

DECISION No. 48/1994 (BHUTAN)

Communication addressed to the Royal Government of Bhutan
on 14 October 1991.

Concerning Tek Nath Rizal, on the one hand, and the Kingdom of
Bhutan 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 communication, 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 letter by the Working Group.
3. (Same text as paragraph 3 of Decision No. 35/1994.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Royal Government of Bhutan. Apart from responding to the allegations made, the Government of Bhutan has kept the Working Group informed of all relevant developments that took place in the case of Tek Nath Rizal, culminating in the judgement rendered by the High Court at Thimphu on 6 November 1993. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case in question, taking into consideration all relevant material, including the allegations made and the Government's reply.
5. According to the source, Tek Nath Rizal was arrested in October/November 1989 for his alleged involvement in the writing and distribution of a booklet entitled "Bhutan: We want justice", which was critical of a decree issued by the King in May 1989. For this, Tek Nath Rizal, a former counsellor of the King and President of the People's Forum for Human Rights (PFHR), was charged with publishing seditious literature and indulging in anti-national activities. Apparently, the PFHR published the booklet referred to.
6. In its reply dated 11 December 1991, the Government of Bhutan, although it did not deny the allegations, detailed the activities of Tek Nath Rizal which, according to the Government, were directed at inciting the people against the Government through a disinformation campaign and were further directed at damaging Bhutan's relations with a friendly neighbour, India. The reply went on to state that, in April 1988, Tek Nath Rizal, a Royal Advisory Counsellor from Chirang district, attempted to create misunderstanding between the Government and the people by falsely reporting that the southern Bhutanese were on the verge of rebellion because of their resentment against the nationwide census which was then being carried out. At the same time he was inciting the people of southern Bhutan by alleging that the Government was using the census as a pretext to expel as many southern Bhutanese as possible from the Kingdom, in order to confiscate their properties. Although this was a treasonable act, His Majesty the King showed clemency to Tek Nath Rizal and

no legal action was taken against him apart from terminating his service. Instead of being grateful for such leniency, Tek Nath Rizal emigrated to Nepal with his family and from there began to incite southern Bhutanese to rebel against the Government. With the help of disgruntled persons like the Gazmere brothers (Ratan and Jogen) and Sushil Pokhrel, and illegal immigrants who had settled in Bhutan, a massive disinformation campaign was launched to win the sympathy of human rights groups around the world.

7. According to the Government, these anti-national elements then spread malicious lies among the people of southern Bhutan, alleging that the Government was discriminating against the southern Bhutanese of Nepalese descent and destroying their Hindu culture. They grossly distorted the reasons for the 1988 census and the policy of strengthening Bhutan's national identity. They unsuccessfully attempted to sow seeds of discord between the Government and the people of eastern Bhutan through baseless allegations that the Royal Government had been discriminating against the eastern Bhutanese.

8. Furthermore, the Government stated that in an attempt to create misunderstanding between the peoples of India and Bhutan, Tek Nath Rizal and others fed Indian newspapers with false accounts of Indian businessmen and labourers being harassed in Bhutan and of Hinduism being suppressed in Bhutan. Even the Government's ban on foreign television programmes in order to protect the Kingdom's unique culture was dubbed by these people as an anti-Indian move.

9. The Government further stated that while it was fortunate that the machinations of Tek Nath Rizal and others had not harmed Bhutan's traditionally good relations with India, they had nevertheless destabilized the Kingdom. Tek Nath Rizal and others had not only succeeded in fanning communal passions but had launched an extremely violent terrorist movement in Bhutan which had forced the closure of schools, basic health units and other services, and had brought all developmental activities to a halt.

10. For these allegedly treasonable activities, Tek Nath Rizal and others were extradited from Nepal in November 1989. The Government admitted in its reply that Tek Nath Rizal along with others was in police custody, but stated that he was being well looked after with full access to medical attention.

