

**Mandates of the Special Rapporteur in the field of cultural rights; and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

REFERENCE:  
AL CHN 16/2018

27 July 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; and Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, pursuant to Human Rights Council resolutions 37/12 and 37/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the rights of Tibetans implicated by the restrictions on accessing the Hoh Xil nature reserve.

According to the information received:

The Hoh Xil nature reserve on the Qinghai-Tibet Plateau in China was granted UNESCO World Heritage status in July 2017. The reserve encompasses approximately a 60,000 km<sup>2</sup> area and is known as the earth's "third pole" because it includes the largest reserves of fresh water outside the Arctic and Antarctic.

Tibetan pastoralists have coexisted with wildlife in the Hoh Xil nature reserve area and have protected the land for millennia. They have played an integral role in protecting Hoh Xil's rich wildlife including Tibetan antelopes, snow leopards, bears, and yaks. It is suggested that livestock mobility is necessary to ensure the health of the rangelands, mitigate negative warming impacts, and protect the biodiversity of the area.

On 27 November 2017, the Chinese state media released notification that access to the Hoh Xil nature reserve would be limited to only security personnel and other authorised officials. According to the Chinese authorities, the restriction aims to crack down on illegal crossing and mining and anyone breaching the ruling would be punished. Reportedly, the ban came despite the Government's assurances that they would fully respect the traditional culture, religious beliefs, and lifestyle of local herders.

The practices of Tibetan pastoralism and gathering of medicinal herbs are now prohibited in the Hoh Xil nature reserve. As a consequence, the Tibetan herders' livelihood-seeking activities are largely limited and their rights to food and health as well as to participate in cultural life appear to be negatively impacted by the restriction to access the Hoh Xil nature reserve.

It is reported that Tibetans were not provided adequate information on the impacts of the ban or the designation of the reserve nor given an opportunity to participate in the decision-making process. Reports suggest that the Government has not provided the affected population with an adequate compensation or other remedies.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern at the potential negative human rights implications for the Tibetans whose livelihoods depend on the Hoh Xil nature reserve of the Government's restriction to access the reserve. We are concerned that the Government has not provided any remedies to the affected population for the adverse human rights impacts (e.g., rights to food, health, and to take part in cultural life). We are also concerned that the decision on the ban was unilaterally imposed by the Government without providing adequate and timely information or consulting the affected population in the process.

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. Has the affected population, in particular the Tibetans, been provided with adequate information about the access ban to the Hoh Xil reserve, including its impact on their environment and human rights? If so, please indicate what information was provided to whom, and when and where it was provided.
3. Has the Government held consultation(s) with affected populations in the decision-making process? If so, please indicate when the consultations were held, who participated in them, and the conclusions of the consultation. In addition, please elaborate what efforts the Government has taken to integrate the results of the consultation into the decision-making process.
4. What measures has the Government taken to ensure that the affected populations continue to enjoy their rights, especially economic, social and cultural rights in accordance with the principle of non-regression? Has the Government provided the affected population with any guarantees or alternatives to sustain their lives given the foreseen decline in their standard of living? If so, please provide in detail what sort of remedial solutions were provided to whom and when.

5. Please indicate whether compensation will be provided to the affected population, including assurances that alternative sources of livelihood will be guaranteed, particularly for those who depend on the ecosystem services provided by the Hoh Xil nature reserve as a means of subsistence.

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.

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

Karima Bennoune  
Special Rapporteur in the field of cultural rights

John H. Knox  
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to applicable international human rights laws and standards, as well as authoritative guidance on their interpretation. These are detailed below:

In connection with the above concerns, we would like to remind your Excellency's Government that article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR), which has been signed by your Excellency's Government on 5 October 1998, state that the right to freedom of expression includes the freedom "to seek, receive and impart information". While China is not a party to the Covenant, as a signatory, it is committed to not defeating the object and purpose of the treaty.

The Special Rapporteur on human rights and the environment has stated that States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information (A/HRC/37/59, Framework Principle 7). The Human Rights Council has also recognized that States have obligations to guarantee the enjoyment of human rights pertaining to environmental issues by "making environmental information public and enabling effective participation in environmental decision-making processes" (A/HRC/RES/25/21).

The baseline rights of everyone to participate in the conduct of public affairs are recognized in the Universal Declaration of Human Rights (art. 21) and the International Covenant on Civil and Political Rights (art. 25), respectively. The Special Rapporteur on human rights and the environment has stated that States should provide for and facilitate public participation in decision-making related to the environment, and take the views of the public into account in the decision-making process (A/HRC/37/59, Framework Principle 9).

Article 25 of the Universal Declaration of Human Rights (UDHR) recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food." Furthermore, article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which your Excellency's Government ratified on 27 March 2001, provides that States "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions", and requires them to "take appropriate steps to ensure the realization of this right." In addition, we would like to stress that there is a strong presumption against retrogressive measures under the ICESCR.

With respect to the right to health, the ICESCR (art. 12, para. 2(b)) provides that the steps, to be taken by States to achieve the full realization of this right, "shall include those necessary for... the improvement of all aspects of environmental and industrial hygiene". Interpreting this language in its General Comment No. 14, the CESCR stated

that “the right to health embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as... a healthy environment” (para. 4). Finally, General Comment No. 14 holds that the right to health also extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment (para. 4).

In accordance with article 15 of ICESCR, everyone has the right to take part in cultural life. In its General Comment 21, the Committee on Economic, Social and Cultural Rights stressed that article 15 protects the right of all persons to express their cultural identity freely and to exercise their cultural practices and way of life (E/C.12/GC/21, para. 49 a). 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. Furthermore, States must respect and protect cultural heritage of all groups and communities, in particular the most disadvantaged and marginalized individuals and groups, in economic development and environmental policies and programmes (E/C.12/GC/21, para. 50 b).

Viewed from a human rights perspective, cultural heritage is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and communities and their identity and development processes (see A/71/317, para 6; A/HRC/17/38 and Corr.1, para. 77).

The right of access to and enjoyment of all forms of cultural heritage is guaranteed by international human rights law, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, deriving its legal basis, in particular, from the right to take part in cultural life, the right of members of minorities to enjoy their own culture and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage. The right of access to and enjoyment of cultural heritage includes the right of individuals and collectivities to, *inter alia*, know, understand, enter, visit, make use of, maintain, exchange elements of and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others. It also includes the right to participate in the identification, interpretation and development of cultural heritage, as well as in the design and implementation of preservation and safeguard policies and programmes (see A/71/317, para.14; A/HRC/17/38 and Corr.1, paras.78-79). The Special Rapporteur in the field of cultural rights has insisted that a human rights approach to cultural heritage entails consulting the people who have particular connections with heritage. Such consultations must include marginalized groups; further, women must be fully involved.<sup>43</sup> Consultations must aim at obtaining free, prior and informed consent, in particular where the rights of indigenous peoples are at stake. (A/71/317, para. 58).

States should recognize and value the diversity of cultural heritage present in their territories and under their jurisdiction and acknowledge, respect and protect the choices

of individuals and groups to feel associates (or not) with specific elements of cultural heritage. States have the duty not to destroy, damage or alter cultural heritage, at least not without the prior and informed consent of concerned communities (A/HRC/17/38, para. 80 (a) and (b)). We also like to stress that, as recommended by the Special Rapporteur in the field of cultural rights, States are encouraged to develop cultural heritage mapping processes within their territory and should utilize cultural impact assessments in the planning and implementation of development projects, in full cooperation with concerned communities (A/HRC/17/38, para 80 e).

In accordance with article IV of the 1972 Convention for the protection of the World Cultural and Natural Heritage, ratified by your Excellency's Government on 12 December 1985, State parties have an international legal obligation to protect and conserve heritage for its transmission to future generations. Furthermore, the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage stresses that "States should take all appropriate measures to prevent, avoid, stop and suppress acts of intentional destruction of cultural heritage, wherever such heritage is located." It also underscores the responsibility of States to take all appropriate measures to protect cultural heritage in conformity with the principles and objectives of, inter alia, the 1972 Convention for the Protection of the World Cultural and Natural Heritage, the 1968 Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works and the 1972 Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage. Moreover, the 2003 Declaration makes clear that States bear responsibility for the intentional destruction of cultural heritage [...] "whether or not it is inscribed on a list maintained by UNESCO or another international organization" (Section VI).