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**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its 105th session, 23 March–1 April 2026****Opinion No. 11/2026 concerning Chaturman Tamang and Hasta Bahadur Rai (Bhutan)\***

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 60/8.
2. In accordance with its methods of work,<sup>1</sup> on 5 November 2025 the Working Group transmitted to the Government of Bhutan a communication concerning Chaturman Tamang and Hasta Bahadur Rai. The Government submitted a late response on 2 February 2026. The State is not a Party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States Parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
  - (d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
  - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination, based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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\* Miriam Estrada Castillo did not participate in the discussion of the case.

<sup>1</sup> [A/HRC/36/38](#).

## 1. Submissions

### (a) Communication from the source

4. Chaturman Tamang is a Nepali speaker born in Bhutan in February 1984. It is reported that Mr. Tamang and his family were expelled from Bhutan along with around 90,000 other Nepali-speaking Bhutanese. According to the source, the Government of Bhutan does not recognize their nationality. Mr. Tamang has an identity document issued by the International Committee of the Red Cross.

5. At the time of his arrest, Mr. Tamang was an unemployed refugee student residing in the Beldangi I refugee camp, located in eastern Nepal. The camp is now reportedly closed following the resettlement of the refugees in third countries.

6. Hasta Bahadur Rai is a Nepali speaker born in Bhutan in 1984. It is reported that Mr. Rai and his family were expelled from Bhutan along with around 90,000 other Nepali-speaking Bhutanese. According to the source, the Government of Bhutan does not recognize their nationality. Mr. Tamang has an identity document issued by the International Committee of the Red Cross.

7. At the time of his arrest, Mr. Rai was an unemployed refugee student residing in the Beldangi II refugee camp, located in eastern Nepal. The camp is now reportedly closed following the resettlement of the refugees in third countries.

#### (i) Context

8. The source submits that, in the 1990s, the Nepali-speaking minority population in Bhutan faced marginalization and discrimination from the authorities. As a response, pro-democracy demonstrations took place in southern Bhutan. In that context, the National Security Act (1992) of Bhutan was adopted. Many demonstrators have reportedly been arrested and prosecuted under this Act. These events also reportedly resulted in the forced expulsion from Bhutan of an estimated 90,000 mostly Nepali-speaking individuals, including Mr. Tamang and Mr. Rai, together with their families.

9. According to the source, framing the National Security Act within the context of pro-democracy demonstrations in Bhutan reveals its intended function as a mechanism for suppressing dissent. The Act's provisions on "treasonable acts" reportedly appear to have been drafted with the activism of Nepali-speaking Bhutanese in mind, serving as a legal instrument to target individuals accused of advocating for democracy and human rights.

#### (ii) Arrest and detention

10. According to the source, in early 2008, in the village of Samrang, located at the border between Bhutan and India, Mr. Tamang and Mr. Rai distributed political pamphlets to raise awareness about the discriminatory policies of the Government of Bhutan against the Nepali-speaking southern Bhutanese. On 17 February 2008, as Mr. Tamang was returning from that village, officers of the security forces of the Royal Bhutan Army stationed along the border stopped him for a document check and inspected his bags. The same occurred with Mr. Rai on 18 February 2008.

11. Mr. Tamang and Mr. Rai were unable to present Bhutanese citizenship documents or authorized entry permits to the officers. Further, the authorities found pamphlets and books on political campaigns among their belongings. The authorities reportedly arrested Mr. Tamang and Mr. Rai and took them to a nearby army barracks (Samrang Block, located in Samdrup Jongkhar District). The authorities did not show a warrant or another decision by a public authority at the time of the arrests. The source remarks that arrest warrants are generally not issued in Bhutan for the arrest of individuals who are allegedly involved in opposing government activities.

12. The source reports that Mr. Tamang and Mr. Rai were held in army barracks and interrogated daily without the presence of lawyers. They were also allegedly tortured.

13. According to the source, on 26 February 2008, the Royal Bhutan Army handed Mr. Tamang and Mr. Rai over to the Royal Bhutan Police. On the same day, they were taken to Chemgang Central Jail in Thimphu and, on 29 February 2008, they appeared before the Sarpang Dzongkhag (District) Court.

14. As for the reasons for the arrest given by the authorities, the source specifies that Mr. Tamang and Mr. Rai were firstly arrested for unauthorized entry to Bhutan. It explains that an individual must produce Bhutanese citizenship documents or, in case of a foreigner, an authorized entry permit, at any time when requested by patrolling security personnel. Mr. Tamang and Mr. Rai had none of those documents, as their citizenship was reportedly terminated by the authorities during their eviction from the country in the early 1990s. Thereafter, as stateless refugees, Mr. Tamang and Mr. Rai had no foreign passports enabling them to obtain permits to enter Bhutan.

15. Once they were transferred to Chemgang Central Jail, Mr. Tamang and Mr. Rai were informed that they had been arrested under the National Security Act. The source states that Mr. Tamang and Mr. Rai were remanded in prison before a hearing that was held at the Sarpang Dzongkhag (District) Court on 29 May 2008.

16. According to the source, the prosecution and the court verdict documents mention that security personnel confiscated various weapons, political pamphlets and booklets from Mr. Tamang and Mr. Rai. The same documents reportedly stipulate that Mr. Tamang and Mr. Rai were prosecuted for joining and paying fees to the Communist Party of Bhutan (Marxist–Leninist–Maoist). That organization was reportedly identified by the authorities as a terrorist organization attempting to subvert the *Tsa-Wa-Sum* (King, country and people of Bhutan).

17. Mr. Tamang and Mr. Rai were charged under section 6 of the National Security Act for joining the aforementioned organization. They were also charged under article 6 of the Act and under section 329 of the Penal Code for training in and financing the use of weapons.

18. The source submits that the National Security Act was specifically designed to discourage citizens of Bhutan, in particular Nepali speakers, from challenging the authorities.

19. Mr. Tamang and Mr. Rai were charged under article 4 of the National Security Act and sections 327 (a) and (c), 478, 480 and 482 of the Penal Code. These provisions stipulate that engaging in treasonable acts against the King, country and people or attempts to do so, either within or outside Bhutan, are to be punished with death or life imprisonment. Further, the provisions state that committing any overt act with intent to give aid and comfort to the enemy in order to deliberately and voluntarily betray the King, country and people and harm the national interest is to be punished with death or life imprisonment.

20. The source submits that the terminology used to define treason under section 327 (a) of the Penal Code lends itself to arbitrary sentencing. It argues that the National Security Act also contains overly broad and vague provisions, thus obstructing the possibility for Mr. Tamang and Mr. Rai to effectively defend themselves.

21. In their defence statement, submitted on 15 June 2008, Mr. Tamang and Mr. Rai argued that it was never their intention to carry out physical acts of violence. The source notes that Mr. Tamang and Mr. Rai had no access to a defence lawyer during the trial or during their subsequent appeal.

22. On 9 September 2008, the Sarpang Dzongkhag (District) Court sentenced Mr. Tamang and Mr. Rai to life imprisonment. They were placed in Block 5 of Chemgang Central Jail in Thimphu, where they remain to date without the possibility of parole.

23. On 10 September 2008, Mr. Tamang and Mr. Rai appealed their life sentences to the High Court of Bhutan. In their letters to the appeals court dated 27 September 2008 and 20 January 2009, Mr. Tamang and Mr. Rai submitted that, while they were in possession of weapons, they had no intention of overthrowing the State.

24. The court proceedings, which reportedly included no defence lawyers and lacked due process guarantees, lasted eight months and resulted in dismissal of the appeal.

(iii) *Legal analysis*

25. The source submits that the detention of Mr. Tamang and Mr. Rai is arbitrary, falling under categories I, II, III and V of the Working Group.

a. Category I

26. In relation to category I, the source submits that the National Security Act contains broad and vague definitions of charges for opposing the King, country and people, thus making it hard for individuals to predict which acts would fall within the scope of the legislation. It also submits that these vague and overly broad charges have been utilized against individuals who oppose the authorities, such as political leaders or law enforcement and security personnel. Such individuals are considered to be opposing King, country and people and are subsequently labelled “anti-nationals” or terrorists by the authorities.

b. Category II

27. In relation to category II, the source argues that the deprivation of liberty of Mr. Tamang and Mr. Rai is a result of the exercise of their rights guaranteed by articles 7, 13 and 18–20 of the Universal Declaration of Human Rights.

