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## Consejo de Derechos Humanos

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**Promoción y protección de todos los derechos humanos,  
civiles, políticos, económicos, sociales y culturales,  
incluido el derecho al desarrollo**

## Visita a Bhután

### Informe del Grupo de Trabajo sobre la Detención Arbitraria\* \*\*

#### *Resumen*

Por invitación del Gobierno, el Grupo de Trabajo sobre la Detención Arbitraria visitó Bhután del 14 al 24 de enero de 2019. El Grupo de Trabajo encomia los progresos logrados por Bhután en relación con la privación de libertad desde las visitas realizadas en 1994 y 1996, entre los que cabe destacar el cumplimiento habitual de la exigencia de que los detenidos comparezcan ante un juez en el plazo de 24 horas, el uso de las cárceles al aire libre, el crecimiento de la sociedad civil y la profesión jurídica, las mejoras con respecto a la justicia juvenil, los juicios rápidos y el uso sistemático de registros de las detenciones. No obstante, el Grupo de Trabajo observa problemas importantes en el sistema de justicia penal con respecto a la prevención de la detención arbitraria, como la existencia de delitos que no admiten fianza, la ausencia de centros de detención preventiva especiales para adultos, la detención de menores en comisarías de policía, la falta de atención a las necesidades de las mujeres privadas de libertad, el incumplimiento de la obligación de garantizar la representación letrada, un bajo nivel de conocimientos básicos de derecho y de concienciación jurídica, la práctica de la privación de libertad por motivos de deuda y el hecho de que el tiempo que las personas permanecen recluidas en las comisarías —los únicos centros de reclusión para los detenidos en prisión preventiva en Bhután— no se tiene en cuenta para la remisión de la pena. El Grupo de Trabajo también señala cuestiones que son motivo de preocupación en el contexto de las detenciones relacionadas con las drogas, como la falta de control judicial de los análisis de drogas, la distinción arbitraria entre las personas que pueden acogerse a la rehabilitación y aquellas que serán detenidas y la imposibilidad de impugnar las conclusiones del grupo de evaluación del tratamiento que toma esas decisiones. Entre sus recomendaciones para subsanar los problemas detectados durante la visita, el Grupo de Trabajo alienta a Bhután a que sea parte en los principales tratados de derechos humanos, entre ellos el Pacto Internacional de Derechos Civiles y Políticos, y a que apruebe modificaciones legislativas y adopte prácticas específicas que ofrezcan una mayor protección contra la detención arbitraria.

\* Se acordó publicar el presente informe después de la fecha de publicación prevista debido a circunstancias ajenas a la voluntad de quien lo presenta.

\*\* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo, se distribuye únicamente en el idioma en que se presentó. Los apéndices I y II se publican sin haber sido objeto de revisión editorial oficial.



## Annex

### Report of the Working Group on Arbitrary Detention on its visit to Bhutan

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## I. Introduction

1. At the invitation of the Government, the Working Group on Arbitrary Detention conducted an official visit to Bhutan from 14 to 24 January 2019. The Working Group was represented by Seong-Phil Hong (Republic of Korea, Chair-Rapporteur), Leigh Toomey (Australia, Vice-Chair) and Elina Steinerte (Latvia, Vice-Chair) and accompanied by staff from the Office of the United Nations High Commissioner for Human Rights. The Working Group would like to thank the United Nations country team, the Resident Coordinator and their staff for supporting the visit.
2. The Working Group expresses its gratitude and appreciation to the Government of Bhutan for the invitation and for its cooperation throughout the visit. The Working Group met with the Secretary of the Ministry of Foreign Affairs, the Minister for Home and Cultural Affairs, a Supreme Court Justice, the Acting Attorney General, the Chief of Police, the secretariat of the Gross National Happiness Commission, the Chair of the Anti-Corruption Commission, the Head of Treatment of the Bhutan Narcotics Control Authority, the Acting Director of the National Commission for Women and Children, the Judge of the Family and Child Bench of Thimphu, the Deputy Director of the Bhutan National Legal Institute, the Dean of Jigme Singye Wangchuck School of Law and local authorities in the districts visited.
3. The Working Group visited over 20 places of deprivation of liberty in Thimphu, Chukha, Paro, Punakha and Samtse Districts (see appendix I). It was able to confidentially interview over 150 persons who were deprived of their liberty. The Working Group also visited the Gangzhay Kepiling Centre in Limukha, a facility run by the Zhung Dratshang (Central Monastic Body), which provides residence for monks who have retired from active service. The Working Group appreciated being able to visit the facility and to speak with both those in charge and the residents, which allowed the Working Group to conclude that it was not a detention facility.
4. The Working Group also recognizes the stakeholders within the country who shared their perspectives on the arbitrary deprivation of liberty, including representatives from civil society, lawyers and individuals who are currently deprived of their liberty. The Working Group thanks all of them for the information and assistance provided.
5. The Working Group shared its preliminary findings with the Government on 24 January 2019. It intends to continue its constructive dialogue with the Government on the issues discussed in the present report.

## II. Overview of the institutional and legal framework

### A. International human rights obligations

6. Bhutan is party to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. Bhutan is also a signatory to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities.
7. The State is not party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
8. Bhutan has had its human rights record examined in three universal periodic reviews: in 2009, 2014 and 2019.

9. It is important that the Government carefully reviews its current international human rights obligations. In particular, the Working Group urges Bhutan to become a State party to the International Covenant on Civil and Political Rights, which contains important safeguards in relation to the right to liberty, and to other international human rights treaties.

## **B. National legal framework**

10. The Constitution was adopted on 18 July 2008 and marked the country's transition to a democratic constitutional monarchy. Article 7 (fundamental rights) provides for the right to life, liberty and security of person and prohibits the deprivation of such rights except in accordance with the due process of law (art. 7 (1)). The Constitution also enshrines the prohibition of arbitrary arrest or detention (art. 7 (20)) and the right to consult and be represented by a *Jabmi* (legal counsellor) of one's choice (art. 7 (21)). There are exceptions to the above-mentioned rights (art. 7 (22)) in cases involving the sovereignty, security, unity and integrity of Bhutan; the peace, stability and well-being of the nation; or friendly relations with foreign States. Moreover, article 10 (25) stipulates that international conventions, covenants, treaties, protocols and agreements acceded to by the Government after the adoption of the Constitution will become national law only upon ratification by parliament, unless such agreements are inconsistent with the Constitution.

11. The Penal Code, 2004, as amended in 2011, criminalizes illegal arrest (sect. 416). While it is unclear whether the scope of the offence is limited to formal arrest and detention or includes any physical apprehension, in practice section 416 of the Penal Code has been applied quite liberally to include all forms of illegal arrest as long as it is carried out without probable cause. Unlawfully detained persons are subject to compensation under section 212A of the Civil and Criminal Procedure Code (Amendment) Act, 2011. Neither the term "arrest" nor "detention" is defined in the Penal Code.