11. The Government's position was that the acts attributed to Tek Nath Rizal constituted serious offences under the Bhutanese Law of Treason. According to the Government, Tek Nath Rizal had not been tried in a court of law for the simple reason that offences committed by him might have attracted capital punishment, which is mandatory for all treasonable offences, and that it would be extremely difficult to pardon him once the judicial process was carried out and he was convicted. The Government indicated that His Majesty the King of Bhutan might exercise his royal prerogative and grant amnesty, in the near future, to Tek Nath Rizal and others.

12. Subsequently, on 26 June 1991, the Working Group sought a clarification from the Government of Bhutan when the source referred to a statement attributed to the Government that Tek Nath Rizal was to be brought to trial in connection with his anti-national activities. This statement was apparently at variance with the communication of 11 December 1991 and subsequent

communications of the Government of Bhutan wherein it was suggested that Tek Nath Rizal was likely to be granted amnesty. The Government of Bhutan confirmed in its letter of 11 August 1992 that Tek Nath Rizal "will be undergoing a fair and impartial trial under Bhutanese law".

13. Tek Nath Rizal was ultimately tried for violating various articles under the National Security Act, 1992 and a judgement was rendered in his case by the High Court on 16 November 1993, under the terms of which he was sentenced to life imprisonment. A perusal of the judgement of the High Court, a copy of which was forwarded to the Working Group, shows that Tek Nath Rizal was tried on the following nine charges:

"1. Tek Nath Rizal violated the undertaking he had signed on 7 June 1988, in the presence of two High Court judges, that he would not indulge in any further activities harmful to the Tsa-Wa-Sum (King, Country, People) or participate in any gathering of more than three persons. Instead he absconded from the country and embarked on an all-out effort to incite rebellion against the Tsa-Wa-Sum (King, Country, People) in southern Bhutan, thus violating article 4 of the National Security Act, 1992.

"2. Tek Nath Rizal sought the help of political parties in Nepal and Nepalese political leaders in the Duars to overthrow the legitimate and established Government in Bhutan, thus violating article 6 of the National Security Act, 1992.

"3. Tek Nath Rizal, in order to gain the support of the Governments and political parties in Nepal and India, maligned the Royal Government and attempted to create misunderstandings between the Royal Government and the peoples and Governments of the two countries. He spread lies that the Royal Government was persecuting Hindus and Indian nationals in Bhutan. He thus violated articles 8 and 9 of the National Security Act, 1992 and NA-1 of the Thrimshung Chhenpo.

"4. Tek Nath Rizal attempted to create misunderstandings between friendly donor countries and the Royal Government of Bhutan by accusing the Royal Government of misusing foreign assistance, thus violating articles 8 and 9 of the National Security Act, 1992.

"5. Tek Nath Rizal sought to sow communal discord between the northern and southern Bhutanese by writing and distributing booklets containing false and baseless allegations, thus violating NA-1 of the Thrimshung Chhenpo and article 8 of the National Security Act, 1992.

"6. Tek Nath Rizal, in his attempt to incite the southern Bhutanese people against the Tsa-Wa-Sum, personally wrote and distributed seditious literature which distorted government policies for strengthening Bhutan's unique national identity and the process of national integration. He thus violated articles 7 and 9 of the National Security Act, 1992.

"7. Tek Nath Rizal, from his base camp in Nepal, called other Ngolop Lhotshampas to at least three large meetings during which they conspired to subvert the Tsa-Wa-Sum and formulated the strategies for the

rebellion, which included recourse to full-scale violence as the ultimate method. He thus violated articles 4, 6 and 7 of the National Security Act, 1992.

"8. Tek Nath Rizal instructed the members of his so-called executive committee and regional representatives to set up underground organizations in various parts of the country to direct subversive activities against the Tsa-Wa-Sum, thus violating article 4 of the National Security Act, 1992.

"9. Tek Nath Rizal organized the Ngolop absconders into six groups with selected group captains to launch the second phase of his movement, which was to resort to violence and terrorism. The group captains appointed by him, most of whom are still at large, have been relentlessly carrying out terrorist activities against the Royal Government and the Lhotshampas to this day. He thus violated article 4 of the National Security Act, 1992."

14. The High Court held Tek Nath Rizal guilty of charges 2, 3, 5 and 7. Charges 1, 4, 6 and 9 were dismissed. Judgement on charge 8 was deferred until such time as the prosecution could produce key witnesses who had left the Kingdom.

15. The following sentences were imposed in respect of each of the charges for which Tek Nath Rizal was convicted:

"Rizal was sentenced to four years in prison on charge 2 for violating article 6 of the National Security Act, 1992. He admitted to the charge of having sought the help of several political parties in Nepal and Nepalese political leaders in India to carry out anti-government activities.

"Rizal was sentenced to six years in prison on charge 3 for violating article 8 of the National Security Act, 1992. He admitted to the charge of attempting to create misunderstandings between Bhutan and the Governments and peoples of India and Nepal. Rizal admitted that, with the help of Sushil Kumar Pokhrel, he had written the booklet 'Bhutan Hamro Manv Adhikar Khoeye', in which he had accused the Royal Government of persecuting Hindus and Indian nationals in Bhutan.

"Rizal was sentenced to three years in prison on charge 5 for violating article 5 of the National Security Act, 1992. He admitted to having written the booklet 'Bhutan Hamro Manav Adhikar Khoeye', which contained falsehoods and baseless allegations aimed at sowing communal discord, not only between the northern and southern Bhutanese, but also between other ethnic communities of the Kingdom.

"Rizal was sentenced to life imprisonment on charge 7 for violating article 4 of the National Security Act, 1992. It was proved conclusively that he initiated, directed and carried out activities harmful to the Tsa-Wa-Sum."

16. Having noted the contents of the judgement rendered by the High Court, the Working Group considers it clear that at the time of the communication the source was not aware of the various activities for which Tek Nath Rizal was arrested and ultimately tried. A perusal of the judgement also reveals that Tek Nath Rizal's trial lasted 10 months and was apparently just and impartial. The case was heard by the full bench of nine judges in open court, with the public being permitted to attend the hearings. Rizal was given adequate time and opportunity to defend himself. Thirty-three hearings were held, and a total of 15 witnesses and a large number of documents were produced in court. All 15 witnesses were southern Bhutanese of Nepalese origin, most of whom were erstwhile collaborators of Rizal who had come forward to give evidence against him. All evidence, written and spoken, was translated into Nepalese for the benefit of Rizal, as required by the law.

17. It may also be noted that on 19 November 1993, His Majesty the King of Bhutan exercised his prerogative and issued a royal decree under the terms of which the prison sentences handed down to Tek Nath Rizal by the High Court were commuted and Tek Nath Rizal would be granted a royal pardon and released from prison once the problem of refugees in camps in Nepal was amicably resolved between Bhutan and Nepal.

18. The Working Group believes that it cannot question the findings of the High Court in respect of the activities of Tek Nath Rizal which have been found to be proved. Sowing communal discord between the northern and southern Bhutanese and also between ethnic communities of the Kingdom of Bhutan is an offence under the National Security Act, 1992. There is also evidence that Tek Nath Rizal organized meetings at Kakarbitta, Nepal and conspired with others to achieve his ends by violent and non-violent means, for which purpose he authorized the collection of funds through threats or use of force. The nature of the evidence leaves no manner of doubt that the arrest of Tek Nath Rizal cannot be said to be arbitrary and in violation of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights. There is also nothing to suggest that the trial of Tek Nath Rizal was not fair or that it was in derogation of acceptable international standards. Tek Nath Rizal was given an adequate opportunity to defend himself and the accepted rules of fair trial were not violated.

19. In the light of the above the Working Group decides the following:

The detention of Tek Nath Rizal is not held to be in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, and is therefore declared not to be arbitrary.

Adopted on 1 December 1994