

Editorial

ARBITRARY DECISION!

As victims of state oppression, we have been at the receiving end of injustice, violence, and abuse. As refugees, we have had more than our share of sorrow, anguish and pain. Even in exile, we have been subjected to attacks and insults by government representatives and hired proponents of the regime alike. At the *Review*, we have tried always to keep our emotions in check. And we have mostly succeeded, partly because we have already been numbed by our suffering but more so because we have consciously and consistently striven to duly acknowledge the right of others to hold different opinions and express opposing views. The recent decision adopted by the Working Group on Arbitrary Detention of the United Nations Commission on Human Rights with regard to the detention of Tek Nath Rizal, however, is an outrage. It is a decision, we believe, that deserves condemnation and denunciation in the most emphatic terms.

Decision 48/1994 of the Working Group - which determines that the 'arrest' of Tek Nath Rizal is not arbitrary, which states that his trial was fair and impartial, and which consequently accepts that his detention is not arbitrary - is clear evidence of connivance and complicity on the part of some or all members of the Working Group with the Royal Government of Bhutan. From the nature of the Group's investigation (or lack of it) of the case communicated to it, we have strong reasons to believe that some or all members of the Working Group benefitted from their association with the Royal Government of Bhutan, and we are convinced that the decision adopted by the Working Group was influenced by this fraudulent connection.

The facts of the case stand thus: Tek Nath Rizal was **abducted** from Nepal in November 1989; he was kept *incommunicado*, in solitary confinement and in shackles, until December 1992; he was 'tried' during 1993 on nine charges based on the National Security Act adopted only in November 1992; he was sentenced to life on November 16, 1993; three days later, i.e. on November 19 he was granted a bizarre conditional royal pardon - "Rizal will be released from prison once the governments of Bhutan and Nepal resolve the problem of people living in refugee camps in eastern Nepal."

The Decision of the

Working Group appears to be based on the supposed examination and assessment of the charges and the proceedings of the 'trial'. The judgement has been made solely on the basis of Government submissions and response. There is no evidence to indicate that the Working Group's interview with Rizal afforded him an opportunity to comment on the nature of the 'trial' or refute any of the charges against him. Indeed, there is not a single word to suggest that the delegation's findings during the visit had any bearing on the Working Group's final decision. Was the expensive trip to Bhutan really necessary?

The final judgement of the Working Group that the "detention of Tek Nath Rizal.. is therefore declared not to be arbitrary" is based entirely on the Group's two findings:

(1) that "the nature of evidence leaves no manner of doubt that the arrest of Tek Nath Rizal cannot be said to be arbitrary," and

(2) that "there is also nothing to suggest that the trial of Tek Nath Rizal was not fair and in derogation of acceptable international standards."

The two findings are significant, not because they form the basis for the final Decision but because they leave no room for doubt that the Working Group is a corrupt body.

Taking first the issue of Rizal's 'arrest' - according to the Decision, the eminent legal luminaries employed the following logic to deliver their judgement: The Working Group believed Government claims that Rizal attempted to sow communal discord; the Working Group agreed with Government findings that Rizal conspired with others to achieve his ends; the Working Group noted that sowing communal discord is an offence under the National Security Act, 1992; AND THEREFORE ON THE BASIS OF THIS EVIDENCE, the Working Group declared that his 'arrest' was not arbitrary. We refuse to believe mere incompetence can generate such preposterous logic! What is the mandate of the Working Group to judge whether a prisoner is guilty, or to examine whether due process has been followed in his arrest, trial and detention? Was the Working Group empowered to temporarily usurp the role of Bhutan's Supreme Court in order to uphold and sanctify the verdict delivered by the *Royal Government's* High Court?

The Working Group obviously made no efforts to determine if due process had actually been followed while

'arresting' Rizal, failing in its primary, and only, responsibility. It chose instead to deliver a judgement, an action that it was never empowered to undertake. Did the Working Group consider as inconsequential the fact that Rizal was picked up illegally by Bhutanese authorities on foreign soil? The report and the Decision confirm that the Working Group was aware that he was brought back from Nepal. In the Oxford dictionary, *arrest* means to *lawfully seize*. Was the Working Group provided with documentary evidence to indicate that Rizal was *lawfully seized* in Nepal? Was the Working Group satisfied with any evidence that may have been submitted by the Royal Government that the seizure was *lawful* according to international standards? By Nepalese standards? By Bhutanese standards? Can agents of one country *lawfully seize* any person within the territory of another? Was the Working Group satisfied that complicity of some Nepalese citizens helped transform an abduction (*abduct-verb* carry of illegally, kidnap: Oxford Dictionary) to a *lawful* arrest?

It is, of course, possible that the Working Group with its vast combined legal expertise decided to use the word *arrest* interchangeably for the word *extradite* as a matter of convenience. In that case, did the Working Group demand of the Bhutanese authorities, and receive from them, the necessary documentation and evidence to prove that Rizal was, indeed, legally extradited? Was the Working Group aware that Nepal has an Extradition Act, 2020 (1963) - not conveniently promulgated after the event like Bhutan's National Security Act of 1992 - according to which due legal process in the Nepalese courts for proof of offence must precede the act of extradition of an individual? Did the Working Group take the trouble to find out that Rizal was never brought before any Nepalese court? Was the Working Group aware that in any case the said Act has a clause which states that if "the nature of crime or the charge is of political nature, such accused or offender shall neither be extradited nor any proceedings to punish him shall be initiated"?

