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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (56-23) G/SO 214 (107-9) G/SO 214 (33-27) G/SO 214 (53-24)
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10 February 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, 15/21, 14/11, 16/5, 17/5 and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the excessive use of force against allegedly peaceful protestors in Luhuo, Seda and Rangtang Counties, Sichuan Province, which resulted **in the death of at least seven persons. Several individuals were injured (some critically) while others have been allegedly arrested and detained.**

According to the information received:

On 23 January 2012, security forces reportedly opened fire in Luhuo County, Kardze Prefecture, Sichuan Province, on unarmed Tibetan protestors who had gathered peacefully to denounce the arrest of several Tibetans earlier that day who distributed leaflets entitled "Tibet needs freedom". Mr. Norma Yonten, aged 49, was shot dead, and five other persons might also have been killed. In addition, up to 30 protestors were injured.

On 24 January 2012, security forces similarly fired at a reportedly peaceful crowd in Seda County, Kardze Prefecture, Sichuan Province, which had gathered to demand the end of religious repression and the return of the Dalai Lama. Five protestors were reportedly killed and up to 30 injured.

On 26 January 2012, a Tibetan male named Tharpa displayed a poster in Rangtang County, Ngaba Prefecture, Sichuan Province. The poster called on Chinese authorities to give freedom to Tibetans and allow the return of the Dalai Lama. Two hours later, Mr. Tharpa was arrested by security forces at his home and was taken into custody. Tibetans gathered in front of Mr. Tharpa's house to protest against his arrest. Security forces then opened fire on the crowd. One person was reportedly shot dead and several others were injured.

It is reported that wounded persons, some critically, during these events were not taken to hospital for fear of reprisals.

According to reports, the situation remains tense in the aforementioned locations, with a heavy presence of security forces. Access to these locations by independent human rights monitors and foreign media is reportedly prohibited.

We note with appreciation the information provided by your Excellency's Government to the Secretariat of the Office of the High Commissioner for Human Rights, however, we express grave concerns about the alleged excessive use of force against peaceful protestors, which reportedly resulted in the death of at least seven persons and injuries of over 60 persons, as well as for the physical and psychological integrity of those detained, in the exercise of their rights to freedom of peaceful assembly and of opinion and expression.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of the aforementioned persons.

With regard to the alleged deaths which may have resulted from the excessive use of force, we wish to stress that, under international law, excessive use of force and firearms is not permitted when policing peaceful assemblies. We would like to remind your Excellency's Government of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). In particular, principle 12 provides that "everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the UDHR and the ICCPR, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14." Principle 13 states that "In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary", and principle 14 states that "In the dispersal of violent assemblies, law enforcement officials may use

firearms only when less dangerous means are not practicable and only to the minimum extent necessary.”

We would also like to draw your Excellency’s Government’s attention to principle 4 which provides that “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, principle 5 provides that “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.” (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

Without expressing at this stage an opinion on the facts of the cases and on whether the detention of the aforementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their rights not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights.

Furthermore, we would like to appeal your Excellency’s Government to take all necessary steps to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights.

We would also like to refer to General Assembly resolution 65/211, in which the Assembly urges States “to step up their efforts to protect and promote freedom of thought, conscience, religion or belief, and to this end: [...] (b) To ensure that existing legislation is not implemented in a discriminatory way or does not result in discrimination based on religion or belief, and that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights”.

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia,

by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- "Article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) (of the Special Representative of the Secretary-General on the situation of human rights defenders) and in particular to paragraph 98 which states that "in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials."

With regards to the role of media and human rights defenders in monitoring demonstrations, we would like to refer to the 2007 report to the General Assembly (of the Special Representative of the Secretary-General on the situation of human rights defenders) (A/62/225, paras. 91 and 93) that underline how "monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them.

Without in any way implying any conclusion as to the facts of the case, we would like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the aforementioned persons. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights which provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of assembly, as recognized in article 20(1) of the Universal Declaration of Human Rights, which provides that "[e]veryone has the right to freedom of peaceful assembly and association."

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders... seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

We urge your Excellency's Government to take all necessary measures to hold accountable any person responsible for the death of the aforementioned protestors. We further urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the other protestors are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of these persons in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the cases accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the casualties among the protestors. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate the legal basis of the arrest and detention of aforementioned persons. Please indicate how these measures are compatible with international human rights norms and standards as contained inter alia in the Universal Declaration of Human Rights.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment