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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Working Group on Enforced or Involuntary Disappearances; 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; and the Independent Expert on minority issues.

REFERENCE: UA G/SO 218/2 Cultural rights (2009) G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (56-23) Minorities (2005-4)
CHN 1/2014

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; 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; and Independent Expert on minority issues, pursuant to Human Rights Council resolutions 24/7, 19/6, 16/16, 16/4, 24/5, 22/20, and 16/6.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the case of 10 Tibetan singers and musicians which are currently being detained or whose whereabouts are unknown. It is alleged that these artists have been arrested in connection with their songs supporting Tibetan culture and reflecting the situation in the Tibetan Autonomous Region.

According to the information received:

Tibetan Singer **Gongpo Tsezin**, 25 years old, from Driru County (Ch: Biru County), Nagchu (Ch: Naqu) Prefecture, Tibet Autonomous Region, was arrested on 30 November 2013, allegedly for his songs promoting Tibetan culture and in particular his DVD - *No Losar* – that refers to the decision made by Tibetans not to celebrate Losar (Tibetan new year) in reaction to the situation in the Tibet Autonomous Region. His whereabouts are unknown.

Trinley Tsekar, a 22 years old and well known Tibetan singer from Driru County, Tibetan Autonomous Region, was reportedly arrested on 20 November 2013 for distributing his DVD titled “Ring of Unity”, containing songs on Tibetan identity, culture and language. He was sentenced on 19 December 2013 by the County People’s Court in Driru to nine years imprisonment on charges related to “separatist activities”, in connection with his involvement in an anti-mining protest. However, it is believed that his status as a popular singer has contributed to his arrest, conviction and length of sentence. Today, his whereabouts remain unknown.

It is also alleged that **Kelsang Yarphel**, 38 years old, a popular Tibetan singer from Machu (Ch: Maqu) County in Kanlho (Ch: Gannan) Tibet Autonomous Prefecture, Gansu Province was arrested in July 2013 in Lhasa and is currently detained in Chengdu city in Sichuan Province. Information indicates that during a music concert “Khawei Metok” in October and November 2012, Kelsang Yarphel performed a song titled “Bhodpa Tso” (Fellow Tibetans), the lyrics of which were deemed politically subversive by the authorities. The DVD of the concert was widely distributed in Tibetan areas in Qinghai, Gansu, Sichuan and Yunnan provinces. A month later, the authorities enforced a ban on the sale and distribution of this DVD, many copies of which were allegedly confiscated.

Information also indicates that on 23 February 2013, **Lolo**, a 30 year-old popular Tibetan singer from Dhomda village, Trindu (Ch:Chengdu) County, Jyekundo (Ch:Yushu), Tibet Autonomous Prefecture, was sentenced to six years in prison. In an urgent appeal dated 9 August 2012, the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur in the field of cultural rights, the Chair-Rapporteur of the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on the right to education, 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 assembly and of association, the Special Rapporteur on freedom of religion and belief, and the Independent Expert on minority issues, already enquired about this case, as Lolo was first detained on 19 April 2012 for releasing a music album that contained songs such as “Raise the Tibetan flag, Children of Snowland”. We note the response of the Government dated 28 September 2012, informing the Special Procedures mandate holders that Lolo had been detained in accordance with the law, due to activities inciting separatist movements, and that he had been released on bail on 8 May 2012.

It is also reported that in February 2013, **Pema Trinley**, 22 years of age, and **Chakdor**, 32, were sentenced to four years in prison in Ngaba (Ch: Aba) County in Ngaba Tibetan and Qiang Autonomous Prefecture, Sichuan Province. In July 2012, days after the release of their music album “Agony of Unhealed Wounds”, which addressed the situation in the Tibet Autonomous Region, Pema Trinley and

Chakdor were reportedly arrested in the neighbouring Machu (Ch: Maqu) County in Kanlho (Ch: Gannan) Tibetan Autonomous Prefecture, Gansu Province. Their whereabouts remain unknown. Information indicates that family members of both singers were notified in writing by local authorities that Pema Trinley and Chakdor were imprisoned at Mianyang Prison in Sichuan Province. However, family members made unsuccessful attempts to visit them in this prison, as the Mianyang prison officials apparently had no knowledge about the musicians' whereabouts. Furthermore, it seems that two other Tibetan musicians **Khenrap** and **Nyagdompo**, who collaborated with the sentenced singers on the music album, have also gone missing.

It is further alleged that **Shawo Tashi**, 40 years old, a Tibetan singer popular for his many songs celebrating Tibetan identity and culture, was sentenced to five years in prison following his arrest in November 2012 in Dowa Township in Rebkong (Ch: Tongren) County in Malho (Ch: Huangnan) Tibetan Autonomous Prefecture, Qinghai Province, for distributing photographs of self-immolation protesters inscribed with the last notes left by self-immolation protesters; participating in protest against the Chinese Government and singing patriotic Tibetan songs. The exact date of the sentencing is unknown. It is believed that Shawo Tashi is currently being held in a prison in Siling (Ch: Xining) city, capital of Qinghai Province.

