
amnesty international

BHUTAN

Crack-down on "anti-nationals" in the east

Introduction

In recent months, Amnesty International has received reports of serious human rights violations in eastern Bhutan in the context of campaigning activities by the Druk National Congress (DNC). The DNC, a political party set up in exile in Nepal in 1994, has been organizing grassroots campaigning activities in Bhutan demanding a democratic system of government and greater protection of and respect for human rights. The Government of Bhutan views these demands as fomenting civil and political unrest and promoting "anti-national" activities.¹ As a result, the authorities appear to have initiated a concerted effort to crack down on people suspected of being members or sympathisers of the DNC.

The human rights violations reported to Amnesty International include arbitrary arrest and prolonged detention without charge or trial, including of possible prisoners of conscience.² The large majority of those arrested are members of the *Sarchop* community. Among them are dozens of Buddhist monks and religious teachers. Reports also indicate that relatives of genuine or simply suspected political activists have themselves become victims of human rights violations as the authorities' repression takes its toll.

In addition, there have been reports of incommunicado detention and torture and other cruel, inhuman or degrading treatment or punishment in pre-trial detention. The

¹ The authorities refer to suspected government opponents as "*ngolops*", or "anti-nationals".

² Prisoners of conscience are people detained or otherwise physically restricted anywhere for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status - who have not used or advocated violence. Amnesty International seeks their immediate and unconditional release.

organization is also concerned about unfair trial procedures and conditions of detention amounting to cruel, inhuman or degrading treatment.

Based on these reports, Amnesty International believes that the Government of Bhutan has violated some of the most basic human rights of its citizens and several fundamental principles of international law. Specifically, these include: a) the prohibition of arbitrary arrest and detention contained in Article 9 of the Universal Declaration of Human Rights (UDHR) and in a number of provisions of the United Nations (UN) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles); b) the non-derogable prohibition of torture and of cruel, inhuman or degrading treatment or punishment, a norm of customary international law; and c) the entitlement to due process and the presumption of innocence established in the UDHR and in a number of provisions of the Body of Principles and in the UN Standard Minimum Rules for the Treatment of Prisoners.

The Bhutanese authorities have in the past taken some steps -- such as the ratification in 1990 of the UN Convention on the Rights of the Child, the extension since 1992 of an invitation to the International Committee of the Red Cross (ICRC) to visit the country periodically, as well as the cooperation granted to the UN Working Group on Arbitrary Detention (WGAD) during its visits in 1994 and 1996³ -- indicating some willingness on their part to address human rights issues. While welcoming these measures, Amnesty International considers them to be only an initial step. The organization is urging the Government of Bhutan to implement as a matter of priority a series of recommendations to make the protection of and respect for human rights a reality throughout Bhutan.⁴

A draft of this report was submitted to the ambassador of Bhutan in Geneva, Switzerland for comment prior to publication. Despite repeated requests, no comments had been received by the time the report went to print.

Background

³ The WGAD is one of the thematic mechanisms appointed by the UN Commission on Human Rights. The WGAD was established in 1991.

⁴ See section below on Amnesty International's recommendations.

Landlocked Bhutan lies high in the mountains between the Himalayas and the Ganges plain. It is ruled by an absolute monarch, King Jigme Singye Wangchuck, and has no written constitution. The population is made up of several ethnic groups.⁵ The western valleys are populated by the *Ngalongs*, one of the three main ethnic groups, who are said to be of Tibetan origin and are politically dominant. The *Sarchops* live primarily in the east and are thought to be the most numerous. Both are followers of the *Mahayana* school of Buddhism, but generally the *Ngalongs* follow the *Kargyupa* tradition, and the *Sarchops* follow the *Nyingmpa* tradition.

Human Rights violations affecting members of the Nepali-speaking community

⁵ No official figures are available about the percentage of the population different ethnic groups constitute, and the exact number of inhabitants in Bhutan has been disputed for several years. The figure of 600,000 is the official population figure provided on 24 June 1997 to the National Assembly by the Minister for Planning and Chairman of the Planning Commission. The Government since 1990 has maintained that the population is 600,000 while at the same time giving population growth estimates around 3%.

The ethnic Nepalese, the third main population group in the country, are concentrated in the south. The large majority of them are descendants of Nepali settlers who came to work in the southern valleys in the late 19th and early 20th century. They speak Nepali and most are Hindus. Today referred to as *Lhotshampas* (literally translated as "people from the south"), they mainly live in the Samchi, Chhukha, Dagana, Chirang, Sarbhang and Samdrup Jonkhar districts. Overall, the ethnic Nepalese made up an estimated third of the approximately 600,000 people living in Bhutan in the 1980s. Since 1958, the government has introduced a series of measures to curbe the influx of Nepali settlers and regularize citizenship and naturalization procedures for immigrants and their descendants. These measures have resulted in widespread protests among the Nepali-speaking people in the south (see box).

In 1994, Rongthong Kunley Dorji, a member of the *Sarchop* community, founded the DNC while in exile in Nepal. In the following years, the DNC organized poster campaigns and other grassroots activities inside Bhutan demanding political reform and greater respect for human rights. In that context, a few people were reportedly arrested. Among them was Tashi Norbu, a businessman from Phuntsholing. He was detained for ten days in June 1995 after police raided his home looking for posters that had been put up by sympathizers of the DNC in May of that year.

In January 1997, the DNC and other political parties in exile, mainly consisting of members of the Nepali-speaking community, formed the United Front for Democracy (UFD) in Bhutan. Rongthong Kunley Dorji was elected as its chairperson. In a joint declaration, they reportedly stated their intention to "jointly undertake the movement to

remind the Royal Government of Bhutan on the urgency to establish democracy in Bhutan" (*Kathmandu Post*, 12 January 1997).

Arbitrary arrest and detention

According to reports received by Amnesty International, the Bhutanese authorities appear to have recently engaged in a concerted effort to repress and eradicate emerging demands for political reform and greater respect for human rights in Bhutan. The DNC has been spearheading such demands by organizing demonstrations, sit-ins and other forms of campaigning, particularly in the east of the country. This, in turn, has given rise, particularly since late July 1997, to scores of arrests in the districts of Mongar, Pema Gatshel, Samdrup Jonkhar, Tashi Yangtse and Tashigang in eastern Bhutan. Amnesty International believes, based on the information available, that more than 150 people have been arrested and that there may be several prisoners of conscience among them.

The large majority of those arrested appear to be members of the *Sarchop* community. Among them are dozens of Buddhist monks and religious teachers as well as women and children. In addition, information received indicates that the authorities have closed a few monasteries on suspicion of being places where campaigning activities were organized.

As a result of the authorities' crack-down, Amnesty International believes that a clear pattern is emerging whereby members and sympathizers of the DNC as well as their relatives are being arbitrarily arrested. In addition, having been denied access to a *jabmi*⁶, their families or a doctor, many appear to be detained incommunicado without charge or trial.

Information received indicates that, in a number of cases, the families of those arrested were not able to establish for several days -- in some instances even for weeks -- the place where their relatives were being held. For example, it took at least ten days before the relatives of Rinzin Samdrup, a 43-year-old religious coordinator arrested on 1 August 1997 by Royal Bhutan Police (RBP) officers in Chimung, Pema Gatshel district, were able to establish that he had been taken into custody.

It also appears that people attempting to inform others about the recent spate of arrests were themselves taken into custody. For instance, Sangay Phuntsho, a 29-year-old religious teacher attached to Kheri Gompa Monastery in Pema Gatshel district, was detained on 1 August 1997, reportedly for informing others about the arrest from the same monastery on 27 July of his colleague Kinzang Dorji. This appears to be

⁶ A person well versed in law, acting as a legal adviser.

consistent with other reports that RBP officers have threatened people to keep quiet about recent arrests or to face detention themselves.

In one instance, on 23 October 1997, twenty-six people were arrested by the RBP in the Samdrup Jonkhar district, reportedly solely for their participation in a peaceful demonstration demanding democratic reforms and respect for human rights in the country.⁷ On 25 October, an article about their arrest appeared in *Kuensel*, Bhutan's national newspaper. According to this source, the men "had been apprehended for collaborating with *ngolops* in Nepal". The article continues by saying that a spokesman for the Samdrup Jonkhar administration stated that "the persons who were apprehended all admitted to having accepted money from the *ngolops* in Nepal to instigate the villagers of Gomdar the *ngolop* collaborators had misled the people and attempted to create communal problems and misunderstanding between the government and the people....".

Dozens of others were reportedly taken into custody in the aftermath of a nation-wide poster campaign on 21 and 22 October. Demonstrations and sit-ins held in various other parts of the country around the same time have, in turn, resulted in arrests.

⁷ For more details on some of those arrested, please see section below on torture and ill-treatment.

There have been reports that relatives of suspected "anti-nationals" have been arrested in an apparent attempt to force their next of kin to give themselves up. For example, according to reports, Kinzang Chozom, a 25-year-old woman, was arrested on 17 October 1997 by RBP and held in incommunicado detention at Samdrup Jonkhar jail because the Bhutanese authorities suspect her husband, Karma Dorji, of being a DNC supporter.⁸ In this connection, Amnesty International has been informed that Karma Dorji was in hiding at the time of his wife's arrest in order to avoid arrest himself. As a result, it is conceivable that Kinzang Chozom was arrested for her husband's suspected political activities. Karma Dorji recently travelled to Nepal to publicize his wife's detention.

In another instance, in the aftermath of the campaigning activities referred to above, Karje, Sangay Dorji, Pema Tenzin, Pema Chhoje and Dungkar, were reportedly taken into custody and detained at a temporary detention camp in Gomdar, in the Samdrup Jonkhar district. Following their escape from the camp, the RBP and the Royal Bhutan Army (RBA) have reportedly arrested Daza, Karje's wife and their two-year-old daughter, Nima Oezer. They also reportedly arrested Tshering Chhoezom, Sangay Dorji's wife, together with Sangay Lhadon, their three-year-old daughter. In addition, Pema Tenzin's wife, Sangay Lhamu, who is said to be ill, has been ordered to report daily to the local police station until her husband is found. It would appear that the detention of Daza, Tshering Chhoezom and their daughters, as well as the reported intimidation and harassment of Sangay Lhamu, have been adopted by the authorities as reprisal measures to force the escapees to give themselves up.

In similar circumstances in early November, it was reported that Karma Geleg's hiding to avoid arrest had resulted in the taking into custody of his wife, Ngagi and their one-year-old daughter, Chhimi Wangmo.

Unfair trial procedures

"[T]he working group found that in many instances persons had been detained for years without having been charged and persons who had been charged had not been brought before a judge for trial. In most instances, those charged did not know when they might be tried."⁹

⁸ For more details about her detention conditions, please see section below on torture and ill-treatment.

⁹ For more details, see E/CN.4/1995/31/Add.3.

The above quote is an excerpt from the report of the UN WGAD submitted to the UN Commission on Human Rights. The report was compiled in the light of the findings of the WGAD during its initial visit to Bhutan in October 1994. Following an invitation from the Government of Bhutan, a second visit took place in April-May 1996. The main objective of this second "follow-up" visit was "to ensure implementation of the recommendations made by the Group during the previous visit". Nearly two years after its initial visit, the WGAD found that:

"[t]he institution of *Jabmi*¹⁰ appears to be insufficiently known by the people. The function should therefore be popularizedBased on the registers of the status of detainees in the Thimphu District Prison (52) and the Chamgang Central Jail (153), none of them has been assisted by a *Jabmi*...."¹¹

Against this background, Amnesty International continues to receive reports that in the past few months dozens of people have been taken into custody by law enforcement officials and detained in incommunicado detention without charge or trial. In many instances, those arrested have reported being told that they were being arrested because of their support and/or membership of "anti-national" organizations.

In some instances, government opponents are reportedly being charged with vaguely defined offences such as sedition and subversion under the National Security Act 1992. For example, information received indicates that Taw Tshering, Tshampa Wangchuck, Tshampa Ngawang Tenzin and Chhipon Samten Lhendup, four DNC members -- reportedly tortured by police shortly after their arrest in eastern Bhutan in early February 1997 -- have been serving sentences at Tashi Yangtshi prison since being convicted on sedition charges.¹² Allegedly, they were tried and convicted without having had access to a *jabmi*. In addition, they were not always allowed to attend the criminal proceedings. As a result, their ability to defend themselves may have been seriously hampered. Attendance at such proceedings is part and parcel of the internationally recognized right to a fair trial.

"Anti-national" activities are offences under the National Security Act 1992, and carry long mandatory prison sentences. The provisions of this act, however, do not provide a clear definition of what constitutes an "anti-national" activity. Conversely, the National Security Act 1992, establishes a very loose definition of what constitutes an

¹⁰ A person well versed in law, acting as a legal adviser.

¹¹ From the report of the WGAD compiled in the light of its second visit to Bhutan, E/CN.4/1997/4/Add.3.

¹² See section on reports of torture and ill-treatment for more details.

offence under its provisions. For instance, clause 4 states that "whoever engages in treasonable acts shall be punished with death or imprisonment for life". Another example of the vaguely defined grounds on which the act provides for the imposition of very harsh sentencing is clause 7, which reads as follows:

"[w]hoever by words either spoken or written, or by any other means whatsoever, undermines or attempts to undermine the security and sovereignty of Bhutan by creating or attempting to create hatred and disaffection among the people shall be punished with imprisonment which may extend to ten years".

Given that the nature and scope of the charges under the National Security Act 1992 are usually extremely general and vague, the ability of the defence to prepare its case is significantly hampered.

Reports of torture and ill-treatment

In addition to arbitrary arrest and detention in eastern Bhutan, several instances of torture and ill-treatment in police custody -- because of people's direct or suspected involvement in so-called "anti-national" activities -- have been reported recently. According to information received, people are being tortured and/or ill-treated in the immediate aftermath of their arrest.

The victims and/or their relatives have informed Amnesty International that the apparent intention behind the infliction of torture and ill-treatment on detainees is threefold: 1) to punish; 2) to deter those on whom it is inflicted and/or others; and 3) to extract either self-incriminating information or to obtain details about other people suspected by authorities of "anti-national" activities.

In one instance, four members of the DNC were reportedly tortured and ill-treated by police shortly after their arrest in eastern Bhutan in early February 1997. The four, Taw Tshering, Tshampa Wangchuck, Tshampa Ngawang Tenzin and Chhipon Samten Lhendup, have since been convicted in proceedings that fell short of internationally recognized fair trial guarantees and are currently serving sentences at Tashi Yangtshi prison in eastern Bhutan.¹³ According to a relative of one of them, they were held completely naked for one week in very low temperatures.

Dorji Norbu, Kunga, Dorji Tshewang and Namkha Dorji were reportedly arrested on 10 September 1997 in Pema Gatshel district and subsequently taken to Pema Gatshel

¹³ For more details about their prosecution, please see above section on unfair trial procedures.

police station. Reportedly, in the aftermath of their arrest, they were held in shackles and subjected to daily public floggings with willow and other branches in the court yard of the police station in front of members of the public and a number of relatives. At the time, eye-witnesses were reportedly told by those inflicting such punishment that flogging was the standard punishment against government opponents.

Thinley, Sangay Tenzin, Druki and Ugen Wangdi, who were among 26 people arrested by the RBP in Samdrup Jonkhar district on 23 October 1997 (see above), were reportedly subjected to *chepuwa*, a form of torture in which the thighs are pressed between two rods. They have reported that while being tortured they were told that should their "anti-national" activities not cease forthwith upon their release they would be subjected to further torture.

Additional information received, indicates that -- at the time of arrest -- 14 of the 26 arrested on 23 October had their hands tied with bow strings in such a way as to cause excruciating pain. Reportedly -- while being tied in such a manner -- they were also made to look for other activists who had gone into hiding to escape arrest. In this connection, reports indicate that they were threatened that failure to find the escapees would result in further punishment.

On 26 October, Layda, a man from the village Pangthang in the Samdrup Jonkhar district, was also reportedly arrested by a group of RBA and RBP personnel. According to reports, he was subjected to *chepuwa* which -- at the time -- resulted in his losing control over his bowel movements and involuntary urination.

In another instance, according to reports, Kinzang Chozom, was held in incommunicado detention at Samdrup Jonkhar jail and denied access to adequate medical care despite being in the final stages of pregnancy.¹⁴ Reportedly, while in detention, she was also not allowed to see her four-year-old daughter. Recently received information indicates that Kinzang Chozom was released from detention at the beginning of November 1997. She has now given birth though it is unknown whether the birth took place during her detention or subsequent to her release. With respect to Kinzang Chozom's detention conditions, Amnesty International has expressed concern that they could amount to cruel, inhuman or degrading treatment.

In late October 1997, another man, by the name of Dhendup, who had admitted to being a DNC supporter, was reportedly beaten about the head with the butt of a rifle by a

¹⁴ For more details about the reason behind her arrest, please see above section on arbitrary arrest detention.

RBA officer resulting in bleeding. He was not arrested, but was told to keep quiet about the incident. He has since left the country.

DNC and UFD leader, Rongthong Kunley Dorji: another Tek Nath Rizal?

Rongthong Kunley Dorji, the founder of the DNC and the chairperson of the UFD, is currently in detention at Tihar jail, New Delhi, India, awaiting the outcome of extradition proceedings to Bhutan. He was arrested in New Delhi on 18 April 1997 following receipt by the Indian authorities of an extradition request from the Government of Bhutan.

Rongthong Kunley Dorji left Bhutan in 1991 and went to live in Kathmandu, Nepal, where he was registered as a person seeking political asylum by the Ministry of Home Affairs. In addition, the UN High Commissioner for Refugees has stated that it considers him as a person of concern.

Rongthong Kunley Dorji was first arrested in Bhutan in May 1991 on charges of treason in connection with his support for the Nepali-speaking southern Bhutanese during demonstrations in 1990. While in detention, Rongthong Kunley Dorji was reportedly tortured by members of the Royal Bhutan Bodyguards. He claims that he was subjected to *chepuwa*; submerged in a drum full of water until he nearly drowned; and beaten with sticks and fists all over his body. The King of Bhutan "pardoned" him on 5 July 1991. It was soon after this that Rongthong Kunley Dorji left the country.

The charges featured in the arrest warrants issued by the Bhutanese authorities -- which form the basis of the extradition request -- appear to be politically motivated. They were apparently only framed after Rongthong Kunley Dorji had set up the DNC, nearly three years after he had left the country. In addition, several statements by the Bhutanese Minister of Home Affairs suggest that Rongthong Kunley Dorji's political activities are the main reason for issuing the warrants. For instance, in August 1995, the Minister was reported in *Kuensel*, as having informed the National Assembly (the Parliament of Bhutan) that "Rongthong Kunley Dorji had embarked on an all out effort to incite unrest among different sections of the Bhutanese society and to discredit Bhutan's image". In this connection, during recent sessions of the National Assembly, the Minister stated that Rongthong Kunley Dorji "had violated the laws of the land and should appear before a court of law to prove his innocence".

The crimes of which he has been accused include failure to repay loans and "anti-national" activities under the National Security Act 1992. According to a letter of 12 February 1997 by the Minister of Home Affairs forwarding the warrant of arrest for Rongthong Kunley Dorji to the Ambassador of India in Bhutan, his extradition is sought in relation to charges of "fraud and non-payment of numerous loans and dues owed by him to financial institutions, government organisations and private parties." The letter,

however, continues by stating: "Since absconding from Bhutan he has been engaged in conspiracy and unlawful activities against the State for which he is required for prosecution", thereby confirming the political nature, at least in part, of the extradition request.

In addition, in May 1997, a new extradition agreement with India, effectively providing for, among other things, extradition of anyone requested by either of the parties to the agreement, entered into force.¹⁵ Given a) the very broad definition of what constitutes an extraditable offence established in the extradition agreement; b) its timing; and c) the fact that the two governments have agreed that this instrument would have retroactive application, questions have been raised as to whether securing Rongthong Kunley Dorji's extradition was, in fact, one of the main purposes for such an agreement in the first place.