12. The Civil and Criminal Procedure Code, 2001, sets out general principles of the judiciary, including the independence and impartiality of the judiciary (sects. 2, 5–6 and 15), equality before the law (sect. 3) and the right to a fair and public trial by an independent and impartial court (sect. 4).

13. The Code also includes the right to habeas corpus (sect. 7), but it appears to limit the exercise of that right to family members of detained persons, rather than extending it to detained persons themselves. However, reading section 7 together with section 31.1 (e), the right to habeas corpus is provided to detained persons and also extends to family members. Section 31.1 lists individuals who can register a case and that right extends to detainees, legal counsel or the next of kin. In addition, section 188.1 imposes a legal duty on the concerned authority to produce the arrested person before a judge within 24 hours.

14. A detained person has rights under section 164.5 of the Code to challenge an "improper arrest" and under article 7 (23) of the Constitution to initiate appropriate proceedings in the Supreme or High Court for the enforcement of, among other things, the right not to be subjected to arbitrary arrest or detention, "subject to procedures prescribed by law".

15. The right to legal aid is stipulated under section 34 of the Civil and Criminal Procedure Code, which states that "only an indigent accused shall have legal aid provided for one's defence where the interest of justice so requires".

16. The Working Group urges the Government to amend the country's Penal Code by introducing legal definitions of the terms "arrest" and "detention" and broadening the scope of the offence of illegal arrest to include any physical apprehension that results in the deprivation of liberty.

## **III. Positive measures and initiatives**

17. During its previous visits to Bhutan in 1994 and 1996, the Working Group made a series of recommendations to address the arbitrary deprivation of liberty. Throughout its

current visit, the Working Group was encouraged to see that a number of those recommendations had been implemented and progress had been made.

#### **A. Presentation to a court within 24 hours**

18. During its 1994 visit, the Working Group recommended that every person who was arrested should be produced before a court within 24 hours so that the lawfulness of his or her detention could be reviewed. The recommendation was implemented in 2001 through the adoption of section 188.1 of the Civil and Criminal Procedure Code. The vast majority of detainees interviewed by the Working Group confirmed that they had been brought before a judge for their first remand hearing within 24 hours of their arrival at a police station.

19. The Working Group regards production before a court as an essential protection against arbitrary detention and other possible abuses of power, such as torture and other forms of ill-treatment, and commends the work of the police in ensuring that the 24-hour time limit is regularly met.

#### **B. Open-air prisons**

20. Since March 2013, prisoners who have served 75 per cent of their sentence and have demonstrated good conduct are eligible for transfer to an “open-air prison”. Overall 725 male inmates had benefited from such transfers since the introduction of open-air prisons. There were 185 male inmates residing in eight different open-air prisons across Bhutan and 27 female inmates based at the only open-air prison for females in Dawakha, Paro, at the time of the visit. Children of female prisoners are permitted to live in the open-air prison with them up to the age of 9 years. Inmates enjoy more freedom at open-air prisons than in regular prisons, including the ability to earn money by undertaking work in the community, greater access to family members and the ability to move freely in the vicinity of the facility and to use mobile telephones.

21. The open-air prison system is a welcome initiative that has helped to reduce overcrowding in prisons and assisted inmates to prepare for reintegration into society. However, there is a need to expand the use of the open-air prisons by reviewing the eligibility criteria.

#### **C. Growth of civil society**

22. The Working Group met with representatives of civil society organizations and was encouraged that such organizations are growing in strength and number. It is clear that civil society organizations are taking on an increasingly important role in Bhutan, particularly in providing assistance to economically disadvantaged and vulnerable groups. For example, civil society organizations initiated the establishment of drug rehabilitation centres and have provided support to homes for children in conflict with the law.

23. The Working Group urges the Government to support civil society organizations, including ensuring an adequate environment conducive to the establishment of organizations working on civil and political rights and access to justice, so that they can assist in addressing issues relating to arbitrary detention in Bhutan. For example, support to organizations working on the provision of legal aid is of vital importance. Any support must also include training of more social workers with professional education in social work and counselling, in order for civil society organizations to be able to provide services in a sustainable manner. In that context, the Working Group welcomes the plans of the authorities to introduce a Bachelor of Arts in Social Work into the curriculum of Samtse College of Education.

## **D. Juvenile justice and the diversion programme**

24. The Government is to be commended for its efforts in the area of juvenile justice, especially concerning the sentencing of juveniles and the anticipated establishment of family and child benches in the country.

25. In relation to sentencing, it is a positive development that juveniles are sentenced to half the sentence of an adult consistently across the country, in accordance with section 115 of the Penal Code. The Working Group considers it a good practice to minimize the time that children spend in detention, allowing for better reintegration into society upon completion of the sentence. It recalls that, according to article 37 (b) of the Convention on the Rights of the Child, the arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time.

26. The Working Group commends the establishment of the first child-friendly court in the country in Thimphu at the end of 2016. That is the first step in the effective implementation of section 38 of the Child Care and Protection Act, 2011, which provides for the establishment of a juvenile justice court or bench to exercise powers under the Act. The efforts of the family and child bench to expedite cases involving children are noteworthy, given that on average it takes about two months to complete the proceedings. The Working Group was informed of the ambitious plans to further expedite the proceedings in cases involving children with a view to completing them within a month. Provided that due process is fully respected, that could constitute effective implementation of section 146 of the Child Care and Protection Act, which requires all inquiries and proceedings relating to child matters to be handled as expeditiously as possible. The Working Group was pleased to learn of plans of the judiciary to strengthen capacity development of the judges and bench clerks on family- and child-related cases, as well as to equip existing courts with the necessary infrastructure for such proceedings. The Working Group urges the Government to expedite the implementation of that commitment.

27. The programme put in place to divert children from the criminal justice system in juvenile matters, in accordance with chapter 12 of the Child Care and Protection Act, is also a step forward. The Working Group was informed that nine children were diverted from the criminal justice system in 2017, which appears to be a low number. The Government should increase its efforts to use the diversion programme to ensure that, whenever possible, children do not come into contact with the criminal justice system. The Government should also strengthen the capacity of the National Commission for Women and Children, especially by increasing the number of its professional counsellors and social workers, to enhance the diversion programme and its effectiveness.

28. The Working Group also notes the process of developing a standard operating procedure to harmonize the existing legislation concerning children in conflict with the law and to streamline approaches of various law enforcement agencies in the area of juvenile justice.

## **E. Expeditious trials**

29. The Working Group notes that section 188 of the Civil and Criminal Procedure Code of Bhutan, 2001 stipulates the right of all defendants in criminal proceedings to a speedy trial. It was informed that, in practice, most trials are completed within a year from the start of the proceedings, and it was able to confirm that positive development during its visit.

