

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of 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 or 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 peaceful assembly and of association; and the Special Rapporteur on freedom of religion or belief; the Independent Expert on minority issues.

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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 218/2 Cultural rights (2009) G/SO 217/1 Education (1998-11) G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (56-23) Minorities (2005-4)
CHN 8/2012

9 August 2012

Excellency,

We have the honour to address you in our capacities 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 right to education; 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 the Independent Expert on minority issues pursuant to Human Rights Council resolutions 15/18, 19/6, 16/16, 17/3, 16/4, 15/21, 14/11, and 16/6.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **systematic undermining of the autonomous functions and the rights to freedom of religion, culture and expression of the Tibetan Buddhist community**.

According to the information received:

New management policies of the monasteries

On 4 January 2012, Mr. Chen Quanguo, the Party Secretary of the Tibet Autonomous Region (TAR), announced that some senior Government or Party officials will be permanently posted in almost all monasteries. This overturns the central guarantee of 'autonomy' that has guided policy on Tibet for decades. Almost every Tibetan monastery that used to be run by monks who comply with government regulations is currently under the direct rule of government officials.

The new system now allegedly requires establishing an unelected "Monastery Management Committee" in every monastery, with up to 30 lay officials stationed in each monastery, depending on the size of the institution. The new "Monastery Management Committees" will run the monasteries and directly manage different aspects of Tibetan monastic life, replacing the "Democratic Management Committees" that will now be responsible mainly for rituals and a few other matters. In monasteries that are at the "grassroots level," the administration will be in the hands of officials from the local village-level organisations of the Government or Party.

Patriotic re-education and legal education campaigns- closure of monasteries

It is reported that the 'patriotic re-education' campaign was first started in 1996 in a number of monasteries and nunneries in TAR. Since 2008, the 'legal education' campaign was launched with the official "work teams" permanently stationed in monasteries and nunneries carrying out these campaigns. On 30 September 2010, the State Religious Affairs Bureau issued a 44-point regulation called 'Management Measures for Tibetan Buddhist Monasteries and Temples' (Order No. 8) that came into effect on 1 November 2010 to regulate monastic activities. Monasteries and nunneries in Tibet that have sister affiliations abroad are barred from maintaining any contacts.

Since November 2011, "Nine Must Haves" and "The Six Ones" programmes have been implemented to allegedly further regulate and restrict the activities of monks and nuns. It was reported that under the "Nine Must Haves" programme, the Tibetan Buddhist monasteries are required to hang the portraits of four Chinese Communist leaders and the Chinese national flag and to make available in the respective monasteries newspapers and television programmes produced and published by the Chinese government.

The campaigns have allegedly affected the normal functioning of Tibetan Buddhist institutions and the religious freedom of monks and nuns. It was reported that regular religious classes are cancelled to accommodate the legal education sessions run by the work teams in monasteries and nunneries. The monks and nuns are forced to denounce their spiritual leader, the Dalai Lama. In Dama Monastery in Markham County of Chamdo Prefecture, 22 out of 30 monks were expelled for not having registered with the authorities. The monastery also

faced the risk of closing down as the officials insisted that a portrait of Dalai Lama be replaced by the portrait of the Mao, Deng, Jiang and Hu.

Monks and nuns have allegedly been arrested and expelled for not complying with the rules and regulations of the 'patriotic re-education' or 'legal education'. Five monks of Ungting Monastery in Dachu Township of Ngamring County of Shigatse Prefecture were arrested for opposing the order to raise the Chinese flag in the monastery. Besides, minor monks below the age of 18 had to discontinue their education after they were ordered to leave their monasteries.

Movement of monks and nuns is reportedly restricted making it difficult for monks and nuns to go outside their monasteries and nunneries, to visit other sacred monasteries and religious lamas, and to purchase their daily necessities including groceries. These restrictions have allegedly forced many monks to flee their respective monasteries forcing many monasteries such as Bekar, Drong-na, Rabten, and Roggyen to close after monks staged mass boycotts and left their monasteries in protest. The local officials have ordered heads of 'neighbourhood committees' to monitor the neighbourhood closely to ensure that no family is sheltering monks or nuns who have left their monasteries in protest; neighbourhood committees are required to inform the officials of any information they receive about these monks and nuns.

