

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 the situation of human rights defenders; the Special Rapporteur on minority issues; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

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UA CHN 4/2018

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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 the situation of human rights defenders; Special Rapporteur on minority issues; and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 33/30, 28/9, 34/18, 34/5, 34/6 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the prolonged pre-trial detention since 2016, and the trial, on 4 January 2018, of Tashi Wangchuk, a linguistic rights activist and member of the Tibetan minority, following his appearance in an article and documentary in the New York Times published in November 2015 about his advocacy for the right to education in Tibetan.

The case of Mr. Tashi Wangchuk has been previously raised with your Excellency's Government through a joint urgent appeal (UA CHN 2/2017) sent on 10 February 2017. In that letter serious concerns were expressed at the arrest, initial incommunicado detention and continued detention of Mr. Tashi Wangchuk, his physical and psychological well-being while in detention, as well as his limited right to counsel, the failure to present evidence against him and the irregularities in the criminal investigation. In addition, concern was expressed at the use of separatist charges to criminalize the legitimate exercise of freedom of expression and his defense of cultural and linguistic rights of the Tibetan minority, as well as to target legitimate human rights activities. While we thank your Excellency's Government for its response of 22 March 2017 to that joint urgent appeal, we regret to note that it failed to clarify why Mr. Wangchuk's statements about linguistic rights were deemed to amount to the crime of "incitement to separatism". Furthermore, we regret to note that the reply failed to explain how, in accordance with the applicable international human rights norms, the restriction of free speech in this context pursues a legitimate objective, and how it is necessary and proportional to achieve such objective.

In November 2017, the Working Group on Arbitrary Detention rendered Opinion 69/2017 concerning Mr. Wangchuk, according to which his deprivation of liberty, being in contravention of articles 3, 5, 6, 7, 8, 9, 10, 11 (1) and 19 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II and III. The Working Group considered that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Wangchuk immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

According to the new information received:

On 4 January 2018, Mr. Tashi Wangchuk appeared before the Yushu Intermediate Court in Qinghai Province to be tried for his appearance in an article and video documentary in the New York Times, published in November 2015, which showcase Mr. Wangchuk's advocacy for the rights of Tibetans to receive education in their mother tongue, and his efforts to raise awareness about the difficulties faced by the Tibetan minority to exercise its linguistic and cultural rights.

Mr. Wangchuk faces charges of "incitement to separatism" under article 103 (2) of the Criminal Law of the People's Republic of China which punishes any person who "organizes, plots, or acts to split the country or undermine national unification" with penalties of fixed-term imprisonment of more than 5 years.

The Court's judge heard oral arguments for four hours and the video "A Tibetan's Journey for Justice" was shown in the Court as incriminating evidence of Mr. Wangchuk's intention to "attack the Chinese Government", "destroy the ethnic culture", "conspire to undermine ethnic unity, the unification of the country, and the political and social stability of Tibetan areas", to "maliciously misinterpret the nature of the self-immolation cases which have happened in Tibetan areas in recent years", "demonize China's international image on the world stage", and to "incite ethnic hatred".

In addition, according to information received, the Court found that Mr. Wangchuk "disregarded the implementation of the bilingual education system and the social and economic development and social stability across Tibetan areas" and he slandered the Government for "controlling the Tibetan people's actual use of Tibetan ethnic culture" and for the "tight surveillance" and "arbitrary arrests" against the Tibetan people.

The Court's verdict is pending since the day of Mr. Wangchuk's trial, on 4 January 2018. At the time of this communication, Mr. Wangchuk has been kept in detention in Yushu for more than two years, since his initial arrest on 29 January 2016.

We would like to reiterate our serious concerns at the arrest and the continued detention of Mr. Tashi Wangchuk. We deeply regret that the charges of separatism have been upheld by the Yushu Intermediate Court, which criminalizes the exercise by Mr. Wangchuk of his freedom of expression as well as his human rights advocacy, in particular on issues pertaining to the protection of the linguistic and cultural rights of the Tibetan minority in the People's Republic of China and their human rights such as protection from non-discrimination in education. We express further concern that the legal basis for Mr. Tashi Wangchuk's conviction is incompatible with international human rights norms and standards.

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 new information drawn to our attention and share our concerns in relation to the circumstances raised in our previous and current joint urgent appeals as well as the regular communication of the Working Group on Arbitrary Detention in light of the applicable international human rights norms and standards.

The above-mentioned allegations appear to indicate actions taken in contravention of article 19 of 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".

The allegations also raise serious concerns in relation to respect of the right to equality without discrimination enshrined in article 7 of the UDHR and in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which China acceded to on 29 December 1981. We would like to bring to the attention of your Excellency's Government that the prohibition of discrimination applies to education under article 5 of CERD, as well as to freedom of opinion and expression.

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 International Covenant on Economic, Social and Cultural Rights (ICESCR), to which China has been a party since 27 March 2001, establishes in article 15 that States Parties recognize the right of everyone to take part in cultural life. As stressed by the Committee on Economic, Social and Cultural Rights, 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).

In the same General Comment, the Committee on Economic, Social and Cultural Rights also recalled that the protection of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, and requires the full implementation of cultural rights, including the right to take part in cultural life (para. 40). Thus, States are reminded that in many instances, the obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected (para. 50).

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 2012 report by the Special Rapporteur on minorities (A/HRC/22/49), as well as to the 2017 report by the Special Rapporteur entitled “Language Rights of Linguistic Minorities: A Practical Guide for Implementation” (HRC/NONE/2017/12), in particular the recommendations contained therein.

We would finally like to highlight the fundamental principles set forth in articles 1 and 2 of the UN Declaration on Human Rights Defenders, which provide for the right to promote and to strive for the protection and realization of human rights and fundamental freedoms.

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 detailed information on actions taken to implement the WGAD Opinion 69/2017 concerning Mr. Wangchuk;
3. Please provide an explanation, with concrete examples, about the link between Mr. Wangchuk's statements about linguistic and cultural 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.
4. Please indicate the measures undertaken by the Government 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.
5. Please indicate the measures undertaken by the Government to promote and protect the linguistic rights of the Tibetan minority, in particular the right to be educated in their mother tongue, in addition to learning their language.
6. Please provide information on the implementation of the bilingual education policy in the Tibet Autonomous Region and on the number of educational institutions of pre-school, primary, secondary and tertiary education, as well as the number of students, impacted by this policy, that continue to teach in Tibetan language, and the extent of the use of this language in addition to the teaching of it in schools.

While awaiting a response, we urge that all necessary measures be taken to end the detention of Mr. Tashi Wangchuk and to ensure that all charges against him under article 103 are dropped.

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."

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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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