

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on freedom of religion or belief

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 33/30, 34/6, 34/35 and 31/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **policies and legislation of a two-track passport system, which subjects Tibetans residing in the Tibet Autonomous Region, Qinghai, Sichuan and Yunnan, to an onerous application process, restricting them from travel for religious purposes, and leaving them at risk of police investigations, interrogations, family home searches and arbitrary detention.**

According to the information received:

It is reported that since 1950, Tibetans living in the Chinese provinces of Qinghai, Sichuan, Yunnan and the Tibetan Autonomous Region (TAR) have been systemically discriminated against based on their ethnicity, race and religion through policies and laws implemented by Chinese State and provincial authorities. Some of these laws and policies are preventing members of the Tibetan minority from accessing and renewing their passports, and other official documentation. As a consequence, Tibetans are frequently denied residence permits and require special permits to travel within China.

It is reported that the discriminatory nature of the laws has worsened since 2012 with the introduction of an electronic passport (ePassports), which involves a differentiated passport system; one for ethnic Han Chinese citizens, and another for Tibetans and other minority nationalities. The introduction of this system involved the confiscation of passports belonging to Tibetans. The administrative procedures for the new passport system is onerous and obstructs the acquisition of new passports and residence permits by Tibetans. It is a two-track passport system under "Notice 22" with a fast-track route for ethnic Han Chinese citizens. Their applications go through one office; the local branch of the Exit and Entry Administration under the Ministry of Public Security; and are issued within fifteen days, or an explanation is provided. On the other hand, members of the Tibetan minority are faced with a tedious ten-stage process which is slower,

bureaucratic and burdensome, often resulting in denied applications without any proper explanation.

This passport system, currently in place, restricts Tibetans' freedom to movement and has also prevented them from exercising their religious beliefs, particularly with regard to those attending the teachings of the Dalai Lama in other countries. Indeed, it is reported that Tibetans who travelled for such purpose, were summoned by Chinese authorities from their respective areas and ordered to return to the TAR within an unreasonably short period of time, with the threat of reprisal to their families.

It is further alleged that some Tibetans have been detained by Chinese authorities after completing such journeys and also for the possession of religious materials which are deemed illegal by the latter. Indeed, it is alleged that the investigation and detention of Tibetans travelling to and from other countries such as India for religious reasons, and the subsequent seizure of their passports by Chinese authorities, was occurring as recently as January 2018. It is also reported that the provincial authorities of Qinghai, Yunnan and Sichuan have refused to re-issue passports for members of the Tibetan minority whose passports had been confiscated in previous years.

While we do not wish to prejudge the accuracy of the information made available to us, we would like to express our serious concern over the policies and legislation of the two-track passport system specifically targeting and discriminating against members of the Tibetan minority in China on the basis of their ethnicity, race and religion, and its potential negative impact on the enjoyment of their right to freely practice their religion or belief. We express our concern about passport seizures and the failure to re-issue passports of Tibetans, which restrict Tibetans' freedom of movement as well as travel in the exercise of their freedom of religion. Furthermore, we would like to express grave concern at the reported interrogation, arrest, detention and the conditions of detention, of numerous Tibetans in relation to the passport system and travel for religious purposes.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the official policies and legislation of the Government on the two-track passport system, its impact on Tibetans as alleged targeted minority, and the enforcement of compliance

by the Police in the TAR. Please specify whether the alleged actions of the TAR officials and police comply with these policies and legislation.

3. Please provide detailed information concerning the legal grounds for the interrogation, arrest and detention of Tibetans, with regard to this passport system, in light of China's international human rights norms and standards. Please clarify the alleged restrictions on detained Tibetans' access to lawyers, particularly during the appeal process.
4. Please provide information on what steps have been taken to ensure the protection of Tibetans' right to movement and freedom of religion or belief, in line with all relevant international human rights standards.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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(s) responsible for the alleged violations.

