

REVISED DECISION No. 3/1996 (BHUTAN)

1. On 1 December 1994, the Working Group adopted decision No. 48/1994 (BHUTAN), deeming that the detention of Tek Nath Rizal following his conviction on 16 November 1993 could not be considered arbitrary.

2. In a request for a review dated 19 May 1995, the source asked the Group to reconsider that decision.

3. At its fourteenth session, in December 1995, the Group adopted criteria for determining the admissibility of such requests. Those criteria, which have been reflected in the Group's revised methods of work, are as follows:

"Very exceptionally, the Group may, at the request of the Government concerned or the source, reconsider its decisions on the following conditions:

(a) If the facts on which the request is based are considered by the Group to be entirely new and such as to have caused the Group to alter its decision had it been aware of them;

(b) If the facts had not been known or had not been accessible to the party originating the request;

(c) In a case where the request comes from a Government, on condition that the latter has replied within 90 days as stipulated in the Working Group's revised methods of work."

4. Considering that the request for a review of decision No. 48/1994 was made prior to the adoption of those criteria, the Group decided, on the basis of the principle of non-retroactivity, that the criteria should apply only to new cases, and accordingly declared the request admissible.

5. The Working Group recalls that, in its decision No. 48/1994, it rendered its opinion on the period of detention imposed on Tek Nath Rizal between the time he was sentenced by the High Court (16 November 1993) and the date on which the decision was adopted (1 December 1994).

6. With the source's agreement, the allegations supporting the request for a review were sent to the authorities in Bhutan for comment. The Government welcomed this adversary procedure, which gave it an opportunity to put forward its arguments to the Group on an informed basis.

7. In the light of the various arguments, the Working Group has made the following assessments:

First allegation: Tek Nath Rizal was arrested in Nepal and improperly extradited to Bhutan (no extradition order).

In its memorandum, the Government states that Tek Nath Rizal was handed over to the Bhutanese authorities on the basis of border agreements on police cooperation between Bhutan and neighbouring countries. During its visit to

southern Bhutan, the Group noted from interviews with detainees that some of them, apprehended in India, had indeed been handed over to the Bhutanese authorities and imprisoned on the basis of those agreements.

While not expressing a position on the nature of such agreements, the Group believes that if the allegations of irregularities proved to be true, the Nepalese authorities would be implicated.

The Working Group therefore decided not to accept the allegation in the form in which it was presented.

Second allegation: the family of Tek Nath Rizal was not informed of his arrest within a reasonable period of time.

According to the Government, within 20 days of Tek Nath Rizal's arrest, a Bhutanese public official was dispatched to Nepal, to Tek Nath Rizal's home, to inform his wife of her husband's arrest and of where he was being held. As Tek Nath Rizal's wife was out, the official informed the persons who were at home, namely, the father and two servants. When questioned about that, Tek Nath Rizal confirmed that that was what had happened.

The Working Group therefore considered that, given the distances involved, the delay was not so serious as to make the detention arbitrary. The allegation was therefore dismissed.

Third allegation: the wife of Tek Nath Rizal was not given permission to visit him until the second year of his detention.

The Government maintains that Mrs. Rizal did not ask to visit her husband until the second year of his imprisonment and that as soon as she sent a letter to the Minister for Foreign Affairs, on 5 July 1992, requesting such permission, he replied on 20 July 1992, as follows:

"... The Royal Government of Bhutan is pleased to grant you permission to visit your husband, Mr. Tek Nath Rizal. Please let me know your date and time of arrival in Phuntsholing, so that the Dungpa may be instructed to issue your travel permit from Phuntsholing to Thimphu. Kindly contact me after your arrival in Thimphu so that I can make necessary arrangements for you to visit your husband. You may bring an escort with you, if you so wish."

In a letter dated 4 December 1992, Mrs. Rizal replied as follows:

"I thank you very much for the letter dated 20 July 1992 which granted me an opportunity to see my husband, Tek Nath Rizal, who is in jail there. Although this kind gesture of yours gave me great pleasure for which I thank you, yet I wish to inform you that I need a little more time to take the journey. Since I am living here and my husband was taken away from me, I am in difficulty and am not in a financial position to take the trip immediately. I now hope to start it only after May 1993. When I am ready I shall write the date on which I shall reach Phuntsholing as your letter told me to do."

A copy of the above correspondence was handed to the Working Group.

According to some of the detainees the Group interviewed in Chamgang prison, where Tek Nath Rizal is being held, family visits, particularly by wives, are arranged by the Government on the initiative of the International Committee of the Red Cross (ICRC). It seems safe to assume that Mrs. Rizal did not ask to take advantage of this initiative. The Bhutanese authorities have reasserted that they would not turn down any request from Mrs. Rizal if one were made.

The Working Group therefore decided not to accept the allegation in the form in which it was presented.

Fourth allegation: Tek Nath Rizal was not authorized to correspond with his wife, either officially or unofficially.

