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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; 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 the situation of human rights defenders

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
CHN 4/2013

12 June 2013

Dear Mr. Wu Haitao,

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; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Government to information we have received regarding the **sentencing of eight student protestors to prison terms following their participation in peaceful demonstrations in the Tibet Autonomous Region in November 2012, calling for, inter alia, equality among nationalities, and respect for and freedom to study the Tibetan language.**

The arrest and detention of, and the alleged excessive use of force against, peaceful protestors during these demonstrations were the subject of an urgent appeal, dated 10 December 2012, by 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 the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. We acknowledge receipt of the reply of your Government dated 7 February 2013.

According to the information received:

On 10 April 2013, the Gonghe County People's Court sentenced the following student protestors from the Tsolho Technical School for "illegally holding demonstration" and "causing harm to social stability" in November 2012 in Gonghe:

- Mr. **Sangye Bum** sentenced to four years in prison;

- Messrs **Kunsang Bum, Lhaten** and **Jampa Tsering** sentenced to three years and six months in prison;
- Messrs **Wangyal Tsering** and **Choekyong Kyap** sentenced to three years and three months in prison; and
- Messrs **Tsering Tashi** and **Dola** sentenced to three years in prison.

The above mentioned individuals have been detained since then.

Serious concerns are expressed that the sentencing of the eight aforementioned students may be linked to their legitimate human rights activities, in the exercise of their rights to freedom of peaceful assembly, and of opinion and expression. Further concerns are expressed for their physical and psychological integrity while in detention.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your 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 (UDHR).

We would also like to refer your Government to 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.”

Similarly, we would like to refer your Government 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.”

In addition, we would 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.”

Furthermore, we would like to mention the first thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27), in which he made the following recommendations to the international community:

- “A presumption in favour of holding peaceful assemblies should be established in law in a clear and explicit manner” (para. 88);
- “States should facilitate and protect peaceful assemblies, including through negotiation and mediation” (para. 89);

- “The exercise of the right to freedom of peaceful assembly should not be subject to prior authorization by the authorities, but at the most to a prior notification procedure, which should not be burdensome. In case an assembly is not allowed or restricted, a detailed and timely written explanation should be provided, which can be appealed before an impartial and independent court” (para. 90); and
- “Spontaneous assemblies should be recognized in law, and exempted from prior notification” (para. 91).

In this connection, we would like to refer your 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 Government the following provisions of the Declaration, and in particular to 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 this connection, we would also like to refer to Human Rights Council Resolution 22/6 which calls upon States to “ensure that human rights defenders can perform their important role in the context of peaceful protests, in accordance with national legislation consistent with the Charter of the United Nations and international human rights law and, in this regard, to ensure that no one is subject to excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts” (A/HRC/RES/22/6, OP 6).

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of the above-mentioned persons 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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please indicate how the sentences against Messrs Sangye Bum, Kunsang Bum, Lhaten, Jampa Tsering, Wangyal Tsering, Choekyong Kyap, Tsering Tashi and Dola are compatible with the aforementioned international human rights norms and standards.

We undertake to ensure that your Government's response 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 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.

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

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders