

Decision No. 65/1993 (People's Republic of China)

Communications addressed to the Government of the People's Republic of China on 3 February and 15 July 1992.

Concerning: Jampa Ngodrup (communication of 3 February 1992); Lhundrup Ganden, Lobsang Choejor, Lobsang Yeshe, Lobsang Palden, Drakpa Tsultrim, Lobsang Tashi, Tempa Wangdrak, Tenzin Tsultrim, Ngawang Phulchung, Ngawang Oser, Jampel Changchub, Kelsang Thutob, Ngawang Gyaltzen, Jampal Lobsang, Ngawang Rigzin, Jampal Monlam, Jampel Tsering, Ngawang Kunga, Karma, Monlam Gyatso, Gyatso, Yulu Dawa Tsering, Thubten Tsering (1), Dawa Kyizom, Ngawang Chamtsul, Lobsang Tsultrim, Ama Phurbu, Phurbu Drolma, Migmar, Dawa Drolma, Tseten Norgyal, Thubten Tsering (2), Tamsin Sithar, Ngawan Dechoe and Tsering Ngodup (communication of 15 July 1992), on the one hand, and the People's Republic of China, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communications received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question, within 90 days of the transmittal of the letters by the Working Group.
3. (Same text as para. 3 of decision No. 43/1993.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the People's Republic of China. The Working Group transmitted the replies provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.
5. It was alleged in the communications from the source, a summary of which was transmitted to the Government, that:

(a) Jampa Ngodrup, aged 45, ethnic Tibetan, doctor at the clinic in Chengguan City, District of Barkor, was reportedly arrested by agents of the City Public Security Bureau in Lhasa on 20 October 1989. On 13 August 1990, the Lhasa Municipal Intermediate Court ordered his detention on the grounds that Jampa Ngodrup had "with counter-revolutionary aims, collected lists of people detained" during the activities in favour of Tibetan independence carried out by Tibetans in Lhasa in 1988 and "passed them on to others, thus undermining the law and violating the laws of secrecy" under article 97, paragraph 1 and article 52 of the Criminal Law of the People's Republic of China (PRC).

(b) Lhundrup Ganden, Lobsang Choejor, Lobsang Yeshe, Lobsang Palden, Drakpa Tsultrim, Lobsang Tashi, Tempa Wangdrak and Tenzin Tsultrim. Monks of the Ganden monastery outside Lhasa. Arrested between 5 and 7 March 1988 after

a protest on 5 March 1988, following the authorities' failure to release a fellow monk from detention. The aforementioned monks were charged with demonstrating, making posters, calling for Tibetan independence and possession of a leaflet, and were sentenced to prison terms ranging from 5 to 12 years. They were held in the Drapchi prison. Lhundrup Ganden was initially sentenced to three years of re-education through labour, but after he shouted slogans in prison he received an additional nine-year prison sentence. Lobsang Palden and Tempa Wangdrak had been held in Drapchi prison until 27 April 1991 and were then transferred to TAR Regional Prison No. 2 in Powo Nyingtri, where they were still believed to be held at present. The transfer was apparently linked to an attempt made by Tempa Wangdrak (together with another person), to hand Ambassador Lilley a letter, which was retrieved by Chinese officials. Lobsang Palden was among three witnesses to the incident.

(c) Ngawang Phulchung, Ngawang Oser, Jamphel Changchub, Kelsang Thutob, Ngawang Gyaltzen, Jampal Lobsang, Ngawang Rigzin, Jampal Monlam, Jampel Tsering and Ngawang Kunga. Monks of the Drepung monastery in Lhasa. All were sentenced on 30 November 1989 to long prison terms. The first five aforementioned monks were given prison sentences ranging between 17 and 19 years. They were found guilty of "forming a counter-revolutionary organization", "spreading counter-revolutionary propaganda which venomously slandered the people's democratic dictatorship", "passing information to the enemy", and "crossing the border illegally and spying". Jampal Lobsang and Ngawang Rigzin were each sentenced to 10 years in prison for "spreading counter-revolutionary propaganda" and "agitation", and the last three aforementioned were each sentenced to five years in prison for "participating in criminal activities organized by a counter-revolutionary group". According to the source these three monks, as well as Jampal Lobsang and Ngawang Rigzin, had been arrested in September 1987 and held without charge for four months, after they participated in a non-violent pro-independence protest. In January 1988 they were released. In April 1989 the first four aforementioned were arrested and accused of forming a counter-revolutionary group in January 1989 which produced leaflets critical of the Chinese Government. The other six monks were arrested in March 1989 and were described as "accessory offenders" in the same case. The trial on 30 November 1989 was held as a mass rally in the Lhasa Intermediate People's Court. At the trial, Ngawang Phulchung was described as the "elected leader" of the group, and was sentenced to 19 years in prison. Jamphel Changchub was described as a "main culprit", and was sentenced to 19 years' imprisonment, to be followed by deprivation of political rights for an unknown number of years.

