

Mandates of the Special Rapporteur in the field of cultural rights; 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; the Special Rapporteur on minority issues; and the Special Rapporteur on freedom of religion or belief

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; 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; Special Rapporteur on minority issues; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 37/12, 34/18, 34/5, 34/6 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 case of prolonged detention of nine Tibetans from Aba, in Sichuan province, who, in December 2016, were sentenced to prison for their participation in celebrations for the Dalai Lama's 80th birthday in 2015, and their advocacy for the cultural and religious rights of the Tibetan minority in China.**

In this regard, we wish to recall previous letters sent to your Excellency's government on 21 April 2011 (JUA CHN 9/2011), 29 April 2011 (JUA CHN 12/2011), 28 July 2011 (JUA CHN 15/2011), 6 October 2011 (JUA CHN 20/2011), 9 August 2012 (JUA CHN 8/2012), 26 March 2013 (JUA CHN 3/2013), and on 7 November 2016 (JAL CHN 10/2016), which raised concerns over allegations of human rights violations against Tibetans and Tibetan monks, including killings, arrests, detentions, enforced disappearances, and general repression, harassment and intimidation of the Tibetan monastic community, such as that of the Kirti Monastery. While taking note of the Government's responses, we remain concerned at the reported perpetuation of such violations against members of the Tibetan minority in China, and in particular since the 2008 protests in Lhasa and other areas inside and outside the Tibet Autonomous Region.

According to the information received:

In December 2016, nine Tibetans – including four monks from the Kirti monastery – were sentenced to prison by the Ma'erkang Intermediary People's Court in Aba, Tibetan and Qiang Autonomous Prefecture in Sichuan, due to their involvement in the celebrations for the Dalai Lama's 80th birthday in 2015, including through the organisation of outdoor picnics and the dissemination of information and coordination through social media platforms.

The length of the prison sentences ranged from five to fourteen years and it is believed that most of the individuals are detained in the Mianyang prison, located near the city of Chengdu, in Sichuan province, although, to date, no official information on the place of their detention has allegedly been provided to their families by the Chinese authorities. Furthermore, the Mianyang prison is allegedly known for subjecting prisoners to “education through labour”.

According to the reports, Sichuan provincial level security had arrested all nine Tibetans without the knowledge of county-level officials. They were later detained in different county detention centres, where they were allegedly held incommunicado for various periods prior to the sentencing.

There is almost no information regarding the nature of any of the trials. No information seems to be available on actual charges, although it has been reported that they are likely related to ‘separatism’. Reports suggest that all cases were heard by the Intermediate People’s Court in Ma’erkang. It is not known whether the cases were heard together, in groups or separately, or even if the prisoners were present at the sentencing. It has also been reported that none of the nine individuals received legal assistance. Families of the accused were allegedly not informed about the trials. Some of them only received a letter informing them of their relatives’ sentences.

Reports suggest that no appeals were filed by any of these nine individuals, allegedly due to the highly securitised environment in Aba and the fear of repercussions with regard to their sentence or their possible ill-treatment while in detention.

Out of the nine Tibetans, four are monks from the Kirti monastery. Reportedly, the Kirti monastery in Aba has suffered from repeated crackdowns by the Chinese law enforcement since the 16 March 2008 protest in Aba, during which the Chinese police reportedly shot at the demonstrators, causing the death of 20 of them. Since then, the monastery has allegedly become the centre of the Tibetan self-immolation protests, and has been under lockdown and close surveillance. Several of the nine Tibetans sentenced have allegedly also been arrested and detained in the past, accused of being linked with protests and incidents of Tibetan self-immolations taking place since 2008.

Monk Drugdra, also known as Dukda or Drukdra

Mr. Drugdra, a senior Kirti monastery monk, was reportedly arrested from his room at the Kirti monastery on 21 November 2015. On 6 December 2016, he was sentenced to 14 years in prison. At the time of the sentence, he was 50 years old.

He has reportedly been arrested before and imprisoned for a year and four months. According to the received information, Mr. Drugdra is believed to be serving his current prison term in Mianyang prison. He is still in detention, whereas his health

has reportedly deteriorated and he is not able to perform hard labour tasks. To date, his family has not been allowed to visit him.

Monk Lobsang Khedrub

Mr. Lobsang Khedrub is from the Chukle Gabma area of Aba county and joined the Kirti monastery at a young age. He was near completion of his Geshe degree, the highest level of scholastic achievement for a Buddhist monk. He was reportedly arrested and detained in December 2015, and in December 2016 he was sentenced to 13 years in prison at the age of 44. His whereabouts have been unknown since his arrest.

