

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on minority issues; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on minority issues; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 28/9, 25/2, 25/5 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged detention, since 27 January 2016, and the formal arrest, in March 2016, of Tashi Wangchuk, a Tibetan linguistic rights activist, following his appearance in an article and documentary in the New York Times published in November 2015 about his advocacy for the rights of Tibetans to learn and study in their mother tongue.**

According to the information received:

Tashi Wangchuk, a male aged around 30, from Jyekundo County, Tibetan Autonomous Region, was reportedly arrested on 27 January 2016. Allegedly, Tashi Wangchuk's relatives were not notified of his detention until 24 March 2016, in violation of the legal requirement for detainees' families to be informed within 24 hours of the start of detention. It is reported that, upon his initial arrest, he was taken to police custody at the Yushu Public Security Bureau, where he was locked into a "tiger chair" to keep him perpetually uncomfortable and interrogated until the following evening. He was then allegedly transferred to the Pingan Xian public security bureau basement or detention centre, where he was repeatedly beaten by two police officers while being continually subjected to interrogation for one week.

It is further alleged that he did not have legal representation until June; the first meeting between Tashi Wangchuk and his lawyers took place only on 19 June 2016. He was officially charged in March 2016 with "inciting separatism," which carries a penalty of up to 15 years in prison. The case was sent to a criminal court in Yushu prefecture, Qinghai for trial in September 2016 following the conclusion

of an investigation by prosecutors. In December 2016, in what is reportedly an unusual move, the Procuratorate (Prosecutor) requested the court to send the case back to the Procuratorate for further investigation and the re-investigation concluded on 4 January 2017. The case has now been returned to the court for trial. Neither Tashi Wangchuk's indictment nor any evidence of him having committed a crime have been made public. During Tashi Wangchuk's year in detention, his lawyers have only been able to visit him twice, in June and September 2016, respectively. He had no access to his family from the time of his detention until September 2016.

It is reported that, the document submitted to the Procuratorate (Prosecutor) by the police indicates that the investigation focuses on a New York Times documentary published in November 2015 about Tashi Wangchuk's advocacy for the rights of Tibetans to learn and study in their mother tongue. Tashi Wangchuk had appeared in the New York Times article and documentary to speak about his unsuccessful efforts to file a lawsuit against the Government regarding their policies on the use of Tibetan language in schools in the Tibetan Autonomous Region.

It is further alleged that Tashi Wangchuk's arrest and detention have taken place against a backdrop whereby it is increasingly difficult for the Tibetan people to exercise their linguistic and cultural rights. Since 2010 when the Government introduced proposals to increase Chinese-language medium teaching in primary and secondary schools, students, schoolchildren and activists in the Tibet Autonomous Region have engaged in peaceful protests for their rights to study in the Tibetan language. 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 was the subject of an urgent appeal, dated 12 June 2013, 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; and Special Rapporteur on the situation of human rights defenders. We acknowledge the receipt of the reply of your Government, dated 12 July 2013.

We express serious concern at the arrest, the initial incommunicado detention and the continued detention of Tashi Wangchuk, as well as his limited right to counsel, the denial of presenting the evidence against him and the irregularities in the criminal investigation. We express equal concern at the use of separatist-charges to criminalize the legitimate exercise of freedom of expression and his defense of cultural rights, as well as to target legitimate human rights activities. Further concerns are expressed for Mr. Wangchuk's physical and psychological integrity while in detention.

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.

We would like to refer your Excellency's Government to articles 9 and 10 of the UDHR providing for the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal.

We would also 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 "Everyone 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 draw the attention of your Excellency's Government to 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, adopted by the UN General Assembly, requires under article 1.1 that States "shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within its respective territories and shall encourage conditions for the promotion of that identity". Article 2.1 establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination. Article 4.1 establishes that "States will 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". States are required, according to Article 4.2, to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, and Article 4.3 requires States to take appropriate measures so that they may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. Article 4.3 further stipulates that States should take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory.

We also would like to draw your Excellency's Government attention to the report of the Special Rapporteur on minority issues on the rights of linguistic minorities (A/HRC/22/49), in particular the recommendations contained therein.

Furthermore, we would like to refer your Excellency's Government to article 15 of International Covenant on Economic, Social and Cultural Rights (ICESCR),

recognizing the right of everyone to take part in cultural life. In the Committee's view, article 15, paragraph 1 (a) of the Covenant also includes the right of minorities and of persons belonging to minorities to take part in the cultural life of society, and also to conserve, promote and develop their own culture. This right entails the obligation of States parties to recognize, respect and protect minority cultures as an essential component of the identity of the States themselves. Consequently, minorities have the right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media (press, radio, television, Internet) and other manifestations of their cultural identity and membership. (General Comment 21, para. 32)

Lastly, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your government ratified in 1988, and would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156 (February 2014), which, reminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 above-mentioned person(s) in compliance with international instruments.

As 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 observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest and detention of Tashi Wangchuk and how these measures are compatible with international norms and standards as stated above.
3. Please provide detailed information about the investigation of Mr. Wangchuk's case, and the legal justification for denying him access to the evidence against him.

4. Please provide information about the link between Mr. Wangchuk's statements about linguistic rights and the charges brought against him under "incitement to separatism", and how this is compatible with permissible limitations to freedom of expression under international human rights standards.
5. Please provide any information on measures taken to ensure the physical and psychological integrity of Mr. Wangchuk.
6. Please indicate what measures have been taken to ensure the free exercise of the rights to freedom of opinion and expression and freedom to take part in cultural life in the Tibet Autonomous Region.
7. Please indicate what measures have been adopted to ensure Tibetans' rights to learn their mother tongue or to have instruction in their mother tongue, and what guarantees are in place so that they can freely and without discrimination exercise their linguistic rights.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

In addition, we would like to draw your Excellency's Government's attention to paragraph 23 of the methods of work of the Working Group on Arbitrary Detention, according to which, "after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure".

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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