In Pema County of Golok Prefecture in Qinghai Province, many monks left A-Kyong Monastery after they were banned from celebrating their nine-day annual religious festival that fell on 18 January 2012.

There is also a report regarding monks at the Karma Monastery in Chamdo being forced to disrobe while the monastery itself had been placed under a heightened security clampdown with a large presence of officials and security personnel carrying out patriotic re-education campaigns.

Self-immolations, arbitrary detention and expulsion of Tibetans

Since 2009, there have been 46 cases of self-immolation by Tibetans, including monks, nuns, nomads and students in Chamdo, Charu, Chentsa, Darlag, Dzamthang, Kandze, Karma, Lhasa, Machu, Ngaba, Tawu, Thrindu, Sengge and Rebkong. Among the 46 cases, three cases took place in Nepal and India; three were mothers. Only 11 survived.

It was reported that an estimated 600 Tibetans had been rounded up since the first self-immolation case took place outside the Jokhang Temple in Lhasa on 27 May 2012. Several hundred Tibetans from the eastern areas of the Tibetan plateau who live in Lhasa have been arbitrarily expelled from the city. Those expelled have not been accused of any wrongdoing, are not believed to have any record of previous

political activity, and do not have any known connection to the protestors involved in the recent immolations apart from being born in the Tibet Autonomous Region. Foreign media are banned from the area and many facts remain unverifiable.

Public gatherings of more than three people in the city are allegedly banned and this has led to the cancellation of daily group activities including physical exercises normally held in front of the Potala Palace in Lhasa. Security forces in Lhasa have been reportedly carrying out increased identity checks on the streets of the city. Tibetans from areas where protests have recently taken place, in the Tibet Autonomous Region, have been ordered to leave not only the capital, but the TAR as well.

Religious holidays, celebrations and rituals

A notification was reportedly issued by the TAR Committee for Discipline Inspection and Supervision Department banning Party members, cadres, Government officials, and students from participating in religious activities such as the Saka Dawa, the sacred Buddhist day commemorating the Buddha's birth, enlightenment, and death. The notification stated that participation for the individuals above amounts to "serious violations of political discipline and stability work" that will lead to severe punishment, even with immediate dismissal from their posts.

The Tibetans also reportedly said that they feared there would not be any monks left to conduct religious rites and rituals intrinsically important to the practice of their faith as many monks have left the monasteries. Many feared that without the monks, even the dead could not be cremated with necessary rites and rituals.

Arrest of Tibetan pilgrims

In January 2012, over 10,000 Tibetans reportedly attended a ten-day teaching called the Kalachakra Initiation given by the Dalai Lama in Bodh Gaya, India. Upon their return to the TAR via Nepal, hundreds of Tibetan pilgrims were searched and arrested at the border for "illegally crossing the border to attend the Dalai Lama's teachings" despite that they had travelled from China with valid Chinese travel documents. Many have been detained since mid-January 2012 in ad hoc detention centres in Lhasa and other areas, and some detainees are as aged as seventy five or eighty years old. The detainees are reportedly subjected to political re-education sessions for months. To date, it is not possible to verify if the detainees have yet been released.

School closures and arrest of intellectuals

Information was received regarding the cases of 64 Tibetan intellectuals who have been arrested and/or sentenced, or who have been fired from their jobs or demoted, since March 2008. These cases include teachers, writers, bloggers, singers, documentary filmmakers and environmentalists, and the age group ranges from 17 to 81 years old. Among these 64 cases, 24 persons have been sentenced to detention from seven months ranging to life imprisonment; 12 were released after excessive torture during detention to avoid incidents of custodial death. Family members of the detainees have allegedly been intimidated by the authorities and denied visits. Amongst those 64 cases, the whereabouts of about 37 intellectuals, including artists, is reportedly unknown. According to the information received, the exact reasons of the arrests and sentences are not always known, but most probably related to the exercise of the right to freedom of expression and participation in cultural life especially after March 2008. Concerned individuals and their families are reluctant to speak to anyone about the cases or to file any complaint for fear of potential reprisals, further detention and because of concerns about the safety of the detainees.