The scandalous nature of the decision of the Working Group with regard to Rizal's 'arrest' is only surpassed by the Working Group's declaration that the 'trial' of Tek Nath Rizal was fair and impartial. Can any 'trial' wherein the charges are based on

legislation enacted years after a person has been imprisoned be deemed to be fair? Only the knowledge that the Working Group which collectively adopted this decision comprises eminently qualified individuals prevents us from declaring this latter decision to have been adopted by a bunch of illiterate imbeciles. As a corollary, because we know that the expert group in question has a combined IQ at least high enough to enable it to recognize that such a conclusion is incredible, we confidently repeat our claim of a payoff.

The basic facts of the case bear repeating: Tek Nath Rizal was **abducted** from Nepal in November 1989; he was kept *incommunicado*, in solitary confinement and in shackles, until December 1992; he was 'tried' during 1993 on nine charges based on the National Security Act adopted only in November 1992; he was sentenced to life on November 16, 1993; three days later, i.e. on November 19 he was granted a bizarre conditional royal pardon - "Rizal will be released from prison once the governments of Bhutan and Nepal resolve the problem of people living in refugee camps in eastern Nepal."

One need not be conversant with law to declare *prima facie* that the 'trial' of Rizal cannot be said to be fair simply on account of the fact that all charges against him are based on violation of provisions of an Act legislated subsequent to the alleged offences. The duration of the trial, the number of hearings, the number of witnesses etc., which appear to have impressed the Working Group, are meaningless when the very basis of the trial violates the fundamental principles of law. The Working Group, however, chose to overlook this glaring detail.

Thimphu's reputation for charming visitors is now firmly established. It is widely acknowledged that as a rule even the most difficult guest leaves the Himalayan Kingdom heavily obligated. Whether the recipient has been a man or woman, journalist or bureaucrat, only rarely have costly presents and lavish hospitality failed to buy for the regime fleeting loyalty. The report to the 51st session of the UN Commission on Human Rights by the Working Group on Arbitrary Detention whose members visited Bhutan last October is proof that the Royal Government continues to notch up successes in this regard.

Document E/CN.4/1995/31/Add.3 [reviewed on page 3] is a splendid example of how one, or a whole big group in this particular instance, should go about when

obliged to repay a generous host; contradictions are acceptable, facts may be suppressed, chronology of events should be conveniently forgotten, even unjust decisions must be adopted. Decision No. 48/1994 (BHUTAN) of the Working Group in the matter concerning Tek Nath Rizal and this report will forever remain evidence that everyone - black, brown or white - has a price and is up for sale.

At the *Review*, we were well aware of the implications when we decided to carry this article as a special editorial. We realize that we have left ourselves open to complaints and possibly even a suit for slander and defamation. Nonetheless, we firmly believed it was necessary to challenge this disgraceful Decision. Having wilfully committed the offence, we are now prepared to face the consequences. Will this mean the following:

Review editors will be abducted - not lawfully seized or legally extradited - from Nepal by agents of the UN Human Rights Commission in November 1995. They will be secretly flown out of the country on an unscheduled flight the very next day and spend the next 3 years in solitary confinement in some dark cell in the basement of some building within the sprawling compounds of the Palais Des Nations in Geneva. During this period their exact whereabouts will be unknown and only vague rumours will abound as to where they have been kept, or in fact, even whether they are still alive. For three years they will remain *incommunicado* without being charged. In November 1998, a new Slander and Defamation Act will be passed by the Human Rights Commission. It will only be coincidental that the new Act contains provisions, every one of which can be shown to have been violated by the editors of the *Review*. Of course, the editors will also be held accountable for activities undertaken by others subsequent to the editors' arrest. At the beginning of 1999, the editors will be charged with having committed offences under the Slander and Defamation Act, 1998, and brought out of the dungeon to be tried by officials of the Commission. Not unexpectedly, in November 1999 after a 'trial' lasting 10 months, for their part of writing this article in April 1995 the editors will be declared guilty of offences under the Slander and Defamation Act, 1998. The Working Group on Arbitrary Detention will, of course, find nothing arbitrary about this 'arrest', 'trial' and detention. But will others agree?

Has the National Assembly been dissolved?

"The National Assembly has 150 members of which 100 members represent the people. These are elected for a three year term by consensus in each of the Dzongkhags. Ten monastic representatives are elected by the regional monk bodies while forty representatives of the Government are nominated by the King. ...The National Assembly meets twice a year. The Assembly enacts legislation and advises the Government on all matters of national importance." Thus reads a Royal Government publication describing the National Assembly of Bhutan. However, since the Assembly has not met in nearly two years during a period when the country is faced with its most serious crisis in history, it is evident that there is little truth in government claims that this body provides advice or enacts legislation.

The National Assembly is required to meet at least twice a year, and may also meet for special sessions in times of emergencies. The Assembly last met for the 72nd session in July 1993. The 73rd session has yet to take place. In August 1994, the National Assembly Secretariat

announced that the 73rd session would be held sometime in September/October 1994. The session was not held, however, and no announcement was made to explain the further postponement.

