



General Assembly

Distr.: General
3 September 2012

English only

Human Rights Council

Twenty-first session

Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by the 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.

[22 August 2012]

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

People's Republic of China: Tibetans lack access to justice, lawyers, due process, and fair trial

Introduction

Despite efforts to bring transparency and reform to their criminal procedures, Chinese authorities continue to fall short of internationally accepted standards and their own laws which might provide adequate access to justice for their citizens. This disregard for rule of law and due process is visible in the treatment of Tibetans in the People's Republic of China (PRC).

The United Nations Working Group on Arbitrary Detention raised a significant number of cases of arbitrary detention of Tibetans in 2011 as evident in documents A/HRC/19/44 submitted to the 19th session of the Council.

In many Tibetan cases despite the right to counsel of one's choosing, defendants are not always granted attorneys¹ as in the case of three monks who were imprisoned for 10-13 years on trumped up charges of involvement with the self-immolation of their fellow monk Phuntsog. Defence attorneys are intimidated from taking Tibetan clients and face losing their license to practice law over the clients they represent, as repeatedly occurred in trials following the March 2008 demonstrations.²

While the administration of criminal proceedings in Tibetan areas technically required to be in Tibetan language, this is not always practiced, and many Tibetan defendants and their families have little idea of the charges or the case made against them, as was the case for Tibetan writer Kunchok Tsepel who was sentenced to 15 years during a closed-doors trial in November 2009.³

Article 73 of the revised Criminal Procedure Law (CPL) allows for people to be placed under 'residential surveillance' in locations other than their homes or formal detention centres for up to six months if they are believed to be involved in 'endangering state security', 'terrorism' or 'major bribery'.⁴ Families must be informed within 24 hours that their relative has been placed under 'residential surveillance' but police are not obliged to disclose the location or the reason for the detention if it may 'hinder the investigation'.

A clause in an earlier draft of the law, which proposed that families would not be notified at all if doing so would obstruct the investigation, was dropped. Although families will now, in theory, be informed that their relatives have been arrested, the fact that they will be held outside of formal detention centres significantly increases the risk that they will be ill-treated.

Jigme Guri

Jigme Guri, a Tibetan monk, who was first detained following the March 2008 demonstrations in Tibetan area, was subject to these provisions in the CPL, as his initial arrest never resulted in a trial, and instead he endured two months of continued torture until he was finally released. During his two months of torture, which he detailed in a video released on YouTube,⁵ his family and friends knew not of his whereabouts or well-being.

¹ <http://www.savetibet.org/media-center/ict-news-reports/monks-imprisoned-10-13-years-following-self-immolation-kirti-monk>.

² <http://www.savetibet.org/media-center/ict-news-reports/protests-and-harsh-sentences-continue-tibet>.

³ <http://www.savetibet.org/media-center/ict-news-reports/founder-tibetan-cultural-website-sentenced-15-years-closed-door-trial-freedom-expression-c>.

⁴ <http://www.frontlinedefenders.org/node/17752>.

⁵ <http://www.youtube.com/watch?v=Ac-V82xAaUg>.

Guri endured the same procedural loophole following his November 2008 detention, and he was released in May 2009 without any charges against him.

In a rare situation, Li Fangping, one of the two Chinese lawyers who took up his case noted that police told Jigme that lawyers had come forward to help him and that before they had time to meet with him he was released “partly because there was insufficient evidence.”⁶

On 30 August 2011, the Working Group on Arbitrary Detention together with the mandates on Disappearances, Freedom of Religion or Belief and Minority Issues conveyed a joint urgent appeal to the Chinese authorities concerning the detention of Jigme Guri, who in August 2011 was arrested for the fourth time since 2006.

It was not until 1 January 2012, when the Kanlho Tibetan Autonomous Prefecture issued a procuratorate-approved arrest warrant for Jigme Guri that his whereabouts and wellbeing were first known following the August 2011 detention.⁷ The warrant stated that Jigme was charged with engaging in activities aimed at splitting the country. Under the Chinese law, once the procuratorate organs approve a case and issues arrest warrant, the person accused will mostly likely be charged and sentenced.

There are serious fears for his welfare because of the security crackdown in the area, his three previous detentions within the last five years, and his determination to make the truth of the situation in the Tibetan area known publicly. Apart from the notice of his arrest warrant in January 2012, the specifics of Jigme’s case have not been made public. Latest reports now say that the monk has been denied of lawyers chosen to represent him by the Chinese authorities in north-western Gansu province while they have completed his trial using government-appointed lawyers, a family source told Radio Free Asia.

