

OPINION No. 2/1999 (CHINA)

Communication addressed to the Government on 14 October 1998

Concerning Ngawang Choephel

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

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.
5. According to the source, a Chinese citizen of Tibetan origin in exile, Ngawang Choephel, travelled to Tibet in July 1995 to do research on traditional Tibetan music. He disappeared following his arrival in Tibet. In May 1998, the Chinese authorities confirmed to European Union ambassadors that Ngawang Choephel had been tried on 6 September 1995 and sentenced, on 13 November 1996 to 15 years' imprisonment on charges of espionage and to 3 years' imprisonment for counter-revolutionary activities. Two sources, however, reported that Chinese

authorities had stated on Tibetan radio on 26 December 1995, one year before Mr. Choephel's formal sentencing that he was sentenced for having allegedly carried out "espionage activities".

6. Mr. Choephel appealed, and a second hearing was supposed to be held in February 1997. According to the source, the Chinese Government provided no information on the evidence used to convict Mr. Choephel or on his appeal. Ngawang Choephel is reportedly being held at the Nyari detention centre in Shigatse while he awaits the result of his appeal.

7. In its reply, the Government provided the following details, among others:

(a) Ngawang Choephel, male, ethnic Tibetan, born in India in 1967, university educated, was a dance instructor with the dance troupe belonging to the "Government in exile" of the Dalai Lama before his arrest. In July 1995 he was commissioned by the Dalai's (entourage) to enter the country carrying foreign-supplied funds and materials and engage in spying on the pretext of gathering ethnic Tibetan songs and dances. While in Tibet, in accordance with his brief, he gathered intelligence from Lhasa, Shannan, Nyingchi, Xigaze and elsewhere for delivery, when he left the country, to the Dalai Lama's entourage and a foreign agency, and fomented separatism. The Chinese security organs seized evidence of his illegal activities, which Ngawang confessed;

(b) Since the case related to State secrets, the case was tried in closed hearing under the relevant provisions of the Code of Criminal Procedure. The Xigaze Intermediate People's Court tried Ngawang under the relevant provisions of the Penal Code, the State Security Act and the regulations issued pursuant to the State Security Act, sentencing him for spying and fomenting separatism to 18 years' imprisonment and stripping him of his political rights for four years. Ngawang Choephel appealed; the Tibet Autonomous Region Higher People's Court constituted a collegiate bench to hear the case. The bench found that the facts in the original judgement were clear, the evidence was ample, the trial procedure had been lawful and the law had been correctly applied. On 24 September 1997 it issued a final judgement rejecting the appeal and upholding the lower court's decision;

(c) By engaging in espionage while giving out his motivation as being to collect folk songs and dances, Ngawang imperilled State security and broke Chinese law. That the Chinese judicial organs dealt with him severely, in accordance with the law, is not a matter for reproach. During his trial the judicial organs abided strictly by Chinese legal procedure, giving him a fair hearing, and all the rights that properly belonged to him were fully respected and upheld.

8. According to the Working Group, the foregoing gives rise to the following conclusions:

(a) It is undisputed that Ngawang Choephel was a dance instructor who in exile directed a dance troupe of the Dalai Lama;

(b) He is accused of having sought, in those circumstances, to gather information on ethnic Tibetan songs and dances;

(c) The Government alleges that the security services seized evidence of illegal activities and that Ngawang Choephel openly admitted to such activities;

(d) On those grounds, he was tried for espionage and separatist activities, sentenced to 18 years' imprisonment and stripped of his political rights for four years (a conviction upheld on appeal), although the Government's reply makes no specific reference to the articles of the Criminal Code concerning breaches of State security under which he was charged;

(e) The Working Group emphasized, in the report on the visit it made to the People's Republic of China (E/CN.4/1998/44/Add.2, para. 43) that "unless the application of these crimes is restricted to clearly defined areas and in clearly defined circumstances, there is a serious risk of misuse";

(f) That appears to be the case in the present instance, inasmuch as the Government, in its reply, does not specify the nature of the activities of which he is accused - other than collecting ethnic songs and dances - and mentions no evidence in support of the charges;

(g) According to the authorities, all his personal rights were respected during the trial, but no details are given of the rights guaranteed;

(h) It is not disputed that his trial was held in camera;

(i) The Government does not indicate where he is serving his sentence.

9. In the light of the foregoing, the Working Group gives the following opinion:

The deprivation of liberty of Ngawang Choephel is arbitrary, as being in contravention of article 19 of the Universal Declaration of Human Rights, according to which freedom of opinion and expression includes freedom to hold opinions without interference and - as in the instant case - to "receive and impart information and ideas through any media and regardless of frontiers", and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

10. Consequent upon the opinion rendered, the Working Group requests the Government:

(a) To take the necessary steps to remedy the situation and to ensure that application of the articles of the Criminal Code relating to State security takes account of the guarantees enshrined in the Universal Declaration of Human Rights, particularly article 19 thereof in the present case;

(b) And to take appropriate initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 19 May 1999