That the government pays scant regard to the dignity of the Assembly is clear from the fact that this body is only called to session when it is convenient for the regime. Members are not even informed of the reasons for postponement or cancellation of sessions. The Assembly is made to meet only to provide a stamp of approval for government actions. If the government is not confident of the unanimous support of members, it would appear that it would rather not convene the session at all! Only this can explain the current indefinite postponement. While the government claims to be promoting decentralization, whatever little "democratic" processes had been initiated earlier are now being reversed. And to make matters worse, some donors draw satisfaction by "training" these non-functional representatives in the name of assisting in the democratization process!

A Voice from Chirang

Someone from Thimphu recently wrote to his friend abroad: "I visit my village in Chirang each year. I have little choice. I must be physically present at the time of the annual census. I go to an empty house because no one lives at home. My parents fled the village in 1992 and now live in the refugee camp in Jhapa. I feel guilty but I remain behind because of my government job. My village is some distance from the motorable road. This winter, while I was walking home after getting off the bus I came across two young boys. They were resting besides huge baskets of oranges. The two wore tattered ghos and looked exhausted. I asked them if they went to school. After a little hesitation, the boys told me that they were both 12 years old and had enrolled in school in 1990. But after about seven months the schools were closed down by the government and they could not continue their studies. Though a primary school has now been opened we did not get admission since we could not get the NOC (No Objection Certificate)," the boys said. "For the last few years we have been forced to carry oranges during orange season and do other manual work as ordered by the authorities during the rest of the year," the boys added."

The Statistical Year Book (SYB) published by the government states that there were 17 schools in Chirang district catering to 6,208 students in 1990. The last SYB published by the government in July 1992 shows only one school with 44 students in all of Chirang. As against 68,013 students country-

wide prior to the closure of schools in the south during the latter half of 1990, the total number of students went down to 50,412 a year later.

To appease the international community, particularly donor governments, the Royal Government has opened some schools but these are mostly one-teacher community schools with strictly regulated admission procedures. Unable to get admission in schools, young boys and girls are thus forced to join the national workforce. Against these realities, the international community continues to pour in money with no questions asked. Despite accepting the universality of human rights and supposedly "championing" the cause of the rights of the child, many donor agencies are comfortable in Bhutan where gross human rights violations take place as part of national policy.

Sixth Round of Nepal-Bhutan Talks

The sixth round of Bhutan-Nepal Ministerial level talks is scheduled to be held in Thimphu from 17 - 20 April. Since July 1993, the two governments have been engaged in discussions to resolve the problem of Bhutanese refugees on Nepalese soil but there has been little progress. After the last round of talks held in Kathmandu between February 28 and March 2, the Joint Press Release stated that the two sides "held extensive discussions on positions of the two Governments on each of the category (sic)" and agreed "to continue the discussions at their next meeting".

HUMAN RIGHTS ORIENTATION IN DEVELOPMENT COOPERATION

Peter P. Waller

Over the past few years, more and more countries have been linking their development aid to respect for human rights - something that was previously strictly rejected by both donor and beneficiary countries as constituting interference in the internal affairs of sovereign states. Neither universal human rights nor development co-operation is a new idea; both have been evolving since the end of the Second World War. What is new, is the linking of the two domains - and it is a link that is reciprocal: on the one hand, the use of development aid as a means of enforcing respect for human rights, and on the other, the demand for democracy and human rights as a precondition for effective development co-operation. These links are so obvious that one is amazed they were not made much earlier. No doubt the reason lies in the political constellation that prevailed during the post-war era, and in strategic notions such as that of the myth of the "development dictatorship".

The notion that democracy and popular participation are decisive preconditions for self-sustaining and lasting economic growth has only recently gained ground. The cause of this tardiness lay in a myth that dominated development thinking for many years - the myth of the "development dictatorship". The respected political scientist Richard Lowenthal summed up this thinking succinctly in the formula "Every measure of freedom is paid for with a slowing down of (economic) development. Democracy and human rights as a brake on economic growth!"

Since then, numerous dictatorships in the Third World have shown that lack of freedom does not lead to prosperity for all but at most to the enrichment of a tiny clique. Extensive studies have shown that, over longish periods, dictatorships have not been able to produce higher rates of growth than more pluralist, democratically oriented countries. Thus, although it is clear that democracy does not automatically lead to higher rates of growth, the myth of the necessity of "development dictatorships" has been rendered untenable.

The need for a type of development co-operation geared to human rights emerged at the end of the 1980s and evolved primarily out of the collapse of numerous patrimonial Third World states which had slid into insolvency and had been forced to accept structural adjustment programmes from the IMF and the World Bank. The kind of systems in question are economically highly inefficient. The demands of their self-promoting elites exceed the capabilities of their production sectors, and sooner or later there is economic collapse, unless the life-span of the regime is prolonged by outside help - e.g. development aid.

Authoritarian systems in the Third World are a product both of internal structures and of massive support from outside. In line with the doctrine that dictatorships can advance development more rapidly than can democracies, and because dictatorships often suited its own economic and strategic interests, the West, although claiming democracy for itself, strongly supported authoritarian systems in the Third World. Accordingly, it would be utopian

to believe that people in the countries of the Third World now had a chance of asserting themselves successfully in every area against the heavily armed regimes that govern them.

The fact that authoritarian regimes reject the linking of human rights and development co-operation, and are perhaps even ready to forgo such co-operation, is not surprising and does not imply the failure of human rights-oriented development co-operation. On the contrary, during the last few years there has been a growing international trend to regard respect for human rights not just as a precondition for economic development, but as itself an important goal of development. Thus there is now broad agreement that development "is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation" (UN, 1986). Political development stands equal alongside economic development.

The fostering of basic civil and political rights through external pressure comes up against a particular obstacle in the Third World, namely the reservation about non-intervention in internal affairs (Art. 2, para 7 of the UN Charter). On the other hand, it is unmistakably clear that many authoritarian regimes invoke non-intervention in internal affairs merely to conceal crimes committed against their own peoples from the gaze of world opinion. That many

independent people in the Third World hold this same view is perhaps confirmed by the following quotation from an Indian scholar [K.P. Saxena]: "There is an incredibly widespread assumption that human rights is a western concept, meant only for a certain group of people and not for all human beings universally. This is sheer political propaganda, perpetuated by Third World leaders with vested interests."

In formal terms, external intervention to promote respect for human rights is justified. Through ratification, the UN human rights conventions have become a part of the domestic law of most of the countries of the Third World. The use of human rights as criteria for development co-operation cannot therefore be dismissed as a neo-colonial offensive by the West.

In addition to the formal justification, there is also a **political justification** for basic civil and political rights. For a long time, any kind of external intervention - even if it was in the interest of the people in the Third World - was branded as imperialism in the scholarly debate on the issue. Now, however, there is growing realization that many regimes in the Third World do not derive their legitimacy from the consent of their own peoples and do not represent the interests of the majority of the population. In fact, many regimes derive their legitimacy from the international system.

Of crucial importance is the fact that people in an increasing number of Third World countries are no longer merely demanding more democracy and respect for human rights but often actually call upon the West to intervene - either with a demand that an

immediate stop be put to development aid to repressive regimes, or else with a request for support in building up democracy.

Consequences of Donor Credibility

Criticism in donor countries about the linking of development co-operation and human rights is directed not so much at the actual idea as at the huge gap between claim and reality. Examples of regimes in which crass violations of human rights are the order of the day, but which nevertheless receive extensive development aid are easy to find.

This raises the question of **varying motives** underlying development co-operation. There is no doubt that genuine development goals are overlaid with goals of a purely economic, military-cum-strategic, ideological, or other kind. Economic interests will continue to play an important role in large-scale Third World countries (China), but this fact should not induce us to refrain from redirecting development policy by setting up a stronger link with human rights in the majority of the cases. In this connection, it is crucial that political conditionality should truly restrict itself to human rights and should not be tempted to try and impose specific political structures on the developing countries.

Another problem in regard to credibility is the **coherence** of policies relating to the Third World. The Federal Ministry for Co-operation [of Germany] must seek to secure greater influence on policy-making in the fields of external economics, agriculture,

the environment, and others. Chaos will inevitably ensue if the restrictive conditionality in development co-operation operated in the one domain is thwarted by massive promotion of economic commitment in the other. The same is true of the **coordination of development co-operation** by donor countries. If cuts by Germany are counter-balanced by increases from Japan, the overall effect will probably be more or less nil.

Another important consequence of human rights-oriented development co-operation, as far as donor countries are concerned, is that there must be increased **monitoring of governments**. Domestically, parliaments, non-governmental organizations, and public opinion must discuss and monitor the granting of aid to an even greater extent than now. Abroad, there must be a much greater degree of intervention by aid-givers in the internal affairs of beneficiaries, but at the same time there must be the possibility for beneficiary countries or, where appropriate, international organizations to discuss the aid policies of donors. Whether it is realistic to call for the formation of an international forum to draw up the relevant bilateral conditions is open to doubt. However, participation by regional human rights commissions would undoubtedly enhance donor credibility.

[Extracted from the book *Human Rights and Development, in the EINE Welt series published by Stiftung Entwicklung und Frieden (Development and Peace Foundation), 1993. Prof Waller is Deputy Director, Deutsches Institut für Entwicklungspolitik (DIE), Berlin]*

UN WORKING GROUP'S REPORT ON VISIT TO BHUTAN - A Review

At the invitation of the Royal Government three members of the Working Group on Arbitrary Detention of the Geneva-based UN Commission on Human Rights, Chairman-Rapporteur L. Joinet of France, Vice-Chairman K. Sibal of India, and Member L. Kama of Senegal, visited Bhutan last October. The members were accompanied by three other officials. The invitation to the Group was extended following "lengthy correspondence and exchange of information between the Government and the Working Group" over the past three years in the matter of the detention of Tek Nath Rizal whose case was formally submitted by the Group to the Royal Government of Bhutan on 14 October 1991. According to the Group, the scope of the visit was not limited to examining this particular case alone, but covered other areas of concern pertaining to the Group's mandate.

During the week long visit (17-22 October 1994) the delegation met senior government officials and was twice granted audiences with the King. The team visited the detention facilities at Chemgang and Thimphu and the Working Group "was able to interview freely and privately as many detainees as it wished." The report on the visit was circulated as document E/CN.4/1995/31/Add.3 at the 51st Session of the Commission on Human Rights [30th January 10th March, 1995]. It includes, as an annexure, Decision No.48/1994

(BHUTAN) adopted by the Working Group on 1 December 1994 in the case concerning Tek Nath Rizal.

