

Mandates of the Special Rapporteur on minority issues; 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 situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA CHN 11/2020

12 May 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on minority issues; 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 situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/6, 42/22, 34/18, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest and detention of Mr. A-Nya Sengdra, a minority human rights defender from the Tibetan community, and the charges brought against him, in connection with his human rights work.

Mr. A-Nya Sengdra is a nomad and community leader of the Tibetan minority from Qinghai Province, China. He is a human rights defender who has been campaigning against alleged corruption, illegal mining activities, and the illegal hunting and poaching of endangered animals. In 2014, he co-founded a voluntary organization called 'Mongdon Ling' ('Public Affairs Forum') to fight corruption and abuse of power.

According to the information received:

On 4 September 2018, Mr. A-Nya Sengdra was arrested by Chinese security officers in the Qinghai Province. He was allegedly beaten and denied access to his lawyer for the first 48 hours. While he could contact his family and lawyer after 48 hours of detention, his lawyer was not allowed to meet with him until 22 October 2018.

Mr. Sengdra's detention was extended to 12 January 2019 on suspicion of "picking quarrels and provoking trouble," to allow for investigation of other possible "serious criminal activities" His detention was extended further on 4 January 2019 with no reason provided.

On 26 July 2019, Mr. A-Nya Sengdra was formally charged with "picking quarrels and provoking trouble" and "gathering people to disturb public order" under article 290 and article 293 of China's Criminal Law. His use of WeChat to discuss topics ranging from corruption, environmental protection and petitions to the local authorities were used as evidence against him. Other Tibetan minority representatives from Qinghai province were also charged with similar charges, including Mr. Sengdra's brother Jmitri, who died in prison late November 2019 after spending almost a year in detention. The precise date of his death and the circumstances that led to it have not yet been confirmed.

On 5 December 2019 the trial of A-Nya Sengdra and the other defendants began. On 6 December, Mr. Sengdra was found guilty on charges of "gathering people to disturb public order" and "picking quarrels and provoking trouble" and was sentenced to seven years of prison. The other defendants were also handed prison sentences on similar charges.

Mr. Sengdra's defence team appealed the court's decision. The second court trial, initially scheduled to take place on 25 April 2020, has been postponed. Though the date for the second trial has not been set yet, it is expected to take place imminently.

A-Nya Sengdra's physical and mental integrity has deteriorated due to the poor detention conditions in which he has been held. Mr. Sengdra reportedly has a hypertension. He was held in a small prison cell for a number of weeks during which time he was not allowed to walk around or be mobile in anyway.

The allegations described above are reportedly form part of a more general crackdown against Tibetan minority human rights defenders. Our mandates have raised similar concerns in previous communications, including on 10 May 2019 (JAL CHN 5/2019), on 28 August 2018 (JAL CHN 17/2018) and on 6 August 2018 (JOL CHN 14/2018).

While we do not wish to prejudge the accuracy of the information received, we express our grave concern regarding the alleged arbitrary arrest and detention of Mr. A-Nya Sengdra and the charges brought against him, which were reportedly for his work denouncing corruption and abuse of power by local authorities. We are deeply concerned by what appears to be the criminalization of the legitimate work of a minority community member and human rights defender, as well as the alleged violation of his right to hold opinions and to express them freely without interference and without fear of intimidation, harassment or reprisals.

We also express our serious concern over the alleged beating during his arrest and the deterioration of his health in detention. We express our grave concern over the death

of his brother who was detained and charged with similar charges and the fact that circumstances that led to his death have not been clarified.

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 2, 5, 7, 9, and 19 of the Universal Declaration of Human Rights and articles 7, 9, 19 and 26 of the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998, which codifies the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the prohibition of discrimination, the right to not be subjected to arbitrary arrest or detention and the right to freedom of expression. Article 27 of the ICCPR further provides for the protection the rights of persons belonging to minorities.

We would like to draw the attention of your Excellency's Government to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In particular, article 2 of the Declaration 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 and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. The Declaration furthermore refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

We would like to refer your Excellency's 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 would like to refer to articles 1, 2 and 6 of the Declaration. Article 6(c) guarantees the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

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 the factual and legal grounds for the arrest and detention of A-Nya Sengdra, including clarification about the exact nature of the charges that have been levied against him and the facts that supported these charges and explain how these are compatible with international human rights norms and standards.
3. Please provide the details, and where available the results, of any investigation undertaken into the death of A-Nya Sengdra's brother, Jmitri. If no investigation has taken place, please explain why.
4. Please provide information about measures taken to address the allegations of beatings and poor conditions of detention of A-Nya Sengdra. If no investigation has taken place, please explain why.
5. Please provide information on the current physical and mental integrity of A-Nya Sengdra, especially regarding his current health conditions.
6. Please indicate the measures undertaken by your Excellency's Government to ensure that human rights defenders, and in particular those advocating and working for the rights of persons belonging to minorities, are able to carry out their legitimate work in a safe and enabling environment, without the fear of prosecution, harassment and violence, and without discrimination, in full respect of their human 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.

We may 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.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Fernand de Varennes
Special Rapporteur on minority issues

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment