



General Assembly

Distr. General
29 February 2012

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-first session, 29 August–2 September 2011

No. 40/2011 (Bhutan)

Communication addressed to the Government on 7 February 2011

Concerning: Dechen Wangmon

The State is a not party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Dechen Wangmo, born in 1962, a Bhutanese national usually residing in Phuentsholing, runs a private school in called Phajoding Lower Secondary School. She also serves the community as a social worker and is the Coordinator for Phuentsholing Women's Association. Ms. Wangmo has been working as the country coordinator for the YES (Youth Employment Summit) Network, Bhutan Chapter, since 2002.

4. It is reported that on 19 October 2009, Mrs Wangmo was arrested in Phuentsholing by the Officer of the Royal Bhutan Police pursuant the orders of the Ministry of Interior, Royal Government of Bhutan. According to the information received, Ms. Wangmo was presented with no arrest warrant.

5. Ms. Wangmo was taken to police custody in Phuentsholing prison run by Royal Bhutan Police. It was not until 2 January 2011 that Ms. Wangmo was transferred to a central jail (Chemhang) in Thimphu.

6. According to the information received, Ms. Wangmo was charged on the grounds of:

(a) Knowingly faking a marriage with the defendant's son (Ngawand Dendup) and a refugee girl in Nepal (Sonam Choden) with the intention of obtaining a visa to the United States of America (alleged deceptive practice under section 309 (g) of the Penal Code of Bhutan);

(b) Knowingly sending people to an international conference in the name of social cause who she knew would not return to Bhutan (alleged deceptive practice under section 309 (g) of the Penal Code of Bhutan);

(c) Knowingly having a close link with individual(s), who is wanted in Bhutan for engaging in anti-national activities or who had absconded from Bhutan or who is convicted in Bhutan for engaging in anti-national subversive activities (alleged offence of treason under sections 326 and 327 of the Penal Code of Bhutan).

7. It is reported that on 28 December 2010, Ms. Wangmo was sentenced to 15 years' imprisonment by Phuentsholing Court on the grounds of violating sections 326 and 327 of the Penal Code of Bhutan with effect from the date of her arrest, i.e. 19 October 2009. During the hearing, Ms. Wangmo argued that she was not aware that the individuals with whom she maintained e-mail exchange were considered enemies of Bhutan. In any event, according to the source, Ms. Wangmo should not be prohibited from discussing political issues when democracy is adopted as form of Government in Bhutan.

8. The source argues that Ms. Wangmo's arrest and detention is politically influenced and is a direct result of her social work. Similarly, the source argues that the Court did not pay sufficient attention to the fact that Ms. Wangmo was unaware that individuals with whom she maintained e-mail contact were considered enemies of Bhutan.

9. According to the source, Ms. Wangmo's arrest and detention are a direct consequence of her exercise of the right to freedom of opinion and expression in purported violation of article 19 of the Universal Declaration of Human Rights.

Response from the Government

10. In its reply dated 7 April 2011, the Government maintains that Ms. Dechen Wangmo was tried and convicted for “engaging with the known enemy of Bhutan” as per sections 326, 327 (b) and 328 of the Penal Code of Bhutan. Ms. Wangmo appealed the sentence and the judicial proceedings are ongoing.

11. The Government clarifies that in September 2009, the Royal Bhutan Police received information that Ms. Wangmo was engaging in illegal business and trying to send Bhutanese citizens abroad illegally. She was under surveillance for some time which permitted the police to obtain sufficient information before her arrest on 19 October 2009. Ms. Wangmo was brought before a judge on 20 October 2009 as per section 188.1 of the Civil and Criminal Procedure Code of Bhutan. The arrest warrant was issued on the same day pursuant to section 163 of the Civil and Criminal Procedure Code of Bhutan. The Government has produced the copies of these documents.

12. Further, the Government indicates that Ms. Wangmo was formally charged by the prosecution (Office of the Attorney General and the Royal Bhutan Police) and was convicted by the Dungkhag (Sub-Divisional) Court on 28 December 2010 “for engaging with the known enemy of Bhutan” as per sections 326, 327 (b) and 328 of the Penal Code of Bhutan. The Government maintains that Ms. Wangmo was represented by a professional lawyer and benefited from a fair trial in compliance with section 21, article 7 of the Constitution of Bhutan. The Government maintains that Ms. Wangmo’s detention is not arbitrary.

Comments from the source

13. By letter dated 25 June 2011, the Working Group received the response from the source together with three documents: a letter from Ms. Wangmo addressed to the trial court on 15 December 2009 to plead her innocence; the Penal Code of Bhutan and an extract from the newspapers. The source asserts that Ms. Wangmo’s detention is based on political reasons explained by her close relationship to the ethnic minority Lhotshampa and her sympathy to the victims of the Royal Government. According to the source, this explains the heavy sentence rendered against her. The comments contained in the above letter lack precision with regard to the information provided by the Government and shared with a source. The source fails to address any of the substantive issues raised in the Government’s reply.

Discussion

14. In seizing the Working Group of the present case, the source had invoked absence of any charge and fair trial guarantees. According to the source, Ms. Wangmo’s detention was a result of her exercise of freedom of opinion and expression.

15. The Working Group notes that in its reply the Government has rebutted these allegations producing copies of the arrest warrant and information relating to the charges brought against Ms. Wangmo, her verdict before the trial court and the ongoing appeal. The Government also maintains that Ms. Wangmo is subject to a fair trial and benefits from legal assistance. In the view of the Working Group, the comments provided by the source fail to rebut the information presented by the Government.

Disposition

16. In the light of the information available before it regarding Ms. Wangmo’s detention, the Working Group is not in a position to consider its arbitrary character or absence thereof.

17. The Working Group recommends the Government of Bhutan to ensure a fair trial to Ms. Wangmo in accordance with domestic and international law.

[Adopted on 1 September 2011]
