



PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (56-23) G/SO 214 (33-27) G/SO 214 (53-24) G/SO 214 (89-15)
CHN 7/2013

22 July 2013

Dear Mr. Wu Haitao,

We have the honour to address you in our capacities as 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 extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolution 16/4, 15/21, 22/20, 17/5, 16/23 and 23/25.

In this connection, we would like to bring to your Government's attention information we have received concerning the **excessive use of force in the dispersal of a peaceful religious gathering of Tibetans who were celebrating the birthday of the Dalai Lama**.

According to the information received:

On 6 July 2013, monks from Nyitso monastery and nuns from Gedhen Choeling nunnery, as well as laypeople, gathered at the bottom of the Machen Pomra mountain which is regarded as sacred by Tibetans, in Daofu, Ganzi prefecture, Sichuan province, to celebrate the birthday of the Dalai Lama. As per the Tibetan traditions, the people had burnt incense at the top of the mountain earlier that day, and then offered greeting scarves to a photograph of the Dalai Lama on the lower slope of the mountain. It is reported that a large group of police and military officers dispersed the peaceful crowd, opening fire and using tear gas. Mr. **Gyen Tashi Sonam**, a monk and teacher of Nyitso monastery, and Mr. **Ugyen Tashi**, a layman, were shot in the head and are in critical condition in hospital. The following individuals were also injured in the shooting: Ms. **Dolma**, a nun from

Dunkye nomadic camp; **another unnamed nun**; Messrs. **Jangchub Dorjee**, **Gyamtso**, and **Lobsang**, monks; and Messrs. **Tashi**, **Nyendak** and **Sangpo**, laymen. Mr. **Gyaltsen** and Mr. **Yama Tsering** were beaten by security forces and got several ribs broken. Mr. **Tamka Choeden** and Mr. **Dekyi Gonpo**, both monks from Nyitso monastery, were also beaten and the latter has become deaf in one ear. Ms. [REDACTED], a female school student, was similarly beaten, and security officers reportedly seized her gold earrings and a wristwatch without returning them to her owner. It is further reported that 14 Tibetans, including Mr. Gyaltsen, were arrested in the course of the operation by security forces, and were released on 7 July in the evening. Many of them were reportedly unable to walk without constant support due to severe beating.

Serious concerns are expressed that the alleged excessive use of force, including use of lethal force, against, and the arrest and detention of, peaceful Tibetans by law enforcement authorities may be linked to the exercise of their rights to freedom of peaceful assembly, expression and religion.

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Government to seek clarification of the circumstances regarding the cases of the persons named above. 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 (UDHR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

With regard to the reported excessive use of force, including use of lethal force, we would also like to draw your Government's attention to Principle 4 of the United Nations Basic Principles on the Use of Force and Firearms by Law Officials, 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).

The use of lethal force by law enforcement officials is strictly regulated under international human rights law. The principles of necessity and proportionality under international human rights law are interpreted to mean that lethal force may be used as a last resort, with the sole objective of saving life, as reflected in the aforementioned principles 4 and 5 of the United Nations Basic Principles on the Use of Force and Firearms by Law Officials.

In this regard, it is recalled that article 3 of the UDHR stipulates that “everyone has the right to life, liberty and security of person”.

We would also like to respectfully remind your Government of article 18 of UDHR, which states that “everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

We would further like to draw your Government's attention to the General Assembly's Declaration on religious intolerance and discrimination 36/55 (A/RES/36/55) in which the General Assembly in article 6(a) states that the right to religion or belief includes the freedom “to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes.”

Furthermore, we would like to draw your Government's attention to paragraph 11 (k) of the General Assembly's Resolution 64/164 (A/RES/64/164) on religious intolerance and discrimination in which the General Assembly urges states "To take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by intolerance based in religion or belief, as well as incitement to hostility and violence, with particular regard to members of religious minorities in all part of the world."

In this context, we would like to draw attention of your Government to paragraph 4(f) of the Resolution 2005/40 of the former Commission on Human Rights, which urges States, “To ensure 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 arbitrary arrest or detention on that account, and to bring to justice all perpetrators of violations of these rights.”

We would like to refer your Government to article 19 of the UDHR, which provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Similarly, we would like to refer to article 20 of the UDHR which provides that “[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association.”

We would also like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, 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 would further like to recall Article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women.

Furthermore, we would like to bring to your attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Government on 4 November 1980), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that “under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.

Since 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, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by the victims or on their behalf?

3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, 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 instructions received or issued by the security forces on the use of force in the reported case, as well as the legal basis of the use of force against, and the arrest and detention of, the aforementioned Tibetans, and how such measures are compatible with the above mentioned international human rights norms and standards.
6. Please provide information in details on the specific measures undertaken to ensure the freedom of religion or belief and the rights of religious minorities, particularly, in Daofu, Ganzi prefecture, Sichuan province, China, are protected.
7. Please provide information in details on the specific measures undertaken to implement paragraph 11 (k) of the General Assembly's Resolution 64/164 (A/RES/64/164) on religious intolerance and discrimination and paragraph 4(f) of the Resolution 2005/40 of the former Commission on Human Rights, particularly, in Daofu, Ganzi prefecture, Sichuan province, China.

We would appreciate a response within sixty days. Your Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons 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 Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Mr. Wu Haitao, the assurances of our highest consideration.

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freedom of opinion and expression

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