In this context, serious concern arises with respect to the fairness of any legal proceeding initiated against Rongthong Kunley Dorji, should he be extradited to Bhutan. In addition, recent reports of torture and ill-treatment of sympathizers of the DNC and/or UFD (see above) have heightened the fear that -- if returned to Bhutan -- Rongthong Kunley Dorji may again be tortured.

¹⁵ For instance, the agreement provides extradition of people "belonging to an organization engaging in activities declared to be unlawful..." and "aiding, abetting or promoting such unlawful activities or objectives of the organization or association".

The plight of Rongthong Kunley Dorji is reminiscent of the treatment by the Government of Bhutan of Tek Nath Rizal. Tek Nath Rizal, a southern Bhutanese national, was an elected member of Bhutan's National Assembly from 1975 to 1985. In 1985, he was appointed to serve on the nine-member Royal Advisory Council and in 1988 as a member of the Royal Audit Commission. As a result of petitioning the King to seek a review of the manner in which the census was carried out¹⁶, he was first arrested in mid-1988. He was released after three days, after signing an agreement barring him from attending public functions and on condition that he left the capital, Thimphu. He was expelled from the Royal Advisory Council on the grounds of spreading false allegations and inciting southern Bhutanese against the government. After being released, Tek Nath Rizal went into exile in Nepal in 1989 where he continued to campaign for the rights of the ethnic Nepali minority in Bhutan and for an end to discrimination on the basis of ethnicity. There, he helped set up the *People's Forum for Human Rights*, which distributed leaflets and booklets on the situation in southern Bhutan.

Tek Nath Rizal was taken into custody in eastern Nepal in November 1989 and handed over to the Bhutanese authorities at Kathmandu airport without any judicial process. Back in Bhutan, he and five other men were accused of organizing a campaign of violent civil disobedience and held in solitary confinement. Tek Nath Rizal was held in shackles for 20 months. The five others were later released, but Tek Nath Rizal remained in detention. He was tried in 1993 on charges including treason and "sowing communal discord" between different communities. After a 10-month trial he was sentenced to life imprisonment. The King announced that Tek Nath Rizal would be pardoned once the problem of the people in the camps in Nepal was resolved, but years later, Tek Nath Rizal is still in jail.

Amnesty International's conclusions

Amnesty International welcomes several measures taken by the authorities to implement the recommendations of the UN WGAD after its visits to the country in 1994 and 1996. These include a program of training for 30 *jabmis* under the auspices of the UN High Commissioner for Human Rights (HCHR).¹⁷ The organization is further encouraged by

¹⁶ For more details on this issue, please see "*Bhutan: Forcible exile*" (AI Index: ASA 14/04/94), issued by Amnesty International in August 1994.

¹⁷ "The course for the *jabmis* addressed several issues: rule of law in the administration of justice, with emphasis on the independence of the judiciary with respect to human rights; human rights during criminal investigations, arrests and detention; elements of a fair trial with standards for the protection of prisoners and administration of juvenile justice; and the rights of minorities, non-nationals, and refugees, role of *jabmis* in judiciary, rights of women and protection and redress for victims of crime and abuses of power." (From *Kuensel* of 11 October 1997)

the statement made at the opening of a training program by Dasho Sonam Tobgye, the Bhutanese Chief Justice, that "[t]he values of human rights are an integral part of Bhutanese tradition and they are fully incorporated into our laws".

Amnesty International also welcomes the news reported in *Kuensel* of 18 October 1997 that 20 police officers from different parts of the country have completed a five-day course on "human rights and law enforcement" held in Thimphu under the auspices of the UN HCHR. The organization also notes the statement made at the inauguration of the course by the Home Minister, Lyonpo Dago Tshering, who was reported as having said that "the relevant provisions in Bhutanese law were similar to those provisions in the Universal Declaration of Human Rights to which Bhutan fully subscribed."¹⁸

However, Amnesty International remains concerned about the recently reported serious deterioration in the human rights situation in the country, particularly in the east. On the basis of the information received, the organization believes that the Bhutanese authorities have not fulfilled their obligation under international human rights law and the specific undertaking made to the UN WGAD that prisoners' rights would be fully observed.¹⁹

Based on recent reports that dozens of people have been taken into custody and are currently held without charge or trial and that many of them appear to have been denied access to a *jabmi*, Amnesty International believes that their detention violates a number of provisions contained in international standards such as Article 9 of the UDHR which prohibits arbitrary arrest and detention.²⁰

In addition, in the light of the numerous reports of incommunicado detention received, Amnesty International believes that by ordering, tolerating or condoning this practice, the Bhutanese authorities have violated a number of provisions relating to a detainee's access to her or his family contained in international standards such as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the Body of Principles).²¹

¹⁸ From *Kuensel* of 18 October 1997.