In the introduction, the report claims that it was invited to Bhutan "in connection with the alleged case of arbitrary detention [of Rizal] which is presently being considered by the Working Group". The introduction further elaborates the intentions of the delegation to use the opportunity provided by the invitation to visit Bhutan to address other issues falling within the mandate of the Working Group. Obviously somewhere along the line the Group forgot its objectives and clearly got its priorities mixed-up; the case of Tek Nath Rizal, the reason for their visit, merited a single 4-line paragraph in the main body of the report.

If the large delegation to Bhutan at the end of their long, arduous, and expensive journey, took any pains to extract additional useful information vital for helping the Group provide a considered judgement in the case concerning "Tek Nath Rizal on the one hand and the Kingdom of Bhutan on the other", there is no evidence of that either in the main report or the Decision forming annex II. "As the visit of the Working Group came about in the context of the detention of Tek Nath Rizal, the Working Group interviewed him at Chamgang (sic) Central Jail, although he had already been connected (sic) by the High Court at Thimphu", is all that the Group has to say about the person whose plight brought about the visit, succinctly summarizing the Group's attitude. Did they visit Rizal in jail only because he had been instrumental in facilitating their Bhutanese holiday?

It is evident that the

Working Group members and officials who were honoured guests of the Royal Government felt obliged to turn in a favourable report. Considering the state of the legal system in Bhutan, this naturally became a tall order. The report is thus laced with contradictions and too many instances of glaring inconsistencies being overlooked by the visitors.

In standard UN style, after the introduction the report carries a brief background of the institutional framework in the country. In order to "appreciate the context in which persons of Nepalese origin have been detained in Bhutan" the report has a section 'DETAINEES OF NEPALESE ORIGIN' providing the "historical perspective". Of course, this also conveniently provides the Royal Government and the Working Group with the opportunity to attach 'SUMMARY OF TERRORIST ACTIVITIES (Updated as of 17 October 1994)' as Annex I. "This reflects the official Bhutanese position and seeks to explain the reason for the detention and trial, under the National Security Act, 1992, of various persons of Nepalese origin for acts of violence," the report states.

Section III deals with visits to detention centres by the Group and suggestions made to the authorities. Allowed access to Thimphu Detention Centre and the Chemgang Central Jail, the Group reportedly was free to interview inmates. While Chemgang jail only had persons held for allegedly violating the

National Security Act of 1992, there was a mixture of prisoners in Thimphu. The Group "expressed surprise at finding persons involved in purely monetary claims treated as common criminals."

"In the course of its interviews at Chamgang Central Jail the Working Group found that in many instances persons who had been detained for years without having been charged and persons who had been charged had not been brought before a judge for trial," the report states. The Working Group "also noted the complete absence of a legal community, the existence of which is necessary for the functioning of any legal system." While these appear as strong charges, it must be noted that the same Working Group also determined that "the nature of the evidence leaves no manner of doubt that the 'arrest' of Tek Nath Rizal cannot be said to be arbitrary," and that "Tek Nath Rizal's trial.. was just and impartial" and further that "there is nothing to suggest that the trial of Tek Nath Rizal was not fair and in derogation of acceptable international standards." If according to these experts the elements necessary for any legal system are missing in the first place, how any trial could be fair and of acceptable international standards is difficult to conceive!

The Working Group claims to have "candidly conveyed its concerns" to the authorities over a number of issues and submitted an informal memorandum. The Royal Government apparently agreed to consider some 13 suggestions, the most striking being one regarding a review to be "conducted by an independent body, constituted by the Government, of all cases of persons detained under the

National Security Act, 1992, in order to determine that those who are not terrorists and against whom there is no evidence should not be either formally charged or tried." The Working Group, naturally, saw no contradiction while proposing or accepting an "independent" body constituted by the Government in an absolute monarchy!

A letter dated November 2, 1994, from the Bhutanese Home Minister apparently brought on euphoria in the Group's plush office in Geneva. Under a section 'RESPONSE OF THE ROYAL GOVERNMENT OF BHUTAN', the Working Group congratulates itself over the prompt steps taken by the Government to deal with the particular case of three persons whose detention appears to have been brought to the notice of the authorities. The report presumes everyone else knows about these three individuals. That, unfortunately, is not the case. On the more important question of "anti-national detention", the letter, a lengthy portion of which is quoted, promises special most-favoured status and treatment, with the Government even allegedly willing to contravene its own sacred laws.

"I am now happy to inform you that the matter was brought to the attention of the Lhengyel Shuntshog (Cabinet), on the instruction of His Majesty the King, by the Chief Justice of the High Court on 31 October 1994," the Home Minister writes confirming the top-down Bhutanese system. "The Chief Justice also apprised the Cabinet that suspending cases that have already been registered in the High Court and not accepting new cases is in contravention of the Thrimshung Chhenpo (the Law of the Land)," the letter continues, to justify the detention of alleged anti-national without charges or trial. The irony is complete - take recourse to the law to delay and deny justice!

The entire episode would be comic if it were not tragic. And the tragedy is not that the Royal Government resorts to such deceptive ploys, but that legal experts condone or studiously fail to notice the fraud.