According to the information received, Mr. Lobsang Khedrub had previously been arrested on 15 July 2011 at the Kirti monastery, and he was later sentenced to three years for “inciting separatism” and sent to the Sichuan’s Mianyang Prison. On 22 January 2012, he was granted an early release as a result of his worsening health, allegedly due to the severe mistreatment and torture he suffered while in detention. His family had to bear the costs for his medical treatment.

Monk Lobsang Gephel

Mr. Lobsang Gephel is a Kirti monastery monk from the Village No. 2 in the Mai’erma xiang of Aba county. He was reportedly taken from his room at the Kirti monastery on the night of 30 November 2015, and later sentenced to 12 years in prison. Although his location has been unknown since his arrest, reports suggest he might be serving his sentence in a labour camp in the Mianyang Prison, where his family members have not been allowed to visit.

At the time of sentencing, Mr. Lobsang Gephel was 29 years old. He has also been previously sentenced to three years in prison, in May 2011, and detained at the Mianyang Prison, in Sichuan.

Monk Lodro

Mr. Lodro is a Kirti monastery monk from Shongwa village in Adhue area of Aba county. On 18 November 2015, he was arrested from the Kirti monastery and his whereabouts are reportedly unknown. He was sentenced to nine years in prison, after being held incommunicado for a year. At the time of the sentence, he was 41 years old.

Mr. Lodro had also been arrested on 22 December 2011, when he was charged with ‘inciting separatism’ and sentenced to two years in prison and sent to the Mianyang Prison, in Sichuan.

Ms. Ta're Kyi

Ms. Ta're Kyi is from the Choejima village. On 16 March 2008, she allegedly participated in the protests in Aba and as a result of this she was arrested and sent to a prison in Ma'erkang for three months.

On 30 November 2015, Ms. Ta're Kyi and her husband were arrested in Chengdu by Sichuan provincial level security officers. On 5 December 2016, the Ma'erkang People's Intermediate Court sentenced her to eight years in prison for organising celebrations for the 80th birthday of the Dalai Lama and offering help to families of self-immolators. According to the information received, Ms. Ta're Kyi is still in detention at the Mianyang Prison, in Sichuan.

Ms. Bonkho Kyi, also known as Wonkho Kyi

On 20 November 2015, security officials from Sichuan Province reportedly arrested Ms. Bonkho Kyi at her home in Lhade Gabma, Aba. Her whereabouts have been unknown since the time of her arrest, and there is no information about the charges against her. She had previously been arrested in 2011 and 2012 and detained for a few months at the Aba County Detention Centre.

Mr. Trotsik Tsultrim

Mr. Tsultrim is a former monk of the Trotsik monastery. In October 2016, security officers from the Public Security Bureau of Aba Tibetan and Qiang Autonomous Prefecture arrested him at his home in Dowa village. He was sentenced to six years in prison. His whereabouts are reportedly unknown.

In 2008, he was sentenced to one year and nine months in prison at the Mianyang Prison, together with a group of six other Trotsik monks. He was officially charged for "inciting separatism", allegedly due to his participation in the protests of 2008.

Mr. Tsultrim, also known as Tsulte

Mr. Tsultrim is a former monk from the Kirti monastery. On 18 November 2015 he was arrested from his home in Lhade Ghongma in Aba County and later sentenced to six years in prison. At the time of sentencing, he was 32 years old.

He had been previously arrested for participating in the protests in 2008, and sentenced to one year and six months in prison.

Mr. Akyakya

Mr. Akyakya is a former monk from the Kirti monastery, and was arrested from his home in the village no.1 in Mai'erma xiang. He was later sentenced to five years in prison, at the age of 35. His whereabouts are reportedly unknown.

He had previously been arrested in 2011 for participating in demonstrations in Aba county, Sichuan province, and was later imprisoned for three years at the Mianyang Prison.

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 reported arrest and continued detention of the nine Tibetans mentioned above, for reasons that appear to be connected to their participation in the celebrations of the Dalai Lama's 80th birthday in 2015, as well as their alleged previous participation in protests taking place in the Sichuan province in 2008. We deeply regret your Excellency's Government's response to what appears to be a cultural and religious expression by the nine members of the Tibetan minority, and we are concerned over the reportedly frequent application of article 103 (2) of the Chinese Criminal Law on "incitement to separatism" to suppress freedom of expression, religion, assembly and association and the cultural rights of the Tibetan minority, as well as to quash any human rights advocacy with regard to the protection and promotion of these rights.

Furthermore, we are deeply concerned over the reported complete absence of judicial due process that curtailed the ability of the nine Tibetans to mount an effective defence, the lack of information regarding their place of detention and the conditions of their detention. We are also deeply concerned over allegations that the Chinese authorities have prevented family members from visiting their detained relatives.

