

OPINION No. 13/1998 (BHUTAN)

Communication addressed to the Government on 14 July 1997

Concerning: Taw Tshering, Samten Lhendup, Tshampa Wangchuk and Shampa Ngawang Tenzin

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established pursuant to resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended pursuant to resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.
3. (Same text as paragraph 3 of Opinion 1/1998.)
4. According to the source of the communication, a summary of which was transmitted to the Government, the above-named individuals were arrested by the Royal Bhutan Police (RBP) during the first week of February 1997 in Gangkha village, Tashi Yangshe district. The RBP allegedly had caught Taw Tshering's son reading illegal literature which Taw Shering had received from political activists during a stay in India. Upon the arrest of Taw Tshering, the other three above-named individuals became involved. Their presence at political meetings was disclosed and all were arrested. They were detained at Tashi Yangtshe police station until 7 March 1997. Thereafter they were allegedly held incommunicado. The authorities had reportedly arrested them for attending political meetings and possessing documents circulated by the Druk National Congress, a political group in exile. It is submitted that when arresting the above-mentioned individuals, the RBP did not produce an arrest warrant nor any other decision issued by a public authority. It is further submitted that at the time of submission of the communication (April 1997), the relevant legislative provisions had not been applied to their cases.
5. It is alleged that in the above-mentioned cases, several provisions contained in the international legal instruments taken into account by the Working Group on Arbitrary Detention in order to determine the arbitrary character or otherwise of situations of deprivation of liberty have not been respected. This applies in particular to articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights and principles 11, 15, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
6. In its reply of 4 September 1997, the Government indicates that the four above-named individuals were arrested for their involvement in seditious activities. Wangchuk and Ngawang Tenzin were arrested on 4 February 1997, Samten Lhendup on 5 and Taw Tshering on 6 February 1997. All of them were arrested on the basis of warrants issued by the Royal Court of Justice. The

Government adds that the village headman and some members of the public had reported the activities of the above-named persons to the district authorities.

7. The Government notes that the four individuals were brought before the Trashigang district court on 24 March 1997 and subsequently charged under the Trimzhung Chhenpo with involvement in seditious activities. The court held a first hearing in Taw Tshering's case on 22 April 1997 and in the three other cases on 25 April 1997. All the cases were concluded on 27 June 1997. The court found Taw Tshering guilty of taking part in a seditious meeting with subversive elements in the Indian city of Siliguri, with intent to defame the Government and to assist these elements in carrying out their activities. He was sentenced to five years' imprisonment. Samten Lhendup was convicted on charges similar to those against Taw Tshering and of collaborating with the subversive elements in Siliguri and for having accepted payment from them. He was sentenced to five years and six months' imprisonment. Wangchuk was found guilty of meeting subversive elements in India and assisting them by bringing seditious literature into Bhutan and distributing it on the pretext that the books were prayer books. He was sentenced to five years' imprisonment. Ngawang Tenzin was found guilty on the same grounds as Wangchuk and also sentenced to five years' imprisonment.

8. The Government emphasizes that the above-named individuals were properly detained and tried, and that their trials were concluded within four months after their arrest. The trials were open to the public and the accused had ample opportunity to prepare their defence and were given access to legal counsel. However, they told the court that they preferred to defend themselves. The Government reiterates that the proceedings were conducted in strict accordance with Bhutanese laws. All of the above-named persons are currently serving their prison sentences at Trashigang district prison.

9. The Working Group has taken due note of the Government's observations of 4 September 1997, according to which the four above-named individuals were properly charged and tried, in accordance with the provisions of the Thrimzhung Chhenpo. The Group considers, however, that on the basis of the information made available to it, their arrest, trial and detention were essentially politically motivated, because of their links to and sympathy with the Druk National Congress, a political opposition group in exile. Firstly, the Group observes that Samten Lhendup, who, according to the Government, was convicted under Na 1-1, Ma 1-1, 1-2 and 1-3 of the Trimzhung Chhenpo, received a sentence which is heavier than that provided for under Na 1-1 (three years). This is also true for Taw Tshering. Furthermore, while the Government notes that Wangchuk and Ngawang Tenzin were convicted on the basis of Na 1-2, Ma 1-1-, 1-3 and 1-5, it remains the case that Na 1-2 addresses the issue of forgery of documents or seals and the defrauding of others and practice of deceit for personal gain. This, in the Group's view, would have little to do with a conviction for meeting with subversive elements and assisting them by bringing "seditious literature" from a foreign country into Bhutan. In the circumstances, the Working Group considers that the above-named persons were detained and convicted primarily for the exercise of activities related to their political beliefs, and that their detention is in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights.

10. In the light of the above, the Working Group adopts the following opinion:

The deprivation of the liberty of Taw Tshering, Samten Lhendup, Tshampa Wangshuk and Shampa Ngawang Tenzin is arbitrary, as being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights, and falls within Category II of the categories applicable to the consideration of cases submitted to the Working Group.

11. Pursuant to the above Opinion, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights. It further urges the Government to take the appropriate measures with a view to becoming a party to the International Covenant on Civil and Political Rights.

Adopted on 15 May 1998.