

OPINION No. 5/2001 (NEPAL)

Communication addressed to the Government on 7 March 2000

Concerning Krishna Sen

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group regrets that the Government has not replied within the 90-day time limit.
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 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. According to the source, Mr. Krishna Sen, the editor-in-chief of the Nepalese-language weekly Janadesh, was first arrested in Kathmandu on 19 April 1999 and detained under the provisions of the Public Security Act, which allows for the preventive detention of those considered a threat to domestic security and tranquillity. The police filed a charge sheet recording Mr. Sen's arrest on 20 April 1999. It was reported that Mr. Sen's arrest was prompted by that week's edition of Janadesh, which featured an interview with Mr. Baburam Bhattarai, one of the presumed leaders of the Maoist insurgency in Nepal. On the day of Mr. Sen's arrest, the police reportedly confiscated some 20,000 copies of the weekly, in order to prevent the said interview from being widely read.

5. On 10 August 1999, the Supreme Court ordered the release of Mr. Sen. Yet, according to his lawyer, Mr. Yekraj Bhandari, the local police and district officials then conspired to keep Mr. Sen in detention by forging his release papers and re-arresting him on fabricated charges.

6. Mr. Sen is said to have been held initially at Bhadragol Prison in Kathmandu. On 9 February 2000, the prison authorities allegedly forced Mr. Sen to sign papers which certified his release. According to the source, he was instead moved to the Maharajgunj Police Training Centre. It has been reported that this training facility has been used for the secret and unacknowledged detention of those suspected of involvement with the Maoist insurgency.

7. The police in the south eastern district of Siraha reportedly filed a new charge sheet against Mr. Sen on 13 February 2000. Under its reported terms, Mr. Sen was arrested on 13 February around 1 a.m. for carrying illegal weapons. The source alleges that, on the contrary, Mr. Sen was directly transferred to Siraha prison on 13 February and that the new charges against him are false and without basis. Mr. Sen is now held at the prison of Siraha under the Arms and Ammunition Act. No date for his trial has allegedly been determined.

8. In the light of these allegations made by the source, which have not been denied by the Government although it had the opportunity to do so, the Working Group takes into consideration for the purpose of rendering its opinion that:

- (i) Krishna Sen, editor-in-chief of the Nepalese-language weekly "Janadesh", was arrested in Kathmandu on 19 April 1999 by the police because of an interview with Baburam Bhattarai, one of the presumed leaders of the Maoist insurgency in Nepal;
- (ii) Despite the fact that the Supreme Court ordered his release on 10 August 1999, he was immediately rearrested by the local police;
- (iii) This violation of a judicial decision is particularly serious because it was a decision of the highest judicial authority in the land and the violation occurred after those responsible for Krishna Sen's arrest had not only forged his release papers but also arranged for the authorities at Bhadragol prison, Kathmandu to force him to sign a statement on 9 February 2000 certifying that he had been released;
- (iv) After his eventual release, he was rearrested on 13 February 2000 on new charges of carrying illegal weapons and has been held secretly since that date, probably in Siraha Prison.

9. Krishna Sen has therefore been subjected to three distinct periods of detention:

- (i) The first period of detention occurred between his arrest (19 April 1999) and the Supreme Court order for his release (10 August 1999);

- (ii) The second period occurred between the date of his rearrest on the same day, in violation of the Supreme Court decision, and the date (unspecified) of his subsequent release;
- (iii) The third period is the current one, from the time of his second rearrest on 13 February 2000 to date, assuming he has not been released without the Working Group's knowledge.

10. In the light of these distinct periods of detention, the Working Group takes the following position:

- (i) With regard to the first period of detention, the Working Group considers that it does not have enough information at its disposal to give an opinion on the arbitrary nature or otherwise of Krishna Sen's detention, given that the Supreme Court had played its part as guarantor of liberty by ordering Krishna Sen's release;
- (ii) With regard to the second period, the rearrest and detention of a person in violation of a judicial decision - in this case a Supreme Court decision - constitutes a deprivation of liberty that manifestly cannot be justified on any legal basis and is therefore, by definition, of an arbitrary nature;
- (iii) With regard to the third period of detention, the Working Group considers that, however serious the charges brought by the authorities against Krishna Sen - a point on which the Working Group has no mandate to give an opinion - secret detention of a person is in itself a violation of the right to a fair trial, which is protected by articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, of such gravity as to confer on the deprivation of liberty of the above-mentioned person an arbitrary character.

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

- (i) The detention of Krishna Sen after the Supreme Court had ordered his release constitutes a deprivation of liberty that manifestly cannot be justified on any legal basis and falls, for this reason, within category I of the categories applicable to the consideration of cases submitted to the Working Group;
- (ii) The deprivation of liberty of Krishna Sen since his arrest on 13 February 2000 (third period) is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

12. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and to hold the persons responsible accountable, in conformity with Commission on Human Rights resolution 2001/70 on impunity.

Adopted on 17 May 2001