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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP), a non- governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 May 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Secret detention in the People's Republic of China

The Joint Study on Secret detention submitted to the Council states¹: "Secret detention violates the right to personal liberty and the prohibition of arbitrary arrest or detention. No jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including *habeas corpus*. Secret detainees are typically deprived of their right to a fair trial when State authorities do not intend to charge or try them. Even if detainees are criminally charged, the secrecy and insecurity caused by the denial of contact to the outside world and the fact that family members have no knowledge of their whereabouts and fate violate the presumption of innocence and are conducive to confessions obtained under torture or other forms of ill-treatment. At the same time, secret detention amounts to an enforced disappearance. If resorted to in a widespread or systematic manner, secret detention may even reach the threshold of a crime against humanity."

Upon monitoring the situation of secret detentions in the People's Republic of China (PRC), the Joint Study said that the Working Group on Arbitrary Detention and other special procedures mandate holders addressed several urgent communications to the Government of China, in particular with regard to cases of alleged secret detention of Tibetans accused of separatism. Citing specific Tibetan cases, the Joint Study states²:

"Jamyang Gyatso, a monk in Xiahe, in North Western Gansu province, was arrested by security officials on 8 January 2007 and detained at an undisclosed location. The Government informed the special procedures mandate holders that the State security authorities had investigated him on suspicion of having conducted unlawful acts that endangered State security, and that he had confessed to having committed the offence of "incitement to separatism". On 3 February 2007, the Chinese security authorities ordered that he be placed under restricted freedom of movement, pending trial. Jamyang Kyi, a Tibetan writer and musician, was reportedly taken away from her office at the Qinghai Provincial Television Station in Xining City by plainclothes State security officers on 1 April 2008, and taken to an undisclosed location on 4 or 5 April 2008, where she was held incommunicado until her release on 21 April 2008. According to the information provided by the Government, Mrs. Jamyang was not arrested but was placed in criminal detention and held at the Xining municipal detention facility. She was later released on humanitarian grounds. Washu Rangjung, an author of two books on Tibetan history and culture, singer and news presenter for a local television company in the Tibet Autonomous Region, was arrested at his home by Chinese military police officers on 11 September 2008, and taken to an undisclosed location. According to the Government, he was issued a criminal detention order by the Sichuan judicial authorities on suspicion of having engaged in separatist acts and acts harmful to State security. After being assessed as having expressed genuine repentance, he was reprimanded and released on 20 September 2008."

With the regard to the case of Jamyang Kyi, the Chinese authorities on 7 August, 2008 informed the Special Rapporteur on Torture that she "was not arrested but was placed in criminal detention. Her personal property was not confiscated but was lawfully seized. The public security authorities handled the case in strict accordance with Chinese legislation, and she was neither subjected to or at risk of ill-treatment." Despite the claims of the Chinese authorities, Jamyang Kyi was detained by the Public Security Bureau in Xining on

¹ A/HRC/13/42 (p. 2)

² A/HRC/13/42 (par. 169)

1st April 2008 and was accused of sending text messages to 17 of her friends, including Woesser, the Tibetan blogger based in Beijing. The Chinese secret services intercepted text messages between them and found that Jamyang Kyi had sent details of the unrest and the killing of Tibetans in Ngaba (Amdo) in Sichuan Province. She was reportedly released on 8 May, 2008.

How after her release upon paying a huge fine, Ms. Kyi wrote in a blog about her experience whilst in detention (<http://www.highpeakspureearth.com/2008/11/they-by-jamyang-kyi.html>): "During those days when I was thrown in front of the six gates of hell, the person I thought of most was my kind and dear mother. Although it has been nearly three years since she passed away, she is very much alive in my heart. What is comforting is the realization that my dear mother has already left me. Otherwise, if she was alive and to witness my incarceration in prison, I know she would go insane ... At the height of unbearable torture, usually I invoked the name of my mother and Goddess Tara for protection. One afternoon when I was tied to a stool, everyone left for lunch except for one female secret police officer. For many days, I had suppressed my tears of suffering silently. But at that moment of weakness, I could not bear it any longer and cried out "Mother, Mother". The longing for my mother grew more intense and the suffering worsened, and I sobbed. As I was sobbing with pain, all my limbs went numb. At that time the fat man came and said, "You're crying intentionally because you know I'm here." Pressing his finger to my forehead, he warned, "If you continue to wail, I will stop this interrogation" ... Shouting in a loud voice, "Are you this stubborn because you think we are making a false accusations?" he left the room. Although it was not something that I was doing, being aware of his presence there, I still couldn't stop crying. At the time, the nerves in both my hands turned stiff and I could unclench my fist when I tried to force them open. A long time passed sobbing, with my entire body drenched in sweat..."

Secret detentions through arbitrary arrests have been the routine process employed by the Chinese authorities when dealing with human rights crisis in the Tibetan Area. Following the Tibetan Uprising of 2008, on April 2, Zhang Qingli, the party secretary of the Tibet Autonomous Region (TAR), gave a stern speech at a meeting attended by cadres at or above the rank of county magistrates or department heads. He told them to strengthen efforts to arrest the "Separatists" and that arrest orders should be approved rapidly, people should be arrested quickly, prosecuted fast and promptly put to death. Growing more serious, he declared that "a group of people will be executed." All those present applauded his speech, but in private everybody shivered with fear, and all commented that the revenge for the incident had started, Woesser, the Tibetan blogger living in Beijing said³.

In reaction to secret detentions in PRC, on 12 December 2008 following its forty-first session, the Committee Against Torture while being concerned by allegations that secret detention facilities, including the so-called "black jails", recommended⁴ that PRC "should ensure that no one is detained in any secret detention facility. Detaining persons in such conditions constitutes, per se, a violation of the Convention." Calling for the review of PRC's State Secret Laws, the Committee observed⁵ that such a "law prevents the disclosure of crucial information that would enable the Committee to identify possible patterns of abuse requiring attention, such as disaggregated statistical information on detainees in all forms of detention and custody and ill-treatment in the State party, information on groups and entities deemed to be "hostile organizations", "minority splittist organizations", "hostile religious organizations", "reactionary sects", as well as basic information on places of detention, information about the "circumstances of prisoners of great influence",

³ <http://chinadigitaltimes.net/2008/04/tibet-update-2/>

⁴ CAT/C/CHN/CO/4 - par. 14

⁵ CAT/C/CHN/CO/4 - par. 16 (a)

violations of the law or codes of conduct by public security organs, information on matters inside prisons."

The Committee also called upon⁶ PRC to "ensure that all persons who were detained or arrested in the aftermath of the March 2008 events in the Tibetan Autonomous Region and neighboring Tibetan prefectures and counties have prompt access to an independent lawyer and independent medical care and the right to lodge complaints in a confidential atmosphere, free from reprisal or harassment. The State party should adopt all necessary measures to prohibit and prevent enforced disappearances, to shed light on the fate of missing persons, including Genden Choekyi Nyima, and prosecute and punish perpetrators, as this practice constitutes, per se, a violation of the Convention."

We cannot conclude this submission without citing the case of Gendhun Choekyi Nyima, the Eleventh Panchen Lama of Tibet, who has lived under enforced disappearance in a secret detention since the age of six after he and his family members were abducted from their village in May 1995 by the Chinese authorities. Despite repeated appeals from Governments, Parliamentarians, NGOs, UN High Commissioner for Human Rights, the Committee on the Rights of the Child and Special Procedure Mandate-holders of the both the Commission on Human Rights and the Human Rights Council, the People's Republic of China refuses to declare public his whereabouts. Gendhun Choekyi Nyima an important spiritual leader of the Tibetan people is now 21 years old.

⁶ CAT/C/CHN/CO/4 - par.23