(d) Karma, (aged 41), Monlam Gyatso (21) and Gyatso (22), residents of Gyama Trigang, Maldro Gungkar district. The three villagers were arrested on 17 and 19 March 1992 in their village and were currently being held at the Maldro Gungkar District Prison. The reason for their detention appeared to be their alleged involvement in putting up pro-independence posters which appeared in the district.

(e) Yulu Dawa Tsering, aged 59, teacher at the Ganden monastery. Arrested on 26 December 1987. On 19 January 1989 he was tried and sentenced to 10 years' imprisonment for "spreading counter-revolutionary propaganda", "viciously vilifying the policies of the Chinese Communist Party" and

"attempting to overthrow the people's democratic dictatorship". He was currently held in Drapchi prison, Lhasa. According to the source the reason for the jail sentence was a private conversation which Tsering had with a visitor, who recorded it. The source affirmed that no inflammatory language was used by him during the recorded conversation.

(f) Thubten Tsering (1), aged 61, treasurer at Sera monastery. Arrested on 26 December 1987. Was tried and sentenced to six years' imprisonment for "being an accessory to the crime of spreading counter-revolutionary propaganda". According to the source the reason for the jail sentence was the fact that he invited two visitors, a Tibetan relative living in Italy and his Italian student, for a meal at his house. He was currently held in Drapchi prison, Lhasa.

(g) Dawa Kyizom (female), a 19 year old student, arrested on 26 October 1990 from her home in Thepung Gang, East Lhasa. Currently serving a three-year term of re-education through labour in Gutsa prison. According to the source the reason for this measure was the fact that she gave a Tibetan flag to a monk.

(h) Ngawang Chamtsul, monk, caretaker at Potala palace, the residence of Dalai Lama, in Lhasa. Was arrested in March 1989 and sentenced, on 6 December 1989 to 15 years' imprisonment plus five years' deprivation of political rights. The offences imputed to him were "counter-revolutionary propaganda, inflammatory delusion and espionage". According to the source his activity did not go beyond the non-violent exercise of the right to freely receive and impart information, and the right to freedom of opinion and expression. He was currently held in Drapchi prison.

(i) Lobsang Tsultrim, aged 72, a senior monk at Drepung monastery. Arrested on 14 April 1990 and sentenced to six years' imprisonment for "failure to reform through re-education" and "becoming a reactionary with the hope of splitting the great motherland". He had been held for six months in 1988. He was currently held in Drapchi prison.

(j) Ama Phurbu (female), aged 54, a businesswoman. Arrested on 31 October 1989. According to the source she was sentenced on 16 September 1990, without trial, to three years' imprisonment, apparently for having organized memorial prayers for Tibetans killed in earlier demonstrations. No charges were published, but her arrest came after the authorities claimed to have found political leaflets in her home. She was currently held in Gutsa detention centre.

(k) Phurbu Drolma (female), a 20 year old student. Arrested on 11 December 1990 while distributing leaflets. Was released two days later, and then rearrested. No charges have been published and no trial was held. She was currently held in Gutsa detention centre. Another female student named Migmar, aged 22, was believed to have been arrested, released and then rearrested together with Phurbu Drolma and was also currently held in Gutsa jail.

(l) Dawa Drolma (female), a 21-year-old teacher. Arrested in late 1989, then released and re-arrested in 1990. She was said to be serving a

five-year prison sentence in Drapchi prison. The offences imputed to her were "encouraging her pupils to learn a reactionary song", "counter-revolutionary instigation", and "providing shelter to, and encouraging rioters". The source added that Dawa Drolma and 24 other female detainees were badly beaten on 5 March 1992, the Tibetan New Year's Day, for wearing their own clothes. Following that incident she was placed in solitary confinement.

(m) Tseten Norgyal, aged 48, an accountant. Arrested on 21 March 1989 and sentenced on 8 February 1990 to four years' imprisonment for "inciting the overthrow of the socialist system". According to the source Tseten Norgyal had previously served a prison sentence of 12 or 20 years, ending in 1985. The reasons for his detention were said to be the reproduction and distribution of political leaflets. He was allegedly badly tortured and blinded in one eye while he was held incommunicado at the Chakpori interrogation centre. The source added that, at his trial, he only had two days to prepare his defence. He was currently held in Drapchi prison.