28. The source submits that the National Security Act was designed specifically to target Nepali-speaking activists engaged in pro-democracy demonstrations, in violation of article 7 of the Universal Declaration of Human Rights. It recalls that this provision stipulates that all are equal before the law and are entitled without discrimination to equal protection of the law.

29. Moreover, Mr. Tamang and Mr. Rai were initially arrested because they had no documentation to prove themselves as citizens of Bhutan. The source recalls that the authorities had revoked their citizenship, making it impossible for them to legally return to Bhutan. This, according to the source, clearly violated article 13 of the Universal Declaration of Human Rights, which provides for people’s right to freedom of movement, in particular, the right to leave any country, including their own, and to return to their country.

30. Finally, the source recalls that articles 18–20 of the Universal Declaration of Human Rights guarantee the right to free thought and free speech and expression. It argues that these rights of Mr. Tamang and Mr. Rai were similarly violated. When arrested, Mr. Tamang and Mr. Rai had with them written materials on political subjects and criticism of the authorities, alleging that Nepalese-speaking individuals lacked political representation. That resulted in them being charged and convicted of subverting the King, country and people under the National Security Act.

31. The source argues that the National Security Act was adopted after pro-democracy demonstrations against the alleged marginalization of Nepali-speakers in Bhutan. The Act was therefore designed and used as a tool to punish those who advocated for human rights and democracy by accusing them of treason.

c. Category III

32. In the context of category III, the source submits that Mr. Tamang and Mr. Rai were arrested without warrants, which have never been issued. Moreover, the prosecution has relied on an overly broad definition of offences and the documentation produced by the court included errors. The proceedings of the court were carried out in the official language of Bhutan, Dzongkha, in which Mr. Tamang and Mr. Rai are not fluent. The interpreter who was provided was reportedly not qualified, and the source questions whether the two defendants benefited from accurate interpretation throughout the proceedings.

33. Finally, the source recalls that, at the time of the arrest, as well as during the detention and trial of Mr. Tamang and Mr. Rai, defence lawyers were not available. Mr. Tamang and Mr. Rai had to represent themselves.

34. In this context, the source also recalls the reports of the Working Group on its visits to Bhutan, in which the Working Group observed with concern allegations of serious violations of due process rights during trials of detainees convicted of national security

offences.<sup>2</sup> These concerns are particularly compelling given the legal infrastructure in Bhutan. As documented in the Working Group's report on its visit in 1994,<sup>3</sup> Bhutan lacked a functioning system of legal practitioners, meaning that defendants were often tried without access to legal counsel or adequate representation.

35. The source also recalls that the Working Group, in the report on its visit in 1994, recommended that individuals facing accusations of terrorism or other serious charges be afforded legal representation, recognizing the critical importance of procedural safeguards in such cases. Despite this recommendation, in the report on its visit in 2019, the Working Group revealed that those individuals had been denied legal counsel during their trials, raising deep concerns about the fairness and legitimacy of their convictions.<sup>4</sup> This lack of representation is particularly troubling for those serving long-term or life sentences whose liberty has been curtailed for decades without meaningful legal recourse.

36. The source recalls in this regard that the Working Group has recommended that the cases of all detainees sentenced under national security provisions, especially those serving life sentences, be subject to thorough review to determine whether due process violations occurred and whether any convictions were made in error or under conditions that compromised the fairness of the judicial proceedings.

d. Category V

37. Finally, in relation to category V, the source argues that the Nepali-speaking community of Bhutan is linguistically, ethnically and religiously distinct from the country's majority population. The Nepali speakers were reportedly targeted in the late 1980s and early 1990s in response to their demands to bring about democratic change. The source states that those members of the Nepali-speaking community who continued to protest about discrimination have been subjected to arbitrary arrest and detention. The source concludes that the deprivation of liberty of Mr. Tamang and Mr. Rai is a result of discrimination on a combination of ethnic, religious and language grounds.

**(b) Response from the Government**

38. On 5 November 2025, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 5 January 2026, detailed information about the current situation of Mr. Tamang and Mr. Rai and to clarify the legal provisions justifying their continued detention, as well as its compatibility with the obligations of Bhutan under international human rights law. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of Mr. Tamang and Mr. Rai.

39. On 12 January 2026, the Government requested an extension of the deadline. The extension could not be granted, as the request was received after the deadline for the submission of the Government's response to the communication had expired. The Government submitted its reply on 2 February 2026, which was after the deadline. The Working Group cannot accept that response as if it were provided within the time limit. In accordance with paragraph 16 of its methods of work, the Working Group will render its opinion based on all the information that it has obtained.

**2. Discussion**

40. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

<sup>2</sup> E/CN.4/1995/31/Add.3 and A/HRC/42/39/Add.1.

<sup>3</sup> E/CN.4/1995/31/Add.3, para. 27.

<sup>4</sup> A/HRC/42/39/Add.1, para. 59.

41. In determining whether Mr. Tamang's and Mr. Rai's detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.<sup>5</sup>

42. The source has argued that the detention of Mr. Rai and Mr. Tamang is arbitrary under categories I, II, III and V. The Working Group will examine the submissions under each category in turn.

**(a) Category I**

43. The source submits that the detention lacks a legal basis on two grounds: first, the vagueness and overly broad nature of the legal provisions under which Mr. Tamang and Mr. Rai were charged; and second, the absence of an arrest warrant and failure to produce the men before a judicial authority within the period required under the domestic law.

44. The Working Group recalls that the principle of legality – *nullum crimen, nulla poena sine lege* – requires that criminal offences be defined with sufficient precision to enable individuals to foresee, with reasonable certainty, whether their conduct would amount to an offence.<sup>6</sup> Article 11 (2) of the Universal Declaration of Human Rights provides that no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time it was committed. The Working Group has previously found that reliance on criminal provisions that are so vague and overly broad that individuals cannot reasonably predict which acts fall within their scope renders the detention arbitrary under category I.<sup>7</sup>

45. In the present case, the charges against Mr. Tamang and Mr. Rai were made under the National Security Act and section 327 (a) and (c) of the Penal Code. Section 327 (a) criminalizes “treasonable acts” against the King, country and people or attempts to do so under pain of death or life imprisonment; and section 327 (c) criminalizes “any overt act” with intent to give aid and comfort to the enemy in order to deliberately and voluntarily betray the King, country and people. The source submits that these provisions, framed around the concept of the King, country and people, are so broad and imprecise that virtually any form of political dissent or opposition advocacy could be brought within their scope. In its belated reply, the Government does not engage with the argument of vagueness, but notes that the charges under the National Security Act were ultimately dismissed by the trial court and that Mr. Tamang and Mr. Rai were convicted only under the Penal Code.

46. The Working Group observes that the charges under the National Security Act, however ultimately disposed of, formed part of the legal framework under which Mr. Tamang and Mr. Rai were arrested, held and prosecuted. Their exposure to provisions of this breadth constituted a deprivation of liberty without adequate legal basis from the outset. More broadly, the Working Group notes that the prosecution's own High Court brief reveals the theory of liability applied even under the remaining Penal Code charges: receipt of training in “communist ideology” and acceptance of a “code name” were explicitly treated as proving criminal intent. This approach – attributing criminal intent from participation in political ideology training and organizational identification – operates under the same logic of overly broad definition that characterizes the relevant provisions of the National Security Act. The Working Group therefore finds that the legal basis for the initial detention and prosecution failed to satisfy the requirements of article 11 (2) of the Universal Declaration of Human Rights and that the detention of Mr. Tamang and Mr. Rai is arbitrary under category I on this ground.

47. Further, in relation to the source's submissions concerning arrests without warrant, incommunicado detention and failure to present the defendants promptly before a court, the

<sup>5</sup> A/HRC/19/57, para. 68.

<sup>6</sup> Human Rights Committee, general comment No. 34 (2011), para. 25.

<sup>7</sup> Opinions No. 10/2018, para. 52; and No. 71/2019, para. 73. See also opinions No. 9/2019, para. 39; and No. 45/2019, para. 54.