Samdrup brothers

The Samdrup brothers are known for their important work on environmental protection in Chamdo area of eastern Tibetan Autonomous Region. They set up a grassroots environmental organization, the "Snowlands Great Rivers Environmental Protection Association", engaging local villagers with initiatives of litter collection, monitoring of illegal hunting, and the planting of thousands of trees.

Charges against the three brothers, whose environmental work was acclaimed both within China and internationally, are widely regarded to have been rigged after their efforts to stop the poaching of endangered animals in their home area in the Tibet Autonomous Region clashed with the local authorities.

44-year-old Rinchen Samdrup (recipient of a major Ford Motor Company award for nature conservation), was sentenced to five years in prison in July 2010.

Chime Namgyal Samdrup, serving 21 months in a labour camp, can no longer walk or eat without assistance as a result of his torture by authorities.

Karma Samdrup, 42-year-old, was sentenced to 15 years and was severely tortured in detention. Karma Samdrup’s situation is particularly worrying as local sources reported that he was seriously ill but was not given medical parole. He is believed to be held in the same place as the lawyer Gao Zhisheng at Shaya prison in Xinjiang.

According to his lawyer, Pu Zhiqiang, in the lead up to his trial Karma Samdrup was denied the right to meet anyone for more than six months following his arrest, and the court

⁶ <http://www.savetibet.org/media-center/ict-news-reports/tibetan-scholar-monk-who-gave-torture-testimony-detained-fourth-time>.

⁷ <http://www.dossier Tibet.it/news/jigme-guris-impending-sentence-arrest-warrant-surfaces>.

refused to allow his lawyers to photocopy the 70-page prosecution file to prepare his defence.⁸

Karma's wife wrote of her husband's trial on a blogpost, stating: "Even the lawyers seemed to think that much was illegal in the procedures and they raised their doubts. It was just a pity that the panel discarded them as 'unrelated to the respective issue' or said that this has already been clarified."⁹

Tenzin Delek Rinpoche

The legal proceedings surrounding the case of Tenzin Delek Rinpoche (Ch: A'an Zhaxi), a prominent Tibetan Buddhist lama imprisoned for life on charges of 'inciting separatism' and his assistant Lobsang Dondrub (Ch: Luorang Dengzhu) who was executed in January 2003, are evidence of the PRC's disrespect for due process and have previously merited the attention of mandate holders.¹⁰

Both Tenzin Delek and Lobsang Dondrub were denied access to visitors and legal counsel; they also were subjected to coercive methods of interrogation including beating and torture. Two prominent Chinese lawyers, Zhang Sizhi and Li Huigeng, were barred from representing Tenzin Delek.¹¹ During his sentencing, he declared the trial unfair, rejected all charges against him, and proclaimed his innocence before being removed from the court.¹² Furthermore, despite assurances to senior US government officials that Chinese authorities would refrain from executing Dondrub until the Supreme People's Court had reviewed his case, his execution took place within days of the agreement.

Yonten Gyatso

The recent case of senior Tibetan monk Yonten Gyatso who was sentenced to seven years in prison on alleged crimes of sharing sensitive information on the self-immolations in Tibetan area is a further example of the inadequacies of the PRC's justice system to adequately respect Tibetans' right to fair trial.

According to the Dharamsala based Tibetan Centre for Human Rights and Democracy (TCHRD), Gyatso who was first detained in October 2011, was charged with "sharing information since 2008 about political events in Tibet by attempting to make telephone calls to human rights mechanisms of the UN" on June 18, 2012. TCHRD further notes that Gyatso was tortured and severely beaten during his detention.¹³

Conclusion

MRAP appeals to the relevant Special Procedure mandate-holders, in particular to the Special Rapporteur on the independence of judges and lawyers to continue to raise the cases of Tibetan detainees in their communications with the Chinese authorities.

⁸ <http://www.hrw.org/en/news/2010/06/10/china-drop-charges-against-tibetan-environmental-philanthropist>.

⁹ <http://www.highpeakspureearth.com/2010/praying-a-blogpost-by-dolkar-tso-wife-of-karma-samdrup/>.

¹⁰ See document E/CN.4/2003/66.

¹¹ <http://www.savetibet.org/media-center/ict-news-reports/prominent-lawyers-prevented-from-defending-tenzin-delek-rinpoche>.

¹² <http://www.savetibet.org/media-center/ict-news-reports/tibetan-religious-leader-sentenced-life-prison-ict-calls-immediate-rel>.

¹³ http://www.tchrd.org/index.php?option=com_content&view=article&id=274.