"In the course of discussions the Working Group held with the Royal Government of Bhutan, the Group was struck by the absence of lawyers." In the manner in which this discovery has been presented, it gives the impression that this was a significant finding which could possibly be used to justify the Group's travel expenses. Anyone who has done his or her homework, especially experts charged with the responsibility of examining a specific legal matter in the Kingdom, would be aware of such a situation in Bhutan without needing to visit the country and engage in discussions with officials. The Group also noted that "the judges do not have a law degree, as they are appointed from among the members of the civil service." The wording is significant again - the objection, unfortunately, is not over the larger problem of the absence of an independent judiciary but over the fact that judges do not have a law degree.

The 'brilliantly' worded critiques are entirely misplaced, probably intentionally. The lack of an independent judiciary, the fact that judges are appointed by

the Head of State who is also Head of Government, that judges are actually civil servants - are facts that are crucial to assessing the chances that a fair deal would be received by any person alleged to have challenged that very supreme authority. These are not mere observations but an integral part of the institutional framework which works to protect an absolute Government. These should rightly form the backdrop when evaluating cases against the Government. Unfortunately, the Working Group has obviously been infected by the Bhutanese virus - Bhutan's Chief Justice must defer and deny justice because that would mean contravening the Law of the Land, and a collection of international legal experts must observe details of the system while doggedly failing to point out that the system itself flawed and loaded against the Government's opponents.

"IN QUOTES"

"In this regard, my delegation takes note of the appreciation of the Working Group for the 'full cooperation' extended to it and 'the spirit of openness and transparency demonstrated by the Bhutanese authorities' to facilitate its work. On our part, the experience of the various persons and agencies in the government which cooperated with the Working Group was very positive and useful, especially in view of the professional objectivity and methodical manner in which the Working Group carried out its work."

Jigmi Thinlay, Bhutan's Permanent Representative to the UN in Geneva, in his Statement at the 51st Session of the UN Commission on Human Rights on February 20, 1995.

MEDIA SCAN

A CONFUSED BHUTANESE FOREIGN MINISTER

BBC : Nepal and Bhutan are beginning another round of talks at Ministerial level on Monday on the fate of thousands of refugees from Bhutan sheltering in camps in Nepal. The problems have been so far that both sides have failed to agree on the number and identity of the refugees. The Nepalese insist that most of the refugees are Bhutanese and should be allowed to return home. The Bhutanese maintain that many of the refugees are of Nepalese origin and, therefore, not entitled to settle in Bhutan. Since the two sides met last time, there has been a new communist government in Nepal. I asked Bhutan's Foreign Minister Dawa Tsering if he thought a breakthrough might be achieved in the talks with the new government.

Foreign Minister : Well, you know, with the previous government in spite of the complexity of the issue we had come to a remarkable meeting of minds. And we had made tremendous progress on the talks. And now, of course, with the new government we really haven't come to grips with them. So, when our delegation goes to Nepal next week, we will know what their attitude is, and we are hoping that they will have the same attitude as the previous government.

BBC : There are some points which are not absolutely clear. For example, the Nepalese say there are a hundred thousand Bhutanese refugees in camps. What is your figure?

Foreign Minister : Oh! You know the number is not in that order. Our view is that there are large number of people who are not really Bhutanese citizens. Many of them might have gone from Bhutan, but they were illegal immigrants here. Their status was very unclear and ill-defined. And we also feel that they were.. there are many people in the camps who are not even from Bhutan. Actually they are from other areas - and perhaps from neighbouring areas in Nepal itself. So, as far as we are concerned, we are not bothered about that. We feel that this verification process will enable everyone to understand who are the.. which are the categories which are, you know, who can be repatriated to Bhutan. So this verification process will give a clear indication of the picture. And the figures which are quoted, these are just wild speculation, and if I may say so, from motivated parties.

BBC : There are those, of course, who suspect, some who suggest that the Bhutanese government is deliberately delaying trying to find a settlement because they don't want to resolve the problem.

Foreign Minister : That is, you know, what you are saying this is.. this allegation which is being made is contrary to the fact because we were hoping very much to have a breakthrough last year, in May I think, and we were very keen to bring matters to a conclusion, but it was the Nepalese delegation which told us that, you know, the.. we should not come to a decision on the categories, and we should have the next round of talks in Kathmandu in a month's time. And then, of course, when the delegation went back, after a few days we learnt that the government had fallen and that is why, perhaps, we wanted that deferment of the delegation.

BBC : Bhutan's Foreign Minister Dawa Tsering talking to me from Thimphu.

Transcript of British Broadcasting Corporation (BBC) interview by Sudhir Bhowmick aired on Monday, February 20, 1995.

U.S. STATE DEPARTMENT 1995 HUMAN RIGHTS REPORT ... Extracts

The Wangchuck dynasty of hereditary monarchs has ruled Bhutan since 1907. Located in the Himalayas between India and Tibet, the small Kingdom has been able to escape domination by any external power since the 10th century. There is no written constitution or bill of rights. King Jigme Singye Wangchuck, on the throne since 1972, has continued some efforts towards social and political modernization begun by his father. However, in the past half-decade government efforts to repress ethnic Nepalese has sidetracked further progress...