Working Group recalls that, for a deprivation of liberty to have a legal basis, it is not sufficient for a law authorizing arrest to exist; the authorities must invoke that legal basis and apply it through an arrest warrant or equivalent document.<sup>8</sup> The Working Group has consistently maintained that arrest without warrant renders a detention arbitrary, absent a recognized exception such as arrest in flagrante delicto.<sup>9</sup>

48. The Government acknowledges that both Mr. Tamang and Mr. Rai were arrested without warrants, relying on sections 165 (d) and 166 (1) of the Penal Code. The Working Group observes, however, that both individuals were not apprehended at the site where, according to the Government's belated reply, weapons were allegedly recovered (on 15 February 2008) but separately – on 17 and 18 February 2008 – while in the vicinity of the border. The Government has not demonstrated that the specific conditions for warrantless arrest were individually assessed and applied at the moment of each arrest, or that those arrests occurred in flagrante delicto. The Working Group therefore finds that the arrest of both men lacked the procedural legal basis required by article 9 of the Universal Declaration of Human Rights.

49. Compounding this, the Working Group notes the admitted gap between the dates of arrest (17 and 18 February 2008) and appearance before a court (27 February 2008 at the earliest, according to the Government's reply), amounting to a period of 9 or 10 days. Section 188 (1) of the Penal Code requires that a person accused of a crime appear before a court within 24 hours of arrest, exclusive of travel time. The Government describes their appearance before the court as "prompt", without addressing this gap. The requirement of prompt appearance before a court after arrest protects against both arbitrary detention and ill-treatment during initial custody; a delay of 9 or 10 days – some eight times the domestic legal requirement – cannot be characterized as complying with this obligation. The Working Group therefore finds an additional violation of article 9 of the Universal Declaration of Human Rights on this ground.

50. The Working Group also notes that, during this period, neither Mr. Tamang nor Mr. Rai had access to family, legal counsel or any judicial authority. Their whereabouts were not communicated to anyone outside the security apparatus. The Working Group finds that both individuals were held in conditions constituting enforced disappearance from the moment of their arrest until they were handed over to the Royal Bhutan Police, placing them outside the protection of the law, in violation of article 9 of the Universal Declaration of Human Rights.

51. The Working Group recalls that enforced disappearance is prohibited by international law and constitutes a particularly aggravated form of arbitrary detention.<sup>10</sup> It also recalls that no jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods and held outside the reach of the law without the possibility of resorting to legal procedures, including habeas corpus.<sup>11</sup>

52. The Working Group also recalls that prompt access to family members, independent medical personnel and legal counsel is an essential safeguard against arbitrary detention and protection against torture. None of these safeguards were present during the abovementioned period.

53. Based on the foregoing, the Working Group therefore concludes that the deprivation of liberty of Mr. Tamang and Mr. Rai is arbitrary under category I.

<sup>8</sup> Human Rights Committee, general comment No. 35 (2014), para. 23. See also opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39.

<sup>9</sup> Opinions No. 66/2019, para. 61; No. 6/2020, para. 40; No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; and No. 89/2020, para. 54.

<sup>10</sup> See opinions No. 5/2020, No. 6/2020, No. 11/2020 and No. 13/2020. See also Human Rights Committee, general comment No. 35 (2014), para. 17.

<sup>11</sup> [A/HRC/16/47](#) and [A/HRC/16/47/Corr.1](#), para. 54.

**(b) Category II**

54. In relation to category II, the source argues that the deprivation of liberty of Mr. Rai and Mr. Tamang is a result of their exercise of rights guaranteed by articles 7, 13 and 18–20 of the Universal Declaration of Human Rights.

55. Article 13 (2) of the Universal Declaration of Human Rights provides that everyone has the right to return to their country. The source submits – and the Government in its late reply does not contest – that the initial ground of arrest included the inability of Mr. Tamang and Mr. Rai to present Bhutanese citizenship documents, a consequence of the revocation of their citizenship by Bhutan during their forcible expulsion as children. As stateless persons, they had no documentation enabling legal entry. Criminalizing entry by persons whose inability to present legal documentation flows directly from the State’s own discriminatory acts does not constitute a legitimate restriction on freedom of movement. To the extent that the arrests were predicated on unauthorized entry by persons rendered stateless by Bhutan itself, this constitutes a violation of article 13 of the Universal Declaration of Human Rights.<sup>12</sup>

56. The Working Group recalls that article 15 (2) of the Universal Declaration of Human Rights provides that no one shall be arbitrarily deprived of his or her nationality. The mass revocation of citizenship in the early 1990s, which rendered Mr. Tamang and Mr. Rai stateless and is not contested by the Government, raises serious concerns under this provision – concerns that are compounded by the subsequent prosecution of both individuals for their inability to document their entry, which the State’s own acts had made inevitable.

57. In this regard, the Working Group also recalls that the Committee on the Rights of the Child has expressed concern about the situation of children of Nepalese ethnic origin in Bhutan. The Working Group echoes the Committee’s call that Bhutan review the Citizenship Act of 1985 to extend citizenship to children born to at least one Bhutanese parent and to identify and correct practices that might discriminate against children of ethnic Nepalese origin lacking adequate documentation.<sup>13</sup> The Working Group further recalls the views of the Committee on the Elimination of Racial Discrimination, as Bhutan is a signatory to the International Convention on the Elimination of All Forms of Racial Discrimination. In paragraphs 1 and 14 of its general recommendation No. 30 (2004), that Committee expressed the view that States Parties must not discriminate against any particular nationality and recommended that States Parties recognize that deprivation of citizenship on the basis of race, colour, descent or national or ethnic origin was a breach of States Parties’ obligations to ensure non-discriminatory enjoyment of the right to nationality.

58. The Working Group notes that the Government’s own late response and the prosecution documents provided by the source reveal that the charges against Mr. Rai and Mr. Tamang relate in significant part to membership of a political organization, “spreading communist ideologies” and alleged intention to commit acts of violence. The prosecution, in its appeal response, stated that the defendants’ guilt was demonstrated by facts including that they had “code names” and had studied “communist ideology”. The prosecution did not allege that either man had actually committed any act of violence.

59. Articles 18, 19 and 20 of the Universal Declaration of Human Rights protect the rights to freedom of thought and opinion, freedom of expression and freedom of peaceful association. Restrictions on these rights must be provided for by law and be necessary and proportionate; they may not penalize the holding of political opinions, the distribution of political literature or membership in an organization merely because it advocates political change.<sup>14</sup> States must provide particular justification for treating any form of expression or association as a national security threat.<sup>15</sup>

60. The source’s uncontested account of the immediate circumstances of the arrests – stopping individuals returning from distributing political pamphlets with political books in their possession – engages articles 19 and 20 of the Universal Declaration of Human Rights.

<sup>12</sup> Opinion No. 33/2016, paras. 24 and 25.

<sup>13</sup> [CRC/C/BTN/CO/3-5](#), paras. 43 and 44 (a) and (b). See also [CEDAW/C/BTN/CO/10](#), para. 39 (b).

<sup>14</sup> Human Rights Committee, general comment No. 34 (2011), para. 35; and general comment No. 37 (2020), paras. 27–37.

<sup>15</sup> Human Rights Committee, general comment No. 34 (2011), para. 35.

Even accepting, for the sake of argument, elements of the Government's more expansive account, the prosecution's own High Court brief explicitly states that receipt of training in "communist ideology" and acceptance of a "code name" independently established criminal intent. This approach treats participation in the ideological life of a political organization as itself sufficient proof of terrorist intent – an approach incompatible with the protection of the rights to political association and expression under articles 19 and 20 of the Universal Declaration of Human Rights. It criminalizes the holding and communication of political views, contrary to article 19, and the joining of an association, contrary to article 20.

61. The Working Group considers that charges and convictions under provisions of the law that allow for the criminalization of peaceful expression enable arbitrary interpretation and make it difficult for citizens to determine how to act to comply with the law and cannot be regarded as consistent with the Universal Declaration of Human Rights.<sup>16</sup>

62. The source submits that Mr. Rai and Mr. Tamang are also accused of paying fees to the Communist Party of Bhutan (Marxist–Leninist–Maoist) and that the organization was identified by the authorities as a terrorist organization attempting to undermine the King, country and people of Bhutan. In this regard, although Bhutan is not a Party to the Covenant, the Working Group echoes the view of the Human Rights Committee that imprisonment for membership of an organization banned for threatening State order and democracy is impermissible without showing that imprisonment is specifically necessary to avert a real danger to national security and democratic order.<sup>17</sup> The Working Group has not received convincing evidence that Mr. Rai and Mr. Tamang engaged in violent activities or that their activities resulted in violence or were a real danger to national security.

63. The Working Group accordingly finds that the deprivation of liberty of Mr. Rai and Mr. Tamang results, at least in significant part, from the exercise of rights protected under articles 13, 19 and 20 of the Universal Declaration, and is therefore arbitrary under category II.