In addition, musician **Achok Phulshung**, 33 years old, from Marthang County in Ngaba, eastern Tibet Autonomous Region, was arrested in August 2012. Since then, no information has emerged about his whereabouts or whether he has been sentenced.

Serious concerns are expressed that the alleged arbitrary arrest and detention or enforced disappearance of the aforementioned 10 Tibetan singers and musicians may be linked to their legitimate human rights activities, in the exercise of their rights to freedom of opinion and expression, freedom of peaceful assembly, freedom of religion or belief and freedom to take part in cultural life. Further concerns are expressed for their physical and psychology integrity.

Without expressing at this stage an opinion on the facts of these cases and on whether the arrest and detention of the above-mentioned individuals is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right 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.

We would also like to refer your Excellency's Government to 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.”

Similarly, we would like to refer to article 20 of the Universal Declaration of Human Rights, which provides that “[e]veryone has the right to freedom of peaceful assembly and association.”

We would like to further refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 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.”

In relation to the allegations according to which the fate and whereabouts of Gongpo Tsezin, Trinley Tsekar, Pema Trinley, Chakdor, Khenrap, Nyagdompo, Shawo Tashi, and Achok Phulshung are currently unknown, we would like to bring to your Excellency’s Government’s attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction); and
- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance).
- article 7 (no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances);
- article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest); and

- article 12 (right to the maintenance in every place of detention of official up-to-date registers of all detained persons).

We would also like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief in accordance with article 18 of the Universal Declaration of Human Rights.

Furthermore, we would like to recall to your Excellency's Government the principles set forth in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. Article 6 (d) and (i) of the Declaration provides that the right to freedom of thought, conscience, religion or belief includes the freedom "to write, issue and disseminate relevant publications in these areas" and "to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels."

We would further like to draw your Excellency's Government attention to Human Rights Council resolution 19/8 (paragraph 9) and General Assembly resolution 66/168 (paragraph 12), which urge States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end "To ensure, in particular, (...) the right of all persons to seek, receive and impart information and ideas in these areas",

In addition, we would like to refer your Excellency's Government to article 15 of International Covenant on Economic, Social and Cultural Rights, recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have undertaken to respect the freedom indispensable for creative activity. As stressed by the Special Rapporteur in the field of cultural rights, all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. (A/HRC/23/34, paras. 85 and 89 d).

Furthermore, we draw the attention of your Excellency's Government to the international standards relevant to the protection and promotion of the rights of minorities. The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires under Article 1.1 that States "shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity." Article 2.1 states that "persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in

private and in public, freely and without interference or any form of discrimination. Article 2.2 highlights that “persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life”. Article 4.1 establishes that: “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.”

We recall that the Independent Expert on minority issues requested to conduct an official country visit to China in 2009 and renewed the request in 2010, without having received a positive official response to-date. The mandate of the Independent Expert on minority issues requires to, inter alia, promote the implementation of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as to identify best practices and possibilities for technical cooperation.

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 Gongpo Tsezin, Trinley Tsekar, Kelsang Yarphe, Lolo, Pema Trinley, Chakdor, Khenrap, Nyagdompo, Shawo Tashi, and Achok Phulshung in compliance with the above international instruments.

Moreover, 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 cases accurate?
2. Please provide information on the fate and whereabouts of Gongpo Tsezin, Trinley Tsekar, Pema Trinley, Chakdor, Khenrap, Nyagdompo, Shawo Tashi, and Achok Phulshung.
3. If the fates and whereabouts of the above mentioned persons are unknown, please provide the details on any investigation or other inquiries which may have been carried out. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information concerning the legal grounds for the arrest and detention, and, where relevant, the convictions of Gongpo Tsezin, Trinley Tsekar, Kelsang Yarphe, Lolo, Pema Trinley, Chakdor, Khenrap, Nyagdompo, Shawo Tashi, and Achok Phulshung, and how these measures are compatible with international norms and standards as stated above.
5. Please indicate what measures have been taken to ensure the free exercise of the rights to freedom of opinion and expression, freedom of peaceful

assembly, freedom of religion or belief and freedom to take part in cultural life in the Tibet Autonomous Region.

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.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

We would like to bring to the attention of your Excellency's Government that should the sources submit the allegations concerning Gongpo Tsezin, Trinley Tsekar, Pema Trinley, Chakdor, Khenrap, Nyagdompo, Shawo Tashi, and Achok Phulshung as a case to the Working Group on Enforced or Involuntary Disappearances, they will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

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

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Farida Shaheed
Special Rapporteur in the field of cultural rights

Ariel Dulitzky
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

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

IZSÁK Rita
Independent Expert on minority issues