

OPINION No. 13/2003 (CHINA)

Communication addressed to the Government on 2 November 2001.

Concerning: Tenzin Choewang, Sey Khedup, Tserin Lhagon, Yeshe Tenzin, Thraba Yeshe, Ngawang Tsultrim, Nyima Dhakpa, Gyurmey.

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
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, which provided it with 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.
5. According to the source, on 19 March 2000, at approximately 2 a.m., seven men in masks arrived at Sog Tsendhen monastery and arrested Tenzin Choewang, caretaker monk, and four other Tibetan monks. The men had ransacked Mr. Choewang's room and discovered cassettes of the Dalai Lama. It was alleged that a police vehicle parked outside made it possible to identify the masked man, who acted without a warrant.
6. According to the source, the systematic fashion in which the detainees were arrested and the fact that the masked man knew where each of the monks was were clear indications that the authorities had kept a close watch on the movements and activities of the monks with the tacit cooperation of someone inside Sog Tsendhen monastery. The monastery is said to be a "breeding ground" for political activities and has therefore been under strict surveillance; the monks are closely monitored and their freedom of movement restricted.
7. In accordance with the information received, Tenzin Choewang, 64 years old, caretaker of Sog Tsendhen monastery, Sey Khedup, 27 years old, and Yeshe Tenzin, 36 years old, monks at the monastery, Thraba Yeshe, 45 years old, an employee of the Hydroelectricity Power Station of Sog county and carpenter at the monastery, and Tserin Lhagon, 41 years old, farmer, from Yakla township in Sog city, were arrested by officers of the Nagchu Public Security Bureau and held in custody at the TAR (Tibet Autonomous Region) Intelligence Bureau in Lhasa.
8. They were reportedly sentenced in December 2000 under China's Criminal Law on the following grounds: Mr. Choewang and Mr. Yeshe to seven years' imprisonment for the offences of supporting "splittist activities" and for activities "endangering national security", under paragraph 103 of China's Criminal Law, and supporting "splitting activities of the Dalai clique", respectively; Mr. Lhagon and Mr. Tenzin to 15 years' imprisonment for activities "endangering national security" and "supporting splittist activities of the Dalai clique"; and Mr. Khedup to life

imprisonment for activities “endangering national security” and “supporting splittist activities of the Dalai clique”. They were all reportedly transferred to Drapchi prison, where they are all now detained.

9. Ngawang Tsultrim, 24 years old, a monk from Sagang township, Dyokhang county, was apparently arrested in October 1999 in Lhasa, shortly after his return from Drepung monastery in India, by officials of the Public Security Bureau. He was reportedly held in custody at Gutsa Detention Centre, sentenced in early 2000 to three years’ imprisonment for “acting to split the country” or “undermining national unification” under China’s Criminal Law, and is reportedly detained at Drapchi prison.

10. Nyima Dhakpa, 27 years old, a monk at Tawu Nyitso monastery, Karze prefecture, Sichuan province, was apparently arrested in May 2000 in Lhasa by officials of the Public Security Bureau and held in custody at Tawu Detention Centre. He was reportedly severely beaten. He was reportedly sentenced on 5 October 2000 by the county court to nine years’ imprisonment on charges of propaganda and incitement against the masses, and detained at Tawu Detention Centre.

11. According to the source, Mr. Dhakpa had pasted pro-independence posters on the gates of a memorial garden in Tawu county at the end of 1999. The posters carried slogans like “Free Tibet”, “Tibetans in Tibet have no freedom” and “Tibet is not a part of China”, and he had signed his name on the bottom. The county officials arrested another Nyima Dhakpa from Sog Tsendhen monastery the next day. This gave Mr. Dhakpa time to flee until he was finally arrested in May 2000.

12. The Government in its response states that Mr. Choewang, Mr. Yeshi, Mr. Lhagon and Mr. Tenzin, having set up a separatist group, the “Xuecheng Youth Council”, posted and distributed separatist leaflets and engaged in many illegal separatist activities. The four men were found guilty, under the Chinese Penal Code, of fomenting separatism by the Nagchu District Intermediate People’s Court on 10 November 2000 and sentenced as follows: Tenzin Choewang, to 3 years’ imprisonment and deprivation of political rights for 2 years; Thraba Yeshi, to 5 years’ imprisonment and deprivation of political rights for 3 years; Tserin Lhagon, to 15 years’ imprisonment and deprivation of political rights for 10 years; and Yeshi Tenzin, to 10 years’ imprisonment and deprivation of political rights for 5 years. All four men are currently serving their sentence at the TAR prison.

13. The Government further states that Ngawang Tsultrim, a male ethnic Tibetan born in 1975, was detained on 13 October 1999 by the Lhasa public security organs for fomenting separatism; on 23 November that year the Lhasa Municipal People’s Procuratorate authorized his arrest. On 2 April 2000, the Lhasa Municipal Intermediate People’s Court found that his propagandizing of separatism in the Tibet Autonomous Region constituted criminal separatism, sentenced him to three years’ imprisonment and stripped him of his political rights for two years. He is now serving his sentence at the TAR prison.