The human rights situation improved slightly, but many basic rights remain restricted. There was insufficient information to determine if the Government continued to sanction the expulsion of ethnic Nepalese. These people continued to arrive in refugee camps in eastern Nepal, although in much smaller numbers than in the past few years. Some refugees claim that they were evicted by security forces. From 1989 to 1992, Bhutanese authorities forcibly expelled tens of thousands of people declared to be illegal immigrants under the 1985 Citizenship Act. Other rights are also restricted. The citizens do not have the right to change their government, and there are significant limitations on the right to fair trial, peaceful association and assembly, and on worker rights. Traditional cultural practices discriminate against women...

RESPECT FOR HUMAN RIGHTS

1. RESPECT FOR THE INTEGRITY OF THE PERSON, INCLUDING FREEDOM FROM:
1.a Political and Other Extrajudicial Killing

There were no independent confirmations of political or extrajudicial killing. However, the government-controlled weekly newspaper continued to describe dozens of incidents in which unidentified men staged hit-and-run attacks on civilians living in the south, resulting in some deaths. Many attacks, described by the Government as political terrorism, appear to have been the work of criminal gangs taking advantage of unsettled conditions on the border with India.

1.b Disappearance

From 1989-92, police and army forces arrested thousands of ethnic Nepalese suspected of supporting the dissident movement. Some have been held in incommunicado detention; others have disappeared. The Government has denied responsibility for any disappearances. In the past few years, the Government released from detention at least 1,666 ethnic Nepalese under official amnesties, including 23 on February 22. Among those amnestied was Deo Dutta Sharma, a student leader who says he was abducted by the Royal Bhutan Police from the Indian state of West Bengal in December 1989. After his release, Sharma claimed that he was held in solitary confinement for the first 3 years of his detention.

1.c Torture and Other Cruel, Inhuman, or Degrading treatment or Punishment

According to local human rights groups, allegations of torture and rape in southern Bhutan decreased at the end of 1993. However, there was little evidence that the Government investigated or punished security officials implicated in widespread abuses reported during 1989-92. Government forces committed these abuses in southern Bhutan as part of an effort to reduce the presence of ethnic Nepalese. This policy created a climate of impunity in which the Government tacitly condoned the physical abuse of ethnic Nepalese...

1.d Arbitrary Arrest, Detention, or Exile

Arbitrary arrest and detention remain a problem but are not routinely used as a form of harassment. The law does not provide for protection against arbitrary arrest. There are few established procedures for processing detainees. These shortcomings in the criminal justice system leave the authorities ample room for abuse...In many cases, the detention of accused "antinationalists", a term the Government uses to describe some ethnic Nepalese dissidents, is arbitrarily prolonged. At mid-year, the authorities detained some 165 detainees on charges related to political unrest in southern Bhutan. Many have been awaiting trial for nearly 4 years.

Although the Government does not formally use exile as a form of punishment, many of the accused "antinationalists" freed

under government amnesties say they were released on the condition that they depart the country. Several of them subsequently registered at camps in Nepal funded by the United Nations High Commissioner for Refugees (UNHCR).

1.e Denial of Fair Public Trial

...Criminal cases and a variety of civil matters are adjudicated under a 17th century legal code, revised in 1965, which applies to all citizens regardless of ethnic origin. Judges are accountable to the King and responsible for all aspects of a case, including investigation, filing of charges, prosecution, and judgment...

The Government tried and convicted about 40 people over the past two years on charges of treason and other "antinational" activities related to ethnic Nepalese resistance to the 1985 Citizenship Act and its enforcement by the Government. In addition, some or all of the 129 persons detained in Chemgang Prison in connection with anti-national activities may be political prisoners. Tek Nath Rizal, an ethnic Nepalese and internationally recognized political prisoner, remained in prison following his 1993 conviction under the National Security Act.

1.f Arbitrary Interference with Privacy, Family, Home, or Correspondence

There are no laws providing for these rights, but cultural traditions are highly respectful of personal privacy. However, the Government has undermined these traditions by its emphasis on promoting national integration. For example, a royal decree issued in 1989 made

Drukpa national dress compulsory for all citizens. Anyone found violating the decree may be fined or sentenced to jail for a week. Although observance of the decree is lax, there are occasional drives to stiffen enforcement, which exposes ethnic Nepalese to intimidation. According to human rights groups, police regularly conduct house-to-house searches for suspected dissidents without explanation or legal justification.

RESPECT FOR CIVIL LIBERTIES, INCLUDING:
2.a Freedom of Speech and Press

With an adult literacy rate around 30 percent, Bhutan's population is relatively uninfluenced by the print media. Kuensel, the Government's weekly newspaper, with a circulation of 10,000, is the country's only regular publication. The authorities allow indirect criticism of the King in the National Assembly and Kuensel sometimes covers such criticism. Indian and other foreign newspapers are available, but authorities confiscate and censor editions carrying articles critical of the royal family or government policies...

2.b Freedom of Peaceful Assembly and Association

These freedoms are restricted. Citizens may engage in peaceful assembly and association only for purposes approved by the Government. Although the Government allows civic and business organizations, there are no political parties. The

Government regards two parties organized by ethnic Nepalese exiles -- the BPP and BNDP -- as "terrorist and antinational" organizations and has declared them illegal...