¹⁹ In particular, the government undertook to ensure that all those facing trial would be made aware of the institution of the *jabmi* and would be represented by a *jabmi* of their choice.

²⁰ It contravenes several requirements of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. See in particular Principles 2, 4, 9, 10, 11, 12, 13, 17, 18, 32, 36 and 37 which are reproduced in Appendix 1.

²¹ See in particular, Principles 15, 16 and 19 of the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

There is growing concern that the authorities have framed vague charges -- such as sedition and subversion -- against suspected government opponents charging them under the National Security Act 1992. Amnesty International believes that the National Security Act 1992 facilitates arbitrary arrest and detention and politically motivated prosecutions of possible prisoners of conscience. The Act clearly contravenes basic rights established in international human rights standards, especially the right to liberty and security of the person, to fair trial, and to freedom of expression. By lending itself to abuse such as arbitrary arrest and detention, the Act, in turn, facilitates the violation of other fundamental human rights, such as the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment.

With respect to this, it is noteworthy to recall resolution 1997/38 adopted in April 1997 by the UN Commission on Human Rights. The resolution in point reminded "all States that prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment".²² In addition, Nigel Rodley, the UN Special Rapporteur on torture, in his report to the 50th session of the UN Commission on Human Rights stated that "[t]orture is most frequently practised during incommunicado detention....."²³.

Amnesty International is very concerned about the reports of torture and other cruel, inhuman or degrading treatment or punishment in pre-trial detention. Torture and cruel, inhuman or degrading treatment or punishment are clearly prohibited by Article 5 of the UDHR, which reads as follows: "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."²⁴

²² This resolution was adopted without a vote at the 53rd session of the UN Commission on Human Rights on 11 April 1997. Bhutan was a member of the 53rd session of the Commission.

²³ The Special Rapporteur has also called for this practice to be abolished. For further details, see E/CN.4/1995/34.

²⁴ This guarantee is also contained in Principle 6 of the Body of Principles, Article 3 of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 5 of the UN Code of Conduct for Law Enforcement Officials (Code of Conduct). Article 3 of the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prescribes that "[n]o state may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment." In addition, all law enforcement officials are prohibited from inflicting, instigating or tolerating torture or other cruel, inhuman or degrading treatment or punishment of any person; the fact that they were ordered to do so

by their superiors may not be used as a justification. Law enforcement officials are bound by international standards to disobey such orders and to report them (see, *inter alia*, Article 5 and 8 of the Code of Conduct). The prohibition against torture and cruel, inhuman or degrading treatment or punishment includes acts which cause mental as well as physical suffering to the victim.

Principle 1 of the Body of Principles states that "[a]ll persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person." In addition, Principle 6 states that: "[n]o person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment". Principle 21(2) also states that " [n]o detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or judgement."

With respect to the case of Rongthong Kunley Dorji, Amnesty International is concerned that, if returned to Bhutan, Rongthong Kunley Dorji may again be tortured. Concern also arises about the fairness of any legal proceedings against Rongthong Kunley Dorji, should he be extradited to Bhutan.

As far as Tek Nath Rizal is concerned, the organization believes him to be a prisoner of conscience imprisoned after speaking out for the rights of the ethnic Nepalese community in Bhutan, and therefore, solely for the peaceful exercise of the right to freedom of expression.