In particular, it was brought to the attention of the special procedures mandate holders that in March 2012, Tibetan writer and poet, Ms. Tsering Woesser, has been placed under house arrest in Beijing and forbidden to leave the country. Ms. Woesser, author of the book *Notes on Tibet*, received the “2010 Courage in Journalism Award” of the International Women's Media Foundation, but she was not allowed to collect the prize at the Dutch Embassy in Beijing due to house arrest.

On 19 April 2012, Tibetan singer, 29 year-old Lo Lo, was allegedly detained in Qinghai province's prefecture after he released an album of songs titled “Raise the Flag of Tibet, sons of the Snow”. The lyrics of one of the 14 songs on the album reportedly called for the independence for the TAR, the unity of the Tibetan people, and the return of the Dalai Lama to the TAR. Lo Lo's whereabouts are unknown.

It was also reported that, at the end of April 2012, a popular Tibetan comedian, 33 year-old Athar, was sentenced to three years in jail following his release of a video urging unity among Tibetans, and calling for a strengthened Tibetan national identity and culture.

In June 2012, authorities of Sichuan province reportedly ordered the detention of handicapped Tibetan singer Phulchung who was accused of recording and distributing politically sensitive songs through his most recent CD, praising the Dalai Lama and the exiled Lobsang Sangay. The date of the detention order on singer Phulchung is not known.

On 2 April 2012, the authorities forcibly closed a school established twenty years ago to teach and promote Tibetan culture and language at Khadrok village in Rongpo Tsa Lema Township in Kardze County, Kardze Tibetan Autonomous Prefecture, Sichuan Province and ordered the parents to send students to government schools where only Chinese education is provided. The Kardze County Public Security Bureau officers also arrested the school's director, Nyendak and a teacher, Yama Tsering who were taken to an undisclosed location. Their whereabouts remain unknown.

In May 2012, a Tibetan orphanage school in Kanlho (Gansu Province, which housed 50 students) was closed on the grounds that it was teaching Tibetan language, speech, and culture, as well as the composition by the head of the school of a song containing 'separatist' contents.

Grave concern is expressed at the new management policies of the monasteries and nunneries coupled with the imposition of the patriotic or legal re-education of Tibetan monks and nuns that disrupt every aspect of the Tibetan monastic daily life and violate their rights to freedom of religion and belief. Concern is also expressed at the arbitrary detention and expulsion of Tibetans from Lhasa after the incident of self-immolation outside Jokhang Temple. The ban on religious celebration and the lack of presence of the monks to perform religious rituals for various occasions raise issues relating to freedom of religion and belief.

Concerns are further expressed that the arrests of the Tibetan pilgrims returning from India and the closure of schools that taught Tibetan language and culture, run contrary to the right to education and to take part in cultural life. Furthermore, any expression of Tibetan identity in a manner not validated by the State is allegedly labelled as separatist and suppressed, and have led to the arrests of various intellectuals violating their right to take part in cultural life and to freedom of expression, including in the form of art.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to seek clarification on the information drawn to our attention and share our concerns in relation to the present circumstances in light of the applicable international human rights norms and standards.

Without expressing at this stage an opinion on the facts of the case 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 all Tibetans the 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 (UDHR).

We are aware that the right to the freedom of religion and belief is guaranteed by the Constitution of the People's Republic of China pursuant to article 36. Article 36 (2) also provides specifically that [n]o state organ, public organization, or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.

We would like to recall the rights guaranteed by article 18 of the UDHR that provides “[e]veryone has the right to freedom of thought, conscience and religion; this right includes 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.”

In addition, article 2 (1) of the 1981 Declaration of the General Assembly also provided that “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief,” the Commission on Human Rights resolution 2005/40, urged States to step up their efforts to eliminate intolerance and discrimination based on religion or belief. Article 4 (1) also provided that [a] ll States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life. Article 6 further emphasised that the freedom of thought, conscience, religion or belief shall include (c) to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief; (h) to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; and (i) to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Article 1 (1) of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides 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 “[p]ersons 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.” In addition, 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.” Article 4.2 requires that “States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs.”

The Commission on Human Rights resolution 2005/40 (paragraph 4 (d)), Human Rights Council resolution 6/37 (paragraph 9(g)) and General Assembly resolution 65/211

(paragraph 12 (g)) urges States “[t]o ensure, in particular, the right of all persons to worship or assemble in connection with a religion or belief [...].”