Furthermore, grave concern is expressed with regard to practices and methods applied by Chinese law enforcement authorities against all those Tibetan religious institutions and monasteries, which are not considered as being amenable to Government policies. Reportedly, such practices may include close law enforcement surveillance, intimidation and judicial harassment of their members and monks. Such practices, including acts of repression of the human rights of the Tibetan minority, including freedom of opinion, expression, assembly and association, as well as cultural, linguistic and socio-economic rights, have reportedly intensified, in particular since the 2008 protests in Lhasa and other Tibetan areas (see also the letters CHN 9/2011 of 21 April 2011, CHN 12/2011 of 29 April 2011, CHN 15/2011 of 28 July 2011, CHN 20/2011 of 6 October 2011, CHN 8/2012 of 9 August 2012, CHN 3/2013 of 26 March 2013, CHN 10/2016 of 7 November 2016)

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 detailed information concerning the factual and legal grounds for the arrest and detention of the nine Tibetans mentioned above, the charges brought against them and information about the place of detention. Please explain how the reasons for their arrest and continued detention are compatible with China's obligations under international human rights law.
3. 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.
4. Please provide detailed information on their detention condition and the measures undertaken to ensure their physical and mental integrity and to protect them against torture and other cruel, inhuman or degrading treatment or punishment. In those cases where torture and other cruel, inhuman or degrading treatment or punishment has been conducted against them, please indicate any inquiry or investigation that has been undertaken and its outcome.
5. 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.
6. 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.
7. Please indicate the measures undertaken by the Government of China to ensure the free exercise by persons belonging to the Tibetan minority of their rights to freedom of opinion and expression, religion or belief, liberty and security, equality before the law, as well as their right to take part in cultural life without discrimination in China.
8. Please indicate what measures have been taken to ensure that human rights defenders in China, including minority and religious rights defenders, can

operate in an enabling environment and can carry out their legitimate activities without fear of reprisals, threats, harassment or criminalisation of any kind.

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.

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 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.

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

Karima Bennoune
Special Rapporteur in the field of cultural rights

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes
Special Rapporteur on minority issues

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 recall your Excellency's Government's obligations under international law. In particular, we would like to refer to the International Covenant on Civil and Political Rights (ICCPR) signed by China on 5 October 1998. We wish 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).

Article 27 of the Covenant states that: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". Article 26 of ICCPR also prohibits any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds, including race, language, religion, national or social origin, property, birth or other status.

Article 18 (1) of the Covenant further provides that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

We would equally like to refer to article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Any restriction to freedom of expression must meet the threshold established under article 19(3) of the ICCPR, that is, be provided by law and necessary and proportionate in order to protect the rights or reputation of others, national security or public order (ordre public), or public health or morals.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), to which China has been a party since 27 March 2001, establishes in article 15 that States Parties recognize the right of everyone to take part in cultural life. As stressed by the Committee on Economic, Social and Cultural Rights, 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 the same General Comment, the Committee on Economic, Social and Cultural Rights also recalled that the protection of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, and requires the full implementation of cultural rights, including the right to take part in cultural life (para. 40). Thus, States are reminded that in many instances, the obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected (para. 50).

We would also like to draw your attention to the reports of the Special Rapporteur in the field of cultural rights, which emphasize that it is the responsibility of States to create an environment favourable to cultural diversity and the enjoyment of cultural rights, by meeting their obligations to respect, protect and fulfil those rights (A/HRC/14/36), and that States have a duty not to destroy, damage or alter cultural heritage and to take measure to respect and protect tangible and intangible cultural heritage in all its forms and of all groups, which includes, inter alia, traditions, customs and practices, aesthetic and spiritual beliefs, vernacular or other languages, artistic expressions and folklore (A/HRC/31/59, in particular paras. 49, 52 and 53). These obligations to respect and promote cultural diversity are also stated in the 2005 UNESCO Convention on the protection and promotion of the diversity of cultural expressions, which China ratified on 30 January 2007.

The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities, adopted by the UN General Assembly, requires under article 1.1 that States “shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within its respective territories and shall encourage conditions for the promotion of that identity”. Article 2.1 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. Article 4.1 establishes that “States will 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.

The International Convention on the Elimination of all Forms of Racial Discrimination to which China is also party stipulates under article 5 that States Parties should undertake to prohibit and to eliminate racial discrimination in all its forms, including on the basis of descent, or national or ethnic origin, and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law

Finally, 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 6 (b) and c) of the same Declaration provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.