## **F. Detention prior to sentence**

30. In accordance with section 211 of the Civil and Criminal Procedure Code, when a defendant sentenced to imprisonment has previously been detained in relation to the same offence, the time already served in detention is deducted from the sentence. According to the testimony received, that provision is consistently applied in practice. The Working

Group welcomes the compliance of Bhutan with its obligations under international human rights law.

## **G. Immigration control**

31. The Working Group understands that there are no immigration detention facilities in the country and that the current practice is to seek the assistance of the police to hold those who have been found to be in breach of the Immigration Act, 2007. The lack of immigration detention facilities appears to have contributed to relatively few cases of immigration detention and, according to information received, such detention would generally not last longer than a day.

32. The Working Group views the current practice as positive and recalls that deprivation of liberty must be a measure of last resort. It welcomes the restrained approach of the authorities towards the opening of new detention facilities and invites them to consider carefully any initiatives that would lead to opening of new types of places of deprivation of liberty.

## **H. Custody registers**

33. During its first visit in 1994, the Working Group made a series of recommendations concerning the custody registers in places of deprivation of liberty. During its present visit, the Working Group was pleased to see that all the police stations it visited were using registers that followed its recommendations issued in 1994. The registers were generally well kept and up to date. The Working Group recalls that timely and punctual record-keeping is an essential safeguard against arbitrary detention and is to be commended.

34. However, all police stations visited also used a large number of other registers, in some cases over a dozen registers, and often the information recorded in the other registers was duplicated. In addition, some information could only be located in individual case files of the detainees despite the numerous registers. That practice may be counterproductive and the Working Group therefore welcomes the plans to carry out an audit to determine what registers are actually required so as to ensure a more streamlined approach.

## **IV. Main findings concerning the right to personal liberty**

35. In determining whether the information provided, including from persons interviewed during the visit, raised issues regarding the arbitrary deprivation of liberty, the Working Group referred to the five categories of arbitrary deprivation of liberty outlined in its methods of work (A/HRC/36/38, para. 8).

### **A. Deprivation of liberty in the context of the criminal justice system**

#### **1. Non-bailable offences**

36. According to section 199.8A of the Civil and Criminal Procedure Code, as amended in 2011, there are certain criminal offences that are considered to be non-bailable. The courts are not permitted to grant bail to a person who has been charged with either (a) an offence against the security and sovereignty of the country or (b) “an offence of or above felony of the second degree”, which includes murder, treason, terrorism, kidnapping, statutory rape, trafficking of a child between 12 and 18 years of age and aggravated armed robbery.

37. Mandatory pretrial detention for non-bailable offences deprives a detainee of the right to seek non-custodial alternatives to detention, such as bail. In addition, the imposition of pretrial detention for certain non-bailable offences reverses the presumption of innocence found in article 7 (16) of the Constitution, so that those charged with such offences are automatically detained without a balanced consideration of their individual circumstances,

including the risk that they may abscond, interfere with evidence or commit an offence. International standards do not prevent pretrial detention being ordered in the serious cases that are currently considered as non-bailable in the Civil and Criminal Procedure Code. Those standards do, however, require that detention only be ordered after a judicial authority has conducted an individualized assessment of whether pretrial detention in each case is reasonable and necessary.<sup>1</sup>

38. The Working Group therefore urges the Government to remove non-bailable offences from the Civil and Criminal Procedure Code and any other criminal legislation so that all detainees have the right to seek an individualized assessment by a judicial authority of whether pretrial detention is reasonable and necessary in their case.

## **2. Pretrial detention**

39. The Working Group observed that, while there are some dedicated pretrial detention facilities for children, there are no dedicated pretrial detention facilities for adults in Bhutan. Instead, pretrial detainees are held in police stations where they constitute the vast majority of detainees. Periods of pretrial detention outside Thimphu are not excessive, which is commendable, but they are still longer than a few days, which would normally be an acceptable period of time for someone to be held at a police station. The Working Group observed that, in some instances, pretrial detainees were held together with sentenced individuals awaiting their placement in prisons.

40. Police stations are not equipped for holding people for longer than a few days, as they do not have the requisite space and facilities to accommodate individuals for longer periods of time. Pretrial detention should take place in appropriate facilities suitable for the length of such detention. Any regime applicable to pretrial detention facilities must respect the non-convicted status of individuals and their presumption of innocence.

41. The Working Group observed pretrial detainees held in cells with no purposeful activities and allowed out of their cells only for very short periods, so that they effectively spend 23 hours a day in the cells. There was also a lack of beds, mattresses and warm blankets in some police stations, which was cause for concern given the winter weather conditions. Pretrial detainees should be allowed to enjoy meaningful out-of-cell time and should be provided with a choice of purposeful activities. Anyone in detention, including those held in pretrial detention, must be allowed to spend a reasonable part of the day outside their cells, in addition to at least one hour of exercise in the open air. All detainees should be provided with bedding appropriate for the prevailing weather conditions.<sup>2</sup>

42. The Working Group was disturbed to hear of instances of informal punishment when police guards required the detainees to perform “military drills” such as frog jumps, log rolls and sit-ups. In one facility, the detainees were required to hold their hands behind their backs as they walked as a sign of respect for the police officers. All forms of punishment must be accompanied by safeguards against arbitrary application and any type of punishment must be respectful of human dignity. During the visit, the Working Group urged the Government to put an immediate end to all forms of informal punishment. It welcomes the news that Royal Bhutan Police Headquarters has acted upon its recommendation by issuing a notice to that effect in February 2019.

43. While its mandate does not focus on conditions of detention or the treatment of prisoners, the Working Group must consider to what extent detention conditions can negatively affect the ability of detainees to prepare their defence and their chances of a fair trial. Holding pretrial detainees in facilities entirely unsuited for such a purpose, such as police stations that are not equipped with the infrastructure and services to ensure decent conditions of detention, poses impediments to the ability of the detainees to prepare for their defence. The Working Group urges the respective authorities to cease the holding of pretrial detainees in facilities not suited to such a purpose (A/HRC/39/45/Add.1, para. 40).

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<sup>1</sup> Opinions No. 53/2018, No. 16/2018, No. 1/2018, No. 24/2015 and No. 57/2014. See also A/HRC/19/57, paras. 48–58.

<sup>2</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rules 4 (2), 13, 21 and 23.

### 3. Pretrial detention of juveniles

44. The Working Group visited dedicated pretrial detention facilities for children in Thimphu and Phuntsholing. The authorities explained that the facilities were not used to hold children in conflict with the law due to the lack of a need for such detention. Thus, the facility in Thimphu was used to hold women in pretrial detention and those convicted in civil cases, while the facility in Phuntsholing had been empty since August 2018.