Amnesty International is also concerned that, despite the government's undertaking that the use of shackles would be abolished,²⁵ it continues to receive reports that people have been held in shackles and that others have had their hands tied for long periods of time. The organization believes these practices are not in keeping with a) the right to be treated with humanity and respect for human dignity; b) the non-derogable prohibition of torture and cruel, inhuman or degrading treatment or punishment; and c) the requirement that force be used only when and to the extent strictly necessary, which are all contained in international human rights standards. In addition, according to such standards, restraints shall not be used as punishment or be applied for any time longer than is strictly necessary.

In the light of reports that people have been denied access to a doctor and/or to adequate medical care, Amnesty International wishes to emphasize that the right of any person held under any form of detention or imprisonment to adequate medical care is enshrined in international standards such as the UDHR, the UN Body of Principles and the UN Standard Minimum Rules for the Treatment of Prisoners. In addition, international standards such as the UN Code of Conduct impose on law enforcement officials the responsibility of the full protection of the health of people in their custody.

²⁵ This undertaking was made by government officials to Amnesty International's delegates during the organization's visit to Bhutan in 1991.

Amnesty International believes that denial of adequate medical care may constitute cruel, inhuman or degrading treatment.

Amnesty International's recommendations

Amnesty International urges the Government of Bhutan to immediately accede to -- without limiting reservations -- and implement the following international human rights treaties:

- the International Covenant on Civil and Political Rights and its (First) Optional Protocol;
- the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- the International Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention on the Elimination of All Forms of Discrimination against Women;
- UN Convention relating to the Status of Refugees and its 1967 Protocol.

In addition, as a matter of priority, the Bhutanese authorities should:

- release Tek Nath Rizal immediately and unconditionally;
- release any detainee unless promptly charged with a recognizably criminal offence;
- ensure fair trials for political prisoners;
- immediately end torture and ill-treatment by law enforcement officers;
- promptly institute thorough and impartial investigations into reports of torture and ill-treatment;
- bring to justice those members of the security forces suspected of being responsible for unlawful actions or misconduct;
- ensure that adequate medical care is granted to any person under any form of detention or imprisonment who so requires;
- amend the National Security Act 1992 to ensure its compliance with internationally recognized fair trial guarantees;
- ensure that all detainees are brought before a judicial authority without delay after being taken into custody;
- ensure that detainees have prompt and regular access to a *jabmi*, as well as their family;
- ensure that effective judicial remedies are available which enable relatives and *jabmis* to find out immediately where a detainee is held and under what authority, to guarantee her or his safety, and to obtain the release of anyone arbitrarily detained;

- grant permission to the ICRC to continue its program of regular visits in Thimphu and to be allowed to develop a similar program in other parts of the country, including the east. Furthermore, the ICRC should be allowed to develop a program of dissemination of information on humanitarian rules and principles to members of the RBA and RBP;
- repeal the new extradition agreement with India which came into force in May 1997.

With respect to the issue of conditions of detention, Amnesty International is urging the Government of Bhutan to comply with the requirements of international standards relating to detention conditions so as to ensure that incarceration regimes do not amount to cruel, inhuman or degrading treatment or punishment. Such standards include the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

In addition, the authorities must take special steps to address the specific needs of women and children in detention which must comply in letter and spirit with the provisions of the UN Convention on the Rights of the Child -- which Bhutan has ratified. With respect to this, the organization is urging the government to adopt the following specific recommendation.

- Provide all women under any form of detention or imprisonment with adequate medical treatment, denial of which can constitute ill-treatment, including all necessary pre-natal and post-natal care and treatment for women in custody and their infants.

Appendix 1: UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Excerpts)**Principle 2**

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard

promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 12

1. There shall be duly recorded:
(a) The reasons for the arrest;

(b) The time of the arrest and the taking of the arrested person to a place of custody as well as that if his first appearance before a judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody;

2. Such records shall be

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Principle 13

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Any person shall, at the moment of arrest, and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on

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and an explanation of his rights and how to avail himself of such rights.

Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its

own initiative undertake the notification referred to in this principle. Special attention shall be given to notifying parents and guardians.

4. Any notification referred to in this principle shall be made or permitted to be made without delay.

The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in

full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in this principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 of the present principle

shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon

the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

(The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment was adopted without a vote by the UN General Assembly on 9 December 1988)