(n) Thubten Tsering (2), aged 41, a technician. Arrested on 20 April 1989 and sentenced to four years' imprisonment, for "inciting the overthrow of the socialist system" and reproduction of "reactionary documents". According to the source, Thubten Tsering was given a four-year prison sentence even though the charges against him did not include any violent acts or intent to harm on his part. The reason for his detention was said to be the reproduction and distribution of political leaflets in 1988-1989. The source added that, at his trial, he only had two days to prepare his defence. He was currently held in Drapchi prison.

(o) Tamdin Sithar, aged 28, a teacher. Arrested on 26 August 1983 and sentenced, in 1984, to 12 years' imprisonment. The charges against him were not known, but were believed to include "espionage". He had previously served a prison sentence from 1971 to 1975. He was currently held in Drapchi prison.

(p) Ngawang Dechoe, aged 25, a painter in the Drepung monastery. Arrested on 10 April (or on 21 March) 1991. No charges have been published against him. According to the source he was accused of "resisting arrest", and the reason for his detention was that the authorities found his skills as a painter useful. Allegedly he was taken around to paint military barracks and policemen's houses. He was currently held in the Gutsa detention centre.

(q) Tsering Ngodup, aged 57, a restaurant owner. Arrested in March 1989 and sentenced to 12 years' imprisonment, plus 4 years of deprivation of political rights, for "counter-revolutionary propaganda", "inflammatory delusion", "encouraging reactionary singing" and "espionage". According to the source the reason for his detention was singing and tape-recording songs about Tibetan independence, and gathering lists of people arrested and wounded during demonstrations in 1988 in Lhasa and sending the lists to India. He was currently held in Drapchi prison.

6. In its reply, the Government of the People's Republic of China maintains, essentially, that the penalties referred to in the communication of 15 July 1992 were motivated by the fact that demonstrations had developed into a situation bordering on insurrection; according to the Government, acts of violence had been committed against persons and property by militants in

the separatist movement. As to the facts in question, it cites, without going into any particular detail, cases of theft, arson, particularly of public buildings, attacks on government institutions and even shots fired at representatives of the military police and innocent civilians. It stresses that the penalties imposed are thus justified, that they are provided for in the national law of the People's Republic of China and that they were imposed in conformity with that legislation. It adds that they took due account of the seriousness of the offences, a distinction being made between those which entailed a criminal sentence (ranging from five to 19 years' imprisonment) and those which only deserved an administrative penalty in the form of a term of re-education through labour.

7. As regards the consideration of individual cases, the Government of the People's Republic of China in fact distinguishes five categories:

- (i) Persons released: Ama Phurbu, released in May 1992 after a term of re-education through labour ordered by the "Lhasa Municipal Committee for Re-education through Labour";
- (ii) Persons unknown in the registers of arrests: Karma, Monlam Gyatso and Gyatso;
- (iii) Persons not released, but sentenced to a term of re-education through labour: Lhundrup Ganden for three years (followed by nine years' imprisonment) for shouting slogans in prison;
- (iv) Persons for whom investigations by the department concerned are under way: Dawa Kyizom, Phurbu Drolma, Migmar, Ngawang Dechoe, Lobsang Tsultrim, Dawa Drolma and Tamdin Sithar.
- (v) Persons sentenced to terms of imprisonment by the Lhasa Intermediate People's Court: all the rest, namely, the following 24 persons: Jampa Ngodrup, Lobsang Choejor, Lobsang Yeshe, Lobsang Palden, Drakpa Tsultrim, Lobsang Tashi, Tempa Wangdrak, Tenzin Tsultrim, Ngawang Phulchung, Ngawang Oser, Jampel Changchub, Kelsang Thutob, Ngawang Gyaltzen, Jampal Lobsang, Ngawang Rigzin, Jampal Monlam, Jampel Tsering, Ngawang Kunga, Yulu Dawa Tsering, Thubten Tsering (1), Ngawang Chamtsul, Tseten Norgyal, Tubten Tsering (2) and Tsering Ngodup.

8. In conclusion, the People's Republic of China contests the allegations describing the cases of detention brought before the Working Group as arbitrary and stresses that in many cases protesters, particularly if they are Buddhists, are not acting within the context of their faith, since the Chinese Constitution does not distinguish between believers and non-believers, but as separatists.

9. In accordance with its methods of work, the Working Group transmitted the information provided by the Government to the source of the communications, asking it for any comments or further observations. In its reply dated 19 February 1993, the source made the following points:

(a) As far as the disturbances connected with demonstrations are concerned, they are due to the fact that exercise of the right to demonstrate is constantly impeded, because demonstrations being almost always forbidden, even if peaceful, the police charge, which leads to the disturbances.