45. In principle, the decision of the authorities in Thimphu is constructive and the Working Group commends the flexible approach of the authorities to maximize the use of existing empty facilities to ensure better conditions of detention for other groups of detainees. However, during its visit to Thimphu police station, the Working Group met with a number of juveniles in pretrial detention being held together with adults convicted in civil cases; the juveniles had been relocated only very recently after being initially held together with adult males in pretrial detention. The juveniles were subjected to the same regimes as adult pretrial detainees, spending 23 hours a day in their cells, without any purposeful activities and having no access to education.

46. International law requires that juveniles should be separated from adults in detention, as enshrined in article 37 (c) of the Convention on the Rights of the Child and also required by article 49 of the Child Care and Protection Act. The Working Group calls upon the authorities to strictly adhere to that obligation. The Working Group also calls upon the Government to ensure that children in pretrial detention have access to education and adequate opportunities to participate in sports, physical exercise and leisure-time activities, in accordance with paragraphs 32 and 38 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

### 4. Female detainees

47. The Working Group observed that the criminal justice system does not address the needs of female detainees. For example, there is no dedicated prison facility for convicted female inmates, as the current facility used to detain women at Chamgang Prison is an interim measure until a more permanent facility is constructed. In addition, there is no pretrial detention centre for women, and the Working Group observed various ad hoc arrangements for holding female pretrial detainees. For example, female inmates were occupying the juvenile pretrial detention facility at the pretrial detention centre for children in Thimphu. Furthermore, in Phuntsholing, three female detainees were being detained in very close proximity to the male detainees in the police station, while the juvenile pretrial detention unit, only a few paces away from the same police station, was empty and, in the absence of a dedicated centre for women, could have been used to hold the three females.

48. There is only one open-air prison for women at Dawakha, Paro, and female inmates are not currently able to transfer from Chamgang Prison to an open-air prison in another part of the country to be closer to their family and community.

49. Finally, the Working Group understands that there is currently no dedicated operational drug rehabilitation facility for the treatment of drug-dependent females, as the Serbithang rehabilitation centre is only for men. That is reportedly due to the limited number of drug-dependent females, who are currently referred for treatment at centres operated by the Youth Development Fund. The Working Group was informed that, in the event of an increase in the number of female clients, treatment would be made operational at the Serbithang facility, which already had the required structure and trained female counsellors in place.

50. In line with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women, the Government should ensure dedicated and appropriate detention facilities to accommodate all female detainees.

### 5. Detention of members of the lesbian, gay, bisexual, transgender and intersex community

51. The Working Group notes that the Penal Code criminalizes homosexuality, which is a punishable offence under the law (sects. 213–214). In that regard, it recalls its earlier

jurisprudence, in which it found that similar domestic provisions violated the Universal Declaration of Human Rights. More specifically, sexual orientation is a prohibited ground of discrimination under existing international human rights law and any detention resulting from such discrimination is considered arbitrary.<sup>3</sup>

52. During its visit, the Working Group called upon the Government to amend the Penal Code to decriminalize consensual same-sex relations between adults. It was informed that the National Assembly had passed a Penal Code amendment bill to remove sections 213 and 214 criminalizing homosexual acts. The bill would be sent to the National Council for review and adoption.

## 6. Lack of legal representation

53. Since the Working Group's previous visit, in 1996, steady progress has been made in developing the legal profession in the country and the capacity of legal professionals to represent criminal defendants. For instance, there was no law school and no lawyers at the time of the 1996 visit, while at present there are over 200 private lawyers and approximately 120 lawyers in government service. Jigme Singye Wangchuck School of Law is training future members of the legal profession, and lawyers who have gained law qualifications abroad can receive further training at the Royal Institute of Management, which allows them to start practising in Bhutan. Improving the provision of legal representation is also envisaged in the Justice Sector Strategic Plan 2018–2023 and in the twelfth Five Year Plan, as a key strategy for achieving National Key Result Area 16 (strengthening justice services and institutions) through more effective delivery of legal services. The right to legal representation is also enshrined in articles 7 (21) and 9 (6) of the Constitution and in other key legislation, such as the Civil and Criminal Procedure Code, 2001, as amended in 2011, the *Jabmi* Act, 2003, the Child Care and Protection Act, 2011, the Evidence Act, 2005, and the Domestic Violence Prevention Act, 2013.

54. However, further steps are urgently needed to ensure that the right to legal representation is given effect in practice. According to the testimony received, a majority of defendants in criminal matters did not have access to legal representation at crucial stages of their proceedings: following arrest, during pretrial detention and during their trial and appeal. Detainees were generally not aware of their right to a lawyer as they had not been systematically informed of that right by the police and, in many cases, could not afford to retain a private lawyer. In some cases, detainees chose to represent themselves, either based on an incorrect understanding of the law that they would not be subject to a serious sentence if convicted, or because they had committed the offence and did not think that legal representation was important. Both attitudes indicate a general lack of understanding of the importance of having legal counsel to place all important aspects of each case before the court.

55. Additionally, in some cases, juveniles have been tried for serious criminal offences without legal counsel. The lack of legal representation in such circumstances amounts to a grave violation of the right to a fair trial. According to international standards, a person who has been detained is entitled to legal representation at any time during his or her detention, including from the moment of apprehension, and effective representation must be provided by the State if the detainee cannot afford to retain his or her own lawyer.

56. While a legal aid fund has been established under the auspices of the Royal Court of Justice, the fund is not operational and is largely unknown to legal practitioners and the public. There appears to be a low level of awareness that a fund exists to provide free legal representation in criminal matters and how to access it. There is also no clarity on the mechanism for rendering legal aid, service providers, regulators and the scope of legal aid. Guidelines are currently being developed by stakeholders to clarify how the legal aid fund will be accessed and used, including a means and merit test for persons seeking such services. However, there is not yet any agreement on how to determine whether a person is indigent and therefore qualifies for free legal representation and how to ensure that the

<sup>3</sup> Opinion No. 14/2017, para. 51.

provision of free legal assistance is sustainable. There are also no laws that deal specifically with the provision of legal aid.

57. Options to improve the provision of legal representation include pro bono services by private lawyers and the provision of free legal advice from the growing number of law students being trained at Jigme Singye Wangchuck School of Law. A further option would be the ongoing use of the *Jabmi* system for the provision of basic legal services to assist in ensuring that more criminal defendants have access to legal advice. Greater use of alternative mechanisms of resolving disputes (such as mediation or resolution of minor criminal matters at the *gewog*, or village group, level) could also assist in reducing pressure on the legal aid fund and on the legal system overall. In the longer term, it will be important to determine a specific central agency that provides publicly funded defence counsel to those most in need of legal assistance.

58. Moreover, during its first visit to Bhutan, in 1994, the Working Group examined the situation of individuals detained under national security legislation enacted in 1992. It recommended that the Government conduct a review of such cases. By the time of the Working Group's follow-up visit to the country in 1996, the Government reported that it had done so. Subsequent to its follow-up visit, the Working Group deemed that the 15 recommendations that it had made in 1994 had generally been implemented (E/CN.4/1997/4/Add.3, para. 55). It noted that the estimated 300 persons held in the Chamgang Central Prison under the National Security Act was taken before a judge and then either released or put on trial, and that 19 of those individuals had been granted an amnesty by Royal Decree.

59. In the course of its 2019 visit, the Working Group interviewed several prisoners that had been imprisoned under national security legislation. A number of them had been in prison serving life sentences. There is no parole for a life sentence in Bhutan; as a result, those detainees serving life sentences have no prospect of release, with the exception of amnesty. During its interviews with the detainees, the Working Group was again informed of a number of due process violations when the individuals had been tried some 25 years ago. The Working Group is aware that, at the time, there were no legal practitioners in the country, as noted in the Working Group's report following the 1994 visit (E/CN.4/1995/31/Add.3, para. 27). However, in that report, the Working Group specified that individuals accused of terrorism offences should have legal representation. It appears that such representation was not always provided, which is of particular concern in the case of those sentenced to long-term or life imprisonment. Many prisoners argued that they had missed the 10-day appeal period as they did not understand their right to appeal. Many reported having being convicted for actions that appeared to the Working Group to be unrelated to terrorism. The Working Group recommends that the situation of those detainees be reviewed again to determine whether there were any due process violations that may have led to their conviction.

## 7. Legal literacy and awareness

60. In general, the Working Group noted a low level of legal literacy and awareness among the individuals interviewed during the visit, an observation that it also made at the conclusion of its follow-up visit in 1996 (E/CN.4/1997/4/Add.3, para. 54 (d) (i)). In some cases, the lack of legal awareness resulted in the detention of individuals in criminal proceedings, which could have been avoided if they had been aware of the law. That was particularly true of criminal defendants who had not had access to legal advice. For example, the Working Group was informed of several cases in which young men were facing a potential minimum sentence of nine years' imprisonment for the rape of a child above 12 years of age. In those cases, the defendants had not been aware that consensual sexual relationships with a person between the age of 16 and below 18 amounted to a criminal offence. Similarly, a large number of individuals were currently detained in Thimphu and Paro in relation to civil cases for having failed to repay or otherwise meet the terms of a loan which, in most cases, was due to a lack of understanding of the obligations contained in commercial agreements.

61. The Office of the Attorney-General and the Bhutan National Legal Institute have a key role to play in disseminating information on these and other legal issues to the

community, in cooperation with relevant law enforcement agencies. The Working Group notes that there is interest among government agencies in improving legal literacy, particularly among disadvantaged members of the community, which is a very positive development. One of the strategies in strengthening justice services and institutions in the twelfth Five Year Plan involves ensuring that citizens are aware of laws and procedures. The Working Group urges the authorities to expedite the implementation of that initiative.

#### **8. Deprivation of liberty due to debt**

62. During its visit, the Working Group met with numerous detainees in police stations in so-called civil cases, involving individuals who were unable to repay their loans. The Working Group had voiced its concern about that practice in its conclusions issued after its follow-up visit in 1996. In such cases, after a judgment confirming the debt, the debtor is required to repay the amount owing. If the court order is not complied with, the courts normally issue a summons to comply. Such summons are issued repeatedly, but if not complied with, an arrest warrant on the basis of contempt of court is issued and the police arrest the debtor. The debtor is brought to a police station where he or she is detained until the debt is repaid. The time such individuals spend in detention ranges from a few days up to several years, with the maximum term that the Working Group came across being three years. The time spent in police detention was significantly longer in Thimphu and Paro than in other locations. While in Thimphu and Paro it was usual to find individuals spending more than a year in police detention in civil cases, the detention time for such matters in other locations was measured in days and weeks. In fact, some police stations engaged directly with the courts by, for example, producing a weekly report indicating the number of persons held in civil cases in the police station along with the length of time they had spent there. In the view of the officers, that assisted in reducing the time spent in detention. The Working Group commends those initiatives.

63. In general, those held in police stations in civil cases were subjected to the same regime and rations as those detained on suspicion of having committed a crime, and at times they were also kept together, which the Working Group considers to be unacceptable and incompatible with international human rights law.

64. Moreover, such individuals had no possibility to work during their detention so as to enable them to repay their debt and, in the vast majority of cases, debts were reportedly subject to interest, which accrued during the detention. Consequently, individuals detained in civil cases were caught in a vicious cycle, as they were deprived of their liberty and unable to work, which in turn meant that they were unable to earn a wage so that they could repay the debt. Most of the individuals in such situations had no real understanding of when they might be released as their only prospect for freedom rested on family members raising the requisite sum of money. The Working Group observed the profound impact that such detention had not only on the individuals but also on their families, who experienced relationship breakdown due to the pressures brought about by the de facto indefinite detention. The Working Group regrets that its observations are similar to those it made following its 1994 visit and the follow-up visit in 1996. At the conclusion of both the 1994 and 1996 visits, the Working Group recommended that such individuals should be released.

65. International human rights law prohibits deprivation of liberty due to debt. That prohibition is non-derogable and in fact constitutes part of customary international law. Indeed, as the Working Group has expressed previously, detention due to inability to pay back a debt is in itself arbitrary deprivation of liberty (E/CN.4/2002/77, para. 60 (a)).<sup>4</sup> It is also arbitrary as it discriminates against individuals on the basis of their economic condition.

66. The Working Group urges the Government to cease the practice immediately and resort to alternative measures of debt recovery through, for example, the deduction of debt payments from salaries and flexible repayment schedules.

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<sup>4</sup> See also opinions No. 31/2001 and No. 38/2013; and Revised Fact Sheet No. 26 ([www.ohchr.org/Documents/Issues/Detention/FactSheet26.pdf](http://www.ohchr.org/Documents/Issues/Detention/FactSheet26.pdf)).

## 9. Detention of guarantors

67. According to section 100 of the Civil and Criminal Procedure Code, when a person has agreed to assume personal liability in acting as a guarantor, he or she is responsible for the performance of any decree or order. The Working Group was informed that detainees in certain criminal matters and persons detained in civil cases must provide a guarantor as a condition of release. For example, a guarantor is required before a detainee can be transferred to an open-air prison or to a drug rehabilitation centre. In some cases, detainees have not been able to locate a guarantor, as they do not have a relative who was willing or able to provide a guarantee, and they have therefore not been able to benefit from such transfers.

