

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL CHN 14/2023
(Please use this reference in your reply)

28 July 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 52/4, 51/8, 46/7 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the ongoing imprisonment of nine human rights defenders and civil society activists from the Tibetan Autonomous Region, who have reportedly been sentenced to up to 11 years in prison on account of their environmental protection work. A previous communication was sent to your Excellency's Government on the case of Mr. Anya Sengdra (UA CHN 11/2020), to which we regret no response was received.

Mr. Anya Sengdra (also known as A-Nya Sengdra 阿亚桑扎) is an environmental activist, anti-corruption human rights defender and community leader in Gande County, Tibetan Autonomous Prefecture, Qinghai Province. Prior to his detention, he was a campaigner against illegal mining and the hunting of endangered animals while in 2014 he established a voluntary group to expose corruption and challenge abuse of power.

Mr. Kelsang Choklang (格桑却朗), prior to his arrest, was a monk from Yuthang Village, Shaqu Township, Biru County, Naqu Prefecture, Tibetan Autonomous Region. He was reportedly a participant in anti-mining protests in Biru County in 2013.

Mr. Dorjee Daktal, also known as Dorje Dragtsel (多杰 [多吉] 扎泽) is from Biru County, Naqu Prefecture, Tibet Autonomous Region. He is reported to have participated in protests against an illegal mining project which had started at the site of a local sacred mountain, called Naglha Dzamba.

Mr. Dhongye (顿格 [东格], Mr Rinchin Namdol (仁钦 [仁青] 南卓 [昂卓], Mr. Tsultrim Gonpo (次成 [次真] 贡布 [贡保, 干布], Mr. Jangchup Ngodup (降秋 [向秋, 桑秋] 欧珠, Mr. Sogru Abhu (索如·阿布) and Mr. Namsey (朗色 [昂色, 南色] were all residents of Shaqu Township in Biru County, Naqu Prefecture, Tibetan Autonomous Region who had been opposed to a mining project at the site of the Sebtra Zagyen sacred mountain in Biru County. Mr. Dhongye was a businessman, Messrs Rinchin Namdol and Tsultrim Gonpo are monks while Mr. Sogru Abhu was a doctor.

According to the information received:

Anya Sengdra

Anya Sengdra was arrested on 4 September 2018 by Chinese security officers in Qinghai Province. He was allegedly beaten and denied access to a lawyer for the first 48 hours of his detention. 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. On 6 December 2019 Mr. Anya Sengdra was sentenced by the Gade County court to seven years imprisonment. He was found guilty of “gathering peoples to disturb public order” and “picking quarrels and provoking trouble” under articles 290 and 293 of the Chinese Criminal Law. During his trial, it was alleged that conversations he facilitated on WeChat on issues including corruption and environmental protection harmed ‘social order’. The Golog Intermediate People’s Court rejected his appeal on 17 June 2020. It is unclear where Anya Sengdra is currently being detained, the state of his health or whether he has had continued access to family visits.

Dorjee Daktal and Kelsang Choklang

Dorjee Daktal and Kelsang Choklang were arrested in 2013 in connection with a May 2013 environmental protest objecting to mining operations at the site of a local sacred mountain, Naglha Dzamba in Biru County.

Dorjee Daktal was arrested on 3 October 2013 and subsequently sentenced to 11 years in prison on three charges. The first, for allegedly leading the May 2013 protest, resulted in a seven-year sentence while the second, for allegedly ‘wantonly’ lending money to others, resulted in a three-year sentence. The third charge related to ‘disturbing the work of official permanent cadres stations in Biru county’, for which he received a one year sentence.

Kelsang Choklang was also arrested in 2013 while visiting Lhasa for his alleged role in anti-mining protests in Biru county. He was sentenced to ten years in prison on charges of ‘illegally gathering a crowd’.

It is unclear where the two human rights defenders are being detained, the state of their health, or if they have been permitted access to family visits.

Dhongye, Rinchen Namdol, Tsultrim Gonpo, Jangchup Ngodup, Sogru Abhu and Namsey.

Dhongye, Rinchen Namdol, Tsultrim Gonpo, Jangchup Ngodup, Sogru Abhu and Namsey were all reportedly arrested in 2018 as part of a group of 30 Tibetans from Shaqu Town, Biru County, Naqu Prefecture who were detained for either protesting against mining activities near the site of sacred mountain Sebtra Zagyen or for sharing information about the protests. The seven men were all reportedly found guilty of ‘engaging in separatist activity’ although the length of their sentence is not known, nor the charges on which they were sentenced, or whether they had access to legal counsel, and in the case of all but Dhongye, the state of their health and in what prisons they are

being held. It has been alleged that Dhongye is in extremely poor health as a result of alleged mistreatment in Biru County Prison.

The allegations described above reportedly form part of a general crackdown against Tibetan human rights defenders, in breach of the fundamental human rights to freedom of peaceful assembly and of association, and freedom of expression and opinion. 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 these allegations, we express our serious concern regarding the imprisonment of Anya Sengdra, Dorjee Daktal, Kelsang Choklang, Dhongye, Rinchen Namdol, Tsultrim Gonpo, Jangchup Ngodup, Sogru Abhu and Namesy, and the reported lack of transparency around their arrests, sentencing and conditions in prison.

There are serious concerns about the lack of information about the physical integrity of the human rights defenders included in this communication as well as their access to adequate medical care and treatment while deprived of their liberty. This is particularly true for those whose whereabouts reportedly remain unknown or unconfirmed. We wish to recall that, by depriving persons of their liberty, States assume responsibility to care for their life and bodily integrity. Due to this heightened duty of care, States must take any necessary measures to protect the lives of individuals deprived of their liberty. Inadequate conditions of detention can be a factor contributing to deaths and serious injury in detention, and when conditions are seriously inadequate, they can constitute an immediate or long-term danger to life. We reiterate our concern at the alleged denial of due process of the human rights defenders included in this communication, including in connection to their access to legal counsel and the alleged breach of their right not to be arbitrarily detained or deprived of liberty.

We also draw your attention to the UN Standard Minimum Rules for the Treatment of Prisoners (reviewed on 17 December 2015 and renamed the “Mandela Rules”), in particular to rule 24 that establishes that the provision of health care for prisoners is a State responsibility and that the state should ensure continuity of medical treatment for chronic conditions; rule 27(1), which provides that all prisons shall ensure prompt access to medical attention in urgent cases, as well as rule 58 which establishes that prisoners shall be allowed to communicate with their family and friends at regular intervals.

In view of the above, we would also like to refer to articles 9, 10 and 11 of the Universal Declaration on Human Rights which prohibits in absolute terms arbitrary arrest and guarantees everyone the right to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them. These include, among others, the right to legal counsel of own choosing and to communicate with them as necessary, the right to be tried without delay, and the right to be protected from having to testify against oneself or to confess guilt. In this context, we would also like refer to relevant provisions of the United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court.

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.

We are issuing this appeal in order to safeguard the rights of the abovementioned individual from irreparable harm and without prejudicing any eventual legal determination.

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 detailed information with regard to the arrest, charges and conviction of the persons mentioned above, and indicate the measures undertaken by the Chinese authorities to ensure the application of due process and the effective protection of the rights of the nine Tibetans before the law. Please also provide detailed information about their place of imprisonment.
3. Please indicate whether the families and relatives of the nine persons mentioned above have been provided with information regarding the official charges brought against them and their place of detention, and whether access to the places of detention has been granted to these family members and relatives.
4. Please provide updated information with regard to the state of their health, as well as the measures undertaken to ensure their access to appropriate and adequate medical care while in detention.

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 annual report to be presented to the Human Rights Council.

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.

We would 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 the case 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 allegation letter and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release could 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.

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Matthew Gillett

Vice-Chair on Communications of the Working Group on Arbitrary Detention

David R. Boyd

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

Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 10, 11, 19, 20 and 21(3) of the Universal Declaration of Human Rights (UDHR), and articles 14, 19, 21, 22 and 25(b) of the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998, which provide for due process rights, the rights to freedom of expression, freedom of peaceful assembly and association, and universal and equal suffrage. As established by the Vienna Convention on the Law of Treaties (VCLT), where the signature to a treaty is not subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. However, it is a means of authentication and expresses the willingness of the signatory State to continue the treaty-making process. The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty (VCLT, articles 10 and 18).

We note that article 21 of the ICCPR recognises that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. In its resolution 24/5, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs and human rights defenders (A/HRC/26/29, para. 22.). We also recall article 22 of the ICCPR protects the right to freedom of association, which protects the rights of everyone to associate with others, to pursue common interests. Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. These rights can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose as recognized by international standards and the restrictions must be a necessary and proportionate means of achieving that purpose within a democratic society, with a strong and objective justification.

We would like to draw the attention of your Excellency's Government to Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29 of the UDHR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We would like to draw the attention of your Excellency's Government to 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, otherwise known as the UN Declaration on Human Rights Defenders, which was adopted by consensus at the UN General Assembly in 1998. In particular we would like to highlight articles 1 and 2 of the Declaration, which state

that everyone, individually and in association with others, has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms and that each State has a prime responsibility and duty to promote, protect and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- Article 5(a) and (b), which underscores the rights to meet or assemble peacefully and to form, join and participate in non-governmental organisations, associations or groups;
- Article 6(b) and (c), which reiterates the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- Article 12(2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Both the United Nations General Assembly and the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolutions A/RES/76/300 and A/HRC/RES/48/13. As detailed in the Framework Principles on Human Rights and the Environment (A/HRC/37/59), annex), which summarize the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (framework principle 1).

Furthermore, States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (principle 2). Principle 4 provides, specifically, that "States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence." In addition, States should also ensure the effective enforcement of their environmental standards against public and private actors (principle 12), and they should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities (principle 14).