

**Mandates of the Special Rapporteur in the field of cultural rights; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on minority issues**

Ref.: AL CHN 14/2021  
(Please use this reference in your reply)

17 February 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 46/9, 42/22, 45/3, 44/3, 43/4 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding **the arrest, detention and subsequent enforced disappearance of Tibetan writer Mr. Lobsang Lhundup (pen name of Dhi Lhaden), musician Mr. Lhundrup Drakpa, and teacher Ms. Rinchen Kyi, allegedly in connection with their cultural activities in favour of the Tibetan minority language and culture.**

According to the information received:

*The case of Mr. Lobsang Lhundup*

Mr. Lobsang Lhundup, aged 50-years-old, is a teacher and writer from Dida Village in Pema county, Golog (Qinghai Province). He studied at the Serthar Larung Gar Monastery as a monk, after which he taught the Tibetan language, history and Buddhism in various locations in Tibet. Under his pen name of Dhi Lhaden, he has published two books, *Tsesok Le Trun Pe Kecha (Words Uttered with Life on Risk, 2011)* and *Tungol Trimtug (The Art of Passive Resistance, 2015)*, as well as a number of articles.

Mr. Lobsang Lhundup traveled throughout Tibet in 2008. In March 2011, he released his first book, *Tsesok Le Trun Pe Kecha (Words Uttered with Life on Risk)*, on the third anniversary of the 2008 widespread protests against the situation in the Tibetan Autonomous Region. In June 2015, his second book *Tungol Trimtug (The Art of Passive Resistance)* was released, which is also critical of the Chinese rule in the region. This latter book was translated into English.

Mr. Lobsang Lhundup was arrested in June 2019 while he was working at a private cultural education center in Chengdu, Sichuan province. Sources reported that he was arrested for "creating disorder among the public", which seems to be connected to his writings critical of the Chinese rule in the Tibetan Autonomous Region and his involvement in teaching Tibetan history.

For the first 18 months after his arrest, Mr. Lobsang Lhundup remained in detention without trial, and did not receive any visit from his family. It is unclear if a lawyer represented him at any stage, and if so, that lawyer is unknown to his family.

On 4 December 2020, Mr. Lobsang Lhundup's family were summoned by the Chinese authorities. However, the family was not allowed to meet or see Lobsang Lhundup in person.

In June 2021, after two years without information about his case nor a fair trial, Lobsang Lhundup's family reached out to the Tibetan community and civil society organisations for help. It is alleged that the family had initially decided not to raise concerns about the arrest and detention of Lobsang Lhundup and their worries about his life and well-being, in the hope that this would accelerate Lobsang Lhundup's release.

In 2021, Mr. Lobsang Lhundup was sentenced by a Chinese court to a four-year prison term on charges of "disrupting social order" in a closed door trial, without the presence of his family. The exact date of the trial and on which his sentence was announced, as well as his place of detention are still unknown to his family members, and have reportedly not been shared officially by the authorities.

#### *The case of Mr. Lhundrup Drakpa*

Mr. Lhundrup Drakpa, aged 38 years old, is a popular musician and singer, known for his engagement with the Tibetan cultural and artistic traditions. His songs overwhelmingly focus on asserting the Tibetan identity and its traditions, and on voicing dissent about the narrative of the Chinese authorities, the destruction of Tibet's environment and of the Tibetan language.

In May 2019, Mr. Lhundrup Drakpa was arrested by Chinese authorities of the Driru in Kham, Biru, Tibet Autonomous Region, after publicly performing a song entitled "Black Hat" that contains lyrics critical of the policies in the region under the Chinese authorities. The charges against him and his place of detention were not communicated to his family.

In June 2020, Mr. Lhundrup Drakpa was sentenced to six years in prison, presumably in connection with the content of his song.

Mr. Lhundrup Drakpa has been held in prolonged incommunicado detention since May 2019. It is reported that his family has made requests to the local authorities to contact him, which have been denied.

#### *The case of Ms. Rinchen Kyi*

On 20 January 2020, the Director of the Legal Affairs Committee of the National People's Congress announced that schools in "minority areas" were no longer allowed to teach their own languages, declaring such education to be "unconstitutional". The statement contradicted the founding provisions of the 1951 Bilingual Education law.

On 8 July 2021, the Chinese authorities in Golog, in Qinghai Province, ordered the closure of the private Sengdruk Taktse middle school in Darlak County. The school's primary language of teaching is Tibetan, and it provides Tibetan culture-based learning for students in the region. The majority of the students and staff in the school are monks and tantric practitioners. Without giving any official reason for the shutdown of the private Tibetan school, all the students were advised to enrol in other government-affiliated schools in the region.

Ms. Rinchen Kyi was a teacher at Sengdruk Taktse middle school in Darlak County. She was disturbed by the abrupt closure of the school, which caused her to lose appetite. After a few weeks, her health deteriorated and she became weaker.

On 1 August 2021, the Chinese police visited her home in Golog and arrested her on charges of "inciting separatism" for stopping to eat, which is a state security crime under article 103 of Chinese criminal law. Article 103 provides indications about the sentence for those "who organize, plot or carry out the scheme of splitting the State or undermining unity of the country", with possible imprisonment sentences ranging between 3-10 years.

Ms. Rinchen Kyi was subsequently taken to a hospital in Xining, the capital city of Qinghai Province. She reportedly remained there for two days but was not diagnosed for any medical condition. By the time her family was informed of this and went to the hospital, she had already been transferred to an undisclosed location.

Since then, her whereabouts or health status remain unknown. Despite numerous request to the Qinghai local authorities, Ms. Rinchen Kyi's family have not been informed of her current situation and health or of any trial date and have not been allowed to talk to her. It is unclear if she has received the assistance of a lawyer.

In each of the cases of the above-mentioned individuals, their families are extremely concerned for their well-being, which remain unknown to date.

According to reports received, the cases mentioned are representative of the situation faced by a larger number of Tibetan persons engaged in the defense of the Tibetan language, culture and traditions, or expressing critical views about the policies in the region.

Serious concern is expressed that the alleged arbitrary arrest, detention and enforced disappearance of Mr. Lobsang Lhundup, Mr. Lhundrup Drakpa and Ms. Rinchen Kyi may be linked to the legitimate exercise of their freedom of opinion and expression, which includes artistic expression, and freedom to take part in cultural life, as well as their rights, as a members of an ethnic, religious and linguistic

minority, to enjoy their culture, practice their religion and use their language with other members of their community. Further concerns are expressed for their physical well-being.

We also express serious concern about what is reported as a trend of repressive actions, including arrests and prolonged detention, some in incommunicado situations, against a larger number of Tibetans engaged in the promotion of the Tibetan culture, including through education, or who are critical of the Chinese rule in Tibet.

Without expressing at this stage an opinion on the facts of this case and on whether the arrest and detention of Mr. Lobsang Lhundup, Mr. Lhundrup Drakpa and Ms. Rinchen Kyi are arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 11 of the Universal Declaration of Human Rights.

We are issuing this appeal in order to safeguard the rights of Mr. Lhundup, Mr. Drakpa and Ms. Kyi from irreparable harm and without prejudicing any eventual legal determination.

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 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 information on the fate, health status and whereabouts of Mr. Lobsang Lhundup. If this information was always known by the authorities, please explain how and when it has been shared with the family members and/or with the representative or legal counsel. If no information has been shared, please explain why not.
3. Please provide information concerning the legal grounds for the arrest, detention and conviction of Mr. Lobsang Lhundup, and how these measures are compatible with international human rights norms and standards.
4. Please provide information concerning the legal grounds for the arrest, detention and conviction of Mr. Lhundrup Drakpa, and how these charges are compatible with international human rights norms and standards.
5. Please explain the legal grounds for the arrest and detention of Ms. Rinchen Kyi, and how the charges of "inciting separatism" are interpreted in this case and compatible with international human rights

norms and standards.

6. Please provide information on the fate, health status and whereabouts of Mr. Lhundrup Drakpa and Ms. Rinchen Kyi. Please include information about the reasons why their place of detention was not shared with their respective families and representatives.
7. Please provide information about the status of the legal process of Ms. Rinchen Kyi, including details about her expected trial location and dates and her access to a legal representation of her choice.
8. 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, as well as the right to education and rights of members of the Tibetan minority to enjoy their own culture, practice their own religion, and use their own language.

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

We would like to bring to the attention of your Excellency's Government that should the sources submit the allegations concerning Mr. Lhundrup Drakpa and Ms. Rinchen Kyi as cases to the Working Group on Enforced or Involuntary Disappearances, they will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

We would also like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

While waiting your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Lobsang Lhundup, Mr. Lhundrup Drakpa and Ms. Rinchen Kyi are respected, and, in particular, to prevent any irreparable damage to their life and personal integrity. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Alexandra Xanthaki  
Special Rapporteur in the field of cultural rights

Miriam Estrada-Castillo  
Vice-Chair of the Working Group on Arbitrary Detention

Luciano Hazan  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Koumbou Boly Barry  
Special Rapporteur on the right to education

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Fernand de Varennes  
Special Rapporteur on minority issues

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to applicable international human rights norms and standards that are applicable to the issues brought forth by the situation described above, as well as authoritative guidance on their interpretation.

We would like to refer your Excellency's Government to articles 9, 10 and 11 of the Universal Declaration of Human rights providing for the right not to be deprived arbitrarily of liberty, to fair proceedings before an independent and impartial tribunal, and the right to be presumed innocent in a public trial at which all guarantees necessary for the defence are observed. We further recall the Working Group on Arbitrary Detention's 2020 annual report, in which it stated that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty and applies from the moment of deprivation of liberty and across all settings of detention. The right to legal assistance is essential to preserve the right to fair trial, as it safeguards the principle of the equality of arms envisaged in articles 10 and 11 (1) of the Universal Declaration of Human Rights. As such, legal assistance should be available at all stages of criminal proceedings, namely, during pretrial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees.<sup>1</sup>

In relation to the allegations according to which the fate and whereabouts of Mr. Lobsang Lhundup, Mr. Lhundrup Drakpa and Ms. Rinchen Kyi are currently unknown, we would like to recall the prohibition of incommunicado detention and remind your Excellency's Government that, according to the jurisprudence of the Working Group on Arbitrary Detention, enforced disappearances constitute a particularly aggravated form of arbitrary detention. In particular, we would like to bring to your Excellency's Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and especially:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction); and
- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance).
- article 7 (no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances);
- article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial

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<sup>1</sup> A/HRC/45/16, paras 51-53.

authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest); and

- article 12 (right to the maintenance in every place of detention of official up-to date registers of all detained persons).
- article 19 (right of the victims of acts of enforced disappearance and their family to obtain redress and to adequate compensation, including the means for as complete a rehabilitation as possible).

In relation to the case of Ms. Rinchen Kyi, we would like to also recall the General comment on women affected by enforced disappearances (A/HRC/WGEID/98/2), which stresses, inter alia, the differentiated effects of enforced disappearances in women and girls. In particular, States must acknowledge disappeared women, and recognize the particular types of harm they suffer based on their gender, including instances of sexual violence and forced impregnation, and the resulting psychological damage and social stigma as well as the disruption of family structures.

We would further like to refer to the study on ECOSOC rights and enforced disappearances (A/HRC/30/38/Add.5), which emphasize that enforced disappearance should not be used as a repressive measure and a tool to deter the legitimate exercise, defence, or promotion of the enjoyment of economic, social and cultural rights.

In relation to the charges of “inciting separatism” in the case of Ms. Rinchen Kyi, we would like to refer your Excellency’s Government of its obligations under the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, ratified on 4 October 1988, and under the International Convention on the Elimination of All Forms of Racial Discrimination, acceded on 29 December 1981. In particular, we would like to recall that the UN Committee Against Torture has expressed concern at the broad definition of such crimes under Chinese law (CAT/C/CHN/CO/5, para 36) and recommended that the Government of the Republic of China makes the necessary legislative changes to adopt a more precise definition of terrorist acts and acts endangering national security and that it refrains from prosecuting human rights defenders (CAT/C/CHN/CO/5, para 37a), lawyers, petitioners and others for their legitimate activities. In 2018, the UN Committee on the Elimination of Racial Discrimination also communicated to the Government of the Republic of China its concerns over the broad definitions of “terrorism” and “extremism” and the unclear definition of “separatism” (CERD/C/CHN/CO/14-17).

We would also like to refer your Excellency’s Government to article 19 of the Universal Declaration of Human Rights which provides that “[e]veryone 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”, and appeal to your Excellency’s Government to take all necessary steps to secure this right for every one. In her report on artistic freedoms, the Special Rapporteur in the field of cultural rights recalled that the expression of political dissent and participation in public debate in the form of art is part of freedom of expression, as protected by article 19, and that the suppression of political dissent, the quest for nation-building and the pursuit of hegemonic policies are not acceptable reasons for art censorship. (A/HRC/23/34, paras. 45 - 46). In his



report to the Human Rights Council on the subject of artistic freedom, the former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression noted that limitations on artistic expression must meet the same strict requirements of legality, legitimacy, necessity and proportionality, stating that “human rights law neither preferences nor prioritizes certain forms of expression over others; all are to be protected and promoted, with limitations subjected to the same legal framework”. We wish to emphasize that any detention due to the peaceful exercise of rights is arbitrary as per the jurisprudence of the Working Group on Arbitrary Detention.

In addition, we would like to refer your Excellency’s Government to article 15 of International Covenant on Economic, Social and Cultural Rights, to which China has been a party since 27 March 2001, recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have undertaken to respect the freedom indispensable for creative activity. As stressed by the Special Rapporteur in the field of cultural rights, all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision. (A/HRC/23/34, paras. 85 and 89 d).

In the Committee on Economic, Social and Cultural Rights’ 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).

In accordance with article 13 of the International Covenant on Economic, Social and Cultural Rights, all persons have the right to education. In her report to the Human Rights Council on the cultural dimension of the right to education, the Special Rapporteur on the right to education recalled that States and other actors must recognize that cultural diversity is a fundamental characteristic of contemporary societies that must be both reflected and made the most of at all levels of the education system, formal or not (A/HRC/47/32, para.22). She further underlined the right of learners to a culturally appropriate and relevant education (para. 79 a). According to the UNESCO Universal Declaration on Cultural Diversity (art. 5), all persons are entitled to quality education and training that fully respect their cultural identity”.

Furthermore, we draw the attention of your Excellency’s Government to the 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 requires under article 1.1 that States “shall protect the existence and the national or ethnic, cultural, religious

and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.” Article 2.1 states that “persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. Article 2.2 highlights that “persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life”. Article 4.1 establishes that: “States shall 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 of the Special Rapporteur on minority issues on the rights of linguistic minorities (A/HRC/22/49), as well as to the 2017 report entitled “Language Rights of Linguistic Minorities: A Practical Guide for Implementation” (HRC/NONE/2017/12), in particular the recommendations contained therein.