

OPINION No. 28/2000 (CHINA)

Communication addressed to the Government on 8 June 1999

Concerning Ngawang Sandrol

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 by resolution 1977/50 and renewed 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 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. The communication, a summary of which was sent to the Government, concerns Ngawang Sandrol, a Buddhist nun in the nunnery of Garu, who was arrested in 1992 (in 1990, according to the original communication) for having participated in a peaceful demonstration for a "free Tibet". For this she was initially sentenced to 3 years in prison, and her conviction was subsequently extended to 15 years in prison and 3 years' deprivation of political rights. She was detained in Drapchi Prison.

6. According to subsequent information, the last extension of her conviction, in October 1998, was due to a peaceful demonstration in the prison in May 1998 which provoked violent repression that resulted in deaths among the prisoners. According to the source she was ill-treated and subjected to solitary confinement on this occasion.
7. Concern for her health and her situation in the prison after this incident motivated an urgent action by three thematic mechanisms of the Commission on Human Rights, namely the Special Rapporteur on torture, the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on violence against women who, by note of 16 December 1998, sought clarifications from the Government on the situation of Ngawang Sandrol.
8. In its reply to the Working Group, the Government confirms that Ngawang Sandrol is being held in the prison of the Tibet Autonomous Region, initially serving a prison term of 3 years' imprisonment and 1 year of deprivation of her political rights, subsequently increased on successive occasions to 15 years' imprisonment and 3 years of deprivation of her political rights. The Government confirms that the last extension of her conviction occurred in October 1998. The Government affirms that she is treated in accordance with the prison rules and that she is in good health.
9. The Government further indicates that the first conviction was motivated by "separatist activities" and that her subsequent convictions were motivated by the same reason, as well as for causing trouble and gravely disrupting normal order in the prison.
10. The Government observes that citizens enjoy freedom of expression, of the press and of religious belief, citing articles 35 and 36 of the Constitution. According to article 35, "the citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration". According to article 36, "the citizens of the People's Republic of China enjoy freedom of religious belief". The Government states, however, that there are limits to this freedom.
11. The Government states that any country may punish behaviour that endangers national security or seeks to overthrow the Government. It cites all the provisions of the Penal Code that punish actions constituting a threat to the sovereignty, territorial integrity or security of the State.
12. The Government affirms that "holding an idea or belief without engaging in illegal activity is not a crime. No one in China is punished merely for having political views different from the Government's and there are no 'prisoners of conscience'."
13. The Government indicates that Ngawang Sandrol, before her imprisonment, took an active part in separatist activities and, since her incarceration, has continually advocated "Tibetan independence" and incited other prisoners to create problems.
14. In addition, according to the Government, in the various sentences passed against Ngawang Sandrol, the facts were clear, the evidence ample and the punishment proportionate to the offence, under the Penal Code and amended Code of Penal Procedure.

15. The Working Group considers that, by defining as a “separatist activity” even a peaceful demonstration, and making this an offence, the Government contravenes articles 19 and 20 of the Universal Declaration of Human Rights.

16. The Government does not deny the peaceful nature of the demonstrations for which Ngawang Sandrol was sentenced and the Working Group therefore considers that Ngawang Sandrol has been unable to exercise the right to freedom of opinion and peaceful assembly, as guaranteed by the Universal Declaration of Human Rights.

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

The deprivation of liberty of Ngawang Sandrol is arbitrary, being in contravention of 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.

18. 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 take appropriate steps with a view to ratifying the International Covenant on Civil and Political Rights.

Adopted on 14 September 2000

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