

OPINION No. 19/2000 (CHINA)

Communication addressed to the Government on 19 October 1999

Concerning Phuntsok Legmon and Namdrol

The State has signed but not 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 extended by resolution 1997/50 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 regrets that the Government has not replied within the 90-day deadline.
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 would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.
5. In accordance with the information received, two young Tibetan monks, Phuntsok Legmon, aged 16 years, and Namdrol, aged 21 years, were arrested in Lhasa on 10 March 1999. Both are monks at Taklung monastery in Toelung county, near Lhasa. The date of their arrest coincided with the fortieth anniversary of the 1959 uprising in Tibet and police

security around this time is said to have been tight, particularly in Lhasa. Between 14.00 and 15.00 hours on 10 March 1999, Phuntsok Legmon and Namdrol reportedly entered the eastern side of the Barkhor, the road around Lhasa's main temple (the Jokhang). According to the source, they initially were carrying the Tibetan flag. Subsequently, they reportedly raised their fists into the air and began to shout political slogans. Their protest reportedly was brief: within minutes, Phuntsok Legmon was reportedly detained by five police officers from the Barkhor police station; Namdrol sought to escape but was caught and taken to another police station. It was reported that the two monks were beaten with batons during their arrest. They were then transferred to Gutsa detention centre.

6. On 9 July 1999, the Lhasa Intermediate People's Court sentenced Namdrol to three and Phuntsok Legmon to four years' imprisonment. The court found them guilty of "plotting or acting to split the country or to undermine national unity", and for "shouting slogans". In addition, Phuntsok Legmon was sentenced to two years' deprivation of political rights; Namdrol was deprived of his political rights for one year. Since the end of their trial, they have reportedly been detained at Drapchi Prison.

7. According to the source, the activities for which the two monks were sentenced clearly did not represent a genuine threat to national security.

8. In the light of the allegations, which have not been denied by the Government although it was given the opportunity to do so, the Working Group finds that the arrest, detention and sentencing of Phuntsok Legmon and Namdrol were based solely on the ground that they had publicly expressed their opinions by, among other things, waving the Tibetan flag, proclaiming political slogans and raising their fists for a few minutes, on the day of the fortieth anniversary of the Tibetan uprising, before being arrested by the police. Thus, they were only exercising the right, guaranteed by article 19 of the Universal Declaration of Human Rights, relating to freedom of opinion and expression, including the right of everyone to hold opinions without interference and the right to impart ideas through any media.

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

The deprivation of liberty of Phuntsok Legmon and Namdrol is arbitrary, being in contravention of article 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.

10. 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 to complete as soon as possible the process of ratification of the International Covenant on Civil and Political Rights.

Adopted on 14 September 2000