In addition, we would like to inform your Excellency's Government that this communication, and any reply received to it, will be made available to the public and posted on the website page of the mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance at <http://www.ohchr.org/EN/Issues/Racism/SRRacism/Pages/IndexSRRacism.aspx>.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Fernand de Varennes
Special Rapporteur on minority issues

E. Tendayi Achiume
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
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Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

Firstly, we would like to bring to the attention of your Excellency's Government, articles 2, 3, 10, 11(1), 12, 13 and 18 of the Universal Declaration of Human Rights, which respectively provide for the principle of non-discrimination and equality, rights to liberty and security of a person; to be recognized as a person before the law; to be equal before the law and receive equal protection of the law; to have access to effective remedy; to not be subjected to arbitrary arrest, detention or exile; to have equal access to a fair and public hearing; the presumption of innocence until proven guilty; to not face arbitrary interference with privacy, family and home; to freedom of movement and to leave any country, including one's own; and freedom of religion or belief.

We would like to refer to your Excellency's Government's obligations under the International Covenant on Civil and Political Rights (ICCPR) signed by China on 5 October 1998. We would like to remind your Excellency's Government that upon signing the ICCPR, a State is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty (Vienna Convention on the Law of Treaties, Article 18).

Therefore we would like to highlight articles 12 (1), (2), (4), 18, 26, 27 of the ICCPR respectively on the right to not be arbitrarily deprived of the right to enter one's own country; the right to freedom of thought, conscience and religion (except where prescribed by law and where it is necessary to protect public safety, health, morals or the fundamental rights of others); the right to equal protection of the law and effective protection against discrimination based on religion, race, national or social origin; the right of persons belonging ethnic, religious or linguistic minorities, to enjoy in community with the other members of their group, their own culture, to profess and practice their own religion, or to use their own language. Furthermore, articles 9 and 10 respectively, sets out the right to liberty and security of the person; and the right of a detainee to be treated with humanity and respect.

In this context, the Human Rights Committee in its General Comment No. 23 (1994) reiterated that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language (para. 1). It further emphasized in its General Comment No. 27 (1999) that restrictions to the right to movement as stipulated in Article 12 need to be consistent with the fundamental principles of equality and non-discrimination. If this right is restricted by making distinctions of any kind, such as race, color, religion or national origin, this is clearly in violation with the ICCPR (para. 18).

In addition and with regard to the specific targeting of Tibetan minorities by the two-track passport system, we would like to refer to China's obligation under the

Convention on the Elimination of All forms of Racial Discrimination (ICERD), ratified by your Excellency's Government on 29 December 1981. We recall particularly that Article 2 (1) of ICERD obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups. To this end, States must ensure that public authorities and institutions on the national and local level act in compliance with this obligation. Article 5 prohibits discrimination on the basis of race, color, descent, nationality or ethnic origin and guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, especially with regard to (a) the right to equal treatment before the tribunals and all other organs administering justice; (d) (i) (ii) the right to freedom of movement and residence within the border of the State as well as the right to leave any country, including one's own, and to return to one's country. Article 5 (d) (viii) also guarantees the right to freedom of thought, conscience and religion without distinction based on ethnicity. Article 5 (e)(vi) also guarantees the right of Tibetan minorities to equal participation in cultural activities.

In her thematic report (A/HRC/38/52) to the Human Rights Council, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance addressed the issue of racial discrimination in the context of nationality, citizenship and immigration. In this report, she particularly highlighted the consequences of the lack of official documentation for individuals and their impact on their full enjoyment of human rights and freedoms, including their freedom of movement (para. 8).

Furthermore, we would like to draw the attention of your Excellency's Government to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities. In its article 1.1, the Declaration requires that States protect the existence and the national or ethnic, cultural or religious identity of minorities within their respective territories and encourage conditions for the promotion of that identity. Article 2.1, stipulates 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, and in article 2.2, persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs (article 4.2).