The Working Group has been unable to reach an opinion on this matter. It notes that Tek Nath Rizal supposedly received correspondence from his wife, at least from time to time, although, in the face of conflicting allegations, the Group was unable to determine whether the occasional nature of that correspondence was due to the sender or to the administration's unwillingness. The same applies, in the other direction, to Tek Nath Rizal's supposed entitlement to send mail to his wife. Given that uncertainty, the Group decided not to accept the allegation in the form in which it was presented.

Fifth allegation: Tek Nath Rizal was not informed of his right to be assisted by a lawyer, nor was a lawyer provided for him during his prolonged prison custody.

The Government recalled that the function of a lawyer, stricto sensu, did not exist in Bhutan, as legal aid was traditionally provided by Jabmis, i.e. people who also exercised their own professions but who were allowed to perform that function more because of their wisdom and experience than because of any legal competence acquired "on the job".

The Government then stated that, in accordance with current practice, a Jabmi was not normally appointed unless the accused asked for one, which was not the case of Tek Nath Rizal; furthermore, when it had been proposed that a lawyer be appointed for him during the proceedings before the High Court, he had declined the offer, preferring to present his own defence. When questioned on that specific point, Tek Nath Rizal confirmed that version.

In the light of the above, the Working Group decided to dismiss the allegation.

Sixth allegation: imprisoned in November 1989, according to the source, for acts committed in 1988/89, Tek Nath Rizal was charged under the National Security Act, which was not promulgated until October 1992.

The Working Group considered that this allegation should be examined in the light of the principle of non-retroactivity of penal law, as laid down in article 11 of the Universal Declaration of Human Rights.

According to the chronology prepared by the Group on that matter, at the time of Tek Nath Rizal's imprisonment in November 1989, capital punishment was mandatory for offences under the National Security Act then in force. The Government - according to information with which it duly provided the source - maintains that in order to avoid the risks of such an occurrence, before Tek Nath Rizal was brought to trial, the decision was taken to amend the National Security Act, in accordance with the source's wishes, by repealing the provision laying down the death penalty. Because this resulted in a law that reduced the gravity of the offence, it became possible to prosecute on the basis of the new law, by virtue of the principle of the retroactivity of less severe penal legislation.

The Working Group consequently considered that there was no legal basis for the allegation.

Seventh allegation: Tek Nath Rizal was handcuffed for two years. Moreover, he did not receive any medical care until one year after his imprisonment.

In accordance with the Group's decision in pursuance of the recommendation made in Commission on Human Rights resolution 1996/28, which encouraged the Working Group to continue to avoid any unnecessary duplication of work, the Working Group transmitted the information to the competent Special Rapporteur.

Eighth allegation: held incommunicado for two years, Tek Nath Rizal was detained for three years without being charged or tried.

Regarding the first point, once again the Working Group was able only to take note of the contradictory versions it had received. While, according to the source, Tek Nath Rizal was held incommunicado, the Government maintains that this was not a case of solitary confinement but a specific situation, as Tek Nath Rizal had always asked to be kept in a cell without fellow prisoners. In any event, the Group believes that this matter has no decisive influence on its assessment of whether or not that period of detention was arbitrary, for the following reasons.

8. Indeed, the Working Group could not but note that between 17 November 1989, on which date he was imprisoned at Lhendupling Guest-House in Thimphu, and 29 November 1992, when his case was brought before the High Court, Tek Nath Rizal was imprisoned without being given an effective opportunity to be heard promptly by a judicial or other authority (principles 11.1 and 37 of the Body of Principles), and without being tried within a reasonable time (principle 38 of the Body of Principles). The Government explains the length of that period, as stated in the paragraph on the seventh allegation, by its concern that Tek Nath Rizal should not be tried until after the amendment to the National Security Act had been adopted, thereby abolishing the death penalty, which, given the executive procedure (Cabinet) and the legislative procedure (National Assembly), could not be promulgated until October 1992.

9. While welcoming the abolition of the death penalty, the Group recalls that, however praiseworthy the Government's intentions might have been in that regard, that in no way relieved it of the obligation to bring the case of

Tek Nath Rizal before a judicial or other authority as promptly as possible, as required by law, so that that authority could decide without delay on the lawfulness of and need for the detention.

10. The Working Group wishes to stress that, as it was able to note during its recent follow-up visit (May 1996), such shortcomings had been eliminated from the administration of justice.

11. In the light of the above, the Working Group decides:

(a) To declare the detention of Tek Nath Rizal for the period from 17 November 1989 to 29 December 1992 arbitrary, being in contravention of principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and falling within category III of the principles applicable in the consideration of the cases submitted to the Group.

(b) To state that the imprisonment of Tek Nath Rizal between his first appearance before the Court and his sentencing on 16 November 1993 cannot be deemed arbitrary.

(c) To confirm its decision No. 48/1994 of 1 December 1994 in which it declared the detention of Tek Nath Rizal since his sentencing by the High Court of Justice on 16 November 1993 not to be arbitrary.

Adopted on 24 May 1996.