14. As for Nyima Dhakpa, the Government states that between 1998 and 2000, he was frequently engaged in activities in Dawn county town designed to incite separatism and to undermine State unity, which were serious breaches of article 103 and other relevant provisions of the Chinese Criminal Code. In May 2000, with the approval of the Karze prefecture

procuratorial office acting in accordance with the law, took him into custody. On 20 October, the Karze Prefecture Intermediate People's Court, in accordance with the law, sentenced Nyima Dhakpa to nine years' fixed-term imprisonment, stripping him of his political rights for four years. He is currently serving his sentence. The officials in charge of supervising him act in strict accordance with the law and no corporal punishment has ever been applied against him.

15. The Government explains that the Chinese Constitution clearly stipulates that citizens have the right to the freedoms of speech, of the press, of religious belief and other freedoms, of association, of assembly, of movement and of demonstration, and that they are entitled to criticize and make suggestions about any State organ or its employees. The Government adds that in accordance with the law, it protects the exercise by citizens of these rights and freedoms; for their part, in giving effect to their right to freedom of speech, Chinese citizens may not harm the interests of the State, society or collectives. While protecting the enjoyment by citizens of all their lawful freedoms, the Government of China, acting in accordance with the law, adopts measures against activities that break the law or infringe the lawful interest of the State, of collectives and of citizens. This is consistent with the relevant provisions of international human rights instruments. The persons mentioned above have been sentenced to imprisonment because they conducted activities which endangered State security and the territorial integrity of the country and violated Chinese criminal law.

16. The Government notes that any country would investigate and punish, in accordance with its law, conduct of this kind. In the process of ordering the arrest of these persons and putting them on trial, their lawful rights were fully protected: approval was obtained from the procuratorial authorities, and the public security authorities acted in compliance with the law in taking them into custody; the judgements handed down by the courts were based on clear facts, the evidence was ample and conclusive, the convictions were correct, the sentences were commensurate with the offences and the trial proceedings followed due process.

17. The source replies that all the prisoners have been detained merely for exercising their fundamental rights under international law. It states that the Government's response reveals that none of the prisoners had committed violent acts and in all the cases the individuals were imprisoned for the peaceful expression of religion, association or opinion. The Government states that it "guarantees all civic freedoms in accordance with the law". However, it then goes on to say that all such guarantees are subject to the "lawful interest of the State". According to the Government, "any State would punish" people who acted in the same manner as the named prisoners.

18. The source states that this interpretation by the Government of international law regarding rights and responsibilities is simply wrong. Democratic States do not imprison people for 3 to 15 years merely because they are members of a political organization, practised their religion peacefully or expressed dissent concerning government policies.

19. The Government has not given a response in the case of Sey Khedup, and does not contest the facts that he was a monk who was arrested with the group on 19 March 2000 and is now serving a sentence of life imprisonment for "endangering national security" and "supporting splittist activities of the Dalai clique".

20. The Government has not given information about Gyurmey, stating that despite extensive investigations by the Chinese authorities, it has still not been possible to trace this person and requesting the Group to provide more details.

21. The Government states that Tenzin Choewang, Yeshe Tenzin, Sey Khedup, Thraba Yeshe and Tserin Lhagon were organizing a youth group. It has not been disputed, however, that their purpose was to associate peacefully, or express their beliefs peacefully, without inciting or resorting to violence. These persons were also posting and distributing leaflets, exercising their freedom of opinion and expression which includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media. On those grounds, they were tried for endangering national security and supporting separatist activities, sentenced to 3 to 15 years' imprisonment (in the case of Mr. Khedup, even life imprisonment) and stripped of their political rights, although the Government's reply makes no specific reference to the articles of the Criminal Code concerning the breaches of State security under which they were charged.

22. The Working Group emphasized, in the report on its visit to 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". 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 the men were accused - other than founding a peaceful association and distributing leaflets - and mentions no evidence in support of the charges, or if they used violence in their activities.

23. As for Ngawang Tsultrim and Nyima Dhakpa, while they were also charged with propagandizing for separatism, albeit in different circumstances, the charges also concern the exercise of the freedom of expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights. That their activities were peaceful has not been contested.

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

The Working Group declares the deprivation of liberty of Tenzin Choewang, Sey Khedup, Tserin Lhagon, Yeshe Tenzin, Thraba Yeshe, Ngawang Tsultrim and Nyima Dhakpa to be arbitrary as being contrary to articles 18, 19, 20 and 21 of the Universal Declaration of Human Rights, and falls within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

In view of the situation concerning the case of Gyurmey, and subject to the possibility of receiving relevant information and details at a later date, the Working Group believes it cannot render an opinion on whether his detention is arbitrary and decides, in accordance with paragraph 17 (c) of its methods of work, to keep the case pending until that information is received.

25. 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 4 September 2003