(b) As far as the shooting is concerned, while the source does not deny that it occurred, it points out that it had its origins at the end of the 1980s and that only the forces of law and order have ever been responsible for it, particularly at the demonstrations referred to. It notes that according to all the testimony received, there has never been any allegation that an armed Tibetan was present, just as there is no trace of any criminal proceedings on these grounds in the cases submitted to the Working Group.

(c) As regards the sentences passed on Lobsang Yeshe (12 years), Lobsang Palden (10 years), Drakpa Tsultrim (8 years), Lobsang Tashi (7 years) and Tenzin Tsultrim (5 years), they were trying to exercise their right to demonstrate peacefully; as for Lobsang Choejar (9 years), he had not even taken part physically in the demonstration in question.

(d) The sentence of 3 years' imprisonment passed on Lhundrup Garden has been extended by a sentence of 9 years, making 12 years altogether, for shouting slogans in prison. His physical state is said to be very alarming, and he is partly paralysed.

(e) Similarly, the 12-year sentence passed on Tempa Wangdrak has been extended for 2 years, apparently because he demonstrated during a visit to the prison by the United States Ambassador.

(f) The so-called separatist activities said to have constituted offences of espionage and betrayal of State secrets (Ngawang Phulchung, Ngawang Oser, Jampel Changchub, Kelsang Thutob, Ngawang Gyaltzen, Jampal Lobsang, Ngawang Rigzin, Jampel Monlam, Jampel Tsering and Ngawang Kunga) consisted in fact in the exposure of cases of violations of human rights including their disclosure abroad. The persons concerned are said not to have enjoyed even minimum safeguards at their trial. In addition, the charge of crossing the border - and it is not alleged by the Government that it could have been done clandestinely - constitutes a violation of the right to leave any country, including one's own.

(g) In the case of Yulu Dawa Tsering, the separatist activities he is accused of consisted in a conversation with a foreign guest in a private dwelling on the situation in Tibet, with reference to its history and hence its independence.

(h) The same applies to Thubten Tsering, who was also found in possession of reproduced documents.

(i) Tseten Norgyal found himself charged with separatist activities for urging people to reject the political power of the dictatorship of the proletariat and the socialist system.

(j) Finally, in the case of the persons mentioned in paragraph 7 (iv) of the Government's reply as being under investigation by the department

concerned, it is not specified whether the department is looking into the files with a view to replying to the Working Group or conducting inquiries in connection with the arrest. If that were the case, the periods in question would have been relatively brief, whereas most of the persons concerned have been detained for a number of years: Ngawang Dechoe, since April 1991; Dawa Kyizum, since October 1990; Dawa Drolma, since December 1989; Tamdin Sithar and Lobsang Tsultrim, since April 1990; Phurbu Drolm and probably Migmar since December 1990.

(k) As for the others, Tamdin Sithar has had an extension of his 15-year sentence (passed in 1983 for shouting slogans against Deng Xiaoping), first for a period of 4 years, in 1987, for again shouting slogans in prison, and then a second time, in 1991, for 8 years, in connection with the visit of an expert representing Switzerland and the country's ambassador. Ngawang Chamtsul is not even mentioned in the Government's reply.

10. Taking into consideration the reply of the Government and the observations made by the source thereon, the Working Group deems that in the cases under consideration, the right of the persons concerned to freedom of opinion and expression has not been respected.

11. In the light of the above the Working Group decides:

(a) The detention of Jampa Ngodrup, Lhundrup Ganden, Lobsang Choejor, Lobsang Yeshe, Lobsang Palden, Drakpa Tsultrim, Lobsang Tashi, Tempa Wangdrak, Tenzin Tsultrim, Ngawang Phulchung, Ngawang Oser, Jamphel Changchub, Kelsang Thutob, Ngawang Gyaltzen, Jampal Lobsang, Ngawang Rigzin, Jampal Monlam, Jampel Tsering, Ngawang Kunga, Yulu Dawa Tsering, Thubten Tsering (1), Dawa Kyizom, Ngawang Chamtsul, Lobsang Tsultrim, Phurbu Drolma, Migmar, Dawa Drolma, Tseten Norgyal, Thubten Tsering (2), Tamsin Sithar, Ngawan Dechoe and Tsering Ngodup is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 9 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) To keep the cases of Karma, Monlam Gyatso and Gyatso pending for further information, in conformity with paragraph 14 (c) of its methods of work.

(c) To file the case of Ama Phurbu, taking into account her reported release; in conformity with paragraph 14 (a) of its methods of work.

12. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the People's Republic of China to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 9 December 1993.