covenant on Civil and Political Rights. The decision has also acknowledged the travails of the author's wife, Dhanamaya Giri, and their two children, Yashoda and Yogesh Giri, in terms of the torture inflicted on them by the state.

Although Nepal ratified the Convention against Torture (CAT) back in 1991 and its current Interim Constitution (art. 26) expressly establishes torture as a criminal offence, it is functionally still only a civil offence in that no bill providing criminal penalties for torture has ever been passed by the Nepalese legislature. Further, the existing Torture Compensation Act-1996 (TCA) is totally deficient in addressing the grave problem of torture in Nepal. The lack of accountability in cases of torture is exacerbating the problem.

Impunity for torture by the state security forces has been and continues to be the norm. The TCA has long been acknowledged as an inchoate legislation to address torture. On many instances, the state authorities intimidate victims to withdraw their cases. In addition, the medical profession has contributed to impunity for torture as the reports prepared by them are perfunctory and didn't mention a word about torture despite other compelling evidence that it took place.

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