**(c) Category III**

64. Given its finding that the deprivation of liberty of Mr. Rai and Mr. Tamang is arbitrary under category II, the Working Group wishes to emphasize that, in such circumstances, no trial should have taken place. However, as the trials have taken place, the Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough as to give their deprivation of liberty an arbitrary character under category III.

65. The allegations of the source relating to denial of the right to access counsel are consistent with the Working Group's findings, during its country visits to Bhutan in 1994 and 2019, on the lack of legal representation for individuals arrested under national security legislation.<sup>18</sup> According to the testimony received as part of that visit, a majority of defendants in criminal matters did not have access to legal representation at crucial stages of their proceedings: following arrest, during pretrial detention and during their trial and appeal.<sup>19</sup>

66. The Working Group notes that the Government, in its late response, itself acknowledges that the lack of legal representation was on account of the absence of trained lawyers in Bhutan at that time. The Working Group considers that a waiver of the right to counsel in circumstances where no trained lawyers are available cannot be considered truly voluntary. It concludes that these violations concerning access to counsel contravene article 10 of the Universal Declaration of Human Rights, principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. During its 2019 visit, the Working Group interviewed several prisoners who had

<sup>16</sup> See opinions No. 9/2019, No. 45/2019 and No. 26/2023.

<sup>17</sup> *Lee v. Republic of Korea* (CCPR/C/84/D/1119/2002), para. 7.3.

<sup>18</sup> E/CN.4/1995/31/Add.3, para. 27; and A/HRC/42/39/Add.1, para. 59.

<sup>19</sup> A/HRC/42/39/Add.1, para. 54.

been imprisoned under national security legislation, a number of whom were serving life sentences, as is the case with Mr. Rai and Mr. Tamang. As there is no possibility of parole for a life sentence in Bhutan, detainees serving life sentences have no prospect of release, with the exception of amnesty.<sup>20</sup>

67. The Working Group notes with grave concern that the primary evidentiary basis for the conviction of Mr. Rai and Mr. Tamang appears to be confessions obtained during a period of at least nine days of incommunicado military detention, without access to counsel or judicial oversight. The Government does not address the circumstances under which these confessions were obtained. The Working Group recalls that confessions obtained during incommunicado detention, without legal representation, are inherently suspect and not admissible as evidence in criminal proceedings<sup>21</sup> and that the burden is on the State to prove that statements were given freely.<sup>22</sup> The use of confessions obtained in such circumstances violates the prohibition of torture and cruel treatment under article 5 and the right to a fair trial under article 10 of the Universal Declaration of Human Rights, and principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which expressly prohibits taking undue advantage of the situation of a detained person to compel confession or incriminating statements.

68. The source further makes unrefuted allegations that the proceedings were conducted in Dzongkha, a language that neither of the defendants understands. While the Government, in its late response, claims that interpreters were engaged, the source has presented evidence that key court documents, including the prosecution's response to the appeal, are in English and Dzongkha only, not in Nepali. The Working Group finds a failure to ensure that the defendants fully understood the proceedings, leading to due process concerns relating to article 10 of the Universal Declaration of Human Rights and rule 61 (2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

69. The Working Group is deeply concerned that Mr. Rai and Mr. Tamang were sentenced to life imprisonment without the possibility of parole. The prosecution's own appeal documents confirm that it did not allege that either man had committed acts of violence, but rather that they had the "intention" of causing harm. Life imprisonment without parole for offences in which no violence was committed or even alleged raises serious concerns of proportionality.

70. For these reasons, the Working Group concludes that the breaches of the right to a fair trial and due process rights of Mr. Rai and Mr. Tamang are of such gravity as to give their deprivation of liberty an arbitrary character under category III.

**(d) Category V**

71. The source submits that the individuals were targeted on the basis of a combination of ethnic, religious and language grounds. The Working Group recalls the source's submissions that the National Security Act was adopted after pro-democracy demonstrations against the alleged marginalization of Nepali speakers in Bhutan. The Act was reportedly designed and used as a tool to punish those who advocated for human rights and democracy by accusing them of treason and silencing them, as in the present case.