68. In addition, according to some interviewees, if a detainee for whom a guarantee has been provided absconds from the place of detention, the guarantor will be detained until the detainee is located. The detention of a person who provides a guarantee but has not committed any criminal offence is inherently arbitrary. The Working Group recommends that the Government immediately cease that practice. Alternatives to such detention exist, including requiring the guarantor to forfeit a bond if the detainee does not meet the terms of a decree or order.

## 10. Remission of sentences

69. Since 2013, any prisoner who is assessed by the good conduct review committee operating in each prison as having demonstrated good conduct while serving a sentence will be eligible for a reduction (or remission) of their sentence by one month in each year. The initiative is an example of a positive detention practice, as it allows for the earlier release of prisoners who have demonstrated through their good behaviour that they have been rehabilitated and are ready to be reintegrated into society. The granting of remission also represents important progress for the Government in strengthening rehabilitative and reformatory programmes for inmates, as envisaged in its twelfth Five Year Plan.

70. However, the granting of remission does not take into account the period of time in which a person was detained in a police station. According to testimony received, some detainees are held in police stations for lengthy periods – in initial police custody, during pretrial detention, while awaiting trial, following conviction (until their transfer to a prison facility) and pending the hearing of appeal proceedings. As a result, despite having spent a period of detention in a police station, detainees do not gain the benefit of remission for that time. In some cases, detainees effectively have to choose between appealing their case, which may entail a further waiting period in police custody, and not pursuing the appeal so that they can be transferred to a prison facility where the period of detention is taken into account in calculating remission of the sentence.

71. Moreover, remission only extends to detainees who have entered into a remission agreement for good conduct. The Working Group was informed that signature of such an agreement usually takes place once the detainee is transferred to a prison. The granting of remission should automatically apply to all detainees who have demonstrated good conduct and should be based upon all of the time that a person has spent in detention, including time spent at a police station.

## B. Deprivation of liberty in the context of drug control

72. Drug and alcohol addiction is a serious and growing concern across Bhutan. It is clear to the Working Group that there is strong political will on the part of the authorities to effectively address that problem. This should be done in full respect of all human rights and through health-related policies. Bhutan should avoid criminalization of consumption and detention of substance consumers.

73. There are several issues of concern to the Working Group in relation to drug-related detention. According to statistics provided by the Royal Bhutan Police, 530 people were subject to criminal proceedings for drug offences across the country in 2018. The Working Group interviewed many detainees who had been charged with or convicted of drug-related

offences, particularly in relation to the personal possession and consumption of psychotropic drugs, such as Spasmo Proxyvon Plus (SP+). According to section 85 of the Narcotic Drugs, Psychotropic Substances and Substance Abuse Act, 2015, an agency designated by the Bhutan Narcotics Control Authority may conduct drug testing of any person who causes a public nuisance or poses a probable risk to the public and is suspected on reasonable grounds of having consumed or of consuming any substances controlled under the Act in any public place. There appears to be no judicial control of the circumstances in which an agency or the police may obtain a blood or urine sample, which can be obtained without a warrant. The Working Group was informed that persons arrested on suspicion of having committed a drug offence do not have the right to refuse to provide a blood or urine sample to the police, and that many do not refuse to do so, particularly when they do not have legal representation. Section 86 of the Narcotic Drugs, Psychotropic Substances and Substance Abuse Act allows for the detention of a suspect who declines to provide a sample.

74. The Working Group learned that, in some instances, detainees with serious addiction problems had been under the influence of drugs and/or alcohol at the time of their arrest and interrogation, casting doubt on whether they were capable of understanding their rights and providing accurate statements to the police, particularly in the absence of family members or legal representation. Moreover, while some detainees had access to effective medical treatment while they were experiencing withdrawal symptoms in the early stages of their detention, others did not.

75. In addition, the Working Group understands that there is a clear delineation between individuals who are eligible for compulsory rehabilitation and those who will be detained. According to information received, persons found in possession of up to 20 pieces (or tablets) of prohibited narcotics are not prosecuted if they admit themselves to a Bhutan Narcotics Control Authority-approved drop-in centre for detoxification, counselling and/or treatment. However, persons in possession of a larger quantity of the same prohibited narcotic (for example, 21 pieces) are subject to prosecution for a criminal offence, such as drug trafficking. The Working Group considers that all persons found to be using prohibited drugs should only participate in treatment on a voluntary basis. All rehabilitation measures should be based upon the prior and informed consent of the patient.

76. The Working Group also understands that the police may refer cases involving drug dependency to the Bhutan Narcotics Control Authority-approved drop-in centres for assessment of whether the person requires counselling, detoxification and compulsory treatment. The decision on the type of treatment required is made by a treatment assessment panel consisting of clinical experts, a peer counsellor and a legal officer. In some cases, police officers were also reportedly members of the panel, which is inappropriate given the role of the police in referring the case in the first place. The Working Group was informed that, if an individual who has been assessed by the panel does not accept its findings, he or she has no right to challenge the decision and is transferred to a three-month programme of compulsory rehabilitation at Serbithang Rehabilitation Centre in Thimphu. Females who are required to undertake rehabilitation are often placed in other centres, such as the Tsaluna Rehabilitation Centre in Thimphu, which is in principle reserved for voluntary treatment. As an alternative to compulsory drug detention and rehabilitation centres, the Working Group urges the Government to continue to make available voluntary, evidence-informed and rights-based health services in the community.

77. Police station registers indicate that a significant number of individuals are currently detained in relation to drug offences, which represents a potentially overwhelming challenge to the efficient and timely operation of the criminal justice system. In addition, many of those interviewed – both service providers and drug dependents – considered that detention was not the best method of dealing with drug dependency. Instead, most interviewees considered that rehabilitation, with an emphasis on avoiding relapse, is far more effective. An early detection treatment model for drug users at high risk is envisaged under chapter VI of the Narcotic Drugs, Psychotropic Substances and Substance Abuse Act through the establishment of institutions with facilities to treat substance abuse through counselling and other rehabilitative programmes, as well as appropriate aftercare. The

Working Group considers this to be an appropriate model, which recognizes the importance of addressing drug dependency at the earliest stages.

78. The Working Group wishes to emphasize that the absolute prohibition of arbitrary deprivation of liberty and the safeguards to prevent such instances apply to everyone, including those arrested, detained or charged with drug-related offences, as well as those undergoing compulsory rehabilitation for drug addiction, in accordance with international human rights obligations.

### **C. Deprivation of liberty in the context of psychosocial disability and social care**

79. There are currently no facilities for individuals with psychosocial disabilities in the country apart from a small psychiatric ward in Jigme Dorji Wangchuck National Referral Hospital in Thimphu. Although the overall capacity of the ward is 20, it is divided into two units: one for persons with psychosocial disabilities and the other for alcohol and drug dependent persons in detoxification programmes. This means that there are only 10 beds in the ward for persons with psychosocial disabilities. In addition, there are mental health focal points in every hospital and basic health unit. Health professionals are trained on a community approach to mental health care.