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 UDHR 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 recall article 20 of the UDHR, 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, 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.”

Furthermore, we would like to refer your Excellency’s Government to article 26 of the UDHR, which provides for everyone’s right to education. This right is further specified in articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, and in articles 28 and 29 of the Convention on the Rights of the Child, both of which your Excellency’s Government has ratified.

In particular, we wish to remind your Excellency’s Government that article 13 (3) of the Covenant on Economic, Social and Cultural Rights, states that States Parties “undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.” The same article 13 (4) further underline that “no part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State”.

We would also like to recall that, in accordance with article 27 of the UDHR and article 27 of the International Covenant on Economic, Social and Cultural Rights, which

was ratified by China on 27 March 2001, everyone has the right to take part in cultural life and to the freedom indispensable for creative activity. The Committee on Economic, Social and Cultural Rights, in General Comment No. 21, stressed the right of everyone, individually or in association with others or within a community or group, to freely choose their own cultural identity, to belong or not to belong to a community, and have their choice respected. This includes the right not to be subjected to any form of discrimination based on cultural identity, exclusion or forced assimilation, and the right of all persons to express their cultural identity freely and to exercise their cultural practices and way of life. The Committee also stressed the right of everyone to enjoy freedom of opinion, freedom of expression in the language or languages of their choice, and the right to seek, receive and impart information and ideas of all kinds and forms including art forms, regardless of frontiers of any kind. This implies the right of all persons to have access to, and to participate in, varied information exchanges, and to have access to cultural goods and services, understood as vectors of identity, values and meaning. In addition, everyone has the right to enjoy the freedom to create, individually, in association with others, or within a community or group, which implies that States parties must abolish censorship of cultural activities in the arts and other forms of expression, if any; and to have access to their own cultural and linguistic heritage and to that of others. In particular, States must respect free access by minorities to their own culture, heritage and other forms of expression, as well as the free exercise of their cultural identity and practices. This includes the right to be taught about one's own culture as well as those of others. States parties must also respect the rights of indigenous peoples to their culture and heritage. (E/C.12/C/GC/21, para.49).

In addition, as stated by the Special Rapporteur in the field of cultural rights, the right of access to and enjoyment of cultural heritage includes the right of individuals and communities to, inter alia, know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others. States should recognize and value the diversity of cultural heritages present in their territories and under their jurisdiction and respect the free development of cultural heritage, tangible and intangible. (A/HRC/17/38, paras.79 and 80 (a)).

In relation to the allegations according to which the fate and whereabouts of Lo Lo, Nyendak and Yama Tsering remain 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);

- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance);
- 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).

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 the forementioned persons in compliance with the mentioned 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. Have complaints been lodged with regard to the incidents mentioned?
3. Please indicate which measures your Excellency's Government has adopted to ensure that new management policies and the patriotic or legal re-education campaigns respect and protect the freedom of religion or belief and the cultural rights of the Tibetans in compliance with international human rights norms and standards.
4. Please provide details of the arrest and expulsion of Tibetans in Lhasa after the self-immolation incident outside Jokhang temple.
5. Please provide the reasons for which a notification was issued to ban Party members, cadres, Government officials, and students from participating in religious activities.
6. Please provide the details of constructive measures taken to prevent further incidents of self-immolations from happening.
7. Please indicate the legal basis and reasons for the arrest and detention of the arrested Tibetan pilgrims upon their return from India and please indicate their current location(s).

8. Please provide the reasons for closing down the two schools mentioned and the arrests of the teachers.

9. Please provide the legal basis and reasons for the arrest and sentencing of Tibetan artists and intellectuals and indicate the criteria used to qualify expressions of Tibetan identity as separatist.

10. Please provide information on the fate and whereabouts of Lo Lo, Nyendak and Yama Tsering. If their fate and whereabouts are unknown, please provide the details of any investigation or other queries which may have been carried out. If no queries have been made, or if they have been inconclusive, please explain why.

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 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.

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

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

Farida Shaheed
Special Rapporteur in the field of cultural rights

Olivier de Frouville
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

Kishore Singh
Special Rapporteur on the right to education

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