72. The Working Group recalls that, when detention results from the active exercise of civil and political rights, there is a strong presumption that it also constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>23</sup> As established in the category II analysis above, the detention of Mr. Tamang and Mr. Rai is connected to their political association and expression within the political movement. Taking into account the Government's late response, which does not provide convincing evidence to

<sup>20</sup> Ibid., para. 59.

<sup>21</sup> A/HRC/45/16, para. 53. See also opinions No. 73/2019, para. 91; No. 59/2019, para. 70; No. 14/2019, para. 71; and No. 1/2014, para. 22; and E/CN.4/2003/68, para. 26 (e).

<sup>22</sup> Human Rights Committee, general comment No. 32, para. 41. See also opinions No. 86/2020 and No. 41/2020.

<sup>23</sup> Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; No. 59/2019, para. 79; and No. 8/2023, para. 84.

rebut the source's allegations of discriminatory treatment, the Working Group finds credible the source's submission that the arrest and conviction of Mr. Rai and Mr. Tamang and the lengthy sentences imposed on them under the National Security Act are discriminatory. The Working Group notes concerns that have been raised about the treatment by Bhutan of linguistic minorities, especially persons of ethnic Nepalese origin, in the context of the universal periodic review, indicating a pattern of discrimination against those of ethnic Nepalese origin.<sup>24</sup>

73. The Working Group thus finds that Mr. Rai and Mr. Tamang were deprived of their liberty on discriminatory grounds, because of their political opinion and status as members of a linguistic minority, which are also related to their statelessness. Their detention violates articles 2 and 7 of the Universal Declaration of Human Rights and is therefore arbitrary under category V.

**(e) Concluding remarks**

74. The Working Group remains gravely concerned that Mr. Rai and Mr. Tamang have been imprisoned for over 18 years, serving life sentences without the possibility of parole, for offences in which no violence was committed or alleged. Their families have reportedly had no communication with them for over 10 years. The Working Group reminds the Government of its obligations under rule 1 of the Nelson Mandela Rules, according to which all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity. It urges the Government to respect the right of Mr. Rai and Mr. Tamang to contact with the outside world under rules 43 (3) and 58 (1) of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and urgently requests that their visitation rights be upheld.

75. The Working Group notes with concern that a number of individuals remain detained in Bhutan under national security legislation, serving sentences ranging from decades to life imprisonment without possibility of parole for actions that appear to the Working Group to be unrelated to terrorism. In this context, it recalls its recommendation from its visit in 2019 that the Government conduct further review of the remaining cases of persons detained under national security legislation to reassess whether there were any procedural irregularities during the proceedings that occurred in the absence of legal counsel.<sup>25</sup>

76. This case is the second case brought before the Working Group since the conclusion of its country visit concerning arbitrary detention under national security legislation in Bhutan.<sup>26</sup> The Working Group is concerned that these cases indicate a systemic pattern of arbitrary detention of members of the Nepali-speaking minority in Bhutan under vague and overly broad national security provisions.

**3. Disposition**

77. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Hasta Bahadur Rai and Chaturman Tamang, being in contravention of articles 2, 5, 7, 9, 10, 11, 13, 19 and 20 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II, III and V.

78. The Working Group requests the Government of Bhutan to take the steps necessary to remedy the situation of Mr. Rai and Mr. Tamang without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

<sup>24</sup> A/HRC/WG.6/6/BTN/2, para. 52; A/HRC/13/11, para. 72; A/HRC/WG.6/33/BTN/2, paras. 48 and 52; and A/HRC/42/8, para. 158.50. See also A/HRC/29/30/Add.1, paras. 52 and 53.

<sup>25</sup> A/HRC/42/39/Add.1, paras. 59 and 92 (e).

<sup>26</sup> See also opinion No. 60/2024.

79. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Rai and Mr. Tamang immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

80. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Rai and Mr. Tamang and to take appropriate measures against those responsible for the violation of their rights.

81. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

#### 4. Follow-up procedure

82. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Rai and Mr. Tamang have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Rai and Mr. Tamang;
- (c) Whether an investigation has been conducted into the violation of Mr. Rai's and Mr. Tamang's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Bhutan with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

81. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

83. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as of any failure to take action.

84. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>27</sup>

[Adopted on 24 March 2026]

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<sup>27</sup> Human Rights Council resolution 60/8, paras. 6 and 9.