80. The approach has been to provide care in the community which, as long as appropriate and adequate professional care is ensured to everyone who requires it, is commendable. The Working Group encourages the Government to increase its efforts to provide appropriate professional medical care in the community to those with psychosocial disabilities. In addition, the Government should increase the number and professional capacity of the medical professionals who provide care in the psychiatric ward of the National Referral Hospital, consistent with its signing of the Convention on the Rights of Persons with Disabilities in 2010. The Government should accede to that international instrument without delay.

81. Finally, there are homes and shelters operating for vulnerable groups, including women and children facing difficult circumstances, such as domestic violence. The Working Group observed that, in some cases, the residents of such homes and shelters were not readily able or willing to leave the facility and, in most cases, did not attempt to do so. The homes and shelters are providing a vital social service to people most in need who would otherwise have no place to live. The Working Group encourages the Government to continue to provide support to such homes and shelters so that their residents are able to reintegrate into the community.

## **V. Implementation of opinions adopted by the Working Group**

82. Since its establishment, the Working Group has adopted four opinions involving Bhutan (see appendix II). The Working Group invites the Government to submit updated information, including on whether the subjects of those opinions whose deprivation of liberty has been found to be arbitrary have been released, whether reparations have been made to them and whether any other action has been taken to implement the recommendations.

## **VI. Conclusions**

83. **The Working Group appreciates and commends the willingness of the Government to submit itself to scrutiny through the visit and considers that the findings in the present report offer an opportunity to support the Government in addressing situations of arbitrary deprivation of liberty.**

84. **The Working Group observed many positive changes across Bhutan in relation to the deprivation of liberty, including: the regular observance by the police of the requirement to present an individual before a judge within the 24-hour time limit; the**

use of open-air prisons; the growth of civil society and the legal profession; progress with regard to juvenile justice, in particular relating to sentencing and the introduction of family and child benches and diversion programmes; expeditious trials; and the consistent use of custody registers.

85. The Working Group identified systemic problems within the criminal justice system that placed defendants at a high risk of arbitrary detention or in conditions of detention that might affect their ability to exercise their fair trial rights or to seek release:

(a) Under the Civil and Criminal Procedure Code, certain criminal offences are considered to be non-bailable, which reverses the presumption of innocence;

(b) There is an absence of dedicated pretrial detention facilities for adults in Bhutan, with adults held in police stations not equipped with the infrastructure and services to ensure decent conditions of detention and with pretrial detainees often held together with sentenced individuals awaiting their placement in prisons, a situation that poses severe impediments to the ability of detainees to prepare for their defence;

(c) Some juveniles are held in police stations together with adults, a practice that runs counter to the obligations of Bhutan under the Convention on the Rights of the Child;

(d) The criminal justice system in Bhutan does not address the needs of female detainees;

(e) A lack of legal representation, with most defendants in criminal matters not having access to legal representation at crucial stages of their proceedings;

(f) A continuing low level of legal literacy and awareness among the public, which in some cases has resulted in the detention of individuals in criminal proceedings that could have been avoided if they had been aware of the law;

(g) A widespread practice of deprivation of liberty due to debt, contrary to international norms. Similarly, there are instances of detention of guarantors in civil cases;

(h) Remission of sentences does not take into account the period of time in which a person was detained in a police station.

86. The Working Group identified several issues of concern in relation to drug-related detention, including a lack of judicial control of drug testing of suspects; an arbitrary distinction between individuals who are eligible for rehabilitation and those that will be detained; and the inability of individuals to challenge findings of the treatment assessment panel.

87. The Working Group observed that persons with psychosocial disabilities mostly benefit from care within their communities. Apart from a small psychiatric ward in Jigme Dorji Wangchuck National Referral Hospital in Thimphu, there are currently no facilities for such individuals in the country.

88. The Working Group noted that individuals belonging to vulnerable groups, such as women and children in difficult circumstances, benefited from care in homes and shelters. Most were not readily able or willing to leave those facilities and, in most cases, did not attempt to do so.

## VII. Recommendations

89. The Working Group recommends that the Government take the following measures in relation to international human rights obligations:

(a) Become a State party to the International Covenant on Civil and Political Rights, which contains important safeguards in relation to the right to liberty, and other international human rights treaties, such as the Convention against Torture, the International Convention for the Protection of All Persons from

**Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;**

(b) **Accede without further delay to the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities.**

90. **The Working Group recommends that the Government take the following measures in relation to its national legal framework:**

(a) **Introduce amendments in the Penal Code in order to define the terms “arrest” and “detention” and broaden the scope of the offence of illegal arrest to include any physical apprehension that results in the deprivation of liberty;**

(b) **Ensure that the Penal Code amendment bill is enacted to decriminalize consensual same-sex relations between adults.**

91. **The Working Group recommends that the Government build upon its positive initiatives to address the arbitrary deprivation of liberty by taking the following measures:**

(a) **Make greater use of open-air prisons by reviewing the eligibility criteria;**

(b) **Provide support to civil society organizations, including those that work on access to justice and legal aid, and for the training of more social workers with professional education in social work and counselling;**

(c) **Increase the use of the diversion programme and strengthen the capacity of the National Commission for Women and Children by increasing the number of its professional counsellors and social workers;**

(d) **Consider carefully any initiatives that would lead to the opening of new places of deprivation of liberty, especially in the context of immigration control and psychosocial disability;**

(e) **Carry out an audit of the custody registers required so as to ensure a more streamlined approach.**

92. **The Working Group recommends that the Government take the following measures in relation to criminal justice:**

(a) **Remove non-bailable offences from the Civil and Criminal Procedure Code and any other criminal legislation so that all detainees have the right to seek an individualized assessment by a judicial authority of whether pretrial detention is reasonable and necessary in their case;**

(b) **Reform the current system of pretrial detention, including by:**

(i) **Ensuring that pretrial detention takes place in appropriate facilities suitable for the length of such detention;**

(ii) **Placing children in pretrial detention only as a measure of last resort, in full compliance with article 37 of the Convention on the Rights of the Child, and requiring such detention to take place in facilities appropriate for holding children, with effective access to education and age-appropriate recreational activities;**

(iii) **Ensuring that women in pretrial detention are always held separately from men and that such detention fully respects their rights to meaningful out-of-cell time under the same conditions as men;**

(iv) **Ensuring that pretrial detention facilities make it possible to respect the non-convicted status of individuals and the presumption of innocence of such detainees, including the separation of persons in pretrial detention from convicted persons;**

