

OPINION No. 14/2000 (CHINA)

Communication addressed to the Government on 30 March 1999

Concerning Phuntsok Wangdu

The State has signed but not yet ratified 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 reconfirmed by resolution 2000/36. 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, in 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 international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned 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, but to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.
5. According to the information before the Group, Phuntsok Wangdu, a monk at Gaden monastery, was arrested on 7 February 1997 at his residence in Taktse county, Tibet, by officers of the Tibet Autonomous Region Public Security Bureau. It is claimed that no warrant was shown to him, and that it is not known on which relevant legislation his arrest was based.
6. According to the source, Phuntsok Wangdu joined Gaden monastery as a minor. In 1990, when officials visited the monastery to conduct a re-education campaign, 18 monks, including

Phuntsok Wangdu, were expelled from the monastery. Phuntsok Wangdu fled the country in the autumn of the same year and returned to Tibet in 1993. On 17 June 1993, Tibet Autonomous Region Public Security Bureau officers arrested him and detained him at Sangyip Prison. No reason is said to have been given for his arrest. He was held for six months, allegedly without any documents being issued related to his arrest. He then was released and certain conditions on his freedom of movement were imposed on him.

7. On 7 February 1997, he was arrested at his residence together with his brother and 19-year-old cousin. All three were held at Gutsa Detention Centre, where they are said to have been subjected to ill-treatment. In May 1997, Phuntsok Wangdu was transferred to a police station west of Lhasa, where he was interrogated for six weeks and allegedly was made to confess to crimes under duress. In July 1997, he was transferred to Gutsa Detention Centre and subjected to further interrogation; he was eventually charged with "espionage", and sentenced to 14 years' imprisonment by the People's Intermediate Court in Lhasa in June 1998. He appealed to the authorities for a retrial, on the ground that he had not committed any criminal offence. It is argued that his attitude towards the re-education campaign and his having left Tibet for almost three years between 1990 and 1993 were the only factors for which he was singled out. It has not been confirmed whether his appeal has been considered in the meantime, and the source does not know whether he remains at Gutsa or has been transferred to Drapchi Prison, where his brother and cousin were being held.

8. The Government observes that Phuntsok Wangdu illegally left China for India, where in 1991 he joined an intelligence organization. In January 1993 he was dispatched by that organization back to China to gather for it a wide variety of information using photographic and recording equipment and engaged, while in Lhasa, in seditious, violent and destructive activities aimed at the division of the State.

9. On 16 September 1997, Phuntsok Wangdu was detained in accordance with the law. His case was taken up by the Lhasa Municipal Intermediate People's Court. On 8 December 1997, the Lhasa Municipal People's Procuratorate brought charges against him. It was determined in a public hearing that Phuntsok Wangdu had been a member of a spy organization and had been commissioned to engage in espionage. On 9 February 1998, the Lhasa Municipal Intermediate People's Court sentenced him to 14 years' imprisonment for espionage and stripped him of his political rights for four years. Phuntsok Wangdu did not appeal. He is currently serving his sentence in the Tibet Autonomous Region Prison, and is in good health.

10. According to the Government, China's Constitution and laws afford Chinese citizens full freedom of speech. Article 35 of the Constitution states that citizens of the People's Republic of China have freedom of speech. During the 20 years since reforms began, China has strengthened the construction of a democratic legal system, broadened the foundations of democracy, and taken legislative, administrative and other action to guarantee citizens all their human rights and fundamental freedoms, including freedom of speech. Any citizen may express ideas critical of the Government, and that right is legally protected. No citizen may be punished for holding views different from those of the Government. Phuntsok Wangdu has been punished not because he expressed dissident opinions or views, but because he engaged in espionage which imperilled the security of the State. Any country would have punished what he did. While setting forth the freedoms of opinion and assembly, the International Covenant on Civil and

Political Rights also clearly specifies that the exercise of those rights is lawfully subject to necessary restrictions and must not harm national security or public safety, public order, or the rights and freedoms of others.

11. Article 110 of the Chinese Penal Code states that belonging to a spy organization or accepting commissions from such an organization or its agents is, if it imperils national security, punishable by a term of imprisonment of between 10 years and life. That Phuntsok Wangdu joined such an organization and accepted an assignment from it, taking part in separatist activities and imperilling the security of the State, is clearly and amply attested. The sentence passed on him by the Lhasa Municipal Intermediate People's Court was procedurally correct, imposed pursuant to the appropriate laws, fair and reasonable.

12. It follows from the above that according to the Government, Phuntsok Wangdu first of all committed an unlawful act by leaving Chinese territory for India. However, in the opinion of the Working Group he cannot be reproached for this since article 12 of the Covenant provides that everyone is free to leave any country, including his own.

13. With regard to the substance of the case, the custodial measure applied to Phuntsok Wangdu appears to be based on a conviction for the crime of espionage, which in legal terms is covered by article 110 of the Chinese Penal Code. In the Government's reply, the offence is said to have been constituted by the following acts:

(a) Returning to China with an assignment to gather information using photographic and recording equipment, although the nature of that information is not made clear;

(b) Engaging in subversive, violent and destructive activities aimed at the division of the State, but not the slightest indication is given as to the modus operandi of these activities;

(c) Belonging, with no further details provided, "to a spy organization" and, in that connection, taking part in separatist activities imperilling the security of the State.

14. The Working Group considers that Phuntsok Wangdu's expression of and support for so-called "separatist" opinions could not be regarded as reprehensible unless it was established that he had resorted to non-peaceful means, and this does not appear to be the case from the body of information available to the Working Group.

15. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Phuntsok Wangdu is arbitrary, as it contravenes articles 19 and 20 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.

16. Consequent upon the opinion rendered, 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, and encourages the Government to ratify the International Covenant on Civil and Political Rights.

Adopted on 18 May 2000