2.c Freedom of Religion

Buddhism is the state religion. The Government subsidizes monasteries and shrines and provides aid to about a third of the Kingdom's 12,000 monks. The monastic establishment enjoys statutory representation in the National Assembly and Royal Advisory Council and is an influential voice on public policy. Citizens of other faiths, mostly Hindus, enjoy freedom of worship but may not proselytize. Under the law, conversions are illegal...

2.d Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation

Some citizens enjoy considerable freedom of movement, but many reports indicate that ethnic Nepalese face travel restrictions within Bhutan. The southern border with India is open, and people residing in the immediate vicinity cross it freely...

3. RESPECT FOR POLITICAL RIGHTS: THE RIGHT OF CITIZENS TO CHANGE THEIR GOVERNMENT

Citizens do not have the right to change their government. Bhutan is an absolute monarchy, with sovereign power vested in the King. The Government has resisted democratic change. Decision-making is centered in the royal palace and involves only a small number of officials in the civil and religious establishment....

4. GOVERNMENTAL ATTITUDE REGARDING INTERNATIONAL AND NON-GOVERNMENTAL INVESTIGATION OF ALLEGED VIOLATION OF HUMAN RIGHTS

The Government does not allow local human rights groups. At least three groups established by ethnic Nepalese exiles, HUROB, PFHRB, and AHURA, operate abroad and take depositions from ethnic Nepalese refugees arriving in Nepal. The Government accuses these groups of working for the opposition and does not permit them in Bhutan. These groups also conduct international campaigns to put pressure on the government and provide human rights education in the refugee camps. However, they rarely report violations committed by dissident political groups.

The Government continued to cooperate with humanitarian groups. ICRC representatives continued their periodic prison visits, and the Government for the first time allowed them access to temporary detention facilities in the south, and area inhabited by ethnic Nepalese. The Government also allowed a visit by a team from Refugees International, which traveled widely in the south.

5. DISCRIMINATION BASED ON RACE, SEX, RELIGION, DISABILITY, LANGUAGE, OR SOCIAL STATUS

Women: Bhutan has not developed a rigid caste system or customs that sequester or disenfranchise women. Family land is divided equally between sons and daughters, and dowry is not practiced, even among ethnic Nepalese Hindus... Divorce is common. Recent legislation requires that all marriages must be registered and favors women in matters of alimony. About 10 percent of government employees are women. Women in unskilled jobs are generally paid less than men...

Children: Children enjoy a special position in society and benefit from international development programs focused on maternal and child welfare. There is no known pattern of societal abuse against children.

National/Racial/Ethnic Minorities: Ethnic Nepalese arrived in Bhutan in large numbers at the turn of the century. The Citizenship Law of 1958 granted citizenship to all ethnic Nepalese adults who owned land and had lived in Bhutan for at least 10 years. However, the Government maintains that large-scale illegal immigration

continued and was not detected until the 1988 census. The discovery that ethnic Nepalese were close to becoming a majority prompted the Government to launch an aggressive campaign to reassert Bhutanese, or Drukpa, culture, restrict immigration, and expel many ethnic Nepalese. The ruling elite feared that Bhutan's Buddhist society would be overwhelmed by Hindu ethnic Nepalese -- as happened in neighboring Sikkim, which was annexed by India in 1974...

By May 83,817 refugees were registered in UNHCR camps, of whom about 66,000 arrived in 1992. Between 5,000 and 15,000 other refugees are believed to have settled with family members in India. The total outflow of approximately 100,000 people in 2 years is equal to about 15 percent of Bhutan's population.

The Government maintains that those who have been expelled are Nepalese or Indian citizens who arrived in Bhutan after the enactment of the 1958 Nationality Law. It also claims the majority of those in Nepal departed Bhutan voluntarily after selling their land and property. Nonetheless, there are credible reports that these "voluntary" emigrants were compelled to sign away their property by government officials.

A Nepal-Bhutan joint ministerial committee met in February, April, and June to discuss ways to determine which refugees might be entitled to return to Bhutan. These discussions achieved little progress...

6. WORKERS RIGHTS

Trade Unionism is not permitted, there are no labor unions, workers do not have the right to strike... There is no collective bargaining or labor legislation pertaining to industry... Under various rural development schemes, a typical family of 8.5 persons may be required to provide up to 40 worker-days [compulsory labor] each year... There are no laws governing the employment of children... Although most workers are at least 15, a UNICEF study suggested that children as young as 11 are sometimes employed with road-building teams... There is no labor legislation, no legislated minimum wage, standard workweek, or health and safety standards... The largest salaried labor market is the government service, which has an administered wage structure last revised in 1988. Only about 18 industrial plants employ more than 50 workers...

Extracts from the Preliminary Report.

REFUGEE CAMP INFORMATION			
Location	District	Refugees	Students
Timai	Jhapa	8,336	2,969
Goldhap	Jhapa	7,978	3,032
Beldangi I	Jhapa	15,127	5,059
Beldangi II	Jhapa	18,755	7,138
Beldangi II Ext.	Jhapa	9,378	3,327
Sanischare(Pathri)	Morang	17,083	5,862
Khudunabari(N)	Jhapa	7,151	3,902
Khudunabari(S)	Jhapa	3,791	
Total		87,599	31,289
Cumulative births:		5,620	
Cumulative deaths:		2,705	
The above figures are as of March 31, 1995.			