(v) **Allowing pretrial detainees to enjoy meaningful out-of-cell time, which includes spending a reasonable part of the day outside their cells in addition to**

at least one hour of exercise in the open air, and a choice of purposeful activities;

(vi) Providing all detainees with mattresses and bedding appropriate for the prevailing weather conditions;

(vii) Guaranteeing that children in pretrial detention have access to education and adequate opportunities to participate in sports, physical exercise and age-appropriate leisure-time activities;

(c) In line with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women, ensure that dedicated and appropriate detention facilities are available to accommodate female detainees;

(d) Develop standard operating procedures or other policies requiring the Royal Bhutan Police to ensure that all persons in its custody are informed of their right to legal representation and are able to exercise that right effectively in practice;

(e) Further review the remaining cases of persons detained under national security legislation to reassess whether there were any procedural irregularities during the proceedings that occurred in the absence of legal counsel. The Working Group stands ready to provide technical assistance to that end;

(f) Ensure that legal representation is prioritized for persons facing criminal charges that may result in life imprisonment and for juveniles charged with serious criminal offences;

(g) As a matter of urgency, explore options to improve the provision of legal representation, including:

(i) Raising awareness of the legal aid fund established to provide free legal representation in criminal matters, and developing guidelines on how the legal aid fund will be accessed and used;

(ii) Encouraging pro bono services by private lawyers;

(iii) Seeking free legal advice from the growing number of law students being trained at Jigme Singye Wangchuck School of Law, as part of their education;

(iv) Continuing to use the *Jabmi* system for the provision of basic legal services to assist in ensuring that more criminal defendants have access to legal advice;

(v) Making greater use of alternative mechanisms for resolving disputes (such as mediation or resolution of minor criminal matters at the *gewog* level) to reduce pressure on the legal aid fund and on the legal system overall;

(vi) Determining a specific central agency that provides publicly funded defence counsel to those most in need of legal assistance;

(h) Streamline the practice of detention registers to ensure that the various registers do not duplicate the information they contain and are duly completed;

(i) In cooperation with the Office of the Attorney General and the Bhutan National Legal Institute and in consultation with relevant law enforcement agencies, determine areas in which greater legal literacy is required and develop and disseminate information on those topics to the community, particularly among disadvantaged members of the community;

(j) Immediately cease the practice of detaining persons because they owe a debt and implement alternative measures of debt recovery, such as the deduction of debt payments from salaries and flexible repayment schedules;

(k) Immediately cease the practice of detaining guarantors, and make greater use of alternatives to such detention such as requiring the guarantor to forfeit a bond if the detainee does not meet the terms of a decree or order;

(l) Ensure that the remission of sentences applies to all detainees who demonstrate good conduct, and that it takes into account all of the time that a person has spent in detention, including time spent at a police station;

(m) Ensure that all forms of punishment are accompanied by safeguards against arbitrary application and that all punishment is respectful of human dignity, including by ensuring ongoing implementation of the notice issued by Royal Bhutan Police Headquarters to put an end to all forms of informal punishments.

93. The Working Group recommends that the Government take the following measures in relation to deprivation of liberty in the context of drug control:

(a) Amend section 85 of the Narcotic Drugs, Psychotropic Substances and Substance Abuse Act and any other relevant legislation to ensure that drug testing, including the obtaining of a blood or urine sample, can only be undertaken with a warrant approved by a judicial officer;

(b) Develop standard operating procedures or other policies requiring the Royal Bhutan Police to ensure that detainees are not interviewed or interrogated while they are, or are suspected to be, under the influence of drugs and/or alcohol, and that all detainees are given access to effective medical treatment while they are experiencing withdrawal symptoms in the early stages of their detention;

(c) Amend relevant legislation, including the Narcotic Drugs, Psychotropic Substances and Substance Abuse Act, to ensure that all persons found to be using prohibited drugs and other substances only participate in treatment on a voluntary basis;

(d) Amend relevant legislation to ensure that an individual who has been assessed by a treatment assessment panel has:

(i) The right to challenge the decision to transfer him or her to compulsory rehabilitation;

(ii) The right to legal assistance, if required;

(e) Ensure that safeguards against the arbitrary deprivation of liberty are applied to all detainees, including those arrested, detained or charged with drug-related offences.

94. The Working Group recommends that the Government take the following measures in relation to deprivation of liberty on the grounds of psychosocial disability:

(a) Increase efforts to provide appropriate medical care in the community to those with psychosocial disabilities, including by raising the numbers and professional capacity of medical professionals who provide care in the psychiatric ward of the National Referral Hospital in Thimphu;

(b) Continue providing support to homes and shelters for vulnerable groups, including women and children in difficult circumstances. Such support must involve ensuring that the homes and shelters are regularly monitored to guarantee the ability of residents to readily leave the facility when they wish to do so and that they are being supported to reintegrate into the community.

## Appendix I

### Detention facilities visited

The Working Group visited over 20 places of deprivation of liberty, including police stations; long-term and open-air prisons for adults; youth development and rehabilitation centre; shelter homes for women, children and the elderly; hospital psychiatric ward and centre for treatment of drug dependency.

The Working Group also visited the Gangzhay Kepiling centre in Limukha run by the Monastic Council of Bhutan. The Working Group concluded that this is not a detention facility.

#### **Thimphu**

*Thimphu Police Station*

*Chamgang Central Prison*

*Chamgang Female Central Prison*

*Chamgang Open Air Camp*

*Thimphu District Prison*

*Thimphu Child Friendly Pretrial Detention Center*

*Mental Ward of the National Hospital in Thimphu*

*Gawailing Happy Home*

*Bhutan Narcotics Control Authority Treatment Center in Serbitang*

*Nazhome Lamtoen Center*

#### **Chukha**

*Tsimasham Police Station*

*Chukha Youth Development and Rehabilitation Center*

*Bhutan Narcotics Control Agency Centre in Phuntsholing*

*Phuntsholing Police Station*

*Phuntsholing Women and Child Protection Unit*

*Phuntsholing Child Pretrial Detention Center*

*Gedu Police Station*

#### **Samtse**

*Samtse District Prison*

*Samtse Police Station*

#### **Paro**

*Dawakha Open Air Prison*

*Paro Police Station*

#### **Punakha**

*Gangzhay Kepiling centre in Limukha*

*Punakha Open Air Prison Zomlingthan*

## Appendix II

### Opinions concerning Bhutan

Opinion No. 2/2017: (Bhutan and India) A/HRC/WGAD/2017/2

Opinion No. 40/2011: (Bhutan) A/HRC/WGAD/2011/40

Opinion No. 13/1998: (Bhutan) A/HRC/WGAD/1998/13

Decision No. 48/1994 and Revised Decision No. 3/1996 (Bhutan)

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